

**CONSUMER CREDIT  
REGULATIONS**

Guidance on the regulations  
implementing the Consumer Credit  
Directive

AUGUST 2010

# Guidance Notes

The Consumer Credit (EU Directive) Regulations 2010  
(Statutory Instrument 2010 No. 1010)

The Consumer Credit (Total Charge for Credit) Regulations 2010  
(Statutory Instrument 2010 No. 1011)

The Consumer Credit (Disclosure of Information) Regulations 2010  
(Statutory Instrument 2010 No. 1013)

The Consumer Credit (Agreements) Regulations 2010  
(Statutory Instrument 2010 No. 1014)

The Consumer Credit (Amendment) Regulations 2010  
(Statutory Instrument 2010 No. 1969)

The Consumer Credit (Advertisements) Regulations 2010  
(Statutory Instrument 2010 No. 1970)

These guidance notes have been produced to provide guidance on certain aspects of the above regulations.

However, they do not carry any legal authority and should be read in conjunction with the legislation itself.

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## **GLOSSARY**

Advertisements Regulations	The Consumer Credit (Advertisements) Regulations 2010, SI 2010/1970
2004 Advertisements Regulations	The Consumer Credit (Advertisements) Regulations 2004, SI 2004/1484, as amended in 2008
Agreements Regulations	The Consumer Credit (Agreements) Regulations 2010, SI 2010/1014
1983 Agreements Regulations	The Consumer Credit (Agreements) Regulations 1983, SI 1983/1553 as amended in 2004
Amendment Regulations	The Consumer Credit (Amendment) Regulations 2010, SI 2010/1969
APR	annual percentage rate of charge for credit
BIS	Department for Business, Innovation and Skills
borrower	debtor (as defined in section 189 of the CCA) under consumer credit agreement, or prospective debtors, including hirer under hire-purchase agreement. A sole trader, partnership or other unincorporated body may be a debtor for these purposes (if within the definition of “individual” in section 189 of the CCA), provided that the credit does not exceed £25,000.
CCA	Consumer Credit Act 1974 (as amended in 2006)
CPRs	The Consumer Protection from Unfair Trading Regulations 2008, SI 2008/1277
CRA	credit reference agency
d-c-s	a debtor-creditor-supplier agreement
the Directive	The 2008 Consumer Credit Directive – Directive 2008/48/EC 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
Disclosure Regulations	The Consumer Credit (Disclosure of Information) Regulations 2010, SI 2010/1013

2004 Disclosure Regulations	The Consumer Credit (Disclosure of Information) Regulations 2004, SI 2004/1481
Distance Marketing Regulations	The Financial Services (Distance Marketing) Regulations 2004, SI 2004/2095, as amended
ECCI	European Consumer Credit Information form
EU Directive Regulations	The Consumer Credit (EU Directive) Regulations 2010, SI 2010/1010
FOS	Financial Ombudsman Service
implementing regulations	the regulations implementing the Directive – see Introduction, page 3, for list of regulations and link to OPSI website
OFT	Office of Fair Trading
open-end agreement	an agreement of no fixed duration (e.g. a credit card agreement)
overdraft	an authorised overdraft
PCI	Pre-Contractual Information form
PPI	payment protection insurance
PSRs	The Payment Services Regulations 2009, SI 2009/209
section 58	section 58 of the CCA – opportunity for withdrawal from prospective land mortgage
TCC	total charge for credit
TCC Regulations	The Consumer Credit (Total Charge for Credit) Regulations 2010, SI 2010/1011
1980 TCC Regulations	The Consumer Credit (Total Charge for Credit) Regulations 1980, SI 1980/51
UTCCRs	The Unfair Terms in Consumer Contracts Regulations 1999, SI 1999/2083

# **1. INTRODUCTION**

## **The Regulations**

1.1 The 2008 Consumer Credit Directive was adopted on 23 April 2008, replacing the 1987 Consumer Credit Directive. Unlike the previous Directive, the 2008 Directive is based on full (maximum) harmonisation. This means that Member States are precluded from adopting or retaining different national law provisions within the harmonised areas, other than to the extent permitted by the Directive.

1.2 In the UK, the Directive has been implemented by the following regulations (the implementing regulations)<sup>1</sup>:

- The Consumer Credit (EU Directive) Regulations 2010, SI 2010/1010
- The Consumer Credit (Total Charge for Credit) Regulations 2010, SI 2010/1011
- The Consumer Credit (Disclosure of Information) Regulations 2010, SI 2010/1013
- The Consumer Credit (Agreements) Regulations 2010, SI 2010/1014
- The Consumer Credit (Amendment) Regulations 2010, SI 2010/1969
- The Consumer Credit (Advertisements) Regulations 2010, SI 2010/1970.

1.3 The Amendment Regulations correct errors in the EU Directive, Disclosure and Agreements Regulations. The Advertisements Regulations repeal and replace the advertisements regulations originally made to implement the Directive, also to correct errors. This guidance reflects those corrections.

