

# Application for an Order to validate agreements under sections 40(2), 148(2) or 149(2) of the Consumer Credit Act 1974 (CCA)

## What is validation?

Regulated agreements made by a consumer credit or hire business whilst unlicensed cannot be enforced by the courts. Similarly, agreements for the services of a person carrying on ancillary credit business are unenforceable against the parties, including the debtor or the lender, if they were made while the ancillary credit business was unlicensed.

A validation order granted by the Office of Fair Trading (OFT) makes these agreements enforceable by treating them as if they were made when the credit/hire business or ancillary credit business was licensed. This would allow the business to take steps to recover any commission, fees owed or other agreed payments, including court action.

## Who can apply?

You can apply by filling in this form if you want to validate agreements that were entered into with consumers where you were the:

- unlicensed consumer credit or hire business (covered by s40(2) of the CCA); or
- unlicensed provider of an ancillary credit business (covered by s148(2) of the CCA – for example an unlicensed credit broker);<sup>1</sup> or
- licensed consumer credit or hire business that has made agreements with consumers who were introduced by an unlicensed credit broker (covered by s149(2) of the CCA).

## How much does it cost?

The fees charged for a validation application depend on the number of agreements that you want to validate. Full details of fees can be found [here](#).

## Do I need to apply for validation?

Before completing the form, check whether you actually need to apply for a validation order. For example, a validation order is not required to validate an agreement resulting from an introduction to a licensed credit broker by an unlicensed broker, although the latter could be prosecuted for unlicensed trading.

A validation order will however be required if you entered into a credit or hire agreement or carried on an ancillary business when you did not hold a Consumer Credit Licence covering the relevant category of business. More information is available in the OFT's [Do you need a credit licence? \(OFT147\)](#) booklet.

<sup>1</sup> An order under section 148(2) may allow the broker to obtain payments due from (1) the consumer (2) the lender.

## What sort of agreements can be validated?

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**You should only apply for a validation order to cover agreements that are regulated under the Consumer Credit Act 1974.**

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**For example, you will need to ensure that the agreements:**

- Were entered into with an individual for the purposes of the CCA (this includes those entered into with consumers or sole traders and small partnerships. **It does not include agreements entered into with limited companies, public companies or limited liability partnerships**).
- Were for less than £25,000 (if made before 6 April 2008).
- Are regulated credit or hire agreements (unless they are for the sole purposes of an ancillary credit business). We list below some types of agreement that **are not** regulated:
  - first charge mortgages
  - debtor-creditor-supplier agreements for fixed-sum credit, where the debtor is required to repay the credit in four payments or less within the year
  - low cost credit (certain types of non-commercial agreements made at rates below a given limit that are not offered to the general public)
  - some insurance policies (against loss or damage to buildings and contents, mortgage protection or indemnity insurance)
  - hire agreements that last for less than three months and/or that require hire payments exceeding £25,000\*

More information on these can be found [here](#)

**In addition, you will need to ensure that the agreements included in your application:**

- Have not expired (if they are effectively concluded or otherwise paid up, there is nothing left to enforce, therefore nothing left to validate).

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**Please seek legal advice if you are unsure about whether to apply or whether your agreements are eligible for being considered for validation.**

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### Contents of the form

The contents of the form are as follows:

- Part I** Information for the Consumer Credit Licensing Public Register
- Part II** Section A: Your Business  
Section B: Reasons for the unlicensed period  
Section C: The Agreements
- Part III** Declaration

\* where made before 6 April 2008.

## Data protection

The Data Protection Act 1998 and section 237 of the Enterprise Act 2002 restrict disclosure of the information provided in this form. They also allow disclosure for a number of purposes without your further consent.

For example, the OFT may use the information in connection with enforcement or regulatory action it takes under its own powers or may refer the information to other government departments or regulatory, enforcement or public authorities in connection with the exercise of their functions.

