

Act No. 34, 2005

NATIONAL CREDIT ACT, 2005

(2) The laws referred to in Schedule 2 are hereby amended in the manner set out in that Schedule.

(3) The repeal of the laws specified in this section does not affect the transitional arrangements, which are set out in Schedule 3.

(4) Subject to subsection (3) and the provisions of Schedule 3, the following Acts are hereby repealed: 5

- (a) The Usury Act, 1968 (Act No. 73 of 1968);
- (b) the Credit Agreements Act, 1980 (Act No. 75 of 1980); and
- (c) the Integration of Usury Laws Act, 1996 (Act No. 57 of 1996).

Short title and commencement

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173. This Act is called the National Credit Act, 2005, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule 1**Rules concerning conflicting legislation****(Section 172(1))**

Provisions of this Act	Conflicting Legislation	Conflict Resolution Rule	
The whole	Chapter II of the Alienation of Land Act, 1981 (Act No. 68 of 1981)	The provisions of this Act prevail to the extent of the conflict.	5 10
The whole, in so far as it applies to a credit agreement	The Conventional Penalties Act, 1962 (Act No. 15 of 1962)	The provisions of this Act prevail to the extent of the conflict.	15
The whole, in so far as it applies to a credit bureau	A notice issued in terms of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988)	The provisions of this Act prevail to the extent of the conflict.	20
Chapter 2	The Public Finance Management Act, 1999 (Act No. 1 of 1999)	The provisions of that Act prevail to the extent of the conflict.	25
Chapter 2	The Public Service Act, 1994 (Proclamation No. 103 of 1994)	The provisions of that Act prevail to the extent of the conflict.	30
Part D of Chapter 4, Section 127 Section 129 Section 131 Section 132 Chapter 7 Section 164	Section 57 or 58 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)	The provisions of this Act prevail to the extent of the conflict.	40 35
Part D of Chapter 4, Section 127 Section 129 Section 131 Section 132 Chapter 7 Section 164	Chapter IX of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)	The provisions of this Act prevail to the extent of the conflict.	50 45

Schedule 2

Amendment of laws

(Section 172(2))

No. and year of Act	Short Title	Extent of amendment	
Act No. 24 of 1936	Insolvency Act, 1936	<p>The amendment of section 84 by—</p> <p>(a) the substitution for the heading of the following heading: “Special provisions in case of goods delivered to a debtor in terms of an [instalment sale transaction] instalment agreement”;</p> <p>and</p> <p>(b) the substitution for the opening clause of subsection (1) of the following words: “If any property was delivered to a person (hereinafter referred to as the debtor) under a transaction [which is an instalment sale transaction contemplated in paragraphs (a) and (b) of the definition of ‘instalment sale transaction’ in section 1 of the Credit Agreements Act, 1980] that is an instalment agreement contemplated in paragraph (a), (b), and (c)(i) of the definition of ‘instalment agreement’ set out in section 1 of the National Credit Act, 2005.”.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p>

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No. and year of Act	Short Title	Extent of amendment	
Act No. 32 of 1944	Magistrates' Courts Act, 1944	<p>1. The amendment of subsection (1) of section 29 by—</p> <p>(a) the insertion after the expression “Subject to the provisions of this Act”, of the words “<u>and the National Credit Act, 2005</u>”; and</p> <p>(b) the substitution for paragraph (e) of the following paragraph:</p> <p>“(e) actions on or arising out of any credit agreement, as defined in section 1 of the [Credit Agreements Act, 1980 (Act No. 75 of 1980)] <u>National Credit Act, 2005</u>.”.</p> <p>2. The amendment of section 60 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Unless expressly otherwise provided in this Act or the rules <u>and the National Credit Act, 2005</u>, and subject to the provisions of section 19 of the Debt Collectors Act, 1998, no person other than an attorney, [or] an agent referred to in section 22 or a person authorised by or under the provisions of the <u>National Credit Act, 2005</u>, to do so shall be entitled to recover from the debtor any fees or remuneration in connection with the collection of any debt.”.</p> <p>3. The amendment of subsection (5) of section 65D by the substitution for the expression “hire-purchase agreement” of the expression “<u>credit agreement, as defined in section 1 of the National Credit Act, 2005</u>”.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p>

