

**ENHANCED SUSPENSION OF
CONSUMER CREDIT LICENCES**

Impact Assessment

JULY 2012

CONTENTS

Enhanced suspension of consumer credit licences	2
Summary: Intervention and Options.....	2
RPC Opinion:	2
Summary: Analysis & Evidence Policy Option 1.....	3
Evidence Base (for summary sheets)	4
Background	4
Problem under consideration.....	4
Rationale for intervention.....	5
Consultation	5
Policy objective.....	6
Options considered.....	6
Preferred option.....	7
OFT Consultation on implementation	7
Costs and benefits of preferred option.....	8
Costs to business	8
Benefits to consumers	9
Case studies.....	10
Costs to consumers.....	10
Risks.....	10
Micro business exemption	10
Summary	11

Title: Enhanced suspension of consumer credit licences IA No: BIS0372 Lead department or agency: BIS Other departments or agencies: HMT, OFT, FSA	Impact Assessment (IA)		
	Date: 08/06/2012		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Susan Walker x6427			
Summary: Intervention and Options			RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£0m	£0m	£0m	Yes Zero net cost

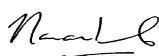
What is the problem under consideration? Why is government intervention necessary?
 Under the Consumer Credit Act credit businesses that do not comply with the law are able to continue trading sometimes up to 2 years. When the OFT finds a business is unfit or may be causing consumer detriment it has no power to suspend a consumer credit licence with immediate effect. A suspension does not take effect until all rights of appeal have been exhausted. This may take up to 2 years during which time the licence-holder may continue to trade and consumers continue to risk serious detriment. The BIS select committee has recommended a fast track procedure to suspend credit licences to prevent serious consumer detriment and there are recent examples of firms harming consumers while they appeal.

What are the policy objectives and the intended effects?
 The objective is to stop a licensed lender from carrying on business during the appeal period where there is risk of serious consumer detriment. The intended effect is to protect consumers, in particular vulnerable consumers, and to provide a significant deterrent effect. A further objective is to ensure that the OFT can act as an effective regulator in the interim period pending transition to the FCA. This power is aligned with the existing FCA power OIVOP ('own initiative variation of permission power') to help ensure a smooth transition of credit regulation to the FCA.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 The option of doing nothing pending the likely transfer of credit regulation to rules-based regulation under the Financial Conduct Authority (FCA) was considered. However, this was rejected on the grounds that the risk of consumer detriment required more urgent action and the likely transfer of consumer credit to FSA may not take effect until 2014. The option of speeding up the appeals process through the SoS' hearing of appeals against OFT licensing decisions was considered. However, this was not considered feasible because changes have already been made in the Consumer Credit Act 2006 to create an appeals process independent of the SoS in order not to infringe an appealing party's human rights.
 The option of seeking an interim injunction under the Consumer Protection from Unfair Trading Regulations 2007 ("CPR's") has limitations and cannot control all potential types of malpractice so could not provide broad security for consumers.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: n/a/					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: n/a	Non-traded: n/a	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.



Signed by the responsible SELECT SIGNATORY:

Date: 28 June 2012

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 2	Net Benefit (Present Value (PV)) 0 (£m)		
			Low: Optional	High: Optional	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

The power to immediately revoke credit licenses would only be used in cases where lenders are not complying with the CCA and are causing serious detriment to consumers. In other words, lenders that are breaking the law, are seriously affecting consumers and refuse to comply with OFT requests for compliance. Firms operating within the law would be unaffected by the new powers. Therefore there is a zero cost to business.

Other key non-monetised costs by 'main affected groups'

As businesses are already familiar with the CCA and are expected to comply with the law there are no other monetised or non-monetised costs to law abiding business. There will be a negligible impact on consumer choice with only a tiny proportion of the 80,000 license holders likely to be affected by the power.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

No monetised benefits.

