

Review of Consumer Credit Licensing Fees

A consultation

December 2009

OFT1149con

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Scope of this consultation

Topic of this consultation	The fees payable when applying for a consumer credit licence.
Scope of this consultation	The consultation gives stakeholders the opportunity to provide views and comments on a revised charging structure for consumer credit licensing fees.
Geographical scope	UK – wide.
Impact assessment	Any revised charging system developed following this consultation will not seek to generate more income for the same level of regulatory activity. There is no impact assessment linked to this consultation.

Basic information

To	All those requiring to be licensed under the Consumer Credit Act 1974 as amended.
Duration	This consultation will run for 12 weeks from 17 December 2009 to 11 March 2010.
Enquiries	By telephone: Dominic Middleton (020 7211 8637) By email to: dominic.middleton@oft.gsi.gov.uk By post to: Dominic Middleton, Consumer Credit Group, Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX.

<p>How to respond</p>	<p>We would welcome your comments on the content of this consultation document. Please respond to as many questions as you are able and provide any comments in writing (by e-mail, or alternatively by letter as indicated above).</p> <p>We appreciate that respondents may have diverse opinions on the metrics that could be used in any revised charging structure. Any evidence you are able to supply in support of a metric you favour is likely to add weight to our consideration.</p> <p>When responding to this consultation, please state whether you are responding as an individual or whether you are representing the views of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were collated.</p> <p>We are publishing this consultation on the OFT website and sending it to a range of stakeholders to invite comments.</p>
<p>Additional ways to become involved</p>	<p>If you wish to meet with the OFT staff involved please contact Dominic Middleton (details given above).</p>
<p>After the consultation</p>	<p>After the consultation we will collate and publish a summary of responses received. This document will be available on our website at www.of.gov.uk.</p> <p>The responses will be used when developing the potential revised charging structure(s) to be reported to Secretary of State for Business, Innovation and Skills.</p>
<p>Compliance with the <i>Code of Practice on Consultation</i></p>	<p>This consultation complies with the Better Regulation Executive's Code of Practice on consultation. A list of the key criteria can be found at Annexe C along with a link to the full document.</p>

Background

Getting to this stage	The OFT recognises the importance of ensuring that credit licensing fees are fair and proportionate. This was also reflected within the BIS White Paper 'A Better Deal for Consumers - Delivering Real Help Now and Change for the Future' published in July 2009.
Previous engagement	None beyond the above White Paper. However, engagement with key stakeholders will be sought throughout the period of consultation.

Feedback about this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Jessica Nardin
OFT Consultation Coordinator
Room 5C9
Office of Fair Trading
Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX

Email: jessica.nardin@oft.gsi.gov.uk

A copy of the key criteria from the Better Regulation Executive's *Code of Practice on Consultation* can be found in Annexe C.

Data use statement for responses

Personal data received in the course of this consultation will be processed in accordance with the Data Protection Act 1998. All information received (including personal data) is subject to Part 9 of the Enterprise Act 2002. We may choose to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, as far as that is practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, would or might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, that information should be marked 'confidential information' and an explanation given as to why you consider it is confidential.

Please note that Information provided in response to this consultation, including personal information, may be the subject of requests from the public for information under the Freedom of Information Act 2000 (FOIA). In considering such requests for information we will take full account of any reasons provided by respondents in support of confidentiality, the Data Protection Act 1998 and our obligations under Part 9 of the Enterprise Act 2002.

If you are replying by email, these provisions override any standard confidentiality disclaimer that is generated by your organisation's IT system.

