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

EXPLANATORY DOCUMENT

JUNE 2008

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Glossary

These terms have the following meanings when used in this Explanatory Document. They are simplified versions of the statutory definitions of these terms (see section 189(1) of the Consumer Credit Act 1974).

“creditor” means the person providing the credit under a consumer credit agreement

“debtor” means the person receiving credit under a consumer credit agreement

“running account credit agreement” means a facility under a consumer credit agreement whereby the debtor can receive from time to time from the creditor or a third party cash, goods or services to an amount or value such that, taking into account payments made by or to the credit of the debtor, the credit limit (if any) is not at any time exceeded. Examples include bank overdrafts and credit card accounts

“fixed-sum credit agreement” means any other facility under a consumer credit agreement (other than under running account credit agreements) whereby the debtor can receive credit whether in one amount or in instalments. The most common example is a single loan advance

“RMC” means a regulated mortgage contract. This is defined in article 61 of the FSMA Order as a first charge on a property in the UK at least 40% of which is used, or intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust, or by a related person

“consumer credit agreement” means an agreement between a debtor and a creditor by which the creditor provides the debtor with credit or any amount.

“consumer hire agreement” means an agreement made by a person with the hirer for the hiring of goods to the hirer being an agreement which is not a hire purchase agreement and is capable of subsisting for more than 3 months.

Introduction

1. This Explanatory Document is laid before Parliament in accordance with section 14(1) of the Legislative and Regulatory Reform Act 2006 ("the LRRA") together with a draft of the Legislative Reform (Consumer Credit) Order 2008 ("the draft Order") which the Minister for Consumer Affairs proposes to make under section 1 of that Act.

2. The purpose of the draft Order is to amend the Consumer Credit Act 1974 ("the 1974 Act") to exempt buy-to-let lending from regulation, clarify the position on the giving of statements for fixed-sum credit agreements and provide definitions of "payments" for the purpose of issuing notices of sums in arrears.

The duties of the Minister

3. With regard to the duties imposed on the Minister in relation to public consultations by section 13 of the LRRA, the Minister for Consumer Affairs considered and approved the consultation document before publication. Following the consultation period the Minister considered that, in the light of the responses, the proposals should proceed subject to the amendments highlighted in paragraph 24.

4. Accordingly the Minister is laying before Parliament the documents required by section 14(1) of the LRRA as well as the additional information requested by the Parliamentary Committees which is all annexed to this Explanatory Document. The Minister is satisfied that the Order serves the purposes set out in section 1(2) of the LRRA and meets the conditions imposed by section 3(2) of the LRRA.

The Consumer Credit Act 1974

5. The 1974 Act set up for the protection of consumers a new system administered by the Director General of Fair Trading (now the Office of Fair Trading) for licensing and other control of traders concerned with the provision of credit or the supply of goods on hire or hire-purchase. The Consumer Credit Act 2006 ("the 2006 Act"), which received Royal Assent in March 2006, amends and updates the 1974 Act. In particular it aims to:

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

Reasons for the proposals

6. There are three headline proposals contained in the draft Order. These are set out in detail in Annexes A – C. Each of the Annexes sets out the rationale for the amendments, the proposals, the impact assessment, an overview of the responses to the consultation (including where changes have been made to the proposals as a consequence of issues raised) and an assessment of the proposals against the pre-conditions laid down in section 3(2) of the LRRA.

7. The issues all arise either as a direct or indirect consequence of provisions introduced into the 1974 Act by the 2006 Act. The proposals are therefore all corrective measures designed to achieve the original policy intention in each case.

8. When the Consumer Credit Bill was being drafted it was thought that the exemption for buy-to-let lending could be achieved through the new exemption for business lending which came into force in April 2008. However, during the consultation on the Consumer Credit (Exempt Agreements) Order 2007 (which prescribes the form and content of the exemptions for businesses and high net worth debtors and hirers) in summer 2006 creditors expressed their concern about the practical implications of this approach as this would not achieve a comprehensive exemption for buy-to-let lending. A credit agreement financing a one-off purchase of a buy-to-let property could not always be said to be an agreement entered into "wholly or predominantly for business purposes" as in reality it is mainly an investment transaction. In its response to the aforementioned consultation the Department stated publicly that it would address this unintended consequence of the 2006 Act through a Legislative Reform Order.

9. The issues on statements for fixed-sum credit agreements and the definitions of "payments" for the purpose of issuing notices of sums in arrears were first raised by industry in early 2007, nearly a year after the 2006 Act received Royal Assent. The issues came to light as a consequence of industry starting to think about the technical changes needed to their IT systems to comply with the new post-contract transparency provisions coming into force on 1 October 2008.

10. In summary the issues and proposals are as follows:

An exemption for buy-to-let lending from regulation under the Consumer Credit Act 1974

- It was never BERR's 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.

Until April 2008 the vast majority of buy-to-let loans were exempt from regulation under the 1974 Act This was either because lenders were able to use an existing exemption under 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 regulated) was removed in April 2008 inadvertently bringing into regulation those buy-to-let loans not exempt under or by virtue of section 16, 16A or 16B of the 1974 Act including the new business and "high net worth" exemptions also introduced in April 2008. There is currently a transitional arrangement in place which keeps buy-to-let lending above £25,000 which is secured on the property and satisfies the less than 40% occupancy test out of regulation until such time as the final Order is made.

The draft Order therefore creates a new exemption from regulation under the 1974 Act for consumer credit agreements for buy-to-let purposes meeting certain specified conditions.

This proposal is set out in detail at Annex A.

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

- 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, the new requirements of the 2006 Act (which amends the 1974 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 this policy intention. The existing wording in the 2006 Act does not allow for the provision in the 2007 Regulations which gives the creditor 30 days to send the statements.

  The draft Order therefore revokes regulation 11 of the 2007 Regulations and amends the 1974 Act to provide that a creditor under a regulated fixed-sum credit agreement has to give the debtor statements covering consecutive periods of not more than one year and that such statements must be given within 30 days of the end of the period to which they relate.

  This proposal is set out in detail at Annex B.

Inclusion of definitions of "payments" for the purpose of issuing notices of sums in arrears

- 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 some of which include the word "payments". The policy intention was that "payments" would cover only those scheduled instalments/repayment sums and hire payments as provided for under the terms of the agreement. 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 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. This was not what was intended.

  The draft Order therefore defines "payments" for the purpose of issuing notices of sums in arrears as those payments made at predetermined intervals provided for under the terms of the agreement. In the case of applicable regulated consumer hire agreements "payments" is defined to mean any payments to be made by the hirer in relation to any period in consideration of the hiring to him of goods under the agreement.

  This proposal is set out in detail at Annex C.

The Legislative and Regulatory Reform Act 2006 – Pre-conditions

11. Section 1 of the Act provides that a Minister of the Crown may by order make any provision which he considers would serve the purpose in subsection (2). That subsection provides that the purpose is removing or reducing any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation. Subsection (3) defines burden to include financial cost.

12. As mentioned previously the proposals in the draft Order are all corrective measures designed to achieve the original policy intention in each case. The Minister considers that the proposals will avoid any unnecessary burdens on industry by way of additional and unintended financial and administrative costs associated with systems changes, staff training and dealing with an increased number of consumer queries (this is expanded on under "Impact Assessment" below and in the full Impact Assessment at Annex D). This view was endorsed by the consultation.

13. The Minister considers that all the conditions in section 3(2) of the LRRA are satisfied for each of the proposals. This view was also endorsed by the consultation. The conditions are assessed in detail for each of the proposals in Annexes A – C.

Impact Assessment

14. The proposal to exempt buy-to-let lending from regulation aims to maintain the current regulatory position for such lending at no additional cost to industry or detriment to buy-to-let investors. Although we are proposing to extend the exemption to buy-to-let loans of any value the impact of this will be negligible as buy-to-let loans of £25,000 or less are few if any in today's market. An independent report by PriceWaterhouseCoopers ("PwC")[1] quotes the cost to industry of complying with the regulatory requirements (as estimated by the Council of Mortgage Lenders ("CML")) to be £100 million in one-off transitional costs (systems and forms changes and staff training) and £500,000 per annum ongoing costs spread over 80 creditors (whose share of the market in 2007 was estimated to be worth £8.7 billion out of a total of £44.6 billion for the market as a whole). Buy-to-let investors will benefit as a consequence of there being no disruption to the market (either permanent or temporary) and creditors not passing on to them the costs of any significant systems changes through increased charges and product costs.

15. The proposals on statements and the definitions of "payments" will help to minimise the costs for industry in complying with the overall post-contract transparency requirements estimated by PwC to be around £500 million for the industry as a whole. Without these amendments it is estimated that industry will incur additional compliance costs of around £25.9 million in one-off transitional costs and £48.8 million per annum ongoing costs. These proposals will ensure that the costs associated with issuing statements for fixed-sum credit agreements and notices of sums in arrears for fixed-sum and running account credit agreements and consumer hire agreements are kept to a minimum by providing clarity in the legislation thus avoiding unintended and unnecessarily complicated and expensive systems changes. They will also provide clarity for consumers who will receive statements and notices in a consistent manner that they understand.

16. A full impact assessment signed by the Minister is attached at Annex D with summaries for each proposal included in Annexes A – C.

Consultation

17. The proposals were subject to a full three month public consultation between 19 December 2007 and 12 March 2008. A full list of all those consulted is attached to the "BERR response to the consultation" at Annex E (this also shows who responded). The consultation document was previously sent to the Parliamentary Committees for information in December.

[1] A copy of the PwC report is available at http://www.berr.gov.uk/files/file38292.pdf

18. The consultation sought views on the policy and proposals (including the burdens, costs and benefits) and the pre-conditions in section 3(2) of the LRRA that need to be satisfied.

19. The consultation was sent to 101 stakeholders with 22 written responses received. The written consultation was also available publicly on the BERR website and was supplemented by face-to-face meetings with key stakeholder groups. Although the response appears small those responses from trade associations represented the views of their wider membership (which number of over 1,000 members in total). As a consequence some of those directly consulted chose to respond through their trade association rather than individually.

20. The overall response to the consultation was very positive with widespread support for the proposals subject to some changes (see paragraph 24). The consultation confirmed our view that the proposals would, in all cases, avoid any unnecessary and unintended burdens on industry and would not be detrimental to consumers. The proposals were particularly welcomed for their simplicity and clarity.

21. The only adverse comment was received from the Money Advice Trust ("MAT") and Citizens' Advice (who are partners of MAT). They were concerned that the proposal to exempt buy-to-let lending from regulation under the 1974 Act would remove protection for buy-to-let investors who get into financial difficulty and are forced to sell the buy-to-let property at a loss. In such cases there could be a risk to their own home if the sale proceeds do not cover any outstanding credit secured on the buy-to-let property.

22. Whilst we note these concerns it is was never BERR's intention to regulate buy-to-let lending secured on the property where the owner or a relative intends to occupy less than 40% of the property. It is existing Government policy that such loans should be unregulated and there is no evidence at the present time to suggest otherwise. The vast majority of buy-to-let loans are already exempt from regulation under or by virtue of existing exemptions in section 16, 16A and 16B of the 1974 Act, including the new business exemption which came into force in April 2008. This proposal therefore aims to provide consistency in the regulatory treatment of buy-to-let loans.

23. Buy-to-let is mainly a commercial venture and consequently the risks associated with it (including the risk to an investor's own home) are no different to those of any other type of business venture or debt. We are not therefore convinced that regulation under the 1974 Act would address the particular concerns raised by Citizens Advice and MAT.

24. In the light of the consultation responses the Minister considered that the proposals should proceed subject to some amendments as follows:

- The proposal for a declaration for buy-to-let lending should not be pursued as, inter alia, it does not sit comfortably with existing mortgage documentation and practice and, in the vast majority of cases, the debtor is legally represented in the transaction. Consequently the risk to consumers entering into buy-to-let agreements is less than for other consumer credit transactions (see Annex A);

- The proposal to exempt from regulation under the 1974 Act all consumer credit agreements secured on land outside the UK has been restricted to agreements that meet the conditions for buy-to-let. We agreed with comments made in response to the consultation that the original proposal went beyond the policy under consideration (see Annex A);

- The proposed transitional provision for first statements issued in relation to fixed-sum credit agreements in existence on 1 October 2008 (the date of commencement of section 77A) should be revised to allow for such statements to cover a period of time before the commencement date and to be shorter or longer than one year. This is a short transitional arrangement which will expire by October 2009 but will be of benefit to consumers (see Annex B);

- The definitions of "payments" should be revised to address concerns that they need to focus on the periodic nature of the payments rather than their composition to achieve the original policy intention (see Annex C).

25. A full analysis of the consultation responses is at Annex E with specific comments for each proposal included in each of Annexes A – C.

Consultation with Welsh, Scottish and Northern Ireland Ministers

26. Consumer credit is a matter reserved to the UK Parliament in relation to Scotland and Wales and the 1974 and 2006 Acts apply to the whole of the UK. Welsh and Scottish Ministers consent is not therefore required to the proposed draft Order. However, the consultation document was sent to both the Scottish Executive and the Welsh Assembly Government neither of whom responded.

27. Consumer credit is a devolved (transferred) matter in Northern Ireland as it has not been excepted or reserved under the Northern Ireland Act 1998 ("NI Act"). Devolution was restored to the Northern Ireland Assembly on 8 May 2007. Despite the fact that consumer credit lies within their competence the Westminster Parliament can still legislate for Northern Ireland (section 5(6) of the NI Act) in relation to consumer credit with their consent. Ministers agreed that the 2006 Act would apply to Northern Ireland.

28. The Minister for Enterprise, Trade and Investment in Northern Ireland has approved the inclusion of Northern Ireland in the draft Order. He also wrote to the Enterprise, Trade and Investment Committee of the Northern Ireland Assembly to advise them of the draft Order. They did not comment.

Parliamentary Resolution Procedure

29. The Minister considers the LRRA an appropriate vehicle for the proposed changes to the 1974 Act. The Minister has laid this draft Order under section 1 of the LRRA which allows Ministers to make provisions which they consider would remove or reduce any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation.

30. The Minister has recommended that the draft Order and the explanatory document be laid in Parliament under the affirmative resolution procedure for which provision is made in section 17 of the LRRA.

31. The draft Order amends the 1974 Act as amended by the 2006 Act. It does not seek to implement new policies. Its primary aim is to remedy some unintended consequences of new provisions introduced into the 1974 Act by the 2006 Act to ensure that the original policy intention is achieved in each case.

32. The problem on buy-to-let mortgages arises as a consequence of the removal of the £25,000 financial threshold (section 2 of the 2006 Act) above which consumer credit agreements were previously unregulated. It was never intended that this should catch buy-to-let mortgages secured on the property where the owner or a relative occupies less than 40% of the property. It is existing Government policy that such loans should be unregulated and we are unaware of any evidence at the present time to suggest otherwise. Indeed, despite the removal of the £25,000 financial limit, the vast majority of buy-to-let loans will continue to be unregulated by virtue of existing exemptions under section 16, 16A or 16B of the 1974 Act. This proposal therefore aims to provide consistency in the regulatory treatment of buy-to-let loans. The proposal for an exemption is relatively straightforward and not controversial. It affects around 80 lenders whose market share (by value) of buy-to-let business in 2007 was estimated to be around 19.5%. It has been welcomed by industry as a “neat” solution to the problem and received widespread support in the consultation.

