

dti

CONSUMER CREDIT ACT 2006

Consultation on Draft
Statutory Instruments:

- Exemptions
- Post-contract information
- Licensing

DTI Response

MARCH 2007

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FOREWORD

In August 2006, I sought your views on draft statutory instruments covering exemptions, post contract information and licensing under the Consumer Credit Act 2006. These form one part of the package of new consumer credit regulations that are being implemented between 1 October 2006 and 1 October 2008.

The statutory instruments set out the detail of many of the provisions of the 2006 Act. In developing these detailed rules, we have been conscious of the need to ensure the 2006 Act delivers the consumer benefits we set out to achieve, but in a way that is proportionate to the costs and risks involved.

Some of these provisions represent real challenges to some lenders as they require significant changes to their complex information systems. This is why, in preparing the consultation document, we undertook a period of pre-consultation and have continued to work closely with industry and consumer groups throughout this period of consultation. This is also why I commissioned PricewaterhouseCoopers (PwC) to provide an independent assessment of the costs and risks involved in implementing the provisions.

As a result, we all have a much clearer understanding of how the new provisions will work in practice and the work involved in implementing them. We have used this information to further develop the Statutory Instruments. However, it is clear that some major lenders will need more time in which to develop and test new information systems than the 12 months originally proposed. We are therefore extending by 6 months the implementation period for the post-contract transparency provisions. While the decision to extend the implementation period was not easy, I am satisfied that not allowing sufficient time introduces an unacceptable risk to consumers. However, I do expect industry to implement the provisions as soon as they are in a position to do so.

I would like to offer my thanks to all those who responded to the consultation document. A summary of their views is given here. These responses, from a broad range of stakeholders, should be read in conjunction with the PwC report and a revised draft of the Statutory Instruments, which I have published alongside this response.

The Order and the Regulations will be laid before Parliament in April 2007.

Ian McCartney
Minister for Trade, Investment and Foreign Affairs
12 March 2007

PART 1

INTRODUCTION

1. The Consumer Credit Act 2006 is designed to help protect consumers and creates a fairer, more transparent and competitive credit market. The main provisions of the 2006 Act will be brought into force in three phases. Phase 1 introduces the unfair relationships test, an alternative dispute resolution scheme and a new definition of individual and will come into force on 6 April 2007. Phase 2 introduces the new licensing regime, the removal of the financial limit and the Consumer Credit Appeals Tribunal, which are due to come into force in April 2008. The final phase will bring in the post-contract transparency provisions and the new categories of business on 1 October 2008.
2. Throughout the consultation period we have been conscious of the need for open and constructive dialogue to ensure that any requirements on industry are in proportion to the consumer benefits being sought.
3. Issuing draft Statutory Instruments with the consultation document in August last year has helped industry better understand how the provisions will impact on their information systems. We also commissioned PricewaterhouseCoopers (PwC) to provide an independent analysis of the challenges facing industry in meeting the requirements of the Act in terms of both time and cost. That report, which is being published alongside this document, highlights the size and complexity of information systems across the credit industry and work that will be involved in adapting them to meet the requirement of the Act. The report also highlights the risks to both lenders and their customers of information systems that are not sufficiently tested before commencement.
4. In addition, the research conducted by PwC established that the implementation costs were significantly greater than predicted in the initial Regulatory Impact Assessment for the Consumer Credit Act. At the time, the RIA was based on the best information available.
5. The higher than expected costs are down to amount of work needed to adapt information systems to meet the requirements of the Act, as well as the high numbers of customer records affected. However, the costs highlighted in the report were based on the draft statutory instruments used to inform this consultation exercise in August last year. In refining the Statutory Instruments throughout the consultation process, we have already reduced the overall costs. A revised draft of the Statutory Instruments is attached to this document.

CONSULTATION

6. The Consumer Credit Act received Royal Assent on 30 March 2006. Draft Statutory Instruments were developed and published in a consultation document on 2 August 2006. This followed a period of pre-consultation, which dealt effectively with a number of issues associated with implementing the Act.

The consultation document sought views on the draft Order and Regulations and on particular issues arising from them.

7. The consultation document was sent to lenders and associated representative bodies, consumer advisory bodies and government bodies. It was also available electronically on the DTI website.
8. The deadline for responses was 24 November 2006. A total of 44 responses were received. These break down as follows.

Category	Number of responses
Consumer Group	6
Government	4
Individual/Academic	1
Industry – legal/advice	6
Industry - lender	18
Trade Association	9
Total	44

9. The Government would like to thank respondents for supplying a great deal of high-quality feedback. As well as input on policy issues, a large number of useful technical drafting suggestions were received.
10. The responses, except those made in confidence, are available in the DTI Library and can be accessed on request by contacting the Information and Library Services in the DTI on 020 7215 6226. A list of those respondents who were willing to have responses disclosed can be found at Annex A.

UNDERSTANDING THIS DOCUMENT

11. This report follows the order of the August consultation document. It gives a summary of the views expressed in relation to each of the areas in which the Government made a proposal and the specific questions asked. The actual respondents have not been cited in each case, not least because some submissions repeated views already expressed by others. Where the Government has concluded, in the light of consultation replies, that a significant change in the provisions is warranted, this is set out at the end of each section. We have also explained where we have decided not to make changes.
12. In the light of comments received, a number of other minor changes have been made to the Regulations on more detailed and/or technical drafting points. While in many cases these changes have been taken on board, they have not all been included in the summary, not least for the sake of brevity.
13. Some respondents offered views on issues that were outside the scope of the consultation – in many cases these issues had already been determined in the Consumer Credit Act 2006. While these views have been taken into consideration in wider work to assess the impact of the Act, they have not been included in this document.

14. A summary of the questions asked in the consultation document is contained at Annex A.

SUMMARY OF THE KEY GOVERNMENT CHANGES

Interspersion

15. In order to ensure that statements and notices are as clear and easily understood as possible, and can be adapted to suit the circumstances of individual cases, we are relaxing the requirement for prescribed information to be shown as a whole and without interspersion.

Transitional arrangements

16. In order to take account of industry concern that some of the required information for existing **periodic fixed-sum statements** was not currently available on their IT systems, we are allowing lenders to indicate where certain elements are not included in the actual statement, but will be available on request. In addition, we are removing the requirement that statements and notices cannot show information relating to the period before commencement of the transparency provisions in **arrears statements**. This is to ensure consumers are aware of their overall arrears situation and to simplify the arrangements for lenders.

Estimated end of the agreement

17. In periodic fixed-sum statements, the requirement to estimate a new end date for the agreement where payments had been missed or reduced was likely to prove difficult (or impossible in some cases) to implement in practice . This requirement has now been removed, and instead we are requiring a general warning on the effect of paying less than the agreed sum and what debtors should do in those circumstances.

Implementation period for post-contract transparency provisions

18. As a result of discussions with industry, backed up by independent evidence, we have decided to extend the implementation period by six months in order to reduce the risks for both lenders and consumers. This means that lenders will need to comply with all the post contract transparency requirements by 1 October 2008. However, the removal of the £25,000 financial limit will come into force at the earlier date of 6 April 2008 to ensure this important consumer protection measure is brought in at the earliest possible date. 6 April 2008 will also bring in the business and high net worth exemptions.

High net worth exemption

19. We have made the arrangements for the certification of an individual's high net worth status more flexible, and balanced this by an increase in the relevant income and asset thresholds.

Buy-to-let

20. The policy intention of the CCA 2006 was that lending over £25,000 for the purpose of buy-to-let would fall within the business exemption, but the way that Act has been drafted means that it exempts only buy-to-let that is wholly or predominantly for business purposes, and not for investment purposes. DTI intends to address this unintended consequence of the CCA 2006 before the Consumer Credit (Exemption Agreements) Order 2007 is brought into force through a Legislative and Regulatory Reform Order to amend the CCA 1974.

Plain English

21. We have reviewed all the regulations and made improvements to the clarity of the English.

PART 2

ANALYSIS OF RESPONSES

CHAPTER 2 – THE REQUIREMENTS FOR THE EXEMPTION FOR HIGH NET WORTH INDIVIDUALS

Question 1: Are you content with our proposal to link the thresholds of what constitutes high net worth to the Financial Services and Markets Act 2000 (Financial Promotions Order) 2005?

Respondents were generally supportive of the proposal to link the thresholds to the Financial Services and Markets Act 2000 (Financial Promotions Order) 2005, as they felt this would help achieve greater consistency of definition across the industry. Some respondents suggested that it would be important to ensure that the thresholds remained aligned in the future. One respondent commented that it was wrong to make a link between the two references to high net worth individuals because they relate to different circumstances and different risks.

DTI Response

Despite the general support for a link to the thresholds in Financial Services and Markets Act 2000 (Financial Promotions Order) 2005, we have instead decided to increase our thresholds to relate more closely to the financial status of the individuals to whom creditors offer private banking services, and therefore the individuals for whom this exemption was envisaged as being of use. We have increased the definition of high net worth status in the Exemption Order to a net income value of £150,000 or net assets of £1,000,000. We believe this increase in thresholds is a justifiable balance to our decision to make a relaxation in the requirements for certification described below.

Question 2: Do you have any comments on the proposed categories of persons who may make a statement of high net worth?

There was considerable concern from industry bodies that what we proposed in the way of certification of high net worth status, i.e. by an independent third party who is a suitably qualified accountant, will not work in practice. Industry's view was that this requirement would add a significant cost and delay and the inconvenience would have a damaging effect on the bankers' relationship with private clients. They felt that the exemption would therefore not achieve its objective and would result in a damaging impact on the private banking sector.

DTI Response

We accept the argument that the arrangements for certification will need to be more flexible for the exemption to work as intended. However, we believe this increase in flexibility needs to be balanced by a reduction in the number of high net worth individuals to whom the exemption could apply. We have therefore increased the

thresholds defining high net worth status to make them more consistent with level of wealth required by individuals to be offered private banking services, as described above.

We will allow in house accountants (i.e. accountants associated with the creditor) to be able to provide the certificate. This should address lenders concerns about difficulty of certification. We are limiting the range of creditors to which this would apply by requiring that for in house certification the creditor would need to be a person who has permission under Part 4 of the FSMA 2000 to accept deposits. The change we have made reflects the fact that in some cases the creditor will be custodian of the client's assets and therefore arguably best placed to confirm the client's financial status. Additionally the creditor would need to satisfy themselves of the individual's high net worth status in order to be sure of the appropriateness of entering into an unregulated agreement with them, so would need to confirm any third party assessment.

In addition we have removed the reference to an employer making the statement, in response to several respondents' comments that this option would not be used. We have also included the possibility of an accountant making the statement who is a member of a professional body established outside the UK.

Question 3: Do you have any comments on the proposed form of a statement of high net worth?

Respondents raised a number of comments and points of detail about the form of the statement, the majority of which we have been able to accommodate.

DTI Response

We have made a number of changes to the statement to make it more comprehensive and clearer as to its purpose. We have moved the text about the thresholds into the body of the statement for clarity; we have required that the person making the statement has to declare whether or not they are connected to the creditor/owner and if so, in what capacity they are connected. We have included wording to accommodate both singular and plurality of creditor / owner. We are no longer requiring the signature to be included within the text of the statement.

Question 4: Do you have any comments on the proposed form of a declaration of high net worth?

Respondents raised a number of comments and points of detail about the form of the statement, the majority of which we have been able to accommodate.

DTI Response

We have included a sentence that the high net worth individual has to confirm that he has received a copy of the statement of high net worth. We have made the acknowledgment about the powers of the court to make an order where there is an unfair relationship more user-friendly. We have provided that this acknowledgment

will be deleted in the case of a consumer hire agreement as it is not applicable. We are no longer requiring the signature to be included within the text of the statement.

CHAPTER 3 – THE REQUIREMENTS FOR THE EXEMPTION FOR BUSINESS LENDING

Question 5: do you have any comments on the proposed form of a declaration of a business purpose?

Status of buy to let lending under the Consumer Credit Act 1974 as amended by the Consumer Credit Act 2006

There was considerable concern from a sector of industry respondents as to the status of lending for the purpose of purchasing buy to let properties and the extent to which it falls within the scope of the business exemption. This concern primarily relates to wording of section 16B of the CCA 1974 as inserted by the CCA 2006, rather than the detail of the secondary legislation; however it is clearly of fundamental relevance to Question 5 and is therefore dealt with here.