1.4 This guidance summarises the principal changes that have been made to the CCA and other legislation. It is intended to be a plain English guide to the new requirements to help businesses identify and understand changes that affect them. It may also be helpful to consumers and those advising consumers on their rights and protections, and to enforcement authorities and other organisations. The guidance has been produced to provide informal guidance on the implementing regulations and should be read in conjunction with the implementing regulations themselves, and with other relevant guidance including OFT guidance on the credit licensing regime<sup>2</sup> and on Irresponsible Lending<sup>3</sup>.

1.5 The changes principally affect creditors (as defined in section 189 of the CCA), but also impact to some extent on credit-brokers (as defined in section 145 of the CCA) and credit intermediaries (see chapter 18 of this guidance). All those involved in lending money, or making credit available to

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<sup>1</sup> Copies of the regulations can be found on the OPSI website at <http://www.opsi.gov.uk/si/si201010>

<sup>2</sup> <http://www.offt.gov.uk/OFTwork/credit-licensing>

<sup>3</sup> [http://www.offt.gov.uk/shared\\_offt/business\\_leaflets/general/oft1107.pdf](http://www.offt.gov.uk/shared_offt/business_leaflets/general/oft1107.pdf)

consumers, or acting on behalf of consumers or creditors in relation to prospective credit agreements, should read this guidance and ensure that they are familiar with the obligations placed on them under the CCA and associated regulations.

1.6 The implementing regulations apply to all consumer credit agreements regulated under the CCA (other than agreements secured on land), but with modifications for certain types of agreement as noted in the individual chapters. The existing CCA regime is unchanged in relation to agreements secured on land and consumer hire agreements (although creditors may choose to comply with the new requirements in respect of agreements secured on land).

1.7 Most of the implementing regulations were made on 28 March 2010. The Amendment Regulations and the Advertisements Regulations were made on 3 August 2010. Creditors will be required to comply with the regulations from 1 February 2011, although firms can comply earlier if they choose (other than in respect of advertising). This is explained in chapter 3 of the guidance.

## **The Guidance**

1.8 This Guidance (URN 10/1053) has been published as an 'electronic only' document and is not available in hard copy form. It may be viewed on the BIS website at [www.bis.gov.uk](http://www.bis.gov.uk) and copies of the document may be made without seeking permission. Other versions of the document (in Braille, other languages, large fonts and other formats) can be made available on request from BIS Publications 0207 215 6024.

1.9 A Quick Start Guide (URN 10/1072) to this guidance has been prepared which summarises very briefly its content and is intended to act as a signpost to it. It may be viewed on the BIS website at [www.bis.gov.uk](http://www.bis.gov.uk).

1.10 This is the August 2010 edition of this guidance. It will be reviewed every 24 months.

1.11 This guidance is compliant with the eight golden rules of good guidance given in the Code of Practice on Guidance on Regulation, which can be viewed at <http://www.bis.gov.uk/files/file53268.pdf>.

1.12 If you wish to comment on the guidance or report any inconsistencies or inaccuracies please contact:

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## **2. SUMMARY OF KEY CHANGES**

### **Advertising and APRs – (Chapters 5 and 6)**

2.1 If an advertisement includes an interest rate or any amount relating to the cost of credit, it must also include a representative example. This must contain certain standard information including a representative APR. The example must be clear and concise and must be more prominent than the information that triggered the inclusion of the example.

2.2 The representative APR must reflect at least 51% of business expected to result from the advertisement. The standard information must be representative of agreements to which the representative APR applies.

2.3 A non-status or comparative indication or incentive triggers a representative APR but does not in itself trigger a representative example. The APR must be more prominent than the relevant indication or incentive.

2.4 The rules for the calculation of the TCC, and hence the APR, differ slightly from the previous requirements, and there are some new assumptions.

### **Creditworthiness and adequate explanations – (Chapters 7 and 8)**

2.5 Creditors are required to assess the borrower's creditworthiness before granting credit or significantly increasing the amount of credit. The assessment must be based on sufficient information, obtained from the borrower where appropriate, and from a CRA where necessary.

2.6 Creditors must ensure that the borrower is provided with an adequate explanation of the proposed credit agreement, for example the particular features of the agreements, the cost and the consequences of failure to make payments, to enable him to assess whether the agreement is suited to his needs and financial situation. The explanation must cover certain specified matters, and must be provided orally in certain circumstances. The borrower must be able to ask questions about the agreement, or to ask for further information or explanation.

### **Pre-contractual information and agreements – (Chapters 9 and 10)**

2.7 The Disclosure Regulations require pre-contractual information to be given in good time before the borrower enters into the agreement. The information must be clear and easily legible, and the borrower must be able to take it away to consider and to shop around if he wishes. In most cases the information must be provided in a standard format, the PCI, to aid comparability and consumer understanding. In the case of overdrafts, a different standard form may be used but is not mandatory. If this form is not used, all the information must be equally prominent.