Other key non-monetised benefits by 'main affected groups'

The faster suspension of credit licenses from businesses that cause significant harm to consumers will reduce consumer detriment in the consumer credit market. Typical examples of consumer detriment include: the sale of inappropriate credit products; incorrect or incomplete information about prices and T&C; intimidating behaviour by lenders, charging additional fees without warning.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

There is the risk that OFT could make errors when suspending licences. However this risk is minimal as OFT's decision would still be subject to appeal. Should the firm win its appeal then it is expected that the firm can sue OFT for lost business. The OFT has not lost an appeal in this area for 3 years.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0	Yes	Zero net cost
Benefits: 0		
Net: 0		

Evidence Base (for summary sheets)

Background

1. The Consumer Credit Act 1974 requires most businesses that lend money to consumers or offer goods or services on credit or engage in certain ancillary credit activities to be licensed by the OFT. It also regulates the way in which consumer credit licence-holders carry on business.
2. The consumer credit licensing regime was established to deliver consumer protection through a positive licensing regime which establishes and monitors the fitness of applicants to hold a consumer credit licence. Licensing ensures that only fit and competent persons are permitted to engage in consumer credit business. It is the key regulatory mechanism by which standards of behaviour of credit businesses in their dealings with consumers are maintained.
3. Where the OFT has evidence that calls into question a licence-holder's fitness to hold a credit licence it can take various measures, including suspending, varying or revoking the credit licence. In such cases the licence-holder will receive a notice sent by an adjudicator acting on behalf of the OFT and can decide whether or not to make oral or written representations within 21 days of receipt of the notice. The adjudicator's role is to consider any representations and to make a decision based on the information contained in the notice and in any representations. In addition, the licence-holder has the right to appeal against the decision of the adjudicator to an independent tribunal, the First Tier Tribunal (Consumer Credit).

Problem under consideration

Long appeal process

4. Under the current regime a licence-holder's credit licence remains in effect until all rights of appeal have been exhausted, even following a finding by both an independent OFT adjudicator and the First-Tier Tribunal that a licence-holder is unfit. The appeal process may include, for example, a right of appeal to the Upper Tribunal on any point of law arising from a decision made by the First-Tier Tribunal and, potentially, to the Court of Appeal and beyond, which can take up to 2 years as evidenced by the cases that have progressed through the system.
5. The problem is that, during the appeal period, any licence-holder found to be unfit may continue to trade and there is the risk that consumers may suffer potentially serious detriment arising from the malpractices that give rise to the OFT's "unfit" finding. There is also the possibility that some licensed businesses, aware that sooner or later they will lose their licences, may seek to maximise their profits during the appeal period by 'stepping up' their level of engagement in those malpractices.
6. Case studies on why licence holders may be unfit are provided below but they can include being sold inappropriate or more expensive credit products due to poor or misleading customer advice, provision of incomplete or incorrect customer information, harassment of customers, delays in providing refunds, deducting additional fees without informing the customer etc.

7. To provide a picture of the possible scale of the cases we used historic data on appeals to the First Tier Tribunal or an average of 14 a year. Fifty five appeals have been lodged with the 'First Tier Tribunal' between 2008/09 and 2011/2012¹. Many of the firms involved are small firms that do not disclose their revenue. These past cases are used as an example of scale and they are not a guide to how many cases OFT may take with the new power.

Risk of a lack of deterrence as transfer to FCA approaches

8. It is expected that responsibility for regulating consumer credit will be transferred to the FCA in 2014. As the transfer date approaches there is a risk that existing credit licence holders will not view OFT as a credible regulator. If the appeal process continues to be up to two years in duration then it is possible firms will believe OFT would not have appetite to undertake such cases. During the lengthy appeals process OFT could lose responsibility for consumer credit regulation.
9. It is not clear that FCA would be responsible for such cases or for detriment that occurred before it became responsible. Firms could argue that FCA regulation could not be applied retrospectively to their behaviour before the FCA has responsibility. This risk could be mitigated by the preferred option.

Rationale for intervention

10. The decision by the OFT to suspend the credit licence of "Yes Loans" in March² brought renewed calls for the OFT's licence suspension powers to be strengthened as a matter of urgency. The BIS select committee, in its report on debt management, published on 7 March 2012³, also called for OFT powers to be amended to allow for a fast-track procedure to suspend credit licences. There has also been widespread support for stronger powers, in particular from consumer groups but also from consumer commentators in the media⁴. In addition, there are concerns that the OFT will be seen as a lame duck regulator in the interim period before the move to the FCA. In particular, the OFT's current payday lending review could be undermined if the OFT is unable to take effective action where it identifies detrimental practices.
11. The combination of factors (the recent high profile cases, the BIS select committee recommendation and the current OFT payday lending review) has prompted Government to act now to ensure that in really serious cases of detriment, the OFT can stop a firm from operating with immediate effect

