

COMMERCE

Understanding the Consumer Credit Act 1974

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The supply to individuals (including unincorporated firms) of credit not exceeding £5,000 is comprehensively regulated throughout the United Kingdom by the Consumer Credit Act 1974. The Act replaces the previous enactments regulating hire purchase, moneylending and pawnbroking, and imposes a new licensing system on all who, by way of business, grant consumer credit. It thus concerns clearing banks, finance houses, mail order firms, retailers, service industries and other businesses providing the citizen with financial accommodation. The Act also extends to ancillary credit firms such as mortgage brokers, debt collectors and credit reference agencies.

The Consumer Credit Act will not be complete without the mass of regulations, orders and other subordinate instruments which have yet to be issued. Inevitably, the final structure will be complex and elaborate. Yet it has to be operated without undue difficulty by thousands of people forming a wide cross-section of our commercial life. The Act was drafted with that fact very much in mind. Statutory regulation inevitably adds to the costs of the traders it governs. Such costs are ultimately borne by the consumer and, since it is pointless to give him financial protection with one hand while dipping heavily into his pocket with the other, every effort has been made to keep them to the minimum.

One obvious way of keeping down costs is to make the legislation as comprehensible as possible, and we have tried hard to do this. Not all the explanation which is desirable can be given in the Act itself however, and what follows is an attempt to assist users of the Act by explaining the ways (some of them novel) in which the system of drafting is designed to aid comprehension.

The Act is divided into 12 parts. Part I deals with the system of administering the Act. This is to be done by the Director General of Fair Trading, with the Secretary of State for Prices and Consumer Protection as the responsible minister. A new system of wide ranging control cannot be set up without devising new concepts, and frequently this requires new terminology. Part II of the Act lays down the basic concepts, and where necessary gives them new names.

Credit and hire

The Act regulates credit in the widest sense, ie any form of financial accommodation. Money loans, credit sales and hire purchase are the main categories. Since the Act aims to be all-embracing, it also extends to hire transactions, since many of these are equivalent in substance, though not in form, to the giving of financial accommodation.

Object

Credit is not sought for its own sake, but for what it will buy-its object. The Act bases some important distinctions on this obvious fact. The object may be the purchase of land or goods, or the enjoyment of services such as transport or maintenance. Or it may simply be the general one of increasing the debtor's immediate purchasing power without reference to any particular use of it. An object separately recognised by the Act is that of the debtor who

refinances his liabilities by an arrangement under which a debt-adjuster pays off the various; debts in return for regular payments to him by the debtor.

Transaction

The Act refers to the deal by which the debtor attains a specific 1 object of the credit as a transaction which is financed by the j credit. The other party to this transaction is called the *supplier*.

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Sometimes, as in the case of a credit sale, the creditor and the supplier are the same person. Where this happens the same agreement often deals both with providing the credit and supplying its object.

Restricted-use credit

Regulated credit agreements are divided into categories according to whether or not the debtor is free to use the credit as he pleases. If a small shopkeeper asks for a bank loan to buy a delivery truck the bank manager may insist on paying the money direct to the seller of the truck. This will be a restricted-use credit. If on the other hand the bank manager trusts his customer and gives him an ordinary overdraft this will be an unrestricted-use credit.

Debtor-creditor-supplier agreements

Regulated credit agreements are also divided into debtor-creditor-supplier agreements and debtor-creditor agreements. The distinction is a simple one. If the creditor is also the supplier, or has a business connection with the supplier, it is a debtor-creditor-supplier agreement. If the creditor is not also the supplier, and has no business connection with the supplier, it is a debtor-creditor agreement; the creditor merely provides the credit, though he is not necessarily indifferent to how the debtor uses it.

Linked transactions

Where the transaction financed by a debtor-creditor-supplier agreement is effected by a separate agreement it is called a linked transaction, and in some respects (notably the debtor's right of cancellation) is treated by the Act in the same way as if it had been part of the credit agreement. The Act also aims to catch, as linked transactions, subsidiary agreements into which the debtor may have been persuaded to enter. Examples are maintenance and insurance agreements entered into on the purchase of consumer durables.