2.8 The Agreements Regulations do not prescribe the form of the credit agreement, or the ordering of information. They do prescribe the information that must be included in the document which the borrower signs. It must be clear and concise and easily legible. There are new rules regarding the provision of copies of executed agreements.

2.9 There is a new right for consumers to request a statement of account for a fixed-term loan. The statement can be requested at any time during the life of the agreement but not more frequently than once a month.

### **Right of withdrawal – (Chapter 11)**

2.10 The borrower can withdraw from an agreement within 14 days following conclusion of the agreement or (if later) once the borrower has received a copy of the executed agreement or notification of the credit limit on a credit card. The borrower must repay the credit and must also pay interest for each day the credit was drawn down.

### **Other key changes – (Chapters 13 to 19)**

2.11 The borrower must be notified of changes in the rate of interest payable under the agreement. This must generally be done in writing before the change takes effect.

2.12 The borrower is entitled to seek redress from the creditor in certain circumstances if he is unable to obtain satisfaction from the supplier of goods or services. This applies in cases where section 75 of the CCA (joint and several liability) does not apply, provided that the cash value of the goods or service is more than £30,000 and the credit does not exceed £60,260.

2.13 The existing right to settle a credit agreement early is extended to a right to make partial early settlements at any time. Under section 95A of the CCA the creditor may claim compensation in certain circumstances provided that this is fair and objectively justified and does not exceed 1% or 0.5% of the amount repaid early.

2.14 The borrower can terminate an open-end agreement at any time, subject to notice not exceeding one month. The creditor must give at least two months' notice of termination, and the notice must give objectively justified reasons for termination. The notice requirement does not apply in certain situations, for example where giving notice would prejudice the prevention of crime.

2.15 The borrower must be informed if the debt is sold or transferred to a third party, unless the arrangements for servicing the debt are unchanged.

2.16 A number of changes have been made in the requirements on overdrafts. These largely relate to the information that the creditor must give

to the borrower about both authorised overdrafts and overdrafts which are not pre-arranged.

2.17 Credit intermediaries must disclose the extent to which they are acting independently or work exclusively with one or more creditors. If a fee is payable by the borrower to the credit intermediary for his services, this must be agreed in writing with the borrower before the credit agreement is entered into. The fee must be notified to the creditor if the creditor is calculating the APR.

2.18 If an application for credit is declined on the basis of information from a CRA, the creditor must notify the borrower of this and provide contact details for the CRA.

### **3. COMMENCEMENT AND TRANSITIONAL PROVISIONS**

3.1 Regulations 99 and 100 of the EU Directive Regulations provide that the implementing regulations apply to agreements entered into on or after 1 February 2011 and to certain aspects of pre-existing agreements entered into before that date. In addition, regulations 101 and 101A<sup>4</sup> provide for the earlier application of the regulations in certain circumstances. Where section 58 of the CCA applies to an agreement, regulation 1 of the Agreements Regulations provides for the earlier application of the regulations<sup>5</sup>. There are also limited transitional arrangements in relation to advertising.

#### **Summary of provisions**

3.2 All regulated consumer credit agreements that are entered into on or after 1 February 2011 will need to comply with the new regime (regulations 99(1) and 100(1) of the EU Directive Regulations). This means, for example, that pre-contractual information and adequate explanations must have been provided in relation to the prospective agreement, and the creditor must have assessed creditworthiness. If this was not done before 1 February 2011, the creditor will need to ensure that it is done after that date and before the agreement is entered into.

3.3 In addition, certain pre-existing agreements will need to comply with some of the new requirements from 1 February 2011, depending upon when the agreement was entered into and whether it is open-ended (regulation 100(2)-(4) of the EU Directive Regulations).

3.4 It will be open to firms to comply with the new requirements before 1 February 2011 (regulations 99(2), 101 and 101A of the EU Directive Regulations). If pre-contractual information is provided in compliance, or purported compliance, with the relevant requirements on or after 30 April 2010 (or, for regulation 101A, the 26 August 2010), the new regime will apply fully to that agreement from that point. The applicable regime during the transitional period will therefore depend upon the pre-contractual arrangements for the particular agreement. Separate provision is made in the Agreements Regulations for agreements where section 58 of the CCA applies. The advertising rules however remain unchanged until 1 February 2011.

3.5 A creditor or credit intermediary may decide to move to the new regime all at one go. Alternatively, it may do so on a product-by-product basis, or some companies in a group may move earlier than others. It will not however be open to firms to comply with old CCA rules in respect of one aspect of an agreement, and new CCA rules in respect of the remainder. The transition for an individual agreement is 'all or nothing'.

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<sup>4</sup> Regulation 30 of the Amendment Regulations

<sup>5</sup> Regulation 42 of the Amendment Regulations

3.6 Firms should ensure that it is clear to borrowers what rights and obligations apply under the agreement. A firm should not mislead, whether by inclusion or omission, contrary to the CPRs.

