

SCHEDULE 2

Article 18

Requirements for registered consumer buy-to-let mortgage firms

Conditions applicable to creditors and credit intermediaries

Conduct of business obligations when providing consumer buy-to-let mortgage products to consumers

1.—(1) When manufacturing consumer buy-to-let mortgage contracts or granting, intermediating or providing advisory services on consumer buy-to-let mortgage contracts and, where appropriate, ancillary services to consumers or when executing a consumer buy-to-let mortgage contract, the creditor or credit intermediary must act honestly, fairly, transparently and professionally, taking account of the rights and interests of the consumers.

(2) The granting, intermediating or provision of advisory services on consumer buy-to-let mortgage contracts and, where appropriate, the provision of ancillary services must be based on—

- (a) information about the borrower's circumstances;
- (b) any specific requirement made known by the borrower;
- (c) reasonable assumptions about risks to the borrower's situation over the term of the contract;
- (d) where the activity is the provision of advisory services, the information set out in paragraph 13(4)(a) and (b); and
- (e) information on the typical rental levels and rental demands within the property's locality and the impact of future interest rate rises, rental voids, rental arrears and typical letting costs.

(3) The manner in which creditors remunerate their staff and credit intermediaries and the manner in which credit intermediaries remunerate their staff must not impede compliance with the obligation set out in sub-paragraph (1).

(4) When establishing and applying remuneration policies for their staff responsible for the assessment of creditworthiness, creditors must comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities—

- (a) the remuneration policy must be consistent with and promote sound and effective risk management and must not encourage risk-taking that exceeds the level of tolerated risk of the creditor;
- (b) the remuneration policy must be in line with the business strategy, objectives, values and long-term interests of the creditor, and must incorporate measures to avoid conflicts of interest, in particular by providing that remuneration is not contingent on the number or proportion of applications accepted.

(5) Where a creditor or credit intermediary provides advisory services, the remuneration structure of the staff involved must not prejudice their ability to act in the consumer's best interest and in particular must not be contingent on sales targets.

Obligation to provide information free of charge to consumers

2. Any information provided to consumers in compliance with the requirements set out in this Schedule must be provided free of charge.

Knowledge and competence requirements for staff

3.—(1) Creditors and credit intermediaries must require their staff to possess and keep up-to-date an appropriate level of knowledge and competence in relation to—

- (a) the manufacturing, offering or granting of consumer buy-to-let mortgage contracts,
- (b) acting as a credit intermediary in relation to consumer buy-to-let mortgage contracts, or
- (c) the provision of advisory services in respect of consumer buy-to-let mortgage contracts.

(2) The appropriate level of knowledge and competence referred to in sub-paragraph (1) must include at least—

- (a) appropriate knowledge of consumer buy-to-let mortgage contracts and the ancillary services typically offered with them;
- (b) appropriate knowledge of the laws relating to consumer buy-to-let mortgage contracts, in particular consumer protection;
- (c) appropriate knowledge and understanding of the process for purchasing land;
- (d) appropriate knowledge of security valuation;
- (e) appropriate knowledge of the organisation and functioning of land registers;
- (f) appropriate knowledge of the market in the United Kingdom for consumer buy-to-let mortgage business;
- (g) appropriate knowledge of business ethics standards;
- (h) appropriate knowledge of the consumer creditworthiness assessment process or, where applicable, competence in assessing consumers' creditworthiness; and
- (i) an appropriate level of financial and economic competency.

Information and practices preliminary to the conclusion of the consumer buy-to-let mortgage contract

Tying and bundling practices

4.—(1) Except in the circumstances described in sub-paragraphs (2) to (4), a creditor must not offer or sell a consumer buy-to-let mortgage contract in a package with other distinct financial products or services where that mortgage contract is not made available to the borrower separately.

(2) A creditor may request the borrower or a related person to—

- (a) open or maintain a payment or savings account where the only purpose of such an account is to accumulate capital to repay the credit, to service the credit, to pool resources to obtain the credit, or to provide additional security for the creditor in the event of default;
- (b) purchase or keep an investment product or a private pension product, where such product which primarily offers the investor an income in retirement serves also to provide additional security for the creditor in the event of default or to accumulate capital to repay the credit, to service the credit or to pool resources to obtain the credit; or
- (c) conclude a separate credit agreement in conjunction with a shared-equity credit agreement to obtain the credit.

