

---

STATUTORY INSTRUMENTS

---

**2010 No. 1010**

**The Consumer Credit (EU Directive) Regulations 2010**

**PART 2**

Amendments to primary legislation

**Amendments to Consumer Credit Act 1974**

2. The Consumer Credit Act 1974<sup>(1)</sup> is amended as specified in regulations 3 to 45.

**Pre-contractual explanations etc**

3. After section 55 (disclosure of information) insert—

**“Pre-contractual explanations etc**

**55A.—**(1) Before a regulated consumer credit agreement, other than an excluded agreement, is made, the creditor must—

- (a) provide the debtor with an adequate explanation of the matters referred to in subsection (2) in order to place him in a position enabling him to assess whether the agreement is adapted to his needs and his financial situation,
  - (b) advise the debtor—
    - (i) to consider the information which is required to be disclosed under section 55(1), and
    - (ii) where this information is disclosed in person to the debtor, that the debtor is able to take it away,
  - (c) provide the debtor with an opportunity to ask questions about the agreement, and
  - (d) advise the debtor how to ask the creditor for further information and explanation.
- (2) The matters referred to in subsection (1)(a) are—
- (a) the features of the agreement which may make the credit to be provided under the agreement unsuitable for particular types of use,
  - (b) how much the debtor will have to pay periodically and, where the amount can be determined, in total under the agreement,
  - (c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the debtor in a way which the debtor is unlikely to foresee,
  - (d) the principal consequences for the debtor arising from a failure to make payments under the agreement at the times required by the agreement including legal

---

<sup>(1)</sup> 1974 c.39.

proceedings and, where this is a possibility, repossession of the debtor's home, and

- (e) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised.

(3) The advice and explanation may be given orally or in writing except as provided in subsection (4).

(4) Where the explanation of the matters specified in paragraphs (a), (b) or (e) of subsection (2) is given orally or in person to a debtor, the explanation of the other matters specified in that paragraph, and the advice required to be given by subsection (1)(b), must be given orally to him.

(5) Subsections (1) to (4) do not apply to a creditor if a credit intermediary (see section 160A) has complied with those subsections in respect of the agreement.

(6) For the purposes of this section an agreement is an excluded agreement if it is—

- (a) an agreement under which the creditor provides the debtor with credit which exceeds £60, 260, or
- (b) an agreement secured on land.

(7) Where the regulated consumer credit agreement is an agreement under which a person takes an article in pawn—

- (a) the obligation in subsection (1)(a) only relates to the matters listed in paragraphs (d) and (e) of subsection (2), and
- (b) the obligations in subsection (1)(b) and (d) do not apply.”.

4. In section 185 (agreement with more than one debtor or hirer)(2), after subsection (1) insert—

“(1A) Notwithstanding subsection (1) above, subsection (4) of section 55A (pre-contractual explanations etc) does not require an oral explanation to be given to any debtor to whom an explanation of the matters referred to in subsection (2)(a), (b) and (e) of that section has not been given orally or in person.”.

#### **Assessment of creditworthiness**

5. After section 55A (pre-contractual explanations etc) as inserted by regulation 3, insert—

##### **“Assessment of creditworthiness**

**55B.**—(1) Before making a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the creditworthiness of the debtor.

(2) Before significantly increasing—

- (a) the amount of credit to be provided under a regulated consumer credit agreement, other than an excluded agreement, or
- (b) a credit limit for running-account credit under a regulated consumer credit agreement, other than an excluded agreement,

the creditor must undertake an assessment of the debtor's creditworthiness.

(3) A creditworthiness assessment must be based on sufficient information obtained from—

- (a) the debtor, where appropriate, and
- (b) a credit reference agency, where necessary.

- (4) For the purposes of this section an agreement is an excluded agreement if it is—
  - (a) an agreement secured on land, or
  - (b) an agreement under which a person takes an article in pawn.”.

#### **Copy of draft consumer credit agreement**

- 6. After section 55B (assessment of creditworthiness) as inserted by regulation 5, insert—

##### **“Copy of draft consumer credit agreement**

**55C.**—(1) Before a regulated consumer credit agreement, other than an excluded agreement, is made, the creditor must, if requested, give to the debtor without delay a copy of the prospective agreement (or such of its terms as have at that time been reduced to writing).

(2) Subsection (1) does not apply if at the time the request is made, the creditor is unwilling to proceed with the agreement.

(3) A breach of the duty imposed by subsection (1) is actionable as a breach of statutory duty.

- (4) For the purposes of this section an agreement is an excluded agreement if it is—

- (a) an agreement secured on land,
- (b) an agreement under which a person takes an article in pawn,
- (c) an agreement under which the creditor provides the debtor with credit which exceeds £60, 260, or
- (d) an agreement entered into by the debtor wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him.

(5) Subsections (2) to (5) of section 16B (declaration by the debtor as to the purposes of the agreement)

apply for the purposes of subsection (4)(d).”.

#### **Information to be included in agreements**

- 7. In section 60 (form and content of agreements), after subsection (4) insert—

“(5) An application may be made under subsection (3) only if it relates to—

- (a) a consumer credit agreement secured on land,
- (b) a consumer credit agreement under which a person takes an article in pawn,
- (c) a consumer credit agreement under which the creditor provides the debtor with credit which exceeds £60,260,
- (d) a consumer credit agreement entered into by the debtor wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him, or
- (e) a consumer hire agreement.

