EXPLANATORY MEMORANDUM TO

THE CONSUMER CREDIT (EXEMPT AGREEMENTS) ORDER 2007

2007 No. 1168

AND

THE CONSUMER CREDIT (INFORMATION REQUIREMENTS AND DURATION OF LICENCES AND CHARGES) REGULATIONS 2007

2007 No. 1167

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. The Consumer Credit (Exempt Agreements) Order 2007 (the 2007 Order) provides for the exemption for high net worth individuals from regulation under the Consumer Credit Act 1974 (the 1974 Act). It also specifies the form and content of the required statement relating to a high net worth individual and the form and content of the declarations by debtors or hirers relating to the high net worth and business exemptions.

2.2. The Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007 ("the 2007 Regulations") specify the form and content of the various statements and notices that were introduced in the Consumer Credit Act 2006 (the 2006 Act). They also set out the maximum duration of a time-limited consumer credit licence following the general move to indefinite licences and the period for payment of the on-going maintenance fee for such indefinite licences.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. Specific provisions for Home Credit lenders in regulation 12. These are included as a result of recommendations made by the Competition Commission following their Inquiry into the Home Credit market. The obligation to provide statements once a quarter or one per loan referred to in regulation 12(1)(b) is not contained in these regulations but will be set out in an Order to be made by the Competition Commission concerning home credit products, which will come into force prior to 1 October 2008 (being the date on which regulation 12 comes into force).

4. Legislative Background

4.1. The 1974 Act as amended by sections 3 and 4 of the 2006 Act allows very wealthy borrowers to opt out of regulatory protection if they choose to do so, and also exempts from regulation lending that is wholly or predominantly for business purposes. The 2007 Order sets out the details of the declaration by a borrower in

relation to these exemptions, and the requirements for certifying that the borrower fulfils the requisite asset or income criteria for the high net worth exemption.

4.2. The 2006 Act adds to and amends the 1974 Act and makes provision for a number of statements and notices that lenders are required to send to consumers so that the latter are kept aware of the state of their account on a regular basis, allowing them to make more informed decisions and be aware of any problems as they arise. In order to implement the 2006 Act, the 2007 Regulations prescribe the form and content of the various statements and notices.

4.3. The 2006 Act has also made substantial changes to the OFT licensing regime in the 1974 Act. In order to reduce bureaucracy and facilitate a more efficient risk-based approach to enforcement, most licences will become indefinite ie will not need to be renewed at intervals. However there will be cases where it will be deemed more appropriate to issue a definite licence ie for a prescribed period. OFT will be able to choose the most appropriate length of time up to a maximum, which we are prescribing here. Because lenders will no longer have to renew their licences and pay a renewal fee, it will become necessary to raise money some other way to pay for the licensing regime. The 2006 Act allows the collection of a periodic "maintenance" fee at prescribed periods. Both figures have been set at five years to reflect the current arrangements. Since the 2006 Act provides that the amount of the maintenance charge is determined by reference to an OFT general notice it is also necessary to specify the date on which the relevant OFT general notice should be in force, in order to make it clear which notice to use for the purpose of carrying out the calculation.

4.4 The authority to produce the Regulations is as follows:

section 22(1B) and (1E) – Standard and group licences
section 28A(3)(b) and (6) - Charges
section 77A(2) – Fixed-sum periodic statements
section 78(4A) – Running-Account periodic statements (existing statement)
section 86B(8) – Fixed-sum arrears notices
section 86C(6) – Running-Account arrears notices
section 86E(2) & (7)(b) – Notices of default sums
section 88(1) and (4) – Default Notices (existing Notice)
section 130A(6) – Notices of post-judgment interest
section 182(2) – Regulations and orders
section 189(1) – Definitions

5. Extent

5.1. The 2007 Order and 2007 Regulations apply to the whole of the United Kingdom.. The responsibility for consumer credit regulation is transferred to Northern Ireland under the devolved settlement. However, as the Northern Ireland Assembly was suspended as the Consumer Credit Bill was going through Parliament, it was agreed that the provisions of the 2006 Act would also apply to Northern Ireland.

6. European Convention on Human Rights

6.1. As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1. The Consumer Credit White Paper of 2003 set out the Government Agenda for change in the consumer credit (and hire) market. Various pieces of secondary legislation, standardising the way APR (Annual Percentage Rates) is calculated, the provision of key information in credit and hire agreements up front and the simplification of early settlement rules came into force in 2004.

7.2. The Consumer Credit Act 2006 continued the aim of enhancing consumer redress, improving the regulation of consumer credit businesses and ensuring that regulation is appropriate.

7.3. The 2006 Act removes the £25,000 financial limit on regulated credit agreements, so that credit agreements of any value would potentially be regulated. However, it was decided that credit agreements that are wholly or predominantly for business purposes should be exempt from regulation as business lending was outside the intended focus of the Act. The 2006 Act also allows a voluntary exemption from regulation for very wealthy ("high net worth") customers to allow private banking services a degree of flexibility to offer a wider range of services to those who want them.

7.4. The 2007 Order sets out the details of the declaration a wealthy individual who satisfies the qualification criteria would need to make to confirm that they understand and accept the implications of entering into an unregulated agreement, and also the requirements for certifying they fulfil the requisite asset or income criteria. For the business exemption the 2006 Act provides that a declaration by a debtor or hirer that a credit agreement is wholly or predominantly for business purposes creates a presumption that the agreement is entered into for such purposes. The requirements for this declaration are set out in the 2007 Order.

7.5. One of the biggest areas of consumer detriment was shown to be a lack of transparency on the state of borrowers' accounts. High profile cases where originally modest loans had escalated to astronomical proportions would have less chance of occurring if the borrower received regular statements and information when an account went into arrears or a default sum was applied to the account following a breach of the agreement.

7.6. Even where an account is not in difficulty, it is important that borrowers are aware of the state of their account, so a periodic statement to be sent at least once a year is being introduced to give a summary of everything that has happened on the account during the period of the statement. It is also important that borrowers are alerted when problems arise, so notices are required when a default sum is charged and when accounts go into arrears, so that they can deal with the problem. Another problem identified is where a court judgment is obtained, but the agreement allows the lender to continue to charge and collect interest on the judgment sum. This could lead to interest accruing faster than the borrower is paying off the judgment sum, without them even being aware that the debt was increasing. Information will now be required to ensure that the borrower is aware of the provision and receives regular statements if the provision is exercised.

7.7. While the 2006 Act requires lenders to send notices and includes trigger points, the detail was left to secondary legislation. This is to ensure that all statements contain

similar information allowing consumers to be equally well-informed about the state of their account, whoever the creditor is.

7.8. A consultation on the draft 2007 Regulations and 2007 Order was sent individually to over 40 organisations and made available on the DTI website. Several Working groups were set up to help work through the draft SIs to ensure the end result was proportionate and workable. Over 40 detailed responses were received.

7.9. The 2006 Act also aims to make the OFT consumer credit licensing system more effective and efficient. One way of doing this is to move from limited duration licences to indefinite licences that do not need to be periodically renewed. Although this will be the standard, there are cases where it will be appropriate to limit the duration of a licence for some reason. OFT have the discretion to set this period up to a limit prescribed in regulations. The 2006 Act also allows regulations to be made specifying the period for payment of the periodic maintenance fee for indefinite licences. The periods for both of these are being set at five years. Five years is the current length of a standard licence, so industry is familiar with licences of this duration, and the payment of a renewal fee that will become the periodic charge for the maintenance of the licensing system. Since the 2006 Act provides that the amount of the maintenance charge is determined by reference to an OFT general notice we have specified the date on which the relevant notice should be in force as three months before the end of the specified payment period. This is because general notices must be laid three months before they come into force, so this ensures that there is adequate notice of the sums to be paid.

8. Impact

8.1. Much of the impact was considered as part of the regulatory impact assessment for the Consumer Credit Bill published in November 2004. An additional RIA assessing the impact of options within the detail of the wording of the 2007 Order and Regulations was prepared to accompany the consultation on those Regulations. This has been finalised and is attached.

8.2. The licensing element of the costs was dealt with in the original RIA, paragraph 13.3

9. Contact

9.1. Fiona Price at the Department of Trade and Industry Tel: 0207 215 0337 or e-mail: Fiona.Price@dti.gsi.gov.uk

Regulatory Impact Assessment

1. Title of proposal

Statutory Instruments (SIs) concerning exemptions, post-contract information and licensing arising from Consumer Credit Act 2006.

2. Purpose and intended effect

2.1 Background

DTI published a White Paper - Fair, Clear and Competitive: The Consumer Credit Market in the 21st Century - in December 2003.[1] This outlined the Government's agenda for modernisation of the consumer credit framework.

