

Consumer Credit (Regulation and Advice) Bill

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Schedule – Debt Commissioner

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B I L L

TO

Impose certain limits on consumer credit interest rates and charges; to establish a levy on credit and debit card providers to fund the provision of debt advice services; to give powers to local authorities to restrict the provision of premises for licensed consumer credit agencies within a local area; to make provision regarding the availability of certain financial services products at branches of the Post Office; to make other measures relating to the regulation of, and availability of advice on, consumer credit; and for connected purposes.

BE 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:—

1 Cost of credit and enforceability of agreements

- (1) No agreement regulated by the Consumer Credit Act 1974 is enforceable if the total cost of credit charged under that agreement or the total cost of transactions linked to that agreement exceeds any relevant limits set by the OFT under sections 2 and 3. 5
- (2) Where a consumer credit agreement is found to be unlawful by virtue of subsection (1) that agreement and any linked agreement shall be unenforceable and the lender and any agent acting on its behalf shall be liable to—
- (a) a fine determined by the OFT in accordance with section 5; and
 - (b) the revocation of the lender's Consumer Credit Licence. 10

2 OFT's powers to set limits on costs of credit

- (1) The OFT must set a reasonable limit on the total cost chargeable for credit by lenders in any part of the consumer credit market ("a limit") if—
- (a) it identifies that a lack of effective price competition is causing consumer detriment in that part of the consumer credit market, or 15
 - (b) it identifies that charges in that part of the consumer credit market reflect an unacceptably high level of credit risk and irresponsible lending practice.

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- (2) Any limit set by the OFT –
- (a) must reflect the cost of providing credit in a properly functioning competitive credit market or be designed to eliminate excessive risk taking by consumer credit lenders and borrowers, 5
 - (b) must be expressed as the maximum total charge for credit permissible per £100 advanced, calculated on an annualised basis, and
 - (c) may reflect the different duration of credit agreements.
- (3) In setting or considering whether or not to set a limit the OFT must consider –
- (a) the degree of price competition in the relevant market,
 - (b) the level of consumer detriment caused by any identified lack of price competition in the relevant market, 10
 - (c) the likely impact of any limit on the supply of affordable and responsible credit products in the relevant market, and
 - (d) the desirability of eliminating excessive risk taking and irresponsible practices from the relevant market. 15
- (4) The OFT must, within 6 months of the day on which this Act comes into force, decide whether or not to set a limit for each part of the consumer credit market and must publish its decision and the reasons for it.
- (5) The OFT must review the decision made under subsection (4) at least every 12 months after the publication of the decision and must publish those reviews, including the reasons for the further decisions it has made. 20
- (6) Before making decisions under subsections (4) and (5) the OFT must consult the Debt Commissioner.
- (7) The OFT may (with not less than 14 days' published notice) vary any limits to reflect wider macroeconomic conditions including but not limited to changes in the Bank of England's base lending rate. 25
- 3 Limits on cost of transactions linked to credit agreements**
- (1) Where the OFT has set a limit under section 2 it may also set limits on the cost of transactions linked to such credit agreements if it finds evidence that –
- (a) the limit is likely to be avoided by the use of such linked transactions by lenders, or 30
 - (b) there is likely to be a degree of consumer detriment.
- (2) Linked transactions include –
- (a) the cash price of a good which is being offered for sale on credit terms, and 35
 - (b) related insurance or collection services.
- 4 Publication of limits**
- When the OFT sets a limit under section 2 or sets a limit on the cost of transactions linked to credit agreements under section 3 the OFT must take reasonable steps to ensure that such limits are, within 1 month of the limit being set – 40
- (a) published in the London Gazette,
 - (b) publicised throughout the credit industry,
 - (c) notified to relevant consumer groups, and

- (d) notified to relevant advice agencies.

5 Level of fines

- (1) The OFT may impose a fine on any lender who exceeds a limit or a limit on the cost of transactions linked to credit agreements.
- (2) A fine imposed by virtue of subsection (1) must not exceed 10% of that lender's annual turnover. 5
- (3) When setting a fine the OFT must have regard to –
- (a) the length of time that the lender has been operating in the market,
 - (b) the lender's previous record regarding limits,
 - (c) the lender's previous record regarding the cost of transactions linked to credit agreements, and 10
 - (d) the annual turnover of the lender in its most recent annual accounts.
- (4) A lender upon which a fine is imposed by the OFT pursuant to this section has the right to appeal to the Secretary of State within 28 days of being notified by the OFT of that fine. 15
- (5) On receiving an appeal under subsection (4) the Secretary of State may –
- (a) uphold the right of the OFT to impose the fine,
 - (b) vary the amount of the fine,
 - (c) waive the fine, or
 - (d) take such other action as the Secretary of State considers appropriate. 20