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1 INTRODUCTION

- 1.1 The Office of Fair Trading (OFT) is conducting a consultation on a proposed revision to the charging structure for consumer credit licensing fees. The consultation was anticipated in the BIS Consumer White Paper 'A Better Deal for Consumers - Delivering Real Help Now and Change for the Future' published in July 2009.
- 1.2 The consultation document provides background to the licensing regime and the OFT's views on what it should consider when developing any revised charging system. The document also highlights some of the criteria that might be chosen to differentiate between different classes of licence applicant.
- 1.3 The consultation gives stakeholders the opportunity to provide views and comments about the proposed revision to the charging structure and the key criteria that could be used to differentiate between applicants for consumer credit licenses. The consultation also asks about exemptions from charges in certain circumstances.
- 1.4 The consultation closes on 11 March 2010. We will continue to liaise with stakeholders during the consultation period and will publish a summary of the responses we receive, on our website at www.offt.gov.uk.
- 1.5 The responses will be considered when developing potential revised charging structure(s), which are to be reported to Secretary of State for Business, Innovation and Skills in 2010. Any revised charging structure that is considered suitable for implementation will be thoroughly tested before being formally introduced in April 2011.
- 1.6 Any revised charging system developed following the consultation will not seek to generate more income for the same level of regulatory activity. It will ensure that all applications that drive regulatory effort under the regime are charged an appropriate and proportionate fee.

2 BACKGROUND

The licensing system

- 2.1 The consumer credit licensing regime was established under the Consumer Credit Act 1974 (the Act) 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. The licensed population is large, with approximately 106,000 extant licences, as at end November 2009.
- 2.2 After a licence has been issued, the fitness of licence holders continues to be monitored and a licence can be revoked where there is evidence that calls fitness into question. Additionally, a licence can be issued subject to certain limitations.

The Consumer Credit Act

- 2.3 The Consumer Credit Act 1974 was significantly revised in 2006 (CCA06). The revisions, which were largely implemented in April 2008, made fundamental changes to the licensing regime.
- 2.4 The changes extended the scope of the regime, by bringing credit competence into the assessment of fitness to hold a licence. This represents a fundamental change in approach as prior to April 2008 the fitness of a business to hold a licence was determined purely on the basis of its integrity.
- 2.5 Concerns about integrity arise where there is clear adverse evidence of past misconduct, in relation to standards of business behaviour as well as to non-compliance with the law. This evidence does not have to relate to a licensable activity. The way applicants operate any aspect of a business may well be relevant to their fitness to hold a consumer credit licence.

- 2.6 Credit competence considers the skills, knowledge and experience of applicants and those participating in a business to carry out the activities covered by a licence to a reasonable standard. The practices and procedures an applicant proposes to operate in connection with licensable business activities are also considered. The OFT assessment of credit competence relates only to the credit activities to be undertaken under a credit licence, not to competence to run the business more generally.
- 2.7 The changes introduced by CCA06 enable the OFT to deliver enhanced consumer protection by focusing its regulatory efforts on those applicants and licensees whose business activities present the greatest potential risk to consumers. The revised Act also grants the OFT powers (requirements and financial penalties) with which to address concerns with licence holders.

Risk based approach

- 2.8 Given the large number of licence holders OFT focuses its resources in those areas where the risk of consumer detriment is greatest. A risk model is used better to identify applicants seeking to enter those credit activities most likely to cause consumer detriment. With these applicants, additional work is undertaken to establish their likely fitness and competence to operate in these high-risk areas.
- 2.9 The current high risk activities are debt adjusting, debt counselling, debt collection, credit information services (including credit repair), secured/sub-prime lending, secured/sub-prime broking, secured sub-prime debt administration, and lending and broking in the home.
- 2.10 The OFT recognises that the impact of the regulatory regime and how we operate it is felt daily by millions of UK consumers and a large number of businesses. Given the scale of the sector and the consequences of poor practice, the OFT seeks to maximise compliance with the law rather than simply relying on action against those who are in breach.

2.11 A wide range of actions are taken to facilitate and encourage a high level of compliance. The OFT liaises regularly with the many business representatives and consumer representatives who have a legitimate interest in the market. We produce Guidance, in consultation with our stakeholders, to change behaviours in the market where this is deemed beneficial.