Consultation

12. The issue of enhanced licence suspension powers was considered in the Government's call for evidence in the Consumer Credit and Personal Insolvency Review (CCPIR),

¹ <http://www.of.gov.uk/about-the-oft/annual-plan-and-report/>

² <http://www.of.gov.uk/news-and-updates/press/2012/15-12>

³ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/business-innovation-and-skills/news/debt-management-chairmans-comments/>

⁴ e.g. support from Citizens Advice in response to Call for Evidence for Consumer Credit and Personal Insolvency Review and on Yes Loans decision http://www.citizensadvice.org.uk/press_20120308

launched in October 2010. Several responses to that review expressed concern at the time taken to remove a company's licence in cases where a company's behaviour was so unacceptable that it should no longer be able to continue trading. These responses included support from Citizens Advice.

13. However, in its formal response published in November 2011, the Government indicated that it did not consider it sensible to draw conclusions about actions involving amendment of the Consumer Credit Act until a final decision has been made on the most appropriate regime for consumer credit regulation. The Government announced its intention on 26 January 2012 to transfer responsibility for credit regulation to the FCA under a rules-based regime under the same legislative framework as other financial services.
14. Those calling for these enhanced powers are urging that this change needs to be made as a matter of urgency and cannot wait until the changes to credit regulation take effect (expected in April 2014).

Policy objective

15. The objective is to stop a licensed credit business from operating with immediate effect in order to prevent consumer detriment where the OFT considers this urgently necessary to protect consumers. This will protect consumers with an emphasis on vulnerable consumers. There is a further objective that this measure should also have a significant deterrent effect.
16. In addition, the power is to be aligned with an existing power held by the Financial Services Authority regarding OIVOP ('own initiative variation of permission power'). The OIVOP power will be replicated under the FCA's credit regulation regime. Therefore the temporary OFT power will be used in advance of the power that will be used following the final transfer of consumer credit regulation to the FCA, expected in April 2014.
17. Given the expected transfer of consumer credit regulation from OFT to FCA, and the time it will take to introduce the new power, it is expected that the power will only be in place for a **maximum of 13 months** from spring 2013.

Options considered

18. **Do nothing:** The option of doing nothing pending the likely transfer of credit regulation to rules-based regulation under the FCA was considered. However, this was rejected on the grounds that the transfer is not expected to take effect until 2014 and the risk of consumer detriment required more urgent action. In addition, there are concerns that the OFT's current payday lending review could be undermined if the OFT is unable to take effective action where it identifies detrimental practices.
19. **Speed up appeals:** The option of speeding up the appeals process was considered. However, the timescales for making representations and for lodging an appeal are considered reasonable and are set out in the Consumer Credit Act, so primary legislation would be required to amend them. After these stages, appeals are handled by the courts. The option of the Secretary of State ultimately making decisions about appeals was briefly considered. However, amendments introduced in the Consumer Credit Act

2006 were made in order to establish an independent tribunal and remove the link with the Secretary of State in order to address concerns that the Consumer Credit Act did not provide for an independent appeals mechanism for licensing determinations in line with Human Rights principles, so this option is not possible.

20. **Interim injunctions:** The option of seeking interim injunctions under the Consumer Protection from Unfair Trading Regulations 2007 (“CPR’s”) was considered. However, this option has limitations as it cannot control all potential types of malpractice (it would only address the specific matters that are the subject of the interim injunction) and it is not clear that other relevant factual scenarios could be brought within the CPRs, for example where serious offences are committed after the licence has been granted. Interim injunctions could therefore not provide the security for consumers that would be afforded by a general suspension of the licence.

Preferred option

21. The preferred option is to introduce a power to allow for immediate suspension of a business’ credit licence where the OFT considers that there is risk of serious consumer detriment.
22. The proposal is an enhanced power to enforce existing consumer protections. It will have no adverse impact on licence-holders that engage in fair business practices. It will only have an impact on businesses that the OFT considers to be unfit to hold a consumer credit licence where the OFT also considers that there is risk of serious consumer detriment. It will be time-limited pending the expected transfer of credit regulation to the Financial Conduct Authority (FCA) (see below).
23. The proposed power will apply to any licence-holder where the OFT has concerns about fitness and potentially serious consumer detriment. This could therefore also impact on any small and microbusinesses giving rise to such concerns.
24. Clearly, if the OFT exercised this power unreasonably, it could be subject to a successful challenge and the licence-holder may have a right to seek compensation from the OFT. It is not proposed that the power will be used in cases where a licence could be suspended on a technicality, for example non-disclosure to the OFT of information such as disqualification of directors.
25. It is proposed to effect the change through a Government amendment to the Treasury’s Financial Services Bill (which includes provisions enabling a transfer of responsibility for consumer credit to the FCA) at Lords Committee stage. This would be followed by a consultation on the impact of the power by the OFT in the autumn and is expected to take effect in spring 2013.