The drivers for reform included that the law governing consumer credit – the Consumer Credit Act 1974 (the 1974 Act) - was over 30 years old, the market had grown and changed in that period, and consumers were suffering harm as a result of a lack of information and unfair practices. The Consumer Credit Act 2006 (2006 Act)[2], which received Royal Assent on 30 March, was one key outcome from the White Paper. The Act has three key aims:

- Ensuring consumers are provided with clear information about their credit accounts.
- Improving consumers' rights and access to redress.
- Establishing a targeted and more effective licensing regime.

An analysis of the issues that the 2006 Act seeks to address was set out in the full RIA that accompanied the Bill when it was introduced into the House of Commons on 18 May 2005[3]. This analysis assessed, and where appropriate, quantified, the benefit and regulatory impact of the proposed reforms against alternatives including 'do nothing' and reliance on voluntary code. The RIA provided evidence to support the regulatory proposals within the Bill.

The Act passed through Parliament largely unchanged and there were no changes to the underlying policy defining a strengthened regulatory regime requiring secondary legislation to bring it into effect. The justification for the secondary legislation (SIs consisting of regulations and an order) that is the subject of this RIA and the associated consultation paper have therefore been established. This RIA is therefore limited to consideration of the options available within the scope of these SIs.

The proposals for the SIs discussed below are the result of a consultation exercise (described below in RIA section 3.1). We believe that this consultation has been effective in eliminating options that would have imposed a disproportionate burden on industry.

2.2 Objective

The SIs are needed to give full effect to a number of sections of the 2006 Act. Where there are alternatives to regulating, these are specified below. Otherwise, this RIA assesses the impact of the viable options within the detail of the wording of the SIs.

[1] http://www.dti.gov.uk/files/file23663.pdf
[2] http://www.opsi.gov.uk/acts/acts2006/ukpga_20060014_en.pdf
[3] http://www.dti.gov.uk/consumers/consumer-finance/credit-act-2006/documents/index.html

The requirements within the SIs fall into three categories:

- Exemptions from regulation – sections 3 and 4 of the 2006 Act. The Order specifies: the conditions under which an agreement made with an individual of 'high net worth' may be exempted from regulation and the form and content of the required statement of high net worth in relation to and the declaration by the individual. The Order also sets out the form and content of declarations by debtors or hirers where an agreement is wholly or predominantly for business purposes and the amount of credit provided under the agreement exceeds £25,000. The Act provides that such a declaration creates a presumption that an agreement is entered into for such purposes.

- Post-contract information – Regulations relating to sections 6, 7, 9, 10, 12, 14 and 17 of the 2006 Act. These Regulations specify precisely what information must be included in statements and notices given to consumers by creditors and owners. The objective has been to balance the need to ensure that consumers are provided with relevant and clear information about the state of their credit account as set out in the 2006 Act, with the need to ensure that any burden on industry is not disproportionate.

- Licensing issues - Regulations relating to sections 34 and 35 of the 2006 Act. These set out the maximum duration of a time-limited licence, and the periods for the payment of charges for indefinite licenses.

3. Consultation

3.1 Stakeholder Consultation

Since Royal Assent, we have consulted extensively with key stakeholder groups on the detailed content of the SIs. A Technical Group comprising industry representatives from small and large businesses across the spectrum of the consumer credit industry, together with representation of consumer interests and OFT was established to act as a sounding board and to provide technical advice on how the Regulations would impact on industry's complex information system.

This work led to a formal consultation on the draft SIs in August 2006. The consultation closed on 24 November 2006 and the responses were used to refine the final SIs. The Government issued a formal response to the consultation on 12 March 2007 (see Annex A). The Technical Group continued to provide support in shaping the policy behind the final SIs.

Throughout the consultation process we have been conscious of the need for an open and constructive dialogue to ensure that any requirements on industry are in proportion to the consumer benefits being sought. Issuing draft SIs with the consultation document helped industry better understand how the provisions would impact on their information systems, and gave an early indication of the likely scale and complexity of the implementation task. We also commissioned PricewaterhouseCoopers (PwC) to provide an independent analysis of the challenges facing industry in meeting the requirements of the Act in terms of both time and cost. The report[4] highlights the complexity of information systems across the credit industry and the work that will be involved in adapting them to meet the requirements of the Act. The report also highlights the risks to both creditors and owners and their customers if information systems are not sufficiently tested before commencement.

[4] A copy of the PwC report can be found on the DTI website at: http://www.dti.gov.uk/files/file38292.pdf

In addition, the research conducted by PwC established that the implementation costs were significantly greater than predicted in the initial RIA for the 2006 Act. That RIA was based on the best information available at the time. The higher than expected costs are down to the complexity of work needed to adapt information systems to meet the requirements of the Regulations, as well as the very large numbers of customer records affected. The costs highlighted in PwC's report were based on the draft SIs issued with the consultation in August 2006.

We have reduced these costs by making significant modifications to the earlier, draft SIs in a way that maintains our consumer protection objectives. The final SIs reflect the decisions reached following the formal and informal consultation processes.

3.2 Consultation with Small Business: The small firms impact test

Small business interests were represented in the consultation exercise through trade associations. Some specific concerns were raised reflecting the different nature of consumer credit lending at the small business end of the spectrum. For example some small businesses operate fixed-sum credit agreements with repayments on a weekly rather than monthly repayment basis, and with rather more flexible and less punitive arrangements around missed payments. We sought to ensure that, as far as possible, the Regulations meet the needs of the entire sector including small business.

4 Options

The partial RIA published with the consultation document highlighted a number of key issues and the options available to Government in defining the detail of the regulations.

These were:

Dynamic Information[5]

Option 1: Include requirements for dynamic information in statements and notices (e.g. information to the debtor on the length of time it would take them to repay a loan if they carried on making part payments at the same rate).

Option 2: No not include requirements for dynamic information in statements and notices.

Orders relating to exemptions from regulation: High Net Worth Exemption – CCA 2006 section 3:

Option 1: Define high net worth individuals in line with the Financial Services and Markets Act's Financial Promotions Orde.r

Option 2: Design an alternative definition for high net worth individuals.

Further provision relating to statements – CCA 2006 section 7:

Option 1: Requirement for information about the allocation of payments to be made more prominent in statements.

[5] Information that relates to a specific client or account.

Option 2: No such requirement.

Notices of default sums – CCA 2006 section 12:

Regulations setting out the form and content of the default sum notices and prescribing the period for service and amount of charges covered by the Notice requirement.

Option 1: exercise power to set a trigger above which notices of default sum must be served.

Option 2: no such power exercised.

Specifying periods in relation to licences – CCA 2006 sections 34 and 35:

Option 1: Maximum duration set at 5 years.

Option 2: Maximum duration set at less than 5 years.

Option 3: Maximum duration set at more than 5 years.

The Government's response to the consultation sets out the approach we have taken in developing the final detail of the Regulations for all the options available, taking stakeholders views into consideration. The Response to Consultation is at Annex A.

The general approach in each case was to identify a solution proportionate to the consumer benefit. Whilst being specific about the requirements of the Regulations, where possible we have identified solutions that will allow industry flexibility in the way they meet those requirements so as to best fit their particular business requirements and processes. This is in response to our recognition of the wide diversity of the consumer credit sector.

The one exception to this is the threshold of net available asset for an individual to qualify for the High Net Worth exemption. In the Government response we proposed a net asset threshold of £1,000,000 (i.e. excluding the individual's main residence and pension). This proposal raised some strong concerns from industry respondents who argued that for the exemption to be effective the threshold should be consistent with the industry's threshold for private banking services. A more appropriate threshold would be £500,000 as this would be consistent with the majority rather than a minority, of the private banking sector. The threshold in the final Order has been reduced to £500,000, which avoids risk of distorting the market. At this level, the number of potentially eligible individuals for the exemption is 250,000 or about 0.5% of the UK adult population.

5 Competition Assessment

A full competition assessment covering the proposals was included in the RIA that accompanied the Bill. The options for implementing the SIs that are considered in this RIA are unlikely to raise any competition concerns as they do not raise barriers to entry or affect some firms disproportionately.

6 Enforcement and Sanctions

Full detail of the resources needed for enforcement and sanctions was considered more fully in the RIA that accompanied the Bill. The options set out in this RIA have no major implications for enforcement.

7 Summary and recommendations

The establishment of the Technical Group and an extensive consultation process has helped to ensure we identified and addressed key areas where there was significant industry concern about our initial proposals, either in terms of the prescriptive and detailed requirement for information or the proposed timing for implementation. This has played a significant role in helping to reduce the potential risks and cost implications highlighted in the PwC report. As a result, the final Regulations will provide a broad framework that will ensure the consumer protection objectives are met, but within which there is flexibility for industry to develop technical solutions that are consistent with each business's unique and information systems.

8 Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed **Ian McCartney**

Date: ***31st March 2007***

Ian McCartney
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Department of Trade and Industry

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Annex A

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CONSUMER CREDIT ACT 2006

Consultation on Draft Statutory Instruments:

- Exemptions
- Post-contract information
- Licensing

DTI Response

MARCH 2007

URN 07/698

FOREWORD

In August 2006, I sought your views on draft statutory instruments covering exemptions, post contract information and licensing under the Consumer Credit Act 2006. These form one part of the package of new consumer credit regulations that are being implemented between 1 October 2006 and 1 October 2008.

