

dti

CONSUMER CREDIT ACT 2006

Consultation on Draft
Statutory Instruments:

- Exemptions
- Post-contract
information
- Licensing

AUGUST 2006

URN 06/1679

DTI invites comments on this consultation paper. Please send your responses, including supporting evidence and figures where applicable to reach us by **24 November 2006**.

Where possible, please send responses and any queries by e-mail to:

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Alternatively, please send responses in writing to:

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Who should read this consultation paper?

We expect this consultation paper to be of interest to both businesses and consumers.

It will be of particular interest to businesses with licences issued by the Office of Fair Trading under the Consumer Credit Act 1974 and anyone thinking of starting a consumer credit business.

The consultation will also be of interest to consumers and consumer organisations that will be able to see the proposed details for lenders to include in statements and notices, as provided for in the Consumer Credit Act 2006.

A list of organisations being consulted is at **Annex D**. Please feel free to pass this consultation document (available on the DTI website at <http://www.dti.gov.uk/consultations/index.html>) to any other interested parties.

When responding please tell us whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please tell us who you are, who you represent and how the views of your members were put together.

As well as answers to the specific questions asked, we would welcome any further views on the content of this consultation.

Confidentiality of responses

Your response will be published by the DTI. If you do not want all or part of your response or name made public, please state this clearly in your response

and the part(s) that you wish to remain confidential. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will **not** be regarded as a request for non-disclosure.

As well as general publication of your responses by DTI, information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). Even if you have asked us to keep other information that you provide confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. Again, an automatic confidentiality disclaimer generated by your IT system will **not** be regarded as binding on the Department.

DTI will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Help with queries

Questions about the policy issues raised in the document should be addressed in the first instance to Amanda Eden at the contact details given above.

Complaints

The Code of Practice on Consultation can be found at **Annex C** to this document. If you wish to make a complaint about, or comment on, the way in which this consultation has been conducted, please contact:

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Ministerial Foreword

The Consumer Credit Act 2006 was given Royal Assent earlier this year. This was a significant milestone on the way to a fairer, clearer and more competitive consumer credit market.

Now we are focused on ensuring that the changes in the Act, which will bring a real benefit to consumers, are brought into force as quickly and as smoothly as possible. In May, we published our timetable for implementation of the Act. This consultation represents a key stage in that process.

The draft secondary legislation – or Statutory Instruments – that we are consulting on will put flesh on the bones of many of the provisions in the Act. They will specify the detail of the important statements and notices about credit agreements that lenders will have to provide to consumers. They will establish how lending to ‘high net worth’ borrowers can be exempted from the Act. And they will determine some time periods in relation to consumer credit licensing.

The regulations need to strike the right balance between ensuring that consumers are given the information they need to understand their credit accounts, without imposing undue burden on business. This means being targeted and proportionate and, where possible, consistent with the best practice that is already followed by responsible lenders in the industry.

I am confident that these draft Statutory Instruments achieve that balance.

I am grateful to the many consumer credit businesses, trade associations and consumer groups who have already contributed to the implementation process.

I look forward to hearing your views on the proposals outlined in this consultation.

Ian McCartney
Minister for Trade, Investment and Foreign Affairs

Glossary

1974 Act	Consumer Credit Act 1974
2006 Act	Consumer Credit Act 2006
Agreements Regulations	Consumer Credit (Agreements) Regulations 1983 SI 1983/1553 as amended
DTI	Department of Trade & Industry
Early Settlement Regulations	Consumer Credit (Early Settlement) Regulations 2004 SI 2004/1482 as amended
Fixed-sum credit	A credit agreement to borrow an amount that is fixed at the outset between creditor and debtor. (A legal definition can be found in S10 of the 74 Act).
FOS	Financial Ombudsman Service
FSA	Financial Services Authority
FSMA	Financial Services and Markets Act 2000
Minister	Secretary of State for Trade & Industry or DTI ministers
OFT	Office of Fair Trading
RIA	Regulatory Impact Assessment
Running-account credit	A credit agreement where the amount the debtor can spend is not fixed at the outset although there is often a pre-set limit. (A legal definition can be found in S10 of the 74 Act).
Time Order	an order made by the court under s.129 of the 1974 Act to alter the repayments due under an agreement.

Executive Summary

Background

In its 2003 White Paper – *Fair, clear and competitive – the consumer credit market in the 21st century*¹ the Government committed to creating a fair, clear and competitive consumer credit market in the United Kingdom. The Consumer Credit Act 2006, which received Royal Assent on 30 March, marks one of the key stages in this programme, in laying the foundations for a new legislative framework.²

The Act is centred around three key changes:

- Ensuring consumers are provided with clear information about the state of their credit accounts;
- Improving consumers' rights and access to redress; and
- Establishing a more targeted licensing regime for the regulation of consumer credit businesses.

Much of the detail under the Act, in particular that detail relating to the first of the Act's three themes above, will be added by secondary legislation, or Statutory Instruments (SIs).

What is covered in this consultation?

In this consultation, we are seeking your views on the detailed content of two SIs that need to be made. The first SI deals with exemptions from the provisions of the Act that will allow more proportionate regulation of lending to businesses and to allow an opt out from regulation for credit lending to very wealthy – or high net worth – people. The second SI focuses on the form and content of the various statements and notices that lenders will be required to provide to all consumers about their regulated agreements, to keep them informed about the state of their account, enabling them to stay in control. This second SI also includes regulations that set the maximum duration of limited licences and the period within which periodic fees for indefinite licences must be paid.

We plan to finalise and make both of the SIs covered in this consultation by April 2007, in order to give stakeholders a minimum 12 months notice of them before they come into force from April 2008. (See Chapter 13 on Implementation for more information.)

We have set out below the specific provisions that will be included in each SI.

¹ Available on the DTI website at www.dti.gov.uk/files/file23663.pdf

² Available at www.opsi.gov.uk/acts/acts2006/ukpga_20060014_en.pdf

The first SI, provisionally called the **Consumer Credit (Exempt Agreements) Order 2007**, will cover:

- The exemption from regulation under the Act for transactions involving “high net worth” borrowers. Regulations will set out the circumstances in which the “high net worth” exemption may be claimed, the description and threshold of income and assets to be taken into account, the categories of persons who may make high net worth statements and the form, content and signature requirements of statements and declarations of “high net worth” (section 3 of the 2006 Act); and
- Requirements for the form, content and signature of declarations about exempted credit agreements relating to credit provided to individuals as defined in the 2006 Act for a business purpose (section 4 of the 2006 Act);

The second SI, provisionally called the **Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007** will include:

- Requirements for the form and content of fixed-sum credit account periodic statements (section 6 of the 2006 Act);
- Requirements for the form and content of running-account statements (section 7 of the 2006 Act);
- Requirements for the form and content of notices of sums in arrears for fixed-sum credit agreements etc (section 9 of the 2006 Act);
- Requirements for the form and content of notices of sums in arrears for running-account credit agreements (section 10 of the 2006 Act);
- Requirements for the form and content of the notices of default sums and prescribing the period for service (section 12 of the 2006 Act);
- Amendments to the existing Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983 (SI 1983/1561) on the form and content of s.87 Default Notices (section 14 of the 2006 Act);
- Requirements for the form and content of notices in relation to post-judgment interest (section 17 of the 2006 Act);
- Regulations specifying the maximum duration of a time-limited licence (section 34 of the 2006 Act); and
- Regulations specifying the periods within which periodic licence charges in relation to indefinite licences must be paid and the time when such charges will be current (section 35 of the 2006 Act).

The draft SIs have been the subject of considerable pre-consultation with representatives from industry and consumer groups. This has helped us to develop workable SIs that we believe strike the right balance between ensuring that consumers are given the information they need, without imposing undue burden on business.

This consultation deals only with the new Statutory Instruments necessary to implement the 2006 Act. We are not seeking views in this consultation on whether changes should be made to other Statutory Instruments made under the 1974 Act.

Layout

Our proposals for the individual provisions in each SI are set out in Chapters 2 to 12. Each Chapter includes a series of questions, on which we would appreciate your views. Where we believe that an alternative or additional option should be considered in relation to a proposal, we have set that out for you to consider. A summary of the full list of questions is provided separately on page 13. *Please note that this list includes a final question, numbered 31, which does not appear in the other chapters.*

Annex A includes the two draft SIs setting out the proposals in this consultation document in legislative form. DTI welcomes comments on the content of these draft SIs.

A Partial Regulatory Impact Assessment (RIA) for the specific provisions in this consultation is included at **Annex B**. We would also welcome your response to the questions in this RIA.

When the Consumer Credit Bill was introduced into Parliament on 18 May 2005, DTI published a full RIA which covered the costs and benefits of the information provisions of the 2006 Act. A link to the Consumer Credit Bill RIA is provided in Annex B.

Implementation

The timetable for implementation of the Consumer Credit Act 2006 was announced by DTI on 25 May. This followed a period of informal consultation with stakeholders, including some IT specialists.

Some basic principles shaped the development of the timetable. The provisions of the Act will be brought into force as soon as practicable and all provisions affecting industry must be commenced on a DTI Common Commencement Date (CCD) of either 6 April or 1 October in any given year. We also needed to take account of any legal constraints within the Act because some sections must be commenced simultaneously or in a certain order.

See Chapter 13 on Implementation for more information.

Devolution

Consumer credit is a matter reserved to the UK Parliament in relation to Scotland and Wales and the 1974 and 2006 Acts apply in both Scotland and Wales.

Consumer credit is reserved to the Northern Ireland Assembly in relation to Northern Ireland and would normally be the responsibility of Northern Ireland Executive Ministers. Whilst the Northern Ireland Assembly and Executive remain suspended, these functions are discharged by Northern Ireland Departments subject to the direction and control of the Minister for Northern Ireland. Ministers have agreed that the 2006 Act will apply to Northern Ireland.

Next Steps

DTI will consider the responses we receive to this consultation and publish a summary of them. If necessary, we will revise the draft SIs included in this consultation document to take account of those views. We do not intend to conduct a further formal consultation on the revised SIs, although we may informally discuss aspects of them with stakeholders before the provisions are brought into force.

List of consultation questions

In responding to all of these questions, please be specific and fully explain your answers, providing alternative suggestions and giving figures and other evidence where appropriate.

Chapter 2 – The requirements for the exemption for high net worth individuals

- Question 1: Are you content with our proposal to link the thresholds of what constitutes high net worth to the Financial Services and Markets Act 2000 (Financial Promotions Order) 2005?
- Question 2: Do you have any comments on the proposed categories of persons who may make a statement of high net worth?
- Question 3: Do you have any comments on the proposed form of a statement of high net worth?
- Question 4: Do you have any comments on the proposed form of a declaration of high net worth?

Chapter 3 – The requirements for the exemption for business lending

- Question 5: Do you have any comments on the proposed form of a declaration of a business purpose?

Chapter 4 – Annual statements for fixed-sum credit account agreements

- Question 6: Do you have any comments on the information we are proposing to include in periodic statements, including comments on any additional information?
- Question 7: Do you have any comments on our proposals for the way in which we propose to deal with agreements covered by one aggregated payment?

Chapter 5 – Additional information in statements for running-account credit agreements

- Question 8: Do you have any comments on the proposed warning in relation to a failure to make a required repayment?
- Question 9: Do you have any comments on the proposed warning in relation to the making of minimum repayments?
- Question 10: Do you think that the allocation of statements should be displayed more prominently in cases where the balance is not paid off in full, or is our proposal to include it somewhere in the statement sufficient?

Chapter 6 – Notices of sums in arrears for fixed-sum credit account agreements

Question 11: Do you have any comments on the proposed information to be included in a notice of sums in arrears for fixed-sum credit agreements, including comments about any additional information?

Chapter 7 – Notices of sums in arrears for running-account credit agreements

Question 12: Do you have any comments on the proposed information to be included in a notice of sums in arrears for running-account credit agreements, including comments about any additional information?

Chapter 8 – Notices of default sums

Question 13: Do you have any comments on our proposed way forward for the requirement to provide notices of default sums?

Question 14: Do you have any comments on the proposed period for the giving of notices of default sums?

Question 15: Do you have any comments on the proposed information to be included in a notice of default sums, including comments about any additional information?

Chapter 9 – Additional information in s.87 default notices

Question 16: Do you have any comments on the proposed requirement for the inclusion in s.87 default notices of information about the right to end HP and conditional sale agreements?

Question 17: Do you consider that a generic description of liabilities for the debtor under s.100(1) would be more appropriate than a specific figure of the amount the debtor would have to pay as at the date of the notice, or vice versa, and why?

Question 18: Do you have any comments on the proposed requirement for the inclusion in s.87 default notices of information about interest payable after a judgment?

Question 19: Do you have any comments on the proposed requirement for inclusion in s.87 default notices of a reference to the OFT information sheet on default?

Question 20: Do you consider that any other information not already proposed should be included in s.87 default notices?

Chapter 10 – Notices in relation to post-judgment interest

Question 21: Do you have any comments on the proposed content of the first notice in relation to interest after a judgment?

Question 22: Do you have any comments on the proposed content of second and subsequent notices in relation to interest after a judgment?

Chapter 11 – Form of post-contract information and notices

Question 23: Do you have any comments on our proposals in Chapter 11 on the form of the various post-contract information notices and statements?

Question 24: Do you think that there are any notices or statements that would benefit from the information appearing in a particular order, or linked to any other specific item of information?

Chapter 12 – OFT licensing

Question 25: Do you have any comments on the proposed 5-year period for the maximum duration of time-limited licences?

Question 26: Do you have any comments on the proposed 5-year period for payment of the periodic licence fee in respect of indefinite licences?

Extra question:

Question 27: In addition to any comments you may already have made on questions 1-26, do you have any comments on the draft Statutory Instruments included at Annex A? Please give references to any specific parts of the draft Statutory Instruments that you comment on.

Chapter 1 – Principles for regulation

This chapter sets out some of the principles DTI has followed in preparing Statutory Instruments under the 2006 Act.

The 2006 Act provides a framework within which we must work. We want the final Statutory Instruments to meet the policy objectives set out in the 2006 Act in a practical and cost-effective way for business, which delivers the protections intended to consumers.

Better Regulation

In preparing Statutory Instruments under the 2006 Act DTI has followed the Better Regulation Taskforce's *Principles of Good Regulation*³ (revised by the Better Regulation Commission).

In keeping with these principles, the Statutory Instruments that we prepare should be:

- **proportionate:** so that the requirements on business are in proportion to the improvements being sought, and that the wide diversity of consumer credit businesses can comply with the regulations in a cost-effective way, without overly complex and detailed sector-specific requirements and exceptions;
- **accountable:** to ensure that the requirements respond to consumer need as well as business practice, and that they are flexible and can change according to changing circumstances;
- **consistent:** to ensure that the requirements apply consistently to all consumer credit businesses and provide consumers with the same degree of protection, and that the regulation is consistent with other Government initiatives;
- **transparent:** to ensure that those affected are consulted before regulation is finalised, and that businesses can understand and comply with the new requirements; and
- **targeted:** to ensure that the requirements address those areas where regulation is needed, without imposing unnecessary burdens.

