



**Law
Commission**
Reforming the law

**Bills of Sale
A Consultation Paper**

**Executive Summary
September 2015**

**50
YEARS**

1. INTRODUCTION

WHAT ARE BILLS OF SALE?

- 1.1 Bills of sale are a way in which individuals can use goods they already own as security for loans. Bills of sale differ from other ways to secure loans because:
- (1) unlike hire purchase (which is used to buy new goods), they are granted on goods the borrower already owns;
 - (2) unlike pawnbroking (where the lender takes possession of the goods), they allow the borrower to use the goods while making repayments;
 - (3) unlike mortgages on land, they are secured on personal property; and
 - (4) unlike company charges (which are granted by companies and limited liability partnerships), they can only be granted by individuals and unincorporated businesses.

THE BILLS OF SALE ACTS

- 1.2 Bills of sale were common in Victorian times, when concerns were expressed that moneylenders could use bills of sale to lead “thousands of honest and respectable people to their ruin”.¹
- 1.3 As a result, Parliament passed two pieces of legislation to regulate their use: the Bills of Sale Act 1878 and the Bills of Sale Amendment Act 1882.² We refer to these as the 1878 Act and the 1882 Act, and together as the Bills of Sale Acts. The Bills of Sale Acts are still in force.

WHAT ARE BILLS OF SALE USED FOR?

- 1.4 The use of bills of sale has grown dramatically in recent years, from 2,840 registered in 2001 to 52,483 in 2014.
- 1.5 This reflects the increasing use of logbook loans. These are a form of sub-prime lending in which a borrower uses their current vehicle as security, by transferring ownership to the logbook lender. So long as they make repayments, borrowers may continue to use their vehicles. However, on default the logbook lender may repossess the vehicle relatively easily, without a court order.
- 1.6 Logbook loans account for over 90% of all bills of sale registered. However, bills of sale may also be used to:
- (1) **buy new vehicles as a direct alternative to hire purchase:** this evades the protections available to hirers in hire purchase law;

¹ Hansard (HC), 8 March 1882, vol 267, cc393-402.

² Its full title is the Bills of Sale Act (1878) Amendment Act 1882.

- (2) **borrow money on the security of goods other than vehicles:** an example is an unincorporated business, such as a hotel, borrowing money on the security of its furniture and fittings; or
- (3) **register general assignments of book debts:** although these transactions are not bills of sale, the Insolvency Act 1986 requires those made by unincorporated businesses to be registered as if they were bills of sale.

1.7 This means that our review is wider than just logbook loans. We have also considered the effect of the Bills of Sale Acts on lending to unincorporated businesses.

THE PROBLEM

1.8 The Bills of Sale Acts are seriously out-of-date. They are written in impenetrable language. They impose detailed document requirements and require all bills of sale to be registered with the High Court. However, they provide only minimal protection for borrowers, and no protection at all for those who buy goods subject to a bill of sale.

1.9 This imposes unnecessary costs on lenders while failing to provide adequate protection for borrowers. It also causes detriment to private purchasers who buy second-hand vehicles in good faith only to find that they are subject to a logbook loan.

THIS PROJECT

1.10 In September 2014, Her Majesty's Treasury asked the Law Commission to examine the Bills of Sale Acts and consider how they can be reformed.

1.11 In brief, we think that individuals should continue to be allowed to borrow money on the security of their goods. However, the Bills of Sale Acts no longer provide an appropriate legal regime. In our view, they should be repealed in their entirety and replaced with new legislation. We propose a new "Good Mortgages Act" to govern the way that individuals may use goods they already own as security for loans, while retaining possession of them.

RESPONSES

1.12 Our full reasoning is set out in the consultation paper. We seek views on our proposals and replies to our questions by **9 December 2015**.

How to respond

Please send your responses either:

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

For those consultees who wish to respond only to our proposals and questions in respect of logbook loans, we have prepared a separate response form, available at <http://www.lawcom.gov.uk/project/bills-of-sale/>.

If you send your comments by post, it would be helpful if, where possible, you also send them to us electronically.

