



# Consumer Credit Act 1974

## 1974 CHAPTER 39

### PART VII

#### DEFAULT AND TERMINATION

##### *Default notices*

#### **87 Need for default notice.**

- (1) Service of a notice on the debtor or hirer in accordance with section 88 (a “default notice”) is necessary before the creditor or owner can become entitled, by reason of any breach by the debtor or hirer of a regulated agreement,—
  - (a) to terminate the agreement, or
  - (b) to demand earlier payment of any sum, or
  - (c) to recover possession of any goods or land, or
  - (d) to treat any right conferred on the debtor or hirer by the agreement as terminated, restricted or deferred, or
  - (e) to enforce any security.
- (2) Subsection (1) does not prevent the creditor from treating the right to draw upon any credit as restricted or deferred, and taking such steps as may be necessary to make the restriction or deferment effective.
- (3) The doing of an act by which a floating charge becomes fixed is not enforcement of a security.
- (4) Regulations may provide that subsection (1) is not to apply to agreements described by the regulations.
- [<sup>F1</sup>(5) Subsection (1)(d) does not apply in a case referred to in section 98A(4) (termination or suspension of debtor's right to draw on credit under open-end agreement).]

*Status: Point in time view as at 26/07/2013.*

*Changes to legislation: Consumer Credit Act 1974, Part VII is up to date with all changes known to be in force on or before 02 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F1** S. 87(5) inserted (1.2.2011) by [The Consumer Credit \(EU Directive\) Regulations 2010 \(S.I. 2010/1010\)](#), **regs. 37, 99(1)** (with **regs. 100, 101**)

#### Modifications etc. (not altering text)

- C1** S. 87 applied (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\)](#), **regs. 1(2)(c), 52(d)** (with **reg. 3**)

## 88 Contents and effect of default notice.

- (1) The default notice must be in the prescribed form and specify—
  - (a) the nature of the alleged breach;
  - (b) if the breach is capable of remedy, what action is required to remedy it and the date before which that action is to be taken;
  - (c) if the breach is not capable of remedy, the sum (if any) required to be paid as compensation for the breach, and the date before which it is to be paid.
- (2) A date specified under subsection (1) must not be less than [<sup>F2</sup>14] days after the date of service of the default notice, and the creditor or owner shall not take action such as is mentioned in section 87(1) before the date so specified or (if no requirement is made under subsection (1)) before those [<sup>F2</sup>14] days have elapsed.
- (3) The default notice must not treat as a breach failure to comply with a provision of the agreement which becomes operative only on breach of some other provision, but if the breach of that other provision is not duly remedied or compensation demanded under subsection (1) is not duly paid, or (where no requirement is made under subsection (1)) if the [<sup>F2</sup>14] days mentioned in subsection (2) have elapsed, the creditor or owner may treat the failure as a breach and section 87(1) shall not apply to it.
- (4) The default notice must contain information in the prescribed terms about the consequences of failure to comply with it [<sup>F3</sup>and any other prescribed matters relating to the agreement].
- [<sup>F4</sup>(4A) The default notice must also include a copy of the current default information sheet under section 86A.]
- (5) A default notice making a requirement under subsection (1) may include a provision for the taking of action such as is mentioned in section 87(1) at any time after the restriction imposed by subsection (2) will cease, together with a statement that the provision will be ineffective if the breach is duly remedied or the compensation duly paid.

#### Textual Amendments

- F2** Words in s. 88(2)(3) substituted (1.10.2006) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {14(1)}, 71(2) (with Sch. 3 para. 10); [S.I. 2006/1508](#), **art. 3(2)**, Sch. 2
- F3** Words in s. 88(4) inserted (16.6.2006) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {14(2)}, 71(2) (with Sch. 3 para. 10); [S.I. 2006/1508](#), **art. 3(1)**, Sch. 1
- F4** S. 88(4A) inserted (1.10.2008) by [Consumer Credit Act 2006 \(c. 14\)](#), ss. {14(3)}, 71(2) (with Sch. 3 para. 10); [S.I. 2007/3300](#), **art. 3(3)**, Sch. 3

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## **89 Compliance with default notice.**

If before the date specified for that purpose in the default notice the debtor or hirer takes the action specified under section 88(1)(b) or (c) the breach shall be treated as not having occurred.

