

## **IMPORTANT - PLEASE NOTE**

This document reflects the position **prior** to the 2010 changes implementing the Consumer Credit Directive. Those changes apply from 1 February 2011, or earlier if a firm opts to comply with the new rules at an earlier stage. Guidance on the changes can be found on the [Department for Business, Innovation and Skills \(BIS\) website](#).

Office of Fair Trading  
January 2011

# **Consumer Credit Act 1974**

## **Post-contract information requirements**

July 2008

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## CONTENTS

<i>Chapter</i>	<i>Page</i>
1 Introduction	5
2 Statements	7
3 Notices of variation	13
4 Arrears notices	14
5 Default sum notices	19
6 Default and enforcement notices	21
7 Notices of post-judgment interest	24
8 Information to be provided on request	26
9 Breach of the Act or regulations	29

# 1 INTRODUCTION

- 1.1 This guidance note provides a brief introduction and overview of the post-contract information requirements under the Consumer Credit Act 1974 (the 1974 Act) as amended. It does not spell out all the requirements, nor does it provide explanatory interpretations of the legislation. As such, creditors and owners are advised to read this guidance note in conjunction with the legislation and not in place of it.
- 1.2 If you have specific queries regarding interpretation of the 1974 Act or regulations, or issues raised in this guidance note, these may be addressed to [credit.guidance@oft.gsi.gov.uk](mailto:credit.guidance@oft.gsi.gov.uk). We may consider adding Q&As on an ongoing basis in the light of our practical experience and any queries we receive going forward.
- 1.3 For simplicity, we refer to creditors and debtors throughout, although a number of the requirements also apply to consumer hire agreements. Note that a creditor would include a person who has acquired the debt or to whom the original creditor's rights and duties under the agreement have passed.

## Summary

- 1.4 The 1974 Act lays down rules about the information to be given to debtors during the lifetime of a regulated consumer credit agreement. Certain information must be given at periodic intervals, whilst other information must be provided on request – such as a statement of account and a copy of the credit agreement.
- 1.5 In addition, if the creditor varies the agreement, notice must be given to the debtor before the variation takes effect. A creditor wishing to terminate an agreement, or to take certain enforcement actions, for example because the debtor is in breach of the agreement, must serve a notice containing specified information.
- 1.6 The Consumer Credit Act 2006 (the 2006 Act) amends some of the existing requirements and introduces new requirements on post-contract transparency. These include:

- annual statements under fixed-sum credit agreements
- additional information in statements for running-account credit
- notices of sums in arrears
- notices of default sums
- additional information in default notices
- notices relating to post-judgment interest.

1.7 The new requirements come into force on 1 October 2008. There are transitional provisions for pre-existing agreements.<sup>1</sup>

1.8 The Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007 (the 2007 Regulations)<sup>2</sup> set out the information and forms of wording to be included in the above statements and notices. The Regulations also prescribe the form of the statements and notices,<sup>3</sup> including that required information must be easily legible, and in plain intelligible language, and (with certain limited exceptions) must be no less prominent than other wording in the document. In addition, certain prescribed wording must be shown together as a whole, without interspersing.

1.9 The 2007 Regulations have been amended by the Consumer Credit (Information Requirements and Duration of Licences and Charges) (Amendment) Regulations 2008,<sup>4</sup> for the purposes of correction and clarification. The amending Regulations also come into force on 1 October 2008.

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<sup>1</sup> Schedule 3 to the 2006 Act

<sup>2</sup> SI 2007/1167 – see [www.opsi.gov.uk/si/si2007/uksi\\_20071167\\_en\\_1](http://www.opsi.gov.uk/si/si2007/uksi_20071167_en_1)

<sup>3</sup> Regulations 36-40

<sup>4</sup> SI 2008/1751 – see [www.opsi.gov.uk/si/si2008/uksi\\_20081751\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20081751_en_1)

