Consumer Credit Act 1974

1974 CHAPTER 39

PART V

ENTRY INTO CREDIT OR HIRE AGREEMENTS

Preliminary matters

55 Disclosure of information.

(1) Regulations may require specified information to be disclosed in the prescribed manner to the debtor or hirer before a regulated agreement is made.

(2) A regulated agreement is not properly executed unless regulations under subsection (1) were complied with before the making of the agreement.

VALID FROM 01/02/2011

[F1 55A Pre-contractual explanations etc

(1) Before a regulated consumer credit agreement, other than an excluded agreement, is made, the creditor must—

(a) provide the debtor with an adequate explanation of the matters referred to in subsection (2) in order to place him in a position enabling him to assess whether the agreement is adapted to his needs and his financial situation,

(b) advise the debtor—

(i) to consider the information which is required to be disclosed under section 55(1), and

(ii) where this information is disclosed in person to the debtor, that the debtor is able to take it away,

(c) provide the debtor with an opportunity to ask questions about the agreement, and

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(d) advise the debtor how to ask the creditor for further information and explanation.

(2) The matters referred to in subsection (1)(a) are—

(a) the features of the agreement which may make the credit to be provided under the agreement unsuitable for particular types of use,

(b) how much the debtor will have to pay periodically and, where the amount can be determined, in total under the agreement,

(c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the debtor in a way which the debtor is unlikely to foresee,

(d) the principal consequences for the debtor arising from a failure to make payments under the agreement at the times required by the agreement including legal proceedings and, where this is a possibility, repossession of the debtor's home, and

(e) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised.

(3) The advice and explanation may be given orally or in writing except as provided in subsection (4).

(4) Where the explanation of the matters specified in paragraphs (a), (b) or (e) of subsection (2) is given orally or in person to a debtor, the explanation of the matters specified in paragraphs (c) and (d) of that subsection, and the advice required to be given by subsection (1)(b), must be given orally to him.

(5) Subsections (1) to (4) do not apply to a creditor if a credit intermediary (see section 160A) has complied with those subsections in respect of the agreement.

(6) For the purposes of this section an agreement is an excluded agreement if it is—

(a) an agreement under which the creditor provides the debtor with credit which exceeds £60, 260, or

(b) an agreement secured on land.

(7) Where the regulated consumer credit agreement is an agreement under which a person takes an article in pawn—

(a) the obligation in subsection (1)(a) only relates to the matters listed in paragraphs (d) and (e) of subsection (2), and

(b) the obligations in subsection (1)(b) and (d) do not apply.**]**

Textual Amendments

F1 S. 55A inserted (1.2.2011) by The Consumer Credit (EU Directive) Regulations 2010 (S.I. 2010/1010), **regs. 3**, 99(1) (with regs. 100, 101) (as amended by The Consumer Credit (Amendment) Regulations 2010 (S.I. 2010/1969), **reg. 6**)

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VALID FROM 01/02/2011

[F2 55B Assessment of creditworthiness

(1) Before making a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the creditworthiness of the debtor.

(2) Before significantly increasing—
- (a) the amount of credit to be provided under a regulated consumer credit agreement, other than an excluded agreement, or
- (b) a credit limit for running-account credit under a regulated consumer credit agreement, other than an excluded agreement,

the creditor must undertake an assessment of the debtor's creditworthiness.

(3) A creditworthiness assessment must be based on sufficient information obtained from—
- (a) the debtor, where appropriate, and
- (b) a credit reference agency, where necessary.

(4) For the purposes of this section an agreement is an excluded agreement if it is—
- (a) an agreement secured on land, or
- (b) an agreement under which a person takes an article in pawn.]

Textual Amendments

F2 S. 55B inserted (1.2.2011) by The Consumer Credit (EU Directive) Regulations 2010 (S.I. 2010/1010), **regs. 5**, 99(1) (with regs. 100, 101)

VALID FROM 01/02/2011

[F3 55C Copy of draft consumer credit agreement

(1) Before a regulated consumer credit agreement, other than an excluded agreement, is made, the creditor must, if requested, give to the debtor without delay a copy of the prospective agreement (or such of its terms as have at that time been reduced to writing).

(2) Subsection (1) does not apply if at the time the request is made, the creditor is unwilling to proceed with the agreement.

(3) A breach of the duty imposed by subsection (1) is actionable as a breach of statutory duty.

(4) For the purposes of this section an agreement is an excluded agreement if it is—
- (a) an agreement secured on land,
- (b) an agreement under which a person takes an article in pawn,
- (c) an agreement under which the creditor provides the debtor with credit which exceeds £60, 260, or

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(d) an agreement entered into by the debtor wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him.