### *Further restriction of remedies for default*

## **90 Retaking of protected hire-purchase etc. goods.**

- (1) At any time when—
  - (a) the debtor is in breach of a regulated hire-purchase or a regulated conditional sale agreement relating to goods, and
  - (b) the debtor has paid to the creditor one-third or more of the total price of the goods, and
  - (c) the property in the goods remains in the creditor,the creditor is not entitled to recover possession of the goods from the debtor except on an order of the court.
- (2) Where under a hire-purchase or conditional sale agreement the creditor is required to carry out any installation and the agreement specifies, as part of the total price, the amount to be paid in respect of the installation (the “installation charge”) the reference in subsection (1)(b) to one-third of the total price shall be construed as a reference to the aggregate of the installation charge and one-third of the remainder of the total price.
- (3) In a case where—
  - (a) subsection (1)(a) is satisfied, but not subsection (1)(b), and
  - (b) subsection (1)(b) was satisfied on a previous occasion in relation to an earlier agreement, being a regulated hire-purchase or regulated conditional sale agreement, between the same parties, and relating to any of the goods comprised in the later agreement (whether or not other goods were also included),subsection (1) shall apply to the later agreement with the omission of paragraph (b).
- (4) If the later agreement is a modifying agreement, subsection (3) shall apply with the substitution, for the second reference to the later agreement, of a reference to the modifying agreement.
- (5) Subsection (1) shall not apply, or shall cease to apply, to an agreement if the debtor has terminated, or terminates, the agreement.
- (6) Where subsection (1) applies to an agreement at the death of the debtor, it shall continue to apply (in relation to the possessor of the goods) until the grant of probate or administration, or (in Scotland) confirmation (on which the personal representative would fall to be treated as the debtor).
- (7) Goods falling within this section are in this Act referred to as “protected goods”.

## **91 Consequences of breach of s. 90.**

If goods are recovered by the creditor in contravention of section 90—

- (a) the regulated agreement, if not previously terminated, shall terminate, and

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- (b) the debtor shall be released from all liability under the agreement, and shall be entitled to recover from the creditor all sums paid by the debtor under the agreement.

## 92 Recovery of possession of goods or land.

- (1) Except under an order of the court, the creditor or owner shall not be entitled to enter any premises to take possession of goods subject to a regulated hire-purchase agreement, regulated conditional sale agreement or regulated consumer hire agreement.
- (2) At any time when the debtor is in breach of a regulated conditional sale agreement relating to land, the creditor is entitled to recover possession of the land from the debtor, or any person claiming under him, on an order of the court only.
- (3) An entry in contravention of subsection (1) or (2) is actionable as a breach of statutory duty.

## 93 Interest not to be increased on default.

The debtor under a regulated consumer credit agreement shall not be obliged to pay interest on sums which, in breach of the agreement, are unpaid by him at a rate—

- (a) where the total charge for credit includes an item in respect of interest, exceeding the rate of that interest, or
- (b) in any other case, exceeding what would be the rate of the total charge for credit if any items included in the total charge for credit by virtue of [F5 rules made by the FCA under paragraph (2)(d) of article 60M of the Regulated Activities Order] were disregarded.

### Textual Amendments

- F5** Words in s. 93(b) substituted (26.7.2013 for specified purposes) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No.2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **20(33)**

## [F6] 93A Summary diligence not competent in Scotland.

Summary diligence shall not be competent in Scotland to enforce payment of a debt due under a regulated agreement or under any security related thereto.]