33. The provisions relating to statements for fixed-sum credit agreements and and notices of sums in arrears under fixed-sum and running account credit agreements and consumer hire agreements were considered by Parliament in 2005/2006 in the context of the Consumer Credit Bill which received Royal Assent on 30 March 2006. The proposals in the draft Order are corrective measures which aim to achieve the original policy intentions behind these provisions. They are relatively minor and straightforward technical changes to the 1974 Act which clarify the position and will be of benefit to both industry and consumers. The amendments

are therefore not controversial and were unanimously welcomed in the consultation.

Compatibility with the European Convention on Human Rights

34. The Minister is satisfied that there are no human rights issues associated with these proposals.

Compatibility with obligations arising from membership of the European Union

35. The draft Order is compatible with obligations arising from membership of the European Union.

ANNEX A

Buy-to-let lending – exemption from regulation under the Consumer Credit Act 1974

Why change is needed

1. The policy intention of the 2006 Act was to remove the financial limit (other than for business lending) but to leave untouched the boundary between the 1974 Act and the Financial Services and Markets Act 2000 (FSMA). Broadly, the latter regulates first charge residential mortgage lending (principally house purchase mortgages and remortgages) leaving second charge secured loans to be regulated under the 1974 Act unless specifically exempt.

2. Section 16(6C)(a) exempts from regulation under the 1974 Act any loan which is a regulated mortgage contract ("RMC") under FSMA. However, this does not extend to most buy-to-let mortgages. Article 61 of the FSMA (Regulated Activities) Order 2001 ("the FSMA Order") defines an RMC as a first charge loan on property in the UK where, at the time the agreement is entered into, 40% or more (by area) of that property is used or intended to be used as, or in connection with, a dwelling by the debtor or a related person or, in the case of credit provided to trustees, by an individual who is a beneficiary of the trust or by a related person. As a consequence, buy-to-let loans which are secured on property but which do not satisfy the 40% occupancy test are not regulated under FSMA.

3. FSMA does, however, regulate buy-to-let loans secured as a first charge on the debtor's place of residence since the debtor's own home is at risk in the event that they get into difficulty with repaying the loan. FSMA also regulates loans secured on the buy-to-let property if, at the time the agreement is entered into, the debtor or a related person intends to occupy the property at any time, provided that the 40% test is satisfied. This reflects the risk to the debtor in cases where the buy-to-let property is for future occupancy, for example by a member of the armed forces serving overseas on return to the UK, or to be occupied for part of the year, for example as student accommodation while the debtor's son or daughter is at university.

4. Where a buy-to-let loan is secured on the debtor's principal place of residence as a first legal charge, it is regulated under FSMA as above. Where it is secured as a second charge on the debtor's home, it is potentially subject to regulation under the 1974 Act.

5. It was never the Government's intention to regulate under the 1974 Act buy-to-let loans which are secured by a first charge on the buy-to-let property. Such loans should either be regulated under FSMA (if more than 40% is occupied by the debtor or a related person) or unregulated (if the debtor or a related person does not intend to occupy more than 39% of the

property at any stage). In the latter case the loan is solely or mainly for investment purposes and the risk to the debtor's own home is much 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.

6. If the loan is secured as a second charge on the buy-to-let property, and the debtor or a connected person intends to occupy at least 40% of the property at any stage, the loan should be regulated under the 1974 Act (unless otherwise exempt). However, if the debtor or a connected person intends to occupy less than 40% of the property then the loan should be unregulated. Again, at the present time there is no evidence to suggest that regulation is needed in such cases.

7. Until April 2008 the 1974 Act provided that an agreement was not a consumer credit agreement if, amongst other things, the credit provided to the debtor exceeded £25,000. Section 2 of the 2006 Act removed this limit with effect from 6 April 2008 bringing all consumer credit agreements, regardless of value, into regulation unless specifically exempt. This would potentially include buy-to-let mortgages secured by a charge on the buy-to-let property. (A transitional arrangement is currently in place which keeps out of regulation buy-to-let lending above £25,000 which satisfies the conditions in the draft Order until such time as the Order comes into force.)

8. Section 16 of the 1974 Act makes provision for exempt agreements which are not regulated by the 1974 Act. For example it includes exemptions for certain consumer credit agreements secured on land for certain categories of creditors, for example building societies or deposit takers[2]. The 2006 Act amended the 1974 Act to add further exemptions for very wealthy ("high net worth") debtors[3] and for business lending above £25,000[4].

9. However, these exemptions do not provide a comprehensive exemption for all buy-to-let lending (other than where secured on the debtor's own home). Since the 1974 Act came into force the market in the buy-to-let

[2] The exemption applies to a) a debtor-creditor-supplier (d-c-s) agreement financing the purchase of land or the provision of dwellings on land secured by a land mortgage on that land, b) a debtor-creditor (d-c) agreement secured by any land mortgage, and c) a d-c-s agreement financing a linked transaction in relation to either a) or b).

[3] A new section 16A was inserted into the 1974 Act by the 2006 Act which provides for the exemption of consumer credit agreements or consumer hire agreements from regulation under the 1974 Act where the debtor or hirer has a high net worth. The conditions for the exemption include that the debtor or hirer is a natural person, that the agreement includes a declaration by the debtor or hirer that he agrees to forego the protections of the 1974 Act, that a statement of high net worth has been made in relation to the debtor or hirer and that this is current to the agreement and a copy has been provided to the creditor or owner.

[4] A new section 16B was inserted into the 1974 Act by the 2006 Act which provides for the exemption of consumer credit agreements or consumer hire agreements which are entered into wholly or predominantly for business purposes and exceed £25,000. Section 16B(2) provides that there shall be a presumption that an agreement is entered into wholly or predominantly for business purposes if the agreement includes a declaration by the debtor or hirer to that effect.

sector has changed dramatically. There are now many more players in the market who do not fall within the categories of creditors listed in section 16(1), including some of the biggest lenders in the buy-to-let market, and who are therefore unable to take advantage of the land purchase exemption. During the passage of the Consumer Credit Bill it was thought that the new business exemption (introduced by the 2006 Act) would be sufficient for buy-to-let lending. Under this exemption the 1974 Act will not regulate consumer credit agreements where the credit provided exceeds £25,000 and the agreement is entered into "wholly or predominantly for the purposes of a business carried on by him, or intended to be carried on, by him". However, it is unlikely that a credit agreement financing a one-off purchase of a buy-to-let property is an agreement entered into "wholly or predominantly for the purposes of a business". In reality where the purchase is for one or a small number of such properties it is a transaction entered into for investment purposes. The definition of "business" in section 189(1) of the 1974 Act includes profession or trade and references to business apply subject to section 189(2). This provides that a person is not to be treated as carrying on a particular type of business merely because occasionally they enter into transactions belonging to a business of that type. This would effectively exclude from the business exemption those investors who buy just one or a small number of buy-to-let properties.

10. In its response to the consultation on the Consumer Credit (Exempt Agreements) Order 2007 the then Department for Trade and Industry stated publicly that it would address this unintended consequence arising from the 2006 Act through a Legislative Reform Order to provide a specific exemption for buy-to-let lending secured by a charge on the property.

Proposals

11. We propose to insert a new section 16C into the 1974 Act creating an exemption for buy-to-let lending secured on the buy-to-let property (other than where the debtor, a beneficiary of a trust where the debtors are trustees or a "connected" person intends to occupy 40% or more of the property).

12. We are proposing to apply the new exemption to loans of any value rather than restricting it to loans over £25,000 as was the case when the £25,000 financial threshold was in place under the 1974 Act. The reality is that in today's housing market there is little if any property available to buy for £25,000 or less and consequently loans for buy-to-let purposes for £25,000 or less are very few if any. Furthermore, the existing land purchase exemption in section 16 of the 1974 Act is not subject to a financial limit and consequently this approach helps to ensure a level playing field in the buy-to-let market. We therefore consider that it would be an unnecessary burden on industry to require that buy-to-let loans at or below £25,000 should be regulated. Indeed the likely consequence would be that creditors would only provide loans for buy-to-let purposes for more than £25,000.

13. The drafting of the exemption is intended to be consistent with the definition of an RMC in FSMA although it approaches it from the other way in that the FSMA Order deals with what is regulated and the proposed new section 16C in the 1974 Act deals with what is exempt. The exemption applies to land both inside and outside the UK. The FSMA Order applies only to land in the UK thus entering into an agreement which is secured on property outside the UK cannot be a regulated activity under the FSMA regime.

14. Looking at various scenarios this means that, for properties in the UK:

- Where a property is bought as an investment using a first charge mortgage on the property as security and the buyer has no intention of living there then the credit agreement will be exempt from regulation under the 1974 Act and the FSMA regime.

- Similarly if the property is a four storey house in the UK and the basement is occupied by a person connected to the buyer (as now defined) and the rest of the house is let out to strangers, the credit agreement will be exempt from regulation.

- If the property is a holiday home occupied by the owner for a few weeks each year and let out for the rest of the year, the credit agreement will not be exempt as there is a clear intention by the owner to occupy 100% of the property at various times (the occupancy test is based on the area occupied and not the amount of time occupied). However, if it is a first charge on the property, and the property is in the UK, it will be an RMC and therefore exempt from regulation under section 16(6C) of the 1974 Act.

- If, for example, an army officer living in army quarters or a vicar living in accommodation provided by the church buys a flat with a view to living in it in their retirement, the credit agreement will be an RMC under the FSMA regime and exempt under the 1974 Act as there is a clear intention to occupy 40% or more of the property at some point in the future.

- A debtor may secure a loan for a buy-to-let property on his own home. If this is a first charge then the loan will be an RMC and exempt from regulation under the 1974 Act as above. If, however, it is a second charge mortgage it will come within the scope of the 1974 Act unless otherwise exempt.

15. In line with this proposal it will also be necessary to make some consequential amendments to section 82 of the 1974 Act. Section 82 deals with situations where an existing agreement (either regulated under the 1974 Act or not) is varied or supplemented by a later agreement. The effect of these provisions as originally enacted was broadly that:

- the later agreement would be treated for the purposes of the 1974 Act as revoking the earlier agreement and containing provisions which reproduced the combined effects of both agreements (section 82(2));
- if the earlier agreement was regulated under the 1974 Act, then the combined agreement was also to be treated as a regulated agreement (section 82(3)); and
- if the earlier agreement was not regulated under the 1974 Act, then the combined agreement would be considered afresh to determine whether the combined effect of the earlier agreement and the modification created an agreement which met the criteria for regulation under the 1974 Act.

16. There is therefore a risk that, where either the first or second agreement is an exempt buy-to-let agreement, the application of section 82 may still bring that agreement into regulation.

17. We are therefore proposing to disapply section 82 where either the earlier or the later agreement is an exempt buy-to-let agreement under the new section 16C. This mirrors what happens in relation to RMCs. The effect of this proposal would be as follows:

- If an exempt buy-to-let agreement is varied by a later agreement (whether to increase the amount of the loan or otherwise) then section 82 should not apply and the original buy-to-let agreement should not be treated for the purposes of the 1974 Act as revoked. The intention is that the exemption test should not have to be reapplied all over again in relation to this first agreement. This agreement should therefore remain as an exempt agreement as amended by the later agreement. The later agreement may or may not be a regulated agreement in its own right for the purposes of the 1974 Act.

- If an earlier agreement, whether regulated or exempt for whatever reason, is modified by a later buy-to-let exempt agreement then section 82 should not apply. The earlier agreement should not be treated as revoked and, for the purposes of the 1974 Act, should continue to be a regulated or exempt agreement as the case may be, and the later agreement an exempt buy-to-let agreement under section 16C.

18. We are also proposing to amend section 82(5) of the 1974 Act. The effect of this section at the moment is that, if a regulated credit agreement which is cancellable[5] under section 67 was modified by a later buy-to-let exempt agreement during the "cooling off" period, the buy-to-let agreement would be treated as a cancellable agreement whether or not this would otherwise have been the case. This is inconsistent with section 67 which does not apply to agreements secured on land and is inconsistent with the treatment for exempt RMCs as specifically stated under section 86(5A). We are therefore proposing that section 82 is amended so that section

[5] Subject to the agreement containing a notice of the customer's cancellation rights, a customer may cancel the agreement by completing and returning the statutory cancellation form within the "cooling off" period.

82(5) does not apply where the later agreement is an exempt buy-to-let agreement. This would ensure that the buy-to-let agreement does not become a cancellable agreement.

Impact Assessment

19. The full impact assessment is at Annex D.

20. Section 1 of the LRRA provides that a Minister of the Crown may by order make any provision which he considers would serve the purpose in subsection (2). That subsection provides that the purpose is removing or reducing any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation. Subsection (3) defines burden to include financial cost.

21. We believe that, by amending the 1974 Act to provide for a specific exemption for buy-to-let lending meeting certain specified conditions, the original policy intention can be achieved with no negative impact on either industry or consumers. The proposal will maintain the current regulatory position for buy-to-let lending (albeit extending the exemption to buy-to-let loans at or below £25,000 – see paragraph 12) and will maintain a level playing field for creditors in this market. This position was widely supported in the consultation.

22. Creditors will benefit from the removal of unintended compliance costs as a consequence of not having to make expensive systems changes to accommodate the requirements of regulation under the 1974 Act. An independent review by PwC carried out for the Department in 2006 quotes CML estimates of compliance costs of around £100 million in one-off transitional costs spread across 80 creditors if buy-to-let lending was brought into regulation and ongoing annual compliance costs to these businesses of around £500,000. These costs cover IT systems development, staff training and adjustments to forms to ensure they are compliant.

23. On the whole creditors 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 and may not be licensed). Until now, such lending has not been regulated where it has exceeded the £25,000 threshold or has otherwise been exempt. As a result, the systems changes needed are more severe than for other financial products because there is no system capability to fall back on. Industry estimates needing between 18 months to 3 years to deliver such changes.

24. The impact on consumers from the regulation of buy-to-let lending is potentially much larger than for other products. Some creditors 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 changes made by the 2006 Act. Others would seriously consider a complete withdrawal given the cost of making systems compliant. Similarly some of their products offering more flexibility and attractive repayment schedules would be completely withdrawn as they may no longer be profitable. Furthermore consumers would suffer as a consequence of disruption to the market (temporary or permanent) and from creditors passing on to them the cost of the significant systems modifications that would be required.

25. There are also potentially wider ramifications for the rental market. If the supply of buy-to-let mortgages were to decrease there is a possibility that the supply of good quality rental accommodation could also decrease and rents increase.

Consultation responses - overview

26. The full BERR response to the consultation is at Annex E.

27. The consultation confirmed that the proposal would remove unintended burdens on industry and overall there was widespread support for the exemption (although Citizens Advice and MAT did have concerns about consumer protection which are dealt with under "Necessary Protections" at paragraphs 41 - 44). The form of the exemption was particularly welcomed for its simplicity and clarity as well as its fit with overall mortgage policy.

28. Respondents were agreed that clarity around the application of section 82 (a complex provision in the 1974 Act) was essential to ensure that buy-to-let lending was not unintentionally brought into regulation. All were agreed that the proposals would appear to achieve the objective.

