



JOINT ADVICE:

CONSUMER CREDIT LICENCES, INTEREST FREE DEBIT SCHEMES & MONEY LAUNDERING REGULATIONS

Advice

1. If an optical business/practice provides a system to allow patients to pay by instalments (eg for contact lenses) they
 - are by definition providing credit under the Consumer Credit Act 1974 (CAA)
 - require a Consumer Credit Licence to do so from the Office of Fair Trading (OFT)
 - need also to register with OFT under the Money Laundering Regulations 2007.

There are fees for each of the above registrations*.

2. None of the above applies, however, where the payment agreement
 - consists of no more than four payments and
 - these are all made within 12 months of the agreement.
3. Such arrangements are exempt from the requirements in paragraph 1.

Consumer Credit Act

4. Under the Consumer Credit Act 1974 (CCA) it is a criminal offence to provide credit under a consumer credit agreement without a Consumer Credit Licence.
5. "Credit" is defined in Section 9 of CCA as including "a cash loan and any other form of financial accommodation".
6. Selling goods to be paid for by instalments is clearly a form of "financial accommodation".

* Consumer Credit Licence £480 sole trader, £970 other businesses; Money Laundering £115 per premises. The Consumer Credit Licence fees are payable every 5 years.

7. Failure to comply with the CCA requirements – including as to form, content and execution of a credit agreement – means that the agreement would not normally be enforceable. It may also lead to a Consumer Credit Licence not being issued (or an already-issued Consumer Credit Licence being revoked).

Exemptions

8. As noted above there are however helpful exemptions from the CCA requirements. Regulation 3(1)(a)(i) of the Consumer Credit (Exempt Agreements) Order 1989 exempts agreements where the credit is, in effect
 - for a set purpose (e.g. a contact lens purchase)
 - under which there are no more than four payments to be made
 - and these are all to be made within 12 months of the agreement.
9. Provided credit agreements meet these requirements, in law the provision of credit does not fall within the CCA. This means that, in such cases
 - no consumer credit licence is needed
 - credit agreements do not need to follow the CCA prescribed form, content or execution.

Money Laundering Regulations 2007

10. Broadly speaking, a business needs to register with OFT under the anti-money laundering regulations if it is a business needing a consumer credit licence under the CCA. However a business that does not need a consumer credit licence under the CCA (as described at paragraph 8 above) does not need to register.

Exceptions

11. The only exceptions are
 - where a company is covered by a group licence issued by the OFT (which optical businesses are not)
 - the company/practice engages in such credit activity on only an occasional or very limited basis. (This cannot be the case for contact lens supplies)
12. Moreover, for the “very limited basis” exception to apply, all the following tests have to be met

- a) total annual turnover in respect of the financial activity must not exceed £64,000
 - b) the financial activity must be limited in relation to any single customer to no more than a single transaction exceeding €1,000 (whether the transaction is carried out in a single operation or a series of operations which appear to be linked)
 - c) the financial activity does not exceed 5% of the company's total annual turnover
 - d) the financial activity is ancillary and directly related to the company's main activity
 - e) the financial activity is not for transmission or remittance of money (or any representation of monetary values) by any means
 - f) the financial activity is provided only to customers of the company's main activity and is not offered to the general public.
13. The optical representative bodies have asked the Office of Fair Trading to clarify how this exemption might operate in relation to the supply of optical products.
14. None of the above, of course, applies if the exemption at paragraph 8 above is followed.

Deadlines

15. All businesses providing credit as in paragraph 1 (unless the exemption at paragraph 8 applies) should register with the Office of Fair Trading www.offt.gov.uk as soon as possible if they have not already done so.
16. Businesses/practices selling contact lenses by direct debit, and not taking advantage of the exemption at paragraph 8 above, also need to register with the OFT under the Money Laundering Regulations by **31 January 2010**. www.offt.gov.uk
17. The OFT have advised that they will supervise businesses for money laundering if they require a consumer credit licence whether they hold such a licence or not.

Some practical advice:

- a) Payments in advance are not credit.
- b) Monthly payments in arrears for each monthly supply of contact lenses will not require a credit licence (provided the lenses are also supplied monthly) as only one month's credit will be given at a time.

- c) Four payments or fewer in arrears annually will not require a credit licence.
- d) A deposit to secure the purchase need not be counted as one of the credit payments.

Further information

- 18. This guidance is not intended to be a full statement of the law and businesses/practices are advised to seek their own legal advice in cases of doubt.
- 19. Further advice is also available on the OFT www.offt.gov.uk and HMRC www.hmrc.gov.uk websites or please contact your representative body

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