

CONSUMER CREDIT ACT 2006

EXPLANATORY NOTES

DEFAULT UNDER REGULATED AGREEMENTS

Section 16: Time orders

39. Section 129 of the 1974 Act provides that a debtor or hirer may apply to the court for a time order. A time order is an order in which the court may reschedule any payments due under the regulated agreement. *Section 16* amends section 129(1) of the 1974 Act and inserts a new section 129A after section 129 of the 1974 Act. Section 129 sets out the circumstances in which a debtor or hirer may apply for, and a court may grant, a time order in respect of a regulated agreement. The amended section 129 will enable a debtor or hirer to apply for a time order after having received a notice of sums in arrears (where required by the new sections 86B or 86C inserted in the 1974 Act by this 2006 Act), in addition to being able to make an application after having received a default notice (under section 87).
40. This does not permit a debtor or hirer to automatically make an application. The new section 129A provides that, having received a notice of sums in arrears, the debtor or hirer may only make an application if he has given a notice to the creditor or owner including certain required information and a period of 14 days has passed since he gave the notice to the creditor or owner. This requirement does not apply to debtors or hirers who receive default notices under section 87 of the 1974 Act. A notice given under section 129A by a debtor or hirer must indicate that the debtor or hirer intends to make the application for a time order in relation to the agreement, indicate that he wants to make a proposal to the creditor or owner in relation to his making of payments under the agreement and give details of that proposal. Although the notice must be in writing, there are no specific requirements as to its form.
41. *Section 16(4)* of the 2006 Act amends the Sheriff Courts (Scotland) Act 1971 to provide that, in respect of applications relating to time orders under section 129 and 130(6) of the 1974 Act made in Scotland, the rules of the Sheriff Court may permit the debtor or hirer to be represented by a person who is not an advocate or a solicitor. (Section 130(6) of the 1974 Act allows a court to vary or revoke a time order on the application of any person affected by it.) *Subsection (5)* makes it clear that, in such circumstances, a person representing a debtor or hirer will not breach section 32(2B) of the Solicitors (Scotland) Act 1980, which prohibits persons who are not advocates or solicitors from preparing certain documents. This brings the position in Scotland into line with that in the rest of the UK where lay representation is already permissible in these cases.