

CONSUMER CREDIT ACT 2006

EXPLANATORY NOTES

DEFAULT UNDER REGULATED AGREEMENTS

Section 8: OFT to prepare information sheets on arrears and default

26. *Section 8* inserts a new section 86A at the beginning of Part 7 of the 1974 Act. Section 86A requires OFT to prepare and publish information sheets for debtors and hirers about arrears and default. A creditor or owner must give a debtor or hirer an arrears information sheet at the same time as a notice of sums in arrears in accordance with new sections 86B and 86C inserted by sections 9 and 10 (see below) and a default information sheet at the same time as a default notice (in accordance with section 87 of the 1974 Act).
27. The information sheets will set out information to help debtors and hirers who are in arrears or default (e.g. information about the legal consequences of the debtor's or hirer's general situation, debt management options and the contact details of advice providers).

Section 9: Notice of sums in arrears under fixed-sum credit agreements etc.

28. *Section 9* inserts a new section 86B after the new section 86A (inserted into the 1974 Act by section 8). Section 86B provides that creditors and owners must give to debtors and hirers notices of sums in arrears in respect of regulated agreements that are fixed sum credit agreements or hire agreements. A creditor or owner must give a notice in the specified form, including an arrears information sheet, to a debtor or hirer 14 days after a point in time where:
- the debtor or hirer is required to have made two (in the case of agreements with a repayment interval of more than one week) or four (in the case of agreements with a repayment interval of one week or less) payments under the agreement before that time;
 - the total sum that has been paid by the debtor or hirer under the agreement up to that time is less than the amount that he is required to have paid at that time;
 - the amount of the debtor's or hirer's shortfall is no less than the total of the last two (in the case of agreements with a repayment interval of more than one week) or four (in the case of agreements with a repayment interval of one week or less) payments required to have been paid under the agreement before that time subject as set out below;
 - the creditor or owner is not already required to provide the debtor or hirer with a notice of sums in arrears in relation to that agreement; and
 - there is no sum payable by the debtor or hirer under a judgment given before that time in relation to the credit or hire agreement.

Thereafter the creditor or owner will be required to give to the debtor or hirer a notice of sums in arrears at intervals of six months until he ceases to be in arrears and has

paid all sums of interest or default sums that are payable in relation to his arrears, or a judgment is made in relation to the sums payable under that agreement.

29. In the case of agreements with repayment intervals of one week or less made more than 20 weeks before the day on which the debtor or hirer is required to have made the most recent payment under the agreement, the amount of the debtor's or hirer's shortfall is calculated on the basis only of payments missed in the period of 20 weeks ending with that day.

Section 10: Notice of sums in arrears under running-account credit agreements

30. *Section 10* inserts a new section 86C after the new section 86B inserted into the 1974 Act by section 9 of the 2006 Act. Section 86C requires that a creditor must give to the debtor notices of sums in arrears in respect of regulated agreements that are running account agreements. A creditor must give to a debtor a notice in the specified form, including an arrears information sheet after a point in time where:

- the debtor should have made at least two repayments before that time;
- the last two payments required before that time have not been made;
- the creditor has not already been required to provide the debtor with a notice of sums in arrears in relation to either of those payments; and
- there is no sum payable by the debtor under a judgment given before the time in relation to the credit agreement.

31. The creditor must give the notice at a time no later than the time that he is required to give the debtor the next regular statement due under section 78(4) of the 1974 Act.

Section 11: Failure to give notice of sums in arrears

32. *Section 11* inserts a new section 86D after the new section 86C (inserted into the 1974 Act by section 10). Section 86D sets out the consequences for a creditor or owner if he fails to give a notice as required by sections 86B or 86C. If the creditor or owner fails to provide a notice of sums in arrears when required to do so, then during the period of his failure to provide the notice (i.e. from the date that it was required to be given until the end of the day on which it is eventually provided), he is not entitled to enforce the agreement. In addition, the debtor or hirer is not liable to pay any interest that relates to the period of the creditor or owner's failure, nor is the debtor or hirer liable to pay any default sum (see the notes in respect of section 18 below) which becomes payable during that period.

Section 12: Notice of default sums

33. *Section 12* inserts a new section 86E after the new section 86D (inserted into the 1974 Act by section 11). Section 86E applies to situations where a debtor or hirer under a regulated agreement incurs a default sum (as defined by section 18). A creditor or owner must give the debtor or hirer a notice in the specified form when a default sum becomes payable as a consequence of a breach of the agreement. The Secretary of State has the power to provide that this only applies where the default sum exceeds a specified amount.

34. A creditor or owner may only require a debtor or hirer to pay interest in connection with a default sum 28 days after the day the notice was given to the debtor or hirer. If the creditor or owner fails to give a notice to the debtor or hirer then he is not entitled to enforce the agreement until he gives the notice to the debtor or hirer.

Section 13: Interest on default sums

35. *Section 13* inserts a new section 86F after the new section 86E (inserted into the 1974 Act by section 12). Section 86F provides that a creditor or owner may only require simple interest to be paid in respect of default sums (see notes in respect of section 18 below) payable by the debtor or hirer, including sums payable under non-commercial or small agreements (see definitions in section 189(1) of the 1974 Act).

