

A BETTER DEAL FOR CONSUMERS

Consultation on proposal to
ban the use of bills of sale
for consumer lending

DECEMBER 2009

About this consultation – the wider context and what it seeks to achieve

In July 2009, the Government published the White Paper *“A Better Deal for Consumers: Delivering Real Help Now and Change for the Future”*. One of the commitments we made in the White Paper was to consult on banning the use of bills of sale for consumer lending.

Bills of sale are being used to support “log book” lending, namely lending using cars as security. This practice has been the subject of relatively high levels of complaints to consumer groups and the OFT. Bills of sale are written in complex, old fashioned language that consumers often cannot understand. Consumers may have their assets – typically their cars – repossessed without the need for the lender to obtain a court order. This consultation seeks to address concerns about adverse outcomes for vulnerable consumers where borrowing is secured under a bill of sale.

We want a better deal for consumers who have been using this form of subprime loan and to tackle any areas of emerging bad practice, while ensuring that any intervention is proportionate, transparent and targeted. We believe that a ban on using bills of sale for consumer lending is likely to be necessary to achieve this.

We have yet to take a final decision on whether to proceed with a ban or whether alternative options would achieve a better result. We specifically seek your views on the proposals set out in this consultation document to help determine the most appropriate next steps.

Issued: 21 December 2009

Respond by: 15 March 2010

Enquiries to: Rosemary Ohen, Consumer and Competition Policy, BIS
1 Victoria Street, London SW1H 0ET, tel: 020 7215 0946
Email: billsofsale@bis.gsi.gov.uk

This consultation is particularly relevant to: those who lend using bills of sale, and to consumers, consumer bodies and members of the legal profession who have experience of bills of sale.

The Government will publish a response to this consultation exercise by the end of June 2010 at <http://www.bis.gov.uk/consultations>

Contents

Foreword.....	4
Executive summary.....	6
How to respond.....	8
Introduction.....	10
What is the problem?.....	12
Key problems in detail.....	13
Why is the use of bills of sale in consumer lending increasing?.....	17
What alternative credit options exist for consumers?.....	18
What measures are already in place to tackle poor business practice?.....	19
The proposals: intended outcomes and discussion of the options.....	23
What happens next?.....	28
Annexes	
A: List of consultation questions.....	29
B: Glossary.....	31
C: How bills of sale work.....	33
D: Diagram showing the process of securing a consumer loan using a bill of sale.....	35
E: List of individuals/organisations receiving consultation.....	36
F: Code of practice on consultations.....	38

Foreword

The last few years have seen a sharp increase in the use of bills of sale to secure consumer loans. Difficulty in obtaining credit during the recent economic downturn has led consumers, particularly those on low incomes or with poor credit records, to take out loans secured by a bill of sale against the value of their cars, a practice known as 'logbook lending'.

Many consumers, however, feel that they are getting a poor deal. There have been high levels of complaint about the exorbitantly high interest that consumers are charged, about the very few protections available to consumers if they fall into arrears and about unfair collection practices by the 'logbook' lenders.

The Government is concerned that increasing numbers of vulnerable consumers who resort to bill of sale loans are ending up in a much worse position and slipping further into unsustainable debt as a result. We believe that the way in which bills of sale are used to secure consumer credit is intrinsically balanced against the interests of consumers and that more must be done to protect consumers.

In July we launched our White Paper: "A better deal for consumers: delivering real help now and change for the future" in which we committed to consulting on banning the use of bills of sale for consumer lending.

This consultation is set in the context of a number of other vital Government initiatives in this area, including the implementation next year of the revised European Consumer Credit Directive, the work of the Office of Fair Trading to develop Guidance on Irresponsible Lending Practices and to review the supply of high cost credit. While these measures will introduce important new protections for consumers, we believe that this is not enough to protect consumers exploited and disadvantaged through bill of sale lending arrangements.

We are determined to see a better deal for consumers, including for those who have limited access to credit where they can afford it, based on a fairer relationship between individual consumer and lender. We need to tackle areas of unfair practice. We therefore propose that a ban on using bills of sale for consumer lending is likely to be necessary to achieve this.

We must of course properly assess the risks that this proposal could inadvertently increase the cost of credit for consumers who already have limited access to credit and will make it even less readily available for them. One of the consequences could be that those with few or no other lines of credit open to them will have to start sooner facing up to and managing their likely debt problem before it escalates out of control. As set out in the Consumer White Paper, we have taken active steps to improve the provision of debt advice and support for such people facing financial difficulty.

We seek your views on whether we should proceed with the proposal to ban the use of bills of sale for consumer lending or whether alternative options would achieve a better result. We want to ensure that everyone affected has an opportunity to contribute to this important consultation.

A handwritten signature in black ink that reads "Kevin Brennan". The signature is written in a cursive style with a long horizontal flourish at the end.

Kevin Brennan MP
Minister for Consumer Affairs

Executive summary

1. The Government has serious concerns about the suitability of bills of sale as a means for issuing consumer loans secured against personal goods. Their complexity makes it difficult for consumers to understand fully the liability they are taking on when they borrow. We are concerned that the relationship under a bill of sale loan arrangement is inappropriately weighted in favour of the lender to the detriment of the consumer. This creates a situation with the potential for the lender to take unfair advantage of the consumer. By far the largest users of bills of sale are 'logbook' lenders, who issue loans secured against a consumer's car. This practice has been subject to significant investigation and complaint.
2. The consumer lending market has contracted significantly since 2007 and those with an impaired or no credit history are very unlikely to be able to borrow from mainstream institutions. So called subprime lenders charge a premium to such customers to compensate for the increased risk they represent. But logbook lenders are unusual in charging extremely high rates of interest for a *secured* product.
3. We have engaged with industry, agencies and consumer groups over recent months to gain a balanced view of how consumer lending using bills of sale operates. The industry has given us an insight into the customer base and operations. Consumer groups and other Government departments and agencies have also provided valuable input. We have identified several areas of real concern, where consumers are suffering:
 - Loans issued using bills of sale represent a very expensive form of credit, particularly for a secured loan, and the way they are marketed increases the likelihood of default by vulnerable consumers;
 - The legislation is outdated and this increases the likelihood that consumers may not understand the risks and liabilities if they default on loans secured using bills of sale;
 - Bills of sale lack the consumer protections associated with other forms of lending, such as the requirement for the lender to obtain a court order before seizing goods in the case of default;
 - Bills of sale are associated with unfair debt collection practices and there are few rights open to consumers when a lender seeks to seize their secured assets;
 - There is little or no protection for third party buyers if a lender recovers a security, typically a second-hand car, to which a bill of sale is still attached.

4. This consultation seeks to address any adverse consequences for consumers caused by lenders using bills of sale to secure loans. The Government is committed to securing a better deal for consumers by tackling unfair forms of lending, while ensuring intervention is justified and measured.
5. The Government is considering the following proposals:
 - do nothing more beyond current legislative and regulatory activity;
 - introduce a voluntary code of practice or other non-statutory regulations;
 - reform bills of sale legislation; or
 - ban the use of bills of sale for consumer lending.
6. The Government is minded to ban the use of bills of sale for consumer lending. We believe this will be necessary to guarantee sufficient consumer protection and prevent the harm suffered by consumers through poor business practice. In deciding whether to proceed with a ban or to pursue one of the alternative options, we recognise the importance of seeking to ensure that credit remains available on fair and reasonable terms to consumers who want to borrow and can afford to do so.