1.13 Our aim is to publish final recommendations in summer 2016.

2. EFFECT OF THE BILLS OF SALE ACTS ON LOGBOOK LOANS

THE REGULATORY REGIME

- 2.1 Providing credit is a highly regulated activity. Logbook loans are subject to a great deal of regulation in addition to the Bills of Sale Acts:
- (1) the typical logbook loan is a “regulated credit agreement”, subject to the Consumer Credit Act 1974 and associated regulations;
 - (2) the Financial Conduct Authority (FCA) is currently overseeing an authorisation process for logbook lenders. It has also published a rulebook dealing with consumer credit, referred to as “CONC”;
 - (3) borrowers have a right to complain to the Financial Ombudsman Service (FOS) if they feel that they have been poorly treated by logbook lenders; and
 - (4) members of the Consumer Credit Trade Association (CCTA) that offer logbook loans undertook to comply with a code of practice (the CCTA Code) from 1 February 2011.
- 2.2 Consumer groups have been critical of many aspects of logbook lending. Some problems, such as poor-quality affordability checks and high interest rates, are not caused by the Bills of Sale Acts: they would need to be addressed by the FCA rather than by this consultation.

PROBLEMS CAUSED BY THE BILLS OF SALE ACTS

- 2.3 Four problems with logbook loans can be addressed through reform of the Bills of Sale Acts. These are:
- (1) the document requirements, which are highly complex;
 - (2) High Court registration, which is cumbersome, expensive and provides no benefit to third parties;
 - (3) the enforcement process, where borrowers have few protections; and
 - (4) the lack of protection for innocent purchasers.

THE DOCUMENT REQUIREMENTS

- 2.4 Under the 1882 Act, where a bill of sale is used to grant security for a loan, the document must satisfy 12 separate requirements. These are contained in a standard form set out in the 1882 Act. Among other things, the document must include:
- (1) a statement of the loan amount, the rate of interest and the repayment instalments, including the date by which repayment is to be made;

- (2) a statement by a witness that the bill of sale has been properly signed; and
 - (3) a schedule which describes the goods being used as security.
- 2.5 If a bill of sale breaches any of the 12 requirements, the lender loses all rights to the secured goods and may no longer sue the borrower for repayment of the loan. This severe sanction appears disproportionate.
- 2.6 Logbook lenders told us that they had in the past been challenged on whether their paperwork complied with the 1882 Act, but there are now far fewer technical challenges than there were. In practice, most logbook lenders stay close to the wording of the standard form. This protects logbook lenders but confuses borrowers.
- 2.7 FCA research found that logbook loan paperwork consists of “complex, lengthy documents, often not written in ‘plain English’”.³ Logbook lenders were more direct: one described the standard form as “horrific”. The CCTA said that the standard form required under the 1882 Act:
- does not satisfy the modern requirement that documents should be written in plain and intelligible language that an ordinary person could easily understand.⁴
- 2.8 We agree and propose to overhaul the document requirements.

HIGH COURT REGISTRATION

- 2.9 Victorian legislation introduced a registration regime to allow potential purchasers and other potential lenders to find out about existing bills of sale over goods. High Court registration fails to fulfil this function for logbook loans. The CCTA said:
- The register is not fit for purpose and does not provide any benefits to lenders or borrowers.⁵

How logbook loans are registered

- 2.10 The legislation requires the signed bill of sale to be sent to the High Court together with a copy, a £25 fee and a sworn affidavit from the witness. In practice, following a face-to-face meeting, the witness (who is usually an agent or employee of the logbook lender) will visit a solicitor to swear an affidavit. Logbook lenders then post the documents by special delivery to the High Court.

³ FCA, *Consumer Credit Research: Payday Loans, Logbook Loans and Debt Management Services* (2014), p 27.

⁴ CCTA, *Response to Law Commission Call for Evidence* (2014), p 8.

⁵ Above, p 5.

- 2.11 On receipt, High Court staff stamp both the original and the copy with a date and number. If a fraudulent borrower grants two bills of sale over the same vehicle, the bill of sale with the earlier High Court stamp has priority. The original is returned to the logbook lender. Staff then enter some basic details into a database before putting the copy into a box, in number order.

