

2010 No. 1011

CONSUMER CREDIT

**The Consumer Credit (Total Charge for Credit) Regulations
2010**

Made - - - - - *28th March 2010*

Laid before Parliament *30th March 2010*

Coming into force *In accordance with regulation 1(2)*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 20 and 182(2) of the Consumer Credit Act 1974(a).

Citation and commencement

1.—(1) These Regulations may be cited as the Consumer Credit (Total Charge for Credit) Regulations 2010.

(2) These Regulations shall come into force —

- (a) on 1st February 2011, or
- (b) in relation to a prospective or actual regulated consumer credit agreement, on the date and at the time Parts 1 to 3 of the Consumer Credit (EU Directive) Regulations 2010(b) apply to such an agreement, being a date before 1st February 2011.

Interpretation

2.—(1) In these Regulations—

“annual percentage rate of charge” means the rate of the total charge for credit (calculated in accordance with regulation 4), expressed as an annual percentage of the total amount of credit;

“current account” means an account under which the customer may, by means of cheques or similar orders payable to the customer or to any other person or by any other means, obtain or have the use of money held or made available by the person with whom the account is kept and which records alterations in the financial relationship between the said person and the customer;

“overdraft facility” means an explicit agreement whereby a creditor makes available to a debtor funds which exceed the current balance in the debtor’s current account;

“total amount of credit” means the credit limit or the total sums made available under a consumer credit agreement;

“total cost of credit to the debtor” means all costs, including interest, commissions, taxes and any other kind of fees which are required to be paid by or on behalf of the debtor or a relative

(a) 1974 c.39.
(b) S.I. 2010/1010.

of the debtor in connection with the consumer credit agreement, whether payable to the creditor or to any other person, and which are known to the creditor, except for notarial costs.

(2) In these Regulations—

- (a) a reference to a rate of interest is a reference to the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down;
- (b) a reference to a consumer credit agreement is to a consumer credit agreement regulated by the Act.

Application

3. These Regulations shall not apply to consumer credit agreements which are secured on land or to prospective consumer credit agreements which are to be secured on land except to the extent that the Consumer Credit (Disclosure of Information) Regulations 2010 apply to such agreements.

Total charge for credit

4.—(1) The total charge for credit which may be provided under an actual or prospective consumer credit agreement shall be the total cost of credit to the debtor determined in accordance with the requirements in paragraphs (2) to (5) below.

(2) Subject to paragraph (3), the following costs shall be included in the total cost of credit to the debtor—

- (a) the costs of maintaining an account recording both payment transactions and drawdowns;
- (b) the costs of using a means of payment for both payment transactions and drawdowns;
- (c) other costs relating to payment transactions.

(3) The costs at paragraph (2) shall not be included in the total cost of credit to the debtor where—

- (a) the opening of the account is optional and the costs of the account have been clearly and separately shown in the consumer credit agreement or in any other agreement made with the debtor;
- (b) in the case of an overdraft facility the costs do not relate to that facility.

(4) Costs in respect of an ancillary service shall be included in the total cost of credit to the debtor if the conclusion of a service contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed.

(5) The total cost of credit to the debtor shall not include—

- (a) any charges payable by or on behalf of the debtor or a relative of his for non-compliance with his commitments contained in the consumer credit agreement;
- (b) charges which, for purchases of goods or services, he or a relative of his is obliged to pay whether the transaction is effected in cash or on credit.

(6) In paragraph (4), the reference to an ancillary service means a service that relates to the provision of credit under the consumer credit agreement and includes in particular an insurance or payment protection policy.

Calculation of the annual percentage rate of charge

5. The annual percentage rate of charge shall be calculated in accordance with the mathematical formula set out in the Schedule to these Regulations.

