

Consumer Credit Act 1974

CHAPTER 39

ARRANGEMENT OF SECTIONS

PART I

DIRECTOR GENERAL OF FAIR TRADING

Section

1. General functions of Director.
2. Powers of Secretary of State.
3. Supervision by Council on Tribunals.
4. Dissemination of information and advice.
5. Annual and other Reports.
6. Form etc. of applications.
7. Penalty for false information.

PART II

CREDIT AGREEMENTS, HIRE AGREEMENTS AND LINKED TRANSACTIONS

8. Consumer credit agreements.
9. Meaning of credit.
10. Running-account credit and fixed-sum credit.
11. Restricted-use credit and unrestricted-use credit.
12. Debtor-creditor-supplier agreements.
13. Debtor-creditor agreements.
14. Credit-token agreements.
15. Consumer hire agreements.
16. Exempt agreements.
17. Small agreements.
18. Multiple agreements.
19. Linked transactions.
20. Total charge for credit.

PART III

LICENSING OF CREDIT AND HIRE BUSINESSES

Licensing principles

21. Businesses needing a licence.
22. Standard and group licences.
23. Authorisation of specific activities.
24. Control of name of business.
25. Licensee to be a fit person.
26. Conduct of business.

Issue of licences

27. Determination of applications.
28. Exclusion from group licence.

Renewal, variation, suspension and revocation of licences

29. Renewal.
30. Variation by request.
31. Compulsory variation.
32. Suspension and revocation.
33. Application to end suspension.

Miscellaneous

34. Representations to Director.
35. The register.
36. Duty to notify changes.
37. Death, bankruptcy etc. of licensee.
38. Application of s. 37 to Scotland and Northern Ireland.
39. Offences against Part III.

40. Enforcement of agreements made by unlicensed trader.
41. Appeals to Secretary of State under Part III.
42. Further appeal on point of law.

PART IV

SEEKING BUSINESS

Advertising

43. Advertisements to which Part IV applies.
44. Form and content of advertisements.
45. Prohibition of advertisement where goods etc. not sold for cash.
46. False or misleading advertisements.
47. Advertising infringements.

Canvassing etc.

48. Definition of canvassing off trade premises (regulated agreements.)
49. Prohibition of canvassing debtor-creditor agreements off trade premises.
50. Circulars to minors.
51. Prohibition of unsolicited credit-tokens.

Miscellaneous

52. Quotations.
53. Duty to display information.
54. Conduct of business regulations.

PART V

ENTRY INTO CREDIT OR HIRE AGREEMENTS

Preliminary matters

55. Disclosure of information.
56. Antecedent negotiations.
57. Withdrawal from prospective agreement.
58. Opportunity for withdrawal from prospective land mortgage.
59. Agreement to enter future agreement void.

Making the agreement

60. Form and content of agreements.
61. Signing of agreement.

62. Duty to supply copy of unexecuted agreement.
63. Duty to supply copy of executed agreement.
64. Duty to give notice of cancellation rights.
65. Consequences of improper execution.
66. Acceptance of credit-tokens.

*Cancellation of certain agreements within
cooling-off period*

67. Cancellable agreements.
68. Cooling-off period.
69. Notice of cancellation.
70. Cancellation: recovery of money paid by debtor or hirer.
71. Cancellation: repayment of credit.
72. Cancellation: return of goods.
73. Cancellation: goods given in part exchange.

Exclusion of certain agreements from Part V

74. Exclusion of certain agreements from Part V.

PART VI

**MATTERS ARISING DURING CURRENCY OF CREDIT
OR HIRE AGREEMENTS**

75. Liability of creditor for breaches by supplier.
76. Duty to give notice before taking certain action.
77. Duty to give information to debtor under fixed-sum credit agreement.
78. Duty to give information to debtor under running-account credit agreement.
79. Duty to give hirer information.
80. Debtor or hirer to give information about goods.
81. Appropriation of payments.
82. Variation of agreements.
83. Liability for misuse of credit facilities.
84. Misuse of credit-tokens.
85. Duty on issue of new credit-tokens.
86. Death of debtor or hirer.

PART VII

DEFAULT AND TERMINATION

Default notices

87. Need for default notice.

- 88. Contents and effect of default notice.
- 89. Compliance with default notice.

Further restriction of remedies for default

- 90. Retaking of protected hire-purchase etc. goods.
- 91. Consequences of breach of s. 90.
- 92. Recovery of possession of goods or land.
- 93. Interest not to be increased on default.

Early payment by debtor

- 94. Right to complete payments ahead of time.
- 95. Rebate on early settlement.
- 96. Effect on linked transactions.
- 97. Duty to give information.

Termination of agreements

- 98. Duty to give notice of termination (non-default cases).
- 99. Right to terminate hire-purchase etc. agreements.
- 100. Liability of debtor on termination of hire-purchase etc. agreement.
- 101. Right to terminate hire agreement.
- 102. Agency for receiving notice of rescission.
- 103. Termination statements.
- 104. Goods not to be treated as subject to landlord's hypothec in Scotland.

PART VIII

SECURITY

General

- 105. Form and content of securities.
- 106. Ineffective securities.
- 107. Duty to give information to surety under fixed-sum credit agreement.
- 108. Duty to give information to surety under running-account credit agreement.
- 109. Duty to give information to surety under consumer hire agreement.
- 110. Duty to give information to debtor or hirer.
- 111. Duty to give surety copy of default etc. notice.
- 112. Realisation of securities.
- 113. Act not to be evaded by use of security.

Pledges

- 114. Pawn-receipts.

- 115. Penalty for failure to supply copies of pledge agreement etc.
- 116. Redemption period.
- 117. Redemption procedure.
- 118. Loss etc. of pawn-receipt.
- 119. Unreasonable refusal to deliver pawn.
- 120. Consequence of failure to redeem.
- 121. Realisation of pawn.
- 122. Order in Scotland to deliver pawn.

Negotiable instruments

- 123. Restrictions on taking and negotiating instruments.
- 124. Consequences of breach of s. 123.
- 125. Holders in due course.

Land mortgages

- 126. Enforcement of land mortgages.

PART IX

JUDICIAL CONTROL

Enforcement of certain regulated agreements and securities

- 127. Enforcement orders in cases of infringement.
- 128. Enforcement orders on death of debtor or hirer.

Extension of time

- 129. Time orders.
- 130. Supplemental provisions about time orders.

Protection of property pending proceedings

- 131. Protection orders.

Hire and hire-purchase etc. agreements

- 132. Financial relief for hirer.
- 133. Hire-purchase etc. agreements: special powers of court.
- 134. Evidence of adverse detention in hire purchase etc. cases.

Supplemental provisions as to orders

- 135. Power to impose conditions, or suspend operation of order.
- 136. Power to vary agreements and securities.

Extortionate credit bargains

- 137. Extortionate credit bargains.
- 138. When bargains are extortionate.
- 139. Reopening of extortionate agreements.
- 140. Interpretation of sections 137 to 139.

Miscellaneous

- 141. Jurisdiction and parties.
- 142. Power to declare rights of parties.

Northern Ireland

- 143. Jurisdiction of county court in Northern Ireland.
- 144. Appeal from county court in Northern Ireland.

PART X

ANCILLARY CREDIT BUSINESSES

Definitions

- 145. Types of ancillary credit business.
- 146. Exceptions from section 145.

Licensing

- 147. Application of Part III.
- 148. Agreement for services of unlicensed trader.
- 149. Regulated agreements made on introductions by unlicensed credit-broker.
- 150. Appeals to Secretary of State against licensing decisions.

Seeking business

- 151. Advertisements.
- 152. Application of sections 52 to 54 to credit brokerage etc.
- 153. Definition of canvassing off trade premises (agreements for ancillary credit services).
- 154. Prohibition of canvassing certain ancillary credit services off trade premises.
- 155. Right to recover brokerage fees.

Entry into agreements

156. Entry into agreements.

Credit reference agencies

157. Duty to disclose name etc. of agency.
158. Duty of agency to disclose filed information.
159. Correction of wrong information.
160. Alternative procedure for business consumers.

PART XI

ENFORCEMENT OF ACT

161. Enforcement authorities.
162. Powers of entry and inspection.
163. Compensation for loss.
164. Power to make test purchases etc.
165. Obstruction of authorised officers.
166. Notification of convictions and judgements to Director.
167. Penalties.
168. Defences.
169. Offences by bodies corporate.
170. No further sanctions for breach of Act.
171. Onus of proof in various proceedings.
172. Statements by creditor or owner to be binding.
173. Contracting-out forbidden.

PART XII

SUPPLEMENTAL

General

174. Restrictions on disclosure of information.
175. Duty of persons deemed to be agents.
176. Service of documents.
177. Saving for registered charges.
178. Local Acts.

Regulations, orders etc.

179. Power to prescribe form etc. of secondary documents.
180. Power to prescribe form etc. of copies.
181. Power to alter monetary limits etc.

- 182. Regulations and orders.
- 183. Determinations etc. by Director.

Interpretation

- 184. Associates.
- 185. Agreement with more than one debtor or hirer.
- 186. Agreement with more than one creditor or owner.
- 187. Arrangements between creditor and supplier.
- 188. Examples of use of new terminology.
- 189. Definitions.

Miscellaneous

- 190. Financial provisions.
- 191. Special provisions as to Northern Ireland.
- 192. Transitional and commencement provisions, amendments and repeals.
- 193. Short title and extent.

SCHEDULES:

- Schedule 1—Prosecution and punishment of offences.
- Schedule 2—Examples of use of new terminology.
- Schedule 3—Transitional and commencement provisions.
- Schedule 4— Minor and consequential amendments.
- Schedule 5—Repeals.

Consumer Credit Act 1974

1974 CHAPTER 39

An Act to establish for the protection of consumers ~ new system, administered by the Director General of Fair Trading, of licensing and other control] of traders concerned with the provision of credit, or the supply of goods on hire or hire-purchase, and their transactions, in place of the present enactments regulating moneylenders, pawnbrokers and hire-purchase traders and their transactions; and for related matters. [31st July 1974]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

DIRECTOR GENERAL OF FAIR TRADING

- 1.—(1) It is the duty of the Director General of Fair Trading (" the Director ")—
- (a) to administer the licensing system set up by this Act,
 - (b) to exercise the adjudicating functions conferred on him by this Act in relation to the issue, renewal, variation, suspension and revocation of licences, and other matters,
 - (c) generally to superintend the working and enforcement of this Act, and regulations made under it, and
 - (d) where necessary or expedient, himself to take steps to enforce this Act, and regulations so made.
- (2) It is the duty of the Director, so far as appears to him to be practicable and having regard both to the national interest and the interests of persons carrying on businesses to which this Act applies and their customers, to keep under review and from time to time advise the Secretary of State about—
- (a) social and commercial developments in the United Kingdom and elsewhere relating to the provision of credit or bailment or (in Scotland) hiring of goods to individuals, and related activities; and
 - (b) the working and enforcement of this Act and orders and regulations made under it.
- 2.—(1) The Secretary of State may by order—
- (a) confer on the Director additional functions concerning the provision of credit or bailment or (in Scotland) hiring of goods to individuals, and related activities, and
 - (b) regulate the carrying out by the Director of his functions under this Act.

- (2) The Secretary of State may give general directions indicating considerations to which the Director should have particular regard in carrying out his functions under this Act, and may give specific directions on any matter connected with the carrying out by the Director of those functions.
- (3) The Secretary of State, on giving any directions under subsection (2), shall arrange for them to be published in such manner as he thinks most suitable for drawing them to the attention of interested persons.
- (4) With the approval of the Secretary of State and the Treasury, the Director may charge, for any service or facility provided by him under this Act, a fee of an amount specified by general notice (the "specified fee").
- (5) Provision may be made under subsection (4) for reduced fees, or no fees at all, to be paid for certain services or facilities by persons of a specified description, and references in this Act to the specified fee shall, in such cases, be construed accordingly.
- (6) An order under subsection (1)(a) shall be made by statutory instrument and shall be of no effect unless a draft of the order has been laid before and approved by each House of Parliament
- (7) References in subsection (2) to the functions of the Director under this Act do not include the making of a determination to which section 41 or 150 (appeals from Director to Secretary of State) applies.

3. The Tribunals and Inquiries Act 1971 is amended as follows (the amendments bringing the adjudicating functions of the Director under this Act under the supervision of the Council on Tribunals)—

- (a) in section 8(2), insert "5A " after " paragraph ";
- (b) in section 19(4), insert " or the Director General of Fair Trading referred to in paragraph 5A " after " or 46 ";
- (c) in Schedule 1, after paragraph 5, insert—

" Consumer credit	5A. The Director General of Fair Trading, in respect of his functions under the Consumer Credit Act 1974 (c. 39), and any member of the Director's staff authorised to exercise those functions under paragraph 7 of Schedule 1 to the Fair Trading Act 1973."
-------------------	--

4. The Director shall arrange for the dissemination, in such form and manner as he considers appropriate, of such information and advice as it may appear to him expedient to give to the public in the United Kingdom about the operation of this Act, the credit facilities available to them, and other matters within the scope of his functions under this Act.

5. At the end of subsection (2) of section 125 (annual and other reports of Director) of the Fair Trading Act 1973 insert " and shall set out any directions given to the Director under section 2(2) of the Consumer Credit Act 1974 during that year ".

6.—(1) An application to the Director under this Act is of no effect unless the requirements of this section are satisfied.

- (2) The application must be in writing, and in such form, and accompanied by such particulars, as the Director may specify by general notice, and must be accompanied by the specified fee.
- (3) After giving preliminary consideration to an application, the Director may by notice require the applicant to furnish him with such further information relevant to the application as may be described in the notice, and may require any information furnished by the applicant (whether at the time of the application or subsequently) to be verified in such manner as the Director may stipulate.
- (4) The Director may by notice require the applicant to publish details of his application at a time or times and in a manner specified in the notice.

7. A person who, in connection with any application or request to the Director under this Act, or in response to any invitation or requirement of the Director under this Act, knowingly or recklessly gives information to the Director which, in a material particular, is false or misleading, commits an offence.

PART II

CREDIT AGREEMENTS, HIRE AGREEMENTS AND LINKED TRANSACTIONS

8.—(1) A personal credit agreement is an agreement between an individual (" the debtor ") and any other person (" the creditor") by which the creditor provides the debtor with credit of any amount. (2) A consumer credit agreement is a personal credit agreement by which the creditor provides the debtor with credit not exceeding £5,000. (3) A consumer credit agreement is a regulated agreement within the meaning of this Act if it is not an agreement (an " exempt agreement ") specified in or under section 16.

9.—(1) In this Act " credit " includes a cash loan, and any other form of financial accommodation. (2) Where credit is provided otherwise than in sterling it shall be treated for the purposes of this Act as provided in sterling of an equivalent amount. (3) Without prejudice to the generality of subsection (1), the person by whom goods are bailed or (in Scotland) hired to an individual under a hire-purchase agreement shall be taken to provide him with fixed-sum credit to finance the transaction of an amount equal to the total price of the goods less the aggregate of the deposit (if any) and the total charge for credit. (4) For the purposes of this Act, an item entering into the total charge for credit shall not be treated as credit even though time is allowed for its payment.

10.—(1) For the purposes of this Act—

- (a) running-account credit is a facility under a personal credit agreement whereby the debtor is enabled to receive from time to time (whether in his own person, or by another person) from the creditor or a third party cash, goods and services (or any of them) to an amount or value such that, taking into account payments

made by or to the credit of the debtor, the credit limit (if any) is not at any time exceeded; and

- (b) fixed-sum credit is any other facility under a personal credit agreement whereby the debtor is enabled to receive credit (whether in one amount or by instalments).

(2) In relation to running-account credit, " credit limit" means, as respects any period, the maximum debit balance which, under the credit agreement, is allowed to stand on the account during that period, disregarding any term of the agreement allowing that maximum to be exceeded merely temporarily.

(3) For the purposes of section 8(2), running-account credit shall be taken not to exceed the amount specified in that subsection (" the specified amount") if—

- (a) the credit limit does not exceed the specified amount; or
- (b) whether or not there is a credit limit, and if there is, notwithstanding that it exceeds the specified amount,—
 - (i) the debtor is not enabled to draw at any one time an amount which, so far as (having regard to section 9(4)) it represents credit, exceeds the specified amount, or
 - (ii) the agreement provides that, if the debit balance rises above a given amount (not exceeding the specified amount), the rate of the total charge for credit increases or any other condition favouring the creditor or his associate comes into operation, or
 - (iii) at the time the agreement is made it is probable, having regard to the terms of the agreement and any other relevant considerations, that the debit balance will not at any time rise above the specified amount.

11.—(I) A restricted-use credit agreement is a regulated consumer credit agreement—

- (a) to finance a transaction between the debtor and the creditor, whether forming part of that agreement or not, or
- (b) to finance a transaction between the debtor and a person (the " supplier") other than the creditor, or
- (c) to refinance any existing indebtedness of the debtor's, whether to the creditor or another person,

and " restricted-use credit" shall be construed accordingly.

(2) An unrestricted-use credit agreement is a regulated consumer credit agreement not falling within subsection (1), and " unrestricted-use credit" shall be construed accordingly.

(3) All agreement does not fall within subsection (1) if the credit is in fact provided in such a way as to leave the debtor free to use it as he chooses, even though certain uses would contravene that or any other agreement.

(4) An agreement may fall within subsection (1)(b) although the identity of the supplier is unknown at the time the agreement is made.

12. A debtor-creditor-supplier agreement is a regulated consumer credit agreement being—

- (a) a restricted-use credit agreement which falls within section 11(1)(a), or

- (b) a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier, or
- (c) an unrestricted-use credit agreement which is made by the creditor under pre-existing arrangements between himself and a person (the "supplier") other than the debtor in the knowledge that the credit is to be used to finance a transaction between the debtor and the supplier.

13. A debtor-creditor agreement is a regulated consumer credit agreement being—

- (a) a restricted-use credit agreement which falls within section 11(1)(b) but is not made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier, or
- (b) a restricted-use credit agreement which falls within section 11(1)(c), or
- (c) an unrestricted-use credit agreement which is not made by the creditor under pre-existing arrangements between himself and a person (the "supplier") other than the debtor in the knowledge that the credit is to be used to finance a transaction between the debtor and the supplier.

14.—(1) A credit-token is a card, check, voucher, coupon, stamp, form, booklet or other document or thing given to an individual by a person carrying on a consumer credit business, who undertakes—

- (a) that on the production of it (whether or not some other action is also required) he will supply cash, goods and services (or any of them) on credit, or
- (b) that where, on the production of it to a third party (whether or not any other action is also required), the third party supplies cash, goods and services (or any of them), he will pay the third party for them (whether or not deducting any discount or commission), in return for payment to him by the individual.

(2) A credit-token agreement is a regulated agreement for the provision of credit in connection with the use of a credit-token.

(3) Without prejudice to the generality of section 9(1), the person who gives to an individual an undertaking falling within subsection (1)(b) shall be taken to provide him with credit drawn on whenever a third party supplies him with cash, goods or services.

(4) For the purposes of subsection (1), use of an object to operate a machine provided by the person giving the object or a third party shall be treated as the production of the object to him.

15.—(1) A consumer hire agreement is an agreement made by a person with an individual (the "hirer") for the bailment or (in Scotland) the hiring of goods to the hirer, being an agreement which—

- (a) is not a hire-purchase agreement, and
 - (b) is capable of subsisting for more than three months, and
 - (c) does not require the hirer to make payments exceeding £5,000.
- (2) A consumer hire agreement is a regulated agreement if it is not an exempt agreement.

16.—(1) This Act does not regulate a consumer credit agreement where the creditor is a local authority or building society, or a body specified, or of a description specified, in an order made by the Secretary of State, being—

- (a) an insurance company,
- (b) a friendly society,
- (c) an organisation of employers or organisation of workers,
- (d) a charity,
- (e) a land improvement company, or
- (f) a body corporate named or specifically referred to in any public general Act.

(2) Subsection (1) applies only where the agreement is—

(a) a debtor-creditor-supplier agreement financing—

(i) the purchase of land, or

(ii) the provision of dwellings on any land, and secured by a land mortgage on that land; or

(b) a debtor-creditor agreement secured by any land mortgage; or

(c) a debtor-creditor-supplier agreement financing a transaction which is a linked transaction in relation to—

(i) an agreement falling within paragraph (a), or

(ii) an agreement falling within paragraph (b) financing—

(aa) the purchase of any land, or

(bb) the provision of dwellings on any land,

and secured by a land mortgage on the land referred to in paragraph (a) or, as the case may be, the land referred to in sub-paragraph (ii).

(3) The Secretary of State shall not make, vary or revoke an order—

(a) under subsection (1)(a) without consulting the Minister of the Crown responsible for insurance companies,

(b) under subsection (1)(b) or (c) without consulting the Chief Registrar of Friendly Societies,

(c) under subsection (1)(d) without consulting the Charity Commissioners, or

(d) under subsection (1)(e) or (f) without consulting any Minister of the Crown with responsibilities concerning the body in question.

(4) An order under subsection (1) relating to a body may be limited so as to apply only to agreements by that body of a description specified in the order.

(5) The Secretary of State may by order provide that this Act shall not regulate other consumer credit agreements where—

(a) the number of payments to be made by the debtor does not exceed the number specified for that purpose in the order, or

(b) the rate of the total charge for credit does not exceed the rate so specified, or

(c) an agreement has a connection with a country outside the United Kingdom.

(6) The Secretary of State may by order provide that this Act shall not regulate consumer hire agreements of a description specified in the order where—

(a) the owner is a body corporate authorised by or under any enactment to supply electricity, gas or water, and
(b) the subject of the agreement is a meter or metering equipment,
or where the owner is the Post Office or the Kingston upon Hull City Council.

(7) Nothing in this section affects the application of sections 137 to 140 (extortionate credit bargains).

(8) In the application of this section to Scotland subsection (3)© shall not have effect.

(9) In the application of this section to Northern Ireland subsection (3) shall have effect as if any reference to a Minister of the Crown were a reference to a Northern Ireland department, any reference to the Chief Registrar of Friendly Societies were a reference to the Registrar of Friendly Societies for Northern Ireland, and any reference to the Charity Commissioners were a reference to the Department of Finance for Northern Ireland.

17.—(1) A small agreement is—

(a) a regulated consumer credit agreement for credit not exceeding £30, other than a hire-purchase or conditional sale agreement; or

(b) a regulated consumer hire agreement which does not require the hirer to make payments exceeding £30,

being an agreement which is either unsecured or secured by a guarantee or indemnity only (whether or not the guarantee or indemnity is itself secured).

(2) Section 10(3)(a) applies for the purposes of subsection (1) as it applies for the purposes of section 8(2).

(3) Where—

(a) two or more small agreements are made at or about the same time between the same parties, and

(b) it appears probable that they would instead have been made as a single agreement but for the desire to avoid the operation of provisions of this Act which would have applied to that single agreement but, apart from this subsection, are not applicable to the small agreements,

this Act applies to the small agreements as if they were regulated agreements other than small agreements.

(4) If, apart from this subsection, subsection (3) does not apply to any agreements but would apply if, for any party or parties to any of the agreements, there were substituted an associate of that party, or associates of each of those parties, as the case may be, then subsection (3) shall apply to the agreements.