The seven clear day limit

- 2.12 The High Court must receive and stamp the bill of sale within seven clear days of its signature. There are many reasons why this deadline may be missed: for example, over Christmas, or if the witness becomes ill before swearing the affidavit. Where the deadline is missed, the logbook lender must apply for late registration, which costs an additional £50.

Searching

- 2.13 The register is extremely difficult to search. The High Court registers the bill of sale against the borrower, not the vehicle. A third party equipped only with details of the vehicle could not search the register. Instead, they would need the name and postcode of the borrower. They would also have to pay a £45 fee.⁶
- 2.14 The CCTA told us that none of its members check the High Court register before agreeing a logbook loan. The High Court confirmed that searches are very rare.

Expense

- 2.15 The document-heavy regime adds between £35 and £51 to the cost of each logbook loan. This includes the £25 registration fee, the cost of the affidavit, employee time in swearing the affidavit and the cost of postage.
- 2.16 We were told that the regime is also susceptible to error. As a result, logbook lenders must spend time sorting out problems, for example when one lender receives stamped bills of sale which should have been sent to a competitor.

Conclusion

- 2.17 Logbook lenders are forced to comply with a cumbersome and outdated registration regime, which adds unnecessary cost. Ultimately, these costs are borne by borrowers, who are often financially vulnerable. There is an urgent need for reform.

ASSET FINANCE REGISTRIES

- 2.18 To inform third parties of their security over vehicles, logbook lenders also register with asset finance registries. These are commercially-run electronic registers that record information about vehicles from many sources (including hire purchase and stolen vehicle records). Registration is generally free and can be done online. There are three main providers: HPI, Experian and Cheshire Datasystems Limited (CDL).

⁶ Those who have the bill of sale registration number may search free of charge, but only the logbook lender that granted the loan would know this number.

- 2.19 Those in the motor trade will usually conduct a “vehicle provenance check”, which provides considerable data about the vehicle. Searches are conducted using the vehicle’s details, not those of the borrower. The logbook lenders we spoke to all conduct a vehicle provenance check with at least one provider before agreeing a logbook loan, generally paying between £1.70 and £3 for each search.
- 2.20 Consumers may also carry out vehicle provenance checks, but they pay more. For a consumer, a vehicle provenance check costs £12.99 from CDL and £19.99 from HPI and Experian.
- 2.21 We propose to abolish the requirement to register logbook loans with the High Court. Instead, logbook lenders should register them with a designated asset finance registry.

BORROWER PROTECTION FROM SEIZURE

- 2.22 The Bills of Sale Acts do little to protect borrowers from having their vehicles seized on default. Under the 1882 Act, the lender is permitted to seize the secured goods for one of four specified reasons, one of which is that the borrower has defaulted.
- 2.23 After seizing the secured goods, the 1882 Act requires lenders to wait five clear days before selling them. During this period, the borrower may apply to court for an order restraining sale.
- 2.24 Important protections which apply to hire purchase agreements do not apply to bills of sale. For hire purchase:
- (1) once the hirer has paid one third of the hire purchase price, the lender may not repossess the goods without a court order; and
 - (2) the hirer can return the goods to the lender at any time, paying one half of the hire purchase price and any arrears. This is known as “voluntary termination”.
- 2.25 As we explain below, CCTA members have agreed to allow borrowers to hand over the vehicle and walk away from the logbook loan, but this is not a legal right.

DEFAULT IN PRACTICE

- 2.26 Logbook lenders told us that default is relatively common. As one logbook lender put it, its typical customer has no savings, so any unexpected expense will impact on repayment.
- 2.27 Under both CONC and the CCTA Code, logbook lenders must deal with default with forbearance and due consideration. The logbook lenders we spoke to emphasised that they would prefer to engage with the borrower to agree an alternative repayment plan. This is usually more profitable than repossession.
- 2.28 However, engagement may be difficult to achieve. Borrowers may fail to respond at all; and when they do respond they may feel lost in a bureaucratic process.