Section 14: Default notices

36. *Section 14* amends section 88 of the 1974 Act to extend from seven to 14 days the minimum period after which a creditor or owner may take action in respect of the agreement after having issued a default notice. Section 87 of the 1974 Act requires a creditor or owner to give the debtor or hirer a default notice in the prescribed form if he wishes to terminate the agreement, demand earlier payment of a sum, recover possession of any goods or land, treat any right conferred on the debtor or hirer by the agreement as terminated, restricted or deferred, or to enforce any security. Section 88 is also amended to allow the Secretary of State to prescribe information in the default notice to include any matters relating to the agreement (e.g. information about whether the agreement includes a term providing for the charging of post-judgment interest).

Section 15: Enforceability of regulated agreements

37. The 1974 Act provides that in certain circumstances where the requirements of the Act are not complied with in relation to regulated agreements or to security provided in relation to such agreements, the agreement or security is enforceable against the debtor or hirer only on an order of the court. Sections 127(1) and (2) of the 1974 Act give the court discretion whether to grant an enforcement order in those circumstances subject to subsections (3) and (4). Section 127(3) and (4) provides that a court shall not make an enforcement order (i.e. a consumer credit or hire agreement will be automatically unenforceable) where:

- prescribed requirements in relation to the execution of regulated agreements (set out in section 61(1)(a) of the 1974 Act) were not complied with or a document containing all the prescribed terms of the agreement was not signed by the debtor or hirer;
- the specific requirements imposed by sections 62, 63 and 64 of the 1974 Act in relation to cancellable agreements as regards supplying copies of the agreement before and after its execution and giving notice of the cancellation rights are not complied with. A cancellable agreement is an agreement which, by virtue of section 67 of the 1974 Act, may be cancelled by the debtor or hirer, essentially where oral representations about the agreement have been made to the debtor or hirer face-to-face before the agreement is made other than on the business premises of the creditor or owner or connected persons and where the agreement is not secured on land.

38. *Section 15* repeals sections 127(3) to (5) of the 1974 Act (subsection (5) is consequential on subsection (3)), which means that a court will have the power to determine in its discretion whether agreements are enforceable in accordance with section 127(1) and (2) regardless of the breach in question.

Section 16: Time orders

39. Section 129 of the 1974 Act provides that a debtor or hirer may apply to the court for a time order. A time order is an order in which the court may reschedule any payments due under the regulated agreement. *Section 16* amends section 129(1) of the 1974 Act and inserts a new section 129A after section 129 of the 1974 Act. Section 129 sets out the circumstances in which a debtor or hirer may apply for, and a court may grant, a time order in respect of a regulated agreement. The amended section 129 will enable a

debtor or hirer to apply for a time order after having received a notice of sums in arrears (where required by the new sections 86B or 86C inserted in the 1974 Act by this 2006 Act), in addition to being able to make an application after having received a default notice (under section 87).

40. This does not permit a debtor or hirer to automatically make an application. The new section 129A provides that, having received a notice of sums in arrears, the debtor or hirer may only make an application if he has given a notice to the creditor or owner including certain required information and a period of 14 days has passed since he gave the notice to the creditor or owner. This requirement does not apply to debtors or hirers who receive default notices under section 87 of the 1974 Act. A notice given under section 129A by a debtor or hirer must indicate that the debtor or hirer intends to make the application for a time order in relation to the agreement, indicate that he wants to make a proposal to the creditor or owner in relation to his making of payments under the agreement and give details of that proposal. Although the notice must be in writing, there are no specific requirements as to its form.
41. *Section 16(4)* of the 2006 Act amends the Sheriff Courts (Scotland) Act 1971 to provide that, in respect of applications relating to time orders under section 129 and 130(6) of the 1974 Act made in Scotland, the rules of the Sheriff Court may permit the debtor or hirer to be represented by a person who is not an advocate or a solicitor. (Section 130(6) of the 1974 Act allows a court to vary or revoke a time order on the application of any person affected by it.) *Subsection (5)* makes it clear that, in such circumstances, a person representing a debtor or hirer will not breach section 32(2B) of the Solicitors (Scotland) Act 1980, which prohibits persons who are not advocates or solicitors from preparing certain documents. This brings the position in Scotland into line with that in the rest of the UK where lay representation is already permissible in these cases.

Section 17: Interest payable on judgment debts etc.

42. *Section 17* inserts a new section 130A after section 130 of the 1974 Act. Section 130A imposes requirements on a creditor or owner to notify and give information to debtors and hirers in the specified form about interest applying to a judgment debt by virtue of a term of the agreement enabling interest to accrue after judgment until payment. After the giving of a judgment, where such interest applies to a judgment sum, the creditor or owner must notify the debtor or hirer and provide further notices at intervals of not more than 6 months. The notice may be incorporated into any other statement or notice that the creditor or owner gives to the debtor or hirer under the 1974 Act. The debtor or hirer will not be liable to pay such interest for any period when the creditor or owner has not complied with the requirements of this section. This provision does not apply where a court has the power to order that interest at a specified rate be payable on a judgment sum.

Section 18: Definition of “default sum”

43. *Section 18* inserts a new definition of “default sum” into the 1974 Act. “Default sum” means a sum payable by a debtor or hirer in connection with his breach of a regulated agreement (e.g. a charge imposed for late payment of an instalment due under the agreement or a fee imposed for exceeding a credit limit on a credit card). A default sum does not include sums that, as a consequence of a breach of the agreement, become payable earlier than they otherwise would have done. It does not include interest.