How to respond to this consultation

7. This consultation asks a range of questions to establish the risks and merits of lending money against goods secured by bills of sale. We are also seeking to establish who is served by this type of lending, what if any alternatives are available and the potential impacts of any actions. Business needs and commercial ramifications will also be explored.
8. The evidence supporting the proposals is set out in the Economic and Equality Impact Assessments that accompany this consultation¹. We have gathered evidence by meeting, and inviting submissions from, enforcement agencies, consumer groups and industry. The responses to this consultation will help inform the Government's decision on which course of action to take.
9. For ease, we have referred simply to "consumers" throughout this consultation. However, we would welcome responses from small businesses and their representatives, sole traders and partnerships, who may be accessing loans secured against bills of sale.

Devolved issues

10. This consultation examines the use of bills of sale for consumer lending in England and Wales. However, it is important that we consider implications at a national level. Consumer credit matters are reserved in Wales and Scotland and devolved (transferred) in Northern Ireland. The legislation (Consumer Credit Acts of 1974 and 2006 and associated regulations) applies to the whole of the UK. Bills of sale legislation (the Bill of Sale Acts 1878 and 1882²) applies only in England and Wales, but not in Scotland where bills of sale are not used. In Northern Ireland, bills of sale are regulated separately under the Bills of Sale Ireland Act (1878).

Consultation timing and contact details

11. This consultation on the proposal to ban the use of bills of sale for consumer lending opened on 21 December 2009. The deadline for responses is 15 March 2010.
12. When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make clear who the organisation represents and, where applicable, how the views of members were assembled.
13. Responses should be sent to:
Rosemary Ohen

¹ www.bis.gov/consultations

² http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1882/cukpga_18820043_en_1

Consumer and Competition Policy Directorate
Department for Business Innovation and Skills
1 Victoria Street, London, SW1H 0ET
Tel: 020 7215 0946 / Email: billsofsale@bis.gsi.gov.uk

14. If you have any policy queries about the consultation, these should also be addressed in the first instance to Rosemary Ohen.
15. A list of those organisations and individuals involved in the consultation process is provided in Annex B. We would welcome suggestions of others who should be consulted.
16. If you have concerns about the way in which this consultation is being managed or conducted, please refer to Annex F which details the Code of Practice for Consultations and provides contact details for complaints.

Confidentiality and data protection

17. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
18. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Additional copies

19. This consultation paper is available electronically at www.bis.gov.uk/consultations along with the accompanying Economic and Equality Impact Assessments. You may make copies of this document without seeking permission. Printed copies of the consultation document can be ordered on request from:
BIS Publications Orderline
ADMAIL 528
London SW1W 8YT
Tel: 0845-015 0010 / Fax: 0845-015 0020
www.bis.gov.uk/publications

Where possible, we will make other versions of this document available on request in Braille, other languages, large fonts and other formats.

Introduction

20. Bills of sale, in the context of consumer lending, are used to secure a loan on an item of personal property, typically a car. The item of property could already be in the ownership of the consumer or it could be an item the consumer intends to purchase with the loan. Loans are often provided at very high rates of interest – loans typically average from £750 to £1,500 with an Annual Percentage Rate (APR) of interest of over 400%.
21. A bill of sale is a legal contract between the consumer and lender, which specifies that on a particular date at a recorded location and for a defined sum of money, the consumer sold to the lender a specific item of personal property. The property itself does not change hands and the consumer is able to continue to use the property, but the lender, as the ‘owner’, has personal rights of seizure. If the consumer defaults on repayments, the lender can take possession of the item of property without the need for a court order, then sell it and still pursue the consumer for any shortfall on the loan.
22. For the bill of sale to be valid and enforceable, it must be registered by the lender with the High Court. Where a lender can provide a properly registered bill of sale, there is no legal action that consumers in default can take to prevent seizure of the property. If the bill of sale is not properly registered, and the evidence suggests that many are not, then it is void and unenforceable³. Many consumers however are not aware of the requirement to register and whether or not their bill of sale has been registered. This could potentially result in vulnerable consumers particularly suffering unduly from questionable collection practices.
23. Recent data shows that 40,000 bills of sale were registered at the High Court in the year 2008/9 and that bills of sale to secure consumer loans have become much more widespread, particularly during the recent economic downturn. As not all bills of sale are registered by lenders, the number of bills of sale actually used for the purposes of securing consumer loans may be much higher than the registration figures indicate.
24. The largest users of bills of sale appear to be ‘log book’ lenders, who issue loans secured against a consumer’s car. Such loans are typically one of the few options available to those with an impaired credit record or no credit history or to the self-employed who may have difficulty accessing a bank loan or other mainstream finance. It is our understanding that although a lender will generally assess a consumer’s ability to afford repayments, limited or no credit checks or credit reporting are carried out at present⁴. A ‘log book’ loan can therefore represent to

³ Annex C sets out in more detail the complexity of how bills of sale work.

⁴ There will be a legal requirement for lenders to assess creditworthiness following forthcoming implementation of the Consumer Credit Directive Regulations.

a consumer an opportunity to obtain quick money relatively simply online, over the phone or at a face-to-face meeting with the lender.

25. It is difficult to assess accurately the overall value of consumer loans secured through bills of sale, but we estimate the size of the market now to be reaching over £30 million a year. Data suggests that 88% of the market is dominated by two major players, Logbook Loans Limited and Mobile Money Limited.

What is the problem?

26. The Government shares the concerns of consumers, consumer groups and enforcement agencies that loans secured by bills of sale are unfair to consumers and that consumers in vulnerable circumstances, such as low income families, may suffer severe detriment and could be at risk of exploitation.
27. Consumer groups have cited many examples of poor practice and the misuse of bills of sale by 'log book lenders' and have called for bills of sale to be banned. The OFT and Local Authority Trading Standards Services also have concerns about the activities of several 'log book' lenders and the high level of consumer complaints they have received. Well over 1,000 complaints have been made to Consumer Direct over the past four years with claims of losses by the complainants amounting to £1.47 million. This scale of complaint and potential loss suffered suggests problems with a significantly high proportion of bill of sale loans.
28. The evidence to date highlights the following key problems:
 - i. Loans issued using bills of sale represent a very expensive form of credit, particularly for a secured loan, and the way they are marketed increases the likelihood of default by vulnerable consumers
 - ii. Bills of sale are difficult to understand and consumers may not realise that they do not own the property on which the loan is secured
 - iii. Bill of sale loans lack consumer protections associated with other lending arrangements and property can be seized without the lender having to obtain a court order if consumers default
 - iv. Consumers can be subjected to unfair debt collections practice and have few rights when a lender seeks to take possession of assets
 - v. Consumers are often unaware that if they default, they may be pursued for the shortfall debt where it is not covered in full by the value of the underlying security, typically a car which may depreciate rapidly
 - vi. Third party buyers have little recourse if a lender recovers a security, typically a second-hand car, to which a bill of sale is still attached in respect of a loan made to the previous owner.
29. Lenders who specialise in loans using bills of sale believe there is a need to address what they consider to be the misconceptions and myths surrounding their businesses. They argue that a ban on bills of sale would remove 'log book loans' from the market, leaving those who are unable to secure alternative credit from a mainstream lender with access to no other legitimate or regulated source of finance.
30. There has been criticism from the legal profession about the use of bills of sale for many years. Within just a few years of introduction of the Bills of Sale Act (1878) Amendment Act 1882, the legislation was drawing adverse judicial comment in the courts and concern about the mass of litigation the Act was producing. Over 80 years later the Crowther

Report⁵ was equally critical about the technical pitfalls of the bills of sale legislation and recommended repeal of the Bills of Sale Acts. The Law Commission in 2002 concluded that serious consideration should be given to reform⁶.