(3) Notwithstanding sub-paragraph (1), a creditor may offer or sell a consumer buy-to-let mortgage contract where the creditor can demonstrate to the FCA that the tied products or categories of product offered, on terms and conditions similar to each other, which are not made available separately, result in a clear benefit to a borrower taking due account of the availability and the prices of the relevant products offered on the market.

(4) A creditor may require the borrower to hold an insurance policy related to the consumer buy-to-let mortgage contract, provided that the creditor must accept an insurance policy from a supplier

different to the creditor's preferred supplier where the policy has a level of guarantee equivalent to the level of guarantee in the insurance policy proposed by the creditor.

General information

5.—(1) A creditor must make available clear and comprehensible general information about consumer buy-to-let mortgage contracts at all times on paper or on another durable medium or in electronic form.

(2) The general information referred to in sub-paragraph (1) must include at least the following—

- (a) the name and address of the creditor;
- (b) the purposes for which the credit provided under the consumer buy-to-let mortgage contract may be used;
- (c) the form of any security, including, where applicable, the possibility for it to be located in another EEA State;
- (d) the possible duration of the consumer buy-to-let mortgage contract;
- (e) the types of available borrowing rate, indicating whether fixed or variable or both, with a short description of the characteristics of a fixed and variable rate, including related implications for the borrower;
- (f) where foreign currency loans are available, an indication of the foreign currency or currencies, including an explanation of the implications for the borrower where the consumer buy-to-let mortgage contract is denominated in a foreign currency;
- (g) a representative example of the total amount of credit, the total cost of the credit to the borrower, the total amount payable by the borrower and the annual percentage rate of charge;
- (h) an indication of possible further costs not included in the total cost of the credit to the borrower, to be paid in connection with a consumer buy-to-let mortgage contract;
- (i) the range of different options available for reimbursing the credit to the creditor, including the number, frequency and amount of the regular repayment instalments;
- (j) where applicable, a clear and concise statement that compliance with the terms and conditions of the consumer buy-to-let mortgage contract does not guarantee repayment of the total amount of credit under that contract;
- (k) a description of the conditions directly relating to early repayment;
- (l) whether a valuation of the property is necessary and, where applicable, who is responsible for ensuring that the valuation is carried out, and whether any related costs arise for the borrower;
- (m) an indication of any ancillary services the borrower is obliged to acquire in order to obtain the consumer buy-to-let mortgage contract or to obtain it on the terms and conditions marketed and, where applicable, a clarification that the ancillary services may be purchased from a provider that is not the creditor; and
- (n) a general warning concerning possible consequences of non-compliance with the commitments linked to the consumer buy-to-let mortgage contract.

Pre-contractual information

6.—(1) A creditor and, where applicable, a credit intermediary must provide a borrower with a lending illustration on paper or another durable medium—

- (a) without undue delay after the borrower has given the necessary information on the borrower's needs, financial situation and preferences in accordance with paragraph 12; and

