

# Consumer Credit Bill

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department of Trade and Industry, are published separately as Bill 2 – EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Alan Johnson has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Consumer Credit Bill are compatible with the Convention rights.

# Consumer Credit Bill

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**B I L L**

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Amend the Consumer Credit Act 1974; to extend the ombudsman scheme under the Financial Services and Markets Act 2000 to cover licensees under the Consumer Credit Act 1974; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Agreements regulated under the 1974 Act etc.*

**1 Definition of “individual”**

In section 189(1) of the 1974 Act (definitions) for the definition of “individual” substitute—

“‘individual’ includes—

- (a) a partnership consisting of two or three persons not all of whom are bodies corporate; and
- (b) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership;”.

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**2 Removal of financial limits etc.**

(1) In section 8 of the 1974 Act (which defines consumer credit agreements)—

- (a) in subsection (1) for “personal” substitute “consumer”;
- (b) subsection (2) shall cease to have effect.

(2) In section 15(1) of that Act (which defines consumer hire agreements) paragraph (c) and the “and” immediately preceding it shall cease to have effect.

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(3) In section 43(3) of that Act (financial and other limits relating to regulation of advertisements) paragraph (a) and the “or” immediately after it shall cease to have effect.

### 3 Exemption relating to high net worth debtors and hirers

After section 16 of the 1974 Act insert –

#### “16A Exemption relating to high net worth debtors and hirers

- (1) The Secretary of State may by order provide that this Act shall not regulate a consumer credit agreement or a consumer hire agreement where – 5
- (a) the debtor or hirer is a natural person;
  - (b) the agreement includes a declaration made by him to the effect that he agrees to forgo the protection and remedies that would be available to him under this Act if the agreement were a regulated agreement; 10
  - (c) a statement of high net worth has been made in relation to him; and
  - (d) that statement is current in relation to the agreement and a copy of it was provided to the creditor or owner before the agreement was made. 15
- (2) For the purposes of this section a statement of high net worth is a statement to the effect that, in the opinion of the person making it, the natural person in relation to whom it is made –
- (a) received during the previous financial year income of a specified description totalling an amount of not less than the specified amount; or 20
  - (b) had throughout that year net assets of a specified description with a total value of not less than the specified value.
- (3) Such a statement – 25
- (a) may not be made by the person in relation to whom it is made;
  - (b) must be made by a person of a specified description; and
  - (c) is current in relation to an agreement if it was made during the period of one year ending with the day on which the agreement is made. 30
- (4) An order under this section may make provision about –
- (a) how amounts of income and values of net assets are to be determined for the purposes of subsection (2)(a) and (b);
  - (b) the form, content and signing of – 35
    - (i) statements of high net worth;
    - (ii) declarations for the purposes of subsection (1)(b).
- (5) Where an agreement has two or more debtors or hirers, for the purposes of paragraph (c) of subsection (1) a separate statement of high net worth must have been made in relation to each of them; and paragraph (d) of that subsection shall have effect accordingly. 40
- (6) In this section –
- ‘previous financial year’ means, in relation to a statement of high net worth, the financial year immediately preceding the financial year during which the statement is made;
  - ‘specified’ means specified in an order under this section. 45
- (7) In subsection (6) ‘financial year’ means a period of one year ending with 31st March.

(8) Nothing in this section affects the application of sections 140A to 140C.”

#### 4 Exemption relating to businesses

Before section 17 of the 1974 Act insert –

##### “16B Exemption relating to businesses

- (1) This Act does not regulate – 5
- (a) a consumer credit agreement by which the creditor provides the debtor with credit exceeding £25,000, or
- (b) a consumer hire agreement that requires the hirer to make payments exceeding £25,000,
- if the agreement is entered into by the debtor or hirer wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him. 10
- (2) If an agreement includes a declaration made by the debtor or hirer to the effect that the agreement is entered into by him wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him, the agreement shall be presumed to have been entered into by him wholly or predominantly for such purposes. 15
- (3) But that presumption does not apply if, when the agreement is entered into –
- (a) the creditor or owner, or 20
- (b) any person who has acted on his behalf in connection with the entering into of the agreement,
- knows, or has reasonable cause to suspect, that the agreement is not entered into by the debtor or hirer wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him. 25
- (4) The Secretary of State may by order make provision about the form, content and signing of declarations for the purposes of subsection (2).
- (5) Where an agreement has two or more creditors or owners, in subsection (3) references to the creditor or owner are references to any one or more of them. 30
- (6) Nothing in this section affects the application of sections 140A to 140C.”

#### 5 Consequential amendments relating to ss. 1 to 4

- (1) In section 8(3) of the 1974 Act (which defines regulated consumer credit agreements) after “16” insert “, 16A or 16B”.
- (2) In section 10 of that Act (running-account credit and fixed-sum credit) – 35
- (a) in subsection (1) for “personal” wherever occurring substitute “consumer”;
- (b) in subsection (3) –
- (i) for “section 8(2)” substitute “paragraph (a) of section 16B(1)”;
- (ii) for “subsection” substitute “paragraph”. 40
- (3) In section 17(2) of that Act (small agreements) for “8(2)” substitute “16B(1)(a)”.
- (4) In section 145(4) of that Act (types of hire businesses relevant to credit

- brokerage) after paragraph (a) insert—
- “(aa) a business which comprises or relates to consumer hire agreements being, otherwise than by virtue of section 16(6), exempt agreements;”
- (5) In subsection (1) of section 158 of that Act (duty of credit reference agency to disclose filed information) for paragraph (a) substitute—
- “(a) a request in writing to that effect from a consumer;”
- (6) After subsection (4) of that section insert—
- “(4A) In this section ‘consumer’ means—
- (a) a partnership consisting of two or three persons not all of whom are bodies corporate; or
- (b) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership.”
- (7) In section 181(1) and (2) of that Act (power to alter monetary limits etc.) for “8(2), 15(1)(c)” substitute “16B(1)”. 15
- (8) In subsection (5) of section 185 of that Act (agreement with more than one debtor or hirer)—
- (a) in paragraph (b) for “a body corporate” substitute “not an individual”;
- (b) for “the body corporate or bodies corporate” substitute “each person within paragraph (b)”. 20
- (9) In subsection (6) of that section after “a body corporate” insert “within paragraph (b) of that subsection”.
- (10) In section 189(1) of that Act (definitions) in the definition of “exempt agreement” after “16” insert “, 16A or 16B”.
- Statements to be provided in relation to regulated credit agreements* 25

## 6 Statements to be provided in relation to fixed-sum credit agreements

After section 77 of the 1974 Act insert—

### “77A Statements to be provided in relation to fixed-sum credit agreements

- (1) The creditor under a regulated agreement for fixed-sum credit—
- (a) shall, within the period of one year beginning with the day after the day on which the agreement is made, give the debtor a statement under this section; and
- (b) after the giving of that statement, shall give the debtor further statements under this section at intervals of not more than one year. 30
- (2) Regulations may make provision about the form and content of statements under this section. 35
- (3) The debtor shall have no liability to pay any sum in connection with the preparation or the giving to him of a statement under this section.
- (4) The creditor is not required to give the debtor any statement under this section once the following conditions are satisfied— 40

- (a) that there is no sum payable under the agreement by the debtor;  
and
  - (b) that there is no sum which will or may become so payable.
- (5) Subsection (6) applies if at a time before the conditions mentioned in subsection (4) are satisfied the creditor fails to give the debtor – 5
- (a) a statement under this section within the period mentioned in subsection (1)(a); or
  - (b) such a statement within the period of one year beginning with the day after the day on which such a statement was last given to him. 10
- (6) Where this subsection applies in relation to a failure to give a statement under this section to the debtor –
- (a) the creditor shall not be entitled to enforce the agreement during the period of non-compliance;
  - (b) the debtor shall have no liability to pay any sum of interest to the extent calculated by reference to the period of non-compliance or to any part of it; and 15
  - (c) the debtor shall have no liability to pay any default sum which (apart from this paragraph) –
    - (i) would have become payable during the period of non-compliance; or 20
    - (ii) would have become payable after the end of that period in connection with a breach of the agreement which occurs during that period (whether or not the breach continues after the end of that period). 25
- (7) In this section ‘the period of non-compliance’ means, in relation to a failure to give a statement under this section to the debtor, the period which –
- (a) begins immediately after the end of the period mentioned in paragraph (a) or (as the case may be) paragraph (b) of subsection (5); and 30
  - (b) ends at the end of the day on which the statement is given to the debtor or on which the conditions mentioned in subsection (4) are satisfied, whichever is earlier.
- (8) This section does not apply in relation to a non-commercial agreement or to a small agreement.” 35

## 7 Further provision relating to statements

- (1) In section 78 of the 1974 Act (duty to give information to debtor under running-account credit agreement) after subsection (4) insert –
- “(4A) Regulations may require a statement under subsection (4) to contain also information in the prescribed terms about the consequences of the debtor – 40
- (a) failing to make payments as required by the agreement; or
  - (b) only making payments of a prescribed description in prescribed circumstances.” 45
- (2) In subsection (7) of that section for “(4) and (5)” substitute “(4) to (5)”.

- (3) In section 185 of that Act (agreement with more than one debtor or hirer) for subsection (2) substitute –
- “(2) Notwithstanding subsection (1)(a), where credit is provided under an agreement to two or more debtors jointly, in performing his duties –
- (a) in the case of fixed-sum credit, under section 77A, or 5
- (b) in the case of running-account credit, under section 78(4), the creditor need not give statements to any debtor who has signed and given to him a notice (a ‘dispensing notice’) authorising him not to comply in his case with section 77A or (as the case may be) 78(4).
- (2A) A dispensing notice given by a debtor is operative from when it is given to the creditor until it is revoked by a further notice given to the creditor by the debtor. 10
- (2B) But subsection (2) does not apply if (apart from this subsection) dispensing notices would be operative in relation to all of the debtors to whom the credit is provided. 15
- (2C) Any dispensing notices operative in relation to an agreement shall cease to have effect if any of the debtors dies.
- (2D) A dispensing notice which is operative in relation to an agreement shall be operative also in relation to any subsequent agreement which, in relation to the earlier agreement, is a modifying agreement.” 20

*Default under regulated agreements*

**8 OFT to prepare information sheets on arrears and default**

At the beginning of Part 7 of the 1974 Act insert –

*“Information sheets*

- 86A OFT to prepare information sheets on arrears and default** 25
- (1) The OFT shall prepare, and give general notice of, an arrears information sheet and a default information sheet.
- (2) The arrears information sheet shall include information to help debtors and hirers who receive notices under section 86B or 86C.
- (3) The default information sheet shall include information to help debtors and hirers who receive default notices. 30
- (4) Regulations may make provision about the information to be included in an information sheet.
- (5) An information sheet takes effect for the purposes of this Part at the end of the period of three months beginning with the day on which general notice of it is given. 35
- (6) If the OFT revises an information sheet after general notice of it has been given, it shall give general notice of the information sheet as revised.

- (7) A revised information sheet takes effect for the purposes of this Part at the end of the period of three months beginning with the day on which general notice of it is given.”

## 9 Notice of sums in arrears under fixed-sum credit agreements etc.

After section 86A of the 1974 Act (inserted by section 8 of this Act) insert— 5

### *“Sums in arrears and default sums*

#### **86B Notice of sums in arrears under fixed-sum credit agreements etc.**

- (1) This section applies where at any time the following conditions are satisfied—
- (a) that the debtor or hirer under an applicable agreement is required to have made at least two payments under the agreement before that time; 10
  - (b) that the total sum paid under the agreement by him is less than the total sum which he is required to have paid before that time;
  - (c) that the amount of the shortfall is no less than the sum of the last two payments which he is required to have made before that time; 15
  - (d) that the creditor or owner is not already under a duty to give him notices under this section in relation to the agreement; and
  - (e) if a judgment has been given in relation to the agreement before that time, that there is no sum still to be paid under the judgment by the debtor or hirer. 20
- (2) The creditor or owner—
- (a) shall, within the period of 14 days beginning with the day on which the conditions mentioned in subsection (1) are satisfied, give the debtor or hirer a notice under this section; and 25
  - (b) after the giving of that notice, shall give him further notices under this section at intervals of not more than six months.
- (3) The duty of the creditor or owner to give the debtor or hirer notices under this section shall cease when either of the conditions mentioned in subsection (4) is satisfied; but if either of those conditions is satisfied before the notice required by subsection (2)(a) is given, the duty shall not cease until that notice is given. 30
- (4) The conditions referred to in subsection (3) are—
- (a) that the debtor or hirer ceases to be in arrears; 35
  - (b) that a judgment is given in relation to the agreement under which a sum is required to be paid by the debtor or hirer.
- (5) For the purposes of subsection (4)(a) the debtor or hirer ceases to be in arrears when—
- (a) no sum, which he has ever failed to pay under the agreement when required, is still owing; 40
  - (b) no default sum, which has ever become payable under the agreement in connection with his failure to pay any sum under the agreement when required, is still owing;

- (c) no sum of interest, which has ever become payable under the agreement in connection with such a default sum, is still owing; and
- (d) no other sum of interest, which has ever become payable under the agreement in connection with his failure to pay any sum under the agreement when required, is still owing. 5
- (6) A notice under this section shall include a copy of the current arrears information sheet under section 86A.
- (7) The debtor or hirer shall have no liability to pay any sum in connection with the preparation or the giving to him of a notice under this section. 10
- (8) Regulations may make provision about the form and content of notices under this section.
- (9) In the case of an applicable agreement under which the debtor or hirer must make all payments he is required to make at intervals of one week or less, this section shall have effect as if in subsection (1)(a) and (c) for ‘two’ there were substituted ‘four’. 15
- (10) In this section ‘applicable agreement’ means an agreement which—
- (a) is a regulated agreement for fixed-sum credit or a regulated consumer hire agreement; and
- (b) is neither a non-commercial agreement nor a small agreement.” 20

## 10 Notice of sums in arrears under running-account credit agreements

After section 86B of the 1974 Act (inserted by section 9 of this Act) insert—

### “86C Notice of sums in arrears under running-account credit agreements

- (1) This section applies where at any time the following conditions are satisfied— 25
- (a) that the debtor under an applicable agreement is required to have made at least two payments under the agreement before that time;
- (b) that the last two payments which he is required to have made before that time have not been made; 30
- (c) that the creditor has not already been required to give a notice under this section in relation to either of those payments; and
- (d) if a judgment has been given in relation to the agreement before that time, that there is no sum still to be paid under the judgment by the debtor. 35
- (2) The creditor shall, no later than the end of the period within which he is next required to give a statement under section 78(4) in relation to the agreement, give the debtor a notice under this section.
- (3) The notice shall include a copy of the current arrears information sheet under section 86A. 40
- (4) The notice may be incorporated in a statement or other notice which the creditor gives the debtor in relation to the agreement by virtue of another provision of this Act.

- (5) The debtor shall have no liability to pay any sum in connection with the preparation or the giving to him of the notice.
- (6) Regulations may make provision about the form and content of notices under this section.
- (7) In this section ‘applicable agreement’ means an agreement which—
  - (a) is a regulated agreement for running-account credit; and
  - (b) is neither a non-commercial agreement nor a small agreement.”

## 11 Failure to give notice of sums in arrears

After section 86C of the 1974 Act (inserted by section 10 of this Act) insert—

### “86D Failure to give notice of sums in arrears 10

- (1) This section applies where the creditor or owner under an agreement is under a duty to give the debtor or hirer notices under section 86B but fails to give him such a notice—
  - (a) within the period mentioned in subsection (2)(a) of that section; or 15
  - (b) within the period of six months beginning with the day after the day on which such a notice was last given to him.
- (2) This section also applies where the creditor under an agreement is under a duty to give the debtor a notice under section 86C but fails to do so before the end of the period mentioned in subsection (2) of that section. 20
- (3) The creditor or owner shall not be entitled to enforce the agreement during the period of non-compliance.
- (4) The debtor or hirer shall have no liability to pay—
  - (a) any sum of interest to the extent calculated by reference to the period of non-compliance or to any part of it; or 25
  - (b) any default sum which (apart from this paragraph)—
    - (i) would have become payable during the period of non-compliance; or
    - (ii) would have become payable after the end of that period in connection with a breach of the agreement which occurs during that period (whether or not the breach continues after the end of that period). 30
- (5) In this section ‘the period of non-compliance’ means, in relation to a failure to give a notice under section 86B or 86C to the debtor or hirer, the period which—
  - (a) begins immediately after the end of the period mentioned in (as the case may be) subsection (1)(a) or (b) or (2); and
  - (b) ends at the end of the day mentioned in subsection (6). 35
- (6) That day is—
  - (a) in the case of a failure to give a notice under section 86B as mentioned in subsection (1)(a) of this section, the day on which the notice is given to the debtor or hirer; 40

- (b) in the case of a failure to give a notice under that section as mentioned in subsection (1)(b) of this section, the earlier of the following –
- (i) the day on which the notice is given to the debtor or hirer; 5
  - (ii) the day on which the condition mentioned in subsection (4)(a) of that section is satisfied;
- (c) in the case of a failure to give a notice under section 86C, the day on which the notice is given to the debtor.”