31. Others counter that there is nothing intrinsically wrong with bills of sale as a financial instrument but that it is its misuse by some traders that is the problem and that this should be more tightly regulated. Some view it as an appropriate use of bills of sale to raise money against personal items of worth, such as a valuable painting or antique, and that this should not be lost.

Key problems in detail

i. Expensive credit for a secured loan, with uneven repayment terms

32. Log book loans secured by a bill of sale generally range from £500 to £2,000 or more. Interest is charged at a flat interest rate, often of around 10% of the principal for each month or four weeks of the term. Some log book lenders are also reported to charge the consumer excessively high arrangement fees, arrears fees and other costs associated with the default process. An APR of over 400% is not uncommon. The total cost, for example, for a typical £750 loan over a 6 month period would be over £3,000. This represents an exceptionally expensive form of borrowing.
33. Although a bill of sale loan is secured, lenders charge a premium to consumers for being 'high risk'. Yet, log book lenders will frequently lend up to only half the value of the vehicle (the security), in return for the title and the vehicle logbook. If a consumer misses a payment, the lender can seek to take possession of the vehicle⁷ and sell it. Although the lender may well not recover his loan from selling the vehicle due to its depreciation, in some cases he may recoup more than the value of the loan and keep the surplus.
34. Of even greater concern is that with a bill of sale loan consumers generally only repay the interest on their loans until the last month of their contract, when the remaining balance must be paid. Unlike most other types of unsecured loan⁸, the repayment schedule for a bill of sale

⁵ The Crowther Committee Report on Consumer Credit was presented to Parliament in March 1971, <http://hansard.millbanksystems.com/lords/1972/jun/28/consumer-credit-the-crowther-report>

⁶ The Law Commission consultation paper no 164 on "Registration of security interests: company charges and property other than land"

⁷ Section 7 of the bill of sale related to a loan under a regulated agreement under the CCA, section 7A of the 1882 Act gives the lender a right to seize the property if the debtor defaults. If the bill of sale related to a loan under a regulated agreement under the CCA, section 7A of the 1882 Act (inserted by the CCA 2006) requires the creditor to serve a default notice (see para 47).

⁸ With the exception of payday loans, which are similar.

loan is not linear⁹. Repayments on bill of sale loans are often advertised weekly or monthly and only include the repayment of interest. As a result, consumers may find themselves caught short and unable to make the final payment, thus incurring further charges. In one sense, bill of sale loans are more comparable to an interest-only home mortgage. However, unlike a mortgage, a bill of sale loan is typically secured against a depreciating asset. Furthermore, the type of consumer (credit-impaired and/or with no access to mainstream finance) that bill of sale loans are marketed to are more likely to be struggling with their finances. In such circumstances, bill of sale loans may exacerbate the financial difficulties that already indebted and other vulnerable consumers find themselves in and tip them further into problem debt.

ii. Bills of sale language and formalities difficult to understand

35. Bills of sale are very arcane and technically complex instruments to use for modern day consumer lending. They were originally designed for commercial use, most commonly in shipping. The evolution of bills of sale legislation was to curb the use of the bill of sale as a means of defrauding innocent persons. The original Bills of Sale Act 1854 was repealed and re-enacted by the Bills of Sale Act 1878, which prescribes the form which a bill of sale should take. Further developments led to the enactment of the Bills of Sale Act (1878) Amendment Act 1882, which aimed to introduce more protection for consumers.
36. However, the language of the Bills of Sale Acts and consequently the language of the prescribed form for a bill of sale used to secure 'log book loans' is outdated and unclear. The modern consumer may fail to understand and appreciate the onerous nature of the terms being entered into. The consumer may not realise, for example, that the title of the security passes to the lender and that the consumer no longer owns the property.
37. The complex and old-fashioned language can create problems for enforcers, as well as consumers. Local Authority Trading Standards Services have indicated that it is difficult for their officers to ascertain if the lender has acted within the law.
38. The very archaic formalities of the Bills of Sale Acts can also be disadvantageous for lenders. Even a minor technical error can mean that the bill of sale is void. This differs from the Consumer Credit Act 1974 (CCA), where a breach of the formal requirements for a secured loan does not necessarily make the agreement unenforceable¹⁰. Instead, the court is granted discretion to decide whether or not it remains enforceable (section 129(1)(b)(i) of the CCA). This further

⁹ A linear schedule is where repayments are structured in such a way that repayment levels are constant and when completed result in repayment of both interest and capital.

¹⁰ Although it should be noted that agreements entered into before April 2007 are still subject to automatic unenforceability for breach of certain provisions.

suggests that bills of sale are not an appropriate form of lending for the 21st century.

iii. Lack of consumer protections and risk of seizure

39. As a 'log book loan' secured by a bill of sale is an agreement by which the lender provides the consumer with credit, it is subject to regulation under the Consumer Credit Act 1974 ("the CCA"). Accordingly, all those offering lending under bills of sale must be licensed by the OFT to carry out a consumer credit business under the CCA.
40. However, consumers of loans issued using bills of sale do not enjoy one of the main protections afforded to other lending arrangements under the CCA, whereby in the event of a default by the consumer, the lender would have to go to court in order to enforce repayment of the debt. Under a 'log book' loan secured with a bill of sale, if a consumer misses a payment, the lender can seek to take possession of the car immediately and place in a car auction¹¹. This leaves potential for vulnerable consumers to suffer sudden and unforeseen detriment, with little scope to protect themselves.
41. Bills of sale have been revived by some traders in the motor industry as an alternative to hire purchase to finance the sale of cars to the riskier, non standard market, but with none of the protections afforded by the hire purchase provisions in the CCA. A consumer in a hire purchase agreement has the right to end the agreement, in accordance with Section 99 of the CCA, at any time before the last instalment is due. The consumer may then return the goods and settle 50% of the balance, plus costs. If a consumer has paid a third or more of the total amount payable, the goods become "protected goods" and, unless the consumer gives consent for the goods to be removed, the lender must go to court for an order for the goods to be returned.
42. Under a bill of sale agreement, however, the consumer does not own the car. The lender or car financier retains the right to recover the consumer's car until the total amount has been paid. Interest charges are also significantly higher than those offered under other forms of conditional sale and in the event of default by the consumer, the enforcement methods are potentially more robust.
43. In the Consumer Law Review, the Trading Standards Institute¹² and the Institute for Consumer Affairs¹³ argued that the use of bills of sale caused significant consumer detriment because consumers were not

¹¹ The bill of sale form says that the "chattels", namely the secured property, shall not be liable to seizure or to be taken possession of "for any cause other than those specified in section 7 of the Bills of Sale Act (1878) Amendment Act 1882". There is no requirement for section 7 to be set out in the lender's agreement with the consumer.

