

**BERR**

Department for Business  
Enterprise & Regulatory Reform

**CONSUMER CREDIT ACT 1974 (AS  
AMENDED BY THE CONSUMER  
CREDIT ACT 2006)**

BERR response to the  
consultation on proposals  
relating to:

- Buy-to-let lending
- Provision of statements
- Definitions of payments

JUNE 2008

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## Executive Summary

1. The Department for Business, Enterprise and Regulatory Reform (BERR) issued a consultation document in December 2007 in which it proposed a number of amendments to the Consumer Credit Act 1974 (the 1974 Act) as amended by the Consumer Credit Act 2006 (the 2006 Act). These would provide:
  - an exemption from regulation under the 1974 Act for consumer credit agreements for the purpose of buy-to-let;
  - clarification on the giving of statements for fixed-sum credit agreements; and
  - definitions of “payments” for the purpose of issuing notices of sums in arrears.
2. These proposed changes are all corrective measures designed to achieve the original policy intention in each case. The consultation document included a draft Legislative Reform Order (the draft Order) intended to effect these changes.
3. 22 responses were received of which 6 were from trade associations representing the views of their members (who number of 1,000 in total). The overall response to the consultation was very positive with widespread support for the proposals subject to minor changes. The consultation confirmed BERR’s view that the proposals would, in all cases, avoid any unnecessary burdens on industry and would not be detrimental to consumers. The proposals were particularly welcomed for their simplicity and clarity.

## Introduction

- 1.1 BERR issued a consultation document on 19 December 2007<sup>1</sup> proposing a number of amendments to the 1974 Act (as amended by the 2006 Act) designed to achieve the original policy intention in each case. The closing date for responses was 12 March 2008.
- 1.2 A list of the organisations consulted (and highlighting those who responded) is attached at Annex A. Copies of the original responses (unless the respondent has requested non-disclosure) are available on request. Please contact Jacqui Entwistle on 020 7215 3970 or via email at [Jacqui.Entwistle@berr.gsi.gov.uk](mailto:Jacqui.Entwistle@berr.gsi.gov.uk) for further information.
- 1.3 22 responses were received. The breakdown is as follows:
- |                                    |   |
|------------------------------------|---|
| Businesses                         | 9 |
| Trade Associations                 | 7 |
| Consumer organisations             | 2 |
| Solicitors and legal organisations | 2 |
| Government bodies                  | 2 |
- 1.4 The written consultation (sent to 101 stakeholders) was also available publicly on the BERR website and supplemented by face-to-face meetings with key stakeholder groups. Although the response level appears low those responses received from trade associations represented the views of their wider membership (who number over 1,000 members in total). Consequently many organisations consulted directly preferred to have their views represented by their trade association rather than responding individually. In addition the Money Advice Trust (MAT) consulted its 9 partner organisations which include Citizens Advice (including Northern Ireland and Scotland), National Debtline and Advice UK.
- 1.5 BERR is very grateful to all respondents for their feedback. In particular it was very helpful to receive collective, agreed feedback through trade associations and umbrella groups in view of the fact that the main issues raised were of common concern.
- 1.6 The consultation posed 17 questions in total – 3 sought information to supplement the partial impact assessment, 6 sought views on the policy, 7 on the pre-conditions laid down in the Legislative and Regulatory Reform Act 2006 (LRRRA) and the proposed parliamentary scrutiny process and the last invited any other comments not covered elsewhere.

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<sup>1</sup> Consumer Credit Act 1974 (as amended by the Consumer Credit Act 2006): Consultation on proposals relating to buy-to-let lending, the provision of statements and the definition of payments. December 2007 URN 07/1633  
<http://www.berr.gov.uk/consultations/page43129.html>

- 1.7 The responses to the consultation have been carefully considered. This report provides a summary of the views expressed together with BERR's response, where appropriate, to the issues raised.
- 1.8 A summary of the questions asked in the consultation document is at Annex B.