## Filling in the form

The purpose of this form is to collect information about the agreements you wish to validate and the reasons behind/your knowledge of the unlicensed period. We will use this and other relevant information to assess whether a validation order should be granted. When the OFT is considering a validation order application, some of the issues it takes into account are:

- evidence of business practices that adversely affected the interests of the debtors or hirers who entered into the agreements covered by the application
- whether the agreements comply with relevant legislation, including the Consumer Credit (Disclosure of Information) Regulations 2004 (pre contract information requirements) and Consumer Credit (Agreements) (Amendment) Regulations 2004
- whether the OFT would have considered the applicant for the validation order 'fit'<sup>2</sup> to hold a licence at the time the agreements were made.
- the reasons why you were unlicensed/how you came to deal with an unlicensed broker.

## Can someone else fill in this form for me?

You can ask someone else to fill in this form and sign the declaration for you. They will need to send a letter from you with this form authorising them to apply on your behalf.

If you are filling in this form for someone else, answer the questions as if you were the applicant. For instance, if the form asks for 'Your home address', give the applicant's home address.

**The individual who signs the form is responsible for making sure it is accurate and complete. It is an offence to knowingly or recklessly give false or misleading information.**

<sup>2</sup> The OFT's assessment of 'fitness' includes past misconduct and credit competence; the skills, knowledge and experience required to carry out the activities covered by the licence to a reasonable standard.

## Part I: Information for the Consumer Credit Licensing Public Register

The information we ask for in Part I will be shown on the Consumer Credit Licensing Public Register. The register holds information on applications for validation orders. It also holds information on applications for consumer credit licences and existing consumer credit licences.

### 1. Your personal details

Title  Surname

Other names in full

Date of birth

### 2. Your business

Name of your business

Your registration number at  
Companies House (if appropriate)

### 3. Main place of business in the UK (and any previous addresses that were used within the unlicensed period)

Building name

Number  Street name

District/village

Town/city

County  Postcode

Building name

Number  Street name

District/village

Town/city

County  Postcode

Building name

Number  Street name

District/village

Town/city

County  Postcode

**4. Contact telephone number and email address**

**5. Please confirm the period for which the order is sought?  
(the unlicensed period)**

From: dd/mm/yy  To: dd/mm/yy

**6. Please give the total number of agreements that you wish to validate\* (we ask for more details about these in part II of this form).**

**7. Trading names**

Please provide details of the names you used for the purposes of the credit or hire agreements that you are seeking to validate.

\* please check that you have sent the correct fees with this form.

## Part II: Confidential information to support your application for a validation order

We need the information we ask for in the following sections to help us decide whether or not to validate the agreements that you want us to consider. It will not be shown in the Consumer Credit Licensing Public Register and will not be available to members of the public. Please continue your answers on a separate sheet of paper where necessary.

### Section A: Your Business

#### 1. Type of business

Please give a description of your business.

Please tick which type(s) of licenseable activity the agreements you wish to validate relate to:

Consumer credit

Consumer hire

**Ancillary credit business:**

Credit brokerage

Debt-adjusting

Debt-counselling

Debt-collecting

Debt administration

Provision of credit information services

Credit reference agency

**2. Consumer Credit Licences held: do you hold/have you held a licence/s previously?**

Please provide details, including the name of the business licensed, number, categories held and the date the licence was issued.

**3. Consumer Credit Licence applications: have you applied for a licence recently?**

Please provide details, including the name of the business, OFT reference number, categories applied for, date application made.

**4. If your answer to question 3 above is no, please explain why you do not consider it necessary to hold a licence.**

**If you intend to continue engaging in the type of activities relating to the agreements for which a validation order is sought, you will need to be licensed by the OFT. Further details of the categories of credit and hire business that require a consumer credit licence are provided in the OFT's [Do you need a credit licence? \(OFT147\)](#) booklet.**

**5. Please also indicate whether in relation to the agreements you have asked to be validated:**

Your marketing of them indicated that credit was available to people whose access to credit may be restricted (including sub-prime consumers):

Yes  No

The marketing of the credit broker that you used did so:

Yes  No

'Sub-prime' (or credit adverse or credit impaired) consumers are those with an impaired or poor credit rating because they are subject to or have:

- county court judgments
- bankruptcy
- individual voluntary arrangements
- arrears or defaults
- poor payment history
- repossessions.