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- (b) in good time before the borrower is bound by any credit agreement or offer.
- (2) The lending illustration must include at least the following—
 - (a) the name of the borrower;
 - (b) the date of issue of the lending illustration;
 - (c) the date until which the lending illustration remains valid;
 - (d) the name, address and telephone number of the creditor;
 - (e) where applicable, the name, address and telephone number of the credit intermediary;
 - (f) the amount of the loan required, including any charges added to the amount of the loan;
 - (g) the value of any property against which the loan is to be secured;
 - (h) the term of the consumer buy-to-let mortgage contract;
 - (i) a description of whether the consumer buy-to-let mortgage contract is to be provided on an interest-only basis, a repayment basis or a combination of the two;
 - (j) the type of interest rate payable;
 - (k) the interest rate payable including, if applicable, the initial interest rate and any reversionary rate;
 - (l) the frequency and amount of each instalment and the number of instalments;
 - (m) the overall cost of the consumer buy-to-let mortgage contract;
 - (n) the annual percentage rate of charge;
 - (o) where the credit agreement allows for variations in the interest rate, either—
 - (i) an illustration of how the annual percentage rate of charge might change in the event of an increase in the interest rate of 1%, and the resulting increase in the amount of each instalment; or
 - (ii) an additional annual percentage rate of charge which illustrates the possible risks for the borrower linked to a significant increase in the interest rate, including the possible increase in the amount of each instalment;
 - (p) details of any early repayment charges;
 - (q) a warning of the risk that interest rates may rise;
 - (r) a warning of the risk that rental income may fall;
 - (s) where applicable, a warning of the risk that the property may be repossessed if the borrower does not keep up with mortgage repayments;
 - (t) where applicable, a warning of the risk of foreign currency loans; and
 - (u) where it is an interest-only loan, a warning that the borrower will still owe the loan amount at the end of the term.
- (3) The creditor or, where applicable, the credit intermediary, must provide the borrower with a copy of the draft consumer buy-to-let mortgage contract at the time of the provision of an offer.
- (4) In this paragraph “lending illustration” means the personalised information needed by the borrower to compare the products available on the market, assess their implications and make an informed decision on whether to conclude a consumer buy-to-let mortgage contract.

Information requirements concerning credit intermediaries

7.—(1) In good time before the carrying on of any of the credit intermediation activities described in article 5(2) to (4), a credit intermediary must provide the borrower with at least the following information on paper or another durable medium—

- (a) the name and address of the credit intermediary;
 - (b) details of the register, the credit intermediary's registration number, where applicable, and the means for verifying such registration;
 - (c) whether the credit intermediary is tied to or works exclusively for one or more creditors;
 - (d) if the credit intermediary is tied to or works exclusively for one or more creditors, the names of the creditors for which the credit intermediary is acting;
 - (e) if the credit intermediary meets the criteria set out in paragraph 13(5), a statement that the credit intermediary is independent;
 - (f) whether the credit intermediary offers advisory services;
 - (g) the fee, where applicable, payable by the borrower to the credit intermediary for its services or, where this is not possible, the method for calculating the fee;
 - (h) the procedures allowing borrowers or other interested parties to register complaints internally about credit intermediaries and, where appropriate, the means by which recourse to out-of-court complaint and redress procedures can be sought;
 - (i) where applicable, the existence of commissions or other inducements payable by the creditor or third parties to the credit intermediary for their services in relation to the contract; and
 - (j) either the amount of such commissions or other inducements or, where the amount is not known at the time of disclosure, a statement that the credit intermediary shall inform the borrower of the actual amount as part of the lending illustration referred to in paragraph 6.
- (2) Where the credit intermediary charges a fee to the borrower and additionally receives commission from the creditor or a third party, the credit intermediary must explain to the borrower whether or not the commission will be offset against the fee, either in part or in full.
- (3) The credit intermediary must inform the creditor of the fee, if any, payable by the borrower to the credit intermediary for its services.

Adequate explanations

8.—(1) Creditors and, where applicable, credit intermediaries, must provide an adequate explanation to the borrower on a proposed consumer buy-to-let mortgage contract and any ancillary services, in order to place the borrower in a position enabling the borrower to assess whether the proposed agreement and ancillary services are adapted to the borrower's needs and financial situation.

- (2) The adequate explanation must, where applicable, include—
- (a) in the case of creditors, the information described in paragraph 6(2);
 - (b) in the case of credit intermediaries, the information described in paragraphs 6(2) and 7(1); and
 - (c) in all cases—
 - (i) the essential characteristics of the consumer buy-to-let mortgage contract proposed;
 - (ii) the specific effect the contract proposed may have on the borrower, including the consequences of default in payment by the borrower; and
 - (iii) where ancillary services are bundled with a consumer buy-to-let mortgage contract, whether each component of the bundle can be terminated separately and the implications for the borrower of doing so.

Annual percentage rate of charge

Calculation of the annual percentage rate of charge

9.—(1) The annual percentage rate of charge must be calculated in accordance with the mathematical formula set out in paragraph 20.

(2) The costs of opening and maintaining a specific account, the costs of using a means of payment for both transactions and drawdowns on that account and other costs relating to payment transactions shall be included in the total cost of credit to the borrower whenever the opening or maintaining of an account is obligatory in order to obtain the credit or to obtain it on the terms and conditions marketed.

