

BERR

Department for Business
Enterprise & Regulatory Reform

**CONSUMER CREDIT ACT 1974 (AS
AMENDED BY THE CONSUMER
CREDIT ACT 2006)**

**THE LEGISLATIVE REFORM
(CONSUMER CREDIT) ORDER
2008**

FINAL IMPACT ASSESSMENT

JUNE 2008

Summary: Intervention & Options

Department /Agency:
**Business, Enterprise and
Regulatory Reform (BERR)**

Title:
**Impact Assessment of the Legislative Reform
(Consumer Credit) Order 2008**

Stage: Final

Version: 1.0

Date: 31 May 2008

Related Publications: Consultation on proposals to amend the Consumer Credit Act 1974 for buy-to-let lending, the provision of statements and definitions of "payments"

Available to view or download at:

<http://www.berr.gov.uk/consultation/ria/index.html>

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What is the problem under consideration? Why is government intervention necessary?

The Consumer Credit Act 1974, as it currently exists, does not achieve the original policy intentions for exempting buy-to-let lending from its scope, the giving of statements for fixed-sum credit agreements and the issuing of notices of sums in arrears. Corrective action is therefore required to provide clarity and legal certainty to industry and consumers.

What are the policy objectives and the intended effects?

To exempt buy-to-let lending from regulation under the 1974 Act following the removal of the £25,000 financial limit (above which credit agreements were previously unregulated) in April 2008. This will maintain the existing regulatory position and ensure consistency with government policy on mortgages.

To provide clarity on the giving of statements for fixed-sum credit agreements and the definitions of "payments" for the purpose of issuing arrears notices. This will resolve the current ambiguities that exist in both cases and avoid unintended regulatory compliance costs.

What policy options have been considered? Please justify any preferred option.

1. Providing clarification through guidance
2. Providing clarification through secondary legislation
3. Amending the Consumer Credit Act 1974 - this is our preferred option. In all cases the changes needed cannot be achieved through guidance and the vires does not exist to make amendments through secondary legislation. Amendment to the primary legislation is therefore needed to provide legal certainty to ensure the original policy objectives are achieved and a common approach is adopted by industry and, as relevant, the courts.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

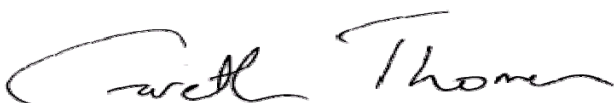
The policy will be reviewed within 3 years from the date of implementation i.e 1 October 2008.

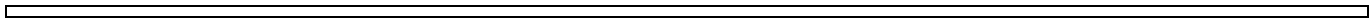
Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Date: 31 May 2008





Summary: Analysis & Evidence

Policy Option: 3	Description: Amend the Consumer Credit Act 1974 to exempt buy-to-let lending
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition) Yrs	
	£ 0	
	Average Annual Cost (excluding one-off)	
£ 0	Total Cost (PV)	£ 0
Other key non-monetised costs by 'main affected groups'		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'
	One-off Yrs	
	£ 100 million 7	
	Average Annual Benefit (excluding one-off)	
£ 500,000	Total Benefit (PV)	£ 103.2 million
Other key non-monetised benefits by 'main affected groups'		
Consumers will benefit as buy-to-let finance will continue to be available from lenders who might otherwise withdraw from the market if it were to become regulated, and the cost of such borrowing will be kept down as compliance costs will not be passed on.		

Key Assumptions/Sensitivities/Risks

Price Base Year 2006	Time Period Years 7	Net Benefit Range (NPV) £ 103.2 million	NET BENEFIT (NPV Best estimate) £ 103.2 million
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What is the geographic coverage of the policy/option?	UK				
On what date will the policy be implemented?	1/10/08 or soon after				
Which organisation(s) will enforce the policy?	OFT				
What is the total annual cost of enforcement for these organisations?	£ Minimal				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	No				
What is the value of the proposed offsetting measure per year?	£ 0				
What is the value of changes in greenhouse gas emissions?	£ 0				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro 0</td> <td style="width: 25%; text-align: center;">Small 0</td> <td style="width: 25%; text-align: center;">Medium 0</td> <td style="width: 25%; text-align: center;">Large 0</td> </tr> </table>	Micro 0	Small 0	Medium 0	Large 0
Micro 0	Small 0	Medium 0	Large 0		
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	No	No	N/A	N/A
No	No	N/A	N/A		