The policy intention of the CCA 2006 was that lending over £25000 for the purpose of buy-to-let would fall within the business exemption but the way the Act has been drafted means that it exempts only buy-to-let lending that is wholly or predominantly for business purposes. A declaration by the debtor to this effect creates a presumption that the agreement is entered into wholly or predominantly for such purposes. The presumption will not apply if at the time the agreement is entered into the creditor or his agent knows or has reasonable cause to suspect that this is not the case.

Business is defined in section 189(1) and the definition is subject to subsection (2) which provides that a person is not to be treated as carrying on a particular type of business merely because occasionally he enters into transactions belonging to a business of that type.

Industry has expressed concerns that this approach presents practical problems. Part of the sector is based around lending for the purchase of one or a very small number of buy to let properties where the loan is secured on the buy to let property rather than the debtor's primary residence. Such lending would currently be unregulated (provided that it was for more than £25,000). Therefore, removal of the £25,000 limit potentially brings this lending within scope of the CCA 2006 and the requirement for regulatory compliance, which is an unintended consequence of the CCA 2006. The scale of the problem is limited to some extent because the Consumer Credit (Exempt Agreements) Order 1989 exempts agreements entered into by a wide range of mortgage lenders from the scope of the CCA 1974, for the initial loan. However, there are clear implications for those lenders whose agreements do not fall within the ambit of the Consumer Credit (Exempt Agreements) Order as they would be required to introduce regulatory compliance systems. In addition agreements indirectly refinancing indebtedness secured on a buy to let property fall outside the scope of the Order.

DTI Response

DTI will seek to address this unintended consequence of the CCA 2006 before the Consumer Credit (Exempt Agreements) Order 2007 is brought into force through a

Legislative and Regulatory Reform Order to amend the CCA 1974. The amendment would exempt agreements that are entered into in order to provide credit of more than £25,000 to finance or refinance the purchase of land that it is to be let for use as a dwelling, or to finance or refinance the repair or improvement of such land or the provision of any dwelling upon it, where the loan is secured on that land.

Form of the declaration

Several respondents commented that it was unnecessary duplication to print the name of the signatory in the text of the declaration, as details of who the signatory is will be elsewhere in the document. Respondents also commented that there should be provision made to cover joint debtors/hirers. There was also some concern from industry respondents that the requirement for two signatures (one for the agreement and one for the business declaration) would be likely to result in delays to the agreement as one or other signature might be forgotten.

DTI Response

We believe we have addressed the majority of concerns and have dealt with the possibility of joint debtors/hirers in the form of the declaration. We suggest to industry that the declaration is placed in close proximity to the agreement signature to help ensure that the requirement to sign the document twice is not overlooked.

We have included in the declaration a statement that lending predominantly for the purpose of a business foregoes the protection of CCA, added a reminder to the debtor/hirer to seek independent legal advice if they are in any doubt about the consequence of entering into an unregulated agreement. We took the view that it would be unhelpful to attempt to incorporate a definition of what 'predominantly' means, but thought that it would be helpful to include a cross reference to the section in the CCA 1974 containing the definition of business.

CHAPTER 4 – ANNUAL STATEMENTS FOR FIXED-SUM CREDIT ACCOUNT AGREEMENTS

The responses to Chapters 4 and 5 were the most detailed and included technical drafting suggestions, suggestions for how to make things work more smoothly, as well as what were perceived to be major problems with the policy. In drafting the response we have tried to balance the cost to industry with the benefit consumers will get, since the views from industry and consumer and enforcement organisations were generally conflicting.

Question 6: Do you have any comments on the information we are proposing to include in periodic statements, including comments on any additional information?

Address/Last known address

A number of lenders expressed concern that the regulations suggested that the address would have to be the actual current address rather than the address held by the lenders. They wanted the SI to be explicit that this was the address last known to the creditor as laid down in S176(3) of the 1974 Act.

DTI Response

These regulations are subject to the 1974 and 2006 Act. The fact that S176(3) says the address last known to the server means that we do not need to repeat it here. S176(3) will apply to these regulations. However, we have decided that this item of information should not be a requirement, and have therefore removed it.

Start date/ remaining term of agreement

Lenders were concerned that the term start date was unclear and could lead to confusion for lenders and borrowers. The remaining term was likely to prove practically difficult especially where the duration was not fixed

DTI Response

The Government policy here is to give borrowers some idea of where they are in the loan period. Stating the duration or minimum duration on its own would not achieve this. Some reference point is needed to allow the borrower to calculate where they are in the life of the agreement. We have therefore decided to keep the start date and clarify that this means either the date the agreement was executed or the date of first drawdown of funds. The duration or minimum duration of the loan would then replace the remaining term of the agreement

Amounts becoming due

This is not information that is currently kept on the lenders' systems and for some lenders would be a costly addition. In the majority of cases it would simply duplicate the payment figure.

DTI Response

We can see that there will be an element of duplication here in many cases. However, if the amounts becoming due are not shown it will not be easy for the consumer to easily identify where under- or over-payments have been made during the period. If more than two payments have been missed and the arrears equals the sum of two payments, then the arrears notice will be triggered. The arrears notice will show the payments due as well as the payments made. Given this, we are prepared to remove this item from the list of prescribed information. However, we will require lenders to state on any statement where there has been either under- or over-payment that this is the case and invite borrowers to contact them for further information.

Estimated end of agreement

Lenders were concerned that this would be a complicated calculation that would not be universally applicable. Consumer organisations agreed that there was potential for confusion here and the possibility of misleading the borrower, although the idea appeared initially attractive.

DTI Response

We are convinced that this will prove difficult to implement in practice and are suggesting that instead a general “wealth warning” is included in all statements.

“If you pay less than your agreed payment in most cases it will take you longer and cost more to pay off the debt under your agreement.

If you have difficulties making payments under your credit agreement, please contact us to discuss terms for the rest of the agreement. You may also want to seek advice on what to do from an independent free advice agency such as the Citizens Advice Bureau.”

“Clerical” errors

There was concern that the definition of clerical might exclude some minor errors that would not affect the consumer, but would have a disproportionate effect on the lender who would be unable to enforce the agreement.

DTI Response

We have always taken the view that an error was only a problem if it affected the substance of the information and that the word clerical was therefore unnecessary.

Competition Commission Inquiry on Home Credit

The Competition Commission (CC) made various recommendations about transparency with regard to home credit agreements. They want home credit borrowers to have more frequent statements than we are prescribing, but agreed

that if lenders were able to use the same format as the periodic statements it would reduce the additional costs for lenders, and, where home credit borrowers did receive a periodic statement it would not be confusing as they would already be familiar with the format. This meant that the CC recommended that the DTI included certain additional pieces of information that would apply purely to the home credit sector. These are:

- Total cost of credit,
- A reference to the comparison website being set up by the CC; and
- A statement telling home credit borrowers that they are entitled to more frequent statements.

The Minister agreed to this recommendation and the provisions are included in the SIs, although we may need to lay an amending SI to bring the second bullet point into force when the website is actually set up.

Transitional arrangements

For agreements in existence at commencement there is concern that much of the information required on the statements is not on the database of the lenders' IT systems. Much of the information will only be available in the original agreements, many of which are stored as microfiche. The cost of the data-inputting exercise to get all the necessary information onto the IT system is likely to be hugely expensive and potentially disproportionate in terms of consumer benefit, particularly if we ensure that the information is available on demand.

There were also concerns about what would happen to statement periods where lenders already provided a regular statement. Would they be forced to split the statement into two or provide two statements – one pre- and one post-commencement?

DTI Response

We propose to allow lenders to not include selected items of information. However, they would be required to indicate, on the statement, that it did not contain all the information which consumers were entitled to and that they can get it (free) by contacting the lender. This could include:

- Amount of credit.
- Start date/date of first drawdown of funds
- Duration or minimum duration
- Interest rate for pre-computed loans

The penalty for not providing the information when requested would be the same as not providing a correct statement – unenforceability and not being able to charge interest during the period of non-compliance. There would also be a requirement to provide the information within a set period of time – 15 working days (this is slightly longer than for providing copies of the agreement since this is potentially more complicated than just getting a copy).

We see this as a long term, but not open-ended transitional lasting 10 years. This would allow lenders plenty of time to input records for loans lasting beyond this time onto their systems, but would mean that a majority of loans would have completed. For lenders who already provide regular statements, we will allow them to continue with their regular statement periods as long as the basic information is provided, so that the new form of statements would only kick in for the first statement after commencement (although they would not have to include the information referred to above).

Agreements that have been terminated

There was considerable concern about how such agreements that have been moved from the main system and possibly put together with other terminated loans will be treated for the purposes of the various statements.

DTI Response

Where statements are required post-termination, we will allow lenders to treat existing agreements rolled up together for recovery to be treated as a single loan, with an indication of which agreements were originally included.

Question 7: Do you have any comments on our proposals for the way in which we propose to deal with agreements covered by one aggregated payment?

There were a lot of industry concerns here, primarily about multiple agreements and industry's desire to have these explicitly included in regulation 6 (now 8). There was also a request to be able to aggregate fixed-sum and running-account agreements. This already happens with some mail order agreements. Finally, consumer organisations were against allowing HP agreements with PPI to be aggregated because two settlement figures will still be needed if a borrower wishes to settle their total indebtedness.

DTI Response

In these provisions we are not making particular provision for multiple agreements and we are making no comment on the way in which lenders deal with these. Regulation 5 (now 7) was originally included to deal with circumstances where borrowers pay one amount to cover several loans which might not all be CCA regulated. There is nothing to stop lenders who wish to from using this for statements for multiple agreements, provided they are satisfied that the agreements in question meet the tests laid down in the regulations – we make no comment in these regulations on the documentation requirements of multiple agreements. These statements do not regulate how agreements are documented, but concern the provision of information to consumers during the life of the agreement about sums which are due to the creditor under it.

Regulation 6 (now 9) deals specifically with loans sold with insurance, which are treated separately in the Agreements Regulations. We are just accommodating this difference and do not wish or intend to extend it to other multiple agreements.

The only changes therefore that we have made to these provisions is to ensure that duplicated items of information need to be shown only once and some small technical changes.

We see no policy reason why fixed-sum and running-account agreements should not be aggregated in the same way if that is what happens. However, this change may not be simple to make and our lawyers are considering whether or not it can be done.

We considered consumer organisation representations on keeping HP and PPI agreements separate. Although we understood the problem they were talking about, we decided that we could address the potential problem by requiring a statement in these circumstances telling the consumer that he can request two figures for settlement. This information would need to be provided within 15 working days.

CHAPTER 5 – ADDITIONAL STATEMENTS FOR RUNNING- ACCOUNT CREDIT AGREEMENTS

There are already regulations concerning running-account agreement statements and we are just adding to those rather than replacing them wholesale.

Charge Cards and Overdrafts

There was considerable concern about the use of minimum payment warnings for charge cards and overdrafts where they made little sense.

DTI Response

We do not believe that there is a problem with charge cards since article 3(1)(a)ii of the Exempts Agreements Order exempts them from the legislation.

On overdrafts we recognise that the warnings are not appropriate and so the only extra information we are requiring here is the allocation of payments information if it is actually relevant.

Interest rates

Lenders already show monthly interest rates as required by the Banking Code and were concerned that an annual rate would also need to be shown and that this might not be shown next to the monthly rate because of the positioning requirement in regulation 23.

DTI Response

We have reconsidered the case for showing an annual interest rate. Given that lenders are already required to provide interest rates under the Running-Account Information Regulations, and do so as a monthly rate, we do not believe that it is necessary to add anything to this. We have therefore deleted that requirement in these regulations.

Dispute resolution

A number of respondents pointed out that there was no equivalent dispute resolution statement required in the running-account statements and that this was useful information for many consumers.

DTI Response

We agree and have added the dispute resolution statement to the requirements for running-account credit statements.

Question 8: Do you have any comments on the proposed warning in relation to a failure to make a required payment?

Failure to make a required payment

Some people suggested that this should be a standard statement on all statements. On the other hand others thought that it was rather heavy handed in circumstances where the borrower may have underpaid by a matter of a few pence.

DTI Response

We felt that the statement would lose its impact if it were to be included on every statement as a matter of course. We do not believe that only including it where the payment has been missed should present too many problems since lenders already add personalised statements in similar circumstances.

We agree that it may seem heavy-handed to include the statement where the shortfall in payment is a matter of a few pence, we are therefore not requiring the statement to be included if the shortfall is less than £1. If a borrower does this two months running, it would trigger an arrears notice. Proposals to deal with such de minimus amounts and arrears notices are set out in Chapter 7.