(6) Subsections (2) to (5) of section 16B (declaration by the debtor as to the purposes of the agreement) apply for the purposes of subsection (5)(d).”.

#### **Duty to supply copies**

- 8. After section 61 (signing of agreement), insert—

**“Duty to supply copy of executed consumer credit agreement**

**61A.**—(1) Where a regulated consumer credit agreement, other than an excluded agreement, has been made, the creditor must give a copy of the executed agreement, and any other document referred to in it, to the debtor.

(2) Subsection (1) does not apply if—

- (a) a copy of the unexecuted agreement (and of any other document referred to in it) has already been given to the debtor, and
- (b) the unexecuted agreement is in identical terms to the executed agreement.

(3) In a case referred to in subsection (2), the creditor must inform the debtor in writing—

- (a) that the agreement has been executed,
- (b) that the executed agreement is in identical terms to the unexecuted agreement a copy of which has already been given to the debtor, and
- (c) that the debtor has the right to receive a copy of the executed agreement if the debtor makes a request for it at any time before the end of the period referred to in section 66A(2).

(4) Where a request is made under subsection (3)(c) the creditor must give a copy of the executed agreement to the debtor without delay.

(5) If the requirements of this section are not observed, the agreement is not properly executed.

(6) For the purposes of this section, an agreement is an excluded agreement if it is—

- (a) a cancellable agreement, or
- (b) an agreement—
  - (i) secured on land,
  - (ii) under which the creditor provides the debtor with credit which exceeds £60,260, or
  - (iii) entered into by the debtor wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him,

unless the creditor or a credit intermediary has complied with or purported to comply with regulation 3(2) of the Consumer Credit (Disclosure of Information) Regulations 2010.

(7) Subsections (2) to (5) of section 16B (declaration by the debtor as to the purposes of the agreement) apply for the purposes of subsection (6)(b)(iii).”.

**9.** After section 61A (duty to supply copy of executed consumer credit agreement) inserted by regulation 8, insert—

**“Duty to supply copy of overdraft agreement**

**61B.**—(1) Where an authorised business overdraft agreement or an authorised non-business overdraft agreement has been made, a document containing the terms of the agreement must be given to the debtor.

(2) The creditor must provide the document referred to in subsection (1) to the debtor before or at the time the agreement is made unless—

- (a) the creditor has provided the debtor with the information referred to in regulation 10(3) of the Consumer Credit (Disclosure of Information) Regulations 2010, in which case it must be provided after the agreement is made,

(b) the creditor has provided the debtor with the information referred to in regulation 10(3)(c), (e), (f), (h) and (k) of those Regulations, in which case it must be provided immediately after the agreement is made, or

(c) the agreement is an agreement of a description referred to in regulation 10(4)(b) of those Regulations, in which case it must be provided immediately after the agreement is made.

(3) If the requirements of this section are not observed, the agreement is enforceable against the debtor on an order of the court only (and for these purposes a retaking of goods or land to which the agreement relates is an enforcement of the agreement).”.

**10.** In section 62 (duty to supply copy of unexecuted agreement)—

- (a) in the heading, after “unexecuted agreement” insert “: excluded agreements”;
- (b) in subsection (1) after “If” insert “in the case of a regulated agreement which is an excluded agreement”;
- (c) in subsection (3), after the words “regulated agreement”, insert “which is an excluded agreement”;
- (d) after subsection (3) insert—

“(4) In this section, “excluded agreement” has the same meaning as in section 61A.”.

**11.** In section 63 (duty to supply copy of executed agreement)—

- (a) in the heading, after “executed agreement” insert “: excluded agreements”;
- (b) in subsection (1) after “If” insert “in the case of a regulated agreement which is an excluded agreement”;
- (c) in subsection (5), after the words “regulated agreement”, insert “which is an excluded agreement”;
- (d) after subsection (5) insert—

“(6) In this section, “excluded agreement” has the same meaning as in section 61A.”.

**12.** In section 127 (enforcement orders in cases of infringement)(3) in subsection (1) after paragraph (za), as inserted by regulation 18, insert—

“(zb) section 61B(3) (duty to supply copy of overdraft agreement), or”.

**Withdrawal from consumer credit agreement**

**13.** After section 66 (acceptance of credit-tokens), insert—

“Withdrawal from certain agreements

**Withdrawal from consumer credit agreement**

**66A.**—(1) The debtor under a regulated consumer credit agreement, other than an excluded agreement, may withdraw from the agreement, without giving any reason, in accordance with this section.

(2) To withdraw from an agreement under this section the debtor must give oral or written notice of the withdrawal to the creditor before the end of the period of 14 days beginning with the relevant day.

(3) For the purposes of subsection (2) the relevant day is whichever is the latest of the following—

