



Consumer Credit Act 1974

1974 CHAPTER 39

PART VIII

SECURITY

General

105 Form and content of securities

- (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—

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- (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 Ineffective securities

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 Duty to give information to surety under fixed-sum credit agreement

- (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 refer.—
 - (i) the total sum paid under the agreement by the debtor,

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- (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)(c)(iii), he shall be taken to comply with that sub-paragraph if his statement under subsection (1)(c) 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 Duty to give information to surety under running-account credit agreement

- (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)(c)(iii), he shall be taken to comply with that sub-paragraph if his statement under subsection (1)(c) 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 Duty to give information to surety under consumer hire agreement

- (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 Duty to give information to debtor or hirer

- (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 Duty to give surety copy of default etc. notice

- (1) When a default notice or a notice under section 76(1) or 98(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 Realisation of securities

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 Act not to be evaded by use of security

- (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 Pawn-receipts

- (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 Penalty for failure to supply copies of pledge agreement etc.

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 Redemption period

- (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 Redemption procedure

- (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 Loss etc. of pawn-receipt

- (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 Unreasonable refusal to deliver pawn

- (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 Consequence of failure to redeem

- (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 Realisation of pawn

- (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 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 Order in Scotland to deliver pawn

- (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 119(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 Restrictions on taking and negotiating instruments

- (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 Consequences of breach of s. 123

- (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 Holders in due course

- (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.

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- (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 Enforcement of land mortgages

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.