Question 9: Do you have any comments on the proposed warning in relation to the making of minimum repayments?

Minimum payments warning

Most lenders were happy with this as it reflects current Banking Code practice. However some lenders suggested that it were only provided on statements where a payment had not been missed, since they would get the “You have missed a payment” warning in the appropriate cases anyhow.

DTI Response

Lenders that subscribe to the Banking Code already include this in all their statements, and the words are still just as valid even if the borrower has missed a payment. As a result we have left this as initially envisaged.

Question 10: Do you think that the allocation of payments should be displayed more prominently in cases where the balance is not paid off in full, or is our proposal to include it somewhere in the statement sufficient?

Respondents were split on this issue. Most lenders preferred things to remain as they were, but all consumer organisations and enforcement agencies, along with some lenders thought that more was needed, with some suggesting that a statement telling consumers that the payments were allocated in a way that would cost them more was necessary where this was the case.

DTI Response

We recognise that most lenders provide this information on the back of the statement. However we are persuaded that without some signposting to this information, it will not help consumers understand how they are being charged interest when they do not pay off the full balance. We have therefore added a statement to be shown in a more prominent position that alerts consumers to the importance of this information and its whereabouts on the statement.

“If you do not pay off the full amount outstanding, we will allocate your payment to the outstanding balance in a specific order, which is set out [state where in relation to this form of wording this information is located on the statement]. The way in which payments are allocated can make a significant difference to the amount of interest you will pay until the balance is cleared completely.”

CHAPTER 6 – NOTICES OF SUMS IN ARREARS FOR FIXED-SUM CREDIT AGREEMENTS

Question 11: Do you have any comments on the proposed information to be included in a notice of sums in arrears for fixed-sum credit agreements, including comments about any additional information?

Explanation Of Why Notice Is Being Sent (11(1))

A number respondents felt that consumers would not understand the reference to section 86B (Regulation 11(1)(a)) in a statement explaining why the Notice was being sent.

DTI Response

We accept the point and have deleted the reference to section 86B though have retained the reference to the 1974 Act. Please see reference in Chapter 11.

Disclosure Of Arrears - Transitional Provisions

Regulation 31 requires that an Arrears Notice cannot take into account payments required to be made before the date of commencement of s9. A number of respondents thought it would be technically difficult to adapt their systems to calculate and store two sets of information and that it was in consumers' interests to be aware of their overall arrears situation.

DTI Response

We agree with the points made. While we will not require lenders to provide pre-commencement information in Arrears Notices, we will make it permissible for them to do so.

Information contained in the first required Arrears Notices

There are technical difficulties for lenders in developing systems to identify the initial trigger point for a first required arrears notice, particularly as this may have happened some time in the past. In addition, the requirement to include the amount and date of payments made and becoming due could lead to arrears notices containing considerable amounts of historical payment information. This would not be the case for subsequent arrears notices, which would follow a six monthly cycle.

DTI Response

We agree with the points made and have amended the Statutory Instruments accordingly. For first required arrears notices, lenders will only be required to provide the amount of the arrears that gave rise to the notice. The arrears notice will invite customers to contact the lender direct for details of the arrears. The lender will have a maximum of 15 days in which to provide the required information.

Address of Debtor

We have decided that it should not be a requirement for the address of the debtor to appear on an Arrears Notice. While in practice the majority of lenders will include the address, there will be instances, for example where Notices will be sent out electronically, where this may not be common practice and which is not to the consumer's detriment.

Information Relating To Each Sum (Missed And Part Payments)

Schedule 3, Part 1(5) requires lenders to provide specific information on sums the debtor failed to pay against payment due dates. A number of respondents felt that it would be difficult to establish which payment applied to which payment date, especially in cases where late payments, partial payments or multiple payments had been made and that customers would find the arrangements confusing. One suggested was that the payment information could be presented in the form of a mini statement.

In addition, there were concerns that automated systems would not be able to easily identify the first point at which an Arrears Notice was triggered, as this would require the system to check historic payment records, which would occasionally need to be archived. This would only be the case for first time Arrears Notices, i.e. those being issued after a period of no arrears.

DTI Response

Government policy is to ensure that minimum levels of information are included in Notices. Part 1 of Schedule 3 (as amended) anticipates provision of this information by means of a mini statement but provided the requirements of that Part are met lenders have discretion as to how the information is presented. In addition, relaxing the non-interspersion rule means that lenders can provide additional information or aggregate missed payments with contractual payments due.

Default Sums And Interest

Part 1(6) provides statements to be included in Arrears Notices relating to default sums and interest payable. A number of respondents thought that the statement would not be correct in some circumstances, for example if an additional payment was made but not received at the time of issuing the Arrears Notice, or if a default sum was waived.

DTI Response

We accept the point that the statement may not be correct in some circumstances and have substituted the word 'will' with the word 'may'.

OFT Information Sheet (Part 3)

Part 3 requires a statement to be included in notices which draws attention to the OFT Information Sheet and informs customers of their right to apply to the courts for

a time order. A number of respondents were concerned that the statement may encourage some borrowers to claim that they had not received the Information Sheet to avoid paying default charges. Many felt that the statement on Time Orders could encourage consumers down that route before first seeking to resolve arrears problems with their lenders. There was also concern that replicating information in the Notice and the OFT Information Sheet would add to the size of the Notice, which may impact on its effectiveness.

DTI Response

We do not accept the statements would lead to significant abuse of the Act, but do accept the need to avoid overloading the Notice with repeated information. We will amend the statements accordingly and work with the OFT to remove any unnecessary duplication between the Notice and the Information Sheet.

So far as customers' claims that an information sheet was not included are concerned, provided that lenders can demonstrate that their information systems are sufficiently robust and reliable as to ensure that Information Sheets are included with notices, and that the documentation as a whole is sent to the debtor's address which is last known to the creditor it would be for the debtor to prove that in his or her particular case those systems broke down.

Advice and Information Statement

One respondent suggested that Arrears Notices should include an "Advice and Information Statement" to reflect the fact that arrears were an indication of financial difficulty, and provide a prescribed form of wording.

DTI Response

We accept the point, but are keen not to overload the Arrears Notice. However, Regulation 11(1)(e) provides for a statement covering the OFT Information Sheet, which will be amended to encourage consumers to seek help advice either from the lender or an independent advisor.

Arrears Notices in Electronic Format

See Chapter 11

CHAPTER 7 – NOTICES OF SUMS IN ARREARS FOR RUNNING-ACCOUNT CREDIT AGREEMENTS

Question 12: Do you have any comments on the proposed information to be included in a notice of sums in arrears for running-account credit agreements, including comments about any additional information?

Form Of Notices And Statements Required Under These Regulations 21

Regulation 21 requires a notice of sums in arrears to be sent in paper form. One respondent suggested that the requirement was onerous for those who communicate with customers electronically and undermines the Government's strategy to promote electronic communications.

DTI Response

We accept the point and will allow for Arrears Notices to be issued electronically in situations where customers have specifically requested such information to be sent to them electronically.

Address of Debtor

See Question 11.

Missed or Partly Made Payments (Part 2 (6))

Schedule 3 Part 2 (6) provides a statement to be used in connection to missed or partly missed payments. A number of respondents suggested that, by definition, any missed or partly made payments relating to a previously notified period of arrears will automatically be included as they will form part of an ongoing, running balance. This applies equally to arrears occurring before the commencement of section 10.

DTI Response

We are clear that the default notices will relate specifically to the current arrears situation, regardless of the fact that previously notified missed or partly made payments will form part of the total amount owing.

Notices (Part 1(7))

Part 1(7) provides a general statement relating to the frequency of notices. A number of respondents questioned the rationale not to allow tolerances in respect of payments below the minimum required level. In some cases, for example where a customer has failed to make a full payment for two consecutive months but the shortfall was small; an Arrears Notice would be triggered. They argued that it would be disproportionate to send an arrears notice if a consumer is in default by a small amount.

DTI Response

We accept the point, but the Act states clearly that arrears notices must be issued once the criteria has been met. However, we are providing for a simpler form of Arrears Notice to be issued in situations where a customer is in arrears of less than £2, and where this has triggered a Notice. In addition, we have relaxed the non-interspersion rule, which means that lenders will be able to state that, although the customer is in default by only a small amount, they are required by law to issue an arrears notice.

CHAPTER 8 – NOTICES OF DEFAULT SUMS

Question 13: Do you have any comments on our proposed way forward for the requirement to provide notices of default sums

Whether to set a threshold prescribing level of default sum where notices need to be sent

The majority of respondents including most from industry either did not comment or positively endorsed the proposal not to set a minimum threshold. We can therefore confirm that we will not set a threshold which will mean that there will be a requirement to issue a default sum notice for any default sum that is charged regardless of the amount of the default sum.

Other comments on the notices of default sums.

Respondents expressed concern about a potential conflict with the Banking Code which requires 14 days pre-notification of certain charges on current accounts before charges become due. However the Banking Code requirement does not relate to default sums and we therefore do not believe there is any conflict between the two requirements. If there were conflict we believe it would be appropriate to amend the Banking Code to be consistent with the requirements of the regulations.

Some industry respondents expressed concern that the changes to the requirements for interest on default sums will be very challenging to implement and may not be technically achievable within the 12 months implementation timetable we have proposed. We have considered these views, along with independent evidence published in the supporting report, and come to the view that we accept that a 12 month implementation period would pose a significant risk to consumers because there is strong evidence that some industry players would not be able to achieve it. For this reason we have decided to extend the period industry has to comply with the requirements on post contract information to 18 months.

Several industry respondents noted there was lack of clarity and ambiguity of meaning in the use of word 'charged' in Schedule 4 part 1 part 5, and what was probably meant was either 'payable' or 'due'. See comments on Question 14 below.

Question 14: Do you have any comments on the proposed period for the giving of notices of default sums

Some respondents expressed concern over whether the draft regulations meant that lenders would be required to wait for up to 35 days before issuing a notice of a default sum, rather than sending it earlier if they so wished. This is a misunderstanding as the regulations simply require that the notice must be sent no later than 35 days later than the relevant default sum being triggered.

There is also some ambiguity over whether the requirement to send the notice is triggered by the date at which the default sum becomes 'payable' i.e. the date of the event which triggered the default sum being incurred, or when the creditor deems

the default sum to be 'due'. Having considered this further we conclude that the wording of the Act is ambiguous and believe it would be wrong to try and second guess this in our secondary legislation. Lenders will need to form their own view. If the ambiguity presents problems arising from different interpretations, we will need to consider what steps can be taken to address the issue.

Practical differences between the two interpretations could, for example, arise where there is a long period between the date on which a sum becomes payable and the date on which it will become due. Depending on which interpretation is taken, the trigger for a note being issued would either be the date the payment became 'due', i.e. when it should be paid, or alternatively, shortly after the sum became 'payable' but possibly months before the consumer was required to pay it.

If lenders wish to send notices based on the "due" date, for example in some business banking arrangements where default sums become due at the end of a quarterly period, only the first interpretation would permit one default sum notice to be sent showing all the default sums becoming payable in that period that fall due on a particular date.

The requirement of the provision is that the creditor must send the default sum notice no more than 35 days after the relevant trigger date, and can start charging interest on the 29th day after the default sum notice is sent.

Question 15: Do you have any comments on the proposed information to be included in a notice of default sums, including comments about any additional information?

Details of interest rate: The requirement to include the interest rate that would be applied after the 28 day interest free period would pose difficulties for agreements with variable rates of interest.

DTI Response

Inclusion of the interest rate in default sum notices is an important consumer protection measure and needs to be there, but we will take account of variable rates by allowing creditors to include a proviso that the rate is subject to variation. Such disclaimers are already used by many lenders where variable interest rates are charged on consumer credit accounts.

Regulation 15 – Many lenders did not like the legalistic tone of this and felt that consumers would not understand the reference to section 86E of the Consumer Credit Act 1974

DTI Response

The reference to the Act is to show that this is a statutory notice under the Act. However we agree that the Section number is unlikely to add anything useful to the consumer and we have therefore removed it.

CHAPTER 9 – DEFAULT NOTICES

Question 16: Do you have any comments on the proposed requirement for the inclusion in s.87 default notices of information about the right to end HP and conditional sale agreements?

Agreements where there is an associated insurance agreement

As with periodic notices there was a desire from consumer and enforcement organisations to make it clear that voluntarily terminating the main agreement would not terminate any subsidiary insurance agreement.

