

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

CONSUMER CREDIT ACT 2006

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Consumer Credit Act 2006, which received Royal Assent on 30 March 2006. They have been prepared by the Department of Trade and Industry (“DTI”) in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

3. Because this Act covers several subject areas, each of the main areas is introduced and described separately in the commentary (although a short explanation of the background is given in paragraphs 5-7). Paragraph 8 gives a brief overview of the Act’s structure.

SUMMARY

4. For the purposes of these notes the Consumer Credit Act 2006 will be referred to as “the 2006 Act”. The 2006 Act principally amends the Consumer Credit Act 1974 (the “1974 Act”), which is the statute governing the licensing of, and other controls on, traders concerned with the provision of credit or the supply of goods on hire or hire-purchase to individuals and with the regulation of transactions concerning

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that provision or that supply. The purpose of the 2006 Act is to reform the 1974 Act to:

- provide for the regulation of all consumer credit and consumer hire agreements subject to certain exemptions;
- make provision in relation to the licensing of providers of consumer credit and consumer hire and ancillary credit services and the functions and powers of OFT in relation to licensing;
- enable debtors to challenge unfair relationships with creditors; and
- provide for an Ombudsman scheme to hear complaints in relation to businesses licensed under the 1974 Act, as amended.

SHORT BACKGROUND

5. In July 2001, the Secretary of State for Trade and Industry announced a review of the 1974 Act. After a process of public consultation with interested parties on the effectiveness of the existing regulation of information disclosure, early settlement, unfair credit transactions, consumer credit licensing, the financial limit above which agreements are not regulated under the 1974 Act and consumer redress, there followed the publication of the White Paper “*Fair, Clear and Competitive – The Consumer Credit Market in the 21st Century*” in December 2003.

6. The review also considered the problem of over-indebtedness in the United Kingdom, and the ways in which government, working with industry and consumer representatives and advisers, can tackle this issue. This led to the publication of the joint DTI and Department for Work and Pensions paper “*Tackling Over-indebtedness – Action Plan 2004*”.

7. The Government’s responses to these consultations may be found at www.dti.gov.uk/ccp/topics1/consumer_finance.htm#review. In respect of the issues of pre-contractual disclosure, advertising and early settlement, the Parliamentary Under-Secretary of State for Employment Relations, Competition and Consumers made the Consumer Credit (Advertisements) Regulations 2004, the Consumer Credit (Agreements) (Amendment) Regulations 2004, the Consumer Credit (Disclosure of Information) Regulations 2004 and the Consumer Credit (Early Settlement) Regulations 2004 in June 2004, the Consumer Credit (Miscellaneous Amendments) Regulations 2004 in October 2004 and the Consumer Credit Act 1974 (Electronic Communications) Order 2004 in December 2004. The remaining proposals for

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reform (relating to unfair credit relationships, consumer credit licensing, the financial limit and consumer redress) required primary legislation to amend the 1974 Act and other legislation and are dealt with in this 2006 Act.

THE ACT

8. The main areas covered by the 2006 Act are:
 - the regulation of consumer credit agreements and consumer hire agreements;
 - the provision of information to debtors and hirers after the agreement is made;
 - unfair relationships between debtors and creditors;
 - the licensing of consumer credit and hire businesses and ancillary credit businesses;
 - the powers of OFT in relation to the licensing of consumer credit and hire businesses and ancillary credit businesses;
 - appeals from decisions of OFT in relation to the licensing of consumer credit and hire businesses and ancillary credit businesses; and
 - the extension of the jurisdiction of the Financial Ombudsman Service established under the Financial Services and Markets Act 2000.
9. In addition to amending the 1974 Act, the 2006 Act amends:
 - the Sheriff Courts (Scotland) Act 1971 and the Solicitors (Scotland) Act 1980 to allow the lay representation of debtors or hirers in applications relating to time orders in Scotland;
 - the Bankruptcy (Scotland) Act 1985, the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989 as a consequence of the provisions in the 2006 Act dealing with unfair relationships;
 - the Criminal Justice and Police Act 2001 as a consequence of the provisions in the 2006 Act concerning powers of OFT in relation to entry into premises;

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which received Royal Assent on 30 March 2006*

- the Tribunals and Inquiries Act 1992 as a consequence of the provisions in the 2006 Act concerning the establishment of the Consumer Credit Appeals Tribunal; and
- the Financial Services and Markets Act 2000 as a consequence of the extension of the jurisdiction of the Financial Ombudsman Service.

10. The 2006 Act has no freestanding parts, apart from the transitional and other supplementary provisions in sections 66-71. All the substantive provisions are amendments to the 1974 Act and the other Acts mentioned above.

INTERPRETATION

11. The 1974 Act sets out a framework for the regulation of the supply of consumer credit and the hiring of goods in the United Kingdom and provides that a licence under the Act is necessary to carry on a consumer credit business, a consumer hire business and an ancillary credit business (for definitions of these terms, please see paragraph 14 below). The 1974 Act regulates the supply of credit and the hiring of goods throughout the United Kingdom to “individuals” (which includes natural persons, unincorporated associations and partnerships of any size) where the credit provided or payments for hire do not exceed a specified limit (currently £25,000).

12. The 1974 Act imposes a system of trading control through regulating the general business activities of those traders that constitute the consumer credit and hire industry and it does this by licensing (Part 3 of the 1974 Act) and controlling the methods of seeking business (Part 4 of the 1974 Act). Control over agreements is done through the regulation of individual consumer credit or consumer hire agreements, that is entry into agreements (Part 5 of the 1974 Act), matters arising during the currency of agreements (Part 6 of the 1974 Act) and default under and termination of agreements generally (Part 7 of the 1974 Act).

