



# Consumer Credit Act 1974

## 1974 CHAPTER 39

### PART VIII

#### SECURITY

##### *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 <sup>M1</sup>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 [<sup>F1</sup>Treasury] may by order provide that this section shall not apply where the regulated agreement has a connection with a country outside the United Kingdom.

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*Changes to legislation: Consumer Credit Act 1974, Cross Heading: Negotiable instruments is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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#### Textual Amendments

- F1** Word in s. 123(6) substituted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services Act 2012 \(Consumer Credit\) Order 2013 \(S.I. 2013/1882\)](#), arts. 1(1), [7\(10\)](#)

#### Marginal Citations

- M1** [1882 c. 61.](#)

### 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.
- (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 <sup>M2</sup>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.

#### Marginal Citations

- M2** [1882 c. 61.](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 25(2A)(b)(ia) inserted by [2010 c. 28 Sch. 2 para. 36](#)