EXPLANATORY MEMORANDUM TO

THE CONSUMER CREDIT (TOTAL CHARGE FOR CREDIT) (AMENDMENT) REGULATIONS

2012 No. 1745

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Consumer Credit (Total Charge for Credit) (Amendment) Regulations 2012 (the "Amendment Regulations") implement Directive 2011/90/EU amending Part II of Annex I to Directive 2008/48/EC providing additional assumptions for the calculation of the annual percentage rate of charge. They do so by amending the assumptions used for calculating the annual percentage rate of charge (the "APRC"), in other words the total cost of credit, that are contained in regulation 6 of the Consumer Credit (Total Charge for Credit) Regulations 2010 (the "TCC Regulations").

2.2 The APR is referred to in a variety of consumer credit legislation, such as that relating to the content of credit advertisements and consumer credit agreements. The changes to the assumptions made by these Amendment Regulations therefore impact more generally.

3. Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 We have explained in paragraph 7.2 below our general approach to this Directive implementation exercise. However we wish to draw the Committee's specific attention to a drafting decision in relation to the numbering of the new assumptions.

3.2 The Amendment Regulations substitute a new Regulation 6 into the TCC Regulations. This list the assumptions provided for in the Directive. Since assumptions (a) to (h) remain unchanged from the 2010 implementation exercise, we have retained thse paragraph numbers. The Joint Committee will however note that, rather than letter the new assumptions consecutively, we have introduced a paragraph (fa) between paragraphs (f) and (g). We chose to do this for two reasons. First, by maintaining the current structure of the paragraphs we minimise the amount of change for businesses, who are familiar with the current numbering of paragraphs. Second, in doing so we also avoid the need to make consequential amendments to the Consumer Credit (Advertisements) Regulations 2010 (S.I. 1012), the Consumer Credit (Disclosure of Information) Regulations 2010 (S.I. 1013) and the Consumer Credit (Agreements) Regulations 2010 (S.I. 1014), which cross refer to particular assumptions in regulation 6 of the TCC Regulations.

4. Legislative Context

4.1 The Consumer Credit Directive 2008[1] was transposed into domestic legislation in 2010 by means of amendments to the Consumer Credit Act 1974 and by a suite of secondary legislation[2]. This included the TCC Regulations. These transposed Article 19 and Annex I of the Consumer Credit Directive, which provided a means for calculating the total charge of credit. Annex 1 contained a series of assumptions for calculating the APR.

4.2 The Directive permitted changes to be made to Annex 1 be means of delegated legislation (article 25(1)). Following concerns about how the assumptions worked in practice for credit cards, and in furtherance of this power, the Commission established a comitology committee which agreed the new assumptions on 4 July 2011. The Commission adopted the revised assumptions and published them as Directive 2011/90/EU on 15 November 2011.

4.3 Directive 2011/90/EU substitutes a new Part II of Annex I into the Consumer Credit Directive. This contains the revised APRC assumptions. Some of the APRC assumptions are identical to the assumptions they replace (although not necessarily appearing in the same order).

4.4 In order to ensure that Part II of Annex I of the Consumer Credit Directive, as amended by Directive 2011/90/EU, is transposed into domestic law, the Amendment Regulations replace in their entirety, the assumptions that existed in Regulation 6 of the TCC Regulations 2010.

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Consumer Credit Directive 2008 requires lenders to ensure that consumers are aware of the APRC when entering into consumer credit agreements. It stipulates that the APRC should be made available in advertising of credit products and in both pre-contractual information and in the credit agreement itself. The APRC is the total cost of credit to the consumer expressed as an annual percentage of the total amount of credit.

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[1] Directive 2008/48/EU of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC. OJ L133, Page 66, 22 May 2008

[2] The Consumer Credit (EU Directive) Regulations 2010 (S.I. 2010/1010) as amended by S.I. 2010/1969 and S.I. 2011/11
The Consumer Credit (Total Charge for Credit) Regulations 2010 (S.I. 2010/1011) as amended by S.I. 2011/11
The Consumer Credit (Advertisements) Regulations 2010 (S.I. 2010/1012) were revoked and replaced by S.I.2010/1970
The Consumer Credit (Disclosure of Information) Regulations 2010 (S.I. 2010/1013) as amended by S.I. 2010/1969 and 2011/11
The Consumer Credit (Agreements) Regulations 2010 (S.I. 2010/1014) as amended by S.I. 2010/1969

The standardisation of the assumptions used to produce the APRC, provided by Part II of Annex I of the Consumer Credit Directive, serves an important purpose in enabling comparability across Member States between different consumer credit products.. The EU has recognised that there are flaws in the existing APRC assumptions and has therefore published Directive 2011/90/EU to improve the way the APRC is calculated.

7.2 Most of the assumptions remain unchanged. Where they differ (for example in new assumption (e)), the approach we have taken is to copy-out the assumption as far as is possible, unless a departure from the wording of the Directive is needed to maintain the existing drafting style of the TCC Regulations, and the existing paragraph structure. Those Regulations departed from the Directive wording in some respects to ensure

7.3 In keeping with our transposition of the provisions in the CCD on advertisements (see regulation 12 of the Consumer Credit (Advertisements) Regulations 2010), which included references to APR assumptions, and following requests from industry, we have included a transitional provision in relation to advertisements (regulation 6). This disapplies the requirements of the Amendment Regulations to advertisements published in a catalogue before 1st February 2013 (so long as they comply with the TCC Regulations) and gives advertisers a period of one month from 1st January 2013 in which to replace other types of credit advertisement published prior to that date. This grace period enables those who have published credit advertisements in accordance with the existing regime, do not have to remove or recall their advertising material overnight; something that would impose a considerable burden on business.