29. The consultation also proposed to allow for a declaration to be made for the purpose of buy-to-let lending following the precedent for the new business exemption. This would be a declaration made by the debtor in the credit agreement about the use of the property and the effect of the exemption. It would not be mandatory and, where used, would simply give rise to a presumption that the agreement satisfied the conditions for buy-to-let. If the creditor, or a person acting on his behalf, knew or had reasonable cause to suspect, that this was not the case then the presumption would not apply.

30. Whilst 3 respondents (all non-industry) supported the proposal, industry respondents were unanimous in their concern for a formal declaration as proposed. Having considered the representations carefully we concluded that it was neither practicable nor proportionate to proceed with this proposal. The provision for a formal declaration to create a presumption that the exemption condition was satisfied would not sit comfortably with existing mortgage documentation and practice, particularly with the move to online applications not requiring a signature and e-conveyancing. Furthermore we were persuaded that, as the vast majority of consumers

entering into buy-to-let agreements are represented by either a solicitor or licensed conveyancer in the transaction, the risks for these consumers are much less than for those in other consumer credit transactions where they are not legally represented

31. One respondent pointed out that the proposal to exempt from regulation under the 1974 Act all consumer credit agreements secured on land outside the UK with no conditions (the inserted section 16C(1) in article 3(1) of the draft Order as consulted on) went beyond the proposal to provide an exemption for buy-to-let lending. Following further consideration of this point we agreed that such a wider ranging exemption required separate detailed consideration of the wider implications and desirability. The proposal for an exemption for consumer credit agreements secured on land outside the UK has therefore now been restricted to agreements that meet the conditions for buy-to-let.

Legal analysis against the requirements of the Legislative and Regulatory Reform Order 2006

32. The Minister cannot make the Order under section 1 of the LRRA unless he considers that the preconditions in section 3 are met.

a) The policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means

33. 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 land purchase exemption and the new business and high net worth exemptions which came into force on 6 April 2008. This would have enabled creditors 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 (affecting around 80 lenders in the market) will be regulated following removal of the £25,000 financial limit in April 2008 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.

34. We also considered the alternative legislative route of using the power that HM Treasury used to amend section 16 of the 1974 Act in relation to RMCs via the consequential provisions in their FSMA (Regulated Activities) Order 2001. 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.

35. All of those who responded to this question in the consultation agreed with our view that there was no viable non-legislative solution to fully achieve

the original policy intention for exempting buy-to-let lending from regulation under the 1974 Act.

b) The effect of the provision is proportionate to the policy objective

36. This proposal is designed to ensure consistency with Government policy on mortgage regulation and to maintain the current regulatory position of buy-to-let lending. Most, if not all, buy-to-let loans were previously exempt from regulation by virtue of the £25,000 financial limit above which credit agreements were not regulated. The draft Order will maintain this regulatory position whilst also extending the exemption to loans of £25,000 or less for the reasons set out in paragraph 12 thus creating a level playing field for creditors in the buy-to-let market by ensuring consistency with the land purchase exemption in section 16 of the 1974 Act which has no threshold. Without this change industry would incur significant costs (see "Impact Assessment" above) which would be passed onto debtors and there could be reduced consumer choice of both products and providers.

37. All those who responded to this question in the consultation agreed with our view that the proposal represented a proportionate response to the policy objective.

c) The provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it

38. The impact of the proposals is restricted to those creditors and debtors involved in the buy-to-let market who will both benefit from the proposal to exempt buy-to-let lending from regulation under the 1974 Act.

39. We do not believe that the proposals will impact adversely on any particular group. We believe that the proposals in the draft Order strike a fair balance between the public interest and the interest of any person who might be adversely affected by them. This view was supported by all of those who responded to this question in the consultation.

40. Creditors will benefit from the removal of unintended compliance costs as a consequence of not having to make expensive systems changes to accommodate the requirements of the 1974 Act. The proposals will also ensure a level playing field for creditors in this market. Debtors will benefit as the market will not suffer any temporary disruption as a consequence of creditors needing to withdraw their products until such time as their systems are compliant. They will be able to continue to benefit from flexible packages on offer from creditors which could be completely withdrawn as they may no longer be profitable if buy-to-let loans were brought into regulation. They will also benefit as a consequence of creditors not passing on to their customers the costs of significant systems changes.

d) The provision does not remove any necessary protections

41. No consumer protections are being removed as we are looking to maintain the status quo and ensure that buy-to-let lending is not inadvertently brought into regulation following the removal of the £25,000 financial limit in April 2008. Although we are proposing to extend the exemption to buy-to-let loans of any value the impact of this will be negligible as buy-to-let loans of £25,000 or less are few if any in today's housing market (see paragraph 12). However, those buy-to-let loans at or below £25,000 taken out before the draft Order comes into force will continue to be regulated as now regardless of the exemption.

42. Buy-to-let debtors will in most cases obtain legal advice when entering into a transaction and so will be fully aware of the nature of the commitment they are entering into. An exemption for buy-to-let lending does not mean that debtors are unprotected under the 1974 Act. Even though the agreements are exempt from regulation they still fall within the definition of a credit agreement in section 140C(1) of the 1974 Act. As such section 140A of the 1974 Act will apply. This allows debtors to challenge credit agreements in the Courts on the grounds that the relationship between the creditor and the debtor is unfair[6]. Also where a creditor (who holds a consumer credit licence) acts unreasonably or irresponsibly the debtor can complain to the Office of Fair Trading (OFT) who can investigate and, as appropriate, revoke the licence or place restrictions on the licensee.

43. This view was supported by the majority of respondents who answered this question. As mentioned previously Citizens Advice and MAT had some concerns about the protections available to buy-to-let investors who might get into financial difficulty and be forced to sell the buy-to-let property at a loss. Citizens Advice also proposed that, should we proceed with the exemption, that, in addition to the unfair relationships test and recourse to the OFT, consumers should have the additional protection of the time order provisions under sections 129 – 136 of the 1974 Act.[7]

44. Whilst we note these concerns it was never BERR's intention to regulate buy-to-let lending secured by a charge on the property where the owner or a relative intends to occupy less than 40% of the property. At the present

[6] The "unfair relationships" test was introduced by the 2006 Act and replaced the extortionate credit bargain provisions. The amended provisions enable a court to consider whether the relationship between the creditor and the debtor arising out of the agreement is unfair to the debtor because of the terms of the agreement, the way in which the agreement is operated by the creditor or any other thing done or not done by or on behalf of the creditor before or after the agreement was made. The court may take into account all matters it thinks relevant relating to the creditor and debtor in making its assessment.

[7] Where a creditor or owner applies to the court for an enforcement order or an order to enforce any security or to recover possession of any goods or land to which a regulated consumer credit agreement relates, or on an application by a debtor or hirer following service of a default, enforcement or termination notice or a notice of sums in arrears under a fixed-sum credit agreement or a running account credit agreement, the court may, in its discretion, make a time order. A time order relating to payments may be made under which the debtor, hirer or surety is ordered to make payment of the sum owed under a regulated agreement or a security, by such instalments and at such times, as the court deems reasonable. A time order in relation to the remedying of a breach is an order on the debtor or hirer to remedy a breach, other than non-payment of money, within such a period as the court may specify.

time, there is no evidence to suggest that such lending should be regulated. Buy-to-let is a commercial venture and consequently the risks associated with it (including the risk to an investor's own home) are no different to those of any other type of business venture or debt. We are not therefore convinced that regulation, partial or otherwise, under the 1974 Act would address these particular concerns. Furthermore the specific buy-to-let exemption is designed to achieve a level playing field in the buy-to-let market. The vast majority of buy-to-let loans are already outside the scope of the 1974 Act under or by virtue of the exemptions in section 16, 16A and 16B of the 1974 Act. This further specific exemption will ensure that all such lending meeting the specified conditions will be exempt from regulation.

e) The provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise

45. As the changes we propose are beneficial to both industry and consumers we do not believe that they will prevent anyone from exercising an existing right or freedom which they might reasonably be expected to continue to exercise. This view was supported by all those who responded to this question in the consultation.

f) The provision is not of constitutional significance

46. The proposals are not of constitutional significance. They are amendments to the 1974 Act to avoid unintentional consequences of the provisions introduced by the 2006 Act and ensure that the original policy intention to exempt buy-to-let lending from the scope of the 1974 Act is achieved. All those who responded to this question in the consultation agreed.

ANNEX B

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

Why change is needed

1. The post-contract transparency requirements introduced by the 2006 Act require creditors to provide specific information about credit agreements to customers at required points in time. In this way the 2006 Act will deliver important improvements to transparency in the consumer credit market and so offer consumers greater protection.

2. Section 77A of the 1974 Act (statements to be provided in relation to fixed-sum credit agreements) was inserted by section 6 of the 2006 Act. Fixed-sum credit is defined in section 10(1)(b) of the 1974 Act to mean a facility under a consumer credit agreement (other than a running account credit facility such as an overdraft facility) under which the debtor is able to receive credit in one amount or in a number of instalments. Section 77A was inserted as part of the drive for greater transparency in consumer credit transactions and to ensure that creditors are obliged to give debtors an increased amount of information about the state of their accounts to help them to manage their borrowing better.

3. Section 77A(1) currently provides that a creditor under a fixed-sum credit agreement has to give the debtor a statement within a period of one year beginning on the day after the day the agreement is made. Thereafter the creditor has to give to the debtor statements at intervals of not more than one year. The word 'give' is defined in section 189(1) to mean deliver or send by an appropriate method.

4. The Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007 ("the 2007 Regulations") include requirements about the form and content of statements under section 77A(1). Regulation 11 of the 2007 Regulations specifies that a statement has to be given within 30 days of the end of the period to which it relates and statements have to cover consecutive periods.

5. Section 77A(1) and regulation 11 of the 2007 Regulations will enter into force on 1 October 2008. There is a transitional provision relating to section 77A in paragraph 2 to Schedule 3 of the 2006 Act which also comes into force on 1 October 2008. This provides that section 77A applies to agreements whenever made and, in the case of agreements made before the commencement of the section, the period in section 77A(1)(a) is one year from the date of commencement i.e 1 October 2008.

6. The original policy intention was that the first and subsequent statements should be able to cover a period of up to one year and that the creditor should have up to 30 days to give each statement, those 30 days

commencing on the day after the last day of the statement period. The latter was aimed at ensuring that statements are given within a reasonable time of the period they cover.

7. The effect of section 77A(1) and regulation 11, when taken together, is that this underlying policy intention has been defeated. This cannot be remedied by amendment to the 2007 Regulations alone as it is the wording in section 77A(1) of the 1974 Act that causes a problem because it focuses on the date the statement is given rather than the period it covers. Thus, under this section, the first statement must be given within the period of one year beginning with the day after the day on which the agreement is made with subsequent statements given at intervals of not more than one year. However, regulation 11 provides for statements to be given within 30 days of the last day of the statement period.

8. As it currently exists creditors are prevented from issuing statements covering a period of one year, as is common industry practice, if they are to comply with section 77A(1). They must allow for the ordinary course of post when calculating when a statement has been given.[8] This means that to satisfy the requirement in section 77A(1) to 'give' the statement within a period of one year the period covered by the statement must be less than one year to allow for it to be received by the debtor in the ordinary course of post. Furthermore, if they wish to take full advantage of the 30 day period within which to send statements then again the statements will need to cover a period of less than one year as the 30 day period will need to be built into the yearly intervals between the giving of statement. This could lead to variable statement dates and irregular periods covered by the statements as creditors try to meet the requirements of this provision. This will be costly to business in terms of the complicated systems changes required and confusing to customers who will be familiar with receiving regular annual statements.

Proposals

9. We propose to amend section 77A of the 1974 Act and to revoke regulation 11 of the Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007 as follows:

- section 77A(1) is revised so that it imposes an obligation on the creditor under a regulated agreement for fixed-sum credit to give the debtor a statement covering a period of not more than one year beginning with the day on which the agreement is made or the day the first movement on the account occurs, and thereafter to give the debtor

[8] The word "give" is defined in section 189(1) to mean deliver or send by an appropriate method. "Appropriate method" is in turn defined in section 189(1) to mean by post or by electronic communication. Postal communication needs to be interpreted on the basis of section 7 of the Interpretation Act 1978 which provides that, unless proved to the contrary, a document is given at the time when it would be delivered in the ordinary course of post i.e when received by the debtor and not when sent by the creditor.

further statements under the section covering consecutive periods of not more than one year;

- a new subsection (1D) is inserted to provide that, if a period of one year would expire on a non-working day it may expire on the next working day (see paragraph 12). Working day is defined in section 189(1) of the 1974 Act. This does not erode the 30 day period in subsection (1E) which will begin on the day after the end of the period covered by the statement.

- a new subsection (1E) is inserted in section 77A providing that a statement given under subsection (1) must be given within 30 days of the end of the period to which it relates; and

- paragraph 2 of Schedule 3 to the 2006 Act is repealed and replaced by a new transitional provision in article 5 of the draft Order. The existing transitional provision when taken with the revised section 77A(1) and the new section 77A(1A) to (1E) in the draft Order does not provide the necessary flexibility in relation to the first statement issued after commencement for agreements in existence prior to 1 October 2008. The draft Order now enables the first statement for existing agreements given after the commencement of section 77A to cover a period of time before the commencement date and to be shorter or longer than one year. The period must end no later than the day before the anniversary of the commencement date.

10. The effect of these proposals is to remove the ambiguity that exists between section 77A(1) and regulation 11. It will provide clarity to industry on the period to be covered by the statements and the time within which they must be given to customers.

11. The provision to allow for the statement period to be extended beyond a year when that period would normally end on a non-working day reflects creditors' current practice (whereby statements due on a non-working day would run to the next working day which could take them over the one year period required under the 1974 Act) and avoids unnecessary and costly additional system changes to accommodate variable statement periods to ensure compliance.

12. The transitional provision will provide the flexibility that industry has asked for in relation to the period covered by the first statement after commencement. This will benefit consumers who will either be brought up-to-date on their accounts where they had previously not received statements or will continue to receive statements on the same basis as previously thus avoiding unnecessary confusion.

Impact assessment

13. The full impact assessment is at Annex D.

14. Section 1 of the LRRA provides that a Minister of the Crown may by order make any provision which he considers would serve the purpose in subsection (2). That subsection provides that the purpose is removing or reducing any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation. Subsection (3) defines burden to include financial cost.

15. To comply with the post-contract transparency requirements creditors 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.[9] In developing the 2007 Regulations the Department endeavoured to strike the right balance between ensuring that consumers were given the information they needed without imposing undue burdens on creditors by keeping the level of prescription and detail to a minimum.[10]

16. 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 a moving deadline for statements 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. Where industry was unable to do this, and consequently found themselves non-compliant, they would not be able to enforce the agreement and debtors would not be liable to pay any interest due during any period of non-compliance and the creditor could suffer significant financial loss as a consequence.

