

Bills of sale

Response form: logbook loans

This optional response form is provided for consultees' convenience in responding to the proposals and questions in respect of logbook loans set out in the consultation paper. Please note that we have retained the original question numbers.

We are happy to receive simple yes/no answers but more detailed comments would also be helpful. You do not have to respond to every question or proposal. Answers are not limited in length (the box should expand, if necessary, as you type).

We invite responses by **9 December 2015**.

Please send your completed form:

- **by email to:** bills_of_sale@lawcommission.gsi.gov.uk or
- **by post to:** Fan Yang, Law Commission, 1st Floor, Tower, Post Point 1.53, 52 Queen Anne's Gate, London SW1H 9AG
Tel: 020 3334 3385

If you send your comments by post, it would be helpful if, wherever possible, you could also send them electronically (for example, by email to the above address, in any commonly used format).

Freedom of information statement

We may publish or disclose information you provide to us in response to this consultation, including personal information. For example, we may publish an extract of your response in Commission publications, or publish the response in its entirety. We may also be required to disclose the information, such as in accordance with the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002. If you want information that you provide to be treated as confidential please contact us first, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic disclaimer generated by your IT system will not be regarded as binding on the Commission.

The Commission will process your personal data in accordance with the Data Protection Act 1998.

How to complete this form

Please fill in the fields below in Adobe Reader or Adobe Acrobat Pro. Once you have completed your response, please save a copy of the document and email it to bills_of_sale@lawcommission.qsi.gov.uk.

If you prefer to fill in a Microsoft Word version of this document, please click [here](#) to download the document.

Your details

| | |
|--|---|
| Name | |
| Organisation | |
| Type of response | Personal response Response on behalf of above named organisation |
| Email address | |
| Postal address | |
| Telephone number | |
| If you want information that you provide to be treated as confidential, please explain to us why you regard the information as confidential. As explained above, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances. | |
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Chapter 7: The case for reform

Q1 Do consultees agree that bills of sale should not be “banned” or “abolished”?

Yes

No

Other

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Q2 Do consultees agree that the law of bills of sale should be reformed?

Yes

No

Other

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Chapter 8: Proposals for reform: a new legislative framework

Q3 Do consultees agree that the Bills of Sale Acts should be repealed and replaced with new legislation regulating how individuals may use their existing goods as security while retaining possession of them?

Yes

No

Other

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Q4 Do consultees agree that:

(1) the phrases “bill of sale”, “security bill” and “personal chattels” should be replaced?

Yes

No

Other

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(3) the new legislation should use the term “vehicle mortgage” to refer to secured loans over vehicles?

Yes

No

Other

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Q5

Do consultees agree that the new legislation should regulate transactions where individuals use goods they already own as security for a loan or other non-monetary obligation and retain possession of the goods?

Yes

No

Other

In particular, should the new legislation:

(1)

apply only to security granted by individuals?

Yes

No

Other

(3)

provide that goods are considered to be in the possession of the borrower if they remain under the borrower's control?

Yes

No

Other

Q6

Do consultees agree that the new legislation should not apply to:

(3)

any security interest which could be registered as an agricultural charge (with the exception of loans secured on vehicles)?

Yes

No

Other

Q7

Do consultees agree that a goods mortgage should take effect by transferring ownership to the lender unless the parties agree that it should take effect as a charge instead?

Yes

No

Other

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Q8

For all goods mortgages (whether or not securing a regulated credit agreement, and whether taking effect as a transfer of ownership or a charge), do consultees agree that the new legislation should:

(1)

prevent lenders from repossessing goods except for one of three specified reasons:

(a) default on payment;

(b) default on maintenance or insurance of the goods; or

(c) the bankruptcy of the borrower?

Yes

No

Other

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(2)

no longer provide that fraudulently removing the goods is a specified reason that allows lenders to repossess goods?

Yes

No

Other

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(3) where there is a transfer of ownership, specify that ownership is automatically transferred to the borrower once the loan is repaid?

Yes No Other

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Q9 Do consultees agree that a goods mortgage should be available to secure loans of any amount with no minimum?

Yes No Other

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Q10 Do consultees agree that borrowers should not be permitted to use future goods as security for a loan, unless the loan is to be used to acquire those goods?