Fees and what they cover

2.12 In order to discharge the regulatory functions noted above, Section 2 (4) of the Consumer Credit Act 1974 empowers the OFT, with the approval of the Secretary of State and the Treasury, to charge a fee of an amount specified by General Notice for any service or facility provided by or under the Act. This general power is supplemented by powers, in sections 6A and 28A of the Act, to charge applicants and licensees towards the costs of carrying out the OFT's functions under the Act. Section 2(5) allows the OFT to charge reduced fees, or to levy no fees at all, for certain services or facilities by persons of a specified description.

2.13 All fees charged for credit licensing must be consistent with the requirements of Managing Public Money and should reflect the principles of good regulation, as set out in the Legislative and Regulatory Reform Act 2006 and elsewhere. These require regulatory activity to be transparent, accountable, proportionate, consistent and targeted.

2.14 The major factor to consider when setting credit licensing fees is the number and type of applications anticipated across the year as this will determine income. The fee is set to ensure income matches expenditure across the regime. The licence fee covers the whole cost of the provision of the credit licensing service which comprises:

- The initial consideration of all applications to identify potential fitness and competence risks posed by applicants wanting to enter the consumer credit market.

- Further investigation as necessary - such as inspection visits and more detailed checking and analysis - in respect of applicants, licensees, certain credit activities, etc.
- Formal enforcement activities, frequently including an OFT adjudicator acting independently of the investigation team. This will apply to most cases where the OFT believes requirements on the business are appropriate or have been breached and where a determination is required on the fitness or otherwise of the trader.
- An appeal of an Adjudicator's decisions to the First Tier Tribunal and beyond, where appropriate.
- The provision of guidance and other information about the requirements of the CCA, associated regulations, fitness to hold a consumer credit licence, exercise of statutory functions under the CCA and the maintenance of a public register of licensees.

Self-funding

2.15 In April 2008, operation of the entire consumer credit regime moved to a self-funding model. This means that all costs incurred in delivering the regime must be recovered through the fees paid for credit licences. The licensing fee level is intended to ensure that all OFT licensing related consumer credit activity is cost neutral. That is, income generated through licensing equals expenditure across the licensing regime.

3 THE CURRENT FEE STRUCTURE

Types of application

- 3.1 A standard licence application includes any application for a new licence, renewal or variation to an existing licence. In addition to standard licenses a group licence can be applied for by a responsible institution to cover specified credit operations carried on by those the licence is intended to cover.
- 3.2 Since April 2008, the vast majority of standard licences issued have been for an indefinite period. However, licences issued prior to April 2008 were valid for five years. Thus, up to March 2013, we will continue to receive renewal licence applications.
- 3.3 Application for orders under section 40(2), 148(2) or 149(2) of the Consumer Credit Act 1974 can be made. These orders validate agreements made by an unlicensed trader or following an introduction by an unlicensed broker, so they are treated as if made by a licensed person.
- 3.4 Directions can be sought under Section 60(3) - waiving of certain requirements regarding form and content of documents embodying regulated agreements - and section 101(8) – disapplying certain rights in relation to hire agreements – of the Act.
- 3.5 The OFT must also be notified of changes to key details of the licence holder shortly after they have taken place. These notifications include changes of address, new or retiring partners or directors and changes to company controllers for a limited company or limited liability partnership.

Fees

- 3.6 Of the above, only licence applications (new, renewal and variation) and, to a much lesser extent, validation applications generate income under the current fee system.

3.7 The OFT considers new and renewal applications for standard licenses to be effectively on a par and the fee is the same in both cases. New and renewal application fees for standard licenses generate the vast majority of income under the existing system. The current licensing fees regime, which reflects the pre April 2008 system, differentiates between new and renewal applicants for standard licenses using only a single metric. This is whether the applicant is:

- a sole trader, or
- a corporate body or partnership ('other').

3.8 Group licence applications also attract a charge under the current system. This charge is linked to the number of persons within the group who would otherwise have to be licensed individually. The income from group licensing is very small and generated less than one per cent of overall licensing income last year.