The statutory instruments set out the detail of many of the provisions of the 2006 Act. In developing these detailed rules, we have been conscious of the need to ensure the 2006 Act delivers the consumer benefits we set out to achieve, but in a way that is proportionate to the costs and risks involved.

Some of these provisions represent real challenges to some lenders as they require significant changes to their complex information systems. This is why, in preparing the consultation document, we undertook a period of pre-consultation and have continued to work closely with industry and consumer groups throughout this period of consultation. This is also why I commissioned PricewaterhouseCoopers (PwC) to provide an independent assessment of the costs and risks involved in implementing the provisions.

As a result, we all have a much clearer understanding of how the new provisions will work in practice and the work involved in implementing them. We have used this information to further develop the Statutory Instruments. However, it is clear that some major lenders will need more time in which to develop and test new information systems than the 12 months originally proposed. We are therefore extending by 6 months the implementation period for the post-contract transparency provisions. While the decision to extend the implementation period was not easy, I am satisfied that not allowing sufficient time introduces an unacceptable risk to consumers. However, I do expect industry to implement the provisions as soon as they are in a position to do so.

I would like to offer my thanks to all those who responded to the consultation document. A summary of their views is given here. These responses, from a broad range of stakeholders, should be read in conjunction with the PwC report and a revised draft of the Statutory Instruments, which I have published alongside this response.

The Order and the Regulations will be laid before Parliament in April 2007.

Ian McCartney
Minister for Trade, Investment and Foreign Affairs
12 March 2007

PART 1

INTRODUCTION

1. The Consumer Credit Act 2006 is designed to help protect consumers and creates a fairer, more transparent and competitive credit market. The main provisions of the 2006 Act will be brought into force in three phases. Phase 1 introduces the unfair relationships test, an alternative dispute resolution scheme and a new definition of individual and will come into force on 6 April 2007. Phase 2 introduces the new licensing regime, the removal of the financial limit and the Consumer Credit Appeals Tribunal, which are due to come into force in April 2008. The final phase will bring in the post-contract transparency provisions and the new categories of business on 1October 2008.

2. Throughout the consultation period we have been conscious of the need for open and constructive dialogue to ensure that any requirements on industry are in proportion to the consumer benefits being sought.

3. Issuing draft Statutory Instruments with the consultation document in August last year has helped industry better understand how the provisions will impact on their information systems. We also commissioned PricewaterhouseCoopers (PwC) to provide an independent analysis of the challenges facing industry in meeting the requirements of the Act in terms of both time and cost. That report, which is being published alongside this document, highlights the size and complexity of information systems across the credit industry and work that will be involved in adapting them to meet the requirement of the Act. The report also highlights the risks to both lenders and their customers of information systems that are not sufficiently tested before commencement.

4. In addition, the research conducted by PwC established that the implementation costs were significantly greater than predicted in the initial Regulatory Impact Assessment for the Consumer Credit Act. At the time, the RIA was based on the best information available.

5. The higher than expected costs are down to amount of work needed to adapt information systems to meet the requirements of the Act, as well as the high numbers of customer records affected. However, the costs highlighted in the report were based on the draft statutory instruments used to inform this consultation exercise in August last year. In refining the Statutory Instruments throughout the consultation process, we have already reduced the overall costs. A revised draft of the Statutory Instruments is attached to this document.

CONSULTATION

6. The Consumer Credit Act received Royal Assent on 30 March 2006. Draft Statutory Instruments were developed and published in a consultation document on 2 August 2006. This followed a period of pre-consultation, which dealt effectively with a number of issued associated with implementing the Act. The consultation document sought views on the draft Order and Regulations and on particular issues arising from them.

7. The consultation document was sent to lenders and associated representative bodies, consumer advisory bodies and government bodies. It was also available electronically on the DTI website.

8. The deadline for responses was 24 November 2006. A total of 44 responses were received. These break down as follows.

Category	**Number of responses**
Consumer Group	6
Government	4
Individual/Academic	1
Industry – legal/advice	6
Industry - lender	18
Trade Association	9
Total	**44**

9. The Government would like to thank respondents for supplying a great deal of high-quality feedback. As well as input on policy issues, a large number of useful technical drafting suggestions were received.

10. The responses, except those made in confidence, are available in the DTI Library and can be accessed on request by contacting the Information and Library Services in the DTI on 020 7215 6226. A list of those respondents who were willing to have responses disclosed can be found at Annex A.

UNDERSTANDING THIS DOCUMENT

11. This report follows the order of the August consultation document. It gives a summary of the views expressed in relation to each of the areas in which the Government made a proposal and the specific questions asked. The actual respondents have not been cited in each case, not least because some submissions repeated views already expressed by others. Where the Government has concluded, in the light of consultation replies, that a significant change in the provisions is warranted, this is set out at the end of each section. We have also explained where we have decided not to make changes.

12. In the light of comments received, a number of other minor changes have been made to the Regulations on more detailed and/or technical drafting points. While in many cases these changes have been taken on board, they have not all been included in the summary, not least for the sake of brevity.

13. Some respondents offered views on issues that were outside the scope of the consultation – in many cases these issues had already been determined in the Consumer Credit Act 2006. While these views have been taken into consideration in wider work to assess the impact of the Act, they have not been included in this document.

14. A summary of the questions asked in the consultation document is contained at Annex A.

SUMMARY OF THE KEY GOVERNMENT CHANGES

Interspersion

15. In order to ensure that statements and notices are as clear and easily understood as possible, and can be adapted to suit the circumstances of individual cases, we are relaxing the requirement for prescribed information to be shown as a whole and without interspersion.

Transitional arrangements

16. In order to take account of industry concern that some of the required information for existing **periodic fixed-sum statements** was not currently available on their IT systems, we are allowing lenders to indicate where certain elements are not included in the actual statement, but will be available on request. In addition, we are removing the requirement that statements and notices cannot show information relating to the period before commencement of the transparency provisions in **arrears statements**. This is to ensure consumers are aware of their overall arrears situation and to simplify the arrangements for lenders.

Estimated end of the agreement

17. In periodic fixed-sum statements, the requirement to estimate a new end date for the agreement where payments had been missed or reduced was likely to prove difficult (or impossible in some cases) to implement in practice . This requirement has now been removed, and instead we are requiring a general warning on the effect of paying less than the agreed sum and what debtors should do in those circumstances.

Implementation period for post-contract transparency provisions

18. As a result of discussions with industry, backed up by independent evidence, we have decided to extend the implementation period by six months in order to reduce the risks for both lenders and consumers. This means that lenders will need to comply with all the post contract transparency requirements by 1 October 2008. However, the removal of the £25,000 financial limit will come into force at the earlier date of 6 April 2008 to ensure this important consumer protection measure is brought in at the earliest possible date. 6 April 2008 will also bring in the business and high net worth exemptions.

High net worth exemption

19. We have made the arrangements for the certification of an individual's high net worth status more flexible, and balanced this by an increase in the relevant income and asset thresholds.

Buy-to-let

20. The policy intention of the CCA 2006 was that lending over £25,000 for the purpose of buy-to-let would fall within the business exemption, but the way that Act has been drafted means that it exempts only buy-to-let that is wholly or predominantly for business purposes, and not for investment purposes. DTI intends to address this unintended consequence of the CCA 2006 before the Consumer Credit (Exemption Agreements) Order 2007 is brought into force through a Legislative and Regulatory Reform Order to amend the CCA 1974.

Plain English

21. We have reviewed all the regulations and made improvements to the clarity of the English.

PART 2

ANALYSIS OF RESPONSES

CHAPTER 2 – THE REQUIREMENTS FOR THE EXEMPTION FOR HIGH NET WORTH INDIVIDUALS

Question 1: Are you content with our proposal to link the thresholds of what constitutes high net worth to the Financial Services and Markets Act 2000 (Financial Promotions Order) 2005?

Respondents were generally supportive of the proposal to link the thresholds to the Financial Services and Markets Act 2000 (Financial Promotions Order) 2005, as they felt this would help achieve greater consistency of definition across the industry. Some respondents suggested that it would be important to ensure that the thresholds remained aligned in the future. One respondent commented that it was wrong to make a link between the two references to high net worth individuals because they relate to different circumstances and different risks.

DTI Response

Despite the general support for a link to the thresholds in Financial Services and Markets Act 2000 (Financial Promotions Order) 2005, we have instead decided to increase our thresholds to relate more closely to the financial status of the individuals to whom creditors offer private banking services, and therefore the individuals for whom this exemption was envisaged as being of use. We have increased the definition of high net worth status in the Exemption Order to a net income value of £150,000 or net assets of £1,000,000. We believe this increase in thresholds is a justifiable balance to our decision to make a relaxation in the requirements for certification described below.