Yes No Other

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Chapter 9: Proposals for reform: simplifying the document requirements

Q11 Do consultees agree that:

(1) a goods mortgage should only be valid if it is set out in a written document signed by both parties?

Yes

No

Other

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(2) the borrower's signature should be a physical signature made in the presence of a witness?

Yes

No

Other

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(3) the goods mortgage should be in a separate document from the credit agreement?

Yes

No

Other

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Q12

Do consultees agree that a goods mortgage document should contain:

- (a) the date of the goods mortgage?
- (b) the names and addresses of the borrower and lender?
- (c) the obligation which is secured by the goods mortgage?
- (d) a statement that ownership of the goods is being transferred to the lender, or that the goods are being charged in favour of the lender, in order to secure the obligation?
- (e) the name, address and occupation of the witness?
- (f) a specific description of the goods?

Yes

No

Other

Q13

Do consultees agree that it is not necessary to require that the goods mortgage document contain:

(1)

a fixed sum where the secured obligation is monetary?

Yes

No

Other

(2)

specific description of the goods in a separate schedule?

Yes

No

Other

Q14

Do consultees agree that where a regulated credit agreement is secured on a vehicle the vehicle mortgage document should include prominent statements that:

(1)

the lender owns the vehicle until the loan is repaid?

Yes

No

Other

(2)

in the event of default, the borrower risks losing possession of the vehicle?

Yes

No

Other

Do consultees have views on:

(3)

the suggested formulations for the prominent statements?

Yes

No

Other

(4) whether the prominent statements should also appear on websites and advertising?

Yes No Other

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Q15 Do consultees agree that:

(2) it is not necessary to include the prominent statements for goods mortgages which do not secure regulated credit agreements?

Yes No Other

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Q16 Do consultees agree that the sanction for failure to comply with the document requirements should be that the lender loses any right to the secured goods, both as against the borrower and as against third parties?

Yes No Other

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Chapter 10: Proposals for reform: modernising the registration regime

Q17 Do consultees agree that:

(1) there should be no requirement to register vehicle mortgages at the High Court?

Yes

No

Other

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(2) instead, a logbook lender should not be entitled to enforce a vehicle mortgage against a third party or trustee in bankruptcy unless the vehicle mortgage has been registered with a designated asset finance registry?

Yes

No

Other

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(3) priority should be determined by the date and time that the details of the vehicle mortgage become publicly available?

Yes

No

Other

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Q18

Do consultees agree that:

(1)

a government entity should designate asset finance registries as suitable to register vehicle mortgages?

Yes

No

Other

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(2)

to provide an asset finance register which meets the needs of lenders and traders, asset finance registries seeking designation should meet four criteria:

(a) adequate data-sharing

(b) a suitable cost structure

(c) robust technology (coupled with indemnities); and

(d) a complaints system?

Yes

No

Other

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We welcome other comments on the registration of vehicle mortgages

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Q19

We expect that the designated asset finance registries will initially be HPI, Experian and CDL. We welcome comments on whether there are likely to be new entrants to this market.

Q22

Do consultees agree that to maintain the accuracy of the registers:

(1)

lenders should be required to enter notices of satisfaction in respect of satisfied vehicle mortgages and goods mortgages?

Yes

No

Other

(2)

there should be a procedure for the borrower (at the lender's cost if successful) to enter a notice of satisfaction where the lender refuses to do so?

Yes

No

Other

(3)

re-registration of vehicle mortgages and goods mortgages should be required every ten years?

Yes

No

Other

Chapter 11: Proposals for reform: protecting borrowers

Q23 Do consultees agree that:

(1) the requirement for a court order before repossession should be extended to all regulated credit agreements secured by a goods mortgage?

Yes

No

Other

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(2) the point at which the lender should be required to seek a court order is when one third of the total loan amount has been repaid?

Yes

No

Other

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(3) lenders should be permitted to pass on the court fee to the specific borrower in question if a return of goods order is granted, or if a suspended return of goods order eventually results in repossession?

Yes

No

Other

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(4) lenders should be permitted to have recourse to borrowers for any shortfall following sale of the repossessed goods?

Yes No Other

(5) lenders should be permitted to seek a charging order against borrowers' homes only in the limited circumstances set out in the CCTA Code?