To enable us to ensure that we have adhered to these principles, we need your knowledge and experience to answer the questions we have asked in this consultation.

³ a copy of the BRT's brochure *Principles of Good Regulation* can be accessed at <http://www.brc.gov.uk/downloads/pdf/principlesleaflet.pdf>

Implementation in context

We want to implement these requirements as soon as practically possible. Therefore we have tried to provide as much detail as we can in this consultation document. Full draft Statutory Instruments are attached to this consultation, and these have been drawn up through a pre-consultation exercise with representatives from industry and representatives for consumers to ensure that what is proposed is proportionate, practical and reasonable.

The proposed requirements set out in this consultation document are intended to apply to all lenders, regardless of their size or the sector in which they operate. Therefore we want to ensure that all businesses affected can comply with the new requirements.

Specific issues

The Statutory Instruments covered by this consultation fall into three broad categories and some different considerations will apply to each of them:

Exemptions – sections 3 and 4 of the 2006 Act

The formal requirements for confirming the exemptions for high net worth and business exemptions should be fairly straightforward for consumers and lenders to understand and implement. In both cases the exemptions are designed to remove the burdens of formal regulation from consumers and lenders where it is not needed, and the mechanisms applying in relation to the exemptions should reflect this.

Post-contract information – sections 6, 7, 9, 10, 12, 14 and 17 of the 2006 Act

In preparing the regulations implementing the provisions of 2006 Act dealing with post contract information, DTI has taken account of the number and diversity of consumer credit businesses in the United Kingdom, which is reflected in the many different ways that those businesses engage with consumers.

DTI believes that, while consumers should receive information about their credit agreements that meets the required standard, businesses should have the flexibility to present that information in a way that is practical and as cost-effective as possible to them.

In order that the provisions may apply across this wide range of business models and sectors, we have tried to keep the level of prescription and detail to a minimum. We want businesses to be free to present information of the required standard in a way that works in the context of their business.

OFT licensing – sections 34 and 35

In relation to setting the period for the duration of licences (section 34) and the length of period before periodic licence fees are payable (section 35), DTI proposes to maintain the current position and set both periods at 5 years.

Chapter 2 – Requirements relating to the exemption for high net worth individuals

Section 3 of the 2006 Act

Section 3 inserts a new section 16A after section 16 of the 1974 Act. Section 16A provides for the exemption from regulation under the Act of credit agreements involving high net worth debtors or hirers provided that they meet specific conditions. If these conditions are not satisfied, the agreement will be regulated.

Section 16A(1) provides that the Minister may by order provide that agreements entered into by those persons defined as being “high net worth individuals” (i.e. those persons who satisfy sub-sections (1)(a)-(d)) are exempted from regulation under the Act, which require that the debtor has signed a declaration agreeing to forego the protections of the Consumer Credit Act, and that a current statement of high net worth has been provided to the creditor.

Sections 16A(3) and (4) provide that the Minister may, by order, make provision about:

- the categories of persons who may make a statement of high net worth;
- how amounts of income and values of net assets are to be determined for the purposes of the sections 16A(2)(a) and (b); and
- the form, content and signing of:
 - statements of high net worth; and
 - declarations for the purposes of section 16A(1)(b).

The exemption

DTI proposes to make an order permitting the exemption from regulation of agreements involving high net worth individuals. The exemption is being provided to allow wealthy individuals, who have the resources to seek their own legal and financial advice about credit transactions, to opt out of regulation on the basis that they are well placed to protect their own interests. Industry also sought the exemption on the basis that these borrowers, if subject to the new requirements for regulated credit agreements, might opt to take their business to other jurisdictions with lighter regulatory regimes.

Relevant thresholds

A debtor or hirer may use the high net worth exemption provided that he or she satisfies certain requirements as to annual income or the value of net assets held throughout the previous financial year. DTI proposes to specify in regulations the manner in which the amounts of income and values of net assets are to be determined for the purposes of sections 16A(2)(a) and (b). Our proposed definition of net assets is based on that used in the Financial Services and Markets Act 2000 (Financial Promotions) Order 2005 (the order uses the concept of high net worth).

DTI's intention is that the exemption should apply only to genuinely wealthy people and not to those who may have what is, in effect, "paper wealth". Accordingly, the terms 'net income' and 'net assets' in the draft order contain certain exclusions, for example pre-tax income, the current value of the family home or a substantial future pension entitlement.

Net income

DTI proposes that the amount of the debtor's annual income for the purposes of the exemption should:

- be the debtor's income after tax and national insurance contributions for the last completed financial year prior to the date on which the statement is made; and
- be no less than **£100,000** *per annum*.

Net assets

DTI proposes that the value of the net assets of the debtor or hirer for the purposes of the exemption should:

- be those assets owned by the debtor or hirer during the financial year immediately preceding the financial year during which the statement is made;
- be no less than **£250,000**
- exclude:
 - the value of the debtor or hirer's primary residence or any loan secured on that residence;
 - any rights of the debtor or hirer under a qualifying contract of insurance within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, and
 - any benefits (in the form of pensions or otherwise) which are payable on the termination of the service of the debtor or hirer or on his or retirement and to which he is (or his dependants are), or may be, entitled.

Question 1: Are you content with our proposal to link the thresholds of what constitutes high net worth to the Financial Services and Markets Act 2000 (Financial Promotions Order) 2005?

Statements of high net worth

A “statement of high net worth” is a statement to be given by a qualified person who will independently verify that the amount of the debtor or hirer’s net income or assets or both, satisfy the specified criteria for the purposes of the exemption.

Persons who may make a statement of high net worth

DTI wants to ensure that the potential for abuse is minimised in respect of statements of high net worth. The high net worth exemption is a general one, available to any individual seeking credit from any lender. Therefore, DTI considers that, without some controls on who may make statements, there is a possibility that:

- vulnerable consumers could be exploited by unscrupulous lenders, who either compel consumers to provide, or themselves make, statements and declarations on a false basis in order to avoid regulation; and
- dishonest consumers could make fraudulent claims about high net worth in the application process in order to obtain a financial advantage.

To this end, section 16A(3)(a) of the 2006 Act provides that the debtor or hirer may not make a statement on his own behalf (even if they happen to fall within one of the categories of persons set out below). Generally speaking, those seeking borrowing under this exemption will be wealthy, and often will retain advisers, such as accountants or lawyers, in relation to the management of their wealth. Furthermore, DTI proposes that, with respect to those persons permitted to make statements neither the creditor nor owner, nor his associates (as defined by the 1974 Act), employees, agents, nor other persons acting on behalf of the creditor, should be permitted to make the statement.

DTI also proposes that persons able to make statements of high net worth should be suitably qualified, with some objective degree of professional competence being required. Furthermore, the person’s professional status ought to be easily verifiable.

DTI therefore proposes that only the following persons should be able to make a statement of high net worth:

- an accountant who is a current member of:
 - the Institute of Chartered Accountants in England & Wales;
 - the Institute of Chartered Accountants in Scotland;
 - the Institute of Chartered Accountants in Ireland;
 - the Association of Chartered Certified Accountants,
 - the Chartered Institute of Management Accountants; or

- the Chartered Institute of Public Finance and Accountancy,
- or.
- an employer, as long as the following conditions are met:
 - the statement can only be made by an employer in relation to income; and
 - the employer is a director (in the case on a body corporate), a partner (in the case of a partnership), a principal (in the case of a sole trader), a member of the governing body (in the case of an unincorporated association) or an employee specifically authorised and designated by the employer for the purpose of giving a statement.

DTI chose not to include solicitors in the categories of people who could make a statement of high net worth based on stakeholder views that solicitors would be unlikely to be prepared to make such a statement. DTI has also considered how to cater for overseas accountants, and considers that it is not necessary to do this specifically in these regulations, given that overseas accounts have the right to join UK professional accountancy bodies – such as those listed above - by virtue of the European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005 (2005/18).

Question 2: Do you have any comments on the proposed categories of persons who may make a statement of high net worth?

The form of statements of high net worth

The regulations should also deal with the form, content and signing of:

- statements of high net worth; and
- declarations for the purposes of the new section 16A(1)(b).

In respect of statements of high net worth DTI proposes that the statement should be in the form set out in **Annex A**, pg. 57.

DTI does not propose that the statement should require evidence to be attached, as the point of the statement is to have an independently qualified person make the determination that the person is a high net worth individual, and for the lender to be able to rely upon that declaration.

Question 3: Do you have any comments on the proposed form of a statement of high net worth?

Declarations of high net worth

A " *declaration of high net worth*" is a declaration to be made by the debtor or hirer, in the credit agreement, that he or she agrees to the exemption. It is

an indication that the debtor or hirer understands the consequences of the consumer credit or hire agreement being exempted from regulation.

Form of declarations of high net worth

Exempted agreements are not subject to many of the formal requirements that apply under the 1974 and 2006 Acts. Accordingly, the agreement may be in any form as the lender requires, within the bounds of relevant common law and legislative rules in relation to the form and content of written agreements. Therefore, it will be necessary to prescribe the form and content of the declaration of high net worth with some particularity, as it does not sit within the context of the detailed requirements of the Agreements Regulations and other relevant regulations.

DTI proposes that the declaration must:

- include the debtor or hirer’s signature;
- be set out no less prominently than the other information in the agreement and be readily distinguishable from the background medium; and
- use the following wording:

Declaration by high net worth debtor or hirer

I understand that by signing this declaration I will not have the benefit of the protection and remedies that would be available to me under the Consumer Credit Act 1974 if this agreement were a regulated agreement under that Act. I understand that this declaration does not affect my ability to make an application under section 140A of the Consumer Credit Act 1974 in respect of unfair relationships between debtors or hirers and creditors or owners. I am aware that, if I am in any doubt as to the consequences of making this declaration I should seek independent legal or other advice.

.....
(signature of debtor or hirer)

.....
(print name)

Question 4: Do you have any comments on the proposed form of a declaration of high net worth?

Section 4 of the 2006 Act

Section 4 inserts a new section 16B after section 16A of the amended 1974 Act. Section 16B provides that the Act does not regulate credit agreements where more than £25,000 of credit is extended wholly or predominantly for a business purpose.

A declaration made under section 16B(2) gives rise to a presumption that the agreement is made wholly or predominantly for a business. If the creditor or a person acting on his behalf knows or has reasonable cause to suspect that the credit is not being provided wholly or predominantly for a business purpose then the presumption will not apply. This would mean that, where the debtor makes a declaration falsely because of pressure applied by the creditor to make the declaration, the creditor may find it difficult to have such an agreement enforced by a court order.

Section 16A(4) provides that the Minister may, by order, make provision about the form, content and signing of declarations for the purposes of the new section 16A(2).

The form of the declaration of a business purpose

Agreements that are subject to this exemption do not need to comply with the formal requirements of the 1974 and 2006 Acts. Accordingly, the agreement may be in such form as the lender requires, within the bounds of the relevant general law. Therefore, it will be necessary to prescribe the form and content of the declaration of business purpose with some particularity, as it does not sit within the context of the detailed requirements of the Agreements and other relevant regulations.

DTI proposes that the declaration should:

- include the debtor's signature;
- be set out no less prominently than the other information in the agreement and be readily distinguishable from the background medium; and
- have the following wording:

Declaration by debtor or hirer of business purpose

I am entering into this agreement wholly or predominantly for the purposes of a business carried on by me or intended to be carried on by me.

.....
(signature of debtor/hirer)

.....
(print name)

Question 5: Do you have any comments on the proposed form of a declaration of a business purpose?

Section 6 of the 2006 Act

Section 6 inserts a new section 77A after section 77 of the 1974 Act, which deals with the creditor's duty to give information to the debtor under a fixed-sum agreement. Section 77A says that the creditor must issue a statement at least once a year for fixed-sum credit agreements which last for one year or more. This will also apply where the original agreement was for under a year, but for whatever reason has continued over a year. This provision will also apply to existing agreements that continue in existence when the regulations come into force.

Section 77A(2) provides for the Minister to make regulations specifying the form and content of such statements. The statement should contain particular information about the account for the period since the date of the last statement or, in the case of the first statement, the period from the start date of the agreement, or, in the case of existing agreements, from the date the provisions came into force. Each statement should cover a period no longer than one year and should be sent out within a month of the end of the statement period.

Periodic statements – information to be included in the statement

We propose that periodic statements should include the following pieces of information:

- *Period of statement:* Dates showing period covered by the statement.
- *Debtor's name and address:* This is the name and address currently held by the creditor.
- *The creditor's name, a telephone number or numbers and postal address and, where appropriate, any other address:* 'any other address' might include an internet address.
- *Account identifiers:* This could include such things as an account name and number.
- *Amount of borrowing:* This is the amount agreed between the creditor and the debtor to be borrowed under the credit agreement (i.e. the principal).
- *Applicable interest rates:* This is the interest rate that applied to the account during the period of the statement, expressed on a *per annum* basis. Where more than one rate has applied during the period of the statement, the statement should show:

- o each of the applicable interest rates, expressed on a *per annum* basis;
- o the periods during which they applied (where the applicable rate changed over time); and/or
- o the element of the account to which they applied (where different rates apply to different elements of the credit provided).

If a variable rate applies, then the statement should also show the date on which the creditor made variations of the rate during the period since the date of the last statement or, in the case of the first statement, the previous 12 months.

Where the interest is pre-computed and rolled up with the principal at the beginning of the loan period, the interest rate(s) quoted in the original agreement should be provided, along with a statement explaining how and when interest charges are calculated and applied under the agreement.

- *Start date of agreement:* This is the date the agreement took effect; and
- *How much longer the agreement has to run;* This will say how much longer the debtor will have to continue payments to the creditor before payments under the agreement are finished.

DTI's original proposal was to require lenders to state the *period of the agreement*, which would require knowledge of the start and finish dates of the agreement. But since these requirements relate to all agreements in force after the date of commencement (ie in this case April 2008), it became clear that, while all lenders would have access to this information, it may not necessarily be easily accessible on the current computer system, particularly where portfolios of loans had been bought in. To input all this data onto computer systems would have attracted a disproportionate cost in relation to the benefit to consumers. We have therefore separated this information requirement into the two elements listed above, with a transitional arrangement for existing agreements that allows the start date to be omitted for existing agreements. A consumer would be able to ask the lender individually for that information if he needed it. We believe that this strikes a balance between informing the consumer of what they may wish to know without requiring expensive data-inputting exercises for existing agreements. Lenders with such agreements will of course be able to put the start date on if they prefer to do so.

