

# Consumer Credit

R.G. Lawson

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**CONSUMER CREDIT**

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# *Consumer Credit*

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## *Preface*

The Consumer Credit Act received the Royal Assent on 31st July 1974. The report which caused it to come about was the product of a Committee on Consumer Credit appointed six years previously under the chairmanship of Lord Crowther. Its researches uncovered, to no one's particular surprise, a picture of great confusion and much anomaly. For instance, if a consumer wanted a loan to buy a motor car, he could go to a moneylender and borrow money in a transaction which would be governed by the Money-lenders Acts 1901-27; or he could buy the car through a finance house on hire-purchase, in which case the governing statute would be the Hire-Purchase Act 1965. Yet further ways of drumming up the money would be a loan from a pawnbroker, subject to the Pawnbrokers Acts 1872-1960, or the mortgage of goods already owned by the borrower, an approach which would be subject to the highly technical rules imposed by the Bills of Sale Acts 1878 and 1882.

When looking on all this, Lord Crowther and his Committee could not but fail to conclude that the law on consumer credit showed an absurd desire to dwell on the form by which cash was raised and ignoring the substance of the matter which was that, in one form or another, a person was quite simply borrowing money.

Hence, to the heart of the Committee's recommendation, which was that all forms of consumer credit should be subject to one and the same set of rules. The aim, ultimately, was to replace the entire corpus of existing consumer credit legislation and to replace it with a single Consumer Credit Act.

No one will deny the draftsman's achievement in the legislation which he ultimately produced. Equally, there will be few dissenters from the view that even a rationalised law on consumer credit remains a complex beast. If one has to pick on just one source of constant difficulty in coming to grips with the Act, it is the new terminology which it creates, principally the debtor-creditor-supplier relationship and its no less cumbrous brethren.

The Consumer Credit Act ranges far and wide, wider indeed than was intended; a crucial factor in explaining its dilatory application. Virtually the entire retail trade has come within its scope, as have such providers of services as mortgage brokers and estate agents. To this list, one need only add everyone throughout the land who lends money or extends credit, and that can cover your local milkman and corner greengrocer.

They and their professional bodies will greatly benefit from a simplified presentation of a law which so greatly affects them. But so too would those at the sharp end of advising, teaching and instructing. Lawyers, consumer advisers, accountants all need a handy account of the Act; nor any the less do trading standards officers whose unenviable task it is to enforce the legislation. To that end, this HANDBOOK is warmly commended to those studying for the Diploma of Trading Standards under the auspices of the Institute of Trading Standards Administration. It is, however, to the student body, earnest in its quest for graduation, that this HANDBOOK is mainly aimed. Courses on consumer credit now form a standard part of university and polytechnic syllabuses. The subject is difficult, yet still lends itself readily to a simplified approach. What follows, it is hoped, achieves this end.

(Thanks must go to HMSO for permission to reproduce extracts from the Consumer Credit (Credit Reference Agency) Regulations 1977, S.I. 1977 No. 329 as an Appendix to this book.)

February 1981

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## CHAPTER I

# The New Terminology

## INTRODUCTION

**1. The Consumer Credit Act 1974.** This created a terminology which is unique to the Act. In a novel provision, the Second Schedule to the Act contains twenty-four examples of this new terminology. The most important examples are given below (2-14).

## CONSUMER CREDIT AGREEMENTS

**2. Definition.** A consumer credit agreement is one where an individual is provided with credit not exceeding £5,000 (s. 8(2)). An "individual" is not just an ordinary person, but can also include partnerships and other unincorporated bodies which do not consist entirely of bodies corporate (s. 189). This means that credit provided to limited companies *cannot* constitute a consumer credit agreement.