(3) The calculation of the annual percentage rate of charge must be based on the assumption that the consumer buy-to-let mortgage contract is to remain valid for the period agreed and that the creditor and the borrower will fulfil their obligations under the terms and by the dates specified in that contract.

(4) If the consumer buy-to-let mortgage contract allows variations in the borrowing rate and, where applicable, in the charges contained in the annual percentage rate of charge but unquantifiable at the time of calculation, the annual percentage rate of charge must be calculated on the assumption that the borrowing rate and other charges will remain fixed in relation to the level set at the conclusion of the contract.

(5) Where applicable, the additional assumptions set out in paragraph 21 must be used in calculating the annual percentage rate of charge.

(6) In this paragraph—

“annual percentage rate of charge” means the total cost of the credit to the borrower, expressed as an annual percentage of the total amount of credit, where applicable, including the costs referred to in sub-paragraph (2) and equates, on an annual basis, to the present value of all future or existing commitments (drawdowns, repayments and charges) agreed by the creditor and the borrower;

“total amount of credit” means the ceiling or total sums made available under the consumer buy-to-let mortgage contract;

“total cost of credit to the borrower” means all the costs which the borrower is required to pay in connection with the credit agreement and which are known to the creditor, including the costs referred to in sub-paragraph (7) but excluding the costs referred to in sub-paragraph (8).

(7) The costs referred to in this sub-paragraph are—

- (a) interest;
- (b) commissions;
- (c) taxes;
- (d) any other kind of fees;
- (e) the cost of valuation of property where such valuation is necessary to obtain the consumer buy-to-let mortgage contract; and
- (f) costs in respect of ancillary services, in particular insurance premiums, where the purchase of those ancillary services is compulsory in order to obtain the consumer buy-to-let mortgage contract or to obtain it on the terms and conditions marketed.

(8) The costs referred to in this sub-paragraph are—

- (a) notarial costs;
- (b) registration fees for the transfer of ownership of the property; and
- (c) any charges payable by the borrower for non-compliance with the commitments laid down in the consumer buy-to-let mortgage contract.

Creditworthiness assessment

Obligation to assess the creditworthiness of the borrower

10.—(1) Before concluding a consumer buy-to-let mortgage contract, the creditor must make a thorough assessment of the borrower's creditworthiness, taking appropriate account of factors relevant to verifying the prospect of the borrower meeting the borrower's obligations under that contract.

(2) The creditor must establish, document and maintain procedures on which it bases a creditworthiness assessment in relation to a consumer buy-to-let mortgage contract.

(3) The assessment of creditworthiness must not rely predominantly on the value of the property exceeding the amount of the credit or on the assumption that the property will increase in value unless the purpose of the consumer buy-to-let mortgage contract is to construct or renovate the property.

(4) Where a creditor concludes a consumer buy-to-let mortgage contract with a borrower the creditor must not subsequently cancel or alter the contract to the detriment of the borrower on the grounds that the assessment of creditworthiness was incorrectly conducted, unless the borrower knowingly withheld or falsified information as described in paragraph 12.

(5) The creditor must only enter into the consumer buy-to-let mortgage contract with the borrower where the result of the creditworthiness assessment indicates that the borrower is likely to meet the obligations resulting from that contract in the manner required under that contract.

(6) Where the application is rejected, the creditor must inform the borrower without delay of the rejection and, where applicable, that the decision is based on automated processing of data.

(7) Where the creditor consults a database as part of the creditworthiness assessment, the creditor must—

- (a) inform the borrower in advance that a database is to be consulted; and
- (b) where the application is rejected, and the rejection is based on the result of the database consultation, inform the borrower of the result of such consultation and of the particulars of the database consulted.

(8) Before granting any significant increase in the total sums made available under the consumer buy-to-let mortgage contract after the conclusion of that contract, the creditor must re-assess the borrower's creditworthiness on the basis of updated information, unless such an increase was envisaged and included in the original creditworthiness assessment.

Property valuation

11. A creditor must use reliable standards when carrying out a property valuation or take reasonable steps to ensure that reliable standards are applied where a valuation is conducted by a third party.