OFT Consultation on implementation

26. The OFT will prepare draft guidance on how it proposes to use the new power and will consult on that guidance in September 2012 and aims to publish it in early 2012.

Costs and benefits of preferred option

27. To provide a picture of the possible scale of the cases we used historic data on appeals to the First Tier Tribunal. Fifty five appeals have been lodged with the 'First Tier Tribunal' between 2008/09 (when the current appeals process was introduced⁵) and 2011/2012 or an average of 14 a year. Many of the firms involved are small firms that do not disclose their revenue. These past cases are used to provide an idea of scale and the types of firms that go through the appeals process.
28. The new enforcement power is expected to be in place for a maximum of 13 months. The measure is time limited and relatively short in duration. As the number of cases is likely to be fairly small and the duration of time is short desk based research is proportionate to estimate the costs and benefits.

Costs to business

29. There are no relevant costs to business.
30. The power to immediately suspend credit licenses would only be used in cases where there is a serious actual and potential detriment to consumers. Firms operating within the existing laws (the Consumer Credit Act) would be unaffected by the new powers. Firms not operating within the law would lose the revenue from their unlawful behaviour unless they agree to comply with the law. This is not a relevant cost to business because it is derived from unlawful activity.
31. There are no familiarisation costs because firms are already familiar with the CCA. The only change is to the enforcement of the CCA on non-compliant firms. Compliant firms will not face any additional costs. Non-compliant firms may have to familiarise themselves with the OFT's new suspension power but they will only have to do so when OFT finds them to be non-compliant and those firms will have a chance to change their behaviour before OFT uses the new power. Costs to firms acting illegally are not a relevant cost to business. Any familiarisation cost to such a firm is likely to be negligible as the new power is not a complex issue to grasp and it simply involves enforcement of an existing law.
32. There is a risk that OFT will conclude that a compliant licence holder is non-compliant and wrongly suspend its licence. That firm would no longer be able to undertake the relevant regulated activity until it wins its appeal and therefore there is the possibility such a firm could lose revenue. However, as compliant firms are expected to be able to claim compensation if their appeal is unsuccessful, there would be a zero net cost to business. Furthermore the risk of finding a compliant firm to be non-compliant is low and mitigated by a number of factors
- the test for OFT's using the power would be the urgent need to protect consumers
 - The OFT has not lost a relevant appeal in the last 3 years
 - The likelihood that OFT could be sued for denial of trade is a very strong incentive to only suspend the licences of non-compliant firms
 - The OFT is in close contact with firms under investigation and the firms have the opportunity to explain their behaviour etc and alter it if required.

⁵ Under the Consumer Credit Act 2006

- The power allows for the OFT to issue a notice with suspension taking effect after 28 days to allow the licence-holder to make representations