- (a) the day on which the agreement is made;
  - (b) where the creditor is required to inform the debtor of the credit limit under the agreement, the day on which the creditor first does so;
  - (c) in the case of an agreement to which section 61A (duty to supply copy of executed consumer credit agreement) applies, the day on which the debtor receives a copy of the agreement under that section or on which the debtor is informed as specified in subsection (3) of that section;
  - (d) in the case of an agreement to which section 63 (duty to supply copy of executed agreement: excluded agreements) applies, the day on which the debtor receives a copy of the agreement under that section.
- (4) Where oral notice under this section is given to the creditor it must be given in a manner specified in the agreement.
- (5) Where written notice under this section is given by facsimile transmission or electronically—
- (a) it must be sent to the number or electronic address specified for the purpose in the agreement, and
  - (b) where it is so sent, it is to be regarded as having been received by the creditor at the time it is sent (and section 176A does not apply).
- (6) Where written notice under this section is given in any other form—
- (a) it must be sent by post to, or left at, the postal address specified for the purpose in the agreement, and
  - (b) where it is sent by post to that address, it is to be regarded as having been received by the creditor at the time of posting (and section 176 does not apply).
- (7) Subject as follows, where the debtor withdraws from a regulated consumer credit agreement under this section—
- (a) the agreement shall be treated as if it had never been entered into, and
  - (b) where an ancillary service relating to the agreement is or is to be provided by the creditor, or by a third party on the basis of an agreement between the third party and the creditor, the ancillary service contract shall be treated as if it had never been entered into.
- (8) In the case referred to in subsection (7)(b) the creditor must without delay notify any third party of the fact that the debtor has withdrawn from the agreement.
- (9) Where the debtor withdraws from an agreement under this section—
- (a) the debtor must repay to the creditor any credit provided and the interest accrued on it (at the rate provided for under the agreement), but
  - (b) the debtor is not liable to pay to the creditor any compensation, fees or charges except any non-returnable charges paid by the creditor to a public administrative body.
- (10) An amount payable under subsection (9) must be paid without undue delay and no later than the end of the period of 30 days beginning with the day after the day on which the notice of withdrawal was given (and if not paid by the end of that period may be recovered by the creditor as a debt).
- (11) Where a regulated consumer credit agreement is a conditional sale, hire-purchase or credit-sale agreement and—
- (a) the debtor withdraws from the agreement under this section after the credit has been provided, and

(b) the sum payable under subsection (9)(a) is paid in full by the debtor, title to the goods purchased or supplied under the agreement is to pass to the debtor on the same terms as would have applied had the debtor not withdrawn from the agreement.

(12) In subsections (2), (4), (5), (6) and (9)(a) references to the creditor include a person specified by the creditor in the agreement.

(13) In subsection (7)(b) the reference to an ancillary service means a service that relates to the provision of credit under the agreement and includes in particular an insurance or payment protection policy.

(14) For the purposes of this section, an agreement is an excluded agreement if it is—

- (a) an agreement for credit exceeding £60, 260,
- (b) an agreement secured on land,
- (c) a restricted-use credit agreement to finance the purchase of land, or
- (d) an agreement for a bridging loan in connection with the purchase of land.”.

**14.** In section 67 (cancellable agreements)—

- (a) at the beginning insert “(1) Subject to subsection (2)”;
- (b) at the end insert “(2) This section does not apply where section 66A applies.”.

**15.** In section 82 (variation of agreements), after subsection (6) insert—

“(6A) If—

- (a) the earlier agreement is an agreement to which section 66A (right of withdrawal) applies, and
- (b) the modifying agreement is made within the period during which the debtor may give notice of withdrawal from the earlier agreement (see section 66A(2)),

then, whether or not the modifying agreement would, apart from this subsection, be an agreement to which section 66A applies, it shall be treated as such an agreement in respect of which notice may be given under subsection (2) of that section within the period referred to in paragraph (b) above.

(6B) Except as provided for under subsection (6A) section 66A does not apply to a modifying agreement.”.

## **Overdrafts etc**

**16.** In section 55 (disclosure of information) for subsection (2) substitute—

“(2) If regulations under subsection (1) are not complied with, the agreement is enforceable against the debtor or hirer on an order of the court only (and for these purposes a retaking of goods or land to which the agreement relates is an enforcement of the agreement).”.

**17.—**(1) Section 74 (exclusion of certain agreements from Part V) is amended as follows.

(2) For subsections (1) and (2) substitute—

“(1) Except as provided in subsections (1A) to (2), this Part does not apply to—

- (a) a non-commercial agreement,
- (b) a debtor-creditor agreement enabling the debtor to overdraw on a current account,
- (c) a debtor-creditor agreement to finance the making of such payments arising on, or connected with, the death of a person as may be prescribed, or
- (d) a small debtor-creditor-supplier agreement for restricted-use credit.

(1A) Section 56 (antecedent negotiations) applies to a non-commercial agreement.

(1B) Where an agreement that falls within subsection (1)(b) is an authorised business overdraft agreement the following provisions apply—

- (a) section 55B (assessment of creditworthiness);
- (b) section 56 (antecedent negotiations);
- (c) section 60 (regulations on form and content of agreements);
- (d) section 61B (duty to supply copy of overdraft agreement).

(1C) Where an agreement that falls within subsection (1)(b) is an authorised non-business overdraft agreement the following provisions apply—

- (a) section 55 (regulations on disclosure of information);
- (b) section 55B (assessment of creditworthiness);
- (c) section 55C (copy of draft consumer credit agreement);
- (d) section 56 (antecedent negotiations);
- (e) section 60 (regulations on form and content of agreements);
- (f) section 61B (duty to supply copy of overdraft agreement).

(1D) Where an agreement that falls within subsection (1)(b) would be an authorised non-business overdraft agreement but for the fact that the credit is not repayable on demand or within three months the following provisions apply—

- (a) section 55 (regulations on disclosure of information);
- (b) section 55A (adequate explanations);
- (c) section 55B (credit assessment);
- (d) section 55C (copy of draft consumer credit agreement);
- (e) section 56 (antecedent negotiations);
- (f) section 60 (regulations on form and content of agreements);
- (g) section 61 (signing of agreement);
- (h) section 61A (duty to supply copy of executed agreement);
- (i) section 66A (withdrawal from consumer credit agreement).