Voluntary termination

- 2.29 Under the CCTA Code, the borrower may give the vehicle to the logbook lender in full and final satisfaction of their liabilities. Logbook lenders suggested that 10% to 15% of vehicles may be handed over in this way. It is an important option for borrowers with little hope of repaying a logbook loan. Instead of waiting for the logbook lender to proceed to repossession and face a shortfall they cannot pay, borrowers have some control of the logbook loan.

The road to repossession

- 2.30 Where attempts to negotiate alternative repayment plans fail, the next stage is to issue a default notice. The logbook lender must wait 14 days before beginning enforcement action, and most wait 16 or 17 days to allow for postage time. After the default notice has expired, the logbook lender may proceed to repossession, though some send an additional letter or “seizure notice” at this point.

Repossession

- 2.31 Some logbook lenders use their own staff to repossess vehicles, but most use independent agents. As one logbook lender put it, “repossession is never a pleasant experience” for either party. We received accounts of borrowers who found the process traumatic. Meanwhile, logbook lenders provided examples of abuse by borrowers where the agent had been forced to call the police.
- 2.32 The larger logbook lenders shared details of their repossession rates, which varied between 2.2% to 5% of all logbook loans issued. We received complaints that some logbook lenders repossess too readily.

Sale

- 2.33 The CCTA Code extends the five clear day wait before sale in the 1882 Act to 14 days. Borrowers rarely apply to court for relief during this time. One logbook lender mentioned two cases in three years.

The costs of default, repossession and sale

- 2.34 For payday lending, fixed charges on default may not exceed £15. This rule does not apply to logbook loans. Logbook lenders may charge for letters and phone calls on default; repossession typically costs £300; and sale charges add more. All these costs are added to the borrower’s account.
- 2.35 There is often a shortfall following sale of the vehicle. Logbook lenders varied in their approach to pursuing borrowers for the shortfall, though they all recognised that little money tends to be recovered. The CCTA Code restricts logbook lenders’ right to apply to court for a charging order to secure the shortfall on borrowers’ homes, except in limited circumstances.

Proposals

- 2.36 Logbook loan borrowers do not have sufficient protection against inappropriate repossession. We make proposals intended to encourage logbook lenders to view repossession as a last resort.

2.37 As we discuss in Chapter 4, we think that where borrowers have indicated an intention to repay, a court should provide independent oversight of repossession. Where borrowers have no realistic prospect of paying off the logbook loan, they should also have a clear legal right to surrender the vehicle without further liability.

PRIVATE PURCHASERS

2.38 Bills of sale law offers no protection to those who buy vehicles subject to logbook loans. Even where the purchaser bought the vehicle for private purposes in good faith and without notice of the logbook loan, they do not acquire ownership of the vehicle. The logbook lender can repossess the vehicle from the private purchaser.

2.39 Logbook lenders usually offer the purchaser three choices: pay off the logbook loan; buy the vehicle at a discount; or surrender the vehicle. From the purchaser's point of view, all these options are unfair.

2.40 This contrasts with the position for hire purchase. If a vehicle subject to a hire purchase agreement is sold, the law protects private purchasers (who are not acting as trade or finance purchasers) who act in good faith and without notice of the hire purchase agreement.⁷ Such purchasers become the owner of the vehicle and the hire purchase lender loses all rights to it.

2.41 We propose that similar protections should apply to those who buy vehicles which are subject to a logbook loan, since there is no reason why the law should be different.

⁷ Hire Purchase Act 1964, ss 27 to 29.

3. EFFECT OF THE BILLS OF SALE ACTS ON FINANCE FOR UNINCORPORATED BUSINESSES

3.1 The Bills of Sale Acts fetter the ability of unincorporated businesses to access finance in three ways:

- (1) **security bills over specific goods:** the 1882 Act restricts the extent to which unincorporated businesses can use specific goods as security for some loans;
- (2) **general assignments of book debts:** these must be registered as if they were absolute bills, which is particularly cumbersome and expensive; and
- (3) **future goods:** the 1882 Act restricts borrowers' ability to grant security over goods which they may acquire in the future.

SECURITY BILLS OVER SPECIFIC GOODS

3.2 Unincorporated businesses occasionally use bills of sale to borrow on the security of specific goods, such as when a hotel grants security over its furniture and fittings. However, the Bills of Sale Acts impose unnecessary restrictions.

