

CONSUMER CREDIT ACT 2006

EXPLANATORY NOTES

UNFAIR RELATIONSHIPS

44. *Sections 19-22* repeal and replace sections 137-140 of the 1974 Act which empowered the Court to reopen an ‘extortionate credit bargain’. A bargain was ‘extortionate’, if at the time the agreement was made, it required the debtor to make payments which were grossly exorbitant or otherwise grossly contravened ordinary principles of fair dealing. In coming to its conclusions the court was required to consider evidence produced concerning specific factors relevant to prevailing interest rates, the debtor (e.g. age, experience or degree of financial pressure) and creditor (e.g. accepted risk having regard to value of security).
45. The amended provisions will enable a court to consider whether the relationship between the creditor and debtor arising out of that agreement is unfair to the debtor because of the terms of the agreement, the way in which the agreement is operated by the creditor or any other thing done or not done by or on behalf of the creditor before or after the agreement was made. The court may take into account all matters it thinks relevant relating to the creditor and debtor in making its assessment. The court is provided with a broad range of remedies under new section 140B to address the unfairness.

Section 19: Unfair relationships between creditors and debtors

46. *Section 19* inserts a new section 140A after section 140 of the 1974 Act. Section 140A(1) enables a court to make an order under the new section 140B, inserted into the 1974 Act by section 20 (see below) if it finds that the relationship between the creditor and the debtor arising out of a credit agreement, or that agreement taken with any related agreement, is unfair to the debtor. A relationship may be unfair to the debtor because of one or more of the following:
- any of the terms of the agreement or any related agreement;
 - the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;
 - any other thing done (or not done) by, or on behalf of, the creditor (whether occurring before or after the making of the agreement or any related agreement).
47. The court may take into account all matters it thinks relevant (including matters relevant to the debtor and to the creditor) in determining whether a relationship is unfair. This may include anything done or not done on behalf of or in relation to the creditor’s associates or former associates (as defined by section 184 of the 1974 Act).
48. Section 140A does not apply to agreements that are exempt under section 16(6C) of the 1974 Act. Section 16(6C) exempts consumer credit agreements secured on land that are regulated by FSA under FSMA.

Section 20: Powers of the court in relation to unfair relationships

49. *Section 20* inserts a new section 140B after the new section 140A (inserted into the 1974 Act by section 19). Section 140B sets out the types of orders that a court may make in relation to any determination that a relationship between a creditor and a debtor is unfair.

Section 21: Interpretation of ss.140A and 140B of the 1974 Act

50. *Section 21* inserts a new section 140C after the new section 140B (inserted into the 1974 Act by section 20). The new section 140C defines the types of agreements that are covered by sections 140A and 140B. Any agreement that involves the provision of credit to an individual, whether or not regulated by the 1974 Act (except as specified (see paragraph 48 above)), is covered. The sections also cover, through the definition of “related agreement”, the practice where the creditor enters into successive credit agreements with a debtor for the purpose, for example, of increasing the total amount of the debt or obtaining multiple fees from the debtor for setting up each loan.

Section 22: Further provision relating to unfair relationships

51. Section 22 makes consequential amendments. In particular, it inserts a new section 140D, which requires OFT to give advice and information about the interaction between the provisions on unfair relationships and Part 8 of the Enterprise Act 2002. Part 8 of the Enterprise Act 2002 allows OFT to bring proceedings against a person who, as a consequence of a breach of a statutory obligation, harms the collective interests of consumers in the United Kingdom. The advice and information published by OFT may include examples of the circumstances, conduct or practices that, in the opinion of OFT, could give rise to an unfair relationship between creditors and debtors.
52. *Section 22(3)* repeals sections 137 to 140 of the 1974 Act, which permit the court to re-open or set aside a credit agreement if it finds the credit bargain to be extortionate (see paragraph 44 above).