No. and year of Act	Short Title	Extent of amendment
		<p>4. The amendment of subsection (2) of section 74A by—</p> <p>(a) the substitution in paragraph (b) for the words—</p> <p>(i) “the credit transaction defined in section 1 of the Credit Agreements Act, 1980 (Act No. 75 of 1980)” with the words “the credit agreement, as defined in section 1 of the National Credit Act, 2005”; and</p> <p>(ii) “purchased under such credit transaction” with the words “purchased under that credit agreement”; and</p> <p>(b) the substitution in paragraph (i) for the words “other than a credit transaction” of the words “other than a credit agreement”.</p> <p>5. The amendment of section 74C by—</p> <p>(a) the substitution in paragraph (b) of subsection (1) for the words “any credit transaction regulated by the Credit Agreements Act, 1980” of the words “a credit agreement regulated by the National Credit Act, 2005”; and</p> <p>(b) the substitution in paragraph (b) of subsection (2) for the words “a credit transaction as defined in section 1 of the Credit Agreements Act, 1980 (Act No. 75 of 1980)” of the words “a credit agreement as defined in section 1 of the National Credit Act, 2005”.</p> <p>6. The amendment of subsection (7) of section 74G by—</p> <p>(a) the substitution for the words “a credit transaction as defined in section 1 of the Credit Agreements Act, 1980 (Act No. 75 of 1980)” of the words “a credit agreement as defined in section 1 of the National Credit Act, 2005”; and</p> <p>(b) the substitution throughout the subsection for each instance of the word “transaction” with the word “agreement”.</p> <p>7. The amendment of subsection (4) of section 74H by the substitution for the words “a credit transaction as defined in section 1 of the Credit Agreements Act, 1980 (Act No. 75 of 1980)” of the words “a credit agreement as defined in section 1 of the National Credit Act, 2005”.</p>

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No. and year of Act	Short Title	Extent of amendment	
		<p>8. The amendment of section 74K by—</p> <p>(a) the substitution in subsection (2) for the words—</p> <p>(i) “credit transaction regulated by the Credit Agreements Act, 1980 (Act No. 75 of 1980)” of the words “a credit agreement regulated by the National Credit Act, 2005”; and</p> <p>(ii) “seller”, in each instance, of the words “credit provider”; and</p> <p>(b) the deletion from subsection (3) of the words “of section 15”; and</p> <p>(c) the substitution in subsection (3) for the words “credit grantor as defined in section 1 of the Credit Agreements Act, 1980” of the words “credit provider as defined in section 1 of the National Credit Act, 2005”.</p>	5 10 15
Act No. 15 of 1962	Conventional Penalties Act, 1962	The repeal of section 5.	20
Act No. 25 of 1964	Sale and Service Matters Act, 1964	<p>1. The amendment of the definition of “sell” in section 1 by the substitution for the expression “as defined in the Credit Agreements Act, 1980 (Act No. 75 of 1980)” of the words “as defined in section 1 of the National Credit Act, 2005”.</p> <p>2. The amendment of section 2 by the insertion after the expression “the control of the Minister”, of the words “and subject to the provisions of the National Credit Act, 2005”.</p>	25 30

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No. and year of Act	Short Title	Extent of amendment	
Act No. 91 of 1964	Customs and Excise Act, 1964	<p>The amendment of subsection (1) of section 114 by—</p> <p>(a) the substitution in paragraph (a)(iv)(bb) for the expression “Credit Agreement Act, 1980 (Act No. 75 of 1980)” of the expression “National Credit Act, 2005”;</p> <p>(b) the substitution in paragraph (a)(v)(aa) for the expression—</p> <p>(i) “Credit Agreement Act” of the expression “National Credit Act, 2005”; and</p> <p>(ii) “credit grantor” of the expression “credit provider”;</p> <p>(c) the substitution in paragraph (a)(v)(bb) for the expression “Usury Act, 1968 (Act No. 73 of 1968)” of the expression “National Credit Act, 2005”;</p> <p>(d) the substitution in paragraph (a)(vi)(aa) for the expression “credit grantor” of the expression “credit provider”;</p> <p>(e) the substitution in paragraph (a)(vi)(bb) for the expression “credit grantor” of the expression “credit provider”;</p> <p>(f) the substitution in paragraph (a)(vi)(cc) for the expression “credit grantor” of the expression “credit provider”; and</p> <p>(g) the substitution in paragraph (b)(ii) for the expression “credit grantor” of the expression “credit provider”.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p>