3.9 Variations to categories of business and names to be used can be applied for at any time. Processing these variation applications is not automatic and, like a licence application, they can be refused. Applications to vary a licence attract a fee under the current regime although the income generated is relatively small. Variation applications under the current system generated approximately five per cent of licensing income last year.

3.10 Where validation agreements are sought a charge is made which is linked to the number of agreements that the applicant requests to be validated. Validation income provides only a very small proportion of the annual income generated under the current regime.

3.11 The current fees regime makes no charge for issuing section 60(3) and section 101(8) directions or for processing notifications.

The issue

3.12 The current charging structure is considered too broad brush accurately to reflect the different costs of regulating different types of licensed

business. It differentiates between new and renewal applications for standard licenses using only a single metric. The structure does not ensure a fair allocation between different types of business in the licensed population, nor does it reflect the risk-based approach used under the new regime. A large multi-national currently pays the same fee as a small limited company for instance.

3.13 The OFT believes this is a good time to consider the introduction of a revised system for charging, and to assess if this should bring in a differentiated fees structure. A revised charging system has the potential to ensure that consumer credit licence fees going forward are robust, fair and reflect the risk based approach to licensing. Any revised charging structure that is considered suitable for implementation will be formally introduced in April 2011.

Q1 Do you agree that the fee structure governing consumer credit licenses should be revised?

Q2 Do you agree with the timing of this review and the timescale for introduction of a revised system?

4 A REVISED CHARGING STRUCTURE

Scope

- 4.1 Any revised charging structure will consider all OFT functions, services and facilities for which we can charge, as falling within sections 2(4) [6A and 28A] of the Act, with the exception of the granting of group licenses. The review will also consider the current exemptions granted under section 2(5) of the Act which allows the OFT to charge reduced fees, or to levy no fees at all, for certain services or facilities by persons of a specified description.
- 4.2 The fees payable when applying for a group licence will be the subject of a separate study. The income generated by group licence applications is small: it accounts for approximately one per cent of annual income. This separate consideration will not, therefore, distort conclusions reached here.
- 4.3 From April 2013 the vast majority of extant licenses will be indefinite¹ and so virtually no further renewal applications will be received. Given this it is evident that continuing income will be needed to maintain the self-funded regulatory regime. The 2006 Act addresses this by introducing the concept of 'payment periods'.
- 4.4 Section 28A(1), under the headings 'Charges for indefinite licences' and 'Charges to be paid by licensees etc before end of payment periods', says 'The licensee under a standard licence which has effect indefinitely shall, before the end of each payment period of his, pay the OFT a charge towards the costs of carrying out its functions under the Act'.
- 4.5 These periodic 'maintenance' payments become due from 2013 and replace renewal application fees. They are likely to be of a similar level to those for new applications.

¹ There is a continuing power for the OFT to issue time limited licences if appropriate and subject to the standard Adjudication process.

- 4.6 The existing refund system will require amendment following any revision to the current charging structure. The nature of any amended refund system will be driven by the revised charging structure itself, so cannot be considered further at this time.
- 4.7 A move towards an annual fee for licences has also been considered but cannot be achieved in the timescale of this review. However we would like to hear views in responses to this consultation on whether respondents would prefer a system requiring annual payments in the future.

Key considerations

- 4.8 A main driver for any revised charging structure will be to ensure that the charges made for each of the application types received more accurately reflect the regulatory burden they impose on the OFT.
- 4.9 Further considerations for any revised charging structure are that it is consistent with the requirements of Managing Public Money and should reflect the principles of good regulation, as set out in the Legislative and Regulatory Reform Act 2006 and elsewhere.
- 4.10 A revised charging system will not seek to generate more income for the same level of regulatory activity. It will ensure all those applications that drive regulatory effort under the regime are charged an appropriate and proportionate fee.

