

## Summary: Intervention & Options

<b>Department /Agency:</b> Department for Business Innovation and Skills	<b>Title:</b> Impact Assessment of proposals to address problems in relation to the use of Bills of Sale for consumer lending	
<b>Stage:</b> Consultation	<b>Version:</b> 1.0	<b>Date:</b> December 2009
<b>Related Publications:</b> Consumer White Paper, "A Better Deal for Consumers", Consultation on proposals to ban the use of Bills of Sale for the purpose of consumer lending		

### Available to view or download at:

<http://www.bis.gov.uk/consultations>

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### What is the problem under consideration? Why is government intervention necessary?

Bills of Sale are a lending instrument used to secure goods (usually cars) against a personal loan. Anecdotal evidence suggests that consumers do not understand the terms of such loans, which indicates the potential for information asymmetry that could potentially be exploited by lenders. This information asymmetry can extend to consumers who unwittingly buy vehicles that already have outstanding Bills of Sale loans attached to them. Previous criticisms about the regulations governing Bills of Sale lending and a lack of associated consumer protections also suggests government failure. Finally, there are concerns that Bill of Sale lenders may be targeting vulnerable consumers (e.g. those on low incomes).

### What are the policy objectives and the intended effects?

The policy objectives are to enhance consumer protection, as well as encourage responsible lending and borrowing in relation to consumer credit. Bills of Sale can be an effective method of securing goods in a transaction, but may not offer sufficient consumer protection, potentially leaving customers susceptible to poor business practices. It is intended to maintain a flow of credit on fair and reasonable terms, but to prevent unscrupulous lenders from circumventing protections under the Consumer Credit Act, hence offering products that are of detriment to consumers.

### What policy options have been considered? Please justify any preferred option.

Three options have been considered, in addition to a 'do nothing' option:

1. Introduce a code of practice, or other non-statutory regulation
2. Reform the Bills of Sale Act 1878 (1882), and
3. Ban the use of Bills of Sale for the purposes of consumer lending

Currently, Option 3 is the preferred option, as it will put a definitive end to problems encountered by consumers in relation to Bill of Sale lending in the quickest possible way. Any other action would result in their continued use and scope for further detriment for consumers.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** The policy will be reviewed by BIS within 3 to 5 years of implementation.

### **Ministerial Sign-off For Consultation stage Impact Assessments:**

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options*

Signed by the responsible Minister:



Date: 18 December 2009

## Summary: Analysis & Evidence

<b>Policy Option: Code of practice/non-statutory regulation</b>	<b>Description: Introduction of code of practice/non-statutory regulation to deal with problems identified in relation to the use of Bills of Sale for consumer lending</b>
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C O S T S	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ TBC	N/A	
	<b>Average Annual Cost</b> (excluding one-off)		
	£ TBC	<b>Total Cost (PV)</b>	£ TBC
<p><b>Other key non-monetised costs</b> by 'main affected groups'</p> <p>Consumers may continue to suffer from poor protection if companies do not adhere to the broad codes of best practice</p>			

B E N E F I T S	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' This benefit stems from a reduction in consumer losses in relation to Bills of Sale. Some of this benefit would be transferred to other lenders as it includes loan repayments; therefore it is not all economic benefit. Nevertheless, the figure represents an upper bound.	
	<b>One-off</b>	<b>Yrs</b>		
	£ TBC	N/A		
	<b>Average Annual Benefit</b> (excluding one-off)			
	£ Up to £700k	10	<b>Total Benefit (PV)</b>	£ Up to £6,000,000
<p><b>Other key non-monetised benefits</b> by 'main affected groups'</p> <p>Consumers would continue to have access to this type of credit and may enjoy clearer and more reasonable borrowing terms if all lenders adhere to the regulation/codes of practice.</p>				

**Key Assumptions/Sensitivities/Risks** The code of practice is not legally binding and so lender adherence would be uncertain. Furthermore, a number of borrowers who have shown that they are capable of repayment may be excluded from Bills of Sale loans if official credit scores are utilised as part of the code.

Price Base Year 2009	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £ TBC	<b>NET BENEFIT (NPV Best estimate)</b> £ TBC
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	2010			
Which organisation(s) will enforce the policy?	Self-regulatory			
What is the total annual cost of enforcement for these organisations?	£ N/A			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro Unknown	Small Unknown	Medium Unknown	Large Unknown
Are any of these organisations exempt?	No	No	No	No

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)
Increase of	£ Unknown	Decrease of £ Unknown
<b>Net Impact</b>		£ Unknown

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Summary: Analysis & Evidence

<b>Policy Option: Reform the Bills of Sale Act</b>	<b>Description: Reform of Bills of Sale Act to deal with problems identified in relation to the use of Bills of Sale for consumer lending</b>
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<b>C O S T S</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups'
	<b>One-off</b> (Transition) <b>Yrs</b>	
	<b>£ TBC</b> N/A	
	<b>Average Annual Cost</b> (excluding one-off)	
<b>£ TBC</b>	<b>Total Cost (PV)</b>	<b>£ TBC</b>
Other <b>key non-monetised costs</b> by 'main affected groups' The scope of reforms would be significant and likely entail considerable resource costs. Comprehensive reform may also increase the cost of lending, which could exclude some consumers from accessing Bills of Sale loans and/or render some businesses unprofitable.		

<b>B E N E F I T S</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups' This benefit stems from a reduction in consumer losses in relation to Bills of Sale and is <b>more likely to occur than under Option 2</b> . Some of the benefit would be transferred to other lenders, as it includes loan repayments; therefore it is not all economic benefit. Nevertheless, the figure represents an upper bound.	
	<b>One-off</b> <b>Yrs</b>		
	<b>£ TBC</b> N/A		
	<b>Average Annual Benefit</b> (excluding one-off)		
<b>£ Up to £700k</b>	10	<b>Total Benefit (PV)</b>	<b>£ Up to £6,000,000</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Bills of Sale lending could continue in a modified form with all the protections of standard consumer credit.			

### Key Assumptions/Sensitivities/Risks

The impact on unregistered Bills of Sale loans is not yet known. Furthermore, it is assumed that the necessary legislation would take 2 years to draft and implement. Therefore, government would have to decide whether (or how) to regulate the market in the intervening period.

Price Base Year 2009	Time Period Years 10	<b>Net Benefit Range (NPV)</b> <b>£ TBC</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ TBC</b>
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What is the geographic coverage of the policy/option?	UK
On what date will the policy be implemented?	2012 [estimated]
Which organisation(s) will enforce the policy?	TBC
What is the total annual cost of enforcement for these organisations?	£ Unknown
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	Yes
Annual cost (£-£) per organisation (excluding one-off)	Micro Unknown    Small Unknown    Medium Unknown    Large Unknown
Are any of these organisations exempt?	No    No    No    No

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)
Increase of    £ Unknown	Decrease of    £ Unknown	<b>Net Impact</b> £ Unknown

Key:    Annual costs and benefits: Constant Prices    (Net) Present Value

## Summary: Analysis & Evidence

**Policy Option: Ban Bills of Sale for consumer lending**

**Description: Ban Bills of Sale for use in relation to consumer lending**

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Cost to HM Courts Service, who would no longer receive revenues from Bills of Sale registration, of up to approximately £1m per year
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ TBC	N/A	
	<b>Average Annual Cost</b> (excluding one-off)		
	£ Up to £1m	10	<b>Total Cost (PV)</b> <b>£ Up to £8,600,000</b>
Other <b>key non-monetised costs</b> by 'main affected groups' Bills of Sale companies may be shut down if they cannot diversify to other products. It is estimated that approximately 300 jobs (mainly at Bills of Sale lenders) would be directly at risk over a two-year period from the date of the ban. Some consumers may also be excluded from accessing credit.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' This benefit stems from a reduction in consumer losses in relation to Bills of Sale and is <b>more likely to occur than under Options 2 and 3</b> . Some of the benefit would be transferred to other lenders, as it includes loan repayments; therefore it is not all economic benefit. Nevertheless, the figure represents an upper bound.
	<b>One-off</b>	<b>Yrs</b>	
	£ TBC	N/A	
	<b>Average Annual Benefit</b> (excluding one-off)		
	£ Up to £700k	10	<b>Total Benefit (PV)</b> <b>£ Up to £6,000,000</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Resources currently devoted to registering and administering Bills of Sale at HMCS could be allocated to other areas. Consumers would only have access to financial products and services that have important protections and are easier to understand.			

### Key Assumptions/Sensitivities/Risks

The status of Bills of Sale contracts that are in place once a ban is implemented remains uncertain. It is also uncertain the extent to which consumers could access alternative financial products and services, such as home credit and pawnbroking.

Price Base Year 2009	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £ -£8.6 million to - £2.6 million	<b>NET BENEFIT (NPV Best estimate)</b> £ -£5.6 million
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	2010			
Which organisation(s) will enforce the policy?	TBC			
What is the total annual cost of enforcement for these organisations?	£ Unknown			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	Yes			
Annual cost (£-£) per organisation (excluding one-off)	Micro Unknown	Small Unknown	Medium Unknown	Large £Unknown
Are any of these organisations exempt?	No	No	No	No

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)				(Increase - Decrease)
Increase of	£ Unknown	Decrease of	£ Unknown	<b>Net Impact</b> £ Unknown

Key:    Annual costs and benefits: Constant Prices    (Net) Present Value

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### Overview

1. Concern has been expressed, by enforcement agencies and consumer groups, about the increasing use of Bills of Sale as an instrument of securitisation for consumer lending in England and Wales<sup>1</sup>. The Bills of Sale Act (the Act) dates back to 1878 and Bills of Sale are an archaic and complex method of lending money, using personal goods (chattels<sup>2</sup>) as security. This type of lending may be suitable for commercial entities, such as a sole trader covering a period where they are waiting for payments to come in, or a brewery requiring a freehold tenant to sign an agreement against their assets to act as security against the provision of credit on a supply account.
2. For consumers, however, the complexity of the arrangement means that they may not be aware of key aspects of the method of lending, such as the rights of possession that the lender has, which permits seizure without court action upon default. The use of an instrument with such powers of seizure that most consumers would believe they were protected from, presented as a modern form of borrowing and bound by a confusing contract are key to the difficulties consumers have understanding the risks. There is also some concern that lenders are acting irresponsibly in areas such as marketing, enforcement and default procedures.
3. However, the evidence in favour of such arguments is far from conclusive. Although anecdotal evidence confirms that some consumers do suffer significant costs associated with loans made in conjunction with Bills of Sale<sup>3</sup>, the incidence of such cases seems to be relatively low (less than 1% of all loans). Similarly, although survey evidence indicates that two-thirds of Bills of Sale users do not consider any other types of credit, this is no different to credit users more generally. It is also alleged that advertising of these financial products is often focussed on the sub-prime, or non-standard, market and consumers in this market may have restricted access to mainstream credit.
4. There are a number of information gaps in relation to Bills of Sale loans, including market size and consumer attitudes/use of such loans. It has therefore not been possible to quantify in detail the impact of each proposed option.