DTI Response

It is important that borrowers realise that they will still be liable under an associated insurance agreement where they elect to voluntarily terminate the main agreement. Wording has been added to make this clear.

Question 17: Do you consider that a generic description of liabilities for the debtor under s.100(1) would be more appropriate than a specific figure of the amount the debtor would be have to pay as at the end date of the notice, or vice versa, and why?

Dynamic or generic description of liabilities in default notices

Because of the cost of system development, industry wanted to include only generic information, although some admitted that dynamic information in the form of a settlement figure would be extremely useful for the consumer. Consumer groups and enforcement agencies on the other hand argued strongly that this was one case where dynamic information was necessary. The timescales are shorter, fewer notices are involved and the potential consumer detriment is greater.

DTI Response

While we have generally tried not to require dynamic information in the various statements and notices given the resource implications of updating IT systems to provide such functionality, we believe that in the case of Default Notices a different approach is required. Once a borrower has reached the stage of receiving a default notice, he is in real trouble, and we would hope the number of cases reaching this stage will be substantially lower than those receiving other notices, such as arrears and notices of default sums. In this instance, the borrower may have only 14 days in which to decide what he wants to do and inform the lender before the agreement is terminated. Because of this a settlement figure included in the original Default Notice would be extremely useful, since a borrower might use up his entire 14 day period deciding to request a figure, doing so and then trying to respond. Default Notices already require some dynamic information, so introducing dynamic information in default notices in the form of a settlement figure for voluntary termination is not a new concept. In this particular circumstance, we believe that the benefit to the borrower will outweigh the extra cost to the lender, which we accept will be higher than providing just generic information.

Question 18: Do you have any comments on the proposed requirement for the inclusion in s.87 default notices of information about the interest payable after a judgment?

Post-judgment interest

Most respondents found this proposal non-controversial, although some lenders felt that it was unnecessary if they did not intend to charge post-judgment interest and others were concerned that lenders that were not entitled to charge post-judgment interest might include the statement, thereby further pressurising the already beleaguered borrower.

DTI Response

If there is no provision for post-judgment interest in the agreement the lender cannot include it. If he does, he has provided incorrect information, which means that he has not provided a Default Notice as prescribed under the Act. If a lender has the ability to charge interest but does not intend to, we do not believe that he should be allowed to exclude this statement – he does after all have the ability to change his mind after judgment. All this statement does here is flag up the provision in the agreement. It does not require the lender to exercise it. If the lender does not intend to exercise his right he will not need to send a notice of interest payable under 130A, which would allow him to claim the interest.

Question 19: Do you have any comments on the proposed requirements for inclusion in s.87 default notices of a reference to the OFT information sheet on default?

Unenforceability of agreements as a result of a failure to provide OFT information sheets

Lenders were generally concerned that the wording might lead some borrowers to claim that they had not been sent an information sheet, and that unenforceability for this was disproportionate.

DTI Response

This issue was also raised with regards to the arrears notices, and although we do not believe that there is likely to be widespread abuse of this by borrowers, we have proposed revised wording. We believe that it is likely that a lender who can show that they have robust systems in place for the sending out of OFT information sheets will not be penalised if that system should occasionally fail (or if a customer makes a claim to that effect). Ultimately any decisions on this will be down to the Court.

Question 20: Do you consider that any other information not already proposed should be included in s.87 default notices?

Comments were generally confined to the items already included.

CHAPTER 10 – NOTICES IN RELATION TO POST-JUDGEMENT INTEREST

Question 21: Do you have any comments on the proposed content of the first notice in relation to interest after a judgment?

Question 22: Do you have any comments on the proposed content of the second and subsequent notices in relation to interest after a judgment?

The responses to these two questions were linked so we have dealt with them together.

Respondents were generally content with the proposed content of the two notices. However there were a range of points of detail, the majority of which we have been able to address.

Several respondents had comments on the requirements to state the relevant interest rate, and pointing out in particular that we need to reflect circumstances where the interest rate may vary. One industry respondent thought that we should suggest that debtors should make contact with their lender in the first instance if they were having problems making their repayments. Several respondents queried our suggestion that the debtor might make an application to the court if they were having problems making repayments, and in particular, some consumer bodies requested that this be made more specific as to what the court might be able to do.

Many respondents wanted the requirement to refer to advisory bodies to be more prescriptive, to ensure that helpful and consistent advice is given to debtors, and that the risk of creditors giving inaccurate or unhelpful information is reduced.

DTI Response

We have made the references to the interest rate consistent between the two notices, so that the first and subsequent notices quote the interest rate (or rates) which is (or are) applicable during the period of the notice, and where the rate is variable the creditor is required to indicate this.

We have included a prescriptive list of advisory bodies that the debtor may contact for advice, and are requiring that the creditor includes contact details for these as available in the OFT information sheet. OFT will maintain these, so providing the creditor ensures that the latest version of the information sheet is used to obtain the contact details, they can be reassured that the details are up-to-date and correct. It may be simpler for them (and it would be permissible) to include an information sheet with the post judgment interest notice instead of this information.

We have included a notice referring the debtor to the creditor in the first instance if in difficulty. We have also expanded the notice in the way it explains that the debtor may be able to apply to court for an extension of the time to pay, and also to amend the amount of interest payable.

We have made various simplifications to the wording, for example we have removed the requirement to include the description of the agreement in Schedule 5 Part 3 as

it was a duplication of what is required in Part 1. We have amended the first paragraph of Part 3 as it could have been interpreted as implying that the amount of interest would remain static which is not necessarily the case. We decided to retain the requirement to include the case number of the judgment in notices as it was felt to be a helpful reference and reminder to the debtor of the judgment. The requirement for post-judgment interest notices relates only to judgements that take place after the commencement of this part of the Act.

We think it appropriate to retain the wording in question because the consequence (losing the right to charge interest) is directly linked to the information which the notice contains (interest which has been charged - or in the case of the first notice the lender's intention to charge interest).

The consequence does not flow from failure to send another document or include other information (such as the OFT information sheet) but flows from failure to comply with the duty itself i.e.: to tell the consumer about the interest charged.

CHAPTER 11 – FORM OF POST-CONTRACT INFORMATION AND NOTICES

Question 23: Do you have comment on our proposals in Chapter 11 on the form of the various post-contract information notices and statements?

Question 24: Do you think that there are any notices or statements that would benefit from the information appearing in a particular order, or linked to any other specific item of information?

The majority of the responses in this Chapter dealt with the way in which the prescriptive provisions would increase the likelihood of the extreme sanction of unenforceability being applied. We believe that the changes we have made here will go a long way to easing that fear, while keeping consumer protection at the same level.

“As a whole and without interspersions”

Consumer groups and enforcement agencies had generally few comments on this chapter, suggesting that they were relatively content. However, lenders were universally concerned at the prescriptive nature of the form – having to show the information as a whole and without interspersions. The main problem envisaged was that no additional explanatory information could be included and that any accidental misinterpretation would make the agreement unenforceable. Lenders who already sent statements would need to change their current format in order to comply with these rules, despite the fact we had said that we wanted the form to be flexible enough to allow lenders to do what made the most sense for them. Lenders generally made the point that it was in their interest to make sure that the statements were clear and easily understood, since a large number of confused borrowers contacting them for clarification would not be in their interest.

DTI Response

Statements produced under the Running Account Information Regulations do not have requirements about interspersions, and on the whole these statements have worked reasonably well. We also take the point that it is not in the lenders' interest to send out statements that are unclear. As a result we have decided to remove the requirement to show the information “as a whole and not interspersed...” However we have not removed the legibility criteria or the prominence requirements, as this will stop the practice of showing some warnings in a smaller font, which is something we wish to avoid. This aspect will be looked at very carefully when the Regulations are reviewed. If it leads to lenders showing movements on the account and attaching a copy of the agreement for the borrower to work out the information required for themselves, which was suggested by at least one respondent, we are likely to reinstate whatever provisions we think are necessary to stop such a practice. We have added a requirement for HP agreements that the early settlement and voluntary termination settlement statements should be shown together so that the borrower can see that there are two different ways of terminating an agreement and does not think that the lender has accidentally included one statement twice but worded slightly differently.

Paper v. electronic

We had said that arrears notices must be sent out in paper form. Lenders objected that this was counter to the spirit of the electronic communications order, and would not allow them to deliver them in the same way as the periodic statements, which could be delivered electronically at the request of the consumer.

DTI Response

We believe that consumers who have elected to have such communications electronically, should be able to. What we would not want is for lenders to send these notices electronically when the borrower has not agreed with the lender to receive statements and notices electronically. The provision has been amended accordingly.

“Clerical” errors

There was concern that the definition of clerical might exclude some minor errors that would not affect the consumer, but would have a disproportionate effect on the lender who would be unable to enforce the agreement.

DTI Response

We have always taken the view that an error was only a problem if it affected the substance of the information and that the word clerical was therefore unnecessary.

CHAPTER 12 – OFT LICENSING

Question 25: Do you have any comments on the proposed 5-year period for the maximum duration of time-limited licences?

Question 26: Do you have any comments on the proposed 5-year period for payment of the periodic licence fee in respect of indefinite licences?

There was general support to set the maximum period for a time-limited licence at 5 years, with the periodic fee also payable at five yearly intervals, since lenders are already used to a five-year cycle. We have therefore made no changes to these provisions.

Some minor issues were raised:

- Q. There was a suggestion that since licensees had to pay a fee every five years, why not limit all licences to five years.
- A. Indefinite licences are more efficient in terms of cost and time for both OFT and licensees. It also allows OFT to concentrate its monitoring resources on the areas and licences that are the highest risk, leaving reputable licensees with a very light touch regulatory regime. The 2006 Act introduces a number of new powers for OFT to enable them to do their job more effectively.
- Q. There were a number of comments about the cost of licences and a desire to see these remain at the current level.
- A. Although a saving will be made by the move to indefinite licences, we believe that the cost of enforcement with the extra duties required by the Act will rise. The RIA suggested that licence fees might double, but this would still represent very good value as the licence currently works out at £22 a year for a sole trader and £55 for a corporate body.
- Q. What happens if the periodic fee is not paid?
- A. If there is a problem with paying the charge by the due date, the licensee can apply for extension of the period he has to pay within. However, if it is not paid the licence can be terminated, although this cannot happen while an application for an extension is being considered. Appeal would be to the Consumer Credit Appeals Tribunal.

EXTRA QUESTION

Question 27: In addition to any comments you may already have made on questions 1-26, do you have any comments on the draft Statutory Instruments included at Annex A? Please give references to any specific parts of the draft Statutory Instruments that you comment on.

DTI Response

All the issues raised have been covered under the existing chapters.

SUMMARY OF QUESTIONS

The questions posed by the consultation were:

CHAPTER 2 – THE REQUIREMENTS FOR THE EXEMPTION FOR HIGH NET WORTH INDIVIDUALS

Question 1: Are you content with our proposal to link the threshold of what constitutes high net worth to the Financial Services and Markets Act 2000 (Financial Promotions Order) 2005?

Question 2: Do you have any comments on the proposed categories of persons who may make a statement of high net worth?

Question 3: Do you have any comments on the proposed form of a statement of high net worth?

Question 4: Do you have any comments on the proposed form of a declaration of high net worth?

CHAPTER 3 – THE REQUIREMENTS FOR THE EXEMPTION FOR BUSINESS LENDING

Question 5: Do you have any comments on the proposed form of a declaration of a business purpose?

CHAPTER 4 – ANNUAL STATEMENTS FOR FIXED-SUM CREDIT ACCOUNT AGREEMENTS

Question 6: Do you have any comments on the information we are proposing to include in periodic statements, including comments on any additional information?

Question 7: Do you have any comments on our proposals for the way in which we propose to deal with agreements covered by one aggregated payment?

CHAPTER 5 – ADDITIONAL STATEMENTS FOR FIXED-SUM CREDIT ACCOUNT AGREEMENTS

Question 8: Do you have any comments on the proposed warning in relation to a failure to make a required payment?

Question 9: Do you have any comments on the proposed warning in relation to the making of minimum repayments?

Question 10: Do you think that the allocation of statements should be displayed more prominently in cases where the balance is not paid off in full, or is our proposal to include it somewhere in the statement sufficient?

CHAPTER 6 – NOTICES OF SUMS IN ARREARS FOR FIXED-SUM CREDIT AGREEMENTS

Question 11: Do you have any comments on the proposed information to be included in a notice of sums in arrears for fixed-sum credit agreements, including comments about any additional information?

