Consumer Credit Act 1974

1974 CHAPTER 39

PART XI

ENFORCEMENT OF ACT

161 Enforcement authorities.

(1) The following authorities ("enforcement authorities ") have a duty to enforce this Act and regulations made under it—

(a) the **[**[F1]OFT**]** ,

(b) in Great Britain, the local weights and measures authority,

(c) in Northern Ireland, the Department of Commerce for Northern Ireland.

(2) [F2]. . . . . .

(3) Every local weights and measures authority shall, whenever the **[**[F1]OFT**]** requires, report to **[**[F3]it**]** in such form and with such particulars as **[**[F3]it**]** requires on the exercise of their functions under this Act.

(4) . . . . . [F4]

Textual Amendments

F1 Words in s. 161 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(32)(a)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F2 S. 161(2) omitted (1.4.2003) by virtue of and repealed (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(32)(b)**, **Sch. 26**; S.I. 2003/766, **art. 2**, Sch. (with art. 3); S.I. 2003/1397, **art. 2**, Sch. (with arts. 8, 10)

F3 Words in s. 161(3) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(32)(c)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F4 S. 161(4)–(6) repealed by Local Government, Planning and Land Act 1980 (c. 65, SIF 81:1, 2), s. 1(4), **Sch. 34 Pt. IV**

Status: *Point in time view as at 01/04/2003.*
Changes to legislation: *Consumer Credit Act 1974, Part XI is up to date with all changes known to be in force on or before 26 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

162 Powers of entry and inspection.

(1) A duly authorised officer of an enforcement authority, at all reasonable hours and on production, if required, of his credentials, may—

(a) in order to ascertain whether a breach of any provision of or under this Act has been committed, inspect any goods and enter any premises (other than premises used only as a dwelling);

(b) if he has reasonable cause to suspect that a breach of any provision of or under this Act has been committed, in order to ascertain whether it has been committed, require any person—

(i) carrying on, or employed in connection with, a business to produce any books or documents relating to it; or

(ii) having control of any information relating to a business recorded otherwise than in a legible form to provide a document containing a legible reproduction of the whole or any part of the information,

and take copies of, or of any entry in, the books or documents;

(c) if he has reasonable cause to believe that a breach of any provision of or under this Act has been committed, seize and detain any goods in order to ascertain (by testing or otherwise) whether such a breach has been committed;

(d) seize and detain any goods, books or documents which he has reason to believe may be required as evidence in proceedings for an offence under this Act;

(e) for the purpose of exercising his powers under this subsection to seize goods, books or documents, but only if and to the extent that it is reasonably necessary for securing that the provisions of this Act and of any regulations made under it are duly observed, require any person having authority to do so to break open any container and, if that person does not comply, break it open himself.

(2) An officer seizing goods, books or documents in exercise of his powers under this section shall not do so without informing the person he seizes them from.

(3) If a justice of the peace, on sworn information in writing, or, in Scotland, a sheriff or a magistrate or justice of the peace, on evidence on oath,—

(a) is satisfied that there is reasonable ground to believe either—

(i) that any goods, books or documents which a duly authorised officer has power to inspect under this section are on any premises and their inspection is likely to disclose evidence of a breach of any provision of or under this Act; or

(ii) that a breach of any provision of or under this Act has been, is being or is about to be committed on any premises; and

(b) is also satisfied either—

(i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier; or

(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to wait for his return,

the justice or, as the case may be, the sheriff or magistrate may by warrant under his hand, which shall continue in force for a period of one month, authorise an officer of an enforcement authority to enter the premises (by force if need be).

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(4) An officer entering premises by virtue of this section may take such other persons and equipment with him as he thinks necessary; and on leaving premises entered by virtue of a warrant under subsection (3) shall, if they are unoccupied or the occupier is temporarily absent, leave them as effectively secured against tres-passers as he found them.

(5) Regulations may provide that, in cases described by the regulations, an officer of a local weights and measures authority is not to be taken to be duly authorised for the purposes of this section unless he is authorised by the **[**[F5]OFT**]** .

(6) A person who is not a duly authorised officer of an enforcement authority, but purports to act as such under this section, commits an offence.

(7) Nothing in this section compels a barrister, advocate or solicitor to produce a document containing a privileged communication made by or to him in that capacity or authorises the seizing of any such document in his possession.