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £ 0	Decrease of £ 0	Net Impact £ 0

Kev: Annual costs and benefits: Constant Prices (Net) Present Value

Summary: Analysis & Evidence

Policy Option: -3

Description: Amend the Consumer Credit Act 1974 to provide clarification on the provision of statements and definitions of "payments"

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£ 0		
	Average Annual Cost (excluding one-off)		
	£	Total Cost (PV)	£ 0
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£ 25.9 million	7	The proposals will minimise the overall administrative burden to lenders of complying with the post-contract transparency requirements by avoiding unnecessary and unintended compliance costs.
	Average Annual Benefit (excluding one-off)		
	£ 48.8 million	Total Benefit (PV)	£ 334.7 million
Other key non-monetised benefits by 'main affected groups'			
Consumers will benefit from a common approach being adopted by lenders, making it easier to make comparisons, from clarity about what to expect and when and from increased compliance costs not being passed onto customers.			

Key Assumptions/Sensitivities/Risks Benefits based on assumptions about likely additional costs. Industry estimates used for costs to large & small businesses (based on small sample) and aggregated based on membership of 4 main consumer credit trade associations (a proxy for total size of the affected market). Therefore likely to be conservative estimates.

Price Base Year 2007	Time Period Years 7	Net Benefit Range (NPV) £ 334.7 million	NET BENEFIT (NPV Best estimate) £ 334.7 million
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	1/10/08 or soon after			
Which organisation(s) will enforce the policy?	OFT			
What is the total annual cost of enforcement for these organisations?	£ Minimal			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£ 0	Decrease of	£ 0
		Net Impact	£ 0

Kev: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

The Legislative Reform (Consumer Credit) Order 2008

1. Purpose

1.1 This impact assessment (IA) examines the implications of exempting buy-to-let lending from regulation under the Consumer Credit Act 1974 (the 1974 Act).

1.2 It also considers the implications of proposals to ensure that the original policy intentions of the Consumer Credit Act 2006 (the 2006 Act) in relation to the giving of statements for fixed-sum credit agreements and the issuing of notices of sums in arrears are achieved.

2. Objectives

2.1 The proposals are intended to ensure that the policy intentions behind some of the measures introduced into the 1974 Act by the 2006 Act are achieved by:

- providing an exemption from regulation under the 1974 Act for buy-to-let lending meeting certain specified conditions thus ensuring that, following the removal of the £25,000 financial limit in April 2008, such lending does not become a regulated activity. This will maintain the existing regulatory position;
- clarifying that creditors, under fixed-sum credit agreements, need to give debtors consecutive statements each covering a period of not more than one year and to do so within 30 days of the end of the period to which they relate; and
- including definitions of “payments” for the purpose of issuing notices of sums in arrears.

3. Background

3.1 The 2006 Act received Royal Assent on 30 March 2006. It is based around three main 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.

3.2 The post-contract transparency requirements introduced by the 2006 Act require lenders to provide specific information about credit agreements to customers at required points in time. They are aimed at providing more information to customers about their credit agreements to enable them to better manage their borrowing and stay in control. They include sending regular statements so that customers are kept up-to-date on their accounts (in particular where any additional interest, fees or charges might have been added) and sending notices of sums in arrears to customers when they fall behind with their payments.

3.3 The full regulatory impact assessment (RIA) for the Consumer Credit Bill¹ provided the evidence base to support these provisions.

3.4 Much of the detail under the 2006 Act is contained in secondary legislation. The Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007 (SI 2007/1167)² prescribe the form and content of the various statements and notices that lenders will be required to provide to all consumers about their regulated agreements. These provisions come into force on 1 October 2008.

3.5 The Consumer Credit (Exempt Agreements) Order 2007 (S.I 2007/1168)³ came into force on 6 April 2008 and exempts from regulation under the 1974 Act all business lending above £25,000 (lending to business below this level remains regulated) and allows an opt-out from regulation for credit lending to very wealthy individuals (“high net worth”).

