

CONSUMER CREDIT ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Agreements Regulated under the 1974 Act

Section 1: Definition of “individual”

15. *Section 1* amends section 189(1) of the 1974 Act to provide a new definition of “individual”. This restricts the partnerships that are to be regarded as “individuals” to those consisting of two or three partners, not all of whom are bodies corporate. This means that in future borrowing or hire by partnerships of more than three members will not be covered by the 1974 Act, i.e. these partnerships will be treated in the same way as bodies corporate.

Section 2: Removal of financial limits etc.

16. *Section 2* removes the financial limit for the regulation of consumer credit and consumer hire agreements under the 1974 Act. The 1974 Act currently applies only to agreements where credit provided or the hire payments to be made do not exceed £25,000. In future, all consumer credit and consumer hire agreements will be regulated by the 1974 Act unless specifically exempted, regardless of the amount of the credit or the amount of the hire payments. *Section 2(3)* extends the application of the provisions regulating credit advertisements to advertisements offering credit regardless of the sum involved, and regardless of whether the creditor requires security.

Section 3: Exemption relating to high net worth debtors and hirers

17. *Section 3* inserts a new section 16A after section 16 of the 1974 Act. Section 16A gives the Secretary of State power by order to provide 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 provisions relating to unfair relationships will continue to apply to such agreements (i.e. the new sections 140A to 140C, inserted by sections 19-22 (see below)), as will the existing provisions relating to extortionate credit bargains (i.e. sections 137-140) to the extent they continue to have effect after commencement of new sections 140A-140C (see the note in respect of Schedule 3 below) if, for example, the high net worth exemption comes into force before the unfair relationships provisions.
18. In order that an agreement may be exempted under section 16A, the debtor or hirer must be a natural person (i.e. not a partnership, unincorporated association or body corporate) and it must include a declaration, in the specified form, that the debtor or hirer agrees to forgo the protection and remedies that would be available under the 1974 Act if the agreement were a regulated agreement. The debtor or hirer must also provide the creditor or owner with a statement of “high net worth”, again in the specified form, which has been made in relation to him by a specified type of person (e.g. an accountant or a solicitor). “Specified” in this case means specified by order of the Secretary of State.

*These notes refer to the Consumer Credit Act 2006
(c.14) which received Royal Assent on 30 March 2006*

19. A statement of “high net worth” must be current in relation to the agreement, i.e. made no more than one year before the date of the making of the agreement. The statement should state that the debtor or hirer, in respect of the previous financial year (being the year ending 31st March preceding the current financial year in which the statement is made), either:
- received income of a specified description of the specified amount or more during that period; or
 - had net assets of a specified description which were of a value not less than the specified amount during the whole of that period.
- “Specified” in this case means specified by order of the Secretary of State.

Section 4: Exemption relating to businesses

20. *Section 4* inserts a new section 16B before section 17 of the 1974 Act. Section 16B exempts from regulation those consumer credit and hire agreements entered into wholly or predominantly for the debtor’s or hirer’s business purposes where the credit provided or hire payments to be made exceed £25,000, although the provisions relating to unfair relationships will continue to apply (i.e. the new sections 140A to 140C inserted by sections 19-22 (see below)) as will the existing provisions relating to extortionate credit bargains (i.e. sections 137-140 of the 1974 Act) as they will in relation to section 16A (see the notes in respect of Schedule 3 below).
21. Whether an agreement is for a business purpose will depend on the circumstances of the proposed transaction. A credit or hire agreement will be presumed to be wholly or predominantly for business purposes where it includes a declaration by the debtor or hirer to that effect, unless at the time the agreement was made, the creditor or owner, or any person who has acted on his behalf in connection with the entering into of the agreement, knows or has reasonable cause to suspect that the declaration is not true.

Section 5: Consequential amendments relating to ss. 1 to 4

22. *Section 5* provides for amendments to the 1974 Act arising as a consequence of sections 1 to 4. *Section 5(7)* provides that the Secretary of State has power by order to alter the amount of £25,000 under the new section 16B inserted in the 1974 Act by section 4 of the 2006 Act. That power is subject to the affirmative resolution procedure.