Question 2: Do you have any comments on the proposed categories of persons who may make a statement of high net worth?

There was considerable concern from industry bodies that what we proposed in the way of certification of high net worth status, i.e. by an independent third party who is a suitably qualified accountant, will not work in practice. Industry's view was that this requirement would add a significant cost and delay and the inconvenience would have a damaging effect on the bankers' relationship with private clients. They felt that the exemption would therefore not achieve its objective and would result in a damaging impact on the private banking sector.

DTI Response

We accept the argument that the arrangements for certification will need to be more flexible for the exemption to work as intended. However, we believe this increase in flexibility needs to be balanced by a reduction in the number of high net worth individuals to whom the exemption could apply. We have therefore increased the thresholds defining high net worth status to make them more consistent with level of wealth required by individuals to be offered private banking services, as described above.

We will allow in house accountants (i.e. accountants associated with the creditor) to be able to provide the certificate. This should address lenders concerns about difficulty of certification.

We are limiting the range of creditors to which this would apply by requiring that for in house certification the creditor would need to be a person who has permission under Part 4 of the FSMA 2000 to accept deposits. The change we have made reflects the fact that in some cases the creditor will be custodian of the client's assets and therefore arguably best placed to confirm the client's financial status. Additionally the creditor would need to satisfy themselves of the individual's high net worth status in order to be sure of the appropriateness of entering into an unregulated agreement with them, so would need to confirm any third party assessment.

In addition we have removed the reference to an employer making the statement, in response to several respondents' comments that this option would not be used. We have also included the possibility of an accountant making the statement who is a member of a professional body established outside the UK.

Question 3: Do you have any comments on the proposed form of a statement of high net worth?

Respondents raised a number of comments and points of detail about the form of the statement, the majority of which we have been able to accommodate.

DTI Response

We have made a number of changes to the statement to make it more comprehensive and clearer as to its purpose. We have moved the text about the thresholds into the body of the statement for clarity; we have required that the person making the statement has to declare whether or not they are connected to the creditor/owner and if so, in what capacity they are connected. We have included wording to accommodate both singular and plurality of creditor / owner. We are no longer requiring the signature to be included within the text of the statement.

Question 4: Do you have any comments on the proposed form of a declaration of high net worth?

Respondents raised a number of comments and points of detail about the form of the statement, the majority of which we have been able to accommodate.

DTI Response

We have included a sentence that the high net worth individual has to confirm that he has received a copy of the statement of high net worth. We have made the acknowledgment about the powers of the court to make an order where there is an unfair relationship more user-friendly. We have provided that this acknowledgment will be deleted in the case of a consumer hire agreement as it is not applicable. We are no longer requiring the signature to be included within the text of the statement.

CHAPTER 3 – THE REQUIREMENTS FOR THE EXEMPTION FOR BUSINESS LENDING

Question 5: do you have any comments on the proposed form of a declaration of a business purpose?

Status of buy to let lending under the Consumer Credit Act 1974 as amended by the Consumer Credit Act 2006

There was considerable concern from a sector of industry respondents as to the status of lending for the purpose of purchasing buy to let properties and the extent to which it falls within the scope of the business exemption. This concern primarily relates to wording of section 16B of the CCA 1974 as inserted by the CCA 2006, rather than the detail of the secondary legislation; however it is clearly of fundamental relevance to Question 5 and is therefore dealt with here.

The policy intention of the CCA 2006 was that lending over £25000 for the purpose of buy-to-let would fall within the business exemption but the way the Act has been drafted means that it exempts only buy-to-let lending that is wholly or predominantly for business purposes. A declaration by the debtor to this effect creates a presumption that the agreement is entered into wholly or predominantly for such purposes. The presumption will not apply if at the time the agreement is entered into the creditor or his agent knows or has reasonable cause to suspect that this is not the case.

Business is defined in section 189(1) and the definition is subject to subsection (2) which provides that a person is not to be treated as carrying on a particular type of business merely because occasionally he enters into transactions belonging to a business of that type.

Industry has expressed concerns that this approach presents practical problems. Part of the sector is based around lending for the purchase of one or a very small number of buy to let properties where the loan is secured on the buy to let property rather than the debtor's primary residence. Such lending would currently be unregulated (provided that it was for more than £25,000). Therefore, removal of the £25,000 limit potentially brings this lending within scope of the CCA 2006 and the requirement for regulatory compliance, which is an unintended consequence of the CCA 2006. The scale of the problem is limited to some extent because the Consumer Credit (Exempt Agreements) Order 1989 exempts agreements entered into by a wide range of mortgage lenders from the scope of the CCA 1974, for the initial loan. However, there are clear implications for those lenders whose agreements do not fall within the ambit of the Consumer Credit (Exempt Agreements) Order as they would be required to introduce regulatory compliance systems. In addition agreements indirectly refinancing indebtedness secured on a buy to let property fall outside the scope of the Order.

DTI Response

DTI will seek to address this unintended consequence of the CCA 2006 before the Consumer Credit (Exempt Agreements) Order 2007 is brought into force through a Legislative and Regulatory Reform Order to amend the CCA 1974. The amendment would exempt agreements that are entered into in order to provide credit of more than £25,000 to finance or refinance the purchase of land that it is to be let for use as a dwelling, or to finance or refinance the repair or improvement of such land or the provision of any dwelling upon it, where the loan is secured on that land.

Form of the declaration

Several respondents commented that it was unnecessary duplication to print the name of the signatory in the text of the declaration, as details of who the signatory is will be elsewhere in the document. Respondents also commented that there should be provision made to cover joint debtors/hirers. There was also some concern from industry respondents that the requirement for two signatures (one for the agreement and one for the business declaration) would be likely to result in delays to the agreement as one or other signature might be forgotten.

DTI Response

We believe we have addressed the majority of concerns and have dealt with the possibility of joint debtors/hirers in the form of the declaration. We suggest to industry that the declaration is placed in close proximity to the agreement signature to help ensure that the requirement to sign the document twice is not overlooked.

We have included in the declaration a statement that lending predominantly for the purpose of a business foregoes the protection of CCA, added a reminder to the debtor/hirer to seek independent legal advice if they are in any doubt about the consequence of entering into an unregulated agreement. We took the view that it would be unhelpful to attempt to incorporate a definition of what 'predominantly' means, but thought that it would be helpful to include a cross reference to the section in the CCA 1974 containing the definition of business.

CHAPTER 4 – ANNUAL STATEMENTS FOR FIXED-SUM CREDIT ACCOUNT AGREEMENTS

The responses to Chapters 4 and 5 were the most detailed and included technical drafting suggestions, suggestions for how to make things work more smoothly, as well as what were perceived to be major problems with the policy. In drafting the response we have tried to balance the cost to industry with the benefit consumers will get, since the views from industry and consumer and enforcement organisations were generally conflicting.

Question 6: Do you have any comments on the information we are proposing to include in periodic statements, including comments on any additional information?

Address/Last known address

A number of lenders expressed concern that the regulations suggested that the address would have to be the actual current address rather than the address held by the lenders. They wanted the SI to be explicit that this was the address last known to the creditor as laid down in S176(3) of the 1974 Act.

DTI Response

These regulations are subject to the 1974 and 2006 Act. The fact that S176(3) says the address last known to the server means that we do not need to repeat it here. S176(3) will apply to these regulations. However, we have decided that this item of information should not be a requirement, and have therefore removed it.

Start date/ remaining term of agreement

Lenders were concerned that the term start date was unclear and could lead to confusion for lenders and borrowers. The remaining term was likely to prove practically difficult especially where the duration was not fixed

DTI Response

The Government policy here is to give borrowers some idea of where they are in the loan period. Stating the duration or minimum duration on its own would not achieve this. Some reference point is needed to allow the borrower to calculate where they are in the life of the agreement. We have therefore decided to keep the start date and clarify that this means either the date the agreement was executed or the date of first drawdown of funds. The duration or minimum duration of the loan would then replace the remaining term of the agreement

Amounts becoming due

This is not information that is currently kept on the lenders' systems and for some lenders would be a costly addition. In the majority of cases it would simply duplicate the payment figure.

DTI Response

We can see that there will be an element of duplication here in many cases. However, if the amounts becoming due are not shown it will not be easy for the consumer to easily identify

where under- or over-payments have been made during the period. If more than two payments have been missed and the arrears equals the sum of two payments, then the arrears notice will be triggered. The arrears notice will show the payments due as well as the payments made. Given this, we are prepared to remove this item from the list of prescribed information. However, we will require lenders to state on any statement where there has been either under- or over-payment that this is the case and invite borrowers to contact them for further information.

Estimated end of agreement

Lenders were concerned that this would be a complicated calculation that would not be universally applicable. Consumer organisations agreed that there was potential for confusion here and the possibility of misleading the borrower, although the idea appeared initially attractive.