**3. Regulated consumer credit agreements.** These are defined as consumer credit agreements which are *not* exempt agreements (s. 8(3)). Under s. 16, an agreement is exempt (and hence *not* a regulated consumer credit agreement) if:

(a) the credit is provided by a local authority or building society as a normal mortgage transaction;

(b) the credit is provided by bodies named in a statutory instrument, again, where it is provided as a normal mortgage transaction. The relevant instrument is: the Consumer Credit (Exempt Agreements) Order 1980 No. 52.

Certain other consumer credit agreements are regarded as exempt where the number of repayments does not exceed a certain number, or where the rate of interest does not exceed a certain level, or where the agreement has a connection with a country outside the U.K. These exemptions are contained in the

Consumer Credit (Exempt Agreements) Order 1980 No. 52. For exempt consumer credit agreements in general, *see* the booklet *Exemption of certain Consumer Credit Agreements under Section 16(1)*, issued by the Ministry of Consumer Affairs (Department of Trade) and available from HMSO.

**4. Running-account credit.** Running -account credit may be regarded as the same thing as revolving credit. The point about running-account credit is that repayments made by the debtor top up the credit to the original level, so that borrowing up to that level can begin again: (s. 10). The best examples of running-account credit are the bank overdraft, the credit card and the budget account. Normal trade credit, such as the weekly milk bill, also constitutes running-account credit.

**5. Fixed-sum credit.** Fixed-sum credit is defined (in the same section) as any form of credit which is not running-account credit. Fixed-sum credit may be regarded as credit provided in relation to a "one-off" transaction. A hire-purchase agreement is the best example. Others are the personal bank loan, loans from pawn-brokers, and cheque and voucher trading.

**6. Restricted-use credit.** The best way to regard restricted-use credit, the definition of which is laid down in s. 11, is to regard it as credit supplied by a creditor who controls the use to which the credit is to be put. This will obviously be the case where the credit is provided to finance a transaction between the creditor and the debtor. This *will* happen where a department store allows a customer to buy goods on credit terms direct from the store itself.

A credit agreement *may* also be a restricted-use agreement if credit is provided by A to finance a transaction between B and C, as happens where a finance house provides a personal loan so that an individual can purchase some items, such as a car, for example.

A credit agreement is also a restricted-use agreement where it refinances any existing indebtedness of the debtor's. This would apply in the case of a debtor who gets into financial difficulties and who makes an agreement to refinance his debts. This re-financing will often be with a debt-adjuster, who, in return for regular payments to him by the debtor, agrees to pay off his debts.



To be restricted-use credit, then, credit has to be supplied in such a way that

(a) the debtor is *not* free to use it as he pleases; and

(b) there are actual restrictions on the way it is used, as by the creditor sending the money direct to the supplier of the relevant goods.

The types of restricted-use credit most commonly encountered, that fulfil these conditions are hire-purchase agreements, mail-order credit, cheque and voucher trading, shop budget and option accounts and loans made for the purchase of goods or services where the loan is paid direct to the supplier.

**7. Unrestricted-use credit.** Section 11 defines unrestricted-use credit as any form of credit which is not restricted-use credit. An example would be a bank overdraft, since here the debtor is free to use the money as he wants. Other agreements within this category would be loans of money, the use of which is at the free disposition of the debtor (such as personal loans or loans from pawnbrokers), even though the purpose of the loan may be known to the creditor.

NOTE: Credit that is expressly provided to finance a particular transaction, but given in such a way that the debtor can use it as he chooses, is unrestricted-use credit. This is so notwithstanding that the debtor will be committing a breach of contract: s. 11(3).

**8. Debtor-creditor-supplier agreements.** This is the most cumbrous of all the new definitions provided in the Act. But it becomes much more simple than it appears if it is thought of as a "connected loan". In other words, an agreement is a debtor-creditor-supplier agreement if the creditor and the supplier are the same person or if they have some kind of business link (s. 12).