## 12 Notice of default sums 10

After section 86D of the 1974 Act (inserted by section 11 of this Act) insert –

### “86E Notice of default sums

- (1) This section applies where a default sum becomes payable under a regulated agreement by the debtor or hirer.
- (2) The creditor or owner shall, within the prescribed period after the default sum becomes payable, give the debtor or hirer a notice under this section. 15
- (3) The notice under this section may be incorporated in a statement or other notice which the creditor or owner gives the debtor or hirer in relation to the agreement by virtue of another provision of this Act. 20
- (4) The debtor or hirer shall have no liability to pay interest in connection with the default sum to the extent that the interest is calculated by reference to a period occurring before the 29th day after the day on which the debtor or hirer is given the notice under this section.
- (5) If the creditor or owner fails to give the debtor or hirer the notice under this section within the period mentioned in subsection (2), he shall not be entitled to enforce the agreement until the notice is given to the debtor or hirer. 25
- (6) The debtor or hirer shall have no liability to pay any sum in connection with the preparation or the giving to him of the notice under this section. 30
- (7) Regulations may –
  - (a) provide that this section does not apply in relation to a default sum which is less than a prescribed amount;
  - (b) make provision about the form and content of notices under this section. 35
- (8) This section does not apply in relation to a non-commercial agreement or to a small agreement.”

## 13 Interest on default sums

After section 86E of the 1974 Act (inserted by section 12 of this Act) insert – 40

### “86F Interest on default sums

- (1) This section applies where a default sum becomes payable under a regulated agreement by the debtor or hirer.

- (2) The debtor or hirer shall only be liable to pay interest in connection with the default sum if the interest is simple interest.”

#### 14 Default notices

- (1) In subsections (2) and (3) of section 88 of the 1974 Act (contents and effect of default notice) for “seven” wherever occurring substitute “14”. 5
- (2) In subsection (4) of that section after “it” insert “and any other prescribed matters relating to the agreement”.
- (3) After that subsection insert –
- “(4A) The default notice must also include a copy of the current default information sheet under section 86A.” 10

#### 15 Enforceability of regulated agreements

In section 127 of the 1974 Act (enforcement orders in cases of infringement) subsections (3) to (5) shall cease to have effect.

#### 16 Time orders

- (1) In subsection (1) of section 129 of the 1974 Act (time orders) before paragraph (c) insert – 15
- “(ba) on an application made by a debtor or hirer under this paragraph after he has been given a notice under section 86B or 86C; or”.
- (2) After that section insert – 20

##### “129A Debtor or hirer to give notice of intent etc. to creditor or owner

- (1) A debtor or hirer may make an application under section 129(1)(ba) in relation to a regulated agreement only if –
- (a) following his being given the notice under section 86B or 86C, he gave a notice within subsection (2) to the creditor or owner; and 25
- (b) a period of at least 14 days has elapsed after the day on which he gave that notice to the creditor or owner.
- (2) A notice is within this subsection if it –
- (a) indicates that the debtor or hirer intends to make the application; 30
- (b) indicates that he wants to make a proposal to the creditor or owner in relation to his making of payments under the agreement; and
- (c) gives details of that proposal.” 35
- (3) In section 143(b) of that Act (provision which may be made by rules of court in Northern Ireland) after “129(1)(b)” insert “or (ba)”. 40
- (4) In section 32(1) of the Sheriff Courts (Scotland) Act 1971 (c. 58) (regulation of civil procedure in sheriff court) after paragraph (l) insert –
- “(m) permitting the debtor or hirer in proceedings for –

- (i) a time order under section 129 of the Consumer Credit Act 1974 (time orders), or
  - (ii) variation or revocation, under section 130(6) of that Act (variation and revocation of time orders), of a time order made under section 129, 5

to be represented by a person who is neither an advocate nor a solicitor.”
- (5) In section 32(2B) of the Solicitors (Scotland) Act 1980 (c. 46) (offence for unqualified persons to prepare certain documents) – 10
  - (a) after “represent” insert “– (a)”; 10
  - (b) after “cause” insert –
    - “(b) a debtor or hirer in proceedings for –
    - (i) a time order under section 129 of the Consumer Credit Act 1974 (time orders); or
    - (ii) variation or revocation, under section 130(6) of that Act (variation and revocation of time orders), of a time order made under section 129”. 15

## 17 Interest payable on judgment debts etc.

After section 130 of the 1974 Act insert –

*“Interest* 20

### 130A Interest payable on judgment debts etc.

- (1) If the creditor or owner under a regulated agreement wants to be able to recover from the debtor or hirer post-judgment interest in connection with a sum that is required to be paid under a judgment given in relation to the agreement (the ‘judgment sum’), he – 25
  - (a) after the giving of that judgment, shall give the debtor or hirer a notice under this section (the ‘first required notice’); and
  - (b) after the giving of the first required notice, shall give the debtor or hirer further notices under this section at intervals of not more than six months. 30
- (2) The debtor or hirer shall have no liability to pay post-judgment interest in connection with the judgment sum to the extent that the interest is calculated by reference to a period occurring before the day on which he is given the first required notice.
- (3) If the creditor or owner fails to give the debtor or hirer a notice under this section within the period of six months beginning with the day after the day on which such a notice was last given to the debtor or hirer, the debtor or hirer shall have no liability to pay post-judgment interest in connection with the judgment sum to the extent that the interest is calculated by reference to the whole or to a part of the period which – 35
  - (a) begins immediately after the end of that period of six months; and
  - (b) ends at the end of the day on which the notice is given to the debtor or hirer. 45

- (4) The debtor or hirer shall have no liability to pay any sum in connection with the preparation or the giving to him of a notice under this section.
- (5) A notice under this section may be incorporated in a statement or other notice which the creditor or owner gives the debtor or hirer in relation to the agreement by virtue of another provision of this Act. 5
- (6) Regulations may make provision about the form and content of notices under this section.
- (7) This section does not apply in relation to post-judgment interest which is required to be paid by virtue of any of the following – 10
- (a) section 4 of the Administration of Justice (Scotland) Act 1972;
  - (b) Article 127 of the Judgments Enforcement (Northern Ireland) Order 1981;
  - (c) section 74 of the County Courts Act 1984.
- (8) This section does not apply in relation to a non-commercial agreement or to a small agreement. 15
- (9) In this section ‘post-judgment interest’ means interest to the extent calculated by reference to a period occurring after the giving of the judgment under which the judgment sum is required to be paid.”
- 18 Definition of “default sum”**
- (1) After section 187 of the 1974 Act insert – 20
- “187A Definition of ‘default sum’**
- (1) In this Act ‘default sum’ means, in relation to the debtor or hirer under a regulated agreement, a sum (other than a sum of interest) which is payable by him under the agreement in connection with a breach of the agreement by him. 25
- (2) But a sum is not a default sum in relation to the debtor or hirer simply because, as a consequence of his breach of the agreement, he is required to pay it earlier than he would otherwise have had to.”
- (2) In section 189(1) of that Act (definitions) after the definition of “default notice” insert – 30
- “‘default sum’ has the meaning given by section 187A;”.

*Unfair relationships*

**19 Unfair relationships between creditors and debtors**

After section 140 of the 1974 Act insert –

*“Unfair relationships*

35

**140A Unfair relationships between creditors and debtors**

- (1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement

taken with any related agreement) is unfair to the debtor because of one or more of the following –

- (a) any of the terms of the agreement or of any related agreement;
  - (b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement; 5
  - (c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).
- (2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor). 10
- (3) For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor. 15
- (4) A determination may be made under this section in relation to a relationship notwithstanding that the relationship may have ended.
- (5) An order under section 140B shall not be made in connection with a credit agreement which is an exempt agreement by virtue of section 16(6C).” 20

## 20 Powers of court in relation to unfair relationships

After section 140A of the 1974 Act (inserted by section 19 of this Act) insert –

### “140B Powers of court in relation to unfair relationships

- (1) An order under this section in connection with a credit agreement may do one or more of the following – 25
- (a) require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person); 30
  - (b) require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement; 35
  - (c) reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;
  - (d) direct the return to a surety of any property provided by him for the purposes of a security;
  - (e) otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement; 40
  - (f) alter the terms of the agreement or of any related agreement;
  - (g) direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons. 45
- (2) An order under this section may be made in connection with a credit agreement only –

- 
- (a) on an application made by the debtor or by a surety;
- (b) at the instance of the debtor or a surety in any proceedings in any court to which the debtor and the creditor are parties, being proceedings to enforce the agreement or any related agreement; or 5
- (c) at the instance of the debtor or a surety in any other proceedings in any court where the amount paid or payable under the agreement or any related agreement is relevant.
- (3) An order under this section may be made notwithstanding that its effect is to place on the creditor, or any associate or former associate of his, a burden in respect of an advantage enjoyed by another person. 10
- (4) An order under this section shall not alter the effect of any judgment.
- (5) An application under subsection (2)(a) may only be made –
- (a) in England and Wales, to the county court;
- (b) in Scotland, to the sheriff court; 15
- (c) in Northern Ireland, to the High Court (subject to subsection (7)).
- (6) In Scotland such an application may be made in the sheriff court for the district in which the debtor or surety resides or carries on business.
- (7) In Northern Ireland such an application may be made to the county court if the credit agreement is an agreement under which the creditor provides the debtor with – 20
- (a) fixed-sum credit not exceeding £15,000; or
- (b) running-account credit on which the credit limit does not exceed £15,000. 25
- (8) For the purposes of subsection (7) –
- (a) the definitions of ‘running-account credit’ and ‘fixed-sum credit’ in subsection (1) of section 10 apply (with any appropriate changes) in relation to a credit agreement which is not a consumer credit agreement as if it were a consumer credit agreement; and 30
- (b) subsection (3) of that section applies (with any appropriate changes) for the purpose of determining whether running-account credit is to be taken as not exceeding the sum mentioned in paragraph (b) of subsection (7). 35
- (9) Without prejudice to any provision which may be made by rules of court made in relation to county courts in Northern Ireland, such rules may provide that an application made by virtue of subsection (7) may be made in the county court for the division in which the debtor or surety resides or carries on business. 40
- (10) A party to any proceedings mentioned in subsection (2) shall be entitled, in accordance with rules of court, to have any person who might be the subject of an order under this section made a party to the proceedings.
- (11) If, in any such proceedings, the debtor or a surety alleges that the relationship between the creditor and the debtor is unfair to the debtor, it is for the creditor to prove to the contrary.” 45

## 21 Interpretation of ss. 140A and 140B of the 1974 Act

After section 140B of the 1974 Act (inserted by section 20 of this Act) insert –

### “140C Interpretation of ss. 140A and 140B

- (1) In this section and in sections 140A and 140B ‘credit agreement’ means any agreement between an individual (the ‘debtor’) and any other person (the ‘creditor’) by which the creditor provides the debtor with credit of any amount. 5
- (2) References in this section and in sections 140A and 140B to the creditor or to the debtor under a credit agreement include –
  - (a) references to the person to whom his rights and duties under the agreement have passed by assignment or operation of law; 10
  - (b) where two or more persons are the creditor or the debtor, references to any one or more of those persons.
- (3) The definition of ‘court’ in section 189(1) does not apply for the purposes of sections 140A and 140B. 15
- (4) References in sections 140A and 140B to an agreement related to a credit agreement (the ‘main agreement’) are references to –
  - (a) a credit agreement consolidated by the main agreement;
  - (b) a linked transaction in relation to the main agreement or to a credit agreement within paragraph (a); 20
  - (c) a security provided in relation to the main agreement, to a credit agreement within paragraph (a) or to a linked transaction within paragraph (b).
- (5) In the case of a credit agreement which is not a regulated consumer credit agreement, for the purposes of subsection (4) a transaction shall be treated as being a linked transaction in relation to that agreement if it would have been such a transaction had that agreement been a regulated consumer credit agreement. 25
- (6) For the purposes of this section and section 140B the definitions of ‘security’ and ‘surety’ in section 189(1) apply (with any appropriate changes) in relation to –
  - (a) a credit agreement which is not a consumer credit agreement as if it were a consumer credit agreement; and
  - (b) a transaction which is a linked transaction by virtue of subsection (5). 30
- (7) For the purposes of this section a credit agreement (the ‘earlier agreement’) is consolidated by another credit agreement (the ‘later agreement’) if –
  - (a) the later agreement is entered into by the debtor (in whole or in part) for purposes connected with debts owed by virtue of the earlier agreement; and 40
  - (b) at any time prior to the later agreement being entered into the parties to the earlier agreement included –
    - (i) the debtor under the later agreement; and
    - (ii) the creditor under the later agreement or an associate or a former associate of his. 45

- (8) Further, if the later agreement is itself consolidated by another credit agreement (whether by virtue of this subsection or subsection (7)), then the earlier agreement is consolidated by that other agreement as well.”

## 22 Further provision relating to unfair relationships

- (1) After section 140C of the 1974 Act (inserted by section 21 of this Act) insert— 5
- “140D Advice and information**
- The advice and information published by the OFT under section 229 of the Enterprise Act 2002 shall indicate how the OFT expects sections 140A to 140C of this Act to interact with Part 8 of that Act.”
- (2) In section 16 of that Act (exempt agreements) before subsection (8) insert— 10
- “(7A) Nothing in this section affects the application of sections 140A to 140C.”
- (3) Sections 137 to 140 of that Act (extortionate credit bargains) shall cease to have effect.
- (4) In section 181 of that Act (power to alter monetary limits etc.)— 15
- (a) in subsection (1) before “155(1)” insert “140B(7),”;
- (b) in subsection (2) before “shall” insert “or 140B(7)”.

### *Businesses requiring a licence and consequences of not being licensed*

## 23 Definitions of “consumer credit business” and “consumer hire business”

- In section 189(1) of the 1974 Act (definitions)—
- (a) for the definition of “consumer credit business” substitute— 20
- “‘consumer credit business’ means any business being carried on by a person so far as it comprises or relates to—
- (a) the provision of credit by him, or
- (b) otherwise his being a creditor, 25
- under regulated consumer credit agreements;”
- (b) for the definition of “consumer hire business” substitute—
- “‘consumer hire business’ means any business being carried on by a person so far as it comprises or relates to— 30
- (a) the bailment or (in Scotland) the hiring of goods by him, or
- (b) otherwise his being an owner, 35
- under regulated consumer hire agreements;”.

## 24 Debt administration etc. 35

- (1) In subsection (1) of section 145 of the 1974 Act (types of ancillary credit business) for the “or” after paragraph (d) substitute—
- “(da) debt administration,”.
- (2) After subsection (7) of that section insert—
- “(7A) Subject to section 146(7), debt administration is the taking of steps— 40

- (a) to perform duties under a consumer credit agreement or a consumer hire agreement on behalf of the creditor or owner, or
- (b) to exercise or to enforce rights under such an agreement on behalf of the creditor or owner,
- so far as the taking of such steps is not debt-collecting.” 5
- (3) In subsection (6) of section 146 of that Act (persons who are to be treated as not carrying on types of ancillary credit businesses) –
- (a) after “an agreement if” insert “any of the following conditions is satisfied”;
- (b) for paragraphs (a) and (b) substitute – 10
- “(aa) that he is the creditor or owner under the agreement, or”;
- (c) at the beginning of each of paragraphs (c) to (e) insert “that”.
- (4) After that subsection insert –
- “(7) It is not debt administration for a person to take steps to perform duties, or to exercise or enforce rights, under an agreement on behalf of the creditor or owner if any of the conditions mentioned in subsection (6)(aa) to (e) is satisfied in relation to that person.” 15
- (5) In subsection (3) of section 177 of that Act (saving for registered charges) and in the subsection (3) applied by virtue of subsection (5) of that section for “a business of debt-collecting” substitute “a consumer credit business, a consumer hire business or a business of debt-collecting or debt administration”. 20
- (6) In section 189(1) of that Act (definitions) after the definition of “debt-adjusting” insert – 25
- “‘debt administration’ has the meaning given by section 145(7A);”.