DTI Response

We are convinced that this will prove difficult to implement in practice and are suggesting that instead a general "wealth warning" is included in all statements.

"If you pay less than your agreed payment in most cases it will take you longer and cost more to pay off the debt under your agreement.

If you have difficulties making payments under your credit agreement, please contact us to discuss terms for the rest of the agreement. You may also want to seek advice on what to do from an independent free advice agency such as the Citizens Advice Bureau."

"Clerical" errors

There was concern that the definition of clerical might exclude some minor errors that would not affect the consumer, but would have a disproportionate effect on the lender who would be unable to enforce the agreement.

DTI Response

We have always taken the view that an error was only a problem if it affected the substance of the information and that the word clerical was therefore unnecessary.

Competition Commission Inquiry on Home Credit

The Competition Commission (CC) made various recommendations about transparency with regard to home credit agreements. They want home credit borrowers to have more frequent statements than we are prescribing, but agreed that if lenders were able to use the same format as the periodic statements it would reduce the additional costs for lenders, and, where home credit borrowers did receive a periodic statement it would not be confusing as they would already be familiar with the format. This meant that the CC recommended that the DTI included certain additional pieces of information that would apply purely to the home credit sector. These are:

- Total cost of credit,
- A reference to the comparison website being set up by the CC; and

- A statement telling home credit borrowers that they are entitled to more frequent statements.

The Minister agreed to this recommendation and the provisions are included in the SIs, although we may need to lay an amending SI to bring the second bullet point into force when the website is actually set up.

Transitional arrangements

For agreements in existence at commencement there is concern that much of the information required on the statements is not on the database of the lenders' IT systems. Much of the information will only be available in the original agreements, many of which are stored as microfiche. The cost of the data-inputting exercise to get all the necessary information onto the IT system is likely to be hugely expensive and potentially disproportionate in terms of consumer benefit, particularly if we ensure that the information is available on demand.

There were also concerns about what would happen to statement periods where lenders already provided a regular statement. Would they be forced to split the statement into two or provide two statements – one pre- and one post-commencement?

DTI Response

We propose to allow lenders to not include selected items of information. However, they would be required to indicate, on the statement, that it did not contain all the information which consumers were entitled to and that they can get it (free) by contacting the lender. This could include:

- Amount of credit.
- Start date/date of first drawdown of funds
- Duration or minimum duration
- Interest rate for pre-computed loans

The penalty for not providing the information when requested would be the same as not providing a correct statement – unenforceability and not being able to charge interest during the period of non-compliance. There would also be a requirement to provide the information within a set period of time – 15 working days (this is slightly longer than for providing copies of the agreement since this is potentially more complicated than just getting a copy).

We see this as a long term, but not open-ended transitional lasting 10 years. This would allow lenders plenty of time to input records for loans lasting beyond this time onto their systems, but would mean that a majority of loans would have completed.
For lenders who already provide regular statements, we will allow them to continue with their regular statement periods as long as the basic information is provided, so that the new form of statements would only kick in for the first statement after commencement (although they would not have to include the information referred to above).

Agreements that have been terminated

There was considerable concern about how such agreements that have been moved from the main system and possibly put together with other terminated loans will be treated for the purposes of the various statements.

DTI Response

Where statements are required post-termination, we will allow lenders to treat existing agreements rolled up together for recovery to be treated as a single loan, with an indication of which agreements were originally included.

Question 7: Do you have any comments on our proposals for the way in which we propose to deal with agreements covered by one aggregated payment?

There were a lot of industry concerns here, primarily about multiple agreements and industry's desire to have these explicitly included in regulation 6 (now 8). There was also a request to be able to aggregate fixed-sum and running-account agreements. This already happens with some mail order agreements. Finally, consumer organisations were against allowing HP agreements with PPI to be aggregated because two settlement figures will still be needed if a borrower wishes to settle their total indebtedness.

DTI Response

In these provisions we are not making particular provision for multiple agreements and we are making no comment on the way in which lenders deal with these. Regulation 5 (now 7) was originally included to deal with circumstances where borrowers pay one amount to cover several loans which might not all be CCA regulated. There is nothing to stop lenders who wish to from using this for statements for multiple agreements, provided they are satisfied that the agreements in question meet the tests laid down in the regulations – we make no comment in these regulations on the documentation requirements of multiple agreements. These statements do not regulate how agreements are documented, but concern the provision of information to consumers during the life of the agreement about sums which are due to the creditor under it.

Regulation 6 (now 9) deals specifically with loans sold with insurance, which are treated separately in the Agreements Regulations. We are just accommodating this difference and do not wish or intend to extend it to other multiple agreements.

The only changes therefore that we have made to these provisions is to ensure that duplicated items of information need to be shown only once and some small technical changes.

We see no policy reason why fixed-sum and running-account agreements should not be aggregated in the same way if that it is what happens. However, this change may not be simple to make and our lawyers are considering whether or not it can be done.

We considered consumer organisation representations on keeping HP and PPI agreements separate. Although we understood the problem they were talking about, we decided that we could address the potential problem by requiring a statement in these circumstances telling the consumer that he can request two figures for settlement. This information would need to be provided within 15 working days.

CHAPTER 5 – ADDITIONAL STATEMENTS FOR RUNNING- ACCOUNT CREDIT AGREEMENTS

There are already regulations concerning running-account agreement statements and we are just adding to those rather than replacing them wholesale.

Charge Cards and Overdrafts

There was considerable concern about the use of minimum payment warnings for charge cards and overdrafts where they made little sense.

DTI Response

We do not believe that there is a problem with charge cards since article 3(1)(a)ii of the Exempts Agreements Order exempts them from the legislation.

On overdrafts we recognise that the warnings are not appropriate and so the only extra information we are requiring here is the allocation of payments information if it is actually relevant.

Interest rates

Lenders already show monthly interest rates as required by the Banking Code and were concerned that an annual rate would also need to be shown and that this might not be shown next to the monthly rate because of the positioning requirement in regulation 23.

DTI Response

We have reconsidered the case for showing an annual interest rate. Given that lenders are already required to provide interest rates under the Running-Account Information Regulations, and do so as a monthly rate, we do not believe that it is necessary to add anything to this. We have therefore deleted that requirement in these regulations.

Dispute resolution

A number of respondents pointed out that there was no equivalent dispute resolution statement required in the running-account statements and that this was useful information for many consumers.

DTI Response

We agree and have added the dispute resolution statement to the requirements for running-account credit statements.

Question 8: Do you have any comments on the proposed warning in relation to a failure to make a required payment?

Failure to make a required payment

Some people suggested that this should be a standard statement on all statements. On the other hand others thought that it was rather heavy handed in circumstances where the borrower may have underpaid by a matter of a few pence.

DTI Response

We felt that the statement would lose its impact if it were to be included on every statement as a matter of course. We do not believe that only including it where the payment has been missed should present too many problems since lenders already add personalised statements in similar circumstances.

We agree that it may seem heavy-handed to include the statement where the shortfall in payment is a matter of a few pence, we are therefore not requiring the statement to be included if the shortfall is less than £1. If a borrower does this two months running, it would trigger an arrears notice. Proposals to deal with such de minimus amounts and arrears notices are set out in Chapter 7.

Question 9: Do you have any comments on the proposed warning in relation to the making of minimum repayments?

Minimum payments warning

Most lenders were happy with this as it reflects current Banking Code practice. However some lenders suggested that it were only provided on statements where a payment had not been missed, since they would get the "You have missed a payment" warning in the appropriate cases anyhow.

DTI Response

Lenders that subscribe to the Banking Code already include this in all their statements, and the words are still just as valid even if the borrower has missed a payment. As a result we have left this as initially envisaged.

Question 10: Do you think that the allocation of payments should be displayed more prominently in cases where the balance is not paid off in full, or is our proposal to include it somewhere in the statement sufficient?

Respondents were split on this issue. Most lenders preferred things to remain as they were, but all consumer organisations and enforcement agencies, along with some lenders thought that more was needed, with some suggesting that a statement telling consumers that the payments were allocated in a way that would cost them more was necessary where this was the case.

DTI Response

We recognise that most lenders provide this information on the back of the statement. However we are persuaded that without some signposting to this information, it will not help consumers understand how they are being charged interest when they do not pay off the full balance. We have therefore added a statement to be shown in a more prominent position that alerts consumers to the importance of this information and its whereabouts on the statement.

"If you do not pay off the full amount outstanding, we will allocate your payment to the outstanding balance in a specific order, which is set out [state where in relation to this form of wording this information is located on the statement]. The way in which payments are allocated can make a significant difference to the amount of interest you will pay until the balance is cleared completely."

CHAPTER 6 – NOTICES OF SUMS IN ARREARS FOR FIXED-SUM CREDIT AGREEMENTS

Question 11: Do you have any comments on the proposed information to be included in a notice of sums in arrears for fixed-sum credit agreements, including comments about any additional information?