## **2 Background**

- 2.1 The 2006 Act received Royal Assent in March 2006 and amends the 1974 Act. It is designed to help protect consumers and create a fairer, more transparent and competitive credit market.
- 2.2 The draft Order proposes three main amendments to the 1974 Act as a consequence of provisions introduced by the 2006 Act as follows:

### **i) An exemption for buy-to-let agreements under the 1974 Act**

From 6 April 2008 all consumer credit agreements, regardless of value, are regulated under the 1974 Act unless specifically exempt. Previously a £25,000 threshold was in place at and below which consumer credit agreements were regulated (unless specifically exempted) and above which they were not. As a consequence of this change, consumer credit agreements for the purpose of buy-to-let will come within the scope of the 1974 Act unless exempted elsewhere, for example, through the existing land purchase exemption or the new business and high net worth exemptions. This is an unintended consequence of the 2006 Act and inconsistent with the original policy intention. A transitional provision is in place at present to exempt buy-to-let lending from regulation until such time as the draft Order comes into force.

### **ii) Clarification on the giving of statements for fixed-sum credit agreements**

The original policy intention under the 2006 Act was that a creditor, under a regulated agreement for fixed-sum credit, must give the debtor regular statements each covering a period of up to one year and that these should be given within 30 days of the end of the period to which they relate and should run consecutively. However, the 2006 Act, when taken together with regulation 11 of the Consumer Credit (Information Requirements and Duration of Licences) Regulations 2007 (the 2007 Regulations) defeats this policy intention as the current wording of the 2006 Act does not allow for the provision in the 2007 Regulations which allows the lender 30 days to send the statements.

### **iii) Inclusion of definitions of "payments" for the purpose of issuing notices of sums in arrears**

The 2006 Act provides for a creditor to give notices of sums in arrears to the debtor under certain regulated fixed-sum and running-account credit

agreements and certain regulated consumer hire agreements. Certain conditions have to be satisfied before this obligation arises, two of which include the word “payments”. The policy intention was that “payments” would cover scheduled instalments/repayment sums and hire “payments” as provided for under the terms of the agreement. However, in the absence of definition of what the word “payments” is supposed to mean, it could be construed more widely than intended and could include those ad hoc sums falling due outside the regular scheduled payments. As a result first notices of sums in arrears could be triggered more quickly than would otherwise be the case if it were clear what the word “payments” was intended to cover.

- 2.3 These are all unintended consequences of provisions introduced by the 2006 Act which have come to light since the 2006 Act received Royal Assent in March 2006. BERR considers that the proposals put forward in the consultation document, as now revised in the light of the responses received, will result in increased legal certainty and clarity for industry and avoid unnecessary confusion for consumers.

### **3 Responses by Question**

#### ***Question 1: Do you think the proposals will remove or reduce burdens as set out in this consultation paper?***

- 3.1 This question sought comments in relation to the three main proposals in the consultation – the exemption for buy-to-let lending, clarification on the giving of statements for fixed-sum credit agreements and the definitions of “payments” for the purpose of issuing notices of sums in arrears.
- 3.2 Many respondents did not answer this question directly but it appears implicit from their responses to questions 4 -9 that they agree with the views expressed below.
- 3.3 8 respondents answered in relation to the proposed exemption for buy-to-let lending. They were unanimous that the proposal would avoid unnecessary burdens on industry. The Council of Mortgage Lenders (CML) emphasised the cost to industry without the proposal - £100 million in one-off transitional costs and £500,000 per annum ongoing costs. In addition they highlighted the legal uncertainty that would exist with some buy-to-let loans being regulated and others not depending on their circumstances. This in turn could inhibit product diversity and customer choice and may push some smaller lenders out of the market altogether. The Trading Standards Institute (TSI) welcomed the proposal on the basis that it allowed buy-to-let lending to be consistent with Government policy on mortgages.
- 3.4 9 respondents answered in relation to the proposal to clarify the giving of statements for fixed-sum credit agreements. Again there was unanimity that the proposal would reduce the burdens on industry. It was

welcomed on the basis of the clarification and simplification it provided and the customer confusion it would avoid. The British Bankers' Association (BBA) supported the proposal commenting that it would reduce and remove burdens by aligning the legislation with the original policy intention. The Royal Bank of Scotland (RBS) agreed adding that it would assist lenders by greatly simplifying the legislative burden (as evidenced in systems and operational processes) without in any way affecting or being detrimental to consumers who would still receive their annual statements as originally intended under the 2006 Act.