17. Some creditors felt that the requirement to give statements within a year would mean issuing statements that covered a period of less than 12 months for example, issuing the statement at say week 50 rather than week 52 or sending regular six monthly statements in order to be compliant. This is unlikely to meet consumer expectation, for example mortgage statements required to be sent to debtors with RMCs cover a 12 month period. However, issuing statements more frequently than annually (as is the common 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 costs, for example systems changes, and in the region of £24.8 million per annum for ongoing costs, for example administrative costs associated with sending more statements than

[9] In its review of the implementation timetable for the 2006 Act PwC estimated that the total costs to business of implementing all the post-contract transparency requirements would be in the order of £500 million. This reflected the wide range of systems requiring change (anything from 25 to over 100 in some cases).

[10] A copy of the full impact assessment on the Consumer Credit Bill can be found at http://www.berr.gov.uk/files/file24434.pdf and the full impact assessment for the 2007 Regulations can be found at http://www.opsi.gov.uk/si/si2007/em/uksiem_20071167_en.pdf

originally intended and dealing with more customer enquiries as a consequence of any confusion caused.[11]

18. In its review of the implementation timetable for the 2006 Act PwC estimated that the total costs to business of implementing all the post-contract transparency requirements would be in the order of £500 million. The majority of the creditors 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. Creditors 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 creditors 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 creditors' shareholders.

19. Our proposals do not impose any new burdens to those previously identified for the 2006 Act and the 2007 Regulations. The amendments we propose should ensure that the costs of complying with these new post-contract transparency provisions introduced by the 2006 Act are kept to a minimum as industry will be clear about what is required. Such clarity will have a positive impact on creditors as it will avoid unnecessary regulatory compliance costs and ensure creditors adopt a common approach.

20. For consumers the proposals will ensure that any additional and unnecessary compliance costs are not passed on to them through higher product costs. 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. The benefits of creditors adopting a common approach will also make it easier for customers to make comparisons between creditors.

Consultation responses – overview

21. The full BERR response to the consultation is at Annex E.

22. The consultation confirmed that the proposals would reduce the burdens on industry and were widely welcomed for their clarity and simplicity as well as for the customer confusion they will avoid.

[11] Figures are based on a number of assumptions about the likely additional costs. Industry estimates are used for costs to both large and small businesses (based on a small sample) and aggregated based on membership of the four main consumer credit trade associations (a proxy for the total size of the affected market). It is therefore likely that these are conservative estimates.

23. Industry did, however, raise concerns about the effect of the revised transitional provision in article 5 of the draft Order in relation to agreements in existence on the day of commencement of section 6 of the 2006 Act (which amends section 77A of the 1974 Act). This compelled the first statement after commencement to relate to a period of one year beginning on the date of the commencement of section 6 i.e 1 October 2008. In these cases industry wanted the flexibility, in cases where statements were not previously given, to:

- cover a period of longer than 12 months to enable historical information to be included in the statement (bringing the customer fully up-to-date with their account); and
- cover a period of less than 12 months from the date of commencement to allow statement periods to be staggered throughout the year thus avoiding the position where all new statement periods run from 1 October to 30 September each year.

Furthermore, where regular statements were already provided creditors wanted the flexibility to be able to continue with existing annual statements periods where these crossed over 1 October 2008 (the commencement date for this provision).

24. We agreed that these were sensible proposals which would alleviate the need for further unnecessary and expensive systems changes by industry and did not go against the policy intention. They would also benefit consumers who, in cases where they did not previously receive a regular statement on their account, would be brought fully up-to-date with the state of their account and, where they did already receive statements, would continue to receive these on their normal annual cycle. The draft Order has therefore been redrafted to reflect this.

<u>Legal analysis against the requirements of the Legislative and Regulatory Reform Act 2006</u>

25. The Minister cannot make the Order under section 1 of the LRRA unless he considers that the preconditions in section 3 are met.

a) The policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means

26. We considered whether it would be possible to resolve the issue through guidance. We concluded that, whilst it would be possible to issue guidance as to the policy intention behind this provision, this would not be consistent with the wording in section 77A(1) and would therefore not provide any legal certainty to industry that they were compliant when sending statements within 30 days of the period to which they relate. This could have serious financial consequences to industry as failure to comply with the requirements would mean that they could not enforce the agreement and the debtor would have no liability to pay interest during the period of non-compliance.

27. We also 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.

28. The consultation confirmed that this was not an issue that could be remedied by any means other than legislation. One respondent commented that as this was a problem caused by the drafting of section 77A and its interaction with other legislative measures, legislative means must be used to cure it.

b) The effect of the provision is proportionate to the policy objective

29. We believe that the proposals are proportionate to the policy objectives. The proposals are aimed at providing clarity to industry to ensure compliance and a common approach to the giving of statements and to ensure that the original policy objective is achieved. The consultation confirmed this view commenting that such legal certainty was essential to achieve the policy objective.

c) The provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it

30. We believe that the proposals strike a fair balance between the public interest and the interest of any person adversely affected by them.

31. Under the post-contract transparency requirements included in the 2006 Act creditors will, with effect from 1 October 2008, have an obligation to provide their customers with regular statements in relation to their fixed-sum credit agreements. This measure was designed to ensure that consumers are regularly kept aware of any activity on their account, including the addition of fees and charges, which will enable them to better manage their borrowing.

32. The proposals in the draft Order simply aim to ensure that the original policy intention in terms of the period covered by the statements (up to one year) and the time within which creditors should give the statements to customers (30 days after the end of the period to which they relate) is achieved. These proposals do not impact adversely on any particular group. They will, however, benefit both creditors, by providing clarity on what is required, and consumers who will have continuity and clarity on what to expect.

33. The consultation confirmed this view.

d) The provision does not remove any necessary protections

34. The purpose of the proposals is to ensure that the original policy intention is achieved. In doing so no necessary protections are being removed.

35. The consultation confirmed this view. One respondent commented that they saw no loss of consumer protection, rather the proposals would enable consumers to assess better their financial situation and compare the value they are receiving from creditors on a like-for-like basis. Another commented that the proposals would enable consumer protection to be applied practically and with consistency.

e) The provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise

36. As the changes we propose are beneficial to both industry and consumers we do not believe that they would prevent anyone from exercising an existing right or freedom which they might reasonably be expected to continue to exercise. The consultation confirmed this view.

f) The provision is not of constitutional significance

37. The consultation confirmed our view that the proposals were not of constitutional significance.

ANNEX C

Inclusion of definitions of "payments" for the purpose of issuing notices of sums in arrears

Why change is needed

1. The post-contract transparency requirements introduced by the 2006 Act require creditors to provide specific information about credit agreements to customers at required points in time. In this way it is expected that the 2006 Act will deliver important improvements to transparency in the consumer credit market and so offer consumers greater protection.

2. Section 86B (notice of sums in arrears under fixed-sum credit agreements etc) provides for greater transparency and ensures that the debtor or hirer receives more information from the creditor or owner about the state of their account. It sets out the obligations of the creditor or owner to give notices of sums in arrears to the debtor under certain fixed-sum credit agreements or the hirer under certain regulated consumer hire agreements (a consumer hire agreement is defined in section 15) when those debtors fall behind with their payments. This measure was designed to ensure that debtors are provided with information about how to resolve problems at a much earlier stage and are made aware of charges being added to their account.

3. Certain conditions have to be satisfied before the obligation arises two of which include the word "payments" –

> "(1)(a) that the debtor or hirer under an applicable agreement is required to have made at least two payments under the agreement before that time;
>
> …….
>
> (c) that the amount of the shortfall is no less than the sum of the last two payments which he is required to have made before that time;"

4. A similar issue arises in relation to section 86C (notice of sums in arrears under running-account credit agreements). This section sets out the obligations of the creditor to give such a notice and the conditions which have to be satisfied for the section to apply. Two of the conditions which have to be satisfied contain the word "payments" –

> "(1)(a) that the debtor under an applicable agreement is required to have made at least two payments under the agreement before that time;
>
> (b) that the last two payments which he is required to have made before that time have not been made."

5. The original policy intention was that “payments” would cover only those scheduled instalments/repayment sums as provided for under the terms of the credit agreement. In relation to regulated consumer hire agreements the policy intention was that payments meant the regular hire payments in relation to any period in consideration of the bailment or hiring of the good.

6. However, in the absence of clear definitions of “payments”, industry is concerned that “payments” might be construed more widely than originally intended and could include those ad hoc payments which might become payable at other times during the period of the loan i.e not as part of the scheduled payments under the terms of the agreement. Such ad hoc payments could include, for example, default sums that may become due and payable at other times as a consequence of a missed payment or over-limit amounts on running account credit agreements which could become payable immediately the customer exceeds their agreed credit limit.

7. As a result first notices of sums in arrears could be triggered more quickly than would otherwise be the case if it were clear that “payments” covered only those scheduled instalments/repayment sums as provided for under the terms of the agreement. For example, for fixed-sum or hire agreements one missed regular payment may generate a default sum which, if not paid, under a wide definition of “payments” would trigger the issue of a notice of sums in arrears as the shortfall would be equivalent to the sum of the last two payments the debtor was required to have made (section 86B(1)(c) of the 1974 Act). This compares to the situation under the original policy intention whereby the notice would not issue until the shortfall was at least equivalent to the last two scheduled payments the debtor or hirer was required to have made (ignoring any ad hoc payments in between times) which would be a later date.

8. Similarly for running account credit agreements one missed scheduled payment followed by a failure to pay an over-limit amount could trigger a notice of sums in arrears as, under a wide definition of “payments”, this situation could satisfy the condition in section 86C(1)(b) that the last two payments which the debtor is required to have made before that time have not been made. This compares to the situation under the original policy intention whereby the notice would not issue until the second scheduled payment had been missed which would be a later date.

9. A very simple practical example to illustrate this point is as follows:

   Regular payment of £100 due on 1 January – not paid (shortfall = £100)
   Default sum of £25 incurred on 15 January – not paid (shortfall = £125)
   Regular payment of £100 due on 1 February – not paid (shortfall = £225)

10. In this example if the wide definition of “payments” is used the notice of sums in arrears would be triggered at the point at which the default sum payment was missed in January as i) under a fixed-sum credit agreement the shortfall on the account (£125) is equivalent to the sum of last two

payments (£125) the debtor was required to have made or ii) under a running account credit agreement the default sum represents the second payment the debtor was required to have made before that time. However, under the original policy intention the notice would not be triggered until the regular payment in February was missed as it is only at this point that i) under a fixed-sum credit agreement the shortfall (£225) is at least equivalent to the sum of the last two scheduled payments the debtor was required to have made (£200) or ii) under a running account credit agreement the February payment represents the second payment the debtor is required to have made before that time.

11. This ambiguity has serious financial consequences for industry as set out under "Impact Assessment" below.

Proposals

12. We propose to define "payments" for the purposes of section 86B (notice of sums in arrears under fixed-sum credit agreements etc) and section 86C (notice of sums in arrears under running-account credit agreements) of the 1974 Act to clarify that, for the purposes of these sections, "payments" is intended to mean only those scheduled payments to be made at predetermined intervals provided for under the terms of the agreement. In the case of applicable consumer hire agreements we propose to define "payments" as any payments to be made by the hirer in relation to any period in consideration of the bailment or hiring to him of goods under the agreement.

13. We also propose to change the word 'sum' to 'payment' in section 86B(5)(a) and change the word "pay" to "make". These are further points of clarity to ensure that "payments" as defined are distinguished from default sums and interest payments which are covered separately in sections 86B(5)(b) and 86B(5)(c) respectively.

Impact Assessment

14. The full impact assessment is at Annex D.

15. Section 1 of the LRRA provides that a Minister of the Crown may by order make any provision which he considers would serve the purpose in subsection (2). That subsection provides that the purpose is removing or reducing any burden, or the overall burdens, resulting directly or indirectly for any person from any legislation. Subsection (3) defines burden to include financial cost.

16. Our proposals do not impose any new burdens on industry to those previously identified for the 2006 Act and the 2007 Regulations. The amendments we propose will ensure that the costs of complying with the new post-contract transparency provisions introduced by the 2006 Act are kept to a minimum as industry will be clear about what is required.

17. In the absence of clear definitions of "payments", whichever approach creditors use as the basis for their systems, they run the risk of adverse financial consequences if a Court decides against them. Under section 86D of the 1974 Act the debtor will have no liability to pay interest or default sums in relation to the period of non-compliance and the creditor will be unable to enforce the agreement during this period.

18. 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 of sums in arrears. This cost is estimated to be around £13.2 million in one-off costs and £24 million for annual ongoing costs.[12]

19. 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 creditors. It will also reduce irritation or unnecessary worry or stress for consumers that could arise if creditors were to adopt a wide definition of payments resulting in arrears notices being sent out earlier and more frequently than might otherwise be the case. This could be particularly so if circumstances are such that the debtor does not recognise that they are in arrears, for example, because the two payments relate to default sums rather than regular payments.

Consultation responses – Overview

20. The full BERR response to the consultation is at Annex E.

21. There was widespread support from both industry and consumer groups for the intention behind the proposal to define "payments" for the purpose of issuing notices of sums in arrears. This was welcomed on the basis that it would reduce uncertainty for creditors around the trigger for issuing notices which would both reduce the costs for industry (as they would not be sending as many notices as might otherwise be the case in the absence of clear definitions) and clarify the position for consumers (who might otherwise have been confused as to why they had been issued with a notice when they themselves might not recognise that they were in arrears).

[12] Figures are based on a number of assumptions about the likely additional costs. Industry estimates are used for costs to both large and small businesses (based on a small sample) and aggregated based on membership of the four main consumer credit trade associations (a proxy for the total size of the affected market). It is therefore likely that these are conservative estimates.

22. However, industry was concerned that the proposed definition in the draft Order did not achieve the policy objective emphasising that, to do so, it needed to focus on the regular or periodic nature of the payments provided for under the terms of the agreement rather than the composition of the payments. We agreed and the definitions in the draft Order have been revised accordingly.

Legal Analysis against requirements of the Legislative and Regulatory Reform Act 2006

23. The Minister cannot make the Order under section 1 of the LRRA unless he considers that the preconditions in section 3 are met.

a) The policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means

24. We considered issuing guidance to industry to clarify the definition of "payments" for the purpose of issuing notices of sums in arrears. In the absence of clear definitions 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. 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. We do not, therefore, think that it would an appropriate use of guidance to clarify the ambiguity in this legislation.

25. We also 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 under sections 86B and 86C. It would therefore not be possible to use secondary legislation to define a term laid down in primary legislation which determines the test for issuing notices of sums in arrears.

26. The consultation confirmed this view. The British Bankers Association ("BBA") did not believe that the required level of consistency could be achieved through a non-legislative solution whilst the Trading Standards Institute commented that Trading Standards Authorities had had problems in the past when definitions had not been well defined.

b) The effect of the provision is proportionate to the policy objective

27. We believe that the proposals set out above are proportionate to the policy objectives. Providing definitions of "payments" will provide clarity and legal certainty for industry thus ensuring the original policy intention is achieved. The consultation confirmed this view.

c) The provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it

d) the provision does not remove any necessary protections

28. We believe that the proposals strike a fair balance between the public interest and the interest of any person adversely affected by them. The consultation confirmed this view

29. Under the post-contract transparency requirements included in the 2006 Act creditors will, with effect from 1 October 2008, have an obligation to provide their customers with notices of sums in arrears when those customers fall behind with their payments. This measure was designed to ensure that debtors are provided with information about how to resolve problems at a much earlier stage and are made aware of charges being added to their account.