CHAPTER 7 – NOTICES OF SUMS IN ARREARS FOR RUNNING-ACCOUNT CREDIT AGREEMENTS

Question 12: Do you have any comments on the proposed information to be included in a notice of sums in arrears for running-account credit agreements, including comments about any additional information?

CHAPTER 8 – NOTICES OF DEFAULT SUMS

Question 13: Do you have any comments on our proposed way forward for the requirement to provide notices of default sums?

Question 14: Do you have any comments on the proposed period for the giving of notices of default sums?

Question 15: Do you have any comments on the proposed information to be included in a notice of default sums, including comments about any additional information?

CHAPTER 9 – ADDITIONAL INFORMATION IN SECTION 87 DEFAULT NOTICES

Question 16: Do you have any comments on the proposed requirement for the inclusion of s.87 default notices of information about the right to end HP and conditional sale agreements?

Question 17: Do you consider that the generic description of liabilities for the debtor under s.100(1) would be more appropriate than a specific figure of the amount the debtor would have to pay as at the date of the notice, or vice versa, and why?

Question 18: Do you have any comments on the proposed requirement for the inclusion in s.87 default notices of information about interest payable after judgement?

Question 19: Do you have any comments on the proposed requirement for the inclusion in s.87 default notices of a reference to the OFT information sheet on default?

Question 20: Do you consider that any other information not already proposed should be included in s.87 default notices?

CHAPTER 10 – NOTICES IN RELATION TO POST-JUDGEMENT INTEREST

Question 21: Do you have any comments on the proposed content of the first notice in relation to interest after judgement?

Question 22: Do you have any comment on the proposed content of the second and subsequent notices in relation to interest after judgement?

CHAPTER 11 – FORM OF POST-CONTRACT INFORMATION AND NOTICES

Question 23: Do you have comment on our proposals in Chapter 11 on the form of the various post-contract information notices and statements?

Question 24: Do you think that there are any notices or statements that would benefit from the information appearing in a particular order, or linked to any other specific item of information?

CHAPTER 12 – OFT LICENSING

Question 25: Do you have any comments on the proposed 5-year period for the maximum duration of time-limited licences?

Question 26: Do you have any comments on the proposed 5-year period for payment of the periodic licence fee in respect of indefinite licences?

EXTRA QUESTION

Question 27: In addition to any comments you may already have made on questions 1-26, do you have any comments on the draft Statutory Instruments included at Annex A? Please give references to any specific parts of the draft Statutory Instruments that you comment on.

LIST OF RESPONDEES

Addleshaw Goddard LLP
Advice NI
AFL Solicitors and N.A. Knight & Co. Solicitors
Alliance & Leicester
Association of Finance Brokers
BBA
Berwin, Leighton Paisner
Britannia Building Society
British Vehicle Rental and Leasing Association
CAB
Cattles plc
CCTA
Citizens' Advice Cardiff
Citizens' Advice NI
CML
DCA
Egg Banking plc
Eversheds
FLA
HSBC
HSBC Private Bank
Institute of Credit Management
JCB Finance Ltd
Lacors
Liverpool Victoria
Lloyds TSB
Mail Order Traders' Association (MOTA)
MBNA
Money Advice Trust & National Debt Line
Nationwide
OFT
RBS
Standard Life Bank
The Bisnode Group
TSI
Watson, Farley & Williams
Wells Fargo
West Bromwich Building Society
Which?

2007 No. XXX

CONSUMER CREDIT

The Consumer Credit (Exempt Agreements) Order 2007

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - *6th April 2008*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 16A, 16B(4) and 182(2) of the Consumer Credit Act 1974⁽¹⁾.

Citation and Commencement

1. This Order may be cited as the Consumer Credit (Exempt Agreements) Order 2007 and shall come into force on 6th April 2008.

Exemption for high net worth debtors and hirers

2. The Consumer Credit Act 1974 shall not regulate a consumer credit agreement or a consumer hire agreement where—

- (a) the debtor or hirer is a natural person;
- (b) the agreement includes a declaration made by him complying with article 3 and Schedule 1;
- (c) a statement of high net worth complying with articles 4 and 5 and Schedule 2 has been made in relation to him;
- (d) that statement was made during the period of one year ending with the day on which the agreement was made; and
- (e) a copy of that statement was provided to the debtor or hirer and to the creditor or owner before the agreement was made.

3. A declaration for the purposes of article 2(b) shall—

- (a) be set out in the consumer credit agreement or consumer hire agreement no less prominently than other information in the agreement and be readily distinguishable from the background medium; and
- (b) be signed by the debtor or hirer.

4.—(a) Subject to article 5, a statement of high net worth shall be signed by an accountant who is a member of any of the bodies listed in paragraph (2).

(1) The bodies referred to in paragraph (1) are:

- (a) the Institute of Chartered Accountants in England and Wales;
- (b) the Institute of Chartered Accountants of Scotland;

(1) 1974 c.39. Sections 16A and 16B were inserted by sections 3 and 4 of the Consumer Credit Act 2006 c.14.

- (c) the Institute of Chartered Accounts in Ireland;
- (d) the Association of Chartered Certified Accountants;
- (e) the Chartered Institute of Management Accountants;
- (f) the Chartered Institute of Public Finance and Accountancy;
- (g) a professional body for accountants established in a jurisdiction outside the United Kingdom.

5. A statement of high net worth may only be made by an accountant who is—

- (a) the creditor;
- (b) an employee or agent of the creditor or a person who otherwise acts on behalf of the creditor in relation to the consumer credit agreement or consumer hire agreement; or
- (c) an associate of the creditor or owner,

if the creditor is a person who has permission under Part 4 of the Financial Services and Markets Act 2000(2) to accept deposits.

Declaration for exemption relating to businesses

6. A declaration for the purposes of section 16B(2) of the Consumer Credit Act 1974 shall—

- (a) comply with Schedule 3;
- (b) be set out in the consumer credit agreement or consumer hire agreement no less prominently than other information in the agreement and be readily distinguishable from the background medium; and
- (c) be signed by the debtor or hirer or where the debtor or hirer is a partnership or unincorporated body of persons be signed by or on behalf of the debtor or hirer.

Name
Minister for Trade,
Investment and Foreign Affairs
Department of Trade and Industry

2007

(2) c.8.

SCHEDULE 1

Article 2

DECLARATION BY HIGH NET WORTH DEBTOR OR HIRER

The declaration to be signed for the purposes of article 2(b) must have the following form and content—

“Declaration by high net worth debtor or hirer

(section 16A(1)(b) Consumer Credit Act 1974)

I confirm that I have received a copy of the statement of high net worth made in relation to me for the purposes of section 16A(1)(c) of the Consumer Credit Act 1974.

I understand that by signing this declaration I will not have the benefit of the protection and remedies that would be available to me under the Consumer Credit Act 1974 if this agreement were a regulated agreement under that Act.

I understand that this declaration does not affect the powers of the court to make an order under section 140B of the Consumer Credit Act 1974 in relation to a credit agreement where it determines that the relationship between the creditor and the debtor is unfair to the debtor. [*This sentence should be omitted in the case of a consumer hire agreement*].

I am aware that if I am in any doubt as to the consequences of making this declaration I should seek independent legal advice.”.

SCHEDULE 2

Article 2

STATEMENT OF HIGH NET WORTH

The statement of high net worth to be signed for the purposes of article 2(c) must have the following form and content—

“Statement of High Net Worth

(section 16A(1)(c) Consumer Credit Act 1974)

I (insert full name) of (insert address and postcode).....

confirm that I am a person qualified to make a statement of high net worth under article 4 of the Consumer Credit (Exempt Agreements) Order 2007, by virtue of the fact that.....

In my opinion (insert name of debtor or hirer).....

of (insert address and post code of debtor or hirer).....

.....is an individual of high net worth because he/she—

- (a) received during the previous financial year net income totalling an amount of not less than £150,000; or
(b) had throughout that year net assets with a total value of not less than £1,000,000.

(insert one of the following declarations as appropriate)

I declare that I am not connected to [insert name of the creditor(s)/owner(s)].

I declare that I am connected to [insert name of creditor(s) or owner(s)] as I am [insert as appropriate - the creditor(s)/owner(s), an employee or agent of the creditor(s)/owner(s) or a person who otherwise acts on behalf of the creditor(s)/owner(s) in relation to the consumer credit agreement/consumer hire agreement, an associate of the creditor(s)/owner(s)].

In this statement—

- (a) “associate” shall be construed in accordance with section 184 of the Consumer Credit Act 1974;
(b) “financial year” means a period of one year ending with 31st March;
(c) “net assets” shall not include—
(i) the value of the debtor’s or hirer’s primary residence or any loan secured on that residence;
(ii) any rights of the debtor or hirer under a qualifying contract of insurance within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; and
(iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of the service of the debtor or hirer or on his death or retirement and to which he is (or his dependents are), or may be, entitled;
(d) “net income” means the total income of the debtor or hirer from all sources reduced by the amount of income tax and national insurance contributions payable in respect of it; and
(e) “previous financial year” means the financial year immediately preceding the financial year during which the statement is made.”.

SCHEDULE 3

Article 6

DECLARATION FOR EXEMPTION RELATING TO BUSINESSES

The declaration to be signed for the purposes of article 6 must have the following form and content—

“Declaration for exemption relating to businesses

(sections 16B and 189(1) and (2) Consumer Credit Act 1974)

I am/We are entering this agreement wholly or predominantly for the purposes of a business carried on by me/us or intended to be carried by me/us.

I am/We are aware that, if I am/we are in any doubt as to the consequences of the agreement not being regulated by the Consumer Credit Act 1974 I/we should seek independent legal advice.”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the exemption of consumer credit agreements or consumer hire agreements from regulation under the Consumer Credit Act 1974 where the debtor or hirer has a high net worth or where the agreements are entered into wholly or predominantly for the purposes of the debtor's or hirer's business.

Article 2 sets out the conditions for the exemption for a person of high net worth. These include the requirements that the debtor or hirer is a natural person and that the agreement must include a declaration by the debtor or hirer complying with article 3. The declaration must also have the form and content set out in Schedule 1.

Another condition for exemption is that a statement of high net worth has to have been made in relation to the debtor or hirer. Articles 4 and 5 set out who is able to give the statement and Schedule 2 sets out the form and content the statement must have.

Section 16B of the Consumer Credit Act 1974 provides for the exemption from regulation under the Consumer Credit Act 1974 of consumer credit agreements or consumer hire agreements, which are entered into wholly or predominantly for the debtor's or hirer's business purposes where the credit provided or hire payments made exceed £25,000. Section 16B(2) of the Consumer Credit Act 1974 provides that there shall be a presumption that an agreement is entered into wholly or predominantly for business purposes if the agreement includes a declaration by the debtor or hirer to that effect. The Order provides that a declaration for the purposes of section 16B(2) must comply with the requirements in article 6 and have the form and content set out in Schedule 3 and be signed by or on behalf of the debtor or hirer.

09.03.07 9.20 am

DRAFT STATUTORY INSTRUMENTS

2007 No. XXX

CONSUMER CREDIT

The Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007

Made

Laid before Parliament

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 22(1B) and (1E), 28A(3)(b) and (6), 77A(2), 78(4A), 86B(8), 86C(6), 86E(2) and (7)(b), 88(4), 130A(6), 182(2) and 189(1) of the Consumer Credit Act 1974a [and section 69(2) of the Consumer Credit Act 2006]:

Citation and commencement

1 (1) These Regulations may be cited as the Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007.

(2) Regulations 1, 2, 41, 42 and 43 shall come into force on 6th April 2008.

(3) The remaining regulations shall come into force on [1st October 2008].

Interpretation

2 In these Regulations-

“agreement to aggregate” means an agreement (whether arising by conduct or otherwise) made between the creditor and the debtor-

(a) concerning two or more agreements for fixed-sum credit between the creditor and the debtor where at least one such agreement is a regulated credit agreement;

(b) which permits or requires the debtor to make individual payments under each agreement mentioned in paragraph (a) at the same time as and aggregated with individual payments under each of the other agreements mentioned in paragraph (a);

“home credit loan agreement” means a debtor-creditor agreement which satisfies either or both of the following conditions-

(b) the agreement requires all or most of the sums payable by the debtor to be collected by or on behalf of the creditor at the debtor’s home or at the home of a

a

natural person who makes payments to the creditor on the debtor's behalf (or, in either case, to be so collected if the debtor so wishes);

(c) at the time the agreement is entered into, the debtor could reasonably expect, from representations made by or on behalf of the creditor at or before that time, that all or most of those sums would be so collected (or, in either case would be so collected if the debtor so wished);

“principal notice” means a notice or statement which the creditor gives the debtor in relation to the agreement by virtue of a provision of the 1974 Act³ into which a statement or other notice to which these Regulations apply may be incorporated;

“the 1974 Act” means the Consumer Credit Act 1974⁴;

“the 2006 Act” means the Consumer Credit Act 2006⁵;

“working day” means a day which is not-

(a) a Saturday or Sunday; or

(b) Christmas Day, Good Friday, or a day which is a bank holiday under the Banking and Financial Dealings Act 1971⁶.