Credit-brokers

Anyone who, in the course of business, introduces an individual to a credit-grantor is called by the Act a credit-broker, even though this may not be his main business. Often a supplier will also be a credit-broker, as where a motor car salesman introduces his customer to a finance company.

Part III of the Act lays down the system under which it is necessary to obtain a licence from the Director General of Fair Trading in order to carry on a consumer credit business or a consumer hire business. Part IV regulates the methods by which people carrying on such businesses are permitted to advertise their services or in other ways seek custom.

Regulating individual credit and hire agreements

We next come to the five Parts of the Act which regulate individual credit and hire agreements. Part V deals with entry into such agreements, pt VI with matters arising during the currency of agreements, pt VII with default by the debtor or hirer and the termination of agreements generally, pt VIII with security and pt IX with control by the county court over the enforcement of agreements by the creditor or (in the case of hire agreements) the owner.

Part X applies to ancillary credit businesses, such as credit-brokerage, the provisions of the Act relating to licensing and the seeking of business. Part XI deals with enforcement of the

Act, and pt XII contains supplementary provisions. The area within which the Act operates is clearly marked out by this division into Parts, and the title of the Part is given in a shoulder note on every page—a new feature in legislation, which helps the user to find his way round the Act.

Within the Parts there is also a logical arrangement of the various sections, and powers to make regulations and other subordinate instruments are conferred specifically in each section where such power is needed.

The Act uses a great number of terms for which it has been found necessary to give definitions. The treatment of these follows a clear principle and it will be helpful if this is understood. Definitions in Acts of Parliament are of two kinds. First, there is the term which, without the definition, is virtually meaningless, eg 'debtor-creditor-supplier agreement'. Second, there is the term, such as 'advertisement' or 'business', which itself conveys the essential meaning—though for the sake of additional clarity it may be desirable to spell this out. The Act deals with expressions of the first kind by defining them in the first place where they are used, and also including the term in the comprehensive definition section (s 189). Expressions of the second type are only defined in the definition section, thus avoiding cluttering up the body of the Act with definitions not essential to the basic meaning. It follows that all the 117 terms defined by the Act are included in s 189. In the case of definitions in the first category mentioned above, the definition is repeated in s 189 if it is fairly brief; otherwise the reader is referred back to the section containing the definition.

Schedule of examples

It is often difficult to grasp the full meaning of an expression even though it is defined. Accordingly the Act contains the novel feature of a schedule (sched 2) of examples illustrating the application of 31 of the most important terms used by the Act. In the section introducing sched 2 (s 188) it is made clear that the examples are not exhaustive and that if it were thought that any of them was inconsistent with a provision of the Act that provision would prevail. Power is given to add further examples if thought desirable.

The Act creates 35 new offences, and the penalties for these are set out comprehensively in sched 1. This enables the user of the Act to see at once the range of activities now made subject to criminal sanction. Another set of provisions grouped together is those dealing with the onus of proof in various court proceedings. These are collected together in s 171.

Complaint is often made that it is not possible to tell from an Act of Parliament whether conduct regulated by it is subject to criminal or civil sanctions additional to those specified. To meet this criticism, s 170 provides that there are to be no civil or criminal sanctions other than those expressly set out in the Act, another novel feature.

Finally, there are the commencement and transitional provisions. These are given in sched 3, which operates on this principle. Except where otherwise mentioned in sched 3, the provisions of the Act came into effect on its passing, that is on 31 July. Provisions which did not come into force then (and that includes nearly all the operative provisions) will be brought into force later by commencement orders. As and when these commencement orders are made, the orders are required by s 192 to amend the relevant provision in sched 3 so as to incorporate the commencement date in the Act. This means that a user with a fully annotated text will be able to see from the Act itself the date when each provision came into operation, and will not need to search through statutory instruments to find it.

I hope that if the above points are borne in mind, practitioners will find the new system imposed by the Consumer Credit Act 1974 reasonably comprehensible.