3.6 It was during the consultation on this Order that lenders expressed their concern about the practical implications of relying on the business exemption to fully achieve the policy objective to exempt buy-to-let lending from regulation and pressed the Department to look again at this issue. In its response to the consultation the Department stated publicly that it would address this unintended consequence of the 2006 Act through a Legislative Reform Order (LRO) to provide a specific exemption for buy-to-let loans.

3.7 During the pre-consultation discussions with industry on the proposed buy-to-let exemption two further issues were identified where the legislation was not fulfilling the original policy intention. These related to the post-contract transparency requirements, in particular the giving of statements for fixed-sum credit agreements and definitions of “payments” for the purpose of issuing notices of sums in arrears. We acknowledged these and agreed that proposals to remedy these two issues would also be included in the LRO.

4. Consultation

4.1 The proposals in the LRO were subject to a full three month public consultation from 19 December 2007 until 12 March 2008. The consultation sought views on the policy and proposals (including the burdens, costs and benefits) and the conditions laid down in sections 1(2) and 3(2) of the Legislative and Regulatory Reform Act 2006.

4.2 The overall response to the consultation was very positive with widespread support for the proposals subject to some minor agreed changes. Further evidence from the consultation has been included in this final Impact Assessment.

5. Exemption for buy-to-let lending from regulation under the 1974 Act

Rationale for government intervention

5.1 It was never our intention to regulate buy-to-let lending where the loan is secured on the property and the owner or a relative occupies less than 40% of the property. Such activity is mainly for investment or business purposes and the risk to the borrower’s own home is less severe in the event that they have difficulty repaying the loan. At the present time there is no evidence to suggest that regulation is needed in such cases.

5.2 Until April 2008 buy-to-let loans were exempt from regulation under the 1974 Act (unless secured by a first charge on the borrower’s own home). This was either because lenders were able to use the existing land purchase exemption (section 16 of the 1974 Act) or because the lending was for over £25,000. However, the £25,000 threshold in the 1974 Act (above which lending was not previously regulated) was removed in April 2008 inadvertently bringing into regulation those buy-to-let loans not exempt under either the land purchase exemption or the new business exemption (also introduced in April 2008). There is currently a transitional

arrangement in place which keeps buy-to-let lending out of regulation until such time as the final LRO is made.

5.3 The effect of exempting buy-to-let loans from regulation under the 1974 Act will be to remove the unintended financial cost to lenders of regulatory compliance. An independent review by PricewaterhouseCoopers (PwC) carried out for the Department in 2006⁴ quoted figures provided by the Council of Mortgage Lenders (CML) of one-off compliance costs of around £100 million spread over about 80 lenders if buy-to-let lending was brought into regulation with ongoing annual compliance costs to these businesses of around £500,000. These costs cover IT development, staff training and adjustments to forms to ensure they are compliant.

5.4 On the whole lenders are significantly less well prepared for implementing the provisions of the 2006 Act for buy-to-let lending than for other types of credit agreement (indeed some businesses specialising in buy-to-let lending are largely unfamiliar with the requirements of consumer credit regulation). To date, such lending has not been regulated where it has exceeded the £25,000 threshold (this position has been maintained since April by the transitional provision) or has otherwise been exempt. As a result, the systems changes needed to comply with regulation are more severe than for other products because there is no system capability to fall back on. Industry estimates needing between 18 months to 3 years to deliver such changes.

5.5 Consequently the impact on consumers from this product is potentially much larger than for other products. Some lenders have indicated that they would almost certainly have to temporarily withdraw some of their products from the market until they had made systems changes to comply with the 1974 Act. Others would seriously consider a complete withdrawal given the cost of making non-consumer credit act systems compliant. Similarly some of their products offering more flexibility and attractive repayment schedules would be completely withdrawn as they would not be profitable under regulation. Furthermore consumers would suffer as a consequence of lenders passing on to their customers the cost of the significant systems modifications that would be required.

Options

5.6 Options 1 and 2 are included here to show the alternative options considered to address this problem. However, having fully considered these we concluded that it was not possible to pursue either option to address this issue. Consequently we have not provided an assessment of the costs and benefits of each of these options.

