



# Consumer Credit Act 1974

## 1974 CHAPTER 39

### PART IX

#### JUDICIAL CONTROL

##### *Enforcement of certain regulated agreements and securities*

#### **127 Enforcement orders in cases of infringement**

- (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—

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- (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 Enforcement orders on death of debtor or hirer**

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 Time orders**

- (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 Supplemental provisions about time orders**

- (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 Protection orders**

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 Financial relief for hirer**

- (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

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(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 Hire-purchase etc. agreements: special powers of court**

- (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 Evidence of adverse detention in hire purchase etc. cases**

- (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 Power to impose conditions, or suspend operation of order**

- (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 Power to vary agreements and securities**

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 Extortionate credit bargains**

- (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, take together.

**138 When bargains are extortionate**

- (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 Reopening of extortionate agreements**

- (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 instance 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 judgment.
- (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 Interpretation of sections 137 to 139**

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 Jurisdiction and parties**

- (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 Power to declare rights of parties**

- (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 Jurisdiction of county court in Northern Ireland**

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 Appeal from county court in Northern Ireland**

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.