Disclosure and verification of borrower information

12.—(1) A creditor must carry out the assessment of creditworthiness referred to in paragraph 10 on the basis of information which is necessary, sufficient and proportionate, including—

- (a) any values provided to the creditor as part of its assessment of the property;
- (b) typical rental levels and rental demands within the property's locality;
- (c) the impact of future interest rate rises, rental voids and rental arrears and the ability of the borrower to meet payments should such pressures arise; and
- (d) typical letting costs.

(2) The information referred to in sub-paragraph (1) may include information obtained by the creditor from relevant internal or external sources, including one or more of the following—

- (a) the borrower;

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- (b) any credit intermediary or appointed representative which obtained information during the credit application process; and
 - (c) a calculation developed by the creditor to demonstrate that the estimated rental income from the property will exceed the interest payments due by an amount sufficient to cover the estimated other costs associated with the property and its rental.
- (3) The information referred to in sub-paragraph (1) must be appropriately verified through reference to independently verifiable documentation when necessary.
- (4) A credit intermediary must accurately submit the necessary information obtained from the borrower to the creditor to enable the creditworthiness assessment to be carried out.
- (5) A creditor must specify in a clear and straightforward way at the pre-contractual phase the necessary information and independently verifiable evidence that the borrower needs to provide and the timeframe within which the borrower needs to provide the information.
- (6) A request for information referred to in sub-paragraph (5) must be proportionate and limited to what is necessary to conduct a proper creditworthiness assessment.
- (7) A creditor may seek clarification of the information received in response to a request for information referred to in sub-paragraph (5) where necessary to enable the assessment of creditworthiness.
- (8) A creditor must not terminate a consumer buy-to-let mortgage contract on the grounds that the information provided by the borrower before the conclusion of the contract was incomplete, unless the borrower knowingly withheld or falsified the information.
- (9) The creditor or credit intermediary must inform the borrower of the need to provide correct and complete information in response to a request referred to in sub-paragraph (5) and must warn the borrower that, where the creditor is unable to carry out an assessment of creditworthiness because the borrower chooses not to provide the information or verification necessary for an assessment of creditworthiness, the credit cannot be granted.
- Advisory services

Standards for advisory services

- 13.—**(1) A creditor or credit intermediary must explicitly inform the borrower, in the context of a given transaction, whether advisory services are being or can be provided to the borrower.
- (2) Before the provision of advisory services or, where applicable, the conclusion of a contract for the provision of advisory services, the creditor or credit intermediary must provide the borrower with the following information on paper or another durable medium—
- (a) whether the recommendation will be based on a consideration of only the creditor's or the credit intermediary's own product range or a consideration of a wide range of products from across the market; and
 - (b) where applicable, the fee payable by the borrower for the advisory services or, where the amount cannot be ascertained at the time of disclosure, the method used for its calculation.
- (3) The information referred to in sub-paragraph (2) may be provided to the borrower as part of the lending illustration under paragraph 6.
- (4) Where a creditor or credit intermediary provides advisory services to a borrower, the creditor or credit intermediary must—
- (a) obtain the necessary information regarding the borrower's personal and financial situation, preferences and objectives so as to enable the recommendation of suitable consumer buy-to-let mortgage contracts;
 - (b) base its recommendation on information that is up-to-date and takes into account reasonable assumptions as to risks to the borrower's situation over the term of the proposed

agreement, including information on the typical rental levels and rental demands within the property's locality, the impact of future interest rate rises, rental voids, and rental arrears and typical letting costs;

- (c) act in the best interests of the borrower by—
 - (i) informing itself about the borrower's needs and circumstances; and
 - (ii) recommending suitable mortgages in accordance with paragraphs (a) and (b); and
- (d) give the borrower a record on paper or another durable medium of the recommendation provided.

(5) A creditor or credit intermediary must not use the term “independent advice” or “independent advisor” in the course of providing advisory services unless—

- (a) the creditor or credit intermediary considers a sufficiently large number of credit agreements available on the market; and
- (b) if the number of creditors considered is less than a majority of the market, the creditor or credit intermediary is not remunerated for those advisory services by one or more creditors.

