

Consumer credit - regulated and exempt agreements

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1 INTRODUCTION

- 1.1 This guidance note provides a brief overview of regulated and exempt agreements under the Consumer Credit Act 1974 (the Act).
- 1.2 The Act was amended by the Consumer Credit Act 2006 (the 2006 Act) to remove the upper financial limit beyond which an agreement was not subject to regulation, and to provide for new exemptions in relation to high net worth individuals and business lending. These came into force on 6 April 2008.¹ A further exemption, relating to 'buy to let' agreements, came into force on 31 October 2008.²
- 1.3 The exemptions are principally contained in the Consumer Credit (Exempt Agreements) Order 1989 (the 1989 Order).³ This was amended as part of implementation of the Consumer Credit Directive (CCD) by the Consumer Credit (EU Directive) Regulations 2010 (the EU Directive Regulations)⁴ and the Consumer Credit (Amendment) Regulations 2010.⁵ The CCD changes come into force on 1 February 2011, unless a firm chooses to comply earlier.⁶ This is explained in chapter 3 of the CCD guidance issued by the Department for Business Innovation and Skills (BIS) in August 2010,⁷ and chapter 4 of that guidance summarises the changes to the exemptions.

¹ Sections 16A and 16B of the Act, as inserted by the 2006 Act, and the Consumer Credit (Exempt Agreements) Order 2007, SI 2007/1168.

² Section 16C of the Act, as inserted by the Legislative Reform (Consumer Credit) Order 2008, SI 2008/2826.

³ SI 1989/869 as amended.

⁴ SI 2010/1010 as amended.

⁵ SI 2010/1969.

⁶ Regulations 101 and 101A of the EU Directive Regulations.

⁷ *Consumer Credit Regulations: Guidance on the regulations implementing the Consumer Credit Directive* (August 2010) – available at: www.bis.gov.uk/policies/consumer-issues/consumer-credit-and-debt/consumer-credit-regulation/ec-consumer-credit-directive

- 1.4 This guidance note sets out what makes an agreement regulated under the Act and the different categories of agreement. It also briefly summarises the principal exemptions, with cross-references to the relevant legislation. It reflects the position once the CCD changes have been fully implemented. The position prior to 1 February 2011 is set out in the previous version of this guidance (OFT140, dated December 2008) which is available separately on the OFT website.⁸
- 1.5 The guidance note represents the OFT's view as an enforcer of the Act. It is not a definitive statement of the law and should not be relied upon as a substitute for legal advice. Only the courts can provide a definitive interpretation of the law. Firms are advised to read this guidance in conjunction with the legislation and not in place of it.

⁸ *Consumer credit - regulated and exempt agreements* (December 2008), OFT140 – available at: www.offt.gov.uk/shared_offt/business_leaflets/consumer_credit/oft140.pdf

2 REGULATED AGREEMENTS

Consumer credit agreements

- 2.1 A consumer credit agreement is an agreement between an individual (the debtor) and any other person (the creditor) by which the creditor provides the debtor with credit of any amount.⁹
- 2.2 The definition of 'individual' includes not only a natural person but also:
- a partnership consisting of two or three persons not all of whom are bodies corporate, and
 - an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership.¹⁰
- 2.3 'Credit' is defined broadly in the Act as including a cash loan and any other form of financial accommodation (under which the debtor is allowed time to pay).¹¹ It includes a hire-purchase agreement.¹²
- 2.4 A consumer credit agreement is a regulated agreement within the meaning of the Act unless it is exempt under section 16 of the Act, or sections 16A, 16B or 16C.¹³

⁹ Section 8 of the Act. The previous financial limit of £25,000 was removed by the 2006 Act with effect from 6 April 2008.

¹⁰ Section 189(1).

¹¹ Section 9(1).

¹² Section 9(3).

¹³ While it may be subject to other parts of the Act, an agreement made before 1 April 1977 that has not been amended in any way cannot be a regulated agreement.

Consumer hire agreements

2.5 A consumer hire agreement is an agreement which is made by a person with an individual (the hirer) for the bailment or hiring of goods which:

- is not a hire-purchase agreement, and
- is capable of lasting for more than three months (that is, even if it is originally made for a shorter period, it is capable of being extended).¹⁴

2.6 A consumer hire agreement is a regulated agreement unless it is exempt under section 16(6) or sections 16A or 16B.

Running-account credit and fixed-sum credit

2.7 Running-account credit is a facility under a consumer credit agreement whereby the debtor is entitled to receive cash, goods and/or services from time to time of an amount or value such that the credit limit (if any) is not exceeded.¹⁵

2.8 Fixed-sum credit is any other facility whereby the debtor is enabled to receive credit, whether in one amount or by instalments.

¹⁴ Section 15.

¹⁵ Section 10.