30. The proposal to provide clear definitions of "payments" simply aims to ensure that the original policy intention in terms of when notices become due is achieved. These proposals do not impact adversely on anyone, however, they do benefit both creditors, in providing clarity on what is required, and consumers who will not be irritated or needlessly worried to receive arrears notices at an earlier stage or more frequently than would otherwise be the case.

d) The provision does not remove any necessary protections

31. The purpose of the proposals is to ensure that the original policy intention in each case is achieved. In doing so no necessary protections are being removed. The consultation confirmed this view. The BBA commented that the proposals would enable consumer protection to be applied practically and with consistency.

e) The provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise

32. As the changes we propose are beneficial to both industry and consumers we do not believe that they would prevent anyone from exercising an existing right or freedom which they might reasonably be expected to continue to exercise. The consultation confirmed this view.

f) The provision is not of constitutional significance

33. The proposals are not of constitutional significance. The consultation confirmed this view.

ANNEX D

Final Impact Assessment

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

URN 08/955

Summary: Intervention & Options

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

Contact for enquiries: Jacqui Entwistle **Telephone:** 020 7215 3970

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.

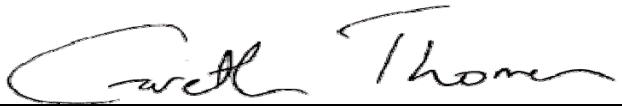
When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

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

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**	Buy-to-let lending meeting the new definition will be exempt from regulation under the 1974 Act. As a consequence the unintended administrative burden on those lenders particularly affected (around 80) will be avoided as they will not be required to make their systems compliant
£ 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**

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)	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

Key: **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**	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.
£ 25.9 million 7	
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**

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

Key: **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 Bill[1] 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 2006[4] 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 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 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	***Results in Evidence Base?***	***Results annexed?***
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

ANNEX E

BERR response to the consultation exercise (including list of stakeholders consulted)

BERR | Department for Business Enterprise & Regulatory Reform

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

BERR response to the consultation on proposals relating to:

- Buy-to-let lending
- Provision of statements
- Definitions of payments

JUNE 2008

URN 08/954

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Annex A - List of consultees and respondents

Annex B – List of consultation questions

Executive Summary

1. The Department for Business, Enterprise and Regulatory Reform (BERR) issued a consultation document in December 2007 in which it proposed a number of amendments to the Consumer Credit Act 1974 (the 1974 Act) as amended by the Consumer Credit Act 2006 (the 2006 Act). These would provide:

    - an exemption from regulation under the 1974 Act for consumer credit agreements for the purpose of buy-to-let;
    - clarification on the giving of statements for fixed-sum credit agreements; and
    - definitions of "payments" for the purpose of issuing notices of sums in arrears.

2. These proposed changes are all corrective measures designed to achieve the original policy intention in each case. The consultation document included a draft Legislative Reform Order (the draft Order) intended to effect these changes.

3. 22 responses were received of which 6 were from trade associations representing the views of their members (who number of 1,000 in total). The overall response to the consultation was very positive with widespread support for the proposals subject to minor changes. The consultation confirmed BERR's view that the proposals would, in all cases, avoid any unnecessary burdens on industry and would not be detrimental to consumers. The proposals were particularly welcomed for their simplicity and clarity.

Introduction

1.1 BERR issued a consultation document on 19 December 2007[13] proposing a number of amendments to the 1974 Act (as amended by the 2006 Act) designed to achieve the original policy intention in each case. The closing date for responses was 12 March 2008.

1.2 A list of the organisations consulted (and highlighting those who responded) is attached at Annex A. Copies of the original responses (unless the respondent has requested non-disclosure) are available on request. Please contact Jacqui Entwistle on 020 7215 3970 or via email at Jacqui.Entwistle@berr.gsi.gov.uk for further information.

1.3 22 responses were received. The breakdown is as follows:

Businesses	9
Trade Associations	7
Consumer organisations	2
Solicitors and legal organisations	2
Government bodies	2

1.4 The written consultation (sent to 101 stakeholders) was also available publicly on the BERR website and supplemented by face-to-face meetings with key stakeholder groups. Although the response level appears low those responses received from trade associations represented the views of their wider membership (who number over 1,000 members in total). Consequently many organisations consulted directly preferred to have their views represented by their trade association rather than responding individually. In addition the Money Advice Trust (MAT) consulted its 9 partner organisations which include Citizens Advice (including Northern Ireland and Scotland), National Debtline and Advice UK.

1.5 BERR is very grateful to all respondents for their feedback. In particular it was very helpful to receive collective, agreed feedback through trade associations and umbrella groups in view of the fact that the main issues raised were of common concern.

1.6 The consultation posed 17 questions in total – 3 sought information to supplement the partial impact assessment, 6 sought views on the policy, 7 on the pre-conditions laid down in the Legislative and Regulatory Reform Act 2006 (LRRA) and the proposed parliamentary scrutiny process and the last invited any other comments not covered elsewhere.

[13] Consumer Credit Act 1974 (as amended by the Consumer Credit Act 2006): Consultation on proposals relating to buy-to-let lending, the provision of statements and the definition of payments. December 2007 URN 07/1633
http://www.berr.gov.uk/consultations/page43129.html

1.7 The responses to the consultation have been carefully considered. This report provides a summary of the views expressed together with BERR's response, where appropriate, to the issues raised.

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1.8 A summary of the questions asked in the consultation document is at Annex B.

2 Background

2.1 The 2006 Act received Royal Assent in March 2006 and amends the 1974 Act. It is designed to help protect consumers and create a fairer, more transparent and competitive credit market.

2.2 The draft Order proposes three main amendments to the 1974 Act as a consequence of provisions introduced by the 2006 Act as follows:

i) An exemption for buy-to-let agreements under the 1974 Act

From 6 April 2008 all consumer credit agreements, regardless of value, are regulated under the 1974 Act unless specifically exempt. Previously a £25,000 threshold was in place at and below which consumer credit agreements were regulated (unless specifically exempted) and above which they were not. As a consequence of this change, consumer credit agreements for the purpose of buy-to-let will come within the scope of the 1974 Act unless exempted elsewhere, for example, through the existing land purchase exemption or the new business and high net worth exemptions. This is an unintended consequence of the 2006 Act and inconsistent with the original policy intention. A transitional provision is in place at present to exempt buy-to-let lending from regulation until such time as the draft Order comes into force.

ii) Clarification on the giving of statements for fixed-sum credit agreements

The original policy intention under the 2006 Act was that a creditor, under a regulated agreement for fixed-sum credit, must give the debtor regular statements each covering a period of up to one year and that these should be given within 30 days of the end of the period to which they relate and should run consecutively. However, the 2006 Act, when taken together with regulation 11 of the Consumer Credit (Information Requirements and Duration of Licences) Regulations 2007 (the 2007 Regulations) defeats this policy intention as the current wording of the 2006 Act does not allow for the provision in the 2007 Regulations which allows the lender 30 days to send the statements.

iii) Inclusion of definitions of "payments" for the purpose of issuing notices of sums in arrears

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 policy intention was that “payments” would cover scheduled instalments/repayment sums and hire “payments” as provided for under the terms of the agreement. However, in the absence of definition of what the word “payments” is supposed to mean, it could be construed more widely than intended and could include those ad hoc sums falling due outside the regular scheduled payments. 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.

2.3 These are all unintended consequences of provisions introduced by the 2006 Act which have come to light since the 2006 Act received Royal Assent in March 2006. BERR considers that the proposals put forward in the consultation document, as now revised in the light of the responses received, will result in increased legal certainty and clarity for industry and avoid unnecessary confusion for consumers.

3 Responses by Question

Question 1: Do you think the proposals will remove or reduce burdens as set out in this consultation paper?

3.1 This question sought comments in relation to the three main proposals in the consultation – the exemption for buy-to-let lending, clarification on the giving of statements for fixed-sum credit agreements and the definitions of “payments” for the purpose of issuing notices of sums in arrears.

3.2 Many respondents did not answer this question directly but it appears implicit from their responses to questions 4 -9 that they agree with the views expressed below.

3.3 8 respondents answered in relation to the proposed exemption for buy-to-let lending. They were unanimous that the proposal would avoid unnecessary burdens on industry. The Council of Mortgage Lenders (CML) emphasised the cost to industry without the proposal - £100 million in one-off transitional costs and £500,000 per annum ongoing costs. In addition they highlighted the legal uncertainty that would exist with some buy-to-let loans being regulated and others not depending on their circumstances. This in turn could inhibit product diversity and customer choice and may push some smaller lenders out of the market altogether. The Trading Standards Institute (TSI) welcomed the proposal on the basis that it allowed buy-to-let lending to be consistent with Government policy on mortgages.

3.4 9 respondents answered in relation to the proposal to clarify the giving of statements for fixed-sum credit agreements. Again there was unanimity that the proposal would reduce the burdens on industry. It was

welcomed on the basis of the clarification and simplification it provided and the customer confusion it would avoid. The British Bankers' Association (BBA) supported the proposal commenting that it would reduce and remove burdens by aligning the legislation with the original policy intention. The Royal Bank of Scotland (RBS) agreed adding that it would assist lenders by greatly simplifying the legislative burden (as evidenced in systems and operational processes) without in any way affecting or being detrimental to consumers who would still receive their annual statements as originally intended under the 2006 Act.

3.5 8 respondents answered in relation to the proposal for definitions of "payments" for the purpose of issuing notices of sums in arrears. All were agreed that the proposal would reduce the burdens on industry. Lloyds TSB commented that the change was necessary to avoid industry having to send statements at a much greater frequency involving considerably increased costs and increasing customer confusion. The need for legal certainty and avoiding customer confusion were points made throughout the consultation responses.

Question 2: Do you have any views regarding the expected benefits of the proposals as set out in this consultation document?

3.6 This question sought comments in relation to the three main proposals in the consultation. As for Question 1 many respondents did not answer this question directly preferring to provide information on the benefits in their fuller responses to questions 4 - 9.

3.7 5 respondents answered in relation to the exemption for buy-to-let lending. The main benefits were seen as clarification, legal certainty and reduced administrative costs for lenders and a well-performing buy-to-let market operating on a level playing field offering competitive and innovative products to customers. The Civil Courts Users Association (CCUA) commented that the expected benefits should be beneficial to all parties in terms of clarification and administrative costs.

3.8 4 respondents answered in relation to the proposal to provide clarification on the giving of statements for fixed-sum credit agreements. RBS commented that such clarification would be helpful with regard to the implementation of systems and operational processes that were not unnecessarily complicated. The TSI saw the main benefit as lenders adopting a common approach which would make it easier for customers to make comparisons between lenders.

3.9 5 respondents answered in relation to the proposal for definitions of "payments" for the purpose of issuing notices of sums in arrears. The BBA saw the main benefit to industry as greater legal certainty as to what constitutes a trigger for the purposes of issuing a notice. This certainty would also benefit customers as it would reduce confusion and worry as they would understand the basis on which they were receiving notices and would not receive as many as they could otherwise have

done. The TSI welcomed the proposal commenting that it contributed to greater transparency in the consumer credit market and so offered greater protection.

Question 3: If there is any further empirical evidence that you are aware of that supports the need for these reforms please provide details here.

3.10 Those respondents who provided additional empirical evidence asked that this not be disclosed. There were no further direct responses to this question but elsewhere in responses to other questions there was general agreement with the cost benefit analysis presented in the partial Impact Assessment which accompanied the consultation document.

Question 4: Do you have any comments on the form of the proposed exemption for buy-to-let lending?

3.11 13 respondents answered this question with widespread support for the proposal. CML welcomed the proposal for its simplicity and clarity whilst Standard Life felt that it was particularly good that a vague and ambiguous definition of a buy-to-let mortgage had been avoided. 4 respondents welcomed in particular the fit with mortgage policy and the existing definition of a Regulated Mortgage Contract (RMC) under the Financial Services and Markets Act (FSMA). The TSI commented that this will reduce confusion by those affected by both the 1974 Act and FSMA. The Local Authority Coordinators of Regulatory Services (LACORS) supported the proposal on the basis that a failure to do this would probably result in a withdrawal of products from the market and a consequent decrease in the availability of accommodation.

3.12 **BERR therefore confirms its proposed intention to amend the 1974 Act to provide an exemption from regulation for buy-to-let loans meeting the specified conditions.**

3.13 A number of respondents to both the written consultation and in stakeholder meetings during the consultation period were concerned that the new section 16C(2) (which provides for the less than 40% occupancy test for buy-to-let) should include the words at the time the agreement is entered into. This would be consistent with the definition of an RMC under FSMA and would provide clarity that the condition only applied at the time the agreement was entered into and was not applicable subsequently should the use of the property change.

3.14 **BERR agreed and the draft Order has been amended accordingly.**

Question 5: Do you have any comments on our proposal to include a declaration for the purpose of buy-to-let lending?

Question 6: Do you have any comments on the proposed form of a declaration for the purpose of buy-to-let lending?

3.15 13 respondents answered these two questions (responses were generally interchangeable between the two) and there was considerable discussion at stakeholder group meetings during the consultation period. Non-industry respondents were supportive of the proposal to allow for a declaration. TSI and LACORS supported the proposal as it followed the precedents set for the new business and high net worth exemptions introduced on 6 April 2008 whilst MAT welcomed it on the basis that it would make it clear to borrowers that they were entering a non-regulated buy-to-let agreement.

3.16 However, industry respondents were unanimous in their concern to allow for a formal declaration as proposed. The main concern was that such a declaration did not sit comfortably with existing mortgage documentation and practice (too prescriptive, legalistic and not user-friendly). It was also pointed out that there could be practical difficulties in getting the declaration signed, particularly with the increasing use of online applications (where a signature is not required) and the possible introduction by the Land Registry of e-conveyancing using e-signatures. Industry told us that having to get the declaration signed would increase the administrative burden and require costly system and forms changes estimated at around £2 million per annum which in turn would lead to increased product costs to the borrower.

3.17 A number of other issues were also raised by industry respondents. For example, Lovells pointed out that no similar notice or declaration is required for buy-to-let lending exempted from regulation under the existing land purchase exemption in section 16 of the 1974 Act. This gives rise to the anomalous situation whereby a lender who is able to use the land purchase exemption under section 16(1) of the 1974 Act would not have the option to require a declaration whereas a lender using the new buy-to-let exemption would (although the new business exemption does provide for the option to use an declaration). Standard Life saw some benefits in the use of a declaration but questioned how much use it would be in practice as very few customers will be familiar with the protections available under the 1974 Act and are therefore unlikely to provide an informed response on the declaration.

3.18 **BERR has considered carefully the representations made in response to the consultation and has decided not to proceed with this proposal. We agree that the original proposal for a formal declaration would not sit comfortably with existing mortgage documentation and practice and, as such, a formal declaration would not be practicable. In the light of industry concerns about the form of the declaration we explored with industry the options for a more workable solution. However we were unable to identify a non-legislative solution that would be effective or a legislative one that would not impose additional costs on industry or go further than the requirements for other exemptions. We were also concerned that any option would cut across our objective to achieve a level playing field in the buy-to-let market as some**

lenders able to use existing exemptions could be put at a competitive advantage if not required to incur the costs of a declaration or similar notice. Furthermore the consultation did not demonstrate that there was any evidence to suggest that such a requirement is needed for this exemption. Around 99% of buy-to-let investors are represented by either a solicitor or licensed conveyancer in the transaction and consequently the risks for these customers are less than those in other consumer credit transactions where they are not represented.