13. The 1974 Act also regulates the giving of security in relation to agreements regulated under the Act and pawn broking (Part 8) and the licensing of ancillary credit businesses (Part 10).

14. These explanatory notes use key terms defined in the 1974 Act, as set out below, as well as, for convenience, certain abbreviated terms (which are marked with an asterisk). Where the term is one used in the 1974 Act and the 2006 Act amends it, the definition below is that used in and for the purposes of the 1974 Act prior to such amendment.

- **1974 Act:** Consumer Credit Act 1974. *

*These notes refer to the Consumer Credit Act 2006 (c.14)
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- **2006 Act:** Consumer Credit Act 2006.*
- **ancillary credit business:** any business so far as it comprises or relates to credit brokerage, debt-adjusting, debt counselling, debt collecting or the operation of a credit reference agency.
- **commencement:** the date or dates on which a provision of the 2006 Act commences (whether for all or specific purposes) in accordance with an order made by the Secretary of State under Section 71. *
- **consumer credit agreement:** an agreement between an individual (the “debtor”) and any other person (the “creditor”) by which the creditor provides the debtor with credit not exceeding £25,000.
- **consumer credit business:** any business so far as it comprises or relates to the provision of credit under regulated consumer credit agreements.
- **consumer hire agreement:** an agreement made by a person with an individual (the “hirer”) for the bailment or (in Scotland) the hiring of goods to the hirer, being an agreement which is not a hire-purchase agreement, is capable of subsisting for more than three months and does not require the hirer to make payments exceeding £25,000.
- **consumer hire business:** any business so far as it comprises or relates to the bailment or (in Scotland) the hiring of goods under regulated consumer hire agreements.
- **exempt agreement:** a consumer credit or hire agreement which is not a regulated agreement under the 1974 Act by virtue of an exemption by or under section 16 of the 1974 Act.
- **FOS:** the Financial Ombudsman Service. *
- **FSA:** the Financial Services Authority. *
- **FSMA:** Financial Services and Markets Act 2000. *
- **fixed-sum credit:** any facility under a credit agreement, other than running account credit, whereby the debtor is enabled to receive credit (whether in one amount or by instalments).

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- **group licence:** a licence, issued by OFT (whether on an application by a person or on OFT's own motion), which during such period as OFT thinks fit or, if it thinks fit, indefinitely, covers such persons and activities as are described in the licence.
- **individual:** includes a partnership or any other unincorporated body of persons not consisting entirely of bodies corporate.
- **licence:** a licence issued by OFT under the 1974 Act to carry on a consumer credit business, a consumer hire business or an ancillary credit business.
- **OFT:** the Office of Fair Trading.
- **regulated agreement:** a consumer credit or consumer hire agreement regulated by the 1974 Act.
- **running-account credit:** a facility under a credit agreement whereby the debtor is enabled to receive from time to time (whether in his own person, or by another person) from the creditor or a third party, cash, goods and services (or any of them) to an amount or value such that, taking into account payments made by or to the credit of the debtor, the credit limit (if any) is not exceeded (e.g. a credit card).
- **standard licence:** a licence issued by OFT to a person named in the licence on an application made by that person, which, during the period of the licence's duration, covers such activities as are described in the licence.

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.

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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.

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

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- 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.

STATEMENTS TO BE PROVIDED IN RELATION TO REGULATED AGREEMENTS

Section 6: Statements to be provided in relation to fixed-sum credit agreements

23 *Section 6* inserts a new section 77A after section 77 of the 1974 Act. Section 77A will require creditors in regulated fixed-sum credit agreements to provide debtors with annual statements in the specified form, the first of which is required within one year of the day after the date on which the agreement was made.

24. If a creditor does not give the debtor an annual statement when required to do so, then he is not entitled to enforce the agreement during the period of his non-compliance and the debtor is not liable to pay any interest during this period. The

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which received Royal Assent on 30 March 2006*

debtor is also not liable to pay any default sum (see note in respect of section 18 below) that would have become payable during the period of non-compliance or would have become payable after the end of that period in connection with a breach of the agreement occurring during that period. A creditor will not be required to give the debtor an annual statement if there are no further sums payable under the agreement.

Section 7: Further provision relating to statements

25. *Section 7* inserts a new section 78(4A) after section 78(4) of the 1974 Act. Section 78(4) of the 1974 Act requires creditors to issue statements to debtors setting out specified information in respect of running account credit agreements at intervals of not more than 12 months. Regulations made by the Secretary of State under the new section 78(4A) may require creditors to include specified information about the consequence of failing to make repayments, or only making minimum repayments, in statements issued under section 78(4) of the 1974 Act. The new *subsection (3)* makes provision for the giving of statements under sections 77A (inserted by section 6 of the 2006 Act) and 78(4) of the 1974 Act where there is more than one debtor to whom credit is provided. If there are two or more debtors, a debtor may provide a dispensing notice to the creditor so as to mean that the creditor is not obliged to provide a statement to that debtor. However, dispensing notices will not be effective if that would mean that no debtor will receive a statement under section 77A or 78.

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

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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:

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- 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.

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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

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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.

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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.

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.

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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.

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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).