Textual Amendments

F5 Words in s. 162(5) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(32)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

Modifications etc. (not altering text)

C1 S. 162(1)(c)(d): powers of seizure extended (1.4.2003) by 2001 c. 16, ss. 50, 52-54, 68, 138, Sch. 1 Pt. 1 para. 19; S.I. 2003/708, **art. 2**

163 Compensation for loss.

(1) Where, in exercising his powers under section 162, an officer of an enforcement authority seizes and detains goods and their owner suffers loss by reason of—

(a) that seizure, or

(b) the loss, damage or deterioration of the goods during detention,

then, unless the owner is convicted of an offence under this Act committed in relation to the goods, the authority shall compensate him for the loss so suffered.

(2) Any dispute as to the right to or amount of any compensation under subsection (1) shall be determined by arbitration.

Modifications etc. (not altering text)

C2 S. 163 applied (1.4.2003) by 2001 c. 16, ss. 70, 138, Sch. 2 Pt. 1 para. 7; S.I. 2003/708, **art. 2**

164 Power to make test purchases etc.

(1) An enforcement authority may—

(a) make, or authorise any of their officers to make on their behalf, such purchases of goods; and

(b) authorise any of their officers to procure the provision of such services or facilities or to enter into such agreements or other transactions,

as may appear to them expedient for determining whether any provisions made by or under this Act are being complied with.

(2) Any act done by an officer authorised to do it under subsection (1) shall be treated for the purposes of this Act as done by him as an individual on his own behalf.

(3) Any goods seized by an officer under this Act may be tested, and in the event of such a test he shall inform the person mentioned in section 162(2) of the test results.

(4) Where any test leads to proceedings under this Act, the enforcement authority shall—

(a) if the goods were purchased, inform the person they were purchased from of the test results, and

(b) allow any person against whom the proceedings are taken to have the goods tested on his behalf if it is reasonably practicable to do so.

165 Obstruction of authorised officers.

(1) Any person who—

(a) wilfully obstructs an officer of an enforcement authority acting in pursuance of this Act; or

(b) wilfully fails to comply with any requirement properly made to him by such an officer under section 162; or

(c) without reasonable cause fails to give such an officer (so acting) other assistance or information he may reasonably require in performing his functions under this Act,

commits an offence.

(2) If any person, in giving such information as is mentioned in subsection (1)(c), makes any statement which he knows to be false, he commits an offence.

(3) Nothing in this section requires a person to answer any question or give any information if to do so might incriminate that person or (where that person is married) the husband or wife of that person.

166 Notification of convictions and judgments to [F6OFT].

Where a person is convicted of an offence or has a judgment given against him by or before any court in the United Kingdom and it appears to the court—

(a) having regard to the functions of the **[**F6OFT**]** under this Act, that the conviction or judgment should be brought to the **[**F7OFT's**]** attention, and

(b) that it may not be brought to **[**F8its**]** attention unless arrangements for that purpose are made by the court,

the court may make such arrangements notwithstanding that the proceedings have been finally disposed of.

Textual Amendments

F6 Words in s. 166 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(34)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F7 Words in s. 166(a) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(34)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F8 Word in s. 166(b) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(34)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

167 Penalties.

(1) An offence under a provision of this Act specified in column 1 of Schedule 1 is triable in the mode or modes indicated in column 3, and on conviction is punishable as indicated in column 4 (where a period of time indicates the maximum term of imprisonment, and a monetary amount indicates the maximum fine, for the offence in question).

(2) A person who contravenes any regulations made under section 44, 52, 53 or 112, or made under section 26 by virtue of section 54, commits an offence.

Modifications etc. (not altering text)

C3 S. 167 excluded (*temp.*) by S.I. 1989/1125, **reg. 10(1)**

C4 S. 167 restricted (31.10.2004) by The Consumer Credit (Advertisements) Regulations 2004 (S.I. 2004/1484), **reg. 12**

C5 S. 167 restricted (1.2.2011) by The Consumer Credit (Advertisements) Regulations 2010 (S.I. 2010/1970), **reg. 12** (with reg. 11)

168 Defences.

(1) In any proceedings for an offence under this Act it is a defence for the person charged to prove—

(a) that his act or omission was due to a mistake, or to reliance on information supplied to him, or to an act or omission by another person, or to an accident or some other cause beyond his control, and

(b) that he took all reasonable precautions and exercised all due diligence to avoid such an act or omission by himself or any person under his control.

(2) If in any case the defence provided by subsection (1) involves the allegation that the act or omission was due to an act or omission by another person or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice giving such information identifying or assisting in the identification of that other person as was then in his possession.