Question 7: Do you have any comments on our proposal to amend section 82 of the 1974 Act to ensure that buy-to-let lending is not inadvertently brought into regulation?

3.19 8 respondents answered this question. All were agreed that the amendment to section 82 of the 1974 Act was necessary to ensure that buy-to-let agreements were not unintentionally brought into regulation and that the proposal would appear to achieve this. The Yorkshire Building Society commented that it was crucial that other parts of the 1974 Act did not accidently cause buy-to-let agreements to become regulated. The Bank of Ireland said that lenders cannot have uncertainty. If they feel that section 82 might apply they could be forced to decline an application from a buy-to-let customer for a variation on their mortgage. This would not be in the best interests of customers but the Bank could not afford to take the risk of systemic unenforceability across a significant section of its buy-to-let book if it were to agree to variations en masse without proper regard to section 82.

3.20 **BERR therefore confirms its proposed intention to amend section 82 of the 1974 Act as set out in the consultation.**

Question 8: Do you have any comments on our proposals to clarify the position on statements for fixed-sum credit agreements?

3.21 15 respondents answered this question. There was unanimous support from both industry and consumer groups for this proposal which was seen as providing much needed clarity for both industry and consumers. The Finance and Leasing Association (FLA) commented that without this clarification lenders will vary as regards the length of statements – some members were considering 6 monthly statements and others 11 month statements. The Institute of Credit Managers (ICM) commented that the proposed change eliminates any confusion and brings the rules into line with normal business practice governing statements. The Bank of Ireland welcomed the clarification saying that getting it wrong was not an option for lenders as the sanctions were very harsh. MAT considered the proposals to be eminently sensible.

3.22 However, there was widespread concern (mainly articulated in stakeholder meetings during the consultation period) that, whilst the proposals address the situation for new agreements after 1 October

2008 when the provisions come in to force, the wording of the transitional provision (article 5(2)) for agreements in existence prior to 1 October 2008 could give rise to problems in relation to the first statement issued after that date. In summary industry respondents were concerned that the wording in the draft Order did not give them the flexibility to, in cases where statements were not previously given, either:

- cover a period of longer than 12 months which would enable historical information to be included in the statement bringing the customer fully up-to-date with their account; or
- cover a period of less than 12 months from the date of commencement to allow lenders to stagger statement periods throughout the year to avoid all statement periods starting on 1 October 2008.

Furthermore, where regular statements were already provided lenders wanted the flexibility to be able to continue with existing annual statements periods where these crossed over 1 October 2008, for example, 1 July 2007 to 30 June 2008.

3.23 **BERR agreed and has now restated its policy position on the transitional provision for agreements in existence prior to 1 October 2008 to reflect industry concerns and revised the draft Order accordingly. This was subject to a further limited consultation (during the formal consultation) and has been widely welcomed. BERR believes that this increased flexibility clarifies the position for lenders as well as avoiding unnecessary administrative burdens. It also avoids confusion for customers who will either continue to receive statements covering the same periods as now or, if receiving their first statement under the agreement, will receive information dating back to when the agreement was taken out.**

Question 9: Do you have any comments on our proposals to define "payments" for the purpose of issuing notices of sums in arrears?

3.24 13 respondents answered this question. There was widespread support from both industry and consumer groups for the intention behind the proposal to define "payments". This was welcomed on the basis that it would reduce the uncertainty for lenders around the trigger for issuing notices of sums in arrears which would both reduce the costs to industry (as they would not be sending as many notices as might otherwise be the case in the absence of clear definitions) and clarify the position for consumers (who might otherwise have been confused as to why they had been issued with a notice when they themselves might not have recognised that they were in arrears, for example because the arrears related to two default sums rather than two regular payments).

3.25 However, this support was tempered by industry concern that the proposed definition in the draft Order did not achieve the policy objective. The BBA and FLA both emphasised the need for the

definition to focus on the periodic nature of the payments provided for under the terms of the agreement rather than the amounts or nature of the payments.

3.26 **BERR noted these concerns and has agreed with industry revised definitions of "payments" to achieve the original policy objective and remove the ambiguity that currently exists. The definitions of "payments" for fixed-sum and running account credit agreements now refer to payments made at predetermined intervals provided for under the terms of the agreement. In relation to consumer hire agreements the definition refers to any payments to be made by the hirer in relation to any period in consideration of the bailment or hiring to him of goods under the agreement.**

3.27 A number of respondents emphasised the need for the definitions of "payments" in the draft Order to follow through to the 2007 Regulations where "payments" is, in places, used in a different context and therefore requires clarification.

3.28 **BERR agreed and is addressing this as part of the work to amend the 2007 Regulations before 1 October 2008 when they are due to come into force.**

Question 10: Are there any non-legislative means that would satisfactorily remedy the difficulties that the proposals in this consultation paper intend to address?

3.29 11 respondents answered this question. All were agreed that the issues addressed in the consultation could not be remedied by any means other than legislation. RBS said that in view of the complexity and legal importance of the proposed changes they considered that any non-legislative proposals would not provide a satisfactory solution. More specifically:

- On the proposal for an exemption for buy-to-let lending CML commented that there was no viable non-legislative solution to the problem of partial regulation of buy-to-let lending under the 1974 Act. This is an unintended legal consequence of removing the £25,000 limit and can only be dealt with by amending the relevant legislation.

- On the proposal to clarify the giving of statements Lovells commented that as the problem was caused by the drafting of section 77A and its interaction with other legislative measures, legislative means must be used to cure the issue.

- On the proposal for definitions of "payments" the BBA did not believe that the required level of consistency could be achieved through a non-legislative solution. The TSI had concerns about using guidance to address this issue as it was not binding and Trading Standards

Authorities had had problems in the past when definitions had not been well defined.

Question 11: Are the proposals put forward in this consultation document proportionate to the policy objective?

3.30 12 respondents answered this question. All were agreed that the proposals in all three cases represented a proportionate response to the policy objectives.

- On the proposal for an exemption for buy-to-let lending CML commented that the consequence of doing nothing would be significant costs to industry which would be passed onto borrowers as well as a reduced choice of products and providers in the buy-to-let market. By contrast they considered that the proposed solution was a modest amendment with effects that did not go beyond the problem it was intended to address.

- On the proposals to clarify the giving of statements and for definitions of "payments" the BBA considered that the proposals were essential if the original policy intention was to be achieved.

Question 12: Do the proposals put forward in this consultation document taken as a whole provide a fair balance between the public interest and any person adversely affected by them?

3.31 12 respondents answered this question. All agreed that the proposals do provide a fair balance between the public interest and any person adversely affected by them.

- On the proposal for an exemption for buy-to-let lending CML believed that the public interest would be well served by dealing with this legislative anomaly. The solution would enable the full range of lenders to efficiently fund investment in the private rented sector on terms that would contribute to continued expansion and improvements in standards. They did not see a threat to the public interest in avoiding the unnecessary costs of regulating what are essentially commercial transactions.

  Furthermore CML said that, without the exemption there would be no level playing field for lenders in the buy-to-let market with competitive advantage for some. Those lenders not qualifying for an exemption elsewhere included some of the largest lenders in the buy-to-let market. It could not therefore be in the interest of borrowers for a significant and innovative group of lenders to be edged out of the market through their products being forced to bear the cost of regulation not borne by their competitors.

- On the proposal to clarify the giving of statements the TSI felt that that it was important for borrowers to be kept informed of any activity

on their account and that lenders should hopefully benefit from a reduced amount of indebtedness as a result.

Question 13: Do the proposals put forward in this consultation document remove any necessary protections?

3.32 12 respondents answered this question. With the exception of Citizens' Advice and the MAT (see below) all were agreed that no necessary protections were being removed under any of the proposals. RBS commented that the proposals would assist lenders as they would greatly simplify the legislative burden (as evident in systems and operational processes) without in any way affecting or being detrimental to consumers.

- On the proposal for an exemption for buy-to-let lending Lovells observed that in most cases borrowers obtain legal advice when entering into a transaction and would therefore be fully aware of the nature of the commitment they were entering into. The lack of a consideration period under section 58 was unlikely to adversely impact on the borrowers' position as in most circumstances the transaction will be taking place over a period of time with delay between offer and acceptance of any loan. Lenders are required by other legislation to ensure agreements are fair and transparent and so the documentation requirements of the 1974 Act do not necessarily provide additional protections. In addition the borrower will continue to benefit from the unfair relationship test which will provide significant protection to all aspects of the borrowers' dealings with the lender.

  However, Citizens' Advice and MAT felt that, whilst the proposals would remove regulatory burdens, this was at the expense of protection for consumers. They claimed that buy-to-let investors do enter into high risk agreements and that buy-to-let properties sold at a loss resulting in a shortfall on the loan means that the lender can enforce the debt against the equity in other properties belonging to the borrower including their own home.

  Citizens' Advice welcomed the protections that will continue to apply to buy-to-let investors (the unfair relationships test and the opportunity to complain to the OFT if the lenders actions suggest they are unfit to hold a licence). However they would also like to see time-order provisions applying to buy-to-let mortgages in arrears as they consider that this could provide protection for consumers from the loss of property if a Court considers it just to do so.

  BERR noted these concerns. It was never BERR's intention to regulate buy-to-let lending secured by a charge on the property where the owner or relative intends to occupy less than 40% of the property. The Government is not aware of any evidence to suggest that such mortgages should be regulated.

The time order provisions of the 1974 Act apply only to regulated consumer credit agreements, unlike the unfair relationships test and recourse to the OFT which can apply to credit agreements more widely. It would not therefore be appropriate to apply the time order provisions to unregulated buy-to-let agreements.

Buy-to-let is a commercial venture and consequently the risks associated with such a venture (including the risk to the investor's own home) are no different to those for other types of business venture or other forms of debt, regulated or otherwise. We are not, therefore, convinced that regulation, partial or otherwise, under the 1974 Act would address these concerns. Furthermore the specific buy-to-let exemption is designed to achieve a level playing field in the buy-to-let market. The vast majority of buy-to-let agreements are already outside the scope of the 1974 Act under or by virtue of existing exemptions in section 16 of that Act such as the land purchase and new business and high net worth exemptions. This further exemption will ensure that all such lending, where secured by a charge on the property and meeting the 40% occupancy test, will be exempt from regulation.

Buy-to-let funds the private rented sector - 89% of buy-to-let stock is owned by 23% of landlords and run on a fully professional basis. If that venture is failing for any reason it is important for the borrower to work closely with the lender to protect the value of the property and the well-being of the tenant. For this reason many lenders use the Law of Property Act (LPA) receiver route rather than formal possession proceedings. The LPA receiver will run the property in the best interests of the landlord and, once the property is under control, will return it to the landlord if the lender is convinced that the borrower can now manage their affairs. Where repossession is chosen as opposed to receivership then certain protections exist under section 36 of the Administration of Justice Act 1970 including power by the Courts to suspend an Order.

- On the proposals to clarify the giving of statements and for definitions of "payments" the FLA commented that they saw no loss of consumer protection, rather that the proposals would enable consumers to assess better their financial situation and compare the value they are receiving from lenders on a like-for-like basis. The BBA added that the proposals would enable the consumer protections to be applied practically and with consistency.

Question 14: Do the proposals put forward in this consultation prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise?

3.33 10 respondents answered this question and all were agreed that the proposals would not prevent any person from continuing to exercise any right or freedom which they might reasonably be expected to continue to exercise.

Question 15: Do you consider the provisions of the proposals to be constitutionally significant?

3.34 10 respondents answered this question and all agreed that the proposals were not constitutionally significant.

Question 16: On the basis of the information provided on each of the LRO procedures in Chapter 6 do you agree with our view that the affirmative procedure should apply to scrutiny of this proposal?

3.35 14 respondents answered this question and all were agreed that the affirmative procedure should apply to scrutiny of this proposal.

Question 17: Are there any further comments you would like to make in relation to any aspect of this consultation not specifically covered in the questions here?

3.36 Berwin Leighton Paisner (BLP) raised a concern that the proposed exemption of consumer credit agreements secured by land mortgages on land outside the UK does not appear to be part of, or consistent with, the underlying proposal to exempt buy-to-let lending.

3.37 **Whilst raised by only one respondent, BERR has considered this point carefully and decided that such a wider ranging exemption as proposed in section 16C(1), which we agree goes beyond the proposal to provide an exemption for buy-to-let lending, requires separate more detailed consideration of the wider ramifications and desirability. The proposal for an exemption for consumer credit agreements secured on land outside the UK has therefore now been restricted to agreements that meet the conditions for buy-to-let.**

ANNEX A

List of consultees

Abbey
Addleshaw Goddard
Advice UK
Alliance & Leicester Commercial Bank
American Express
APACS - the UK payments association
Argos
ARVAL
Association of Chartered Certified Accountants
Association of Finance Brokers
Association of Mortgage Intermediaries
Bank of East Asia
Bank of Ireland
Bank of Ireland UK Financial Services *
Barclaycard
Barclays
Beadles Group Ltd
Berwin Leighton Paisner *
Bradford & Bingley
British Bankers Association *
British Cheque Cashers Association
British Retail Consortium
Capital One
Cattles plc *
Chartered Institute of Public Finance & Accountancy
Church Action on Poverty
Citizens Advice *
Citizens Advice Scotland
City of Edinburgh Council
Clifford Chance LLP
Clydesdale Financial Services
Competition Commission
Consumer Council for Northern Ireland
Consumer Credit Association
Consumer Credit Trade Association of the UK
Co-operative Bank (The)
Creation Financial Services
Council of Mortgage Lenders *
Debt Buyers & Sellers Group
Debt on our Doorstep
Department of Enterprise, Trade & Investment, Northern Ireland
Egg
Ernst & Young
Eversheds LLP
Fidelity National Financial
Finance and Leasing Association *

Finance Industry Standards Association
Financial Ombudsman Service
Financial Services Authority
General Electric
Gough Square Chambers
Halifax
Haydock Finance
HBOS plc
Her Majesty's Courts Service
Her Majesty's Treasury
HFC Bank
Hitachi Capital
HSBC *
igroup
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants in Ireland
Institute of Chartered Accountants of Scotland
Institute of Money Advisers
Jackson Cohen Associates
Kent County Council
Law Commission
Law Society of England & Wales
Law Society of Northern Ireland
Lester Aldridge Solicitors
Law Society of Scotland
Liverpool Victoria
LloydsTSB *
Lobby and Law
Local Authorities Coordinators of Regulatory Services (LACORS) *
Lovells *
M&S Money
Macfarlanes
Ministry of Justice
Money Advice Association
Money Advice Scotland
National Consumer Council
National Pawnbrokers Association (UK)
Nationwide Trust
Northern Ireland Court Service
Northern Rock
Office of Fair Trading
Olympian Financial Ltd
Picture Financial
Provident Financial
Royal Bank of Scotland *
Scottish Consumer Council
Scottish Executive
Scottish Trading Standards Institute
Society of Motor Manufacturers and Traders
Swift

The Chartered Institute of Management Accountants
Trading Standards Institute *
Welsh assembly Government
Welsh Consumer Council
Which?