- 3.5 8 respondents answered in relation to the proposal for definitions of "payments" for the purpose of issuing notices of sums in arrears. All were agreed that the proposal would reduce the burdens on industry. Lloyds TSB commented that the change was necessary to avoid industry having to send statements at a much greater frequency involving considerably increased costs and increasing customer confusion. The need for legal certainty and avoiding customer confusion were points made throughout the consultation responses.

***Question 2: Do you have any views regarding the expected benefits of the proposals as set out in this consultation document?***

- 3.6 This question sought comments in relation to the three main proposals in the consultation. As for Question 1 many respondents did not answer this question directly preferring to provide information on the benefits in their fuller responses to questions 4 - 9.
- 3.7 5 respondents answered in relation to the exemption for buy-to-let lending. The main benefits were seen as clarification, legal certainty and reduced administrative costs for lenders and a well-performing buy-to-let market operating on a level playing field offering competitive and innovative products to customers. The Civil Courts Users Association (CCUA) commented that the expected benefits should be beneficial to all parties in terms of clarification and administrative costs.
- 3.8 4 respondents answered in relation to the proposal to provide clarification on the giving of statements for fixed-sum credit agreements. RBS commented that such clarification would be helpful with regard to the implementation of systems and operational processes that were not unnecessarily complicated. The TSI saw the main benefit as lenders adopting a common approach which would make it easier for customers to make comparisons between lenders.
- 3.9 5 respondents answered in relation to the proposal for definitions of "payments" for the purpose of issuing notices of sums in arrears. The BBA saw the main benefit to industry as greater legal certainty as to what constitutes a trigger for the purposes of issuing a notice. This certainty would also benefit customers as it would reduce confusion and worry as they would understand the basis on which they were receiving notices and would not receive as many as they could otherwise have

done. The TSI welcomed the proposal commenting that it contributed to greater transparency in the consumer credit market and so offered greater protection.

***Question 3: If there is any further empirical evidence that you are aware of that supports the need for these reforms please provide details here.***

3.10 Those respondents who provided additional empirical evidence asked that this not be disclosed. There were no further direct responses to this question but elsewhere in responses to other questions there was general agreement with the cost benefit analysis presented in the partial Impact Assessment which accompanied the consultation document.

***Question 4: Do you have any comments on the form of the proposed exemption for buy-to-let lending?***

3.11 13 respondents answered this question with widespread support for the proposal. CML welcomed the proposal for its simplicity and clarity whilst Standard Life felt that it was particularly good that a vague and ambiguous definition of a buy-to-let mortgage had been avoided. 4 respondents welcomed in particular the fit with mortgage policy and the existing definition of a Regulated Mortgage Contract (RMC) under the Financial Services and Markets Act (FSMA). The TSI commented that this will reduce confusion by those affected by both the 1974 Act and FSMA. The Local Authority Coordinators of Regulatory Services (LACORS) supported the proposal on the basis that a failure to do this would probably result in a withdrawal of products from the market and a consequent decrease in the availability of accommodation.

**3.12 BERR therefore confirms its proposed intention to amend the 1974 Act to provide an exemption from regulation for buy-to-let loans meeting the specified conditions.**

3.13 A number of respondents to both the written consultation and in stakeholder meetings during the consultation period were concerned that the new section 16C(2) (which provides for the less than 40% occupancy test for buy-to-let) should include the words at the time the agreement is entered into. This would be consistent with the definition of an RMC under FSMA and would provide clarity that the condition only applied at the time the agreement was entered into and was not applicable subsequently should the use of the property change.