BUSINESSES REQUIRING A LICENCE AND CONSEQUENCES OF NOT BEING LICENSED

Section 23: Definitions of consumer credit business and consumer hire business

53. *Section 23* redefines “consumer credit business” and “consumer hire business” to clarify that these include respectively being a creditor or an owner under regulated agreements. “Creditor” and “owner” are defined in section 189(1) of the 1974 Act.

Section 24: Debt administration

54. *Section 24* amends section 145 of the 1974 Act to include ‘debt administration’ as a type of ancillary credit business. ‘Debt administration’ means the taking of steps to perform duties under a consumer credit or consumer hire agreement on behalf of the creditor or owner, or to exercise or enforce rights under such an agreement on behalf of the creditor or owner (so far as these steps do not constitute debt collecting). As a consequence, people carrying on a business of debt administration will need to be licensed.

Section 25: Credit information services

55. *Section 25* amends section 145 of the 1974 Act to include provision of ‘credit information services’ as a type of ancillary credit business. ‘Credit information services’ covers those businesses that help individuals to locate and correct records relating to their financial standing held by credit reference agencies and others in the credit and hire industries. As a consequence, people providing credit information services as part of their business will need to be licensed.

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

Section 26: Enforcement of agreements by unlicensed trader etc

56. *Section 26* amends sections 40(1) and (2) of the 1974 Act to provide that a regulated consumer credit or hire agreement is unenforceable by a person acting in the course of a consumer credit or hire business who is not licensed to carry on a consumer credit or a consumer hire business of a description which covers the enforcement of the agreement. In addition, as under the current section 40, the new section 40(1A) provides that a regulated agreement is unenforceable if the creditor or owner who made the agreement did so in the course of a consumer credit or a consumer hire business but was not licensed at that time to make the agreement. Where a person has made an agreement without being licensed, that person may apply to OFT for an order to treat him as if he had been licensed to make the agreement.

57. Subsections (8) and (9) of the amended section 40 ensure that a person who is not required to have a licence under section 21(2) or (3) of the 1974 Act to carry out the acts referred to in sections 40(1) and (1A) is not caught by these provisions.

APPLICATIONS FOR LICENCES AND FITNESS TO HOLD A LICENCE ETC.

Section 27: Charge on applicants for licences etc.

58. *Section 27* inserts a new section 6A after section 6 of the 1974 Act. Section 6A requires applicants for licences (or for licence renewal) to pay to OFT such charge as OFT specifies by general notice towards OFT's costs of carrying out its functions under the 1974 Act. OFT may specify different charges for different classes of persons, including no charges. OFT must obtain the approval of the Secretary of State and HM Treasury before specifying a charge. The section also amends section 189 of the 1974 Act (definitions) to clarify that the definition of "costs" means "expenses" in Scotland (which is the name given to the costs involved in legal proceedings in that jurisdiction).

Section 28: Applications for standard licences

59. *Section 28* inserts a new section 24A after section 24 of the 1974 Act. Section 24A deals with applications for standard licences. The purpose of the new section 24A is to give OFT power to manage the application process in a more efficient way by requiring people to specify in applications for licences what businesses they want the licence to cover. An applicant must specify whether he wants a licence covering one or more of consumer credit business, consumer hire business and ancillary credit business generally or a licence which only covers one or more descriptions of business within any of these broad types of business. It is OFT which will specify the descriptions of business within the types of business specified in subsection (4) that applicants may use in their applications. Under section 25(1) to (1AD) of the 1974 Act, as amended by section 29, if an applicant satisfies OFT that he is fit to do

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everything he has applied for, he is entitled to a licence to do that. If not, there is power for OFT to issue him with a more limited licence.

Section 29: Issue of standard licences

60. *Section 29(2)* amends section 25 of the 1974 Act specifically to require OFT in determining fitness to have regard to the skills, knowledge and experience (in relation to consumer credit, consumer hire or ancillary credit business) of the applicant and anyone who will work for him under that licence, and the practices and procedures that will be implemented in connection with the business, in addition to other matters that are currently set out in the section. Those matters include evidence that the applicant or an associate:

- has committed an offence involving fraud, other dishonesty or violence;
- has contravened provisions of the 1974 Act, Part 16 of FSMA (so far as it relates to the new consumer credit jurisdiction of FOS) and any other laws relating to consumer credit (or the equivalent in another EEA state);
- has practised discrimination; or
- has engaged in business practices, which appear to OFT to be deceitful, oppressive, unfair or improper (whether unlawful or not).

Section 29(2) also inserts a new subsection 25(2B) which makes it clear that the business practices which the OFT may consider to be deceitful, oppressive, unfair or improper include practices which appear to the OFT to involve irresponsible lending.

Section 30: Guidance on fitness test

61. *Section 30* inserts a new section 25A after section 25 of the 1974 Act. Section 25A requires OFT to prepare and publish guidance as to the way it determines the fitness of a person to hold a licence. OFT may revise any guidance on fitness. OFT must consult such persons as it thinks fit in preparing the guidance and publish it in a way that brings it to the attention of those likely to be affected by it. OFT must have regard to the latest published guidance in carrying out its licensing functions.

Section 31: Variation of licences etc.

62. Sections 30 and 31 of the 1974 Act give OFT the power to vary licences on application or compulsorily. Section 32 of the 1974 Act gives OFT the power to suspend or revoke licences. *Section 31* of the 2006 Act makes consequential amendments to these sections of the 1974 Act arising from the new section 24A inserted by section 28 of the 2006 Act.