Document requirements

3.3 As we have seen, the 1882 Act requires the bill of sale document to include a statement of the loan amount and the repayment instalments, including the date by which repayment is to be made. For revolving facilities, overdrafts and guarantees, neither the loan amount nor the repayment instalments can be fixed in advance. This makes it impossible for unincorporated businesses to secure these types of loans on goods.

No second charge

3.4 The Bills of Sale Acts also prevent an unincorporated business from giving a fixed charge on goods. Instead, a bill of sale can only operate as a transfer of ownership. The practical effect is that an unincorporated business may not give more than one security over the same goods. For example, if an unincorporated business had valuable machinery worth £500,000 which it had used to secure, by way of bill of sale, a loan of £50,000, it could not use that machinery to secure another loan from another lender.

3.5 We make proposals to remove these unnecessary restrictions.

GENERAL ASSIGNMENTS OF BOOK DEBTS

3.6 "Book debts" means sums due to a business. Businesses can sell their book debts to an invoice financier to obtain cash now for money owed to them in the future. The sale of book debts represents an important source of liquidity, particularly for small and medium sized businesses.

- 3.7 In a general assignment, a business sells all its book debts, both present and future, to an invoice financier. Insolvency legislation requires that a general assignment must be registered “as if it were” a bill of sale. If not, it is ineffective against a trustee in bankruptcy.

Problems with registering general assignments

- 3.8 The procedure for registering general assignments is highly cumbersome. It normally involves three solicitors: the invoice financier’s solicitor, the business’s solicitor and the solicitor that administers the oath for the affidavit. Other problems include:
- (1) **expense:** the cost of registering each general assignment is between £480 to £1,735 (excluding VAT);
 - (2) **delay in funding:** the registration process can take three to five working days. Invoice financiers often withhold funding until they have confirmation that the High Court has registered the documents; and
 - (3) **re-registration:** the 1878 Act requires re-registration every five years. Many general assignments last more than five years, so need to be re-registered, incurring more expense.
- 3.9 The registration process is so burdensome and expensive that some invoice financiers do not register at all: instead, they take their chances on bankruptcy.
- 3.10 We do not think that the current volume of business would justify an entirely new regime for registration. We propose to streamline the High Court registration regime to make it much easier and cheaper to register general assignments of book debts.

FUTURE GOODS

- 3.11 The 1882 Act restricts a borrower’s ability to grant security over goods which they do not currently own, but which they may own in the future.
- 3.12 Generally, we favour this restriction as it prevents reckless borrowing. However, it does mean that an unincorporated business, unlike an incorporated business, cannot grant a floating charge. Incorporated businesses often use floating charges to secure loans over present and future goods. The incorporated business may buy and sell goods in the ordinary course of business, but on insolvency the floating charge crystallises over the goods it owns at that time. The lender then has first claim to the goods and their sale proceeds.
- 3.13 We can see that in theory it may be useful for unincorporated businesses to grant floating charges, but we do not think that it is possible to propose such a reform as part of this project. Floating charges are an extremely powerful form of security, which affect the interests of all creditors (including landlords, utility companies and trade suppliers). They would need to be registered in a way which could be searched easily. Detailed consultation on these issues could take several years, delaying urgently needed reform of the Bills of Sale Acts.

4. PROPOSALS FOR REFORM

- 4.1 We do not think that there is anything inherently wrong with a borrower raising money on personal property, such as a vehicle, while retaining possession of it. However, the law of bills of sale needs wholesale reform.

A NEW LEGISLATIVE FRAMEWORK

- 4.2 We propose to repeal the Bills of Sale Acts and replace them with new legislation governing how individuals may use goods they already own as security for loans and other non-monetary obligations, while retaining possession of them.
- 4.3 We welcome views on terminology but provisionally propose that this form of security interest should be known as a “goods mortgage”. Where the goods mortgage is secured on a vehicle, it would be referred to as a “vehicle mortgage”.
- 4.4 Dealings with intangible goods, ships and aircraft would be outside the scope of the new legislation. Our preliminary view is that security interests which could be registered under the Agricultural Credits Act 1928 should also be excluded from the new legislation (with the exception of loans secured on vehicles).

