

2007 No. 1168

CONSUMER CREDIT

The Consumer Credit (Exempt Agreements) Order 2007

<i>Made</i> - - - -	<i>31st March 2007</i>
<i>Laid before Parliament</i>	<i>4th April 2007</i>
<i>Coming into force</i> - -	<i>6th April 2008</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 16A, 16B(4) and 182(2) of the Consumer Credit Act 1974(a).

Citation and Commencement

1. This Order may be cited as the Consumer Credit (Exempt Agreements) Order 2007 and shall come into force on 6th April 2008.

Exemption for high net worth debtors and hirers

2. The Consumer Credit Act 1974 shall not regulate a consumer credit agreement or a consumer hire agreement where—

- (a) the debtor or hirer is a natural person;
- (b) the agreement includes a declaration made by him complying with article 3 and Schedule 1;
- (c) a statement of high net worth complying with articles 4 and 5 and Schedule 2 has been made in relation to him;
- (d) that statement was made during the period of one year ending with the day on which the agreement was made; and
- (e) before the agreement was made a copy of that statement was provided to the debtor or hirer and, if the statement was not made by the creditor or owner, to the creditor or owner.

3. A declaration for the purposes of article 2(b) shall—

- (a) be set out in the consumer credit agreement or consumer hire agreement no less prominently than other information in the agreement and be readily distinguishable from the background medium; and
- (b) be signed by the debtor or hirer, unless the agreement is so signed.

4.—(1) Subject to article 5, a statement of high net worth shall be signed by—

- (a) the creditor or owner; or
- (b) an accountant who is a member of any of the bodies listed in paragraph (2).

(a) 1974 c.39. Sections 16A and 16B were inserted by sections 3 and 4 of the Consumer Credit Act 2006 c.14.

- (2) The bodies referred to in paragraph (1)(b) are:
- (a) the Institute of Chartered Accountants in England and Wales;
 - (b) the Institute of Chartered Accountants of Scotland;
 - (c) the Institute of Chartered Accounts in Ireland;
 - (d) the Association of Chartered Certified Accountants;
 - (e) the Chartered Institute of Management Accountants;
 - (f) the Chartered Institute of Public Finance and Accountancy;
 - (g) a professional body for accountants established in a jurisdiction outside the United Kingdom.

5. A person who is—

- (a) the creditor or owner;
- (b) an employee or agent of the creditor or owner or a person who otherwise acts on behalf of the creditor or owner in relation to the consumer credit agreement or consumer hire agreement; or
- (c) an associate of the creditor or owner,

may only make a statement of high net worth if the creditor or owner is a person who has permission under Part 4 of the Financial Services and Markets Act 2000^(a) to accept deposits.

Declaration for exemption relating to businesses

6. A declaration for the purposes of section 16B(2) of the Consumer Credit Act 1974 shall—

- (a) comply with Schedule 3;
- (b) be set out in the consumer credit agreement or consumer hire agreement no less prominently than other information in the agreement and be readily distinguishable from the background medium; and
- (c) be signed by the debtor or hirer or where the debtor or hirer is a partnership or unincorporated body of persons be signed by or on behalf of the debtor or hirer, unless the agreement is so signed.

31st March 2007

Ian McCartney
Minister for Trade,
Investment and Foreign Affairs
Department of Trade and Industry

(a) 2000 c.8.

DECLARATION BY HIGH NET WORTH DEBTOR OR HIRER

The declaration for the purposes of article 2(b) must have the following form and content—

“Declaration by high net worth debtor or hirer

(section 16A(1)(b) Consumer Credit Act 1974)

I confirm that I have received a copy of the statement of high net worth made in relation to me for the purposes of section 16A(1)(c) of the Consumer Credit Act 1974.

I understand that by making this declaration I will not have the benefit of the protection and remedies that would be available to me under the Consumer Credit Act 1974 if this agreement were a regulated agreement under that Act.

I understand that this declaration does not affect the powers of the court to make an order under section 140B of the Consumer Credit Act 1974 in relation to a credit agreement where it determines that the relationship between the creditor and the debtor is unfair to the debtor.*

I am aware that if I am in any doubt as to the consequences of making this declaration I should seek independent legal advice.”.

**This sentence should be omitted in the case of a consumer hire agreement.*

STATEMENT OF HIGH NET WORTH

A statement of high net worth for the purposes of article 2(c) must have the following form and content—

“Statement of High Net Worth

(section 16A(1)(c) Consumer Credit Act 1974)

I/We* (insert full name) of (insert address and postcode).....

.....
confirm that I am/we are* a person qualified to make a statement of high net worth under article 4 of the Consumer Credit (Exempt Agreements) Order 2007, by virtue of the fact that.....