(1E) In the case of an agreement that falls within subsection (1)(b) but does not fall within subsection (1B), (1C) or (1D), section 56 (antecedent negotiations) applies.

(1F) The following provisions apply to a debtor-creditor agreement to finance the making of such payments arising on, or connected with, the death of a person as may be prescribed—

- (a) section 55 (regulations on disclosure of information);
- (b) section 55A (adequate explanations);
- (c) section 55B (assessment of creditworthiness);
- (d) section 55C (copy of draft consumer credit agreement);
- (e) section 56 (antecedent negotiations);
- (f) section 60 (regulations on form and content of agreements);
- (g) section 61 (signing of agreement);
- (h) section 61A (duty to supply copy of executed agreement);
- (i) section 66A (withdrawal from consumer credit agreement).



(2) The following provisions apply to a small debtor-creditor-supplier agreement for restricted-use credit—

- (a) section 55 (regulations on disclosure of information);
- (b) section 56 (antecedent negotiations);
- (c) section 66A (withdrawal from consumer credit agreement).”.

(3) In subsection (3) for “Subsection (1)(b) or (c) applies” substitute “Subsection (1)(c) applies”.

(4) Omit subsection (3A).

(5) In subsection (4) for “(1)(c) or (2)”, in both places, substitute “(1)(d)”.

**18.** In section 127 (enforcement orders in cases of infringement)(4) in subsection (1) before paragraph (a) insert—

“(za) section 55(2) (disclosure of information), or”

**19.—**(1) Section 189 (definitions)(5), is amended as follows.

(2) In subsection (1) after the definition of “associate” insert—

““authorised business overdraft agreement” means a debtor-creditor agreement which provides authorisation in advance for the debtor to overdraw on a current account, where the agreement is entered into by the debtor wholly or predominantly for the purposes of the debtor’s business (see subsection (2A));

“authorised non-business overdraft agreement” means a debtor-creditor agreement which provides authorisation in advance for the debtor to overdraw on a current account where—

- (a) the credit must be repaid on demand or within three months, and
- (b) the agreement is not entered into by the debtor wholly or predominantly for the purposes of the debtor’s business (see subsection (2A));”.

(3) After subsection (2) insert—

“(2A) For the purpose of the definitions of “authorised business overdraft agreement” and “authorised non-business overdraft agreement” subsections (2) to (5) of section 16B (declaration by the debtor as to the purposes of the agreement) apply.”.

**20.—**(1) Schedule 2, Part II (examples) is amended as follows.

(2) In Example 17 omit “if covered by a determination under section 74(3)”.

(3) In Example 18 omit “if covered by a direction under section 74(3)”.

## **Current account overdrafts**

**21.** After section 74 (exclusion of certain agreements from Part V) insert—

(4) Section 127(1) was amended the Consumer Credit Act 2006 (c.14), section 70 and Schedule 4.  
 (5) Section 189(1) was amended by the Banking Act 1987 (c.22), section 88, and the relevant definition inserted by that Act was revoked by S.I. 2001/3649, article 176(a). It was also amended by the Enterprise Act 2002 (c.40), Schedule 25, paragraph 6(38) and by the Consumer Credit Act 2006 (c.14), sections 25(5) and 51(6).

## “PART VA CURRENT ACCOUNT OVERDRAFTS

### **Information to be provided on a current account agreement**

**74A.**—(1) This section applies to a current account agreement where there is the possibility that the account-holder may be allowed to overdraw on the current account without a pre-arranged overdraft or exceed a pre-arranged overdraft limit.

(2) The current account agreement must include the following information at the time it is made—

- (a) the rate of interest charged on the amount by which an account-holder overdraws on the current account or exceeds the pre-arranged overdraft limit,
- (b) any conditions applicable to that rate,
- (c) any reference rate on which that rate is based,
- (d) information on any changes to the rate of interest (including the periods that the rate applies and any conditions or procedure applicable to changing that rate), and
- (e) any other charges payable by the debtor under the agreement (and the conditions under which those charges may be varied).

(3) The account-holder must be informed at least annually of the information in subsection (2).

(4) For the purposes of subsections (2) and (3) where different rates of interest are charged in different circumstances, the creditor must provide the information in subsection (2)(a) to (d) in respect of each rate.

(5) Subsection (3) does not apply where the overdraft or excess would be secured on land.

**22.** After section 74A (information to be provided on a current account agreement), as inserted by regulation 19, insert—

### **“Information to be provided on significant overdrawing without prior arrangement**

**74B.**—(1) Where—

- (a) the holder of a current account overdraws on the account without a pre-arranged overdraft, or exceeds a pre-arranged overdraft limit, for a period exceeding one month,
- (b) the amount of that overdraft or excess is significant throughout that period, and
- (c) the account-holder has not been informed in writing of the matters mentioned in subsection (2) within that period,

the account-holder must be informed in writing of those matters without delay.

(2) The matters referred to in subsection (1) are—

- (a) the fact that the current account is overdrawn or the overdraft limit has been exceeded,
- (b) the amount of that overdraft or excess,
- (c) the rate of interest charged on it, and
- (d) any other charges payable by the debtor in relation to it (including any penalties and any interest on those charges).