## 25 Credit information services

- (1) In subsection (1) of section 145 of the 1974 Act (types of ancillary credit business) before paragraph (e) insert – 30
- “(db) the provision of credit information services, or”.
- (2) Before subsection (8) of that section insert –
- “(7B) A person provides credit information services if –
- (a) he takes any steps mentioned in subsection (7C) on behalf of an individual; or 35
- (b) he gives advice to an individual in relation to the taking of any such steps.
- (7C) Those steps are steps taken with a view –
- (a) to ascertaining whether a credit information agency (other than that person himself if he is one) holds information relevant to the financial standing of an individual; 40
- (b) to ascertaining the contents of such information held by such an agency;

- (c) to securing the correction of, the omission of anything from, or the making of any other kind of modification of, such information so held; or
- (d) to securing that such an agency which holds such information—
- (i) stops holding it; or 5
  - (ii) does not provide it to another person.
- (7D) In subsection (7C) ‘credit information agency’ means—
- (a) a person carrying on a consumer credit business or a consumer hire business;
  - (b) a person carrying on a business so far as it comprises or relates to credit brokerage, debt-adjusting, debt-counselling, debt-collecting, debt administration or the operation of a credit reference agency; 10
  - (c) a person carrying on a business which would be a consumer credit business except that it comprises or relates to consumer credit agreements being, otherwise than by virtue of section 16(5)(a), exempt agreements; or 15
  - (d) a person carrying on a business which would be a consumer hire business except that it comprises or relates to consumer hire agreements being, otherwise than by virtue of section 16(6), exempt agreements.” 20
- (3) In section 151 of that Act (advertisements relating to ancillary credit businesses)—
- (a) in subsection (2) for “or” substitute “to” and after “liquidation of debts” insert “or to provide credit information services”; 25
  - (b) in subsection (3) for “or debt-counselling” substitute “, debt-counselling or the provision of credit information services”;
  - (c) in subsection (4) after “advertisement” insert “(other than one for credit information services)”.
- (4) In each of the following provisions of that Act for “or debt-counselling” substitute “, debt-counselling or the provision of credit information services”— 30
- (a) section 152(1) (application of sections 52 to 54 to ancillary credit businesses);
  - (b) section 154 (prohibition of canvassing ancillary credit business off trade premises); 35
  - (c) section 156 (regulations about agreements entered into for ancillary credit businesses).
- (5) In section 189(1) of that Act (definitions) after the definition of “credit brokerage” insert— 40
- “‘credit information services’ has the meaning given by section 145(7B).”

## 26 Enforcement of agreements by unlicensed trader etc.

- (1) In section 40 of the 1974 Act (enforcement of regulated agreements made by unlicensed trader) for subsections (1) and (2) substitute— 45
- “(1) A regulated agreement is not enforceable against the debtor or hirer by a person acting in the course of a consumer credit business or a consumer hire business (as the case may be) if that person is not

- licensed to carry on a consumer credit business or a consumer hire business (as the case may be) of a description which covers the enforcement of the agreement.
- (1A) Unless the OFT has made an order under subsection (2) which applies to the agreement, a regulated agreement is not enforceable against the debtor or hirer if— 5
- (a) it was made by the creditor or owner in the course of a consumer credit business or a consumer hire business (as the case may be); and
  - (b) at the time the agreement was made he was not licensed to carry on a consumer credit business or a consumer hire business (as the case may be) of a description which covered the making of the agreement. 10
- (2) Where—
- (a) during any period a person (the ‘trader’) has made regulated agreements in the course of a consumer credit business or a consumer hire business (as the case may be), and 15
  - (b) during that period he was not licensed to carry on a consumer credit business or a consumer hire business (as the case may be) of a description which covered the making of those agreements, 20
- he or his successor in title may apply to the OFT for an order that the agreements are to be treated for the purposes of subsection (1A) as if he had been licensed as required.”
- (2) In subsection (4) of that section—
- (a) in paragraph (a) for “regulated agreements made by the trader during that period” substitute “the regulated agreements in question”; 25
  - (b) in paragraph (b) after “covering” insert “the making of those agreements during”;
  - (c) in paragraph (c) for “obtain a licence” substitute “be licensed as required”. 30
- (3) In subsection (6) of that section after “This section” insert “(apart from subsection (1))”.
- (4) After that subsection insert—
- “(7) Subsection (1) does not apply to the enforcement of a regulated agreement by a consumer credit EEA firm unless that firm is precluded from enforcing it as a result of a prohibition or restriction mentioned in subsection (6)(a) or (b). 35
  - (8) This section (apart from subsection (1)) does not apply to a regulated agreement made by a person if by virtue of section 21(2) or (3) he was not required to be licensed to make the agreement. 40
  - (9) Subsection (1) does not apply to the enforcement of a regulated agreement by a person if by virtue of section 21(2) or (3) he is not required to be licensed to enforce the agreement.”

*Applications for licences and fitness to hold a licence etc.***27 Charge on applicants for licences etc.**

(1) After section 6 of the 1974 Act insert –

**“6A Charge on applicants for licences etc.**

(1) *An applicant for a licence, or for the renewal of a licence, shall pay the OFT a charge towards the costs of carrying out its functions under this Act.* 5

(2) *The amount of the charge payable by an applicant shall be determined in accordance with provision made by the OFT by general notice.*

(3) The provision that may be made by the OFT under subsection (2) includes – 10

(a) different provision in relation to persons of different descriptions;

(b) provision for no charge at all to be payable by persons of specified descriptions.

(4) The approval of the Secretary of State and the Treasury is required for a general notice under subsection (2).” 15

(2) In section 6 of that Act (which contains provision relating to applications) after subsection (2) insert –

“(2A) The application must also be accompanied –

(a) in the case of an application for a licence or for the renewal of a licence, by the charge payable by virtue of section 6A; 20

(b) in any other case, by the specified fee.”

(3) In section 191(1)(a) of that Act (special provisions as to Northern Ireland) after “notices” insert “, charges”.

**28 Applications for standard licences** 25

After section 24 of the 1974 Act insert –

**“24A Applications for standard licences**

(1) An application for a standard licence shall, in relation to each type of business which is covered by the application, state whether the applicant is applying – 30

(a) for the licence to cover the carrying on of that type of business with no limitation; or

(b) for the licence to cover the carrying on of that type of business only so far as it falls within one or more descriptions of business. 35

(2) An application within subsection (1)(b) in relation to a type of business shall set out the description or descriptions of business in question.

(3) References in this Part to a type of business are references to a type of business within subsection (4).

(4) The types of business within this subsection are – 40

(a) a consumer credit business;

- (b) a consumer hire business;
  - (c) a business so far as it comprises or relates to credit brokerage;
  - (d) a business so far as it comprises or relates to debt-adjusting;
  - (e) a business so far as it comprises or relates to debt-counselling;
  - (f) a business so far as it comprises or relates to debt-collecting; 5
  - (g) a business so far as it comprises or relates to debt administration;
  - (h) a business so far as it comprises or relates to the provision of credit information services;
  - (i) a business so far as it comprises or relates to the operation of a credit reference agency. 10
- (5) The OFT –
- (a) shall by general notice specify the descriptions of business which can be set out in an application for the purposes of subsection (2) in relation to a type of business; 15
  - (b) may by general notice provide that applications within subsection (1)(b) cannot be made in relation to one or more of the types of business within subsection (4)(c) to (i).
- (6) The power of the OFT under subsection (5) includes power to make different provision for different cases or classes of case.” 20

## 29 Issue of standard licences

- (1) In section 25 of the 1974 Act (licensee to be a fit person) for subsection (1) substitute –
- “(1) If an applicant for a standard licence –
- (a) makes an application within section 24A(1)(a) in relation to a type of business, and 25
  - (b) satisfies the OFT that he is a fit person to carry on that type of business with no limitation,
- he shall be entitled to be issued with a standard licence covering the carrying on of that type of business with no limitation. 30
- (1AA) If such an applicant –
- (a) makes an application within subsection (1)(b) of section 24A in relation to a type of business, and
  - (b) satisfies the OFT that he is a fit person to carry on that type of business so far as it falls within the description or descriptions of business set out in his application in accordance with subsection (2) of that section, 35
- he shall be entitled to be issued with a standard licence covering the carrying on of that type of business so far as it falls within the description or descriptions in question. 40
- (1AB) If such an applicant makes an application within section 24A(1)(a) or (b) in relation to a type of business but fails to satisfy the OFT as mentioned in subsection (1) or (1AA) (as the case may be), he shall nevertheless be entitled to be issued with a standard licence covering the carrying on of that type of business so far as it falls within one or more descriptions of business if – 45

- (a) he satisfies the OFT that he is a fit person to carry on that type of business so far as it falls within the description or descriptions in question;
- (b) he could have applied for the licence to be limited in that way; and 5
- (c) the licence would not cover any activity which was not covered by his application.
- (1AC) In this section ‘description of business’ means, in relation to a type of business, a description of business specified in a general notice under section 24A(5)(a). 10
- (1AD) An applicant shall not, by virtue of this section, be issued with a licence unless he satisfies the OFT that the name or names under which he would be licensed is or are not misleading or otherwise undesirable.”
- (2) For subsection (2) of that section substitute –
- “(2) In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things) – 15
- (a) the applicant’s skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses; 20
- (b) such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;
- (c) practices and procedures that the applicant proposes to implement in connection with any such business; 25
- (d) evidence of the kind mentioned in subsection (2A).
- (2A) That evidence is evidence tending to show that the applicant, or any of the applicant’s employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has – 30
- (a) committed any offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under – 35
- (i) this Act;
- (ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;
- (iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals; 40
- (c) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);
- (d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or 45
- (e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not).”

- (3) In subsection (3) of that section for “(2)” substitute “(2A)”.

### 30 Guidance on fitness test

After section 25 of the 1974 Act insert –

#### “25A Guidance on fitness test

- (1) The OFT shall prepare and publish guidance in relation to how it determines, or how it proposes to determine, whether persons are fit persons as mentioned in section 25. 5
- (2) If the OFT revises the guidance at any time after it has been published, the OFT shall publish it as revised.
- (3) The guidance shall be published in such manner as the OFT thinks fit for the purpose of bringing it to the attention of those likely to be affected by it. 10
- (4) In preparing or revising the guidance the OFT shall consult such persons as it thinks fit.
- (5) In carrying out its functions under this Part the OFT shall have regard to the guidance as most recently published.” 15

### 31 Variation of standard licences etc.

- (1) In section 30 of the 1974 Act (variation of licences by request) for subsection (1) substitute –

- “(1) If it thinks fit, the OFT may by notice to the licensee under a standard licence – 20
- (a) in the case of a licence which covers the carrying on of a type of business only so far as it falls within one or more descriptions of business, vary the licence by – 25
- (i) removing that limitation;
- (ii) adding a description of business to that limitation; or
- (iii) removing a description of business from that limitation;
- (b) in the case of a licence which covers the carrying on of a type of business with no limitation, vary the licence so that it covers the carrying on of that type of business only so far as it falls within one or more descriptions of business; 30
- (c) vary the licence so that it no longer covers the carrying on of a type of business at all;
- (d) vary the licence so that a type of business the carrying on of which is not covered at all by the licence is covered either – 35
- (i) with no limitation; or
- (ii) only so far as it falls within one or more descriptions of business; or
- (e) vary the licence in any other way except for the purpose of varying the descriptions of activities covered by the licence. 40
- (1A) The OFT may vary a licence under subsection (1) only in accordance with an application made by the licensee.

- (1B) References in this section to a description of business in relation to a type of business –
- (a) are references to a description of business specified in a general notice under section 24A(5)(a); and
  - (b) in subsection (1)(a) (apart from sub-paragraph (ii)) include references to a description of business that was, but is no longer, so specified.” 5
- (2) In subsection (1) of section 31 of that Act (compulsory variation of licences) for “the licence should be varied” substitute “it should take steps mentioned in subsection (1A)”.
- (3) After that subsection insert –
- “(1A) Those steps are –
- (a) in the case of a standard licence, steps mentioned in section 30(1)(a)(ii) and (iii), (b), (c) and (e);
  - (b) in the case of a group licence, the varying of terms of the licence.” 15
- (4) After subsection (7) of that section insert –
- “(8) Subsection (1) shall have effect in relation to a standard licence as if an application could be made for the renewal or further renewal of the licence on the same terms (except as to expiry) even if such an application could not be made because of provision made in a general notice under section 24A(5). 20
- (9) Accordingly, in applying subsection (1AA) of section 25 in relation to the licence for the purposes of this section, the OFT shall treat references in that subsection to the description or descriptions of business in relation to a type of business as references to the description or descriptions of business included in the licence in relation to that type of business, notwithstanding that provision under section 24A(5).” 25
- (5) In section 32 of that Act (suspension and revocation of licences) after subsection (8) insert – 30
- “(9) The OFT has no power to revoke or to suspend a standard licence simply because, by virtue of provision made in a general notice under section 24A(5), a person cannot apply for the renewal of such a licence on terms which are the same as the terms of the licence in question.”
- 32 Winding-up of standard licensee’s business 35**
- (1) After section 34 of the 1974 Act insert –
- “34A Winding-up of standard licensee’s business**
- (1) If it thinks fit, the OFT may, for the purpose of enabling the licensee’s business, or any part of his business, to be transferred or wound up, include as part of a determination to which subsection (2) applies provision authorising the licensee to carry on for a specified period – 40
- (a) specified activities, or
  - (b) activities of specified descriptions,
- which, because of that determination, the licensee will no longer be licensed to carry on. 45

- (2) This subsection applies to the following determinations –
- (a) a determination to refuse to renew a standard licence in accordance with the terms of the application for its renewal;
  - (b) a determination to vary such a licence under section 31;
  - (c) a determination to suspend or revoke such a licence. 5
- (3) Such provision –
- (a) may specify different periods for different activities or activities of different descriptions;
  - (b) may provide for persons other than the licensee to carry on activities under the authorisation; 10
  - (c) may specify requirements which must be complied with by a person carrying on activities under the authorisation in relation to those activities;
- and, if a requirement specified under paragraph (c) is not complied with, the OFT may by notice to a person carrying on activities under the authorisation terminate the authorisation (in whole or in part) from a specified date. 15
- (4) Activities carried on under an authorisation shall be treated for the purposes of sections 39(1), 40, 148 and 149 as if carried on under a standard licence.” 20
- (2) In section 29 of that Act (renewal of licences) after subsection (3) insert –
- “(3A) In its application to the renewal of standard licences by virtue of subsection (3) of this section, section 27(1) shall have effect as if for paragraph (b) there were substituted –
- ‘(b) invite the applicant to submit to the OFT in accordance with section 34 representations – 25
    - (i) in support of his application; and
    - (ii) about the provision (if any) that should be included under section 34A as part of the determination were the OFT to refuse the application or grant it in terms different from those applied for.” 30
- (3) Subsection (5) of that section (which gives the OFT power to give directions allowing licensees to carry agreements into effect) shall cease to have effect.
- (4) In section 31(2) of that Act (procedure to be followed in case of proposed compulsory variation of a standard licence) for paragraph (b) substitute – 35
- “(b) invite him to submit to the OFT in accordance with section 34 representations –
    - (i) as to the proposed variations; and
    - (ii) about the provision (if any) that should be included under section 34A as part of the determination were the OFT to vary the licence.” 40
- (5) In subsection (2) of section 32 of that Act (procedure to be followed in case of proposed revocation or suspension of a standard licence) for paragraph (b) substitute –
- “(b) invite him to submit to the OFT in accordance with section 34 representations – 45
    - (i) as to the proposed revocation or suspension; and