Restricted-use credit and unrestricted-use credit

- 2.9 A restricted-use credit agreement is an agreement to finance a transaction between the debtor and the creditor, or between the debtor and a third party (the supplier), or to refinance any existing indebtedness of the debtor, whether to the creditor or another person.¹⁶
- 2.10 An unrestricted-use credit agreement is an agreement under which the debtor is free to use the credit as he chooses.

Debtor-creditor-supplier agreements and debtor-creditor agreements

- 2.11 A debtor-creditor-supplier (d-c-s) agreement is an agreement made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier, or which is financing a transaction between the debtor and the supplier.¹⁷
- 2.12 A debtor-creditor (d-c) agreement is any other kind of credit agreement, including one which is refinancing any existing indebtedness of the debtor.¹⁸

Credit-token agreements

- 2.13 A credit-token agreement is an agreement for the provision of credit in connection with the use of a credit-token – for example, a credit card. A credit-token may also include a voucher or other item given to an individual by a person carrying on a consumer credit business, who undertakes that on the production of it he will supply (or will pay a third party to supply) cash, goods or services on credit.¹⁹

¹⁶ Section 11.

¹⁷ Section 12.

¹⁸ Section 13.

¹⁹ Section 14.

Variation of agreements

- 2.14 An unregulated agreement can become regulated because of a variation made to it. This can happen when the parties make a further agreement which varies or supplements the earlier one. In such a case, the Act regards the earlier agreement as having been revoked and replaced by a new agreement which incorporates the terms of the earlier agreement. This new agreement may be regulated under the Act even if the previous agreement was unregulated.²⁰
- 2.15 This does not however apply where the earlier agreement or the modifying agreement is exempt under section 16(6C) of the Act (regulated mortgage contracts and regulated home purchase plans) or section 16C (buy-to-let agreements). In such cases the earlier agreement and the modifying agreement are treated as separate for the purposes of the Act.²¹
- 2.16 If the earlier agreement was regulated under the Act, it cannot become unregulated because of a variation.

²⁰ Section 82(2).

²¹ Section 82(2A).

3 EXEMPT AGREEMENTS

3.1 As noted above, the exemptions from the Act are principally contained in section 16 of the Act and the 1989 Order as amended. There are further exemptions in sections 16A, 16B and 16C of the Act and the Consumer Credit (Exempt Agreements) Order 2007.²²

3.2 The descriptions below reflect the situation once the CCD changes have been fully implemented – see paragraph 1.3 above.

Agreements secured on land

3.3 The Act does not regulate:

- a regulated mortgage contract, or regulated home purchase plan, within the meaning of the Financial Services and Markets Act 2000,²³ or
- an agreement where the creditor is a housing authority and the agreement is secured by a land mortgage of a dwelling.²⁴

3.4 In addition, the Act does not regulate:

- a) a debtor-creditor-supplier agreement financing the purchase of land, or the provision of dwellings on any land, secured by a land mortgage on that land
- b) a debtor-creditor agreement secured by any land mortgage to finance the purchase of land or the provision of dwellings on any land

²² See paragraph 1.2 above.

²³ Section 16(6C).

²⁴ Section 16(6A).

- c) a debtor-creditor agreement secured by any land mortgage to finance the provision of business premises on any land

- d) a debtor-creditor agreement secured by any land mortgage to finance the alteration, enlarging, repair or improvement of a dwelling or business premises on any land, provided that:
 - the creditor is the creditor under another agreement relating to that land (and secured by a land mortgage on it), or

 - the services are certified as having been provided by a local authority or charity, or by a housing association or similar body, or by the National Home Improvement Council

- e) a debtor-creditor agreement secured by any land mortgage to refinance any existing indebtedness of the debtor under an agreement falling within (b) to (d), or

- f) a debtor-creditor-supplier agreement financing a transaction which is a linked transaction in relation to an agreement falling within (a) or (b) and secured by a land mortgage on that land,

provided in each case that the creditor is a deposit-taker²⁵ or a body specified in Part 1 of Schedule 1 to the 1989 Order, namely certain named insurance companies, friendly societies, charities and other bodies.²⁶

²⁵ Within the meaning of section 16(10).

²⁶ Sections 16(1) and 16(2) and Article 2(2) of the 1989 Order

3.5 The Act also does not regulate:

- an agreement falling within (a) to (d) above, where:
 - the creditor is a body specified in Part III of Schedule 1 to the 1989 Order, namely certain named mortgage companies which are named or referred to in an order under the Housing Act 1985, and
 - the agreement is secured on a dwelling,²⁷ or
- an agreement of a description specified in Part II of Schedule 1 to the 1989 Order, where:
 - the creditor is a body corporate named or referred to in a public general Act, and
 - the agreement is made pursuant to a provision of that Act.²⁸

Interest-free credit

3.6 The Act does not regulate a debtor-creditor-supplier agreement for fixed-sum credit where the credit is provided without interest and without any other charges and which is:

- an agreement under which the total number of payments to be made by the debtor does not exceed four, and those payments are required to be made within a period not exceeding 12 months beginning with the date of the agreement²⁹

²⁷ Article 2(5) of the 1989 Order.