**3.14 BERR agreed and the draft Order has been amended accordingly.**

***Question 5: Do you have any comments on our proposal to include a declaration for the purpose of buy-to-let lending?***

***Question 6: Do you have any comments on the proposed form of a declaration for the purpose of buy-to-let lending?***

- 3.15 13 respondents answered these two questions (responses were generally interchangeable between the two) and there was considerable discussion at stakeholder group meetings during the consultation period. Non-industry respondents were supportive of the proposal to allow for a declaration. TSI and LACORS supported the proposal as it followed the precedents set for the new business and high net worth exemptions introduced on 6 April 2008 whilst MAT welcomed it on the basis that it would make it clear to borrowers that they were entering a non-regulated buy-to-let agreement.
- 3.16 However, industry respondents were unanimous in their concern to allow for a formal declaration as proposed. The main concern was that such a declaration did not sit comfortably with existing mortgage documentation and practice (too prescriptive, legalistic and not user-friendly). It was also pointed out that there could be practical difficulties in getting the declaration signed, particularly with the increasing use of online applications (where a signature is not required) and the possible introduction by the Land Registry of e-conveyancing using e-signatures. Industry told us that having to get the declaration signed would increase the administrative burden and require costly system and forms changes estimated at around £2 million per annum which in turn would lead to increased product costs to the borrower.
- 3.17 A number of other issues were also raised by industry respondents. For example, Lovells pointed out that no similar notice or declaration is required for buy-to-let lending exempted from regulation under the existing land purchase exemption in section 16 of the 1974 Act. This gives rise to the anomalous situation whereby a lender who is able to use the land purchase exemption under section 16(1) of the 1974 Act would not have the option to require a declaration whereas a lender using the new buy-to-let exemption would (although the new business exemption does provide for the option to use an declaration). Standard Life saw some benefits in the use of a declaration but questioned how much use it would be in practice as very few customers will be familiar with the protections available under the 1974 Act and are therefore unlikely to provide an informed response on the declaration.
- 3.18 **BERR has considered carefully the representations made in response to the consultation and has decided not to proceed with this proposal. We agree that the original proposal for a formal declaration would not sit comfortably with existing mortgage documentation and practice and, as such, a formal declaration would not be practicable. In the light of industry concerns about the form of the declaration we explored with industry the options for a more workable solution. However we were unable to identify a non-legislative solution that would be effective or a legislative one that would not impose additional costs on industry or go further than the requirements for other exemptions. We were also concerned that any option would cut across our objective to achieve a level playing field in the buy-to-let market as some**

**lenders able to use existing exemptions could be put at a competitive advantage if not required to incur the costs of a declaration or similar notice. Furthermore the consultation did not demonstrate that there was any evidence to suggest that such a requirement is needed for this exemption. Around 99% of buy-to-let investors are represented by either a solicitor or licensed conveyancer in the transaction and consequently the risks for these customers are less than those in other consumer credit transactions where they are not represented.**

***Question 7: Do you have any comments on our proposal to amend section 82 of the 1974 Act to ensure that buy-to-let lending is not inadvertently brought into regulation?***

3.19 8 respondents answered this question. All were agreed that the amendment to section 82 of the 1974 Act was necessary to ensure that buy-to-let agreements were not unintentionally brought into regulation and that the proposal would appear to achieve this. The Yorkshire Building Society commented that it was crucial that other parts of the 1974 Act did not accidentally cause buy-to-let agreements to become regulated. The Bank of Ireland said that lenders cannot have uncertainty. If they feel that section 82 might apply they could be forced to decline an application from a buy-to-let customer for a variation on their mortgage. This would not be in the best interests of customers but the Bank could not afford to take the risk of systemic unenforceability across a significant section of its buy-to-let book if it were to agree to variations en masse without proper regard to section 82.

**3.20 BERR therefore confirms its proposed intention to amend section 82 of the 1974 Act as set out in the consultation.**

***Question 8: Do you have any comments on our proposals to clarify the position on statements for fixed-sum credit agreements?***

3.21 15 respondents answered this question. There was unanimous support from both industry and consumer groups for this proposal which was seen as providing much needed clarity for both industry and consumers. The Finance and Leasing Association (FLA) commented that without this clarification lenders will vary as regards the length of statements – some members were considering 6 monthly statements and others 11 month statements. The Institute of Credit Managers (ICM) commented that the proposed change eliminates any confusion and brings the rules into line with normal business practice governing statements. The Bank of Ireland welcomed the clarification saying that getting it wrong was not an option for lenders as the sanctions were very harsh. MAT considered the proposals to be eminently sensible.

