

2004 No. 3236

CONSUMER CREDIT

**The Consumer Credit Act 1974 (Electronic Communications)
Order 2004**

<i>Made</i>	- - - -	<i>6th December 2004</i>
<i>Laid before Parliament</i>		<i>9th December 2004</i>
<i>Coming into force</i>		<i>31st December 2004</i>

The Secretary of State considering that the authorisation of the use of electronic communications by the following Order for any purpose is such that the extent (if any) to which records of things done for that purpose will be available will be no less satisfactory in cases where use is made of electronic communications than in other cases, in exercise of the powers conferred upon her by sections 8 and 9 of the Electronic Communications Act 2000(a) hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Consumer Credit Act 1974 (Electronic Communications) Order 2004 and shall come into force on 31st December 2004.

(2) In this Order, the “Act” means the Consumer Credit Act 1974(b).

Amendments to the Act

2.—(1) The Act shall be amended as follows:

(2) In section 61 (signing of the agreement), in paragraph (b) of subsection (2) (unexecuted agreement to be sent to debtor or hirer by post for signature), for “by post” substitute “by an appropriate method”.

(3) In section 63(3) (duty to supply copy of executed agreement), for “by post” substitute “by an appropriate method”.

(4) In section 64 (duty to give notice of cancellation rights), for “by post”, in each place where it occurs, substitute “by an appropriate method”.

(5) For section 69(7) substitute—

“(7) Whether or not it is actually received by him, a notice of cancellation sent to a person shall be deemed to be served on him—

(a) in the case of a notice sent by post, at the time of posting, and

(b) in the case of a notice transmitted in the form of an electronic communication in accordance with section 176A(1), at the time of the transmission.”.

(a) 2000 c.7.
(b) 1974 c.39.

(6) In section 176 (service of documents), in subsection (2) (permitted methods of service), for “by post” substitute “by an appropriate method”.

(7) After section 176 insert—

“176A Electronic transmission of documents

(1) A document is transmitted in accordance with this subsection if—

- (a) the person to whom it is transmitted agrees that it may be delivered to him by being transmitted to a particular electronic address in a particular electronic form,
- (b) it is transmitted to that address in that form, and
- (c) the form in which the document is transmitted is such that any information in the document which is addressed to the person to whom the document is transmitted is capable of being stored for future reference for an appropriate period in a way which allows the information to be reproduced without change.

(2) A document transmitted in accordance with subsection (1) shall, unless the contrary is proved, be treated for the purposes of this Act, except section 69, as having been delivered on the working day immediately following the day on which it is transmitted.

(3) In this section, “electronic address” includes any number or address used for the purposes of receiving electronic communications.”.

(8) In section 189 (definitions), in subsection (1), insert the following at the appropriate places—

““appropriate method” means—

- (a) post, or
- (b) transmission in the form of an electronic communication in accordance with section 176A(1);”.

““electronic communication” means an electronic communication within the meaning of the Electronic Communications Act 2000 (c.7)”.

(9) In that subsection, in the definitions of the expressions “give” and “serve on” for “by post” substitute “by an appropriate method”.

Amendments to the Consumer Credit (Termination of Licences) Regulations 1976

3.—(1) The Consumer Credit (Termination of Licences) Regulations 1976(a) shall be amended as follows:

(2) In regulation 7, for “by post”, in each place where it occurs, substitute “by an appropriate method”.

Amendments to the Consumer Credit (Agreements) Regulations 1983

4.—(1) The Consumer Credit (Agreements) Regulations 1983(b) shall be amended as follows:

(2) In regulation 6 (signing of agreement)—

- (a) In subsection (2) for “colour of the paper” substitute “background medium upon which the information is displayed”; and
- (b) After subsection 4 insert—

“(5) Where an agreement is intended to be concluded by the use of an electronic communication nothing in this Regulation shall prohibit the inclusion in the signature box of information about the process or means of providing, communicating or verifying the signature to be made by the debtor or hirer.”.