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Section 32: Winding up of standard licensee's business

63. *Section 32* inserts a new section 34A after section 34 of the 1974 Act. If OFT determines to renew a licence on different terms to the application, to vary it compulsorily, or to revoke or suspend a licence OFT may as part of that determination authorise the licensee to carry on specified activities (for a specified period) which it would otherwise no longer be licensed to carry on for the purpose of winding up or transferring its business. OFT may specify requirements which the licensee must comply with during the period of the authorisation failing which OFT may terminate the authorisation by notice to the licensee. *Subsection (5)* ensures (inter alia) that a licensee so authorised will not incur criminal liability for carrying on such activities without a licence.

Section 33: Consequential amendments relating to sections 27 to 32

64. *Section 33* makes amendments to other provisions of the 1974 Act and to provisions of FSMA consequential on the introduction of the new provisions in relation to the issue of licences by OFT.

DURATION OF LICENCES

Section 34: Definite and indefinite licences

65. *Section 34* amends the definitions of 'standard licence' and 'group licence' in the 1974 Act and enables OFT to issue indefinite standard licences as the norm. It provides for OFT to issue licences either indefinitely or for a specified period, provided definite licences do not exceed a period prescribed by the Secretary of State, and to vary the duration of licences in certain circumstances.

66. *Section 37* of the 1974 Act, which deals with the circumstances giving rise to termination of a standard licence, is amended to enable licensees to terminate such licences by notice to OFT. OFT may specify the form and content of the notice required for a licensee to terminate such a licence.

Sections 35 - 37: Charges for indefinite licences

67. *Sections 35 to 37* insert new sections 28A, 28B and 28C after section 28 of the 1974 Act relating to periodic payments for indefinite licences. Holders of indefinite standard licences and original applicants for indefinite group licences shall pay OFT a periodic charge specified by general notice, which may include different provision for different cases. OFT is given the power to extend the period for a person to make payments in respect of indefinite licences if there is a good reason for doing so. Failure to pay a periodic charge in respect of a standard licence during the payment period (or extended payment period) results in the licence being terminated and details of licences terminated for this reason must be kept on OFT's public register.

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FURTHER POWERS OF OFT TO REGULATE CONDUCT OF LICENSEES ETC.

Section 38: Power of OFT to impose requirements on licensees

68. *Section 38* inserts a new section 33A after section 33 of the 1974 Act. Section 33A provides OFT with a new intermediate power (additional to existing powers of revocation, suspension or variation of a licence) to impose requirements on licensees. OFT may impose a requirement in relation to a business carried on (or proposed to be carried on) under the licence where it is dissatisfied with any matter in connection with:

- a business being carried on, or which has been carried on, by a licensee or associate or former associate of the licensee;
- a proposal made by a licensee, or associate or former associate of the licensee, to carry on a business; or
- any other conduct of such a person,

whether occurring before or after the person became a licensee.

69. OFT may, by notice, require the licensee to do or not to do (or cease doing) anything specified in the notice to address the matter with which OFT is dissatisfied or to ensure that the same or similar matters do not arise. The requirement must relate to a business that the licensee is carrying on, or is proposing to carry on, under the licence. OFT may take action to impose a requirement whilst dealing with an application for a licence to be issued.

Section 39: Power of OFT to impose requirements on supervisory bodies

70. *Section 39* inserts a new section 33B after the new section 33A (inserted into the 1974 Act by section 38). Section 33B deals with the power of OFT to impose requirements on the responsible person in relation to a group licence where OFT is dissatisfied with the manner in which that person is regulating or otherwise supervising, or proposes to regulate or supervise, licensees under that licence. A requirement imposed under this provision may only relate to the practices and procedures of the responsible person for regulating or otherwise supervising licensees under the licence in connection with their carrying on of businesses under the licence. A person is a “responsible person” in relation to a group licence if he is the original applicant under it and he has a responsibility (whether by virtue of an enactment, an agreement or otherwise) for regulating or otherwise supervising persons who are licensees under the licence.

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Section 40: Supplementary provision relating to requirements

71. *Section 40* inserts a new section 33C after the new section 33B (inserted into the 1974 Act by section 39). Section 33C(3) provides that a person cannot be required under section 33A or 33B to compensate or otherwise make amends to another person. Section 33C gives OFT the power to vary or revoke requirements on its own motion or to do so on application by the person on whom the requirement has been imposed. It gives the same rights to make an application for the variation or revocation of a requirement to a person who is named in the requirement and prevented from being employed by the person on whom the requirement is imposed, or restricted as to the activities that he may engage in as an employee, or is otherwise prevented or restricted from doing something in connection with the business under the licence (an “affected person” for the purpose of these notes).

Section 41: Procedure in relation to requirements

72. *Section 41* inserts a new section 33D after the new section 33C (inserted into the 1974 Act by section 40). Section 33D sets out the procedure OFT must follow when imposing requirements. When it is minded to impose, vary or revoke a requirement, OFT must give a notice to any person on whom the requirement is or would be imposed and any affected person. The notice should inform him of OFT’s reasons for wishing to impose, vary or revoke the requirement and invite the person to submit representations as to OFT’s proposed determination to impose, vary or revoke the requirement.

73. OFT does not need to issue a notice if the proposed determination is in the same terms as one proposed by the person on whom the requirement is or would be imposed or an affected person (so that if OFT and that person agree on the content of a proposed requirement, the notice procedure is not necessary in relation to that person).

Section 42: Guidance on requirements

74. *Section 42* inserts a new section 33E after the new section 33D (inserted into the 1974 Act by section 41). Section 33E requires OFT to issue guidance as to how it exercises or how it proposes to exercise its powers in relation to the imposition, variation or revocation of requirements. OFT must have regard to this guidance in exercising its powers in relation to requirements.

