



HM Treasury

Goods Mortgages Bill: response to the consultation

May 2018

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Chapter 1

Introduction

- 1.1 Bills of sale are a way in which individuals can use goods they already own as security for loans, while retaining possession of the goods. They are now mainly used for “logbook loans”, a form of high-cost credit where a borrower transfers ownership of their vehicle to the lender for the duration of the agreement. The borrower can continue to use the vehicle while they keep up the repayments, but if they default they can lose it relatively easily.
- 1.2 Bills of sale are currently governed by two Victorian Statutes, the Bills of Sale Act 1878 and the Bills of Sale Act (1878) Amendment Act 1882. In September 2014, the Treasury asked the Law Commission to review this legislation and make recommendations for its reform.
- 1.3 The Law Commission initially consulted on the reform of the existing legislation in 2015 and its final report and recommendations to reform the Bills of Sale Acts were published in September 2016. The Law Commission concluded that reform was necessary and recommended that the Bills of Sale Acts should be repealed in their entirety and replaced with a new “Goods Mortgages Act”. The purpose of this act would be to create a new security which can be granted over a person’s goods.
- 1.4 In response, the government published a Written Ministerial Statement on 7 February 2017. The government accepted the overarching thrust of the Law Commission’s recommendations but decided that some issues needed further reflection.
- 1.5 The government agreed to support the Law Commission in drafting primary legislation. The Law Commission consulted on draft clauses in July 2017, and published a final report on 24 November 2017.
- 1.6 On 22 September 2017 the government published a consultation document alongside an updated draft of the bill published by the Law Commission. The consultation sought views from stakeholders on whether they agreed that reform of the law in this area was required and that the bill was appropriate for the special Parliamentary procedure.
- 1.7 The government received 25 responses to the consultation. Responses came primarily from consumer groups, industry representatives, academics, and legal experts. A full list of respondents can be found at Annex A.
- 1.8 This document summarises the content of these responses and sets out the government’s response. The government is grateful for all the contributions made during the consultation process.

Overview

- 1.9 Although most respondents agreed that this area of law would benefit from reform, some stakeholders had reservations arguing that this should be a broader reform of securities law or that the proposed consumer protection measures did not go far enough.
- 1.10 There was broad agreement with the proposal to create a single central electronic register and that it would be beneficial to extend the territorial scope of the bill to include Northern Ireland, in addition to England and Wales.
- 1.11 While the majority of respondents also agreed that the bill was suitable for the special Parliamentary procedure for Law Commission Bills, two respondents disagreed on this point, arguing that the subject matter of the bill was too controversial for the procedure.

Our response

- 1.12 The Law Commission report 'From Bills of Sale to Goods Mortgages' was published on 24 November 2017. The report set out a draft Goods Mortgage Bill and provided a commentary on the draft bill.
- 1.13 The government welcomes the extensive work carried out by the Law Commission to examine how the Bills of Sale legislation is working in practice.
- 1.14 While broadly supportive of the proposed approach set out in the bill, some stakeholders raised significant concerns with the proposed bill in their consultation responses. In particular, a number of responses suggested that the consumer protection provisions did not go far enough, and that the proposed bill could encourage lending to vulnerable consumers.
- 1.15 Access to affordable credit is an important issue, and the government is determined to ensure that any legislative change leads to better outcomes for consumers and does not have unintended consequences.
- 1.16 Furthermore, the number of logbook loans has fallen substantially in recent years and makes up a very small percentage of the wider high-cost credit market. The number of bills of sale registered at the High Court has fallen from 52,000 in 2014 to around 35,000 in 2016. This compared to 760,000 people taking out a total of 3.6m¹ high-cost short-term (payday) loans in 2016. The reduction in the number of bills of sale reflects the increased oversight of the logbook lending sector by the FCA and structural changes to the car finance market caused by the increase in Personal Contracts Plans.
- 1.17 The FCA is currently conducting a review of the high-cost credit market, focusing on concerns with rent-to-own, catalogue credit, home-collected credit and overdrafts. The review is also examining alternatives to high-cost credit and the FCA aims to consult on proposed remedies in Spring 2018.

¹ <https://www.fca.org.uk/publication/feedback/fs17-02.pdf>

- 1.18 Given the concerns raised in the consultation, the small and reducing market, and the wider work on high-cost credit, the government will not introduce legislation at this point in time. The government will continue to work with the FCA as they carry out their high-cost credit review, and then further consider government action on alternatives to high-cost credit in light of the FCA's review.