¹² Trading Standards Institute response to Consumer Law Review at page 53 of <http://www.berr.gov.uk/files/file52000.pdf>

¹³ Institute of Consumer Affairs response to Consumer Law Review at page 272 of <http://www.berr.gov.uk/files/file51998.pdf>

afforded the same protections as under hire purchase arrangements or other types of unsecured consumer loans.

iv. Unfair debt collection and enforcement practices

44. Once the consumer has entered into a bill of sale agreement, the lender is entitled to enter the consumer's premises to examine the assets secured against the loan at all times, in order to protect his interests¹⁴. Some modern 'log book loan' contracts have taken this provision further and specifically provide that the lender has a right to break open any door or window necessary to observe this right.
45. If the agreement is also protected by the Consumer Credit Act 1974, then the lender need only issue a default notice (see further at para 47 below). Once that is done, there is no need for the lender to secure a court order. Lenders are within their rights to seize the car even if the missed payment is the last but one.
46. Under section 7 of the Bill of Sale Act 1882, once the property is seized, it must not be sold for 5 days. During that time, the consumer can apply to the High Court or a judge in chambers who may rule that if a payment can be made, the lender can be restrained from removing or selling the goods. Unfortunately, the language in section 7 is not clear and the need for a court application is unlikely to be made by a vulnerable consumer who would be unaware that he had the right to do so. The period for making the application, namely 5 days, is also very short.
47. When a bill of sale is given by way of security for the payment of money under a regulated agreement under the CCA, section 87(1) requires the lender to serve a default notice 14 days before seizing the asset. In theory, this could allow the consumer to apply to the court for a 'time order' against the bill of sale to allow for more time to satisfy the loan agreement. Once again, as with the procedure under section 7 of the Bill of Sale Act, the process is not free and in practice, few consumers will have the knowledge or wherewithal to apply to the courts or may not receive the default notice with sufficient time to act.
48. If the consumer does not apply for a time order or resume payments, the lender will legally be able to seize the secured goods without a court order, unless the bill of sale is defectively drafted, or the instrument has not been properly registered. However, a consumer is unlikely to know whether a bill of sale was defective or whether it was properly registered (or indeed whether it was registered at all). A lender might not know either or may choose not to inform the consumer. In either case, the consumer could be subject to adverse consequences.

v. Consumers may be unaware of liability for shortfall debt

¹⁴ *Paxton, ex parte Pope (1889) 60 LT 428 DC*

49. The consumer's liability may not end with seizure of the secured asset. Bill of sale loans are sometimes made without reference to the value of the underlying security or its likely depreciation. Vehicles depreciate over time. Particularly under circumstances where the consumer becomes liable for interest and other charges, the security may well not be sufficient to cover the outstanding balance. In such circumstances, consumers remain liable for any shortfall after the sale of the secured goods. The OFT has seen some cases of charging orders being taken out against the consumer's home as a result of outstanding debt. If the lender is successful in obtaining a charging order over the consumer's home, or indeed, any other property the consumer may own, this would mean that the lender would be entitled to a share of the proceeds on the sale of that property.

vi. No protection for innocent third party buyers

50. Third party buyers can also be disadvantaged when buying a second hand car if, unknown to them, it has previously been accepted as security under an outstanding bill of sale. Even where the buyer has performed checks to verify the seller's ownership of the vehicle, such as searching asset finance registers, it may not be apparent that a bill of sale is still attached to a vehicle. Under such circumstances, the vehicle could be repossessed from the third party buyer at any time, leaving the bringing of a civil case against the seller as the only option available to the third party buyer.
51. This is partly caused by the process whereby bills of sale are registered at Court. Cars subject to outstanding finance under a hire purchase agreement will be registered on one of the asset finance registers operated by Equifax or Hire Purchase Information. However, the only way to find out whether a bill of sale is attached would be to search the registry at the Court where bills of sale are registered. The search needs to be done either in person or by written request, with the latter usually taking 2 weeks. Such searches are subject to charges which may add up to a considerable percentage of the car value and consequently may deter prospective buyers from carrying them out. Furthermore, while the lender may hold onto the car's V5 logbook, it is quite common for cars to be sold without the original logbook, as a copy can be obtained on request from the Driving and Vehicle Licensing Authority.

Why is the use of bills of sale in consumer lending increasing?

52. There has been and continues to be a rapid growth in the use of bills of sale for consumer lending. Data from the High Court shows the number of registered bills of sale increased 12.6% from 34,327 in 2007/8 to 38,639 in 2008/9. For the period from April to September 2009 there were 20,627 registered bills of sale, and if registrations continue at the same rate, this would be a 28% increase on the previous year. The alarming rate of the rise is also illustrated by earlier figures in the Law

Commission report¹⁵ showing that in 2001 only 2,840 bills of sale were registered but in the first 6 months of 2005 nearly 11,000 were registered.

53. The withdrawal from the market of providers of traditional forms of subprime loan such as Cattles plc and London Scottish Bank could account for some but not all of this increase. To be eligible for a 'logbook' loan, a consumer usually needs to own a finance-free car less than 8 years old. Many consumers therefore who traditionally use other forms of subprime credit may not be able access a 'logbook' loan.
54. Bills of sale may appear attractive to both lenders and consumers because they facilitate lending to the credit impaired. The lender will seek to remove much of the risk associated with unsecured non standard lending by securing a loan with a bill of sale against goods, usually a car at half of its value to take account of depreciation over the period, so that a loan can be made to those with a poor credit rating.
55. Lenders see additional advantages. The threat of the consumer's vehicle being removed if he defaults on repayments on a bill of sale loan gives lenders a strong lever to ensure that consumers prioritise repayments. The lender is doubly covered because the secured asset can be repossessed without the need to follow the usual court and recovery procedures and the consumer can be pursued for any outstanding balance, using other collections methods.
56. Many consumers will turn to a bill of sale loan as a last resort because they have little or no alternative. Consumers are likely to have a poor credit history, be self employed or on a low income and unable to access mainstream finance. They are attracted by the absence of what to some may be a daunting credit reference check and the speed with which this type of loan can be agreed. Given the consumer's likely precarious financial position, the risk of default will be higher and the consumer then faces rapid intervention by the lender seeking to seize the security, with little or no protection and in a way which is unexpected since the consumer may not understand the terms of the agreement. This leaves vulnerable consumers exposed to potential exploitation.

What alternative forms of lending exist for consumers?

57. The individual amounts being lent under bills of sale by lenders to consumers are similar to other sub-prime lenders such as payday loans or home credit providers. The typical APR for a non-mainstream loan of £750, the typical amount for a bill of sale loan, could range from 40% to over 200%. The time period over which bill of sale loans are offered is often much longer than home credit or payday loans, placing consumers at greater risk.

¹⁵ See footnote 6.