### Background

5. There has been criticism from the legal profession about the use of Bills of Sale for many years. Within just a few years of introduction of the Bills of Sale Act (1878) Amendment Act 1882, the legislation was drawing adverse judicial comment in the courts and concern about the mass of litigation the Act was producing. Over 80 years later the Crowther Report<sup>4</sup> was equally critical about the technical pitfalls of the Bills of Sale legislation and recommended

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<sup>1</sup> In Scotland, the Bills of Sales Acts do not apply and Bills of Sale are not used. For consumers in Scotland unable to access mainstream finance, lending using a sale and buy-back arrangement is typically available against vehicles, offered by at least one of the companies met by BIS.

<sup>2</sup> Chattel is defined as a personal possession. The Bills of Sale Act permits a 'Chattel Mortgage' where the Chattel is defined as any item of personal property, moveable or immoveable, except real estate.

<sup>3</sup> Examples are set out in Annex 3

<sup>4</sup> The Crowther Committee Report on Consumer Credit was presented to Parliament in March 1971: <http://hansard.millbanksystems.com/lords/1972/jun/28/consumer-credit-the-crowther-report>

repeal of the Bills of Sale Acts. More recently, the Law Commission concluded in 2002 that serious consideration should be given to reform<sup>5</sup>.

6. Historically, Bills of Sale have been used by commercial enterprises to purchase stock or cargo and to buy vessels. In these cases the Bill of Sale is not used under a consumer credit agreement<sup>6</sup>, or the value of the asset is generally adequate to cover the amount borrowed.
7. However, loans offered in conjunction with a Bill of Sale are increasingly being secured against the value of a car and are often referred to as 'logbook' loans<sup>7</sup>. Between April 2008 and March 2009, there were 38,369 registered Bills of Sale. Evidence suggests the overwhelming majority are used in relation to consumer credit and based around the 'logbook lending' model – for example, the top 10 companies who registered Bills of Sale last year were all logbook lenders. Such loans typically take one of two forms:
  - A loan secured against the value of a vehicle which the borrower already owns, or
  - A loan used to finance the purchase of a new (or second-hand) vehicle.
8. In order to use Bills of Sale for logbook lending, there are certain preconditions that must be met – typically, the vehicle must be less than eight years old or of high value, and the car must be finance-free, or almost finance-free. The amount that consumers are able to borrow will depend on the value of the vehicle. For example, one logbook loan company will lend half of the value of the car, and estimates the average loan to be in the region of £750<sup>8</sup>.
9. Bills of Sale may be a useful tool for sole traders, freelancers or other uses operating outside the immediate scope of domestic credit. It is not possible to state how many Bills of Sale are used for these purposes but it is a more suitable use of this type of securitisation. Some, such as the High Court, argue that there is nothing intrinsically wrong with Bills of Sale as a financial instrument but that it is misuse by some traders that is the problem and this should therefore be more tightly regulated. Views have also been expressed that an appropriate use of Bills of Sale is to raise money against personal items of worth, such as a valuable painting or antique, and that this should not be lost. However, enforcement agencies argue that Bills of Sale as an instrument is itself inappropriate for lending to consumers.
10. One of the root concerns for consumer groups and enforcement agencies is the speed with which lenders that use Bills of Sale for consumer lending can seize secured goods without a need for a court order. However, lenders argue that it is this feature that is fundamental to their lending model, as it allows them to operate with lower running costs. Lenders argue that, as a result, logbook lending – if used responsibly and appropriately – can provide a source of credit to people who would not otherwise be able to borrow money. In particular, they highlight their ability to serve people with bad credit history, who are bankrupt or who are self-employed.

## **Current legislation/regulation**

### *Bills of Sale Act*

11. Bills of Sale are governed by two sets of legislation, the Bills of Sale Act 1878 and an amending Act of 1882<sup>9</sup>. The Bill of Sale Act 1878 allows personal property to be given as security for a loan. Under a Bill of Sale the borrower retains the use of the property but the

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<sup>5</sup> The Law Commission consultation paper no 164 on "Registration of security interests: company charges and property other than land"

<sup>6</sup> For example, in relation to the Merchant Shipping Act: [http://www.opsi.gov.uk/si/si1988/Uksi\\_19881926\\_en\\_3.htm](http://www.opsi.gov.uk/si/si1988/Uksi_19881926_en_3.htm)

<sup>7</sup> The term 'logbook lending' refers to the fact that creditors generally retain the original logbook, or V5 registration document, of the vehicle

<sup>8</sup> The lending criteria from another lender allows a customer to increase the maximum loan amount, if they sign up for certain risk-sharing features of the loan – for example, by providing spare keys or electing to make repayments by direct debit

<sup>9</sup> [http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1882/cukpga\\_18820043\\_en\\_1](http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1882/cukpga_18820043_en_1)

lender assumes the ownership. Bills of Sale must be registered with the court, but if the consumer defaults on the payment the lender can enforce the Bill of Sale without the need to go to court. The lender can seize the property and sell it, and still pursue the consumer for any shortfall from the proceeds of the sale.

### *Consumer Credit Act*

12. Loans made in conjunction with a Bill of Sale share features with hire purchase. However, under the Consumer Credit Act, hire purchase offers two key protections over a Bill of Sale loan – ‘voluntary termination’<sup>10</sup> and ‘protected goods’<sup>11</sup>.
13. Voluntary termination allows a consumer to stop making repayments and hand back the goods to the credit provider. The consumer could still be liable for some reasonable excess charges under voluntary termination, but has the opportunity to ‘cut their losses’. Financing using Bills of Sale offers no such safeguard and a consumer who might wish to exit from a deal part way through would have no mechanism to do so, without being liable for the whole amount of the loan.
14. Once items are deemed ‘protected goods’, a consumer would own the item being financed through a hire purchase agreement. This protection does not exist under a Bills of Sale finance agreement as the goods remain the property of the lender who can repossess them, without notice, as soon as the consumer is deemed to be in default.
15. It has been suggested that Bills of Sale have been revived by some traders in the motor industry as an alternative to hire purchase to finance the sale of cars to the riskier, non-standard market, but with none of the protections afforded by the Hire Purchase Regulations.
16. Under a Bill of Sale agreement, the consumer does not own the car. Instead, the lender or car financier retains the right to recover the borrower’s car until the total amount has been paid. Interest charges are also significantly higher than those offered under other forms of conditional sale and in the event of default by the borrower; the enforcement methods are potentially more robust.

### *Consumer credit licensing*

17. As a ‘logbook loan’ secured by a Bill of Sale is an agreement by which the lender provides the borrower with credit, it is subject to regulation under the Consumer Credit Act 1974 (“the CCA”). Accordingly, all those offering lending under Bills of Sale must be licensed by the OFT to carry out a consumer credit business under the CCA.
18. Since April 2008, lenders have been subject to greater scrutiny by the OFT in order to get a consumer credit licence. In addition, the OFT now has a wider range of powers, from the ability to place conditions on a licence to imposing a fine<sup>12</sup>, or ultimately taking away the licence. The Consumer Credit Act 2006 (CCA) also provided consumers with the ability to challenge any credit relationship which they believe is unfair through the courts<sup>13</sup> and extended the right to free and independent dispute resolution via the Financial Ombudsman Service (FOS), to cover all consumer credit licence holders.

### *Financial Services Authority Regulation*

19. Bills of sale lending is not regulated by the Financial Services Authority (FSA). A lender should comply with FSA regulations if it is engaged in other activities that fall under the FSA’s remit but compliance is not required for Bills of Sale alone.

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<sup>10</sup> Able to be exercised once half of the loan has been paid

<sup>11</sup> Able to be exercised once one-third of the loan has been paid

<sup>12</sup> Of up to £50,000 for failure to comply with a single requirement

<sup>13</sup> [http://www.offt.gov.uk/advice\\_and\\_resources/resource\\_base/legal/cca/CCA2006/unfair/](http://www.offt.gov.uk/advice_and_resources/resource_base/legal/cca/CCA2006/unfair/)

## **Forthcoming legislation/regulation**

20. There are several initiatives either recently implemented, or close to implementation, that will impact lenders who use Bills of Sale.

### *Consumer Credit Directive*

21. The implementation of the Consumer Credit Directive<sup>14</sup> (CCD) in 2010 will make several requirements on all lenders, including those using Bills of Sale. Lenders will have to explain their products to consumers adequately before they enter into a contract, including the consequences of any failure to repay. This should require Bills of Sale lenders to provide sufficient information to the borrower to enable them to understand the possessory nature of the deal and the gravity of failing to repay. In addition to providing key information about fees, charges and repayment schedules, it is likely that they would also have to make clear the threat to an individual's home, or other assets, should the Bills of Sale security be worth less than an outstanding debt. The introduction of the Standard European Consumer Credit Information (SECCI) sheet means that lenders must provide this information in a standardised form, providing key summary information 'at a glance'.
22. Under the provisions in the CCD, lenders will be required to check the creditworthiness of consumers before they lend to them. Some Bills of Sale lenders already perform basic income and expenditure checks, such as completing a personal budget planner and taking copies of bank statements proving salary deposits. Lenders may, however, have to take further steps to meet this obligation. This could include using the credit reference agencies and performing more detailed checks in the borrowers' ability to repay. However, analysis from one Bills of Sale lender, using data from a credit reference bureau, indicates that use of credit scoring would have led to 25% of credit to good<sup>15</sup> customers being declined. They found no evidence of a correlation between a consumer's credit history and their behaviour when making repayments against the logbook lending product.

### *Irresponsible Lending guidance*

23. As part of its irresponsible lending project<sup>16</sup>, the OFT consulted with business, consumer groups and other stakeholders and one of the key outcomes of the project was clear guidance on lending behaviours and practices which the OFT considers to be irresponsible. This guidance will cover all forms of consumer credit lending which the OFT licenses and all participants in the market, including lenders, brokers and other intermediaries. For lenders using Bills of Sale, the guidance will balance the need to ensure that consumers are protected from irresponsible lending practices against the need to ensure that the supply of sustainable credit, particularly to those most in need, is not unduly inhibited. Draft guidance has already been published and consulted on<sup>17</sup>, although final guidance is due to be published early in 2010.

### *OFT high-cost credit review*

24. On 2 July 2009, the OFT launched a review into the supply of high-cost credit as part of its ongoing Financial Services Strategy, which was announced in the Consumer White Paper. The OFT estimates the size of the high-cost credit sector to be up to £35 billion annually, which includes Bills of Sale lending. The sector is characterised by loans which are often for small amounts, repayable over short periods, and with high Annual Percentage Rates (APR) of interest. Many of the customers of products in the sector have limited access to credit and are on low incomes and represent a vulnerable consumer group.
25. The review will draw on information from the credit industry, consumer organisations, other parts of government and independent experts. It will also examine credit and lending practices in other countries. The OFT expects to publish interim findings by the end of 2009

<sup>14</sup> [http://www.berr.gov.uk/whatwedo/consumers/consumer-finance/credit\\_regulation/ec-directives/page29927.html](http://www.berr.gov.uk/whatwedo/consumers/consumer-finance/credit_regulation/ec-directives/page29927.html)

<sup>15</sup> "Good book" refers to the loan book where consumers repay the loan on time. Conversely, the "bad book" refers to accounts that ended up in default.

