



# Consumer Credit Act 1974

## 1974 CHAPTER 39

### PART X

#### ANCILLARY CREDIT BUSINESSES

##### *Definitions*

#### **145 Types of ancillary credit business**

- (1) An ancillary credit business is any business so far as it comprises or relates to—
  - (a) credit brokerage,
  - (b) debt-adjusting,
  - (c) debt-counselling,
  - (d) debt-collecting, or
  - (e) the operation of a credit reference agency.
- (2) Subject to section 146(5), credit brokerage is the effecting of introductions—
  - (a) of individuals desiring to obtain credit—
    - (i) to persons carrying on businesses to which this sub-paragraph applies,  
or
    - (ii) in the case of an individual desiring to obtain credit to finance the acquisition or provision of a dwelling occupied or to be occupied by himself or his relative, to any person carrying on a business in the course of which he provides credit secured on land, or
  - (b) of individuals desiring to obtain goods on hire to persons carrying on businesses to which this paragraph applies, or
  - (c) of individuals desiring to obtain credit, or to obtain goods on hire, to other credit-brokers.
- (3) Subsection (2)(a)(i) applies to—
  - (a) a consumer credit business ;

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- (b) a business which comprises or relates to consumer credit agreements being, otherwise than by virtue of section 16(5)(a), exempt agreements;
  - (c) a business which comprises or relates to unregulated agreements where—
    - (i) the proper law of the agreement is the law of a country outside the United Kingdom, and
    - (ii) if the proper law of the agreement were the law of a part of the United Kingdom it would be a regulated consumer credit agreement.
- (4) Subsection (2)(b) applies to—
- (a) a consumer hire business ;
  - (b) a business which comprises or relates to unregulated agreements where—
    - (i) the proper law of the agreement is the law of a country outside the United Kingdom, and
    - (ii) if the proper law of the agreement were the law of a part of the United Kingdom it would be a regulated consumer hire agreement.
- (5) Subject to section 146(6), debt-adjusting is, in relation to debts due under consumer credit agreements or consumer hire agreements.—
- (a) negotiating with the creditor or owner, on behalf of the debtor or hirer, terms for the discharge of a debt, or
  - (b) taking over, in return for payments by the debtor or hirer, his obligation to discharge a debt, or
  - (c) any similiar activity concerned with the liquidation of a debt.
- (6) Subject to section 146(6), debt-counselling is the giving of advice to debtors or hirers about the liquidation of debts due under consumer credit agreements or consumer hire agreements.
- (7) Subject to section 146(6), debt-collecting is the taking of steps to procure payment of debts due under consumer credit agreements or consumer hire agreements.
- (8) A credit reference agency is a person carrying on a business comprising the furnishing of persons with information relevant to the financial standing of individuals, being information collected by the agency for that purpose.

#### **146 Exceptions from section 145**

- (1) A barrister or advocate acting in that capacity is not to be treated as doing so in the course of any ancillary credit business.
- (2) A solicitor engaging in contentious business (as defined in section 86(1) of the Solicitors Act 1957) is not to be treated as doing so in the course of any ancillary credit business.
- (3) A solicitor within the meaning of the Solicitors (Scotland) Act 1933 engaging in business done in or for the purposes of proceedings before a court or before an arbiter is not to be treated as doing so in the course of any ancillary credit business.
- (4) A solicitor in Northern Ireland engaging in business done, whether as solicitor or advocate, in or for the purposes of proceedings begun before a court (including the Lands Tribunal for Northern Ireland) or before an arbitrator appointed under the Arbitration Act (Northern Ireland) 1937, not being business contained in section 2 of

the Probates and Letters of Administration Act (Ireland) 1857, is not to be treated as doing so in the course of any ancillary credit business.

- (5) For the purposes of section 145(2), introductions effected by an individual by canvassing off trade premises either debtor-creditor-supplier agreements falling within section 12(a) or regulated consumer hire agreements shall be disregarded if—
- (a) the introductions are not effected by him in the capacity of an employee, and
  - (b) he does not by any other method effect introductions falling within section 145(2).
- (6) It is not debt-adjusting, debt-counselling or debt-collecting for a person to do anything in relation to a debt arising under an agreement if—
- (a) he is the creditor or owner under the agreement, otherwise than by virtue of an assignment, or
  - (b) he is the creditor or owner under the agreement by virtue of an assignment made in connection with the transfer to the assignee of any business other than a debt-collecting business, or
  - (c) he is the supplier in relation to the agreement, or
  - (d) he is a credit-broker who has acquired the business of the person who was the supplier in relation to the agreement, or
  - (e) he is a person prevented by subsection (5) from being treated as a credit-broker, and the agreement was made in consequence of an introduction (whether made by him or another person) which, under subsection (5), is to be disregarded.