58. Credit unions offer an alternative to bill of sale lending and can provide loans from relatively small amounts of around £100 to much larger loans. It will not be possible for all consumers to borrow from a credit union, because they are regional and sometimes because a consumer must be an employee of a certain company or resident of an area to qualify for membership. Credit unions may perform credit checks and are less likely to pay out quickly as they do not always operate in the same way as a retail business. A credit union loan has a dramatically lower rate of annual interest, typically around 25%, and does not normally require security.
59. A useful comparison to borrowing secured on a bill of sale would be a pawnbroking agreement. As with bill of sale lending, the pawnbroker will assess the value of the item and lend money factoring in depreciation, sale value and costs incurred. The pawnbroker will ask a consumer to sign a credit agreement and provide a pawn-receipt either separately or contained within the credit agreement to prove that the consumer owns the item. The item is normally 'redeemed' by handing over the pawn-receipt and paying back what is owed under the agreement. The standard period for redeeming an item is six months, but the pawnbroker may agree to longer when the agreement is made. If by the deadline the debt cannot be repaid, and the outstanding debt is £75 or less, the pawnbroker will keep the pawn. If more than £75, the pawnbroker can sell the pawn to recover the debt owed. The pawn belongs to the consumer until it is sold and can still be redeemed by paying what is owed, including the interest that has built up.
60. The key difference between loans secured against pawn as opposed to a bill of sale is that at the point of borrowing the consumer is in little doubt about the terms of transaction; they retain ownership of the item but not use of the item as the lender now has possession. More importantly, the security would normally represent the maximum amount of the consumer's liability. Goods accepted for pawn are typically not subject to rapid depreciation, so that if sold the money recovered will be greater than the total cost of the loan and the surplus is returned to the consumer.
61. Some pawnbrokers also offer 'sale and buy-back' schemes which is similar to bill of sale lending in that the item is sold to the pawnbroker with an agreement to buy back the pawn for a higher price at a future date. For all intents and purposes this is a secured loan. However, like a pawnbroking agreement, consumers will rarely be left liable for any shortfalls or outstanding repayments. If they fail to buy back an item, it can be retained or sold by the broker and the proceeds should normally cover the total value of the loan plus interest.
62. In Scotland, the Bills of Sales Acts do not apply and bills of sale are not used. Typically for consumers unable to access mainstream finance, lending using a sale and buy-back arrangement may be available.

What measures are already in place to tackle poor business practice?

63. There are a number of initiatives aimed at improving consumer protection which have been recently implemented or are close to implementation and which will have an impact on the behaviour of lenders using bills of sale.

OFT enforcement

64. Since 2008, lenders applying for a consumer credit licence to engage in 'high risk' credit activities, which would include those who proposing to use bills of sale as the basis for their lending business, have been subject to greater scrutiny by the Office of Fair Trading. In addition the OFT now has a wider range of powers ranging from the ability to place conduct requirements on a licence to imposing fines (of up to £50,000 for failure to comply with a single requirement), or ultimately to taking away the licence.

Unfair relationships test

65. The Consumer Credit Act 2006 (CCA06) provides a consumer with the ability to challenge any credit relationship which they believe is unfair through the courts. It also provides a right to free and independent dispute resolution via the Financial Ombudsman Service (FOS) which covers all standard consumer credit licence holders.

New requirements on lenders

66. The forthcoming implementation of the European Consumer Credit Directive (CCD)¹⁶ will impose several new requirements on lenders, including those issuing loans or finance using bills of sale. First, lenders will be required to explain their products to consumers adequately before they enter into a contract, including the consequences of any failure to repay. The lender will need to make clear the potential threat to a consumer's home or other assets should the bill of sale security be worth less than the outstanding debt and if it is the lender's practice to apply for charging orders under such circumstances. This is in addition to information about fees, charges and repayment schedules that the lender will need to provide. The introduction of Standard European Consumer Credit Information (SECCI) means that lenders must provide certain information in a standardised form, providing key information 'at a glance'.
67. The CCD will also require lenders to check the credit worthiness of consumers before lending to them. It is our understanding that bill of sale lenders generally already perform basic income and expenditure checks, such as completing a personal budget planner and taking copies of bank statements to prove salary deposits. Lenders may however

¹⁶ Directive 2008/48/EC. Full text available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:133:0066:0092:EN:PDF>

have to take further steps to meet the obligation to lend responsibly. This could include using the credit reference agencies and performing more detailed checks on the consumer's ability to repay amongst other measures.

New irresponsible lending guidance

68. The requirement not to lend irresponsibly is a cornerstone of the reforms introduced by the Consumer Credit Act 2006. The OFT will be issuing revised new guidance on what constitutes irresponsible lending. The Guidance on Irresponsible Lending Practices will apply to all steps of the transaction process from advertising and marketing through to the handling of arrears and default. The OFT has consulted on the draft guidance over the summer of 2009¹⁷ with a view to issuing the final guidance in early 2010. The guidance will aim to balance the need to ensure that consumers are protected from irresponsible lending practices against the need to ensure that the supply of sustainable credit, particularly to those most in need, is not unduly inhibited.

High cost credit review

69. On July 2009 the OFT launched a review into the supply of high cost credit¹⁸ as part of its ongoing Financial Services Strategy. The sector is characterised by loans which are often for small amounts, repayable over short periods, and with high APRs. Many consumers of such products have limited access to credit and are on low incomes and represent a vulnerable consumer group. The OFT review is focusing on:
- the level and drivers of competition in this market;
 - the sources of suppliers' revenue;
 - the choices faced by consumers; and
 - the factors that influence their decision.

It will look across the range of options available to consumers, including payday lending and home credit, and examine the impact of the economic downturn on both suppliers and consumers. The OFT expects to publish interim findings by the end of 2009 and the final report in spring 2010. The interim findings from this review will support the evidence already gathered by the Government for the consultation on bills of sale.

Q1. The Government would welcome further evidence about the current nature of the bill of sale consumer lending market, including in particular:

- The incidence of bills of sale used for consumer lending, particularly among vulnerable consumers with no access to mainstream credit;
- The use of bill of sale loans for business purposes for the self-employed

¹⁷ http://www.ofg.gov.uk/shared_ofg/consultations/ofg1107con.pdf

¹⁸ http://www.ofg.gov.uk/ofg_at_work/markets/services/credit-review/

and owners of small firms;

- The consumer experience of accessing bill of sale loans and dealing with their lenders;
- The profitability of bill of sale lending and the impact of the economic downturn on both consumers and lenders.

The proposals

70. We want a better deal for consumers and to tackle areas of poor business practice, while ensuring that any intervention is proportionate, transparent and targeted. In considering whether to proceed with a ban on the use of bills of sale for consumer lending or to pursue alternative action, the Government will be guided by the following principles:
- credit should continue to be available on fair and reasonable terms to those who wish to use it responsibly;
 - vulnerable consumers, or those with an impaired or no credit history, should have access to credit without suffering detriment if they can afford the repayments;
 - consumers should retain the right to use their possessions as security for a loan, provided such a loan is made on fair and reasonable terms;
 - consumers should be able to benefit from an open, competitive and innovative credit market and from transparent products.
71. There are a number of possible options to achieve these intended outcomes:
- (1) Do nothing beyond current legislation and regulatory activity;
 - (2) Introduce a voluntary code of practice or other non statutory requirements;
 - (3) Reform bills of sale legislation to make it more appropriate for consumer lending;
 - (4) Ban the use of bills of sale for the purpose of consumer lending.

Option 1: Do nothing beyond current legislation and regulatory activity

72. Under this option, no changes to legislation would be made and the use of bills of sale for the purpose of consumer lending would continue to be allowed.
73. Lending using bills of sale would be subject to new regulations implementing the Consumer Credit Directive, specifically provisions introducing:
- A requirement on lenders to provide adequate explanations of products to consumers at the pre-contract stage; and
 - A requirement on lenders to check consumers' credit worthiness.

74. The new requirement for lenders to provide adequate explanations might improve consumers' understanding of the terms of a bill of sale loan and the possible associated adverse consequences. The new credit worthiness check might ensure that fewer consumers unable to afford the repayments are inappropriately granted loans secured against bills of sale.
75. A failure to provide adequate explanations of the terms of the bills of sale or to check the consumer's credit worthiness could, amongst other matters, breach the CCD implementing legislation and call into question the bill of sale lender's fitness to be licensed by the OFT.
76. These measures alone would not protect consumers from the possibility of having their goods seized without a court order in case of default, or protect innocent third party buyers, typically of a second-hand car, from action to take possession where, unknown to them, a bill of sale still covers the vehicle that they have purchased in good faith.

Q2 We would welcome evidence on the extent of consumers' understanding of the terms of bills of sale, and their options in the event of default should they wish to prevent the seizure of the secured asset.

Q3 Is it fair and reasonable to have fewer protections for consumers borrowing money under a bill of sale than under other forms of consumer credit agreement including hire purchase agreements?

Q4 Will the implementation of the Consumer Credit Directive, combined with OFT guidance, provide sufficient additional consumer protection in this area? If not, what other measures (not covered in this consultation) would you suggest to improve consumer protection?

Option 2: Introduce a voluntary code of practice or other non-statutory requirements

77. Lenders would provide additional consumer protection under a voluntary code of practice or other non-statutory self-regulation. Such a code of practice or other non-statutory self-regulation would need to be developed in consultation with the industry, consumer groups, the legal profession, enforcement agencies and other stakeholders.
78. The consumer protections gained from a voluntary code of practice or other non-statutory requirements would be in addition to the changes required under the forthcoming OFT Irresponsible Lending Guidance and the regulations to implement the CCD, described in Option 1 above.

79. Under this option, consumers would continue to have access to this form of credit and through better lending and enforcement practices by lenders may enjoy clearer and more reasonable borrowing terms. Improvements to the registration process for a bill of sale could also be included in such a code of practice, so that bills of sale are registered online electronically with asset finance registers in the same way as hire purchase agreements. This would make it easier to search the register and thus provide better protection for third party buyers.
80. The Government's main concern, however, is that unless companies adhere to sufficiently broad codes of best practice, vulnerable consumers could continue to suffer some of the harm set out in the introduction to this consultation. It is difficult to see how non-compliance by lenders with a code of practice would be dealt with and what sanctions could be applied. As an alternative to intervention by enforcement agencies, a code of practice may therefore have limited effect. Furthermore, the underlying law on bills of sale would remain, allowing lenders who breach any code of practice to continue to operate in ways that have caused concern.

Q5 Would a voluntary code of practice, if adopted by bill of sale lenders, coupled with ongoing enforcement action, provide sufficient additional protections for consumers?

Q6 Would a code of practice requirement to register a bill of sale loan agreement with online electronic asset finance registers provide sufficient protection for third party consumers?

Option 3: Reform bills of sale legislation to make it more appropriate for consumer lending

81. Under this option, the Government would repeal the Bills of Sale Acts 1878 and 1882 and extend all the protections of the Consumer Credit Act 1974 to lending which is secured on goods (bills of sale type lending). We would also introduce any additional protections required to address the adverse consequences associated with bill of sale loans as set out in the introduction of the consultation document. To affect such changes would most likely require primary legislation.
82. Such reform could include:
- removing the lender's power of entry and rights to seize and sell the consumer's goods without a court order;
 - protecting the consumer from having goods repossessed where the arrears are very small;
 - updating the language and formalities of bills of sale administration;
 - improving the registration process for bills of sale;

- setting limits to the size of sum to be lent against goods secured through a bill of sale to protect against inappropriate use of bills of sale for small or large value loans.
83. Making reforms to this form of lending may remove the areas of concern and the adverse elements associated with the way in which bills of sale for consumer lending are currently used. Bill of sale type lending secured against personal goods could continue in a modified form, with all the protections of a standard consumer credit or hire purchase agreement. This modified form of secured lending would also be subject to any changes required under the forthcoming OFT Irresponsible Lending Guidance and the regulations to implement the CCD, described in Option 1 above. Enforcement action would still have to be taken against poor commercial practices by lenders.
84. There could be a case for reform if the evidence shows that bills of sale are an appropriate form of instrument by which to secure consumer loans. However, the likely scope of reforms to guarantee the necessary consumer protections would be so widespread as to require extraordinary resources to implement, which may not be justified. The proposed reforms may well render this new model unprofitable for lending businesses, causing them to exit the market with much the same result as under option 4 below.

Q7 To what extent would reform of the legislation rectify the problems identified in relation to bills of sale?

Q8 If you consider that a bills of sale type instrument for consumer lending should be preserved, what would make a credible package of reform measures to ensure sufficient consumer protection?

Q9 What might be the unintended consequences of this option, including the implications for access to affordable credit for vulnerable consumers?

Q10 What might be the costs to lenders of this reform and adopting a new secured lending instrument?

Option 4: Ban the use of bills of sale for the purpose of consumer lending

85. The Government's preferred option therefore would be to ban the use of bills of sale for the purpose of consumer lending, in effect preventing bills of sale being used to secure lending against personal goods. This would be achieved by repealing the Bills of Sale Acts 1878 and 1882, banning the use of bills of sale as an instrument of securitisation for the purpose of consumer lending.

86. In banning the use of bills of sale for consumer lending, all of the detriment set out in the introduction to this consultation document would be prevented.
87. Lenders would still be able to use alternative lending methods such as hire purchase or pawnbroking agreements or adopt a new style of lending, possibly by means of a new method of securitisations but with the protections associated with modern consumer credit agreements.
88. On the other hand, lenders who currently use bills of sale as the basis of their loans business may exit the market. For some consumers, logbook lenders may represent a lender of last resort, along with other low value, short term, high cost credit, such as home credit and payday loans or loans through pawnbroking. With no other lines of credit available, the removal of bill of sale loans from the market could prevent consumers already experiencing problem debt from ending up worse off.
89. Credit markets are continually evolving and in coming years, new products are likely to be introduced to fill any gap left by the absence of consumer loans secured against personal goods through a bill of sale.

Q11 Should bills of sale for consumer lending be banned?

Q12 If bills of sale for consumer lending were banned, are there real alternative forms of borrowing available to consumers?

Q13 What would be the benefits and risks of a ban on the use of bills of sale to consumers?

Q14 What might be the costs to lenders of using alternative methods of lending?

Q15 What might be the unintended impacts on consumers and lenders of a ban on the use of bills of sale?

Q16 Of the 4 options proposed, which do you prefer?

What happens next?

90. Following the receipt of responses to this consultation on the proposal to ban the use of bills of sale for consumer lending by 15 March 2010, we will publish a Government response to the consultation by the end of June 2010. Any proposal for legislative change will be for the next Parliamentary session. If legislation to reform or ban bills of sale is taken forward, it will be subject to a Post-Implementation Review, which would be undertaken 3 to 5 years after implementation.

Annex A: List of consultation questions

What is the problem?

Q1. The Government would welcome further evidence about the current nature of the bills of sale consumer lending market, including in particular:

- The incidence of bills of sale used for consumer lending, particularly among vulnerable consumers with no access to mainstream credit;
- The use of bill of sale loans for business purposes for the self-employed and owners of small firms;
- The consumer experience of accessing bill of sale loans and dealing with their lenders;
- The profitability of bill of sale lending and the impact of the economic downturn on both consumers and lenders.

The proposals

Option 1: Do nothing beyond current legislation and regulatory activity

Q2 We would welcome evidence on the extent of consumers' understanding of the terms of bills of sale, and their options in the event of default should they wish to prevent the seizure of the secured asset.