### **Requirements which will apply from 1 February 2011 to open-end agreements entered into before 11 June 2010**

3.7 Regulation 100(2) provides that from 1 February 2011, certain requirements will apply to open-end agreements entered into before 11 June 2010. These are requirements:

- to provide information on significant overdrawn that has not been pre-arranged (regulation 22 of the EU Directive Regulations),
- to provide information on changes to the rate of interest or charges under a regulated agreement (regulations 27 and 28),
- to notify the borrower of an assignment of rights under the agreement (regulation 36),
- on the termination of open-end agreements or the termination or suspension of the right of drawdown (regulations 37 to 39), and
- on the information to be included in a statement of account in the case of authorised overdrafts (regulation 63).

### **Requirements which will apply from 1 February 2011 to open-end agreements entered into between 11 June 2010 and 31 January 2011**

3.8 Regulation 100(3) provides that from 1 February 2011, certain requirements will apply to open-end agreements entered into between 11 June 2010 and 31 January 2011. These are requirements:

- to provide information on significant overdrawn that has not been pre-arranged (regulation 22 of the EU Directive Regulations),
- on secondary liability of the creditor under certain linked credit agreements (regulation 25),
- to provide information on changes to the rate of interest or charges under a regulated agreement (regulations 27 and 28),
- to allow partial early settlements at any time during the life of the agreement and to provide information on request following a partial early settlement (regulations 29 to 35, 59 to 62 and 77 to 84),
- to notify the borrower of an assignment of rights under the agreement (regulation 36),
- on the termination of open-end agreements or the termination or suspension of the right of drawdown (regulations 37 to 39), and
- on the information to be included in a statement of account in the case of authorised overdrafts (regulation 63).

## **Requirements which will apply from 1 February 2011 to other agreements entered into between 11 June 2010 and 31 January 2011**

3.9 Regulation 100(4) provides that from 1 February 2011, certain requirements will apply to agreements entered into between 11 June 2010 and 31 January 2011 which are not open-end agreements. These are requirements:

- on secondary liability of the creditor under certain linked credit agreements (regulation 25 of the EU Directive Regulations),
- to provide a statement of account on request under a fixed-sum credit agreement (regulation 26),
- to allow partial early settlements at any time during the life of the agreement, to provide a rebate in the event of partial early settlement (subject to compensation in appropriate cases) and to provide information on request following a partial early settlement, with corresponding changes to the regime for full early settlement (regulations 29 to 35, 59 to 62 and 77 to 84), and
- to notify the borrower of an assignment of rights under the agreement (regulation 36).

### **All agreements**

3.10 Regulation 100(5) provides that section 95A of the CCA on compensation for early settlement applies only where the borrower gives notice of early settlement on or after 1 February 2011 (and where the agreement has been entered into on or after 11 June 2010).

3.11 New section 74A of the CCA applies to current account agreements where a borrower may be allowed to overdraw without a pre-arranged overdraft. These requirements will apply where a borrower overdraws on or after 1 February 2011. The information that has to be provided at the time a current account agreement is entered into should therefore be provided when any new current account is entered into on or after 1 February 2011. The requirement to provide information annually should be complied with from 1 February 2011 for all current account agreements whether they are entered into before, on or after the 1 February 2011. For existing agreements, this means that annual information must be provided for the first time by 1 February 2012.

### **Possibility of complying with the new requirements before 1 February 2011**

3.12 In the majority of cases, firms can choose to move to the new regime (other than in relation to advertising) at any point between 30 April 2010 and 31 January 2011. They must then comply with all of the new requirements in relation to the particular agreement. In the situation described in Condition F (see below) and where section 58 of the CCA applies to an agreement, firms

can choose to move to the new regime from 26 August 2010 to 31 January 2011. Because many of the new requirements are inter-dependent (for example the pre-contractual information must contain information about the new right of withdrawal), firms which choose to comply before 1 February 2011 need to move to the new requirements in a logical and sensible manner in order to avoid confusion both for themselves and for borrowers.

3.13 Regulations 101 and 101A set out a series of triggers (described as conditions) for early compliance with the new regime. These conditions apply agreement-by-agreement. If a creditor has triggered the application of the new regime in relation to one agreement with one borrower, that does not mean that he must apply the new rules to all other credit agreements he concludes – only those where he has triggered the new requirements. Any one of the conditions can be satisfied for the new regime to apply.

3.14 Condition A is that pre-contractual information relating to the agreement is disclosed by a creditor or credit intermediary in compliance – or purported compliance – with the Disclosure Regulations. For most agreements this will mean provision of the PCI.

3.15 Condition B applies to distance contracts which are entered into, at the borrower's request, using a means of distance communication (other than telephone) which does not enable provision of the full pre-contractual information. In such cases the condition is that the creditor informs the borrower that the pre-contractual information will be disclosed immediately after the agreement is made in accordance with the Disclosure Regulations.

