

Awaiting the new system of Consumer Credit Control

by F. A. R. Bennion

Draftsman of the Consumer Credit Act 1974

A year has elapsed since the passing of the Consumer Credit Act 1974, but the Department of Prices and Consumer Protection is still some way off being able to bring it into operation. This is because of the wide-ranging scope of the Act and the elaborate processes of consultation the Department and the Office of Fair Trading are together carrying out. Rarely if ever has the introduction of a new statutory system been preceded by such a thorough going attempt to elicit from those affected ideas on how best to implement it. This is justified, because the new system of control will affect the trading practices of a very large number of firms indeed.

In June Tony Scott, who, as Director of Consumer Credit at the OFT, is responsible for administering the Consumer Credit Act, estimated that initially about 100,000 applications would be made for standard licences. These will come from every kind of credit and hire business, "credit" having a very wide meaning which covers the lending of money and any other form of financial accommodation. Not only do the obvious types of business need to be licensed, such as banks, finance houses, moneylenders, pawnbrokers, mail-order firms and hire-purchase traders, but a wide range of others as well. Credit brokers will need a licence, and the term covers not merely businesses whose main operation is in this field (such as mortgage brokers) but any firm which introduces individuals desiring to obtain credit, or to hire goods, to a credit grantor or hirer. Solicitors often fall within this category, as do shopkeepers and suppliers of travel and other services. Licences are also required by debt collectors, debt adjusters, debt counsellors and credit reference agencies. Some exemptions are contemplated from the licensing requirements (for example house purchase lending by local authorities and building societies) but these will benefit only a relatively small number of traders. In his announcement Tony Scott stressed that "the consequences to a trader who fails to make a valid application before the 'appointed day' are serious — he could be committing a criminal offence by operating an unlicensed business, and agreements he had made with customers or clients might be unenforceable".

This brings me to the main impact of the Consumer Credit Act — on credit or hire agreements. The elaborate controls erected by the Act and the regulations to be made under it will call for fundamental changes in the terms on which agreements are normally entered into. C. McNeil Greig, Director of the Hire Purchase Trade Association, has described the Act as being of "at times frightening complexity" and as containing provisions of "remarkable obscurity". It was not the draftsman's intention to frighten anybody, and indeed strenuous and sometimes unorthodox efforts were made to lighten the reader's task. *Nevertheless the wide variety of transactions intended to be caught by the Act inevitably led to complexity in its provisions.

The Act controls (with limited exceptions) all credit or hire agreements made with individuals where the amount involved does not exceed £5,000. If the borrower is an incorporated body, e.g. a limited company, the Act does not bite. Commercial credit, including leasing of plant or equipment, is however covered where the customer is a one-man firm or a partnership.

Perhaps unexpectedly, at least for those not familiar with the "connected lender liability" proposals of the Crowther Report (on which the Act was based), the new system of control also extends to the supplier of goods in certain cases — even though the credit was provided by someone else.

A whole further range of traders is brought within the net by the provisions relating to "linked transactions". If a customer buying say a deep freezer on credit from A is persuaded to enter into a contract with B for the supply of frozen food in bulk, a contract with C for insuring the freezer, and a contract with D for maintaining it, then B, C or D (or all of them) may feel

the force of the Act. If, for example, the customer uses his cancellation rights in relation to the purchase of the freezer B, C and D may find their contracts with him are automatically cancelled too. Nor will it avail if they seek to evade this by contracting with the customer's wife or other relative — the reach of the Act extends to them too.

The "truth in lending" provisions of the Consumer Credit Act require the document embodying a credit or hire agreement to inform the customer of his rights and duties under it, of the amount and rate of the total charge for credit (including charges under "linked transactions"), of the protection and remedies given to him by the Act, and of anything else the Department thinks he needs to know. The other aspect of "truth in lending" brings in a further category of persons caught by the new controls: the advertising agent. Every credit or hire "advertisement" (defined very widely by the Act) is required to convey a fair and reasonably comprehensive indication of the nature of the credit or hire facilities offered by the advertiser and of their true cost to persons using them. The way this is to be done will be spelt out by regulations shortly to be made. Anyone concerned with the devising or publishing of such advertisements will need to be familiar with the statutory requirements or risk prosecution.

The Consumer Credit Act creates 35 new offences, many of them punishable with up to two years' imprisonment. Clearly the carrying into effect of this vast new scheme will place heavy burdens on the commercial community. They can take some comfort from the fact that the new system of control is clearly going to be administered with tact and understanding. The public meanwhile may look forward to some redress of bargaining inequality and the ending of certain trading malpractices.

*See "Understanding the Consumer Credit Act" by F. A. R. Bennion, *Solicitors' Journal* (1 Nov 1974) pp 742-743, www.francisbennion.com/1974/001.htm.