- ***Consolidation***

7.3 Not applicable.

8. Consultation outcome

8.1 A formal public consultation was not undertaken since the changes were very limited. However BIS engaged in extensive dialogue with representatives of the industry during the EU negotiations and has consulted with them informally on its approach to implementation.

9. Guidance

9.1 BIS produced guidance in 2010 on the TCC Regulations as part of its guidance on the suite of regulations which implemented the Consumer Credit Directive. The European Commission has recently updated its Staff Working Document, which contains guidelines on the application of the annual percentage rate of charge provisions. This is not legally binding. We will consider whether the BIS guidance needs amending in light of the revised assumptions contained in the 2011 Directive, and whether any points arising from the Staff Working Document might usefully be incorporated into the BIS guidance which will be updated prior to the Amendment Regulations taking effect.

10. Impact

10.1 An Impact Assessment was produced and cleared by the Regulatory Policy Committee and is provided with this Explanatory Memorandum.

11. Regulating small business

11.1 This type of European legislative measure is not in scope for micro-business exemptions.

12. Monitoring & review

12.1 In accordance with regulation 7 a review of the UK Regulations will be carried out five years after they come into force and further reports will be published at intervals of not more than five years.

13. Contact

Diana Sibbald at the Department for Business, Innovation and Skills (Tel: 020 7215 1530 or email: Diana.sibbald@bis.gsi.gov.uk) can answer any queries regarding this instrument.

TRANSPOSITION TABLE

This table has been prepared by the Department for Business, Innovation & Skills. It sets out the objective of each article of the Directive, and how it is to be implemented in the United Kingdom. The Secretary of State is responsible for implementation.

The domestic legislation transposing Directive 2011/90/EU must be adopted and published by 31 December 2012 and must take effect on 1 January 2013.

Article 1 of the Directive provides that Part II of Annex I to Directive 2008/48/EC is replaced by a new Part II of Annex I which is set out in the Annex of the Directive.

The transposition of Directive 2011/90/EU takes the form of amendments to the Consumer Credit (Total Charge for Credit) Regulations 2010 (S.I. 2010/1011) ("TCC Regulations"). Regulation 4 substitutes a new Regulation 6 into the TCC Regulations

Assumption in Directive	**Objective of Assumption**	**2012 Regulations**[3]
(a)	Where a credit agreement gives the consumer freedom of drawdown, the total amount of credit is deemed to be drawn down immediately and in full	Regulation 6(f)
(b)	Where a credit agreement imposes a limitation with regard to the amount of credit and period of time, the amount of credit is deemed to be drawn down on the earliest date provided for in the credit agreement	Regulation 6(fa)
(c)	Where a credit agreement provides different ways of drawdown with different charges or borrowing rates, the total amount of credit is deemed to be drawn down at the highest charge and borrowing rate applied to the most common drawdown mechanism for this type of credit agreement	Regulation 6(g)
(d)	In the case of an overdraft facility, the total amount of credit is deemed to be drawn down in full and for the whole duration of the credit agreement. If the duration of the overdraft facility is not known, the annual percentage rate of charge is calculated on the assumption that the duration of the credit is 3 months	Regulations 6(i) and 6(j)
(e)	In the case of an open-end consumer credit agreement, which is not an overdraft facility, it is assumed that (i) the credit is provided for a period of 1 year and that the final payment clears the balance of the capital, interest and other charges; and (ii) the capital is repaid by the consumer in equal monthly payments	Regulations 6(k) and 6(l)
(f)	In the case of a credit agreement (other than an overdraft or open-end credit) (i) if the date or amount of a repayment cannot be ascertained it is assumed that the repayment is made at the earliest date and for the lowest amount provided for in the credit agreement	Regulation 6(m)
(g)	Where the date or amount of payment cannot be ascertained on the basis of the credit agreement or assumptions (d), (e) or (f), it is assumed that the payment is made in accordance with the dates and conditions required by the creditor, and where these are unknown, this assumption sets out the assumptions to be applied	Regulation 6(n)
(h)	Where the credit limit has not yet been agreed, the limit is assumed to be €1,500	Regulation 6(o)
(i)	Where different borrowing rates and charges are offered for a limited period or amount, the borrowing rate and charges are assumed to be at the highest rate for the whole duration of the agreement	Regulation 6(d)
(j)	Where a consumer credit agreement has a fixed borrowing rate for the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator, the calculation of the annual percentage rate is based on the assumption that at the end of the fixed borrowing rate period, the borrowing rate is the same as at the time of calculating the annual percentage rate, based on the value of the agreed indicator at the time	Regulation 6(e)

[3] Regulations 6(a) to (c) transpose Article 19(3), Article 19(4), and Article 3(k) respectively of the Consumer Credit Directive, and therefore do not transpose provisions of Directive 2011/90/EU