- *Opening balance:* This is the total amount outstanding at the beginning of the statement period. For the first statement issued in relation to a new agreement, this will be the same as the total amount borrowed. In relation to existing agreements, this should be the amount outstanding at the date the regulations come into force. For

subsequent statements, the opening balance should be the same as the closing balance on the previously provided statement.

- *Payments made under the agreement:* The statement should include each credit or payment made to the debtor's account during the period of the statement. The period of the statement will follow on immediately from the date of the last statement. Each entry should include the amount of the payment and the date on which it was made.
- *Amounts becoming due:* The statement should include each debit made to the debtor's credit account made during the period of the statement. Debits would include all interest (either compound or simple) and any applicable default sums or other charges. It should be made clear that these entries are debits, and each entry should include a brief description (i.e. whether it is an interest payment or a default sum). The description would include the amount and date of each debit. If the creditor treats returned direct debits and dishonoured cheques as debits to the account then these should also be included.
- *Closing balance:* The statement should include the balance of the credit account on the end date of the statement period (i.e. the amount owing at the end of the statement period).
- *Inability to repay in accordance with the terms of the agreement:* There are situations where, because of missed repayments or part payments, the debtor will not repay the loan at the time originally agreed. In these situations, where the creditor calculates that the balance of the credit account will not be paid by the debtor at the expiry date of the credit agreement (because, for example there has been previous arrears and so default sums and interest have been added), then the following words should be included:

Estimated end of loan period

At your currently agreed rate of payment if the interest rate remains the same, you will not pay off your balance until [new recalculated loan end-date]

Please contact your lender if you have not already done so to agree terms for the remainder of the loan. If you are having difficulty reaching agreement with your lender, you should consider seeking advice on what to do from an independent free advice agency such as the Citizen's Advice Bureau.

DTI proposes that periodic statements should also include various generic, signposting statements.

- *Early settlement:* The statement should include a notice informing the debtor of his right to settle early. We propose that this statement on

early settlement should signpost the borrower to where he can get a final settlement quotation, and should be as follows:

You are entitled to settle your credit agreement early. If you do so, you may be required to pay an additional sum for early settlement. Please contact [lender's name and address] for a final settlement figure.

- *Hire purchase and conditional sale agreements:* In the case of hire purchase or conditional sale agreements, the creditor shall also provide information reminding the debtor or hirer of their right to terminate the agreement under section 99 of the 1974 Act and referring to the notice that appears in the credit agreement under the heading "Termination: Your rights"⁴. We propose that this information shall be in the following form:

Termination: Your rights

You may be entitled to terminate this agreement early in accordance with section 99 of the Consumer Credit Act 1974. Please contact your lender or see the notice in your agreement headed "Termination: Your Rights" to see what you must do if you would like to terminate your agreement early.

- *Complaints/FOS statement* - a general statement containing the information about complaints and the alternative dispute resolution scheme run by the Financial Ombudsman Service (FOS):

"If you have a problem with your agreement, please try to settle it with your lender in the first instance. If you are not happy with the way in which your complaint was handled or the result, you may be eligible to make a complaint to the Financial Ombudsman Service. You can contact the Financial Ombudsman Service on [0845 080 1800]⁵ or at www.financial-ombudsman.org.uk. "

Question 6: Do you have any comments on the information we are proposing to include in periodic statements, including comments on any additional information?

Format of statements where aggregated payments are made covering a number of agreements

Following representations from business, we are proposing that lenders will be able to send statements that cover more than one agreement (whether CCA regulated agreements or not) where there is an agreement between the

⁴ Standard wording is prescribed for the form and content of agreements (s.60) in Schedule 2 of the Agreements Regulations.

⁵ The current number of the FOS.

creditor and debtor that one aggregated sum will be paid by the debtor to cover payments on **all** the accounts listed on the statement. The opening and closing balances for each individual agreement will need to be split out and shown separately, and the prescribed forms of wording would have to be applied to the relevant agreements, to make it clear to consumers which agreements they refer to.

We have also considered how this would impact on agreements where credit for Payment Protection Insurance (PPI) and gap insurance have been sold alongside the original loan. When PPI or gap insurance is financed by credit, there are effectively two credit agreements – one for the principal sum and one to finance the PPI. However, the Consumer Credit (Agreements) Regulations allow agreements including PPI or gap insurance to be documented as a single agreement as long as there are separate signatures for the two agreements. We therefore propose to extend this concession to fixed-sum periodic statements to allow statements following the first statement to show aggregated opening and closing balances in these two circumstances. Where certain other information is required in respect of each agreement and the information is the same for both agreements we have also allowed the creditor to simply present that information once.. The first statement following the start of the agreement would show the two elements of the credit split out and listed separately.

Question 7: Do you have any comments on our proposals for the way in which we propose to deal with agreements covered by one aggregated payment?

Chapter 5 – Additional information in statements for running-account credit agreements

Section 7 of the 2006 Act

Section 7 inserts a new section 78(4A) into section 78 of the 1974 Act. This allows the Minister to make regulations stipulating information to be provided on statements under section 78(4) about the consequences to the debtor of:

- failing to make payments as required by the agreement, or
- only making payments of a prescribed description in prescribed circumstances.

Failure to make repayments

DTI proposes that where a debtor has failed to make a repayment as required by the agreement (i.e. no repayment or less than the required minimum repayment) in relation to the previous statement, the next statement issued by a creditor in accordance with section 78(4) should include a warning about the effect of failing to make payments, as follows:

You have failed to make a minimum payment

Failing to make your minimum repayment can mean that you are in breach of this credit agreement and could result in [insert name of creditor] bringing legal proceedings against you. This could have a detrimental affect on your credit rating and affect your ability to borrow in future.

The warning is to be included in the statement immediately following the missed payment, however small the missed payment might be.

Question 8: Do you have any comments on the proposed warning in relation to a failure to make a required repayment?

Minimum repayments

All statements issued by a creditor in accordance with section 78(4) for running-account agreements that require a minimum payment to be made each month (or other period) should include a warning about the effect of making only minimum payments, as follows:

Minimum repayments

If you make only the minimum payment it will take you longer and cost you more to clear your balance.

This wording has been taken from the Banking Code and is already in wide use among lenders, and widely recognised by consumers.

Question 9: Do you have any comments on the proposed warning in relation to the making of minimum repayments?

Allocation of repayments

During the passage of the 2006 Act, some stakeholders suggested to DTI that an additional warning should be included on running-account credit statements with various applicable interest rates, where the payment is allocated to the lowest interest bearing part of the account first when the account is not paid off in full.

As part of the Banking Code many lenders already reproduce the allocation of payments statement that is included in the pre-contract information on the pre-printed backs of the statements, and rather than imposing a totally new requirement we are proposing to make the inclusion of what is generally seen as good practice a regulatory requirement.

We would like to know whether you think that requiring all lenders to include this information on the statement somewhere is sufficient for reminding consumers or whether the reminder needs to be placed more prominently on the front.

We are not proposing to prescribe the form of wording such a statement would need to take.

Question 10: Do you think that the allocation of statements should be displayed more prominently in cases where the balance is not paid off in full, or is our proposal to include it somewhere in the statement sufficient?

Section 9 of the 2006 Act

Section 9 inserts a new section 86B into the 1974 Act. Section 86B provides that where the debtor or hirer is in arrears in respect of a fixed-sum credit agreement or hire agreement then the creditor must provide an arrears notice within 14 days. The creditor's duty to provide such a notice arises where, among other conditions:

- The debtor has missed payments so that the total sum of the shortfall is at least the sum of what should have been paid under the last two payments; or
- Where the payment interval is one week or less, the debtor has missed payments so that the total sum of the shortfall is at least the sum of what should have been paid under the last four payments within the last 20 week period.

The new section 86B(8) allows the Minister to make regulations specifying the form and content of notices of sums in arrears. Notices of sums in arrears must also include an OFT information sheet, as required by section 8 of the 2006 Act.

Section 8 of the 2006 Act – Information sheets

Section 8 inserts a new section 86A into the 1974 Act. This requires OFT to prepare and publish information sheets on arrears and default. The information contained in the sheets will be designed to help debtors and hirers who receive notices of sums in arrears and default notices under the Act.

The new section 86A(4) provides that the Minister may make regulations providing for the information that the OFT must include in the information sheets. DTI does not propose to exercise this power at this time.

OFT will begin informal consultation on the form and content of the information sheets in the Autumn. DTI will work together with OFT to ensure consistency of approach to the SIs under the Act and the information sheets.

Information

DTI proposes that the notice of sums in arrears for fixed-sum credit account agreements and hire agreements should include the following pieces of information:

- *An explanation of why the notice is being sent* – i.e. because the debtor is behind with their payments – creditors will have the flexibility to provide their own wording for this
- *A statement encouraging the debtor or hirer to discuss the state of their account with the creditor or owner* - creditors will have the flexibility to provide their own wording for this
- *The date of the notice*
- *A description of the agreement sufficient to identify it*
- *The name, telephone number and postal address and, where appropriate, any other address of the creditor or owner* - 'any other address' might include an internet address.
- *The name and postal address of the debtor*
- *Missed or part payments:* details of sums which the debtor or hirer was required to have paid and failed to pay in full and are still owing at the date on which the duty to give the notice arose, including:
 - a) the amount of the sum payable;
 - b) the date on which the sum became payable;
 - c) in the event that the debtor or hirer has paid part of that sum, the amount paid and the date or dates on which it was paid;
 - d) the nature of the sum payable; and
 - e) the total of the sums outstanding at the date of the notice.
- *Any further default sums and additional interest:* if further default sums or interest (other than any that may already be indicated in the notice) will become payable as a result of the arrears indicated in the notice, the notice should also include a generic statement as below:

Default sums and interest

You will have to pay additional sums to us which are not set out in this notice as a result of failing to make payments in full or in part. Please contact us if you would like further details.

And if such additional sums will not become payable, then a statement as follows should be included instead:

Default sums and interest

You will not incur any additional sums as a result of the payments you have missed other than those set out in this notice.

- *Frequency of notices:* a generic statement explaining when the next arrears notice would be due, if the consumer does not clear his arrears, as follows:

Notices

For so long as you continue to be behind with your payments by any amount, you will be sent notices about this at least every six months. We are not required to send you notices more frequently than this, even if you get further behind with your payments in between notices.

- *Payment of arrears:* if the notice is not a demand for immediate payment of the sums it refers to, the notice may also include a statement to this effect, but if such a statement is included, the creditor or owner must set out when the amounts set out in the notice must be paid.
- *Scope of arrears notice:* where applicable, a generic statement explaining that information about arrears occurring before the commencement of section 9 of the 2006 Act will not be included in the notice, as follows:

This notice does not take account of payments which were required to be made before [date of commencement of section 9 of the Consumer Credit Act 2006] and which were not paid or fully paid whether or not they remain unpaid.

(Note that this will be provided for in transitional provision as part of the Commencement Order to bring section 9 into force)

- *OFT information sheet:* reference to the Office of Fair Trading (OFT) Information Sheet on arrears (as required by section 86B(6) of the 2006 Act), which must be included with the arrears notice. We propose that the reference to the OFT information sheet should use the following words:

Office of Fair Trading information sheet

This notice should include a copy of the current information sheet on arrears prepared by the Office of Fair Trading. This contains important information intended to help you. If it is not included you should contact us to get one. Our rights to charge you interest and default sums on the amounts you should have paid under the agreement or to enforce the agreement against you will be restricted until we have given you a notice including a copy of the current information sheet on arrears

- *Time orders:* a statement reminding the debtor of their right to apply for a time order, using the following words:

Time orders

If you are having difficulty in making payments under this agreement you may be able to apply for a time order from a court (in England or Wales, from a county court, in Scotland, from a sheriff court and in Northern Ireland from a county court or the high court). This is an order giving you more time to repay what you owe. Please see the copy of the current information sheet on arrears prepared by the Office of Fair Trading which should be included with this notice for more information.

Question 11: Do you have any comments on the proposed information to be included in a notice of sums in arrears for fixed-sum credit agreements, including comments about any additional information?

Chapter 7 – Notices of sums in arrears for running-account credit agreements

Section 10 of the 2006 Act

Section 10 inserts a new section 86C after section 86B of the amended 1974 Act. Section 86C provides that where the debtor is in arrears (i.e. has either missed or partly paid the last two payments) in respect of a running-account credit agreement, then the creditor must provide an arrears notice.

The new section 86C(6) provides for the Minister to make regulations specifying the form and content notices of sums in arrears.

Information

DTI proposes that the notice of sums in arrears in respect of running-account credit agreements should include the following pieces of information:

- *An explanation of why the notice is being sent* – i.e. because the debtor is behind with their payments – creditors will have the flexibility to provide their own wording for this
- *A statement encouraging the debtor to discuss the state of their account with the creditor* - creditors will have the flexibility to provide their own wording for this
- *The date of the notice*
- *A description of the agreement sufficient to identify it*
- *The name, telephone number and postal address and, where appropriate, any other address of the creditor* - 'any other address' might include an internet address.
- *The name and postal address of the debtor*
- *Missed or part payments*: details of the last two sums which the debtor was required to have paid and failed to pay in full and are still owing at the date on which the duty to give the notice arose, including:
 - a) the amount payable;
 - b) the date on which the amount became payable;
 - c) in the event that the debtor has paid part of that amount, the amount paid and the date or dates on which it was paid;
 - d) the nature of the amount payable; and
 - e) the total of the amounts outstanding set out in the notice at the date of the notice.

- *Scope of arrears notice:* a generic statement explaining that the notice does not include any other arrears than the last two payments that were missed, whether or not they remain unpaid:

Missed and partly made payments

This notice does not take account of missed or partly made payments previously notified whether or not they remain unpaid

(Note that because of the way in which section 10 and transitional provision in Schedule 3 paragraph 7(2) of the 2006 Act work, arrears notices for running-account credit will not be required to include information about arrears occurring before the commencement of section 10 of the 2006 Act.)

- *Any further default sums and additional interest:* if further default sums or interest (other than any that may already be indicated in the notice) will become payable as a result of the arrears indicated in the notice, the notice should also include a generic statement as below:

Default sums and Interest

You will have to pay default sums and interest in relation to the missed payments indicated above in addition to any default sums and interest already included in this notice. Please contact us if you would like further details.

And if such additional sums will not become payable, then a statement as follows should be included instead:

Default sums and Interest

You will not incur any default sums or extra interest in relation to the missed payments indicated above.