Assumptions for calculation

6. For the purposes of calculating the total charge for credit and the annual percentage rate of charge—

- (a) it shall be assumed that the consumer credit agreement is to remain valid for the period agreed and that the creditor and the debtor will fulfil their obligations under the terms and by the dates specified in that agreement;
- (b) in the case of a consumer credit agreement allowing variations in—
 - (i) the rate of interest, or
 - (ii) where applicable, charges contained in the annual percentage rate of charge, where these cannot be quantified at the time of calculation, it shall be assumed that they will remain at the initial level and will be applicable for the duration of the agreement;
- (c) where not all rates of interest are determined in the consumer credit agreement, a rate of interest shall be assumed to be fixed only for the partial periods for which the rate of interest is determined exclusively by a fixed specific percentage agreed when the agreement is made;
- (d) where the duration of the consumer credit agreement cannot be determined at the date of calculation and where different rates of interest and charges are to be offered for limited periods during that agreement, the rate of interest and the charge shall be assumed to be at the highest level for the duration of the agreement;
- (e) where there is a fixed rate of interest agreed in relation to an initial period under a consumer credit agreement, at the end of which a new rate of interest is determined and subsequently periodically adjusted according to an agreed indicator, it shall be assumed that, at the end of the period of the fixed rate of interest, the rate of interest is the same as at the time of making the calculation, based on the value of the agreed indicator at that time;
- (f) where the consumer credit agreement gives the debtor freedom of drawdown, the total amount of credit shall be assumed to be drawn down immediately and in full;
- (g) where the consumer credit agreement provides different ways of drawdown with different charges or rates of interest, the total amount of credit shall be assumed to be drawn down at the highest charge and rate of interest applied to the most common drawdown mechanism for the credit product to which the agreement relates;
- (h) for the purposes of paragraph (g), the most common drawdown mechanism for a particular credit product shall be assessed on the basis of the volume of transactions for that product in the preceding 12 months, or expected volumes in the case of a new credit product;
- (i) where the consumer credit agreement imposes, amongst the different ways of drawdown, a limitation with regard to the amount and period of time, the amount of credit shall be assumed to be the maximum amount provided for in the agreement and to be drawn down on the earliest date provided for in the agreement;
- (j) subject to paragraphs (p) and (q), where there is no fixed timetable for repayment under a consumer credit agreement, it shall be assumed—
 - (i) that the credit is provided for a period of one year;
 - (ii) that the credit will be repaid in 12 equal instalments and at monthly intervals;
- (k) repayment of credit in paragraph (j)(ii) includes repayment of interest and other charges;
- (l) there is no fixed timetable for repayment under a consumer credit agreement where the agreement does not set a specific date by which the entire credit must be repaid;
- (m) where there is a fixed timetable for repayment under a consumer credit agreement but the amount of repayment instalments is flexible, the amount of each instalment (other than the last instalment) shall be assumed to be the lowest for which the agreement provides;
- (n) unless otherwise provided, where the consumer credit agreement provides for more than one repayment date, it shall be assumed that the credit is to be made available and repayment made on the earliest date provided for in the agreement;
- (o) in the case of an agreement for running-account credit, where the credit limit applicable to the credit is not yet known, that credit limit shall be assumed to be £1,200;

- (p) in the case of an overdraft facility, the total amount of credit shall be assumed to be drawn down in full and for the entire duration of the consumer credit agreement;
- (q) for the purposes of paragraph (p) if the duration of the consumer credit agreement is not known it shall be assumed that the duration of the agreement is three months.

28th March 2010

Kevin Brennan
Minister for Further Education, Skills, Apprenticeships and Consumer Affairs
Department for Business, Innovation and Skills

SCHEDULE

Regulation 5

Calculation of the Annual Percentage Rate of Charge

1. The annual percentage rate of charge (“APR”) is calculated by means of the equation in paragraph 2 which equates, on an annual basis, the total present value of drawdowns with the total present value of repayments and payments of charges.

2. The equation referred to in paragraph 1 is—

$$\sum_{k=1}^m C_k (1 + X)^{-t_k} = \sum_{l=1}^{m'} D_l (1 + X)^{-S_l}$$

where

X is the APR;

m is the number of the last drawdown;

k is the number of a drawdown, thus $1 \leq k \leq m$;

C_k is the amount of drawdown k;

t_k is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus $t_1 = 0$;

m' is the number of the last repayment or payment of charges;

l is the number of a repayment or payment of charges;

D_l is the amount of a repayment or payment of charges;

S_l is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges.

3. For the purposes of paragraph 2—

- (a) the amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals;
- (b) the starting date shall be that of the first drawdown;
- (c) intervals between dates used in the calculations shall be expressed in years or in fractions of a year;
- (d) a year is assumed to have 365 days (366 days for leap years), 52 weeks or 12 equal months;
- (e) an equal month is assumed to have 30.41666 days (365/12) regardless of whether or not it is a leap year;
- (f) the result of the calculation shall be expressed with an accuracy of at least one decimal place; if the figure at the following decimal place is greater than or equal to 5, the figure at that particular decimal place shall be increased by one;
- (g) the equation can be rewritten as set out in sub-paragraph (h) using a single sum and the concept of flows (A_k), which will be positive or negative, either paid or received during periods 1 to n, expressed in years;
- (h) the equation referred to in sub-paragraph (g) is—

$$S = \sum_{k=1}^n A_k (1 + X)^{-t_k}$$

S being the present balance of flows; if the aim is to maintain the equivalence of flows, the value will be zero.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement article 19 of and Annex 1 to Directive 2008/48/EC of the European Parliament and of the Council on credit agreements for consumers (OJ No L133, 22.5.2008, p66) (“the Directive”). They set out the basis on which the annual percentage rate of charge (APR) and the total charge for credit must be calculated for the purpose of an actual or prospective regulated consumer credit agreement.

By virtue of regulation 3, these Regulations do not apply to credit agreements secured on land except where the Consumer Credit (Disclosure of Information) Regulations 2010 (S.I. 2010/1013) apply to such agreements (see regulation 2(5) of those Regulations). Where these Regulations do not apply to agreements secured on land, the Consumer Credit (Total Charge for Credit) Regulations 1980 (S.I.1980/51) continue to apply (see regulation 50 of the Consumer Credit (EU Directive) Regulations 2010 (S.I. 2010/1010)).

Regulation 4 sets out how the total charge for credit shall be determined.

Regulation 5 provides that the APR shall be calculated in accordance with the Schedule.

Regulation 6 contains a list of assumptions that may be applied, where necessary, when calculating the total charge for credit and the APR.

A transposition note and an impact assessment of the effect this instrument will have on the costs to business and the voluntary sector are available from the BIS website (www.bis.gov.uk). They are also annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk). Copies have also been placed in the Libraries of both Houses of Parliament.

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STATUTORY INSTRUMENTS

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