(3) For the purposes of subsection (1)(b) the amount of the overdraft or excess is to be treated as significant if—

- (a) the account-holder is liable to pay a charge for which he would not otherwise be liable,
- (b) the overdraft or excess is likely to have an adverse effect on the debtor's ability to receive further credit (including any effect on the information about the debtor held by a credit reference agency), or
- (c) it otherwise appears significant, having regard to all the circumstances.

(4) Where the overdraft or excess is secured on land, subsection (1)(a) is to be read as if the reference to one month were a reference to three months.”.

**23.** In section 77A (statements to be provided in relation to fixed-sum credit agreements) after subsection (8) insert—

“(9) This section does not apply where the holder of a current account overdraws on the account without a pre-arranged overdraft or exceeds a pre-arranged overdraft limit.”.

### **Charge cards**

**24.** In section 75 (liability of creditor for breaches by supplier)(6), in subsection (3)—

- (a) at the end of paragraph (a) omit “or”,
- (b) at the end of paragraph (b) insert “, or”, and
- (c) after paragraph (b) insert—
  - “(c) under a debtor-creditor-supplier agreement for running-account credit—
    - (i) which provides for the making of payments by the debtor in relation to specified periods which, in the case of an agreement which is not secured on land, do not exceed three months, and
    - (ii) which requires that the number of payments to be made by the debtor in repayments of the whole amount of the credit provided in each such period shall not exceed one.”.

### **Linked credit agreements**

**25.** After section 75, insert—

#### **“Further provision for liability of creditor for breaches by supplier**

**75A.**—(1) If the debtor under a linked credit agreement has a claim against the supplier in respect of a breach of contract the debtor may pursue that claim against the creditor where any of the conditions in subsection (2) are met.

- (2) The conditions in subsection (1) are—
  - (a) that the supplier cannot be traced,
  - (b) that the debtor has contacted the supplier but the supplier has not responded,
  - (c) that the supplier is insolvent, or
  - (d) that the debtor has taken reasonable steps to pursue his claim against the supplier but has not obtained satisfaction for his claim.
- (3) The steps referred to in subsection (2)(d) need not include litigation.

(4) For the purposes of subsection (2)(d) a debtor is to be deemed to have obtained satisfaction where he has accepted a replacement product or service or other compensation from the supplier in settlement of his claim.

(5) In this section “linked credit agreement” means a regulated consumer credit agreement which serves exclusively to finance an agreement for the supply of specific goods or the provision of a specific service and where—

- (a) the creditor uses the services of the supplier in connection with the preparation or making of the credit agreement, or
- (b) the specific goods or provision of a specific service are explicitly specified in the credit agreement.

(6) This section does not apply where—

- (a) the cash value of the goods or service is £30, 000 or less,
- (b) the linked credit agreement is for credit which exceeds £60, 260, or
- (c) the linked credit agreement is entered into by the debtor wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him.

(7) Subsections (2) to (5) of section 16B (declaration by the debtor as to the purposes of the agreement) apply for the purposes of subsection (6)(c).”.

#### **Statement of account**

26. After section 77A (statements to be provided in relation to fixed-sum agreements)(7), insert—

#### **“Fixed-sum credit agreement: statement of account to be provided on request**

**77B.**—(1) This section applies to a regulated consumer credit agreement—

- (a) which is for fixed-sum credit,
- (b) which is of fixed duration,
- (c) where the credit is repayable in instalments by the debtor, and
- (d) which is not an excluded agreement.

(2) Upon a request from the debtor, the creditor must as soon as reasonably practicable give to the debtor a statement in writing which complies with subsections (3) to (5).

(3) The statement must include a table showing the details of each instalment owing under the agreement as at the date of the request.

(4) Details to be provided under subsection (3) must include—

- (a) the date on which the instalment is due,
- (b) the amount of the instalment,
- (c) any conditions relating to payment of the instalment, and
- (d) a breakdown of the instalment showing how much of it is made up of capital repayment, interest payment and other charges.

(5) Where the rate of interest is variable or the charges under the agreement may be varied, the statement must also indicate clearly and concisely that the information in the table is valid only until the rate of interest or charges are varied.

(7) Section 77A was inserted by the Consumer Credit Act 2006 (c.14), section 6.

(6) The debtor may make a request under subsection (2) at any time that the agreement is in force unless a previous request has been made less than a month before and has been complied with.

(7) The debtor shall have no liability to pay any sum in connection with the preparation or the giving of a statement under this section.

(8) A breach of the duty imposed by this section is actionable as a breach of statutory duty.

(9) For the purposes of this section, an agreement is an excluded agreement if it is—

- (a) an agreement secured on land,
- (b) an agreement under which a person takes an article in pawn,
- (c) an agreement under which the creditor provides the debtor with credit which exceeds £60, 260, or
- (d) an agreement entered into by the debtor wholly or predominantly for the purpose of a business carried on, or intended to be carried on, by him.

(10) Subsections (2) to (5) of section 16B (declaration by the debtor as to the purposes of the agreement) apply for the purposes of subsection (9)(d).”.

### **Information on change of rate of interest and charges**

**27.** After section 78 (duty to give information to debtor under running-account credit agreement), insert—

#### **“Duty to give information to debtor on change of rate of interest**

**78A.—**(1) Where the rate of interest charged under a regulated consumer credit agreement, other than an excluded agreement, is to be varied, the creditor must inform the debtor in writing of the matters mentioned in subsection (3) before the variation can take effect.