²⁸ Article 2(4) of the 1989 Order.

²⁹ Article 3(1)(a)(i) of the 1989 Order as amended by SI 2010/1010.

- an agreement financing the purchase of land under which the number of payments to be made by the debtor does not exceed four³⁰
- an agreement to finance a premium under a contract of insurance relating to land or buildings where:
 - the creditor is the creditor under an exempt agreement secured by a land mortgage on that land
 - the credit is to be repaid within the period to which the premium relates, not exceeding 12 months, and
 - the number of payments does not exceed twelve,³¹ or
- an agreement to finance a premium under a contract of life insurance where:
 - the creditor is the creditor under an exempt agreement secured by a land mortgage on any land,
 - the insurance provides for the repayment of the credit and charges under that agreement in the event of the death of the insured person, and
 - the number of payments does not exceed twelve.³²

3.7 See also paragraphs 4.3-4.19 of the BIS guidance. The 'charges' referred to in this section are principally those falling within the total charge for credit (TCC) under the agreement.

³⁰ Article 3(1)(b).

³¹ Article 3(1)(c) as amended.

³² Article 3(1)(d).

Agreements with only insignificant charges

3.8 The Act does not regulate a debtor-creditor-supplier agreement for running-account credit which:

- provides for the making of payments in relation to specified periods not exceeding 3 months, and
- requires the entire credit to be repaid in one instalment

provided that no or insignificant charges are payable for the credit.³³

3.9 See also paragraphs 4.3-4.23 of the BIS guidance. As above, the charges in question are principally those falling within the TCC.

Credit union agreements

3.10 The Act does not regulate a debtor-creditor agreement where:

- the creditor is a credit union,³⁴ and
- the rate of the total charge for credit (TCC) – that is, the APR – does not exceed 26.9 per cent.³⁵

Agreements with employees

3.11 The Act does not regulate a debtor-creditor agreement which:

- is of a type offered to a particular class of individuals and not offered to the public generally, and

³³ Article 3(1)(a)(ii) as amended by SI 2010/1010.

³⁴ As defined in Article 4(4).

³⁵ Section 16(5)(b) and Article 4(1)(a).

- is offered by a creditor who is an employer to a debtor as an incident of employment with the creditor,³⁶

provided that either:

- there are no TCC charges other than interest, and the interest rate does not exceed the highest base rate of certain specified banks³⁷ plus one per cent,³⁸ or
- there can be no increase in the rate or amount of interest or other TCC charges, and the TCC rate (that is, the APR) does not exceed the highest base rate of the specified banks plus one per cent,³⁹

and provided in each case that:

- the total amount to be repaid by the debtor does not vary by reference to movements in any index or other factor.⁴⁰

3.12 An equivalent exemption applies in respect of debtor-creditor agreements secured on land which are of a type offered to a particular class of individuals and not offered to the public generally.⁴¹

Other low-cost loans

3.13 The Act does not regulate a debtor-creditor agreement which:

- is of a type offered to a particular class of individuals and not offered to the public generally, and

³⁶ Article 4(2A)(a) as inserted by SI 2010/1010.

³⁷ Article 4(3).

³⁸ Article 4(1)(b).

³⁹ Article 4(1)(c).

⁴⁰ Article 4(1)(c) as amended by SI 2010/2010.

⁴¹ Article 4(2A)(b).

- is offered under an enactment with a general interest purpose,

provided that:

- the rate of interest (if any) on the credit which may be provided under the agreement is:
 - at a rate which is lower than that prevailing on the market, or
 - at a rate which is not higher than that prevailing on the market where the other terms on which credit may be provided are more favourable for the debtor than those prevailing on the market, and
- the other conditions applicable in relation to loans to employees (paragraph 3.11 above) are also satisfied.⁴²

3.14 See also paragraphs 4.24-4.26 of the BIS guidance.

Agreements connected with a country outside the United Kingdom

3.15 The Act does not regulate:

- agreements made in connection with trade in goods or services between the United Kingdom and another country, or within or between countries outside the UK, under which credit is provided to the debtor in the course of a business carried on by him,⁴³ or

⁴² Article 4(1)(c) as amended and Article 4(2B).

⁴³ Section 16(5)(c) and Article 5(a).