Option 1: Provide clarity through guidance

5.7 We considered providing guidance to define the circumstances when buy-to-let lending would be exempt from regulation under or by virtue of section 16 of the 1974 Act including the new business and “high net worth” exemptions which came into force on 6 April 2008. This would have enabled lenders to choose to avoid entering into lending for regulated agreements and therefore to avoid the burden of regulatory compliance. However, as these exemptions do not achieve a comprehensive exemption for buy-to-let lending, some such lending will be regulated following the removal of the £25,000 financial limit without a specific exemption. Consequently guidance would not address the problem and achieve the original policy intention to keep out of regulation buy-to-let lending secured on the property and satisfying the 40% occupancy test.

Option 2: Provide clarification through secondary legislation

5.8 We considered using the power that HM Treasury used to amend section 16 of the 1974 Act in relation to regulated mortgage contracts (RMCs) via the consequential provisions in their

FSMA (Regulated Activities) Order 2001.⁵ However RMCs are a specified 'investment' under the Order whereas buy-to-let mortgages are not. Consequently it is not possible to use this power to make consequential amendments to the 1974 Act related to buy-to-let mortgages.

Option 3: Provide clarification through changes to primary legislation

5.9 Our preferred option is to amend the 1974 Act to provide for a specific exemption for buy-to-let lending meeting certain specified conditions.

Benefits

5.10 This option achieves the original policy intention by ensuring that buy-to-let loans which are secured by a charge on the buy-to-let property and meet the specified conditions will be exempt from regulation under the 1974 Act. This will maintain the existing regulatory position for buy-to-let lending and create a level playing field for lenders in this market.

5.11 Lenders will benefit from the removal of unintended compliance costs (see paragraph 5.3) as a consequence of not having to make expensive systems changes to accommodate the requirements of the 1974 Act.

5.12 Borrowers will benefit from no disruption (temporary or otherwise) of the market as a consequence of lenders needing to withdraw their products until such time as their systems are compliant. They will continue to benefit from flexible packages on offer from lenders which could be completely withdrawn if they proved no longer profitable under regulation. They will also benefit as a consequence of lenders not passing on to their customers the costs of significant systems changes

5.13 More widely there could be benefits for the rental market. If the supply of buy-to-let mortgages decreases as a consequence of regulation it is possible that the supply of rental accommodation could do likewise which in turn could drive up rents.

Costs

5.14 This approach does not impose any administrative burdens on industry as it maintains the existing regulatory position for buy-to-let lending. However, without this amendment there would be additional administrative burdens on industry of £100 million one-off transitional costs plus £500,000 per annum ongoing costs.

Risks

5.15 Following removal of the £25,000 financial limit in April 2008, a large amount of buy-to-let lending will still be exempt from regulation under the 1974 Act by virtue of other exemptions. For example, some agreements will fall within the new business exemption or high net worth exemption or within an exemption under or by virtue of section 16 of the 1974 Act. This leaves around 80 lenders who will be the only players in the market whose agreements would potentially be regulated. In 2007 these lenders' share of the market was estimated to be worth around £8.7 billion out of a total of £44.6 billion. There is therefore a risk that some of these businesses might choose to withdraw from the buy-to-let market thus affecting the availability of finance for consumers.

6. Clarification on the giving of statements for fixed-sum credit agreements

Rationale for Government intervention

6.1 The policy intention under the 2006 Act was that a creditor, under a regulated agreement for fixed-sum credit, must give a debtor regular statements each covering a period of up to one

year. These should be given within 30 days of the end of the period to which they relate and should run consecutively. However, section 77A(1) of the 1974 Act (as introduced by the 2006 Act), when taken together with regulation 11 of the Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007 (the 2007 Regulations) defeats the policy intention to allow 30 days within which to give the statement.

6.2 To comply with the post-contract transparency requirements introduced by the 2006 Act lenders will need to adapt their business systems to provide the new information to their customers. As such it is inevitable that these changes will give rise to additional one-off as well as recurring costs for those businesses which are obliged to comply with the new provisions. In developing the 2007 Regulations the Department endeavoured to strike the right balance between ensuring that consumers are given the information they need without imposing undue burdens on lenders by keeping the level of prescription and detail to a minimum.