3.22 However, there was widespread concern (mainly articulated in stakeholder meetings during the consultation period) that, whilst the proposals address the situation for new agreements after 1 October

2008 when the provisions come in to force, the wording of the transitional provision (article 5(2)) for agreements in existence prior to 1 October 2008 could give rise to problems in relation to the first statement issued after that date. In summary industry respondents were concerned that the wording in the draft Order did not give them the flexibility to, in cases where statements were not previously given, either:

- cover a period of longer than 12 months which would enable historical information to be included in the statement bringing the customer fully up-to-date with their account; or
- cover a period of less than 12 months from the date of commencement to allow lenders to stagger statement periods throughout the year to avoid all statement periods starting on 1 October 2008.

Furthermore, where regular statements were already provided lenders wanted the flexibility to be able to continue with existing annual statements periods where these crossed over 1 October 2008, for example, 1 July 2007 to 30 June 2008.

**3.23 BERR agreed and has now restated its policy position on the transitional provision for agreements in existence prior to 1 October 2008 to reflect industry concerns and revised the draft Order accordingly. This was subject to a further limited consultation (during the formal consultation) and has been widely welcomed. BERR believes that this increased flexibility clarifies the position for lenders as well as avoiding unnecessary administrative burdens. It also avoids confusion for customers who will either continue to receive statements covering the same periods as now or, if receiving their first statement under the agreement, will receive information dating back to when the agreement was taken out.**

***Question 9: Do you have any comments on our proposals to define “payments” for the purpose of issuing notices of sums in arrears?***

3.24 13 respondents answered this question. There was widespread support from both industry and consumer groups for the intention behind the proposal to define “payments”. This was welcomed on the basis that it would reduce the uncertainty for lenders around the trigger for issuing notices of sums in arrears which would both reduce the costs to industry (as they would not be sending as many notices as might otherwise be the case in the absence of clear definitions) and clarify the position for consumers (who might otherwise have been confused as to why they had been issued with a notice when they themselves might not have recognised that they were in arrears, for example because the arrears related to two default sums rather than two regular payments).

3.25 However, this support was tempered by industry concern that the proposed definition in the draft Order did not achieve the policy objective. The BBA and FLA both emphasised the need for the

definition to focus on the periodic nature of the payments provided for under the terms of the agreement rather than the amounts or nature of the payments.

**3.26 BERR noted these concerns and has agreed with industry revised definitions of “payments” to achieve the original policy objective and remove the ambiguity that currently exists. The definitions of “payments” for fixed-sum and running account credit agreements now refer to payments made at predetermined intervals provided for under the terms of the agreement. In relation to consumer hire agreements the definition refers to any payments to be made by the hirer in relation to any period in consideration of the bailment or hiring to him of goods under the agreement.**

3.27 A number of respondents emphasised the need for the definitions of “payments” in the draft Order to follow through to the 2007 Regulations where “payments” is, in places, used in a different context and therefore requires clarification.

**3.28 BERR agreed and is addressing this as part of the work to amend the 2007 Regulations before 1 October 2008 when they are due to come into force.**

***Question 10: Are there any non-legislative means that would satisfactorily remedy the difficulties that the proposals in this consultation paper intend to address?***

3.29 11 respondents answered this question. All were agreed that the issues addressed in the consultation could not be remedied by any means other than legislation. RBS said that in view of the complexity and legal importance of the proposed changes they considered that any non-legislative proposals would not provide a satisfactory solution. More specifically:

- On the proposal for an exemption for buy-to-let lending CML commented that there was no viable non-legislative solution to the problem of partial regulation of buy-to-let lending under the 1974 Act. This is an unintended legal consequence of removing the £25,000 limit and can only be dealt with by amending the relevant legislation.
- On the proposal to clarify the giving of statements Lovells commented that as the problem was caused by the drafting of section 77A and its interaction with other legislative measures, legislative means must be used to cure the issue.
- On the proposal for definitions of “payments” the BBA did not believe that the required level of consistency could be achieved through a non-legislative solution. The TSI had concerns about using guidance to address this issue as it was not binding and Trading Standards

Authorities had had problems in the past when definitions had not been well defined.