- (ii) about the provision (if any) that should be included under section 34A as part of the determination were the OFT to revoke or suspend the licence.”
- (6) Subsection (5) of that section (which gives the OFT power to give directions allowing licensees to carry agreements into effect) shall cease to have effect. 5

### 33 Consequential amendments relating to ss. 27 to 32

- (1) In section 21(1) of the 1974 Act (businesses needing a licence) for “consumer hire business” substitute “a consumer hire business or an ancillary credit business”.
- (2) In section 22 of that Act (standard and group licences) after subsection (5) insert – 10
  - “(5A) A group licence to carry on a business may limit the activities it covers in any way the OFT thinks fit.”
- (3) In subsection (1) of section 23 of that Act (authorisation of specific activities) for “this section” substitute “the terms of the licence”. 15
- (4) In subsection (4) of that section for “Regulations may be made specifying” substitute “The OFT may by general notice specify”.
- (5) After section 27 of that Act insert –

#### “27A Consumer credit EEA firms

- (1) Where – 20
  - (a) a consumer credit EEA firm makes an application for a standard licence, and
  - (b) the activities covered by the application are all permitted activities,
 the OFT shall refuse the application. 25
- (2) Subsection (3) applies where –
  - (a) a consumer credit EEA firm makes an application for a standard licence; and
  - (b) some (but not all) of the activities covered by the application are permitted activities. 30
- (3) In order to be entitled to be issued with a standard licence in accordance with section 25(1) to (1AB) in relation to a type of business, the firm need not satisfy the OFT that it is a fit person to carry on that type of business so far as it would involve any of the permitted activities covered by the application. 35
- (4) A standard licence held by a consumer credit EEA firm does not at any time authorise the carrying on of an activity which is a permitted activity at that time.
- (5) In this section ‘permitted activity’ means, in relation to a consumer credit EEA firm, an activity for which the firm has, or could obtain, permission under paragraph 15 of Schedule 3 to the Financial Services and Markets Act 2000.” 40

- (6) In the Table in section 41 of that Act (appeals) in the entry relating to “refusal to make order under section 40(2) in accordance with terms of application” after “40(2)” insert “, 148(2) or 149(2)”.
- (7) In sections 194(3) and 203(4) of the 2000 Act (powers of intervention and prohibition) for “(a) to (d) of section 25(2)” substitute “(a) to (e) of section 25(2A)”. 5
- (8) In section 203(10) of that Act (definitions relating to Consumer Credit Act businesses) in the definition of “associate” for “25(2)” substitute “25(2A)”.
- (9) In paragraph 15(3) of Schedule 3 to that Act (EEA passport rights) for “21, 39(1) and 147(1)” substitute “21 and 39(1)”. 10
- (10) In paragraph 23 of that Schedule in sub-paragraph (1) for “Sub-paragraph (2) applies” substitute “Sub-paragraphs (2) and (2A) apply”.
- (11) In sub-paragraph (2) of that paragraph for “(a) to (d) of section 25(2)” substitute “(a) to (e) of section 25(2A)”.
- (12) After that sub-paragraph insert – 15
- “(2A) The Authority may also exercise its power under section 45 in respect of the firm if the Office of Fair Trading has informed the Authority that it has concerns about any of the following –
- (a) the firm’s skills, knowledge and experience in relation to Consumer Credit Act businesses; 20
- (b) such skills, knowledge and experience of other persons who are participating in any Consumer Credit Act business being carried on by the firm;
- (c) practices and procedures that the firm is implementing in connection with any such business.” 25

*Duration of licences and charges*

**34 Definite and indefinite licences**

- (1) In subsection (1) of section 22 of the 1974 Act (definitions of standard and group licences) –
- (a) in paragraph (a) for “during the prescribed period” substitute “whilst the licence is in effect”; 30
- (b) in paragraph (b) for the words from “during” to “indefinitely” substitute “whilst the licence is in effect”.
- (2) After that subsection insert –
- “(1A) The terms of a licence shall specify – 35
- (a) whether it has effect indefinitely or only for a limited period; and
- (b) if it has effect for a limited period, that period.
- (1B) For the purposes of subsection (1A)(b) the period specified shall be such period not exceeding the prescribed period as the OFT thinks fit. 40
- (1C) A standard licence shall have effect indefinitely unless –
- (a) the application for its issue requests that it have effect for a limited period only; or

- (b) the OFT otherwise thinks there is good reason why it should have effect for such a period only.
- (1D) A group licence shall have effect for a limited period only unless the OFT thinks there is good reason why it should have effect indefinitely.”
- (3) In section 29 of that Act (renewal of licences) – 5
- (a) in subsection (1) after “standard licence” insert “of limited duration”;
- (b) in subsection (4) for “in force” substitute “to have effect”.
- (4) In subsection (1) of section 31 of that Act (compulsory variation of licences) after “that time” insert “(assuming, in the case of a licence which has effect indefinitely, that it were a licence of limited duration)”.
- (5) Before subsection (2) of that section insert – 10
- “(1B) The OFT shall also proceed as follows if, having regard to section 22(1B) to (1D), it is of the opinion –
- (a) that a licence which has effect indefinitely should have its duration limited; or 15
- (b) in the case of a licence of limited duration, that the period during which it has effect should be shortened.”
- (6) In section 32(1) of that Act (suspension and revocation of licences) after “that time” insert “(assuming, in the case of a licence which has effect indefinitely, that it were a licence of limited duration)”.
- (7) In section 35(1)(b) of that Act (particulars to be kept in register maintained by OFT) for “force” substitute “effect”.
- (8) In section 37 of that Act (circumstances giving rise to termination of a licence) after subsection (1) insert – 20
- “(1A) A licence terminates if the licensee gives the OFT a notice under subsection (1B). 25
- (1B) A notice under this subsection shall –
- (a) be in such form as the OFT may by general notice specify;
- (b) contain such information as may be so specified;
- (c) be accompanied by the licence or give reasons as to why it is not accompanied by the licence; and 30
- (d) be signed by or on behalf of the licensee.”
- (9) In subsection (3)(a) of that section after “(1)” insert “or (1A)”.
- 35 Charges for indefinite licences**
- After section 28 of the 1974 Act insert – 35
- “Charges for indefinite licences*
- 28A Charges to be paid by licensees etc. before end of payment periods**
- (1) *The licensee under a standard licence which has effect indefinitely shall, before the end of each payment period of his, pay the OFT a charge towards the costs of carrying out its functions under this Act.* 40

- (2) *The original applicant for a group licence which has effect indefinitely shall, before the end of each payment period of his, pay the OFT such a charge.*
- (3) *The amount of the charge payable by a person under subsection (1) or (2) before the end of a payment period shall be determined in accordance with provision which –* 5
- (a) *is made by the OFT by general notice; and*
- (b) *is current on such day as may be determined in accordance with provision made by regulations.*
- (4) *The provision that may be made by the OFT under subsection (3)(a) includes –* 10
- (a) *different provision in relation to persons of different descriptions (including persons whose payment periods end at different times);*
- (b) *provision for no charge at all to be payable by persons of specified descriptions.* 15
- (5) *The approval of the Secretary of State and the Treasury is required for a general notice under subsection (3)(a).*
- (6) *For the purposes of this section a person’s payment periods are to be determined in accordance with provision made by regulations.”*
- 36 Extension of period to pay charge for indefinite licence** 20
- After section 28A of the 1974 Act (inserted by section 35 of this Act) insert –
- “28B Extension of period to pay charge under s. 28A**
- (1) *A person who is required under section 28A to pay a charge before the end of a period may apply once to the OFT for that period to be extended.* 25
- (2) *The application shall be made before such day as may be determined in accordance with provision made by the OFT by general notice.*
- (3) *If the OFT is satisfied that there is a good reason –*
- (a) *why the applicant has not paid that charge prior to his making of the application, and* 30
- (b) *why he cannot pay that charge before the end of that period, it may, if it thinks fit, by notice to him extend that period by such time as it thinks fit having regard to that reason.*
- (4) *The power of the OFT under this section to extend a period in relation to a charge –* 35
- (a) *includes the power to extend the period in relation to a part of the charge only;*
- (b) *may be exercised even though the period has ended.”*
- 37 Failure to pay charge for indefinite licence**
- (1) After section 28B of the 1974 Act (inserted by section 36 of this Act) insert – 40
- “28C Failure to pay charge under s. 28A**
- (1) *This section applies if a person (the ‘defaulter’) fails to pay a charge –*

- (a) before the end of a period (the ‘payment period’) as required under section 28A; or
- (b) where the payment period is extended under section 28B, before the end of the payment period as extended (subject to subsection (2)). 5
- (2) Where the payment period is extended under section 28B in relation to a part of the charge only, this section applies if the defaulter fails—
- (a) to pay so much of the charge as is not covered by the extension before the end of the payment period disregarding the extension; or 10
- (b) to pay so much of the charge as is covered by the extension before the end of the payment period as extended.
- (3) Subject to subsection (4), if the charge is a charge under section 28A(1), the defaulter’s licence terminates.
- (4) If the defaulter has applied to the OFT under section 28B for the payment period to be extended and that application has not been determined— 15
- (a) his licence shall not terminate before the application has been determined and the OFT has notified him of the determination; and 20
- (b) if the OFT extends the payment period on that application, this section shall have effect accordingly.
- (5) If the charge is a charge under section 28A(2), the charge shall be recoverable by the OFT.”
- (2) In section 35(1)(b) of that Act (particulars to be kept in register maintained by OFT) after “revoked” insert “or terminated by section 28C”. 25

*Further powers of OFT to regulate conduct of licensees etc.*

### **38 Power of OFT to impose requirements on licensees**

After section 33 of the 1974 Act insert—

*“Further powers of OFT to regulate conduct of licensees etc. 30*

#### **33A Power of OFT to impose requirements on licensees**

- (1) This section applies where the OFT is dissatisfied with any matter in connection with—
- (a) a business being carried on, or which has been carried on, by a licensee or by an associate or a former associate of a licensee; 35
- (b) a proposal to carry on a business which has been made by a licensee or by an associate or a former associate of a licensee; or
- (c) any conduct not covered by paragraph (a) or (b) of a licensee or of an associate or a former associate of a licensee.
- (2) The OFT may by notice to the licensee require him to do or not to do (or to cease doing) anything specified in the notice for purposes connected with— 40
- (a) addressing the matter with which the OFT is dissatisfied; or

- (b) securing that matters of the same or a similar kind do not arise.
- (3) A requirement imposed under this section on a licensee shall only relate to a business which the licensee is carrying on, or is proposing to carry on, under the licence under which he is a licensee.
- (4) Such a requirement may be framed by reference to a named person other than the licensee. 5
- (5) For the purposes of subsection (1) it is immaterial whether the matter with which the OFT is dissatisfied arose before or after the licensee became a licensee.
- (6) If— 10
- (a) a person makes an application for a standard licence, and
- (b) while dealing with that application the OFT forms the opinion that, if such a licence were to be issued to that person, it would be minded to impose on him a requirement under this section, the OFT may, before issuing such a licence to that person, do (in whole or in part) anything that it must do under section 33D or 34(1) or (2) in relation to the imposing of the requirement. 15
- (7) In this section ‘associate’, in addition to the persons specified in section 184, includes a business associate.”
- 39 Power of OFT to impose requirements on supervisory bodies 20**
- After section 33A of the 1974 Act (inserted by section 38 of this Act) insert—
- “33B Power of OFT to impose requirements on supervisory bodies**
- (1) This section applies where the OFT is dissatisfied with the way in which a responsible person in relation to a group licence—
- (a) is regulating or otherwise supervising, or has regulated or otherwise supervised, persons who are licensees under that licence; or 25
- (b) is proposing to regulate or otherwise to supervise such persons.
- (2) The OFT may by notice to the responsible person require him to do or not to do (or to cease doing) anything specified in the notice for purposes connected with— 30
- (a) addressing the matters giving rise to the OFT’s dissatisfaction; or
- (b) securing that matters of the same or a similar kind do not arise.
- (3) A requirement imposed under this section on a responsible person in relation to a group licence shall only relate to practices and procedures for regulating or otherwise supervising licensees under the licence in connection with their carrying on of businesses under the licence. 35
- (4) For the purposes of subsection (1) it is immaterial whether the matters giving rise to the OFT’s dissatisfaction arose before or after the issue of the group licence in question. 40
- (5) If—
- (a) a person makes an application for a group licence, and

- (b) while dealing with that application the OFT forms the opinion that, if such a licence were to be issued to that person, it would be minded to impose on him a requirement under this section, the OFT may, before issuing such a licence to that person, do (in whole or in part) anything that it must do under section 33D or 34(1) or (2) in relation to the imposing of the requirement. 5
- (6) For the purposes of this Part a person is a responsible person in relation to a group licence if –
- (a) he is the original applicant for it; and
- (b) he has a responsibility (whether by virtue of an enactment, an agreement or otherwise) for regulating or otherwise supervising persons who are licensees under the licence.” 10

#### 40 Supplementary provision relating to requirements

After section 33B of the 1974 Act (inserted by section 39 of this Act) insert –

- “33C Supplementary provision relating to requirements” 15**
- (1) A notice imposing a requirement under section 33A or 33B may include provision about the time at or by which, or the period during which, the requirement is to be complied with.
- (2) A requirement imposed under section 33A or 33B shall not have effect after the licence by reference to which it is imposed has itself ceased to have effect. 20
- (3) A person shall not be required under section 33A or 33B to compensate, or otherwise to make amends to, another person.
- (4) The OFT may by notice to the person on whom a requirement has been imposed under section 33A or 33B vary or revoke the requirement (including any provision made under subsection (1) of this section in relation to it) with effect from such date as may be specified in the notice. 25
- (5) The OFT may exercise its power under subsection (4) in relation to a requirement either on its own motion or on the application of a person falling within subsection (6) or (7) in relation to the requirement. 30
- (6) A person falls within this subsection in relation to a requirement if he is the person on whom the requirement is imposed.
- (7) A person falls within this subsection in relation to a requirement if – 35
- (a) the requirement is imposed under section 33A;
- (b) he is not the person on whom the requirement is imposed;
- (c) the requirement is framed by reference to him by name; and
- (d) the effect of the requirement is –
- (i) to prevent him being an employee of the person on whom the requirement is imposed; 40
- (ii) to restrict the activities that he may engage in as an employee of that person; or
- (iii) otherwise to prevent him from doing something, or to restrict his doing something, in connection with a business being carried on by that person.” 45

**41 Procedure in relation to requirements**

After section 33C of the 1974 Act (inserted by section 40 of this Act) insert—

**“33D Procedure in relation to requirements**

- (1) Before making a determination—
  - (a) to impose a requirement on a person under section 33A or 33B, 5
  - (b) to refuse an application under section 33C(5) in relation to a requirement imposed under either of those sections, or
  - (c) to vary or to revoke a requirement so imposed,
 the OFT shall proceed as follows.
- (2) The OFT shall give a notice to every person to whom subsection (3) applies in relation to the determination— 10
  - (a) informing him, with reasons, that it is minded to make the determination; and
  - (b) inviting him to submit to it representations as to the determination under section 34. 15
- (3) This subsection applies to a person in relation to the determination if he falls within, or as a consequence of the determination would fall within, section 33C(6) or (7) in relation to the requirement in question.
- (4) This section does not require the OFT to give a notice to a person if the determination in question is in the same terms as a proposal made to the OFT by that person (whether as part of an application under this Part or otherwise).” 20

**42 Guidance on requirements**

After section 33D of the 1974 Act (inserted by section 41 of this Act) insert—

**“33E Guidance on requirements 25**

- (1) The OFT shall prepare and publish guidance in relation to how it exercises, or how it proposes to exercise, its powers under sections 33A to 33C.
- (2) If the OFT revises the guidance at any time after it has been published, the OFT shall publish it as revised. 30
- (3) The guidance shall be published in such manner as the OFT thinks fit for the purpose of bringing it to the attention of those likely to be affected by it.
- (4) In preparing or revising the guidance the OFT shall consult such persons as it thinks fit. 35
- (5) In exercising its powers under sections 33A to 33C the OFT shall have regard to the guidance as most recently published.”