18.—(1) This section applies to an agreement (a "multiple agreement") if its terms are such as—

(a) to place a part of it within one category of agreement mentioned in this Act, and another part of it within a different category of agreement so mentioned, or within a category of agreement not so mentioned, or

(b) to place it, or a part of it, within two or more categories of agreement so mentioned.

(2) Where a part of an agreement falls within subsection (1), that part shall be treated for the purposes of this Act as a separate agreement.

(3) Where an agreement falls within subsection (1)(b), it shall be treated as an agreement in each of the categories in question, and this Act shall apply to it accordingly.

(4) Where under subsection (2) a part of a multiple agreement is to be treated as a separate agreement, the multiple agreement shall (with any necessary modifications) be construed accordingly; and any sum payable under the multiple agreement, if not apportioned by the parties, shall for the purposes of proceedings in any court relating to the multiple agreement be apportioned by the court as may be requisite.

(5) In the case of an agreement for running-account credit, a term of the agreement allowing the credit limit to be exceeded merely temporarily shall not be treated as a separate agreement or as providing fixed-sum credit in respect of the excesses.

(6) This Act does not apply to a multiple agreement so far as the agreement relates to goods if under the agreement payments are to be made in respect of the goods in the form of rent (other than a rent charge) issuing out of land.

19.—(1) A transaction entered into by the debtor or hirer, or a relative of his, with any other person (" the other party "), except one for the provision of security, is a linked transaction in relation to an actual or prospective regulated agreement (the " principal agreement") of which it does not form part if—

(a) the transaction is entered into in compliance with a term of the principal agreement; or

(b) the principal agreement is a debtor-creditor-supplier agreement and the transaction is financed, or to be financed, by the principal agreement; or

(c) the other party is a person mentioned in subsection (2), and a person so mentioned initiated the transaction by suggesting it to the debtor or hirer, or his relative, who enters into it—

(i) to induce the creditor or owner to enter into the principal agreement, or

(ii) for another purpose related to the principal agreement, or

(iii) where the principal agreement is a restricted use credit agreement, for a purpose related to a transaction financed, or to be financed, by the principal agreement.

(2) The persons referred to in subsection (1)(c) are—

(a) the creditor or owner, or his associate;

(b) a person who, in the negotiation of the transaction, is represented by a credit-broker who is also a negotiator in antecedent negotiations for the principal agreement;

(c) a person who, at the time the transaction is initiated, knows that the principal agreement has been made or contemplates that it might be made.

- (3) A linked transaction entered into before the making of the principal agreement has no effect until such time (if any) as that agreement is made.
- (4) Regulations may exclude linked transactions of the prescribed description from the operation of subsection (3).

20.—(1) The Secretary of State shall make regulations containing such provisions as appear to him appropriate for determining the true cost to the debtor of the credit provided or to be provided under an actual or prospective consumer credit agreement (the "total charge for credit"), and regulations so made shall prescribe—

- (a) what items are to be treated as entering into the total charge for credit, and how their amount is to be ascertained;
- (b) the method of calculating the rate of the total charge for credit.

(2) Regulations under subsection (1) may provide for the whole or part of the amount payable by the debtor or his relative under any linked transaction to be included in the total charge for credit, whether or not the creditor is a party to the transaction or derives benefit from it.

PART III

LICENSING OF CREDIT AND HIRE BUSINESSES

Licensing principles

21.—(1) Subject to this section, a licence is required to carry on a consumer credit business or consumer hire business.

(2) A local authority does not need a licence to carry on a business.

(3) A body corporate empowered by a public general Act naming it to carry on a business does not need a licence to do so.

22.—(1) A licence may be—

- (a) a standard licence, that is a licence, issued by the Director to a person named in the licence on an application made by him, which, during the prescribed period, covers such activities as are described in the licence, or
- (b) a group licence, that is a licence, issued by the Director (whether on the application of any person or of his own motion), which, during such period as the Director thinks fit or, if he thinks fit, indefinitely, covers such persons and activities as are described in the licence.

(2) A licence is not assignable or, subject to section 37, transmissible on death or in any other way.

(3) Except in the case of a partnership or an unincorporated body of persons, a standard licence shall not be issued to more than one person.

- (4) A standard licence issued to a partnership or an unincorporated body of persons shall be issued in the name of the partnership or body.
- (5) The Director may issue a group licence only if it appears to him that the public interest is better served by doing so than by obliging the persons concerned to apply separately for standard licences.
- (6) The persons covered by a group licence may be described by general words, whether or not coupled with the exclusion of named persons, or in any other way the Director thinks fit.
- (7) The fact that a person is covered by a group licence in respect of certain activities does not prevent a standard licence being issued to him in respect of those activities or any of them.
- (8) A group licence issued on the application of any person shall be issued to that person, and general notice shall be given of the issue of any group licence (whether on application or not).

23.—(1) Subject to this section, a licence to carry on a business covers all lawful activities done in the course of that business, whether by the licensee or other persons on his behalf.

- (2) A licence may limit the activities it covers, whether by authorising the licensee to enter into certain types of agreement only, or in any other way.
- (3) A licence covers the canvassing off trade premises of debtor-creditor-supplier agreements or regulated consumer hire agreements only if, and to the extent that, the licence specifically so provides; and such provision shall not be included in a group licence.
- (4) Regulations may be made specifying other activities which, if engaged in by or on behalf of the person carrying on a business, require to be covered by an express term in his licence.

24. A standard licence authorises the licensee to carry on a business under the name or names specified in the licence, but not under any other name.

25.—(1) A standard licence shall be granted on the application of any person if he satisfies the Director that—

- (a) he is a fit person to engage in activities covered by the licence, and
- (b) the name or names under which he applies to be licensed is or are not misleading or otherwise undesirable.

- (2) In determining whether an applicant for a standard licence is a fit person to engage in any activities, the Director shall have regard to any circumstances appearing to him to be relevant, and in particular any evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person

appearing to the Director to be a controller of the body corporate or an associate of any such person, has

- (a) committed any offence involving fraud or other dishonesty, or violence,
- (b) contravened any provision made by or under this Act, or by or under any other enactment regulating the provision of credit to individuals or other transactions with individuals,
- (c) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business, or
- (d) engaged in business practices appearing to the Director to be deceitful or oppressive, or otherwise unfair or improper (whether unlawful or not).

(3) In subsection (2), " associate ", in addition to the persons specified in section 184, includes a business associate.

26. Regulations may be made as to the conduct by a licensee of his business, and may in particular specify—

- (a) the books and other records to be kept by him, and
- (b) the information to be furnished by him to persons with whom he does business or seeks to do business, and the way it is to be furnished.

Issue of licences

27.—(1) Unless the Director determines to issue a licence in accordance with an application he shall, before determining the application, by notice—

- (a) inform the applicant, giving his reasons, that, as the case may be, he is minded to refuse the application, or to grant it in terms different from those applied for, describing them, and
- (b) invite the applicant to submit to the Director representations in support of his application in accordance with section 34

(2) If the Director grants the application in terms different from those applied for then, whether or not the applicant appeals, the Director shall issue the licence in the terms approved by him unless the applicant by notice informs him that he does not desire a licence in those terms.

28. Where the Director is minded to issue a group licence (whether on the application of any person or not), and in doing so to exclude any person from the group by name, he shall, before determining the matter,—

- (a) give notice of that fact to the person proposed to be excluded, giving his reasons, and
- (b) invite that person to submit to the Director representations against his exclusion in accordance with section 34.

Renewal, variation, suspension and revocation of licences

b.—(1) If the licensee under a standard licence, or the original applicant for, or any licensee under, a group licence of Renewal limited duration, wishes the Director to renew the licence, whether on the same terms (except as to expiry) or on varied terms, he must, during the period specified by the Director by general notice or such longer period as the Director may allow, make an application to the Director for its renewal.

(2) The Director may of his own motion renew any group licence.

(3) The preceding provisions of this Part apply to the renewal of a licence as they apply to the issue of a licence, except that section 28 does not apply to a person who was already excluded in the licence up for renewal.

(4) Until the determination of an application under subsection (1) and, where an appeal lies from the determination, until the end of the appeal period, the licence shall continue in force, notwithstanding that apart from this subsection it would expire earlier.

(5) On the refusal of an application under this section, the Director may give directions authorising a licensee to carry into effect agreements made by him before the expiry of the licence.

(6) General notice shall be given of the renewal of a group licence.

30.—(1) On an application made by the licensee, the Director may if he thinks fit by notice to the licensee vary a standard licence in accordance with the application.

(2) In the case of a group licence issued on the application of any person, the Director, on an application made by that person, may if he thinks fit by notice to that person vary the terms of the licence in accordance with the application; but the Director shall not vary a group licence under this subsection by excluding a named person, other than the person making the request, unless that named person consents in writing to his exclusion.

(3) In the case of a group licence from which (whether by name or description) a person is excluded, the Director, on an application made by that person, may if he thinks fit, by notice to that person, vary the terms of the licence so as to remove the exclusion.

(4) Unless the Director determines to vary a licence in accordance with an application he shall, before determining the application, by notice—

(a) inform the applicant, giving his reasons, that he is minded to refuse the application, and

(b) invite the applicant to submit to the Director representations in support of his application in accordance with section 34.

(5) General notice shall be given that a variation of a group licence has been made under this section.

31.—(1) Where at a time during the currency of a licence the Director is of the opinion that, if the licence had expired at that time, he would, on an application for its renewal or further renewal on the same terms (except as to expiry), have been minded to grant

the application but on different terms, and that therefore the licence should be varied, he shall proceed as follows.

(2) In the case of a standard licence the Director shall, by notice (a) inform the licensee of the variations the Director is minded to make in the terms of the licence, stating his reasons, and (b) invite him to submit to the Director representations as to the proposed variations in accordance with section 34.

(3) In the case of a group licence the Director shall—

(a) give general notice of the variations he is minded to make in the terms of the licence, stating his reasons, and

(b) in the notice invite any licensee to submit to him representations as to the proposed variations in accordance with section 34.

(4) In the case of a group licence issued on application the Director shall also—

(a) inform the original applicant of the variations the Director is minded to make in the terms of the licence, stating his reasons, and

(b) invite him to submit to the Director representations as to the proposed variations in accordance with section 34.

(5) If the Director is minded to vary a group licence by excluding any person (other than the original applicant) from the group by name the Director shall, in addition, take the like steps under section 28 as are required in the case mentioned in that section.

(6) General notice shall be given that a variation of any group licence has been made under this section. (7) A variation under this section shall not take effect before the end of the appeal period.

32.—(1) Where at a time during the currency of a licence the Director is of the opinion that if the licence had expired at that time he would have been minded not to renew it, and that therefore it should be revoked or suspended, he shall proceed as follows. (2) In the case of a standard licence the Director shall, by notice—

(a) inform the licensee that, as the case may be, the Director is minded to revoke the licence, or suspend it until a specified date or indefinitely, stating his reasons, and

(b) invite him to submit representations as to the proposed revocation or suspension in accordance with section 34.

(3) In the case of a group licence the Director shall—

(a) give general notice that, as the case may be, he is minded to revoke the licence, or suspend it until a specified date or indefinitely, stating his reasons, and

(b) in the notice invite any licensee to submit to him representations as to the proposed revocation or suspension in accordance with section 34.

- (4) In the case of a group licence issued on application the Director shall also—
- (a) inform the original applicant that, as the case may be, the Director is minded to revoke the licence, or suspend it until a specified date or indefinitely, citing his reasons, and
 - (b) invite him to submit representations as to the proposed revocation or suspension in accordance with section 34.
- (5) If he revokes or suspends the licence, the Director may give directions authorising a licensee to carry into effect agreements made by him before the revocation or suspension.
- (6) General notice shall be given of the revocation or suspension of a group licence.
- (7) A revocation or suspension under this section shall not take effect before the end of the appeal period.
- (8) Except for the purposes of section 29, a licensee under a suspended licence shall be treated, in respect of the period of suspension, as if the licence had not been issued; and where the suspension is not expressed to end on a specified date it may, if the Director thinks fit, be ended by notice given by him to the licensee or, in the case of a group licence, by general notice.

33.—(1) On an application made by a licensee the Director may, if he thinks fit, by notice to the licensee end the suspension of a licence, whether the suspension was for a fixed or indefinite period.

(2) Unless the Director determines to end the suspension in accordance with the application he shall, before determining the application, by notice—

(a) inform the applicant, giving his reasons, that he is minded to refuse the application, and

(b) invite the applicant to submit to the Director representations in support of his application in accordance with section 34.

(3) General notice shall be given that a suspension of a group licence has been ended under this section.

(4) In the case of a group licence issued on application—

(a) the references in subsection (1) to a licensee include the original applicant;

(b) the Director shall inform the original applicant that a suspension of a group licence has been ended under this section.

Miscellaneous

34.—(1) Where this section applies to an invitation by the Director to any person to submit representations, the Director shall invite that person, within 21 days after the notice containing the invitation is given to him or published, or such longer period as the Director may allow,—

(a) to submit his representations in writing to the Director, and

(b) to give notice to the Director, if he thinks fit, that he wishes to make representations orally,

and where notice is given under paragraph (b) the Director shall arrange for the oral representations to be heard.

(2) In reaching his determination the Director shall take into account any representations submitted or made under this section.

(3) The Director shall give notice of his determination to the persons who were required to be invited to submit representations about it or, where the invitation to submit representations was required to be given by general notice, shall give general notice of the determination.

35.—(1) The Director shall establish and maintain a register, in which he shall cause to be kept particulars of—

- (a) applications not yet determined for the issue, variation or renewal of licences, or for ending the suspension of a licence;
- (b) licences which are in force, or have at any time been suspended or revoked, with details of any variation of the terms of a licence;
- (c) decisions given by him under this Act, and any appeal from those decisions;
- and (d) such other matters (if any) as he thinks fit.

(2) The Director shall give general notice of the various matters required to be entered in the register, and of any change in them made under subsection (1)(d).

(3) Any person shall be entitled on payment of the specified fee—

- (a) to inspect the register during ordinary office hours and take copies of any entry, or
- (b) to obtain from the Director a copy, certified by the Director to be correct, of any entry in the register.

(4) The Director may if he thinks fit, determine that the right conferred by subsection (3)(a) shall be exercisable in relation to a copy of the register instead of, or in addition to, the original.

(5) The Director shall give general notice of the place or places where, and times when, the register or a copy of it may be inspected.

36.—(1) Within 21 working days after a change takes place in any particulars entered in the register in respect of a standard licence or the licensee under section 35(1)(d) (not being a change ' resulting from action taken by the Director), the licensee shall give the Director notice of the change; and the Director shall cause any necessary amendment to be made in the register.

(2) Within 21 working days after—

- (a) any change takes place in the officers of—

- (I) a body corporate, or an unincorporated body of persons, which is the licensee under a standard licence, or
- (ii) a body corporate which is a controller of a body corporate which is such a licensee, or
- (b) a body corporate which is such a licensee becomes aware that a person has become or ceased to be a controller of the body corporate, or
- (c) any change takes place in the members of a partnership which is such a licensee (including a change on the amalgamation of the partnership with another firm, or a change whereby the number of partners is reduced to one), the licensee shall give the Director notice of the change.
- (3) Within 14 working days after any change takes place in the officers of a body corporate which is a controller of another body corporate which is a licensee under a standard licence, the controller shall give the licensee notice of the change.
- (4) Within 14 working days after a person becomes or ceases to be a controller of a body corporate which is a licensee under a standard licence, that person shall give the licensee notice of the fact.
- (5) Where a change in a partnership has the result that the business ceases to be carried on under the name, or any of the names, specified in a standard licence the licence shall cease to have effect.
- (6) Where the Director is given notice under sub-section (1) or (2) of any change, and subsection (5) does not apply, the Director may by notice require the licensee to furnish him with such information, verified in such manner, as the Director may stipulate.

37.—(1) A licence held by one individual terminates if he—

- (a) dies, or
- (b) is adjudged bankrupt, or
- (c) becomes a patient within the meaning of Part VIII of the Mental Health Act 1959.
- (2) In relation to a licence held by one individual, or a partnership or other unincorporated body of persons, or a body corporate, regulations may specify other events relating to the licensee on the occurrence of which the licence is to terminate.
- (3) Regulations may—
 - (a) provide for the termination of a licence by subsection (1), or under subsection (2), to be deferred for a period not exceeding 12 months, and
 - (b) authorise the business of the licensee to be carried on under the licence by some other person during the period of deferment, subject to such conditions as may be prescribed.
- (4) This section does not apply to group licences.

38.—(1) In the application of section 37 to Scotland the following shall be substituted for paragraphs (b) and (c) of subsection (1)—

" (b) has his estate sequestrated, or
(c) becomes incapable of managing his own affairs."

(2) In the application of section 37 to Northern Ireland the following shall be substituted for subsection (1)—

" (1) A licence held by one individual terminates if—

(a) he dies, or

(b) he is adjudged bankrupt or his estate and effects vest in the official assignee under section 349 Or the Irish Bankrupt and Insolvent Act 1857, or

(c) a declaration is made under section 15 of the Lunacy Regulation (Ireland) Act 1871 that he is of unsound mind and incapable of managing his person or property, or an Order is made under section 68 of that Act in consequence of its being found that he is of unsound mind and incapable of managing his affairs."

39.—(1) A person who engages in any activities for which a licence is required when he is not a licensee under a licence covering those activities commits an offence.

(2) A licensee under a standard licence who carries on business under a name not specified in the licence commits an offence.

(3) A person who fails to give the Director or a licensee notice under section 36 within the period required commits an offence.

40.—(1) A regulated agreement, other than a non commercial agreement, if made when the creditor or owner was unlicensed, is enforceable against the debtor or hirer only where the Director has made an order under this section which applies to the agreement.

(2) Where during any period an unlicensed person (the " trader ") was carrying on a consumer credit business or consumer hire business, he or his successor in title may apply to the Director for an order that regulated agreements made by the trader during that period are to be treated as if he had been licensed.

(3) Unless the Director determines to make an order under subsection (2) in accordance with the application, he shall, before determining the application, by notice—

(a) inform the applicant, giving his reasons, that, as the case may be, he is minded to refuse the application, or to grant it in terms different from those applied for, describing them, and

(b) invite the applicant to submit to the Director representations in support of his application in accordance with section 34.

(4) In determining whether or not to make an order under subsection (2) in respect of any period the Director shall consider, in addition to any other relevant factors—

(a) how far, if at all, debtors or hirers under regulated agreements made by the trader during that period were prejudiced by the trader's conduct,

(b) whether or not the Director would have been likely to grant a licence covering that period on an application by the trader, and

(c) the degree of culpability for the failure to obtain a licence.

- (5) If the Director thinks fit, he may in an order under subsection (2)—
- (a) limit the order to specified agreements, or agreements of a specified description or made at a specified time;
- (b) make the order conditional on the doing of specified acts by the applicant.

41.—(1) If, in the case of a determination by the Director such as is mentioned in column 1 of the table set out at the end of this section, a person mentioned in relation to that determination in column 2 of the table is aggrieved by the determination he may, within the prescribed period, and in the prescribed manner, appeal to the Secretary of State.

(2) Regulations may make provision as to the persons by whom (on behalf of the Secretary of State) appeals under this section are to be heard, the manner in which they are to be conducted, and any other matter connected with such appeals.

(3) On an appeal under this section, the Secretary of State may give such directions for disposing of the appeal as he thinks just, including a direction for the payment of costs by any party to the appeal.

(4) A direction under subsection (3) for payment of costs may be made a rule of the High Court on the application of the party in whose favour it is given.

(5) In Scotland a direction under subsection (3) for payment of expenses may be enforced in like manner as a recorded decree arbitral.

TABLE

<i>Determination</i>	<i>Appellant</i>
Refusal to issue, renew or vary licence in accordance with terms of application.	The applicant.
Exclusion of person from group licence.	The person excluded.
Refusal to give directions in respect of a licensee under section 29(5) or 32(5).	The licensee.
Compulsory variation, or suspension or revocation, of standard licence.	The licensee.
Compulsory variation, or suspension or revocation, of group licence.	The original applicant or any licensee.
Refusal to end suspension of licence in accordance with terms of application.	The applicant.
Refusal to make order under section 40(2) in accordance with terms of application.	The applicant.

42.—(1) In section 13 of the Tribunals and Inquiries Act 1971 (subsection (1) of which provides that on a point of law an appeal shall lie to the high Court from a decision of any tribunal mentioned in that subsection or the tribunal may be required to state a case for the opinion of the High Court), insert the following new subsection after subsection (5)—

" (5A) Subsection (1) of this section shall apply to a decision of the Secretary of State on an appeal under section 41 of the Consumer Credit Act 1974 from a determination of the Director General of Fair Trading as it applies to a decision of any of the tribunals mentioned in that subsection, but with the substitution for the reference to a party to proceedings of a reference to any person who had a right to appeal to the Secretary of State (whether or not he has exercised that right); and accordingly references in subsections (1) and (3) of this section to a tribunal shall be construed, in relation to such an appeal, as references to the Secretary of State."

(2) In subsection (6)(a) of the said section 13 (application to Scotland), after the word " commissioners " there shall be inserted the words ' or on an appeal under section 41 of the Consumer Credit Act 1974 by a company registered in Scotland or by any other person whose principal or prospective principal place of business in the United Kingdom is in Scotland ".

(3) In subsection (7) of the said section 13 (application to Northern Ireland) after " subsection (1) of this section" insert " and in relation to a decision of the Secretary of State on an appeal under section 41 of the Consumer Credit Act 1974 by a company registered in Northern Ireland or by any other person whose principal or prospective principal place of business in the United Kingdom is in Northern Ireland."

PART IV

SEEKING BUSINESS

Advertising

43.—(1) This Part applies to any advertisement, published for the purposes of a business carried on by the advertiser, indicating that he is willing—

- (a) to provide credit, or
- (b) to enter into an agreement for the bailment or (in Scotland) the hiring of goods by him.

(2) An advertisement does not fall within subsection (1) if the advertiser does not carry on—

- (a) a consumer credit business or consumer hire business, or
- (b) a business in the course of which he provides credit to individuals secured on land, or
- (c) a business which comprises or relates to unregulated agreements where—

- (i) the proper law of the agreement is the law of a country outside the United Kingdom, and
- (ii) if the proper law of the agreement were the law of a part of the United Kingdom it would be a regulated agreement.

(3) An advertisement does not fall within subsection (1)(a) if it indicates

- (a) that the credit must exceed £5,000, and that no security is required, or the security is to consist of property other than land, or
- (b) that the credit is available only to a body corporate.

(4) An advertisement does not fall within subsection (1)(b) if it indicates that the advertiser is not willing to enter into a consumer hire agreement.

(5) The Secretary of State may by order provide that this Part shall not apply to other advertisements of a description specified in the order.

44.—(1) The Secretary of State shall make regulations as to the form and content of advertisements to which this Part applies, and the regulations shall contain such provisions as appear to him appropriate with a view to ensuring that, having regard to its subject-matter and the amount of detail included in it, an advertisement conveys a fair and reasonably comprehensive indication of the nature of the credit or hire facilities offered by the advertiser and of their true cost to persons using them.

(2) Regulations under subsection (1) may in particular—

(a) require specified information to be included in the prescribed manner in advertisements, and other specified material to be excluded;

(b) contain requirements to ensure that specified information is clearly brought to the attention of persons to whom advertisements are directed, and that one part of an advertisement is not given insufficient or excessive prominence compared with another.