(5) Subsections (2) to (5) of section 16B (declaration by the debtor as to the purposes of the agreement)

apply for the purposes of subsection (4)(d).**]**

Textual Amendments

F3 S. 55C inserted (1.2.2011) by The Consumer Credit (EU Directive) Regulations 2010 (S.I. 2010/1010), **regs. 6**, 99(1) (with regs. 100, 101)

56 Antecedent negotiations.

(1) In this Act "antecedent negotiations " means any negotiations with the debtor or hirer—

(a) conducted by the creditor or owner in relation to the making of any regulated agreement, or

(b) conducted by a credit-broker in relation to goods sold or proposed to be sold by the credit-broker to the creditor before forming the subject-matter of a debtor-creditor-supplier agreement within section 12(a), or

(c) conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement within section 12(b) or (c),

and "negotiator " means the person by whom negotiations are so conducted with the debtor or hirer.

(2) Negotiations with the debtor in a case falling within subsection (1)(b) or (c) shall be deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity.

(3) An agreement is void if, and to the extent that, it purports in relation to an actual or prospective regulated agreement—

(a) to provide that a person acting as, or on behalf of, a negotiator is to be treated as the agent of the debtor or hirer, or

(b) to relieve a person from liability for acts or omissions of any person acting as, or on behalf of, a negotiator.

(4) For the purposes of this Act, antecedent negotiations shall be taken to begin when the negotiator and the debtor or hirer first enter into communication (including communication by advertisement), and to include any representations made by the negotiator to the debtor or hirer and any other dealings between them.

57 Withdrawal from prospective agreement.

(1) The withdrawal of a party from a prospective regulated agreement shall operate to apply this Part to the agreement, any linked transaction and any other thing done in anticipation of the making of the agreement as it would apply if the agreement were made and then cancelled under section 69.

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(2) The giving to a party of a written or oral notice which, however expressed, indicates the intention of the other party to withdraw from a prospective regulated agreement operates as a withdrawal from it.

(3) Each of the following shall be deemed to be the agent of the creditor or owner for the purpose of receiving a notice under subsection (2)—
   (a) a credit-broker or supplier who is the negotiator in antecedent negotiations, and
   (b) any person who, in the course of a business carried on by him, acts on behalf of the debtor or hirer in any negotiations for the agreement.

(4) Where the agreement, if made, would not be a cancellable agreement, subsection (1) shall nevertheless apply as if the contrary were the case.

58 Opportunity for withdrawal from prospective land mortgage.

(1) Before sending to the debtor or hirer, for his signature, an unexecuted agreement in a case where the prospective regulated agreement is to be secured on land (the "mortgaged land "), the creditor or owner shall give the debtor or hirer a copy of the unexecuted agreement which contains a notice in the prescribed form indicating the right of the debtor or hirer to withdraw from the prospective agreement, and how and when the right is exercisable, together with a copy of any other document referred to in the unexecuted agreement.

(2) Subsection (1) does not apply to—
   (a) a restricted-use credit agreement to finance the purchase of the mortgaged land, or
   (b) an agreement for a bridging loan in connection with the purchase of the mortgaged land or other land.

59 Agreement to enter future agreement void.

(1) An agreement is void if, and to the extent that, it purports to bind a person to enter as debtor or hirer into a prospective regulated agreement.

(2) Regulations may exclude from the operation of subsection (1) agreements such as are described in the regulations.

Making the agreement

60 Form and content of agreements.

(1) The Secretary of State shall make regulations as to the form and content of documents embodying regulated agreements, and the regulations shall contain such provisions as appear to him appropriate with a view to ensuring that the debtor or hirer is made aware of—
   (a) the rights and duties conferred or imposed on him by the agreement,
   (b) the amount and rate of the total charge for credit (in the case of a consumer credit agreement),
   (c) the protection and remedies available to him under this Act, and

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(d) any other matters which, in the opinion of the Secretary of State, it is desirable for him to know about in connection with the agreement.

(2) Regulations under subsection (1) may in particular—

(a) require specified information to be included in the prescribed manner in documents, and other specified material to be excluded;

(b) contain requirements to ensure that specified information is clearly brought to the attention of the debtor or hirer, and that one part of a document is not given insufficient or excessive prominence compared with another.

(3) If, on an application made to the **[**[F4]OFT**]** by a person carrying on a consumer credit business or a consumer hire business, it appears to the **[**[F4]OFT**]** impracticable for the applicant to comply with any requirement of regulations under subsection (1) in a particular case, **[**[F5]it**]** may, by notice to the applicant direct that the requirement be waived or varied in relation to such agreements, and subject to such conditions (if any), as **[**[F5]it**]** may specify, and this Act and the regulations shall have effect accordingly.