Explanation Of Why Notice Is Being Sent (11(1))

A number respondents felt that consumers would not understand the reference to section 86B (Regulation 11(1)(a)) in a statement explaining why the Notice was being sent.

DTI Response

We accept the point and have deleted the reference to section 86B though have retained the reference to the 1974 Act. Please see reference in Chapter 11.

Disclosure Of Arrears - Transitional Provisions

Regulation 31 requires that an Arrears Notice cannot take into account payments required to be made before the date of commencement of s9. A number of respondents thought it would be technically difficult to adapt their systems to calculate and store two sets of information and that it was in consumers' interests to be aware of their overall arrears situation.

DTI Response

We agree with the points made. While we will not require lenders to provide pre-commencement information in Arrears Notices, we will make it permissible for them to do so.

Information contained in the first required Arrears Notices

There are technical difficulties for lenders in developing systems to identify the initial trigger point for a first required arrears notice, particularly as this may have happened some time in the past. In addition, the requirement to include the amount and date of payments made and becoming due could lead to arrears notices containing considerable amounts of historical payment information. This would not the case for subsequent arrears notices, which would follow a six monthly cycle.

DTI Response

We agree with the points made and have amended the Statutory Instruments accordingly. For first required arrears notices, lenders will only be required to provide the amount of the arrears that gave rise to the notice. The arrears notice will invite customers to contact the lender direct for details of the arrears. The lender will have a maximum of 15 days in which to provide the required information.

Address of Debtor

We have decided that it should not be a requirement for the address of the debtor to appear on an Arrears Notice. While in practice the majority of lenders will include the address, there

will be instances, for example where Notices will be sent out electronically, where this may not be common practice and which is not to the consumer's detriment.

Information Relating To Each Sum (Missed And Part Payments)

Schedule 3, Part 1(5) requires lenders to provide specific information on sums the debtor failed to pay against payment due dates. A number of respondents felt that it would be difficult to establish which payment applied to which payment date, especially in cases where late payments, partial payments or multiple payments had been made and that customers would find the arrangements confusing. One suggested was that the payment information could be presented in the form of a mini statement.

In addition, there were concerns that automated systems would not be able to easily identify the first point at which an Arrears Notice was triggered, as this would require the system to check historic payment records, which would occasionally need to be archived. This would only be the case for first time Arrears Notices, i.e. those being issued after a period of no arrears.

DTI Response

Government policy is to ensure that minimum levels of information are included in Notices. Part 3 of Schedule 3 (as amended) anticipates provision of this information by means of a mini statement but provided the requirements of that Part are met lenders have discretion as to how the information is presented. In addition, relaxing the non-interspersion rule means that lenders can provide additional information or aggregate missed payments with contractual payments due (provided they also show contractual payments separately).

Default Sums And Interest

Part 1(6) provides statements to be included in Arrears Notices relating to default sums and interest payable. A number of respondents thought that the statement would not be correct in some circumstances, for example if an additional payment was made but not received at the time of issuing the Arrears Notice, of if a default sum was waived.

DTI Response

We accept the point that the statement may not be correct in some circumstances and have substituted the word ‘will’ with the word ‘may’.

OFT Information Sheet (Part 3)

Part 3 requires a statement to be included in notices which draws attention to the OFT Information Sheet and informs customers of their right to apply to the courts for a time order. A number of respondents were concerned that the statement may encourage some borrowers to claim that they had not received the Information Sheet to avoid paying default charges. Many felt that the statement on Time Orders could encourage consumers down that route before first seeking to resolve arrears problems with their lenders. There was also concern that replicating information in the Notice and the OFT Information Sheet would add to the size of the Notice, which may impact on its effectiveness.

DTI Response

We do not accept the statements would lead to significant abuse of the Act, but do accept the need to avoid overloading the Notice with repeated information. We will amend the statements accordingly and work with the OFT to remove any unnecessary duplication between the Notice and the Information Sheet.

So far as customers' claims that an information sheet was not included are concerned, provided that lenders can demonstrate that their information systems are sufficiently robust and reliable as to ensure that Information Sheets are included with notices, and that the documentation as a whole is sent to the debtor's address which is last known to the creditor it would be for the debtor to prove that in his or her particular case those systems broke down.

Advice and Information Statement

One respondent suggested that Arrears Notices should include an "Advice and Information Statement" to reflect the fact that arrears were an indication of financial difficulty, and provide a prescribed form of wording.

DTI Response

We accept the point, but are keen not to overload the Arrears Notice. However, Regulation 11(1)(e) provides for a statement covering the OFT Information Sheet, which will be amended to encourage consumers to seek help advice either from the lender or an independent advisor.

Arrears Notices in Electronic Format

See Chapter 11

CHAPTER 7 – NOTICES OF SUMS IN ARREARS FOR RUNNING-ACCOUNT CREDIT AGREEMENTS

Question 12: Do you have any comments on the proposed information to be included in a notice of sums in arrears for running-account credit agreements, including comments about any additional information?

Form Of Notices And Statements Required Under These Regulations 21

Regulation 21 requires a notice of sums in arrears to be sent in paper form. One respondent suggested that the requirement was onerous for those who communicate with customers electronically and undermines the Government's strategy to promote electronic communications.

DTI Response

We accept the point and will allow for Arrears Notices to be issued electronically in situations where customers have specifically requested such information to sent to them electronically.

Address of Debtor

See Question 11.

Missed or Partly Made Payments (Part 2 (6))

Schedule 3 Part 2 (6) provides a statement to be used in connection to missed or partly missed payments. A number of respondents suggested that, by definition, any missed or partly made payments relating to a previously notified period of arrears will automatically be included as they will form part an ongoing, running balance. This applies equally to arrears occurring before the commencement of section 10.

DTI Response

We are clear that the default notices will relate specifically to the current arrears situation, regardless of the fact that previously notified missed or partly made payments will form part of the total amount owing.

Notices (Part 1(7))

Part 1(7) provides a general statement relating to the frequency of notices. A number of respondents questioned the rationale not to allow tolerances in respect of payments below the minimum required level. In some cases, for example where a customer has failed to make a full payment for two consecutive months but the shortfall was small; an Arrears Notice would be triggered. They argued that it would be disproportionate to send an arrears notice if a consumer is in default by a small amount.

DTI Response

We accept the point, but the Act states clearly that arrears notices must be issued once the criteria has been met. However, we are providing for a simpler form of Arrears Notice to be issued in situations where a customer is in arrears of less than £2, and where this has triggered a Notice. In addition, we have relaxed the non-interspersion rule, which means that lenders will be able to state that, although the customer is in default by only a small amount, they are required by law to issue an arrears notice.

CHAPTER 8 – NOTICES OF DEFAULT SUMS

Question 13: Do you have any comments on our proposed way forward for the requirement to provide notices of default sums

Whether to set a threshold prescribing level of default sum where notices need to be sent

The majority of respondents including most from industry either did not comment or positively endorsed the proposal not to set a minimum threshold. We can therefore confirm that we will not set a threshold which will mean that there will be a requirement to issue a default sum notice for any default sum that is charged regardless of the amount of the default sum.

Other comments on the notices of default sums.

Respondents expressed concern about a potential conflict with the Banking Code which requires 14 days pre-notification of certain charges on current accounts before charges become due. However the Banking Code requirement does not relate to default sums and we therefore do not believe there is any conflict between the two requirements. If there were conflict we believe it would be appropriate to amend the Banking Code to be consistent with the requirements of the regulations.

Some industry respondents expressed concern that the changes to the requirements for interest on default sums will be very challenging to implement and may not be technically achievable within the 12 months implementation timetable we have proposed. We have considered these views, along with independent evidence published in the supporting report, and come to the view that we accept that a 12 month implementation period would pose a significant risk to consumers because there is strong evidence that some industry players would not be able to achieve it. For this reason we have decided to extend the period industry has to comply with the requirements on post contract information to 18 months.

Several industry respondents noted there was lack of clarity and ambiguity of meaning in the use of word ‘charged’ in Schedule 4 part 1 part 5, and what was probably meant was either ‘payable’ or ‘due’. See comments on Question 14 below.

Question 14: Do you have any comments on the proposed period for the giving of notices of default sums

Some respondents expressed concern over whether the draft regulations meant that lenders would be required to wait for up to 35 days before issuing a notice of a default sum, rather than sending it earlier if they so wished. This is a misunderstanding as the regulations simply require that the notice must be sent no later than 35 days later than the relevant default sum being triggered.

There is also some ambiguity over whether the requirement to send the notice is triggered by the date at which the default sum becomes ‘payable’ i.e. the date of the event which triggered the default sum being incurred, or when the creditor deems the default sum to be ‘due’. Having considered this further we conclude that the wording of the Act is ambiguous and believe it would be wrong to try and second guess this in our secondary legislation. Lenders will need to form their own view. If the ambiguity presents problems arising from different interpretations, we will need to consider what steps can be taken to address the issue.