SIMPLIFYING THE DOCUMENT REQUIREMENTS

- 4.5 We think that a goods mortgage should only be valid if it is set out in a written document, separate from the credit agreement, signed by both parties.

Witnessing the signature

- 4.6 At present, the requirement that a borrower must sign the bill of sale in the presence of a witness means that a logbook loan cannot be granted over the telephone or online.
- 4.7 We see advantages in this. We would be concerned if people could take out a logbook loan late at night or while drunk, without understanding the implications. We propose that the borrower should have to apply a physical signature to the document in the presence of a witness, but we do not propose any restrictions on who that witness should be.

Simplifying the document

- 4.8 We wish to simplify the document so as to make goods mortgages more suitable for business borrowing.
- 4.9 In particular, we do not think that it should be necessary for the document to state a fixed sum or repayment instalments. This would allow goods mortgages to be used to secure revolving facilities, overdrafts and guarantees.

Prominent warnings for logbook loans

- 4.10 Typically logbook loans are vehicle mortgages used to secure a regulated credit agreement. In these circumstances, the document should include prominent statements making clear to borrowers that:

(1) the logbook lender owns the vehicle until the logbook loan is repaid; and

(2) the borrower risks losing possession of the vehicle if they default.

4.11 We make preliminary suggestions below.

YOU TRANSFER OWNERSHIP OF YOUR VEHICLE TO US UNTIL YOU HAVE REPAID YOUR LOAN

YOUR VEHICLE MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON YOUR LOAN

4.12 Adapted versions could be used where other goods are used to secure regulated credit agreements.

Sanction for failure to comply

4.13 We propose that if the lender fails to comply with the document requirements, it would still be entitled to repayment of the loan, but would lose any right to the secured goods, both as against the borrower and as against third parties.

MODERNISING THE REGISTRATION REGIME

Logbook loans

4.14 We do not propose to require registration of vehicle mortgages at the High Court. Instead, logbook lenders should only be entitled to enforce the vehicle mortgage against a third party if it has been registered with a designated asset finance registry. A logbook lender should be entitled to enforce a vehicle mortgage against a borrower whether or not it is registered.

4.15 There would be no time limit for registering, but any third party who acquired an interest in the vehicle before the mortgage had been registered would take free of the mortgage.

4.16 We propose that a government body should designate suitable asset finance registries. At least in the first instance, such registries should meet the needs of other lenders and traders, rather than private purchasers. We think that there should be four main criteria for designation: adequate data-sharing; a suitable cost structure; robust technology (coupled with indemnities); and a complaints system.

Mortgages on other goods

4.17 We propose that mortgages on other goods should continue to be registered with the High Court. Bills of sale over goods other than vehicles tend to be over very disparate goods, including fine wine and art. In the absence of any online registers capable of dealing with these varied items, the High Court register would be the only form of public notice.

4.18 We propose to simplify the High Court registry, including by:

(1) allowing submission and search requests by email;

- (2) determining priority by the date and time of submission, rather than the date of the High Court stamp;
 - (3) removing the requirement for an affidavit; and
 - (4) abolishing the time limit for registration.
- 4.19 Registration should have to be renewed every ten years to sweep away old goods mortgages which are very likely to have been discharged.

PROTECTING BORROWERS

- 4.20 Hire purchase law gives hirers two key protections: the court order and voluntary termination. We propose that similar protections should apply to logbook loans and any other goods mortgage used to secure a regulated credit agreement.

Court order

- 4.21 Where the borrower has paid off one third of the total loan amount, we propose that the lender should only be entitled to repossess the goods with a court order. These borrowers have demonstrated an intention to repay and so we think should receive the benefit of court protection.
- 4.22 “Total loan amount” means the full amount payable by the borrower, assuming that the loan runs its natural course. This would include any arrangement fee and interest, but exclude, for example, any default charges.