If a finance house buys goods from a dealer, and lets them out on hire-purchase to a debtor (the typical hire-purchase type of transaction) the agreement between the finance house and the dealer will be a debtor-creditor-supplier agreement because the finance house is both supplier (it bought the goods from the dealer) and creditor. The same thing, in a more elementary form, occurs when a dealer allows goods to be paid for on credit without the intervention of a third party.

The following is an example of a debtor-creditor-supplier



agreement where the creditor and the supplier are not the same person. A finance house agrees to finance all the customers of a particular dealer who have satisfactory references from him. The customer's cheque is forwarded straight from the finance house to the dealer. Since the parties have a business link, the agreement is a debtor-creditor-supplier agreement. It should be noted that a business link exists even though the financing arrangement is "in contemplation of future arrangements" between the creditor and the supplier.

These examples of debtor-creditor-supplier agreements are types of restricted-use credit (*see* 6 above). But s. 12, which defines the debtor-creditor-supplier agreement, states that one type of unrestricted-use credit transaction (*see* 7) can form a debtor-creditor-supplier agreement. This is where the agreement is made between a creditor and supplier and where:

- (a) there is already a business link between them; and
- (b) the creditor knows that the credit is to finance a transaction between the debtor and the supplier.

Suppose that a prospective debtor is directed by a retailer to a particular finance house for credit. This is done under existing arrangements between the supplier and creditor. If the finance house knows that the loan will be used to purchase goods from the dealer, the agreement is a debtor-creditor-supplier agreement, even though the loan is provided in such a way that the debtor can use it as he chooses.

**9. Debtor-creditor agreements.** In effect, every agreement which is not a debtor-creditor-supplier agreement is a debtor-creditor agreement. An example would be a loan to finance the purchase of goods where the creditor, at the debtor's request, pays the loan to the supplier, where there are no existing arrangements nor contemplated future arrangements between creditor and supplier. Other examples are the bank overdraft or the personal loan, where the money advanced is at the free disposition of the borrower.

## CONSUMER HIRE AGREEMENTS

**10. Regulated consumer hire agreement.** These, as defined in s. 15 of the Act, are agreements with an "individual" (*see* 2) where the rental does not exceed £5,000 and which is *capable* of lasting

more than three months (which means that a weekly agreement renewable indefinitely is within the definition). Straight hire-purchase agreements, where the hirer eventually becomes owner of the goods are not consumer hire agreements. As with regulated consumer credit agreements (*see* 3) a regulated consumer hire agreement is one that is not exempt.

Taking advantage of the power granted in s. 16 of the Act, the Secretary of State has provided (The Consumer Credit (Exempt Agreements) Order 1980 No. 52) that the following consumer hire agreements are exempt (i.e. not regulated):

(a) agreements where the owner is a statutory corporation supplying electricity, gas or water and the subject of the agreement is a meter or metering equipment used in connection with that supply; and

(b) agreements where the owner is British Telecom (or the Kingston-upon-Hull City Council) and the subject of the agreement is telecommunication equipment other than equipment which forms part of an internal telephone system.

**11. Small agreements.** A small agreement, as defined in s. 17, is a regulated consumer hire or consumer credit agreement where the credit or rental does not exceed £30. But note that hire-purchase and conditional sale agreements *never* count as small agreements; nor do agreements which are secured unless the security is by guarantee or indemnity.

**12. Multiple agreements.** It is always possible that an agreement contains or comprises a number of provisions which can be subdivided into separate categories. Thus, a householder may enter into one agreement for the cash purchase of detergent and for the hire-purchase of a washing-machine. That part of the agreement relating to the detergent is not within the Act since it is a cash transaction. But that part of the agreement dealing with the washing-machine is within the Act. What s. 18 says in this situation is that the provisions of the Act apply in full to that part of the agreement dealing with the washing-machine.

It is equally possible that one agreement will contain separate transactions coming within different parts of the Act. For instance, an agreement may provide for the hire of a television set and the hire-purchase of a music-centre. Section 18 provides that each part of the agreement is to be treated as a separate agreement.