Were the agreements offered or brokered in the home?<sup>3</sup>

Yes  No

<sup>3</sup> Home credit is the provision of credit where the repayments are collected at the consumer's home.

## Section B: Reasons for the unlicensed period

If you were the unlicensed party, please answer questions 1-8 below. If you were licensed but dealt with an unlicensed credit broker, please answer questions 9-20.

1. When did you become aware that you did not have a licence covering the activities leading to the agreements that are the subject of this application?

2. How did you become aware of this and what advice (if any) have you sought since discovering you did not hold a licence?

3. Did you have any measures in place prior to this to ensure that your business continued to be licensed under the CCA? If yes, please include full details of any systems used for this purpose.

4. Please explain why you were unlicensed during the period given at question 5, Part I.

5. Please provide details of any new procedures you have since put in place, or intend to put in place, to ensure that you remain licensed in future.

- 6. Please provide details of any agreements that you may have entered into since discovering that you were unlicensed, including up until the point where you may have been issued with a new licence (see Question 5 of Part II).**

- 7. If you are a credit broker and are aware that a credit business that you dealt with while you were unlicensed is also applying for validation, please give details here:**

- 8. If you are a broker, please provide details of the creditors or owners you deal with most often, including their full addresses and main places of business.**

Please answer the questions at 9-20 below if you were licensed but dealt with an unlicensed credit broker.

- 9. Please provide details of the unlicensed credit broker that introduced you to the agreements that are the subject of this validation application:**

Broker name:

Company name (if different):

Main place of business

Telephone number:

**10. On what date did you first accept introductions from the broker?**

**11. When did you become aware that the broker did not have a licence covering the activities which led to the agreements that are the subject of this application?**

**12. How did you become aware of this? Please provide full details.**

**13. Prior to this, did you carry out any checks to ensure that the broker was licensed? If yes, when were such procedures put in place and how often were they followed? Please include full details of any systems used for this purpose.**

**14. What action, if any, did you take after becoming aware that the broker was unlicensed?**

**15. Have you taken any further business from the credit broker concerned since you became aware it was unlicensed? If so, please provide full details.**

- 16. Do you know if the credit broker concerned has since applied for a licence? If so, please provide details.**

- 17. Please provide details of any new procedures you may have since put in place, or intend to put in place, to ensure that you deal only with licensed credit brokers in the future.**

- 18. How many other brokers did you deal with during the validation period? What proportion of your business do the agreements that are the subject of this validation application represent?**

- 19. Are you aware of any information (whether in writing or verbally) that the broker may have supplied to consumers which suggested it was licensed? If yes, please give details.**

- 20. If you are aware that the unlicensed credit broker you dealt with is also submitting a separate validation application, please provide details:**

**If you are a lender who was licensed at the time agreements were made, but entered into them as a result of an introduction by an unlicensed broker, you may be able to benefit from the following:**

If a broker who was unlicensed at the time of introducing consumers to agreements that were made with licensed lenders obtains a validation order from the OFT under s148(2), then the lenders to whom the broker introduced consumers may also benefit. This is because this provision can enable the lender to enforce such agreements without the need to apply for a separate validation order covering the agreement from the lender's perspective under s149(2).

However, this beneficial effect is discretionary. Lenders should therefore be aware that they could be at risk of having unenforceable agreements if the OFT were to consider it inappropriate for this beneficial effect to apply. If you are a lender who has dealt with an unlicensed broker and you are not sure if this benefit extends to you, we recommend that you apply for an order in your own right and give us details of any validation applications made by the broker in answer to this question.