6 Duties of the Financial Ombudsman Service

- (1) Section 228 of the Financial Services and Markets Act 2000 is amended as follows.
- (2) After subsection (2) insert –
- “(2A) In respect of its consumer credit jurisdiction the ombudsman shall have regard to any limits on the cost of credit or on the cost of transactions linked to credit agreements imposed by the OFT pursuant to sections 2 or 3 of the Consumer Credit (Regulation and Advice) Act 2011. 25
- (2B) The ombudsman must publish, on an annual basis, details of all consumer credit decisions where it has found the cost of credit to be unfair or unreasonable. 30
- (2C) When making an assessment as to whether the cost of credit is fair and reasonable, the ombudsman must consider –
- (a) the total charge for credit at the time of the original agreement at the outset of the credit relationship with the lender, 35
 - (b) the impact of any repeat lending or modification of agreements on the total cost of credit paid by the borrower over the lifetime of the credit relationship,
 - (c) the cost of any linked transactions to the credit agreement throughout the relationship, and 40
 - (d) the cumulative cost of default charges applied to the borrower's account throughout the relationship.”.

7 Debt Commissioner

- (1) There is to be a Debt Commissioner.
- (2) The Schedule has effect with respect to the Debt Commissioner.
- (3) The Debt Commissioner must administer funding for the provision of debt advice. 5
- (4) The funds allocated under subsection (3) must be provided for entirely through the mechanism in section 8.
- (5) The operational costs of the Debt Commissioner must not exceed 1% of the total funds provided under section 8.
- (6) The Debt Commissioner must advise the OFT on suitable levels for any limits on the total cost chargeable for credit. 10

8 Funding for the Debt Commissioner and money advice services

- (1) Section 6A of the Consumer Credit Act 1974 is amended as follows.
- (2) In subsection (1), after “Act” insert “plus an additional contribution to cover the operational costs of the Debt Commissioner and to support the funding of debt advice services.” 15
- (3) After subsection (4) insert –
 - “(5) The OFT shall be responsible for paying the additional contribution referred to in section (1) to the Debt Commissioner in accordance with the content of a Memorandum of Understanding to be drawn up between the two parties within 3 months of this Act or any Part of this Act coming into force.” 20

9 Powers of local authorities

- (1) The Secretary of State must by regulations made by statutory instrument amend the Town and Country Planning (Use Classes) Order 1987 (S.I. 1987/764) (“TCPUC 1987”), so that any holder of a Consumer Credit Licence which is not also regulated by the Financial Services Authority for the purpose of taking deposits, is removed from the A2 Use Class as defined in TCPUC 1987 and placed in a new category. 25
- (2) The Secretary of State must lay regulations under subsection (1) before Parliament before the end of the period of 12 months beginning with the day on which this Act is passed. 30

10 Availability of credit union services through the Post Office network

- (1) The Secretary of State must by regulations made by statutory instrument amend the Postal Services Act 2000 to make provision for the availability of credit union services through the Post Office network. 35
- (2) The Secretary of State must lay regulations under subsection (1) before Parliament before the end of the period of 12 months beginning with the day on which this Act is passed.

11 Interpretation

In this Act “OFT” means the Office of Fair Trading or any successor body with the power to issue licences to trade to consumer credit providers or otherwise issue rules concerning their conduct of business.

12 Financial provisions

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- (1) *There is to be paid, out of money provided by Parliament –*
 - (a) *any expenditure incurred under or virtue of this Act by the Secretary of State or a person holding office under Her Majesty, and*
 - (b) *any increase attributable to this Act in the sums payable under any other Act out of money so provided.*
- (2) *There is to be paid into the Consolidated Fund any sums received by a government department by virtue of this Act.*

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13 Regulations

Regulations made under this Act are to be made by statutory instrument and are to be subject to annulment in pursuance of a resolution of either House of Parliament.

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14 Short title, commencement and extent

- (1) This Act may be cited as the Consumer Credit (Regulation and Advice) Act 2011.
- (2) This Act comes into force at the end of the period of 3 months beginning with the day on which it is passed.
- (3) This Act extends to England and Wales only.