Section 43: Consequential amendments relating to requirements

75. *Section 43* provides for a right of appeal for persons on whom a requirement is imposed and affected persons against imposition, variation or revocation of a requirement by OFT or refusal by OFT of an application by the appellant for variation or revocation of a requirement. It also provides that requirements and details of their variation will have to be recorded in the public register held by OFT.

POWERS AND DUTIES IN RELATION TO INFORMATION

Section 44: Provision of information etc. by applicants

76. *Section 44* deals with the information applicants under the 1974 Act may be required to provide in connection with their application. OFT may require additional information or documents that are relevant to the application, before the application is determined. Where an applicant has made an application to OFT, but it has not been determined, and OFT has published a general notice specifying any additional information required to be provided in connection with future applications then the applicant whose application is pending must provide OFT with that additional information.

77. If any information or document provided by an applicant in relation to his application is superseded or otherwise affected by any change in circumstances, or if any errors come to light during the period from when the application was made but before its determination, the applicant must notify OFT within 28 days of the information or document being superseded, the change in circumstances occurring, or the applicant becoming aware of the error or omission. This does not apply to clerical errors that do not affect the substance of the document, or anything that the applicant must notify OFT about under section 36 (duty to notify changes).

Section 45: Duties to notify changes in information etc.

78. *Section 45* inserts a new section 36A after section 36 of the 1974 Act, which concerns the duty on licensees to notify OFT of certain changes to their circumstances. Section 36A(2) requires licensees to provide OFT with information or documents in respect of a relevant application, where OFT has (after the application has been determined) published a general notice requiring the provision of that information. In this section a relevant application means the original application for a standard or group licence, or an application for the renewal or variation of such a licence.

79. After the determination of a relevant application, the holders of standard licences and original applicants for group licences must inform OFT (within 28 days of their becoming aware) of all documents and information which they have provided under section 6 of the 1974 Act or under this section, which have or has been superseded or otherwise affected by a change in circumstances. Any change of circumstances must fall within a description specified by OFT by general notice that must be relevant to a question of fitness of persons to have a standard licence or the public interest in maintaining a group licence.

80. The same persons must also notify OFT of any errors or omissions in any information or document which they have provided by virtue of section 6 or this section that comes to their attention following determination of a relevant application.

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which received Royal Assent on 30 March 2006*

Section 36A does not require a licensee to notify OFT of anything that he is already required to notify OFT about under section 36 of the 1974 Act or any clerical error or omission in any information or document that does not affect the substance of the information or document.

Section 46: Power of OFT to require information generally

81. *Section 46* inserts a new section 36B after the new section 36A (inserted into the 1974 Act by section 45). Section 36B allows OFT, on giving notice, to require a person to provide specified information and documents. The notice must set out OFT's reasons for requiring the information and documents. OFT may require such information or documents from the holder of a standard licence and the original applicant for a group licence only if it is reasonably required for the exercise of OFT's functions under the 1974 Act. It may require information from others if a specified act or omission has occurred (or OFT has reason to suspect that a specified act or omission has occurred) and the production of the information or document is reasonably required to enable OFT to take steps under Part 3 of the 1974 Act or to consider whether to do so. Those acts or omissions are specified in section 36B(6).

Section 47: Power of OFT to require access to premises

82. *Section 47* inserts a new section 36C after the new section 36B (inserted into the 1974 Act by section 46). Section 36C allows OFT to issue a notice requiring a licensee under a standard licence or the original applicant for a group licence to ensure that an officer of an enforcement authority (as defined in section 161(1) of the 1974 Act) may enter the specified premises on reasonable notice and at reasonable times for the purposes of observing the licensee's or applicant's carrying on of his business, and to inspect relevant specified documents relating to the licensee's or applicant's business kept at those premises, where it is reasonably required for purposes connected with OFT's functions under the 1974 Act. It may issue such a notice to persons who are licensees under group licences if the acts or omissions set out in section 36B(6) have occurred or OFT has reason to believe they have occurred and the observation or inspection is reasonably required to enable OFT to take a step under Part 3 of the 1974 Act or to consider whether to do so.

83. The licensee must give such access on such days and at such hours as OFT reasonably requires. A licensee is not required to secure access to premises if OFT has not given reasonable notice or the access is sought in respect of premises used solely as a dwelling. An officer of an enforcement authority inspecting a document may require anyone on the premises who is involved in the licensee's business to give him an explanation of that document.

Section 48: Entry to premises under warrant

84. *Section 48* inserts a new section 36D after the new section 36C (inserted into the 1974 Act by section 47). Section 36D allows OFT to obtain a warrant from a

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justice of the peace or (in Scotland) a sheriff if he is satisfied that there are reasonable grounds for believing that there is on the premises information or documents in relation to which OFT could impose a requirement under section 36B and that, if such a requirement were to be imposed, it would either not be complied with or the information or documents would be tampered with. An officer of an enforcement authority may be authorised to enter and search the specified premises, to seize and detain any information of a description specified in the warrant. The officer may also take such steps as are reasonably necessary to secure the protection of such documents or information, take such persons and equipment with him as he thinks necessary and use such force as reasonably necessary.