Content of statements provided in relation to fixed-sum credit agreements

3 Regulations 4 to 11 shall apply to a statement given under section 77A of the 1974 Act (statements to be provided in relation to fixed-sum credit agreements).

4 Subject to regulations 7 and 9 the statement shall contain -

(a) the information set out in Part 1 of Schedule 1;

(b) the forms of wording set out in Part 2 of Schedule 1;

(c) where the statement relates to a hire-purchase or conditional sale agreement the forms of wording set out in Part 3 of Schedule 1 as applicable.

5 The creditor shall indicate which of the pieces of information which it is required to include in the statement under paragraphs 3(4) and 3(5) of Part 1 of Schedule 1 it has included in the statement.

6 Where the debtor has paid more or less than he is required to pay under the terms of the agreement in relation to any sum which becomes due under the agreement during the period to which the statement relates-

3 1974 c.39

4 1974 c. 39 as amended by the Consumer Credit Act 2006 c. 14 [; section 189(1) is cited for the definitions of “prescribed” and “regulations”].

5 2006 c. 14

6 1971 c.80

(a) the creditor shall within fifteen working days of receiving the debtor's request for information concerning such payments in relation to each such payment give to the debtor details of-

- (i) the amount of the sum due;
- (ii) the date on which the sum became due;
- (iii) the amount the debtor paid in respect of the sum due and the date of that payment;

(b) the statement shall include the following wording-

“You have made [an] [under] [over] payment[s].....[NOTE 1]. Please contact us for further details. We are required to provide you with this information free of charge within fifteen working days of receiving your request for it.”.

NOTE 1: delete as appropriate

7 Subject to regulation 9, where the creditor and the debtor have entered into an agreement to aggregate—

(a) the reference to payments made in paragraph 3(7), of Part 1 of Schedule 1 may be construed as a reference to the aggregated payments which the debtor is permitted or required to make;

(b) the reference to interest and charges which become due in paragraph 3(8) of Part 1 of Schedule 1 may be construed as the aggregated interest and charges which became due;

(c) the reference to movements in paragraph 3(9) of Part 1 of Schedule 1 may be construed as a reference to the aggregated movements in all the accounts maintained by the creditor in relation to the agreements to which the agreement to aggregate relates;

(d) where the statement contains any of the forms of wording set out in Parts 2 and 3 of Schedule 1 the creditor shall identify for each form of wording the regulated agreement or agreements to which it relates;

(e) the information required under paragraphs 1, 2, 3(2), 3(3), 3(4) and 3(5) of Part 1 of Schedule 1 need only be shown once where the information which would otherwise have to be provided for the agreements to which the agreement to aggregate relates is the same for each agreement.

8 Where not all the sums permitted to be shown in the statement as an aggregated figure under regulation 7 are so shown the creditor shall indicate where each figure for payment made or interest or charges which became due or the movement which occurred is an aggregated figure.

9 (1) Paragraphs (2) to (5) shall apply where the agreement to aggregate concerns agreements to which regulation 2(9) of the Consumer Credit (Agreements) Regulations 1983a (information requirements in relation to credit and insurance finance agreements) applies.

(2) The information required under paragraphs 1, 2, 3(3), 3(4) and 3(5) of Part 1 of Schedule 1 need only be shown once where the information that would otherwise have to be provided for the agreements is the same for each agreement.

(3) Where the statement is not the first statement given under section 77A of the 1974 Act in relation to the agreements the references to the amount of credit and to an opening balance in paragraphs 3(2) and 3(6) of Part 1 of Schedule 1 may be construed as references to the aggregated amount of credit provided, and where applicable, to be provided under the agreements and the aggregated opening balance under the agreements.

(4) The reference to the balance due under the agreement at the end of the period to which the statement relates in sub-paragraph 4(9) of Part 1 of Schedule 1 may be construed as a reference to the aggregated balance due under the agreements at the end of the period to which the statement relates.

(5) The creditor shall not be required to comply with regulation 8.

10 Where the creditor and the debtor have entered into an arrangement under which interest or charges payable under a fixed sum credit agreement are applied to an account which is separate from the account to which payments referred to in paragraph 3(7) of Part 1 of Schedule 1 are applied, the statement shall include a form of wording reminding the debtor of that arrangement.

11 (1) Where the statement is the first given under section 77A of the 1974 Act in relation to an agreement made on or after 1 October 2007 it shall relate to a period beginning with the date of the making of the agreement and ending on a date not more than 30 days before the date the statement is given.

(2) Any subsequent statement in relation to that agreement shall relate to a period beginning on the day immediately after the end of the period to which the preceding statement relates and ending on a date not more than 30 days before the date the subsequent statement is given.

Additional information in statements provided in relation to certain fixed-sum credit agreements

12 A statement given under section 77A of the 1974 Act (statements to be provided in relation to fixed-sum credit agreements) in relation to a home credit loan agreement shall include-

(a) the total charge for credit provided under the agreement;

a SI 1983/1553, to which there are amendments not relevant to these Regulations

(b) a statement in the following form:

“You are entitled to request one free statement per quarter, or one per loan (whichever allows for more statements). We are required to provide you with a statement within seven days of receiving your request.

You can compare our loans with other home credit loans available in your area by accessing the website at [NOTE1].”.

NOTE 1: insert the location of the website created and maintained in pursuance of the Competition Commission home credit market investigation report of 30 November 2006

Additional information in statements provided in relation to running-account credit agreements

13 Regulations 14, 15, 16 and 17 shall apply to a statement given under section 78(4) of the 1974 Act (duty to give information to debtor under running-account credit agreement).

14 Subject to regulations 15,16 and 17 the statement shall contain the forms of wording and information set out in Schedule 2.

15 The forms of wording set out in paragraphs 1 and 2 of Schedule 2 shall only be required to be included in a statement given in relation to an agreement which requires payment each month of a minimum sum.

16 The forms of wording set out in paragraphs 3 and 4 of Schedule 2 shall only be included in a statement given in relation to an agreement which does not require payment each month of a minimum sum where that form of wording is relevant to the information contained in the statement.

17 The form of wording in paragraph 2 of Schedule 2 shall not be required to be included in a statement where the total amount which the debtor has failed to pay in relation to all the payments due under the running-account credit agreement during the period to which the statement relates does not exceed £1.

Content of notices of sums in arrears under fixed-sum credit agreements etc.

18 (1) A notice given under section 86B of the 1974 Act (notice of sums in arrears under fixed-sum credit agreements etc.) shall contain-

(a) a form of wording to the effect that the notice is given in compliance with the Consumer Credit Act 1974 because the debtor or hirer is behind with his payments under the agreement;

(b) a form of wording to the effect that the debtor or the hirer is encouraged to discuss the state of his account with the creditor or owner;

(c) the information required by paragraphs 1 to 3 of Part 1 of Schedule 3;

(d) the statements in the form specified in paragraphs 4 and 5 of Part 1 of Schedule 3 as applicable;

(e) a statement in the form specified in Part 5 of Schedule 3.

(2) Where the notice is the first required to be given-

(a) it shall include the information set out in Part 2 of Schedule 3;

(b) the creditor shall within fifteen working days of receiving the debtor's request for information in relation to each of the sums which comprise the shortfall which gave rise to the duty to give the notice give the debtor details of-

(i) the amount of the sums due;

(ii) the date on which the sums became due;

(iii) the amounts the debtor paid in respect of the sums due and the dates of those payments;

(c) the notice shall include a statement in the following form:

“If you want more information about which payments you failed to make please get in touch with us. We are required to give you this information free of charge within fifteen working days of receiving your request for it.”.

(3) Where the notice is not the first required to be given it shall include the information and additional form of wording set out in Part 3 of Schedule 3.

(4) The notice may include a form of wording to the effect that the notice is not a demand for immediate payment but in any such case the creditor or owner must state when the amounts set out in the notice must be paid.

(5) The reference to the account in paragraph 3 of Part 3 of Schedule 3 shall be construed as a reference to all accounts maintained by the creditor or owner which relate to the agreement with the debtor or hirer.

19 Where the creditor terminates two or more regulated agreements which he has entered into with the debtor (the “terminated agreements”) and aggregates all the sums due under the terminated agreements for the purpose of recovering those sums-

(a) the reference to the opening balance in paragraph 3(2) of Part 1 of Schedule 3 shall be construed as a reference to the aggregated opening balance under the terminated agreements;

(b) the reference to opening balance in paragraph 1 of Part 3 of that Schedule may be construed as a reference to the aggregated arrears balance under the terminated agreements;

(c) the reference to payments made in paragraph 2 of Part 3 of that Schedule may be construed as a reference to the aggregated payments which the debtor is permitted or required to make;

(d) the reference to sums becoming due to the creditor including interest and default sums in paragraph 3 of Part 3 of that Schedule may be construed as a reference to the aggregated sums and the aggregated interest and default charges becoming due;

(e) the reference to movements in paragraph 4 of Part 3 of that Schedule may be construed as a reference to the aggregated movements in all the accounts maintained by the creditor in relation to the terminated agreements;

(f) the reference to the balance in paragraph 5 of Part 3 of Schedule 3 may be construed as a reference to the aggregated balance under the terminated agreements.

(g) the reference to the balance in paragraph 6 of Part 3 of that Schedule may be construed as a reference to the aggregated arrears balance;

Content of notices of sums in arrears under running-account credit agreements

20 (1) A notice given under section 86C of the 1974 Act (notice of sums in arrears under running-account credit agreements) shall contain-

(a) a statement that the notice is given in compliance with the Consumer Credit Act 1974 because the debtor is behind with his payments under the agreement;

(b) a statement encouraging the debtor to discuss the state of his account with the creditor;

(c) the information set out in paragraphs 1 to 5 of Part 4 of Schedule 3;

(d) statements in the form specified in paragraphs 6 and 7 of Part 4 of Schedule 3; and

(e) a statement in the form specified in Part 5 of Schedule 3.

(2) Where the statement includes a form of wording to the effect that the notice is not a demand for immediate payment the creditor shall state when the amounts set out in the notice must be paid.

21 Where a notice referred to in regulation 20 is incorporated into a principal notice, the notice need not contain so much of the information required under paragraphs 1 to 4 of Part 4 of Schedule 3 as is required to be included in the principal notice by or under the provision of the 1974 Act under which the principal notice is given.

22 Regulations 23 and 24 apply to a notice given under section 86C of the 1974 Act which is required to be given to a debtor where the total amount which the debtor has failed

to pay in relation to the last two payments due under the agreement prior to the date on which the creditor came under a duty to give the debtor the notice is not more than £2.

23 Subject to regulation 24 notices to which this Regulation applies-

(a) need not include any of the information or statements referred to in regulation 20;

(b) shall contain a statement in the following form-

“You have failed to make two minimum payments

Failing to make minimum payments can mean that you have broken the terms of this credit agreement. This could result in your having to pay additional costs. A copy of the Office of Fair Trading Arrears Information Sheet is enclosed, which contains more information about what to do when you get behind with your payments.”.

24 Where a notice to which this Regulation applies is incorporated into a statement which the creditor is required to give the debtor under section 78(4) of the 1974 Act, the statement shall not contain the wording required under paragraph 2 of Schedule 2.

Giving of notices of default sums

25 Regulations 26 to 30 shall apply to a notice of default sums given under section 86E of the 1974 Act (notices of default sums).

26 A notice shall be given to the debtor or hirer by the creditor or owner within 35 days of a default sum becoming payable by the debtor or hirer.

Content of notices of default sums

27 The notice shall state that it relates to default sums and that it is given in compliance with the Consumer Credit Act 1974.

28 The notice shall contain the information and the form of wording set out in Part 1 of Schedule 4.

29 If the notice is given in relation to an agreement which provides that interest is payable in connection with default sums the notice shall contain the form of wording set out in Part 2 of Schedule 4.