3.16 Condition C is similar, and applies to distance contracts entered into wholly or predominantly for business purposes.

3.17 Condition D applies to distance contracts which are authorised non-business overdraft agreements and are not secured on land or for credit exceeding £60,260, where the contract is entered into at the borrower's request using a means of distance communication which does not enable provision of the full pre-contractual information. Unlike Condition B, this includes telephone contracts. In such cases the condition is that the creditor informs the borrower that a document containing the terms of the agreement will be provided immediately after the agreement is made in accordance with the new provisions of the CCA on the duty to supply a copy of the overdraft agreement.

3.18 Condition E applies to authorised non-business overdraft agreements which are secured on land or for credit exceeding £60,260, and to authorised business overdraft agreements. This is irrespective of whether or not it is a distance contract. In such cases the condition is that the creditor provides a document containing the terms of the agreement before the agreement is made, or informs the borrower that such a document will be provided at the time the agreement is made or immediately thereafter in accordance with the new provisions of the CCA on the duty to supply a copy of the overdraft agreement.

3.19 Condition F applies to agreements where, even after 1 February 2011, the creditor may continue using the 2004 Disclosure Regulations, as amended by the EU Directive Regulations (i.e. credit agreements for amounts exceeding £60,260 and which are not authorised non-business overdrafts, or which are entered into by the borrower wholly or predominantly for business purposes). It applies where the creditor discloses the pre-contractual information before the agreement is entered into in accordance with the 2004 Disclosure Regulations as though the amendments in the EU Directive regulations apply. The relevant amendment to the 2004 Disclosure Regulations is in regulation 76. The 2004 Disclosure Regulations also require some information to be provided in accordance with the 1983 Agreements Regulations and the amendments in regulations 52 and 54 to 56 of the EU Directive Regulations must therefore also be complied with.

3.20 Where section 58 of the CCA applies to an agreement the condition for moving to the new regime early is in regulation 1 of the Agreements Regulations. Section 58 requires a copy of the unexecuted agreement to be provided to a borrower containing certain additional information about the right of withdrawal (as required by the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557) prior to the unexecuted agreement being provided for signature. The condition is fulfilled where the copy of the unexecuted agreement containing the additional information is provided in compliance or purported compliance with the Agreements Regulations.

## **Advertising**

3.21 In the case of advertising, the Advertisements Regulations do not come into force until 1 February 2011. This is because it could be confusing for the consumer if credit was being advertised according to two different regimes, with different thresholds for the representative or typical APR and different minimum information requirements.

3.22 Therefore, the 2004 Advertisements Regulations will remain in place until 1 February 2011 even if the relevant agreements are otherwise subject to the new CCA requirements. It will be open to firms to include additional information in the advertisement, on an optional basis, but this will be subject to the 2004 requirements regarding presentation and prominence, and the application of the CPRs.

3.23 There are limited transitional arrangements for certain advertisements following 1 February 2011 (see Chapter 6).

## **Credit intermediaries**

3.24 If the new CCA requirements apply to a credit agreement before 1 February 2011, any credit intermediary will be subject to the requirements on credit intermediaries in section 160A of the CCA in relation to that agreement from that point forward (see Chapter 18).

3.25 Any documentation the intermediary provides subsequently to that borrower must therefore comply with section 160A. In addition, any fee payable by the borrower to the intermediary must be disclosed and agreed in writing with the borrower before the credit agreement is concluded and must be disclosed to the creditor if the creditor is calculating the APR.

3.26 This applies irrespective of whether the PCI is provided by the creditor or the credit intermediary. The creditor should ensure that the credit intermediary is aware that a PCI has been provided. The credit intermediary should also check with the creditor as to whether a PCI has been provided so that he is clear as to the legal position. Otherwise he risks committing a criminal offence without realising it.

## **4. EXEMPTIONS**

4.1 The scope of the CCA is broadly unchanged although some of the exemptions have been modified in line with the Directive. In practice this means that fewer agreements will be exempt from the requirements of the CCA.

4.2 The changes to the CCA Exemption Orders are summarised below. The amendments do not apply to agreements secured on land.

### **Consumer Credit (Exempt Agreements) Order 1989 (SI 1989/869 as amended in 1999 and 2006)**

#### *Article 3 – number of payments*

4.3 The exemption for d-c-s agreements for fixed-sum credit (Article 3(1)(a)(i) of the 1989 Order) is limited to agreements where the total number of payments does not exceed four and the payments are required to be made within a period not exceeding 12 months from the date the agreement was made. The amendment now also requires that the credit is provided *without interest and any other charges* (see below)<sup>6</sup>.

4.4 The exemption in Article 3(1)(a)(ii) concerning running-account credit (e.g. charge cards) has also been modified. Previously this applied to d-c-s agreements where the credit had to be repaid by one repayment. The amendment now requires that the credit has to be repaid in full by a single repayment in respect of a period not exceeding three months, and *there are either no charges or only insignificant charges* payable for the credit (see below).