### Textual Amendments

- F6** S. 93A inserted (S.) by [Debtors \(Scotland\) Act 1987 \(c. 18, SIF 45:2\)](#), ss. 108(1)(2), 109(3), Sch. 6 para. 16, **Sch. 7 para. 5**

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### *Early payment by debtor*

## **94 Right to complete payments ahead of time.**

- (1) The debtor under a regulated consumer credit agreement is entitled at any time, by notice to the creditor and the payment to the creditor of all amounts payable by the debtor to him under the agreement [<sup>F7</sup>and any amount which the creditor claims under section 95A(2)] [<sup>F8</sup>or section 95B(2)] (less any rebate allowable under section 95), to discharge the debtor's indebtedness under the agreement.
- (2) A notice under subsection (1) may embody the exercise by the debtor of any option to purchase goods conferred on him by the agreement, and deal with any other matter arising on, or in relation to, the termination of the agreement.
- [<sup>F9</sup>(3) The debtor under a regulated consumer credit agreement, other than an agreement secured on land, is entitled at any time to discharge part of his indebtedness by taking the steps in subsection (4).
- (4) The steps referred to in subsection (3) are as follows—
  - (a) he provides notice to the creditor,
  - (b) he pays to the creditor some of the amount payable by him to the creditor under the agreement before the time fixed by the agreement, and
  - (c) he makes the payment—
    - (i) before the end of the period of 28 days beginning with the day following that on which notice under paragraph (a) was received by the creditor, or
    - (ii) on or before any later date specified in the notice.
- (5) Where a debtor takes the steps in subsection (4) his indebtedness shall be discharged by an amount equal to the sum of the amount paid and any rebate allowable under section 95 less any amount which the creditor claims under section 95A(2) [<sup>F10</sup>or section 95B(2)].
- (6) A notice—
  - (a) under subsection (1), other than a notice relating to a regulated consumer credit agreement secured on land, or
  - (b) under subsection (4)(a),need not be in writing.]

#### **Textual Amendments**

- F7** Words in s. 94(1) inserted (1.2.2011) by [The Consumer Credit \(EU Directive\) Regulations 2010 \(S.I. 2010/1010\)](#), [regs. 30\(a\)](#), 99(1) (with [regs. 100, 101](#))
- F8** Words in s. 94(1) inserted (E.W.S.) (21.3.2012 for specified purposes, 28.1.2013 in so far as not already in force) by [Energy Act 2011 \(c. 16\)](#), [ss. 29\(3\)\(a\)](#), 121(1); [S.I. 2012/873](#), [art. 3\(1\)\(d\)\(2\)](#); [S.I. 2013/125](#), [art. 2\(d\)](#)
- F9** S. 94(3)-(6) inserted (1.2.2011) by [The Consumer Credit \(EU Directive\) Regulations 2010 \(S.I. 2010/1010\)](#), [regs. 30\(b\)](#), 99(1) (with [regs. 100, 101](#))
- F10** Words in s. 94(5) inserted (E.W.S.) (21.3.2012 for specified purposes, 28.1.2013 in so far as not already in force) by [Energy Act 2011 \(c. 16\)](#), [ss. 29\(3\)\(b\)](#), 121(1); [S.I. 2012/873](#), [art. 3\(1\)\(d\)\(2\)](#); [S.I. 2013/125](#), [art. 2\(d\)](#)

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## 95 Rebate on early settlement.

- (1) Regulations may provide for the allowance of a rebate of charges for credit to the debtor under a regulated consumer credit agreement where, under section 94, on refinancing, on breach of the agreement, or for any other reason, his indebtedness is discharged [<sup>F11</sup>or is discharged in part] or becomes payable before the time fixed by the agreement, or any sum becomes payable by him before the time so fixed.
- (2) Regulations under subsection (1) may provide for calculation of the rebate by reference to any sums paid or payable by the debtor or his relative under or in connection with the agreement (whether to the creditor or some other person), including sums under linked transactions and other items in the total charge for credit.

### Textual Amendments

**F11** Words in s. 95(1) inserted (1.2.2011) by [The Consumer Credit \(EU Directive\) Regulations 2010 \(S.I. 2010/1010\)](#), **regs. 31, 99(1)** (with **regs. 100, 101**)