**43 Consequential amendments relating to requirements**

- (1) In section 23 of the 1974 Act (authorisation of specific activities by licence) after

subsection (4) insert –

- “(5) An activity does not cease to be covered by a licence simply because it involves a failure to comply with a requirement imposed under section 33A or 33B.”
- (2) In section 35(1) of that Act (particulars to be kept in register maintained by OFT) after paragraph (b) insert – 5
- “(ba) requirements imposed under section 33A or 33B which are in effect or which have been in effect, with details of any variation of such a requirement;”.
- (3) In the Table in section 41 of that Act (appeals) after the entry relating to “refusal to end suspension of licence in accordance with terms of application” insert the following entry – 10
- |   |   |    |
|---|---|----|
| “Determination –  | A person who falls within   |    |
| (a) to impose a requirement under section 33A or 33B;   | section 33C(6) or (7) in relation to the requirement unless the OFT was not required to give a notice to him in relation to the determination by virtue of section 33D(4).” | 15 |
| (b) to refuse an application under section 33C(5) in relation to a requirement imposed under either of those sections; or |   | 20 |
| (c) to vary or revoke a requirement so imposed.   |   | 25 |

*Powers and duties in relation to information*

**44 Provision of information etc. by applicants**

- (1) In subsection (2) of section 6 of the 1974 Act (which contains provision relating to applications) – 30
- (a) for “particulars” substitute “information and documents”;
- (b) for “by” in the second place where it occurs substitute “or describe in a”.
- (2) For subsection (3) of that section substitute –
- “(3) Where the OFT receives an application, it may by notice to the applicant at any time before the determination of the application require him to provide such information or documents relevant to the application as may be specified or described in the notice.” 35
- (3) After subsection (4) of that section insert –
- “(5) Subsection (6) applies where a general notice under subsection (2) comes into effect – 40
- (a) after an application has been made; but
- (b) before its determination.

- (6) The applicant shall, within such period as may be specified in the general notice, provide the OFT with any information or document—
- (a) which he has not previously provided in relation to the application by virtue of this section;
  - (b) which he would have been required to provide with his application had it been made after the general notice came into effect; and
  - (c) which the general notice requires to be provided for the purposes of this subsection.
- (7) An applicant shall notify the OFT, giving details, if before his application is determined—
- (a) any information or document provided by him in relation to the application by virtue of this section is, to any extent, superseded or otherwise affected by a change in circumstances; or
  - (b) he becomes aware of an error in or omission from any such information or document.
- (8) A notification for the purposes of subsection (7) shall be given within the period of 28 days beginning with the day on which (as the case may be)—
- (a) the information or document is superseded;
  - (b) the change in circumstances occurs; or
  - (c) the applicant becomes aware of the error or omission.
- (9) Subsection (7) does not require an applicant to notify the OFT about—
- (a) anything of which he is required to notify it under section 36; or
  - (b) an error in or omission from any information or document which is a clerical error or omission not affecting the substance of the information or document.”

#### 45 Duties to notify changes in information etc.

After section 36 of the 1974 Act insert—

- “36A Further duties to notify changes etc.**
- (1) Subsections (2) to (4) apply where a general notice under section 6(2) comes into effect.
- (2) A person who is the licensee under a standard licence or who is the original applicant for a group licence shall, in relation to each relevant application which he has made and which was determined before the general notice came into effect, provide the OFT with any information or document—
- (a) which he would have been required to provide with the application had the application been made after the general notice came into effect; and
  - (b) which the general notice requires to be provided for the purposes of this subsection.
- (3) Any such information or document shall be provided within such period as may be specified in the general notice.
- (4) Subsection (2) does not require a person to provide any information or document—

- (a) which he provided in relation to the application by virtue of section 6;
- (b) which he has previously provided in relation to the application by virtue of this section; or
- (c) which he would have been required to provide in relation to the application by virtue of subsection (5) but for subsection (6). 5
- (5) A person who is the licensee under a standard licence or who is the original applicant for a group licence shall, in relation to each relevant application which he has made, notify the OFT giving details if, after the application is determined, any information or document which he – 10
- (a) provided in relation to the application by virtue of section 6, or
- (b) has so provided by virtue of this section,
- is, to any extent, superseded or otherwise affected by a change in circumstances. 15
- (6) Subsection (5) does not require a person to notify the OFT about a matter unless it falls within a description of matters specified by the OFT in a general notice.
- (7) A description may be specified for the purposes of subsection (6) only if the OFT is satisfied that the matters which would fall within that description are matters which would be relevant to the question of – 20
- (a) whether, having regard to section 25(2), a person is a fit person to carry on a business under a standard licence; or
- (b) whether the public interest is better served by a group licence remaining in effect than by obliging the licensees under it to apply separately for standard licences. 25
- (8) A person who is the licensee under a standard licence or who is the original applicant for a group licence shall, in relation to each relevant application which he has made, notify the OFT about every error or omission – 30
- (a) in or from any information or document which he provided by virtue of section 6, or which he has provided by virtue of this section, in relation to the application; and
- (b) of which he becomes aware after the determination of the application. 35
- (9) A notification for the purposes of subsection (5) or (8) shall be given within the period of 28 days beginning with the day on which (as the case may be) –
- (a) the information or document is superseded;
- (b) the change in circumstances occurs; or 40
- (c) the licensee or the original applicant becomes aware of the error or omission.
- (10) This section does not require a person to notify the OFT about –
- (a) anything of which he is required to notify it under section 36; or
- (b) an error in or omission from any information or document which is a clerical error or omission not affecting the substance of the information or document. 45

- (11) In this section ‘relevant application’ means, in relation to a person who is the licensee under a standard licence or who is the original applicant for a group licence –
- (a) the original application for the licence; or
  - (b) an application for its renewal or for its variation.”

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#### 46 Power of OFT to require information generally

After section 36A of the 1974 Act (inserted by section 45 of this Act) insert –

##### “36B Power of OFT to require information generally

- (1) The OFT may by notice to a person require him –
- (a) to provide such information as may be specified or described in the notice; or
  - (b) to produce such documents as may be so specified or described.
- (2) The notice shall set out the reasons why the OFT requires the information or documents to be provided or produced.
- (3) The information or documents shall be provided or produced –
- (a) before the end of such reasonable period as may be specified in the notice; and
  - (b) at such place as may be so specified.
- (4) A requirement may be imposed under subsection (1) on a person who is –
- (a) the licensee under a standard licence, or
  - (b) the original applicant for a group licence,
- only if the provision or production of the information or documents in question is reasonably required for purposes connected with the OFT’s functions under this Act.
- (5) A requirement may be imposed under subsection (1) on any other person only if –
- (a) an act or omission mentioned in subsection (6) has occurred or the OFT has reason to suspect that such an act or omission has occurred; and
  - (b) the provision or production of the information or documents in question is reasonably required for purposes connected with –
    - (i) the taking by the OFT of steps under this Part as a consequence; or
    - (ii) its consideration of whether to take such steps as a consequence.
- (6) Those acts or omissions are acts or omissions which –
- (a) cast doubt on whether, having regard to section 25(2), a person is a fit person to carry on a business under a standard licence;
  - (b) cast doubt on whether the public interest is better served by a group licence remaining in effect, or being issued, than by obliging the persons who are licensees under it, or who would be licensees under it, to apply separately for standard licences;
  - (c) give rise, or are likely to give rise, to dissatisfaction for the purposes of section 33A(1) or 33B(1); or

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- (d) constitute or give rise to a failure of the kind mentioned in section 39A(1).”

#### 47 Power of OFT to require access to premises

After section 36B of the 1974 Act (inserted by section 46 of this Act) insert—

- “36C Power of OFT to require access to premises** 5
- (1) The OFT may by notice to a licensee under a licence require him to secure that access to the premises specified or described in the notice is given to an officer of an enforcement authority in order for the officer—
- (a) to observe the carrying on of a business under the licence by the licensee; or 10
  - (b) to inspect such documents of the licensee relating to such a business as are—
    - (i) specified or described in the notice; and
    - (ii) situated on the premises.
- (2) The notice shall set out the reasons why the access is required. 15
- (3) The premises which may be specified or described in the notice—
- (a) include premises which are not premises of the licensee if they are premises from which he carries on activities in connection with the business in question; but
  - (b) do not include premises which are used only as a dwelling. 20
- (4) The licensee shall secure that the required access is given at such times as the OFT reasonably requires.
- (5) The OFT shall give reasonable notice of those times.
- (6) Where an officer is given access to any premises by virtue of this section, the licensee shall also secure that persons on the premises give the officer such assistance or information as he may reasonably require in connection with his observation or inspection of documents (as the case may be). 25
- (7) The assistance that may be required under subsection (6) includes (amongst other things) the giving to the officer of an explanation of a document which he is inspecting. 30
- (8) A requirement may be imposed under subsection (1) on a person who is—
- (a) the licensee under a standard licence, or
  - (b) the original applicant for a group licence, 35
- only if the observation or inspection in question is reasonably required for purposes connected with the OFT’s functions under this Act.
- (9) A requirement may be imposed under subsection (1) on any other person only if—
- (a) an act or omission mentioned in section 36B(6) has occurred or the OFT has reason to suspect that such an act or omission has occurred; and 40
  - (b) the observation or inspection in question is reasonably required for purposes connected with—

- (i) the taking by the OFT of steps under this Part as a consequence; or
  - (ii) its consideration of whether to take such steps as a consequence.
- (10) In this section—
- (a) references to a licensee under a licence include, in relation to a group licence issued on application, references to the original applicant; and
  - (b) references to a business being carried on under a licence by a licensee include, in relation to the original applicant for a group licence, activities being carried on by him for the purpose of regulating or otherwise supervising (whether by virtue of an enactment, an agreement or otherwise) licensees under that licence in connection with their carrying on of businesses under that licence.”

#### 48 Entry to premises under warrant

After section 36C of the 1974 Act (inserted by section 47 of this Act) insert—

##### “36D Entry to premises under warrant

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given on behalf of the OFT that there are reasonable grounds for believing that the following conditions are satisfied. 20
- (2) Those conditions are—
- (a) that there is on the premises specified in the warrant information or documents in relation to which a requirement could be imposed under section 36B; and 25
  - (b) that if such a requirement were to be imposed in relation to the information or documents—
    - (i) it would not be complied with; or
    - (ii) the information or documents would be tampered with. 30
- (3) A warrant under this section shall authorise an officer of an enforcement authority—
- (a) to enter the premises specified in the warrant;
  - (b) to search the premises and to seize and detain any information or documents appearing to be information or documents specified in the warrant or information or documents of a description so specified; 35
  - (c) to take any other steps which may appear to be reasonably necessary for preserving such information or documents or preventing interference with them; and 40
  - (d) to use such force as may be reasonably necessary.
- (4) An officer entering premises by virtue of this section may take such persons and equipment with him as he thinks necessary.
- (5) In the application of this section to Scotland—
- (a) the reference to a justice of the peace includes a reference to a sheriff; 45

(b) for ‘information on oath’ there is substituted ‘evidence on oath’.

(6) In the application of this section to Northern Ireland the reference to a justice of the peace shall be construed as a reference to a lay magistrate.”

#### **49 Failure to comply with information requirement** 5

After section 36D of the 1974 Act (inserted by section 48 of this Act) insert—

##### **“36E Failure to comply with information requirement**

(1) If on an application made by the OFT it appears to the court that a person (the ‘information defaulter’) has failed to do something that he was required to do by virtue of section 36B or 36C, the court may make an order under this section. 10

(2) An order under this section may require the information defaulter—  
 (a) to do the thing that it appears he failed to do within such period as may be specified in the order;  
 (b) otherwise to take such steps to remedy the consequences of the failure as may be so specified. 15

(3) If the information defaulter is a body corporate, a partnership or an unincorporated body of persons which is not a partnership, the order may require any officer who is (wholly or partly) responsible for the failure to meet such costs of the application as are specified in the order. 20

(4) In this section—  
 ‘court’ means—  
 (a) in England and Wales and Northern Ireland, the High Court or the county court;  
 (b) in Scotland, the Court of Session or the sheriff; 25

‘officer’ means—  
 (a) in relation to a body corporate, a person holding a position of director, manager or secretary of the body or any similar position;  
 (b) in relation to a partnership or to an unincorporated body of persons, a member of the partnership or body. 30

(5) In subsection (4) ‘director’ means, in relation to a body corporate whose affairs are managed by its members, a member of the body.”

#### **50 Officers of enforcement authorities other than OFT** 35

After section 36E of the 1974 Act (inserted by section 49 of this Act) insert—

##### **“36F Officers of enforcement authorities other than OFT**

(1) A relevant officer may only exercise powers by virtue of section 36C or 36D in pursuance of arrangements made with the OFT by or on behalf of the enforcement authority of which he is an officer.

(2) Anything done or omitted to be done by, or in relation to, a relevant officer in the exercise or purported exercise of a power by virtue of section 36C or 36D shall be treated for all purposes as having been done or omitted to be done by, or in relation to, an officer of the OFT. 40

- (3) Subsection (2) does not apply for the purposes of any criminal proceedings brought against a relevant officer or the enforcement authority of which he is an officer in respect of anything done or omitted to be done by the officer.
- (4) A relevant officer shall not disclose to a person other than the OFT information obtained by his exercise of a power by virtue of section 36C or 36D unless – 5
- (a) he has the approval of the OFT to do so; or
  - (b) he is under a duty to make the disclosure.
- (5) In this section ‘relevant officer’ means an officer of an enforcement authority other than the OFT.” 10

## 51 Consequential amendments relating to information

- (1) For section 7 of the 1974 Act (penalty for false information) substitute –
- “7 Penalty for false information**
- A person commits an offence if, for the purposes of, or in connection with, any requirement imposed or other provision made by or under this Act, he knowingly or recklessly gives information to the OFT, or to an officer of the OFT, which, in a material particular, is false or misleading.” 15
- (2) In subsection (1)(b)(ii) of section 162 of that Act (powers of entry and inspection) for the words from “recorded” onwards substitute “to provide him with that information;”. 20
- (3) At the end of that section insert –
- “(8) References in this section to a breach of any provision of or under this Act do not include references to – 25
- (a) a failure to comply with a requirement imposed under section 33A or 33B;
  - (b) a failure to comply with section 36A; or
  - (c) a failure in relation to which the OFT can apply for an order under section 36E.” 30
- (4) In section 165 of that Act (obstruction of authorised officers) after subsection (1) insert –
- “(1A) A failure to give assistance or information shall not constitute an offence under subsection (1)(c) if it is also – 35
- (a) a failure to comply with a requirement imposed under section 33A or 33B;
  - (b) a failure to comply with section 36A; or
  - (c) a failure in relation to which the OFT can apply for an order under section 36E.”
- (5) In Part 12 of that Act before section 175 insert – 40
- “174A Powers to require provision of information or documents etc.**
- (1) Every power conferred on a relevant authority by or under this Act (however expressed) to require the provision or production of information or documents includes the power –

- (a) to require information to be provided or produced in such form as the authority may specify, including, in relation to information recorded otherwise than in a legible form, in a legible form;
- (b) to take copies of, or extracts from, any documents provided or produced by virtue of the exercise of the power; 5
- (c) to require the person who is required to provide or produce any information or document by virtue of the exercise of the power –
- (i) to state, to the best of his knowledge and belief, where the information or document is; 10
- (ii) to give an explanation of the information or document;
- (iii) to secure that any information provided or produced, whether in a document or otherwise, is verified in such manner as may be specified by the authority; 15
- (iv) to secure that any document provided or produced is authenticated in such manner as may be so specified;
- (d) to specify a time at or by which a requirement imposed by virtue of paragraph (c) must be complied with.
- (2) Every power conferred on a relevant authority by or under this Act (however expressed) to inspect or to seize documents at any premises includes the power to take copies of, or extracts from, any documents inspected or seized by virtue of the exercise of the power. 20
- (3) But a relevant authority has no power under this Act –
- (a) to require another person to provide or to produce, 25
- (b) to seize from another person, or
- (c) to require another person to give access to premises for the purposes of the inspection of,
- any information or document which the other person would be entitled to refuse to provide or produce in proceedings in the High Court on the grounds of legal professional privilege or (in Scotland) in proceedings in the Court of Session on the grounds of confidentiality of communications. 30
- (4) In subsection (3) ‘communications’ means –
- (a) communications between a professional legal adviser and his client; 35
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings.
- (5) In this section ‘relevant authority’ means –
- (a) the OFT or an enforcement authority (other than the OFT); 40
- (b) an officer of the OFT or of an enforcement authority (other than the OFT).”
- (6) In section 189(1) of that Act (definitions) after the definition of “deposit” insert –
- “‘documents’ includes information recorded in any form;” 45
- (7) In Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001 (c. 16)

(powers of seizure to which section 50 applies) before paragraph 19 insert –

“18A The power of seizure conferred by section 36D(3) of the Consumer Credit Act 1974.”