(4) The **[**[F4]OFT**]** shall give a notice under subsection (3) only if **[**[F5]it**]** is satisfied that to do so would not prejudice the interests of debtors or hirers.

Textual Amendments

F4 Words in s. 60(3)(4) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(23)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F5 Words in s. 60(3)(4) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(23)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

61 Signing of agreement.

(1) A regulated agreement is not properly executed unless—

(a) a document in the prescribed form itself containing all the prescribed terms and conforming to regulations under section 60(1) is signed in the prescribed manner both by the debtor or hirer and by or on behalf of the creditor or owner, and

(b) the document embodies all the terms of the agreement, other than implied terms, and

(c) the document is, when presented or sent to the debtor or hirer for signature, in such a state that all its terms are readily legible.

(2) In addition, where the agreement is one to which section 58(1) applies, it is not properly executed unless—

(a) the requirements of section 58(1) were complied with, and

(b) the unexecuted agreement was sent, for his signature, to the debtor or hirer by post not less than seven days after a copy of it was given to him under section 58(1), and

(c) during the consideration period, the creditor or owner refrained from approaching the debtor or hirer (whether in person, by telephone or letter, or in any other way) except in response to a specific request made by the debtor or hirer after the beginning of the consideration period, and

(d) no notice of withdrawal by the debtor or hirer was received by the creditor or owner before the sending of the unexecuted agreement.

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(3) In subsection (2)(c), "the consideration period " means the period beginning with the giving of the copy under section 58(1) and ending—
  (a) at the expiry of seven days after the day on which the unexecuted agreement is sent, for his signature, to the debtor or hirer, or
  (b) on its return by the debtor or hirer after signature by him,

whichever first occurs.

(4) Where the debtor or hirer is a partnership or an unincorporated body of persons, subsection (1)(a) shall apply with the substitution for "by the debtor or hirer " of "by or on behalf of the debtor or hirer ".

VALID FROM 01/02/2011

[F6 61A Duty to supply copy of executed consumer credit agreement

(1) Where a regulated consumer credit agreement, other than an excluded agreement, has been made, the creditor must give a copy of the executed agreement, and any other document referred to in it, to the debtor.

(2) Subsection (1) does not apply if—
  (a) a copy of the unexecuted agreement (and of any other document referred to in it) has already been given to the debtor, and
  (b) the unexecuted agreement is in identical terms to the executed agreement.

(3) In a case referred to in subsection (2), the creditor must inform the debtor in writing—
  (a) that the agreement has been executed,
  (b) that the executed agreement is in identical terms to the unexecuted agreement a copy of which has already been given to the debtor, and
  (c) that the debtor has the right to receive a copy of the executed agreement if the debtor makes a request for it at any time before the end of the period referred to in section 66A(2).

(4) Where a request is made under subsection (3)(c) the creditor must give a copy of the executed agreement to the debtor without delay.

(5) If the requirements of this section are not observed, the agreement is not properly executed.

(6) For the purposes of this section, an agreement is an excluded agreement if it is—
  (a) a cancellable agreement, or
  (b) an agreement—
    (i) secured on land,
    (ii) under which the creditor provides the debtor with credit which exceeds £60,260, or
    (iii) entered into by the debtor wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him,

  unless the creditor or a credit intermediary has complied with or purported to comply with regulation 3(2) of the Consumer Credit (Disclosure of Information) Regulations 2010.

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(7) Subsections (2) to (5) of section 16B (declaration by the debtor as to the purposes of the agreement) apply for the purposes of subsection (6)(b)(iii).**]**

Textual Amendments

F6 S. 61A inserted (1.2.2011) by The Consumer Credit (EU Directive) Regulations 2010 (S.I. 2010/1010), **regs. 8**, 99(1) (with regs. 100, 101)

VALID FROM 01/02/2011

[F7 61B Duty to supply copy of overdraft agreement

(1) Where an authorised business overdraft agreement or an authorised non-business overdraft agreement has been made, a document containing the terms of the agreement must be given to the debtor.

(2) The creditor must provide the document referred to in subsection (1) to the debtor before or at the time the agreement is made unless—

(a) the creditor has provided the debtor with the information referred to in regulation 10(3) of the Consumer Credit (Disclosure of Information) Regulations 2010, in which case it may be provided after the agreement is made,

(b) the creditor has provided the debtor with the information referred to in regulation 10(3)(c), (e), (f), (h) and (k) of those Regulations, in which case it must be provided immediately after the agreement is made, or

(c) the agreement is an agreement of a description referred to in regulation 10(4)(b) of those Regulations, in which case it must be provided immediately after the agreement is made.