45. If an advertisement to which this Part applies indicates that the advertiser is willing to provide credit under a restricted use credit agreement relating to goods or services to be supplied by any person, but at the time when the advertisement is published that person is not holding himself out as prepared to sell the goods or provide the services (as the case may be) for cash, the advertiser commits an offence.

46.—(1) If an advertisement to which this Part applies conveys information which in a material respect is false or misleading the advertiser commits an offence.

(2) Information stating or implying an intention on the advertiser's part which he has not got is false.

47.—(1) Where an advertiser commits an offence against regulations made under section 44 or against section 45 or 46 or would be taken to commit such an offence but for the defence provided by section 168, a like offence is committed by—

- (a) the publisher of the advertisement, and
- (b) any person who, in the course of a business carried on by him, devised the advertisement, or a part of it relevant to the first-mentioned offence, and

(c) where the advertiser did not procure the publication of the advertisement, the person who did procure it.

(2) In proceedings for an offence under subsection (1)(a) it is a defence for the person charged to prove that—

(a) the advertisement was published in the course of a business carried on by him, and

(b) he received the advertisement in the course of that business, and did not know and had no reason to suspect that its publication would be an offence under this Part.

Canvassing etc.

48.—(1) An individual (the "canvasser ") canvasses a regulated agreement off trade premises if he solicits the entry (as debtor or hirer) of another individual (the "consumer") into the agreement by making oral representations to the consumer, or any other individual, during a visit by the canvasser to any place (not excluded by subsection (2)) where the consumer, or that other individual, as the case may be, is, being a visit—

(a) carried out for the purpose of making such oral representations to individuals who are at that place, but

(b) not carried out in response to a request made on a previous occasion.

(2) A place is excluded from subsection (1) if it is a place where a business is carried on (whether on a permanent or temporary basis) by—

(a) the creditor or owner, or

(b) a supplier, or

(c) the canvasser, or the person whose employee or agent the canvasser is, or

(d) the consumer.

49.—(1) It is an offence to canvass debtor-creditor agreements off trade premises.

(2) It is also an offence to solicit the entry of an individual (as debtor) into a debtor-creditor agreement during a visit carried out in response to a request made on a previous occasion, where—

(a) the request was not in writing signed by or on behalf of the person making it, and

(b) if no request for the visit had been made, the soliciting would have constituted the canvassing of a debtor-creditor agreement off trade premises.

(3) Subsections (1) and (2) do not apply to any soliciting for an agreement enabling the debtor to overdraw on a current account of any description kept with the creditor, where—

(a) the Director has determined that current accounts of that description kept with the creditor are excluded from subsections (1) and (2), and

(b) the debtor already keeps an account with the creditor (whether a current account or not).

(4) A determination under subsection (3)(a)—

- (a) may be made subject to such conditions as the Director thinks fit, and
- (b) shall be made only where the Director is of opinion that it is not against the interests of debtors.

(5) If soliciting is done in breach of a condition imposed under subsection (4)(a), the determination under subsection (3)(a) does not apply to it.

50.—(1) A person commits an offence who, with a view to financial gain, sends to a minor any document inviting him to—

- (a) borrow money, or
- (b) obtain goods on credit or hire, or
- (c) obtain services on credit, or
- (d) apply for information or advice on borrowing money or otherwise obtaining credit, or hiring goods.

(2) In proceedings under subsection (1) in respect of the sending of a document to a minor, it is a defence for the person charged to prove that he did not know, and had no reasonable cause to suspect, that he was a minor.

(3) Where a document is received by a minor at any school or other educational establishment for minors, a person sending it to him at that establishment knowing or suspecting it to be such an establishment shall be taken to have reasonable cause to suspect that he is a minor.

51.—(1) It is an offence to give a person a credit-token if he has not asked for it.

(2) To comply with subsection (1) a request must be contained in a document signed by the person making the request, unless the credit-token agreement is a small debtor-creditor supplier agreement.

(3) Subsection (1) does not apply to the giving of a credit token to a person—

- (a) for use under a credit-token agreement already made, or
- (b) in renewal or replacement of a credit-token previously accepted by him under a credit-token agreement which continues in force, whether or not varied.

Miscellaneous

52.—(1) Regulations may be made—

- (a) as to the form and content of any document (a "quotation") by which a person who carries on a consumer credit business or consumer hire business, or a business in the course of which he provides credit to individuals secured on land, gives prospective customers information about the terms on which he is prepared to do business;
- (b) requiring a person carrying on such a business to provide quotations to such persons and in such circumstances as are prescribed.

(2) Regulations under subsection (1)(a) may in particular contain provisions relating to quotations such as are set out in relation to advertisements in section 44.

53. Regulations may require a person who carries on a consumer credit business or consumer hire business, or a business in the course of which he provides credit to individuals secured on land, to display in the prescribed manner, at any premises

where the business is carried on to which the public have access, prescribed information about the business.

54. Without prejudice to the generality of section 26, regulations under that section may include provisions further regulating the seeking of business by a licensee who carries on a consumer credit business or a consumer hire business.

PART V

ENTRY INTO CREDIT OR HIRE AGREEMENTS

Preliminary matters

55.—(1) Regulations may require specified information to be disclosed in the prescribed manner to the debtor or hirer before a regulated agreement is made.

(2) A regulated agreement is not properly executed unless regulations under subsection (1) were complied with before the making of the agreement.

56.—(1) In this Act " antecedent negotiations " means any negotiations with the debtor or hirer—

(a) conducted by the creditor or owner in relation to the making of any regulated agreement, or

(b) conducted by a credit-broker in relation to goods sold or proposed to be sold by the credit-broker to the creditor before forming the subject-matter of a debtor-creditor-supplier agreement within section 12(a), or

(c) conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement within section 12(b) or ©,

and " negotiator " means the person by whom negotiation are so conducted with the debtor or hirer.

(2) Negotiations with the debtor in a case falling within subsection (1)(b) or © shall be deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity.

(3) An agreement is void if, and to the extent that, it purports in relation to an actual or prospective regulated agreement—

(a) to provide that a person acting as, or on behalf of, a negotiator is to be treated as the agent of the debtor or hirer, or

(b) to relieve a person from liability for acts or omissions of any person acting as, or on behalf of, a negotiator.

(4) For the purposes of this Act, antecedent negotiations shall be taken to begin when the negotiator and the debtor or hirer first enter into communication (including communication by advertisement), and to include any representations made by the negotiator to the debtor or hirer and any other dealings between them.

57.—(1) The withdrawal of a party from a prospective regulated agreement shall operate to apply this Part to the agreement, any linked transaction and any other thing

done in anticipation of the making of the agreement as it would apply if the agreement were made and then cancelled under section 69.

(2) The giving to a party of a written or oral notice which, however expressed, indicates the intention of the other party to withdraw from a prospective regulated agreement operates as a withdrawal from it.

(3) Each of the following shall be deemed to be the agent of the creditor or owner for the purpose of receiving a notice under subsection (2)--

- (a) a credit-broker or supplier who is the negotiator in antecedent negotiations, and
- (b) any person who, in the course of a business carried on by him, acts on behalf of the debtor or hirer in any negotiations for the agreement.

(4) Where the agreement, if made, would not be a cancellable agreement, subsection (1) shall nevertheless apply as if the contrary were the case.

58.—(1) Before sending to the debtor or hirer, for his signature, an unexecuted agreement in a case where the prospective regulated agreement is to be secured on land (the " mortgaged land"), the creditor or owner shall give the debtor or hirer a copy of the unexecuted agreement which contains a notice in the prescribed form indicating the right of the debtor or hirer to withdraw from the prospective agreement, and how and when the right is exercisable, together with a copy of any other document referred to in the unexecuted agreement.

(2) Subsection (1) does not apply to—

- (a) a restricted-use credit agreement to finance the purchase of the mortgaged land, or
- (b) an agreement for a bridging loan in connection with the purchase of the mortgaged land or other land.

59.—(1) An agreement is void if, and to the extent that, it purports to bind a person to enter as debtor or hirer into a prospective regulated agreement.

(2) Regulations may exclude from the operation of subsection (1) agreements such as are described in the regulations.

Making the agreement

60.—(1) The Secretary of State shall make regulations as to the form and content of documents embodying regulated agreements, and the regulations shall contain such provisions as appear to him appropriate with a view to ensuring that the debtor or hirer is made aware of—

- (a) the rights and duties conferred or imposed on him by the agreement,
- (b) the amount and rate of the total charge for credit (in the case of a consumer credit agreement),
- (c) the protection and remedies available to him under this Act, and
- (d) any other matters which, in the opinion of the Secretary of State, it is desirable for him to know about in connection with the agreement.

(2) Regulations under subsection (1) may in particular—

- (a) require specified information to be included in the prescribed manner in documents, and other specified material to be excluded;
- (b) contain requirements to ensure that specified information is clearly brought to the attention of the debtor or hirer, and that one part of a document is not given insufficient or excessive prominence compared with another.

(3) If, on an application made to the Director by a person carrying on a consumer credit business or a consumer hire business, it appears to the Director impracticable for the applicant to comply with any requirement of regulations under subsection (1) in a particular case, he may, by notice to the applicant direct that the requirement be waived or varied in relation to such agreements, and subject to such conditions (if any), as he may specify, and this Act and the regulations shall have effect accordingly.

(4) The Director shall give a notice under subsection (3) only if he is satisfied that to do so would not prejudice the interests of debtors or hirers.

61.—(1) A regulated agreement is not properly executed unless

- (a) a document in the prescribed form itself containing all the prescribed terms and conforming to regulations under section 60(1) is signed in the prescribed manner both by the debtor or hirer and by or on behalf of the creditor or owner, and
- (b) the document embodies all the terms of the agreement, other than implied terms, and
- (c) the document is, when presented or sent to the debtor or hirer for signature, in such a state that all its terms are readily legible.

(2) In addition, where the agreement is one to which section 58(1) applies, it is not properly executed unless

- (a) the requirements of section 58(1) were complied with, and
- (b) the unexecuted agreement was sent, for his signature, to the debtor or hirer by post not less than seven days after a copy of it was given to him under section 58(1), and
- (c) during the consideration period, the creditor or owner refrained from approaching the debtor or hirer (whether in person, by telephone or letter, or in any other way) except in response to a specific request made by the debtor or hirer after the beginning of the consideration period, and
- (d) no notice of withdrawal by the debtor or hirer was received by the creditor or owner before the sending of the unexecuted agreement.

(3) In subsection (2)(c), " the consideration period " means the period beginning with the giving of the copy under section 58(1) and ending—

- (a) at the expiry of seven days after the day on which the unexecuted agreement is sent, for his signature, to the debtor or hirer, or
- (b) on its return by the debtor or hirer after signature by him, whichever first occurs.

(4) Where the debtor or hirer is a partnership or an unincorporated body of persons, subsection (1)(a) shall apply with the substitution for " by the debtor or hirer " of " by or on behalf of the debtor or hirer ".

62.—(1) If the unexecuted agreement is presented personally to the debtor or hirer for his signature. but on the occasion when he signs it the document does not become an executed agreement, a copy of it, and of any other document referred to in it, must be there and then delivered to him.

(2) If the unexecuted agreement is sent to the debtor or hirer for his signature, a copy of it, and of any other document referred to in it, must be sent to him at the same time.

(3) A regulated agreement is not properly executed if the requirements of this section are not observed.

63.—(1) If the unexecuted agreement is presented personally to the debtor or hirer for his signature. and on the occasion when he signs it the document becomes an executed agreement. a copy of the executed agreement, and of any other document referred to in it, must be there and then delivered to him.

(2) A copy of the executed agreement, and of any other document referred to in it, must be given to the debtor or hirer within the seven days following the making of the agreement unless—

(a) subsection (1) applies, or

(b) the unexecuted agreement was sent to the debtor or hirer for his signature and, on the occasion of his signing it, the document became an executed agreement.

(3) In the case of a cancellable agreement. a copy under subsection (2) must be sent by post.

(4) In the case of a credit-token agreement, a copy under subsection (2) need not be given within the seven days following the making of the agreement if it is given before or at the time when the credit-token is given to the debtor.

(5) A regulated agreement is not properly executed if the requirements of this section are not observed.

64.—(1) In the case of a cancellable agreement, a notice in the prescribed form indicating the right of the debtor or hirer to cancel the agreement, how and when that right is exercisable, and the name and address of a person to whom notice of cancellation may be given,—

(a) must be included in every copy given to the debtor or hirer under section 62 or 63, and

(b) except where section 63(2) applied, must also be sent by post to the debtor or hirer within the seven days following the making of the agreement.

(2) In the case of a credit-token agreement, a notice under subsection (1)(b) need not be sent by post within the seven days following the making of the agreement if either—

- (a) it is sent by post to the debtor or hirer before the credit token is given to him, or
- (b) it is sent by post to him together with the credit-token.

(3) Regulations may provide that except where section 63(2) applied a notice sent under subsection (1)(b) shall be accompanied by a further copy of the executed agreement, and of any other document referred to in it.

(4) Regulations may provide that subsection (1)(b) is not to apply in the case of agreements such as are described in the regulations, being agreements made by a particular person, if—

(a) on an application by that person to the Director, the Director has determined that, having regard to—

(i) the manner in which antecedent negotiations for agreements with the applicant of that description are conducted, and

(ii) the information provided to debtors or hirers before such agreements are made,

the requirement imposed by subsection (1)(b) can be dispensed with without prejudicing the interests of debtors or hirers; and

(b) any conditions imposed by the Director in making the determination are complied with.

(5) A cancellable agreement is not properly executed if the requirements of this section are not observed.

65.—(1) An improperly-executed regulated agreement is enforceable against the debtor or hirer on an order of the court only.

(2) A retaking of goods or land to which a regulated agreement relates is an enforcement of the agreement.

66.—(1) The debtor shall not be liable under a credit-token agreement for use made of the credit-token by any person unless the debtor had previously accepted the credit-token, or the use constituted an acceptance of it by him.

(2) The debtor accepts a credit-token when—

(a) it is signed, or

(b) a receipt for it is signed, or

(c) it is first used,

either by the debtor himself or by a person who, pursuant to the agreement, is authorised by him to use it.

Cancellation of certain agreements within cooling off period

67. A regulated agreement may be cancelled by the debtor or hirer in accordance with this Part if the antecedent negotiations included oral representations made when

in the presence of the debtor or hirer by an individual acting as, or on behalf of, the negotiator, unless—

- (a) the agreement is secured on land, or is a restricted-use credit agreement to finance the purchase of land or is an agreement for a bridging loan in connection with the purchase of land, or
- (b) the unexecuted agreement is signed by the debtor or hirer at premises at which any of the following is carrying on any business (whether on a permanent or temporary basis)—
 - (i) the creditor or owner;
 - (ii) any party to a linked transaction (other than the debtor or hirer or a relative of his);
 - (iii) the negotiator in any antecedent negotiations.

68. The debtor or hirer may serve notice of cancellation of a cancellable agreement between his signing of the unexecuted agreement and—

- (a) the end of the fifth day following the day on which he received a copy under section 63(2) or a notice under section 64(1)(b), or
- (b) if (by virtue of regulations made under section 64(4)) section 64(1)(b) does not apply, the end of the fourteenth day following the day on which he signed the unexecuted agreement.

69.—(1) If within the period specified in section 68 the debtor or hirer under a cancellable agreement serves on—

- (a) the creditor or owner, or
- (b) the person specified in the notice under section 64(1), or
- (c) a person who (whether by virtue of subsection (6) or otherwise) is the agent of the creditor or owner,

a notice (a "notice of cancellation") which, however expressed and whether or not conforming to the notice given under section 64(1), indicates the intention of the debtor or hirer to withdraw from the agreement, the notice shall operate—

- (i) to cancel the agreement, and any linked transaction, and
- (ii) to withdraw any offer by the debtor or hirer, or his relative, to enter into a linked transaction.

(2) In the case of a debtor-creditor-supplier agreement for restricted-use credit financing—

- (a) the doing of work or supply of goods to meet an emergency, or
- (b) the supply of goods which, before service of the notice of cancellation, had by the act of the debtor or his relative become incorporated in any land or thing not comprised in the agreement or any linked transaction,

subsection (1) shall apply with the substitution of the following for paragraph (i)—

- " (i) to cancel only such provisions of the agreement and any linked transaction as
 - (aa) relate to the provision of credit, or
 - (bb) require the debtor to pay an item in the total charge for credit, or
 - (cc) subject the debtor to any obligation other than to pay for the doing of the said work, or the supply of the said goods "

(3) Except so far as is otherwise provided, references in this Act to the cancellation of an agreement or transaction do not include a case within subsection (2).

(4) Except as otherwise provided by or under this Act, an agreement or transaction cancelled under subsection (1) shall be treated as if it had never been entered into.

(5) Regulations may exclude linked transactions of the prescribed description from subsection (1)(i) or (ii).

(6) Each of the following shall be deemed to be the agent of the creditor or owner for the purpose of receiving a notice of cancellation

(a) a credit-broker ~ supplier who is the negotiator in antecedent negotiations, and

(b) any person who, in the course of a business carried on by him, acts on behalf of the debtor or hirer in any negotiations for the agreement.

(7) Whether or not it is actually received by him, a notice of cancellation sent by post to a person shall be deemed to be served on him at the time of posting.

70.—(1) On the cancellation of a regulated agreement, and of any linked transaction,—

(a) any sum paid by the debtor or hirer, or his relative, under or in contemplation of the agreement or transaction, including any item in the total charge for credit, shall become repayable, and

(b) any sum, including any item in the total charge for credit, which but for the cancellation is, or would or might become, payable by the debtor or hirer, or his relative, under the agreement or transaction shall cease to be, or shall not become, so payable, and

(c) in the case of a debtor-creditor-supplier agreement falling within section 12(b), any sum paid on the debtor's behalf by the creditor to the supplier shall become repayable to the creditor.

(2) If, under the terms of a cancelled agreement or transaction, the debtor or hirer, or his relative, is in possession of any goods, he shall have a lien on them for any sum repayable to him under subsection (1) in respect of that agreement or transaction, or any other linked transaction.

(3) A sum repayable under subsection (1) is repayable by the person to whom it was originally paid, but in the case of a debtor-creditor-supplier agreement falling within section 12(b) the creditor and the supplier shall be under a joint and several liability to repay sums paid by the debtor, or his relative, under the agreement or under a linked transaction falling within section 19(1)(b) and accordingly, in such a case, the creditor shall be entitled, in accordance with rules of court, to have the supplier made a party to any proceedings brought against the creditor to recover any such sums.

(4) Subject to any agreement between them, the creditor shall be entitled to be indemnified by the supplier for loss suffered by the creditor in satisfying his liability under subsection (3), including costs reasonably incurred by him in defending proceedings instituted by the debtor.

(5) Subsection (1) does not apply to any sum which, if not paid by a debtor, would be payable by virtue of section 71, and applies to a sum paid or payable by a debtor for the issue of a credit-token only where the credit-token has been returned to the creditor or surrendered to a supplier.

(6) If the total charge for credit includes an item in respect of a fee or commission charged by a credit-broker, the amount repayable under subsection (1) in respect of that item shall be the excess over £1 of the fee or commission.

(7) If the total charge for credit includes any sum payable or paid by the debtor to a credit-broker otherwise than in respect of a fee or commission charged by him, that sum shall for the purposes of subsection (6) be treated as if it were such a fee or commission.

(8) So far only as is necessary to give effect to section 69(2), this section applies to an agreement or transaction within that subsection as it applies to a cancelled agreement or transaction.

71.—(1) Notwithstanding the cancellation of a regulated consumer credit agreement, other than a debtor-creditor-supplier agreement for restricted-use credit, the agreement shall continue in force so far as it relates to repayment of credit and payment of interest.

(2) If, following the cancellation of a regulated consumer credit agreement, the debtor repays the whole or a portion of the credit—

(a) before the expiry of one month following service of the notice of cancellation, or

(b) in the case of a credit repayable by instalments, before the date on which the first instalment is due, no interest shall be payable on the amount repaid.

(3) If the whole of a credit repayable by instalments is not repaid on or before the date specified in subsection (2)(b), the debtor shall not be liable to repay any of the credit except on receipt of a request in writing in the prescribed form, signed by or on behalf of the creditor, stating the amounts of the remaining instalments (recalculated by the creditor as nearly as may be in accordance with the agreement and without extending the repayment period), but excluding any sum other than principal and interest.

(4) Repayment of a credit, or payment of interest, under a cancelled agreement shall be treated as duly made if it is made to any person on whom, under section 69, a notice of cancellation could have been served, other than a person referred to in section 69(6)(b).

72.—(1) This section applies where any agreement or transaction relating to goods, being—

- (a) a restricted-use debtor-creditor-supplier agreement, a consumer hire agreement, or a linked transaction to which the debtor or hirer under any regulated agreement is a party, or
- (b) a linked transaction to which a relative of the debtor or hirer under any regulated agreement is a party,

is cancelled after the debtor or hirer (in a case within paragraph (a)) or the relative (in a case within paragraph (b)) has acquired possession of the goods by virtue of the agreement or transaction.

(2) In this section—

- (a) "the possessor" means the person who has acquired possession of the goods as mentioned in subsection (1),
- (b) "the other party" means the person from whom the possessor acquired possession, and
- (c) "the pre-cancellation period" means the period beginning when the possessor acquired possession and ending with the cancellation.

(3) The possessor shall be treated as having been under a duty throughout the pre-cancellation period—

- (a) to retain possession of the goods, and
- (b) to take reasonable care of them.

(4) On the cancellation, the possessor shall be under a duty, subject to any lien, to restore the goods to the other party in accordance with this section, and meanwhile to retain possession of the goods and take reasonable care of them.

(5) The possessor shall not be under any duty to deliver the goods except at his own premises and in pursuance of a request in writing signed by or on behalf of the other party and served on the possessor either before, or at the time when, the goods are collected from those premises.

(6) If the possessor—

- (a) delivers the goods (whether at his own premises or elsewhere) to any person on whom, under section 69, ~ notice of cancellation could have been served (other than a person referred to in section 69(6)(b)), or
- (b) sends the goods at his own expense to such a person,

he shall be discharged from any duty to retain the goods or deliver them to any person.

(7) Where the possessor delivers the goods as mentioned in subsection (6)(a), his obligation to take care of the goods shall cease; and if he sends the goods as mentioned in subsection (6)(b), he shall be under a duty to take reasonable care to see that they are received by the other party and not damaged in transit, but in other respects his duty to take care of the goods shall cease.

(8) Where, at any time during the period of 21 days following the cancellation, the possessor receives such a request as is mentioned in subsection (5), and unreasonably refuses or unreasonably fails to comply with it, his duty to take reasonable care of the goods shall continue until he delivers or sends the goods as mentioned in subsection (6), but if within that period he does not receive such a request his duty to take reasonable care of the goods shall cease at the end of that period.

(9) The preceding provisions of this section do not apply to—

- (a) perishable goods, or
- (b) goods which by their nature are consumed by use and which, before the cancellation, were so consumed, or
- (c) goods supplied to meet an emergency, or
- (d) goods which, before the cancellation, had become incorporated in any land or thing not comprised in the cancelled agreement or a linked transaction.

(10) Where the address of the possessor is specified in the executed agreement, references in this section to his own premises are to that address and no other.

(11) Breach of a duty imposed by this section is actionable as a breach of statutory duty.