<sup>16</sup> [http://www.of.gov.uk/advice\\_and\\_resources/resource\\_base/legal/cca/irresponsible](http://www.of.gov.uk/advice_and_resources/resource_base/legal/cca/irresponsible)

<sup>17</sup> [http://www.of.gov.uk/shared\\_of/consultations/oft1107con.pdf](http://www.of.gov.uk/shared_of/consultations/oft1107con.pdf)

and the final report in spring 2010. The interim findings from this review will complement the evidence already gathered by Government for this consultation.

### Scale and scope

26. Logbook loans, secured by a Bill of Sale, are generally provided for sizeable amounts of money, usually ranging from £500 to £2,000 or more, the average stated by the largest user of Bills of Sale was £750. Interest is charged at a flat interest rate, often at 10% of the principal for each month or four weeks of the term. Some logbook lenders are also reported to charge the consumer excessively high arrangement fees, arrears fees and other costs associated with the default process, leading to high overall charges. An APR of over 400% is not uncommon. The total cost, for example, for a typical £750 loan over a 6 month period would be over £3,000<sup>18</sup>.
27. Logbook lending is not like most other types of unsecured loan, in that the repayment schedule is not linear<sup>19</sup>. In that sense, logbook loans are more comparable to an interest-only mortgage, in that borrowers make repayments that only cover the interest on the capital borrowed throughout the term of the loan<sup>20</sup>. At the end of the loan term, the final repayment covers both the interest for that final period and the capital borrowed. In contrast, typical repayments for fixed-term unsecured loans are structured in such a way that repayment levels are constant, and when completed, results in repayment of both interest **and** capital.
28. As shown in the table below, the growth in registered Bills of Sale is increasing – from 07/08 to 08/09, year-on-year growth was 12.6% and, based on current usage, growth for the year ending March 2010 will be 28.1%. Historic figures are difficult to acquire, as electronic records of registered Bills of Sale were not kept by the High Court prior to 2007. However, figures sourced from the Law Commission report shows that in 2001 only 2,840 Bills of Sale were registered, but in the first six months of 2005 there were nearly 11,000.

**Table: Number of registered Bills of Sale, 2007-2009**

Date	Registered Bills of Sale
April 2007-March 2008	34,327
April 2008-March 2009	38,639
April 2009-September 2009	20,627
April 2009-March 2010*	49,504 <sup>21</sup>

\*- projected

Source: Royal Courts of Justice

29. Due to the paper-based nature of record keeping, within these numbers it is not possible to present the exact proportion of Bills of Sale that are used for consumer lending. However, one lender indicated that they used around 20,000 Bills of Sale annually, whilst a second said they used 14,400, which collectively accounts for 88% of all registered Bills of Sale between April 2008 and March 2009. There are at least seven other companies providing consumer finance using Bills of Sale, which indicates that the vast majority are used for this purpose. However, it is possible that there are a significant number of unregistered Bills of Sale used for consumer lending, which is very difficult to estimate.
30. Evidence from one lender indicates that approval rates for logbook loans are low – around 2% of all applications<sup>22</sup>. This low approval rate is due to a combination of their assessment

<sup>18</sup> For a more detailed comparison of other types of lending, please see Annex 1

<sup>19</sup> With the exception of payday loans, which are similar

<sup>20</sup> A more detailed discussion of the suitability of other types of lending is contained in Annex 1

<sup>21</sup> This figure represents an extrapolation of the trend to date, which broadly agrees with OFT estimates of usage for 2009/10 of 50,000

<sup>22</sup> On average, out of 55,000 applications, around 1,200 are approved

of the individual's ability to repay or the suitability of the security. This would suggest that there are still a large number of individuals whose credit needs remain unfulfilled, and who may go to less reputable credit providers, including less scrupulous logbook lenders that may offer loans in conjunction with unregistered Bills of Sale.

31. Given these data problems, it is also not possible to say what proportion of Bills of Sale is used for loans to purchase vehicles, or loans secured against vehicles owned by borrowers. Anecdotal evidence indicates that a number of registered Bills of Sale are later found to be unenforceable, due to errors made when completing the document and some are rejected by the court as void and never registered. One lender admitted that this does happen but they would not inform the consumer of this, as they are more likely to repay with the threat of repossession existing.

**Q1: What proportion of Bills of Sale are registered?**

**Q2: What proportion of Bills of Sale loans are used by consumers for borrowing against existing vehicles?**

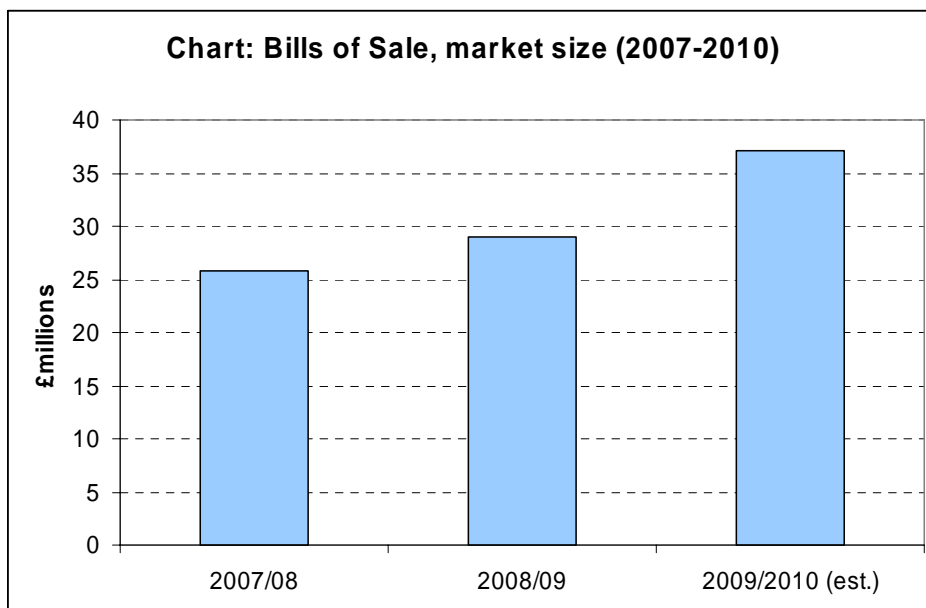
**Q3: What proportion of Bills of Sale loans are used by consumers for borrowing to purchase a new or second-hand vehicle?**

**Q4: What proportion of Bills of Sale loans are used for business purposes (e.g. self-employed, owners of small firms)?**

Market size

32. Given the uncertainty around the total number of Bills of Sale, as well as the value of each loan, it is not possible to accurately assess the overall value of all loans associated with Bills of Sale. Therefore, in estimating the overall market size of Bills of Sale lending, we have taken an average loan value (£750) to be representative of the average loan from all firms.

33. On this basis, the total amount lent through Bills of Sale lending was just under £26m in 2007/8, £29m in 2008/9 and a predicted £31m in 2009/10. Vanquis Bank, the sub-prime credit card brand, had 404,000 customers in 2008, with an average balance of £540 equating to some £205m<sup>23</sup>. This is a similar size of loan to Bills of Sale, over a similar socio-economic group but unsecured and with an average interest rate of 39.9%.



*Note: estimate based on average loan size of £750*

*Source: BIS calculations based on High Court figures*

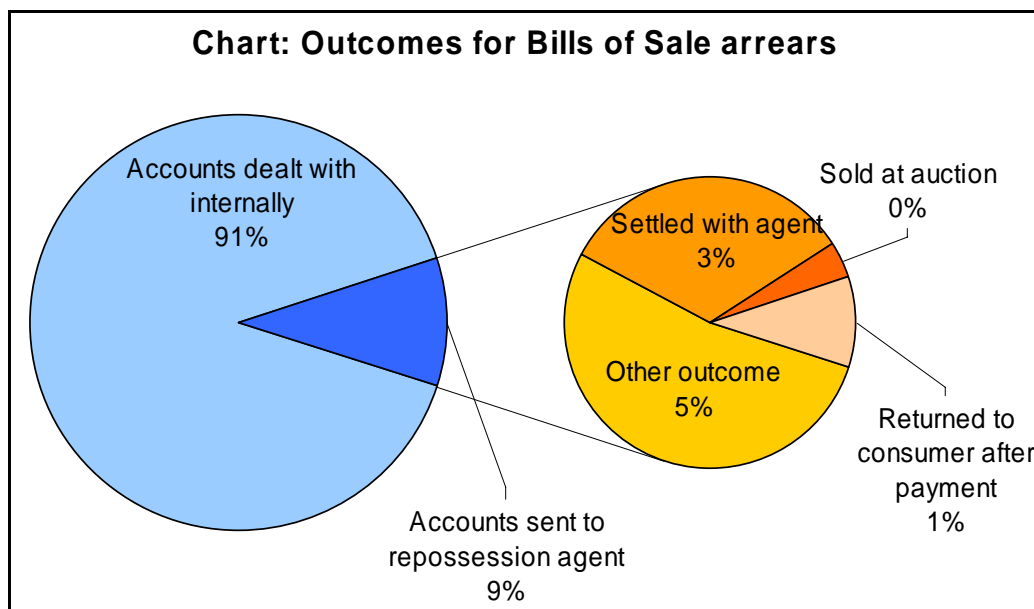
<sup>23</sup> Source: Provident Financial Annual Report 2008

34. The High Court noted that there was a very large increase in the registrations of Bills of Sale about ten years ago. This coincided with the period when one of the largest lenders, met by BIS, began trading. The increase in registered Bills of Sale from 2001 to 2007 can be linked to a period where more consumers owned a vehicle, or feel financially secure enough to purchase a vehicle, meeting the borrowing criteria for logbook-style lenders.
35. Since 2007, registered Bills of Sale have increased markedly. This could be attributed to the reduction in availability of credit for sub-prime (or non-standard) borrowers during this period, suggesting that this form of credit is a 'last resort'. During the economic downturn major sub-prime lenders exited the market, leaving few options for unsecured borrowing greater than a few hundred pounds. The increase in use of Bills of Sale from 2007 to date could be attributed to the decline in alternative sources of credit but it is a much reduced customer base that are served here, due to the criteria required to borrow from the majority of logbook-type lenders.

**Q5. Do you agree with our estimates regarding the scale and scope of the Bills of Sale consumer lending market? Do you have alternate calculations, which you could substantiate with evidence?**

#### Defaults

36. One logbook lender stated that their default rate was around 18%, which is slightly higher than default rates for other types of mainstream lending (e.g. credit cards, personal loans). This could be expected, given the slightly higher risk profile of customers making use of loans from Bill of Sale lenders.
37. As set out in the chart below, a very high proportion (91%) of loans in default are 'dealt with internally'. This could encompass a number of potential outcomes, including successful arrangement for repayment, if the Bill of Sale was unenforceable and situations in which the customer is still being sought. Visits to lenders included demonstrations of collection and forbearance procedures. Companies insisted that they worked with struggling debtors to come to a financial arrangement as it was financially beneficial to do so. One company showed a dedicated team of agents who would offer reduced one-off payments to clear a debt or offer long-term, low-payment options to clear a debt.
38. For those loans that are passed on to a repossession agent, around one-third are settled by borrowers, with more than half accounted for by 'other' outcomes (e.g. voluntary handover of vehicle, inability to locate vehicle or customer, outstanding debt even after repossession).



