

**1999 No. 3177**

**CONSUMER CREDIT**

**The Consumer Credit (Total Charge for Credit, Agreements and Advertisements) (Amendment) Regulations 1999**

<i>Made</i> - - - -	<i>26th November 1999</i>
<i>Laid before Parliament</i>	<i>26th November 1999</i>
<i>Coming into force</i>	<i>14th April 2000</i>

The Secretary of State, in exercise of his powers under sections 20, 44 (read with section 151(1) and (5)), 60 (read with section 82(3)) and 182(2) of the Consumer Credit Act 1974<sup>(a)</sup>, makes the following Regulations:—

**Title and commencement**

1. These Regulations may be cited as the Consumer Credit (Total Charge for Credit, Agreements and Advertisements) (Amendment) Regulations 1999.
2. These Regulations shall come into force on 14th April 2000.

**Amendments to the Consumer Credit (Total Charge for Credit) Regulations 1980**

3. The Consumer Credit (Total Charge for Credit) Regulations 1980<sup>(b)</sup> are amended as follows—

- (a) in regulation 1(2)—
  - (i) by adding the following after the definition of “agreement”—

““land-related agreement” means an agreement which is—

    - (a) intended primarily to finance the acquisition or retention of land, or
    - (b) intended to finance the renovation or improvement of a building,

or any other agreement secured by a mortgage on land or, in Scotland, by a standard security within the meaning of the Conveyancing and Feudal Reform (Scotland) Act 1970<sup>(c)</sup>”; and
  - (ii) by substituting the following for the definition of “period rate of charge”—

““period rate of charge” means a percentage rate of charge for a period, comprising all charges included in the total charge for credit determined in accordance with Part II of these Regulations;”;
- (b) by deleting the word “and” at the end of regulation 2(1)(c);
- (c) in regulation 2(1)(d)—
  - (i) at the beginning, by inserting the words “subject to sub-paragraph (e) below,”; and

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(a) 1974 c. 39.

(b) S.I. 1980/51, amended by S.I. 1985/1192, 1989/596.

(c) 1970 c. 35.

- (ii) at the end, by replacing the full stop with “; and”;
- (d) by adding the following after regulation 2(1)(d)–
  - “(e) in the case of a land-related agreement which provides for the possibility of any variation of the rate of interest in consequence of the occurrence after the relevant date of any event (being an event which is certain to occur and of which the date of occurrence, or the earliest date of occurrence, can be ascertained at the date of the making of the agreement), the assumption that such a variation will, when the event occurs, take place.”;
- (e) by deleting the word “and” at the end of regulation 4(a);
- (f) by replacing the comma at the end of regulation 4(b) with “; and” and by adding the following after regulation 4(b)–
  - “(c) a premium under a contract of insurance, payable under the transaction by the debtor or a relative of his, where the making or maintenance of the contract of insurance is required by the creditor–
    - (i) as a condition of making the agreement, and
    - (ii) for the sole purpose of ensuring complete or partial repayment of the credit, and complete or partial payment to the creditor of such of those charges included in the total charge for credit as are payable to him under the transaction, in the event of the death, invalidity, illness or unemployment of the debtor.”;
- (g) by substituting the following for regulation 5(1)(g) to (l)–
  - “(g) any charge for a guarantee other than a guarantee–
    - (i) which is required by the creditor as a condition of making the agreement, and
    - (ii) the purpose of which is to ensure complete or partial repayment of the credit, and complete or partial payment to the creditor of such of those charges included in the total charge for credit as are payable to him under the transaction, in the event of the death, invalidity, illness or unemployment of the debtor;
  - (h) charges for the transfer of funds (other than charges within sub-paragraph (f) above) and charges for keeping an account intended to receive payments towards the repayment of the credit and the payment of interest and other charges, except where the debtor does not have reasonable freedom of choice in the matter and where such charges are abnormally high; but this sub-paragraph does not exclude from the total charge for credit charges for collection of the payments to which it refers, whether such payments are made in cash or otherwise;
  - (i) a premium under a contract of insurance other than a contract of insurance referred to in regulation 4(c) above.”;
- (h) in regulation 5(2)–
  - (i) in sub-paragraph (b), by deleting the words “and of any charge within sub-paragraph (l)”;
  - (ii) by deleting the words “or contract of insurance” where they occur in sub-paragraph (b)(i), (ii) and (iii); and
  - (iii) in the words which follow sub-paragraph (b), by deleting the words “or the contract of insurance”;
- (i) in regulation 6, by deleting the words from “such determination” to “disregarded” and replacing them with the words “(where it has more than one decimal place) rounded to one decimal place in accordance with regulation 6A below”;
- (j) by adding the following after regulation 6–