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No. and year of Act	Short Title	Extent of amendment	
Act No. 55 of 1975	Prescribed Rate of Interest Act, 1975	The amendment of subsection (2) of section 2A by the insertion in paragraph (a) after the expression "between the parties" of the words "and the provisions of the National Credit Act, 2005".	5
Act No. 88 of 1984	Matrimonial Property Act, 1984	The amendment of subsection (2) of section 15 by the substitution for paragraph (f) of the following paragraph: “(f) enter, as a consumer, into a credit agreement to <u>which the provisions of the National Credit Act, 2005 apply, as ‘consumer’ and ‘credit agreement’ are respectively defined in that Act, but this paragraph does not require the written consent of a spouse before incurring each successive charge under a credit facility, as defined in that Act;</u> ”.	10 15 20

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No. and year of Act	Short Title	Extent of amendment	
Act No. 61 of 1984	Small Claims Court Act, 1984	The amendment of section 15 by the substitution for paragraph (d) of the following paragraph: “(d) actions based on or arising out of a credit agreement, as defined in section 1 of the [Credit Agreements Act, 1980 (Act No. 75 of 1980)] National Credit Act, 2005 , where the claim or value of the property in dispute does not exceed the amount determined by the Minister from time to time by notice in the <i>Gazette</i> ;”.	5 10
Act No. 71 of 1988	Consumer Affairs (Unfair Business Practices) Act, 1988	<p>1. The amendment of subsection (1) of section 4 by the insertion in paragraph (c) after the words “with any interested party” of the words “and the <u>National Credit Regulator established in terms of the National Credit Act, 2005, if the matter falls within the jurisdiction of the National Credit Regulator.</u>”.</p> <p>2. The amendment of subsection (1) of section 9 by the insertion after the expression “corporate or unincorporate” of the words “<u>or the National Credit Regulator established in terms of the National Credit Act, 2005.</u>”.</p>	15 20 25

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No. and year of Act	Short Title	Extent of amendment	
Act No. 52 of 1998	Long-term Insurance Act, 1998	The amendment of section 44 by the insertion of a new subsection 5: “(5) This section does not apply if the long-term policy or its policy benefits as contemplated in subsection (1), is made available for the purpose of protecting the interests of a creditor under a credit agreement to which the National Credit Act, 2005, applies.”	5 10
Act No. 53 of 1998	Short-term Insurance Act, 1998	The amendment of section 43 by the insertion of a new subsection 6: “(6) This section does not apply if the short-term policy or its policy benefits as contemplated in subsection (1), is made available for the purpose of protecting the interests of a creditor under a credit agreement to which the National Credit Act, 2005, applies.”	15 20

No. and year of Act	Short Title	Extent of amendment	
Act No. 78 of 1998	National Payment System Act, 1998	<p>1. By the insertion after section 6 of the following:</p> <p style="text-align: center;">“Effectiveness and efficiency of the National Payment System</p> <p>6A. (1) <u>As of 1 July 2006, a person may not change, manipulate, maintain or apply a payment system in any manner that provides preferential treatment to a payment instruction over any other payment instruction in that system, unless such preferential treatment is prescribed by law.</u></p> <p>(2) <u>With regard to any credit agreement concluded on or before 30 June 2006, which is subject to a payment system that provides preferential treatment to a payment instruction over any other payment instruction in that system, other than preferential treatment prescribed by law, such preferential treatment must be terminated on or before 31 December 2007.</u></p> <p>(3) <u>A person providing access to or allowing participation in a payment system may not deny any person access to or participation in that payment system if that second person meets the criteria set by the first mentioned person.</u></p> <p>(4) <u>The criteria referred to in subsection (3) for access to or participation in a payment system must be fair, transparent and equitable.</u></p> <p>(5) <u>A person who contravenes any provision of this section is guilty of an offence.”.</u></p> <p>2. By the substitution for paragraph (a) of subsection (1) of section 14 of the following: <u>“(a) sections 6(2), 6A(4) or 12(8), is liable to a fine not exceeding R1 million, or to imprisonment for a period not exceeding five years, or to both such a fine and such imprisonment;”.</u></p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p>

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No. and year of Act	Short Title	Extent of amendment	
Act No. 64 of 1990	Financial Institutions Amendment Act, 1990	The repeal of paragraph (i) of section 17.	5
Act No. 89 of 1991	Value-added Tax Act, 1991	<p>1. (a) Section 8 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (3) of the following subsection:</p> <p>(3) For the purposes of this Act, a credit agreement to which section [13 of the Credit Agreements Act, 1980 (Act No. 75 of 1980)] 121 of the National Credit Act, 2005 applies, [shall] will be deemed not to be a supply of goods or services [unless the credit receiver] if the consumer has [failed to] exercised the right to rescind [under that section to terminate the] that agreement in the manner and within the time permitted [period available to him or her under] by that section”.</p> <p>(b) Section 9 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:</p> <p>“(b) where that supply is a supply to which section 8(3) refers, on the day after the last day of the period during which the recipient may exercise the right under [section 13 of the Credit Agreements Act, 1980 (Act No. 75 of 1980)] section 121 of the National Credit Act, 2005, to [terminate] rescind the agreement;”.</p>	10 15 20 25 30