39. Overall, it is therefore difficult to say precisely how many loans made in conjunction with a Bill of Sale end in repossession of the vehicle/security. Very few loans in default appear to end directly with repossession (on the basis of the figures above, around 5% of all loans in default – i.e. 0.9% of all Bills of Sale loans). However, it is difficult to be certain how many loans that are ‘dealt with internally’ might end in repossession, albeit voluntary.

**Q6: Do you have further evidence regarding the default rates for consumer loans taken out in conjunction with a Bill of Sale?**

**Q7: What proportion of all logbook loans end in repossession of the vehicle?**

### Consumer research

40. As part of their high-cost credit review, Ipsos Mori have recently conducted some consumer research for OFT asking questions about a number of aspects of high-cost credit use, which includes logbook loans<sup>24</sup>. Due to the small sample sizes involved, it is not possible to separate out the responses of only those who use logbook loans. However, here we have assumed that a separate category of ‘other credit combined’, which includes logbook loans<sup>25</sup>, is approximately representative of views of consumer who use logbook loans.

41. Many consumers appear to be unaware of the possibilities of lending through logbook loans, with 49% stating that they had not heard of them before being asked about them as part of the research<sup>26</sup>. For those consumers that are aware of them, logbook loans are generally regarded as poor value for money, compared to other types of mainstream credit – 56% of respondents consider logbook loans to be a poor value way of raising £250, compared to 18% for a personal loan<sup>27</sup>.

### *Bills of Sale users*

42. A user of ‘other’ types of credit is marginally less likely to be an experienced credit user, with only 12% simultaneously holding other credit agreements of the same type, compared to the average of 18% for all types of credit<sup>28</sup>. Such users are less likely to be able to recall the repayment instalments associated with the agreement, with only 34% of ‘other’ credit users able to do so, compared to 47% for all credit users<sup>29</sup>.

**Q8: What further evidence do you have regarding the extent of consumer understanding in relation to Bill of Sale lending?**

### *Purpose of loan*

43. When asked about the purpose of the loan, the most popular reason for those who used ‘other’ types of credit was ‘needed money for a special occasion’ (23%), followed by ‘help with day-to-day household spending’ (22%). This is not significantly different to aggregated responses for all types of credit, which suggests that consumers that borrow through logbook lending do not do so for different reasons than the average credit user.

44. In terms of reasons for choosing a particular product, users of ‘other’ types of credit favoured products that were quick to arrange (with 50% selecting this answer, compared to 43% for all types of credit) and where they felt they may be declined for other credit products (8%,

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<sup>24</sup> [www.of.gov.uk/shared\\_of/reports/consumer\\_credit/oft1150a.pdf](http://www.of.gov.uk/shared_of/reports/consumer_credit/oft1150a.pdf)

<sup>25</sup> Along with payday loans, mobile phone loans by text, pawnbroker loan and credit union loan

<sup>26</sup> Table 3.19

<sup>27</sup> Table 3.21

<sup>28</sup> Table 4.12

<sup>29</sup> Table 4.11

compared to 4% for the average credit user). However, the lowest interest rate was a less important factor (19% for users of 'other' credit, compared to 25% on average), as was comparison with other offers (7%, compared to 1% on average).

**Q9: What further evidence do you have regarding the importance of factors that users of logbook loans take into account in making their decision to borrow?**

*Time available before taking out loan*

45. Respondents were asked about both the amount of time available to think about taking out the product and the time between thinking of taking out the product and actually doing so. Users of 'other' types of credit stated that they had less time, on average – 42% had a few days or less to think about the loan, compared to 34% for all types of credit<sup>30</sup>. However, there was no significant difference when asked about time between thinking about taking out the loan and actually taking it out – 40% for 'other' types of credit, compared to 39% for all types<sup>31</sup>.

*Information used in making decision to take out loan*

46. There does not appear to be a discernible difference in terms of the amount of information used by borrowers in relation to 'other' types of credit – 39% said they used either 'a great deal' or 'a fair amount', compared to 42% for all types of credit. However, within that, 12% of 'other' credit users said that they used 'a great deal', compared to 7% for all types of credit<sup>32</sup>.

47. In terms of the sources of information used by borrowers, responses for users of 'other' types of credit were not significantly different for many answers – informal information (e.g. family, friends) was 32% for 'other' types of credit and 31% for all types of credit; information from the internet was 13% and 14% respectively. However, there are some potentially contradictory findings – although users of 'other' types of credit were marginally more likely to use information from a number of providers (14%) compared to all types of credit (9%), a greater proportion of those users of 'other' types of credit did not use any sources (24%), compared to all types of credit (18%)<sup>33</sup>.

**Q10: What further evidence do you have regarding the types and amount of information that users of logbook loans take into account in making their decision to borrow?**

*Other forms of credit considered*

48. In terms of considering other forms of credit, users of 'other' types of credit do not appear to be significantly different to users of all types of credit – 64% did not consider any other forms of credit, compared to 62% for users of all types of credit.

49. Users of 'other' types of credit appear to have particular needs – 25% felt that they have found the best type of loan or credit product for them, compared to 19% across all credit users. However, only 27% of users of 'other' types of credit felt they had found the best deal, compared to 35% across all types of credit.

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<sup>30</sup> Table 4.7

<sup>31</sup> Table 4.8

<sup>32</sup> Table 4.16

<sup>33</sup> Table 4.15

## Issue

50. Consumers, consumer groups and enforcement agencies have all raised concerns that loans secured by Bills of Sale are unfair to consumers and that borrowers in vulnerable circumstances, such as low-income families, may suffer severe detriment and are at risk of exploitation.
51. Consumer groups have cited many examples of poor practice and the misuse of Bills of Sale by 'logbook lenders' and have called for Bills of Sale to be banned. The OFT and Local Authority Trading Standards Services also have concerns about the activities of several 'logbook' lenders and the high level of consumer complaints they have received. Over 1,000 complaints<sup>34</sup> have been made to Consumer Direct regarding Bills of Sale lending over the past five years, with claims of losses by complainants amounting to £1.47 million<sup>35</sup>. This scale of complaint and potential loss suffered suggests a significantly large problem.

### **Q11: What further evidence do you have regarding the losses incurred by consumers in relation to borrowing through logbook loans?**

52. Evidence indicates the existence of the following problem areas to be addressed:

- Bills of Sale are difficult to understand and borrowers may not realise that they no longer own the property on which the loan is secured
- Bills of Sale loans lack the consumer protections associated with other lending arrangements and property can be seized without the lender having to obtain a court order if borrowers default
- Borrowers can be subjected to unfair debt collections practice and have few rights when a lender seeks to repossess assets
- Borrowers are often unaware that if they default, they may be pursued for the shortfall debt where it is not covered in full by the value of the underlying security, typically a car which may depreciate rapidly
- Third party buyers have little recourse if a lender recovers a security, typically a second-hand car, to which a Bill of Sale is still attached in respect of a loan made to the previous owner.
- Loans issued using Bills of Sale represent a very expensive form of credit, particularly for a secured loan

#### Bills of Sale language and formalities difficult to understand

53. Bills of Sale are arcane and technically complex instruments to use for modern day consumer lending. The evolution of Bills of Sale legislation was to curb the use of the Bill of Sale as a means of defrauding innocent persons<sup>36</sup>. However, the language of the Bills of Sale Acts – and consequently the language of the prescribed form for a Bill of Sale used to secure 'logbook loans' – is outdated and unclear.
54. The modern consumer may fail to understand and appreciate the onerous nature of the terms being entered into. The borrower may not realise, for example, that the title of the security passes to the lender and that the borrower no longer owns the property.

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<sup>34</sup> Evidence from Consumer Direct indicates that 1,030 complaints were made between June 2004 and July 2009 that related to Bills of Sale.

<sup>35</sup> Sum of values relating to individual complaints received from Consumer Direct, which could represent the balance owing, fines, disputed debt or any loan-related issue.

<sup>36</sup> The original Bills of Sale Act 1854 was repealed and re-enacted by the Bills of Sale Act 1878, which prescribes the form which a Bill of Sale should take. Further developments led to the enactment of the Bills of Sale Act (1878) Amendment Act 1882, which aimed to introduce more protection for borrowers.

55. The complex and old-fashioned language can create problems for enforcers, as well as borrowers. Local Authority Trading Standards Services have indicated that it is difficult for their officers to ascertain if the lender has acted within the law.
56. Finally, the archaic formalities of the Bills of Sale Acts can also be disadvantageous for lenders, as even a minor technical error can mean that the Bill of Sale is void<sup>37</sup>. This further suggests that Bills of Sale are not an appropriate form of lending for the 21<sup>st</sup> century.

#### Lack of consumer protections and risk of seizure

57. Borrowers of loans issued using Bills of Sale do not enjoy one of the main protections afforded to other lending arrangements under the CCA, such as home credit and other forms of unsecured credit – that, in the event of a default by the borrower, the lender would have to go to court in order to enforce repayment of the debt<sup>38</sup>.
58. Under a 'logbook' loan secured with a Bill of Sale, if a borrower misses a payment, the lender can seek to take possession of the car immediately<sup>39</sup>. This leaves potential for vulnerable consumers to suffer sudden and potentially unforeseen detriment, with little scope to protect themselves.
59. In the Consumer Law Review, the Trading Standards Institute<sup>40</sup> and the Institute for Consumer Affairs<sup>41</sup> argued that the use of Bills of Sale caused significant consumer detriment because borrowers were not afforded the same protections as under hire purchase arrangements or other types of unsecured consumer loans.
60. In relation to loans used to purchase new (or second-hand) vehicles, there is a suggestion that Bills of Sale are being used instead of hire purchase (HP), to avoid providing customers with such regulatory protections.

#### **Q12: What further evidence do you have about the extent to which such seizure practices are utilised by logbook lenders?**

#### Borrowers may be unaware of liability for shortfall debt

61. The borrower's liability may not end with seizure of the secured asset. Given that vehicles depreciate over time, the security may not be sufficient to cover the outstanding balance, particularly under circumstances where the debtor becomes liable for interest and other charges. In such circumstances, borrowers remain liable for any shortfall after the sale of the secured goods and charging orders may be taken out against the borrower's home as a result of outstanding debt.
62. 'Logbook' loans are sometimes made without sufficient reference to the underlying value of a car or its likely depreciation. Although lenders met by BIS showed that they assess the value of a vehicle and typically lent no more than 50% of that value, there is no requirement for such a limit. Logbook loans can be made over 74 weeks, during which time a car can depreciate significantly, due to market conditions, damage or wear and tear. As a result, when lenders repossess and sell the cars at auction the amount recovered does not always

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<sup>37</sup> This differs from the Consumer Credit Act 1974 (CCA), where a breach of the formal requirements for a secured loan does not necessarily make the agreement unenforceable. Instead, the court is granted discretion to decide whether or not it remains enforceable (section 129(1)(b)(i) of the CCA).