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SCHEDULE

Section 7

DEBT COMMISSIONER

- 1 (1) The Debt Commissioner is to be a corporation sole.
- (2) The Debt Commissioner is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Commissioner's property is not to be regarded as property of, or property held on behalf of, the Crown. 5

General powers

- 2 (1) The Debt Commissioner may do anything which appears to him or her to be necessary or expedient for the purpose of, or in connection with, the exercise of his or her functions. 10
- (2) In particular the Debt Commissioner may –
- (a) co-operate with other public authorities in the United Kingdom;
 - (b) enter into contracts; and
 - (c) acquire, hold and dispose of any property. 15

Appointment and tenure of office

- 3 (1) The Debt Commissioner is to be appointed by the Secretary of State.
- (2) Subject to the provisions of this paragraph, a person shall hold and vacate office as the Debt Commissioner in accordance with the terms and conditions of his or her appointment as determined by the Secretary of State. 20
- (3) An appointment as the Debt Commissioner shall be for a term not exceeding five years.
- (4) A person who has held office as the Debt Commissioner is eligible for reappointment once only.
- (5) The Debt Commissioner may at any time resign by notice in writing to the Secretary of State. 25
- (6) The Secretary of State may remove the Debt Commissioner from office if the Secretary of State is satisfied that the Commissioner has –
- (a) become unfit or unable properly to discharge his or her functions; or
 - (b) behaved in a way that is not compatible with continuing in office. 30

Remuneration

- 4 The Secretary of State must –
- (a) pay the Debt Commissioner such remuneration and allowances, and
 - (b) pay or make provision for the payment of such pension or gratuities to or in respect of the Debt Commissioner, 35
- as may be provided under the terms of his or her appointment.

Staff

- 5 (1) The Debt Commissioner may appoint any staff the Debt Commissioner considers necessary for assisting in the exercise of his or her functions, one of whom shall be appointed as deputy Debt Commissioner.
- (2) During any vacancy in the office of Debt Commissioner or at any time when the Debt Commissioner is for any reason unable to act, the deputy Debt Commissioner shall exercise his or her functions (and any property or rights vested in the Debt Commissioner may accordingly be dealt with by the deputy Debt Commissioner as if vested in him or her). 5
- (3) Without prejudice to subparagraph (2), any member of the Debt Commissioner’s staff may, so far as authorised by the Debt Commissioner, exercise any of his or her functions. 10

Pensions

- 6 (1) In the Superannuation Act 1972, in Schedule 1 (kinds of employment etc to which section 1 of that Act applies) – 15
- (a) in the list of “Other Bodies”, at the end insert “Employment by the Debt Commissioner”;
- (b) in the list of “Offices”, at the appropriate place insert “Debt Commissioner”.
- (2) The Secretary of State must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as he may determine in respect of any increase attributable to subparagraph (1) in the sums payable out of money provided by Parliament under the Superannuation Act 1972. 20

Funding

- 7 The office of the Debt Commissioner will be funded in accordance with the provisions of section 8. 25

Accounts

- 8 (1) The Debt Commissioner must – 30
- (a) keep proper accounting records;
- (b) prepare a statement of accounts for each financial year; and
- (c) send a copy of each such statement of accounts to the Secretary of State and the Comptroller and Auditor General as soon as possible after the end of the financial year to which the statement relates.
- (2) The Comptroller and Auditor General must examine, certify and report on each statement of accounts sent under subparagraph (1)(c) and must lay copies of the statement and of the report before Parliament. 35
- (3) In this paragraph, “financial year” means – 40
- (a) the period beginning with the date on which the first Debt Commissioner is appointed and ending with 31 March next following that date; and
- (b) each successive period of twelve months ending with 31 March.

Evidence

- 9 A document purporting to be duly executed under the seal of the Debt Commissioner or to be signed by him or her or on his or her behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed. 5

Protection from defamation actions

- 10 For the purposes of the law of defamation –
- (a) any statement made by the Debt Commissioner in a report published under this Act has absolute privilege; and
 - (b) any other statement made by the Debt Commissioner or a member of his or her staff for the purposes of this Act has qualified privilege. 10

Regulated position

- 11 In the Criminal Justice and Court Services Act 2000, in section 36(6) (meaning of “regulated position”), after paragraph (f) insert –
- “(fa) Debt Commissioner and deputy Debt Commissioner appointed under section 1 of the Consumer Credit (Regulation and Advice) Act 2011.” 15

Disqualifications

- 12 In the House of Commons Disqualification Act 1975, in Part 3 of Schedule 1 (certain disqualifying offices), at the appropriate places insert the following entries –
- “Debt Commissioner”;
 - “Member of staff of the Debt Commissioner”.
- 13 In the Northern Ireland Assembly Disqualification Act 1975, in Part 3 of Schedule 1 (certain disqualifying offices), at the appropriate places insert the following entries –
- “Debt Commissioner”;
 - “Member of staff of the Debt Commissioner”.
- 25

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*Ordered to be brought in by Stella Creasy,
Tom Blenkinsop, Liz Kendall, Heidi Alexander,
Mr Dennis Skinner, John McDonnell,
Jon Cruddas, Yvonne Fovargue,
Alex Cunningham, Sheila Gilmore,
Natascha Engel and Fiona O'Donnell.*

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