Chapter 2

Summary of responses

The draft bill

Question 1: Do you agree that reform of the law in this area is required?

- 2.1 Although overall respondents agreed that reform of the law in this area was desirable, several responses highlighted concerns with the proposed approach which tempered their support for reform.
- 2.2 All respondents noted problems with the Bills of Sale Acts, including limited consumer protections, particularly for innocent third party purchasers, and archaic requirements for lenders.
- 2.3 However, one respondent suggested that reform of the Bills of Sale legislation should be included in a broader reform of securities law as a whole, and another was concerned that proposed changes should not cause future reform to be more complex. One response argued that while reform of the law in this area would be useful, it was not a pressing requirement and that they did not support the approach set out in the bill.

Question 2: Do you support the approach as set out in the draft Goods Mortgages Bill published today?

- 2.4 For the most part, respondents broadly agreed with the approach set out in the draft Goods Mortgages Bill. Respondents welcomed the increased level of consumer protection, the modernised registration system, and the removal of unnecessary burdens on firms. However, a number of responses disagreed with specific aspects of the bill.
- 2.5 Some groups representing consumer interests expressed concern that the consumer protection provisions did not go far enough in a number of areas. Specifically, there was significant concern about the proposal that consumers should be required to 'opt-in' to the Court Order process when they were at risk of having their goods possessed. A number of responses argued that this provision would weaken consumer protection, particularly for customers who lack an understanding of court procedures. One response in particular argued that an opt-in procedure would ensure that opting out of consumer protection is the default.
- 2.6 The same consumer group also questioned whether it was appropriate to require borrowers to repay one third of their loan before being protected by the requirement of a court order for repossession, arguing that there is a

significant difference between logbook lending and hire purchase and that all borrowers should be protected from action by lenders to possess their goods regardless of how much has been repaid.

- 2.7 In addition, consumer groups sought clarification on how elements of the bill interact with the Consumer Credit Act 1974 and the Debt Pre-Action Protocol.
- 2.8 One response raised concerns regarding the protection for innocent third party purchasers, arguing that it should be made clearer.
- 2.9 Two respondents did not support the approach as set out in the draft bill. One argued that the scope of the bill was too narrow, and that reform should address securities law more broadly. This response also expressed strong concerns that the bill could have unintended negative consequences, such as increasing the level of consumer debt in the economy by encouraging vulnerable individuals to secure loans on their goods. Another respondent criticised the bill on the basis that it was overly complicated and did not do enough to meet the objective of providing new finance opportunities for businesses.

Question 3: Do you have views on risks and benefits of also implementing the proposed provisions of the Goods Mortgages Bill in Northern Ireland?

- 2.10 Only a minority of respondents addressed this question specifically, but those who did argued that it would be beneficial to extend the territorial scope of the Goods Mortgages Bill to include Northern Ireland. Respondents noted the benefits to consumers in Northern Ireland, who would be provided with greater protections, and to lenders, who would benefit from a new registration system and a consistent regime across England and Wales and Northern Ireland.

Approach to registration

Question 4: Do you agree with the proposal to establish a single electronic register of all goods mortgages which is searchable by asset or borrower?

- 2.11 The consultation proposed a new approach to registration. Most respondents agreed that establishing a single electronic register was the right approach although several respondents requested more clarity on how the register would be designed and administered, or put forward suggestions.
- 2.12 Consumer groups emphasised the need to take vulnerable consumers into account, and suggested that a robust complaints process should be put in place. These responses also expressed concern that the improved register should not be used to undermine the protections for third party purchasers by introducing an expectation that a borrower acting in good faith would always search the register.
- 2.13 Industry representatives stressed the need for the register to meet certain technical requirements, including the quality and extent of data captured,

and the capacity to share data with private asset finance registries. One respondent argued that even with an updated electronic system, it would still be preferable for goods mortgages data to be shared with private asset finance registers, which could then be searched.

Regulatory impact

Question 5: Do you agree that these are the main costs and benefits that firms and consumers will face? Are there any further costs and benefits to the proposed reforms, beyond those costs and benefits outlined by the Law Commission?