## 2 STATEMENTS

### Statements for fixed-sum credit agreements

- 2.1 From 1 October 2008, creditors will be required by section 77A of the 1974 Act<sup>5</sup> to provide debtors with annual statements in relation to regulated agreements for fixed-sum credit, such as loans and hire-purchase.
- 2.2 For agreements made on or after 1 October 2008, the first statement must be given within a period of one year beginning on the day after the day the agreement is made. For pre-existing agreements, the first statement must be given within one year from 1 October 2008.<sup>6</sup> Thereafter the creditor must give the debtor further statements at intervals of not more than one year, until there are no sums which are or may become payable under the agreement.
- 2.3 The Department for Business, Enterprise and Regulatory Reform (BERR) is proposing to make a Legislative Reform Order (LRO) which, subject to Parliamentary approval, will amend the 1974 Act to clarify that statements must cover a period of not more than one year,<sup>7</sup> and must be given within 30 days of the end of the period to which they relate.<sup>8</sup>
- 2.4 The 2007 Regulations specify the information to be included in statements for fixed-sum credit agreements.<sup>9</sup> In particular:
- the duration of the agreement and the amount of credit provided

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<sup>5</sup> As inserted by section 6 of the 2006 Act

<sup>6</sup> There are transitional provisions at Regulations 46-48

<sup>7</sup> Other than in respect of pre-existing agreements

<sup>8</sup> The draft Order was laid in Parliament on 17 June 2008 and can be viewed at [www.berr.gov.uk/consumers/consumer-finance/credit-act-2006/documents/index.html](http://www.berr.gov.uk/consumers/consumer-finance/credit-act-2006/documents/index.html)

<sup>9</sup> Regulations 4-10 as amended and Schedule 1

- the rate or rates of interest applicable, together with
  - the period during which each rate applied
  - if applicable, the element of the credit to which it applied
- the opening balance at the beginning of the period to which the statement relates
- the amount and date of any payment to the account during the period
- the amount and date of any interest or other charges falling due during the period
- the amount and date of any other movement in the account during the period
- the closing balance at the end of the period.

2.5 Certain prescribed forms of wording must also be included.<sup>10</sup> These relate to:

- the consequences of paying less than the agreed sum
- sources of help or advice if the debtor is having difficulties making payments
- the right to settle the agreement early
- the right to terminate a hire-purchase or conditional sale agreement
- dispute resolution and complaints to the Financial Ombudsman Service (FOS).

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<sup>10</sup> Schedule 1 Parts 2 and 3

- 2.6 There are special provisions in respect of agreements with pre-computed interest – under which interest is calculated at the start of the agreement rather than on the basis of the balance outstanding.<sup>11</sup> There are also special provisions in respect of agreements to aggregate – under which payments under two or more agreements may be aggregated.<sup>12</sup>
- 2.7 Statements relating to home credit loan agreements must contain additional information, in accordance with the Competition Commission's Home Credit Market Investigation Order 2007.<sup>13</sup> Such statements must include:<sup>14</sup>
- the total charge for credit under the agreement
  - prescribed wording about the right to request additional statements
  - a statement regarding the price comparison website set up under the terms of the Order.

### **Statements for running-account credit agreements**

- 2.8 Section 78(4) of the 1974 Act requires creditors to give periodic statements to debtors in relation to regulated agreements for running-account credit, such as credit cards. The requirements are set out in the Consumer Credit (Running-Account Credit Information) Regulations 1983.<sup>15</sup>

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<sup>11</sup> Regulation 6 as amended and Schedule 1 paragraph 3(c)(ii)

<sup>12</sup> Regulations 7-9 as amended

<sup>13</sup> [www.competition-commission.org.uk/inquiries/current/homecredit/order.pdf](http://www.competition-commission.org.uk/inquiries/current/homecredit/order.pdf)

<sup>14</sup> Regulation 12 as amended

<sup>15</sup> SI 1983/1570

2.9 The statement must be given within a prescribed period after the end of the billing period to which it relates.<sup>16</sup> In particular:

- where the statement includes a demand for payment it must be given within one month from the end of the period
- where the statement does not include a demand for payment but there is a debit or credit balance on the account, the statement must be given within six months from the end of the period
- where there is no balance on the account, the statement must be given within twelve months from the end of the period or from the date on which there is such a balance.

2.10 The 1983 regulations specify the information to be included in periodic statements for running-account credit.<sup>17</sup> In particular:

- any opening balance at the beginning of the period to which the statement relates
- the amount and date of any payment to the account during the period
- the amount and date of any drawing on the account during the period
- the amount and date of any interest or other charges applied to the account during the period
- the closing balance at the end of the period
- the rate of interest, or information enabling the debtor to check the interest calculation, or a statement that the rate will be provided on

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<sup>16</sup> Regulation 3 of the 1983 regulations

<sup>17</sup> Schedule to the 1983 regulations

request together with an explanation of the manner in which interest has been calculated.