(3) If the requirements of this section are not observed, the agreement is enforceable against the debtor on an order of the court only (and for these purposes a retaking of goods or land to which the agreement relates is an enforcement of the agreement).**]**

Textual Amendments

F7 S. 61B inserted (1.2.2011) by The Consumer Credit (EU Directive) Regulations 2010 (S.I. 2010/1010), **regs. 9**, 99(1) (with regs. 100, 101) (as amended by The Consumer Credit (Amendment) Regulations 2010 (S.I. 2010/1969), **reg. 7**)

62 Duty to supply copy of unexecuted agreement.

(1) If the unexecuted agreement is presented personally to the debtor or hirer for his signature, but on the occasion when he signs it the document does not become an executed agreement, a copy of it, and of any other document referred to in it, must be there and then delivered to him.

(2) If the unexecuted agreement is sent to the debtor or hirer for his signature, a copy of it, and of any other document referred to in it, must be sent to him at the same time.

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(3) A regulated agreement is not properly executed if the requirements of this section are not observed.

63 Duty to supply copy of executed agreement.

(1) If the unexecuted agreement is presented personally to the debtor or hirer for his signature, and on the occasion when he signs it the document becomes an executed agreement, a copy of the executed agreement, and of any other document referred to in it, must be there and then delivered to him.

(2) A copy of the executed agreement, and of any other document referred to in it, must be given to the debtor or hirer within the seven days following the making of the agreement unless—
  (a) subsection (1) applies, or
  (b) the unexecuted agreement was sent to the debtor or hirer for his signature and, on the occasion of his signing it, the document became an executed agreement.

(3) In the case of a cancellable agreement, a copy under subsection (2) must be sent by post.

(4) In the case of a credit-token agreement, a copy under subsection (2) need not be given within the seven days following the making of the agreement if it is given before or at the time when the credit-token is given to the debtor.

(5) A regulated agreement is not properly executed if the requirements of this section are not observed.

64 Duty to give notice of cancellation rights.

(1) In the case of a cancellable agreement, a notice in the prescribed form indicating the right of the debtor or hirer to cancel the agreement, how and when that right is exercisable, and the name and address of a person to whom notice of cancellation may be given,—
  (a) must be included in every copy given to the debtor or hirer under section 62 or 63, and
  (b) except where section 63(2) applied, must also be sent by post to the debtor or hirer within the seven days following the making of the agreement.

(2) In the case of a credit-token agreement, a notice under subsection (1)(b) need not be sent by post within the seven days following the making of the agreement if either—
  (a) it is sent by post to the debtor or hirer before the credit-token is given to him, or
  (b) it is sent by post to him together with the credit-token.

(3) Regulations may provide that except where section 63(2) applied a notice sent under subsection (1)(b) shall be accompanied by a further copy of the executed agreement, and of any other document referred to in it.

(4) Regulations may provide that subsection (1)(b) is not to apply in the case of agreements such as are described in the regulations, being agreements made by a particular person, if—
  (a) on an application by that person to the **[**[F8]OFT**]** , the **[**[F8]OFT**]** has determined that, having regard to—

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(i) the manner in which antecedent negotiations for agreements with the applicant of that description are conducted, and

(ii) the information provided to debtors or hirers before such agreements are made,

the requirement imposed by subsection (1)(b) can be dispensed with without prejudicing the interests of debtors or hirers; and

(b) any conditions imposed by the **[**[F8]OFT**]** in making the determination are complied with.

(5) A cancellable agreement is not properly executed if the requirements of this section are not observed.

Textual Amendments

F8 Words in s. 64 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(24)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

65 Consequences of improper execution.

(1) An improperly-executed regulated agreement is enforceable against the debtor or hirer on an order of the court only.

(2) A retaking of goods or land to which a regulated agreement relates is an enforcement of the agreement.

66 Acceptance of credit-tokens.

(1) The debtor shall not be liable under a credit-token agreement for use made of the credit-token by any person unless the debtor had previously accepted the credit-token, or the use constituted an acceptance of it by him.

(2) The debtor accepts a credit-token when—

(a) it is signed, or

(b) a receipt for it is signed, or

(c) it is first used,

either by the debtor himself or by a person who, pursuant to the agreement, is authorised by him to use it.