- *Payment of arrears:* if the notice is not a demand for immediate payment of the sums it refers to, the notice may also include a statement to this effect, but if such a statement is included, the creditor or owner must set out when the amounts set out in the notice must be paid.
- *OFT information sheet:* reference to the Office of Fair Trading (OFT) Information Sheet on arrears (as required by section 86C(3) of the 2006 Act), which must be included with the arrears notice. We propose that the reference to the OFT information sheet should use the following words:

Office of Fair Trading information sheet

This notice should include a copy of the current information sheet on arrears prepared by the Office of Fair Trading. This contains important information intended to help you. If it is not included you should contact us to get one. Our rights to charge you interest and default sums on the amounts you should have paid under the agreement or to enforce the agreement against

you will be restricted until we have given you a notice including a copy of the current information sheet on arrears; and

- *Time orders:* a statement reminding the debtor of their right to apply for a time order, using the following words:

Time orders

If you are having difficulty in making payments under this agreement you may be able to apply for a time order from a court (in England or Wales, from a county court, in Scotland, from a sheriff court and in Northern Ireland from a county court or the high court). This is an order giving you more time to repay what you owe. Please see the copy of the current information sheet on arrears prepared by the Office of Fair Trading which should be included with this notice for more information.

Question 12: Do you have any comments on the proposed information to be included in a notice of sums in arrears for running-account credit agreements, including comments about any additional information?

Section 12 of the 2006 Act

Section 12 inserts a new section 86E after section 86D of the amended 1974 Act. This requires a creditor or owner to send a notice about default sums that have fallen due. “Default sums” are defined in new section 187A of the 1974 Act to mean a sum (other than a sum of interest) which is payable in connection with a breach of the agreement (e.g., a late payment charge).

Section 86E(2) requires that the creditor or owner must give a notice of default sums within the prescribed period. Section 86E(7)(b) provides that the Minister may make regulations that:

- provide that the requirement to provide section 86E is not to apply in relation to a default sum which is less than the prescribed amount;
- specify the time within which a notice of default sums must be given; and
- specify the form and content of a default sum notice.

Requirement for the notice

DTI’s proposal is not to make regulations at this time that prescribe a level of default sum where notices need not be sent. We have considered this carefully and have come to the conclusion in view of the problems in identifying a level that would be the most helpful for consumers and at the same time equitable for all lenders. Overall we felt it would be simpler for all not to prescribe a level, and this is how we intend to proceed initially.

The OFT has suggested that £12 is a fair level for a default sum, and as a result some lenders have suggested to us that the trigger for sending notices should be set just above that level. However, it is also possible that OFT may consider that in some circumstances a default sum higher than £12 may also be fair. This could lead to a scenario where some lenders setting a reasonable default sum were never required to send Notices of default sums, and other lenders also setting a different reasonable default sum were always required to do so, leading to a competitive disadvantage. From the consumer’s point of view a large number of them would never receive these notices and would have to rely on other statements to inform them that default sums had been added to the account and were accruing interest.

We also considered having different *de minimus* levels of sums - say £50 for the first sum, £25 for the second and £10 for a third - in order to trigger notices when several default sums had been applied to the account were thought by industry to be too complicated and have potentially very expensive IT implications.

Question 13: Do you have any comments on our proposed way forward for the requirement to provide notices of default sums?

Time for the notice to be given

DTI proposes that a creditor must give to the debtor a notice of default sums within 35 calendar days of the relevant threshold being reached in order to ensure that for running-account credit it will always be possible to include Notices of default sums in the monthly statements.

Question 14: Do you have any comments on the proposed period for the giving of notices of default sums?

Content of notices

DTI proposes that any notice of default sums, whether by itself or when forming part of another notice, should include:

- *general description*: text, telling the consumer that this information is being provided to comply with section 86E of the amended 1974 Act;
- *default sums*: details of all default sums incurred during the relevant period, including:
 - the amount of each default sum;
 - a description of each default sum; and
 - the date on which the default sum was applied to the account.
- *interest*: if the agreement provides that interest may be applied to default sums, a statement using the following wording:

Interest

No interest will be charged on default sums for the first 28 days after the giving of this Notice. After that interest will be charged at the rate of [insert applicable interest rate] per annum.

Question 15: Do you have any comments on the proposed information to be included in a notice of default sums, including comments about any additional information?

Section 14 of the 2006 Act

Section 14 amends section 88(4) of the 1974 Act to permit the Minister to prescribe additional information to be included in a default notice issued by a creditor in accordance with section 87 of the 1974 Act. A default notice must be issued if the creditor wants to terminate the agreement or take enforcement action for breach of the agreement. The Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983 (SI 1983/1561) set out what must currently be included in a default notice, such as a description of what action the creditor intends to take and the amount of any sum that the creditor demands be paid.

Additional information

DTI proposes to use the power set out in section 14 of the Act to amend Schedule 2 of the 1983 Regulations to require that the default notice should include three pieces of additional information, which are important for the debtor to receive at the time the notice is served.

Hire purchase and conditional sale agreements – ending the agreement

Where a default notice is served on the debtor in relation to a hire purchase or conditional sale agreement, DTI proposes that it should contain a statement reminding the debtor or hirer that they may have the right to end the agreement under section 99 of the 1974 Act (right to terminate hire purchase etc. agreements), and emphasising that if they chose to exercise that right, they would need to do so quickly and by a certain date. This statement will complement more general information about the right to end such agreements that will also be given earlier in the process - in the agreements themselves, and also in fixed-sum periodic statements (see Chapter 4).

We propose that this statement should also explain the implications for the debtor or hirer, under section 100(1) of the 1974 Act, if they were to exercise the right to end the agreement. One option would be to include in the statement the specific amount that the debtor would be required to pay under section 100(1) as at the date of the notice, if they exercised that right. The alternative would be to include in the statement a generic, balanced explanation of the debtor's liabilities, which also encourages the debtor to contact the lender to receive more information. For the purposes of this consultation, we propose the latter option, but we would welcome views on this particular point.

In summary, we propose that the statement should have the following wording:

You [may] [NOTE 1] have the right to end this agreement. To do so, you should write to the person you make your payments to.

Note that this right may be lost if you do not act before[NOTE 2]

If you end the agreement, we will then be entitled to the return of the goods [and to the costs of installing the goods plus half the rest of the total amount payable under the agreement] [and to half the rest of the total amount payable under the agreement] [NOTE 3]. If you have already paid at least this amount plus any overdue instalments and have taken reasonable care of the goods, you will not have to pay any more. [NOTE 4]

Please contact your lender or [NOTE 5] as soon as possible to find out more about what you must do to end your agreement.

NOTE 1: creditor to omit the word "may" in the case of a hire purchase agreement.

NOTE 2: creditor to insert the date shown in the notice by when the debtor must take any action to remedy a specified breach of the agreement or to pay compensation for the breach or, if no such action is required to be taken, the date shown in the notice after which the creditor intends to take any action specified in the notice.

NOTE 3: creditor to insert the appropriate passage in square brackets where the amount calculated in accordance with the provisions of section 100 of the Act applies. If the agreement provides for a sum below the minimum prescribed in the Act, creditor to substitute for the passages in square brackets that sum or an explanation of how that sum is calculated. If the agreement does not provide for any payment on termination, both passages in square brackets are to be omitted.

NOTE 4: creditor to omit this entire paragraph in the case of an agreement that does not make provision for any payment on termination and to substitute "If you end the agreement, we will then be entitled to the return of the goods. If you have taken reasonable care of the goods, you will not have to pay any more."

NOTE 5: Creditor to insert consumer advice body, such as the Citizens Advice Bureau, Consumer Credit Counselling Service or National Debtline"

Question 16: Do you have any comments on the proposed requirement for the inclusion in s.87 default notices of information about the right to end HP and conditional sale agreements?

Question 17: Do you consider that a generic description of liabilities for the debtor under s.100(1) would be more appropriate than a specific figure of the amount the debtor would have to pay as at the date of the notice, or vice versa, and why?

Interest payable after a judgment

DTI proposes that, if a credit agreement includes an interest after judgment clause - i.e. a clause that permits the creditor to apply interest on monies owed by the debtor at the date of a judgment, then a default notice should include a clear statement by the creditor explaining this. If such a clause is not included in the agreement, then that statement need not be made.

Previously, debtors may have been unaware that in the event of a judgment being made against them, they might have not only the judgment sum itself to pay, but also an additional sum to pay in the form of interest. We consider that it is important to alert debtors at an early stage to this potential additional risk of being taken to court and having a judgment made against them.

DTI proposes that this statement should use the following wording:

You should be aware that if we take you to court and get a judgment against you requiring you to pay us money you owe us under the agreement, you may have to pay us both the amount of the judgment and interest under the agreement on all the monies owed by you at the date of the judgment until you have paid these in full. This means that even if you pay off the whole amount of the judgment, you may still have a further sum to pay.

Question 18: Do you have any comments on the proposed requirement for the inclusion in s.87 default notices of information about interest payable after a judgment?

OFT information sheet on default

Finally, we propose that a statement should be included to remind the debtor that the default notice should be accompanied by an Office of Fair Trading (OFT) information sheet on default, as required by section 88(4A). This statement would serve to remind both the creditor and debtor of the importance of the information sheet, and the implications of it not being included. We propose that this statement should use the following words:

This notice should include an information sheet on default published by the Office of Fair Trading. This contains important information intended to help you. If it is not included, you should contact us to get

one and we will not be able to enforce the agreement until we have given you a notice including it.

- Question 19: Do you have any comments on the proposed requirement for inclusion in s.87 default notices of a reference to the OFT information sheet on default?
- Question 20: Do you consider that any other information not already proposed should be included in s.87 default notices?

Chapter 10 – Notices in relation to post-judgment interest

Section 17 of the 2006 Act

Section 17 of the Act inserts a new section 130A after section 130 of the 1974 Act. This provides that, where the credit agreement permits the charging of interest after a judgment, the creditor, in order that he may claim that interest, must give to the debtor a notice after judgment (the first required notice) and then subsequent notices at intervals of not more than 6 months. The creditor may then charge interest from the date on which the notice was given.

Previously, debtors have been unaware that in the event of a judgment being made against them, they might have not only the judgment sum itself to pay, but also an additional sum to pay in the form of interest. We consider that it is important to inform debtors of any such additional interest that is charged after judgment.

Section 130A(6) provides that the Minister may make regulations about the form and content of notices of interest after a judgment. In general, we propose that the first required notice should contain more background about the way in which interest will be applied after the judgment, with the subsequent notices concentrating on the amounts and details of the interest that has been charged. Some information will also be common to all notices.

All notices

DTI proposes that all notices issued under s.17 of the 2006 Act should include the following pieces of information:

- *The date of the notice*
- *A description of the agreement and the case number of the judgment;*
- *The name, telephone number and postal address and, where appropriate, any other address of the creditor or owner - 'any other address' might include an internet address.*
- *The name and address of the debtor or hirer;*
- *The rate at which post-judgment interest is or will be charged at the date of the notice;*
- *The amount on which post-judgment interest is or will be charged at the date of the notice;*
- A generic statement as follows:

If you are having problems making repayments you should contact the court where judgment was entered. If you are making repayments under an instalment order you may be able to apply to the court to have the terms of the instalment order varied; and

- A generic statement as follows:

Advice and information

You can also obtain advice and information about managing debt issues from [NOTE 1] on [NOTE 2].

NOTE 1: Creditor to insert consumer advice body, such as the Citizens Advice Bureau, Consumer Credit Counselling Service or National Debtline

NOTE 2: Insert telephone number for organisation in NOTE 2

First required notice

In addition to the general information required to be included in all notices, as detailed above, DTI proposes that the first required notice ought to include a statement as follows. We believe that this full explanation of interest payable after a judgment is necessary early on in the process (i.e. in the first notice) so that debtors are clear about what they can expect.

Interest payable after a judgment

This notice is being given following a judgment being given in relation to the [Insert a description of the agreement sufficient to identify it]. Under the agreement we, [Insert name of creditor or owner], are allowed to continue to charge interest on all the monies owed by you at the date of the judgment.

This notice is to advise you that we intend to charge interest. The rate of interest payable will be [Insert applicable interest rate or rates] per annum.

Interest will be charged as from and including the day on which you were given this notice.

This means that even if you pay off the whole amount of the judgment, you may still have a further sum to pay.

For so long as we intend to charge interest on the monies owed by you at the date of the judgment, you will be given a notice about this at least every six months. This will also include information about the amount of interest that has been charged since the previous notice was given.

If you are not given such a notice within 6 months starting with the day after the previous notice was given to you then we will not be able to charge further interest until you are given such a notice.

Question 21: Do you have any comments on the proposed content of the first notice in relation to interest after a judgment?

Subsequent notices

Finally, DTI proposes that second and subsequent notices of interest after a judgment, given at not more than six-monthly intervals, should include - in addition to the information to be included in all notices, as detailed above – the following two pieces of information specifically related to the amount of interest that has been charged:

- *The total amount of post-judgment interest charged since the date of the last notice given; and*
- *The date or dates on which post-judgment interest has been charged since that date.*

Question 22: Do you have any comments on the proposed content of second and subsequent notices in relation to interest after a judgment?

Chapter 11 – Form of Post-Contract Information Notices and Statements

Sections 6, 7, 9, 10, 12, 14 and 17 of the 2006 Act

We do not propose to prescribe the precise format of the various statements, but rather to specify minimum requirements in terms of:

- the information to be included in the statements; and
- the manner in which that information is to be presented.

Lenders will therefore be free to determine the precise format of the statements and to present the statements in a way that suits the context of their own businesses and which complies with the statutory requirements.

Neither do we propose to prescribe the ordering of such information, but would welcome views as to whether there would be any merit in doing so.

In all cases the lettering and any figures and symbols must be easily legible and in a colour that shows up against the background. Where there is scope for the lender to use their own words, these must be plain and intelligible.

A general point of principle has been to keep the information that must be provided under the Act for each individual Notice or Statement together as a whole apart from totals, sub-totals and headings that clarify the information. It will always be possible to add additional explanatory notes and cross-references outside the required information – either to one side, or underneath.

However, there are some exceptions to this. There is a specific provision in the Act to allow Notices of Default Sums, Notice of Interest Payable on Judgement Debts and Notices of Sums in Arrears for Running-Account Credit to be incorporated into other notices/statements to be given under the Consumer Credit Act 2006. Where this is relevant, they can be included and interspersed within the information given in the main notice. This is because there are several common pieces of information such as, name and address of creditor and debtor, way of identifying agreement, and statement date, and we would not want lenders to have to produce these pieces of information twice. It will also allow flexibility for lenders to present this information in the most sensible way.

We have not specified anything for Default Notices or Running-Account Periodic statements as these are dealt with by earlier legislation and we are just adding in a requirement for some extra information to be included.