(2) But subsection (1) does not apply where—

- (a) the agreement provides that the creditor is to inform the debtor in writing periodically of the matters mentioned in subsection (3) in relation to any variation, at such times as may be provided for in the agreement,
- (b) the agreement provides that the rate of interest is to vary according to a reference rate,
- (c) the reference rate is publicly available,
- (d) information about the reference rate is available on the premises of the creditor, and
- (e) the variation of the rate of interest results from a change to the reference rate.

(3) The matters referred to in subsections (1) and (2)(a) are—

- (a) the variation in the rate of interest,
- (b) the amount of any payments that are to be made after the variation has effect, if different, expressed as a sum of money where practicable, and
- (c) if the number or frequency of payments changes as a result of the variation, the new number or frequency.

(4) In the case of an agreement mentioned in subsection (5) this section applies as follows—

- (a) the obligation in subsection (1) only applies if the rate of interest increases, and
- (b) subsection (3) is to be read as if paragraphs (b) and (c) were omitted.
- (5) The agreements referred to in subsection (4) are—
  - (a) an authorised business overdraft agreement,
  - (b) an authorised non-business overdraft agreement, or
  - (c) an agreement which would be an authorised non-business overdraft agreement but for the fact that the credit is not repayable on demand or within three months.
- (6) For the purposes of this section an agreement is an excluded agreement if it is—
  - (a) a debtor-creditor agreement arising where the holder of a current account overdraws on the account without a pre-arranged overdraft or exceeds a pre-arranged overdraft limit, or
  - (b) an agreement secured on land.”.
- 28.** In section 82 (variation of agreements), after subsection (1) insert—
  - “(1A) Subsection (1) does not apply to a variation in the rate of interest charged under an agreement not secured on land (see section 78A).
  - (1B) Subsection (1) does not apply to a variation in the rate of interest charged under an agreement secured on land if—
    - (a) the agreement falls within subsection (1D), and
    - (b) the variation is a reduction in the rate.
  - (1C) Subsection (1) does not apply to a variation in any other charge under an agreement if—
    - (a) the agreement falls within subsection (1D), and
    - (b) the variation is a reduction in the charge.
  - (1D) The agreements referred to in subsections (1B) and (1C) are—
    - (a) an authorised business overdraft agreement,
    - (b) an authorised non-business overdraft agreement, or
    - (c) an agreement which would be an authorised non-business overdraft agreement but for the fact that the credit is not repayable on demand or within three months.
  - (1E) Subsection (1) does not apply to a debtor-creditor agreement arising where the holder of a current account overdraws on the account without a pre-arranged overdraft or exceeds a pre-arranged overdraft limit.”.

### **Early repayment**

- 29.** In section 82 (variation of agreements), after subsection (2A)(8), insert—
  - “(2B) Subsection (2) does not apply if the modifying agreement varies—
    - (a) the amount of the repayment to be made under the earlier agreement, or
    - (b) the duration of the agreement,
 as a result of the discharge of part of the debtor’s indebtedness under the earlier agreement by virtue of section 94(3).”.
- 30.** In section 94 (right to complete payments ahead of time)—

---

(8) Section 82(2A) was inserted by [S.I. 2005/2967](#).

(a) in subsection (1), after “under the agreement” where these words first occur, insert “and any amount which the creditor claims under section 95A(2)”;

(b) after subsection (2) insert—

“(3) The debtor under a regulated consumer credit agreement, other than an agreement secured on land, is entitled at any time to discharge part of his indebtedness by taking the steps in subsection (4).

(4) The steps referred to in subsection (3) are as follows—

(a) he provides notice to the creditor,

(b) he pays to the creditor some of the amount payable by him to the creditor under the agreement before the time fixed by the agreement, and

(c) he makes the payment—

(i) before the end of the period of 28 days beginning with the day following that on which notice under paragraph (a) was received by the creditor, or

(ii) on or before any later date specified in the notice.

(5) Where a debtor takes the steps in subsection (4) his indebtedness shall be discharged by an amount equal to the sum of the amount paid and any rebate allowable under section 95 less any amount which the creditor claims under section 95A(2).

(6) A notice—

(a) under subsection (1), other than a notice relating to a regulated consumer credit agreement secured on land, or

(b) under subsection (4)(a),

need not be in writing.”.

**31.** In section 95 (rebate on early settlement), in subsection (1), after the words “is discharged” insert “or is discharged in part”.

**32.** After section 95 (rebate on early settlement) insert—

**“Compensatory amount**

**95A.—**(1) This section applies where—

(a) a regulated consumer credit agreement, other than an agreement secured on land, provides for the rate of interest on the credit to be fixed for a period of time, and

(b) under section 94 the debtor discharges all or part of his indebtedness during that period.

(2) The creditor may claim an amount equal to the cost which the creditor has incurred as a result only of the debtor’s indebtedness being discharged during that period if—

(a) the amount of the payment under section 94 exceeds £8,000 or, where more than one such payment is made in any 12 month period, the total of those payments exceeds £8,000,

(b) the agreement is not a debtor-creditor agreement enabling the debtor to overdraw on a current account, and

(c) the amount of the payment under section 94 is not paid from the proceeds of a contract of payment protection insurance.

(3) The amount in subsection (2)—

(a) must be fair,

(b) must be objectively justified, and

- (c) must not exceed whichever is the higher of—
  - (i) the relevant percentage of the amount of the payment under section 94, and
  - (ii) the total amount of interest that would have been paid by the debtor under the agreement in the period from the date on which the debtor makes the payment under section 94 to the date fixed by the agreement for the discharge of the indebtedness of the debtor.

