

2012 No. 1745

CONSUMER CREDIT

**The Consumer Credit (Total Charge for Credit) (Amendment)
Regulations 2012**

<i>Made</i> - - - -	<i>5th July 2012</i>
<i>Laid before Parliament</i>	<i>6th July 2012</i>
<i>Coming into force</i> - -	<i>1st January 2013</i>

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, commencement and interpretation

1.—(1) These Regulations may be cited as the Consumer Credit (Total Charge for Credit) (Amendment) Regulations 2012.

(2) These Regulations shall come into force on 1st January 2013.

(3) In these Regulations—

“the 2010 Regulations” means the Consumer Credit (Total Charge for Credit) Regulations 2010(b);

“the Act” means the Consumer Credit Act 1974;

“credit advertisement” means an advertisement to which Part 4 of the Act applies by virtue of it falling within section 43(1)(a), or which falls within section 151(1) of the Act in so far as section 44 is applied to such an advertisement; and

“the EU Directive” means Commission Directive 2011/90/EU of 14th November 2011 amending Part II of Annex I to Directive 2008/48/EC of the European Parliament and of the Council providing additional assumptions for the calculation of the annual percentage rate of charge(c).

Amendments to the 2010 Regulations

2. The 2010 Regulations are amended as specified in regulations 3 to 5.

3. In regulation 2 (interpretation) after paragraph (2)(b) insert—

“(c) a reference to an open-end consumer credit agreement is to a consumer credit agreement of no fixed duration and includes credits which must be repaid in full within or after a period but, once repaid, become available to be drawn down again.”.

(a) 1974 c.39.

(b) S.I. 2010/1011 was amended by S.I. 2011/11.

(c) OJ L 296, 15.11.2011, p.35.

4. For regulation 6 (assumptions for calculation) substitute—

“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;
- (fa) where the consumer credit agreement imposes, amongst the different ways of drawdown, a limitation with regard to the amount of credit 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;
- (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) 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;
- (j) for the purposes of paragraph (i) if the duration of the overdraft facility is not known it shall be assumed that the duration of the facility is three months;
- (k) in the case of an open-end consumer credit agreement, other than an overdraft facility, it shall be assumed that the credit is provided for a period of one year

starting from the date of the initial drawdown, and that the final payment made by the debtor clears the balance of capital, interest and other charges, if any;

- (l) for the purposes of paragraph (k)—
 - (i) the capital is repaid by the debtor in equal monthly payments, commencing one month after the date of initial drawdown;
 - (ii) in cases where the capital must be repaid in full, in a single payment, within or after each payment period, successive drawdowns and repayments of the entire capital by the debtor shall be assumed to occur over the period of one year;
 - (iii) interest and other charges shall be applied in accordance with those drawdowns and repayments of capital and as provided for in the consumer credit agreement;
- (m) in the case of a consumer credit agreement, other than an overdraft facility, or an open-end consumer credit agreement—
 - (i) where the date or amount of a repayment of capital to be made by the debtor cannot be ascertained, it shall be assumed that the repayment is made at the earliest date provided for under the consumer credit agreement and is for the lowest amount for which the consumer credit agreement provides;
 - (ii) where it is not known on which date the consumer credit agreement is made, the date of the initial drawdown shall be assumed to be the date which results in the shortest interval between that date and the date of the first payment to be made by the debtor;
- (n) where the date or amount of a payment to be made by the debtor cannot be ascertained on the basis of the consumer credit agreement or the assumptions set out in paragraphs (i) to (m), it shall be assumed that the payment is made in accordance with the dates and conditions required by the creditor and, when these are unknown—
 - (i) interest charges are paid together with repayments of capital;
 - (ii) a non-interest charge expressed as a single sum is paid on the date of the making of the consumer credit agreement;
 - (iii) non-interest charges expressed as several payments are paid at regular intervals, commencing with the date of the first repayment of capital, and if the amount of such payments is not known they shall be assumed to be equal amounts;
 - (iv) the final payment clears the balance of capital, interest and other charges, if any;
- (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.”.

5. In paragraph 3(g) of the Schedule to the 2010 Regulations (calculation of the annual percentage rate of charge) for “l to n” substitute “l to k”.

Transitional provisions

6.—(1) Subject to paragraph (2), a person shall not be guilty of an offence under section 47(1) or 167 of the Act for contravention of these Regulations in respect of a credit advertisement that would have complied with the requirements of the 2010 Regulations had those Regulations not been amended by virtue of regulation 4 of these Regulations.

(2) Paragraph (1) only applies to—

- (a) credit advertisements published in a catalogue, diary or work of reference comprising at least 50 printed pages—

- (i) copies of which are first published, or made available for publication in the ordinary course of business before 1st February 2013, and
 - (ii) which, in a reasonably prominent position either contains the date of its first publication or specifies a period, being a calendar or seasonal period, throughout which it is intended to have effect;
- (b) other credit advertisements—
- (i) which are first published before 1st January 2013, and
 - (ii) which cease to be published before 1st February 2013.

Review

7.—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of regulations 3 and 4,
- (b) set out the conclusions of the review in a report, and
- (c) lay the report before Parliament.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Annex to the EU Directive (which is implemented by means of regulations 3 and 4) has been implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by those regulations,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) “Review period” means—

- (a) the period of five years beginning with the day on which regulations 3 and 4 come into force, and
- (b) subject to paragraph (5), each successive period of five years.

(5) If a report under this regulation is laid before Parliament before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is laid.

Norman Lamb

Parliamentary Under Secretary of State for Employment Relations, Consumer and Postal Affairs
5th July 2012

Department for Business, Innovation and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2011/90/EU amending Part II of Annex I to Directive 2008/48/EC of the European Parliament and of the Council providing additional assumptions for the calculation of the annual percentage rate of charge (“the 2011 Directive”) (OJ No L296, 15.11.2011, p35). They amend certain provisions of the Consumer Credit (Total Charge for Credit) Regulations 2010 (S.I. 2010/1011) (“the 2010 Regulations”) which set out assumptions for the purposes of calculating the total charge for credit and the annual percentage rate of charge.

Regulation 3 inserts a definition of “open-end consumer credit agreement” into the 2010 Regulations that expands for the purposes of these Regulations the definition in section 189 of the Consumer Credit Act 1974.

Regulation 4 implements the changes made by the 2011 Directive to the assumptions for calculating the total charge for credit and the annual percentage rate of charge (APR). It does so by substituting regulation 6 of the 2010 Regulations.

Regulation 5 makes an amendment to paragraph 3(g) of the Schedule to the 2010 Regulations so as to correct a typographical error in the original transposition.

Regulation 6 makes transitional provision disapplying the requirements to advertisements published in a catalogue before 1st February and giving advertisers a period of one month from 1st January 2013 in which to replace other types of credit advertisement published prior to that date.

Regulation 7 requires the Secretary of State to review the operation and effect of these Regulations and lay a report before Parliament no later than five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

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 Legislation website (<http://www.legislation.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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