

# The New Consumer Credit Act 2006

## A Brief Analysis of the Major Provisions

Sections	Covers	Provisions	Issues
2 – 5	Who falls within CCA	<p><b>Removal of Financial Limits</b></p> <p>The £25,000 limit will be removed for consumer credit and hire agreements entered into after the Consumer Credit Act 2006 comes into force.</p> <p>Exemptions are available for 'high net worth' debtors and hirers,<sup>1</sup> and for businesses.<sup>2</sup></p> <p><b>Partnerships</b></p> <p>Partnerships of more than three persons are not included within the definition of "individual" for the purposes of the Act.</p>	<p>System issues</p> <p>The half rule will apply to expensive cars on HP. Will the 'high net worth' exemption give protection here? Needs to be considered in practice as to get it you will need proof in a specified form (yet to be decided) from specified people (yet to be finalised but to include lawyers and accountants) and within other tolerances too long to set out here.</p> <p>The business exemption will also help with commercial assets but the agreement will need to have certification on these points</p> <p>Obtaining proof of number of current partners may be difficult if not a professional partnership as accounts are historic and so may not be a true reflection of the position/number of partners.</p>
6 – 7	Fixed-Sum Credit statements	<p>Creditors will have to supply annual statements in relation to fixed-sum credit free of charge.</p> <p>Where this is not complied with, then for the period of non-compliance:</p> <ul style="list-style-type: none"> <li>the agreement will be unenforceable,</li> <li>no interest may be charged, and</li> <li>no default charges may be applied for any breach which occurs during the period of non-enforceability, even if the breach continues after the end of that period.</li> </ul> <p>These rules will apply in relation to agreements whenever made.</p>	<p>System issues</p> <p>The lack of enforceability during the period of non-compliance is the key. There must be a question as to costs liabilities if proceedings are issued during the non-compliance period ie the creditor may have to pick up all parties costs, if it issues proceedings in these circumstances, until the defect is cured.</p>
8 – 18	New Default Rules for fixed sum credit/hire agreements	<p>There are new rules for notices by the creditor to the debtor or hirer in the event of default under fixed sum credit agreements or hire agreements.</p> <p>For example, an arrears notice will be required to be given by the creditor 14 days after:</p> <ul style="list-style-type: none"> <li>the debtor/hirer is in arrears by more than the sum of the last two payments,</li> <li>when a debtor/hirer misses two consecutive payments these are the two main times</li> </ul>	<p>System issues</p> <p>Not issuing the correct default notice with the additional clauses means that no default interest or costs can be claimed</p> <p>Information on fees and charges on default has to be given. It may be given in a stand alone notice or incorporated into any other notice – annual statement</p>

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		<p>but there are others, too long to set out here, but notice must be given</p> <ul style="list-style-type: none"> <li>• if any default sum is to become payable</li> <li>• if the creditor intends to charge interest on judgment debts.</li> </ul> <p>No prescribed form of the arrears notice has yet been published.</p> <p>Arrears will be defined by reference to failure to make a specified number of contracted repayments</p> <p>Failure to provide these notices will lead to similar remedies in each case, being the inability during the period of non-compliance:</p> <ul style="list-style-type: none"> <li>• to charge interest on relevant sums due</li> <li>• to charge default sums</li> <li>• where not yet enforced, to enforce the agreement.</li> </ul> <p>In the case of failure to give notice of default sums being payable, interest cannot be charged on those default sums during the period of non-compliance and for the period up to the twenty-ninth day after notice is given.</p> <p>These rules will apply in relation to agreements whenever made, but only to defaults arising, and default sums becoming payable, after the relevant provisions come into force.</p> <p><b>No compounding of interest on default sums</b></p> <p>Only simple interest will be payable on default sums. This will apply in relation to agreements whenever made, but only to default sums becoming payable after the provision comes into effect.</p>	<p>or arrears notice, within 6 months. But if the amount of default sums exceeds a certain sum in any month ( yet to be set) then the information must be given within one month of the charge being applied to the account.</p> <p>The lender has to give the debtor 28 days to pay default fees and charges before interest can be applied to those elements. Once default sums are claimed ( including interest) 6 monthly notices have to be given until all arrears are discharged or judgement is obtained (see below)</p> <p>Additional information has to go into the default notices:</p> <ul style="list-style-type: none"> <li>• Is there an interest after judgement clause in the agreement?*</li> <li>• If hp/conditional sale a statement as to the debtors s.99 rights has to be present</li> <li>• Has to be accompanied by an OFT information sheet on default</li> </ul> <p>* if claiming post judgement interest the creditor will need to serve 6 monthly statements on debtor including as to rate and amount of interest charged. If not serve, can not claim.</p> <p>Note this</p>
15	Enforcement orders	<p>Subsections 127(3) to 127(5) of the Act shall cease to have effect.</p> <p>This means that agreements which would under the current section 127 be wholly unenforceable, due to a technical defect or the failure to provide the correct cancellation notice, will be enforceable by a court order. This will not however affect agreements entered into before the new provision comes into force.</p>	<p>So if there are technical errors in the agreements prior to the date the new provisions come into force, those agreements will not be saved by the new provisions but will remain unenforceable.</p>
19 – 22	Unfair relationships	<p>The court will have wide powers to make an order against the creditor if it decides that the relationship between creditor and debtor is “unfair” to the debtor due to:</p> <ul style="list-style-type: none"> <li>• the terms of the agreement; or</li> <li>• the manner in which the creditor has exercised or enforced his rights under the agreement or</li> <li>• any other thing done by or on behalf of the creditor.</li> </ul>	<p><b>This is the new area which will cause a great deal of uncertainty in relation to expressing the balance of power in agreements.</b></p> <p>Although they are designed to replace <i>extortionate</i> credit bargains, they have the ability to go much wider. A more detailed note is being worked upon.</p>