<sup>38</sup> In addition, a consumer in a hire purchase agreement has the right to end the agreement, in accordance with Section 99 of the CCA, at any time before the last instalment is due. The consumer may then return the goods and settle 50% of the balance, plus costs. If a consumer has paid a third or more of the total amount payable, the goods become "protected goods" and, unless the debtor gives consent for the goods to be removed, the creditor must go to court for an order for the goods to be returned.

<sup>39</sup> For further details of the enforcement procedures comparing Bills of Sale with other unsecured credit products, please see Annex 2

<sup>40</sup> Trading Standards Institute response to Consumer Law Review - <http://www.berr.gov.uk/files/file52000.pdf> (p.53)

<sup>41</sup> Institute of Consumer Affairs response to Consumer Law Review - <http://www.berr.gov.uk/files/file51998.pdf> (p.272)

cover the debt. This leaves borrowers liable to pay the surplus amount and therefore potentially putting consumers in a worse situation than before taking out the loan.

63. Consumer groups have examples of logbook lenders who have raised charging orders against debtors homes, after the sale of a repossessed vehicle failed to cover the balance of an outstanding loan. One lender acknowledged that they had used charging orders several times but stated that they had never applied for an order for sale as this would have been disproportionate given the size of the sum owing. The option for an order for sale does remain however, and a larger default could initiate proceedings.

#### Unfair debt collection and enforcement practices

64. Once the consumer has entered into a Bill of Sale agreement, the creditor is entitled to enter the borrower's premises to examine the assets secured against the loan at all times, in order to protect his interests<sup>42</sup>. Some modern 'logbook loan' contracts have taken this provision further and specifically provide that the creditor has a right to break open any door or window necessary to observe this right.

65. In addition, as has been set out earlier, once a lender has issued a default notice, there is no need to secure a court order – creditors are within their rights to seize the car even if the missed payment is the last but one. Under the CCA, section 87(1) requires the creditor to serve a default notice 14 days before seizing the asset. In theory, this could allow the debtor to apply to the court for a 'time order' against the Bill of Sale to allow for more time to satisfy the loan agreement. As with the procedure under section 7 of the Bill of Sale Act (see below), the process is not free and in practice, few borrowers will have the knowledge or wherewithal to apply to the courts or may not receive the default notice with sufficient time to act.

66. If the borrower does not apply for a time order or resume payments, the lender will legally be able to seize the secured goods without a court order, unless the Bill of Sale is defectively drafted, or the instrument has not been properly registered. However, a borrower is unlikely to know whether a Bill of Sale was defective or whether it was properly registered (if at all). A creditor might not know either or may choose not to inform the borrower. In either case, the consumer could be subject to adverse consequences.

67. Under section 7 of the Bill of Sale Act 1882, once the property is seized, it must not be sold for 5 days. During that time, the borrower can apply to the High Court or a judge in chambers who may rule that if a payment can be made, the lender can be restrained from removing or selling the goods. Unfortunately, the language in section 7 is not clear and a court application is unlikely to be made by a vulnerable consumer who would be unaware that he had the right to do so. The period for making the application, namely 5 days, is also very short.

### **Q13: What evidence do you have about the consumer experience of dealing with logbook lenders?**

#### No protection for third party buyers

68. An additional problem is that a third party could purchase a financed vehicle (on which a Bill of Sale has been raised), complete with replacement logbook. Replacement logbooks, or V5 documents, are available from the Driver and Vehicle Licensing Agency (DVLA), and can be obtained even though a Bill of Sale is attached to a car. Some consumers, particularly when purchasing an older vehicle, may accept that the logbook is simply missing and purchase a vehicle without one.

69. This is partly caused by the process by which Bills of Sale are registered at Court. Cars subject to outstanding finance under a hire purchase agreement will be registered on one of

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<sup>42</sup> Section 4 of the Bill of Sale Act 1878

the asset finance registers operated by credit reference agencies. However, the only way to find out whether a Bill of Sale is attached would be to search the registry at the Court where Bills of Sale are registered. The search needs to be done either in person or by written request, with the latter usually taking 2 weeks. Such searches are subject to charges, which may add up to a considerable percentage of the car value, and consequently may deter prospective buyers from carrying them out. Furthermore, while the lender may hold onto the car's V5 logbook, it is quite common for cars to be sold without the original logbook, a copy of which can be obtained on request from the DVLA.

70. This therefore means that consumers can suffer costs associated with seizure of property that they have acquired, without having taken out the loan in the first place.

**Q14: What evidence do you have about the incidence of situations in which a consumer suffers seizure of a vehicle purchased, with an outstanding Bill of Sale attached to it?**

Expensive credit, particularly for a secured loan

71. Although a Bill of Sale loan is secured, lenders charge a premium to consumers for being 'high risk'. Yet, logbook lenders will frequently lend up to only half the value of the vehicle (the security), in return for the title and the vehicle logbook. If a debtor misses a payment, the lender can seek to take possession of the vehicle<sup>43</sup> and sell it. Although the lender may well not recover his loan from selling the vehicle due to its depreciation, in some cases he may recoup more than the value of the loan and keep the excess.

72. For further details of comparable types of lending, please see Annex 1.

**Rationale**

73. Bills of Sale lending have been characterised by both market and government failures.

*Market failure*

74. The market failure derives from the complexity of the law and the consumers' consequent lack of understanding about how the loans work. If consumers do not fully understand or do not have access to the terms and conditions of such loans, this can lead to adverse selection, which is a form of asymmetric information.

75. Evidence from Consumer Direct, Citizens Advice and Trading Standards suggests that consumers do not always fully understand the Bills of Sale agreement they are signing. Consumers do not appreciate the speed at which their vehicle can be repossessed or the lack of action they can take to prevent this. Consumers report feeling threatened and vulnerable when agents arrive, unannounced, to seize their vehicle and there is no recourse for them.

76. In the presence of information asymmetry, consumers may deviate from an optimal choice in their purchase of financial products. That is, if they had access to full information, they might choose an alternative form of lending.

77. This problem of asymmetric information also arises where innocent customers purchase second hand vehicles that have Bills of Sale attached and which are subsequently repossessed. However, because the lenders are not required to go to court prior to repossessing the vehicle there is no course for redress for these consumers, only a civil case if they can identify the previous owner.

78. Two logbook lenders who provided operational documentation to us demonstrated that they have generated the materials to go some way to providing customers with a plain English explanation of an antiquated act. Evidence from enforcement agencies and complaints to

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<sup>43</sup> Section 7 of the 1882 Act gives the lender a right to seize the property if the debtor defaults.

consumer organisations demonstrates that a problem exists for consumers in understanding Bills of Sale agreements and the ramifications of failing to maintain payments. It was reported in the Consumer Law Review that even Judges had commented on the complexity and impenetrability of the Act, whilst a submission from Trading Standards highlights the difficulties faced by the enforcement agencies for the same reasons<sup>44</sup>.

### *Government failure*

79. However, there has also been a government failure in the regulation of the market, in that Bills of Sale loans lack the consumer protections that exist for other types of lending. The most important of these is that the secured property can be seized without the lender having to obtain a court order, making it relatively easy (compared to other loans) for lenders to foreclose on the collateral. Furthermore, Bills of Sale loans are often utilised by financially vulnerable consumers on low incomes. Therefore, addressing this government failure is important in ensuring that such consumers are not made worse off and that the existing inequality gap is not widened.

### **Objectives**

80. In considering whether to take action in relation to the use of Bills of Sale for consumer lending or to pursue alternative action, the Government will be guided by the following principles:

- Credit should continue to be available on fair and reasonable terms to those who wish to use it responsibly;
- Vulnerable consumers, or those with an impaired or no credit history, should be able to access credit without suffering detriment if they can afford the repayments
- Consumers should retain the right to use their possessions as security for a loan, provided such loan is made on fair and reasonable terms;
- Consumers should be able to benefit from an open, competitive and innovative credit market and from transparent products.

### **Options**

81. The Government considers that Bills of Sale in their current form are an unsuitable instrument to use for consumer loans secured against personal goods. Their complexity makes it difficult for consumers to understand fully the liability they are taking on when they borrow. We are concerned that some lenders using Bills of Sale to secure loan agreements are behaving in questionable ways and have been subject to significant investigation and complaint. Therefore, the following policy options are being considered:

- Do nothing beyond upcoming measures
- Introduce a code of practice or other non-statutory regulations
- Reform the Bills of Sale Act 1878 (1882)
- Ban the use of Bills of Sale for the purpose of consumer lending through legislation

### **Option 1 - Do nothing beyond current legislation and regulatory activity**

82. Doing nothing beyond the upcoming measures described earlier (e.g. CCD, OFT irresponsible lending guidance) would allow Bills of Sale lending to continue but under the provisions of new legislation and guidance from the OFT. For example, under the provisions in the Consumer Credit Directive from 11 June 2010, lenders would be subject to:

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<sup>44</sup> Consumer Law Review, evidence submitted to BIS

- A requirement to provide adequate explanations of products to borrowers
  - A requirement on lenders to check borrowers' creditworthiness
83. Guidelines on responsible lending, and the upcoming review of the high-cost credit market by the OFT will provide a further steer towards best practice. Improved data sharing with Government departments, competitors and the credit reference agencies could help build credit histories, prevent fraudulent activity and promote responsible lending and borrowing. However, evidence received from one lender indicates that traditional credit scoring methods might need to be adapted<sup>45</sup>.
84. Lenders have demonstrated that they have gone to some lengths to make the process of borrowing more transparent, by issuing documents such as a "Borrowers Guide"<sup>46</sup> and producing a list of tariffs and fees with the loan documentation, outlining charges for late payments etc. One logbook lending company met by BIS has also instigated a full income/expenditure process at the point of sale to assess affordability.
85. As the credit market recovers, increased lending from sub-prime lenders returning to the market may make loans offered by Bills of Sale lenders less attractive to borrowers. In addition, continued government support of the Growth Fund, Social Fund and credit unions should increase access to funds for vulnerable consumers.

### *Costs*

86. Evidence from complaint data collected by Consumer Direct suggests that the individual monetised loss per case where a consumer experiences problems in relation to Bills of Sale lending is around £1,500. If it is assumed that such costs would be incurred by 5% of all Bill of Sale users in default (i.e. 5% of 18%, from the data outlined in para 38), then this would equate to annual costs for consumers in respect of Bills of Sale lending of between **£500,000 and £700,000 per year**. Some of these costs are derived from the cost of the credit, and could be avoided by consumers making better choices about the lending products that they use (in which case they would merely be transferred from existing logbook loan lenders to lenders of other credit products). However, some of these costs would not be incurred at all, if consumers chose different products – e.g. costs associated with expedited seizure of assets. Given that the Consumer Credit Directive will not address this problem, it is likely that some consumers would continue to suffer these losses under this option.

### *Benefits*

87. By requiring lenders to provide adequate explanations of their products and the issuing of guidance from OFT, the problem of adverse selection will be addressed to some extent. In theory, this should allow consumers to make more informed decisions when purchasing financial products and therefore make an optimal choice. However, at this stage – and without more accurate data about the nature of the market for Bill of Sale loans – it is not possible to estimate the potential degree of improvement and its impact on consumer choice.