## [<sup>F12</sup>95A Compensatory amount

- (1) This section applies where—
  - (a) a regulated consumer credit agreement, other than an agreement secured on land, provides for the rate of interest on the credit to be fixed for a period of time, and
  - (b) under section 94 the debtor discharges all or part of his indebtedness during that period.
- (2) The creditor may claim an amount equal to the cost which the creditor has incurred as a result only of the debtor's indebtedness being discharged during that period if—
  - (a) the amount of the payment under section 94 exceeds £8,000 or, where more than one such payment is made in any 12 month period, the total of those payments exceeds £8,000,
  - (b) the agreement is not a debtor-creditor agreement enabling the debtor to overdraw on a current account, and
  - (c) the amount of the payment under section 94 is not paid from the proceeds of a contract of payment protection insurance.
- (3) The amount in subsection (2)—
  - (a) must be fair,
  - (b) must be objectively justified, and
  - (c) must not exceed whichever is the lower of—
    - (i) the relevant percentage of the amount of the payment under section 94, and
    - (ii) the total amount of interest that would have been paid by the debtor under the agreement in the period from the date on which the debtor makes the payment under section 94 to the date fixed by the agreement for the discharge of the indebtedness of the debtor.
- (4) In subsection (3)(c)(i) “ relevant percentage ” means—
  - (a) 1%, where the period from the date on which the debtor makes the payment under section 94 to the date fixed by the agreement for the discharge of the indebtedness of the debtor is more than one year, or

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- (b) 0.5%, where that period is equal to or less than one year.]

#### Textual Amendments

**F12** S. 95A inserted (1.2.2011) by [The Consumer Credit \(EU Directive\) Regulations 2010 \(S.I. 2010/1010\)](#), [regs. 32, 99\(1\)](#) (with [regs. 100, 101](#)) (as amended (31.1.2011) by [S.I. 2011/11](#), [reg. 3](#))

### [<sup>F13</sup>95B Compensatory amount: green deal finance

- (1) This section applies where—
- a regulated consumer credit agreement provides for the rate of interest on the credit to be fixed for a period of time (“the fixed rate period”),
  - the agreement is a green deal plan (within the meaning of section 1 of the Energy Act 2011) which is of a duration specified for the purposes of this section in regulations, and
  - under section 94 the debtor discharges all or part of his indebtedness during the fixed rate period.
- (2) The creditor may claim an amount equal to the cost which the creditor has incurred as a result only of the debtor's indebtedness being discharged during the fixed rate period if—
- the amount of the payment under section 94 is not paid from the proceeds of a contract of payment protection insurance, and
  - such other conditions as may be specified for the purposes of this section in regulations are satisfied.
- (3) The amount in subsection (2)—
- must be fair,
  - must be objectively justified,
  - must be calculated by the creditor in accordance with provision made for the purposes of this section in regulations, and
  - must not exceed the total amount of interest that would have been paid by the debtor under the agreement in the period from the date on which the debtor makes the payment under section 94 to the date fixed by the agreement for the discharge of the indebtedness of the debtor.
- (4) If a creditor could claim under either section 95A or this section, the creditor may choose under which section to claim.]

#### Textual Amendments

**F13** S. 95B inserted (21.3.2012 for specified purposes, 28.1.2013 in so far as not already in force) by [Energy Act 2011 \(c. 16\)](#), [ss. 29\(2\), 121\(1\)](#); [S.I. 2012/873](#), [art. 3\(1\)\(d\)\(2\)](#); [S.I. 2013/125](#), [art. 2\(d\)](#)

### 96 Effect on linked transactions.

- (1) Where for any reason the indebtedness of the debtor under a regulated consumer credit agreement is discharged before the time fixed by the agreement, he, and any relative of his, shall at the same time be discharged from any liability under a linked transaction, other than a debt which has already become payable.

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- (2) Subsection (1) does not apply to a linked transaction which is itself an agreement providing the debtor or his relative with credit.
- (3) Regulations may exclude linked transactions of the prescribed description from the operation of subsection (1).

## 97 Duty to give information.

- (1) The creditor under a regulated consumer credit agreement, within the prescribed period after he has received a request<sup>F14</sup> . . . to that effect from the debtor, shall give the debtor a statement in the prescribed form indicating, according to the information to which it is practicable for him to refer, the amount of the payment required to discharge the debtor's indebtedness under the agreement, together with the prescribed particulars showing how the amount is arrived at.
  - (2) Subsection (1) does not apply to a request made less than one month after a previous request under that subsection relating to the same agreement was complied with.
- [<sup>F15</sup>(2A) A request under subsection (1) need not be in writing unless the agreement is secured on land.]
- (3) If the creditor fails to comply with subsection (1)—
    - (a) he is not entitled, while the default continues, to enforce the agreement;<sup>F16</sup> . . .
    - (b) <sup>F16</sup> . . . . .