Section 49: Failure to comply with information requirement

85. *Section 49* inserts a new section 36E after section 36D (inserted into the 1974 Act by section 48). Section 36E deals with the consequences of failing to comply with an information requirement under the new section 36B or request to gain access to premises under section 36C. OFT may apply to the court for an order to enforce an information requirement or request to gain access to premises. If the information defaulter is a body corporate, or an unincorporated association, an officer of the body who is wholly or partly responsible for the failure may be required to pay costs or expenses as specified in the court order. If the information defaulter is a partnership, a member of that partnership may be so liable.

Section 50: Officers of enforcement authorities other than OFT

86. *Section 50* inserts a new section 36F after the new section 36E (inserted into the 1974 Act by section 49). Section 36F provides that anything done or not done by an officer of an enforcement authority, other than OFT, acting under sections 36C and 36D, shall be treated as if done or not done by an officer of OFT, other than in respect of any criminal proceedings brought against that officer, his enforcement authority or the OFT in respect of anything done or not done by that officer. Such an officer may not disclose any information that he obtains by virtue of new sections 36C or 36D other than to OFT unless he has OFT's approval or is under a duty to make the disclosure.

Section 51: Consequential amendments relating to information

87. *Section 51* makes certain consequential amendments to the 1974 Act in respect of the sections relating to the provision of information to OFT or other enforcement authority. It extends section 7 of the 1974 Act, which provides that it is an offence for a person knowingly or recklessly to give OFT information that is false or misleading in a material particular, to cover information given under any requirement imposed or other provision made by or under the 1974 Act. The section also provides that breach of a requirement imposed under the new sections 33A and 33B or certain of the information provisions (see new sections 36A to 36C, inserted by sections 45 to 47 of the 2006 Act) will not trigger the powers of entry and inspection under section 162 of

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the 1974 Act nor will it trigger criminal liability under section 165 of the 1974 Act. The section inserts a new section 174A into the 1974 Act, which makes clear that the information powers in the 1974 Act, as amended by the 2006 Act, do not override legal professional privilege.

CIVIL PENALTIES

Section 52: Power of OFT to impose civil penalties

88. *Section 52* inserts a new section 39A after section 39 of the 1974 Act. Section 39A confers a power on OFT to impose civil penalties on persons who do not comply with a requirement imposed by OFT under the new sections 33A, 33B or 36A inserted in the 1974 Act by sections 38, 39 and 45 of the 2006 Act. If a person has failed to comply with such a requirement, then OFT may, by giving the person a penalty notice, impose on him a penalty of up to £50,000. A person who commits such a breach is called a “defaulter”.

89. A penalty notice must state the amount of the penalty that is being imposed, set out OFT’s reasons for determining to impose a penalty for that amount, specify how the payment of the penalty may be made and specify the period within which the penalty is required to be paid to OFT (which must not be earlier than the end of the period during which an appeal may be brought against the imposition of the penalty). The defaulter is required to pay the penalty in the manner specified in the penalty notice.

90. The maximum penalty that may be imposed by OFT is £50,000 for every breach of a requirement. In determining whether to impose a penalty, OFT must have regard to its published statement of policy (see notes in relation of section 54 below) and any penalty or fine that has already been imposed on the defaulter by any other body in relation to the conduct the subject of the penalty. OFT must also have regard to any other steps which it has taken or it might take in relation to the conduct in question (for example, revocation or suspension of a licence) (see notes in respect of section 53 below). If the defaulter does not pay the penalty, OFT may recover it and the unpaid balance will incur interest.

Section 53: Further provision relating to civil penalties

91. *Section 53* inserts a new section 39B after the new section 39A (inserted into the 1974 Act by section 52). Before determining to impose a penalty on a person, OFT must give a notice to that person which informs him that it is minded to impose a penalty on him. That notice must also state the proposed amount of the penalty, set out OFT’s reasons for being minded to impose a penalty and for proposing that amount and the proposed period for the payment of the penalty, and invite him to make representations in accordance with section 34 of the 1974 Act. The maximum

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which received Royal Assent on 30 March 2006*

penalty may be changed by an order of the Secretary of State (approved by a resolution of both Houses of Parliament).

92. OFT must give a general notice of the imposition of a penalty on a person who is a responsible person in relation to a group licence, which must state the amount of the penalty that is being imposed and set out OFT's reasons for determining to impose a penalty and for specifying that amount. A person may appeal in relation to the decision of OFT to impose a civil penalty.

Section 54: Statement of policy in relation to civil penalties

93. *Section 54* inserts a new section 39C after the new section 39B (inserted into the 1974 Act by section 53). Section 39C requires OFT to prepare and publish a statement of policy as regards the exercise of its powers in relation to penalties under section 39A. In imposing any penalty, OFT must have regard to the statement of policy and it cannot impose a penalty until it has published the statement of policy. OFT may revise the statement of policy at any time after it has been published and must publish it as revised. In preparing or revising the statement, OFT must consult such persons as it thinks fit. OFT cannot publish a statement of policy without the approval of the Secretary of State and it must publish it in such manner as it thinks fit for the purpose of bringing it to the attention of those likely to be affected by it.

APPEALS

94. *Sections 55, 56, 57 and 58* establish the Consumer Credit Appeals Tribunal and deal with appeals to and from that Tribunal.

Section 55: The Consumer Credit Appeals Tribunal

95. *Section 55* establishes the Tribunal and gives the Lord Chancellor the power to make its procedural rules. Schedule 1 of the 2006 Act inserts Schedule A1 into the 1974 Act. This sets out requirements for the appointment of the President of the Tribunal and the panels from which members of the Tribunal will be drawn, imposes requirements in relation to their qualifications and terms of office and also provides for the appointment of a Deputy President and administrative staff. It sets out the powers of the Tribunal to make orders and to award costs.