Potential metrics within any revised system of charging

- 4.11 It is highly likely that new and renewal applications for standard licenses - and from 2013 periodic 'maintenance' payments - will continue to generate the vast majority of income under any revised charging structure. Applications to vary, validations and charges for issuing directions and processing notifications, should they be made, will only contribute a relatively minor element of the funding required to maintain the licensing regime.

4.12 When seeking to ensure that the fees payable for new and renewal applications for standard licenses, and post 2013 maintenance payments, are fair and proportionate, it is vital to understand what drives the regulatory burden in these cases. The OFT has conducted a series of internal workshops to identify the typical work carried out under these types of applications and has produced a number of metrics which are drivers of the regulatory burden imposed. The OFT aims to utilise some or all of these metrics in any revised charging structure.

4.13 The metrics identified are listed below and discussed in the subsequent paragraphs.

- credit activity
- type of business
- number of trading names applied for
- number of categories applied for
- format of submission (on-line versus paper)
- priority of application
- authorisation
- size of credit business
- overall size of business.

4.14 Credit activity is defined by the category of credit licence applied for. As explained above, certain licensing categories are considered high risk due to an increased potential for consumer detriment associated with these areas. The category of credit applied for is a key metric as the licensing categories underpin the credit risk model used in the regime. This in turn drives the level of regulatory effort expended on an application.

4.15 A wide range of businesses require a consumer credit licence to operate, some purely financial services, others offering credit ancillary to the

provision of goods or services. Certain types of business involve activities which of themselves bring about greater potential for consumer harm. The type of business to be undertaken is thus also considered to be a potentially important metric. Accurate risk assessment with regard to every business model is not possible, but it may be viable to group different broad types of business activities together.

- 4.16 A metric based on the number of trading names applied for would allow the fee payable to reflect the higher burden that results from an application requesting numerous trading names. All trading names must be properly considered to ensure they are appropriate and, where required, fully authorised by the relevant authority.
- 4.17 The number of categories applied for is a relatively straightforward method of differentiating between applicants, that is, the greater the number of categories applied for, the higher the regulatory burden. This metric, if adopted, would have to take account of the types of credit activity applied for. For example, any fee for multiple categories would have to ensure an appropriate balance was struck between considering an application seeking multiple low risk categories compared with one seeking a single high-risk category.
- 4.18 The OFT receives the majority of applications for credit licenses on-line. The percentage of on-line applications is likely to increase following updates to our licensing software, following implementation of the EU Services Directive in December 2009.
- 4.19 On-line applications are more efficient as the submission is electronically transferred into our licensing software. Paper applications are frequently incomplete and necessitate exchanges between the OFT and the applicant simply to start processing. When complete, submitted documentation has to be manually entered onto our database. The processing of paper applications is thus more expensive for the OFT. A higher charge for paper applications would ensure this additional burden was borne only by relevant applicants.

- 4.20 Where applicants are authorised by the FSA or where minimum levels of consumer protection are promised and delivered by self regulatory or other mechanisms, this can be taken into account by the OFT when considering the application. A metric taking account of such authorisation or external guarantee of minimum standards could ensure this was reflected in the fee payable. It would be necessary to keep such a metric under close review to ensure theory and practice were in line.
- 4.21 The size of credit business is a metric that would enable the fee payable to be related to the extent to which applicants are involved in regulated consumer credit activity. It may be difficult to establish the relationship between size of credit business and OFT regulatory action in a constant and linear way across different types of credit activity however. It would also depend upon new applicants being able to provide a meaningful indication of the likely size of credit business at the point of application.
- 4.22 It has also been put to the OFT that the overall size of a business – whether by turnover, people involved in the business (including employees), or a mix of these and similar factors - should be a metric in its own right. It is true that complex business structures, irrespective of how much of the business carried on is regulated credit, bring about additional work for the OFT. There are, inevitably, more persons involved to assess for integrity, the corporate structure may of itself require considerable assessment, there are frequently more business names to consider, and often greater scope for total, as opposed to proportionate, consumer dissatisfaction. Equally many larger businesses have compliance officers and can address problem areas swiftly. This is a difficult metric accurately to assess but again it could be a ‘scaling factor’ within a differentiated fee structure.