Arguments for and against

- 4.23 The court process can:
- (1) encourage negotiations between lender and borrower;
 - (2) give comfort to the borrower by providing an impartial forum; and
 - (3) encourage lenders to see repossession as a last resort.
- 4.24 Logbook lenders made three objections to this proposal, on the basis of cost, delay and difficulties in enforcing court orders.

COST

- 4.25 The lender would need to pay a court fee, which is currently £155.⁸ We think that where the lender is successful in obtaining a court order, it should be able to pass the court fee on to the borrower. However, other costs, such as legal fees, should not be passed on to the borrower.
- 4.26 We accept that the requirement for a court order would impose costs on logbook lenders, but these costs would be offset by the savings resulting from the abolition of High Court registration of logbook loans.

⁸ The Government intends to raise this to £255.

DELAY

- 4.27 Logbook lenders expressed concern that borrowers could exploit the delay in the court process, retaining the vehicle for several months while arrears build up.
- 4.28 For this reason we think that, once the court process has been initiated, the borrower should be liable for any further arrears that accrue. Lenders should also be entitled to pursue borrowers for any shortfall after the goods have been repossessed and sold.

ENFORCEMENT

- 4.29 It is difficult to enforce a court order effectively using county court authorised enforcement agents. We propose that lenders should be allowed to use their own employees or debt collectors to enforce a court order. By this point, the parties will have had plenty of opportunity to negotiate, and we think that the lender should be able to realise its security quickly.

Voluntary termination

- 4.30 The requirement for a court order protects borrowers who could pay off the loan with additional time. It does little to help those with no realistic prospect of repaying the loan and may simply end up increasing the expense the borrower must bear. These borrowers should have the right of voluntary termination to release themselves from a loan they can no longer afford.

The CCTA Code

- 4.31 The CCTA Code already gives logbook loan borrowers the right of voluntary termination. The provisions in the CCTA Code are more favourable than the hire purchase provisions in three ways:
- (1) voluntary termination is not dependent on half the loan amount being repaid. Instead it is available immediately;
 - (2) voluntary termination is done in full and final settlement of both the loan amount and any arrears which have accrued; and
 - (3) the vehicle is accepted in its current condition, unless there has been malicious damage or a significant lack of care.

Our proposal

- 4.32 We think that voluntary termination should be a clear right set out in statute and available to all borrowers who have used goods mortgages to secure regulated credit agreements.
- 4.33 Our proposal is modelled on the provisions of the CCTA Code. Voluntary termination should be available, from the start, in full and final settlement of all outstanding amounts, irrespective of the condition of the goods, provided that the tests in the CCTA Code are met. The right would be available up until the point when the lender has incurred costs to repossess the goods.

Secured loans to buy vehicles

- 4.34 We think that it is highly undesirable to allow lenders to evade the long-established hire purchase protections by using bills of sale to secure the purchase of new vehicles. We think that our proposals in respect of borrower protection will remove the incentive to use vehicle mortgages in this way.

PROTECTING PRIVATE PURCHASERS

- 4.35 We propose that a private purchaser who acts in good faith and without actual notice of the goods mortgage should acquire ownership of the goods. A “private purchaser” would be defined as someone who is not a trade or finance purchaser. Where the lender seeks to recover goods from a private purchaser, it would have to go to court to show that the private purchaser had not acted in good faith or without actual notice.
- 4.36 The hire purchase protection is confined to vehicles. Our proposal would apply to all goods mortgages, though it is particularly important for logbook loans.

The arguments put by logbook lenders

- 4.37 Logbook lenders were concerned that borrowers and purchasers might collude. If the borrower sold the vehicle to a friend, the logbook lender might be unable to prove that the friend knew of the loan, even though this was likely. Logbook lenders argued that, instead, private purchasers should protect themselves by carrying out vehicle provenance checks.
- 4.38 At present, we do not think that it is realistic to expect all private purchasers to carry out vehicle provenance checks. We say this for four reasons:
- (1) consumers are not aware of the need to check. HPI told us that out of around seven million used vehicle transactions each year, consumers carry out only half a million vehicle provenance checks;
 - (2) even where consumers are aware of the need to check, they are confused by cheap “text checks” which do not reveal logbook loans;
 - (3) the cost is too high. Whereas those in the motor trade may pay less than £3, a private vehicle provenance check costs £12.99 from CDL and £19.99 from HPI and Experian; and
 - (4) consumers confuse bills of sale with hire purchase, where private purchasers are already protected.