“6A. The annual percentage rate of charge referred to in regulation 6 above shall be rounded to one decimal place as follows–

- (a) where the figure at the second decimal place is greater than or equal to 5, the figure at the first decimal place shall be increased by one and the decimal place (or places) following the first decimal place shall be disregarded; and
  - (b) where the figure at the second decimal place is less than 5, that decimal place and any decimal places following it shall be disregarded.”;
- (k) by deleting regulations 7, 8 and 9 and replacing them with the following—

“7.—(1) Subject to paragraph (4) below, the annual percentage rate of charge is the rate for  $i$  which satisfies the equation set out in paragraph (2) below, expressed as a percentage.

(2) The equation referred to in paragraph (1) above is—

$$\sum_{K=1}^{K=m} \frac{A_K}{(1+i)^{tK}} = \sum_{K'=1}^{K'=m'} \frac{A'_{K'}}{(1+i)^{t'K'}}$$

- where  $K$  is the number identifying a particular advance of credit;  
 $K'$  is the number identifying a particular instalment;  
 $A_K$  is the amount of advance  $K$ ;  
 $A'_{K'}$  is the amount of instalment  $K'$ ;  
 $\sum$  represents the sum of all the terms indicated;  
 $m$  is the number of advances of credit;  
 $m'$  is the total number of instalments;  
 $tK$  is the interval, expressed in years, between the relevant date and the date of the second advance and those of any subsequent advances numbered three to  $m$ ; and  
 $t'K'$  is the interval, expressed in years, between the relevant date and the dates of instalments numbered one to  $m'$ .

(3) In paragraph (2) above, references to instalments are references to any payment made by or on behalf of the debtor or a relative of his which comprises—

- (a) a repayment of all or part of the credit under the agreement;
- (b) a payment of all or part of the total charge for credit; or
- (c) both a repayment of all or part of the credit and a payment of all or part of the total charge for credit.

(4) Where more than one rate is given under paragraph (1) above, the annual percentage rate of charge is the positive rate nearest to zero or, if no positive rate is so given, the negative rate nearest to zero.”;

- (l) by deleting regulation 10;
- (m) by substituting the following for regulation 11(6)—

“(6) A day may be taken to be either—

- (a) one three hundred and sixty-fifth part of a year or, if it is a leap year, one three hundred and sixty-sixth part of a year; or
- (b)  $\frac{1}{365.25}$  of a year.”; and

- (n) by inserting the words “Subject to regulation 15A below,” at the beginning of regulation 15 and by adding the following after that regulation—

*“Assumptions about variations of interest rates in land-related agreements*

**15A.**—(1) This regulation applies to any land-related agreement which provides for the possibility of any variation of the rate of interest if it is to be assumed, by virtue of regulation 2(1)(e) above, that the variation will take place but the amount of the variation cannot be ascertained at the date of the making of the agreement.