Section 56: Appeals to the Consumer Credit Appeals Tribunal

96. *Section 56* amends section 41 of the 1974 Act, which deals with appeals. Appeals in respect of decisions by OFT under the 1974 Act will be to the Tribunal and not the Secretary of State. The appeal is a rehearing of the determination appealed against. The time limit for claims and the form of the notice of appeal are to be specified in the rules of the Tribunal.

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which received Royal Assent on 30 March 2006*

Section 57: Appeals from the Consumer Credit Appeals Tribunal

97. *Section 57* inserts a new section 41A after section 41 of the 1974 Act and establishes the right to appeal to the Courts of Appeal of England & Wales and Northern Ireland or Court of Session in Scotland on a point of law against a decision of the Tribunal. If the appeal court considers that the decision is wrong in law it may quash or vary the decision, substitute a decision of its own for the decision of the Tribunal or remit (with directions, if it wishes) the matter back to the Tribunal for a rehearing and decision. An appeal may be made from the Courts of Appeal to the House of Lords with the leave of the Court or of the House of Lords. Appeals from the Court of Session lie to the House of Lords in the manner provided for in section 40 of the Court of Session Act 1988.

Section 58: Consequential amendments relating to appeals

98. *Section 58* makes certain amendments to the 1974 Act in relation to the new appeals provisions. *Section 58(5)* includes the Consumer Credit Appeals Tribunal as a tribunal covered by the Tribunals and Inquiries Act 1992. This means that the Tribunal will be subject to the supervision of the Council on Tribunals.

OMBUDSMAN SCHEME

99. *Sections 59, 60 and 61* extend the jurisdiction of FOS established under Part 16 of FSMA, to hear complaints involving licensed persons under the 1974 Act. It provides for the detailed operation of the new consumer credit jurisdiction to be determined largely by rules made by FOS on which it is required to consult in accordance with the requirements of Schedule 2. A contravention by a licence-holder of any provision relating to the consumer credit jurisdiction may be considered by OFT in determining that person's fitness to hold a licence (see the notes on Section 29 above).

Section 59: Financial Services Ombudsman scheme to apply to consumer credit licensees

100. *Section 59* inserts a new section 226A into FSMA introducing the new consumer credit jurisdiction and will require holders of standard licences under the 1974 Act (and persons authorised to wind up a licensable business under new section 34A inserted by section 32 of the 2006 Act) to submit to the jurisdiction of the scheme. The Secretary of State may bring within the consumer credit jurisdiction types of business for which a licence is required under the 1974 Act. The scheme operator may make rules to describe the complaints it will and will not deal with under the jurisdiction it has been given. For example, if the Secretary of State was to apply the jurisdiction to "consumer credit businesses", FOS could consider (among other things) acts or omissions relating to advice on credit, the making of agreements, or the administration of accounts. The section sets out the circumstances in which a

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which received Royal Assent on 30 March 2006*

complaint can be dealt with: namely, that the complainant meets the relevant eligibility criteria (set by the new section 226A) and wishes for FOS to consider the case; that the complaint falls within a description specified by FOS in its consumer credit rules; and that the business being complained about falls within the remit of the consumer credit jurisdiction. Finally, if the complaint can be dealt with under FOS's existing compulsory jurisdiction it will not be dealt with under consumer credit jurisdiction (e.g. a complaint involving an FSA authorised firm engaging in consumer credit activity will be covered by FSA's rules under section 226 of FSMA, rather than FOS's rules under section 226A).

101. Section 226A(7) makes provision for the making of rules in relation to the consumer credit jurisdiction by FOS. Such rules must be approved by FSA.

Section 60: Funding of ombudsman scheme

102. *Section 60* prescribes the funding arrangements for the new scheme. It provides for FOS to levy fees on licensees to meet both the costs of establishing the consumer credit jurisdiction of the Ombudsman scheme and the costs of running the consumer credit jurisdiction. They may also include a fee to cover the costs of collection.

Section 61: Consequential amendments relating to ombudsman scheme

103. *Section 61* makes consequential amendments to the 1974 Act and FSMA in relation to the ombudsman scheme, including inserting reference to the consumer credit jurisdiction where appropriate. Section 229 of FSMA is amended to allow FOS to specify a maximum limit for compensation that can be awarded under the consumer credit jurisdiction. Section 353 of FSMA, which relates to powers to allow the disclosure of information, is amended to allow the Ombudsman to disclose information about cases and decisions to OFT to assist or enable OFT to discharge its licensing functions under the 1974 Act.

MISCELLANEOUS

Section 62: Monitoring of businesses by OFT

104. Section 1 of the 1974 Act sets out the general functions of OFT under the 1974 Act. *Section 62* amends that section to impose a general duty on OFT to monitor businesses being carried on under licences issued under the 1974 Act.

Section 63: Disapplication of section 101 of the 1974 Act

105. *Section 63* inserts a new subsection (8A) into section 101 of the 1974 Act. That section provides the hirer under a regulated consumer hire agreement with a power to terminate the agreement by giving notice as prescribed by subsections (3) to (6) of the section. Subsection 101(8) of the 1974 Act gives the OFT power to exempt

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which received Royal Assent on 30 March 2006*

specific agreements from this provision on application by a person carrying on a consumer hire business if it appears to the OFT that it would be in the interests of hirers to do so. The new subsection 101(8A) provides that the OFT may by general notice direct that section 101 does not apply to any consumer hire agreement falling within a specified description subject to such conditions as it may specify. Such a direction may only be given if it appears to the OFT that it is in the interests of hirers to do so.