(a) S.I. 1976/1002, amended by S.I. 1981/614.

(b) S.I. 1983/1553, to which there are amendments not relevant to these Regulations.

(3) In Column 2 of paragraph 2 of Schedule 1 (information to be contained in documents embodying regulated consumer credit agreements other than modifying agreements), for “and a postal address” in each place where it occurs substitute “, postal address and, where appropriate, any other address”.

(4) In Column 3 of Form 3 of Part 1 of Schedule 2 (forms of statement of protection and remedies available under the Consumer Credit Act 1974 to debtors under regulated consumer credit agreements)—

- (a) for “by post” substitute “[by post]²”; and
- (b) at the end insert—

“² Creditor to replace words in square brackets with a description of the form of electronic communication agreed with the debtor in accordance with section 176A of the Act where the agreement is intended to be concluded by the use of an electronic communication.”.

(5) In Column 2 of paragraph 2 of Schedule 3 (information to be contained in documents embodying regulated consumer hire agreements other than modifying agreements), for “and a postal address” in each place where it occurs substitute “, postal address and, where appropriate, any other address”.

(6) In Column 3 of Form 2 of Schedule 4 (forms of statement of protection and remedies available under the Consumer Credit Act 1974 to hirers under regulated consumer hire agreements)—

- (a) for “by post” substitute “[by post]¹”; and
- (b) at the end insert—

“Note

1 Owner to replace words in square brackets with a description of the form of electronic communication agreed with the hirer in accordance with section 176A of the Act where the agreement is intended to be concluded by the use of an electronic communication.”.

(7) In Column 2 of paragraph 2 of Part I of Schedule 8, for “and a postal address”, in each place where it occurs, substitute “, postal address and, where appropriate, any other address”.

(8) In Column 2 of paragraph 2 of Part II of Schedule 8, for “and a postal address”, in each place where it occurs, substitute “, postal address and, where appropriate, any other address”.

Consumer Credit (Guarantees and Indemnities) Regulations 1983

5.—(1) The Consumer Credit (Guarantees and Indemnities) regulations 1983(a) shall be amended as follows:

(2) In regulation 3(1)(a) delete the words “the first page of”.

(3) In regulation 4(1) for “colour of the paper” substitute “background medium upon which the information is displayed”.

(4) After subsection 4 insert—

“(5) Where a security instrument is intended to be concluded by the use of an electronic communication nothing in this Regulation shall prohibit the inclusion in the signature box of information about the process or means of providing, communicating or verifying the signature to be made by or on behalf of the surety.”.

(5) In Part II of the Schedule (information to be contained in security instruments), for “and a postal address”, in each place where it occurs, substitute “, postal address and, where appropriate, any other address”.

(a) S.I. 1983/1556

Amendments to the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983

6.—(1) The Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983(a) shall be amended as follows:

(2) In regulation 2 (legibility of notices and copy documents and wording of prescribed Forms)—

- (a) in paragraph (1) for “colour of the paper” substitute “background medium upon which the information is displayed”; and
- (b) in paragraph (2) for “by post” substitute “by an appropriate method”; and
- (c) in paragraph (6) for “by post” substitute “by an appropriate method”.

(3) In regulation 4(a) (copies of unexecuted agreements given under section 58(1) of the Act) for “shown prominently on the first page of” substitute “shown prominently on”.

(4) In regulation 5 (copies of cancellable unexecuted and executed agreements) —

- (a) in paragraph (2) for “by post” substitute “by an appropriate method”; and
- (b) after paragraph (2) insert—

“(2A) Nothing in this Regulation shall prohibit the inclusion in the cancellable unexecuted or executed agreement of information about the process or means of providing, communicating or verifying the cancellation by the use of an electronic communication.”.

(5) In regulation 6 (notices of cancellation rights sent by post under section 64(1)(b) or (2) of the Act) for “by post” substitute “by an appropriate method”.

(6) After regulation 6 insert—

“6A. Regulation 6(b) shall not apply to a notice which is transmitted in the form of an electronic communication in accordance with section 176A of the Act.