On the question of prominence, we have tried to keep the rules as simple as possible. Prescribed information must be no smaller than any other

information provided in the document apart from names and logos. This will allow lenders to give some items of required information more prominence to some items – for instance, the amount to pay and the due date - but will not allow any other information that is not required such as promotions or advertising to be any more prominent than the least prominent item of required information. The only times we have specified that information must be more prominent than anything else is where the statement will not occur regularly in statements, but only where something has gone wrong, for instance where the debtor has failed to make all or part of a minimum payment, or where it has become clear that the debtor will not finish paying off the debt by the date set out in the agreement.

We also propose that all notices of sums in arrears as well as Default Notices should be in paper form, and not provided in electronic form only, as the notice gives rise to certain legal consequences, such as the right to apply for a time order.

Question 23: Do you have any comments on our proposals in Chapter 11 on the form of the various post-contract information notices and statements?

Question 24: Do you think that there are any notices or statements that would benefit from the information appearing in a particular order, or linked to any other specific item of information? Please explain your answer.

Regulations setting out the maximum duration of a time-limited licence (section 34)

Section 34 of the 2006 Act amends section 22 of the 1974 Act to provide that the OFT may issue licences either for an indefinite period or for a specified period and to vary the duration of licences in certain circumstances. A time-limited licence will have effect for such period as the OFT thinks fit provided that period does not exceed a period prescribed by the .

Currently, standard licences that are not for an indefinite term are issued for a period of 5 years as prescribed by the Consumer Credit (Period of Standard Licences) Regulations.⁶

DTI proposes to retain this period in relation to time-limited licences, issued after commencement of section 34 of the 2006 Act, on the basis that if the period were to be any longer there would be a question whether an indefinite licence (with close monitoring) would be more appropriate. OFT would still retain the discretion to issue time-limited licences for less than 5 years.

Question 25: Do you have any comments on the proposed 5-year period for the maximum duration of time-limited licences?

Regulations setting out the periods for the payment of charges for indefinite licences (section 35)

Section 35 of the 2006 Act inserts a new section 28A into the 1974 Act, which requires holders of indefinite standard and group licences to pay the OFT a periodic fee during the life of the licence. This provision is needed as a result of the move to indefinite licences and the requirement in Section 62 for ongoing monitoring of licensees, for which the costs will need to be recovered. Under the 1974 Act, prior to amendment by the 2006 Act, OFT would receive a fee every 5 years when a licence was renewed and this would cover OFT's costs in relation to the licensing system.

DTI proposes that the fee should cover the 5-year period for which it is paid, and that it will not be possible to make further demands until the end of that period.

Question 26: Do you have any comments on the proposed 5-year period for payment of the periodic licence fee in respect of indefinite licences?

⁶ 1075 (SI 1975/2124), as amended by SI 1991/817

Implementation timing

A timetable for implementation was announced on 25 May. This followed extensive informal consultation with stakeholders including some IT specialists, through two working groups that met regularly to discuss the proposals being put forward and the implications for business and their systems.

In drawing up the timetable there were some basic principles driving the process. The provisions of the Act will be brought into force as soon as practicable. Given the huge changes in the consumer credit market since the 1974 Act became law, it is important that the new provisions take effect as soon as possible. However it would still not be possible to commence everything immediately. To start with, all provisions affecting industry must be commenced on a DTI Common Commencement Date (CCD) of either 6 April or 1 October. We also needed to take account of any legal constraints within Act because some sections must be commenced simultaneously or in a certain order. Many of the provisions also involve a good deal of preparation in the form of consultation and time for industry to prepare themselves for the new provisions. This was one of the areas where pre-consultation was particularly useful in allowing us to understand better the IT systems implications for the various proposals.

This consultation paper forms part of a wider implementation and consultation exercise. We will continue to meet with stakeholder representatives to discuss specific issues and we intend to involve stakeholders in the process of finalising the Statutory Instruments covered by this consultation.

The table below shows the dates when it is expected that the various provisions will come into force.

Date	Provision(s) coming into force
June 2006	Disapplication of s.101 of the 1974 Act (s.63) Miscellaneous/technical provisions (ss.65-69) Enabling powers for SIs to be made later on, and other 'supporting' provisions
1 October 2006 (CCD)	Extension of period to respond to default notices (s.14 (1))
Late 2006	Change to definition of an individual (s.1)
6 April 2007 (CCD)	Abolition of automatic unenforceability (s.15) Unfair relationships (ss.19-22) for <u>new</u> agreements (there will be a one-year transitional period (i.e. until April 2008) before the test applies to existing agreements) Alternative dispute resolution provided by FOS (ss.59-61 and Schedule 2)
6 April 2008 (CCD)	Removal of financial limit (s.2) High net worth and business exemptions (ss.3-4) Post-contract transparency (ss.6-14, 16-18) Licensing regime and OFT powers (ss.23, 26-54, 62, 64) Consumer Credit Appeals Tribunal (ss.55-58, Schedule 1)
1 October 2008 (CCD)	New categories of business – debt administration and credit information services (ss.24-25)

Business has been particularly interested in the post-contractual disclosure statements and the preparation necessary to update their IT systems.

Following the pre-consultation exercise, where we worked with industry to ensure that these requirements would add the minimum burden necessary to ensure that the principles in the Act were implemented fully, we have been reassured that it will be possible for business to meet the timescale published on 25 May. We have worked on the basis of an implementation period of **12 months** from the making of the Statutory Instruments, after which the new requirements will come into force in April 2008. We have come to this conclusion for the following reasons:

- We want to implement the proposals at the first opportunity possible;
- While we understand that businesses will wait for the final provisions before actually starting work on implementing the changes, business will have foreknowledge of the likely shape and detail of the new requirements, the Statutory Instruments and the layout of new documents as set out in this consultation paper. We expect these to be subject to only relatively minor modification as a result of this consultation;

- Business has been involved closely in the preparation of these Statutory Instruments, which has meant that some of the more complicated ideas involving the need for “dynamic” information - i.e. information specific to the individual agreement, has been modified to just require a generic statement where we believed that the additional cost to business was not justified by the small additional benefit to consumers;
- Recent regulations of a similar nature have been successfully implemented by lenders in 12 months, including the requirements brought in by the Consumer Credit Act Agreements Regulations and Early Settlement Regulations, and the FSA’s implementation of mortgage regulation in 2004-2005; and
- Specific provisions of the 2006 Act permit longer periods before compliance is mandatory, for example in relation to periodic statements for fixed-sum credit agreements, where the first statement is required within 1 year of the making of an agreement or, for agreements made before commencement of the provisions, 1 year from the date of commencement.

STATUTORY INSTRUMENTS

[2007] No. XXX

CONSUMER CREDIT

The Consumer Credit (Exempt Agreements) Order 2007

Made

Laid before Parliament

Coming into force

The Secretary of State makes the following Order in exercise of the powers conferred by sections 16A and 16B of the Consumer Credit Act 1974¹.

Citation and commencement

1. This Order may be cited as the Consumer Credit (Exempt Agreements) Order 2006 and shall come into force on [].

Exemption for high net worth debtors and hirers

2. The Consumer Credit Act 1974 shall not regulate a consumer credit agreement or a consumer hire agreement where-

- (a) the debtor or hirer is a natural person;
- (b) the agreement includes a declaration made by him complying with article 3;
- (c) a statement of high net worth complying with articles 4 to 7 has been made in relation to him; and
- (d) that statement is current in relation to the agreement and a copy of it was provided to the creditor or owner before the agreement was made.

3. A declaration for the purposes of article 2(b) shall-

(a) be in the form set out in Schedule 1; and

(b) be set out in the consumer credit agreement or consumer hire agreement no less prominently than other information in the agreement and be readily distinguishable from the background medium.

¹ 1974 c.39 – sections 16A and 16B were inserted by sections 3 and 4 of the Consumer Credit Act 2006 c.14.

4. Articles 5, 6 and 7 shall apply to statements made for the purposes of article 2(c).
5. (1) A statement shall be in the form set out in Schedule 2 and shall show that the debtor or hirer-
- (a) received during the previous financial year net income totalling an amount not less than £100,000; or
 - (b) had throughout that year net assets with a total value of not less than £250,000.
- (2) In this article-
- (a) “net income” means the total income of the debtor or hirer from all sources reduced by the amount of income tax and national insurance contributions payable in respect of it; and
 - (b) “net assets” shall not include-
 - (i) the value of the debtor or hirer’s primary residence or any loan secured on that residence;
 - (ii) any rights of the debtor or hirer under a qualifying contract of insurance within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001²; and
 - (iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of the service of the debtor or hirer or on his death or retirement and to which he is (or his dependants are), or may be, entitled.
6. (1) Subject to article 7, a statement shall be made by a person who is:
- (a) an accountant who is a member of any of the bodies listed in paragraph (2); or
 - (b) an employer where all the conditions set out in paragraph (3) are satisfied.
- (2) The bodies referred to in paragraph (1)(a) are:
- (a) the Institute of Chartered Accountants in England and Wales;
 - (b) the Institute of Chartered Accountants in Scotland;
 - (c) the Institute of Chartered Accountants in Ireland;
 - (d) the Association of Chartered Certified Accountants;
 - (e) the Chartered Institute of Management Accountants;
 - (f) the Chartered Institute of Public Finance and Accountancy.
- (3) The conditions referred to in paragraph (1)(b) are that:
- (a) an employer may only provide a statement in relation to income;
 - (b) the statement is to be provided by:
 - (i) a director (in the case of a body corporate);
 - (ii) a partner (in the case of a partnership);

² S.I. 2001/544, to which there are amendments not relevant to these Regulations.

- (iii) a principal (in the case of a sole trader);
 - (iv) a member of the governing body (in the case of an unincorporated association); or
 - (v) an employee specifically authorised and designated by the employer for the purpose of giving a statement; and
- (c) any person providing a statement at sub-paragraph (b) may not be the debtor or hirer.

7. (1) A statement shall not be made by-
- (a) the creditor or owner;
 - (b) an employee or agent of the creditor or owner or a person who otherwise acts on behalf of the creditor or owner in relation to the consumer credit agreement or consumer hire agreement; or
 - (c) an associate of the creditor or owner.
- (2) In this article, “associate”, in addition to the persons specified in section 184 of the Consumer Credit Act 1974, includes a business associate.

Declaration for exemption relating to businesses

8. A declaration for the purpose of section 16B(2) of the Consumer Credit Act 1974 shall-
- (a) be in the form set out in Schedule 3; and
 - (b) be set out in the consumer credit agreement and consumer hire agreement no less prominently than other information in the agreement and be readily distinguishable from the background medium.

_____ [2006]

Name
Minister of State for Trade,
Investment and Foreign Affairs
Department of Trade and Industry

Schedule 1

Article 3

Declaration by high net worth debtor or hirer

I understand that by signing this declaration I will not have the benefit of the protection and remedies that would be available to me under the Consumer Credit Act 1974 if this agreement were a regulated agreement under that Act. I understand that this declaration does not affect my ability to make an application under section 140A of the Consumer Credit Act 1974 in respect of unfair relationships between debtors or hirers and creditors or owners. I am aware that, if I am in any doubt as to the consequences of making this declaration I should seek independent legal or other advice.

.....
(signature of debtor/hirer)

.....
(print name)

Schedule 2

Article 5

Statement of High Net Worth
s.16A(1)(c) Consumer Credit Act 1974

I, *(insert name)*, of *(insert address)*

.....
being a person qualified to make a statement of high net worth under article 6 of the **Consumer Credit (Exempt Agreements) Order 2006**, state as follows:

I am satisfied that *(insert name of debtor or hirer)*,
of *(insert address of debtor or hirer)*, was a
person of high net worth fulfilling the conditions of article 5(1)(a) or 5(1)(b) of the
Consumer Credit (Exempt Agreements) Order 2006 in respect of the financial year
beginning 1st April*(insert year)* and ending 31st
March.....*(insert year)*

Made on this day of, *(insert year)*

.....
(signature)

.....
(print name)

.....
(state nature of qualification to make this statement)

Schedule 3

Article 8

Declaration by debtor or hirer of business purpose

I am entering into this agreement wholly or predominantly for the purposes of a business carried on by me or intended to be carried on by me.

.....
(signature of debtor/hirer)

.....
(print name)

Draft Statutory Instruments

2007 No. XXX

CONSUMER CREDIT

The Consumer Credit (Information Requirements and Duration of
Licences and Charges) Regulations 2007

Made

Laid before Parliament

Coming into force

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 22(1B) and (1E), 28A(3)(b) and (6), 77A(2), 78(4A), 86B(8), 86C(6), 86E(2) and (7)(b), 88(4), 130A(6), 182(2) and 189(1) of the Consumer Credit Act 1974^a:

Citation and commencement

1. (1) These Regulations may be cited as the Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007.
- (2) These Regulations shall come into force on [6th April 2008].

Interpretation

2. In these Regulations, “agreement to aggregate” means an agreement made between a creditor and a debtor-
 - (a) concerning two or more agreements for fixed-sum credit between the creditor and the debtor where at least one such agreement is a regulated credit agreement;
 - (b) which entitles or requires the debtor to make individual payments under each agreement mentioned in paragraph (a) at the same time as and aggregated with individual payments under each of the other agreements;

and references to aggregated payments shall be construed accordingly;

^a 1974 c. 39 as amended by the Consumer Credit Act 2006 c. 14; sections 22(1B) and (1E) were inserted by section 34(2) of the 2006 Act, sections 28A(3)(b) and 28A(6) were inserted by section 35 of the 2006 Act, section 77A(2) was inserted by section 6 of the 2006 Act, section 78(4A) was inserted by section 7(1) of the 2006 Act, section 86B(8) was inserted by section 9 of the 2006 Act, section 86C(6) was inserted by section 10 of the 2006 Act, sections 86E(2) and (7)(b) were inserted by section 12 of the 2006 Act, section 88(4) was amended by section 14(2) of the 2006 Act, section 130A(6) was inserted by section 17 of the 2006 Act and section 182(2) was amended by section 58(3)(a) of the 2006 Act. Section 189(1) is cited for the definitions of “prescribed” and “regulations”.

“the 1974 Act” means the Consumer Credit Act 1974.

Content of statements provided in relation to fixed-sum credit agreements

3. Regulations 4 to 7 shall apply to a statement given under section 77A of the 1974 Act.

4. Subject to regulation 5, the statement shall contain -

- (a) the information set out in Part 1 of Schedule 1;
- (b) the forms of wording set out in Part 2 of Schedule 1;
- (c) where the statement relates to a hire-purchase or conditional sale agreement the form of wording set out in Part 3 of Schedule 1; and
- (d) where the agreement had or has a fixed end date and either that date has passed and the debtor is still making repayments or at the current rate of repayment the debtor will have to continue making repayments after that date, the form of wording set out in Part 4 of Schedule 1.