Practical differences between the two interpretations could, for example, arise where there is a long period between the date on which a sum becomes payable and the date on which it will become due. Depending on which interpretation is taken, the trigger for a note being issued would either be the date the payment became 'due', i.e. when it should be paid, or alternatively, shortly after the sum became 'payable' but possibly months before the consumer was required to pay it.

If lenders wish to send notices based on the "due" date, for example in some business banking arrangements where default sums become due at the end of a quarterly period, only the first interpretation would permit one default sum notice to be sent showing all the default sums becoming payable in that period that fall due on a particular date.

The requirement of the provision is that the creditor must send the default sum notice no more than 35 days after the relevant trigger date, and can start charging interest on the 29th day after the default sum notice is sent.

Question 15: Do you have any comments on the proposed information to be included in a notice of default sums, including comments about any additional information?

Details of interest rate: The requirement to include the interest rate that would be applied after the 28 day interest free period would pose difficulties for agreements with variable rates of interest.

DTI Response
Inclusion of the interest rate in default sum notices is an important consumer protection measure and needs to be there, but we will take account of variable rates by allowing creditors to include a proviso that the rate is subject to variation. Such disclaimers are already used by many lenders where variable interest rates are charged on consumer credit accounts.

Regulation 15 – Many lenders did not like the legalistic tone of this and felt that consumers would not understand the reference to section 86E of the Consumer Credit Act 1974

DTI Response
The reference to the Act is to show that this is a statutory notice under the Act. However we agree that the Section number is unlikely to add anything useful to the consumer and we have therefore removed it.

CHAPTER 9 – DEFAULT NOTICES

Question 16: Do you have any comments on the proposed requirement for the inclusion in s.87 default notices of information about the right to end HP and conditional sale agreements?

Agreements where there is an associated insurance agreement

As with periodic notices there was a desire from consumer and enforcement organisations to make it clear that voluntarily terminating the main agreement would not terminate any subsidiary insurance agreement.

DTI Response

It is important that borrowers realise that they will still be liable under an associated insurance agreement where they elect to voluntarily terminate the main agreement. Wording has been added to make this clear.

Question 17: Do you consider that a generic description of liabilities for the debtor under s.100(1) would be more appropriate than a specific figure of the amount the debtor would be have to pay as at the end date of the notice, or vice versa, and why?

Dynamic or generic description of liabilities in default notices

Because of the cost of system development, industry wanted to include only generic information, although some admitted that dynamic information in the form of a settlement figure would be extremely useful for the consumer. Consumer groups and enforcement agencies on the other hand argued strongly that this was one case where dynamic information was necessary. The timescales are shorter, fewer notices are involved and the potential consumer detriment is greater.

DTI Response

While we have generally tried not to require dynamic information in the various statements and notices given the resource implications of updating IT systems to provide such functionality, we believe that in the case of Default Notices a different approach is required. Once a borrower has reached the stage of receiving a default notice, he is in real trouble, and we would hope the number of cases reaching this stage will be substantially lower than those receiving other notices, such as arrears and notices of default sums. In this instance, the borrower may have only 14 days in which to decide what he wants to do and inform the lender before the agreement is terminated. Because of this a settlement figure included in the original Default Notice would be extremely useful, since a borrower might use up his entire 14 day period deciding to request a figure, doing so and then trying to respond. Default Notices already require some dynamic information, so introducing dynamic information in default notices in the form of a settlement figure for voluntary termination is not a new concept. In this particular circumstance, we believe that the benefit to the borrower will outweigh the extra cost to the lender, which we accept will be higher than providing just generic information.

Question 18: Do you have any comments on the proposed requirement for the inclusion in s.87 default notices of information about the interest payable after a judgment?

Post-judgment interest

Most respondents found this proposal non-controversial, although some lenders felt that it was unnecessary if they did not intend to charge post-judgment interest and others were concerned that lenders that were not entitled to charge post-judgment interest might include the statement, thereby further pressurising the already beleaguered borrower.

DTI Response

If there is no provision for post-judgment interest in the agreement the lender cannot include it. If he does, he has provided incorrect information, which means that he has not provided a Default Notice as prescribed under the Act. If a lender has the ability to charge interest but does not intend to, we do not believe that he should be allowed to exclude this statement – he does after all have the ability to change his mind after judgment. All this statement does here is flag up the provision in the agreement. It does not require the lender to exercise it. If the lender does not intend to exercise his right he will not need to send a notice of interest payable under 130A, which would allow him to claim the interest.

Question 19: Do you have any comments on the proposed requirements for inclusion in s.87 default notices of a reference to the OFT information sheet on default?

Unenforceability of agreements as a result of a failure to provide OFT information sheets

Lenders were generally concerned that the wording might lead some borrowers to claim that they had not been sent an information sheet, and that unenforceability for this was disproportionate.

DTI Response

This issue was also raised with regards to the arrears notices, and although we do not believe that there is likely to be widespread abuse of this by borrowers, we have proposed revised wording. We believe that it is likely that a lender who can show that they have robust systems in place for the sending out of OFT information sheets will not be penalised if that system should occasionally fail (or if a customer makes a claim to that effect). Ultimately any decisions on this will be down to the Court.

Question 20: Do you consider that any other information not already proposed should be included in s.87 default notices?

Comments were generally confined to the items already included.

CHAPTER 10 – NOTICES IN RELATION TO POST-JUDGEMENT INTEREST

Question 21: Do you have any comments on the proposed content of the first notice in relation to interest after a judgment?

Question 22: Do you have any comments on the proposed content of the second and subsequent notices in relation to interest after a judgment?

The responses to these two questions were linked so we have dealt with them together.

Respondents were generally content with the proposed content of the two notices. However there were a range of points of detail, the majority of which we have been able to address.

Several respondents had comments on the requirements to state the relevant interest rate, and pointing out in particular that we need to reflect circumstances where the interest rate may vary. One industry respondent thought that we should suggest that debtors should make contact with their lender in the first instance if they were having problems making their repayments. Several respondents queried our suggestion that the debtor might make an application to the court if they were having problems making repayments, and in particular, some consumer bodies requested that this be made more specific as to what the court might be able to do.

Many respondents wanted the requirement to refer to advisory bodies to be more prescriptive, to ensure that helpful and consistent advice is given to debtors, and that the risk of creditors giving inaccurate or unhelpful information is reduced.

DTI Response

We have made the references to the interest rate consistent between the two notices, so that the first and subsequent notices quote the interest rate (or rates) which is (or are) applicable during the period of the notice, and where the rate is variable the creditor is required to indicate this.

We have included a prescriptive list of advisory bodies that the debtor may contact for advice, and are requiring that the creditor includes contact details for these as available in the OFT information sheet. OFT will maintain these, so providing the creditor ensures that the latest version of the information sheet is used to obtain the contact details, they can be reassured that the details are up-to-date and correct. It may be simpler for them (and it would be permissible) to include an information sheet with the post judgment interest notice instead of this information.

We have included a notice referring the debtor to the creditor in the first instance if in difficulty. We have also expanded the notice in the way it explains that the debtor may be able to apply to court for an extension of the time to pay, and also to amend the amount of interest payable.

We have made various simplifications to the wording, for example we have removed the requirement to include the description of the agreement in Schedule 5 Part 3 as it was a duplication of what is required in Part 1. We have amended the first paragraph of Part 3 as it could have been interpreted as implying that the amount of interest would remain static which is not necessarily the case. We decided to retain the requirement to include the case number of the judgment in notices as it was felt to be a helpful reference and reminder to the debtor of the judgment. The requirement for post-judgment interest notices relates only to judgements that take place after the commencement of this part of the Act.

We think it appropriate to retain the wording in question because the consequence (losing the right to charge interest) is directly linked to the information which the notice contains (interest which has been charged - or in the case of the first notice the lender's intention to charge interest).

The consequence does not flow from failure to send another document or include other information (such as the OFT information sheet) but flows from failure to comply with the duty itself i.e.: to tell the consumer about the interest charged.

CHAPTER 11 – FORM OF POST-CONTRACT INFORMATION AND NOTICES

Question 23: Do you have comment on out proposals in Chapter 11 on the form of the various post-contract information notices and statements?

Question 24: Do you think that that there are any notices or statements that would benefit from the information appearing in a particular order, or linked to any other specific item of information?

The majority of the responses in this Chapter dealt with the way in which the prescriptive provisions would increase the likelihood of the extreme sanction of unenforceability being applied. We believe that the changes we have made here will go a long way to easing that fear, while keeping consumer protection at the same level.

"As a whole and without interspersion"

Consumer groups and enforcement agencies had generally few comments on this chapter, suggesting that they were relatively content. However, lenders were universally concerned at the prescriptive nature of the form – having to show the information as a whole and without interspersion. The main problem envisaged was that no additional explanatory information could be included and that any accidental misinterpretation would make the agreement unenforceable. Lenders who already sent statements would need to change their current format in order to comply with these rules, despite the fact we had said that we wanted the form to be flexible enough to allow lenders to do what made the most sense for them. Lenders generally made the point that it was in their interest to make sure that the statements were clear and easily understood, since a large number of confused borrowers contacting them for clarification would not be in their interest.