2.11 From 1 October 2008, creditors will be required to include additional information in periodic statements for running-account credit.<sup>18</sup> The provisions are set out in the 2007 Regulations,<sup>19</sup> and relate to:

- the consequences of making only minimum payments
- the consequences of failing to make a minimum payment
- a statement of the order of payment allocation, if the balance is not repaid in full, and the implications for future interest charges
- dispute resolution and complaints to the FOS.

2.12 Statements relating to store card agreements must contain additional information, by virtue of the Competition Commission's Store Cards Market Investigation Order 2006.<sup>20</sup> In particular, such statements must include:

- the current APR on purchases
- estimated interest next month if only the minimum payment is made
- a minimum payment warning in prescribed terms
- a description and amount of any insurance charges.

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<sup>18</sup> Section 78(4A) of the 1974 Act as inserted by section 7(1) of the 2006 Act

<sup>19</sup> Regulations 14-18 as amended and Schedule 2

<sup>20</sup> [www.competition-commission.org.uk/inquiries/completed/2006/storecard/pdf/store\\_cards\\_order.pdf](http://www.competition-commission.org.uk/inquiries/completed/2006/storecard/pdf/store_cards_order.pdf)

## Statements for two or more debtors

2.13 If there are two or more debtors who are party to a fixed-sum or running-account credit agreement, a debtor may provide a dispensing notice to the creditor so as to waive the creditor's obligation to provide a statement to that debtor.<sup>21</sup> However, dispensing notices will not be effective if that would mean that no debtor would receive a statement.

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<sup>21</sup> Section 185 of the 1974 Act as amended by section 7(3) of the 2006 Act

### **3 NOTICES OF VARIATION**

- 3.1 Section 82(1) of the 1974 Act provides that, where the creditor varies a regulated agreement under a power contained in the agreement, the variation shall not take effect until notice of the variation has been given to the debtor. This must be done in accordance with the Consumer Credit (Notice of Variation of Agreements) Regulations 1977.<sup>22</sup>
- 3.2 The notice must set out details of the variation, and must be given to the debtor not less than seven days before the variation takes effect. In the case of certain interest rate variations, where interest is charged daily on the basis of the outstanding balance, notice may be published in three national newspapers and (where practicable) by prominent display in branch offices.

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<sup>22</sup> SI 1977/328

## 4 ARREARS NOTICES

### Notices of sums in arrears under fixed-sum credit agreements

- 4.1 From 1 October 2008, creditors will be required by section 86B of the 1974 Act<sup>23</sup> to give debtors a notice of sums in arrears under fixed-sum credit agreements, where the debtor is in arrears by more than a certain amount. The notice must include the information and forms of wording prescribed by the 2007 Regulations.<sup>24</sup>
- 4.2 An initial arrears notice will be triggered if:
- the debtor is required to have made at least two payments under the agreement before that time
  - the total sum paid under the agreement is less than the total sum required to be paid, and
  - the amount of the shortfall is no less than the sum of the last two required payments.<sup>25</sup>
- 4.3 The proposed LRO,<sup>26</sup> subject to Parliamentary approval, will amend the provisions to make clear that payments for these purposes mean payments to be made at pre-determined intervals under the terms of the agreement.
- 4.4 In the case of agreements under which payments are required at intervals of one week or less (such as home credit agreements), the trigger will apply if the shortfall is no less than the sum of the last four

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<sup>23</sup> As inserted by section 9 of the 2006 Act

<sup>24</sup> Regulations 19-23 and Schedule 3 as amended

<sup>25</sup> Unless there is a court judgment in relation to sums under the agreement

<sup>26</sup> See paragraph 2.3 above

required payments, provided that the arrears relate to payments within the previous 20 weeks.

4.5 Once triggered, an initial arrears notice must be served within 14 days. Further notices must be given at intervals of not more than six months until the debtor ceases to be in arrears or a judgment is made in relation to the agreement.

4.6 The initial notice must indicate among other things:<sup>27</sup>

- the balance under the agreement at the date on which the duty to give the notice arose
- the amount of the shortfall which gave rise to the duty.