73.—(1) This section applies on the cancellation of a regulated agreement where, in antecedent negotiations, the negotiator agreed to take goods in part-exchange (the "part-exchange goods ") and those goods have been delivered to him.

(2) Unless, before the end of the period of ten days beginning with the date of cancellation, the part-exchange goods are returned to the debtor or hirer in a condition substantially as good as when they were delivered to the negotiator, the debtor or hirer shall be entitled to recover from the negotiator a sum equal to the part-exchange allowance (as defined in subsection (7)(b)).

(3) In the case of a debtor-creditor-supplier agreement within section 12(b), the negotiator and the creditor shall be under a joint and several liability to pay to the debtor a sum recoverable under subsection (2).

(4) Subject to any agreement between them, the creditor shall be entitled to be indemnified by the negotiator for loss suffered by the creditor in satisfying his liability under subsection (3), including costs reasonably incurred by him in defending proceedings instituted by the debtor.

(5) During the period of ten days beginning with the date of cancellation, the debtor or hirer, if he is in possession of goods to which the cancelled agreement relates, shall have a lien on them for—

- (a) delivery of the part-exchange goods, in a condition substantially as good as when they were delivered to the negotiator, or

(b) a sum equal to the part-exchange allowance; and if the lien continues to the end of that period it shall thereafter subsist only as a lien for a sum equal to the part-exchange allowance.

(6) Where the debtor or hirer recovers from the negotiator or creditor, or both of them jointly, a sum equal to the part-exchange allowance, then, if the title of the debtor or hirer to the part-exchange goods has not vested in the negotiator, it shall so vest on the recovery of that sum.

(7) For the purposes of this section—

(a) the negotiator shall be treated as having agreed to take goods in part-exchange if, in pursuance of the antecedent negotiations, he either purchased or agreed to purchase those goods or accepted or agreed to accept them as part of the consideration for the cancelled agreement, and

(b) the part-exchange allowance shall be the sum agreed as such in the antecedent negotiations or, if no such agreement was arrived at, such sum as it would have been reasonable to allow in respect of the part-exchange goods if no notice of cancellation had been served. (8) In an action brought against the creditor for a sum recoverable under subsection (2), he shall be entitled, in accordance with rules of court, to have the negotiator made a party to the proceedings.

Exclusion of certain agreements from Part V

74.—(1) This Part (except section 56) does not apply to—

(a) a non-commercial agreement, or

(b) a debtor-creditor agreement enabling the debtor to overdraw on a current account, or

(c) a debtor-creditor agreement to finance the making of such payments arising on, or connected with, the death of a person as may be prescribed.

(2) This Part (except sections 55 and 56) does not apply to a small debtor-creditor-supplier agreement for restricted-use credit.

(3) Subsection (1)(b) or © applies only where the Director so determines, and such a determination—

(a) may be made subject to such conditions as the Director thinks fit, and

(b) shall be made only if the Director is of opinion that it is not against the interests of debtors.

(4) If any term of an agreement falling within subsection (1)(b) or (c) or (2) is expressed in writing, regulations under section 60(1) shall apply to that term (subject to section 60(3)) as if the agreement were a regulated agreement not falling within subsection (1)(b) or (c) or (2).

PART VI

MATTERS ARISING DURING CURRENCY OF CREDIT OR HIRE AGREEMENTS

75.—(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.

(2) Subject to any agreement between them, the creditor shall be entitled to be indemnified by the supplier for loss suffered by the creditor in satisfying his liability under subsection (1), including costs reasonably incurred by him in defending proceedings instituted by the debtor.

(3) Subsection (1) does not apply to a claim—

- (a) under a non-commercial agreement, or
- (b) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £30 or more than £10,000.

(4) This section applies notwithstanding that the debtor, in entering into the transaction, exceeded the credit limit or otherwise contravened any term of the agreement.

(5) In an action brought against the creditor under subsection (1) he shall be entitled, in accordance with rules of court, to have the supplier made a party to the proceedings.

76.—(1) The creditor or owner is not entitled to enforce a term of a regulated agreement by—

- (a) demanding earlier payment of any sum, or
- (b) recovering possession of any goods or land, or
- (c) treating any right conferred on the debtor or hirer by the agreement as terminated, restricted or deferred,

except by or after giving the debtor or hirer not less than seven days' notice of his intention to do so.

(2) Subsection (1) applies only where—

- (a) a period for the duration of the agreement is specified in the agreement, and
- (b) that period has not ended when the creditor or owner does an act mentioned in subsection (1),

but so applies notwithstanding that, under the agreement, any party is entitled to terminate it before the end of the period so specified.

- (3) A notice under subsection (1) is ineffective if not in the prescribed form.
- (4) Subsection (1) does not prevent a creditor from treating the right to draw on any credit as restricted or deferred and taking such steps as may be necessary to make the restriction or deferment effective.
- (5) Regulations may provide that subsection (1) is not to apply to agreements described by the regulations.
- (6) Subsection (1) does not apply to a right of enforcement arising by reason of any breach by the debtor or hirer of the regulated agreement.



Microsoft Word 6.0
Document

77.—(1) The creditor under a regulated agreement for fixed sum credit, within the prescribed period after receiving a request in writing to that effect from the debtor and payment of a fee of 15 new pence, shall give the debtor a copy of the executed agreement (if any) and of any other document referred to in it, together with a statement signed by or on behalf of the creditor showing, according to the information to which it is practicable for him to refer,—

- (a) the total sum paid under the agreement by the debtor;
 - (b) the total sum which has become payable under the agreement by the debtor but remains unpaid, and the various amounts comprised in that total sum, with the date when each became due: and
 - (c) the total sum which is to become payable under the agreement by the debtor, and the various amounts comprised in that total sum, with the date, or mode of determining the date, when each becomes due.
- (2) If the creditor possesses insufficient information to enable him to ascertain the amounts and dates mentioned in subsection (1)(c), he shall be taken to comply with that paragraph if his statement under subsection (1) gives the basis on which, under the regulated agreement, they would fall to be ascertained.
- (3) Subsection (1) does not apply to—
- (a) an agreement under which no sum is, or will or may become, payable by the debtor, or
 - (b) a request made less than one month after a previous request under that subsection relating to the same agreement was complied with.
- (4) If the creditor under an agreement fails to comply with subsection (1)—
- (a) he is not entitled, while the default continues, to enforce the agreement; and
 - (b) if the default continues for one month he commits an offence.
- (5) This section does not apply to a non-commercial agreement.

78.—(1) The creditor under a regulated agreement for running-account credit, within the prescribed period after receiving a request in writing to that effect from the debtor and payment of a fee of 15 new pence, shall give the debtor a copy of the executed agreement (if any) and of any other document referred to in it, together with a statement signed by or on behalf of the creditor showing, according to the information to which it is practicable for him to refer,—

- (a) the state of the account, and
- (b) the amount, if any, currently payable under the agreement by the debtor to the creditor, and
- (c) the amounts and due dates of any payments which, if the debtor does not draw further on the account, will later become payable under the agreement by the debtor to the creditor.

(2) If the creditor possesses insufficient information to enable him to ascertain the amounts and dates mentioned in subsection (1)©, he shall be taken to comply with that paragraph if his statement under subsection (1) gives the basis on which, under the regulated agreement, they would fall to be ascertained.

(3) Subsection (1) does not apply to—

- (a) an agreement under which no sum is, or will or may become, payable by the debtor, or
- (b) a request made less than one month after a previous request under that subsection relating to the same agreement was complied with.

(4) Where running-account credit is provided under a regulated agreement, the creditor shall give the debtor statements in the prescribed form, and with the prescribed content

- (a) showing according to the information to which it is practicable for him to refer, the state of the account at regular intervals of not more than twelve months, and
- (b) where the agreement provides, in relation to specified periods, for the making of payments by the debtor, or the charging against him of interest or any other sum, showing according to the information to which it is practicable for him to refer the state of the account at the end of each of those periods during which there is any movement in the account.

(5) A statement under subsection (4) shall be given within the prescribed period after the end of the period to which the statement relates.

(6) If the creditor under an agreement fails to comply with subsection (1)—

- (a) he is not entitled, while the default continues, to enforce the agreement; and
- (b) if the default continues for one month he commits an offence.

(7) This section does not apply to a non-commercial agreement, and subsections (4) and (5) do not apply to a small agreement.

79.—(1) The owner under a regulated consumer hire agreement, within the prescribed period after receiving a request in writing to that effect from the hirer and payment of a fee of 15 new pence, shall give to the hirer a copy of the executed agreement and of any other document referred to in it, together with a statement signed by or on behalf of the owner showing, according to the information to which it is practicable for him to refer, the total sum which has become payable under the agreement by the hirer but remains unpaid and the various amounts comprised in that total sum, with the date when each became due.

(2) Subsection (1) does not apply to—

- (a) an agreement under which no sum is, or will or may become, payable by the hirer, or
- (b) a request made less than one month after a previous request under that subsection relating to the same agreement was complied with.

(3) If the owner under an agreement fails to comply with subsection (1)~

- (a) he is not entitled, while the default continues, to enforce the agreement; and
- (b) if the default continues for one month he commits an offence.

(4) This section does not apply to a non-commercial agreement.

80.—(1) Where a regulated agreement, other than a non-commercial agreement, requires the debtor or hirer to keep goods to which the agreement relates in his possession or control, he shall, within seven working days after he has received a request in writing to that effect from the creditor or owner, tell the creditor or owner where the goods are.

(2) If the debtor or hirer fails to comply with subsection (1), and the default continues for 14 days, he commits an offence.

81.—(1) Where a debtor or hirer is liable to make to the same person payments in respect of two or more regulated agreements, he shall be entitled, on making any payment in respect of the agreements which is not sufficient to discharge the total amount then due under all the agreements, to appropriate the sum so paid by him—

- (a) in or towards the satisfaction of the sum due under any one of the agreements, or
- (b) in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit.

(2) If the debtor or hirer fails to make any such appropriation where one or more of the agreements is—

- (a) a hire-purchase agreement or conditional sale agreement, or
- (b) a consumer hire agreement, or
- (c) an agreement in relation to which any security is provided,

the payment shall be appropriated towards the satisfaction of the sums due under the several agreements respectively in the proportions which those sums bear to one another.

82.—(1) Where, under a power contained in a regulated agreement, the creditor or owner varies the agreement, the variation shall not take effect before notice of it is given to the debtor or hirer in the prescribed manner.

(2) Where an agreement (a " modifying agreement ") varies or supplements an earlier agreement, the modifying agreement shall for the purposes of this Act be treated as—

(a) revoking the earlier agreement and

(b) containing provisions reproducing the combined effect of the two agreements, and obligations outstanding in relation to the earlier agreement shall accordingly be treated as outstanding instead in relation to the modifying agreement.

(3) If the earlier agreement is a regulated agreement but (apart from this subsection) the modifying agreement is not then, unless the modifying agreement is for running-account credit, it shall be treated as a regulated agreement.

(4) If the earlier agreement is a regulated agreement for running-account credit, and by the modifying agreement the creditor allows the credit limit to be exceeded but intends the excess to be merely temporary, Part V (except section 56) shall not apply to the modifying agreement.

(5) If—

(a) the earlier agreement is a cancellable agreement, and

(b) the modifying agreement is made within the period applicable under section 68 to the earlier agreement, then, whether or not the modifying agreement would, apart from this subsection, be a cancellable agreement, it shall be treated as a cancellable agreement in respect of which a notice may be served under section 68 not later than the end of the period applicable under that section to the earlier agreement.

(6) Except under subsection (5), a modifying agreement shall not be treated as a cancellable agreement.

(7) This section does not apply to a non-commercial agreement.

83.—(1) The debtor under a regulated consumer credit agreement shall not be liable to the creditor for any loss arising from use of the credit facility by another person not acting, or to be treated as acting, as the debtor's agent.

(2) This section does not apply to a non-commercial agreement, or to any loss in so far as it arises from misuse of an instrument to which section 4 of the Cheques Act 1957 applies.

84.—(1) Section 83 does not prevent the debtor under a credit-token agreement from being made liable to the extent of £30 (or the credit limit if lower) for loss to the creditor arising from use of the credit-token by other persons during a period beginning when the credit-token ceases to be in the possession of any authorised

person and ending when the credit-token is once more in the possession of an authorised person.

(2) Section 83 does not prevent the debtor under a credit token agreement from being made liable to any extent for loss to the creditor from use of the credit-token by a person who acquired possession of it with the debtor's consent.

(3) Subsections (1) and (2) shall not apply to any use of the credit-token after the creditor has been given oral or written notice that it is lost or stolen, or is for any other reason liable to misuse.

(4) Subsections (1) and (2) shall not apply unless there are contained in the credit token agreement in the prescribed manner particulars of the name, address and telephone number of a person stated to be the person to whom notice is to be given under subsection (3).

(5) Notice under subsection (3) takes effect when received, but where it is given orally, and the agreement so requires, it shall be treated as not taking effect if not confirmed in writing within seven days.

(6) Any sum paid by the debtor for the issue of the credit token, to the extent (if any) that it has not been previously offset by use made of the credit token, shall be treated as paid towards satisfaction of any liability under subsection (1) or (2).

(7) The debtor, the creditor, and any person authorised by the debtor to use the credit-token, shall be authorised persons for the purposes of subsection (1).

(8) Where two or more credit-tokens are given under one credit-token agreement, the preceding provisions of this section apply to each credit-token separately.

85.—(1) Whenever, in connection with a credit-token agreement, a credit-token (other than the first) is given by the creditor to the debtor, the creditor shall give the debtor a copy of the executed agreement (if any) and of any other document referred to in it.

(2) If the creditor fails to comply with this section—

- (a) he is not entitled, while the default continues, to enforce the agreement; and
- (b) if the default continues for one month he commits an offence.

(3) This section does not apply to a small agreement.

86.—(1) The creditor or owner under a regulated agreement is not entitled, by reason of the death of the debtor or hirer, to do an act specified in paragraphs (a) to (e) of section 87(1) if at the death the agreement is fully secured.

(2) If at the death of the debtor or hirer a regulated agreement is only partly secured or is unsecured, the creditor or owner is entitled, by reason of the death of the debtor or hirer, to do an act specified in paragraphs (a) to (e) of section 87(1) on an order of the court only.

(3) This section applies in relation to the termination of an agreement only where—

- (a) a period for its duration is specified in the agreement, - and
- (b) that period has not ended when the creditor or owner purports to terminate the agreement,

but so applies notwithstanding that, under the agreement, any party is entitled to terminate it before the end of the period so specified.

(4) This section does not prevent the creditor from treating the right to draw on any credit as restricted or deferred, and taking such steps as may be necessary to make the restriction or deferment effective.

(5) This section does not affect the operation of any agreement providing for payment of terms—

- (a) due under the regulated agreement, or
- (b) becoming due under it on the death of the debtor or hirer, out of the proceeds of a policy of assurance on his life.

(6) For the purposes of this section an act is done by reason of the death of the debtor or hirer if it is done under a power conferred by the agreement which i-

- (a) exercisable on his death, or
- (b) exercisable at will and exercised at any time after his death.

PART VII

DEFAULT AND TERMINATION

Default Notices

87.—(1) Service of a notice on the debtor or hirer in accordance with section 88 (a " default notice ") is necessary before the creditor or owner can become entitled, by reason of any breach by the debtor or hirer of a regulated agreement,—

- (a) to terminate the agreement, or
- (b) to demand earlier payment of any sum, or
- (c) to recover possession of any goods or land, or
- (d) to treat any right conferred on the debtor or hirer by the agreement as terminated, restricted or deferred, or
- (e) to enforce any security.

(2) Subsection (1) does not prevent the creditor from treating the right to draw upon any credit as restricted or deferred, and taking such steps as may be necessary to make the restriction or deferment effective.

(3) The doing of an act by which a floating charge becomes fixed is not enforcement of a security.

(4) Regulations may provide that subsection (1) is not to apply to agreements described by the regulations.

88.—(1) The default notice must be in the prescribed form and specify—

- (a) the nature of the alleged breach;

- (b) if the breach is capable of remedy, what action is required to remedy it and the date before which that action is to be taken;
- (c) if the breach is not capable of remedy, the sum (if any) required to be paid as compensation for the breach, and the date before which it is to be paid.

(2) A date specified under subsection (1) must not be less than seven days after the date of service of the default notice, and the creditor or owner shall not take action such as is mentioned in section 87(1) before the date so specified or (if no requirement is made under subsection (1)) before those seven days have elapsed.

(3) The default notice must not treat as a breach failure to comply with a provision of the agreement which becomes Operative only on breach of some other provision, but if the breach of that other provision is not duly remedied or compensation demanded under subsection (1) is not duly paid, or (where no requirement is made under subsection (1)) if the seven days mentioned in subsection (2) have elapsed, the creditor or owner may treat the failure as a breach and section 87(1) shall not apply to it.

(4) The default notice must contain information in the prescribed terms about the consequences of failure to comply with it.

(5) A default notice making a requirement under subsection (1) may include a provision for the taking of action such as is mentioned in section 87(1) at any time after the restriction imposed by subsection (2) will cease, together with a statement that the provision will be ineffective if the breach is duly remedied or the compensation duly paid.

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

Further restriction of remedies for default

90.—(1) At any time when—

- (a) the debtor is in breach of a regulated hire-purchase or a regulated conditional sale agreement relating to goods, and
- (b) the debtor has paid to the creditor one-third or more of the total price of the goods, and
- (c) the property in the goods remains in the creditor,

the creditor is not entitled to recover possession of the goods from the debtor except on an order of the court.

(2) Where under a hire-purchase or conditional sale agreement the creditor is required to carry out any installation and the agreement specifies, as part of the total price, the amount to be paid in respect of the installation (the " installation charge") the reference in subsection (1)(b) to one third of the total price shall be construed as a reference to the aggregate of the installation charge and one third of the remainder of the total price.

(3) In a case where—

(a) subsection (1)(a) is satisfied, but not subsection (1)(b), and

(b) subsection (1)(b) was satisfied on a previous occasion in relation to an earlier agreement, being a regulated hire-purchase or regulated conditional sale agreement, between the same parties, and relating to any of the goods comprised in the later agreement (whether or not other goods were also included), subsection (1) shall apply to the later agreement with the omission of paragraph (b).

(4) If the later agreement is a modifying agreement, subsection (3) shall apply with the substitution, for the second reference to the later agreement, of a reference to the modifying agreement.

(5) Subsection (1) shall not apply, or shall cease to apply, to an agreement if the debtor has terminated, or terminates, the agreement.

(6) Where subsection (1) applies to an agreement at the death of the debtor, it shall continue to apply (in relation to the possessor of the goods) until the grant of probate or administration, or (in Scotland) confirmation (on which the personal representative would fall to be treated as the debtor).

(7) Goods falling within this section are in this Act referred to as "protected goods".

91. If goods are recovered by the creditor in contravention of section 90 (a) the regulated agreement, if not previously terminated, shall terminate, and (b) the debtor shall be released from all liability under the agreement, and shall be entitled to recover from the creditor all sums paid by the debtor under the agreement.

92.—(1) Except under an order of the court, the creditor or owner shall not be entitled to enter any premises to take possession of goods subject to a regulated hire-purchase agreement, regulated conditional sale agreement or regulated consumer hire agreement.

(2) At any time when the debtor is in breach of a regulated conditional sale agreement relating to land, the creditor is entitled to recover possession of the land from the debtor, or any person claiming under him, on an order of the court only.

(3) An entry in contravention of subsection (1) or (2) is actionable as a breach of statutory duty.

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

(a) where the total charge for credit includes an item in respect of interest, exceeding the rate of that interest, or

(b) in any other case, exceeding what would be the rate of the total charge for credit if any items included in the total charge for credit by virtue of section 20(2) were disregarded.

Early payment by debtor

94.—(1) The debtor under a regulated consumer credit agreement is entitled at any time, by notice to the creditor and the payment to the creditor of all amounts payable by the debtor to him under the agreement (less any rebate allowable under section 95), to discharge the debtor's indebtedness under the agreement.

(2) A notice under subsection (1) may embody the exercise by the debtor of any option to purchase goods conferred on him by the agreement, and deal with any other matter arising on, or in relation to, the termination of the agreement.

95.—(1) Regulations may provide for the allowance of a rebate of charges for credit to the debtor under a regulated consumer credit agreement where, under section 94, on refinancing, on breach of the agreement, or for any other reason, his indebtedness is discharged or becomes payable before the time fixed by the agreement, or any sum becomes payable by him before the time so fixed.

(2) Regulations under subsection (1) may provide for calculation of the rebate by reference to any sums paid or payable by the debtor or his relative under or in connection with the agreement (whether to the creditor or some other person), including sums under linked transactions and other items in the total charge for credit.

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

(2) Subsection (1) does not apply to a linked transaction which is itself an agreement providing the debtor or his relative with credit.

(3) Regulations may exclude linked transactions of the prescribed description from the operation of subsection (1).

97.—(1) The creditor under a regulated consumer credit agreement, within the prescribed period after he has received a request in writing to that effect from the debtor, shall give

the debtor a statement in the prescribed form indicating, according to the information to which it is practicable for him to refer, the amount of the payment required to discharge the debtor's indebtedness under the agreement, together with the prescribed particulars showing how the amount is arrived at.

(2) Subsection (1) does not apply to a request made less than one month after a previous request under that subsection relating to the same agreement was complied with.

(3) If the creditor fails to comply with subsection (1)~

(a) he is not entitled, while the default continues, to enforce the agreement; and

(b) if the default continues for one month he commits an offence.

Termination of agreements

98.—(1) The creditor or owner is not entitled to terminate a regulated agreement except by or after giving the debtor or hirer not less than seven days' notice of the termination.

(2) Subsection (1) applies only where—

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

99.—(1) At any time before the final payment by the debtor under a regulated hire-purchase or regulated conditional sale agreement falls due, the debtor shall be entitled to terminate the agreement by giving notice to any person entitled or authorised to receive the sums payable under the agreement.

(2) Termination of an agreement under subsection (1) does not affect any liability under the agreement which has accrued before the termination.

(3) Subsection (1) does not apply to a conditional sale agreement relating to land after the title to the land has passed to the debtor.

(4) In the case of a conditional sale agreement relating to goods, where the property in the goods, having become vested in the debtor, is transferred to a person who does not become the debtor under the agreement, the debtor shall not thereafter be entitled to terminate the agreement under subsection (1).

(5) Subject to subsection (4), where a debtor under a conditional sale agreement relating to goods terminates the agreement under this section after the property in the goods has become vested in him, the property in the goods shall thereupon vest in the person (the " previous owner ") in whom it was vested immediately before it became vested in the debtor:

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

100.—(1) Where a regulated hire-purchase or regulated conditional sale agreement is terminated under section 99 the debtor shall be liable, unless the agreement provides for a smaller payment, or does not provide for any payment, to pay to the creditor the amount (if any) by which one-half of the total price exceeds the aggregate of the sums paid and the sums due in respect of the total price immediately before the termination.

(2) Where under a hire-purchase or conditional sale agreement the creditor is required to carry out any installation and the agreement specifies, as part of the total price, the amount to be paid in respect of the installation(the " installation charge") the reference in subsection (1) to one-half of the total price shall be construed as a reference to the aggregate of the installation charge and one-half of the remainder of the total price.

(3) If in any action the court is satisfied that a sum less than the amount specified in subsection (1) would be equal to the loss sustained by the creditor in consequence of the termination of the agreement by the debtor, the court may make an order for the payment of that sum in lieu of the amount specified in subsection (1).