- agreements made by certain specified creditors⁴⁴ with a debtor who is a member of the armed forces of the United States of America (USA), or an employee not habitually resident in the UK of such forces, or the spouse or child of such a person.⁴⁵

Consumer hire agreements

3.16 The Act does not regulate consumer hire agreements where:

- the owner is a body corporate authorised by law to supply electricity or water, and
- the subject of the agreement is a meter or metering equipment used in connection with the supply of gas, electricity or water.⁴⁶

High net worth individuals

3.17 The Act does not regulate certain consumer credit or consumer hire agreements where the debtor or hirer is a person of high net worth.⁴⁷

3.18 The exemption applies only if:

- the debtor or hirer is a natural person
- the agreement includes a declaration by the individual, in a prescribed form, confirming that he agrees to forgo the protection and remedies that would otherwise be available under the Act
- the agreement (or the declaration) is signed by the individual

⁴⁴ Part IV of Schedule 1 to the 1989 Order.

⁴⁵ Article 5(b).

⁴⁶ Section 16(6) and Article 6.

⁴⁷ Section 16A of the Act and Articles 2-5 of the 2007 Order.

- a statement of high net worth has been made in relation to the individual, by a specified person, and in a prescribed form
- in the case of agreements with joint debtors or hirers, a separate statement is made in relation to each of them, and
- the statement confirms that, in the opinion of the person making it, the individual received during the previous financial year an income of not less than £150,000, or had throughout that year net assets of not less than £500,000.⁴⁸

3.19 A statement of high net worth may be provided by the creditor or owner (or an employee, agent or associate) if that person has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits. It may also be provided by an accountant who is a member of a specified professional body in the UK, or of a professional body for accountants outside the UK.⁴⁹

3.20 The exemption has been modified by the EU Directive Regulations so that, in the case of consumer credit agreements which are not secured on land, the exemption applies only if the amount of credit exceeds £60,260.⁵⁰ See also paragraph 4.28 of the BIS guidance.

Agreements for business purposes

3.21 The Act does not regulate:

- a consumer credit agreement by which the creditor provides credit exceeding £25,000, or

⁴⁸ Articles 2 and 3 of the 2007 Order.

⁴⁹ Articles 4 and 5 of the 2007 Order.

⁵⁰ Article 2(aa) of the 2007 Order as inserted by SI 2010/1010.

- a consumer hire agreement requiring the hirer to make payments exceeding £25,000

provided in each case that 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.⁵¹

3.22 An agreement is presumed to be wholly or predominantly for business purposes if it includes a declaration to that effect by the debtor or hirer, in a prescribed form, unless the creditor or owner knows or has reasonable cause to suspect that this is not the case.⁵² 'Business' is defined in section 189 of the Act, but a person is not to be treated as carrying on a particular type of business merely because occasionally he enters into relevant transactions.⁵³

Buy-to-let agreements

3.23 The Act does not regulate certain consumer credit agreements relating to investment properties – typically 'buy-to-let' agreements.⁵⁴

3.24 The exemption applies where:

- sums due under the agreement are secured by a land mortgage, and
- less than 40 per cent of the land is used, or is intended to be used, as or in connection with a dwelling by the debtor or by a person connected with the debtor (for example, a spouse or close relative).⁵⁵

⁵¹ Section 16B of the Act and Article 6 of the 2007 Order.

⁵² Section 16B(2) and (3).

⁵³ Section 189(2).

⁵⁴ Section 16C as inserted by the Legislative Reform (Consumer Credit) Order 2008.

⁵⁵ Section 16C(4).

3.25 An agreement would not be exempt if the debtor, or a connected person, intends to occupy at least 40 per cent of the land area at any time, and for any period. For example, if a member of the UK armed forces serving overseas purchases a property with the intention of living in it on his return to the UK, but renting it out in the meantime. Likewise, if a parent purchases a property for his son or daughter to live in while at university, provided that (if they are sharing with other students) they will occupy at least 40 per cent of the land area taking into account any common areas. The exemption would also not apply if the agreement were secured on the debtor's own home, rather than on the buy-to-let property.

Share dealing accounts

3.26 The Act does not regulate certain consumer credit agreements relating to share dealing accounts offered by investment firms or credit institutions under the Markets In Financial Instruments Directive (MIFID).⁵⁶ The exemption⁵⁷ applies where:

- the agreement is concluded with an investment firm or a credit institution, as defined,⁵⁸ and
- the agreement is for the purposes of allowing a debtor to carry out a transaction relating to one or more of the investments listed in Section C of Annex I to MIFID, where the investment firm or credit institution providing the credit is involved in that transaction.

3.27 See also paragraph 4.27 of the BIS guidance.

⁵⁶ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments - <http://eur-lex.europa.eu/LexUriServ/site/en/consleg/2004/L/02004L0039-20060428-en.pdf>

⁵⁷ Article 5A of the 1989 Order as inserted by SI 2010/1969.

⁵⁸ Article 5A(2).