### *Risks*

88. Whilst consumer access to information will improve under the new Directive, consumers will remain vulnerable to the sudden loss of their property in the absence of further protections. In addition, the problems outlined in relation to unfair debt collection and enforcement practices will not be addressed and protection for third party buyers will remain limited.

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<sup>45</sup> Analysis of a sample of customer accounts by Equifax – equally split between good and bad accounts – indicated that 25% of its 'good' book would have had their application declined on the basis of a poor credit score. Analysis also yielded that 89% of the entire 'good book' were 'below-prime'. The company therefore concluded that credit scoring was not necessarily an accurate predictor of their clients' behaviour.

<sup>46</sup> In-house operational documents provided to BIS by lenders

**Q15: To what extent do you think such measures would resolve the problems identified above in relation to the use of Bills of Sale for consumer lending?**

**Option 2 - Introduce a voluntary code of practice or other non-statutory requirements**

89. No legislative or regulatory changes would take place but industry and regulators (in this case, the OFT) would be encouraged to engage with each other, perhaps through a trade body. Two Bills of Sale lenders provided documents – including codes of practice for collections, operational procedures for staff, codes of practice or conduct for repossessions staff, or outsourced agents – and explained their policies on forbearance.

*Costs*

90. Consumers may continue to suffer some of the detriment set out earlier unless companies adhere to sufficiently broad codes of best practice, encompassing all lenders and covering every area of concern. Evidence on industry structure suggests that lending through Bills of Sale is relatively concentrated – with two lenders accounting for nearly 90% of all registered Bills of Sale – which would suggest that the costs of setting up a code of practice to cover a significant proportion of Bills of Sale loans may be relatively low. Indeed, one logbook lender has made moves to set up an industry code of practice through a trade association to which it was already affiliated.

91. However, as such a code of practice would be voluntary, membership would not be mandatory and so action against poor practice by Bills of Sale lenders would have to be taken on a case-by-case basis, leaving consumers at risk of continued detriment. Enforcement resources may not be sufficient to support this approach and it may not be effective in preventing poor practice or detriment to the consumer.

**Q16: What evidence do you have about the costs associated with setting up a code of practice or other non-statutory requirements in relation to Bill of Sale lending?**

*Benefits*

92. Provided that a sufficient number of providers adopt the code of practice and that any code was sufficiently broad in addressing the key areas of concern, a code of practice may lead to potentially significant benefits for borrowers. This would then lead to the avoidance of a number of the costs identified above (£500,000 to £700,000 annually). However, the extent to which these costs are avoided would depend on the degree to which consumers make better choices about their lending products and lenders do not act in such a way as to cause consumers to incur costs, both of which are very difficult to estimate, *a priori*.

93. In addition, consumers would continue to have access to this type of credit and, through better practices and tougher enforcement, may enjoy clearer and more reasonable borrowing terms. However, at this stage – and without more accurate data about the nature of the market for Bill of Sale loans – it is not possible to estimate the potential degree of improvement.

*Risks*

94. A voluntary code of practice or another non-statutory requirement would not be legally binding, which means that lender adherence to such codes would be uncertain. In the event that Option 2 is implemented, it would be necessary to monitor lender compliance and evaluate whether the problems defined earlier had been addressed.

95. Furthermore, as discussed earlier it can be shown that a number of ‘good’ borrowers would have been refused loans if lenders had utilised an official credit score. Given that certain consumers could be denied access to their chosen type of credit if such arrangements were included as part of an industry code of practice, this risk may need to ensuring that such

consumers are aware of alternative types of borrowing (see Annex 1). Alternatively, traditionally credit scoring methods may need to be adapted for use in relation to Bills of Sale lending.

**Q17: To what extent do you think such measures would resolve the problems identified above in relation to the use of Bills of Sale for consumer lending?**

**Option 3 - Reform Bills of Sale legislation to make it more appropriate for consumer lending**

96. Under this option, changes would be made to the Bills of Sale Act to give consumers the ability to challenge repossession and deal with some of the most egregious practices, as set out above (e.g. consumers who find their cars have previous Bill of Sales attached and are subsequently seized; immediate seizure of a vehicle after unexpected charges are levied, without the opportunity to make payment or contest the action).

97. To modernise the Act, the following provisions would be examined:

- Removing the lender's power of entry and rights to seize and sell the borrower's goods without a court order;
- Protecting the borrower from having goods repossessed under certain conditions (e.g. with low levels of arrears);
- Updating the language and formalities of Bills of Sale administration;
- Improving the registration process for Bills of Sale;
- Setting limits to the size of sum to be lent against goods secured through a bill of sale to protect against inappropriate use of Bills of Sale for small or large value loans<sup>47</sup>.

**Costs**

98. The likely scope of reforms to guarantee the necessary consumer protections would be significant and so would likely entail considerable resource costs. In addition, as no legislative vehicle has yet been identified to carry such proposals forward it is likely that reforms would take up to two years to draft and implement. In the interim period, the consumer would suffer from some of the detriment set out earlier. If Government decided to introduce other measures for a phased time period, there would be subsequent implementation costs.

99. One lender has argued that its ability to repossess vehicles without going through the court process reduces its costs considerably and therefore allows them to offer loans to high-risk borrowers, who may otherwise be unable to borrow. If borrowers were able to challenge the repossession, access to credit through Bills of Sale lending could potentially be more limited for some types of consumer. Alternatively, the proposed reforms may well render this new model unprofitable for lending businesses, causing them to exit the market with much the same result as under Option 4.

100. In spite of potentially successful reform, enforcement action would still have to be taken against poor practices by lenders. Although the reforms would be legally binding, unlike Option 2 above, there is a similarity in that enforcement resources may not be sufficient to ensure universal compliance with any new regulations/legislation and it may not be completely effective in preventing poor practice or detriment to the consumer. However, the scope of such enforcement is currently unknown and full proposals are yet to be developed, thus it is not possible to estimate the necessary resources at this time.

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<sup>47</sup> The 1882 Bills of Sale Act introduced a £30 minimum limit for a Bill of Sale. This may have been intended as a form of protection to avoid the widespread use of Bills of Sale for low-value transactions. This sum could be updated to reflect a more realistic present value (e.g. using an average earnings index).

**Q18: To what extent do you think such measures would impact on the profitability (and hence sustainability) of businesses engaged in consumer lending through Bills of Sale?**

**Q19: What costs would be associated with such reforms?**

**Q20: To what extent do you think such measures would impact on the access to alternative forms of credit for consumers who currently make use of lending through Bills of Sale?**

**Q21: What resources and costs would be associated with the enforcement of such reforms?**

### *Benefits*

101. Making reforms to this form of lending may remove the areas of concern and the adverse elements associated with the way in which Bills of Sale for consumer lending are currently used. Bill of Sale type lending secured against personal goods could continue in a modified form, with all the protections of a standard consumer credit or hire purchase agreement.
102. This modified form of lending would also be subject to changes required under the forthcoming OFT irresponsible lending guidance and regulations to implement the CCD, described in Option 1 above.
103. In addition, this would lead to the avoidance of a number of the costs currently incurred by users of logbook loans identified above (£500,000 to £700,000 annually). However, the extent to which these costs are avoided would depend on the degree to which consumers make better choices about their lending products and lenders do not act in such a way as to cause consumers to incur costs, both of which are very difficult to estimate, *a priori*.

### *Risks*

104. There is currently little evidence on the number and value of unregistered Bills of Sale loans. Therefore, it is not known whether reforming the existing legislation will have an impact on unregistered loans. However, a better system of recording Bills of Sale should help to identify the number of unregistered loans.
105. It is assumed that the necessary legislation would take two years to draft and implement. Therefore, government would have to decide how to regulate Bills of Sale loans in the interim period (if at all) and assess the required resources for implementation.
106. Furthermore, as discussed above, reforming current legislation could increase the cost of lending. Lenders may respond by withdrawing credit from certain consumers, particularly those considered high-risk, who would therefore require alternative forms of credit. Government may need to ensure that consumers who are excluded from Bills of Sale lending are aware of their substitutes and have access to suitable alternatives.

**Q22: To what extent do you think such measures would resolve the problems identified above in relation to the use of Bills of Sale for consumer lending?**

### **Option 4: Ban the use of Bills of Sale for the purpose of consumer lending**

107. The final option is to ban the use of Bills of Sale for the purpose of consumer lending, in effect preventing Bills of Sale being used to secure lending against personal goods. This would be achieved by repealing the Bills of Sale Acts 1878 and 1882, banning the use of Bills of Sale as an instrument of securitisation for the purpose of consumer lending. In banning the use of Bills of Sale for consumer lending, all of the detriment set out above would be prevented.

108. The OFT and consumer groups strongly favour a ban, on the basis that Bills of Sale are complex and confusing instruments which consumers do not fully understand, are lacking in consumer protections and are open to abuse. They believe that reform or enforcement may never fully address the issues around seizure and the transfer of ownership. The view of the OFT is that lending using a Bill of Sale as security, in any form, is wholly inappropriate. They are being used in consumer lending in ways which the OFT, Trading Standards and consumer groups regard as unfair and irresponsible. As data from the High Courts shows, the use of Bills of Sale (for logbook lending in particular) is growing; however, it remains a relatively small part of the consumer lending market.
109. Officials have explored the possibility of using a Pledge (or Pawn) or Contractual Lien as an alternative to a Bill of Sale<sup>48</sup>. This method would require a contract to be drafted in which a borrower pledges the title of their vehicle to a lender according to the terms of the contract, the consumer credit agreement. A pledge (also called pawn) gives a "special propriety" interest to a lender and means that they can actually seek property, named in a contract, to recoup a debt. A contractual lien is different to a pledge or pawn because it simply allows a person to retain property till they are paid.
110. Whilst the pledge and lien methods would require some innovation to use for lending purposes it does support the notion that alternative methods may be available which protect the consumer by requiring court permission to pursue a security and ensure that the lender can recover outstanding debt.

#### Costs

111. Lenders claim that there are no viable alternatives to Bills of Sale lending. Hire purchase (HP) does not offer sufficient incentives for the lender, as goods under a HP agreement become 'protected' after one third of the term and hence are not able to be immediately repossessed. They therefore believe that lenders would have to cease trading should Bills of Sale be banned for the purpose of consumer lending. This would involve a gradual shutting down of their business, starting with the granting of loans and, over the course of around two years, reducing staffing as the loan book is repaid or vehicles repossessed and sold.
112. Although in practice those companies currently using Bills of Sale might be able to find other ways to offer secured loans compatible with the Consumer Credit Act, it is likely that such action could result in a number of companies ceasing to offer logbook loans and firms who lend exclusively (or predominantly) in this manner could cease trading.
113. In terms of estimating this cost, the two largest lenders have told officials that between them, and their franchises, they employ in the region of 200 people<sup>49</sup>. On the basis that the two largest operators employ around 200 people and enjoy a market share of almost 90%, we would estimate that approximately 300 jobs would be directly at risk over a two-year period from the date of a ban. There would be further impacts on suppliers and those firms to whom operations have been outsourced, but no figures are available to estimate this.
114. An additional source of cost would be revenue lost to HM Courts Service (HMCS) from fees associated with registering a Bill of Sale<sup>50</sup>. HMCS reports that 2008/9 revenues from

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<sup>48</sup> Section 121 of the CCA makes specific provision for the sale of a pawn (which could relate to a pledge), the pawn broker is under a legal duty under section 121 (6) of the CCA to show that he, and the agents employed by him, used reasonable care to ensure that the true market value was obtained, there is no such provision for Bills of Sale. The pawn broker is also under a duty to show that the expenses relating to the sale were reasonable. Under section 121(3) of the CCA if the amount recouped is more than the debt, then the balance is to be repaid to the debtor. Under section 121(4), where s 121 (3) does not apply, the debt shall be treated as equal to the amount "by which the net proceeds of sale fall short of the sum which would have been payable for the redemption of the pawn". This means that as long as the pawnbroker has achieved the 'best price' the borrower can remain liable for any shortfall.