Foreign currency loans and variable rate loans

Foreign currency loans

14.—(1) Where a borrower enters into a buy-to-let mortgage contract that is a foreign currency loan—

- (a) the borrower must have a right to convert the contract into an alternative currency if conditions specified by the creditor are met;
- (b) the creditor must put in place arrangements to limit the exchange rate risk to which the borrower is exposed under the contract; and
- (c) if sub-paragraph (4) applies, the creditor must give the borrower, on a regular basis, foreign currency risk warnings.

(2) The creditor may specify the alternative currency referred to in sub-paragraph (1)(a), but it must be either—

- (a) the currency in which the borrower primarily receives income or holds assets from which the credit is to be repaid, as indicated at the time the most recent creditworthiness assessment in relation to the contract was made; or
- (b) the currency of the EEA State in which the borrower either was resident at the time the contract was concluded or is currently resident.

(3) Where a borrower has a right to convert the contract into an alternative currency in accordance with sub-paragraph (1)(a), the exchange rate at which the conversion is carried out must be the market exchange rate applicable on the day of application for conversion, unless otherwise specified in the contract.

(4) This sub-paragraph applies if the value of—

- (a) the total amount payable by the borrower which remains outstanding; or
- (b) the regular instalments,

varies by more than 20% from what it would be if the exchange rate between the currency of the contract and sterling applicable at the time of the conclusion of the contract were applied.

(5) In this paragraph “foreign currency risk warning” means a warning, on paper or on another durable medium—

- (a) informing the borrower of a rise in the total amount payable by the borrower;

- (b) setting out, where applicable, the borrower's right to convert to an alternative currency and the conditions for doing so; and
- (c) explaining any other applicable mechanism for limiting the exchange rate risk to which the borrower is exposed.

Variable rate credits

15. Where the contract provides for variable rate credit, the creditor must—

- (a) make any indexes or reference rates used to calculate the borrowing rate clear, accessible, objective and verifiable by the borrower and the FCA; and
- (b) maintain historical records of indexes used by the creditor for calculating the borrowing rates.

Sound execution of consumer buy-to-let mortgage contracts and related rights

Early repayment

16.—(1) Subject to sub-paragraph (3), the creditor must allow the borrower to discharge fully or partially the borrower's obligations under the consumer buy-to-let mortgage contract prior to the expiry of that contract.

(2) Where the borrower discharges, fully or partially, the borrower's obligations prior to the expiry of the contract, the creditor must provide the borrower with a reduction in the total cost of credit to the borrower, consisting of the interest and costs for the remaining duration of the contract.

(3) The creditor may provide that the exercise of the right referred to in sub-paragraph (1) is subject to one or more of the following conditions—

- (a) time limitations on the exercise of the right;
- (b) different treatment depending on the type of borrowing rate or on the moment the borrower exercises the right;
- (c) restrictions with regard to the circumstances in which the right may be exercised; or
- (d) if the exercise of the right falls within a period for which the borrowing rate is fixed, the existence of a legitimate interest on the part of the borrower.

(4) The creditor is entitled to fair and objective compensation, where justified, for possible costs directly linked to the early repayment but the creditor must not impose a sanction on the borrower and the amount of compensation must not exceed the financial loss of the creditor.

(5) Where a borrower seeks to exercise the right referred to in sub-paragraph (1), the creditor must provide the borrower without delay after receipt of the borrower's request, on paper or on another durable medium, with the information necessary to consider whether to proceed with the exercise of the right.

(6) The information referred to in sub-paragraph (5) must include—

- (a) a quantification of the implications for the borrower of exercising the right; and
- (b) any assumptions used by the creditor in making that quantification.

(7) The assumptions referred to in sub-paragraph (6)(b) must be reasonable and justifiable.

Flexible and reliable markets

17. The creditor must keep appropriate records concerning, where applicable, the types of property accepted by the creditor as security and the related mortgage underwriting policies used by the creditor in relation to its consumer buy-to-let mortgage business.

Information concerning changes in the borrowing rate

18.—(1) Unless sub-paragraph (3) applies, the creditor must inform the borrower of any change in the borrowing rate, on paper or another durable medium, before the change takes effect.

(2) The information referred to in sub-paragraph (1) must include—

- (a) a statement of the amount of the payments to be made after the new borrowing rate takes effect; and
- (b) in cases where the number or frequency of the payments changes, particulars of those changes.