169 Offences by bodies corporate.

Where at any time a body corporate commits an offence under this Act with the consent or connivance of, or because of neglect by, any individual, the individual commits the like offence if at that time—

(a) he is a director, manager, secretary or similar officer of the body corporate, or

(b) he is purporting to act as such an officer, or

(c) the body corporate is managed by its members of whom he is one.

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170 No further sanctions for breach of Act.

(1) A breach of any requirement made (otherwise than by any court) by or under this Act shall incur no civil or criminal sanction as being such a breach, except to the extent (if any) expressly provided by or under this Act.

(2) In exercising **[**[F9]its**]** functions under this Act the **[**[F10]OFT**]** may take account of any matter appearing to **[**[F11]it**]** to constitute a breach of a requirement made by or under this Act, whether or not any sanction for that breach is provided by or under this Act and, if it is so provided, whether or not proceedings have been brought in respect of the breach.

(3) Subsection (1) does not prevent the grant of an injunction, or the making of an order of certiorari, mandamus or prohibition or as respects Scotland the grant of an interdict or of an order under section 91 of the [M1]Court of Session Act 1868 (order for specific performance of statutory duty).

Textual Amendments

F9 Word in s. 170(2) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(35)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F10 Words in s. 170(2) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(35)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

F11 Word in s. 170(2) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(35)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

Marginal Citations

M1 1868 c. 100.

171 Onus of proof in various proceedings.

(1) If an agreement contains a term signifying that in the opinion of the parties section 10(3)(b)(iii) does not apply to the agreement, it shall be taken not to apply unless the contrary is proved.

(2) It shall be assumed in any proceedings, unless the contrary is proved, that when a person initiated a transaction as mentioned in section 19(1)(c) he knew the principal agreement had been made, or contemplated that it might be made.

(3) Regulations under section 44 or 52 may make provision as to the onus of proof in any proceedings to enforce the regulations.

(4) In proceedings brought by the creditor under a credit-token agreement—

(a) it is for the creditor to prove that the credit-token was lawfully supplied to the debtor, and was accepted by him, and

(b) if the debtor alleges that any use made of the credit-token was not authorised by him, it is for the creditor to prove either—

(i) that the use was so authorised, or

(ii) that the use occurred before the creditor had been given notice under section 84(3).

(5) In proceedings under section 50(1) in respect of a document received by a minor at any school or other educational establishment for minors, it is for the person sending

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it to him at that establishment to prove that he did not know or suspect it to be such an establishment.

(6) In proceedings under section 119(1) it is for the pawnee to prove that he had reasonable cause to refuse to allow the pawn to be redeemed.

(7) If, in proceedings referred to in section 139(1), the debtor or any surety alleges that the credit bargain is extortionate it is for the creditor to prove the contrary.

172 Statements by creditor or owner to be binding.

(1) A statement by a creditor or owner is binding on him if given under—
section 77(1),
section 78(1),
section 79(1),
section 97(1),
section 107(1)(c),
section 108(1)(c), or
section 109(1)(c),

(2) Where a trader—
(a) gives a customer a notice in compliance with section 103(1)(b), or
(b) gives a customer a notice under section 103(1) asserting that the customer is not indebted to him under an agreement,
the notice is binding on the trader.

(3) Where in proceedings before any court—
(a) it is sought to reply on a statement or notice given as mentioned in subsection (1) or (2), and
(b) the statement or notice is shown to be incorrect,
the court may direct such relief (if any) to be given to the creditor or owner from the operation of subsection (1) or (2) as appears to the court to be just.

173 Contracting-out forbidden.

(1) A term contained in a regulated agreement or linked transaction, or in any other agreement relating to an actual or prospective regulated agreement or linked transaction, is void if, and to the extent that, it is inconsistent with a provision for the protection of the debtor or hirer or his relative or any surety contained in this Act or in any regulation made under this Act.

(2) Where a provision specifies the duty or liability of the debtor or hirer or his relative or any surety in certain circumstances, a term is inconsistent with that provision if it purports to impose, directly or indirectly, an additional duty or liability on him in those circumstances.

(3) Notwithstanding subsection (1), a provision of this Act under which a thing may be done in relation to any person on an order of the court or the **[**[F12]OFT**]** only shall not be taken to prevent its being done at any time with that person's consent given at that time, but the refusal of such consent shall not give rise to any liability.

Textual Amendments

F12 Words in s. 173 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 6(36)**; S.I. 2003/766, **art. 2**, Sch. (with art. 3)

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