(4) In subsection (3)(c)(i) “relevant percentage” means—

- (a) 1%, where the period from the date on which the debtor makes the payment under section 94 to the date fixed by the agreement for the discharge of the indebtedness of the debtor is more than one year, or
- (b) 0.5%, where that period is equal to or less than one year.”.

**33.** In section 97 (duty to give information)—

- (a) in subsection (1), omit “in writing”;
- (b) after subsection (2) insert—
 

“(2A) A request under subsection (1) need not be in writing unless the agreement is secured on land.”.

**34.** After section 97 (duty to give information) insert—

**“Duty to give information on partial repayment**

**97A.**—(1) Where a debtor under a regulated consumer credit agreement—

- (a) makes a payment by virtue of which part of his indebtedness is discharged under section 94, and
- (b) at the same time or subsequently requests the creditor to give him a statement concerning the effect of the payment on the debtor’s indebtedness,

the creditor must give the statement to the debtor before the end of the period of seven working days beginning with the day following that on which the creditor receives the request.

(2) The statement shall be in writing and shall contain the following particulars—

- (a) a description of the agreement sufficient to identify it,
- (b) the name, postal address and, where appropriate, any other address of the creditor and the debtor,
- (c) where the creditor is claiming an amount under section 95A(2), that amount and the method used to determine it,
- (d) the amount of any rebate to which the debtor is entitled—
  - (i) under the agreement, or
  - (ii) by virtue of section 95 where that is higher,
- (e) where the amount of the rebate mentioned in paragraph (d)(ii) is given, a statement indicating that this amount has been calculated having regard to the Consumer Credit (Early Settlement) Regulations 2004,
- (f) where the debtor is not entitled to any rebate, a statement to this effect,
- (g) any change to—
  - (i) the number, timing or amount of repayments to be made under the agreement, or



- (ii) the duration of the agreement,  
which results from the partial discharge of the indebtedness of the debtor, and
- (h) the amount of the debtor's indebtedness remaining under the agreement at the date the creditor gives the statement.”.

**35.** In section 120 (consequence of failure to redeem), in subsection (1), in paragraph (a), for the words from “the redemption period” to the end substitute—

- “(i) the redemption period is six months,
- (ii) the pawn is security for fixed-sum credit not exceeding £75 or running-account credit on which the credit limit does not exceed £75, and
- (iii) the pawn was not immediately before the making of the regulated consumer credit agreement a pawn under another regulated consumer credit agreement in respect of which the debtor has discharged his indebtedness in part under section 94(3); or”.

### **Assignment of rights**

**36.** After section 82 (variation of agreements), insert—

#### **“Assignment of rights**

**82A.—**(1) Where rights of a creditor under a regulated consumer credit agreement are assigned to a third party, the assignee must arrange for notice of the assignment to be given to the debtor—

- (a) as soon as reasonably possible, or
  - (b) if, after the assignment, the arrangements for servicing the credit under the agreement do not change as far as the debtor is concerned, on or before the first occasion that they do.
- (2) This section does not apply to an agreement secured on land.”.

### **Open-end agreements**

**37.** In section 87 (need for a default notice), after subsection (4), insert—

“(5) Subsection (1)(d) does not apply in a case referred to in section 98A(4) (termination or suspension of debtor's right to draw on credit under open-end agreement).”.

**38.** After section 98 (duty to give notice of termination), insert—

#### **“Termination etc of open-end consumer credit agreements**

**98A.—**(1) The debtor under a regulated open-end consumer credit agreement, other than an excluded agreement, may by notice terminate the agreement, free of charge, at any time, subject to any period of notice not exceeding one month provided for by the agreement.

(2) Notice under subsection (1) need not be in writing unless the creditor so requires.

(3) Where a regulated open-end consumer credit agreement, other than an excluded agreement, provides for termination of the agreement by the creditor—

- (a) the termination must be by notice served on the debtor, and
- (b) the termination may not take effect until after the end of the period of two months, or such longer period as the agreement may provide, beginning with the day after the day on which notice is served.

(4) Where a regulated open-end consumer credit agreement, other than an excluded agreement, provides for termination or suspension by the creditor of the debtor's right to draw on credit—

- (a) to terminate or suspend the right to draw on credit the creditor must serve a notice on the debtor before the termination or suspension or, if that is not practicable, immediately afterwards,
- (b) the notice must give reasons for the termination or suspension, and
- (c) the reasons must be objectively justified.

(5) Subsection (4)(a) and (b) does not apply where giving the notice—

- (a) is prohibited by an EU obligation, or
- (b) would, or would be likely to, prejudice—
  - (i) the prevention or detection of crime,
  - (ii) the apprehension or prosecution of offenders, or
  - (iii) the administration of justice.

(6) An objectively justified reason under subsection (4)(c) may, for example, relate to—

- (a) the unauthorised or fraudulent use of credit, or
- (b) a significantly increased risk of the debtor being unable to fulfil his obligation to repay the credit.

(7) Subsections (1) and (3) do not affect any right to terminate an agreement for breach of contract.

(8) For the purposes of this section an agreement is an excluded agreement if it is—

- (a) an authorised non-business overdraft agreement,
- (b) an authorised business overdraft agreement,
- (c) a debtor-creditor agreement arising where the holder of a current account overdraws on the account without a pre-arranged overdraft or exceeds a pre-arranged overdraft limit, or
- (d) an agreement secured on land.”.