30 Where the notice is incorporated in a principal notice the notice need not contain so much of the information required under paragraphs 1, 2 and 3 of Part 1 of Schedule 4 as is required to be included in the principal notice by the provision of the 1974 Act under which the principal notice is given.

Amendments to the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983

31 (1) The Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983^a shall be amended as follows.

(2) In regulation 2(2) for the words “paragraphs 4, 5, 7 and” there shall be substituted “paragraphs 4, 5, 7, 8A and”.

(3) After paragraph 8 of Schedule 2 there shall be inserted-

“Ending your agreement

8A Where the agreement is a hire-purchase or conditional sale agreement, a statement in the following form

You [may] [NOTE 1] have the right to end this agreement at any time before the final payment falls due.

Note that this right may be lost if you do not act before the date shown in this notice (after which we may take action).

If you wish to end this agreement, you should write to the person to whom you make your payments. [You will need to pay [NOTE 2] if you wish to end this agreement by the date shown in this notice and we will be entitled to the return of the goods. You will also be liable for any arrears as well as costs if you have not taken reasonable care of the goods.] [If you have taken reasonable care of the goods, you will not need to pay anything further unless there are outstanding arrears, but we will be entitled to the return of the goods.] [NOTE 3]

Note that if you end this agreement, this will not necessarily terminate any insurance finance agreements that are linked to this agreement.

NOTE 1: creditor to omit the word “may” in the case of a hire purchase agreement.

NOTE 2: creditor to insert the amount to be paid by the debtor on the assumption that settlement takes place on the date shown in the notice.

NOTE 3: creditor to insert the appropriate passage in square brackets where the amount calculated in accordance with the provisions of section 100 of the Act applies. If the agreement provides for a sum below the minimum prescribed in the Act, creditor to substitute for the passages in square brackets that sum or an explanation of how that sum is calculated. If the agreement does not provide for any payment on termination, both passages in square brackets are to be omitted and the creditor is to substitute “We will then be entitled to return of the goods. If you have taken reasonable care of the goods, you will not have to pay any more”.

(4) After paragraph 9 there shall be inserted-

^a SI 1983/1561, amended by SI 2004/3237

“Interest payable after a judgment

9A Where an agreement makes provision for the charging of post-judgment interest in connection with a judgment sum, a statement in the following form-

You should be aware that if we take you to court and get a judgment against you requiring you to pay us money you owe us under the agreement, you may have to pay us both the amount of the judgment and interest under the agreement on all the sums owed by you at the date of the judgment until you have paid these in full. This means that even if you pay off the whole amount of the judgment, you may still have a further sum to pay.

(5) After paragraph 10 there shall be inserted –

“10A A statement in the following form -

“This notice should include a copy of the current Office of Fair Trading information sheet. This contains important information about your rights and where to go for support and advice. If it is not included, you should contact us to get one.””

Content of notices of intention to recover post-judgment interest

32 A notice given under section 130A(1) of the 1974 Act⁸ (notice of intention to recover post-judgment interest in connection with a judgment sum) shall contain :

(a) if the notice is the first required notice -

(i) the information listed and forms of wording set out in Part 1 of Schedule 5;
and

(ii) the form of wording set out in Part 3 of Schedule 5;

(b) if the notice is not the first required notice the information listed and forms of wording set out in Parts 1 and 2 of Schedule 5.

33 The creditor may instead of including in the notice the form of wording set out in paragraph 6 of Part 1 of Schedule 5 -

(a) include a copy of the current default information sheet under section 86A of the 1974 Act, and

(b) include in the notice a statement in the following form:

“Advice and information

You can obtain free independent advice and information about dealing with your debt from a number of organisations. Further details are contained in the Office of Fair Trading [Default?] Information Sheet enclosed.”.

⁸ 1974 c.39

Form of notices and statements required under these Regulations

34 A notice of sums in arrears which is given under section 86B or 86C of the 1974 Act shall be given to the debtor or hirer in paper form unless the debtor or hirer has agreed with the creditor or owner that such notices may be transmitted to him in the form of an electronic communication in accordance with section 176A(1) of the 1974 Act.

35 The information and statements required by these Regulations to be included in a statement or notice to be given under the 1974 Act shall be expressed in plain, intelligible language.

36 Subject to regulation 37 the wording required to be included in a statement under paragraph 1 of Part 2 of Schedule 1 and the wording required to be included under paragraph 1 of Part 3 of that Schedule shall appear together as a whole and shall not be interspersed with any other information or wording.

37 Where applicable the wording required under paragraph 1 of Part 2 of Schedule 1 and the wording required under paragraph 1 of Part 3 of that Schedule may be interspersed with the wording required under paragraph 2 of Part 3 of that Schedule.

38 The lettering of the information and wording required by these Regulations to be included in a statement or notice and any figures and symbols forming part of that information or wording shall be easily legible and of a colour which is readily distinguishable from the background medium upon which it is or they are displayed.

39 The information and wording required by these Regulations to be included in a statement or notice to be given under the 1974 Act shall be no less prominent than any other information and wording included in the document in which that notice or statement is embodied save that –

(a) the date of the notice or statement, trade names and names of parties to the agreement, logos or the reference number of the agreement may be more prominent; and

(b) the forms of wording set out in paragraph 2 of Schedule 2 shall be more prominent,

than any such other information and wording, whether prominence is achieved by capital letters, underlining, larger or bold print or otherwise.

Errors and omissions

40 Where a notice or statement contains an error or omission which does not affect the substance of the information or forms of wording required by these Regulations that notice or statement shall not breach these Regulations on this ground alone.

Duration of licences and charges

41 For the purposes of sections 22(1B) and (1E) of the 1974 Act, the prescribed period shall be a period of five years.

42 (1) The amount of the charge payable by a person under subsection (1) or (2) of section 28A(3) of the 1974 Act before the end of a payment period of his shall be the amount determined in accordance with provision made by the OFT by general notice which is current on the day three months before the end of that person's payment period.

(2) The payment period for the purposes of section 28A of the Act shall be five years beginning—

(a) in the case of a person's first payment period on the day that his standard licence or, where a person is the original applicant for a group licence, that group licence takes effect; and

(b) in the case of all subsequent payment periods on the day after the day on which the immediately preceding payment period expires.

Revocation of superseded provisions

43 The Consumer Credit (Period of Standard Licence) Regulations 1975⁹ are revoked.

Transitional provisions

44 Regulations 45 to 50 shall apply where a statement is given under section 77A of the 1974 Act in relation to a fixed-sum credit agreement made before the commencement of section 6 of the 2006 Act.

45 A statement to which this regulation applies need not include the information required under paragraphs 3(2), 3(3)(b), 3(4) and 3(5) of Part 1 of Schedule 1.

46 Where a statement to which this regulation applies does not include some or all of the information referred to in regulation 45—

(a) the creditor shall give the debtor such of the information referred to in regulation 47 as was omitted from the statement in writing within fifteen working days of receipt of the debtor's request for that information, and

(b) the statement shall contain the following wording:

“More information

This statement does not contain all the information which you are entitled to receive from us about your agreement. If you would like to receive this extra information please get in touch with us to obtain it. We are required to provide you with this

⁹ S.I. 1975/2124, amended by S.I. 1979/796, 1986/1016 and 1991/817

information at no additional cost within fifteen working days of receiving your request for it.”.

47 Section 77A(3) and section 77A(6) of the 1974 Act shall apply to information which the creditor gives the debtor under regulation 48(a) as if the words “a statement under this section” in each case were construed as a reference to that information.

48 Regulations 44, 45, 46, and 47 shall apply until 30 September 2017.

49 Regulation 50 shall apply where-

(a) a statement to which this regulation applies is the first given following commencement of section 6 of the 2006 Act, and

(b) the creditor and the debtor have entered into an agreement to aggregate to which regulation 9 applies

(c) the agreement to aggregate pre-dates commencement of section 6 of the 2006 Act.

50 Subject to regulation 45 regulation 9(3) shall apply to a statement to which this regulation applies as if the words “Where the statement is not the first statement given under section 77A of the 1974 Act in relation to the agreements” were omitted.

51 Regulations 52, 53 and 54 apply where a notice of sums in arrears is given pursuant to section 86B of the 1974 Act in relation to a regulated agreement for fixed-sum credit or a regulated consumer hire agreement made before the commencement of section 9 of the 2006 Act.

52 For the purposes of regulation 53 “pre-commencement information” means such of the information required to be included in a notice under paragraph 1 of Part 2 of Schedule 3 as came into existence before 1 October 2006.

53 A notice to which this regulation applies may contain pre-commencement information.

Name

_____ 2007

Minister of State for Trade,
Investment and Foreign Affairs
Department of Trade and Industry

Schedule 1

Part 1

Regulation 4(a)

INFORMATION TO BE INCLUDED IN FIXED-SUM CREDIT STATEMENTS

- 1 The period to which the statement relates.
- 2 (1) The creditor's name, a telephone number or numbers, a postal address and, where appropriate, any other address.

(2) Where the creditor and the debtor have entered into an arrangement under which the creditor has given the debtor details of a particular employee or category of employees of the creditor whom the debtor is entitled to contact in relation to all his dealings with the creditor, the creditor may instead of including the telephone number or numbers referred to in sub paragraph (1) refer to that arrangement.
- 3 Information specific to the agreement-
 - (1) a description of the agreement sufficient to identify it;
 - (2) amount of credit provided and, where applicable, to be provided under the agreement (shown as one figure);
 - (3) (a) any rate or rates of interest applicable on a per annum basis which applied during the period to which the statement relates and-
 - (i) the periods during which each rate applied; and
 - (ii) if applicable, the element of the credit to which each rate applied; or
(b) where the rate or rates of interest are not applicable on a per annum basis, the rate or rates of interest on the credit provided under the agreement, in each case quoted on a per annum basis and a statement explaining how and when interest charges are calculated and applied under the agreement.
 - (4) (a) date on which the agreement became an executed agreement, or

(b) date of first movement on the account;
 - (5) (a) duration of the agreement, or

(b) minimum duration of the agreement;

- (6) any opening balance under the agreement at the beginning of the period to which the statement relates;
- (7) the amount and date of any payment made by, or to the credit of, the debtor during the period to which the statement relates;
- (8) the amount and date of any interest or other charges payable by the debtor which became due during the period to which the statement relates, whether or not the interest or other charges relate only to the said period;
- (9) the amount and date of any movement in the account during the period to which the statement relates which is not required to be included in the statement under subparagraphs (7) and (8);
- (10) the balance under the agreement at the end of the period to which the statement relates.

Part 2

Regulation 4(b)

FORMS OF WORDING TO BE INCLUDED IN FIXED-SUM CREDIT STATEMENTS

1. “Settling your credit agreement early

You can settle this agreement at any time by giving us notice in writing and paying off the amount you owe. If you wish to settle early you should write to us for a final settlement figure.”.

2. “Dispute resolution

If you have a problem with your agreement, please try to settle it with us in the first instance. If you are not happy with the way in which we handled your complaint or the result, you may be able to complain to the Financial Ombudsman Service. If you do not take up your problem with us first you will not be entitled to complain to the Ombudsman. We will provide details of how to contact the Ombudsman.”.

3. “Paying less than the agreed sum:

If you pay less than your agreed payment in most cases it will take you longer and cost you more to pay off the debt under the agreement.

If you have difficulties making payments under your credit agreement please contact us if you have not already done so to discuss terms for the rest of the agreement. You may also want to seek advice on what to do from an independent free advice agency such as the Citizen’s Advice Bureau.”.

Part 3

Regulation 4(c)

FORM OF WORDING TO BE INCLUDED IN FIXED-SUM CREDIT STATEMENTS FOR HIRE-PURCHASE OR CONDITIONAL SALE AGREEMENTS

1 “Termination: Your rights

You also have the right to end this agreement early in accordance with section 99 of the Consumer Credit Act 1974. You will not have to pay all the sums due under the agreement but you will not be entitled to retain the goods if you do this. Details were set out in your credit agreement. If you wish to terminate the agreement you should contact us for further information including any amount payable on termination.”.

2 Where the debtor purchased a policy of insurance on credit referred to in regulation 2(9) of the Consumer Credit (Agreements) Regulations 1983 in connection with a hire purchase or conditional sale agreement a statement in the following form:

“If you wish we can provide you with separate balances for your [hire purchase] [conditional sale] [NOTE 1] agreement and for your insurance finance agreement. Please contact us in writing to obtain this”.