Modifications etc. (not altering text)

C1 S. 66 applied (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), **52(b)** (with reg. 3)

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VALID FROM 01/02/2011

[F9 Withdrawal from certain agreements

Textual Amendments

F9 S. 66A and preceding cross-heading inserted (1.2.2011) by The Consumer Credit (EU Directive) Regulations 2010 (S.I. 2010/1010, {regs. 13}, 99(1) (with regs. 100, 101) (as amended by The Consumer Credit (Amendment) Regulations 2010 (S.I. 2010/1969), **reg. 8** (with reg. 46))

66A Withdrawal from consumer credit agreement

(1) The debtor under a regulated consumer credit agreement, other than an excluded agreement, may withdraw from the agreement, without giving any reason, in accordance with this section.

(2) To withdraw from an agreement under this section the debtor must give oral or written notice of the withdrawal to the creditor before the end of the period of 14 days beginning with the day after the relevant day.

(3) For the purposes of subsection (2) the relevant day is whichever is the latest of the following—

(a) the day on which the agreement is made;

(b) where the creditor is required to inform the debtor of the credit limit under the agreement, the day on which the creditor first does so;

(c) in the case of an agreement to which section 61A (duty to supply copy of executed consumer credit agreement) applies, the day on which the debtor receives a copy of the agreement under that section or on which the debtor is informed as specified in subsection (3) of that section;

(d) in the case of an agreement to which section 63 (duty to supply copy of executed agreement: excluded agreements) applies, the day on which the debtor receives a copy of the agreement under that section.

(4) Where oral notice under this section is given to the creditor it must be given in a manner specified in the agreement.

(5) Where written notice under this section is given by facsimile transmission or electronically—

(a) it must be sent to the number or electronic address specified for the purpose in the agreement, and

(b) where it is so sent, it is to be regarded as having been received by the creditor at the time it is sent (and section 176A does not apply).

(6) Where written notice under this section is given in any other form—

(a) it must be sent by post to, or left at, the postal address specified for the purpose in the agreement, and

(b) where it is sent by post to that address, it is to be regarded as having been received by the creditor at the time of posting (and section 176 does not apply).

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(7) Subject as follows, where the debtor withdraws from a regulated consumer credit agreement under this section—

(a) the agreement shall be treated as if it had never been entered into, and

(b) where an ancillary service relating to the agreement is or is to be provided by the creditor, or by a third party on the basis of an agreement between the third party and the creditor, the ancillary service contract shall be treated as if it had never been entered into.

(8) In the case referred to in subsection (7)(b) the creditor must without delay notify any third party of the fact that the debtor has withdrawn from the agreement.

(9) Where the debtor withdraws from an agreement under this section—

(a) the debtor must repay to the creditor any credit provided and the interest accrued on it (at the rate provided for under the agreement), but

(b) the debtor is not liable to pay to the creditor any compensation, fees or charges except any non-returnable charges paid by the creditor to a public administrative body.

(10) An amount payable under subsection (9) must be paid without undue delay and no later than the end of the period of 30 days beginning with the day after the day on which the notice of withdrawal was given (and if not paid by the end of that period may be recovered by the creditor as a debt).

(11) Where a regulated consumer credit agreement is a conditional sale, hire-purchase or credit-sale agreement and—

(a) the debtor withdraws from the agreement under this section after the credit has been provided, and

(b) the sum payable under subsection (9)(a) is paid in full by the debtor,

title to the goods purchased or supplied under the agreement is to pass to the debtor on the same terms as would have applied had the debtor not withdrawn from the agreement.

(12) In subsections (2), (4), (5), (6) and (9)(a) references to the creditor include a person specified by the creditor in the agreement.

(13) In subsection (7)(b) the reference to an ancillary service means a service that relates to the provision of credit under the agreement and includes in particular an insurance or payment protection policy.

(14) For the purposes of this section, an agreement is an excluded agreement if it is—

(a) an agreement for credit exceeding £60, 260,

(b) an agreement secured on land,

(c) a restricted-use credit agreement to finance the purchase of land, or

(d) an agreement for a bridging loan in connection with the purchase of land.**]**

Cancellation of certain agreements within cooling-off period

67 Cancellable agreements.

A regulated agreement may be cancelled by the debtor or hirer in accordance with this Part if the antecedent negotiations included oral representations made when in

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the presence of the debtor or hirer by an individual acting as, or on behalf of, the negotiator, unless—

(a) the agreement is secured on land, or is a restricted-use credit agreement to finance the purchase of land or is an agreement for a bridging loan in connection with the purchase of land, or

(b) the unexecuted agreement is signed by the debtor or hirer at premises at which any of the following is carrying on any business (whether on a permanent or temporary basis)—

(i) the creditor or owner;

(ii) any party to a linked transaction (other than the debtor or hirer or a relative of his);

(iii) the negotiator in any antecedent negotiations.