(4) If the debtor has contravened an obligation to take reasonable care of the goods or land, the amount arrived at under subsection (1) shall be increased by the sum required to recompense the creditor for that contravention, and subsection (2) shall have effect accordingly.

(5) Where the debtor, on the termination of the agreement, wrongfully retains possession of goods to which the agreement relates, then, in any action brought by the creditor to recover possession of the goods from the debtor, the court, unless it is satisfied that having regard to the circumstances it would not be just to do so, shall order the goods to be delivered to the creditor without giving the debtor an option to pay the value of the goods.

101.~(1) The hirer under a regulated consumer hire agreement is entitled to terminate the agreement by giving notice to any person entitled or authorised to receive the sums payable under the agreement.

(2) Termination of an agreement under subsection (1) does not affect any liability under the agreement which has accrued before the termination.

(3) A notice under subsection (1) shall not expire earlier than eighteen months after the making of the agreement, but apart from that the minimum period of notice to be given under subsection (1), unless the agreement provides for a shorter period, is as follows.

(4) If the agreement provides for the making of payments by the hirer to the owner at equal intervals, the minimum period of notice is the length of one interval or three months, whichever is less.

(5) If the agreement provides for the making of such payments at differing intervals, the minimum period of notice is the length of the shortest interval or three months, whichever is less.

(6) In any other case, the minimum period of notice is three months.

(7) This section does not apply to—

(a) any agreement which provides for the making by the hirer of payments which in total (and without breach of the agreement) exceed £300 in any year, or

(b) any agreement where—

(i) goods are bailed or (in Scotland) hired to the hirer for the purposes of a business carried on by him, or the hirer holds himself out as requiring the goods for those purposes, and

(ii) the goods are selected by the hirer, and acquired by the owner for the purposes of the agreement at the request of the hirer from any person other than the owner's associate, or

(c) any agreement where the hirer requires, or holds himself out as requiring, the goods for the purpose of bailing or hiring them to other persons in the course of a business carried on by him.

(8) If, on an application made to the Director by a person carrying on a consumer hire business, it appears to the Director that it would be in the interest of hirers to do so, he may by notice to the applicant direct that this section shall not apply to consumer hire agreements made by the applicant, and subject to such conditions (if any) as the Director may specify, this Act shall have effect accordingly.

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

102.—(1) Where the debtor or hirer under a regulated agreement claims to have a right to rescind the agreement, each of the following shall be deemed to be the agent of the creditor or owner for the purpose of receiving any notice rescinding the agreement which is served by the debtor or hirer—

- (a) a credit-broker or supplier who was the negotiator in antecedent negotiations, and
- (b) any person who, in the course of a business carried on by him, acted on behalf of the debtor or hirer in any negotiations for the agreement.

(2) In subsection (1) " rescind " does not include—

- (a) service of a notice of cancellation, or
- (b) termination of an agreement under section 99 or 101 or by the exercise of a right or power in that behalf expressly conferred by the agreement.

103.—(1) If an individual (the " customer ") serves, on any person (the " trader ") a notice—

(a) stating that—

- (i) the customer was the debtor or hirer under a regulated agreement described in the notice, and the trader was the creditor or owner under the agreement, and
- (ii) the customer has discharged his indebtedness to the trader under the agreement, and
- (iii) the agreement has ceased to have any operation; and

(b) requiring the trader to give the customer a notice, signed by or on behalf of the trader, confirming that those statements are correct,

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

(2) Where the trader disputes the correctness of the notice he shall give particulars of the way in which he alleges it to be wrong.

(3) Subsection (1) does not apply in relation to any agreement if the trader has previously complied with that subsection on the service of a notice under it with respect to that agreement.

(4) Subsection (1) does not apply to a non commercial agreement.

(5) If the trader fails to comply with subsection (1), and the default continues for one month, he commits an offence.

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

(a) during the period between the service of a default notice in respect of the goods and the date on which the notice expires or is earlier complied with; or

(b) if the agreement is enforceable on an order of the court only, during the period between the commencement and termination of an action by the creditor to enforce the agreement.

PART VIII

SECURITY

General

105.—(1) Any security provided in relation to a regulated agreement shall be expressed in writing.

(2) Regulations may prescribe the form and content of documents (" security instruments ") to be made in compliance with subsection (1).

(3) Regulations under subsection (2) may in particular—

(a) require specified information to be included in the prescribed manner in documents, and other specified material to be excluded;

(b) contain requirements to ensure that specified information is clearly brought to the attention of the surety, and that one part of a document is not given insufficient or excessive prominence compared with another.

(4) A security instrument is not properly executed unless

(a) a document in the prescribed form, itself containing all the prescribed terms and conforming to regulations under subsection (2), is signed in the prescribed manner by or on behalf of the surety, and

(b) the document embodies all the terms of the security, other than implied terms, and

(c) the document, when presented or sent for the purpose of being signed by or on behalf of the surety, is in such state that its terms are readily legible, and

(d) when the document is presented or sent for the purpose of being signed by or on behalf of the surety there is also presented or sent a copy of the document.

(5) A security instrument is not properly executed unless

(a) where the security is provided after, or at the time when, the regulated agreement is made, a copy of the executed agreement, together with a copy of any other document referred to in it, is given to the surety at the time the security is provided, or

(b) where the security is provided before the regulated agreement is made, a copy of the executed agreement, together with a copy of any other document referred to in it, is given to the surety within seven days after the regulated agreement is made.

(6) Subsection (1) does not apply to a security provided by the debtor or hirer.

(7) If—

(a) in contravention of subsection (1) a security is not expressed in writing, or

(b) a security instrument is improperly executed,

the security, so far as provided in relation to a regulated agreement, is enforceable against the surety on an order of the court only.

(8) If an application for an order under subsection (7) is dismissed (except on technical grounds only) section 106 (ineffective securities) shall apply to the security.

(9) Regulations under section 60(1) shall include provision requiring documents embodying regulated agreements also to embody any security provided in relation to a regulated agreement by the debtor or hirer.

106. Where, under any provision of this Act, this section is applied to any security provided in relation to a regulated agreement, then, subject to section 177 (saving for registered charges,—

(a) the security, so far as it is so provided, shall be treated as never having effect;

(b) any property lodged with the creditor or owner solely for the purposes of the security as so provided shall be returned by him forthwith;

(c) the creditor or owner shall take any necessary action to remove or cancel an entry in any register, so far as the entry relates to the security as so provided; and

(d) any amount received by the creditor or owner on realisation of the security shall, so far as it is referable to the agreement, be repaid to the surety.

107.—(1) The creditor under a regulated agreement for fixed sum credit in relation to which security is provided, within the prescribed period after receiving a request in writing to that effect from the surety and payment of a fee of 15 new pence, shall give to the surety (if a different person from the debtor)—

(a) a copy of the executed agreement (if any) and of any other document referred to in it;

(b) a copy of the security instrument (if any); and

- (c) a statement signed by or on behalf of the creditor showing, according to the information to which it is practicable for him to defer,—
 - (i) the total sum paid under the agreement by the debtor,
 - (ii) the total sum which has become payable under the agreement by the debtor but remains unpaid, and the various amounts comprised in that total sum, with the date when each became due, and
 - (iii) the total sum which is to become payable under the agreement by the debtor, and the various amounts comprised in that total sum, with the date, or mode of determining the date, when each becomes due.
- (2) If the creditor possesses insufficient information to enable him to ascertain the amounts and dates mentioned in subsection (1)©(iii), he shall be taken to comply with that sub-paragraph if his statement under subsection (1)© gives the basis on which, under the regulated agreement, they would fall to be ascertained.
- (3) Subsection (1) does not apply to—
 - (a) an agreement under which no sum is, or will or may become, payable by the debtor, or
 - (b) a request made less than one month after a previous request under that subsection relating to the same agreement was complied with.
- (4) If the creditor under an agreement fails to comply with subsection (1)—
 - (a) he is not entitled, while the default continues, to enforce the security, so far as provided in relation to the agreement; and
 - (b) if the default continues for one month he commits an offence.
- (5) This section does not apply to a non-commercial agreement.

108.—(1) The creditor under a regulated agreement for running-account credit in relation to which security is provided, within the prescribed period after receiving a request in writing to that effect from the surety and payment of a fee of 15 new pence, shall give to the surety (if a different person from the debtor)—

- (a) a copy of the executed agreement (if any) and of any other document referred to in it;
- (b) a copy of the security instrument (if any); and
- (c) a statement signed by or on behalf of the creditor showing, according to the information to which it is practicable for him to refer,—
 - (i) the state of the account, and
 - (ii) the amount, if any, currently payable under the agreement by the debtor to the creditor, and
 - (iii) the amounts and due dates of any payments which, if the debtor does not draw further on the account, will later become payable under the agreement by the debtor to the creditor.
- (2) If the creditor possesses insufficient information to enable him to ascertain the amounts and dates mentioned in subsection (1)©(iii), he shall be taken to comply with that sub-paragraph if his statement under subsection (1)© gives the basis on which, under the regulated agreement, they would fall to be ascertained.

- (3) Subsection (1) does not apply to—
- (a) an agreement under which no sum is, or will or may become, payable by the debtor, or
 - (b) a request made less than one month after a previous request under that subsection relating to the same agreement was complied with.
- (4) If the creditor under an agreement fails to comply with subsection (1)—
- (a) he is not entitled, while the default continues, to enforce the security, so far as provided in relation to the agreement; and
 - (b) if the default continues for one month he commits an offence.
- (5) This section does not apply to a non-commercial agreement.

109.—(1) The owner under a regulated consumer hire agreement in relation to which security is provided, within the prescribed period after receiving a request in writing to that effect from the surety and payment of a fee of 15 new pence, shall give to the surety (if a different person from the hirer)

- (a) a copy of the executed agreement and of any other document referred to in it;
 - (b) a copy of the security instrument (if any); and
 - (c) a statement signed by or on behalf of the owner showing, according to the information to which it is practicable for him to refer, the total sum which has become payable under the agreement by the hirer but remains unpaid and the various amounts comprised in that total sum, with the date when each became due.
- (2) Subsection (1) does not apply to—
- (a) an agreement under which no sum is, or will or may become, payable by the hirer, or
 - (b) a request made less than one month after a previous request under that subsection relating to the same agreement was complied with.
- (3) If the owner under an agreement fails to comply with subsection (1)—
- (a) he is not entitled, while the default continues, to enforce the security, so far as provided **in relation to the** agreement; and
 - (b) if the default continues for one month he commits an offence.
- (4) This section does not apply to a non-commercial agreement.

110.—(1) The creditor or owner under a regulated agreement, within the prescribed period after receiving a request in writing to that effect from the debtor or hirer and payment of a fee of 15 new pence, shall give the debtor or hirer a copy of any security instrument executed in relation to the agreement after the making of the agreement.

- (2) Subsection (1) does not apply to—

- (a) a non-commercial agreement, or
- (b) an agreement under which no sum is, or will or may become, payable by the debtor or hirer, or
- (c) a request made less than one month after a previous request under subsection (1) relating to the same agreement was complied with.

(3) If the creditor or owner under an agreement fails to comply with subsection (1)—

- (a) he is not entitled, while the default continues, to enforce the security (so far as provided in relation to the agreement); and
- (b) if the default continues for one month he commits an offence.

111.—(1) When a default notice or a notice under section 76(1) or 9~(1) is served on a debtor or hirer, a copy of the notice shall be served by the creditor or owner on any surety (if a different person from the debtor or hirer).

(2) If the creditor or owner fails to comply with subsection (1) in the case of any surety, the security is enforceable against the surety (in respect of the breach or other matter to which the notice relates) on an order of the court only.

112. Subject to section 121, regulations may provide for any matters relating to the sale or other realisation, by the creditor or owner, of property over which any right has been provided by way of security in relation to an actual or prospective regulated agreement, other than a non-commercial agreement.

113.—(1) Where a security is provided in relation to an actual or prospective regulated agreement, the security shall not be enforced so as to benefit the creditor or owner, directly or indirectly, to an extent greater (whether as respects the amount of any payment or the time or manner of its being made) than would be the case if the security were not provided and any obligations of the debtor or hirer or his relative, under or in relation to the agreement were carried out to the extent (if any) to which they would be enforced under this Act.

(2) In accordance with subsection (1), where a regulated agreement is enforceable on an order of the court or the Director only, any security provided in relation to the agreement is enforceable (so far as provided in relation to the agreement) where such an order has been made in relation to the agreement, but not otherwise.

(3) Where—

- (a) a regulated agreement is cancelled under section 69(1) or becomes subject to section 69(2), or
- (b) a regulated agreement is terminated under section 91, or
- (c) in relation to any agreement an application for an order under section 40(2), 65(1), 124(1) or 149(2) is dismissed (except on technical grounds only), or
- (d) a declaration is made by the court under section 142(1) (refusal of enforcement order) as respects any regulated agreement,

section 106 shall apply to any security provided in relation to the agreement.

(4) Where subsection (3)(d) applies and the declaration relates to a part only of the regulated agreement, section 106 shall apply to the security only so far as it concerns that part.

(5) In the case of a cancelled agreement, the duty imposed on the debtor or hirer by section 71 or 72 shall not be enforceable before the creditor or owner has discharged any duty imposed on him by section 106 (as applied by subsection (3)(a)).

(6) If the security is provided in relation to a prospective agreement or transaction, the security shall be enforceable in relation to the agreement or transaction only after the time (if any) when the agreement is made; and until that time the person providing the security shall be entitled, by notice to the creditor or owner, to require that section 106 shall thereupon apply to the security.

(7) Where an indemnity is given in a case where the debtor or hirer is a minor, or is otherwise not of full capacity, the reference in subsection (1) to the extent to which his obligations would be enforced shall be read in relation to the indemnity as a reference to the extent to which they would be enforced if he were of full capacity.

(8) Subsections (1) to (3) also apply where a security is provided in relation to an actual or prospective linked transaction, and in that case—

(a) references to the agreement shall be read as references to the linked transaction, and

(b) references to the creditor or owner shall be read as references to any person (other than the debtor or hirer, or his relative) who is a party, or prospective party, to the linked transaction.

Pledges

114.—(1) At the time he receives the article, a person who takes any article in pawn under a regulated agreement shall give to the person from whom he receives it a receipt in the prescribed form (a " pawn-receipt ").

(2) A person who takes any article in pawn from an individual whom he knows to be, or who appears to be and is, a minor commits an offence.

(3) This section and sections 115 to 122 do not apply to—

(a) a pledge of documents of title, or

(b) a non-commercial agreement.

115. If the creditor under a regulated agreement to take any article in pawn fails to observe the requirements of sections 62 to 64 or 114(1) in relation to the agreement he commits an offence.

116.—(1) A pawn is redeemable at any time within six months after it was taken.

(2) Subject to subsection (1), the period within which a pawn is redeemable shall be the same as the period fixed by the parties for the duration of the credit secured by the pledge, or such longer period as they may agree.

(3) If the pawn is not redeemed by the end of the period laid down by subsections (1) and (2) (the " redemption period "), it nevertheless remains redeemable until it is realised by the pawnee under section 121 except where under section 120(1)(a)~ the property in it passes to the pawnee.

(4) No special charge shall be made for redemption of a pawn after the end of the redemption period, and charges in respect of the safe keeping of the pawn shall not be at a higher rate after the end of the redemption period than before.

117.—(1) On surrender of the pawn-receipt, and payment of the amount owing, at any time when the pawn is redeemable, the pawnee shall deliver the pawn to the bearer of the pawn receipt.

(2) Subsection (1) does not apply if the pawnee knows or has reasonable cause to suspect that the bearer of the pawn-receipt is neither the owner of the pawn nor authorised by the owner to redeem it.

(3) The pawnee is not liable to any person in tort or delict for delivering the pawn where subsection (1) applies, or refusing to deliver it where the person demanding delivery does not comply with subsection (1) or, by reason of subsection (2), subsection (1) does not apply.

118.—(1) A person (the "claimant") who is not in possession of the pawn-receipt but claims to be the owner of the pawn, or to be otherwise entitled or authorised to redeem it, may do so at any time when it is redeemable by tendering to the pawnee in place of the pawn-receipt—

(a) a statutory declaration made by the claimant in the prescribed form, and with the prescribed contents, or

(b) where the pawn is security for fixed-sum credit not exceeding £15 or running-account credit on which the credit limit does not exceed £15, and the pawnee agrees, a statement in writing in the prescribed form, and with the prescribed contents, signed by the claimant.

(2) On compliance by the claimant with subsection (1), section 117 shall apply as if the declaration or statement were the pawn-receipt, and the pawn-receipt itself shall become inoperative for the purposes of section 117.

119.—(1) If a person who has taken a pawn under a regulated agreement refuses without reasonable cause to allow the pawn to be redeemed, he commits an offence.

(2) On the conviction in England or Wales of a pawnee under subsection (1) where the offence does not amount to theft, section 28 (orders for restitution) of the Theft Act 1968, and any provision of the Theft Act 1968 relating to that section, shall apply as if the pawnee had been convicted of stealing the pawn.

(3) On the conviction in Northern Ireland of a pawnee **under** subsection (1) where the offence does not amount to theft, section 27 (orders for restitution) of the Theft Act (Northern Ireland) 1969, and any provision of the Theft Act (Northern Ireland) 1969 relating to that section, shall apply as if the pawnee had been convicted of stealing the pawn.

120.—(1) If at the end of the redemption period the pawn has not been redeemed—

(a) notwithstanding anything in section 113, the property in the pawn passes to the pawnee where the redemption period is six months and the pawn is security for fixed-sum credit not exceeding £15 or running account credit on which the credit limit does not exceed £15; or

(b) in any other case the pawn becomes realisable by the pawnee.

(2) Where the debtor or hirer is entitled to apply to the court for a time order under section 129, subsection (1) shall apply with the substitution, for " at the end of the redemption period " of " after the expiry of five days following the end of the redemption period".

121.—(1) When a pawn has become realisable by him, the pawnee may sell it, after giving to the pawnor (except in such cases as may be prescribed) not less than the prescribed period of notice of the intention to sell, indicating in the notice the asking price and such other particulars as may be prescribed.

(2) Within the prescribed period after the sale takes place, the pawnee shall give to the pawnor the prescribed information in writing as to the sale, its proceeds and expenses.

(3) Where the net proceeds of sale are not less than the sum which, if the pawn had been redeemed on the date of the sale, would have been payable for its redemption, the debt secured by the pawn is discharged and any surplus shall be paid by the pawnee to the pawnor.

(4) Where subsection (3) does not apply, the debt shall be treated as from the date of sale as equal to the amount by which the net proceeds of sale fall short of the sum which would have been payable for the redemption of the pawn on that date.

(5) In this section the " net proceeds of sale " is the amount realised (the " gross amount") less the expenses (if any) of the sale.

(6) If the pawnor alleges that the gross amount is less than the true market value of the pawn on the date of sale, it is for the pawnee to prove that he and any agents employed by him in the sale used reasonable care to ensure that the true market value was obtained, and if he fails to do so subsections (3) and (4) shall have effect as if the reference in subsection (5) to the gross amount were a reference to the true market value.

(7) If the pawnor alleges that the expenses of the sale were unreasonably high, it is for the pawnee to prove that they were reasonable, and if he fails to do so subsections (3) and (4) shall have effect as if the reference in subsection (5) to expenses were a reference to reasonable expenses.

122.—(1) As respects Scotland where—

(a) *a pawn is either—*

(i) an article which has been stolen, or

(ii) an article which has been obtained by fraud, and a person is convicted of any offence in relation to the theft or, as the case may be, the fraud; or

(b) a person is convicted of an offence under section 19(1),
the court by which that person is so convicted may order delivery of the pawn
to the owner or the person otherwise entitled thereto.

(2) A court making an order under subsection (1)(a) for delivery of a pawn may make
the order subject to such conditions as to payment of the debt secured by the pawn as
it thinks fit.

Negotiable instruments

123.—(1) A creditor or owner shall not take a negotiable instrument, other than a
bank note or cheque, in discharge of any sum payable—

(a) by the debtor or hirer under a regulated agreement, or

(b) by any person as surety in relation to the agreement.

(2) The creditor or owner shall not negotiate a cheque taken by him in discharge of a
sum payable as mentioned in subsection (1) except to a banker (within the meaning of
the Bills of Exchange Act 1882).

(3) The creditor or owner shall not take a negotiable instrument as security for the
discharge of any sum payable as mentioned in subsection (1).

(4) A person takes a negotiable instrument as security for the discharge of a sum if the
sum is intended to be paid in some other way, and the negotiable instrument is to
be presented for payment only if the sum is not paid in that way.

(5) This section does not apply where the regulated agreement is a non-commercial
agreement.

(6) The Secretary of State may by order provide that this section shall not apply
where the regulated agreement has a connection with a country outside the United
Kingdom.

124.—(1) After any contravention of section 123 has occurred in relation to a sum
payable as mentioned in section 123(1)(a), the agreement under which the sum is
payable is enforceable against the debtor or hirer on an order of the court only.

(2) After any contravention of section 123 has occurred in relation to a sum payable by
any surety, the security is enforceable on an order of the court only.

(3) Where an application for an order under subsection (2) is dismissed (except on
technical grounds only) section 106 shall apply to the security.

125.—(1) A person who takes a negotiable instrument in contravention of section
123(1) or (3) is not a holder in due course, and is not entitled to enforce the
instrument.

(2) Where a person negotiates a cheque in contravention of section 123(2), his
doing so constitutes a defect in his title within the meaning of the Bills of Exchange
Act 1882.

(3) If a person mentioned in section 123(1)(a) or (b) (" the protected person") becomes liable to a holder in due course of an instrument taken from the protected person in contravention of section 123(1) or (3), or taken from the protected person and negotiated in contravention of section 123(2), the creditor or owner shall indemnify the protected person in respect of that liability.

(4) Nothing in this Act affects the rights of the holder in due course of any negotiable instrument.

Land mortgages

126. A land mortgage securing a regulated agreement is enforceable (so far as provided in relation to the agreement) on an order of the court only.

PART IX

JUDICIAL CONTROL

Enforcement of certain regulated agreements and securities

127.—(1) In the case of an application for an enforcement order under—

- (a) section 65(1) (improperly executed agreements), or
- (b) section 105(7)(a) or (b) (improperly executed security instruments), or
- (c) section 111(2) (failure to serve copy of notice on surety), or
- (d) section 124(1) or (2) (taking of negotiable instrument in contravention of section 123),

the court shall dismiss the application if, but (subject to subsections (3) and (4)) only if, it considers it just to do so having regard to—

- (i) prejudice caused to any person by the contravention in question, and the degree of culpability for it; and
- (ii) the powers conferred on the court by subsection (2) and sections 135 and 136.

(2) If it appears to the court just to do so, it may in an enforcement order reduce or discharge any sum payable by the debtor or hirer, or any surety, so as to compensate him for prejudice suffered as a result of the contravention in question.

(3) The court shall not make an enforcement order under section 65(1) if section 61(1)(a) (signing of agreements) was not complied with unless a document (whether or not in the prescribed form and complying with regulations under section 60(1)) itself containing all the prescribed terms of the agreement was signed by the debtor or hirer (whether or not in the prescribed manner).