### *Civil penalties*

## **52 Power of OFT to impose civil penalties** 5

After section 39 of the 1974 Act insert –

### **“39A Power of OFT to impose civil penalties**

- (1) Where the OFT is satisfied that a person (the ‘defaulter’) has failed or is failing to comply with a requirement imposed on him by virtue of section 33A, 33B or 36A, it may by notice to him (a ‘penalty notice’) impose on him a penalty of such amount as it thinks fit. 10
- (2) The penalty notice shall –
  - (a) specify the amount of the penalty that is being imposed;
  - (b) set out the OFT’s reasons for imposing a penalty and for specifying that amount; 15
  - (c) specify how the payment of the penalty may be made to the OFT; and
  - (d) specify the period within which the penalty is required to be paid.
- (3) The amount of the penalty shall not exceed £50,000. 20
- (4) The period specified in the penalty notice for the purposes of subsection (2)(d) shall not end earlier than the end of the period during which an appeal may be brought against the imposition of the penalty under section 41.
- (5) If the defaulter does not pay the penalty to the OFT within the period so specified – 25
  - (a) the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838; and
  - (b) the penalty and any interest payable on it shall be recoverable by the OFT.” 30

## **53 Further provision relating to civil penalties**

- (1) After section 39A of the 1974 Act (inserted by section 52 of this Act) insert –

### **“39B Further provision relating to civil penalties**

- (1) Before determining to impose a penalty on a person under section 39A the OFT shall give a notice to that person – 35
  - (a) informing him that it is minded to impose a penalty on him;
  - (b) stating the proposed amount of the penalty;
  - (c) setting out its reasons for being minded to impose a penalty on him and for proposing that amount; 40
  - (d) setting out the proposed period for the payment of the penalty; and

- (e) inviting him to submit representations to it about the matters mentioned in the preceding paragraphs in accordance with section 34.
- (2) In determining whether and how to exercise its powers under section 39A in relation to a person's failure, the OFT shall have regard to (amongst other things) – 5
- (a) any penalty or fine that has been imposed on that person by another body in relation to the conduct giving rise to the failure;
- (b) other steps that the OFT has taken or might take under this Part in relation to that conduct. 10
- (3) General notice shall be given of the imposition of a penalty under section 39A on a person who is a responsible person in relation to a group licence.
- (4) That notice shall include the matters set out in the notice imposing the penalty in accordance with section 39A(2)(a) and (b).” 15
- (2) In the Table in section 41 of that Act (appeals) before the entry relating to “refusal to make order under section 40(2) in accordance with terms of application” insert the following entry –
- |   |   |    |
|---|---|----|
| “Imposition of penalty under section 39A. | The person on whom the penalty is imposed.” | 20 |
|---|---|----|
- (3) In section 181 of that Act (power to alter monetary limits etc.) –
- (a) in subsection (1) before “70(6)” insert “39A(3),”;
- (b) in subsection (2) before “75(3)(b)” insert “39A(3),”.

#### 54 Statement of policy in relation to civil penalties

After section 39B of the 1974 Act (inserted by section 53 of this Act) insert – 25

##### “39C Statement of policy in relation to civil penalties

- (1) The OFT shall prepare and publish a statement of policy in relation to how it exercises, or how it proposes to exercise, its powers under section 39A.
- (2) If the OFT revises the statement of policy at any time after it has been published, the OFT shall publish it as revised. 30
- (3) No statement of policy shall be published without the approval of the Secretary of State.
- (4) The statement of policy shall be published in such manner as the OFT thinks fit for the purpose of bringing it to the attention of those likely to be affected by it. 35
- (5) In preparing or revising the statement of policy the OFT shall consult such persons as it thinks fit.
- (6) In determining whether and how to exercise its powers under section 39A in relation to a person's failure, the OFT shall have regard to the 40

statement of policy as most recently published at the time the failure occurred.

- (7) The OFT shall not impose a penalty on a person under section 39A in relation to a failure occurring before it has published a statement of policy.”

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### *Appeals*

## 55 The Consumer Credit Appeals Tribunal

- (1) After section 40 of the 1974 Act insert –

### *“Appeals*

#### **40A The Consumer Credit Appeals Tribunal**

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- (1) There shall be a tribunal known as the Consumer Credit Appeals Tribunal (‘the Tribunal’).
- (2) The Tribunal shall have the functions conferred on it by or under this Part.
- (3) The Lord Chancellor may by rules make such provision as he thinks fit for regulating the conduct and disposal of appeals before the Tribunal. 15
- (4) Schedule A1 (which makes provision about the Tribunal and proceedings before it) shall have effect.
- (5) But that Schedule does not limit the Lord Chancellor’s powers under subsection (3).” 20
- (2) Before Schedule 1 to that Act insert the Schedule A1 set out in Schedule 1 to this Act.

## 56 Appeals to the Consumer Credit Appeals Tribunal

- (1) In subsection (1) of section 41 of the 1974 Act (appeals) for the words from “prescribed period” onwards substitute “specified period, appeal to the Tribunal”. 25
- (2) After that subsection insert –
- “(1A) The means for making an appeal is by sending the Tribunal a notice of appeal.
- (1B) The notice of appeal shall – 30
- (a) be in the specified form;
- (b) set out the grounds of appeal in the specified manner; and
- (c) include the specified information and documents.
- (1C) An appeal to the Tribunal is to be by way of a rehearing of the determination appealed against. 35
- (1D) In this section ‘specified’ means specified by rules under section 40A(3).”
- (3) Subsections (2) to (5) of that section shall cease to have effect.

**57 Appeals from the Consumer Credit Appeals Tribunal**

In Part 3 of the 1974 Act after section 41 insert—

**“41A Appeals from the Consumer Credit Appeals Tribunal**

- (1) A party to an appeal to the Tribunal may with leave appeal—
  - (a) in England and Wales and Northern Ireland, to the Court of Appeal, or
  - (b) in Scotland, to the Court of Session,
 on a point of law arising from a decision of the Tribunal. 5
- (2) For the purposes of subsection (1) leave to appeal may be given by—
  - (a) the Tribunal; or
  - (b) the Court of Appeal or the Court of Session. 10
- (3) An application for leave to appeal may be made to the Court of Appeal or the Court of Session only if the Tribunal has refused such leave.
- (4) If on an appeal under this section the court considers that the decision of the Tribunal was wrong in law, it may do one or more of the following—
  - (a) quash or vary that decision;
  - (b) substitute for that decision a decision of its own;
  - (c) remit the matter to the Tribunal for rehearing and determination in accordance with the directions (if any) given to it by the court. 15
- (5) An appeal may be brought from a decision of the Court of Appeal under this section only if leave to do so is given by the Court of Appeal or the House of Lords.
- (6) Rules under section 40A(3) may make provision for regulating or prescribing any matters incidental to or consequential on an appeal under this section. 20
- (7) In this section ‘party’ means, in relation to an appeal to the Tribunal, the appellant or the OFT.”

**58 Consequential amendments relating to appeals 30**

- (1) In section 2(7) of the 1974 Act (restriction on power to give directions to OFT) for “Secretary of State” substitute “the Tribunal”.
- (2) In section 182 of that Act (regulations and orders) after subsection (1) insert—
 

“(1A) The power of the Lord Chancellor to make rules under section 40A(3) shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.” 35
- (3) In subsection (2) of that section—
  - (a) after “orders” wherever occurring insert “or rules”;
  - (b) after “by the Secretary of State” insert “or by the Lord Chancellor”;
  - (c) in paragraph (c) for “Secretary of State” substitute “person making them”. 40
- (4) In section 189(1) of that Act (definitions)—

- (a) in the definition of “appeal period” for “Secretary of State” substitute “Tribunal”;
- (b) after the definition of “total price” insert—  
     “the Tribunal’ means the Consumer Credit Appeals Tribunal;”.
- (5) In Schedule 1 to the Tribunals and Inquiries Act 1992 (c. 53) (tribunals under supervision of Council of Tribunals) after paragraph 9A insert—
- “Consumer credit                      9B. The Consumer Credit Appeals Tribunal established by section 40A of the Consumer Credit Act 1974.”

*Ombudsman scheme*

**59 Financial services ombudsman scheme to apply to consumer credit licensees**

- (1) After section 226 of the 2000 Act insert—
- “226A Consumer credit jurisdiction**
- (1) A complaint which relates to an act or omission of a person (‘the respondent’) is to be dealt with under the ombudsman scheme if the conditions mentioned in subsection (2) are satisfied.
- (2) The conditions are that—
- (a) the complainant is eligible and wishes to have the complaint dealt with under the scheme;                      20
- (b) the complaint falls within a description specified in consumer credit rules;
- (c) at the time of the act or omission the respondent was the licensee under a standard licence;                      25
- (d) the act or omission occurred in the course of a business being carried on by the respondent which was of a type mentioned in subsection (3);
- (e) at the time of the act or omission that type of business was specified in an order made by the Secretary of State; and                      30
- (f) the complaint cannot be dealt with under the compulsory jurisdiction.
- (3) The types of business referred to in subsection (2)(d) are—
- (a) a consumer credit business;
- (b) a consumer hire business;                      35
- (c) a business so far as it comprises or relates to credit brokerage;
- (d) a business so far as it comprises or relates to debt-adjusting;
- (e) a business so far as it comprises or relates to debt-counselling;
- (f) a business so far as it comprises or relates to debt-collecting;
- (g) a business so far as it comprises or relates to debt administration;                      40
- (h) a business so far as it comprises or relates to the provision of credit information services;

- (i) a business so far as it comprises or relates to the operation of a credit reference agency.
- (4) A complainant is eligible if –
  - (a) he is –
    - (i) an individual; or 5
    - (ii) a surety in relation to a security provided to the respondent in connection with the business mentioned in subsection (2)(d); and
  - (b) he falls within a class of person specified in consumer credit rules. 10
- (5) The approval of the Treasury is required for an order under subsection (2)(e).
- (6) The jurisdiction of the scheme which results from this section is referred to in this Act as the ‘consumer credit jurisdiction’.
- (7) In this Act ‘consumer credit rules’ means rules made by the scheme operator with the approval of the Authority for the purposes of the consumer credit jurisdiction. 15
- (8) Consumer credit rules under this section may make different provision for different cases.
- (9) Expressions used in the Consumer Credit Act 1974 have the same meaning in this section as they have in that Act.” 20
- (2) In Schedule 17 to that Act (the ombudsman scheme) after Part 3 insert the Part 3A set out in Schedule 2 to this Act.

## 60 Funding of ombudsman scheme

In Part 16 of the 2000 Act after section 234 insert – 25

### “234A Funding by consumer credit licensees etc.

- (1) For the purpose of funding –
  - (a) the establishment of the ombudsman scheme so far as it relates to the consumer credit jurisdiction (whenever any relevant expense is incurred), and 30
  - (b) its operation in relation to the consumer credit jurisdiction, the scheme operator may from time to time with the approval of the Authority determine a sum which is to be raised by way of contributions under this section.
- (2) A sum determined under subsection (1) may include a component to cover the costs of the collection of contributions to that sum (‘collection costs’) under this section. 35
- (3) The scheme operator must notify the OFT of every determination under subsection (1).
- (4) The OFT must give general notice of every determination so notified. 40
- (5) The OFT may by general notice impose requirements on –
  - (a) licensees to whom this section applies, or
  - (b) persons who make applications to which this section applies,

- to pay contributions to the OFT for the purpose of raising sums determined under subsection (1).
- (6) The amount of the contribution payable by a person under such a requirement—
- (a) shall be the amount specified in or determined under the general notice; and
  - (b) shall be paid before the end of the period or at the time so specified or determined.
- (7) A general notice under subsection (5) may—
- (a) impose requirements only on descriptions of licensees or applicants specified in the notice;
  - (b) provide for exceptions from any requirement imposed on a description of licensees or applicants;
  - (c) impose different requirements on different descriptions of licensees or applicants;
  - (d) make provision for refunds in specified circumstances.
- (8) Contributions received by the OFT must be paid to the scheme operator.
- (9) As soon as practicable after the end of—
- (a) each financial year of the scheme operator, or
  - (b) if the OFT and the scheme operator agree that this paragraph is to apply instead of paragraph (a) for the time being, each period agreed by them,
- the scheme operator must pay to the OFT an amount representing the extent to which collection costs are covered in accordance with subsection (2) by the total amount of the contributions paid by the OFT to it during the year or (as the case may be) the agreed period.
- (10) Amounts received by the OFT from the scheme operator are to be retained by it for the purpose of meeting its costs.
- (11) The Secretary of State may by order provide that the functions of the OFT under this section are for the time being to be carried out by the scheme operator.
- (12) An order under subsection (11) may provide that while the order is in force this section shall have effect subject to such modifications as may be set out in the order.
- (13) The licensees to whom this section applies are licensees under standard licences which cover to any extent the carrying on of a type of business specified in an order under section 226A(2)(e).
- (14) The applications to which this section applies are applications for—
- (a) standard licences covering to any extent the carrying on of a business of such a type;
  - (b) the renewal of standard licences on terms covering to any extent the carrying on of a business of such a type.
- (15) Expressions used in the Consumer Credit Act 1974 have the same meaning in this section as they have in that Act.”

**61 Consequential amendments relating to ombudsman scheme**

- (1) In section 4 of the 1974 Act (OFT to disseminate information and advice) after “the operation of this Act,” insert “the consumer credit jurisdiction under Part 16 of the Financial Services and Markets Act 2000.”
- (2) In section 227(2)(e) of the 2000 Act (conditions for exercise of voluntary jurisdiction) after “jurisdiction” insert “or the consumer credit jurisdiction”. 5
- (3) In sections 228(1) and 229(1) of that Act (determinations and awards by ombudsman) after “jurisdiction” insert “and to the consumer credit jurisdiction”.
- (4) In subsection (4) of section 229 of that Act (awards by ombudsman) after “specify” insert “for the purposes of the compulsory jurisdiction”. 10
- (5) After that subsection insert –
- “(4A) The scheme operator may specify for the purposes of the consumer credit jurisdiction the maximum amount which may be regarded as fair compensation for a particular kind of loss or damage specified under subsection (3)(b).” 15
- (6) In subsection (8)(b) of that section after “17” insert “or (as the case may be) Part 3A of that Schedule”.
- (7) For subsection (11) of that section substitute –
- “(11) ‘Specified’ means – 20
- (a) for the purposes of the compulsory jurisdiction, specified in compulsory jurisdiction rules;
- (b) for the purposes of the consumer credit jurisdiction, specified in consumer credit rules.
- (12) Consumer credit rules under this section may make different provision for different cases.” 25
- (8) In section 230 of that Act (costs) –
- (a) in subsection (1) after “jurisdiction” insert “or the consumer credit jurisdiction”;
- (b) in subsection (7) after “17” insert “or (as the case may be) paragraph 16D of that Schedule”. 30
- (9) In section 353(1) of that Act (power to permit disclosure of information) after paragraph (b) insert –
- “(c) by the scheme operator to the Office of Fair Trading for the purpose of assisting or enabling that Office to discharge prescribed functions under the Consumer Credit Act 1974.” 35
- (10) In Schedule 17 to that Act (the ombudsman scheme) –
- (a) in paragraph 3(4) after “227” insert “, the function of making consumer credit rules, the function of making determinations under section 234A(1)”;
- (b) in paragraph 7(2) after “compulsory jurisdiction” insert “, functions in relation to its consumer credit jurisdiction”;
- (c) in paragraph 9(3) after “compulsory” insert “, consumer credit”;
- (d) in paragraphs 10(1) and 11 after “jurisdiction” insert “or to the consumer credit jurisdiction”. 45

*Miscellaneous*

**62 Monitoring of businesses by OFT**

In section 1(1) of the 1974 Act (general functions of OFT) after paragraph (b) insert—

“(ba) to monitor, as it sees fit, businesses being carried on under licences;”.