6.3 Not being able to send statements on a regular annual basis covering periods of up to one year will create additional cost burdens for industry when building and implementing their IT systems to accommodate a more complex requirement than was originally intended. For example, existing systems are not smart enough to cover variable statement periods for individual debtors that compliance with the legislation as it currently exists would generate. To do so would be a significant and onerous systems task with associated costs. Where industry was unable to do this they would not be able to enforce the agreement during any period of non-compliance and could suffer significant financial loss as a consequence.

6.4 In its review of the implementation timetable for the 2006 Act PwC estimated that the total costs to business of implementing the post-contract transparency requirements would be in the region of £500 million. The majority of the lenders that PwC spoke to stressed that one of the major challenges they faced arising from the 2006 Act was that a wide range of systems required change. This reflects the large number of products which are in scope and also the fact that the requirements apply across the lifecycle of the product. Lenders indicated that the number of affected systems could range from 25 to well over 100. It is reasonable to assume, and it was stressed by most lenders who PwC spoke to, that some if not all of these costs would be passed on to customers through higher interest rates and/or fees rather than being absorbed by the lenders' shareholders.

Options

6.5 Options 1 and 2 are included here to show the alternative options considered to address this problem. However, having fully considered these we concluded that it was not possible to pursue either option to address this issue. Consequently we have not provided an assessment of the costs and benefits of each of these options.

Option 1: Providing clarity through guidance

6.6 Whilst it would be possible to issue guidance as to the policy intention behind this provision, this would not be consistent with the wording of section 77A(1) and would not therefore provide any legal certainty to industry that they were compliant when sending statements within 30 days of the period to which they relate.

Option 2: Provide clarification through secondary legislation

6.7 We considered whether it would be possible to provide clarity on this issue in secondary legislation using existing powers in the 1974 Act. However, the vires in relation to statements that was introduced into the 1974 Act by the 2006 Act only provides for regulations to make provision about the form and content of statements under section 77A. The problem cannot therefore be remedied by amendment to the 2007 Regulations alone as it is the wording in

section 77A(1) of the 1974 Act that causes the problem as it focuses on the date the statement is given rather than the period it covers.

Option 3: Provide clarification through changes to primary legislation

6.8 This issue arises directly from an inconsistency in the legislation and therefore requires corrective action through amendment to the 1974 Act. This is our preferred option.

Benefits

6.9 This option provides both clarity and legal certainty to industry about the period to be covered by the statements (up to one year) and the time within which the statements need to be given (within 30 days after the end of the period to which they relate). Under this proposal these requirements would be set out clearly in the 1974 Act thus reducing the risk of non-compliance.

6.10 The proposals do not impose any new burdens on industry to those previously identified for the 2006 Act and the 2007 Regulations. They will ensure that the original policy objective is achieved and that, as far as is possible, a common approach is adopted by lenders which will make it easier for customers to make comparisons. They will also avoid unnecessary compliance costs (see paragraph 6.12) as the provision of regular annual statements is much more straightforward to achieve from a systems and processing perspective than it is for statements where the period is inconsistent.

6.11 For consumers the proposals will ensure that any additional and unnecessary compliance costs are not passed on to them through higher product costs and interest rates. They will also provide clarity and, where annual statements are already provided by creditors, consistency thus avoiding any unnecessary confusion or inconvenience around the timing of statements.

6.12 As mentioned above not being able to send statements on a regular annual basis will generate additional systems development costs for industry over and above those already required to implement this provision. Industry is concerned that the legislation as it currently exists would mean that they would be required to issue statements that covered less than 12 months, for example, issuing the statement at say week 50 rather than week 52 or sending regular six monthly statements. This is unlikely to meet consumer expectation, for example mortgage statements cover a 12 month period. However, issuing statements more frequently than annually (as is common industry practice) would significantly increase the compliance costs for this new provision. It is estimated that the additional costs to industry as a whole are likely to be in the region of £12.7 million in one-off transitional costs, for example IT systems changes, and in the region of £24.8 million per annum in ongoing costs associated with sending more statements than originally intended and dealing with more customer enquiries as a consequence of any confusion caused.

Costs

6.13 The proposals will ensure that the overall compliance cost burden for industry (estimated to be around £500 million in total) in complying with the post-contract transparency requirements will be kept to the minimum necessary. The full RIA for the Consumer Credit Bill recognised that the provision of annual statements would be an incremental cost to most businesses as many already provide this information to consumers in some form. These proposals will keep those costs to a minimum by providing clarity in the legislation thus avoiding unintended and unnecessarily complicated and expensive systems changes as set out above.