4.5 In addition, section 75 of the CCA has been amended so that it does not apply to a running-account d-c-s agreement where the credit has to be repaid in full by a single repayment in respect of a period not exceeding three months.<sup>7</sup> This ensures that such agreements remain exempt from section 75 regardless of whether charges are insignificant.

4.6 The exemption in Article 3(1)(b) concerning d-c-s agreements financing the purchase of land has been modified. It still applies to agreements where the total number of payments does not exceed four, but the amendment also requires that the credit is provided without interest and any other charges.

4.7 The exemptions in Article 3(1)(c) and (d) concerning d-c-s agreements for fixed-sum credit to finance premiums for insurance against loss or damage to buildings and their contents, or mortgage protection insurance, have also been modified. Sub-paragraph (iii) in each case – concerning the rate of interest that may be charged – has been amended to require that the credit is provided without interest and any other charges.

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<sup>6</sup> Regulation 66 of the EU Directive Regulations

<sup>7</sup> Regulation 24 of the EU Directive Regulations

4.8 As was previously the case, the exemptions in Article 3(1) can only exempt the d-c-s element of an agreement.

#### *Article 3 – relevant charges*

4.9 Charges relevant for the purpose of the above exemptions include those falling within the definition of ‘total cost of credit to the debtor’ in the TCC Regulations. This includes interest and any non-interest charges (other than notarial fees) that are required to be paid by or on behalf of the borrower (or a relative) in connection with the credit agreement. This is irrespective of whether the charge is payable to the creditor or a third party, provided that it is known to or ascertainable by the creditor.

4.10 This would include, for example, an annual or monthly fee for the credit. It would also include transaction fees which are required to be paid in order to access the relevant part of the credit facility (and irrespective of whether they fall within the APR calculation). It would not however include optional fees such as for copy statements.

#### *Article 3 – payable for the credit*

4.11 The Article 3(1)(a)(i) and (b)-(d) exemptions require the credit to be provided without interest and any other charges, and Article 3(1)(a)(ii) requires that no or insignificant charges are payable for the credit.

4.12 If therefore a charge is payable under the credit agreement, or a related agreement, but is not linked in any way to the provision of credit, it will be disregarded in determining whether the exemptions apply.

4.13 This means that consideration needs to be given to whether and to what extent any charges are actually a charge *for the credit facility*.

4.14 In many agreements, the credit facility is the only facility being offered to the consumer and therefore the only facility to which charges could be related.

4.15 On the other hand, in some cases increased charges may be payable in recognition of additional services provided – for example travel insurance, or car breakdown cover. The question then arises whether or not the consumer could access the credit without paying these increased charges.

4.16 Where the consumer could, for example, choose between payment cards attracting different fees depending on whether or not they wanted to access non-credit facilities, it may be possible to disregard the higher fees, provided that the consumer could still access the credit on the same terms without paying the higher fee and that the creditor could objectively demonstrate that the higher fees were attributable to non-credit facilities and that these were genuinely optional.

4.17 However, where a consumer has no option other than to pay charges, even if some or all of these are for non-credit facilities, consideration might need to be given to the whole fee. This does not mean that such a charge would automatically be considered to be significant, but it would mean that the entire fee might need to be subject to the test.

4.18 The onus will be on the creditor to clarify the nature of any non-credit components of the charge, in order to demonstrate that they are not charges for the credit facility.

4.19 Ultimately it would be for a court to determine whether and to what extent a charge was payable for the credit and hence whether an exemption applied.

### *Article 3 – insignificant charges*

4.20 The 1989 Order (as amended) does not elaborate on the term “insignificant charges”. As above, this would ultimately be for a court to determine in the light of the relevant circumstances.

4.21 Relevant criteria in any assessment might include the amount of the charge, both in absolute terms and relative to the amount of credit or the value of the transaction. They might also include the nature of the product and the circumstances in which it is sold. A particular amount might be deemed insignificant in one context but not in another, for example depending upon the financial circumstances of the borrower.

4.22 Other factors could include how a charge would work out as a percentage of the amount of credit or the credit limit, or the amount drawn down. It could also be judged by reference to the value of the individual transaction and the number of transactions in any given period.

4.23 It may also be appropriate to consider charges by reference to other similar or closely competing products on the market; for example, if a charge is payable under one type of agreement but not another and the products are generally seen by borrowers as substitutable.

### *Article 4 – rate of the total charge for credit*

4.24 The exemptions in Article 4(1)(b) and (c) of the 1989 Order relating to the rate of the TCC in agreements offered to a specific class of individuals (rather than the public generally) have been modified<sup>8</sup>.

4.25 The previous conditions for exemption still apply, but the following conditions must be satisfied in addition:

- the agreement is offered under an enactment with a general interest purpose (i.e. an interest which is broader than that of a limited class of individuals), and

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<sup>8</sup> Regulation 67 of the EU Directive Regulations

- the rate of interest on the credit is either:
  - lower than the rate prevailing on the market (i.e. which is common across the consumer credit market as a whole), or
  - not higher than such a rate, provided that the other terms on which credit may be provided are more favourable for the borrower than those prevailing on the market.