<sup>49</sup> One of the lenders operates from 23 regional branches with relatively few centralised staff whilst the other runs a franchised operation over larger swathes of the country. The franchise operation model has the entirety of the parent companies staff based at their head office and outsources several key roles such as repossession.

<sup>50</sup> The cost of registering a Bill of Sale is £25

Bills of Sale registration was £966,000 and the first five months of 2009/10 saw registrations worth £447,000<sup>51</sup>.

115. HMCS employs three full-time members of staff to administer Bills of Sale and these positions may also be at risk under this option, if an insufficient number of Bills of Sale were registered. Both HMCS and the Bills of Sale lenders use the Royal Mail to post Bills of Sale, which equates to around 50,000 bills and many more correspondence items.
116. If consumers are unable to access alternative forms of lending, they will face significant borrowing constraints that prevent them from making optimal choices. One lender pointed out that they believe a ban on Bills of Sale lending could push potential customers towards loan sharks, but stated at a meeting with officials that they did not believe they had seen an increase in custom themselves, as a result of a contraction the sub-prime lending sector<sup>52</sup>. This could be because the potential customer base is reduced by the lending criteria of owning a car of sufficient worth. However, for those who do qualify and are still considered sub-prime, borrowing using Bills of Sale could be their last resort.

**Q23: Do you agree with the cost estimates above? Do you have alternate calculations, which you could substantiate with evidence?**

**Q24: How easily do you think that current lenders who make use of Bills of Sale for consumer lending could switch to other types of credit provision?**

#### *Benefits*

117. It is possible that both lenders and borrowers would be able to utilise alternative lending methods, such as hire purchase or pawnbroking agreements<sup>53</sup>. Lenders may be able to adopt a new style of lending, possibly by means of a new method of securitisation, but with the consumer protections associated with modern credit agreements.
118. In addition, this would lead to the avoidance of the costs currently incurred by users of logbook loans identified above (£500,000 to £700,000 annually).
119. A further benefit for HMCS is that resources currently allocated to registering and administering Bills of Sale loans for consumers could be transferred to other areas.

**Q25: To what extent do you think such measures would impact on the access to alternative forms of credit for consumers who currently make use of lending through Bills of Sale?**

#### *Risks*

120. There is uncertainty regarding the status of contracts that are in place once a ban is implemented. If existing Bills of Sale loans are to be paid off in full, then government must decide how to regulate them for a specific and phased time period.
121. It is also not yet known the extent to which unregistered Bills of Sale will continue to be used in the event of a ban. There is currently little evidence on the number and value of unregistered loans and therefore it is not possible to analyse the impact of a ban. This is an area that requires further investigation.

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<sup>51</sup> These figures do not take into account fees of £40, levied for a Bill of Sale registered 'out of time'. An 'out of time' Bill of Sale is where a good reason is accepted by the court for late registration.

<sup>52</sup> Notably the withdrawal of the two largest sub-prime lenders from the UK market, Cattle's Welcome Finance and Welcome Car Finance brands and London Scottish Bank

<sup>53</sup> For a more detailed discussion, please see Annex 1

122. It is important that in the absence of Bills of Sale, consumers have alternative means of accessing credit. Annex 1 provides details of alternative credit options for Bills of Sale borrowers, which suggests that there are sufficient substitutes such as payday loans, home credit and pawn broking (all of which consumers benefit from protections that do not exist for bills of sale). On the other hand, it is possible that some consumers are currently making an informed decision to utilise Bills of Sale loans and therefore they may not be able (or want) to access these alternatives. Therefore, if a ban is implemented it will be necessary to monitor the effect of the policy on this segment of consumers. It is also important that consumers are made aware of Bills of Sale substitutes in the event of a ban.

123. Lastly, there is uncertainty regarding the effect of a ban on lenders. A direct impact of banning is that Bills of Sale lenders will either be shut down or forced to provide alternative legal types of credit. It is not yet possible to assess the extent to which they will be able to do so. Furthermore, by eliminating suppliers in the consumer credit market, there will be an indirect effect on other lenders by reducing the number of competitors. This issue is addressed in more detail in the competition assessment below.

**Q26: To what extent do you think such measures would resolve the problems identified above in relation to the use of Bills of Sale for consumer lending?**

**Summary of options**

124. The Government does not consider Options 1 or 2 to be sufficient as a means of addressing the problems identified in relation to Bills of Sale for consumer lending. Under the provisions of the forthcoming Consumer Credit Directive, there would not be sufficient protection for consumers. Under a Bill of Sale agreement, the lender would continue to retain ownership of the asset, lenders would still be able to seize assets without court action and borrowers could continue to suffer the losses identified above. Protection for third party buyers will also remain limited.

125. Similarly, under Option 2 it is possible that consumers would continue to suffer as the code of practice is not legally binding for lenders. Resources would be required to monitor lender compliance and in the event that the problems remain, further intervention would be needed.

126. Reforming Bills of Sale legislation would directly address the problems related to consumer protection, unlike Options 1 and 2. However, the necessary reforms would take approximately two years to draft and implement. Given the increasing use of Bills of Sale loans by consumers, there would still be significant costs in the interim period in the form of continued consumer losses. Once the reforms are implemented, there would also be significant enforcement costs and it is uncertain whether they would be completely effective in preventing poor practice. Furthermore, this option could increase lenders' costs to a point where they become unprofitable and also exclude high-risk borrowers from the market.

127. Therefore, the Government's preferred option is to ban the use of Bills of Sale for consumer lending. Under this option, there is a higher probability that consumer losses will be averted and the extra costs and delays involved in Option 3 would be avoided. In terms of HMCS, whilst there are losses in revenue there are also benefits in that resources allocated to administering Bills of Sale can be utilised for other purposes.

128. The costs of Option 4 are the impacts on consumers with poor access to alternative forms of credit, who therefore might not be able to borrow in the absence of Bills of Sale, and lenders that would have to close down their Bills of Sale operations for consumer lending (these impacts also occur under Option 3). Therefore, in order to encourage responsible lending and directly address consumer detriment (which the first two options do not achieve), it will be necessary to mitigate the risks for lenders and the financially vulnerable. The latter could be done by ensuring that consumers are fully aware of alternatives products, such as those in Annex 1. In terms of creditors, those that are active in multiple

types of lending should be able to adapt to the new market. Lenders whose sole business is logbook lending, however, will be disadvantaged if they cannot adopt a new type of lending.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

# Annexes

## Sensitivity analysis – consumer detriment

The estimate of costs for consumers associated with use of Bills of Sale is based on a certain proportion of loans that are in default (based on lender data, this latter figure is around 18%), with an assumed cost per case of around £1,500<sup>54</sup>. In the main document, this proportion of default loans is assumed to be 5% and is multiplied by between 40,000-50,000 total Bills of Sale. Below, we relax and alter these two assumptions:

Variable	Assumption 1: Proportion of problematic Bills of Sale*			Assumption 2: Number of total Bills of Sale**		
	2%	5%	10%	40,000	50,000	100,000
Estimated costs to consumers (£000s)	270	675	1,350	540	675	1,350

\* - Based on 50,000 annual Bills of Sale

\*\* - Based on 5% of Bills of Sale loans in default being problematic

## Competition Assessment

### *Consumers*

Based purely on the amount of lending which it is estimated to account for, a ban on the use of Bills of Sale for consumer lending (Option 4) would have a relatively small impact. However, some sub-prime (or non-standard) borrowers may be faced with an even more limited choice of potential lending products. If proposed reforms under Option 3 were to reduce the profitability of lending via Bills of Sale to the point that a significant number of logbook loan providers exited the market, this could lead to similar outcomes in terms of reduction of consumer choice.

This reduction in choice may force consumers to deal with other types of lenders, such as pawnbrokers, payday lenders or home credit providers. However, none of these alternative lenders offer a product which can be secured on property retained by the consumer. As such, the ability of an individual consumer to switch to alternative credit sources will depend on the assets of the individual or their creditworthiness according to the requirements of high-cost credit lenders.

### *Creditors*

As set out earlier, reforming the Bills of Sale Act (Option 3) might result in some lenders leaving the market, whilst obviously a ban on the use of Bills of Sale for consumer lending (Option 4) would necessitate exit. Lenders whose sole business is logbook lending would be most disadvantaged by this, as they would be least able to switch into supplying other types of credit. Lenders who are already active in other types of lending could adapt more easily – this may favour larger lenders, as evidence indicates that they are part of a much larger parent organisation. For those operators who stay in the market under Option 3, it is likely that any increase in operating costs would be passed directly onto consumers in the form of higher prices/charges.

## Small firms impact test

One of the largest logbook lenders met by BIS stated that their parent company, which offers other financial products to consumers, might be at risk if their core logbook business was to

<sup>54</sup> Based on Consumer Direct data of almost £1.5m in consumer costs being incurred on just over 1,000 complaints between 2004 and 2009

cease trading. All of the operators of which BIS are aware, would be classified as SMEs and operate as limited companies, some under franchise.

A ban on Bills of Sale lending (Option 4) would almost certainly see most of these lenders close down operations, at least until a viable alternative lending model had been tested and proved financially viable. As stated above, reforms to the Bills of Sale Act (Option 3) are likely to see some firms close down if they cannot make similar margins of profit under new legislation.

#### Equality impact tests

A separate equality impact assessment has been prepared for this consultation.

## **Annex 1 – Alternative forms of sub-prime lending**

Lenders met by BIS, who specialise in logbook lending using Bills of Sale, argue that a ban or significant reform<sup>55</sup> on Bills of Sale would remove 'logbook loans' from the market, leaving those who are unable to secure alternative credit from a mainstream lender with no other access to a legitimate or regulated source of finance. Borrowers may turn to a Bill of Sale loan as a last resort because they perceive that there is little or no alternative and these borrowers are likely to have a poor credit history, be self employed or on a low income and unable to access mainstream finance.

Bills of Sale lenders argue that borrowers are attracted by the speed with which the loan can be agreed and the fact that they avoid undergoing credit reference checks. However, there may be alternative forms of lending that Bills of Sale borrowers could turn to, such as credit union loans, pawnbroking and home credit.