### Textual Amendments

- F14** Words in s. 97(1) omitted (1.2.2011) by virtue of [The Consumer Credit \(EU Directive\) Regulations 2010 \(S.I. 2010/1010\)](#), [regs. 33\(a\), 99\(1\)](#) (with [regs. 100, 101](#))
- F15** S. 97(2A) inserted (1.2.2011) by [The Consumer Credit \(EU Directive\) Regulations 2010 \(S.I. 2010/1010\)](#), [regs. 33\(b\), 99\(1\)](#) (with [regs. 100, 101](#))
- F16** S. 97(3)(b) and preceding word repealed (26.5.2008) by [The Consumer Protection from Unfair Trading Regulations 2008 \(S.I. 2008/1277\)](#) [regs. 30\(1\)\(3\), Sch. 2 para. 23, {Sch. 4 Pt. 1}](#) (with savings in [reg. 28\(2\)\(3\)](#))

## [<sup>F17</sup>97A Duty to give information on partial repayment

- (1) Where a debtor under a regulated consumer credit agreement—
  - (a) makes a payment by virtue of which part of his indebtedness is discharged under section 94, and
  - (b) at the same time or subsequently requests the creditor to give him a statement concerning the effect of the payment on the debtor's indebtedness,

the creditor must give the statement to the debtor before the end of the period of seven working days beginning with the day following that on which the creditor receives the request.
- (2) The statement shall be in writing and shall contain the following particulars—
  - (a) a description of the agreement sufficient to identify it,
  - (b) the name, postal address and, where appropriate, any other address of the creditor and the debtor,



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- (c) where the creditor is claiming an amount under section 95A(2)<sup>F18</sup> or section 95B(2)], that amount and the method used to determine it,
- (d) the amount of any rebate to which the debtor is entitled—
  - (i) under the agreement, or
  - (ii) by virtue of section 95 where that is higher,
- (e) where the amount of the rebate mentioned in paragraph (d)(ii) is given, a statement indicating that this amount has been calculated having regard to the Consumer Credit (Early Settlement) Regulations 2004,
- (f) where the debtor is not entitled to any rebate, a statement to this effect,
- (g) any change to—
  - (i) the number, timing or amount of repayments to be made under the agreement, or
  - (ii) the duration of the agreement,which results from the partial discharge of the indebtedness of the debtor, and
- (h) the amount of the debtor's indebtedness remaining under the agreement at the date the creditor gives the statement.]

#### Textual Amendments

**F17** S. 97A inserted (1.2.2011) by [The Consumer Credit \(EU Directive\) Regulations 2010 \(S.I. 2010/1010\)](#), [regs. 34, 99\(1\)](#) (with [regs. 100, 101](#))

**F18** Words in s. 97A(2)(c) inserted (E.W.S.) (21.3.2012 for specified purposes, 28.1.2013 in so far as not already in force) by [Energy Act 2011 \(c. 16\)](#), [ss. 29\(4\), 121\(1\)](#); [S.I. 2012/873](#), [art. 3\(1\)\(d\)\(2\)](#); [S.I. 2013/125](#), [art. 2\(d\)](#)

### *Termination of agreements*

#### **98 Duty to give notice of termination (non-default cases).**

- (1) The creditor or owner is not entitled to terminate a regulated agreement except by or after giving the debtor or hirer not less than seven days' notice of the termination.
- (2) Subsection (1) applies only where—
  - (a) a period for the duration of the agreement is specified in the agreement, and
  - (b) that period has not ended when the creditor or owner does an act mentioned in subsection (1),but so applies notwithstanding that, under the agreement, any party is entitled to terminate it before the end of the period so specified.
- (3) A notice under subsection (1) is ineffective if not in the prescribed form.
- (4) Subsection (1) does not prevent a creditor from treating the right to draw on any credit as restricted or deferred and taking such steps as may be necessary to make the restriction or deferment effective.
- (5) Regulations may provide that subsection (1) is not to apply to agreements described by the regulations.
- (6) Subsection (1) does not apply to the termination of a regulated agreement by reason of any breach by the debtor or hirer of the agreement.