## Section C: Agreements made during the unlicensed period

**We will need the following information about the agreements you wish to validate. If you fail to include any of this information we will not be able to consider your application.**

We need the following details of each agreement that you wish to validate:

- Name of consumer
- Agreement number/identifier
- Date that the agreement was made (that is, date by which it had been signed by both parties)
- Total amount payable under the agreement
- Total number of instalments under the agreement
- Amount of each instalment
- Whether the agreement is in arrears or dispute
- Trading name

**Please use the Excel spreadsheet, available [here](#)**

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### Copies of the agreements

We also need a copy of each of the agreements that you wish to validate. This must include a copy of any terms and conditions and any other documents/materials that the agreement refers to.

If you have more than 100 agreements that you wish to validate, you may wish to consider sending a sample of the agreements. The OFT would require a sample of at least 30 agreements in these circumstances.<sup>4</sup> **If you have more than one type of agreement, please include at least 10 copies of each type.**

**Please also note that if you do submit a sample of agreements, we may ask you to provide a signed affidavit confirming your understanding as to whether or not each agreement not included has been signed by all parties.**

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<sup>4</sup> If you are submitting an application for a substantial number of agreements, it may be that we will need to ask you to supply a larger sample than that referred to above.

**Further information about the agreements**

**21. Does the number of agreements you have asked to be validated cover every agreement that you made within the unlicensed period?**

Yes  No  (if no please answer question 22 below)

**22. If not, please explain why**

**23. Please tell us about any measures that you took/were aware that had been taken, to ensure that agreements complied with the Consumer Credit (Agreements) Regulations 2004 and other relevant consumer protection legislation?**

**24. Had you received any advice, or are you aware of any advice that had been received, in relation to the terms or format of the agreements (for example from a legal adviser, trade association or trading standards service)?**

## **Part III: All Applicants**

### **Declaration**

#### **I understand that:**

- It is an offence to carry out any business that needs a licence under the Consumer Credit Act 1974 before a licence is issued.
- It is an offence to knowingly or recklessly give any false or misleading information to the OFT.
- If I give false or misleading information:
  - I may not be issued with a validation order
  - I might be prosecuted.
- The OFT will not accept the form if any of the questions in it have been amended or have not been answered.
- I am responsible for all of the information that I have given on this form, including information about other people.
- Anyone named in this form that needs to be authorised under any Acts of Parliament has the required authorisation. Examples of these Acts include:
  - Banking Act 1987
  - Business Names Act 1985
  - Financial Services and Markets Act 2000
  - Insurance Brokers (Registration) Act 1977.
- Where necessary I have continued my answers on a separate sheet of paper, this is securely attached to the form.

#### **I confirm that**

- I have answered every question as fully as possible. I have included all relevant details.
- The information I have given is true and complete.
- I will provide any further information that the OFT requests.

Name

Signature

Date

Daytime telephone number

**Are you the applicant? (delete the statement that does not apply)**

**Yes** I am the applicant

**No** (Please ask the applicant to write a letter to us authorising you to apply on their behalf and send the letter to us)

**What is your relationship to the applicant?**

Legal representative

Accountant

other *please give details*

### What to do next:

- Check that the agreements you are seeking to validate are regulated.
- Check that you have filled in the form correctly and answered all relevant questions.
- Check that you have completed the excel spreadsheet with details of all agreements that you want to validate.
- Check that you have included photocopies of the agreements we have asked you to send us.
- If you have filled in the form on behalf of the applicant, check that you have included a letter of authorisation from them.
- Include your payment made out to **Office of Fair Trading**. You can pay by cheque, banker's draft or postal order.

### Please write how much your payment is in the box below:

Email the form and any attachments to [ccl@oft.gsi.gov.uk](mailto:ccl@oft.gsi.gov.uk) or post the form to us at:

Consumer Credit Licensing  
PO Box 62691  
London  
EC4P 4UW

### What happens next?

- We will confirm receipt of your application.
- We may write to you to ask for more information.
- We will confirm our decision in writing.