(2) In this regulation—

“initial standard variable rate” means—

- (a) the standard variable rate of interest which would be applied by the creditor to the agreement on the date of the making of the agreement if the agreement provided for interest to be paid at the creditor’s standard variable rate with effect from that date, or
- (b) if there is no such rate, the standard variable rate of interest applied by the creditor on the date of the making of the agreement in question to other land-related agreements or, where there is more than one such rate, the highest such rate,

taking no account (for the avoidance of doubt) of any discount or other reduction to which the debtor would or might be entitled; and

“varied rate” means any rate of interest charged when a variation of the rate of interest is to be assumed to take place by virtue of regulation 2(1)(e) above.

(3) Where a land-related agreement provides a formula for calculating a varied rate by reference to a standard variable rate of interest applied by the creditor, or any other fluctuating rate of interest, but does not enable the varied rate to be ascertained at the date of the making of the agreement because it is not known on that date what the standard variable rate will be or (as the case may be) at what level the fluctuating rate will be fixed when the varied rate falls to be calculated, it shall be assumed that that rate or level will be the same as the initial standard variable rate.

(4) Where a land-related agreement provides for the possibility of any variation in the rate of interest (other than a variation referred to in paragraph (3) above) which it is to be assumed, by virtue of regulation 2(1)(e) above, will take place but does not enable the amount of that variation to be ascertained at the date of the making of the agreement, it shall be assumed that the varied rate will be the same as the initial standard variable rate.”.

#### **Amendments to the Consumer Credit (Agreements) Regulations 1983**

4. The Consumer Credit (Agreements) Regulations 1983(a) are amended as follows–

(a) in Schedule 1, by adding the following after paragraph 19–

“**19A.** Agreements to which regulation 15A of the Total Charge for Credit Regulations applies. The initial standard variable rate within the meaning of regulation 15A(2) of the Total Charge for Credit Regulations together with a statement explaining–

- (a) what that rate is; and
- (b) that it has been taken into account in calculating the APR.”;

(b) in paragraph 2 of Schedule 7, by substituting the words “regulation 7” for the words “any of regulations 7, 9 and 10”;

(c) in paragraph 3 of Schedule 7, by substituting the words “regulation 7” for the words “any of regulations 7, 9 and 10”;

(d) in Schedule 7, by deleting paragraphs 4 and 5; and

(e) in Part I of Schedule 8, by adding the following after paragraph 19–

“**19A.** Modifying agreements which are required under paragraph 14, 15 or 16 to disclose an APR in relation to the modified agreement and under which the provisions of an earlier agreement are varied or supplemented with the result that the modified agreement is an agreement to which regulation 15A of the Total Charge for Credit Regulations applies. The initial standard variable rate (within the meaning of regulation 15A(2) of the Total Charge for Credit Regulations) in relation to the modified agreement, together with a statement explaining–

- (a) what that rate is; and
- (b) that it has been taken into account in calculating the APR in relation to the modified agreement.”.

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(a) S.I. 1983/1553, to which there are amendments not relevant to these Regulations.

**Amendments to the Consumer Credit (Advertisements) Regulations 1989**

5. The Consumer Credit (Advertisements) Regulations 1989<sup>(a)</sup> are amended as follows—
- (a) in regulation 1(2), by deleting the definition of “Consumer credit tables”; and
  - (b) in Schedule 3—
    - (i) by substituting the words “regulation 7” for the words “any of regulations 7, 9 and 10” where those words occur in paragraphs 3 and 4; and
    - (ii) by deleting paragraphs 5 and 6.

26th November 1999

*Stephen Byers*  
Secretary of State for Trade and Industry

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<sup>(a)</sup> S.I. 1989/1125, to which there are amendments not relevant to these Regulations.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Consumer Credit (Total Charge for Credit) Regulations 1980 (“the 1980 Regulations”), the Consumer Credit (Agreements) Regulations 1983 (“the 1983 Regulations”) and the Consumer Credit (Advertisements) Regulations 1989 (“the 1989 Regulations”).