Benefits to consumers

33. The faster removal of credit licenses from businesses that cause significant and ongoing harm to consumers will reduce consumer detriment in the consumer credit market. Consumer detriment includes being sold inappropriate or more expensive credit products due to poor or misleading customer advice, provision of incomplete or incorrect customer information, harassment of customers, delays in providing refunds, deducting additional fees without informing the customer etc.
34. The benefits to consumers are qualitative only. We have not quantified them because it is not proportionate to gather the information to do so. The power is expected to be in place for a maximum of 13 months and would be abolished on the expected transfer of consumer credit regulation to the FCA. In the past there have been about 14 appeals a year so, as an illustration, there might be around 14 or 15 cases in the 13 months duration of the power. Many of the appeals since 2008/09 (when the current appeals process was introduced) have involved small firms that do not disclose their revenue publicly. Even if they did it might not be clear where the revenue was derived (for example whether the revenue was derived from non-compliant credit sales, compliant credit sales or from unrelated activity⁶). The firms involved are likely to be unwilling to provide information on revenue or customer numbers to Government (OFT does not collect such information on licence holders) and it would also be disproportionately resource intensive for Government to attempt to collect information for this IA on which to make estimates of the number of consumers affected and their financial and emotional detriment.
35. While the total detriment is unlikely to be large the impact on individual consumers may be very significant. For example the case studies below show that consumers may be harassed by licensed firms, they may be put under pressure to provide debit card details, they may be given incorrect information in order to put pressure on the customer to, perhaps, roll over the debt, they may be charged fees without warning.
36. A survey of consumers would also be prohibitively resource intensive and contact details are not available. Firms that have lost their appeals are unlikely to be willing to provide contact details. The firms may well no longer trade when they lose their licence.
37. To summarise the consumer detriment is qualitative and not quantitative because it would not be proportionate to collect the relevant information because
- The duration of the power is expected to be 13 months or less
 - The number of cases is likely to be few (although individual customers may suffer significant detriment)
 - It would be too costly to obtain customer details and then to survey customers
 - The total detriment is unlikely to be large (relevant firms have been small) although individual consumers may suffer significant detriment.

⁶ As the OFT found in its High Cost Credit Market Study it is very difficult to attribute revenue and cost to a particular credit activity as a firm may have multiple credit products and activities (loans, debt advice, debt collection etc) and customers may transfer between them.

Case studies

38. In the case of Log Book loans (2011) customers in arrears were harassed by the threat of legal action by a fictional legal firm. This involved deliberate deceit⁷.
39. Mr Hall, trading as Westminster Services, (2010) behaved in threatening, intimidatory or violent ways in connection with his consumer credit or ancillary credit business⁸.
40. Yes Loans (2012) was found by OFT to have undertaken the following practices⁹
- using high pressure sales tactics to persuade consumers to provide their debit or credit card details on the false premise that they were required for an identity and/or security check
 - deducting brokerage fees without making it clear that a fee was payable, and/or without the consumer's consent
 - failing to introduce some consumers to the product originally sought, frequently arranging short-term, high interest, loans instead
 - misleading consumers into believing it was a loan provider rather than a credit broker
 - treating customers poorly by not providing refunds in a timely manner
 - prolonged engagement in deceitful and oppressive business practices.

Costs to consumers

41. Removing consumer credit licenses might reduce the choice for consumers in the consumer credit market. However, this impact is negligible as a tiny proportion of licenses will be affected. Records held by OFT indicate that there are as many as 80,000 licence holders so 14 or 15 cases is a tiny proportion.

Risks

Probability of mistaken removal of license

42. There is a risk that OFT makes errors when suspending licences. However this risk is very low because OFT's decision would still be subject to appeal and should the firm win its appeal then the OFT could be sued for compensation. This is a significant incentive for OFT to make the appropriate decision.

One in one out

43. The new power is in scope of OIOO. There are no costs to business. It is a zero cost IN.

Micro business exemption

44. The proposed power will apply to any licence-holder where the OFT has concerns about fitness and serious actual or potential consumer detriment. Past cases subject to appeal

⁷ <http://www.oft.gov.uk/news-and-updates/press/2011/125-11>

⁸ <http://www.oft.gov.uk/news-and-updates/press/2010/38-10>

⁹ <http://www.oft.gov.uk/news-and-updates/press/2012/15-12>

to the First Tier Tribunal have often involved micro or small businesses. While this might not reflect potential suspension cases in future there is a significant risk that if micro businesses are exempt the new power will not help many of the consumers it is intended to help. A questionnaire of 806 licence holders by FSA and BIS (unpublished) found that two thirds of licence holders were micro businesses. So excluding them would mean the power covered only a small proportion of licence-holders.

Summary

45. Consumer credit licence holders that OFT finds are causing serious harm to consumers and are not complying with the law can carry on trading for as long as two years after the OFT finds against them. There are as many as 14 cases a year.
46. We propose an additional enforcement power for the OFT to enforce the existing Consumer Credit Act and force non-compliant firms that seriously harm consumers to cease trading while they appeal the OFT finding.
47. The OFT will have a very strong incentive to use this power appropriately as licence holders that win their appeal are expected to be able to claim compensation.
48. Businesses that comply with the existing law (the CCA) are not affected. Only non-compliant firms, of which there may be as many as 14 a year but are usually small or micro firms, may be affected but only if they do not agree to comply with the existing law.

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