* Consultees who responded

Additional respondents

Association of Mortgage Intermediaries
Civil Courts Users Association
Credit Services Association
Institute of Credit Management
Money Advice Trust
Resolution Management Services Ltd
St Helens Finance plc
Standard Life
Yorkshire Building Society

ANNEX B

Summary of question asked in the consultation

Question 1: Do you think the proposals will remove or reduce burdens as set out in this consultation paper?

Question 2: Do you have any views regarding the expected benefits of the proposals as set out in this consultation document?

Question 3: If there is any further empirical evidence that you are aware of that supports the need for these reforms please provide details here.

Question 4: Do you have any comments on the form of the proposed exemption for buy-to-let lending?

Question 5: Do you have any comments on our proposal to include a declaration for the purpose of buy-to-let lending?

Question 6: Do you have any comments on the proposed form of a declaration for the purpose of buy-to-let lending?

Question 7: Do you have any comments on our proposal to amend section 82 of the 1974 Act to ensure that buy-to-let lending is not inadvertently brought into regulation?

Question 8: Do you have any comments on our proposals to clarify the position on statements for fixed-sum credit agreements?

Question 9: Do you have any comments on our proposals to define payments for the purpose of issuing notices of sums in arrears?

Question 10: Are there any non-legislative means that would satisfactorily remedy the difficulties that the proposals in this consultation paper intend to address?

Question 11: Are the proposals put forward in this consultation document proportionate to the policy objective?

Question 12: Do the proposals put forward in this consultation document taken as a whole provide a fair balance between the public interest and any person adversely affected by them?

Question 13: Do the proposals put forward in this consultation document remove any necessary protections?

Question 14: Do the proposals put forward in this consultation prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise?

Question 15: Do you consider the provisions of the proposals to be constitutionally significant?

Question 16: On the basis of the information provided on each of the LRO procedures in Chapter 6 do you agree with our view that the affirmative procedure should apply to scrutiny of this proposal?

Question 17: Are there any further comments you would like to make in relation to any aspect of this consultation not specifically covered in the questions here?

ANNEX F

Keeling Schedule: Consumer Credit Act 1974 prior to amendment by the Legislative Reform (Consumer Credit) Order 2008

KEELING SCHEDULE : Legislation prior to amendment by the Legislative Reform (Consumer Credit) Order 2008

Consumer Credit Act 1974

8 Consumer credit agreements

(1) A *personal* [consumer] credit agreement is an agreement between an individual ("the debtor") and any other person ("the creditor") by which the creditor provides the debtor with credit of any amount.

(2) *A consumer credit agreement is a personal credit agreement by which the creditor provides the debtor with credit not exceeding* [*£25,000*].

(3) A consumer credit agreement is a regulated agreement within the meaning of this Act if it is not an agreement (an "exempt agreement") specified in or under section 16[, 16A or 16B].

NOTES
Initial Commencement
Royal Assent

Royal Assent: 31 July 1974: (no specific commencement provision).
Amendment

Sub-s (1): word "personal" in italics repealed and subsequent word in square brackets substituted by the Consumer Credit Act 2006, s 2(1)(a).

Date in force (for certain purposes): 6 April 2008: see SI 2008/831, arts 2, 3(1), Schs 1, 2; for transitional provisions see art 4 thereof.
Date in force (for remaining purposes): 1 October 2008: see SI 2008/831, art 3(2), Sch 3; for transitional provisions see art 4 thereof.

Sub-s (2): repealed by the Consumer Credit Act 2006, ss 2(1)(b), 70, Sch 4.

Date in force (for certain purposes): 6 April 2008: see SI 2008/831, arts 2, 3(1), Schs 1, 2; for transitional provisions see art 4 thereof.
Date in force (for remaining purposes): 1 October 2008: see SI 2008/831, art 3(2), Sch 3; for transitional provisions see art 4 thereof.

Sub-s (2): sum "£25,000" in square brackets substituted by SI 1983/1878, Schedule, Pt II, as amended by SI 1998/996, art 2.

Date in force: 1 May 1998: see SI 1998/996, art 1.

Sub-s (3): words ", 16A or 16B" in square brackets inserted by the Consumer Credit Act 2006, s 5(1).

Date in force: 6 April 2008: see SI 2007/3300, art 3(2), Sch 2.

[77A Statements to be provided in relation to fixed-sum credit agreements]

[(1) The creditor under a regulated agreement for fixed-sum credit—

(a) shall, within the period of one year beginning with the day after the day on which the agreement is made, give the debtor a statement under this section; and

(b) after the giving of that statement, shall give the debtor further statements under this section at intervals of not more than one year.

(2) Regulations may make provision about the form and content of statements under this section.

(3) The debtor shall have no liability to pay any sum in connection with the preparation or the giving to him of a statement under this section.

(4) The creditor is not required to give the debtor any statement under this section once the following conditions are satisfied—

(a) that there is no sum payable under the agreement by the debtor; and

(b) that there is no sum which will or may become so payable.

(5) Subsection (6) applies if at a time before the conditions mentioned in subsection (4) are satisfied the creditor fails to give the debtor—

(a) a statement under this section within the period mentioned in subsection (1)(a); or

(b) such a statement within the period of one year beginning with the day after the day on which such a statement was last given to him.

(6) Where this subsection applies in relation to a failure to give a statement under this section to the debtor—

(a) the creditor shall not be entitled to enforce the agreement during the period of non-compliance;

(b) the debtor shall have no liability to pay any sum of interest to the extent calculated by reference to the period of non-compliance or to any part of it; and

(c) the debtor shall have no liability to pay any default sum which (apart from this paragraph)—

(i) would have become payable during the period of non-compliance; or

(ii) would have become payable after the end of that period in connection with a breach of the agreement which occurs during that period (whether or not the breach continues after the end of that period).

(7) In this section "the period of non-compliance" means, in relation to a failure to give a statement under this section to the debtor, the period which—

(a) begins immediately after the end of the period mentioned in paragraph (a) or (as the case may be) paragraph (b) of subsection (5); and

(b) ends at the end of the day on which the statement is given to the debtor or on which the conditions mentioned in subsection (4) are satisfied, whichever is earlier.

(8) This section does not apply in relation to a non-commercial agreement or to a small agreement.]

NOTES

Amendment

Inserted by the Consumer Credit Act 2006, s 6.

Date in force (in so far as relating to sub-s (2)): 16 June 2006: see SI 2006/1508, art 3(1), Sch 1; for transitional provisions see the Consumer Credit Act 2006, s 69(1), Sch 3, paras 1, 2. Date in force (for remaining purposes): 1 October 2008: see SI 2007/3300, art 3(3), Sch 3; for transitional provisions see the Consumer Credit Act 2006, s 69(1), Sch 3, paras 1, 2.

82 Variation of agreements

(1) Where, under a power contained in a regulated agreement, the creditor or owner varies the agreement, the variation shall not take effect before notice of it is given to the debtor or hirer in the prescribed manner.

(2) Where an agreement (a "modifying agreement") varies or supplements an earlier agreement, the modifying agreement shall for the purposes of this Act be treated as—

(a) revoking the earlier agreement, and

(b) containing provisions reproducing the combined effect of the two agreements,

and obligations outstanding in relation to the earlier agreement shall accordingly be treated as outstanding instead in relation to the modifying agreement.

[(2A) Subsection (2) does not apply if [the earlier agreement or] the modifying agreement is an exempt agreement as a result of section 16(6C).]

(3) If the earlier agreement is a regulated agreement but (apart from this subsection) the modifying agreement is not then, [unless the modifying agreement is—

(a) for running account credit; or

(b) an exempt agreement as a result of section 16(6C),

it shall be treated as a regulated agreement].

(4) If the earlier agreement is a regulated agreement for running-account credit, and by the modifying agreement the creditor allows the credit limit to be exceeded but intends the excess to be merely temporary, Part V (except section 56) shall not apply to the modifying agreement.

(5) If—

(a) the earlier agreement is a cancellable agreement, and

(b) the modifying agreement is made within the period applicable under section 68 to the earlier agreement,

then, whether or not the modifying agreement would, apart from this subsection, be a cancellable agreement, it shall be treated as a cancellable agreement in respect of which a notice may be served under section 68 not later than the end of the period applicable under that section to the earlier agreement.

[(5A) Subsection (5) does not apply where the modifying agreement is an exempt agreement as a result of section 16(6C).]

(6) Except under subsection (5), a modifying agreement shall not be treated as a cancellable agreement.

(7) This section does not apply to a non-commercial agreement.

NOTES

Initial Commencement

Royal Assent

Royal Assent: 31 July 1974: (no specific commencement provision).

Amendment

Sub-s (2A): inserted by SI 2005/2967, art 2(1), (2).

Date in force: 16 November 2005: see SI 2005/2967, art 1.

Sub-s (2A): words “the earlier agreement or” in square brackets inserted by SI 2008/733, art 2.

Date in force: 6 April 2008: see SI 2008/733, art 1.

Sub-s (3): words from “unless the modifying” to “a regulated agreement” in square brackets substituted by SI 2005/2967, art 2(1), (3).

Date in force: 16 November 2005: see SI 2005/2967, art 1.

Sub-s (5A): inserted by SI 2005/2967, art 2(1), (4).

Date in force: 16 November 2005: see SI 2005/2967, art 1.

[86B Notice of sums in arrears under fixed-sum credit agreements etc]

[(1) This section applies where at any time the following conditions are satisfied—

(a) that the debtor or hirer under an applicable agreement is required to have made at least two payments under the agreement before that time;

(b) that the total sum paid under the agreement by him is less than the total sum which he is required to have paid before that time;

(c) that the amount of the shortfall is no less than the sum of the last two payments which he is required to have made before that time;

(d) that the creditor or owner is not already under a duty to give him notices under this section in relation to the agreement; and

(e) if a judgment has been given in relation to the agreement before that time, that there is no sum still to be paid under the judgment by the debtor or hirer.

(2) The creditor or owner—

(a) shall, within the period of 14 days beginning with the day on which the conditions mentioned in subsection (1) are satisfied, give the debtor or hirer a notice under this section; and

(b) after the giving of that notice, shall give him further notices under this section at intervals of not more than six months.

(3) The duty of the creditor or owner to give the debtor or hirer notices under this section shall cease when either of the conditions mentioned in subsection (4) is satisfied; but if either of those conditions is satisfied before the notice required by subsection (2)(a) is given, the duty shall not cease until that notice is given.

(4) The conditions referred to in subsection (3) are—

(a) that the debtor or hirer ceases to be in arrears;

(b) that a judgment is given in relation to the agreement under which a sum is required to be paid by the debtor or hirer.

(5) For the purposes of subsection (4)(a) the debtor or hirer ceases to be in arrears when—

(a) no sum, which he has ever failed to pay under the agreement when required, is still owing;

(b) no default sum, which has ever become payable under the agreement in connection with his failure to pay any sum under the agreement when required, is still owing;

(c) no sum of interest, which has ever become payable under the agreement in connection with such a default sum, is still owing; and

(d) no other sum of interest, which has ever become payable under the agreement in connection with his failure to pay any sum under the agreement when required, is still owing.

(6) A notice under this section shall include a copy of the current arrears information sheet under section 86A.

(7) The debtor or hirer shall have no liability to pay any sum in connection with the preparation or the giving to him of a notice under this section.

(8) Regulations may make provision about the form and content of notices under this section.

(9) In the case of an applicable agreement under which the debtor or hirer must make all payments he is required to make at intervals of one week or less, this section shall have effect as if in subsection (1)(a) and (c) for "two" there were substituted "four".

(10) If an agreement mentioned in subsection (9) was made before the beginning of the relevant period, only amounts resulting from failures by the debtor or hirer to make payments he is required to have made during that period shall be taken into account in determining any shortfall for the purposes of subsection (1)(c).

(11) In subsection (10) "relevant period" means the period of 20 weeks ending with the day on which the debtor or hirer is required to have made the most recent payment under the agreement.

(12) In this section "applicable agreement" means an agreement which—

(a) is a regulated agreement for fixed-sum credit or a regulated consumer hire agreement; and

(b) is neither a non-commercial agreement nor a small agreement.]

NOTES

Amendment

Inserted by the Consumer Credit Act 2006, s 9.

Date in force (in so far as relating to sub-s (8)): 16 June 2006: see SI 2006/1508, art 3(1), Sch 1; for transitional provisions see the Consumer Credit Act 2006, s 69(1), Sch 3, paras 1, 6. Date in force (for remaining purposes): 1 October 2008: see SI 2007/3300, art 3(3), Sch 3; for transitional provisions see the Consumer Credit Act 2006, s 69(1), Sch 3, paras 1, 6.

[86C Notice of sums in arrears under running-account credit agreements]

[(1) This section applies where at any time the following conditions are satisfied—

(a) that the debtor under an applicable agreement is required to have made at least two payments under the agreement before that time;

(b) that the last two payments which he is required to have made before that time have not been made;

(c) that the creditor has not already been required to give a notice under this section in relation to either of those payments; and

(d) if a judgment has been given in relation to the agreement before that time, that there is no sum still to be paid under the judgment by the debtor.

(2) The creditor shall, no later than the end of the period within which he is next required to give a statement under section 78(4) in relation to the agreement, give the debtor a notice under this section.

(3) The notice shall include a copy of the current arrears information sheet under section 86A.

(4) The notice may be incorporated in a statement or other notice which the creditor gives the debtor in relation to the agreement by virtue of another provision of this Act.

(5) The debtor shall have no liability to pay any sum in connection with the preparation or the giving to him of the notice.

(6) Regulations may make provision about the form and content of notices under this section.

(7) In this section "applicable agreement" means an agreement which—

(a) is a regulated agreement for running-account credit; and

(b) is neither a non-commercial agreement nor a small agreement.]

NOTES

Amendment

Inserted by the Consumer Credit Act 2006, s 10.

Date in force (in so far as relating to sub-s (6)): 16 June 2006: see SI 2006/1508, art 3(1), Sch 1; for transitional provisions see the Consumer Credit Act 2006, s 69(1), Sch 3, paras 1, 7. Date in force (for remaining purposes): 1 October 2008: see SI 2007/3300, art 3(3), Sch 3; for transitional provisions see the Consumer Credit Act 2006, s 69(1), Sch 3, paras 1, 7.

189 Definitions

(1) In this Act, unless the context otherwise requires—

…….

"exempt agreement" means an agreement specified in or under section 16

[, 16A or 16B];

Consumer Credit Act 2006

SCHEDULE 3
TRANSITIONAL PROVISION AND SAVINGS

Section 69

Statements to be provided in relation to regulated agreements

2 (1) Section 77A of the 1974 Act applies in relation to agreements whenever made.

(2) Section 77A shall have effect in relation to agreements made before the commencement of section 6 of this Act as if the period mentioned in subsection (1)(a) were the period of one year beginning with the day of the commencement of section 6.

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

11

(1) Where the statement is the first given under section 77A of the 1974 Act in relation to an agreement made on or after 1 October 2008 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 subsequent statement is given.