The Regulations make such amendments to the 1980 Regulations as are required to implement Directive 98/7/EC of the European Parliament and of the Council (O.J. No. L101, 1.4.1998, p. 17), which amended for the second time Council Directive 87/102/EEC on the approximation of the laws, regulations and administrative provisions of the member States concerning consumer credit (O.J. No. L42, 12.2.1987, p. 48) (“the Consumer Credit Directive”).

The Regulations change the way in which the rate of the total charge for credit (APR) is to be calculated by replacing the three methods of calculation in the 1980 Regulations with the single method required by Directive 98/7/EC (regulation 3(k) and (m)). The resulting rate is required to be rounded to one decimal place (regulation 3(i) and (j)).

The Regulations amend the 1980 Regulations so that the rate of the total charge for credit in relation to an actual or prospective agreement may no longer be taken to be the applicable rate set out in the “Consumer credit tables” (Parts 1 to 15) published by Her Majesty’s Stationery Office (regulation 3(l)).

The amendments made to implement Directive 98/7/EC extend to credit agreements which are outside the scope of the Consumer Credit Directive.

The Regulations make consequential amendments to the 1980, 1983 and 1989 Regulations (regulations 3(a)(ii), 4(b) to (d) and 5).

The Regulations also amend the 1980 Regulations to change, in one respect, the way in which the total charge for credit is to be calculated in relation to credit agreements which are intended primarily to finance the acquisition or retention of land or intended to finance the renovation or improvement of a building and in relation to other credit agreements secured by a mortgage (or, in Scotland, a standard security) on land (regulation 3(a)(i), (b), (c), (d) and (n)). Where such an agreement (a “land-related agreement”) provides for the possibility of a variation of the rate of interest in consequence of the occurrence after “the relevant date” (which is defined in regulation 1(2) of the 1980 Regulations) of an event which is certain to occur and of which the date of occurrence (or the earliest date) can be ascertained when the agreement is made, it is to be assumed that the variation will indeed take place when the event occurs. And where the amount of such variation cannot be ascertained when the agreement is made, assumptions are provided which require it to be calculated by reference to the creditor’s standard variable rate in operation at the date on which the agreement is made.

Consequential amendments are made to the 1983 Regulations to require the creditor’s standard variable rate to be stated in regulated agreements (and, in certain circumstances, in modifying agreements), together with an explanation of what that rate is and a statement that it has been taken into account in calculating the APR (regulation 4(a) and (e)).

Finally, the following amendments are made to the 1980 Regulations in order to align their requirements more closely with those of the Consumer Credit Directive, as amended by Council Directive 90/88/EEC (O.J. No. L61, 10.3.1990, p. 14) (though the amendments also affect credit agreements to which the Consumer Credit Directive does not apply).

First, the 1980 Regulations are amended so that certain insurance premiums are required to be included in the total charge for credit, and all others are required to be excluded (regulation 3(e), (f), (g) and (h)). Those required to be included are premiums payable in respect of insurance arrangements required by the creditor for the sole purpose of ensuring that all or part of the credit, interest and other charges is repaid in the event of the debtor’s death, invalidity, illness or unemployment.

Second, the 1980 Regulations are amended so that charges for guarantees are required to be excluded from the total charge for credit, with the exception of charges for one specified type of

guarantee which are required to be included (regulation 3(g)). The specified type of guarantee is one required by the creditor to ensure that all or part of the credit, interest and other charges is repaid in the event of the debtor's death, invalidity, illness or unemployment.

Third, the 1980 Regulations are amended to provide for the exclusion from the total charge for credit of charges for the transfer of funds and charges for keeping an account intended to receive repayments of credit and payments of other charges, with exceptions (regulation 3(g)).

A Regulatory Impact Assessment of the costs and benefits which will result from these Regulations has been prepared. Copies have been placed in the libraries of both Houses of Parliament and can also be obtained from the Consumer Affairs Directorate of the Department of Trade and Industry, Room 407, 1 Victoria Street, London SW1H 0ET.

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and Advertisements) (Amendment) Regulations 1999**

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