**Question 11: Are the proposals put forward in this consultation document proportionate to the policy objective?**

3.30 12 respondents answered this question. All were agreed that the proposals in all three cases represented a proportionate response to the policy objectives.

- On the proposal for an exemption for buy-to-let lending CML commented that the consequence of doing nothing would be significant costs to industry which would be passed onto borrowers as well as a reduced choice of products and providers in the buy-to-let market. By contrast they considered that the proposed solution was a modest amendment with effects that did not go beyond the problem it was intended to address.
- On the proposals to clarify the giving of statements and for definitions of “payments” the BBA considered that the proposals were essential if the original policy intention was to be achieved.

**Question 12: Do the proposals put forward in this consultation document taken as a whole provide a fair balance between the public interest and any person adversely affected by them?**

3.31 12 respondents answered this question. All agreed that the proposals do provide a fair balance between the public interest and any person adversely affected by them.

- On the proposal for an exemption for buy-to-let lending CML believed that the public interest would be well served by dealing with this legislative anomaly. The solution would enable the full range of lenders to efficiently fund investment in the private rented sector on terms that would contribute to continued expansion and improvements in standards. They did not see a threat to the public interest in avoiding the unnecessary costs of regulating what are essentially commercial transactions.

Furthermore CML said that, without the exemption there would be no level playing field for lenders in the buy-to-let market with competitive advantage for some. Those lenders not qualifying for an exemption elsewhere included some of the largest lenders in the buy-to-let market. It could not therefore be in the interest of borrowers for a significant and innovative group of lenders to be edged out of the market through their products being forced to bear the cost of regulation not borne by their competitors.

- On the proposal to clarify the giving of statements the TSI felt that that it was important for borrowers to be kept informed of any activity

on their account and that lenders should hopefully benefit from a reduced amount of indebtedness as a result.

**Question 13: Do the proposals put forward in this consultation document remove any necessary protections?**

3.32 12 respondents answered this question. With the exception of Citizens' Advice and the MAT (see below) all were agreed that no necessary protections were being removed under any of the proposals. RBS commented that the proposals would assist lenders as they would greatly simplify the legislative burden (as evident in systems and operational processes) without in any way affecting or being detrimental to consumers.

- On the proposal for an exemption for buy-to-let lending Lovells observed that in most cases borrowers obtain legal advice when entering into a transaction and would therefore be fully aware of the nature of the commitment they were entering into. The lack of a consideration period under section 58 was unlikely to adversely impact on the borrowers' position as in most circumstances the transaction will be taking place over a period of time with delay between offer and acceptance of any loan. Lenders are required by other legislation to ensure agreements are fair and transparent and so the documentation requirements of the 1974 Act do not necessarily provide additional protections. In addition the borrower will continue to benefit from the unfair relationship test which will provide significant protection to all aspects of the borrowers' dealings with the lender.

However, Citizens' Advice and MAT felt that, whilst the proposals would remove regulatory burdens, this was at the expense of protection for consumers. They claimed that buy-to-let investors do enter into high risk agreements and that buy-to-let properties sold at a loss resulting in a shortfall on the loan means that the lender can enforce the debt against the equity in other properties belonging to the borrower including their own home.

Citizens' Advice welcomed the protections that will continue to apply to buy-to-let investors (the unfair relationships test and the opportunity to complain to the OFT if the lenders actions suggest they are unfit to hold a licence). However they would also like to see time-order provisions applying to buy-to-let mortgages in arrears as they consider that this could provide protection for consumers from the loss of property if a Court considers it just to do so.