NOTES
Initial Commencement
Specified date Specified date: 1 October 2008: see reg 1(3).

ANNEX G

Keeling Schedule: Consumer Credit Act 1974 as amended by the proposed Legislative Reform (Consumer Credit) Order 2008

KEELING SCHEDULE : Consumer Credit Act 1974 as amended by the proposed Legislative Reform (Consumer Credit) Order 2008

(changes are shown in bold)

8 Consumer credit agreements

(1) A *personal* [consumer] credit agreement is an agreement between an individual ("the debtor") and any other person ("the creditor") by which the creditor provides the debtor with credit of any amount.

(2) *A consumer credit agreement is a personal credit agreement by which the creditor provides the debtor with credit not exceeding* [*£25,000*].

(3) A consumer credit agreement is a regulated agreement within the meaning of this Act if it is not an agreement (an "exempt agreement") specified in or under section 16[**, 16B or 16C**].

NOTES
Initial Commencement
Royal Assent

Royal Assent: 31 July 1974: (no specific commencement provision).
Amendment

Sub-s (1): word "personal" in italics repealed and subsequent word in square brackets substituted by the Consumer Credit Act 2006, s 2(1)(a).

Date in force (for certain purposes): 6 April 2008: see SI 2008/831, arts 2, 3(1), Schs 1, 2; for transitional provisions see art 4 thereof.
Date in force (for remaining purposes): 1 October 2008: see SI 2008/831, art 3(2), Sch 3; for transitional provisions see art 4 thereof.

Sub-s (2): repealed by the Consumer Credit Act 2006, ss 2(1)(b), 70, Sch 4.

Date in force (for certain purposes): 6 April 2008: see SI 2008/831, arts 2, 3(1), Schs 1, 2; for transitional provisions see art 4 thereof.
Date in force (for remaining purposes): 1 October 2008: see SI 2008/831, art 3(2), Sch 3; for transitional provisions see art 4 thereof.

Sub-s (2): sum "£25,000" in square brackets substituted by SI 1983/1878, Schedule, Pt II, as amended by SI 1998/996, art 2.

Date in force: 1 May 1998: see SI 1998/996, art 1.

Sub-s (3): words ", 16A or 16B" in square brackets inserted by the Consumer Credit Act 2006, s 5(1).

Date in force: 6 April 2008: see SI 2007/3300, art 3(2), Sch 2.

16C Exemption relating to investment properties

(1) This Act does not regulate a consumer credit agreement if, at the time the agreement is entered into, any sums due under it are secured by a land mortgage on land where the condition in subsection (2) is satisfied.

(2) The condition is that less than 40% of the land is used, or is intended to be used, as or in connection with a dwelling—

(a) by the debtor or a person connected with the debtor, or

(b) in the case of credit provided to trustees, by an individual who is the beneficiary of the trust or a person connected with such an individual.

(3) For the purposes of subsection (2) the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those storeys.

(4) For the purposes of subsection (2) a person is "connected with" the debtor or an individual who is the beneficiary of a trust if he is—

(a) that person's spouse or civil partner;

(b) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or

(c) that person's parent, brother, sister, child, grandparent or grandchild.

(5) Section 126 (enforcement of land mortgages) applies to an agreement which would but for this section be a regulated agreement.

(6) Nothing in this section affects the application of sections 140A to 140C.

[77A Statements to be provided in relation to fixed-sum credit agreements]

(1) The creditor under a regulated agreement for fixed-sum credit must give the debtor statements under this section.

(1A) The statements must relate to consecutive periods.

(1B) The first such period must begin with either—

(a) the day on which the agreement is made, or

(b) the day the first movement occurs on the debtor's account with the creditor relating to the agreement.

(1C) No such period may exceed a year.

(1D) For the purposes of subsection (1C), a period of a year which expires on a non-working day may be regarded as expiring on the next working day.

(1E) Each statement under this section must be given to the debtor before the end of the period of thirty days beginning with the day after the end of the period to which the statement relates.

(2) Regulations may make provision about the form and content of statements under this section.

(3) The debtor shall have no liability to pay any sum in connection with the preparation or the giving to him of a statement under this section.

(4) The creditor is not required to give the debtor any statement under this section once the following conditions are satisfied—

(a) that there is no sum payable under the agreement by the debtor; and

(b) that there is no sum which will or may become so payable.

(5) Subsection (6) applies if at a time before the conditions mentioned in subsection (4) are satisfied the creditor fails to give the debtor—

(a) a statement under this section within the period mentioned in subsection **(1E)**.

……

(6) Where this subsection applies in relation to a failure to give a statement under this section to the debtor—

(a) the creditor shall not be entitled to enforce the agreement during the period of non-compliance;

(b) the debtor shall have no liability to pay any sum of interest to the extent calculated by reference to the period of non-compliance or to any part of it; and

(c) the debtor shall have no liability to pay any default sum which (apart from this paragraph)—

(i) would have become payable during the period of non-compliance; or

(ii) would have become payable after the end of that period in connection with a breach of the agreement which occurs during that period (whether or not the breach continues after the end of that period).

(7) In this section "the period of non-compliance" means, in relation to a failure to give a statement under this section to the debtor, the period which—

(a) begins immediately after the end of the period mentioned in ..... subsection (5); and

(b) ends at the end of the day on which the statement is given to the debtor or on which the conditions mentioned in subsection (4) are satisfied, whichever is earlier.

(8) This section does not apply in relation to a non-commercial agreement or to a small agreement.]

NOTES
Amendment

Inserted by the Consumer Credit Act 2006, s 6.

Date in force (in so far as relating to sub-s (2)): 16 June 2006: see SI 2006/1508, art 3(1), Sch 1; for transitional provisions see the Consumer Credit Act 2006, s 69(1), Sch 3, paras 1, 2. Date in force (for remaining purposes): 1 October 2008: see SI 2007/3300, art 3(3), Sch 3; for transitional provisions see the Consumer Credit Act 2006, s 69(1), Sch 3, paras 1, 2.

82 Variation of agreements

(1) Where, under a power contained in a regulated agreement, the creditor or owner varies the agreement, the variation shall not take effect before notice of it is given to the debtor or hirer in the prescribed manner.

(2) Where an agreement (a "modifying agreement") varies or supplements an earlier agreement, the modifying agreement shall for the purposes of this Act be treated as—

(a) revoking the earlier agreement, and

(b) containing provisions reproducing the combined effect of the two agreements,

and obligations outstanding in relation to the earlier agreement shall accordingly be treated as outstanding instead in relation to the modifying agreement.

[(2A) Subsection (2) does not apply if [the earlier agreement or] the modifying agreement is an exempt agreement as a result of section 16(6C) **or 16C**.]

(3) If the earlier agreement is a regulated agreement but (apart from this subsection) the modifying agreement is not then, [unless the modifying agreement is—

(a) for running account credit; or

(b) an exempt agreement as a result of section 16(6C) **or 16C**,

it shall be treated as a regulated agreement].

(4) If the earlier agreement is a regulated agreement for running-account credit, and by the modifying agreement the creditor allows the credit limit to be exceeded but intends the excess to be merely temporary, Part V (except section 56) shall not apply to the modifying agreement.

(5) If—

(a) the earlier agreement is a cancellable agreement, and

(b) the modifying agreement is made within the period applicable under section 68 to the earlier agreement,

then, whether or not the modifying agreement would, apart from this subsection, be a cancellable agreement, it shall be treated as a cancellable agreement in respect of which a notice may be served under section 68 not later than the end of the period applicable under that section to the earlier agreement.

[(5A) Subsection (5) does not apply where the modifying agreement is an exempt agreement as a result of section 16(6C) **or 16C**.]

(6) Except under subsection (5), a modifying agreement shall not be treated as a cancellable agreement.

(7) This section does not apply to a non-commercial agreement.

NOTES

Initial Commencement

Royal Assent

Royal Assent: 31 July 1974: (no specific commencement provision).

Amendment

Sub-s (2A): inserted by SI 2005/2967, art 2(1), (2).

Date in force: 16 November 2005: see SI 2005/2967, art 1.

Sub-s (2A): words “the earlier agreement or” in square brackets inserted by SI 2008/733, art 2.

Date in force: 6 April 2008: see SI 2008/733, art 1.

Sub-s (3): words from “unless the modifying” to “a regulated agreement” in square brackets substituted by SI 2005/2967, art 2(1), (3).

Date in force: 16 November 2005: see SI 2005/2967, art 1.

Sub-s (5A): inserted by SI 2005/2967, art 2(1), (4).

Date in force: 16 November 2005: see SI 2005/2967, art 1.

[86B Notice of sums in arrears under fixed-sum credit agreements etc]

[(1) This section applies where at any time the following conditions are satisfied—

(a) that the debtor or hirer under an applicable agreement is required to have made at least two payments under the agreement before that time;

(b) that the total sum paid under the agreement by him is less than the total sum which he is required to have paid before that time;

(c) that the amount of the shortfall is no less than the sum of the last two payments which he is required to have made before that time;

(d) that the creditor or owner is not already under a duty to give him notices under this section in relation to the agreement; and

(e) if a judgment has been given in relation to the agreement before that time, that there is no sum still to be paid under the judgment by the debtor or hirer.

(2) The creditor or owner—

(a) shall, within the period of 14 days beginning with the day on which the conditions mentioned in subsection (1) are satisfied, give the debtor or hirer a notice under this section; and

(b) after the giving of that notice, shall give him further notices under this section at intervals of not more than six months.

(3) The duty of the creditor or owner to give the debtor or hirer notices under this section shall cease when either of the conditions mentioned in subsection (4) is satisfied; but if either of those conditions is satisfied before the notice required by subsection (2)(a) is given, the duty shall not cease until that notice is given.

(4) The conditions referred to in subsection (3) are—

(a) that the debtor or hirer ceases to be in arrears;

(b) that a judgment is given in relation to the agreement under which a sum is required to be paid by the debtor or hirer.

(5) For the purposes of subsection (4)(a) the debtor or hirer ceases to be in arrears when—

(a) no **payments**, which he has ever failed to **make** under the agreement when required, **are** still owing;

(b) no default sum, which has ever become payable under the agreement in connection with his failure to pay any sum under the agreement when required, is still owing;

(c) no sum of interest, which has ever become payable under the agreement in connection with such a default sum, is still owing; and

(d) no other sum of interest, which has ever become payable under the agreement in connection with his failure to pay any sum under the agreement when required, is still owing.

(6) A notice under this section shall include a copy of the current arrears information sheet under section 86A.

(7) The debtor or hirer shall have no liability to pay any sum in connection with the preparation or the giving to him of a notice under this section.

(8) Regulations may make provision about the form and content of notices under this section.

(9) In the case of an applicable agreement under which the debtor or hirer must make all payments he is required to make at intervals of one week or less, this section shall have effect as if in subsection (1)(a) and (c) for "two" there were substituted "four".

(10) If an agreement mentioned in subsection (9) was made before the beginning of the relevant period, only amounts resulting from failures by the debtor or hirer to make payments he is required to have made during that period shall be taken into account in determining any shortfall for the purposes of subsection (1)(c).

(11) In subsection (10) "relevant period" means the period of 20 weeks ending with the day on which the debtor or hirer is required to have made the most recent payment under the agreement.

(12) In this section "applicable agreement" means an agreement which—

(a) is a regulated agreement for fixed-sum credit or a regulated consumer hire agreement; and

(b) is neither a non-commercial agreement nor a small agreement.]

(13) In this section—

(a) "payments" in relation to an applicable agreement which is a regulated agreement for fixed-sum credit means payments to be made at predetermined intervals provided for under the terms of the agreement; and

(b) "payments" in relation to an applicable agreement which is a regulated consumer hire agreement means any payments to be made by the hirer in relation to any period in consideration of the bailment or hiring to him of goods under the agreement.

NOTES
Amendment

Inserted by the Consumer Credit Act 2006, s 9.

Date in force (in so far as relating to sub-s (8)): 16 June 2006: see SI 2006/1508, art 3(1), Sch 1; for transitional provisions see the Consumer Credit Act 2006, s 69(1), Sch 3, paras 1, 6.
Date in force (for remaining purposes): 1 October 2008: see SI 2007/3300, art 3(3), Sch 3; for transitional provisions see the Consumer Credit Act 2006, s 69(1), Sch 3, paras 1, 6.

[86C Notice of sums in arrears under running-account credit agreements]

[(1) This section applies where at any time the following conditions are satisfied—

(a) that the debtor under an applicable agreement is required to have made at least two payments under the agreement before that time;

(b) that the last two payments which he is required to have made before that time have not been made;

(c) that the creditor has not already been required to give a notice under this section in relation to either of those payments; and

(d) if a judgment has been given in relation to the agreement before that time, that there is no sum still to be paid under the judgment by the debtor.

(2) The creditor shall, no later than the end of the period within which he is next required to give a statement under section 78(4) in relation to the agreement, give the debtor a notice under this section.

(3) The notice shall include a copy of the current arrears information sheet under section 86A.

(4) The notice may be incorporated in a statement or other notice which the creditor gives the debtor in relation to the agreement by virtue of another provision of this Act.

(5) The debtor shall have no liability to pay any sum in connection with the preparation or the giving to him of the notice.

(6) Regulations may make provision about the form and content of notices under this section.

(7) In this section "applicable agreement" means an agreement which—

(a) is a regulated agreement for running-account credit; and

(b) is neither a non-commercial agreement nor a small agreement.]

(8) In this section "payments" means payments to be made at predetermined intervals provided for under the terms of the agreement.

NOTES
Amendment

Inserted by the Consumer Credit Act 2006, s 10.

Date in force (in so far as relating to sub-s (6)): 16 June 2006: see SI 2006/1508, art 3(1), Sch 1; for transitional provisions see the Consumer Credit Act 2006, s 69(1), Sch 3, paras 1, 7. Date in force (for remaining purposes): 1 October 2008: see SI 2007/3300, art 3(3), Sch 3; for transitional provisions see the Consumer Credit Act 2006, s 69(1), Sch 3, paras 1, 7.

189 Definitions

(1) In this Act, unless the context otherwise requires—

……

"exempt agreement" means an agreement specified in or under section 16

[, 16A**,** 16B **or 16C**];

Consumer Credit Act 2006

SCHEDULE 3

TRANSITIONAL PROVISION AND SAVINGS

Section 69

Statements to be provided in relation to regulated agreements

2 …….

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

11 …….

ANNEX H

LIST AND COPIES OF EXTRACTS FROM RELEVANT STATUTES

i) The Legislative and Regulatory Reform Act 2006 – sections 1, 3, 13, 14 and 17

ii) The Consumer Credit Act 2006 – sections 2 and 6

iii) The Consumer Credit Act 1974 – sections 10(1), 16, 16A, 16B, 67, 129-136, 140A, 140C and 189(1) & (2)

iv) The Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007 – Regulation 11

v) The Consumer Credit (Exempt Agreements) Order 2007

vi) The Consumer Credit (Exempt Agreements) Order 1989

vii) The Financial Services and Markets Act 2001 (Regulated Activities) Order 2001 – article 61

viii) The Northern Ireland Act 1998 – section 5(6)

ix) The Interpretation Act 1978 – section 7

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