4.26 The additional conditions do not however have to be met for agreements offered by a creditor as an employer to its employees, or agreements secured on land. In such cases, the exemptions apply as if the above amendments had not been made.

#### *Article 5 – countries outside the UK*

4.27 A new Article 5A has been inserted<sup>9</sup> to make it clear that share dealing accounts offered by MIFID<sup>10</sup> investment firms continue to be exempt from the requirements of the CCA.

#### **Consumer Credit (Exempt Agreements) Order 2007 (SI 2007/1168)**

4.28 Article 2 of the 2007 Order has been amended so that the exemption in section 16A of the CCA concerning loans to high net worth individuals will only apply to agreements above £60,260 – the upper threshold in the Directive<sup>11</sup>. Agreements for amounts below this value will no longer be capable of falling within the exemption.

#### **Transitional provisions**

4.29 The amendments to the CCA Exemption Orders come into force on 1 February 2011. However, they will apply before then if the creditor or a credit intermediary provides pre-contractual information in compliance, or purported compliance, with the Disclosure Regulations – see chapter 3. This may have the effect that agreements that would otherwise have been exempt under the 1989 Order or the 2007 Order fall within the scope of CCA regulation by virtue of the amendments to those Orders.

4.30 If an agreement is modified on or after 1 February 2011, and section 82(2) of the CCA applies, the notional new agreement may need to be considered afresh in terms of whether it is exempt from regulation.

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<sup>9</sup> Regulation 12 of the Amendment Regulations

<sup>10</sup> Directive 2004/39/EC of the European Parliament of the Council of 21 April 2004 on markets in financial instruments

<sup>11</sup> Regulation 92 of the EU Directive Regulations

## **5. TOTAL CHARGE FOR CREDIT**

5.1 The TCC Regulations set out what must be included in the TCC to the consumer and how this must be expressed as an APR.

5.2 They replace the 1980 TCC Regulations except in relation to credit agreements secured on land. However, where the Disclosure Regulations apply to a credit agreement secured on land, the TCC Regulations also apply by virtue of regulations 50 and 52 of the EU Directive Regulations. A TCC is now required in credit agreements for overdrafts.

5.3 The TCC is defined in regulation 2 as encompassing all costs known to the creditor and which are required to be paid by or on behalf of the borrower (or a relative) in connection with the credit agreement. These include interest, commissions, taxes and any other kind of fees, whether payable to the creditor or to a third party, with the exception of notarial fees.

5.4 Where amounts are not known or ascertainable by the creditor, they should not be estimated for the purposes of calculating the TCC and APR, but may be estimated in advertisements and pre-contractual and contractual information.

### **TCC calculation**

5.5 Regulation 4 sets out how the TCC should be determined. It must include:

- the costs of maintaining an account which records both payment transactions and drawdowns (i.e. money going into and out of the account),
- the costs of using a particular means of payment for payment transactions or drawdowns, and
- any other costs relating to payment transactions,

unless the opening of the account and the charges in question are optional (and have been clearly set out in the credit agreement or in another agreement with the borrower) or, in the case of an overdraft facility, the current account charges are not related to the overdraft itself.

5.6 The TCC must also include charges for any ancillary service relating to the agreement (such as PPI or other insurance) if that service is compulsory in order to obtain the credit or to do so on the terms and conditions marketed (for example, where a discounted interest rate is conditional upon insurance being taken out).

5.7 On the other hand, the TCC does not include charges payable for non-compliance with the agreement (such as late payment charges or default charges). It also does not include charges relating to the purchase of goods

or services which would have to be paid whether the goods or services were paid for with credit or with cash.

5.8 Regulation 5 stipulates that the APR must be calculated in accordance with the mathematical formula set out in the schedule to the TCC Regulations. The schedule includes a number of rules that must be followed when using the formula to calculate the APR. There are also rules regarding the time periods used in the calculation.

### **APR assumptions**

5.9 Regulation 6 sets out a number of assumptions that should be made when calculating the APR in certain situations, in particular where not all the facts are known or ascertainable at the time or may vary according to how the agreement is operated (such as in the case of credit cards). These are intended to ensure that the APR is calculated in a consistent way where there might otherwise be doubt as to how to calculate it.