A long-term option?

- 4.39 In the long term, we believe that these problems could be overcome. Logbook lenders and asset finance registries would need to act together, to make vehicle provenance checks cheaper, advertise the need to carry them out and prevent confusing alternatives.

- 4.40 We propose to include a regulation-making power in the new legislation so that if this situation were achieved, the legislation could be amended. Private purchasers who then failed to carry out a vehicle provenance check would no longer be protected.

FCA and FOS

- 4.41 It would also be beneficial for the FCA and FOS to have jurisdiction to supervise logbook lender behaviour towards private purchasers. We propose to give them both this power.

GENERAL ASSIGNMENTS OF BOOK DEBTS

- 4.42 We think that, in principle, registration of general assignments of book debts serves a useful purpose: it can put third parties on notice. We propose to continue to require registration of general assignments of book debts at the High Court. However, we propose a much simpler registration regime based on our proposals for mortgages on goods other than vehicles.
- 4.43 We propose that the parties should sign a short, simple assignment document. Although the business should sign it in the presence of a witness, we do not propose any restrictions on who that witness should be. The requirement for the witness to swear an affidavit would also be abolished.
- 4.44 The invoice financier would email the assignment document to the High Court, together with a registration form. The assignment would be validly registered from the date and time of submission. Registration would be renewed every ten years.

ABSOLUTE BILLS

- 4.45 The 1878 Act requires the registration of “absolute bills”. An absolute bill is a bill of sale for purposes other than borrowing money, where someone gives or sells goods but retains possession of them. In our visits to the High Court registry, we found no examples of absolute bills being registered.
- 4.46 The main use made of the registration requirement for absolute bills is a negative one. Creditors can use the 1878 Act to argue that an absolute bill is not valid against them because it has not been registered. In two cases (from 1940 and 1966) wives sought to enforce judgments against their estranged husbands by seizing goods, only to be told that the husband had given or sold those goods to someone else. The wives countered that the transaction was invalid because it had not been registered.
- 4.47 Nowadays other legislation protects creditors where people give away goods and then become bankrupt. We welcome evidence about whether the registration of absolute bills has any use in contemporary society. In the absence of any evidence that it does, we propose to abolish it.

5. ASSESSING THE IMPACT OF REFORM

LOGBOOK LOANS

- 5.1 The main impact of our reforms will be on logbook loans. We welcome comments on the benefits and costs of our reforms.

Benefits

- 5.2 The main benefit arises out of our proposal to abolish High Court registration of logbook loans. We estimate that this would save the industry around £1.67 million to £2.43 million a year.

Costs

- 5.3 The main costs arise out of our proposals to extend the requirement for a court order to vehicle mortgages and to protect private purchasers who act in good faith and without notice. Many logbook lenders already allow borrowers to exercise the right of voluntary termination under the CCTA Code so this proposal should have little direct impact.

Court order

- 5.4 Our initial estimate is that there will be between 334 to 525 applications for a court order a year. We estimate that the combined cost of the court fee and legal costs would be in the region of £600, giving a total annual cost of between £200,400 and £315,000.⁹
- 5.5 The delay inherent in the court process represents a cost to logbook lenders who may need to borrow money to ensure adequate cash flow. We welcome evidence from logbook lenders on this.

Protecting private purchasers

- 5.6 It will no longer be possible for logbook lenders to repossess vehicles from innocent private purchasers. We welcome evidence from logbook lenders on what cost this would represent for them.

Transitional costs

- 5.7 Any legal change involves some transitional costs, to train staff and develop new documentation. We seek views on our initial estimate that these costs would not be substantial – less than £50,000 for each logbook lender.

OTHER PROPOSALS

- 5.8 Outside the area of logbook loans, we think the impact of our proposals will be relatively small. We give further details in Chapter 15 of the consultation paper.

⁹ Based on a court fee of £255, see para 4.25, fn 8.