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## [<sup>F19</sup>98A Termination etc of open-end consumer credit agreements

- (1) The debtor under a regulated open-end consumer credit agreement, other than an excluded agreement, may by notice terminate the agreement, free of charge, at any time, subject to any period of notice not exceeding one month provided for by the agreement.
- (2) Notice under subsection (1) need not be in writing unless the creditor so requires.
- (3) Where a regulated open-end consumer credit agreement, other than an excluded agreement, provides for termination of the agreement by the creditor—
  - (a) the termination must be by notice served on the debtor, and
  - (b) the termination may not take effect until after the end of the period of two months, or such longer period as the agreement may provide, beginning with the day after the day on which notice is served.
- (4) Where a regulated open-end consumer credit agreement, other than an excluded agreement, provides for termination or suspension by the creditor of the debtor's right to draw on credit—
  - (a) to terminate or suspend the right to draw on credit the creditor must serve a notice on the debtor before the termination or suspension or, if that is not practicable, immediately afterwards,
  - (b) the notice must give reasons for the termination or suspension, and
  - (c) the reasons must be objectively justified.
- (5) Subsection (4)(a) and (b) does not apply where giving the notice—
  - (a) is prohibited by an EU obligation, or
  - (b) would, or would be likely to, prejudice—
    - (i) the prevention or detection of crime,
    - (ii) the apprehension or prosecution of offenders, or
    - (iii) the administration of justice.
- (6) An objectively justified reason under subsection (4)(c) may, for example, relate to—
  - (a) the unauthorised or fraudulent use of credit, or
  - (b) a significantly increased risk of the debtor being unable to fulfil his obligation to repay the credit.
- (7) Subsections (1) and (3) do not affect any right to terminate an agreement for breach of contract.
- (8) For the purposes of this section an agreement is an excluded agreement if it is—
  - (a) an authorised non-business overdraft agreement,
  - (b) an authorised business overdraft agreement,
  - (c) a debtor-creditor agreement arising where the holder of a current account overdraws on the account without a pre-arranged overdraft or exceeds a pre-arranged overdraft limit, or
  - (d) an agreement secured on land.]

### Textual Amendments

**F19** S. 98A inserted (1.2.2011) by [The Consumer Credit \(EU Directive\) Regulations 2010 \(S.I. 2010/1010\)](#), [regs. 38, 99\(1\)](#) (with [regs. 100, 101](#))

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## **99 Right to terminate hire-purchase etc. agreements.**

- (1) At any time before the final payment by the debtor under a regulated hire-purchase or regulated conditional sale agreement falls due, the debtor shall be entitled to terminate the agreement by giving notice to any person entitled or authorised to receive the sums payable under the agreement.
- (2) Termination of an agreement under subsection (1) does not affect any liability under the agreement which has accrued before the termination.
- (3) Subsection (1) does not apply to a conditional sale agreement relating to land after the title to the land has passed to the debtor.
- (4) In the case of a conditional sale agreement relating to goods, where the property in the goods, having become vested in the debtor, is transferred to a person who does not become the debtor under the agreement, the debtor shall not thereafter be entitled to terminate the agreement under subsection (1).
- (5) Subject to subsection (4), where a debtor under a conditional sale agreement relating to goods terminates the agreement under this section after the property in the goods has become vested in him, the property in the goods shall thereupon vest in the person (the “previous owner”) in whom it was vested immediately before it became vested in the debtor:

Provided that if the previous owner has died, or any other event has occurred whereby that property, if vested in him immediately before that event, would thereupon have vested in some other person, the property shall be treated as having devolved as if it had been vested in the previous owner immediately before his death or immediately before that event, as the case may be.