### *Licensing*

#### **147 Application of Part III**

- (1) The provisions of Part III (except section 40) apply to an ancillary credit business as they apply to a consumer credit business.
- (2) Without prejudice to the generality of section 26, regulations under that section (as applied by subsection (1)) may include provisions regulating the collection and dissemination of information by credit reference agencies.

#### **148 Agreement for services of unlicensed trader**

- (1) An agreement for the services of a person carrying on an ancillary credit business (the "trader"), if made when the trader was unlicensed, is enforceable against the other party (the "customer") only where the Director has made an order under subsection (2) which applies to the agreement.
- (2) The trader or his successor in title may apply to the Director for an order that agreements within subsection (1) are to be treated as if made when the trader was licensed.
- (3) Unless the Director determines to make an order under subsection (2) in accordance with the application, he shall, before determining the application, by notice—
- (a) inform the trader, giving his reasons, that, as the case may be, he is minded to refuse the application, or to grant it in terms different from those applied for, describing them, and

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- (b) invite the trader to submit to the Director representations in support of his application in accordance with section 34.
- (4) In determining whether or not to make an order under subsection (2) in respect of any period the Director shall consider, in addition to any other relevant factors.—
  - (a) how far, if at all, customers under agreements made by the trader during that period were prejudiced by the trader's conduct,
  - (b) whether or not the Director would have been likely to grant a licence covering that period on an application by the trader, and
  - (c) the degree of culpability for the failure to obtain a licence.
- (5) If the Director thinks fit, he may in an order under subsection (2)—
  - (a) limit the order to specified agreements, or agreements of a specified description or made at a specified time;
  - (b) make the order conditional on the doing of specified acts by the trader.

#### **149 Regulated agreements made on introductions by unlicensed credit-broker**

- (1) A regulated agreement made by a debtor or hirer who, for the purpose of making that agreement, was introduced to the creditor or owner by an unlicensed credit-broker is enforceable against -the debtor or hirer only where—
  - (a) on the application of the credit-broker, the Director has made an order under section 148(2) in respect of a period including the time when the introduction was made, and the order does not (whether in general terms or specifically) exclude the application of this paragraph to the regulated agreement, or
  - (b) the Director has made an order under subsection (2) which applies to the agreement.
- (2) Where during any period individuals were introduced to a person carrying on a consumer credit business or consumer hire business by an unlicensed credit-broker for the purpose of making regulated agreements with the person carrying on that business, that person or his successor in title may apply to the Director for an order that regulated agreements so made are to be treated as if the credit-broker had been licensed at the time of the introduction.
- (3) Unless the Director determines to make an order under subsection (2) in accordance with the application, he shall, before determining the application, by notice—
  - (a) inform the applicant, giving his reasons, that, as the case may be, he is minded to refuse the application, or to grant it in terms different from those applied for, describing them, and
  - (b) invite the applicant to submit to the Director representations in support of his application in accordance with section 34.
- (4) In determining whether or not to make an order under subsection (2) the Director shall consider, in addition to any other relevant factors—
  - (a) how far, if at all, debtors or hirers under regulated agreements to which the application relates were prejudiced by the credit-broker's conduct, and
  - (b) the degree of culpability of the applicant in facilitating the carrying on by the credit-broker of his business when unlicensed.
- (5) If the Director thinks fit, he may in an order under subsection (2)—

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- (a) limit the order to specified agreements, or agreements of a specified description or made at a specified time;
- (b) make the order conditional on the doing of specified acts by the applicant.

### **150 Appeals to Secretary of State against licensing decisions**

Section 41 (as applied by section 147(1)) shall have effect as if the following entry were included in the table set out at the end—

<i>Determination</i>	<i>Appellant</i>
Refusal to make order under section 148(2) or 149(2) in accordance with terms of application.	The applicant.