(3) This sub-paragraph applies if—

- (a) the change in the borrowing rate is correlated with a change in a reference rate;
- (b) the new reference rate is made publicly available by appropriate means;
- (c) the creditor agrees with the borrower in the contract that information about any change in borrowing rate may be given to the borrower periodically; and
- (d) the information concerning the new reference rate is kept available in the premises of the creditor and communicated personally to the borrower together with the amount of new periodic instalments.

Arrears and possession

19.—(1) A creditor must exercise reasonable forbearance before initiating possession proceedings.

(2) Any charges that the creditor imposes on the borrower arising from the borrower's default must be no greater than is necessary to compensate the creditor for costs incurred by the creditor as a result of the default.

(3) Where the price obtained for the secured property affects the amount owed by the borrower under the contract, the creditor must take all reasonable steps to obtain the best possible price for the secured property.

(4) Where, after possession proceedings, outstanding debt remains, the creditor must put in place measures to facilitate repayment by the borrower.

Calculation of the annual percentage rate of charge

Basic equation expressing the equivalence of drawdowns on the one hand and repayments and charges on the other

20.—(1) The basic equation, which establishes the annual percentage rate of charge, equates, on an annual basis, the total present value of drawdowns on the one hand and the total present value of repayments and payments of charges on the other hand, expressed by means of the following formula—

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

where—

X is the annual percentage rate of charge;

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 ;

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t_k is the interval 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; and

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.

where—

X is the annual percentage rate of charge;

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 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; and

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.

(2) The following remarks apply to the equation set out in sub-paragraph (1)—

- (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 must be that of the first drawdown;
- (c) intervals between dates used in the calculation must be expressed in years or in fractions of a year, where—
 - (i) a year is presumed to have 365 days (or 366 days for leap years), 52 weeks or 12 equal months; and
 - (ii) an equal month is presumed to have 30.41666 days regardless of whether or not it is a leap year;
- (d) where intervals between dates used in the calculations cannot be expressed as a whole number of weeks, months or years, the intervals must be expressed as a whole number of one of those periods in combination with a number of days;
- (e) for the purposes of paragraph (d), where using days—
 - (i) every day must be counted, including weekends and holidays;
 - (ii) equal periods and then days must be counted backwards to the date of the initial drawdown; and

- (iii) the length of the period of days must be—
 - (aa) obtained excluding the first day and including the last day; and
 - (bb) expressed in years by dividing this period by the number of days (365 or 366 days) of the complete year counted backwards from the last day to the same day of the previous year;
- (f) the result of the calculation must be expressed with an accuracy of at least one decimal place and if the figure at the following decimal place is greater than or equal to 5, the figure at the preceding decimal place must be increased by one;
- (g) the equation may be rewritten using a single sum and the concept of flows (A_k), which will be positive or negative, in other words either paid or received during periods 1 to n, expressed in years, using the following formula—

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

where s is the present balance of flows;

- (h) for the purposes of paragraph (g), if the aim is to maintain the equivalence of flows, the value of s will be zero.

Additional assumptions for the calculation of the annual percentage rate of charge

21.—(1) The following additional assumptions apply for the purposes of calculating the annual percentage rate of charge.

(2) If a consumer buy-to-let mortgage contract gives the borrower freedom of drawdown, the total amount of credit must be deemed to be drawn down immediately and in full.

(3) If a consumer buy-to-let mortgage contract provides different ways of drawdown with different charges or borrowing rates, the total amount of credit must be deemed to be drawn down at the highest charge and borrowing rate applied to the most common drawdown mechanism for this type of contract.

(4) If a consumer buy-to-let mortgage contract gives the borrower freedom of drawdown in general but imposes, amongst the different ways of drawdown, a limitation with regard to the amount of credit and period of time, the amount of credit must be deemed to be drawn down on the earliest date provided for in the contract and in accordance with those drawdown limits.

(5) If different borrowing rates and charges are offered for a limited period or amount, the highest borrowing rate and charges must be deemed to be the borrowing rate and charges for the whole duration of the contract.

