

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Wednesday, 2 September 1981

CREDIT CONTRACTS BILL

Proposed Amendments

HON. Mr McLAY, in Committee, to move the following amendments:

Clause 2 (1): To insert in the definition of the term “cash price”, after the word “services” in line 38 on page 3, the words “from the vendor, bailor, or provider thereof”.

To omit the definition of the term “creditor” (all the words in lines 35 to 41 on page 4), and substitute the following definition:

“Creditor”, in relation to a credit contract, means a person who provides or agrees to provide credit pursuant to the contract; and includes—

(a) If the rights of such a person are transferred by assignment (whether absolutely or by way of mortgage) or operation of law, the person for the time being entitled to those rights; and

(b) If a person enters into the contract in his own name as creditor, or holds security under the contract in his own name, or obtains in his own name the rights of a creditor under the contract, on behalf of or as nominee for any other person or persons, the person who so enters into the contract or holds security or obtains the rights:

Clause 3B (1): To omit the words “or is or may become liable to pay” in lines 32 and 33 on page 15, and substitute the words “or provided or is or may become liable to pay or provide”.

Clause 21 (1): To insert in the proviso, after the word “business” in line 32 on page 27, the words “or address”.

Clause 22 (2): To omit this subclause (all the words in lines 4 to 11 on page 29), and substitute the following subclause:

(2) Notwithstanding subsection (1) of this section, disclosure documents need not contain any information, statement, or other matter that is contained in a legible document that has previously been given, or sent by post to the last place of residence or business known to the creditor or to an address specified by the person for this purpose, to each person to whom disclosure is to be made:

Provided that—

- (a) Where that place of residence or business or address is the same for 2 or more persons, a document given or sent to any of those persons shall be deemed to have been given or sent to all those persons;
- (b) This subsection shall not apply in respect of disclosure documents relating to request disclosure.

Clause 39: To omit this clause (all the words in lines 1 to 25 on page 46), and substitute the following clause:

39. Penalty rates—(1) Except as provided in subsections (2) and (3) of this section, no credit contract shall contain a term to the effect that, if a debtor fails to comply with a term of the contract, an amount payable by the debtor under the contract (whether or not expressed in terms of an interest rate) will be increased, or will not be reduced, to another amount.

(2) Notwithstanding any other enactment or rule of law, a credit contract may contain a term to the effect that, if a debtor fails to comply with any specified term of the contract by a specified time, the finance rate payable under the contract in respect of any specified period may be increased to a specified rate:

Provided that—

- (a) The specified time shall be not earlier than 14 days after the date compliance was due; and
- (b) The specified period shall be a period beginning not earlier than the due date of the last instalment that, at the time the rate is increased, has been paid by the debtor.

(3) For the avoidance of doubt, it is hereby declared that nothing in this section shall prevent the inclusion in a credit contract of a term to the effect that, if a debtor fails to pay an amount payable under the contract by the payment date specified in the contract, he shall be liable to pay to the creditor interest at a specified rate on the amount for the period during which it remains unpaid.

(4) If any term of a credit contract contravenes subsection (1) of this section, that term shall be read as if all references to the higher amount were omitted and as if the amount payable under the contract by the debtor were the lower amount, whether or not the debtor fails to comply with a term thereof.

(5) Nothing in this section shall limit Part I of this Act.

Clause 41: To insert, after the word “original” in line 16 on page 47, the word “creditor”.

Second Schedule, Part I: To omit clause 1 on page 57, and substitute the following clause:

1. Name and address of creditor—(1) Except in any case to which subclause (2) of this clause applies, the full name and full address of each creditor.

(2) Where a person enters into a credit contract in his own name as creditor, or holds security under a credit contract in his own name, on behalf of or as nominee for any other person or persons, the full name and full address of the person entering into the contract or holding security.

To omit from clause 3 (1) (a) on page 57 the expression "section 3A (4)", and substitute the expression "section 3A (3)".

Second Schedule, Part II: To omit from clause 2 (1) (a) on page 61 the expression "section 3A (4)", and substitute the expression "section 3A (3)".

Second Schedule, Part IV: To omit subclause (1) of clause 2 on page 65, and substitute the following subclause:

(1) In the case of a revolving credit contract, the finance rate for any billing period specified by the debtor or guarantor, being a billing period for which the cost of credit has been determined and ending during the period of 6 months preceding the day on which the request is made:

Provided that this subclause shall not apply in the case of a contract where the cost of credit does not vary with the amount of credit provided.

EXPLANATORY NOTE

This Supplementary Order Paper proposes the following amendments to the Credit Contracts Bill:

- (a) The definition of "creditor" is extended to include nominees for creditors. The initial disclosure requirements are amended to provide that, where there is a nominee, only his name need be disclosed:
 - (b) The provisions relating to request disclosure of the finance rate under a revolving credit contract are amended to provide that disclosure need be made only in respect of a billing period ending during the previous 6 months:
 - (c) Drafting amendments are made in order to clarify the definition of "cash price", and the provisions relating to penalty rates (clause 39). Other minor drafting amendments are also made.
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