## **100 Liability of debtor on termination of hire-purchase etc. agreement.**

- (1) Where a regulated hire-purchase or regulated conditional sale agreement is terminated under section 99 the debtor shall be liable, unless the agreement provides for a smaller payment, or does not provide for any payment, to pay to the creditor the amount (if any) by which one-half of the total price exceeds the aggregate of the sums paid and the sums due in respect of the total price immediately before the termination.
- (2) Where under a hire-purchase or conditional sale agreement the creditor is required to carry out any installation and the agreement specifies, as part of the total price, the amount to be paid in respect of the installation (the “installation charge”) the reference in subsection (1) to one-half of the total price shall be construed as a reference to the aggregate of the installation charge and one-half of the remainder of the total price.
- (3) If in any action the court is satisfied that a sum less than the amount specified in subsection (1) would be equal to the loss sustained by the creditor in consequence of the termination of the agreement by the debtor, the court may make an order for the payment of that sum in lieu of the amount specified in subsection (1).
- (4) If the debtor has contravened an obligation to take reasonable care of the goods or land, the amount arrived at under subsection (1) shall be increased by the sum required to recompense the creditor for that contravention, and subsection (2) shall have effect accordingly.
- (5) Where the debtor, on the termination of the agreement, wrongfully retains possession of goods to which the agreement relates, then, in any action brought by the creditor

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to recover possession of the goods from the debtor, the court, unless it is satisfied that having regard to the circumstances it would not be just to do so, shall order the goods to be delivered to the creditor without giving the debtor an option to pay the value of the goods.

## **101 Right to terminate hire agreement.**

- (1) The hirer under a regulated consumer hire agreement is entitled to terminate the agreement by giving notice to any person entitled or authorised to receive the sums payable under the agreement.
- (2) Termination of an agreement under subsection (1) does not affect any liability under the agreement which has accrued before the termination.
- (3) A notice under subsection (1) shall not expire earlier than eighteen months after the making of the agreement, but apart from that the minimum period of notice to be given under subsection (1), unless the agreement provides for a shorter period, is as follows.
- (4) If the agreement provides for the making of payments by the hirer to the owner at equal intervals, the minimum period of notice is the length of one interval or three months, whichever is less.
- (5) If the agreement provides for the making of such payments at differing intervals, the minimum period of notice is the length of the shortest interval or three months, whichever is less.
- (6) In any other case, the minimum period of notice is three months.
- (7) This section does not apply to—
  - (a) any agreement which provides for the making by the hirer of payments which in total (and without breach of the agreement) exceed [<sup>F20</sup>£1,500] in any year, or
  - (b) any agreement where—
    - (i) goods are bailed or (in Scotland) hired to the hirer for the purposes of a business carried on by him, or the hirer holds himself out as requiring the goods for those purposes, and
    - (ii) the goods are selected by the hirer, and acquired by the owner for the purposes of the agreement at the request of the hirer from any person other than the owner's associate, or
  - (c) any agreement where the hirer requires, or holds himself out as requiring, the goods for the purpose of bailing or hiring them to other persons in the course of a business carried on by him.
- (8) If, on an application made to the [<sup>F21</sup>FCA] by a person carrying on a consumer hire business, it appears to the [<sup>F21</sup>FCA] that it would be in the interest of hirers to do so, [<sup>F22</sup>it] may [<sup>F23</sup>... direct that [<sup>F24</sup>, subject to such conditions (if any) as it may specify, this section shall not apply to consumer hire agreements made by the applicant; and this Act shall have effect accordingly].
- [<sup>F25</sup>(8A) If it appears to the [<sup>F26</sup>FCA] that it would be in the interests of hirers to do so, it may [<sup>F27</sup>... direct that, subject to such conditions (if any) as it may specify, this section shall not apply to a consumer hire agreement if the agreement falls within a specified description; and this Act shall have effect accordingly.]

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- (9) In the case of a modifying agreement, subsection (3) shall apply with the substitution, for “the making of the agreement ” of “the making of the original agreement ”.