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		<p>These rules will cover any agreement already in existence when these provisions come into force, provided that the agreement is still in existence at the end of a further transitional period of one year.</p> <p>This will replace the current extortionate credit bargain regime under sections 137-140 of the Act, which will cease to have effect.</p>	<p>They will apply to current agreements which are still in force a year after the new provisions come into force.</p>
38 – 43	Power of OFT to impose requirements on licensees	<p>The OFT has a new intermediate power to impose requirements:</p> <ul style="list-style-type: none"> <li>on licensees in relation to a business carried on (or proposed to be carried on) under the licence where it is dissatisfied with the business or conduct of the licensee or an associate or former associate of his</li> <li>on the responsible person in relation to a group licence where the OFT is dissatisfied with the manner in which that person is regulating or otherwise supervising licensees, or proposes to do so.</li> </ul> <p>This power will not be affected by whether the matters giving rise to the OFT's concern arose before or after the relevant provisions come into force.</p> <p>The OFT will have to notify its intention to impose requirements on, or to fine licensees and must then allow representations to be made to it. It must also publish guidance and statements of policy as to how it intends to exercise its powers.</p>	<p>This effectively gives the OFT the power to run a creditor's business on a day to day basis.</p> <p>Although there have been expressions of comfort from the OFT that they will of course behave equitably, the threat is nonetheless there for the credit industry to behold !!</p>
47 – 48	Power of OFT to require access to premises and enter premises under warrant	<p>The OFT will have the power to require access to licensees' premises at reasonable times and on reasonable notice in order to carry out its functions under the Consumer Credit Act.</p> <p>Where the OFT has reasonable grounds to believe that there is on the premises information in relation to which it could impose a requirement of access, and that such requirement would not be complied with or the information would be tampered with, it may obtain a warrant to enter and search the premises and to seize that information.</p>	<p>This is a disruptive power for the OFT to have; backup processes may help avoid business disruption. Planning will be needed.</p>
52 – 54	OFT Power to Fine	<p>Where a licensee fails to comply with a requirement under the intermediate power or a requirement to notify changes in their circumstances, the OFT may impose a civil penalty of up to £50,000 for each breach.</p>	

See overleaf for quick guide

<sup>1</sup> The scope of this exemption will be defined by an order made under the Act.

<sup>2</sup> An agreement for credit exceeding £25,000 will not be regulated if the agreement is entered into 'wholly or predominantly' for business purposes, which will be presumed if a declaration in specified form is made by the debtor or hirer. However, knowledge or reasonable cause for suspicion on the part of the creditor that this is not the case will rebut that presumption.

Regulated	Non-regulated
All lending to individuals of any amount (unless exemption applies - see below)	All lending of any amount to <ul style="list-style-type: none"> <li>• Companies</li> <li>• Partnerships of 4+</li> </ul>
Lending under £25k to <ul style="list-style-type: none"> <li>• Sole traders</li> <li>• Partnerships of 3 or fewer partners</li> <li>• Unincorporated associations</li> </ul>	Lending over £25k for business purposes to <ul style="list-style-type: none"> <li>• Sole traders</li> <li>• Partnerships of 3 or fewer</li> <li>• Unincorporated associations</li> </ul>
High net worth individual exemptions	<ul style="list-style-type: none"> <li>• High net worth individuals within exemption; or</li> <li>• Wholly or predominantly for business purposes</li> </ul>
	Buy to let

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**Halliwells LLP** Tel: +44 (0)870 365 8000

St James's Court Brown Street Manchester M2 2JF  
**Fax:** +44 (0)870 365 8001 **DX** 14317 Manchester 1

1 Threadneedle Street London EC2R 8AY  
**Fax:** +44 (0)870 365 8002 **DX** 98933 Cheapside 2

The Plaza 100 Old Hall Street Liverpool L3 9TD  
**Fax:** +44 (0)870 365 8004 **DX** 14126 Liverpool 1

City Plaza Pinfold Street Sheffield S1 2GU  
**Fax:** +44 (0)870 365 8003 **DX** 10525 Sheffield

[info@halliwells.com](mailto:info@halliwells.com) [www.halliwells.com](http://www.halliwells.com)

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