68 Cooling-off period.

The debtor or hirer may serve notice of cancellation of a cancellable agreement between his signing of the unexecuted agreement and—

(a) the end of the fifth day following the day on which he received a copy under section 63(2) or a notice under section 64(1)(b), or

(b) if (by virtue of regulations made under section 64(4)) section 64(1)(b) does not apply, the end of the fourteenth day following the day on which he signed the unexecuted agreement.

69 Notice of cancellation.

(1) If within the period specified in section 68 the debtor or hirer under a cancellable agreement serves on—

(a) the creditor or owner, or

(b) the person specified in the notice under section 64(1), or

(c) a person who (whether by virtue of subsection (6) or otherwise) is the agent of the creditor or owner,

a notice (a "notice of cancellation ") which, however expressed and whether or not conforming to the notice given under section 64(1), indicates the intention of the debtor or hirer to withdraw from the agreement, the notice shall operate—

(i) to cancel the agreement, and any linked transaction, and

(ii) to withdraw any offer by the debtor or hirer, or his relative, to enter into a linked transaction.

(2) In the case of a debtor-creditor-supplier agreement for restricted-use credit financing—

(a) the doing of work or supply of goods to meet an emergency, or

(b) the supply of goods which, before service of the notice of cancellation, had by the act of the debtor or his relative become incorporated in any land or thing not comprised in the agreement or any linked transaction,

subsection (1) shall apply with the substitution of the following for paragraph (i)—

"(i) to cancel only such provisions of the agreement and any linked transaction as—

(aa) relate to the provision of credit, or

(bb) require the debtor to pay an item in the total charge for credit, or

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(cc) subject the debtor to any obligation other than to pay for the doing of the said work, or the supply of the said goods".

(3) Except so far as is otherwise provided, references in this Act to the cancellation of an agreement or transaction do not include a case within subsection (2).

(4) Except as otherwise provided by or under this Act, an agreement or transaction cancelled under subsection (1) shall be treated as if it had never been entered into.

(5) Regulations may exclude linked transactions of the prescribed description from subsection (1)(i) or (ii).

(6) Each of the following shall be deemed to be the agent of the creditor or owner for the purpose of receiving a notice of cancellation—

(a) a credit-broker or supplier who is the negotiator in antecedent negotiations, and

(b) any person who, in the course of a business carried on by him, acts on behalf of the debtor or hirer in any negotiations for the agreement.

(7) Whether or not it is actually received by him, a notice of cancellation sent by post to a person shall be deemed to be served on him at the time of posting.

70 Cancellation: recovery of money paid by debtor or hirer.

(1) On the cancellation of a regulated agreement, and of any linked transaction,—

(a) any sum paid by the debtor or hirer, or his relative, under or in contemplation of the agreement or transaction, including any item in the total charge for credit, shall become repayable, and

(b) any sum, including any item in the total charge for credit, which but for the cancellation is, or would or might become, payable by the debtor or hirer, or his relative, under the agreement or transaction shall cease to be, or shall not become, so payable, and

(c) in the case of a debtor-creditor-supplier agreement falling within section 12(b), any sum paid on the debtor's behalf by the creditor to the supplier shall become repayable to the creditor.

(2) If, under the terms of a cancelled agreement or transaction, the debtor or hirer, or his relative, is in possession of any goods, he shall have a lien on them for any sum repayable to him under subsection (1) in respect of that agreement or transaction, or any other linked transaction.

(3) A sum repayable under subsection (1) is repayable by the person to whom it was originally paid, but in the case of a debtor-creditor-supplier agreement falling within section 12(b) the creditor and the supplier shall be under a joint and several liability to repay sums paid by the debtor, or his relative, under the agreement or under a linked transaction falling within section 19(1)(b) and accordingly, in such a case, the creditor shall be entitled, in accordance with rules of court, to have the supplier made a party to any proceedings brought against the creditor to recover any such sums.

(4) Subject to any agreement between them, the creditor shall be entitled to be indemnified by the supplier for loss suffered by the creditor in satisfying his liability under subsection (3), including costs reasonably incurred by him in defending proceedings instituted by the debtor.

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(5) Subsection (1) does not apply to any sum which, if not paid by a debtor, would be payable by virtue of section 71, and applies to a sum paid or payable by a debtor for the issue of a credit-token only where the credit-token has been returned to the creditor or surrendered to a supplier.