4.7 The debtor is entitled to request information about the shortfall, including the amounts of the sums in question, the dates on which they became due, and the amounts and dates of any part payments, unless this information is already included in the notice. Such information must be provided within 15 working days.<sup>28</sup>

4.8 Subsequent arrears notices must indicate among other things:<sup>29</sup>

- the opening balance at the date on which the duty to give the notice arose (corresponding to the closing balance in the last notice)
- the amount of the shortfall in the opening balance
- the amount and date of any payment to the account during the period

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<sup>27</sup> Schedule 3 Parts 1 and 2

<sup>28</sup> Regulation 19(2) as amended

<sup>29</sup> Schedule 3 Parts 1 and 3 as amended

- the amount and date of any interest or other charges falling due during the period
- the amount and date of any other movement in the account during the period
- the closing balance at the end of the period, and the amount of the shortfall at that date.

4.9 In addition, all arrears notices must indicate whether default sums or interest may be payable on the arrears, and that further notices will be given at least every six months while the debtor continues to be in arrears.

4.10 Special provisions apply in respect of agreements to aggregate.<sup>30</sup> There are also transitional provisions for agreements made before 1 October 2008, permitting the inclusion of pre-commencement information.<sup>31</sup>

4.11 Each arrears notice must be accompanied by a copy of the current OFT arrears information sheet, and must include a prescribed statement referring to this.<sup>32</sup> The OFT is required by the 2006 Act to prepare, and give general notice of, an arrears information sheet and a default information sheet.<sup>33</sup> These must include information to help debtors who are in arrears or default, including a summary of their key rights and responsibilities and where to go for help or advice. The current information sheets can be downloaded from the OFT website.<sup>34</sup>

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<sup>30</sup> Regulations 20-23 as amended

<sup>31</sup> Regulation 50 as amended

<sup>32</sup> Schedule 3 Part 5

<sup>33</sup> Section 86A of the 1974 Act as inserted by section 8 of the 2006 Act

<sup>34</sup> [www.offt.gov.uk/advice\\_and\\_resources/resource\\_base/legal/cca/CCA2006/information/](http://www.offt.gov.uk/advice_and_resources/resource_base/legal/cca/CCA2006/information/)

## Notices of sums in arrears under running-account credit agreements

4.12 From 1 October 2008, creditors will be required by section 86C of the 1974 Act<sup>35</sup> to give debtors a notice of sums in arrears under running-account credit agreements, together with a copy of the current OFT arrears information sheet.<sup>36</sup> The notice must include the information and forms of wording prescribed by the 2007 Regulations.<sup>37</sup>

4.13 An arrears notice will be triggered if:

- the debtor is required to have made at least two payments<sup>38</sup> under the agreement before that time, and
- the last two payments have not been made (or have been paid only in part).<sup>39</sup>

4.14 The notice must be served not later than the time the creditor is next required to give a periodic statement under section 78(4).<sup>40</sup> The notice may be incorporated in the section 78(4) statement or any other statement or notice under the 1974 Act.

4.15 The arrears notice must indicate among other things:

- the amount of each of the last two required payments
- the date on which the amount fell due

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<sup>35</sup> As inserted by section 10 of the 2006 Act

<sup>36</sup> See paragraph 4.11 above

<sup>37</sup> Regulations 24-26 and Schedule 3 Part 4

<sup>38</sup> See paragraph 4.3 above

<sup>39</sup> Unless there is a court judgment in relation to sums under the agreement

<sup>40</sup> See paragraph 2.9 above

- the amount and date of any part payment
- the total shortfall on the payments.

4.16 In addition, the notice must indicate whether default sums or interest may be payable on the arrears, and if so, that further details may be obtained from the creditor. Special provisions apply in cases where the amount of the shortfall does not exceed £2, unless default sums or interest are payable.<sup>41</sup>