6B. Nothing in this Regulation shall prohibit the inclusion in a notice of information about the process or means of providing, communicating or verifying the cancellation by the use of an electronic communication.”.

(7) In the Schedule—

- (a) in the heading to Part III (forms of notice of cancellation rights to be included in copies of cancellable executed agreements sent by post to the debtor or hirer under section 63(2) or (4) of the Act) for “by post” substitute “by an appropriate method”;
- (b) in Part IV (cancellation form to be included in copy cancellable executed agreements sent by post to the debtor or hirer under section 63(2) or (4) of the Act)—
 - (i) in the heading for “by post” substitute “by an appropriate method”; and
 - (ii) in Column 2 of form 16 for “by post” substitute “by an appropriate method”; and
- (c) In the heading to Part VI (forms of notice of cancellation rights to be sent by post to the debtor or hirer under section 64(1)(b) or (2) of the Act) for the words “by post” substitute “by an appropriate method”.

Amendments to the Consumer Credit (Repayment of Credit on Cancellation) Regulations 1983

7.—(1) The Consumer Credit (Repayment of Credit on Cancellation) Regulations 1983(b) shall be amended as follows:

(2) In Schedule 1 (form of request for repayment of credit under a cancelled regulated consumer credit agreement repayable by instalments)—

(a) S.I. 1983/1557; relevant amending instruments are S.I. 1984/1108 and S.I. 1988/2047.
(b) S.I. 1983/1559

- (a) in paragraph 2 for “postal address” substitute “postal address and, where appropriate, any other address”; and
 - (b) in paragraph 3 for “postal address” substitute “postal address and, where appropriate, any other address”.
- (3) In Schedule 2 (form of request for repayment of credit following withdrawal of party from a prospective regulated consumer credit agreement payable by instalments)—
- (a) in paragraph 2 for “postal address” substitute “postal address and, where appropriate, any other address”; and
 - (b) in paragraph 3 for “postal address” substitute “postal address and, where appropriate, any other address”.

Amendments to the Consumer Credit (Settlement Information) Regulations 1983

8.—(1) The Consumer Credit (Settlement Information) Regulations(a) shall be amended as follows:

(2) In paragraph 2 of the Schedule (information to be contained in a statement given by a creditor of the amount of the payment required to discharge the debtor’s indebtedness under a regulated consumer credit agreement together with particulars showing how the amount is arrived at), for “and a postal address”, in each place where it occurs, substitute “, postal address and, where appropriate, any other address”.

Amendments to the Consumer Credit (Conduct of Business) (Pawn Records) Regulations 1983

9.—(1) The Consumer Credit (Conduct of Business) (Pawn Records) Regulations 1983(b) shall be amended as follows:

(2) In paragraph 1(c) of the Schedule (information to be contained in entries in the books or other records to be kept by a person who takes any article in pawn under a regulated consumer credit agreement) after the words “postal address” insert “and, where appropriate, other address”.

Amendments to the Consumer Credit (Pawn Receipts) Regulations 1983

10.—(1) The Consumer Credit (Pawn Receipts) Regulations 1983(c) shall be amended as follows:

- (2) In regulation 2—
 - (a) in subparagraph (a) for “colour of the paper” substitute “background medium upon which the information is displayed”; and
 - (b) in subparagraph (c)—
 - (i) delete the words “front of the” in each place where it occurs; and
 - (ii) after the words “postal address” in each place where it occurs insert “and, where appropriate, other address”.