(6) If the total charge for credit includes an item in respect of a fee or commission charged by a credit-broker, the amount repayable under subsection (1) in respect of that item shall be the excess over **[**[F10]£5**]** of the fee or commission.

(7) If the total charge for credit includes any sum payable or paid by the debtor to a credit-broker otherwise than in respect of a fee or commission charged by him, that sum shall for the purposes of subsection (6) be treated as if it were such a fee or commission.

(8) So far only as is necessary to give effect to section 69(2), this section applies to an agreement or transaction within that subsection as it applies to a cancelled agreement or transaction.

Textual Amendments

F10 Amount "£5" substituted (1.5.1998) in s. 70(6) by S.I. 1998/997, art. 3, **Sch.**

71 Cancellation: repayment of credit.

(1) Notwithstanding the cancellation of a regulated consumer credit agreement, other than a debtor-creditor-supplier agreement for restricted-use credit, the agreement shall continue in force so far as it relates to repayment of credit and payment of interest.

(2) If, following the cancellation of a regulated consumer credit agreement, the debtor repays the whole or a portion of the credit—

(a) before the expiry of one month following service of the notice of cancellation, or

(b) in the case of a credit repayable by instalments, before the date on which the first instalment is due,

no interest shall be payable on the amount repaid.

(3) If the whole of a credit repayable by instalments is not repaid on or before the date specified in subsection (2)(b), the debtor shall not be liable to repay any of the credit except on receipt of a request in writing in the prescribed form, signed by or on behalf of the creditor, stating the amounts of the remaining instalments (recalculated by the creditor as nearly as may be in accordance with the agreement and without extending the repayment period), but excluding any sum other than principal and interest.

(4) Repayment of a credit, or payment of interest, under a cancelled agreement shall be treated as duly made if it is made to any person on whom, under section 69, a notice of cancellation could have been served, other than a person referred to in section 69(6)(b).

72 Cancellation: return of goods.

(1) This section applies where any agreement or transaction relating to goods, being—

(a) a restricted-use debtor-creditor-supplier agreement, a consumer hire agreement, or a linked transaction to which the debtor or hirer under any regulated agreement is a party, or

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(b) a linked transaction to which a relative of the debtor or hirer under any regulated agreement is a party,

is cancelled after the debtor or hirer (in a case within paragraph (a)) or the relative (in a case within paragraph (b)) has acquired possession of the goods by virtue of the agreement or transaction.

(2) In this section—

(a) "the possessor " means the person who has acquired possession of the goods as mentioned in subsection (1),

(b) "the other party " means the person from whom the possessor acquired possession, and

(c) "the pre-cancellation period " means the period beginning when the possessor acquired possession and ending with the cancellation.

(3) The possessor shall be treated as having been under a duty throughout the pre-cancellation period—

(a) to retain possession of the goods, and

(b) to take reasonable care of them.

(4) On the cancellation, the possessor shall be under a duty, subject to any lien, to restore the goods to the other party in accordance with this section, and meanwhile to retain possession of the goods and take reasonable care of them.

(5) The possessor shall not be under any duty to deliver the goods except at his own premises and in pursuance of a request in writing signed by or on behalf of the other party and served on the possessor either before, or at the time when, the goods are collected from those premises.

(6) If the possessor—

(a) delivers the goods (whether at his own premises or elsewhere) to any person on whom, under section 69, a notice of cancellation could have been served (other than a person referred to in section 69(6)(b)), or

(b) sends the goods at his own expense to such a person,

he shall be discharged from any duty to retain the goods or deliver them to any person.

(7) Where the possessor delivers the goods as mentioned in subsection (6)(a), his obligation to take care of the goods shall cease; and if he sends the goods as mentioned in subsection (6)(b), he shall be under a duty to take reasonable care to see that they are received by the other party and not damaged in transit, but in other respects his duty to take care of the goods shall cease.

(8) Where, at any time during the period of 21 days following the cancellation, the possessor receives such a request as is mentioned in subsection (5), and unreasonably refuses or unreasonably fails to comply with it, his duty to take reasonable care of the goods shall continue until he delivers or sends the goods as mentioned in subsection (6), but if within that period he does not receive such a request his duty to take reasonable care of the goods shall cease at the end of that period.

(9) The preceding provisions of this section do not apply to—

(a) perishable goods, or

(b) goods which by their nature are consumed by use and which, before the cancellation, were so consumed, or

(c) goods supplied to meet an emergency, or

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(d) goods which, before the cancellation, had become incorporated in any land or thing not comprised in the cancelled agreement or a linked transaction.