(4) The court shall not make an enforcement order under section 65(1) in the case of a cancellable agreement if—

(a) a provision of section 62 or 63 was not complied with, and the creditor or owner did not give a copy of the executed agreement, and of any other document referred to in it, to the debtor or hirer before the commencement of the proceedings in which the order is sought. or

(b) section 64(1) was not complied with.

(5) Where an enforcement order is made in a case to which subsection (3) applies, the order may direct that the regulated agreement is to have effect as if it did not include a term omitted from the document signed by the debtor or hirer.

128. The court shall make an order under section 86(2) if, but only if, the creditor or owner proves that he has been unable to satisfy himself that the present and future obligations of the debtor or hirer under the agreement are likely to be discharged.

Extension of time

129.—(1) If it appears to the court just to do so—

(a) on an application for an enforcement order; or

(b) on an application made by a debtor or hirer under this paragraph after service on him of—

(i) a default notice, or

(ii) a notice under section 76(1) or 98(1); or

(c) in an action brought by a creditor or owner to enforce a regulated agreement or any security, or recover possession of any goods or land to which a regulated agreement relates,

the court may make an order under this section (a "time order").

(2) A time order shall provide for one or both of the following, as the court considers just—

(a) the payment by the debtor or hirer or any surety of any sum owed under a regulated agreement or a security by such instalments, payable at such times, as the court, having regard to the means of the debtor or hirer and any surety, considers reasonable;

(b) the remedying by the debtor or hirer of any breach of a regulated agreement (other than non-payment of money) within such period as the court may specify..

130.—(1) Where in accordance with rules of court an offer to pay any sum by instalments is made by the debtor or hirer and accepted by the creditor or owner, the court may in accordance with rules of court make a time order under section 129(2)

(a) giving effect to the offer without hearing evidence of means.

(2) In the case of a hire-purchase or conditional sale agreement only, a time order under section 129(2)(a) may deal with sums which, although not payable by the debtor at the time the order is made, would if the agreement continued in force become payable under it subsequently.

- (3) A time order under section 129(2)(a) shall not be made where the regulated agreement is secured by a pledge if, by virtue of regulations made under section 76(5), 87(4) or 98(5), service of a notice is not necessary for enforcement of the pledge.
- (4) Where, following the making of a time order in relation to a regulated hire-purchase or conditional sale agreement or a regulated consumer hire agreement, the debtor or hirer is in possession of the goods, he shall be treated (except in the case of a debtor to whom the creditor's title has passed) as a bailee or (in Scotland) a custodian of the goods under the terms of the agreement, notwithstanding that the agreement has been terminated.
- (5) Without prejudice to anything done by the creditor or owner before the commencement of the period specified in a time order made under section 129(2)(b) (" the relevant period "),—
- (a) he shall not while the relevant period subsists take in relation to the agreement any action such as is mentioned in section 87(1);
- (b) where—
- (i) a provision of the agreement (" the secondary provision ") becomes operative only on breach of another provision of the agreement (" the primary provision "), and
- (ii) the time order provides for the remedying of such a breach of the primary provision within the relevant period,
- he shall not treat the secondary provision as operative before the end of that period;
- (c) if while the relevant period subsists the breach to which the order relates is remedied it shall be treated as not having occurred.
- (6) On the application of any person affected by a time order, the court may vary or revoke the order.

Protection of property pending proceedings

131. The court, on the application of the creditor or owner under a regulated agreement, may make such orders as it thinks just for protecting any property of the creditor or owner, or property subject to any security, from damage or depreciation pending the determination of any proceedings under this Act, including orders restricting or prohibiting use of the property or giving directions as to its custody.

Hire and hire-purchase etc. agreements

132.—(1) Where the owner under a regulated consumer hire agreement recovers possession of goods to which the agreement relates otherwise than by action, the hirer may apply to the court for an order that—

- (a) the whole or part of any sum paid by the hirer to the owner in respect of the goods shall be repaid, and
- (b) the obligation to pay the whole or part of any sum owed by the hirer to the owner in respect of the goods shall cease,

and if it appears to the court just to do so, having regard to the extent of the enjoyment of the goods by the hirer, the court shall grant the application in full or in part.

(2) Where in proceedings relating to a regulated consumer hire agreement the court makes an order for the delivery to the owner of goods to which the agreement relates the court may include in the order the like provision as may be made in an order under subsection (1).

133.—(1) If, in relation to a regulated hire-purchase or conditional sale agreement, it appears to the court just to do so—

- (a) on an application for an enforcement order or time order; or
- (b) in an action brought by the creditor to recover possession of goods to which the agreement relates, the court may—

- (i) make an order (a “ return order “) for the return to the creditor of goods to which the agreement relates;
- (ii) make an order (a “ transfer order “) for the transfer to the debtor of the creditor’s title to certain goods to which the agreement relates (“ the transferred goods”), and the return to the creditor of the remainder of the goods.

(2) In determining for the purposes of this section how much of the total price has been paid (“ the paid-up sum “), the court may—

- (a) treat any sum paid by the debtor, or owed by the creditor, in relation to the goods as part of the paid-up sum;
- (b) deduct any sum owed by the debtor in relation to the goods (otherwise than as part of the total price) from the paid-up sum,

and make corresponding reductions in amounts so owed.

(3) Where a transfer order is made, the transferred goods shall be such of the goods to which the agreement relates as the court thinks just; but a transfer order shall be made only where the paid-up sum exceeds the part of the total price referable to the transferred goods by an amount equal to at least one-third of the unpaid balance of the total price.

(4) Notwithstanding the making of a return order or transfer order, the debtor may at any time before the goods enter the possession of the creditor, on payment of the balance of the total price and the fulfilment of any other necessary conditions, claim the goods ordered to be returned to the creditor.

(5) When, in pursuance of a time order or under this section, the total price of goods under a regulated hire-purchase agreement or regulated conditional sale agreement is paid and any other necessary conditions are fulfilled, the creditor’s title to the goods vests in the debtor.

(6) If, in contravention of a return order or transfer order, any goods to which the order relates are not returned to the creditor, the court, on the application of the creditor, may—

- (a) revoke so much of the order as relates to those goods, and

(b) order the debtor to pay the creditor the unpaid portion of so much of the total price as is referable to those goods.

(7) For the purposes of this section, the part of the total price referable to any goods is the part assigned to those goods by the agreement or (if no such assignment is made) the part determined by the court to be reasonable.

134.—(1) Where goods are comprised in a regulated hire purchase agreement, regulated conditional sale agreement or regulated consumer hire agreement, and the creditor or owner—

(a) brings an action or makes an application to enforce a right to recover possession of the goods from the debtor or hirer, and

(b) proves that a demand for the delivery of the goods was included in the default notice under section 88(5), or that, after the right to recover possession of the goods accrued but before the action was begun or the application was made, he made a request in writing to the debtor or hirer to surrender the goods,

then, for the purposes of the claim of the creditor or owner to recover possession of the goods, the possession of them by the debtor or hirer shall be deemed to be adverse to the creditor or owner.

(2) In subsection (1) “ the debtor or hirer “ includes a person in possession of the goods at any time between the debtor’s or hirer’s death and the grant of probate or administration, or (in Scotland) confirmation.

(3) Nothing in this section affects a claim for damages for conversion or (in Scotland) for delict.

Supplemental provisions as to orders

135.—(1) If it considers it just to do so, the court may in an order made by it in relation to a regulated agreement include provisions—

(a) making the operation of any term of the order conditional on the doing of specified acts by any party to the proceedings;

(b) suspending the operation of any term of the order either—

(i) until such time as the court subsequently directs, or

(ii) until the occurrence of a specified act or omission.

(2) The court shall not suspend the operation of a term requiring the delivery up of goods by any person unless satisfied that the goods are in his possession or control.

(3) In the case of a consumer hire agreement, the court shall not so use its powers under subsection (1)(b) as to extend the period for which, under the terms of the agreement, the hirer is entitled to possession of the goods to which the agreement relates.

(4) On the application of any person affected by a provision included under subsection (1), the court may vary the provision.

136. The court may in an order made by it under this Act include such provision as it considers just for amending any agreement or security in consequence of a term of the order.

Extortionate credit bargains

137.—(1) If the court finds a credit bargain extortionate it may reopen the credit agreement so as to do justice between the parties.

(2) In this section and sections 138 to 140,—

(a) “ credit agreement “ means any agreement between an individual (the “ debtor “) and any other person (the “ creditor “) by which the creditor provides the debtor with credit of any amount, and

(b) “ credit bargain “—

(i) where no transaction other than the credit agreement is to be taken into account in computing the total charge for credit, means the credit agreement, or

(ii) where one or more other transactions are to be so taken into account, means the credit agreement and those other transactions, taken together.

138.—(1) A credit bargain is extortionate if it—

(a) requires the debtor or a relative of his to make payments (whether unconditionally, or on certain contingencies) which are grossly exorbitant, or

(b) otherwise grossly contravenes ordinary principles of fair dealing.

(2) In determining whether a credit bargain is extortionate, regard shall be had to such evidence as is adduced concerning—

(a) interest rates prevailing at the time it was made,

(b) the factors mentioned in subsection (3) to (5), and

(c) any other relevant considerations.

(3) Factors applicable under subsection (2) in relation to the debtor include—

(a) his age, experience, business capacity and state of health; and

(b) the degree to which, at the time of making the credit bargain, he was under financial pressure, and the nature of that pressure.

(4) Factors applicable under subsection (2) in relation to the creditor include—

(a) the degree of risk accepted by him, having regard to the value of any security provided;

(b) his relationship to the debtor; and

(c) whether or not a colourable cash price was quoted for any goods or services included in the credit bargain.

(5) Factors applicable under subsection (2) in relation to a linked transaction include the question how far the transaction was reasonably required for the protection of debtor or creditor, or was in the interest of the debtor.

139.—(1) A credit agreement may, if the court thinks just, be reopened on the ground that the credit bargain is extortionate—

- (a) on an application for the purpose made by the debtor or any surety to the High Court, county court or sheriff court; or
- (b) at the instance of the debtor or a surety in any proceedings to which the debtor and creditor are parties, being proceedings to enforce the credit agreement, any security relating to it, or any linked transaction; or
- (c) at the insistence of the debtor or a surety in other proceedings in any court where the amount paid or payable under the credit agreement is relevant.

(2) In reopening the agreement, the court may, for the purpose of relieving the debtor or a surety from payment of any sum in excess of that fairly due and reasonable, by order—

- (a) direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons,
- (b) set aside the whole or part of any obligation imposed on the debtor or a surety by the credit bargain or any related agreement,
- (c) require the creditor to repay the whole or part of any sum paid under the credit bargain or any related agreement by the debtor or a surety, whether paid to the creditor or any other person,
- (d) direct the return to the surety of any property provided for the purposes of the security, or
- (e) alter the terms of the credit agreement or any security instrument.

(3) An order may be made under subsection (2) notwithstanding that its effect is to place a burden on the creditor in respect of an advantage unfairly enjoyed by another person who is a party to a linked transaction.

(4) An order under subsection (2) shall not alter the effect of any judgement.

(5) In England and Wales an application under subsection (1)(a) shall be brought only in the county court in the case of—

- (a) a regulated agreement, or
- (b) an agreement (not being a regulated agreement) under which the creditor provides the debtor with fixed-sum credit not exceeding £750 or running-account credit on which the credit limit does not exceed £750.

(6) In Scotland an application under subsection (1)(a) may be brought in the sheriff court for the district in which the debtor or surety resides or carries on business.

(7) In Northern Ireland an application under subsection (1)(a) - may be brought in the county court in the case of—

- (a) a regulated agreement, or
- (b) an agreement (not being a regulated agreement) under which the creditor provides the debtor with fixed-sum credit not exceeding £300 or running-account credit on which the credit limit does not exceed £300.

140. Where the credit agreement is not a regulated agreement, expressions used in sections 137 to 139 which, apart from this section, apply only to regulated agreements, shall be construed as nearly as may be as if the credit agreement were a regulated agreement.

Miscellaneous

141.—(1) In England and Wales the county court shall have jurisdiction to hear and determine—

- (a) any action by the creditor or owner to enforce a regulated agreement or any security relating to it;
- (b) any action to enforce any linked transaction against the debtor or hirer or his relative, and such an action shall not be brought in any other court.

(2) Where an action or application is brought in the High Court which, by virtue of this Act, ought to have been brought in the county court it shall not be treated as improperly brought, but shall be transferred to the county court.

(3) In Scotland the sheriff court for the district in which the debtor or hirer resides or carries on business, or resided or carried on business at the date on which he last made a payment under the agreement, shall have jurisdiction to hear and determine any action falling within subsection (1) and such an action shall not be brought in any other court.

(4) In Northern Ireland the county court shall have jurisdiction to hear and determine any action or application falling within subsection (1).

(5) Except as may be provided by rules of court, all the parties to a regulated agreement, and any surety, shall be made parties to any proceedings relating to the agreement.

142.—(1) Where under any provision of this Act a thing can be done by a creditor or owner on an enforcement order only, and either—

- (a) the court dismisses (except on technical grounds only) an application for an enforcement order, or
- (b) where no such application has been made or such an application has been dismissed on technical grounds only, an interested party applies to the court for a declaration under this subsection

the court may if it thinks just make a declaration that the creditor or owner is not entitled to do that thing, and thereafter no application for an enforcement order in respect of it shall be entertained.

(2) Where—

- (a) a regulated agreement or linked transaction is cancelled under section 69(1), or becomes subject to section 69(2), or
- (b) a regulated agreement is terminated under section 91,

and an interested party applies to the court for a declaration under this subsection, the court may make a declaration. to that effect.

Northern Ireland

143. Without prejudice to any provision which may be made by rules of court made in relation to county courts in Northern Ireland such rules may provide—

- (a) that any action or application such as is mentioned in section 141(4) which is brought against the debtor or hirer in the county court may be brought in the county court for the division in which the debtor or hirer resided or carried on business at the date on which he last made a payment under the regulated agreement;
- (b) that an application by a debtor or hirer or any surety under section 129(1)(b), 132(1), 139(1)(a) or 142(1)(b) which is brought in the county court may be brought in the county court for the division in which the debtor, or, as the case may be, the hirer or surety resides or carries on business;
- (c) for service of process on persons outside Northern Ireland.

144. Any person dissatisfied—

- (a) with an order, whether adverse to him or in his favour, made by a county court in Northern Ireland in the exercise of any jurisdiction conferred by this Act, or
- (b) with the dismissal or refusal by such a county court of any action or application instituted by him under the provisions of this Act,

shall be entitled to appeal from the order or from the dismissal or refusal as if the order, dismissal or refusal had been made in exercise of the jurisdiction conferred by Part III of the County Courts Act (Northern Ireland) 1959 and the appeal brought under the County Court Appeals Act (Northern Ireland) 1964 and sections 2 (cases stated by county court judge) and 3 (cases stated by assize judge or High Court on appeal from county court) of the last-mentioned Act shall apply accordingly.

PART X

ANCILLARY CREDIT BUSINESSES

Definitions

145.—(1) An ancillary credit business is any business so far as it comprises or relates to—

- (a) credit brokerage,
- (b) debt-adjusting,
- (c) debt-counselling,
- (d) debt-collecting, or
- (e) the operation of a credit reference agency.

(2) Subject to section 146(5), credit brokerage is the effecting of introductions—

- (a) of individuals desiring to obtain credit—

- (i) to persons carrying on businesses to which this sub-paragraph applies, or

- (ii) in the case of an individual desiring to obtain credit to finance the acquisition or provision of a dwelling occupied or to be occupied by himself or his relative, to any person carrying on a business in the course of which he provides credit secured on land, or
- (b) of individuals desiring to obtain goods on hire to persons carrying on businesses to which this paragraph applies, or
- (c) of individuals desiring to obtain credit, or to obtain goods on hire, to other credit-brokers.

(3) Subsection (2)(a)(i) applies to—

- (a) a consumer credit business;
- (b) a business which comprises or relates to consumer credit agreements being, otherwise than by virtue of section 16(5)(a), exempt agreements;
- (c) a business which comprises or relates to unregulated agreements where—
 - (i) the proper law of the agreement is the law of a country outside the United Kingdom, and
 - (ii) if the proper law of the agreement were the law of a part of the United Kingdom it would be a regulated consumer credit agreement.

(4) Subsection (2)(b) applies to—

- (a) a consumer hire business;
- (b) a business which comprises or relates to unregulated agreements where—
 - (i) the proper law of the agreement is the law of a country outside the United Kingdom, and
 - (ii) if the proper law of the agreement were the law of a part of the United Kingdom it would be a regulated consumer hire agreement.

(5) Subject to section 146(6), debt-adjusting is, in relation to debts due under consumer credit agreements or consumer hire agreements,—

- (a) negotiating with the creditor or owner, on behalf of the debtor or hirer, terms for the discharge of a debt, or
- (b) taking over, in return for payments by the debtor or hirer, his obligation to discharge a debt, or
- (c) any similar activity concerned with the liquidation of a debt.

(6) Subject to section 146(6), debt-counselling is the giving of advice to debtors or hirers about the liquidation of debts due under consumer credit agreements or consumer hire agreements.

(7) Subject to section 146(6), debt-collecting is the taking of steps to procure payment of debts due under consumer credit agreements or consumer hire agreements.

(8) A credit reference agency is a person carrying on a business comprising the furnishing of persons with information relevant to the financial standing of individuals, being information collected by the agency for that purpose.

146.—(1) A barrister or advocate acting in that capacity is not to be treated as doing so in the course of any ancillary credit business.

(2) A solicitor engaging in contentious business (as defined in section 86(1) of the Solicitors Act 1957) is not to be treated as doing so in the course of any ancillary credit business.

(3) A solicitor within the meaning of the Solicitors (Scotland) Act 1933 engaging in business done in or for the purposes of proceedings before a court or before an arbiter is not to be treated as doing so in the course of any ancillary credit business.

(4) A solicitor in Northern Ireland engaging in business done, whether as solicitor or advocate, in or for the purposes of proceedings begun before a court (including the Lands Tribunal for Northern Ireland) or before an arbitrator appointed under the Arbitration Act (Northern Ireland) 1937, not being business contained in section 2 of the Probates and Letters of Administration Act (Ireland) 1857, is not to be treated as doing so in the course of any ancillary credit business.

(5) For the purposes of section 145(2), introductions effected by an individual by canvassing off trade premises either debtor creditor-supplier agreements falling within section 12(a) or regulated consumer hire agreements shall be disregarded if—

- (a) the introductions are not effected by him in the capacity of an employee, and
- (b) he does not by any other method effect introductions falling within section 145(2).

(6) It is not debt-adjusting, debt-counselling or debt-collecting for a person to do anything in relation to a debt arising under an agreement if—

- (a) he is the creditor or owner under the agreement, otherwise than by virtue of an assignment, or
- (b) he is the creditor or owner under the agreement by virtue of an assignment made in connection with the transfer to the assignee of any business other than a debt collecting business, or
- (c) he is the supplier in relation to the agreement, or
- (d) he is a credit-broker who has acquired the business of the person who was the supplier in relation to the agreement, or
- (e) he is a person prevented by subsection (5) from being treated as a credit-broker, and the agreement was made in consequence of an introduction (whether made by him or another person) which, under subsection (5), is to be disregarded.

Licensing

147.—(1) The provisions of Part III (except section 40) apply to an ancillary credit business as they apply to a consumer credit business.

(2) Without prejudice to the generality of section 26, regulations under that section (as applied by subsection (1)) may include provisions regulating the collection and dissemination of information by credit reference agencies.

148.—(1) An agreement for the services of a person carrying on an ancillary credit business (the “trader”), if made when the trader was unlicensed, is enforceable against the other party (the “customer”) only where the Director has made an order under subsection (2) which applies to the agreement.

(2) The trader or his successor in title may apply to the Director for an order that agreements within subsection (1) are to be treated as if made when the trader was licensed.

(3) Unless the Director determines to make an order under subsection (2) in accordance with the application, he shall, before determining the application, by notice—

(a) inform the trader, giving his reasons, that, as the case may be, he is minded to refuse the application, or to grant it in terms different from those applied for, describing them, and

(b) invite the trader to submit to the Director representations in support of his application in accordance with section 34.

(4) In determining whether or not to make an order under subsection (2) in respect of any period the Director shall consider, in addition to any other relevant factors,—

(a) how far, if at all, customers under agreements made by the trader during that period were prejudiced by the trader’s conduct,

(b) whether or not the Director would have been likely to grant a licence covering that period on an application by the trader, and

(c) the degree of culpability for the failure to obtain a licence.

(5) If the Director thinks fit, he may in an order under subsection (2)—

(a) limit the order to specified agreements, or agreements of a specified description or made at a specified time;

(b) make the order conditional on the doing of specified acts by the trader.

149.—(1) A regulated agreement made by a debtor or hirer who, for the purpose of making that agreement, was introduced to the creditor or owner by an unlicensed credit-broker is enforceable against the debtor or hirer only where—

(a) on the application of the credit-broker, the Director has made an order under section 148(2) in respect of a period including the time when the introduction was made, and the order does not (whether in general terms or specifically) exclude the application of this paragraph to the regulated agreement, or

(b) the Director has made an order under subsection (2) which applies to the agreement.

(2) Where during any period individuals were introduced to a person carrying on a consumer credit business or consumer hire business by an unlicensed credit-broker for the purpose of making regulated agreements with the person carrying on that business, that person or his successor in title may apply to the Director for an order that regulated agreements so made are to be treated as if the credit-broker had been licensed at the time of the introduction.

- (3) Unless the Director determines to make an order under subsection (2) in accordance with the application, he shall, before determining the application, by notice—
- (a) inform the applicant, giving his reasons, that, as the case may be, he is minded to refuse the application, or to grant it in terms different from those applied for, describing them, and
 - (b) invite the applicant to submit to the Director representations in support of his application in accordance with section 34.
- (4) In determining whether or not to make an order under subsection (2) the Director shall consider, in addition to any other relevant factor
- (a) how far, if at all, debtors or hirers under regulated agreements to which the application relates were prejudiced by the credit-broker's conduct, and
 - (b) the degree of culpability of the applicant in facilitating the carrying on by the credit-broker of his business when unlicensed.
- (5) If the Director thinks fit, he may in an order under subsection (2)—
- (a) limit the order to specified agreements, or agreements of a specified description or made at a specified time;
 - (b) make the order conditional on the doing of specified acts by the applicant.

150. Section 41 (as applied by section 147(1)) shall have effect as if the following entry were included in the table set out at the end—

<i>Determination</i>	<i>Appellant</i>
Refusal to make order under section 148(2) or accordance with terms of application.	The applicant.

Seeking business

- 151.**—(1) Sections 44 to 47 apply to an advertisement published for the purposes of a business of credit brokerage carried on by any person, whether it advertises the services of that person or the services of persons to whom he effects introductions, as they apply to an advertisement to which Part IV applies.
- (2) Sections 44, 46 and 47 apply to an advertisement, published for the purposes of a business carried on by the advertiser. indicating that he is willing to advise on debts, or engage in transactions concerned with the liquidation of debts, as they apply to an advertisement to which Part IV applies.
- (3) The Secretary of State may by order provide that an advertisement published for the purposes of a business of credit brokerage, debt adjusting or debt counselling shall not fall within subsection (1) or (2) if it is of a description specified in the order.