Section 64: Determinations etc. by OFT

106. *Section 64* replaces section 183 of the 1974 Act. The new section 183 will provide that OFT can vary or revoke any determination made or direction given by it under the 1974 Act, except in relation to:

- the issue, renewal, variation or ending of suspension of licences,
- those determinations which can be appealed and are listed in the table in section 41 of the 1974 Act (as amended by the 2006 Act),
- the extension of, or the refusal to extend, the period to make payment for a licence in the new section 28B, inserted into the 1974 Act by section 36 of the 2006 Act,
- a decision under sections 40, 148 or 149 of the 1974 Act regarding the enforcement of agreements entered into by persons without a licence or following introduction by an unlicensed credit broker.

SCHEDULES

Schedule 1: The consumer credit appeals tribunal

107. *Schedule 1* inserts a new Schedule A1 into the 1974 Act. The new Schedule A1 relates to the establishment and running of the Consumer Credit Appeals Tribunal established by section 55. *Part 2* empowers the Lord Chancellor to appoint the President, Deputy President, the panel of Chairmen and other members of the Tribunal, to determine the terms of their appointment, remuneration and allowances and to make provision for the appointment and remuneration of staff. *Part 3* makes provision about how the Tribunal is to be constituted for the purpose of hearing an appeal and makes provision for the appointment of experts. *Part 4* deals with the Tribunal's powers and procedures. *Paragraph 8* empowers the Lord Chancellor to direct the times and places at which the Tribunal may sit. *Paragraphs 9 to 11* make provision for the conduct of hearings, the rules of evidence and the rules of procedure to be employed by the Tribunal. *Paragraphs 12 to 16* make provision for the manner

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which received Royal Assent on 30 March 2006*

in which the Tribunal may dispose of appeals, make decisions and award costs and also for the enforcement of its costs orders.

Schedule 2: The consumer credit jurisdiction

108. *Schedule 2* sets out a new Part 3A to be inserted into Schedule 17 of FSMA and relates to the consumer credit jurisdiction of the Ombudsman. This requires FOS to make procedural rules for the operation of the consumer credit jurisdiction of the scheme. For example, it provides for rules to be made which allow an Ombudsman to dismiss a complaint without consideration of its merits, for example where he deems the complaint to be frivolous or vexatious, and for the early stages of the handling of a complaint, for example a conciliation stage, to be handled by a member of FOS's staff other than an Ombudsman.

109. The new Part 3A also sets out the procedural matters to be followed by the FOS for the making of rules in respect of the consumer credit jurisdiction. These include, for example, the means of recognising a verified version of the consumer credit rules and the obligation on FOS to consult before making any rules. The new Part 3A also deals with the fees payable to the Ombudsman and the way in which money awards made by the Ombudsman will be enforced.

Schedule 3: Transitional provision and savings

110. *Schedule 3* sets out a number of transitional provisions which will apply following the commencement of specified sections. Some of these provisions are set out below in more detail.

111. As at the date of the commencement of section 86F, any term in a regulated agreement existing at that date which enables the creditor or owner to impose compound interest on a default sum will have the effect that he will only be able to recover simple interest in that regard.

112. Sections 140A to 140C will apply to all new agreements made after the commencement date and will apply to any agreements already made which continue in existence at a specified date after commencement. The period between the commencement date and the specified date is called the "transitional period." Sections 137 to 140 of the 1974 Act will continue to apply to agreements that have been completed (e.g. no party has any further obligations under the agreement because no further sums are payable) before the end of the transitional period. The transitional period will allow creditors to ensure that any agreements that will continue beyond the end of the transitional period comply with the amended 1974 Act.

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TERRITORIAL APPLICATION

113. The 2006 Act extends to the whole of the UK.

114. The responsibility for consumer credit regulation is transferred to Northern Ireland under the devolved settlement. However, as the Northern Ireland Assembly is currently suspended, Ministers have agreed that the 2006 Act should extend to Northern Ireland.

COMMENCEMENT DATE

115. *Section 71* gives the Secretary of State a power, by order, to bring all of the provisions of the 2006 Act into force on such day as the Secretary of State may appoint, and to appoint different days for different purposes.

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which received Royal Assent on 30 March 2006*

HANSARD REFERENCES

116. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

| Stage | Date | Hansard Reference |
|--|------------------------------|------------------------------|
| House of Commons | | |
| Introduction | 18 May 2005 | Vol.434, Cols 151 |
| Second Reading | 9 June 2005 | Vol.434, Cols 1405-1489 |
| Committee | 15 June 2005 | Hansard Standing Committee D |
| | 23 June 2005 (4 sessions) | |
| Report and Third Reading | 14 July 2005 | Vol.434, Cols 980-1044 |
| Commons Consideration of Lords Amendment | 29 March 2006 | Vol.444, Cols 970-997 |
| House of Lords | | |
| Introduction | 19 July 2005 | Vol.673, Cols 1377 |
| Second Reading | 24 October 2005 | Vol.674, Cols 1025-1058 |
| Committee | 8 November 2005 | Vol.675, Cols GC131-180 |
| | 16 November 2005 | Vol.675, Cols GC301-326 |
| Report | 18 January 2006 | Vol.677, Cols 718-760 |
| Third Reading | 21 March 2006 | Vol.680, Cols 139-152 |

Royal Assent – 30 March 2006 House of Lords Hansard, Vol.680, Col.861

House of Commons Hansard, Vol.444, Col.1061

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