5. Subject to regulation 6, where the creditor and the debtor have entered into an agreement to aggregate—

(a) the references to payments in paragraph 4(7) and sums becoming due in paragraph 4(8) of Part 1 of Schedule 1 may be construed as references to the aggregated payments which the debtor is permitted or required to make and in any such case the creditor shall specify:

- (i) that the figure for payment or for a sum becoming due is an aggregated figure; and
- (ii) the agreements to which it relates;

(b) where the statement contains any of the forms of wording set out in Parts 2 to 4 of Schedule 1 the creditor shall identify for each form of wording the regulated agreement or agreements to which it relates.

6. (1) Paragraphs (2) to (5) shall apply where the agreement to aggregate concerns only two agreements and Regulation 2(9) of the Consumer Credit (Agreements) Regulations 1983^a (information requirements in relation to credit and insurance finance agreements) applies to those two agreements.

(2) The information required under sub-paragraphs 4(3), (4) and (5) of Part 1 of Schedule 1 need only be shown once where the information that would

^a SI 1983/1553, to which there are amendments not relevant to these Regulations

otherwise have to be provided for the two agreements is the same for both agreements.

(3) Where the statement is not the first statement given under section 77A of the 1974 Act in relation to the two agreements, the references to the amount of credit [and to an opening balance] in sub-paragraphs 4(2) [and (6) respectively] of Part 1 of Schedule 1 may be construed as references to the aggregated amount of credit provided, and where applicable, to be provided under the two agreements [and the aggregated opening balance under the two agreements at the beginning of the period to which the statement relates].

(4) The reference to the balance due under the agreement at the end of the period to which the statement relates in sub-paragraph 4(9) of Part 1 of Schedule 1 may be construed as a reference to the aggregated balance due under the two agreements at the end of the period to which the statement relates.

(5) The creditor shall not be required to specify the matters referred to in sub-paragraphs (i) and (ii) of regulation 5(a) or to comply with regulation 5(b).

7. (1) If the statement is the first given under section 77A of the 1974 Act in relation to an agreement it shall relate to a period beginning with the date of the making of the agreement and ending on a date not more than 30 days before the date the statement is given.

(2) Any subsequent statement in relation to that agreement shall relate to a period beginning on the day immediately after the end of the period to which the preceding statement relates and ending on a date not more than 30 days before the date the statement is given.

Additional information in statements provided in relation to running-account credit agreements

8. Regulations 9 and 10 shall apply to a statement given under section 78(4) of the 1974 Act.

9. Subject to regulation 10 the statement shall contain the forms of wording and information set out in Schedule 2.

10. The form of wording set out in paragraph 1 of Schedule 2 shall only be required to be included in a statement provided in relation to an agreement which requires payment each month of a minimum sum.

Content of notices of sums in arrears under fixed-sum credit agreements etc.

11. (1) A notice given under section 86B of the 1974 Act (notice of sums in arrears under fixed-sum credit agreements etc.) shall contain-

(a) a statement that the notice is given under section 86B of the Consumer Credit Act 1974 because the debtor or hirer is behind with his payments under the agreement;

(b) a statement encouraging the debtor or the hirer to discuss the state of his account with the creditor or owner;

(c) the information set out in paragraphs 1 to 5 of Part 1 of Schedule 3;

(d) statements in the form specified in paragraphs 6 and 7 of Part 1 of Schedule 3;

(e) statements in the form specified in Part 3 of Schedule 3.

(2) The statement under paragraph (1)(a) may, where applicable, be followed by a statement to the effect that the notice is not a demand for immediate payment but in any such case the creditor or owner must set out when the amounts set out in the notice must be paid.

Content of notices of sums in arrears under running-account credit agreements

12. (1) A notice given under section 86C of the 1974 Act (notice of sums in arrears under running-account credit agreements) shall contain-

(a) a statement that the notice is given under section 86C of the Consumer Credit Act 1974 because the debtor is behind with his payments under the agreement;

(b) a statement encouraging the debtor to discuss the state of his account with the creditor;

(c) the information set out in paragraphs 1 to 5 of Part 2 of Schedule 3;

(d) statements in the form specified in paragraphs 6 and 7 of Part 2 of Schedule 3; and

(e) statements in the form specified in Part 3 of Schedule 3.

(2) The statement under paragraph (1)(a) may, where applicable, be followed by a statement to the effect that the notice is not a demand for immediate payment but in any such case the creditor must set out when the amounts set out in the notice must be paid.

Giving of notices of default sums

13. A notice under section 86E of the 1974 Act (notice of default sums) shall be given within 35 days after a default sum becomes payable.

Content of notices of default sums

14. Regulations 15 to 17 shall apply to a notice of default sums given under section 86E of the 1974 Act.

15. The notice shall state that it relates to default sums and that it is given under section 86E of the Consumer Credit Act 1974.

16. The notice shall contain the information and the form of wording set out in Part 1 of Schedule 4.

17. If the notice is given in relation to an agreement which provides that interest is payable in connection with default sums the notice shall contain the form of wording set out in Part 2 of Schedule 4.

Amendments to the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983

18. (1) The Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983^a shall be amended as follows.

(2) In regulation 2(2) for the expression “paragraphs 4, 5, 7” there shall be substituted “paragraphs 4, 5, 7, 8A”.

(3) In Schedule 2 after paragraph 8 there shall be inserted-

“Ending your agreement

8A Where the agreement is a hire-purchase or conditional sale agreement, a statement in the following form-

You [may] [NOTE 1] have the right to end this agreement. To do so, you should write to the person you make your payments to.

Note that this right may be lost if you do not act before[NOTE 2]

If you end the agreement, we will then be entitled to the return of the goods [and to the costs of installing the goods plus half the rest of the total amount payable under the agreement] [and to half the rest of the total amount payable under the agreement] [NOTE 3]. If you have already paid at least this amount plus any overdue instalments and have taken reasonable care of the goods, you will not have to pay any more. [NOTE 4]

Please contact your lender or [NOTE 5] as soon as possible to find out more about what you must do to end your agreement.

NOTE 1: creditor to omit the word “may” in the case of a hire purchase agreement.

^a SI 1983/1561, amended by SI 2004/3237

NOTE 2: creditor to insert the date shown in the notice by when the debtor must take any action to remedy a specified breach of the agreement or to pay compensation for the breach or, if no such action is required to be taken, the date shown in the notice after which the creditor intends to take any action specified in the notice.

NOTE 3: creditor to insert the appropriate passage in square brackets where the amount calculated in accordance with the provisions of section 100 of the Act applies. If the agreement provides for a sum below the minimum prescribed in the Act, creditor to substitute for the passages in square brackets that sum or an explanation of how that sum is calculated. If the agreement does not provide for any payment on termination, both passages in square brackets are to be omitted.

NOTE 4: creditor to omit this entire paragraph in the case of an agreement that does not make provision for any payment on termination and to substitute “If you end the agreement, we will then be entitled to the return of the goods. If you have taken reasonable care of the goods, you will not have to pay any more.”

NOTE 5: Creditor to insert consumer advice body, such as the Citizens Advice Bureau, Consumer Credit Counselling Service or National Debtline”

(4) After paragraph 9 there shall be inserted-

“Interest payable after a judgment

9A Where an agreement makes provision for the charging of post-judgment interest in connection with a judgment sum, a statement in the following form-

You should be aware that if we take you to court and get a judgment against you requiring you to pay us money you owe us under the agreement, you may have to pay us both the amount of the judgment and interest under the agreement on all the monies owed by you at the date of the judgment until you have paid these in full. This means that even if you pay off the whole amount of the judgment, you may still have a further sum to pay.

(5) After paragraph 10 there shall be inserted –

“10A A statement in the following form -

“This notice should include an information sheet on default published by the Office of Fair Trading. This contains important information intended to help you. If it is not included, you should contact us to get one and we will not be able to enforce the agreement until we have given you a notice including it.””

Content of notices of intention to recover post-judgment interest

19. A notice given under section 130A(1) of the 1974 Act (notice of intention to recover post-judgment interest in connection with a judgment sum) shall contain :

(a) if the notice is the first required notice -

(i) the information listed and forms of wording set out in Part 1 of Schedule 5; and

(ii) the form of wording set out in Part 3 of Schedule 5;

(b) if the notice is not the first required notice the information listed and forms of wording set out in Parts 1 and 2 of Schedule 5.

Form of notices and statements required under these Regulations

20. The information and statements required by these Regulations to be included in a statement or notice to be given under the 1974 Act shall be expressed in plain, intelligible language.

21. A notice of sums in arrears which is given under section 86B or 86C of the 1974 Act shall be given to the debtor or hirer in paper form.

22. (1) Subject to paragraph (2), the information and wording required or (in the case of information and wording given in relation to an agreement which is subject to an agreement to aggregate) permitted by these Regulations to be included in a notice or statement to be given under the 1974 Act shall be shown together as a whole and not interspersed with any other information or wording apart from -

(a) headings, totals and sub-totals for clarification;

(b) where applicable, the information required by regulation 5(a) and (b).

(2) Where a statement or notice which is required to be given under section 86C, 86E or 130A of the 1974 Act in relation to a regulated agreement (“the incorporated statement or notice”) is incorporated in another statement or notice which is required to be given under that Act in relation to the same agreement (“the principal statement or notice”), the information and wording included in the principal statement or notice may be interspersed with, and paragraph (1) shall not apply to, the information and wording required to be included in the incorporated statement or notice.

23. With the exception of the information required under paragraph 4 of Schedule 2 the form of words and information set out in that Schedule shall be set out immediately after the information showing the state of the account required by the Consumer Credit (Running-Account Credit Information) Regulations 1983^a.

24. The lettering of the information and wording required by these Regulations to be included in a statement or notice and any figures and symbols forming part of that information or wording shall be easily legible and of a colour which is readily distinguishable from the background medium upon which it is or they are displayed.

25. The information and wording required by these Regulations to be included in a statement or notice to be given under the 1974 Act shall be no less prominent than any

^a S.I. 1983/1570

other information and wording included in the document in which that notice or statement is embodied save that -

(a) the date of the notice or statement, trade names and names of parties to the agreement, logos or the reference number of the agreement may be more prominent; and

(b) the forms of wording set out in Part 4 of Schedule 1 and paragraph 2 of schedule 2 shall be more prominent,

than any such other information and wording, whether prominence is achieved by capital letters, underlining, larger or bold print or otherwise.

Clerical errors and omissions

26. Where a notice or statement contains a clerical error or omission which does not affect the substance of the information or forms of wording required by these Regulations that notice or statement shall not breach these Regulations on this ground alone.

Duration of licences and charges

27. For the purposes of sections 22(1B) and (1E) of the 1974 Act, the prescribed period shall be a period of five years.

28. (1) The amount of the charge payable by a person under subsection (1) or (2) of section 28A(3) of the 1974 Act before the end of a payment period of his shall be the amount determined in accordance with provision made by the OFT by general notice which is current on the day three months before the end of that person's payment period.

(2) The payment period for the purposes of section 28A of the Act shall be five years beginning—

(a) in the case of a person's first payment period on the day that his standard licence or, where a person is the original applicant for a group licence, that group licence takes effect; and

(b) in the case of all subsequent payment periods on the day after the day on which the immediately preceding payment period expires.

Revocation of superseded provisions

29. The Consumer Credit (Period of Standard Licence) Regulations 1975¹ are revoked.

Transitional provisions

30. Where a statement is given under section 77A of the 1974 Act in relation to a fixed-sum credit agreement made before [the commencement of section 6 of the Consumer Credit Act 2006] –

¹ S.I. 1975/2124, amended by S.I. 1979/796, 1986/1016 and 1991/817

(a) the information required under paragraph 4(4) of Schedule 1 need not be given; and

(b) regulation 7(1) shall apply in relation to such a statement as if for the words “period beginning with the date of the making of the agreement” there were substituted “period beginning on the date of commencement of section 6 of the Consumer Credit Act 2006”.

31. Where a notice of sums in arrears is given under section 86B of the 1974 Act in relation to a regulated agreement for fixed-sum credit or a regulated consumer hire agreement made before the commencement of section 9 of the Consumer Credit Act 2006, the notice shall contain where applicable in addition to the statements set out in paragraphs 6 and 7 of Part 1 of Schedule 3 a statement in the following form:

“This notice does not take account of payments which were required to be made before [date of commencement of section 9 of the Consumer Credit Act 2006] and which were not paid or fully paid when required to be paid, whether or not they remain unpaid.”

Name

_____ [2007]

Minister of State for Trade,
Investment and Foreign Affairs
Department of Trade and Industry

Schedule 1

Part 1

Regulation 4(a)

INFORMATION TO BE INCLUDED IN FIXED-SUM CREDIT STATEMENTS

- 1 The period to which the statement relates.
- 2 The creditor's name, a telephone number or numbers and postal address and, where appropriate, any other address.
- 3 The debtor's name and address.
- 4 Information in relation to the agreement-
 - (1) a description of the agreement sufficient to identify it;
 - (2) amount of credit provided and, where applicable, to be provided under the agreement;
 - (3) (a) any rate or rates of interest applicable on a per annum basis and-
 - (i) the periods during which each rate applies; and
 - (ii) if applicable, the element of the credit to which each rate applies; or

(b) where rates of interest are not applicable on a per annum basis, the rate or, where applicable, rates of interest on the credit provided under the agreement, in each case quoted on a per annum basis and a statement explaining how and when interest charges are calculated and applied under the agreement.
 - (4) start date of the agreement;
 - (5) remaining term of the agreement, calculated with reference to the date of the statement;
 - (6) any opening balance under the agreement at the beginning of the period to which the statement relates;
 - (7) payments made under the agreement by, or on behalf of, the debtor during the period to which the statement relates including date and amount of each payment;

- (8) the amount and nature of every sum which became due to the creditor under the agreement during the period to which the statement relates, including interest and default sums, together with the date on which every such sum became due;
- (9) the balance due under the agreement at the end of the period to which the statement relates.

Part 2

Regulation 4(b)

FORMS OF WORDING TO BE INCLUDED IN FIXED-SUM CREDIT STATEMENTS

1. “Settling your credit agreement early

You are entitled to settle your credit agreement early. If you do so, you may be required to pay an additional sum for early settlement. Please contact.....[NOTE 1] for a final settlement figure.”

2. “Dispute resolution

If you have a problem with your agreement, please try to settle it with your lender in the first instance. If you are not happy with the way in which your complaint was handled or the result, you may be eligible to make a complaint to the Financial Ombudsman Service. You can contact the Financial Ombudsman Service on [NOTE 2] or at[NOTE 3].”