- (4) An advertisement does not fall within subsection (2) if it indicates that the advertiser is not willing to act in relation to consumer credit agreements and consumer hire agreements.
- (5) In subsections (1) and (3) “ credit brokerage “ includes the effecting of introductions of individuals desiring to obtain credit to any person carrying on a business in the course of which he provides credit secured on land.

152.—(1) Sections 52 to 54 apply to a business of credit brokerage, debt-adjusting or debt-counselling as they apply to a consumer credit business.

(2) In their application to a business of credit brokerage, sections 52 and 53 shall apply to the giving of quotations and information about the business of any person to whom the credit broker effects introductions as well as to the giving of quotations and information about his own business.

153.—(1) An individual (the “ canvasser “) canvasses off trade premises the services of a person carrying on an ancillary credit business if he solicits the entry of another individual (the “ consumer”) into an agreement for the provision to the consumer of those services by making oral representations to the consumer, or any other individual, during a visit by the canvasser to any place (not excluded by subsection (2)) where the consumer, or that other individual as the case may be, is, being a visit—

- (a) carried out for the purpose of making such oral representations to individuals who are at that place, but
- (b) not carried out in response to a request made on a previous occasion.

(2) A place is excluded from subsection (1) if it is a place where (whether on a permanent or temporary basis)—

- (a) the ancillary credit business is carried on, or
- (b) any business is carried on by the canvasser or the person whose employee or agent the canvasser is, or by the consumer.

154. It is an offence to canvass off trade premises the **services** of a person carrying on a business of credit-brokerage, debt adjusting or debt-counselling.

155.—(1) The excess over £1 of a fee or commission for his services charged by a credit-broker to an individual to whom this subsection applies shall cease to be payable or, as the case may be, shall be recoverable by the individual if the introduction does not result in his entering into a relevant agreement within the six months following the introduction (disregarding any agreement which is cancelled under section 69(1) or becomes subject to section 69(2)).

- (2) Subsection (1) applies to an individual who sought an introduction for a purpose which would have been fulfilled by his entry into—
- (a) a regulated agreement! or
 - (b) in the case of an individual such as is referred to in section 145(2)(a)(ii), an agreement for credit secured on land, or
 - (c) an agreement such as is referred to in section 145(3)(b) or © or (4)(b).

(3) An agreement is a relevant agreement for the purposes of subsection (1) in relation to an individual if it is an agreement such as is referred to in subsection (2) in relation to that individual.

(4) In the case of an individual desiring to obtain credit under a consumer credit agreement, any sum payable or paid by him to a credit-broker otherwise than as a fee or commission for the credit-broker's services shall for the purposes of subsection (1) be treated as such a fee or commission if it enters, or would enter, into the total charge for credit.

Entry into agreements

156. Regulations may make provision, in relation to agreements entered into in the course of a business of credit brokerage, debt-adjusting or debt-counselling, corresponding, with such modifications as the Secretary of State thinks fit, to the provision which is or may be made by or under sections 55, 60, 61, 62, 63, 65, 127, 179 or 180 in relation to agreements to which those sections apply.

Credit reference agencies

157.—(1) A creditor, owner or negotiator, within the prescribed period after receiving a request in writing to that effect from the debtor or hirer, shall give him notice of the name and address of any credit reference agency from which the creditor, owner or negotiator has, during the antecedent negotiations, applied for information about his financial standing.

(2) Subsection (1) does not apply to a request received more than 28 days after the termination of the antecedent negotiations, whether on the making of the regulated agreement or otherwise.

(3) If the creditor, owner or negotiator fails to comply with subsection (1) he commits an offence.

158.—(1) A credit reference agency, within the prescribed period after receiving,—

- (a) a request in writing to that effect from any individual (the "consumer"), and
- (b) such particulars as the agency may reasonably require to enable them to identify the file, and
- (c) a fee of 25 new pence,

shall give the consumer a copy of the file relating to him kept by the agency.

(2) When giving a copy of the file under subsection (1), the agency shall also give the consumer a statement in the prescribed form of his rights under section 159.

(3) If the agency does not keep a file relating to the consumer it shall give him notice of that fact, but need not return any money paid.

(4) If the agency contravenes any provision of this section it commits an offence.

(5) In this Act “ file”, in relation to an individual, means all the information about him kept by a credit reference agency, regardless of how the information is stored, and “ copy of the file”, as respects information not in plain English, means a transcript reduced into plain English.

159.—(1) A consumer given information under section 158 who considers that an entry in his file is incorrect, and that if it is not corrected he is likely to be prejudiced, may give notice to the agency requiring it either to remove the entry from the file or amend it.

(2) Within 28 days after receiving a notice under subsection (1), the agency shall by notice inform the consumer that it has—

- (a) removed the entry from the file, or
- (b) amended the entry, or
- (c) taken no action,

and if the notice states that the agency has amended the entry it shall include a copy of the file so far as it comprises the amended entry.

(3) Within 28 days after receiving a notice under subsection (2), or where no such notice was given, within 28 days after the expiry of the period mentioned in subsection (2), the consumer may, unless he has been informed by the agency that it has removed the entry from his file, serve a further notice on the agency requiring it to add to the file an accompanying notice of correction (not exceeding 200 words) drawn up by the consumer, and include a copy of it when furnishing information included in or based on that entry.

(4) Within 28 days after receiving a notice under subsection (3), the agency, unless it intends to apply to the Director under subsection (5), shall by notice inform the consumer that it has received the notice under subsection (3) and intends to comply with it.

(5) If—

- (a) the consumer has not received a notice under subsection (4) within the time required, or
- (b) it appears to the agency that it would be improper for it to publish a notice of correction because it is incorrect, or unjustly defames any person, or is frivolous or scandalous, or is for any other reason unsuitable,

the consumer or, as the case may be, the agency may, in the prescribed manner and on payment of the specified fee, apply to the Director, who may make such order on the application as he thinks fit.

(6) If a person to whom an order under this section is directed fails to comply with it within the period specified in the order he commits an offence.

160.—(1) The Director, on an application made by a credit reference agency, may direct that this section shall apply to the agency if he is satisfied—

- (a) that compliance with section 158 in the case of consumers who carry on a business would adversely

affect the service provided to its customers by the agency, and (b) that, having regard to the methods employed by the agency and to any other relevant factors, it is probable that consumers carrying on a business would not be prejudiced by the making of the direction.

(2) Where an agency to which this section applies receives a request, particulars and a fee under section 158(1) from a consumer who carries on a business, and section 158(3) does not apply, the agency, instead of complying with section 158, may elect to deal with the matter under the following subsections.

(3) Instead of giving the consumer a copy of the file, the agency shall within the prescribed period give notice to the consumer that it is proceeding under this section, and by notice give the consumer such information included in or based on entries in the file as the Director may direct, together with a statement in the prescribed form of the consumer's rights under subsections (4) and (5).

(4) If within 28 days after receiving the information given him under subsection (3), or such longer period as the Director may allow, the consumer— (a) gives notice to the Director that he is dissatisfied with the information, and (b) satisfies the Director that he has taken such steps in relation to the agency as may be reasonable with a view to removing the cause of his dissatisfaction, and © pays the Director the specified fee, the Director may direct the agency to give the Director a copy of the file, and the Director may disclose to the consumer such of the information on the file as the Director thinks fit.

(5) Section 159 applies with any necessary modifications to information given to the consumer under this section as it applies to information given under section 158.

(6) If an agency making an election under subsection (2) fails to comply with subsection (3) or (4) it commits an offence.

PART XI

ENFORCEMENT OF ACT

161.—(1) The following authorities (“ enforcement authorities “) have a duty to enforce this Act and regulations made under it—

- (a) the Director,
- (b) in Great Britain, the local weights and measures authority,
- (c) in Northern Ireland, the Department of Commerce for Northern Ireland.

(2) Where a local weights and measures authority in England or Wales propose to institute proceedings for an offence under this Act (other than an offence under section 162(6), 165(1) or (2) or 174(5)) it shall, as between the authority and the Director, be the duty of the authority to give the Director notice of the intended

proceedings, together with a summary of the facts on which the charges are to be founded, and postpone institution of the proceedings until either—

- (a) 28 days have expired since that notice was given, or
- (b) the Director has notified them of receipt of the notice and summary.

(3) Every local weights and measures authority shall, whenever the Director requires, report to him in such form and with such particulars as he requires on the exercise of their functions under this Act.

(4) Where a complaint is made to the Secretary of State that all or any of the functions of a local weights and measures authority under this Act are not being properly discharged in any area, or he is of the opinion that an investigation should be made relating to the proper discharge of those functions in any area, he may cause a local inquiry to be held, and section 250(2) to (5) of the Local Government Act 1972 (evidence and costs at local inquiries), but subsection (4) (costs of department) of that section only in a case where the Secretary of State so directs, shall apply as if the inquiry were held in pursuance of section 250(1) of that Act.

(5) The person holding an inquiry under subsection (4) shall make a written report of the results to the Secretary of State, who shall publish it together with such observations on it (if any) as he thinks fit.

(6) In the application of subsection (4) to Scotland, for the references to section 250(2) to (5) of the Local Government Act 1972, subsection (4) of that section and section 250(1) of that Act there shall be substituted respectively references to section 210(4) to (8) of the Local Government (Scotland) Act 1973, subsection (7) of that section and section 210(1) of that Act.

162.—(1) A duly authorised officer of an enforcement authority, at all reasonable hours and on production, if required, of his credentials, may—

(a) in order to ascertain whether a breach of any provision of or under this Act has been committed, inspect any goods and enter any premises (other than premises used only as a dwelling);

(b) if he has reasonable cause to suspect that a breach of any provision of or under this Act has been committed, in order to ascertain whether it has been committed, require any person—

(i) carrying on, or employed in connection with, a business to produce any books or documents relating to it; or

(ii) having control of any information relating to a business recorded otherwise than in a legible form to provide a document containing a legible reproduction of the whole or any part of the information,

and take copies of, or of any entry in, the books or documents;

(c) if he has reasonable cause to believe that a breach of any provision of or under this Act has been committed, seize and detain any goods in order to ascertain (by testing or otherwise) whether such a breach has been committed;

(d) seize and detain any goods, books or documents which he has reason to believe may be required as evidence in proceedings for an offence under this Act;

(e) for the purpose of exercising his powers under this subsection to seize goods, books or documents, but only if and to the extent that it is reasonably necessary for securing that the provisions of this Act and of any regulations made under it are duly observed, require any person having authority to do so to break open any container and, if that person does not comply, break it open himself.

(2) An officer seizing goods, books or documents in exercise of his powers under this section shall not do so without informing the person he seizes them from.

(3) If a justice of the peace, on sworn information in writing, or, in Scotland, a sheriff or a magistrate or justice of the peace, on evidence on oath,—

(a) is satisfied that there is reasonable ground to believe either—

(i) that any goods, books or documents which a duly authorised officer has power to inspect under this section are on any premises had their inspection is likely to disclose evidence of a breach of any provision of or under this Act; or

(ii) that a breach of any provision of or under this Act has been, is being or is about to be committed on any premises; and

(b) is also satisfied either—

(i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier; or

(ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to wait for his return,

the justice or, as the case may be, the sheriff or magistrate may by warrant under his hand, which shall continue in force for a period of one month, authorise an officer of an enforcement authority to enter the premises (by force if need be).

(4) An officer entering premises by virtue of this section may take such other persons and equipment with him as he thinks necessary; and on leaving premises entered by virtue of a warrant under subsection (3) shall, if they are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

(5) Regulations may provide that, in cases described by the regulations, an officer of a local weights and measures authority is not to be taken to be duly authorised for the purposes of this section unless he is authorised by the Director.

(6) A person who is not a duly authorised officer of an enforcement authority, but purports to act as such under this section, commits an offence.

(7) Nothing in this section compels a barrister, advocate or solicitor to produce a document containing a privileged communication made by or to him in that capacity or authorises the seizing of any such document in his possession.

163.—(1) Where, in exercising his powers under section 162, an officer of an enforcement authority seizes and detains goods and their owner suffers loss by reason of—

(a) that seizure, or

(b) the loss, damage or deterioration of the goods during detention, then, unless the owner is convicted of an offence under this Act committed in relation to the goods, the authority shall compensate him for the loss so suffered.

(2) Any dispute as to the right to or amount of any compensation under subsection (1) shall be determined by arbitration.

164.—(1) An enforcement authority may—

(a) make, or authorise any of their officers to make on their behalf, such purchases of goods; and

(b) authorise any of their officers to procure the provision of such services or facilities or to enter into such agreements or other transactions, as may appear to them expedient for determining whether any provisions made by or under this Act are being complied with.

(2) Any act done by an officer authorised to do it under subsection (1) shall be treated for the purposes of this Act as done by him as an individual on his own behalf.

(3) Any goods seized by an officer under this Act may be tested, and in the event of such a test he shall inform the person mentioned in section 162(2) of the test results.

(4) Where any test leads to proceedings under this Act, the enforcement authority shall—

(a) if the goods were purchased, inform the person they were purchased from of the test results, and

(b) allow any person against whom the proceedings are taken to have the goods tested on his behalf if it is reasonably practicable to do so.

165.—(1) Any person who—

(a) wilfully obstructs an officer of an enforcement authority acting in pursuance of this Act; or

(b) wilfully fails to comply with any requirement properly made to him by such an officer under section 162; or

(c) without reasonable cause fails to give such an officer (so acting) other assistance or information he may reasonably require in performing his functions under this Act,

commits an offence.

(2) If any person, in giving such information as is mentioned in subsection (1)(c), makes any statement which he knows to be false, he commits an offence.

(3) Nothing in this section requires a person to answer any question or give any information if to do so might incriminate that person or (where that person is married) the husband or wife of that person.

166.—Where a person is convicted of an offence or has a judgement given against him by or before any court in the United Kingdom and it appears to the court—

(a) having regard to the functions of the Director under this Act, that the conviction or judgement should be brought to the Director’s attention, and

(b) that it may not be brought to his attention unless arrangements for that purpose are made by the court,

the court may make such arrangements notwithstanding that the proceedings have been finally disposed of.

167.—(1) An offence under a provision of this Act specified in column 1 of Schedule 1 is triable in the mode or modes indicated in column 3, and on conviction is punishable as indicated in column 4 (where a period of time indicates the maximum term of imprisonment, and a monetary amount indicates the maximum fine, for the offence in question).

(2) A person who contravenes any regulations made under section 44, 52, 53, or 112, or made under section 26 by virtue of section 54, commits an offence.

168.—(1) In any proceedings for an offence under this Act it is a defence for the person charged to prove—

(a) that his act or omission was due to a mistake, or to reliance on information supplied to him, or to an act or omission by another person, or to an accident or some other cause beyond his control, and

(b) that he took all reasonable precautions and exercised all due diligence to avoid such an act or omission by himself or any person under his control.

(2) If in any case the defence provided by subsection (1) involves the allegation that the act or omission was due to an act or omission by another person or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice giving such information identifying or assisting in the identification of that other person as was then in his possession.

169. Where at any time a body corporate commits an offence under this Act with the consent or connivance of, or because of neglect by, any individual, the individual commits the like offence if at that time—

(a) he is a director, manager, secretary or similar officer of the body corporate, or

(b) he is purporting to act as such an officer, or

(c) the body corporate is managed by its members of whom he is one.

170.—(1) A breach of any requirement made (otherwise than by any court) by or under this Act shall incur no civil or criminal sanction as being such a breach, except to the extent (if any) expressly provided by or under this Act.

(2) In exercising his functions under this Act the Director may take account of any matter appearing to him to constitute a breach of a requirement made by or under this Act, whether or not any sanction for that breach is provided by or under This Act and, if it is so provided, whether or not proceedings have been brought in respect of the breach.

(3) Subsection (1) does not prevent the grant of an injunction, or the making of an order of certiorari, mandamus or prohibition or as respects Scotland the grant of an interdict or of an order under section 91 of the Court of Session Act 1868 (order for specific performance of statutory duty).

171.—(1) If an agreement contains a term signifying that in the opinion of the parties section 10(3)(b)(iii) does not apply to the agreement, it shall be taken not to apply unless the contrary is proved.

(2) It shall be assumed in any proceedings, unless the contrary is proved, that when a person initiated a transaction as mentioned in section 19(1)© he knew the principal agreement had been made, or contemplated that it might be made.

(3) Regulations under section 44 or 52 may make provision as to the onus of proof in any proceedings to enforce the regulations.

(4) In proceedings brought by the creditor under a credit token agreement—
(a) it is for the creditor to prove that the credit-token was lawfully supplied to the debtor, and was accepted by him, and
(b) if the debtor alleges that any use made of the credit token was not authorised by him, it is for the creditor to prove either—
(i) that the use was so authorised, or
(ii) that the use occurred before the creditor had been given notice under section 84(3).

(5) In proceedings under section 50(1) in respect of a document received by a minor at any school or other educational establishment for minors, it is for the person sending it to him at that establishment to prove that he did not know or suspect it to be such an establishment.

(6) In proceedings under section 119(1) it is for the pawnee to prove that he had reasonable cause to refuse to allow the pawn to be redeemed.

(7) If, in proceedings referred to in section 139(1), the debtor or any surety alleges that the credit bargain is extortionate it is for the creditor to prove the contrary.

172.—(1) A statement by a creditor or owner is binding on him if given under—
section 77(1),
section 78(1),
section 79(1),
section 97(1),

section 107(1)(c),
section 108(1)(c), or
section 109(1)(c).

- (2) Where a trader—
(a) gives a customer a notice in compliance with section 103(1)(b), or
(b) gives a customer a notice under section 103(1) asserting that the customer is not indebted to him under an agreement,

the notice is binding on the trader.

- (3) Where in proceedings before any court—
(a) it is sought to reply on a statement or notice given as mentioned in subsection (1) or (2), and
(b) the statement or notice is shown to be incorrect, the court may direct such relief (if any) to be given to the creditor or owner from the operation of subsection (1) or (2) as appears to the court to be just.

173.—(1) A term contained in a regulated agreement or linked transaction, or in any other agreement relating to an actual or prospective regulated agreement or linked transaction, is void if, and to the extent that, it is inconsistent with a provision for the protection of the debtor or hirer or his relative or any surety contained in this Act or in any regulation made under this Act.

(2) Where a provision specifies the duty or liability of the debtor or hirer or his relative or any surety in certain circumstances, a term is inconsistent with that provision if it purports to impose, directly or indirectly, an additional duty or liability on him in those circumstances.

(3) Notwithstanding subsection (1), a provision of this Act under which a thing may be done in relation to any person on an order of the court or the Director only shall not be taken to prevent its being done at any time with that person's consent given at that time, but the refusal of such consent shall not give rise to any liability.

PART XII

SUPPLEMENTAL

174.—(1) No information obtained under or by virtue of this Act about any individual shall be disclosed without his consent.

(2) No information obtained under or by virtue of this Act about any business shall be disclosed except, so long as the business continues to be carried on, with the consent of the person for the time being carrying it on.

(3) Subsections (1) and (2) do not apply to any disclosure of information made—
(a) for the purpose of facilitating the performance of any functions, under this Act, the Trade Descriptions Act 1968 or Part II or III or section 125 (annual and other reports of Director) of the Fair Trading Act 1973, of the Secretary of State, any other Minister, any enforcement authority or any Northern Ireland department, or

- (b) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings, or
- (c) for the purposes of any civil proceedings brought under or by virtue of this Act or under Part III of the Fair Trading Act 1973.

(4) Nothing in subsections (1) and (2) shall be construed—

- (a) as limiting the particulars which may be entered in the register; or
- (b) as applying to any information which has been made public as part of the register.

(5) Any person who discloses information in contravention of this section commits an offence.

175. Where under this Act a person is deemed to receive a notice or payment as agent of the creditor or owner under a regulated agreement, he shall be deemed to be under a contractual duty to the creditor or owner to transmit the notice, or remit the payment, to him forthwith.

176.—(1) A document to be served under this Act by one person (“ the server “) on another person (“ the subject “) is to be treated as properly served on the subject if dealt with as mentioned in the following subsections.

(2) The document may be delivered or sent by post to the subject, or addressed to him by name and left at his proper address.

(3) For the purposes of this Act, a document sent by post to, or left at, the address last known to the server as the address of a person shall be treated as sent by post to, or left at, his proper address.

(4) Where the document is to be served on the subject as being the person having any interest in land, and it is not practicable after reasonable inquiry to ascertain the subject’s name or address, the document may be served by—

- (a) addressing it to the subject by the description of the person having that interest in the land (naming it), and
- (b) delivering the document to some responsible person on the land or affixing it, or a copy of it, in a conspicuous position on the land.

(5) Where a document to be served on the subject as being a debtor, hirer or surety, or as having any other capacity relevant for the purposes of this Act, is served at any time on another person who—

- (a) is the person last known to the server as having that capacity, but
- (b) before that time had ceased to have it,

the document shall be treated as having been served at that time on the subject.

(6) Anything done to a document in relation to a person who (whether to the knowledge of the server or not) has died shall be treated for the purposes of subsection (5) as service of the document on that person if it would have been so treated had he not died.

(7) Neither of the following enactments (which provide for the vesting of the estate of an intestate in the Probate Judge) shall be construed as authorising service on the Probate Judge of any document which is to be served under this Act—
section 9 of the Administration of Estates Act 1925;

section 3 of the Administration of Estates Act (Northern Ireland) 1955.

(8) References in the preceding subsections to the serving of a document on a person include the giving of the document to that person.

177.—(1) Nothing in this Act affects the rights of a proprietor of a registered charge (within the meaning of the Land Registration Act 1925), who—

(a) became the proprietor under a transfer for valuable consideration without notice of any defect in the title arising (apart from this section) by virtue of this Act,
or

(b) derives title from such a proprietor.

(2) Nothing in this Act affects the operation of section 104 of the Law of Property Act 1925 (protection of purchaser where mortgagee exercises power of sale).

(3) Subsection (1) does not apply to a proprietor carrying on a business of debt-collecting.

(4) Where, by virtue of subsection (1), a land mortgage is enforced which apart from this section would be treated as never having effect, the original creditor or owner shall be liable to indemnify the debtor or hirer against any loss thereby suffered by him.

(5) In the application of this section to Scotland for subsections (1) to (3) there shall be substituted the following subsections—

“ (1) Nothing in this Act affects the rights of a creditor in a heritable security who—

(a) became the creditor under a transfer for value without notice of any defect in the title arising (apart from this section) by virtue of this Act; or

(b) derives title from such a creditor.

(2) Nothing in this Act affects the operation of section 41 of the Conveyancing (Scotland) Act 1924 (protection of purchasers), or of that section as applied to standard securities by section 32 of the Conveyancing and Feudal Reform (Scotland) Act 1970.

(3) Subsection (1) does not apply to a creditor carrying on a business of debt-collecting.”.

(6) In the application of this section to Northern Ireland—

(a) any reference to the proprietor of a registered charge (within the meaning of the Land Registration Act 1925) shall be construed as a reference to the registered owner of a charge under the Local Registration of Title

(Ireland) Act 1891 or Part IV of the Land Registration Act (Northern Ireland) 1970, and

- (b) for the reference to section 104 of the Law of Property Act 1925 there shall be substituted a reference to section 21 of the Conveyancing and Law of Property Act 1881 and section 5 of the Conveyancing Act 1911.

178. The Secretary of State or the Department of Commerce for Northern Ireland may by order make such amendments or repeals of any provision of any local Act as appears to the Secretary of State or, as the case may be, the Department, necessary or expedient in consequence of the replacement by this Act of the enactments relating to pawnbrokers and money lenders.