- 2.14 The consultation set out several costs and benefits associated with reform of bills of sale: reforming the registration of goods mortgages; reforming the registration of general assignments of book debts; introducing a court order provision; protecting innocent private purchasers; and familiarisation costs. Most respondents agreed that these were the main costs and benefits of the reforms.
- 2.15 Some respondents suggested that the scale of the benefits may have been underestimated. Reform of bills of sale, and in particular the introduction of an electronic register, could increase the volume of credit available for small and micro businesses, which could have further economic benefits.
- 2.16 One respondent noted additional benefits for borrowers of the increased consumer protections provided by the court order provision, such as being able to keep using their vehicle to drive to work or transport children to school. They also noted, however, that the need to opt-in to a Court Order might weaken this provision.
- 2.17 One respondent suggested that the costs of producing a goods mortgage agreement would be reduced for firms if a prescribed agreement was included in regulations.

Question 6: What impact would the government's proposals for registration have on the costs and benefits estimated by the Law Commission in its September 2016 report?

- 2.18 The majority of responses estimated that the government's revised proposals for registration would continue to have a positive overall impact on the costs and benefits of reform.
- 2.19 One respondent argued that it was difficult to make an assessment without seeing the regulations to establish a new register because the details of these regulations would impact the costs and benefits of the government's proposals.

Question 7: What would be the cost to firms of engaging enforcement agents to repossess goods, where a court order has been granted?

- 2.20 Only a small number of respondents addressed this question directly. Those that did expected that the bill would not significantly increase the cost of

repossession. One respondent estimated that costs would range between £250 and £350.

Special Parliamentary procedure for Law Commission Bills

Question 8: Do you consider the bill suitable for a Parliamentary procedure designed for uncontroversial Law Commission Bills?

- 2.21 While most responses agreed that the bill was suitable for the special Parliamentary procedure for Law Commission Bills, two strongly disagreed.
- 2.22 Most respondents agreed that the bill was broadly uncontroversial, and therefore suitable for the special procedure for Law Commission Bills. These responses pointed to the consensus that stronger consumer protections are required, and welcomed the additional benefits for firms.
- 2.23 Two respondents disagreed, however, arguing strongly that the policy set out in the bill was too controversial for the special procedure. Several elements of the bill were identified as being controversial, including: the potential impact of the bill in the context of wider concerns around household debt; the risk of relying on an opt-in to court proceedings; the bill's treatment of high net worth individuals; the risks of problematic enforcement behaviour; the bill's interaction with other areas of security law; and the risk of promoting slavery if goods mortgages were used to secure inappropriate non-monetary obligations.
- 2.24 The respondents who raised these concerns also argued that the bill would benefit from further consultation and deeper engagement with expert evidence, which could not be afforded by the expedited special procedure for Law Commission Bills.

Potential risks

Question 9: Are people with protected characteristics under the Equalities Act 2010, or any consumers in vulnerable circumstances, impacted by the policy proposed?

- 2.25 All respondents who answered this question agreed that the proposed policy would have either a neutral or positive impact on consumers in vulnerable circumstances. In particular, respondents noted that many people who take out loans using bills of sale are vulnerable or financially-excluded consumers who have limited access to other forms of credit, and who would benefit from the reforms in the bill. Respondents did not anticipate any particular impact on people with protected characteristics.

Annex A

Respondents to the Goods Mortgages Bill consultation

- A.1 HM Treasury received 25 written responses from a wide range of respondents, including consumer groups, industry representatives, academics, legal experts, and individuals.
- A.2 HM Treasury would like to thank all of those who took the time to respond or discuss this issue.

List of organisations which responded to the Goods Mortgages Bill consultation

- A.3 In addition to the organisations listed, HM Treasury received nine responses from individuals.
- Advice Northern Ireland
 - Boodle Hatfield
 - Chancery Bar Association
 - Chartered Trading Standards Institute
 - Cheshire Datasystems Limited
 - Citizens Advice
 - City of London Law Society
 - Consumer Credit Trade Association
 - Financial Services Consumer Panel
 - Finance and Leasing Association
 - Loans 2 Go
 - Money Advice Service
 - Money Advice Trust
 - Overstone Art
 - StepChange Debt Charity
 - UK Finance

HM Treasury contacts

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If you require this information in an alternative format or have
general enquiries about HM Treasury and its work, contact:

Correspondence Team

HM Treasury

1 Horse Guards Road

London

SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk