



How does a hire agreement become regulated under the Consumer Credit Act 1974?

Mohammed Azeem Ali

July 2021

clerkroom

How does a hire agreement become regulated under the Consumer Credit Act 1974?

Mohammed Azeem Ali

June 2021

Introduction

The question of “How does a hire agreement become regulated under the Consumer Credit Act 1974” may appear to be simple. It is however an important question, and it may not be as straightforward as it appears to be at first blush.

It's an important issue as a *regulated* hire agreement is restricted by the Consumer Credit Act 1974 (herein largely referred to as the “Act”). If the hire agreement is regulated by the Act, then there are a number of formalities that need to be complied with. I do not intend to highlight these formalities in this article, as I am purely concentrating on how a hire agreement becomes regulated. I will also not be dealing with how hire agreements become “exempt” from the Act in this credit hire article, which would be better served in a further credit hire article.

In this short article, I will purely be dealing with the routes as to *how* a hire agreement becomes regulated under the Act.

Situations where a hire agreement becomes regulated under the Act

In the following situations a hire agreement becomes regulated: (1) a hire agreement becomes regulated where “credit” is provided – which I would summarise as the “credit route” and/or (2) a hire agreement becomes regulated where a hire agreement is capable of subsisting for more than three months – which I would summarise as the “duration route”.

I will deal with these two situations in more detail.

Where “credit” is provided under the hire agreement (the “credit route”)

Section 8 (1) of the Act states that “A [consumer] credit agreement is an agreement between an individual (the “debtor”) and any other person (“the creditor”) by which the creditor provides the debtor with credit of any amount”.

Under section 8 [(3) (a)] of the Act there is reference to Chapter 14A of Part 2 of the Regulated Activities Order, which basically provides that where credit is provided the agreement becomes regulated. There is also a reference under section 8 [(3) (b)] of the Act to certain agreements that are not regulated – for the purposes of this article I will not explore these, save to say that it would not affect the typical hire agreements that my articles are intended to cover.

So broadly speaking, if any hire agreement provides for credit, then it becomes regulated by the Act. In summary in my view whether “credit” is involved has to be considered in two stages namely: (i) whether payment is agreed to be later then would be otherwise under the express or implied terms of the agreement *and* (ii) was the purpose to provide “credit”? In my view *both* conditions need to be met.

I have dealt with the meaning of “credit” in detail in my article: “The meaning of “credit” under the Consumer Credit Act 1974”, which the reader can cross-refer to for greater detail.

I would summarise this route as the “credit route” to a hire agreement becoming regulated under the Act.

Where a hire agreement is capable of subsisting for more than three months (the “duration route”)

Section 15 (1) of the Act states: “A consumer hire agreement is an agreement made by a person with an individual (the “hirer”) for the bailment or (in Scotland) the hiring of goods to the hirer, being an agreement which — (a) is not a hire-purchase agreement, and (b) is capable of subsisting for more than three months, [2] A consumer hire agreement is a regulated agreement within the meaning of this Act if it is a regulated consumer hire agreement for the purposes of Chapter 14B of Part 2 of the Regulated Activities Order”.

So basically, what this means is that a hire agreement is regulated if: (a) it is *not* a hire-purchase agreement – in other words it does not apply to a hire agreement that has an option to *purchase the vehicle* and (b) the agreement is capable of subsisting for more than three months - so an agreement which is limited to three months or 3 weeks does not come under the Act on this basis. Of course, it can still come under the Act if there is “credit” provided under Section 8 (1) of the Act. An agreement which does not provide any indication on the duration and is therefore *open ended* on the issue of the period, would be regulated under the Act as it is still capable of lasting more than 3 months. The *actual duration* of the hire for example a 1 week hire is not relevant, as the issue is whether the hire agreement was *capable* of lasting for more than 3 months. So, a hire agreement which does not state the intended duration, though *the actual hire* lasts for only 1 week, *would still* be regulated under the Act, unless exempt.

I would summarise this route as the “duration” route to a hire agreement becoming regulated under the Act.

The interaction of the two routes (“credit route” and “duration route”) to a hire agreement becoming regulated

There are two routes for a hire agreement to become regulated, the “credit route” and the “duration route”. These two routes are disjunctive, not conjunctive - so in other words *only one route will make the hire agreement regulated*. So, a hire agreement can be regulated due to one route only, even if under the other route the agreement would not have been regulated. So, for example if a hire agreement *does not provide for credit*, though it is capable of lasting for more than three months, then it is still regulated under the Act. This is rather ironic, as the Act is titled the Consumer *Credit* Act 1974, yet “credit” is not necessary to make the agreement regulated. Conversely if the duration of the hire agreement's is limited to 3 months or less, yet the agreement *does provide for credit*, then the hire agreement is still regulated by the Act, under the “credit route”.

Conclusion and Summary

There are two ways for a hire agreement to become regulated. Firstly, in the situation whereby the agreement provides for credit under the “credit route”, which in my view is a two-stage process namely: (i) whether payment is agreed to be later then would be otherwise under the express or implied terms of the agreement and (ii) was the purpose to provide “credit”? Please cross-refer to my credit hire article: “The meaning of “credit” under the Consumer Credit Act 1974” - which the reader can cross-refer to for greater detail.

Secondly if a hire agreement (which is not a hire *purchase* agreement) is capable of subsisting for more than 3 months, then it also becomes regulated under the “hire route”. A hire agreement limited to 3 weeks or 3 months would therefore not be regulated under the Act, *unless* credit was provided under the agreement.

There are *two* routes for a hire agreement to become regulated, which I would summarise as the “credit route” and the “duration route”. These two routes are disjunctive, not conjunctive. So, a hire agreement can be regulated due to one route only, even if under the other route the agreement would not have been regulated. It is indeed rather ironic that a hire agreement can become regulated under the Consumer Credit Act 1974 through the “duration route”, even though no credit is provided under the agreement.

Azeem Ali

Please note this article does not constitute legal advice for any specific case or cases.

© Mohammed Azeem Ali 2021 14/07/2021

contact the author:



Azeem Ali (1997)

Barrister

Contact:

Email: ali@clerkroom.com

Call: 01823 247 247

Join Azeem on [Linked in](#)

Follow Azeem:

[Twitter](#) @Azeemali1Ali

clerkroom
.com