A differentiated fees regime

- 4.23 An effective differentiated fees regime will ensure that the charges made to consider each of the application types received are fair, proportionate and more accurately reflect the regulatory burden they impose on the OFT.

- 4.24 A fully differentiated charging system would utilise all of the metrics identified, and potentially others, to calculate the fee payable with an application. A partially differentiated system would only utilise key metrics to calculate the fee payable and ensure that it was consistent across similar types of application. While all of the metrics identified can potentially be of use, a few of them are likely to be of greater importance.
- 4.25 Credit activity, defined by the category applied for, is critical to the level of scrutiny applied to an application as this is aligned to the risk model used within the credit licensing regime. The type of business is also a useful metric when considering the level of scrutiny that should be applied to an application. Due consideration is given as to whether an applicant is authorised by the FSA or where minimum levels of consumer protection are promised and delivered by self regulatory or other mechanisms. The size of credit business metric would be important when considering the extent to which applicants are directly involved with the credit market, while the overall size of business also offers a method of differentiating between applicants. These last two metrics could potentially be of use as 'scaling factors' within a differentiated system.
- 4.26 The remaining metrics identified each provide a method of differentiating between applications but are not considered as important by the OFT. They are mostly not linked to, or driven by the other metrics.

Self-funding issues

- 4.27 It is important that the licensed community understands the credit licensing charging structure and the likely amount to be paid when applying. It is also vital for the OFT that the level of income to be generated under the licensing regime can be forecast as accurately as possible, given the need to match closely anticipated expenditure. A further consideration is that any revised charging structure must be capable of ready implementation using current licensing software. Changes which necessitate significant changes to the software carry a cost.

- 4.28 The inherent complexity of any revised charging structure will need to be balanced against the overarching requirement to ensure fees are fair and proportionate. Importantly, a fully differentiated system could be overly complex and potentially difficult for the licensed community to understand. Perhaps of even greater impact, it would also require a higher level of maintenance going forward as it would be subject to a greater number of changes than a simpler model.
- 4.29 The complexity of charging structure is an especially important consideration given the self-funding nature of the credit regime, as all costs are ultimately passed on to the licensed community. The OFT would wish to avoid an unduly complex system that was expensive to implement and maintain and resulted in higher costs for the licensed community.

Current thinking

- 4.30 Initial analysis by the OFT indicates that a simple system that defines applications as straightforward, moderately complex or complex might be sufficiently differentiated across the large majority of applications. This simple model could be further refined with a 'scaling factor' based on size of credit business and/or overall size of business, should this be considered appropriate. A system along these lines, based on (some or all of) the key metrics discussed above, would ensure implementation and maintenance costs are minimised, to the benefit of the licensed community going forward.
- 4.31 The OFT thus initially favours the relatively simple differentiated system noted above, provided this ensures fees are fair and proportionate.

Q3 Do you agree with the risk based approach recommended to underpin any revised charging structure?

Q4 Do you agree with the metrics identified by OFT?

Q5 Do you favour any particular metrics more strongly than others?

Q6 Are there metrics not identified in this consultation that could be used, and what are they?

Q7 Do you agree that a simple system of charging should be implemented?

Q8 Would you favour a move towards a system requiring annual payment for credit licensing?