Risks

6.14 The legislation in this area is inconsistent and consequently if it is not amended there is a strong risk that there will be a high level of non-compliance as industry attempts to interpret the ambiguity in the legislation.

6.15 The proposals will reduce the serious financial risk to industry if they were found to be non-compliant with this requirement. During any period of non-compliance a lender is unable to enforce an agreement and a borrower has no liability to pay interest falling due during any period of non-compliance.

6.16 Furthermore, not sending statements to customers in a consistent timeframe is likely to cause unnecessary consumer confusion as they will receive information at irregular periods that they are not used to. It is also likely that any increased costs associated with sending statements more regularly than was originally intended will be passed on to customers.

7. Inclusion of definitions of “payments” for the purpose of issuing notices of sums in arrears

Rationale for Government intervention

7.1 The 2006 Act provides for a creditor to give notices of sums in arrears to the debtor under certain regulated fixed-sum and running-account credit agreements and certain regulated consumer hire agreements. Certain conditions have to be satisfied before this obligation arises two of which include the word “payments”. The original intention was that “payments” would only cover those scheduled instalments/repayment sums provided for under the terms of the agreement and for consumer hire agreements the regular hire payments in relation to any period in consideration of the bailment or hiring of the good. It was not intended to cover ad hoc payments which might become payable at other times during the period of the loan. For example default sums that may be charged and payable at other times as a consequence of a missed payment. However, in the absence of clear definitions of what the word “payments” is supposed to mean, it could be construed more widely as including any sums falling due under the agreement at any time. As a result first notices of sums in arrears could be triggered more quickly than would otherwise be the case if it were clear what the word “payments” was intended to cover.

7.2 One stakeholder association estimates that, if the wider (unintended) definition of payments is adopted, twice as many first notices of sums in arrears could be issued as a result. This will involve considerable expenditure on IT system development changes and increased administrative costs involved with the issuing and sending out of up to double the number of notices. There will also be considerable expenditure on systems changes based on the definition of payments adopted without any benefits to consumers.

7.3 These proposals do not impose any new burdens on industry to those previously identified for the 2006 Act and the Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007. The amendments we propose will ensure that the costs of complying with this provision are kept to a minimum by providing industry with clear definitions of “payments” against which to make their systems changes.

Options

7.4 Options 1 and 2 are included here to show the alternative options considered to address this problem. However, having fully considered these we concluded that it was not possible to pursue either option to address this issue. Consequently we have not provided an assessment of the costs and benefits of each of these options.

Option 1: Providing clarity through guidance

7.5 In the absence of clear definitions of “payments” there is a risk that the policy intention will not be achieved across the board if industry adopts, and the Courts rule on, different interpretations of the definitions. Legal certainty is needed on the definitions in order to mitigate this risk. Guidance alone would not be sufficient as it is not binding and industry or the Courts could still take a different view. It would not, therefore, be an appropriate use of guidance to clarify the ambiguity in this legislation.

Option 2: Provide clarification through secondary legislation

7.6 We considered whether it would be possible to provide clarity on this issue in secondary legislation using existing powers in the 1974 Act. However, as for statements, the vires in relation to notices of sums in arrears that was introduced into the 1974 Act by the 2006 Act only provides for regulations to make provision about the form and content of such notices. It would, therefore, not be possible to use secondary legislation to define a term laid down in primary legislation where it contributes to determination of the test for issuing notices of sums in arrears.

Option 3: Provide clarification through changes to primary legislation

7.7 This problem stems from primary legislation and therefore requires corrective action through amendment to the 1974 Act. This is our preferred option.

Benefits

7.8 This option will provide the clarity and legal certainty that industry requires (in view of the severe sanctions for non-compliance) and will ensure compliance with the 1974 Act as originally intended. It will also avoid unintended additional financial and administrative burdens on industry.