**BERR noted these concerns. It was never BERR's intention to regulate buy-to-let lending secured by a charge on the property where the owner or relative intends to occupy less than 40% of the property. The Government is not aware of any evidence to suggest that such mortgages should be regulated.**

**The time order provisions of the 1974 Act apply only to regulated consumer credit agreements, unlike the unfair relationships test and recourse to the OFT which can apply to credit agreements more widely. It would not therefore be appropriate to apply the time order provisions to unregulated buy-to-let agreements.**

**Buy-to-let is a commercial venture and consequently the risks associated with such a venture (including the risk to the investor's own home) are no different to those for other types of business venture or other forms of debt, regulated or otherwise. We are not, therefore, convinced that regulation, partial or otherwise, under the 1974 Act would address these concerns. Furthermore the specific buy-to-let exemption is designed to achieve a level playing field in the buy-to-let market. The vast majority of buy-to-let agreements are already outside the scope of the 1974 Act under or by virtue of existing exemptions in section 16 of that Act such as the land purchase and new business and high net worth exemptions. This further exemption will ensure that all such lending, where secured by a charge on the property and meeting the 40% occupancy test, will be exempt from regulation.**

**Buy-to-let funds the private rented sector - 89% of buy-to-let stock is owned by 23% of landlords and run on a fully professional basis. If that venture is failing for any reason it is important for the borrower to work closely with the lender to protect the value of the property and the well-being of the tenant. For this reason many lenders use the Law of Property Act (LPA) receiver route rather than formal possession proceedings. The LPA receiver will run the property in the best interests of the landlord and, once the property is under control, will return it to the landlord if the lender is convinced that the borrower can now manage their affairs. Where repossession is chosen as opposed to receivership then certain protections exist under section 36 of the Administration of Justice Act 1970 including power by the Courts to suspend an Order.**

- On the proposals to clarify the giving of statements and for definitions of "payments" the FLA commented that they saw no loss of consumer protection, rather that the proposals would enable consumers to assess better their financial situation and compare the value they are receiving from lenders on a like-for-like basis. The BBA added that the proposals would enable the consumer protections to be applied practically and with consistency.

***Question 14: Do the proposals put forward in this consultation prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise?***

3.33 10 respondents answered this question and all were agreed that the proposals would not prevent any person from continuing to exercise any right or freedom which they might reasonably be expected to continue to exercise.

***Question 15: Do you consider the provisions of the proposals to be constitutionally significant?***

3.34 10 respondents answered this question and all agreed that the proposals were not constitutionally significant.

***Question 16: On the basis of the information provided on each of the LRO procedures in Chapter 6 do you agree with our view that the affirmative procedure should apply to scrutiny of this proposal?***

3.35 14 respondents answered this question and all were agreed that the affirmative procedure should apply to scrutiny of this proposal.

***Question 17: Are there any further comments you would like to make in relation to any aspect of this consultation not specifically covered in the questions here?***

3.36 Berwin Leighton Paisner (BLP) raised a concern that the proposed exemption of consumer credit agreements secured by land mortgages on land outside the UK does not appear to be part of, or consistent with, the underlying proposal to exempt buy-to-let lending.

3.37 Whilst raised by only one respondent, BERR has considered this point carefully and decided that such a wider ranging exemption as proposed in section 16C(1), which we agree goes beyond the proposal to provide an exemption for buy-to-let lending, requires separate more detailed consideration of the wider ramifications and desirability. The proposal for an exemption for consumer credit agreements secured on land outside the UK has therefore now been restricted to agreements that meet the conditions for buy-to-let.

## **ANNEX A**

### **List of consultees**

Abbey  
Addleshaw Goddard  
Advice UK  
Alliance & Leicester Commercial Bank  
American Express  
APACS - the UK payments association  
Argos  
ARVAL  
Association of Chartered Certified Accountants  
Association of Finance Brokers  
Association of Mortgage Intermediaries  
Bank of East Asia  
Bank of Ireland  
Bank of Ireland UK Financial Services \*  
Barclaycard  
Barclays  
Beadles Group Ltd  
Berwin Leighton Paisner \*  
Bradford & Bingley  
British Bankers Association \*  
British Cheque Cashers Association  
British Retail Consortium  
Capital One  
Cattles plc \*  
Chartered Institute of Public Finance & Accountancy  
Church Action on Poverty  
Citizens Advice \*  
Citizens Advice Scotland  
City of Edinburgh Council  
Clifford Chance LLP  
Clydesdale Financial Services  
Competition Commission  
Consumer Council for Northern Ireland  
Consumer Credit Association  
Consumer Credit Trade Association of the UK  
Co-operative Bank (The)  
Creation Financial Services  
Council of Mortgage Lenders \*  
Debt Buyers & Sellers Group  
Debt on our Doorstep  
Department of Enterprise, Trade & Investment, Northern Ireland  
Egg  
Ernst & Young  
Eversheds LLP  
Fidelity National Financial