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No. and year of Act	Short Title	Extent of amendment	
Act No. 57 of 1993	Security by Means of Movable Property Act, 1993	The amendment of subsection (1) of section 2 by the substitution for paragraph (b) of the following paragraph: “(b) to which an instalment [sale transaction] agreement, as defined in section 1 of the [Credit Agreement Act 1980 (Act No. 75 of 1980)] National Credit Act, 2005, relates;”.	5 10
Act No. 63 of 2000	Home Loan and Mortgage Disclosure Act, 2000	The repeal of section 13.	15

Schedule 3

Transitional provisions

Definitions

1. (1) In this Schedule—
 - “**effective date**” means the date on which this Act, or any relevant provision of it, came into operation in terms of section 173; 5
 - “**pre-existing credit agreement**” means an agreement that was made before the effective date, and to which this Act applies; and
 - “**previous Act**” means a law repealed by section 172.
- (2) A reference in this Schedule— 10
 - (a) to a section by number is a reference to the corresponding section of—
 - (i) the previous Act, if the number is followed by the words “of the previous Act”; or
 - (ii) this Act, in any other case;
 - (b) to an item or a subitem by number is a reference to the corresponding item or subitem of this Schedule. 15

Delayed application of required registration

2. Despite section 40, the requirement in terms of this Act for a credit provider or a credit bureau to be registered—
 - (a) takes effect 40 business days after the effective date; and 20
 - (b) during the first year after the effective date, that requirement is temporarily satisfied from the time that a person applies for registration as a credit provider until a regulator has made a final decision with respect to that application.

National register of credit agreements

3. (1) Despite section 69, the requirements of section 69(2), (3), (4) and (5) remain inoperative until a date declared by the Minister by notice in the *Gazette* after—
 - (a) the National Credit Regulator has established the register of credit agreements as required by section 69(1); and
 - (b) the Minister has received advice from an independent auditor that the National Credit Regulator has established reasonable and effective means to receive and compile information to be reported to it in terms of section 69. 30
- (2) The Minister may prescribe the information to be registered by a credit provider in respect of a pre-existing credit agreement, in lieu of the information required by section 69(2).

Application of Act to pre-existing agreements 35

4. (1) This Act applies to a credit agreement that was made before the effective date, if that credit agreement would have fallen within the application of this Act in terms of Chapter 1 if this Act had been in effect when the agreement was made, subject to subitems (2) to (5).
- (2) The provisions of this Act referred to in the first column of the following table apply to a pre-existing credit agreement only to the extent indicated in the second column of the table. 40

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Provisions of the Act	Extent to which the provisions apply to a pre-existing credit agreement	
Chapter 1 Chapter 2 Chapter 3 Sections 67 and 68 Sections 70 to 72 Sections 95 to 98 Chapter 5 — Part E Sections 122 and 123 Chapters 6 to 9 Schedules 1 and 2	Apply fully to a pre-existing credit agreement from the effective date, except that section 5(3) does not apply in respect of a pre-existing incidental credit agreement.”	5 15 10
Chapter 4 — Part D	Applies to a pre-existing credit agreement only to the extent that it does not concern reckless credit.	
Chapter 4 — Part A Section 91	Apply to a pre-existing credit agreement only with respect to actions or omissions that occur on or after the effective date.	20
Section 69	Applies to a pre-existing credit agreement only after the date declared by the Minister in terms of item 3.	
Sections 89 and 90	Apply to a pre-existing credit agreement only to the extent that common law, national or provincial legislation applied, to similar effect, to such an agreement or provision as at the date the agreement was made.	25
Section 93 Chapter 5 — Part D	Apply to a pre-existing credit agreement from the effective date, subject to subitem (3).	
Chapter 4 — Part C Sections 92, 94, 99 and 121. Chapter 5 — Part C	Do not apply to pre-existing credit agreements, subject to subitem (3).	30

(3) With respect to any credit agreement, other than a pawn transaction, made within one year before the effective date, the credit provider must within six months after the effective date—

(a) provide the consumer with—

(i) a statement that meets the requirements of section 92; and

(ii) a document that meets the requirements of section 93, to the extent that a document or statement contemplated in terms of subparagraphs (i) or (ii) above has not already been provided to the consumer by the credit provider prior to the effective date; and

(b) introduce a form of periodic statement that meets the requirements of section 108.