5

**63 Disapplication of s.101 of the 1974 Act**

(1) In section 101 of the 1974 Act (right of hirer to terminate regulated consumer hire agreement) after subsection (8) insert—

“(8A) If it appears to the OFT that it would be in the interests of hirers to do so, it may by general notice direct that, subject to such conditions (if any) as it may specify, this section shall not apply to a consumer hire agreement if the agreement falls within a specified description; and this Act shall have effect accordingly.”

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(2) In subsection (8) of that section for the words from “this section” onwards substitute “, subject to such conditions (if any) as it may specify, this section shall not apply to consumer hire agreements made by the applicant; and this Act shall have effect accordingly”.

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**64 Determinations etc. by OFT**

For section 183 of the 1974 Act (determinations etc. by OFT) substitute—

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**“183 Determinations etc. by OFT**

(1) The OFT may vary or revoke any determination made, or direction given, by it under this Act.

(2) Subsection (1) does not apply to—

(a) a determination to issue, renew or vary a licence;

25

(b) a determination to extend a period under section 28B or to refuse to extend a period under that section;

(c) a determination to end a suspension under section 33;

(d) a determination to make an order under section 40(2), 148(2) or 149(2);

30

(e) a determination mentioned in column 1 of the Table in section 41.”

**65 Sums received by OFT**

*In section 190(2) of the 1974 Act (fees received by OFT to be paid into the Consolidated Fund) after “fees” insert “, charges, penalties or other sums”.*

35

*Final provisions*

**66 Financial provision**

*There shall be payable out of money provided by Parliament—*

- (a) *any expenditure incurred by a Minister of the Crown or the Office of Fair Trading by virtue of this Act; and*
- (b) *any increase attributable to this Act in the sums payable out of money so provided by virtue of any other Act.*

## 67 Interpretation 5

In this Act—

“the 1974 Act” means the Consumer Credit Act 1974 (c. 39);

“the 2000 Act” means the Financial Services and Markets Act 2000 (c. 8).

## 68 Consequential amendments

- (1) The Secretary of State may by order made by statutory instrument make such modifications of— 10
  - (a) any Act or subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)), or
  - (b) any Northern Ireland legislation or instrument made under such legislation, 15

as he thinks fit in consequence of any provision of this Act.
- (2) An order under this section may include transitional or transitory provisions and savings.
- (3) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament. 20

## 69 Transitional provision and savings

- (1) Schedule 3 (which sets out transitional provision and savings) has effect.
- (2) The Secretary of State may by order made by statutory instrument make such transitional or transitory provisions and savings as he thinks fit in connection with the coming into force of any provision of this Act. 25
- (3) An order under this section may (amongst other things)—
  - (a) where a provision of this Act is brought into force for limited purposes only, make provision about how references in Schedule 3 to the commencement of that provision of this Act are to apply;
  - (b) make provision for or in connection with the application of any provision of this Act in relation to— 30
    - (i) things existing or done, or
    - (ii) persons who have done something or in relation to whom something has been done,

before the coming into force of that provision of this Act. 35
- (4) An order under this section may—
  - (a) modify any Act or any subordinate legislation (within the meaning of the Interpretation Act 1978);
  - (b) modify any Northern Ireland legislation or any instrument made under such legislation; 40
  - (c) make different provision for different cases.

- 
- (5) Schedule 3 does not restrict the power under this section to make transitional or transitory provisions or savings.

## **70 Repeals**

The enactments and instruments set out in Schedule 4 are repealed or revoked to the extent shown in that Schedule.

5

## **71 Short title, commencement and extent**

- (1) This Act may be cited as the Consumer Credit Act 2005.
- (2) This Act (apart from this section) shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different purposes.
- (3) This Act extends to Northern Ireland.

10

## SCHEDULES

### SCHEDULE 1

Section 55

#### SCHEDULE A1 TO THE 1974 ACT

#### SCHEDULE A1

#### THE CONSUMER CREDIT APPEALS TRIBUNAL

5

##### PART 1

##### INTERPRETATION

1 In this Schedule –

“the Deputy President” means the Deputy President of the Consumer Credit Appeals Tribunal;

10

“lay panel” means the panel established under paragraph 3(3);

“panel of chairmen” means the panel established under paragraph 3(1);

“party” means, in relation to an appeal, the appellant or the OFT;

“the President” means the President of the Consumer Credit Appeals Tribunal;

15

“rules” means rules under section 40A(3) of this Act;

“specified” means specified by rules.

##### PART 2

##### THE TRIBUNAL

#### *The President and the Deputy President*

20

2 (1) The Lord Chancellor shall appoint one of the members of the panel of chairmen to preside over the discharge of the Tribunal’s functions.

(2) The person so appointed shall be known as the President of the Consumer Credit Appeals Tribunal.

(3) The Lord Chancellor may appoint one of the members of the panel of chairmen to be the Deputy President of the Consumer Credit Appeals Tribunal.

25

(4) The Deputy President shall have such functions in relation to the Tribunal as the President may assign to him.

(5) If the President or the Deputy President ceases to be a member of the panel of chairmen, he shall also cease to be the President or (as the case may be) the Deputy President.

30

- (6) The functions of the President may, if he is absent or is otherwise unable to act, be discharged –
- (a) by the Deputy President; or
  - (b) if there is no Deputy President or he too is absent or otherwise unable to act, by a person appointed for that purpose from the panel of chairmen by the Lord Chancellor. 5

*Panels*

- 3 (1) The Lord Chancellor shall appoint a panel of persons for the purpose of serving as chairmen of the Tribunal.
- (2) A person shall not be appointed to the panel of chairmen unless he – 10
- (a) has a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990;
  - (b) is an advocate or solicitor in Scotland of at least seven years' standing; or
  - (c) is a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court of Northern Ireland, of at least seven years' standing. 15
- (3) The Lord Chancellor shall also appoint a panel of persons who appear to him to be qualified by experience or otherwise to deal with appeals of the kind that may be made to the Tribunal.

*Terms of office etc.* 20

- 4 (1) Each member of the panel of chairmen or the lay panel shall hold and vacate office in accordance with the terms of his appointment.
- (2) The Lord Chancellor may remove a member of either panel from office on the ground of incapacity or misbehaviour.
- (3) A member of either panel – 25
- (a) may at any time resign office by notice in writing to the Lord Chancellor;
  - (b) is eligible for re-appointment if he ceases to hold office.

*Remuneration and allowances*

- 5 The Lord Chancellor may pay to a person in respect of his service – 30
- (a) as the President or the Deputy President,
  - (b) as a member of the Tribunal, or
  - (c) as a person appointed under paragraph 7(4),
- such remuneration and allowances as the Lord Chancellor may determine.

*Staff and costs* 35

- 6 (1) The Lord Chancellor may appoint such staff for the Tribunal as he may determine.
- (2) The Lord Chancellor shall defray –
- (a) the remuneration of the Tribunal's staff; and
  - (b) such other costs of the Tribunal as he may determine. 40

PART 3

CONSTITUTION OF THE TRIBUNAL

- 7 (1) On an appeal to the Tribunal, the persons to act as members of the Tribunal for the purposes of the appeal shall be selected from the panel of chairmen or the lay panel. 5
- (2) The selection shall be in accordance with arrangements made by the President for the purposes of this paragraph.
- (3) Those arrangements shall provide for at least one member to be a person selected from the panel of chairmen.
- (4) If it appears to the Tribunal that a matter before it involves a question of fact of special difficulty, it may appoint one or more experts to provide assistance. 10

PART 4

TRIBUNAL POWERS AND PROCEDURE

*Sittings* 15

- 8 The Tribunal shall sit at such times and in such places as the Lord Chancellor may direct.

*Evidence*

- 9 (1) Subject to sub-paragraph (2), the Tribunal may, on an appeal, consider any evidence that it thinks relevant, whether or not it was available to the OFT at the time it made the determination appealed against. 20
- (2) Rules may make provision restricting the evidence that the Tribunal may consider on an appeal in specified circumstances.

*Rules on procedure*

- 10 Rules may include, amongst other things, provision— 25
- (a) about the withdrawal of appeals;
  - (b) about persons who may appear on behalf of a party to an appeal;
  - (c) about how an appeal is to be dealt with if a person acting as member of the Tribunal in respect of the appeal becomes unable to act;
  - (d) setting time limits in relation to anything that is to be done for the purposes of an appeal or for such limits to be set by the Tribunal or a member of the panel of chairmen; 30
  - (e) for time limits to be extended by the Tribunal or a member of the panel of chairmen;
  - (f) conferring powers on the Tribunal or a member of the panel of chairmen to give such directions to the parties to an appeal as it or he thinks fit for purposes connected with the conduct and disposal of the appeal; 35
  - (g) about the holding of hearings by the Tribunal or a member of the panel of chairmen (including for such hearings to be held in private); 40

(h)	placing restrictions on the disclosure of information and documents or for such restrictions to be imposed by the Tribunal or a member of the panel of chairmen;	
(i)	about the consequences of a failure to comply with a requirement imposed by or under any rule (including for the immediate dismissal or allowing of an appeal if the Tribunal or a member of the panel of chairmen thinks fit);	5
(j)	for proceedings on different appeals (including appeals with different appellants) to take place concurrently;	
(k)	for the suspension of determinations of the OFT;	10
(l)	for the suspension of decisions of the Tribunal;	
(m)	for the Tribunal to reconsider its decision disposing of an appeal where it has reason to believe that the decision was wrongly made because of an administrative error made by a member of its staff.	
 <i>Council of Tribunals</i>		 15
11	A member of the Council of Tribunals or of its Scottish Committee shall be entitled –	
(a)	to attend any hearing held by the Tribunal or a member of the panel of chairmen whether or not it is held in public; and	
(b)	to attend any deliberations of the Tribunal in relation to an appeal.	20
 <i>Disposal of appeals</i>		
12	(1) The Tribunal shall decide an appeal by reference to the grounds of appeal set out in the notice of appeal.	
	(2) In disposing of an appeal the Tribunal may do one or more of the following –	25
(a)	confirm the determination appealed against;	
(b)	quash that determination;	
(c)	vary that determination;	
(d)	remit the matter to the OFT for reconsideration and determination in accordance with the directions (if any) given to it by the Tribunal;	30
(e)	give the OFT directions for the purpose of giving effect to its decision.	
(3)	In the case of an appeal against a determination to impose a penalty, the Tribunal –	
(a)	has no power by virtue of sub-paragraph (2)(c) to increase the penalty;	35
(b)	may extend the period within which the penalty is to be paid (including in cases where that period has already ended).	
(4)	Sub-paragraph (3) does not affect –	
(a)	the Tribunal’s power to give directions to the OFT under sub-paragraph (2)(d); or	40
(b)	what the OFT can do where a matter is remitted to it under sub-paragraph (2)(d).	
(5)	Where the Tribunal remits a matter to the OFT, it may direct that the requirements of section 34 of this Act are not to apply, or are only to apply to a specified extent, in relation to the OFT’s reconsideration of the matter.	45

- (6) Subject to sub-paragraphs (7) and (8), where the Tribunal remits an application to the OFT, section 6(1) and (3) to (9) of this Act shall apply as if the application had not been previously determined by the OFT.
- (7) In the case of a general notice which came into effect after the determination appealed against was made but before the application was remitted, the applicant shall provide any information or document which he is required to provide under section 6(6) within – 5
- (a) the period of 28 days beginning with the day on which the application was remitted; or
  - (b) such longer period as the OFT may allow. 10
- (8) In the case of –
- (a) any information or document which was superseded,
  - (b) any change in circumstances which occurred, or
  - (c) any error or omission of which the applicant became aware,
- after the determination appealed against was made but before the application was remitted, any notification that is required to be given by the applicant under section 6(7) shall be given within the period of 28 days beginning with the day on which the application was remitted. 15

#### *Decisions of the Tribunal*

- 13 (1) A decision of the Tribunal may be taken by majority. 20
- (2) A decision of the Tribunal disposing of an appeal shall –
- (a) state whether it was unanimous or taken by majority; and
  - (b) be recorded in a document which – 25
    - (i) contains a statement of the reasons for the decision and any other specified information; and
    - (ii) is signed and dated by a member of the panel of chairmen.
- (3) Where the Tribunal disposes of an appeal it shall –
- (a) send to each party to the appeal a copy of the document mentioned in sub-paragraph (2)(b); and
  - (b) publish that document in such manner as it thinks fit. 30
- (4) The Tribunal may exclude from what it publishes under sub-paragraph (3)(b) information of a specified description.

#### *Costs*

- 14 (1) Where the Tribunal disposes of an appeal and –
- (a) it decides that the OFT was wrong to make the determination appealed against, or 35
  - (b) during the course of the appeal the OFT accepted that it was wrong to make that determination,
- it may order the OFT to pay to the appellant the whole or a part of the costs incurred by the appellant in relation to the appeal. 40
- (2) In determining whether to make such an order, and the terms of such an order, the Tribunal shall have regard to whether it was unreasonable for the OFT to make the determination appealed against.
- 15 Where –

- (a) the Tribunal disposes of an appeal or an appeal is withdrawn before the Tribunal disposes of it, and
- (b) the Tribunal thinks that a party to the appeal acted vexatiously, frivolously or unreasonably in bringing the appeal or otherwise in relation to the appeal, 5
- it may order that party to pay to the other party the whole or a part of the costs incurred by the other party in relation to the appeal.
- 16 An order of the Tribunal under paragraph 14 or 15 may be enforced –
- (a) as if it were an order of the county court; or
- (b) in Scotland, as if it were an interlocutor of the Court of Session. 10

## SCHEDULE 2

Section 59

## PART 3A OF SCHEDULE 17 TO THE 2000 ACT

## PART 3A

## THE CONSUMER CREDIT JURISDICTION

*Introduction* 15

- 16A This Part of this Schedule applies only in relation to the consumer credit jurisdiction.

*Procedure for complaints etc.*

- 16B (1) Consumer credit rules –
- (a) must provide that a complaint is not to be entertained unless the complainant has referred it under the ombudsman scheme before the applicable time limit (determined in accordance with the rules) has expired; 20
- (b) may provide that an ombudsman may extend that time limit in specified circumstances; 25
- (c) may provide that a complaint is not to be entertained (except in specified circumstances) if the complainant has not previously communicated its substance to the respondent and given him a reasonable opportunity to deal with it;
- (d) may make provision about the procedure for the reference of complaints and for their investigation, consideration and determination by an ombudsman. 30
- (2) Sub-paragraphs (2) and (3) of paragraph 14 apply in relation to consumer credit rules under sub-paragraph (1) of this paragraph as they apply in relation to scheme rules under that paragraph. 35
- (3) Consumer credit rules may require persons falling within sub-paragraph (5) to establish such procedures as the scheme operator considers appropriate for the resolution of complaints which may be referred to the scheme.
- (4) Consumer credit rules under sub-paragraph (3) may make different provision in relation to persons of different descriptions or to complaints of different descriptions. 40

- (5) A person falls within this sub-paragraph if he is licensed by a standard licence (within the meaning of the Consumer Credit Act 1974) to carry on to any extent a business of a type specified in an order under section 226A(2)(e) of this Act.

*Fees* 5

16C (1) Consumer credit rules may require a respondent to pay to the scheme operator such fees as may be specified in the rules.

- (2) Sub-paragraph (2) of paragraph 15 applies in relation to consumer credit rules under this paragraph as it applies in relation to scheme rules under that paragraph. 10

*Enforcement of money awards*

16D A money award, including interest, which has been registered in accordance with consumer credit rules may –

- (a) if a county court so orders in England and Wales, be recovered by execution issued from the county court (or otherwise) as if it were payable under an order of that court; 15

(b) be enforced in Northern Ireland as a money judgment under the Judgments Enforcement (Northern Ireland) Order 1981;

- (c) be enforced in Scotland as if it were a decree of the sheriff and whether or not the sheriff could himself have granted such a decree. 20

*Procedure for consumer credit rules*

16E (1) If the scheme operator makes any consumer credit rules, it must give a copy of them to the Authority without delay.

- (2) If the scheme operator revokes any such rules, it must give written notice to the Authority without delay. 25

(3) The power to make such rules is exercisable in writing.