5 CHARGING EXEMPTIONS

5.1 Section 2(5) of the CCA allows the OFT to charge reduced fees, or to levy no fees at all, for certain services or facilities by persons of a specified description. Specifically, the OFT does not charge for the following:

- Where a standard application relates only to debt adjusting and/or debt counselling and/or the provision of credit information services and neither the applicant nor any associate² of the applicant will charge any fee in the course of any consumer credit business or ancillary credit business carried on by him.
- Where a Group Licence application is made in respect of a group consisting of persons and/or their associates who make or require no charge, fee or commission in connection with their business and the only categories of business to which the application relates are debt adjusting and/or debt counselling and/or the provision of credit information services.
- An application for a society registered under the Friendly Societies Act 1974 pursuant to a special authority issued by the Treasury under section 7 of that Act.³
- An application by a credit union registered as such under the Industrial and Provident Societies Act 1965, in accordance with the Credit Unions Act 1979 or the Industrial and Provident Societies Act (Northern Ireland) 1969.⁴

² Associate has the meaning given by section 184 of the Act.

³ By virtue of S16(1)(b) of the CCA, consumer credit agreements made by a friendly society are not regulated, but to carry on other credit activities a society might need a licence.

⁴ By virtue of the Consumer Credit (Exempt Agreements) (Amendment) Order 2006 many consumer credit agreements made by a credit union are not regulated, but to carry on other credit activities a credit union might need a licence.

- 5.2 There is a consistent, though not identical, rationale behind these exemptions from payment. First, the business model is specifically designed not to deliver a profit. There are differences in this respect. Where no fee or interest at all is charged, no profit can be made from any licensable activity. Friendly Society and Credit Unions' credit agreements do make a return. But their credit agreements are not generally regulated by the Act and in any event, the profits made are not paid out – there are, by definition, no shareholders – but simply put back into the business to be made available for other borrowers.
- 5.3 Second, the absence of the profit motive for those carrying on these businesses and the limited scope of any licences needed should translate into fewer potential fitness issues requiring the OFT to take regulatory action. Not only could this justify a reduced fee, even the imposition of no charge at all should have no significant impact on the level of fees levied on other licence applicants/licence holders.
- 5.4 The OFT's experience of administering these applications and monitoring the credit activities these businesses carry on suggests that the logic of this approach, adopted since the Act came into force, remains essentially sound. The OFT must undertake administrative actions on all those falling under these exemptions but the level of regulatory action needed has been minimal.
- 5.5 In the course of our licensing work, we have received a small number of representations, from other not for profit bodies, that their activities should equally attract no charge. Over and above this, the OFT has also had representations that even some schemes involving for profit businesses should pay no, or at least a reduced, fee. These are broadly where the goal is primarily to deliver social benefits.
- 5.6 The OFT believes that there may be scope for the current exemptions to be expressed more as a statement of principles. This would potentially enable other comparable bodies to escape an obligation to pay.
- 5.7 Where a for profit business is involved, the OFT finds the arguments less easy to assess. Taking out a loan under a regulated agreement always

carries risks for the borrower and raises the potential for OFT regulatory intervention. The OFT cannot introduce an exemption which risks cross subsidy between businesses engaged in the same commercial activities and raising the same level of risk of detriment to consumers. Moreover, the OFT is mindful of the fact that the more applicants whose licence is subsidised, the more that those who pay will have to contribute.

Exemptions, or even reduced fees, for commercial businesses would require overt and measurable provisions which could demonstrably show a significant likelihood of a reduction in regulatory intervention by the OFT for that type of business.

5.8 The OFT would appreciate views on whether the current exemptions should be taken forward, and if so whether they should be expressed as a set of principles. We would also appreciate views on whether, and if so in what circumstances, they should be extended to other types of organisations.

5.9 In addition to the exemptions noted above the OFT currently makes no charge for issuing section 60(3) and section 101(8) directions. Applications for these directions are infrequent and irregular and would not represent a significant income stream. For this reason the OFT intends to continue providing these directions free of charge. The OFT would appreciate views regarding whether this is considered appropriate by the licensed community.

5.10 Finally, no charge is made under the current regime to process notifications. This non-charging policy is aimed at ensuring that the licensing database and Public Register are kept fully up to date. The OFT intends to continue processing notifications free of charge but would appreciate views regarding whether this policy is considered valid and appropriate by the licensed community.