(4) On application by a credit provider the National Credit Regulator, if it is satisfied that it is impracticable for the credit provider making best efforts in good faith to comply with all or part of subitem (3), may—

(a) extend the time within which the credit provider must comply with the obligations of subitem (3); or

(b) enter into a compliance agreement with the credit provider establishing a plan and schedule for meeting the requirements of subitem (3).

(5) Despite section 95, for the purposes of this item, a change after the effective date to any credit agreement that was made before the effective date constitutes the making of a new credit agreement, unless it is a change to—

(a) the interest rate under a variable rate agreement; or

(b) the interest rate or the credit limit under a credit facility.

Maximum interest rate

5. The maximum annual finance charge rate set in terms of the Usury Act, 1968 (Act No. 73 of 1968), and in effect immediately before the effective date continues in force despite the repeal of that Act, as the maximum interest rate, until the Minister first prescribes a maximum rate of interest in terms of section 105. 5

Specific preservation of rights, instructions, registration and similar status

6. (1) Subject to item 7(1), a person who, immediately before the effective date, was registered by an entity contemplated in item 8 as a debt counsellor is deemed to have been registered as such in terms of this Act as from the effective date.

(2) Despite the repeal of the Credit Agreements Act, 1980 (Act No. 75 of 1980), the provisions of section 24 of the Income Tax Act, 1962 (Act No. 58 of 1962), apply to a credit agreement to which this Act applies, to the extent that those provisions would have applied to such a credit agreement if the Credit Agreements Act, 1980 (Act No. 75 of 1980), had not been repealed. 10

General preservation of regulations, rights, duties, notices and other instruments 15

7. (1) A registration that had been issued in terms of section 15A of the Usury Act, 1968 (Act No. 73 of 1968), by an authority administering exemptions under that section, for an indefinite term and in force immediately before the effective date, has a duration, as from the effective date, of the period determined by regulation for that category of registration. 20

(2) Any other right or entitlement enjoyed by, or obligation imposed on, any person in terms of any provision of the previous Act, which had not been spent or fulfilled immediately before the effective date must be considered to be a valid right or entitlement of, or obligation imposed on, that person in terms of any comparable provision of this Act, as from the date that the right, entitlement or obligation first arose, subject to the provisions of this Act. 25

(3) A notice given by any person to another person in terms of any provision of a previous Act must be considered as notice given in terms of any comparable provision of this Act, as from the date that the notice was given under the previous Act.

(4) A document that, before the effective date, had been served in accordance with a previous Act must be regarded as having been satisfactorily served for any comparable purpose of this Act. 30

(5) An order given by an inspector, in terms of any provision of a previous Act, and in effect immediately before the effective date, continues in effect, subject to the provisions of this Act. 35

National Credit Regulator

8. As of the effective date—

- (a) the assets, liabilities and employees of a regulatory institution designated by the Minister in terms of section 15A of the Usury Act, 1968 (Act No. 73 of 1968), are transferred to and are assets, liabilities and employees, respectively, of the National Credit Regulator; and 40
- (b) any person appointed as an inspector or in any other capacity in terms of the Usury Act, 1968 (Act No. 73 of 1968), may be transferred to the National Credit Regulator.

Provincial regulatory capacity

9. Until provincial legislation has been enacted in a province establishing for that province a provincial credit regulator as contemplated in Part D of Chapter 2, the Minister, by notice in the *Gazette*, may delegate to the relevant MEC of that province all or any of the functions of the National Credit Regulator to be exercised within that province and in accordance with this Act. 5

Continued enforcement of repealed laws

10. Despite the repeal of the previous Acts, for a period of three years after the effective date and in respect of a matter that occurred during the period of three years immediately before the effective date— 10

- (a) the National Credit Regulator may exercise any power of the Minister in terms of any such previous Act to investigate and prosecute any breach of that Act, as if it were proceeding with a complaint in terms of this Act; and
- (b) the Tribunal may make any order that it is authorised to make in terms of this Act that could have been made in the circumstances by a court under any previous Act as if it were proceeding with a complaint in terms of this Act. 15

Regulations

11. On the effective date, and for a period of 60 business days after the effective date, the Minister may make any regulation contemplated in the Act without meeting the procedural requirements set out in section 171 or elsewhere in this Act, provided the Minister has published such proposed regulations in the *Gazette*, allowing a period of at least 30 business days for comment. 20