*Seeking business*

### **151 Advertisements**

- (1) Sections 44 to 47 apply to an advertisement published for the purposes of a business of credit brokerage carried on by any person, whether it advertises the services of that person or the services of persons to whom he effects introductions, as they apply to an advertisement to which Part IV applies.
- (2) Sections 44, 46 and 47 apply to an advertisement, published for the purposes of a business carried on by the advertiser, indicating that he is willing to advise on debts, or engage in transactions concerned with the liquidation of debts, as they apply to an advertisement to which Part IV applies.
- (3) The Secretary of State may by order provide that an advertisement published for the purposes of a business of credit brokerage, debt adjusting or debt counselling shall not fall within subsection (1) or (2) if it is of a description specified in the order.
- (4) An advertisement does not fall within subsection (2) if it indicates that the advertiser is not willing to act in relation to consumer credit agreements and consumer hire agreements.
- (5) In subsections (1) and (3) "credit brokerage" includes the effecting of introductions of individuals desiring to obtain credit to any person carrying on a business in the course of which he provides credit secured on land.

### **152 Application of sections 52 to 54 to credit brokerage etc.**

- (1) Sections 52 to 54 apply to a business of credit brokerage, debt-adjusting or debt-counselling as they apply to a consumer credit business.
- (2) In their application to a business of credit brokerage, sections 52 and 53 shall apply to the giving of quotations and information about the business of any person to whom the credit-broker effects introductions as well as to the giving of quotations and information about his own business.

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### **153 Definition of canvassing off trade premises (agreements for ancillary credit services)**

- (1) An individual (the " canvasser ") canvasses off trade premises the services of a person carrying on an ancillary credit business if he solicits the entry of another individual (the " consumer ") into an agreement for the provision to the consumer of those services by making oral representations to the consumer, or any other individual, during a visit by the canvasser to any place (not excluded by subsection (2)) where the consumer, or that other individual as the case may be, is, being a visit—
  - (a) carried out for the purpose of making such oral representations to individuals who are at that place, but
  - (b) not carried out in response to a request made on a previous occasion.
- (2) A place is excluded from subsection (1) if it is a place where (whether on a permanent or temporary basis)—
  - (a) the ancillary credit business is carried on, or
  - (b) any business is carried on by the canvasser or the person whose employee or agent the canvasser is, or by the consumer.

### **154 Prohibition of canvassing certain ancillary credit services off trade premises**

It is an offence to canvass off trade premises the services of a person carrying on a business of credit-brokerage, debt-adjusting or debt-counselling.

### **155 Right to recover brokerage fees**

- (1) The excess over £1 of a fee or commission for his services charged by a credit-broker to an individual to whom this subsection applies shall cease to be payable or, as the case may be, shall be recoverable by the individual if the introduction does not result in his entering into a relevant agreement within the six months following the introduction (disregarding any agreement which is cancelled under section 69(1) or becomes subject to section 69(2)).
- (2) Subsection (1) applies to an individual who sought an introduction for a purpose which would have been fulfilled by his entry into—
  - (a) a regulated agreement, or
  - (b) in the case of an individual such as is referred to in section 145(2)(a)(ii), an agreement for credit secured on land, or
  - (c) an agreement such as is referred to in section 145(3)(b) or (c) or (4)(b).
- (3) An agreement is a relevant agreement for the purposes of subsection (1) in relation to an individual if it is an agreement such as is referred to in subsection (2) in relation to that individual.
- (4) In the case of an individual desiring to obtain credit under a consumer credit agreement, any sum payable or paid by him to a credit-broker otherwise than as a fee or commission for the credit-broker's services shall for the purposes of subsection (1) be treated as such a fee or commission if it enters, or would enter, into the total charge for credit.

### *Entry into agreements*

#### **156 Entry into agreements**

Regulations may make provision, in relation to agreements entered into in the course of a business of credit brokerage, debt-adjusting or debt-counselling, corresponding, with such modifications as the Secretary of State thinks fit, to the provision which is or may be made by or under sections 55, 60, 61, 62, 63, 65, 127, 179 or 180 in relation to agreements to which those sections apply.

### *Credit reference agencies*

#### **157 Duty to disclose name etc. of agency**

- (1) A creditor, owner or negotiator, within the prescribed period after receiving a request in writing to that effect from the debtor or hirer, shall give him notice of the name and address of any credit reference agency from which the creditor, owner or negotiator has, during the antecedent negotiations, applied for information about his financial standing.
- (2) Subsection (1) does not apply to a request received more than 28 days after the termination of the antecedent negotiations, whether on the making of the regulated agreement or otherwise.
- (3) If the creditor, owner or negotiator fails to comply with subsection (1) he commits an offence.