NOTE 1: Delete as applicable

Schedule 2

Regulation 14

FORM OF WORDING AND INFORMATION TO BE USED IN RUNNING-ACCOUNT CREDIT STATEMENTS

1 The following form of wording –

“Minimum payments

If you make only the minimum payment each month, it will take you longer and cost you more to clear your balance.”.

2 If at the end of the period to which the statement relates, the debtor has paid less than the minimum payment required to be paid by him in accordance with the agreement, the statement shall contain the following form of wording–

“You have failed to make a minimum payment

Failing to make your minimum payment can mean that you have broken the terms of this credit agreement and could result in us taking legal action against you. It could

lead to your having to pay additional costs and make it more difficult for you to obtain credit in future.”.

3 A statement of the order or proportions in which any amount paid by the debtor which is not sufficient to discharge the total debt then due under the agreement will be applied or appropriated by the creditor towards the discharge of the sums due in respect of:

- (1) the amounts of credit provided for different purposes; or
- (2) different parts of the agreement.

4 The following form of wording-

“If you do not pay off the full amount outstanding, we will allocate your payment to the outstanding balance in a specific order, which is set out [NOTE 1]. The way in which payments are allocated can make a significant difference to the amount of interest you will pay until the balance is cleared completely.”.

NOTE 1: state where in relation to this form of wording this information is located on the statement

5 “Dispute resolution

If you have a problem with your agreement, please try to settle it with us in the first instance. If you are not happy with the way in which we handled your complaint or the result, you may be able to complain to the Financial Ombudsman Service. If you do not take up your problem with us first you will not be entitled to complain to the Ombudsman. We will provide details of how to contact the Ombudsman.”.

Schedule 3

Part 1

Regulation 18(1)(c), (d)

INFORMATION AND STATEMENTS TO BE INCLUDED IN NOTICES OF SUMS IN ARREARS UNDER FIXED-SUM CREDIT AGREEMENTS ETC.

1 The date of the notice.

2 (1) The creditor’s or owner’s name, a telephone number or numbers, the postal address, and, where appropriate, any other address of the creditor or owner;

(2) Where the creditor and the debtor or the owner and the hirer have entered into an arrangement under which the creditor has given the debtor or the owner has given the hirer details of a particular employee or category of employee of the creditor or owner whom the debtor or hirer is entitled to contact in relation to all his dealings with the creditor or owner,

the creditor or owner may instead of including the telephone number or numbers referred to in sub paragraph (1) refer to that arrangement.

3 Information specific to the agreement:

(1) a description of the agreement sufficient to identify it;

(2) the opening balance under the agreement at the date at which the notice is required to be given.

4 (1) Where default sums or interest (other than any set out in the notice) may be payable in connection with the amounts set out in the notice, a statement in the following form-

“Default sums and interest

You may have to pay default sums and interest in relation to the missed or partly made payments referred to above. Please contact us if you would like further details. This notice does not take account of any payments received after the date of the notice.”.

(2) In any other case, a statement in the following form-

“Default sums and interest

You will not incur any default sums or extra interest in relation to the missed or partly made payments referred to in this notice. This notice does not take account of any payments received after the date of the notice.”.

5 A statement in the following form:

“Notices

For so long as you continue to be behind with your payments by any amount, you will be sent notices about this at least every six months. We are not required to send you notices more frequently than this, even if you get further behind with your payments in between notices.”.

Part 2

Regulation 18(2)(a)

INFORMATION TO BE INCLUDED IN THE FIRST REQUIRED NOTICE OF SUMS IN ARREARS UNDER FIXED-SUM CREDIT AGREEMENTS ETC.

1 The sum which comprises the shortfall which gave rise to the duty to give the notice.

Part 3

Regulation 18(3)

INFORMATION TO BE INCLUDED IN ALL NOTICE OF SUMS IN ARREARS UNDER FIXED-SUM CREDIT AGREEMENTS ETC. EXCEPT FIRST REQUIRED NOTICES

1 That part of the opening balance referred to in paragraph 3(2) of Part 1 of this Schedule which comprises any sum which the debtor or hirer has failed to pay in full when it became due under the agreement, whether or not such sums have been included in a previous notice.

2 The amount and date of any payment made by, or to the credit of, the debtor or hirer during the period to which the notice relates.

3 The amount and nature of every sum becoming due to the creditor under the agreement during the period to which the notice relates, including interest and default sums, together with the date on which every such sum became due.

4 The amount and date of any movement in the account during the period to which the notice relates which is not required to be included in the notice under paragraphs 2 and 3 of this Part.

5 The balance under the agreement at the end of the period to which the notice relates.

6 That part of the closing balance referred to in paragraph 5 of this Part which comprises any sum which the debtor or hirer has failed to pay in full when it became due under the agreement which remains unpaid at the end of the period to which the notice relates, whether or not such a sum has been included in a previous notice.

7 Add the following words to the end of the first sentence of the statement in paragraph 4(1) of Part 1 of this Schedule:

“in addition to any default sums and interest included in this notice.”.

Part 4

Regulation 21(1)(c) and (d)

INFORMATION AND STATEMENTS TO BE INCLUDED IN NOTICES OF SUMS IN ARREARS UNDER RUNNING-ACCOUNT CREDIT AGREEMENTS

1 The date of the notice.

2 A description of the agreement sufficient to identify it.

3 (1) The name, telephone number, postal address and, where appropriate, any other address of the creditor.

(2) Where the creditor and the debtor have entered into an arrangement under which the creditor has given the debtor details of a particular employee or category of employee of the creditor whom the debtor is entitled to contact in relation to all his dealings with the creditor, the creditor may instead of including the telephone number or numbers referred to in sub paragraph (1) refer to that arrangement.

4 In relation to each of the last two payments which the debtor is required under the agreement to have made and which have not been paid or fully paid:

(a) the amount payable;

(b) the date on which that amount became due;

(c) in the event that the debtor has paid part of that amount, the amount he has paid and the date on which such payment was made;

(d) the nature of the amount due.

together with the aggregate of the amounts payable as shown under paragraph (a) less the aggregate of the amounts paid as shown under paragraph (c).

5 A statement in the following form-

“Missed and partly made payments

This notice does not give details of missed or partly made payments previously notified whether or not they remain unpaid.”.

6 (a) Where default sums or interest (other than any set out in the notice) will be payable in connection with the amounts set out in the notice, a statement in the following form-

“Default sums and Interest

You will have to pay default sums and interest in relation to the missed or partly made payments indicated above in addition to any default sums and interest already included in this notice. Please contact us if you would like further details. This notice does not take account of any payments received after the date of the notice.”;

(b) In any other case, a statement in the following form-

“Default sums and Interest

You will not incur any default sums or extra interest in relation to the missed or partly made payments indicated above. This notice does not take account of any payments received after the date of the notice.”.

Part 5

Regulation 18(1)(e) and 21(1)(e)

STATEMENT TO BE INCLUDED IN NOTICES OF SUMS IN ARREARS UNDER FIXED-SUM CREDIT AGREEMENTS ETC. AND RUNNING-ACCOUNT CREDIT AGREEMENTS

A statement in the following form [indicating that the notice must include a copy of the current arrears information sheet under section 86A (in accordance with section 86B(6) or section 86C(3))] -

“Office of Fair Trading Information Sheet

This notice should include a copy of the current Information Sheet on arrears prepared by the Office of Fair Trading. This contains important information about your rights and where to go for support and advice, for example on applying for a Time Order as well as our right to charge you interest. If it is not included you should contact us to get one. Please refer to the Office of Fair Trading Information Sheet for more information about how to get advice on dealing with your debt.”.

Schedule 4

Part 1

Regulation 30

INFORMATION AND FORM OF WORDING TO BE INCLUDED IN NOTICES OF DEFAULT SUMS

- 1 The date of the notice.
- 2 A description of the agreement sufficient to identify it.
- 3 (1) The name, telephone number, postal address and, where appropriate, any other address of the creditor or owner.

(2) Where the creditor and the debtor or the owner and the hirer have entered into an arrangement under which the creditor has given the debtor or the owner has given the hirer details of a particular employee of the creditor or owner whom the debtor or hirer is entitled to contact in relation to all his dealings with the creditor or owner, the creditor or owner may instead of including the telephone number or numbers referred to in sub paragraph (1) refer to that arrangement.
- 4 The amount and nature of each default sum payable under the agreement which has not been the subject of a previous notice of default sums.

5 The date upon which each default sum referred to in the notice became payable under the agreement.

6 The date upon which each default sum referred to in the notice became due under the agreement (if different from the date on which the sum became payable).

7 The following form of words:

“This Notice does not take account of default sums which we have already told you about in another default sum notice whether or not those sums remain unpaid.”

8 The total amount of all the default sums included in the notice.

Part 2

Regulation 31

**FORMS OF WORDING TO BE INCLUDED IN NOTICES OF DEFAULT SUMS
IF INTEREST IS PAYABLE ON DEFAULT SUMS**

1. Where the interest rate which applies to the default sum in the event that it is not paid or not paid in full when it falls due is a variable rate the creditor or owner shall insert the following form of wording-

“Interest

No interest will be charged on the default sums for the first 28 days after the giving of this notice. If the sums are not paid in full by that date interest will be charged at the rate of.....[NOTE 1]. Since this interest rate is a variable rate, the rate which we will apply to the default sum once the 28 days have passed may be different.”.

NOTE 1: Insert the interest rate applicable at the date of the notice

2. Where the interest rate which applies to the default sum in the event that it is not paid or not paid in full when it falls due is a fixed rate the creditor or owner shall insert the following form of wording-

“Interest

_____No interest will be charged on the default sums for the first 28 days after the giving of this notice. If the sums are not paid in full by that date interest will be charged at the rate of.....[NOTE 1] per annum.”.

NOTE 1: Insert applicable interest rate

Schedule 5

Part 1

Regulation 34(a)(i) and (b)

INFORMATION AND STATEMENT TO BE INCLUDED IN ALL NOTICES UNDER SECTION 130A

- 1 The date of the notice.
- 2 A description of the agreement sufficient to identify it and the case number of the judgment given in relation to the agreement.
- 3 The name, telephone number, postal address and, where appropriate, any other address of the creditor or owner.
- 4 The amount to which post-judgment interest is or will be charged at the date of the notice.
- 5 A statement as follows-

“If you are having problems making repayments you should contact us in the first instance. If we cannot help you resolve the problem and if you are making payments under an instalment order you may be able to apply to the court to have the terms of the instalment order varied. If you do so you may also ask the court to reduce the amount of interest payable on the judgment debt.”.

- 6 A statement as follows-

“Advice and information

You can also obtain advice and information about dealing with your debt issues from the Citizens Advice Bureau, Federation of Law Centres, Consumer Credit Counselling Service, National Debtline, Advice UK agencies, Trading Standards, and Consumer Direct on [NOTE 1].”.

NOTE 1: Insert the telephone numbers for the organisations which are contained in the OFT [default?] Information Sheet

Part 2

Regulation 34(b))

INFORMATION AND STATEMENT TO BE INCLUDED IN ALL NOTICES UNDER SECTION 130A, EXCEPT FIRST REQUIRED NOTICES

- 1 The total amount of post-judgment interest charged since the date of the last notice given under s130A in relation to the agreement; and
- 2 The date or dates on which post-judgment interest has been charged since that date.
- 3 The rate or rates at which post-judgment interest was charged. Where the rate is a variable rate it shall be stated to be variable.

Part 3

Regulation 34(a)(ii)

FORM OF WORDING TO BE INCLUDED IN FIRST REQUIRED NOTICE

“Interest payable after a judgment

This notice is being given to you because a court judgment has been obtained against you in relation to the agreement. Under the agreement we are allowed to continue to charge you interest on all the sums which the judgment states you owe us.

This notice is to advise you that we intend to charge interest. The rate of interest payable will be [NOTE 1].(variable).....[NOTE 2].

Interest will be charged from the day you were given this notice onwards.

This means that even if you pay off the whole amount of the judgment, you may still have a further sum to pay.

For so long as we intend to charge interest on the monies owed by you at the date of the judgment, you will be given a notice about this at least every six months. This will also include information about the amount of interest that has been charged since the previous notice was given.

If you are not given such a notice within 6 months starting with the day after the previous notice was given to you then we will not be able to charge further interest until you are given such a notice.”

NOTE 1: Insert interest rate or rates. Where the rate is variable insert the rate applicable at the date of the notice

NOTE 2: Delete where the rate or rates are fixed

End