Yes No Other

(6) in accordance with the CCTA Code on charging orders, lenders should not be able to apply for an order seeking sale even where they have obtained a charging order against borrowers' homes?

Yes No Other

(7) lenders should be permitted to use the return of goods order, and so their own employees or debt collectors, to repossess the goods?

Yes No Other

Q24

Do consultees agree that for regulated credit agreements secured by a goods mortgage:

(1)

borrowers should have the right of voluntary termination by handing over the vehicle or other goods?

Yes

No

Other

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(2)

the right for borrowers to terminate voluntarily should be available until the lender has incurred costs to repossess the vehicle or other goods?

Yes

No

Other

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Q25

Do consultees agree that the approach of the CCTA Code should be adopted so that voluntary termination:

(1)

is available immediately, without requiring any percentage of the loan amount to have been repaid?

Yes

No

Other

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(2) acts as full and final settlement of all outstanding amounts?

Yes

No

Other

(3) is available except where:

(a) it is established that the vehicle or other goods have sustained malicious damage of whatever nature; or

(b) it is evident that the borrower has contravened the obligation to take reasonable care of the vehicle or other goods to the extent that the contravention adversely and significantly affects the resale value?

Yes

No

Other

Where vehicles are maliciously damaged, we welcome views on whether borrowers should retain the right of voluntary termination if they can show that the malicious damage was not caused by them or anyone associated with them.

Q27

Do consultees agree that where a goods mortgage secures a loan which is not a regulated credit agreement:

(1)

goods may be repossessed without a court order?

Yes

No

Other

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(2)

there should be no statutory right of voluntary termination?

Yes

No

Other

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Chapter 12: Proposals for reform: protecting private purchasers

Q28 Do consultees agree that:

(1) a private purchaser who acts in good faith and without actual notice of the goods mortgage should acquire ownership of the goods?

Yes

No

Other

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(3) if the private purchaser did not act in good faith and/or had actual notice of the goods mortgage, lenders should only be entitled to repossess from them with a court order?

Yes

No

Other

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(4) the proposed new legislation should contain a regulation-making power to amend its provisions, including the repeal of the protection granted to private purchasers of vehicles, if vehicle provenance checks were to become free (or almost free) and a routine part of buying a second-hand vehicle?

Yes

No

Other

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Q29

We welcome views on whether the protection should be confined to “disposition” as defined by the Hire Purchase Act 1964, or whether it should extend more widely, to include (for example) exchange and barter?

Q30

Do consultees agree that the FCA should be given jurisdiction to curb abuses in the way that logbook lenders treat private purchasers?

Yes

No

Other

Q31

Do consultees agree that FOS should have jurisdiction to hear complaints against logbook lenders made by private purchasers of vehicles subject to logbook loans?

Yes

No

Other

Chapter 15: Assessing the impact of reform

Q36

We welcome evidence on the current cost of registering a logbook loan at the High Court. We seek views on our estimate that the cost of registering a logbook loan at the High Court is between £35 and £51.

Q37

We welcome evidence on the savings to the logbook loan industry if the requirement to register logbook loans at the High Court is abolished. Do consultees agree that abolishing the requirement to register logbook loans at the High Court will save the logbook loan industry between £1.67 million and £2.43 million a year?

Q38

We welcome evidence from logbook lenders as to the percentage of cases in which they repossess from borrowers and how many repossessions currently take place after the one third point at which a court order would become necessary under our proposals.

Q39

We seek views on whether the figures would change if our proposals are implemented. We welcome views on our initial estimate that, if our proposals are implemented, between 0.7% to 1.1% of logbook loans will involve a court order before repossession.

Q40

What are the likely costs of a court order? We seek views on the estimate that the combined cost of the court fee and legal costs would be in the region of £600.

Q41

We welcome evidence from logbook lenders about the costs they would incur in borrowing money from banks and other lenders to finance a period of delay in repayment from borrowers.

Q42

We seek evidence from logbook lenders about:

- (a) the amount of money received in settlements from innocent private purchasers; and
- (b) the value obtained from vehicles repossessed from innocent private purchasers.

Q43

We welcome views on the costs of achieving readily available vehicle provenance checks for consumers.

Q44

We welcome evidence on the transitional costs to the logbook loan industry of adapting to the new legislation. We seek views on an initial estimate that these costs would be less than £50,000 for each logbook lender.