Finance and Leasing Association \*  
Finance Industry Standards Association  
Financial Ombudsman Service  
Financial Services Authority  
General Electric  
Gough Square Chambers  
Halifax  
Haydock Finance  
HBOS plc  
Her Majesty's Courts Service  
Her Majesty's Treasury  
HFC Bank  
Hitachi Capital  
HSBC \*  
igroup  
Institute of Chartered Accountants in England and Wales  
Institute of Chartered Accountants in Ireland  
Institute of Chartered Accountants of Scotland  
Institute of Money Advisers  
Jackson Cohen Associates  
Kent County Council  
Law Commission  
Law Society of England & Wales  
Law Society of Northern Ireland  
Lester Aldridge Solicitors  
Law Society of Scotland  
Liverpool Victoria  
LloydsTSB \*  
Lobby and Law  
Local Authorities Coordinators of Regulatory Services (LACORS) \*  
Lovells \*  
M&S Money  
Macfarlanes  
Ministry of Justice  
Money Advice Association  
Money Advice Scotland  
National Consumer Council  
National Pawnbrokers Association (UK)  
Nationwide Trust  
Northern Ireland Court Service  
Northern Rock  
Office of Fair Trading  
Olympian Financial Ltd  
Picture Financial  
Provident Financial  
Royal Bank of Scotland \*  
Scottish Consumer Council  
Scottish Executive  
Scottish Trading Standards Institute  
Society of Motor Manufacturers and Traders

Swift  
The Chartered Institute of Management Accountants  
Trading Standards Institute \*  
Welsh assembly Government  
Welsh Consumer Council  
Which?

\* Consultees who responded

**Additional respondents**

Association of Mortgage Intermediaries  
Civil Courts Users Association  
Credit Services Association  
Institute of Credit Management  
Money Advice Trust  
Resolution Management Services Ltd  
St Helens Finance plc  
Standard Life  
Yorkshire Building Society

### Summary of question asked in the consultation

Question 1: Do you think the proposals will remove or reduce burdens as set out in this consultation paper?

Question 2: Do you have any views regarding the expected benefits of the proposals as set out in this consultation document?

Question 3: If there is any further empirical evidence that you are aware of that supports the need for these reforms please provide details here.

Question 4: Do you have any comments on the form of the proposed exemption for buy-to-let lending?

Question 5: Do you have any comments on our proposal to include a declaration for the purpose of buy-to-let lending?

Question 6: Do you have any comments on the proposed form of a declaration for the purpose of buy-to-let lending?

Question 7: Do you have any comments on our proposal to amend section 82 of the 1974 Act to ensure that buy-to-let lending is not inadvertently brought into regulation?

Question 8: Do you have any comments on our proposals to clarify the position on statements for fixed-sum credit agreements?

Question 9: Do you have any comments on our proposals to define payments for the purpose of issuing notices of sums in arrears?

Question 10: Are there any non-legislative means that would satisfactorily remedy the difficulties that the proposals in this consultation paper intend to address?

Question 11: Are the proposals put forward in this consultation document proportionate to the policy objective?

Question 12: Do the proposals put forward in this consultation document taken as a whole provide a fair balance between the public interest and any person adversely affected by them?

Question 13: Do the proposals put forward in this consultation document remove any necessary protections?

Question 14: Do the proposals put forward in this consultation prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise?

Question 15: Do you consider the provisions of the proposals to be constitutionally significant?

Question 16: On the basis of the information provided on each of the LRO procedures in Chapter 6 do you agree with our view that the affirmative procedure should apply to scrutiny of this proposal?

Question 17: Are there any further comments you would like to make in relation to any aspect of this consultation not specifically covered in the questions here?