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<sup>41</sup> Regulation 26

## 5 DEFAULT SUM NOTICES

- 5.1 From 1 October 2008, creditors will be required by section 86E of the 1974 Act<sup>42</sup> to give the debtor a notice in a specified form where a default sum becomes payable under a regulated agreement. A 'default sum' means a sum (other than interest) which is payable by the debtor in connection with a breach of the agreement.<sup>43</sup>
- 5.2 The notice must be given to the debtor within 35 days of the default sum becoming payable.<sup>44</sup> The notice may be incorporated in any other statement or notice under the 1974 Act.
- 5.3 The creditor may not charge interest in connection with a default sum before the 29<sup>th</sup> day after the day on which the default sum notice was given to the debtor.<sup>45</sup> In addition, such interest must be simple interest, and may not be compounded.<sup>46</sup>
- 5.4 The 2007 Regulations specify the information and forms of wording to be included in notices of default sums.<sup>47</sup> In particular, the notice must include:
- the amount and nature of each default sum payable
  - the date on which it became payable
  - the total amount of default sums covered by the notice.

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<sup>42</sup> As inserted by section 12 of the 2006 Act

<sup>43</sup> Section 187A of the 1974 Act as inserted by section 18 of the 2006 Act

<sup>44</sup> Regulation 28 of the 2007 Regulations

<sup>45</sup> Section 86E(4)

<sup>46</sup> Section 86F of the 1974 Act as inserted by section 13 of the 2006 Act

<sup>47</sup> Regulations 29-32 and Schedule 4

5.5 In addition, a prescribed warning will be required in cases where interest may be payable on the default sum. This must include a statement of the interest rate and whether this is fixed or variable.<sup>48</sup>

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<sup>48</sup> Schedule 4 Part 2

## 6 DEFAULT AND ENFORCEMENT NOTICES

### Default notices

- 6.1 Section 87 of the 1974 Act requires creditors to give the debtor a default notice in a specified form if, following any breach of a regulated agreement by the debtor, the creditor wishes to terminate the agreement, demand earlier payment of any sum, recover possession of any goods or land, treat any right conferred on the debtor as terminated, restricted or deferred, or enforce any security.
- 6.2 The requirements are set out in the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983.<sup>49</sup> In particular, the default notice must indicate:<sup>50</sup>
- the nature of the alleged breach of the agreement
  - the action needed to remedy the breach or to compensate the creditor, and the date by which this must be done
  - the consequences of failure to comply with the notice
  - the action intended to be taken by the creditor in the event of non-compliance
  - the procedures relating to the recovery of goods under a hire-purchase or conditional sale agreement
  - a statement indicating the debtor's right to apply to the court for a time order, giving more time to repay the debt
  - prescribed wording regarding sources of help or advice.

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<sup>49</sup> SI 1983/1561 as amended

<sup>50</sup> Schedule 2 to the 1983 regulations

- 6.3 The date specified in the notice must be not less than 14 days after the date of service.<sup>51</sup> (This period was increased from seven days by the 2006 Act).<sup>52</sup> The creditor is precluded from taking enforcement action until this period has elapsed.
- 6.4 The 2006 Act also broadens the power to prescribe the contents of default notices.<sup>53</sup> The 2007 Regulations amend the 1983 regulations by requiring (from 1 October 2008) prescribed statements in the case of hire-purchase or conditional sale agreements (regarding the consumer's right to end the agreement and the procedures involved) and in cases where the agreement provides for the charging of post-judgment interest.<sup>54</sup>
- 6.5 Creditors will be required, from 1 October 2008, to include a copy of the current OFT default information sheet with each default notice.<sup>55</sup>

### **Enforcement and termination notices**

- 6.6 The 1974 Act also requires service of a notice in a specified form if the creditor wishes to terminate a regulated agreement, or to take other enforcement actions, in cases other than involving breach by the debtor.
- 6.7 Under section 76 of the 1974 Act, the creditor is not entitled to enforce a term of a regulated agreement by demanding earlier payment of any sum, or recovering possession of any goods or land, or treating any right conferred on the debtor as terminated, restricted or deferred, unless he

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<sup>51</sup> Section 88(2) of the 1974 Act, as amended by section 14(1) of the 2006 Act

<sup>52</sup> From 1 October 2006

<sup>53</sup> Section 88(4) of the 1974 Act as amended by section 14(2) of the 2006 Act

<sup>54</sup> Regulation 33

<sup>55</sup> See paragraph 4.11 above

provides the debtor with a notice of his intention to take such action at least seven days beforehand.<sup>56</sup>