**39.** In section 189 (definitions)(9), in subsection (1) after the definition of “OFT”, insert—

““open-end” in relation to a consumer credit agreement, means of no fixed duration;”.

## Database access

**40.—**(1) Section 157 (duty to disclose name etc of agency) is amended as follows.

(2) Before subsection (1) insert—

“(A1) Where a creditor under a prospective regulated agreement, other than an excluded agreement, decides not to proceed with it on the basis of information obtained by the creditor from a credit reference agency, the creditor must, when informing the debtor of the decision—

- (a) inform the debtor that this decision has been reached on the basis of information from a credit reference agency, and

(9) Section 189(1) was amended by the Banking Act 1987 (c.22), section 88, and the relevant definition inserted by that Act was revoked by S.I. 2001/3649, article 176(a). It was also amended by the Enterprise Act 2002 (c.40), Schedule 25, paragraph 6(38) and by the Consumer Credit Act 2006 (c.14), sections 25(5) and 51(6).

- (b) provide the debtor with the particulars of the agency including its name, address and telephone number.”.
- (3) In subsection (1) insert at the beginning “In any other case,”.
- (4) After subsection (2) insert—
  - “(2A) A creditor is not required to disclose information under this section if such disclosure—
    - (a) contravenes the Data Protection Act 1998,
    - (b) is prohibited by any EU obligation,
    - (c) would create or be likely to create a serious risk that any person would be subject to violence or intimidation, or
    - (d) would, or would be likely to, prejudice—
      - (i) the prevention or detection of crime,
      - (ii) the apprehension or prosecution of offenders, or
      - (iii) the administration of justice.”.
- (5) In subsection (3) after “subsection” insert “(A1) or”.
- (6) After subsection (3) insert—
  - “(4) For the purposes of subsection (A1) an agreement is an excluded agreement if it is—
    - (a) a consumer hire agreement, or
    - (b) an agreement secured on land.”.

## **Credit intermediaries**

- 41.** After section 160 (alternative procedure for business consumers) insert—

### **“Credit intermediaries**

**160A.**—(1) In this section “credit intermediary” means a person who in the course of business—

- (a) carries out any of the activities specified in subsection (2) for a consideration that is or includes a financial consideration, and
  - (b) does not do so as a creditor.
- (2) The activities are—
  - (a) recommending or making available prospective regulated consumer credit agreements, other than agreements secured on land, to individuals,
  - (b) assisting individuals by undertaking other preparatory work in relation to such agreements, or
  - (c) entering into regulated consumer credit agreements, other than agreements secured on land, with individuals on behalf of creditors.
- (3) A credit intermediary must in—
  - (a) advertising of his relating to an activity in subsection (2) which is intended for individuals not acting the course of a business, or
  - (b) documentation of his relating to an activity in subsection (2) which is intended for individuals,

indicate the extent to which the intermediary is acting independently and in particular whether he works exclusively with a creditor.

(4) Where a credit intermediary carries on an activity specified in subsection (2) for a debtor, the intermediary must secure that any financial consideration payable to him by the debtor for the activity is disclosed to the debtor and then agreed in writing before the regulated consumer credit agreement is concluded.

(5) Where a credit intermediary carries on an activity specified in subsection (2) for a debtor, the intermediary must disclose to the creditor the financial consideration for the activity payable by the debtor if the annual percentage rate of the total charge for credit prescribed under section 20 is to be ascertained by the creditor.

(6) A credit intermediary who fails to comply with a requirement of this section commits an offence.

(7) An offence under this section is to be treated for the purposes of the definition of “relevant offence” in section 38(1) and (2) of the Regulatory Enforcement and Sanctions Act 2008 as an offence contained in this Act immediately before the day on which that Act was passed.”.

**42.** In section 189 (definitions)(10), in subsection (1) after the definition of “credit information services”, insert—

““credit intermediary” has the meaning given by section 160A;”.

**43.** In Schedule 1 (prosecution and punishment of offences) after the entry for section 160(6) insert—

“160A	Failure of credit intermediary to comply with section 160A(3), (4) or (5).	Summarily.	Level 4 on the standard scale.”
-------	--	------------	---------------------------------

#### **Amount of credit in running-account agreement**

**44.** In section 10(3) (running-account credit and fixed sum credit)—

- (a) for “paragraph (a) of section 16B(1)” substitute “any provision of this Act that specifies an amount of credit (except section 17(1)(a))”, and
- (b) for “that paragraph” substitute “that provision”.

**45.** In section 17 (small agreements), for subsection (2) substitute—

“(2) For the purposes of paragraph (a) of subsection (1), running-account credit shall be taken not to exceed the amount specified in that paragraph if the credit limit does not exceed that amount.”.

#### **Enterprise Act 2002**

**46.** In Schedule 13 to the Enterprise Act 2002 (listed Directives and Regulations)(11)—

- (a) omit paragraph 3 (Council Directive [87/102/EEC](#));
- (b) after paragraph 9C insert—

(10) Section 189(1) was amended by the Banking Act 1987 ([c.22](#)), section 88, and the relevant definition inserted by that Act was revoked by [S.I. 2001/3649](#), article 176(a). It was also amended by the Enterprise Act 2002 ([c.40](#)), Schedule 25, paragraph 6(38) and by the Consumer Credit Act 2006 ([c.14](#)), sections 25(5) and 51(6).

(11) [2002 c.40](#).

“**9D.** Directive [2008/48/EC](#) of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive [87/102/EEC](#).”.