Q3 Is it fair and reasonable to have fewer protections for consumers borrowing money under a bill of sale than under other forms of consumer credit agreement including hire purchase agreements?

Q4 Will the implementation of the Consumer Credit Directive, combined with OFT guidance, provide sufficient additional consumer protection in this area? If not, what other measures (not covered in this consultation) would you suggest to improve consumer protection?

Option 2: Introduce a voluntary code of practice or other non statutory requirements

Q5 Would a voluntary code of practice, if adopted by bill of sale lenders, coupled with ongoing enforcement action, provide sufficient additional protections for consumers?

Q6 Would a code of practice requirement to register a bill of sale loan agreement with online electronic asset finance registers provide sufficient protection for third party consumers?

Option 3: Reform bills of sale legislation to make it more appropriate for consumer lending

Q7 To what extent would reform of the legislation rectify the problems identified in relation to bills of sale?

Q8 If you consider that a bills of sale type instrument for consumer lending should be preserved, what would make a credible package of reform measures to ensure sufficient consumer protection?

Q9 What might be the unintended consequences of this option, including the implications for access to affordable credit for vulnerable consumers?

Q10 What might be the costs to lenders of this reform and adopting a new secured lending instrument?

Option 4: Ban the use of bills of sale for the purpose of consumer lending

Q11 Should bills of sale for consumer lending be banned?

Q12 If bills of sale for consumer lending were banned, are there real alternative forms of borrowing available to consumers?

Q13 What would be the benefits and risks of a ban on the use of bills of sale to consumers?

Q14 What might be the costs to lenders of using alternative methods of lending?

Q15 What might be the unintended impacts on consumers and lenders of a ban on the use of bills of sale?

Overall

Q16 Of the 4 options proposed, which do you prefer?

Further questions are included in the Economic Impact Assessment and Equality Impact Assessment which accompany this consultation.

Annex B: Glossary

Annual Percentage Rate (APR)	The APR stands for the Annual Percentage Rate of charge and is required under the Consumer Credit Act 1974 to be published for all regulated loans. It enables consumers to compare different credit and loan offers. The APR includes important factors such as: the interest rate; how the loan is repaid, the length of the loan agreement, frequency of payments and amount of each payment; and certain fees associated with the loan. But an APR may not include all the costs associated with a credit agreement such as charges for late or missed payments.
Bills of Sale Acts (The Acts)	The current acts still in force are the Bills of Sale Act 1878 and the Amendment Act 1882.
Consumer Credit Act (CCA)	Consumer Credit Act 1974, amended by the Consumer Credit Act 2006.
Consumer Credit Directive (CCD)	The Consumer Credit Directive is EU legislation is to be implemented in 2010. It aims to create a common credit market across the EU and to ensure high levels of consumer protection.
Credit Reference Agency (CRA)	Credit reference agencies provide lenders with information about potential borrowers, which they then use to make lending decisions. The information shared may include information about a borrower's previous credit history. They hold certain information about most adults in the UK. This information is called your credit reference file or credit.
Financial Ombudsman Service (FOS)	The Financial Ombudsman Service is a public body set up by Parliament. It is the official independent expert in settling complaints between consumers and businesses providing financial services.
Home credit	Home credit loans are short term, low value, high cost, unsecured personal loans, where payments are usually collected by an agent from the consumer's home. Some lenders are moving to direct debit payments and higher value loans.

<p>Irresponsible Lending Guidance</p>	<p>The draft Guidance was launched for public consultation by the OFT in August 2009. The consultation closed on 21 October 2009 and the OFT will issue the final Guidance in 2010. The Guidance will provide guidance on lending behaviours and practices which the OFT considers to be irresponsible and would call into consideration a firm's fitness to hold a consumer credit licence.</p>
<p>The Office of Fair Trading (OFT)</p>	<p>The OFT is the UK's consumer and competition authority. Its mission is to make markets work well for consumers. It is a non-ministerial Government department. It administers and enforces the Consumer Credit Act and licenses providers of consumer credit, including those using bills of sale for consumer lending.</p>
<p>Self-regulation</p>	<p>This is the practice whereby regulation is not imposed by Government, but is undertaken voluntarily by industry.</p>

Annex C: How bills of sale work

- There are two types of bill of sale: absolute and conditional. Absolute bills of sale do not represent any form of security and are simply documents recording the transfer or assignment of personal goods (chattels). They are not significantly different from a contract of sale of goods, covered by the common law of contract. Conditional bills of sale refer to any assignment or transfer of personal chattels to a person by way of security for the payment of money. The property itself does not change hands but the lender, as the owner, has personal rights of seizure. It is the conditional bill of sale that is used for consumer lending.
- In effect, a conditional bill of sale enables an individual to “mortgage” any item of personal property, moveable or immovable, except real estate, for a secured loan. A bill of sale is not a pawnbroking agreement. The key difference is that while the item of personal property is held by the pawnbroker until the total amount of the loan is repaid, ownership rights remain with the consumer. While the pawnbroker holds the item of property in his possession as security, he does not take ownership. If the consumer fails to repay the loan within a certain timeframe, usually six months, the pawnbroker may retain or sell the item to recover the debt. Until sold, the item remains the property of the consumer and can be redeemed if the debt still owing is repaid.

Registration of a bill of sale

- A bill of sale can only be enforced if it has been properly registered in the prescribed form and it shows the correct Court seal. All bills must be registered by the lender within 7 days at the High Court otherwise they may not be accepted except in extenuating circumstances. This means that there is little scope for a cooling off period for the consumer.
- If the consumer, lender or the goods are outside London, a copy of the bill of sale must be sent to the local district judge. Anyone wishing to make a search of the register, either centrally or locally, must pay a fee. Searching requires attendance in person. It is not a very user-friendly or accessible system.
- Many bill of sale lenders also register their bills of sale with online electronic asset finance registers in much the same way as finance companies register hire purchase agreements. This does make it easier for a third party buyer or anyone else to find out whether an asset is subject to a bill of sale. Registration however is voluntary.

Satisfaction of a bill of sale

- A memorandum of satisfaction should be applied to a bill of sale to show that the terms of the conditional sale have been satisfied (or the goods seized). If the bill of sale is not marked as satisfied then ownership of the

property on which the loan was secured does not transfer back to the consumer. The lender could seek to take possession of the property regardless of whether or not the consumer had repaid the loan. However, few consumers are likely to be aware of this risk.

- The satisfaction must be written on a registered copy of a bill of sale. The prescribed form for registering the satisfaction of a bill of sale needs to be obtained from the High Court, completed by the lender and consumer and returned. It would generally be for the lender to initiate this process. However, there is little incentive for the lender to do so. The satisfaction can be applied for by the consumer without the lender's consent by obtaining a witness statement or affidavit. However, this is an onerous process which few consumers will have the knowledge or wherewithal to navigate.
- Fewer than 20 memorandums of satisfaction were issued in 2007 or 2008, despite almost 80,000 bills of sale being registered.

Enforcement of a bill of sale

- The lender must (if requested) provide a valid bill of sale that bears the stamp of the High court in order to seize the item used as security. Since the bill of sale proves legal ownership, at this stage there is no legal action that can be taken by the consumer to prevent seizure.