#### Textual Amendments

- F20** "£1,500" substituted (1.5.1998) in s. 101(7)(a) by S.I. 1998/997, art. 3, Sch.
- F21** Word in s. 101(8) substituted (26.7.2013 for specified purposes) by The Financial Services Act 2012 (Consumer Credit) Order 2013 (S.I. 2013/1882), arts. 1(1), 7(8)(a)(i)
- F22** Word in s. 101(8) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 6(26); S.I. 2003/766, art. 2, Sch. (with art. 3)
- F23** Words in s. 101(8) omitted (26.7.2013 for specified purposes) by virtue of The Financial Services Act 2012 (Consumer Credit) Order 2013 (S.I. 2013/1882), arts. 1(1), 7(8)(a)(ii)
- F24** Words in s. 101(8) substituted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. {63(2)}, 71(2); S.I. 2006/1508, art. 3(1), Sch. 1
- F25** S. 101(8A) inserted (16.6.2006) by Consumer Credit Act 2006 (c. 14), ss. {63(1)}, 71(2); S.I. 2006/1508, art. 3(1), Sch. 1
- F26** Word in s. 101(8A) substituted (26.7.2013 for specified purposes) by The Financial Services Act 2012 (Consumer Credit) Order 2013 (S.I. 2013/1882), arts. 1(1), 7(8)(b)(i)
- F27** Words in s. 101(8A) omitted (26.7.2013 for specified purposes) by virtue of The Financial Services Act 2012 (Consumer Credit) Order 2013 (S.I. 2013/1882), arts. 1(1), 7(8)(b)(ii)

#### 102 Agency for receiving notice of rescission.

- (1) Where the debtor or hirer under a regulated agreement claims to have a right to rescind the agreement, each of the following shall be deemed to be the agent of the creditor or owner for the purpose of receiving any notice rescinding the agreement which is served by the debtor or hirer—
- a credit-broker or supplier who was the negotiator in antecedent negotiations, and
  - any person who, in the course of a business carried on by him, acted on behalf of the debtor or hirer in any negotiations for the agreement.
- (2) In subsection (1) “rescind ” does not include—
- service of a notice of cancellation, or
  - termination of an agreement under section 99 or 101 or by the exercise of a right or power in that behalf expressly conferred by the agreement.

#### 103 Termination statements.

- (1) If an individual (the “customer ”) serves on any person (the “trader ”) a notice—
- stating that—
    - the customer was the debtor or hirer under a regulated agreement described in the notice, and the trader was the creditor or owner under the agreement, and
    - the customer has discharged his indebtedness to the trader under the agreement, and
    - the agreement has ceased to have any operation; and
  - requiring the trader to give the customer a notice, signed by or on behalf of the trader, confirming that those statements are correct,

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the trader shall, within the prescribed period after receiving the notice, either comply with it or serve on the customer a counter-notice stating that, as the case may be, he disputes the correctness of the notice or asserts that the customer is not indebted to him under the agreement.

- (2) Where the trader disputes the correctness of the notice he shall give particulars of the way in which he alleges it to be wrong.
- (3) Subsection (1) does not apply in relation to any agreement if the trader has previously complied with that subsection on the service of a notice under it with respect to that agreement.
- (4) Subsection (1) does not apply to a non-commercial agreement.
- (5) <sup>F28</sup> .....

[<sup>F29</sup>(6) A breach of the duty imposed by subsection (1) is actionable as a breach of statutory duty.]

#### Textual Amendments

- F28** S. 103(5) repealed (26.5.2008) by The Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), regs. 30(1)(3), Sch. 2 para. 24(a), **Sch. 4 Pt. 1** (with savings in reg. 28(2)(3))
- F29** S. 103(6) inserted (26.5.2008) by The Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277), reg. 30(1), **Sch. 2 para. 24(b)** (with savings in reg. 28(2)(3))

## 104 Goods not to be treated as subject to landlord's hypothec in Scotland.

Goods comprised in a hire-purchase agreement or goods comprised in a conditional sale agreement which have not become vested in the debtor shall not be treated in Scotland as subject to the landlord's hypothec—

- (a) during the period between the service of a default notice in respect of the goods and the date on which the notice expires or is earlier complied with; or
- (b) if the agreement is enforceable on an order of the court only, during the period between the commencement and termination of an action by the creditor to enforce the agreement.

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