In my/our* opinion (insert full name of debtor or hirer).....
of (insert address and post code of debtor or hirer).....

.....
is an individual of high net worth because he/she*—

- (a) received during the previous financial year net income totalling an amount of not less than £150,000*; and/or*
- (b) had throughout that year net assets with a total value of not less than £500,000*.

(insert one of the following declarations as appropriate)

I/We* declare that I am/we are* not connected to [insert name of the creditor(s)/owner(s)] [any person who is a creditor/owner offering consumer credit agreements/consumer hire agreements*].

I/We* declare that I am/we are* [connected to] [insert name of creditor(s)/owner(s)] as I am/we are* [the creditor(s)/owner(s)/an employee of/an agent of the creditor(s)/owner(s)/a person who otherwise acts on behalf of the creditor(s)/owner(s) in relation to the consumer credit agreement/consumer hire agreement/an associate of the creditor(s)/owner(s)].*

I/We* declare that I am/we are*/[a/an] creditor(s)/owner(s) offering consumer credit agreements/consumer hire agreements/an employee of/an agent of/a person who otherwise acts on behalf of/an associate of creditor(s)/owner(s) offering consumer credit agreements/consumer hire agreements.*

In this statement—

- (a) “associate” shall be construed in accordance with section 184 of the Consumer Credit Act 1974;
- (b) “financial year” means a period of one year ending with 31st March;
- (c) “net assets” shall not include—
 - (i) the value of the debtor’s or hirer’s primary residence or any loan secured on that residence;
 - (ii) any rights of the debtor or hirer under a qualifying contract of insurance within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544); and

- (iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of the service of the debtor or hirer or on his death or retirement and to which he is (or his dependents are), or may be, entitled;
- (d) “net income” means the total income of the debtor or hirer from all sources reduced by the amount of income tax and national insurance contributions payable in respect of it; and
- (e) “previous financial year” means the financial year immediately preceding the financial year during which the statement is made.”.

**Delete as appropriate.*

DECLARATION FOR EXEMPTION RELATING TO BUSINESSES

A declaration for the purposes of article 6 must have the following form and content—

“Declaration for exemption relating to businesses

(sections 16B and 189(1) and (2) Consumer Credit Act 1974)

I am/We are* entering this agreement wholly or predominantly for the purposes of a business carried on by me/us* or intended to be carried by me/us.*

I/We* understand that I/we* will not have the benefit of the protection and remedies that would be available to me/us* under the Consumer Credit Act 1974 if this agreement were a regulated agreement under that Act.

I/We* understand that this declaration does not affect the powers of the court to make an order under section 140B of the Consumer Credit Act 1974 in relation to a credit agreement where it determines that the relationship between the creditor and the debtor is unfair to the debtor.**

I am/We are* aware that, if I am/we are* in any doubt as to the consequences of the agreement not being regulated by the Consumer Credit Act 1974 I/we should seek independent legal advice.”.

**Delete as appropriate.*

***This section should be omitted in the case of a consumer hire agreement.*

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the exemption of consumer credit agreements or consumer hire agreements from regulation under the Consumer Credit Act 1974 where the debtor or hirer has a high net worth. It also makes provision about declarations where agreements are entered into wholly or predominantly for the purposes of the debtor's or hirer's business.

Article 2 sets out the conditions for the exemption for a person of high net worth. These include the requirements that the debtor or hirer is a natural person and that the agreement must include a declaration by the debtor or hirer complying with article 3. The declaration must also have the form and content set out in Schedule 1.

Another condition for the exemption is that a statement of high net worth has been made in relation to the debtor or hirer. Articles 4 and 5 set out who is able to give the statement and Schedule 2 sets out the form and content the statement must have.

Section 16B of the Consumer Credit Act 1974 provides for the exemption from regulation under that Act of consumer credit agreements or consumer hire agreements, which are entered into wholly or predominantly for the purposes of the debtor's or hirer's business where the credit provided or hire payments made exceed £25,000. Section 16B(2) of the Act provides that there shall be a presumption that an agreement is entered into wholly or predominantly for the purposes of the debtor's or hirer's business if the agreement includes a declaration by the debtor or hirer to that effect. The Order provides that a declaration for the purposes of section 16B(2) must comply with the requirements in article 6 and have the form and content set out in Schedule 3.

A Regulatory Impact Assessment has been prepared in respect of this Order and may be viewed at <http://www.dti.gov.uk/consumers/consumer-finance/credit-act-2006/documents>. Impact was also considered as part of the Regulatory Impact Assessment, which accompanied the Consumer Credit Bill when it was introduced into the House of Commons in May 2005.

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