Amendments to the Consumer Credit (Realisation of Pawn) Regulations 1983

11.—(1) The Consumer Credit (Realisation of Pawn) Regulations 1983(d) shall be amended as follows:

(2) In Schedule 1 (particulars to be indicated in addition to the asking price in a notice of the intention to sell an article taken in pawn under a regulated consumer credit agreement)—

(a) S.I. 1983/1564
 (b) S.I. 1983/1565
 (c) S.I. 1983/1566
 (d) S.I. 1983/1568

- (a) In paragraph 1, for “and a postal address” substitute “, postal address and, where appropriate, other address”.
 - (b) In paragraph 2, for “and a postal address” substitute “, postal address and, where appropriate, other address”.
- (3) In Schedule 2 (Information to be given as to the sale of an article taken in pawn under a regulated agreement, its proceeds and expenses)—
- (a) In paragraph 1, for “and a postal address” substitute “, postal address and, where appropriate, other address”.
 - (b) In paragraph 2, for “and a postal address” substitute “, postal address and, where appropriate, other address”.

Amendment to the Consumer Credit (Running Account Information) Regulations 1983

12.—(1) The Consumer Credit (Running Account Information) Regulations 1983(a) shall be amended as follows:

(2) In regulation 2(2) (form and contents of statements) for “colour of the paper” substitute “background medium upon which the information is displayed”.

Jacqui Smith,
Minister of State for Industry and the Regions
and Deputy Minister for Women and Equality
Department of Trade and Industry

6th December 2004

EXPLANATORY NOTE

(This note is not part of the Order)

This Order inserts or modifies provisions of the Consumer Credit Act 1974 (c 39) and secondary legislation made under that Act for the purpose of enabling and facilitating the use of electronic communications for concluding regulated agreements and when sending notices and other documents.

Article 2(8) makes provision to facilitate the use by a person of electronic communications for the service of statutory notices and documents. Article 2(7) to (8) amends section 176 of the Act (service of documents) to clarify that a requirement under the Act to serve a document on a person may be discharged by sending that document to an electronic address and in electronic form agreed by that person. Article 2(9) to (10) insert new definitions of “appropriate method” and “electronic communication” in section 189 (definitions) of the Act for this purpose.

Article 2(2) to (6) make amendments to relevant parts of the Act that deal with the service, giving or sending of documents so as to include transmission in the form of an electronic communication.

Article 3 amends the Consumer Credit (Termination of Licences) Regulations 1976 to enable service of a notice in the form of an electronic communication.

Article 4 amends the Consumer Credit (Agreements) Regulations 1983 to enable agreements to be concluded electronically and to enable the creditor or owner to include in the signature box information about the process or means of providing, communicating or verifying the signature made by the debtor or hirer.

Article 5 amends the Consumer Credit (Guarantees and Indemnities) Regulations 1983 to enable security instruments to be in the form of an electronic communication and to enable the creditor or

(a) S.I. 1983/1570

owner to include in the security instrument information about the process or means of providing, communicating or verifying the signature made or on behalf of the surety.

Article 6 amends the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983 to enable copies of agreements and cancellation notices to be in the form of an electronic communication. It also enables the creditor or owner to include in the cancellation notice information about the process or means of providing, communicating or verifying such cancellation in the form of an electronic communication.

Article 7 amends the Consumer Credit (Repayment of Credit on Cancellation) Regulations 1983 to enable requests for repayment of credit to include where appropriate an electronic address.

Article 8 amends the Consumer Credit (Settlement Information) Regulations 1983 to allow for an electronic address to be contained in a statement given to the debtor showing the amount required to discharge their indebtedness.

Article 9 amends the Consumer Credit (Conduct of Business) (Pawn Records) Regulations 1983 to allow for an electronic address to be contained in entries in books and records of a person who takes an item in pawn.

Article 10 amends the Consumer Credit (Pawn Receipts) Regulations 1983 to enable pawn receipts to be in the form of an electronic communication.

Article 11 amends the Consumer Credit (Realisation of Pawn) Regulations 1983 to allow for an electronic address to be given, where appropriate, in a notice of an intention to sell an item held in pawn.

Article 12 amends the Consumer Credit (Running Account Information) Regulations 1983 to enable statements to be sent in the form of an electronic communication.

A full regulatory impact assessment of the effect that this instrument will have on costs to business is available from the Consumer and Competition Policy Directorate of the Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET.

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Order 2004

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