(10) Where the address of the possessor is specified in the executed agreement, references in this section to his own premises are to that address and no other.

(11) Breach of a duty imposed by this section is actionable as a breach of statutory duty.

73 Cancellation: goods given in part-exchange.

(1) This section applies on the cancellation of a regulated agreement where, in antecedent negotiations, the negotiator agreed to take goods in part-exchange (the "part-exchange goods ") and those goods have been delivered to him.

(2) Unless, before the end of the period of ten days beginning with the date of cancellation, the part-exchange goods are returned to the debtor or hirer in a condition substantially as good as when they were delivered to the negotiator, the debtor or hirer shall be entitled to recover from the negotiator a sum equal to the part-exchange allowance (as defined in subsection (7)(b)).

(3) In the case of a debtor-creditor-supplier agreement within section 12(b), the negotiator and the creditor shall be under a joint and several liability to pay to the debtor a sum recoverable under subsection (2).

(4) Subject to any agreement between them, the creditor shall be entitled to be indemnified by the negotiator for loss suffered by the creditor in satisfying his liability under subsection (3), including costs reasonably incurred by him in defending proceedings instituted by the debtor.

(5) During the period of ten days beginning with the date of cancellation, the debtor or hirer, if he is in possession of goods to which the cancelled agreement relates, shall have a lien on them for—

(a) delivery of the part-exchange goods, in a condition substantially as good as when they were delivered to the negotiator, or

(b) a sum equal to the part-exchange allowance;

and if the lien continues to the end of that period it shall thereafter subsist only as a lien for a sum equal to the part-exchange allowance.

(6) Where the debtor or hirer recovers from the negotiator or creditor, or both of them jointly, a sum equal to the part-exchange allowance, then, if the title of the debtor or hirer to the part-exchange goods has not vested in the negotiator, it shall so vest on the recovery of that sum.

(7) For the purposes of this section—

(a) the negotiator shall be treated as having agreed to take goods in part-exchange if, in pursuance of the antecedent negotiations, he either purchased or agreed to purchase those goods or accepted or agreed to accept them as part of the consideration for the cancelled agreement, and

(b) the part-exchange allowance shall be the sum agreed as such in the antecedent negotiations or, if no such agreement was arrived at, such sum as it would have been reasonable to allow in respect of the part-exchange goods if no notice of cancellation had been served.

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(8) In an action brought against the creditor for a sum recoverable under subsection (2), he shall be entitled, in accordance with rules of court, to have the negotiator made a party to the proceedings.

Exclusion of certain agreements from Part V

74 Exclusion of certain agreements from Part V.

(1) This Part (except section 56) does not apply to—

(a) a non-commercial agreement, or

(b) a debtor-creditor agreement enabling the debtor to overdraw on a current account, or

(c) a debtor-creditor agreement to finance the making of such payments arising on, or connected with, the death of a person as may be prescribed.

(2) This Part (except sections 55 and 56) does not apply to a small debtor-creditor-supplier agreement for restricted-use credit.

[[F11](2A) In the case of an agreement to which the Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987 apply the reference in subsection (2) to a small agreement shall be construed as if in section 17(1)(a) and (b) "£35 " were substituted for "£50 ".**]**

(3) Subsection (1)(b) or (c) applies only where the **[**[F12]OFT**]** so determines, and such a determination—

(a) may be made subject to such conditions as the **[**[F12]OFT**]** thinks fit, and

(b) shall be made only if the **[**[F12]OFT**]** is of the opinion that it is not against the interests of debtors.

[[F13](3A) Notwithstanding anything in subsection (3)(*b*) above, in relation to a debtor-creditor agreement under which the creditor is the Bank of England or a bank within the meaning of the Bankers' Books Evidence Act 1879, the **[**[F12]OFT**]** shall make a determination that subsection (1)(*b*) above applies unless **[**[F14]it**]** considers that it would be against the public interest to do so**]**

(4) If any term of an agreement falling within subsection **[**[F15](1)(*c*)**]** or (2) is expressed in writing, regulations under section 60(1) shall apply to that term (subject to section 60(3)) as if the agreement were a regulated agreement not falling within subsection **[**[F15](1)(*c*)**]** or (2).

Textual Amendments

F11 S. 74(2A) added by S.I. 1987/2117, **reg. 9**

F12 Words in s. 74 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(25)(a)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F13 S. 74(3A) inserted by Banking Act 1979 (c. 37, SIF 10), **s. 38(1)**

F14 Word in s. 74(3A) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(25)(b)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F15 "(1)(*c*) " substituted by Banking Act 1979 (c. 37, SIF 10), **s. 38(1)**

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