(6) For consumer buy-to-let mortgage contracts for which a fixed rate borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator or internal reference rate the calculation of the annual percentage rate of charge must be 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 calculation of the annual percentage rate of charge, based on the value of the agreed indicator or internal reference rate at that time, but is not less than the fixed borrowing rate.

(7) If the ceiling applicable to the credit has not yet been agreed, that ceiling is assumed to be—

- (a) in the case of credit agreements, other than contingent liabilities or guarantees, the purpose of which is not to acquire or retain a right in immovable property or land, overdrafts, deferred debit cards or credit cards, EUR 1,500; and
- (b) in all other cases, EUR 170,000.

(8) In the case of credit agreements other than overdrafts, bridging loans, shared equity credit agreements, contingent liabilities or guarantees and open-ended credit agreements as referred to in the assumptions set out in sub-paragraphs (10), (11), (12), (16) and (17)—

- (a) if the date or amount of a repayment of capital to be made by the borrower cannot be ascertained, it must be assumed that the repayment is made at the earliest date provided for in the credit agreement and is for the lowest amount for which the credit agreement provides; and
- (b) if the interval between the date of initial drawdown and the date of the first payment to be made by the borrower cannot be ascertained, it must be assumed to be the shortest interval.

(9) Where the date or amount of a payment to be made by the borrower cannot be ascertained on the basis of the credit agreement or the assumptions set out in sub-paragraphs (8), (10), (11), (12), (16) and (17) it must be assumed that the payment is made in accordance with the dates and conditions required by the creditor and, when these are unknown—

- (a) interest charges are paid together with the repayment of the capital;
- (b) non-interest charges expressed as a single sum are paid at the date of the conclusion of the credit agreement;
- (c) 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; and
- (d) the final payment clears the balance of capital, interest and other charges, if any.

(10) In the case of an overdraft facility, the total amount of credit must be deemed to be drawn down in full and for the whole duration of the credit agreement and, if the duration of the overdraft facility is not known, the annual percentage rate of charge must be calculated on the assumption that the duration of the credit is three months.

(11) In the case of a bridging loan, the total amount of credit must be deemed to be drawn down in full and for the whole duration of the credit agreement and, if the duration of the credit agreement is not known, the annual percentage rate of charge must be calculated on the assumption that the duration of the credit is 12 months.

(12) In the case of an open-ended credit agreement, other than an overdraft facility and bridging loan, it must be assumed that—

- (a) for credit agreements the purpose of which is to acquire or retain rights in immovable property, the credit is provided for a period of 20 years starting from the date of the initial drawdown, and the final payment made by the borrower clears the balance of capital, interest and other charges, if any;
- (b) for credit agreements the purpose of which is not to acquire or retain rights in immovable property or which are drawn down by deferred debit cards or credit cards, the credit is provided for a period of 1 year starting from the date of the initial drawdown;
- (c) unless sub-paragraph (13) applies, the capital is repaid by the borrower in equal monthly payments, commencing one month after the date of the initial drawdown.

(13) This sub-paragraph applies in cases where the capital must be repaid only in full, in a single payment, within each payment period.

(14) If sub-paragraph (13) applies—

- (a) successive drawdowns and repayments of the entire capital by the borrower must be assumed to occur over the period of one year; and
- (b) interest and other charges must be applied in accordance with those drawdowns and repayments of capital and as provided for in the credit agreement.

(15) For the purposes of sub-paragraph (12), an open-ended credit agreement is a credit agreement without 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.

(16) In the case of contingent liabilities or guarantees, the total amount of credit must be deemed to be drawn down in full as a single amount at the earlier of—

- (a) the latest draw down date permitted under the credit agreement being the potential source of the contingent liability or guarantee; or
- (b) in the case of a rolling credit agreement at the end of the initial period prior to the rollover of the agreement.

(17) In the case of a shared equity credit agreement—

- (a) the payments by borrowers must be deemed to occur at the latest date or dates permitted under the credit agreement; and
- (b) percentage increases in value of the immovable property which secures the shared equity credit agreement, and the rate of any inflation index referred to in the agreement, shall be assumed to be a percentage equal to the higher of the current central bank target inflation rate or the level of inflation rate in the EEA State where the property is located at the time of conclusion of the credit agreement or 0% if those percentages are negative.