#### **158 Duty of agency to disclose filed information**

- (1) A credit reference agency, within the prescribed period after receiving.—
  - (a) a request in writing to that effect from any individual (the " consumer "), and
  - (b) such particulars as the agency may reasonably require to enable them to identify the file, and
  - (c) a fee of 25 new pence,shall give the consumer a copy of the file relating to him kept by the agency.
- (2) When giving a copy of the file under subsection (1), the agency shall also give the consumer a statement in the prescribed form of his rights under section 159.
- (3) If the agency does not keep a file relating to the consumer it shall give him notice of that fact, but need not return any money paid.
- (4) If the agency contravenes any provision of this section it commits an offence.
- (5) In this Act " file ", in relation to an individual, means all the information about him kept by a credit reference agency, regardless of how the information is stored, and " copy of the file ", as respects information not in plain English, means a transcript reduced into plain English.

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## **159 Correction of wrong information**

- (1) A consumer given information under section 158 who considers that an entry in his file is incorrect, and that if it is not corrected he is likely to be prejudiced, may give notice to the agency requiring it either to remove the entry from the file or amend it.
- (2) Within 28 days after receiving a notice under subsection (1), the agency shall by notice inform the consumer that it has—
  - (a) removed the entry from the file, or
  - (b) amended the entry, or
  - (c) taken no action,and if the notice states that the agency has amended the entry it shall include a copy of the file so far as it comprises the amended entry.
- (3) Within 28 days after receiving a notice under subsection (2), or where no such notice was given, within 28 days after the expiry of the period mentioned in subsection (2), the consumer may, unless he has been informed by the agency that it has removed the entry from his file, serve a further notice on the agency requiring it to add to the file an accompanying notice of correction (not exceeding 200 words) drawn up by the consumer, and include a copy of it when furnishing information included in or based on that entry.
- (4) Within 28 days after receiving a notice under subsection (3), the agency, unless it intends to apply to the Director under subsection (5), shall by notice inform the consumer that it has received the notice under subsection (3) and intends to comply with it.
- (5) If—
  - (a) the consumer has not received a notice under subsection (4) within the time required, or
  - (b) it appears to the agency that it would be improper for it to publish a notice of correction because it is incorrect, or unjustly defames any person, or is frivolous or scandalous, or is for any other reason unsuitable,the consumer or, as the case may be, the agency may, in the prescribed manner and on payment of the specified fee, apply to the Director, who may make such order on the application as he thinks fit.
- (6) If a person to whom an order under this section is directed fails to comply with it within the period specified in the order he commits an offence.

## **160 Alternative procedure for business consumers**

- (1) The Director, on an application made by a credit reference agency, may direct that this section shall apply to the agency if he is satisfied—
  - (a) that compliance with section 158 in the case of consumers who carry on a business would adversely affect the service provided to its customers by the agency, and
  - (b) that, having regard to the methods employed by the agency and to any other relevant factors, it is probable that consumers carrying on a business would not be prejudiced by the making of the direction.
- (2) Where an agency to which this section applies receives a request, particulars and a fee under section 158(1) from a consumer who carries on a business, and section 158(3)



does not apply, the agency, instead of complying with section 158, may elect to deal with the matter under the following subsections.

- (3) Instead of giving the consumer a copy of the file, the agency shall within the prescribed period give notice to the consumer that it is proceeding under this section, and by notice give the consumer such information included in or based on entries in the file as the Director may direct, together with a statement in the prescribed form of the consumer's rights under subsections (4) and (5).
- (4) If within 28 days after receiving the information given him under subsection (3), or such longer period as the Director may allow, the consumer—
  - (a) gives notice to the Director that he is dissatisfied with the information, and
  - (b) satisfies the Director that he has taken such steps in relation to the agency as may be reasonable with a view to removing the cause of his dissatisfaction, and
  - (c) pays the Director the specified fee,the Director may direct the agency to give the Director a copy of the file, and the Director may disclose to the consumer such of the information on the file as the Director thinks fit.
- (5) Section 159 applies with any necessary modifications to information given to the consumer under this section as it applies to information given under section 158.
- (6) If an agency making an election under subsection (2) fails to comply with subsection (3) or (4) it commits an offence.