Q9 Do you agree the rationale of the current charging exemptions should continue?

Q10 Do you believe these exemptions should be expressed as a set of principles?

- Q11** Is there scope for limited exemptions to be allowed for profit making businesses and if yes, in what circumstances would these be appropriate?
- Q12** Should section 60(3) and section 101(8) directions continue to be issued without charge?
- Q13** Should notifications continue to be processed without charge?

ANNEXES

A SUMMARY OF QUESTIONS

- A.1 Do you agree that the fee structure governing consumer credit licenses should be revised?
- A.2 Do you agree with the timing of this review and the timescale for introduction of a revised system?
- A.3 Do you agree with the risk based approach recommended to underpin any revised charging structure?
- A.4 Do you agree with the metrics identified by OFT?
- A.5 Do you favour any particular metrics more strongly than others?
- A.6 Are there metrics not identified in this consultation that could be used, and what are they?
- A.7 Do you agree that a simple system of charging should be implemented?
- A.8 Would you favour a move towards a system requiring annual payment for credit licensing?
- A.9 Do you agree the rationale of the current charging exemptions should continue?
- A.10 Do you believe these exemptions should be expressed as a set of principles?
- A.11 Is there scope for limited exemptions to be allowed for profit making businesses and if yes, in what circumstances would these be appropriate?
- A.12 Should section 60(3) and section 101(8) directions continue to be issued without charge?
- A.13 Should notifications continue to be processed without charge?

B LIST OF CONSULTEES

The following organisations and individuals have been consulted. We would welcome suggestions of others who may wish to be involved in this consultation process.

Advice NI

Advice UK

Arts Council England

Association of British Credit Unions Ltd

Association of Finance Brokers

Association of Independent Financial Advisers

Association of Mortgage Intermediaries

Association of Payment Clearing Services

Better Regulation Executive

British Bankers' Association

British Chamber of Commerce

British Cheque Cashers Association

British Retail Consortium

Building Societies Association

Citizens Advice

Citizens Advice Scotland

Confederation of British Industry

Consumer Credit Association UK

Consumer Credit Counselling Service

Consumer Credit Trade Association

Consumer Finance Association

Consumer Focus

Consumer Focus Scotland

Consumer Focus Wales

Consumer Focus Post (Northern Ireland)

Debt Managers Standards Association

Department for Business, Innovation and Skills

Department of Culture, Media and Sport

Department of Enterprise, Trade and Investment (DETINI)

Direct Selling Association

Federation of Small Business

Federation of Small Business Scotland

Finance and Leasing Association

Financial Ombudsman Service

Financial Services Authority

General Consumer Council for Northern Ireland (GCC NI)

Her Majesty's Treasury

Information Commissioners Office

Insolvency Practitioners Association

Institute of Credit Management

Institute of Directors

Institute of Money Advisers

LACORS

LBRO

Mail Order Traders Association

Ministry of Justice

Money Advice Liaison Group

Money Advice Scotland

Money Advice Trust

National Consumer Federation

National Pawnbrokers Association

Northern Ireland Association of Citizens Advice Bureaux

Trading Standards Institute

UK Cards Association

Which?

C CONSULTATION CRITERIA

Public bodies are required to perform consultations in accordance with the following criteria wherever possible:

- C.1 **When to consult** – formal consultation should take place at a stage when there is scope to influence the policy outcome.
- C.2 **Duration of consultation exercises** – consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- C.3 **Clarity of scope and impact** – consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- C.4 **Accessibility of consultation exercises** – consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- C.5 **The burden of consultation** – keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- C.6 **Responsiveness of consultation exercises** – consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- C.7 **Capacity to consult** – officials running consultations should seek guidance in how to run effective consultation exercises and share what they have learned from the experience.
- C.8 The full *Code of Practice on Consultation* can be found on the website of the Department for Business, Enterprise and Regulatory Reform:
www.berr.gov.uk/files/file47158.pdf.