- 6.8 Under section 98 of the 1974 Act, the creditor is not entitled to terminate a regulated agreement (in non-default cases) unless he provides the debtor with a notice of his intention to terminate at least seven days before taking such action.
- 6.9 Enforcement and termination notices are not needed where an agreement is for an indefinite duration or where notice is served at the end of the period specified in the agreement for its duration.
- 6.10 The information and forms of wording required in enforcement and termination notices are laid down in the 1983 regulations,<sup>57</sup> and broadly parallel those applying to default notices.<sup>58</sup>

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<sup>56</sup> This period was not altered by the 2006 Act

<sup>57</sup> Schedules 1 and 3 to the 1983 regulations

<sup>58</sup> See paragraph 6.2 above

## **7 NOTICES OF POST-JUDGMENT INTEREST**

- 7.1 From 1 October 2008, creditors will be required by section 130A of the 1974 Act<sup>59</sup> to notify the debtor if they intend to charge post-judgment interest under a regulated agreement in connection with a sum that is required to be paid under a court judgment. The creditor will not be entitled to charge interest on the judgment sum until the first required notice has been served.
- 7.2 Further notices must be given at intervals of not more than six months for such time as the creditor wishes to charge post-judgment interest.
- 7.3 The notice may be incorporated in any other statement or notice under the 1974 Act. The provisions do not apply in respect of post-judgment interest which is required to be paid by virtue of a court order.
- 7.4 The 2007 Regulations set out the information and forms of wording to be included in notices of post-judgment interest.<sup>60</sup>
- 7.5 The first required notice must include a prescribed statement indicating the creditor's intention to charge post-judgment interest, and the procedures involved. This must indicate the rate of interest payable, and the date from which it will be payable, and that further notices will be given at least every six months for so long as the creditor intends to charge post-judgment interest.<sup>61</sup>
- 7.6 In addition, the notice must indicate the amount on which post-judgment interest will be charged. It must also include prescribed statements highlighting the debtor's right to apply to the court to vary the terms of the instalment order or to reduce the amount of interest payable, and that the debtor can obtain advice and information about dealing with the

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<sup>59</sup> As inserted by section 17 of the 2006 Act

<sup>60</sup> Regulations 34-35 and Schedule 5 as amended

<sup>61</sup> Schedule 5 Part 3

debt from a number of organisations (with contact details taken from the OFT default information sheet).<sup>62</sup>

- 7.7 Subsequent notices must also indicate the total amount of post-judgment interest charged since the date of the last notice, the dates on which interest was charged, and the rate of interest (and whether this was variable).<sup>63</sup>

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<sup>62</sup> Schedule 5 Part 1 as amended

<sup>63</sup> Schedule 5 Part 2

## 8 INFORMATION TO BE PROVIDED ON REQUEST

### Fixed-sum credit agreements

8.1 Under section 77(1) of the 1974 Act, the creditor has a duty to give information to the debtor on request in relation to fixed-sum credit agreements. The request must be made in writing and accompanied by a fee of £1, and the creditor must respond within 12 working days (unless a similar request was made within the previous month).

8.2 The debtor can request a copy of the executed agreement (and any document referred to in it), together with a statement showing:

- the total sum paid to date
- the total sum which has become payable but remains unpaid, including the amounts in question and the date when each became due
- the total sum which will become payable, including the amounts in question and the date when each will become due (or if not ascertainable, the basis on which this will be determined).

8.3 The creditor has a similar duty in relation to any person who acted as surety under the agreement, in relation to security provided such as a guarantee or indemnity. The surety must also be supplied with a copy of the security instrument.<sup>64</sup>

8.4 The debtor can also request a copy of any security instrument, upon payment of a £1 fee, and this must again be provided within 12 working days.<sup>65</sup>

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<sup>64</sup> Sections 107-109 of the 1974 Act

<sup>65</sup> Section 110 of the 1974 Act

## Running-account credit agreements

8.5 Section 78(1) of the 1974 Act provides similar duties in respect of running-account credit agreements. The debtor can request a copy of the executed agreement (and any document referred to in it) together with a statement showing:

- the state of the account
- the amount, if any, currently payable under the agreement
- the amounts and dates of any payments that will become payable if there are no further drawings on the account (or if not ascertainable, the basis on which this will be determined).