NOTE 1: Insert name address and telephone number of creditor

NOTE 2: Insert Financial Ombudsman Service telephone number

NOTE 3: Insert Financial Ombudsman Service website address

Part 3

Regulation 4(c)

FORM OF WORDING TO BE INCLUDED IN FIXED-SUM CREDIT STATEMENTS FOR HIRE-PURCHASE OR CONDITIONAL SALE AGREEMENTS

“Termination: Your rights

You may be entitled to terminate this agreement early in accordance with section 99 of the Consumer Credit Act 1974. Please contact your lender or see the notice in your agreement headed “Termination: Your Rights” to see what you must do to terminate your agreement early.”

Part 4

Regulation 4(d)

FORM OF WORDING TO BE CONTAINED IN FIXED-SUM CREDIT STATEMENTS WHERE REPAYMENT WILL CONTINUE OR ARE CONTINUING AFTER THE FIXED END DATE OF THE AGREEMENT

“Estimated end of loan period

At your currently agreed rate of repayment if the interest rate remains the same, you will not pay off your balance until [NOTE 1].

Please contact your lender if you have not already done so to [discuss/agree] terms for the remainder of the loan. If you are having difficulty reaching agreement with your lender, you should consider seeking advice on what to do from an independent free advice agency such as the Citizen’s Advice Bureau.”

NOTE 1: Insert date at which all sums outstanding under the agreement will be repaid if the debtor continues to make repayments at the current rate and interest rates do not change

Schedule 2

Regulation 9

FORM OF WORDING AND INFORMATION TO BE USED IN RUNNING-ACCOUNT CREDIT STATEMENTS

1 The following form of wording –

“Minimum repayments

If you make only the minimum payment each month, it will take you longer and cost you more to clear your balance.”

2 If at the date on which the statement is given, the debtor has paid less than the minimum repayment required to be paid by him in accordance with the agreement during any period to which a previous statement relates, the statement shall contain the following form of wording –

“You have failed to make a minimum payment

Failing to make your minimum repayment can mean that you are in breach of this credit agreement and could result in [NOTE 1] bringing legal proceedings against you. This could have a detrimental effect on your credit rating and affect your ability to borrow in future.”

NOTE 1: Insert name of creditor

3 A statement of the rate of interest on the credit to be provided under the agreement or, where more than one such rate applies, all the rates in all cases quoted on a per annum basis with details of when each rate applies.

4 A statement of the order or proportions in which any amount paid by the debtor which is not sufficient to discharge the total debt then due under the agreement will be applied or appropriated by the creditor towards the discharge of the sums due in respect of:

- (1) the amounts of credit provided for different purposes; or
- (2) different parts of the agreement.

Schedule 3

Part 1

Regulation 11(1)(c) and (d)

INFORMATION AND STATEMENTS TO BE INCLUDED IN NOTICES OF SUMS IN ARREARS UNDER FIXED-SUM CREDIT AGREEMENTS ETC.

- 1 The date of the notice.
- 2 A description of the agreement sufficient to identify it.
- 3 The name, telephone number and postal address and, where appropriate, any other address of the creditor or owner.
- 4 The name and address of the debtor or hirer.
- 5 In relation to each sum which the debtor or hirer has failed to pay in full when required under the agreement and which is owing at the date on which the duty to give the notice arose:

(a) the amount of that sum;

(b) the date on which that sum became payable;

(c) in the event that the debtor or hirer has paid part of that sum, the amount paid and the date or dates on which it was paid; and

(d) the nature of that sum,

together with the aggregate of the sums payable as shown under paragraph (a) less the aggregate of the sums paid as shown under paragraph (c).

6. (a) Where default sums or interest (other than any set out in the notice) will be payable in connection with the amounts set out in the notice, a statement in the following form-

“Default sums and interest

You will have to pay additional sums to us which are not set out in this notice as a result of failing to make payments in full or in part. Please contact us if you would like further details.”

(b) In any other case, a statement in the following form-

“Default sums and interest

You will not incur any additional sums as a result of the payments you have missed other than those set out in this notice.”

7. A statement in the following form:

“Notices

For so long as you continue to be behind with your payments by any amount, you will be sent notices about this at least every six months. We are not required to send you notices more frequently than this, even if you get further behind with your payments in between notices.”

Part 2

Regulation 12(1)(c) and (d)

INFORMATION AND STATEMENTS TO BE INCLUDED IN NOTICES OF
SUMS IN ARREARS UNDER RUNNING-ACCOUNT CREDIT AGREEMENTS

- 1 The date of the notice.
- 2 A description of the agreement sufficient to identify it.
- 3 The name, telephone number and postal address and, where appropriate, any other address of the creditor.
- 4 The name and address of the debtor.

5 In relation to each of the last two payments which the debtor is required under the agreement to have made and which have not been paid or fully paid:

- (a) the amount payable;
- (b) the date on which the amount became payable;
- (c) in the event that the debtor has paid part of that amount, the amount paid and the date or dates on which it was paid;
- (d) the nature of the amount payable,

together with the aggregate of the amounts payable as shown under paragraph (a) less the aggregate of the amounts paid as shown under paragraph (c).

6. A statement in the following form-

“Missed and partly made payments

This notice does not take account of missed or partly made payments previously notified whether or not they remain unpaid.”

7. (a) Where default sums or interest (other than any set out in the notice) will be payable in connection with the amounts set out in the notice, a statement in the following form-

“Default sums and Interest

You will have to pay default sums and interest in relation to the missed payments indicated above in addition to any default sums and interest already included in this notice. Please contact us if you would like further details.”

(b) In any other case, a statement in the following form-

“Default sums and Interest

You will not incur any default sums or extra interest in relation to the missed payments indicated above.”

Part 3

Regulation 11(1)(e) and 12(1)(e)

STATEMENTS TO BE INCLUDED IN NOTICES OF SUMS IN ARREARS
UNDER FIXED-SUM CREDIT AGREEMENTS ETC. AND RUNNING-
ACCOUNT CREDIT AGREEMENTS

1 A statement in the following form-

“Office of Fair Trading Information Sheet

This notice should include a copy of the current information sheet on arrears prepared by the Office of Fair Trading. This contains important information intended to help you. If it is not included you should contact us to get one. Our rights to charge you interest and default sums on the amounts you should have paid under the agreement or to enforce the agreement against you will be restricted until we have given you a notice including a copy of the current information sheet on arrears.”

2 A statement in the following-

“Time Orders

If you are having difficulty in making payments under this agreement you may be able to apply for a time order from a court (in England or Wales, from a county court, in Scotland, from a sheriff court and in Northern Ireland from a county court or the high court). This is an order giving you more time to repay what you owe. Please see the copy of the current information sheet on arrears prepared by the Office of Fair Trading which should be included with this notice for more information.”

Schedule 4

Part 1

Regulation 16

INFORMATION AND FORM OF WORDING
TO BE INCLUDED IN NOTICES OF DEFAULT SUMS

- 1 The date of the notice.
- 2 A description of the agreement sufficient to identify it.
- 3 The name, telephone number and postal address and, where appropriate, any other address of the creditor or owner.
- 4 The name and postal address of the debtor or hirer.

5 The amount and nature of each default sum charged under the agreement which has not been the subject of a previous notice of default sums.

6 The nature of each default sum charged under the agreement which has not been the subject of a previous notice of default sums.

7 The date upon which each default sum referred to in the notice became payable under the agreement.

8 The following form of words:

“This Notice does not take account of default sums previously notified in a notice given under section 86E of the Consumer Credit Act 1974 whether or not they remain unpaid.”

Part 2

Regulation 17

FORM OF WORDING TO BE INCLUDED IN NOTICES OF DEFAULT SUMS IF INTEREST IS PAYABLE ON DEFAULT SUMS

“Interest

No interest will be charged on default sums for the first 28 days after the giving of this notice. After that interest will be charged at the rate of.....[NOTE 1] per annum.”

NOTE 1: Insert applicable interest rate

Schedule 5

Part 1

Regulation 19(a)(i) and (b)

INFORMATION AND STATEMENT TO BE INCLUDED IN ALL NOTICES UNDER SECTION 130A

1 The date of the notice.

2 A description of the agreement sufficient to identify it and the case number of the judgment given in relation to the agreement.

3 The name, telephone number and postal address and, where appropriate, any other address of the creditor or owner.

4 The name and address of the debtor or hirer.

5 The rate at which post-judgment interest is or will be charged at the date of the notice.

6 The amount on which post-judgment interest is or will be charged at the date of the notice.

7 A statement as follows-

“If you are having problems making repayments you should contact the court where judgment was given. If you are making repayments under an instalment order you may be able to apply to the court to have the terms of the instalment order varied.”

8 A statement as follows-

“Advice and information

You can also obtain advice and information about managing debt issues from [NOTE 1] on [NOTE 2].”

NOTE 1: Creditor to insert consumer advice body, such as the Citizens Advice Bureau, Consumer Credit Counselling Service or National Debtline

NOTE 2: Insert telephone number for organisation in NOTE 2

Part 2

Regulation 19(b))

INFORMATION AND STATEMENT TO BE INCLUDED IN ALL NOTICES UNDER SECTION 130A, EXCEPT FIRST REQUIRED NOTICES

1 The total amount of post-judgment interest charged since the date of the last notice given under s130A in relation to the agreement.

2 The date or dates on which post-judgment interest has been charged since that date.

Part 3

Regulation 19(a)(ii)

FORM OF WORDING TO BE INCLUDED IN FIRST REQUIRED NOTICE

“Interest payable after a judgment

This notice is being given to you following a judgment being given in relation to the [NOTE 1]. Under the agreement we, [NOTE 2], are allowed to continue to charge interest on all the monies owed by you at the date of the judgment.

This notice is to advise you that we intend to charge interest. The rate of interest payable will be [NOTE 3] per annum.

Interest will be charged as from and including the day on which you were given this notice.

This means that even if you pay off the whole amount of the judgment, you may still have a further sum to pay..

For so long as we intend to charge interest on the monies owed by you at the date of the judgment, you will be given a notice about this at least every six months. This will also include information about the amount of interest that has been charged since the previous notice was given.

If you are not given such a notice within 6 months starting with the day after the previous notice was given to you then we will not be able to charge further interest until you are given such a notice.”

- NOTE 1: Insert a description of the agreement sufficient to identify it
NOTE 2: Insert name of creditor or owner
NOTE 3: Insert applicable interest rate or rates

Annex B

Partial Regulatory Impact Assessment

1. Title of proposal

Statutory Instruments concerning exemptions, post-contract information and licensing arising from Consumer Credit Act 2006.

2. Purpose and intended effect

2.1 Background

DTI published a White Paper Fair, Clear and Competitive: The Consumer Credit Market in the 21st Century in December 2003.¹ This outlined the Government's agenda for modernization of the consumer credit framework. The drivers for reform included that the law governing consumer credit – the Consumer Credit Act 1974 ("the 1974 Act") - was over 30 years old, the market had grown and changed in that period, and consumers were suffering harm as a result of a lack of information and unfair practices. The Consumer Credit Act 2006 (2006 Act)², which received Royal Assent on 30 March, was one key outcome from the White Paper. The Act has three key aims:

- Ensuring consumers are provided with clear information about their credit accounts.
- Improving consumers' rights and access to redress.
- Establishing a targeted and more effective licensing regime.

An analysis of the issues that the Consumer Credit Act 2006 seeks to address was set out in the full RIA that accompanied the Bill when it was introduced into the House of Commons on 18 May 2005³. This analysis assessed, and where appropriate, quantified, the benefit and regulatory impact of the proposed reforms against alternatives including 'do nothing' and reliance on voluntary code. The RIA provided the evidence base to support the regulatory proposals within the Bill. The Act passed through Parliament largely unchanged and there were no changes to the underlying policy defining a strengthened regulatory regime requiring secondary legislation to bring it into effect. The justification for this secondary legislation (Statutory Instruments (SIs) consisting of regulations and an order) that is the subject of this RIA) and the associated consultation paper have therefore been established. This RIA is therefore limited to consideration of the options available within the scope of these SIs.

¹ <http://www.dti.gov.uk/files/file23663.pdf>

² http://www.opsi.gov.uk/acts/acts2006/ukpga_20060014_en.pdf

³ <http://www.dti.gov.uk/consumers/consumer-finance/credit-act-2006/documents/index.html>

The proposals for the SIs discussed below are the result of a pre-consultation exercise (described below in RIA section 3.1). We believe that this consultation has been effective in eliminating options which would have imposed a disproportionate burden on industry. In all the requirements listed, the detailed content of the proposals will have no significant impact except where identified below.

2.2 Objective

The Statutory Instruments are needed to give full effect to a number of sections of 2006 Act. Where there are alternatives to regulating, these are specified below. Otherwise, this RIA assesses the impact of the viable options within the detail of the wording of the SIs.

The requirements within the SIs fall into three categories:

- Exemptions from regulation – 2006 Act Sections 3 and 4.
The order specifies: (i) the conditions under which an agreement made by a person of ‘high net worth’ may be exempted from regulation; and the form and content of declarations made by debtors for the purpose of exempting agreements from regulation where the agreement is wholly or predominantly for business purposes and the amount of credit provided under the agreement exceeds £25,000.
- Post-contract information – Regulations relating to 2006 Act Sections 6, 7, 9, 10, 12, 14 and 17.
These Statutory Instruments will specify precisely what information must be included in statements and notices given to consumers by lenders. The objective is to balance the need to ensure that consumers are provided with relevant and clear information about the state of their credit account as set out in 2006 Act, with the need to ensure the requirements are not disproportionately burdensome for businesses.
- Licensing issues - Regulations relating to 2006 Act Sections 34 and 35.
These set out the maximum duration of a time-limited licence, and the periods for the payment of charges for indefinite licenses.

For simplicity all these various requirements have been incorporated into just two SIs. The first deals with both the high net worth and business exemptions; the second deals with all the regulations relating to post contract information and licensing issues. However, within the RIA and the associated consultation document we have grouped the discussion of these requirements according to the three themes above, and within those themes

we have included separate discussions relating to the separate sections of the Act.

3 Consultation

3.1 Pre consultation with representatives from key stakeholder groups

Since Royal Assent, we have consulted extensively with representatives from key stakeholder groups on the detailed content of secondary legislation. A forum comprising industry representatives from small and large businesses across the spectrum of the consumer credit industry, together with representation of consumer interests and OFT was established to act as a sounding board.

The key purpose of this pre-consultation was to explore options for the secondary legislation, both in terms of the timing for bringing it into force, and its detailed content. Our objective on timing was to bring it into force as quickly as possible, but it was important to ensure that our timetable was achievable in practice by industry. Our objective on the detailed content was to identify an appropriate level of content and detail that would meet the needs of consumers (by providing clear and helpful information but not so much detail that could become confusing) and at the same time not imposing a burden on industry that would be disproportionate to the consumer benefits. The co-operation and support of stakeholders in this process and positive feedback on our conclusions has given us confidence that the level of detail we are now proposing is about right. Moreover it was clear that a detailed assessment of costs of possible options would add little to the process at this stage.