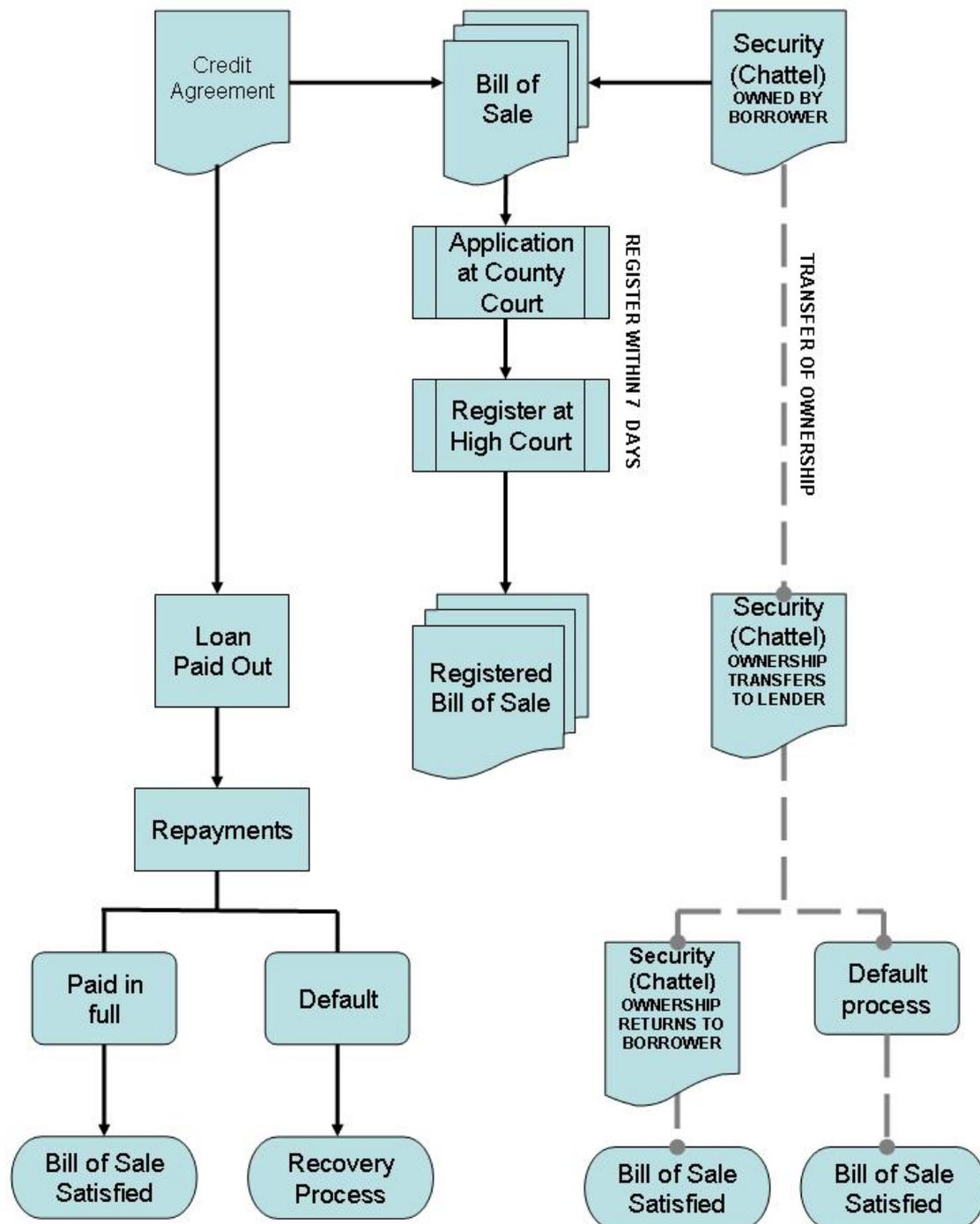
Consumer Credit Act requirements applying to a bill of sale

- Whether a bill of sale is being used to issue a loan secured against a consumer's car or other property, or to finance the consumer's purchase of a car or other item as an alternative to hire purchase, the following requirements under the CCA must be satisfied:
 - A description of the security should be included/embodyed in the credit agreement
 - The bills of sale must be presented to the consumer at the time the credit agreement was signed
 - The lender will have to issue a default notice before calling in the debt
 - The terms of the bill of sale must be consistent with the credit agreement
 - The agreement must not be extortionate (if made before 2007) or constitute an unfair relationship (after 2007), though this is ultimately up to the court to decide

All other normal requirements of the CCA apply. It is also possible to apply for a time order to prevent the repossession of goods.

Annex D

The process of securing a consumer loan using a Bill of Sale



Annex E: List of organisations receiving consultation

Accountant in Bankruptcy (Scotland's insolvency service)
ACF Car Finance
Advertising Association
Advertising Standards Authority
Advice UK
Age Concern
Association of British Credit Unions Ltd (ABCUL)
Bar Council
British Bankers Association (BBA)
British Chambers of Commerce
British Cheque Cashier Association (BCCA)
British Retail Consortium (BRC)
British Vehicle Rental and Leasing Association
Callcredit Ltd
Cash Converters
Cattles plc
Central Trust
Church Action on Poverty
Citizens Advice
Citizens Advice for Scotland
City of London Law Society
Communities and Local Government
Community Development Finance Association (CDFA)
Competition Commission
Confederation of British Industry (CBI)
Consumer Council for Northern Ireland
Consumer Credit Association (CCA)
Consumer Credit Counselling Service (CCCS)
Consumer Credit Trade Association (CCTA)
Consumer Finance Association (CFA)
Consumer Focus
Consumer Focus Scotland
Consumer Focus Wales
Credit Action
Credit Services Association (CSA UK)
Debt Resolution Forum
Debt Management Standards Association (DEMSA)
Department for Food, Environment and Rural Affairs
Department for Work and Pensions
Department of Enterprise, Trade and Investment (Northern Ireland)
Debt on our Doorstep
Equality and Human Rights Commission
Equifax
European Commission
Experian
Federation of Small Business (FSB)
Finance and Leasing Association (FLA)
Financial Services Authority (FSA)

Financial Ombudsman Service (FOS)
Forum of Private Business
Help the Aged
HM Treasury
HM Courts Service
Information Commissioner's Office (ICO)
Insolvency Service
Institute of Consumer Affairs
Institute of Directors (IOD)
Joseph Rowntree Foundation
Law Commission
Law Society
Loans4Logbooks
Local Authorities Coordinators of Regulatory Services (LACORS)
Local Better Regulation Office (LBRO)
Logbook Loans
Mind
Ministry of Justice
Mobile Money
Money Advice Liaison Group
Money Advice Trust
Money Advice Scotland
Moneysavingexpert.com
Moneysupermarket.com
National Pawnbrokers Association
Northern Ireland Insolvency Service
Northern Ireland Office
Office of Fair Trading
Provident Financial plc
Rethink
Royal Association of Disability Rights (RADAR)
Scotland Office
Scottish Government
Secured Transactions Law Reform Project
Trading Standards Institute (TSI)
UK Cards Association
V5 Loans
Wales Office
Welsh Assembly Government
Which?

Annex F: The Consultation Code of Practice Criteria

1. Formal consultation should take place at a stage when there is scope to influence policy outcome.
2. Consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. 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.
4. Consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. 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.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Comments or complaints

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:

Tunde Idowu,
BIS Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET

Telephone Tunde on 020 7215 0412
or e-mail to: Babatunde.Idowu@bis.gsi.gov.uk