8.6 Section 79 of the 1974 Act makes similar provision in respect of information under consumer hire agreements.

## Settlement information

8.7 Under section 97 of the 1974 Act, the debtor may request a statement, in a specified form, indicating the amount that would be required in order to settle the agreement early. The request must be in writing, but no fee may be charged. The creditor must provide the information within seven working days,<sup>66</sup> unless a similar request was made within the previous month. This is irrespective of whether the debtor actually intends to settle the agreement at that point.

8.8 The content of the settlement statement is prescribed by the Consumer Credit (Settlement Information) Regulations 1983.<sup>67</sup> The required information includes:

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<sup>66</sup> This period was reduced from 12 working days from 31 May 2005

<sup>67</sup> SI 1983/1564 as amended by SI 2004/1483

- the total amount payable by the debtor in order to discharge his indebtedness under the agreement, before deducting any rebate
- whether the debtor will be entitled to a rebate on early settlement, whether under the agreement or by virtue of section 95 of the Act
- the method of calculation of any rebate, and the settlement date, and the minimum amount of the rebate
- the total amount payable less any rebate

### **Statements to be binding on creditors**

8.9 Under section 172 of the 1974 Act, a statement given by a creditor under sections 77(1), 78(1), 79, 97 or 107-109 is deemed to be binding on the creditor, subject to the right to apply to a court during proceedings for just relief for any incorrect statement.

### **Information to be provided after an agreement has ended**

8.10 Under section 103 of the 1974 Act, a debtor may serve notice on the creditor requesting written confirmation that he has discharged his indebtedness under the credit agreement and that the agreement has ceased to operate. The creditor must, within 12 working days of receiving such a notice, either provide the confirmation or serve a counter-notice disputing the claim and giving details.

## **9 BREACH OF THE ACT OR REGULATIONS**

- 9.1 If a creditor does not give the debtor an annual statement in respect of a fixed-sum credit agreement when he is required to do so, then he is not entitled to enforce the agreement during the period of non-compliance. In addition, the debtor is not liable to pay any interest calculated by reference to the period of non-compliance, or any default sum which would have become payable during that period or which relates to any breach occurring during the period.<sup>68</sup>
- 9.2 Similar consequences apply if the creditor fails to give a notice of sums in arrears under a fixed-sum or running-account credit agreement.<sup>69</sup>
- 9.3 If the creditor fails to give a default sum notice, he is not entitled to enforce the agreement until the notice is given.<sup>70</sup> If the creditor fails to give a notice of post-judgment interest, he is not entitled to charge interest until a notice is given.<sup>71</sup>
- 9.4 Where a creditor fails – on request and upon payment of the appropriate fee by the debtor - to provide the information required by sections 77-79 and 97 of the 1974 Act, the creditor is not entitled to enforce the agreement whilst the default continues. If the creditor fails to provide information relating to any security, pursuant to sections 107-110, he is not entitled to enforce the security instrument.
- 9.5 In addition, the OFT and Local Authority Trading Standards Services have powers under Part 8 of the Enterprise Act 2002 to take enforcement action where there is a breach of legislation which harms

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<sup>68</sup> Section 77A(6) of the 1974 Act as amended

<sup>69</sup> Section 86D of the 1974 Act as amended

<sup>70</sup> Section 86E(5) of the 1974 Act as amended

<sup>71</sup> Section 130A(2) and (3) of the 1974 Act as amended

the collective interests of consumers.<sup>72</sup> Enforcement action may also be taken where appropriate under the Consumer Protection from Unfair Trading Regulations 2008.<sup>73</sup>

- 9.6 Breach of the requirements may also reflect on fitness to hold a consumer credit licence under the credit licensing regime.<sup>74</sup>

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<sup>72</sup> The OFT's general guidance on Part 8 may be found at [www.oft.gov.uk/shared\\_of/business\\_leaflets/enterprise\\_act/oft512.pdf](http://www.oft.gov.uk/shared_of/business_leaflets/enterprise_act/oft512.pdf)

<sup>73</sup> S.I. 2008/1277 – see [www.opsi.gov.uk/si/si2008/pdf/uksi\\_20081277\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20081277_en.pdf)

<sup>74</sup> See the OFT's general fitness guidance at [www.oft.gov.uk/shared\\_of/business\\_leaflets/credit\\_licences/oft969.pdf](http://www.oft.gov.uk/shared_of/business_leaflets/credit_licences/oft969.pdf)