(4) Immediately after the making of such rules, the scheme operator must arrange for them to be printed and made available to the public.

- (5) The scheme operator may charge a reasonable fee for providing a person with a copy of any such rules. 30

*Verification of consumer credit rules*

16F (1) The production of a printed copy of consumer credit rules purporting to be made by the scheme operator –

- (a) on which there is endorsed a certificate signed by a member of the scheme operator's staff authorised by the scheme operator for that purpose, and 35

(b) which contains the required statements,  
is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.

- (2) The required statements are – 40

- (a) that the rules were made by the scheme operator;  
(b) that the copy is a true copy of the rules; and

- (c) that on a specified date the rules were made available to the public in accordance with paragraph 16E(4).
- (3) A certificate purporting to be signed as mentioned in sub-paragraph (1) is to be taken to have been duly signed unless the contrary is shown.

*Consultation* 5

- 16G (1) If the scheme operator proposes to make consumer credit rules, it must publish a draft of the proposed rules in the way appearing to it to be best calculated to bring the draft to the attention of the public.
- (2) The draft must be accompanied by –
- (a) an explanation of the proposed rules; and 10
  - (b) a statement that representations about the proposals may be made to the scheme operator within a specified time.
- (3) Before making any consumer credit rules, the scheme operator must have regard to any representations made to it in accordance with sub-paragraph (2)(b). 15
- (4) If consumer credit rules made by the scheme operator differ from the draft published under sub-paragraph (1) in a way which the scheme operator considers significant, the scheme operator must publish a statement of the difference.

SCHEDULE 3

Section 69 20

TRANSITIONAL PROVISION AND SAVINGS

*Interpretation*

- 1 (1) Expressions used in the 1974 Act have the same meaning in this Schedule (apart from paragraphs 14 to 16 and 26) as they have in that Act.
- (2) For the purposes of this Schedule an agreement becomes a completed agreement once – 25
- (a) there is no sum payable under the agreement; and
  - (b) there is no sum which will or may become so payable.

*Statements to be provided in relation to regulated agreements*

- 2 (1) Section 77A of the 1974 Act applies in relation to agreements whenever made. 30
- (2) Section 77A shall have effect in relation to agreements made before the commencement of section 6 of this Act as if the period mentioned in subsection (1)(a) were the period of one year beginning with the day of the commencement of section 6. 35
- 3 Regulations made under section 78(4A) of the 1974 Act may apply in relation to agreements regardless of when they were made.
- 4 (1) Section 7(3) of this Act shall have effect in relation to agreements whenever made.

- (2) A dispensing notice given under section 185(2) of the 1974 Act which is operative immediately before the commencement of section 7(3) –
- (a) shall, on the commencement of section 7(3), be treated as having been given under section 185(2) as substituted by section 7(3); and
  - (b) shall continue to be operative accordingly.

5

*Default under regulated agreements*

5 The OFT shall prepare, and give general notice of, the arrears information sheet and the default information sheet required under section 86A of the 1974 Act as soon as practicable after the commencement of section 8 of this Act.

10

6 (1) Section 86B of the 1974 Act applies in relation to agreements whenever made.

(2) In the application of section 86B in relation to an agreement made before the commencement of section 9 of this Act, the conditions under subsection (1) can be satisfied only if the two payments mentioned in paragraph (c) were not required to have been made before the commencement of section 9.

15

(3) In the case of an agreement within subsection (9) of section 86B, subparagraph (2) has effect as if for “two” there were substituted “four”.

7 (1) Section 86C of the 1974 Act applies in relation to agreements whenever made.

20

(2) In the application of section 86C in relation to an agreement made before the commencement of section 10 of this Act, the conditions mentioned in subsection (1) can be satisfied only if the two payments mentioned in paragraph (b) were not required to have been made before the commencement of section 10.

25

8 Section 86E of the 1974 Act applies in relation to agreements whenever made but only as regards default sums which become payable after the commencement of section 12 of this Act.

9 (1) Section 86F of the 1974 Act applies in relation to agreements whenever made but only as regards default sums which become payable after the commencement of section 13 of this Act.

30

(2) Where section 86F applies in relation to an agreement made before the commencement of section 13, the agreement shall have effect as if any right of the creditor or owner to recover compound interest in connection with the default sum in question at a particular rate were a right to recover simple interest in that connection at that rate.

35

10 Section 14 of this Act shall have effect in relation to any default notice served after the commencement of that section, regardless of –

- (a) when the breach of the agreement in question occurred; or
- (b) when that agreement was made.

40

11 The repeal by this Act of –

- (a) the words “(subject to subsections (3) and (4))” in subsection (1) of section 127 of the 1974 Act,
- (b) subsections (3) to (5) of that section, and
- (c) the words “or 127(3)” in subsection (3) of section 185 of that Act,

45

- has no effect in relation to improperly-executed agreements made before the commencement of section 15 of this Act.
- 12 A debtor or hirer under an agreement may make an application under section 129(1)(ba) of the 1974 Act regardless of when that agreement was made. 5
- 13 Section 130A of the 1974 Act applies in relation to agreements whenever made but only as regards sums payable under judgments given after the commencement of section 17 of this Act.

*Unfair relationships*

- 14 (1) The court may make an order under section 140B of the 1974 Act in connection with a credit agreement made before the commencement of section 20 of this Act but only – 10
- (a) on an application of the kind mentioned in paragraph (a) of subsection (2) of section 140B made at a time after the end of the transitional period; or 15
- (b) at the instance of the debtor or a surety in any proceedings of the kind mentioned in paragraph (b) or (c) of that subsection which were commenced at such a time.
- (2) But the court shall not make such an order in connection with such an agreement so made if the agreement – 20
- (a) became a completed agreement before the commencement of section 20; or
- (b) becomes a completed agreement during the transitional period.
- (3) Expressions used in sections 140A to 140C of the 1974 Act have the same meaning in this paragraph as they have in those sections. 25
- (4) In this paragraph “the transitional period” means the period of one year beginning with the day of the commencement of section 20.
- (5) An order under section 69 of this Act may extend, or further extend, the transitional period.
- 15 (1) The repeal by this Act of sections 137 to 140 of the 1974 Act shall not affect the court’s power to reopen an existing agreement under those sections as set out in this paragraph. 30
- (2) The court’s power to reopen an existing agreement which – 35
- (a) became a completed agreement before the commencement of section 22(3) of this Act, or
- (b) becomes a completed agreement during the transitional period, is not affected at all.
- (3) The court may also reopen an existing agreement – 40
- (a) on an application of the kind mentioned in paragraph (a) of subsection (1) of section 139 made at a time before the end of the transitional period; or
- (b) at the instance of the debtor or a surety in any proceedings of the kind mentioned in paragraph (b) or (c) of that subsection which were commenced at such a time.

- (4) Nothing in section 16A or 16B of the 1974 Act shall affect the application of sections 137 to 140 (whether by virtue of this paragraph or otherwise).
- (5) The repeal or revocation by this Act of the following provisions has no effect in relation to existing agreements so far as they may be reopened as set out in this paragraph— 5
- (a) section 16(7) of the 1974 Act;
  - (b) in section 143(b) of that Act, the words “, 139(1)(a)”;
  - (c) section 171(7) of that Act;
  - (d) in subsection (1) of section 181 of that Act, the words “139(5) and (7),”;
  - (e) in subsection (2) of that section, the words “or 139(5) or (7)”;
  - (f) in section 61(6) of the Bankruptcy (Scotland) Act 1985 (c. 66), the words from the beginning to “but”;
  - (g) in section 343(6) of the Insolvency Act 1986 (c. 45), the words from the beginning to “But”;
  - (h) Article 316(6) of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (6) Expressions used in sections 137 to 140 of the 1974 Act have the same meaning in this paragraph as they have in those sections.
- (7) In this paragraph— 20
- “existing agreement” means a credit agreement made before the commencement of section 22(3) of this Act;
  - “the transitional period” means the period of one year beginning with the day of the commencement of section 22(3).
- (8) An order under section 69 of this Act may extend, or further extend, the transitional period. 25
- 16 (1) It is immaterial for the purposes of section 140C(4)(a) to (c) of the 1974 Act when (as the case may be) a credit agreement or a linked transaction was made or a security was provided.
- (2) In relation to an order made under section 140B of the 1974 Act during the transitional period in connection with a credit agreement— 30
- (a) references in subsection (1) of that section to any related agreement shall not include references to a related agreement to which this sub-paragraph applies;
  - (b) the reference to a security in paragraph (d) of that subsection shall not include a reference to a security to which this sub-paragraph applies;
- and the order shall not under paragraph (g) of that subsection direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons in relation to a related agreement to which this sub-paragraph applies. 40
- (3) Sub-paragraph (2) applies to a related agreement or a security if—
- (a) it was made or provided before the commencement of section 21 of this Act; and
  - (b) it ceased to have any operation before the order under section 140B is made. 45

- (4) In relation to an order made under section 140B after the end of the transitional period in connection with a credit agreement –
- (a) references in subsection (1) of that section to any related agreement shall not include references to a related agreement to which this sub-paragraph applies; 5
  - (b) the reference to a security in paragraph (d) of that subsection shall not include a reference to a security to which this sub-paragraph applies;
- and the order shall not under paragraph (g) of that subsection direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons in relation to a related agreement to which this sub-paragraph applies. 10
- (5) Sub-paragraph (4) applies to a related agreement or a security if –
- (a) it was made or provided before the commencement of section 21; and 15
  - (b) it ceased to have any operation before the end of the transitional period.
- (6) Expressions used in sections 140A to 140C of the 1974 Act have the same meanings in this paragraph as they have in those sections.
- (7) In this paragraph “the transitional period” means the period of one year beginning with the day of the commencement of section 21. 20
- (8) An order under section 69 of this Act may extend, or further extend, the transitional period.
- 17 Section 1 of this Act shall have no effect for the purposes of section 140C(1) of the 1974 Act in relation to agreements made before the commencement of section 1. 25

*Applications for licences and fitness to hold a licence etc.*

- 18 (1) Section 6A of the 1974 Act shall not apply in relation to applications made before the commencement of section 27 of this Act.
- (2) Section 6(2A) of the 1974 Act shall not apply in relation to applications so made. 30
- (3) The repeal by this Act of the words “and must be accompanied by the specified fee” in section 6(2) of the 1974 Act has no effect in relation to applications so made.
- 19 (1) The OFT shall prepare and publish the guidance required by section 25A of the 1974 Act as soon as practicable after the commencement of section 30 of this Act. 35
- (2) The requirements of subsection (4) of section 25A may be satisfied in relation to the preparation of that guidance by steps taken wholly or partly before the commencement of section 30. 40

*Further powers of OFT to regulate conduct of licensees etc.*

- 20 The cases in which the OFT may impose requirements under section 33A of the 1974 Act include cases where the matter with which the OFT is dissatisfied arose before the commencement of section 38 of this Act.

- 21 The cases in which the OFT may impose requirements under section 33B of the 1974 Act include cases where the matters giving rise to the OFT's dissatisfaction arose before the commencement of section 39 of this Act.
- 22 (1) The OFT shall prepare and publish the guidance required by section 33E of the 1974 Act as soon as practicable after the commencement of section 42 of this Act. 5
- (2) The requirements of subsection (4) of section 33E may be satisfied in relation to the preparation of that guidance by steps taken wholly or partly before the commencement of section 42.

*Powers and duties in relation to information* 10

- 23 (1) Section 44 of this Act has no effect in relation to applications made before the commencement of that section.
- (2) Paragraph 12(6) of Schedule A1 to the 1974 Act does not apply in relation to applications so made.
- 24 A person is not required by section 36A of the 1974 Act to do anything in relation to an application made by him before the commencement of section 45 of this Act. 15

*Civil penalties*

- 25 (1) The OFT shall prepare and publish the statement of policy required by section 39C of the 1974 Act as soon as practicable after the commencement of section 54 of this Act. 20
- (2) The requirements of subsection (5) of section 39C may be satisfied in relation to the preparation of that statement of policy by steps taken wholly or partly before the commencement of section 54.

*Appeals* 25

- 26 (1) A person who –
- (a) immediately before the commencement of section 55 of this Act is a member of a panel established under regulation 24 of the appeals regulations, and
- (b) at the time of his appointment to that panel fell within paragraph (2)(a) of that regulation, 30
- shall be treated as having been appointed to the panel of chairmen on the day of the commencement of section 55.
- (2) A person who –
- (a) immediately before the commencement of section 55 is a member of a panel established under regulation 24 of the appeals regulations, and 35
- (b) is not to be treated as having been appointed to the panel of chairmen in accordance with sub-paragraph (1), 40
- shall be treated as having been appointed to the lay panel on the day of the commencement of section 55.
- (3) A person who is to be treated as having been appointed to the panel of chairmen or to the lay panel in accordance with this paragraph shall, subject



<i>Act or instrument</i>	<i>Extent of repeal</i>	
Consumer Credit Act 1974 (c. 39) – <i>cont.</i>	<p>In section 40(6), the words “, other than a non-commercial agreement,”.</p> <p>In section 41 –</p> <p>(a) subsections (2) to (5); and</p> <p>(b) in the Table the entry relating to “refusal to give directions in respect of licence under section 29(5) or 32(5)”.</p> <p>In section 43, subsection (3)(a) and the “or” immediately after it.</p> <p>In section 127 –</p> <p>(a) in subsection (1) the words “(subject to subsections (3) and (4))”; and</p> <p>(b) subsections (3) to (5).</p> <p>Sections 137 to 140.</p> <p>In section 143(b), the words “, 139(1)(a)”.</p> <p>In section 147 –</p> <p>(a) subsection (1); and</p> <p>(b) in subsection (2) the words “(as applied by subsection (1))”.</p> <p>Section 150.</p> <p>In section 162 –</p> <p>(a) in subsection (1)(b)(i), the words “books or”;</p> <p>(b) in subsection (1)(b), the words “and take copies of, or of any entry in, the books or documents”;</p> <p>(c) in subsections (1)(d) and (e), (2) and (3) the word “books”; and</p> <p>(d) subsection (7).</p> <p>Section 171(7).</p> <p>In section 181 –</p> <p>(a) in subsection (1) the words “43(3)(a),” and the words “139(5) and (7),”; and</p> <p>(b) in subsection (2) the words “43(3)(a),” and the words “or 139(5) or (7)”.</p> <p>In section 185(3), the words “or 127(3)”.</p> <p>In section 189(1) –</p> <p>(a) in the definition of “licence” the words “(including” onwards; and</p> <p>(b) the definition of “personal credit agreement”.</p> <p>In Schedule 2, in Part 1, the entry relating to “personal credit agreement”.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p>
Bankruptcy (Scotland) Act 1985 (c. 66)	In section 61(6), the words from the beginning to “but”.	45
Insolvency Act 1986 (c. 45)	In section 343(6), the words from the beginning to “But”.	
Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19))	Article 316(6).	50

<i>Act or instrument</i>	<i>Extent of repeal</i>	
Tribunals and Inquiries Act 1992 (c. 53)	In section 11 – <ul style="list-style-type: none"> <li data-bbox="687 367 943 405">(a) subsection (6);</li> <li data-bbox="687 409 1289 501">(b) in subsection (7)(a), the words from “or on an appeal” to “Scotland” in the third place where it occurs; and</li> <li data-bbox="687 506 1289 600">(c) in subsection (8), the words from “and in relation to” to “Northern Ireland” in the third place where it occurs.</li> </ul>	5
Enterprise Act 2002 (c. 40)	In Schedule 25, paragraphs 6(18)(b) and 27(2).	10

# Consumer Credit Bill

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## B I L L

To amend the Consumer Credit Act 1974; to extend the ombudsman scheme under the Financial Services and Markets Act 2000 to cover licensees under the Consumer Credit Act 1974; and for connected purposes.

*Presented by Secretary Alan Johnson  
supported by  
The Prime Minister, Mr Secretary Prescott,  
Mr Chancellor of the Exchequer,  
Mr Secretary Blunkett, Mr Secretary Darling,  
Mr Secretary Hain, Mr Gerry Sutcliffe,  
and Bridget Prentice.*

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*Ordered, by The House of Commons,  
to be printed, 18th May 2005.*

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