There were many points identified by the pre-consultation process, some of which persuaded us to modify our initial proposals, and in other cases to keep things as they were.

3.2 Consultation with Small Business: The small firms impact test

Small business interests were represented in the pre-consultation exercise through trade associations. Some specific concerns were raised reflecting the different nature of consumer credit lending at the small business end of the spectrum. For example some small businesses operate fixed-sum credit agreements with repayments on a weekly rather than monthly repayment basis, and with rather more flexible and less punitive arrangements around missed payments. We sought to ensure that as far as possible the draft regulations meet the needs of the entire sector including the issues raised by small business.

3.3 Formal consultation

This partial RIA accompanies a full formal consultation on the draft SIs. This consultation is for a period of 16 weeks and closes on 24 November 2006.

4 Options

General Points

The pre-consultation process helped to identify some key areas where there was significant industry-wide concern about our initial proposals, either in terms of the detailed requirement for information or the proposed timing for implementation. Hence before discussing options relating to the specific SIs we set out a couple of these points:

Dynamic Information (i.e. information specific to the individual agreement)

Option 1: Include requirements for dynamic information in statements and notices (e.g. how much the debtor would have to pay if he were to settle early).

Option 2: Not include requirements for dynamic information in any statements and notices.

Option 3: To only include dynamic information where there is a real consumer benefit identified. This means that such information is more likely to be required where warning statements are triggered in response to particular circumstances e.g. information to the debtor on how long he will need to continue paying in order to settle the agreement when it is clear that he will not do so at the time agreed at the start of the agreement.

Benefits

Option 1: The benefits of including this are difficult to quantify but this information will lead to consumers being better informed about their credit accounts and provide them with information that may make them better able to take decisions about their accounts – thereby reducing the potential for consumer detriment.

Option 2: Under this option these potential consumer benefits would not be realised.

Option 3: Under this option only items that would be of real value to the debtor would include dynamic information. This would still allow the debtor to receive all the information he needed without involving the creditors in a potentially expensive process of providing information to all debtors that will only be of interest to a minority, such as a figure for early settlement. This would also mean that debtors were less likely to be confused by extra information that did not interest them

Costs

Option 1: Industry raised concerns that providing this information would be difficult and costly – although the costs would vary significantly from one lender to another. However, these costs have not been quantified. Although businesses have been able to indicate at a general level which provisions might be more expensive in bringing their IT systems up-to-date to deal with these latest requirements, they have been unable to be more specific until the final requirements are in place. How much each individual business will need to pay will depend on the current state of their IT systems and what they currently provide to consumers.

So much information may also be confusing when combined with all the other information the customer is given.

Option 2: These additional costs would not be incurred.

Option 3: Costs will be minimised by mostly limiting dynamic information to circumstances where there is already a dynamic element to the giving of a Notice or including a form of words.

The pre-consultation exercise has gone a long way in persuading us that in most cases the requirement for dynamic information would be a disproportionate burden and of little benefit to consumers. We have therefore modified the proposals significantly in response to remove most requirements for additional ‘dynamic information’. The only possible exceptions, where there was a strong consumer view that dynamic information could be of significant consumer benefit is where special circumstances have already triggered some extra wording or even an extra Notice. One of the options to consider in the consultation paper is within default notices served on debtors in relation to hire purchase or conditional sale agreements. An option here would be to include the specific amount a debtor would be required to pay under section 100 of the 1974 Act in order to end the agreement if they had a right to do so under section 99.

Question 1: Do you consider that a generic description of liabilities for the debtor under s.100 would be more appropriate than a specific figure of the amount the debtor would have to pay as at the date of the notice, or vice versa, and why?

Implementation Timetable

Another area where we obtained important input from the pre-consultation exercise was in the implementation timetable. We shared our early proposal for the implementation timetable with industry IT experts to identify whether there were any particular difficulties. As a result we identified one major difficulty with the initial timetable. This was the date for introducing the requirement preventing lenders from compounding interest on default sums. We had originally considered bringing this section into force in April 2007, a year ahead of the post-contract information requirements. However,

representation from industry presented a strong argument that this date would be extremely challenging to meet, and it would be more straightforward for lenders and customers to bring all these changes in at the same time. We adjusted the timetable to accommodate, but otherwise the pre-consultation process provided reassurance that our timing proposals announced on 25th May were achievable (see chapter 13 of consultation paper).

Question 2: Can you provide any further evidence (quantified if possible) on the likely impact on costs of the proposed implementation timetable?

Points relating to specific SIs

In this section we consider the different options for the SIs and the associated costs and benefits under each of these three high level categories.

4.1 Orders relating to exemptions from regulation:

High Net Worth Exemption – 2006 Act Section 3

This order will exempt transactions involving “high net worth” debtors and hirers from regulation under 2006 Act. The options for the regulation involve setting out the circumstances in which the “high net worth” exemption may be claimed, the description and thresholds of income and assets to be taken into account, the category of persons who may make high net worth statements and the form, content and signature requirements of statements and declarations of “high net worth”.

Option 1: Define high net worth individuals utilizing concepts from FSMA’s Financial Promotions Order⁵

Option 2: Design an alternative definition for high net worth individuals

Benefits

Option 1: There are advantages to both business and consumers from having the thresholds of high net worth the same as the Financial Promotions Order as this will make it simpler and quicker to adjust to the changes.

Option 2: The benefit from a different definition would arise only if this definition represented an improvement on the one currently used – in so far as it better isolated those groups of individuals who should be exempt from CCA 2006. The extent that this would be the case is unclear.

Costs

Option 1: Costs here are unlikely to be significant as business and consumers already have an understanding of the current thresholds.

⁵ Financial Services and Markets Act 2000 (Financial Promotion) Order 2005/1529

Option 2: This option is likely to impose higher costs on business and consumers and lead to confusion for both as they seek to interpret and implement the changes and to apply different definitions for different purposes.

Business exemption – 2006 Act Section 4:

2006 Act specifies the threshold, £25,000, above which lending to business will not be regulated. The policy intention is to ensure that while lending to large businesses is not regulated (as large businesses do not need the protection of regulation), small businesses retain the protections under the Act. The SI simply specifies the form and content of the declaration of business purposes.

Options:

Alternative options are not considered here as the SI simply specifies the form and content of the declaration for business purposes. We do not believe that changes in the detail of this wording will have a significant impact on industry or on consumers. Advice from the pre-consultation group supported this analysis.

4.2 Regulations relating to post contract transparency.

For the regulatory requirements in this section the options are around the detail of the content of the regulation – i.e. precisely what information lenders are required to give debtors about the state of their credit agreements.

There is likely to be a general correlation between cost and requirement for information, i.e. the more information industry is required to provide the more it will cost. However, there are likely to be additional cost factors depending on the nature of the information, for example, where information has to be extracted from different IT systems, or requires different systems to be combined the costs are likely to be significantly greater. These costs are likely to differ from one business to another because of the different IT systems used and information about the costs of adapting those systems to meet regulatory requirements may be commercially sensitive and difficult to obtain. Equally, it would be very difficult to quantify the potential consumer benefit of different options. The pre-consultation exercise sought to find a pragmatic solution to these problems so avoiding the need for full cost benefit analysis at this stage in the appraisal of options, for example as explained above in relation to dynamic information.

The following section therefore only sets out options where there are particular points being considered as part of the consultation exercise.

Statements to be provided in relation to fixed-sum credit agreements - 2006 Act Section 6:

Regulations setting out the form and content of fixed-sum credit account annual statements.

Options are around the form and content of the statement and hence not considered here.

Further provision relating to statements - 2006 Act Section 7:

Regulations setting out the form and content of running-account statements.

Option 1: Requirement for information about the allocation of payments to be made more prominent in statements.

Option 2: No additional requirement on prominence or position

Benefits:

Option 1: This should make information on allocation of payments more clearly apparent to consumers, helping to reduce consumer detriment that arises when consumers are unclear about this.

Option 2: No additional benefits to those already achieved by making the inclusion of such a statement a legislative requirement.

Costs:

Option 1: Given that we are requiring this information in the statement anyway, requirements about its prominence are unlikely to make any significant impact on costs. There could be additional costs if a requirement to position the statement in a certain place made the statement run onto another page. The only other potential downside arises if the inclusion of this information in a more prominent way distracts consumers from other information they would find useful.

Option 2: No additional costs for the majority of lenders as they already include this information following the Banking Code

Arrears notices for fixed-sum and running-account credit agreements - 2006 Act Sections 9 and 10:

Regulations setting out the form and content of notices of sums in arrears for fixed-sum and running-account credit agreements;

Options are around the forms and content of the agreement and hence not considered here.

Notices of default sums - 2006 Act Section 12:

Regulations setting out the form and content of the default sum notices and prescribing the period for service and amount of charges covered by the Notice requirement.

Option 1: exercise power to set a single trigger above which notices of default sum must be served

Option 2: Set a sliding scale of sums to trigger the sending of Notices e.g. £50 for the first sum, £20 for the second sum and £5 for the third. This would mean that nearly all debtors would receive a notice once three default sums had been applied to the account

Option 3: no such power exercised

Benefits

Option 1: This would save lenders the burden of issuing notices of default sum if they set their default sum charge below the level of the trigger.

Option 2: Lenders would not have to send notices for every sum, but debtors would receive a notice before too many default sums had been added to the account

Option 3: This would be simpler and potentially more equitable, and would leave lenders to work out whether or not it is cost-effective to charge a default sum given they will be required to issue a notice of default sum. Consumers would always be informed when a default sum was added to their account, making it easier to manage the account and decide on the most appropriate action to take

Costs

Option 1: It would be difficult to identify the right trigger level that would be equitable across all industry. Industry would be required to introduce different systems for default sum charges above and below the level of the trigger. It would be possible for some lenders to never send notices while others would always send them, so some consumers would be well informed as to the state of their account while others would be no wiser than they are currently.

Option 2: This would be more complicated and therefore more expensive for creditors' IT systems. It was indicated in pre-consultation that this would be a difficult and expensive IT option to set up.

Option 3: Industry would incur the costs of issuing a notice of default sum for all default sums charged, no matter how small those charges were.

The pre-consultation exercise did not reach a clear consensus on this issue, apart from on the complexity and cost of option 2, but on balance it was thought that it would be more straightforward and equitable not to exercise this power, i.e. to require lenders to notify debtors (within 35 days) each time a default sum is charged.

Extra information to be included in default notices - 2006 Act Section 14:

Regulations amending existing [insert name] SI 1983/1561 on the form and content of s.87 Default Notices. This provides the Secretary of State with a general power to include other information in default notices as he sees fit. Options are around the forms and content of the agreement and hence not considered here.

Notices relating to post-judgment interest - 2006 Act Section 17:

Regulations specifying the form and content of notices in relation to post-judgment interest.

Options are around the forms and content of the agreement and hence not considered here.

4.3 Regulations relating to Licensing

Specifying periods in relation to licences - 2006 Act Sections 34 and 35

These regulations set out the maximum duration of a time-limited licence and the periods during which periodic licence fees must be paid in respect of those licences. Once the CCA 2006 has been implemented, the majority of licences will be issued on an indefinite basis with a general monitoring role for OFT that will concentrate more than it has on looking at areas judged to hold more risk of consumer detriment, rather than routinely reassessing all lenders every five years. However, there will still be cases where OFT, as the licensing authority, believe that a time limited licence would be better and that it is necessary for a business to go through the whole application process and fitness testing on a regular basis. OFT will be able to set the duration of such licences at whatever it believes is best for industry and consumers as a whole. These regulations, drawn up after consultation with OFT set the maximum term for one of these limited licences to 5 years. This mirrors current arrangements, which industry are already comfortable with and ensures that businesses that are likely to pose a greater risk will have to be fully tested for fitness at least every five years.

For those with indefinite licences a periodic "maintenance" fee will need to be paid. Again this has been set at five years in order to provide continuity with the current system. This is particularly important while the old licensing and new licensing systems are running alongside each other.

Pre-consultation on this did not flag up any problems with this approach.

5 Competition Assessment

A full competition assessment covering the proposals was included in the RIA that accompanied the Bill. The options for implementing the Statutory Instruments that are considered in this RIA are unlikely to raise any competition concerns as they do not raise barriers to entry or affect some firms disproportionately.

6 Enforcement and Sanctions

Full detail of the resources needed for enforcement and sanctions was considered more fully in the RIA that accompanied the Bill. The options set out in this RIA have no major implications for enforcement.

Question 3: Do you agree with the options set out in this RIA? Please provide any evidence (ideally quantified) on the associated costs and benefits

7 Summary and recommendations

(This remains blank until the legislation is to be sent to Parliament. It then becomes a final RIA)

8 Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed (This remains blank until the legislation is to be sent to Parliament. It then becomes a final RIA)

Date

Minister's name, title, department

Contact point

Insert name, address and phone number of an official who can answer any queries on the assessment or proposed legislation.

Annex C – Code of Practice on consultations

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site, address <http://www.cabinetoffice.gov.uk/regulation/consultation/index.asp>

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to Nick Cooper, DTI Consultation Co-ordinator, 1 Victoria Street, London SW1H 0ET or telephone him on 020 7215 6206 or email to:

nick.cooper@dti.gsi.gov.uk

Annex D – Organisations to be consulted

Advice UK
Association of Chartered Certified Accountants, UK
Association of Mortgage Intermediaries
Association of Payment & Clearing Services
British Bankers Association
British Cheque Cashers Association
Chartered Institute of Management Accountants
Chartered Institute of Public Finance & Accountancy
Citizens Advice
Citizens Advice Scotland
Consumer Credit Association of the UK
Consumer Credit Trade Association
Council of Mortgage Lenders
Debt on our Doorstep/Church Action on Poverty
Department for Constitutional Affairs
Department of Enterprise, Trade & Investment, Northern Ireland
Finance & Leasing Association
Finance Industry Standards Association
Financial Ombudsman Service
Financial Services Authority
General Consumer Council of Northern Ireland
HM Treasury
Institute of Chartered Accountants in England & Wales
Institute of Chartered Accountants of Scotland
Institute of Chartered Accountants in Ireland
Local Authorities Coordinating Office on Regulatory Services (LACORS)
Law Society of England & Wales
Law Society of Scotland
Law Society of Northern Ireland

ANNEX D
ORGANISATIONS TO BE CONSULTED

Money Advice Association
Money Advice Scotland
National Consumer Council
National Pawnbrokers Association
Office of Fair Trading
Scottish Consumer Council
Scottish Executive
Scottish Trading Standards Institute
Trading Standards Institute
Welsh Assembly Government
Welsh Consumer Council
Which?

As well as from these trade associations, representative groups and government bodies, we also welcome responses from individual organisations, businesses and members of the public.

End
DTI
August 2006