Regulations, orders, etc.

179.—(1) Regulations may be made as to the form and content of credit cards, trading checks, receipts, vouchers and other documents or things issued by creditors, owners or suppliers under or in connection with regulated agreements or by other persons in connection with linked transactions, and may in particular—

- (a) require specified information to be included in the prescribed manner in documents, and other specified material to be excluded;
- (b) contain requirements to ensure that specified information is clearly brought to the attention of the debtor or hirer, or his relative, and that one part of a document is not given insufficient or excessive prominence compared with another.

(2) If a person issues any document or thing in contravention of regulations under subsection (1) then, as from the time of the contravention but without prejudice to anything done before it, this Act shall apply as if the regulated agreement had been improperly executed by reason of a contravention of regulations under section 60(1).

180.—(1) Regulations may be made as to the form and content of documents to be issued as copies of any executed agreement, security instrument or other document referred to in this Act, and may in particular—

- (a) require specified information to be included in the prescribed manner in any copy, and contain requirements to ensure that such information is clearly brought to the attention of a reader of the copy;
- (b) authorise the omission from a copy of certain material contained in the original, or the inclusion of such material in condensed form.

(2) A duty imposed by any provision of this Act (except section 35) to supply a copy of any document—

- (a) is not satisfied unless the copy supplied is in the prescribed form and conforms to the prescribed requirements;
- (b) is not infringed by the omission of any material, or its inclusion in condensed form, if that is authorised by regulations;

and references in this Act to copies shall be construed accordingly.

(3) Regulations may provide that a duty imposed by this Act to supply a copy of a document referred to in an unexecuted agreement or an executed agreement shall not apply to documents of a kind specified in the regulations.

181.—(1) The Secretary of State may by order made by statutory instrument amend, or further amend, any of the following provisions of this Act so as to reduce or increase a sum mentioned in that provision, namely, sections 8(), 15(1)©, 17(1), 43(3)(a), 70(), 75(3)(b), 77(1), 78(1), 79(1), 84(1), 101(7)(a), 107(1), 108(1), 109(1), 110(1), 118(1)(b), 120(1)(a), 139(5) and (7), 15(1) and 158(1).

(2) An order under subsection (1) amending section 8(1), 15(1)©, 17(1), 43(3)(a), 75(3)(b) or 139(5) or (7) shall be of no effect unless a draft of the order has been laid before and approved by each House of Parliament.

182.—(1) Any power of the Secretary of State to make regulations or orders under this Act, except the power conferred by sections 2(1)(a), 181 and 192 shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(2) Where a power to make regulations or orders is exercisable by the Secretary of State by virtue of this Act, regulations or orders made in the exercise of that power may—

(a) make different provision in relation to different cases or classes of case, and

(b) exclude certain cases or classes of case, and

(c) contain such transitional provisions as the Secretary of State thinks fit.

(3) Regulations may provide that specified expressions, when used as described by the regulations, are to be given the prescribed meaning, notwithstanding that another meaning is intended by the person using them.

(4) Any power conferred on the Secretary of State by this Act to make orders includes power to vary or revoke an order so made.

183. The Director may vary or revoke any determination or direction made or given by him under this Act (other than Part III, or Part III as applied by section 147).

Interpretation

184. (1) A person is an associate of an individual if that person is the individual's husband or wife, or is a relative, or the husband or wife of a relative, of the individual or of the individual's husband or wife.

(2) A person is an associate of any person with whom he is in partnership, and of the husband or wife or a relative of any individual with whom he is in partnership.

(3) A body corporate is an associate of another body corporate—

- (a) if the same person is a controller of both, or a person is a controller of one and persons who are his associates, or he and persons who are his associates, are controllers of the other; or
- (b) if a group of two or more persons is a controller of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.

(4) A body corporate is an associate of another person if that person is a controller of it or if that person and persons who are his associates together are controllers of it.

(5) In this section “ relative “ means brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, and references to a husband or wife include a former husband or wife and a reputed husband or wife; and for the purposes of this subsection a relationship shall be established as if any illegitimate child, stepchild or adopted child of a person had been a child born to him in wedlock.

185. (1) Where an actual or prospective regulated agreement has two or more debtors or hirers (not being a partnership or an unincorporated body of persons)—

- (a) anything required by or under this Act to be done to or in relation to the debtor or hirer shall be done to or in relation to each of them; and
- (b) anything done under this Act by or on behalf of one of them shall have effect as if done by or on behalf of all of them.

(2) Notwithstanding subsection (1)(a), where running account credit is provided to two or more debtors jointly, any of them may by a notice signed by him (a “ dispensing notice “) authorise the creditor not to comply in his case with section 78(4) (giving of periodical statement of account); and the dispensing notice shall have effect accordingly until revoked by a further notice given by the debtor to the creditor:

Provided that:

- (a) a dispensing notice shall not take effect if previous dispensing notices are operative in the case of the other debtor, or each of the other debtors, as the case may be ;
- (b) any dispensing notices operative in relation to an agreement shall cease to have effect if any of the debtors dies.

(3) Subsection (1)(b) does not apply for the purposes of section 61(1)(a) or 127(3).

(4) Where a regulated agreement has two or more debtors or hirers (not being a partnership or an unincorporated body of persons), section 86 applies to the death of any of them.

(5) An agreement for the provision of credit, or the bailment or (in Scotland) the hiring of goods, to two or more persons jointly where

- (a) one or more of those persons is an individual, and
- (b) one or more of them is a body corporate,

is a consumer credit agreement or consumer hire agreement if it would have been one had they all been individuals; and the body corporate or bodies corporate shall accordingly be included among the debtors or hirers under the agreement.

(6) Where subsection (5) applies, references in this Act to the signing of any document by the debtor or hirer shall be construed in relation to a body corporate as referring to a signing on behalf of the body corporate.

186. Where an actual or prospective regulated agreement has two or more creditors or owners, anything required by or under this Act to be done to, or in relation to, or by, the creditor or owner shall be effective if done to, or in relation to, or by, any one of them.

187. (1) A consumer credit agreement shall be treated as entered into under pre-existing arrangements between a creditor and a supplier if it is entered into in accordance with, or in furtherance of, arrangements previously made between persons mentioned in subsection 14)(a), (b) or (c).

(2) A consumer credit agreement shall be treated as entered into in contemplation of future arrangements between a creditor and a supplier if it is entered into in the expectation that arrangements will subsequently be made between persons mentioned in subsection (4)(a), (b) or (c) for the supply of cash, goods and services (or any of them) to be financed by the consumer credit agreement.

(3) Arrangements shall be disregarded for the purposes of subsection (1) or (2) if—

- (a) they are arrangements for the making, in specified circumstances, of payments to the supplier by the creditor, and
- (b) the creditor holds himself out as willing to make, in such circumstances, payments of the kind to suppliers generally.

(4) The persons referred to in subsections (1) and (2) are—

- (a) the creditor and the supplier;
- (b) one of them and an associate of the other's;
- (c) an associate of one and an associate of the other's.

(5) Where the creditor is an associate of the supplier's, the consumer credit agreement shall be treated, unless the contrary is proved, as entered into under pre-existing arrangements between the creditor and the supplier.

188. (1) Schedule 2 shall have effect for illustrating the use of terminology employed in this Act.

(2) The examples given in Schedule 2 are not exhaustive.

(3) In the case of conflict between Schedule 2 and any other provision of this Act, that other provision shall prevail.

(4) The Secretary of State may by order amend Schedule 2 by adding further examples or in any other way.

189. (1) In this Act, unless the context otherwise requires—

“ advertisement “ includes every form of advertising, whether in a publication, by television or radio, by display of notices, signs, labels, showcards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way, and references to the publishing of advertisements shall be construed accordingly;

“ advertiser “ in relation to an advertisement, means any person indicated by the advertisement as willing to enter into transactions to which the advertisement relates;

“ ancillary credit business “ has the meaning given by section 145(1);

“ antecedent negotiations” has the meaning given by section 56;

“ appeal period “ means the period beginning on the first day on which an appeal to the Secretary of State may be brought and ending on the last day on which it may be brought or, if it is brought, ending on its final determination, or abandonment;

“ assignment”, in relation to Scotland, means assignment;

“ associate “ shall be construed in accordance with section 184;

“ bill of sale “ has the meaning given by section 4 of the Bills of Sale Act 1878 or, for Northern Ireland, by section 4 of the Bills of Sale (Ireland) Act 1879;

“ building society” has the meaning given by section 1 of the Building Societies Act 1962, and includes a Northern Ireland society as defined by section 134(4) of that Act;

“ business “ includes profession or trade, and references to a business apply subject to subsection (2);

“ cancellable agreement” means a regulated agreement which, by virtue of section 67, may be cancelled by the debtor or hirer;

“ canvass “ shall be construed in accordance with sections 48 and 153;

“ cash “ includes money in any form;

“ charity “ means as respects England and Wales a charity registered under the Charities Act 1960 or an exempt charity (within the meaning of that Act), and as respects Scotland and Northern Ireland an institution or other organisation established for charitable purposes only (“ organisation “ including any persons administering a trust and “ charitable” being construed in the same way as if it were contained in the Income Tax Acts);

“ conditional sale agreement” means an agreement for the sale of goods or land under which the purchase price or part of it is payable by instalments, and the property in the goods or land is to remain in the seller (notwithstanding that the buyer is to be in

possession of the goods or land) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled;

“ consumer credit agreement “ has the meaning given by section 8, and includes a consumer credit agreement which is cancelled under section 69(1), or becomes subject to section 69(2), so far as the agreement remains in force;

“ consumer credit business “ means any business so far as it comprises or relates to the provision of credit under regulated consumer credit agreements;

“ consumer hire agreement “ has the meaning given by section 15;

“ consumer hire business “ means any business so far as it comprises or relates to the bailment or (in Scotland) the hiring of goods under regulated consumer hire agreements;

“ controller “, in relation to a body corporate, means a person—

- (a) in accordance with whose directions or instructions the directors of the body corporate or of another body corporate which is its controller (or any of them) are accustomed to act, or
- (b) who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the body corporate or of another body corporate which is its controller;

“ copy “ shall be construed in accordance with section 180;

“ costs “, in relation to Scotland, means expenses;

“ court “ means in relation to England and Wales the county court, in relation to Scotland the sheriff court and in relation to Northern Ireland the High Court or the county court;

“ credit” shall be construed in accordance with section 9;

“ credit broker” means a person carrying on a business of credit brokerage;

“ credit brokerage “ has the meaning given by section 145(2);

“ credit limit” has the meaning given by section 10(2);

“ creditor “ means the person providing credit under a consumer credit agreement or the person to whom his rights and duties under the agreement have passed by assignment or operation of law, and in relation to a prospective consumer credit agreement, includes the prospective creditor;

“ credit reference agency “ has the meaning given by section 145(8);

“ credit sale agreement “ means an agreement for the sale of goods, under which the purchase price or part of it is payable by instalments, but which is not a conditional sale agreement;

“ credit token “ has the meaning given by section 14(1);

“ credit token agreement “ means a regulated agreement for the provision of credit in connection with the use of a credit token;

“ debt adjusting “ has the meaning given by section 145(5);

“ debt collecting “ has the meaning given by section 145(7);

“ debt counselling” has the meaning given by section 145(6);

“ debtor “ means the individual receiving credit under a consumer credit agreement or the person to whom his rights and duties under the agreement have passed by assignment or operation of law, and in relation to a prospective consumer credit agreement includes the prospective debtor;

“ debtor creditor agreement” has the meaning given by section 13;

“ debtor-creditor-supplier agreement “ has the meaning given by section 12;

“ default notice “ has the meaning given by section 87(1);

“ deposit “ means any sum payable by a debtor or hirer by way of deposit or down payment, or credited or to be credited to him on account of any deposit or down payment, whether the sum is to be or has been paid to the creditor or owner or any other person, or is to be or has been discharged by a payment of money or a transfer or delivery of goods or by any other means;

“ Director “ means the Director General of Fair Trading;

“ electric line” has the meaning given by the Electric Lighting Act 1882 or, for Northern Ireland, the Electricity Supply (Northern Ireland) Order 1972;

“ embodies “ and related words shall be construed in accordance with subsection (4);

“ enforcement authority “ has the meaning given by section 161(1);

“ enforcement order” means an order under section 65(1), 105(7)(a) or (b), 111(2) or 124(1) or (2);

“ executed agreement” means a document, signed by or on behalf of the parties, embodying the terms of a regulated agreement, or such of them as have been reduced to writing;

“ exempt agreement “ means an agreement specified in or under section 16;
“ finance” means to finance wholly or partly, and “ financed “ and “refinanced” shall be construed accordingly;

“ file “ and “ copy of the file “ have the meanings given by section 158(5);

“ fixed sum credit “ has the meaning given by section 10(1)(b);

“friendly society “ means a society registered under the Friendly Societies Acts 1896 to 1971 or a society within the meaning of the Friendly Societies Act (Northern Ireland) 1970;

“future arrangements “ shall be construed in accordance with section 187;

“ general notice “ means a notice published by the Director at a time and in a manner appearing to him suitable for securing that the notice is seen within a reasonable time by persons likely to be affected by it;

“ give “ means deliver or send by post to;

“ goods “ has the meaning given by section 62(1) of the Sale of Goods Act 1893;

“ group licence “ has the meaning given by section 22(1)(b);

“ High Court “ means Her Majesty’s High Court of Justice, or the Court of Session in Scotland or the High Court of Justice in Northern Ireland;

“ hire-purchase agreement “ means an agreement, other than a conditional sale agreement, under which—

(a) goods are bailed or (in Scotland) hired in return for periodical payments by the person to whom they are bailed or hired, and

(b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs—

(i) the exercise of an option to purchase by that person,

(ii) the doing of any other specified act by any party to the agreement,

(iii) the happening of any other specified event;

“ hirer “ means the individual to whom goods are bailed or (in Scotland) hired under a consumer hire agreement, or the person to whom his rights and duties under the agreement have passed by assignment or operation of law, and in relation to a prospective consumer hire agreement includes the prospective hirer;

“ individual “ includes a partnership or other unincorporated body of persons not consisting entirely of bodies corporate;

“ installation “ means—

(a) the installing of any electric line or any gas or water pipe,

- (b) the fixing of goods to the premises where they are to be used, and the alteration of premises to enable goods to be used on them,
- (c) where it is reasonably necessary that goods should be constructed or erected on the premises where they are to be used, any work carried out for the purpose of constructing or erecting them on those premises;

“ insurance company “ has the meaning given by section 33(1) of the Insurance Companies Act 1958. and includes such a company as defined by section 72(1) of the Insurance Companies Act (Northern Ireland) 1968, but does not include a friendly society or an organisation of workers or organisation of employers;

“ judgement “ includes an order or decree made by any court;

“ land “, includes an interest in land, and in relation to Scotland includes heritable subjects of whatever description;

“ land improvement company “ means an improvement company as defined by section 7 of the Improvement of Land Act 1899;

“ land mortgage “ includes any security charged on land;

“ licence “ means a licence under Part III (including that Part as applied to ancillary credit businesses by section 147);

“ licensed “, in relation to any act, means authorised by a licence to do the act or cause or permit another person to do it;

“ licensee “, in the case of a group licence, includes any person covered by the licence;

“ linked transaction “ has the meaning given by section 19(1);

“ local authority “, in relation to England and Wales, means the Greater London Council, a county council, a London borough council, a district council, the Common Council of the City of London, or the Council of the Isles of Scilly, and in relation to Scotland, means a regional, islands or district council, and, in relation to Northern Ireland, means a district council;

“ minor”, in relation to Scotland, includes pupil;

4 modifying agreement “ has the meaning given by section 82(2);

“ mortgage “, in relation to Scotland, includes any heritable security;

s’ multiple agreement “ has the meaning given by section 18(1);

“ negotiator “ has the meaning given by section 56(1);

‘ non commercial agreement “ means a consumer credit agreement or a consumer hire agreement not made by the creditor or owner in the course of a business carried on by him ;

“ notice “ means notice in writing;

“ notice of cancellation “ has the meaning given by section 69(1);

“owner” means a person who bails or (in Scotland) hires out goods under a consumer hire agreement or the person to whom his rights and duties under the agreement have passed by assignment or operation of law, and in relation to a prospective consumer hire agreement, includes the prospective bailor or person from whom the goods are to be hired;

“pawn” means any article subject to a pledge;

“pawn receipt” has the meaning given by section 114;

“pawnee” and “pawnor” include any person to whom the rights and duties of the original pawnee or the original pawnor, as the case may be, have passed by assignment or operation of law;

“payment” includes tender;

“personal credit agreement” has the meaning given by section 8(1);

“pledge” means the pawnee’s rights over an article taken in pawn;

“prescribed” means prescribed by regulations made by the Secretary of State;

“pre-existing arrangements” shall be construed in accordance with section 187;

“principal agreement” has the meaning given by section 19(1);

“protected goods” has the meaning given by section 90(7);

“quotation” has the meaning given by section 52(1)(a);

“redemption period” has the meaning given by section 16(3);

“register” means the register kept by the Director under section 35;

“regulated agreement” means a consumer credit agreement, or consumer hire agreement, other than an exempt agreement, and “regulated” and “unregulated” shall be construed accordingly;

“regulations” means regulations made by the Secretary of State;

“relative”, except in section 184, means a person who is an associate by virtue of section 184(1);

“representation” includes any condition or warranty, and any other statement or undertaking, whether oral or in writing;

“restricted use credit agreement” and “restricted use credit” have the meanings given by section 11(1);

“rules of court”, in relation to Northern Ireland means, in relation to the High Court, rules made under section 7 of the Northern Ireland Act 1962, and, in relation to any other court, rules made by the authority having for the time being power to make rules regulating the practice and procedure in that court;

“ running account credit” shall be construed in accordance with section 10;

“ security “, in relation to an actual or prospective consumer credit agreement or consumer hire agreement, or any linked transaction, means a mortgage, charge, pledge, bond, debenture, indemnity, guarantee, bill, note or other right provided by the debtor or hirer, or at his request (express or implied), to secure the carrying out of the obligations of the debtor or hirer under the agreement;

“ security instrument” has the meaning given by section 105(2);

“ serve on “ means deliver or send by post to;

“ signed” shall be construed in accordance with subsection (3) ;

“ small agreement “ has the meaning given by section 17(1), and “ small “ in relation to an agreement within any category shall be construed accordingly;

“ specified fee “ shall be construed in accordance with section 2(4) and (5);

“ standard licence “ has the meaning given by section 22(1)(a);

“supplier” has the meaning given by section 11(1)(b) or 12© or 13© or, in relation to an agreement falling within section 11(1)(1), means the creditor, and includes a person to whom the rights and duties of a supplier (as so defined) have passed by assignment or operation of law, or (in relation to a prospective agreement) the prospective supplier;

“ surety” means the person by whom any security is provided, or the person to whom his rights and duties in relation to the security have passed by assignment or operation of law;

“ technical grounds “ shall be construed in accordance with subsection (5);

“ time order “ has the meaning given by section 129(1);

“ total charge for credit “ means a sum calculated in accordance with regulations under section 20(1);

“total price” means the total sum payable by the debtor under a hire purchase agreement or a conditional sale agreement, including any sum payable on the exercise of an option to purchase, but excluding any sum payable as a penalty or as compensation or damages for a breach of the agreement;

“ unexecuted agreement “ means a document embodying the terms of a prospective regulated agreement, or such of them as it is intended to reduce to writing;

“ unlicensed “ means without a licence, but applies only in relation to acts for which a licence is required;

“ unrestricted use credit agreement “ and “ unrestricted use credit” have the meanings given by section 11(2);

“ working day “ means any day other than—

- (a) Saturday or Sunday,
- (b) Christmas Day or Good Friday,

(c) a bank holiday within the meaning given by section 1 of the Banking and Financial Dealings Act 1971.

(2) 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.

(3) Any provision of this Act requiring a document to be signed is complied with by a body corporate if the document is sealed by that body.

This subsection does not apply to Scotland.

(4) A document embodies a provision if the provision is set out either in the document itself or in another document referred to in it.

(5) An application dismissed by the court or the Director shall, if the court or the Director (as the case may be) so certifies, be taken to be dismissed on technical grounds only.

(6) Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(7) In this Act, except where otherwise indicated—

(a) a reference to a numbered Part, section or Schedule is a reference to the Part or section of, or the Schedule to, this Act so numbered, and

(b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered, and

(c) a reference in a section, subsection or Schedule to a numbered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered.

190.(1) There shall be defrayed out of money provided by Parliament

(a) all expenses incurred by the Secretary of State in consequence of the provisions of this Act;

(b) any expenses incurred in consequence of those provisions by any other Minister of the Crown or Government department;

(c) any increase attributable to this Act in the sums payable out of money so provided under the Superannuation Act 1972 or the Fair Trading Act 1973.

(2) Any fees received by the Director under this Act shall be paid into the Consolidated Fund.

191.(1) The Director may make arrangements with the Department of Commerce for Northern Ireland for the Department, on his behalf,

- (a) to receive applications, notices and fees;
 - (b) to maintain, and make available for inspection and copying, copies of entries in the register; and
 - (c) to provide certified copies of entries in the register,
- to the extent that seems to him desirable for the convenience of persons in Northern Ireland.

(2) The Director shall give general notice of any arrangements made under subsection (1).

(3) Nothing in this Act shall authorise any Northern Ireland department to incur any expenses attributable to the provisions of this Act until provision has been made for those expenses to be defrayed out of money appropriated for the purpose.

(4) The power of the Department of Commerce for Northern Ireland to make an order under section 178 shall be exercisable by statutory rule for the purposes of the Statutory Rules Act (Northern Ireland) 1958, and any such order shall be subject to negative resolution within the meaning of the Interpretation Act (Northern Ireland) 1954 as if it were a statutory instrument within the meaning of that Act.

(5) In this Act " enactment " includes an enactment of the Parliament of Northern Ireland or the Northern Ireland Assembly, and " Act " shall be construed in a corresponding manner; and (without prejudice to section 189(6)) any reference in this Act to such an enactment shall include a reference to any enactment re-enacting it with or without modifications.

(6) Section 38 of the Interpretation Act 1889 (effect of repeals) shall have the same operation in relation to any repeal by this Act of an enactment of the Parliament of Northern Ireland as it has in relation to the repeal of an Act of the Parliament of the United Kingdom, references in that section of the Act of 1889 to Acts and enactments being construed accordingly.

192.(1) The provisions of Schedule 3 shall have effect for the purposes of this Act.

(2) The appointment of a day for the purposes of any provision of Schedule 3 shall be effected by an order of the Secretary of State made by statutory instrument; and any such order shall include a provision amending Schedule 3 so as to insert an express reference to the day appointed.

(3) Subject to subsection (4)

- (a) the enactments specified in Schedule 4 shall have effect subject to the amendments specified in that Schedule (being minor amendments

or amendments consequential on the preceding provisions of this Act), and

(b) the enactments specified in Schedule 5 are hereby repealed to the extent shown in column 3 of that Schedule.

(4) The Secretary of State shall by order made by statutory instrument provide for the coming into operation of the amendments contained in Schedule 4 and the repeals contained in Schedule 5, and those amendments and repeals shall have effect only as provided by an order so made.

193.(1) This Act may be cited as the Consumer Credit Act 1974.

(2) This Act extends to Northern Ireland.