### *Credit unions*

Credit unions offer an alternative to Bills of Sale lending and can provide loans from relatively small amounts of around £100 to much larger loans. It is not always possible for all consumers to borrow from a credit union, they are regional and sometimes a consumer must be an employee of a certain company or resident of an area to qualify for membership. Credit unions may perform credit checks and are less likely to pay out quickly as they do not always operate in the same way as a retail business. A credit union is a much more attractive borrowing proposition because the loan has a dramatically lower rate of annual interest, typically around 25%, and does not normally require security.

### *Pawnbroking*

Under pawnbroking, a consumer signs a credit agreement and provides a pawn-receipt which will either be separate or will be contained within the credit agreement. This proves that the consumer owns the item. Normally, the item is 'redeemed' by handing over the pawn-receipt and paying what is owed under the agreement. In a similar way to Bills of Sale lending, the pawnbroker will assess the value of the item and lend money factoring in depreciation, sale value and costs incurred.

The key difference between Bills of Sale lending and pawning an item is that the consumer retains ownership of the item but the broker has possession, the borrower is left in no doubt as to the situation as they physically leave the item and obtain a receipt. Under Bills of Sale lending confusion can arise as the consumer leaves with both the loan and the vehicle, but legally has signed away ownership rights.<sup>56</sup>

### *Home credit*

Borrowing using home credit could also be a viable alternative and one lender now offers larger loans, up to £6,000. Providers will make an assessment of an individual's ability to repay based on their income and expenditure and could be turned down; the UK's largest Home Credit provider states that they turn down 6 in 10 applications.

Home credit loans are simple, unsecured, weekly repayment products that are collected by an agent or sometimes by bank transfer. Both home credit and logbook lenders will pay out money relatively quickly to a borrower; although advertised times can be 'same day' or 'within two hours', typically a consumer might expect a few days to expire from the application process to the receipt of the loan.

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<sup>55</sup> 'Significant reform' is used here to describe legislation that would require lenders to go through lengthy court processes to seek repossession of goods, or similar amendments which lenders argue would not be compatible with their business model.

<sup>56</sup> The standard is six months to redeem an item, but the pawnbroker may agree to a longer period when the agreement is made. If by the deadline the debt cannot be repaid, and is £75 or less, the pawnbroker will keep the item. If the debt is more than £75, the pawnbroker can sell the item to recover the amount owed.

### Comparison between different types of credit

The amounts being lent to individuals under Bills of Sale loans are similar to other sub-prime lenders such as Payday Loans and Home Credit. The time period over which the loans are offered is often longer than Home Credit or Payday loans although one company we met fixed its standard term at 6 months.

The APR of interest is generally around 400%, but is offered to the consumer as a 'flat fee', often of around 10% of the principle each month or four weeks of the term. Table A1 illustrates the costs of borrowing £500 for four types of consumer credit, including logbook loans. It shows that the cost of the latter is higher than the cost of home credit and credit unions but is cheaper than payday loans.

<b>Table A1: Comparison of Credit Options for a loan of £500</b>				
<b>Company</b>	<b>Type of Credit</b>	<b>Term</b>	<b>Typical APR (%)</b>	<b>Typical Cost (£)</b>
Chase Finance Ltd	Home Credit	6 months	332	750
Provident	Home Credit	23 weeks	545	748
Mobile Money	Logbook Loan	24 weeks	378	860*
Logbook Loan Shop	Logbook Loan	6 months	199	850**
Payday UK	Payday Loan	6 months (rolled over)	1737	1,250
The Money Shop	Payday Loan	6 months (rolled over)	260	875***
Credit Union	Credit Union	6 months	27	580

Source: Lenders own website quotes, [www.lenderscompared.org](http://www.lenderscompared.org)

\* Includes a £100 finance charge (fees may vary)

\*\* Includes a £75 finance charge

\*\*\* Charge is taken from loan when paid out

However, these comparisons of typical APRs and costs should be seen in three important contexts. Firstly, logbook loans are made against a secured asset whereas payday loans and home credit are not. Secondly, there are often arrangement fees, administration costs and high default related charges for logbook loans when borrowers get into financial difficulties. Lastly, a key issue with logbook loans is that a number of borrowers only repay the interest on their loans until the last month of their contract, when the remaining balance must be paid. Repayments are often advertised weekly and only include the repayment of interest. As a result, individuals may not be able to make the final payment and will incur further charges.

## Annex 2: Debt collection and enforcement practices across credit products

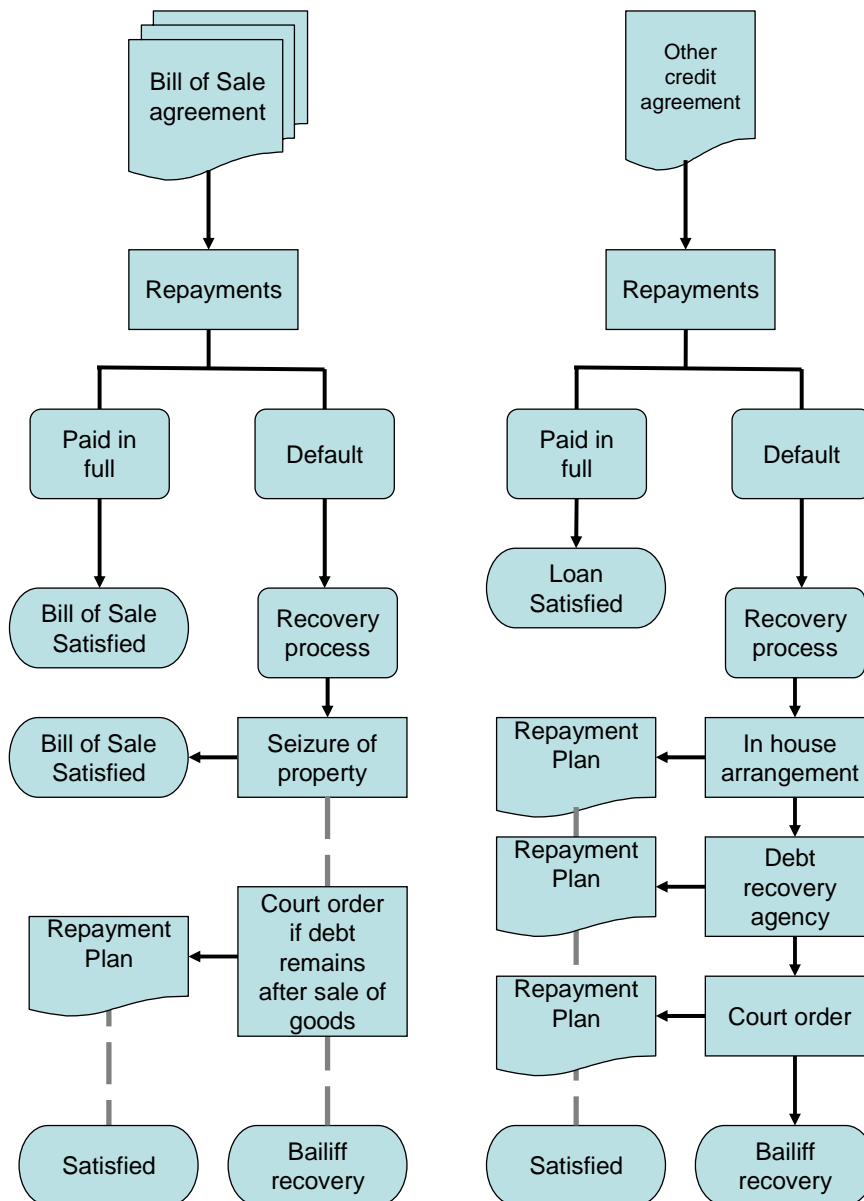
In comparison to other types of sub-prime lending, such as payday loans or home credit, logbook loans provide consumers with less protection, because companies do not have to go to court to enforce the sale of goods. A lender is able to seize and sell the vehicle after a single default on payment or a default with only one payment remaining.

### Enforcement of other types of credit

A customer of a payday loan or home credit firm who fails to make a repayment is likely to be offered opportunities to get their account back on track before the account is passed to a debt management company, where further efforts to reach a repayment plan would be pursued.

After these stages, the debt may be finally passed to the County Court, where the debtor would have a final chance to pay the balance owing or face enforcement action. Bills of Sale lenders have stated that they will try and negotiate a repayment plan with debtors who fall behind. Whilst this outcome can be caused by irresponsible borrowing on the part of the consumer, it is not always the fault of the borrower that they fall into arrears, as mistakes made setting up direct debits or other clerical errors can result in default.

**Chart – comparison enforcement route for different types of credit agreement**



### Annex 3: Case studies of worst cases involving Bills of Sale

Taken from Citizens Advice Evidence Journal, Autumn 2009<sup>57</sup>:

- A Shropshire CAB saw a man who had taken out a loan with a Bill of Sale lender. The client, who had poor basic skills, asked the lender's representative to help him complete the application. The representative would not read the form back to the client, saying there wasn't time and if he didn't sign it now, he wouldn't get the loan.
- The client kept up with payments for 12 months at the expense of falling into arrears on household bills. At the time of seeking advice, she still owed £2,000 to the lender and had started to miss payments under the agreement. The Bill of Sale lender contacted her daily about the arrears, threatening to remove her car and put a charge on her home if she defaulted again.
- A Hampshire CAB saw a self-employed man who was struggling to find the money to service a loan secured by a Bill of Sale on his motorbike at 240.7% APR. After missing one loan payment, he was called back from work to find two vans, one at the rear and one at the front of his home. He had to borrow £1,000 from his mother that day to prevent the bike being taken.
- A lone parent sought debt advice from a Lincolnshire CAB after her car had been clamped a week after she had missed a payment on her £700 Bill of Sale loan. Her mother had to pay £700 to get it released.
- Another Lincolnshire CAB saw a woman whose partner had defaulted on a payment for a loan secured by a Bill of Sale on his car. Although the man had asked the lender for one week's grace until he was paid, the car was clamped the following day. As they could not afford the £900 fee to have the clamp removed, his car was sold. The lender then took court action for the shortfall debt of £5,000 and applied for a charging order against their house.
- A West Midlands CAB saw a man who had got into financial difficulties after he had to pay his son's funeral expenses. His car had been repossessed as he could not maintain payments on a Bill of Sale agreement. The Bill of Sale was nevertheless void as it did not contain a statement of the consideration, the amount secured, the rate of interest or the instalments payable. The client could have pursued a claim for this, but was not eligible for legal aid. The adviser decided to write to the Bill of Sale lender stating that the client would not pursue a claim if the lender would not pursue the client for any shortfall. The bureau received no response, but the client received a county court claim.
- A CAB in Surrey saw a Polish man who had bought a second hand car in cash from a private individual via an advert. He completed all the relevant paper work and had the registration certificate. The previous owner, however, had signed away the ownership of the car to a Bill of Sale lender. A few months later, the lender's representative called at the client's address and demanded the car keys. He went on to threaten to smash the car windows with a hammer unless the keys were handed over. In the face of the threat, the client gave up the keys.

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<sup>57</sup> [http://www.citizensadvice.org.uk/pdf\\_evidence\\_autumn\\_2009.pdf](http://www.citizensadvice.org.uk/pdf_evidence_autumn_2009.pdf)