DTI Response

Statements produced under the Running Account Information Regulations do not have requirements about interspersion, and on the whole these statements have worked reasonably well. We also take the point that it is not in the lenders' interest to send out statements that are unclear. As a result we have decided to remove the requirement to show the information "as a whole and not interspersed…." However we have not removed the legibility criteria or the prominence requirements, as this will stop the practice of showing some warnings in a smaller font, which is something we wish to avoid. This aspect will be looked at very carefully when the Regulations are reviewed. If it leads to lenders showing movements on the account and attaching a copy of the agreement for the borrower to work out the information required for themselves, which was suggested by at least one respondent, we are likely to reinstate whatever provisions we think are necessary to stop such a practice. We have added a requirement for HP agreements that the early settlement and voluntary termination settlement statements should be shown together so that the borrower can see that there are two different ways of terminating an agreement and does not think that the lender has accidentally included one statement twice but worded slightly differently.

Paper v. electronic

We had said that arrears notices must be sent out in paper form. Lenders objected that this was counter to the spirit of the electronic communications order, and would not allow them to

deliver them in the same way as the periodic statements, which could be delivered electronically at the request of the consumer.

DTI Response

We believe that consumers, who have elected to have such communications electronically, should be able to. What we would not want is for lenders to send these notices electronically when the borrower has not agreed with the lender to receive statements and notices electronically. The provision has been amended accordingly.

"Clerical" errors

There was concern that the definition of clerical might exclude some minor errors that would not affect the consumer, but would have a disproportionate effect on the lender who would be unable to enforce the agreement.

DTI Response

We have always taken the view that an error was only a problem if it affected the substance of the information and that the word clerical was therefore unnecessary.

CHAPTER 12 – OFT LICENSING

Question 25: Do you have any comments on the proposed 5-year period for the maximum duration of time-limited licences?

Question 26: Do you have any comments on the proposed 5-year period for payment of the periodic licence fee in respect of indefinite licences?

There was general support to set the maximum period for a time-limited licence at 5 years, with the periodic fee also payable at five yearly intervals, since lenders are already used to a five-year cycle. We have therefore made no changes to these provisions.

Some minor issues were raised:

Q. There was a suggestion that since licensees had to pay a fee every five years, why not limit all licences to five years.

A. Indefinite licences are more efficient in terms of cost and time for both OFT and licensees. It also allows OFT to concentrate its monitoring resources on the areas and licences that are the highest risk, leaving reputable licensees with a very light touch regulatory regime. The 2006 Act introduces a number of new powers for OFT to enable them to do their job more effectively.

Q. There were a number of comments about the cost of licences and a desire to see these remain at the current level.

A. Although a saving will be made by the move to indefinite licences, we believe that the cost of enforcement with the extra duties required by the Act will rise. The RIA suggested that licence fees might double, but this would still represent very good value as the licence currently works out at £22 a year for a sole trader and £55 for a corporate body.

Q. What happens if the periodic fee is not paid?

A. If there is a problem with paying the charge by the due date, the licensee can apply for extension of the period he has to pay within. However, if it is not paid the licence can be terminated, although this cannot happen while an application for an extension is being considered. Appeal would be to the Consumer Credit Appeals Tribunal.

EXTRA QUESTION

Question 27: In addition to any comments you may already have made on questions 1-26, do you have any comments on the draft Statutory Instruments included at Annex A? Please give references to any specific parts of the draft Statutory Instruments that you comment on.

DTI Response

All the issues raised have been covered under the existing chapters.

SUMMARY OF QUESTIONS

The questions posed by the consultation were:

CHAPTER 2 – THE REQUIREMENTS FOR THE EXEMPTION FOR HIGH NET WORTH INDIVIDUALS

Question 1: Are you content with our proposal to link the threshold of what constitutes high net worth to the Financial Services and Markets Act 2000 (Financial Promotions Order) 2005?

Question 2: Do you have any comments on the proposed categories of persons who may make a statement of high net worth?

Question 3: Do you have any comments on the proposed form of a statement of high net worth?

Question 4: Do you have any comments on the proposed form of a declaration of high net worth?

CHAPTER 3 – THE REQUIREMENTS FOR THE EXEMPTION FOR BUSINESS LENDING

Question 5: Do you have any comments on the proposed form of a declaration of a business purpose?

CHAPTER 4 – ANNUAL STATEMENTS FOR FIXED-SUM CREDIT ACCOUNT AGREEMENTS

Question 6: Do you have any comments on the information we are proposing to include in periodic statements, including comments on any additional information?

Question 7: Do you have any comments on our proposals for the way in which we propose to deal with agreements covered by one aggregated payment?

CHAPTER 5 – ADDITIONAL STATEMENTS FOR FIXED-SUM CREDIT ACCOUNT AGREEMENTS

Question 8: Do you have any comments on the proposed warning in relation to a failure to make a required payment?

Question 9: Do you have any comments on the proposed warning in relation to the making of minimum repayments?

Question 10: Do you think that the allocation of statements should be displayed more prominently in cases where the balance is not paid off in full, or is our proposal to include it somewhere in the statement sufficient?

CHAPTER 6 – NOTICES OF SUMS IN ARREARS FOR FIXED-SUM CREDIT AGREEMENTS

Question 11: Do you have any comments on the proposed information to be included in a notice of sums in arrears for fixed-sum credit agreements, including comments about any additional information?

CHAPTER 7 – NOTICES OF SUMS IN ARREARS FOR RUNNING-ACCOUNT CREDIT AGREEMENTS

Question 12: Do you have any comments on the proposed information to be included in a notice of sums in arrears for running-account credit agreements, including comments about any additional information?

CHAPTER 8 – NOTICES OF DEFAULT SUMS

Question 13: Do you have any comments on our proposed way forward for the requirement to provide notices of default sums?

Question 14: Do you have any comments on the proposed period for the giving of notices of default sums?

Question 15: Do you have any comments on the proposed information to be included in a notice of default sums, including comments about any additional information?

CHAPTER 9 – ADDDITIONAL INFORMATION IN SECTION 87 DEFAULT NOTICES

Question 16: Do you have any comments on the proposed requirement for the inclusion of s.87 default notices of information about the right to end HP and conditional sale agreements?

Question 17: Do you consider that the generic description of liabilities for the debtor under s.100(1) would be more appropriate than a specific figure of the amount the debtor would have to pay as at the date of the notice, or vice versa, and why?

Question 18: Do you have any comments on the proposed requirement for the inclusion in s.87 default notices of information about interest payable after judgement?

Question 19: Do you have any comments on the proposed requirement for the inclusion in s.87 default notices of a reference to the OFT information sheet on default?

Question 20: Do you consider that any other information not already proposed should be included in s.87 default notices?

CHAPTER 10 – NOTICES IN RELATION TO POST-JUDGEMENT INTEREST

Question 21: Do you have any comments on the proposed content of the first notice in relation to interest after judgement?

Question 22: Do you have any comment on the proposed content of the second and subsequent notices in relation to interest after judgement?

CHAPTER 11 – FORM OF POST-CONTRACT INFORMATION AND NOTICES

Question 23: Do you have comment on out proposals in Chapter 11 on the form of the various post-contract information notices and statements?

Question 24: Do you think that that there are any notices or statements that would benefit from the information appearing in a particular order, or linked to any other specific item of information?

CHAPTER 12 – OFT LICENSING

Question 25: Do you have any comments on the proposed 5-year period for the maximum duration of time-limited licences?

Question 26: Do you have any comments on the proposed 5-year period for payment of the periodic licence fee in respect of indefinite licences?

EXTRA QUESTION

Question 27: In addition to any comments you may already have made on questions 1-26, do you have any comments on the draft Statutory Instruments included at Annex A? Please give references to any specific parts of the draft Statutory Instruments that you comment on.

ANNEX B

LIST OF RESPONDEES

Addleshaw Goddard LLP
Advice NI
AFL Solicitors and N.A. Knight & Co. Solicitors
Alliance & Leicester
Association of Finance Brokers
BBA
Berwin, Leighton Paisner
Britannia Building Society
British Vehicle Rental and Leasing Association
CAB
Cattles plc
CCTA
Citizens' Advice Cardiff
Citizens' Advice NI
CML
DCA
Egg Banking plc
Eversheds
FLA
HSBC
HSBC Private Bank
Institute of Credit Management
JCB Finance Ltd
Lacors
Liverpool Victoria
Lloyds TSB
Mail Order Traders' Association (MOTA)
MBNA
Money Advice Trust & National Debt Line
Nationwide
OFT
RBS
Standard Life Bank
The Bisnode Group
TSI
Watson, Farley & Williams
Wells Fargo
West Bromwich Building Society
Which?