7.9 In the absence of clear definitions of “payments” one stakeholder association estimates that, if the wider (unintended) definition of payments is adopted, twice as many first notices of sums in arrears could be issued as a result. This will involve considerable expenditure on IT system development changes and increased administrative costs involved with the issuing and sending out of double the number of notices as well as the cost of dealing with an increased number of enquiries from customers confused about why they had received a notice. It is estimated that the additional cost to industry as a whole will be in the region of £13.2 million in one-off transitional costs and £24 million in annual ongoing costs.

7.10 For consumers the proposal will provide clarity on what to expect in relation to notices of sums in arrears. It will avoid any unnecessary confusion around when such notices will be issued and ensure consistency in approach from lenders. It will also reduce irritation or unnecessary worry or stress that could arise if lenders were to adopt wide definitions of “payments” resulting in notices being issued earlier and more frequently than might otherwise be the case, particularly if circumstances are such that the debtor does not recognise that they are in arrears.

Costs

7.11 This option does not impose any additional administrative burdens on industry above those identified in the original RIA for the Consumer Credit Bill for this requirement. By providing clarity as to the definitions of “payments” industry will be confident that the systems changes they make now will be compliant with the legislation and that further expenditure will not be needed later on if they opt for the wrong definition now in the absence of clarity.

Risks

7.12 In the absence of clear definitions of “payments” there is a high risk of non-compliance as industry adopts, and the Courts rule on, different interpretations. This risks defeating the original policy intention for the issue of arrears notices and has serious financial consequences for lenders as they will be unable to enforce the agreement during any period of non-compliance. In addition the borrower will have no liability to pay interest or default sums in relation to this period.

7.13 Furthermore, not sending notices out in a consistent manner that customers understand risks causing confusion and unnecessary worry particularly in cases where the customer might not recognise themselves to be in arrears. It is also likely that any increased costs associated with sending more notices than was originally intended will be passed onto customers.

8. Who will be affected?

8.1 The proposals for buy-to-let lending will affect businesses involved in the buy-to-let market as well as consumers who are either involved in, or thinking of entering this market.

8.2 The proposals on the giving of statements for fixed-sum credit agreements and the definitions of “payments” will affect lenders in the consumer credit market in view of the impact on regulatory compliance costs. They will also affect consumers who have, or who are thinking of taking out, a consumer credit agreement. They will have clarity about what to expect and when and won't suffer as a consequence of increased compliance costs being passed on to them.

9. Issues of equity and fairness

9.1 The Government considers that these proposals will not bring disproportionate benefits or have a disproportionate effect on any particular group.

9.2 Although buy-to-let lending will be exempt from regulation under the 1974 Act such agreements will still fall within the definition of a credit agreement in section 140C(1) in the 1974 Act. As such borrowers can still challenge their agreements in the Courts on the grounds that the relationship is unfair or complain to the Office of Fair Trading if they feel their lender has acted unreasonably or irresponsibly.

10. Small firms impact test

10.1 There is no change in the nature or number of businesses affected by these provisions to that intended originally under the Consumer Credit Bill. The proposals are all corrective measures designed to ensure that the original policy intentions are achieved in each case. They will benefit all businesses, regardless of size, involved in the consumer credit market ensuring that the compliance costs associated with the post-contract transparency provisions which come into force on 1 October 2008 are kept to the minimum necessary.

11. Enforcement and sanctions

10.1 The existing provisions in the 1974 Act apply. There are no new burdens and hence no new enforcement implications in these proposals.

12. Consultation

12.1 This final impact assessment has been updated in the light of comments and further evidence received from the consultation. The Department's response to the consultation was published on 11 June 2008.⁶

¹ The Regulatory Impact Assessment for the Consumer Credit Bill is available at <http://www.berr.gov.uk/files/file24434.pdf>

² The Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007 are available at http://www.opsi.gov.uk/SI/si2007/uksi_20071167_en.pdf

³ The Consumer Credit (Exempt Agreements) Order 2007 is available at http://www.opsi.gov.uk/SI/si2007/uksi_20071168_en.pdf

⁴ PwC review of implementation timetable for the Consumer Credit Act 2006 is available at <http://www.berr.gov.uk/files/file38292.pdf>

⁵ The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 is available at <http://www.opsi.gov.uk/si/si2001/20010544.htm>

⁶ The Consultation Document and BERR's response is available at <http://www.berr.gov.uk/consultations/closedwithresponse/index.html>

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

Annexes