5.10 Many of the assumptions are straightforward, but the following explanations (using the same lettering as in regulation 6) are provided to aid clarity:

- (b) – This is relevant where a credit agreement allows the possibility of changes to the rate of interest or other TCC charges and where the amount of any variation is unknown at the time the TCC and APR are calculated. For example, in the case of a variable rate loan, future interest rates will not be known. In that case the assumption is that they will remain at their initial level for the duration of the agreement.
- (d) – This applies to agreements where the interest rate or charges are fixed for specified periods and where the duration of the agreement cannot be ascertained at the date of calculation. In that case the assumption is that the rate and charges will be at their highest levels for the entire duration of the agreement. Any introductory interest rate will therefore be disregarded in calculating the TCC and APR. This assumption must however be taken together with assumption (e).
- (e) – This applies where the interest rate is fixed for an initial period, after which it is variable in line with an agreed indicator (such as the Bank of England base rate). In that case the rate after the initial fixed period is assumed to be the same as the variable rate which applies at the time of calculation of the TCC and APR, based on the value of the agreed indicator at that time.
- (g) – This applies, for example, to credit card agreements which charge different rates of interest or charges depending on whether the card is used for purchases or cash advances or balance transfers. In such a case, the interest rate and charges are assumed to be those applicable to the most common drawdown

mechanism for that product. This is determined on the basis of the actual or anticipated volume of transactions for the particular product rather than, for example, for all credit cards.

- (j) – This applies where there is no fixed timetable for repayment, and assumption (l) provides that this means that the agreement does not set a specific date by which the credit must be repaid.

Assumption (j) would not apply where the timing of instalments and either the number or the amount of instalments are fixed and so the date of the final repayment can be inferred. It would however apply where the borrower can exercise choices which would vary the date of the final repayment. For example, in the case of credit cards, it is open to the borrower to make more than the minimum repayment or to top up some or all of the credit after each repayment. There is therefore no end date specified in or ascertainable from the agreement.

Where assumption (j) applies, the credit is assumed to be drawn down in full on day one and repaid in 12 equal monthly instalments over one year. Assumption (k) makes clear that repayments of credit for these purposes include interest and other TCC charges as well as capital repayment. The terms of the contract will determine the mix of these in each instalment, and this may vary month by month but with the total of each instalment (including any annual fee) being the same.

- (o) – This applies in the case of credit cards and other running-account credit where the credit limit is not known at the time of calculating the TCC and APR. In such a case the credit limit is assumed to be £1,200. It should be noted however that there are specific rules in the case of advertising, pre-contractual and contractual information where it is known that the credit limit will be less than £1,200.
- (p) – This applies in the case of overdrafts. An APR is not required in advertising or agreements for authorised non-business overdrafts (i.e. those repayable on demand or within three months) or authorised business overdrafts but if one is included it must be calculated in accordance with this assumption. The TCC is required in agreements for non-business overdrafts (other than those secured on land) and must be calculated using assumptions (p) and (q).

## **6. ADVERTISING**

6.1 The Advertisements Regulations replace the 2004 Advertisements Regulations except in relation to agreements secured on land.

6.2 The Advertisements Regulations apply to all forms of advertising, including in print, on television or radio, on the internet or by way of telephone canvassing.

6.3 Certain credit advertisements are exempt from the Advertisements Regulations, as set out in regulation 11 and in section 43 of the CCA. For example, an advertisement is exempt if it indicates that credit is available only to bodies corporate (such as limited companies) or only for business purposes, or if the advertiser does not carry on a consumer credit business or a credit brokerage business. An advertisement is also exempt insofar as it is regulated under the Financial Services and Markets Act 2000 by the Financial Services Authority.

### **General requirements**

6.4 Under regulation 2 of the Advertisements Regulations, any person who causes a credit advertisement to be published must ensure that it complies with the regulations. The advertiser or publisher must also ensure that the advertisement is not misleading, by inclusion or omission, contrary to the CPRs.

6.5 Under regulation 3, every advertisement must use plain and intelligible language and must be easily legible (or clearly audible). It must also include the name of the advertiser. If there is more than one advertiser each must be named. An 'advertiser' (as defined in section 189 of the CCA) is a person indicated by the advertisement as willing to enter into transactions to which it relates.

6.6 A postal address must also be specified for each advertiser, under regulation 4(1)(b), but only if a representative example is triggered. A postal address is not however required where the advertisement:

- is published by means of television or radio broadcast,
- is on the premises of a creditor or a dealer (i.e. a retailer of goods or services on credit) and is not intended to be taken away, or
- includes the name and address of a dealer or the name and postal address of a credit-broker.

### **Requirement to display a representative example**

6.7 Under regulation 4(1), where the advertisement includes an interest rate or any amount relating to the cost of the credit, then a representative example of the credit on offer must also be included in the advertisement. An interest rate for this purpose is not limited to an annual rate of interest but

would include a monthly or daily rate or an APR. It would also include reference to 0% credit. An amount relating to the cost of credit would include the amount of any fee or charge, or any repayment of credit (where it includes interest or other charges), whether expressed as a sum of money or a proportion of a specified amount.

6.8 The representative example must comprise the information listed in regulation 5(1) – the “standard information” – and must be accompanied by the words “representative example”. It must be representative of agreements to which the representative APR applies and which are expected to result from the advertisement. This is not limited to agreements featured in the advertisement if the advertiser expects other agreements (e.g. with different rates or amounts) to be entered into as a result of the advertisement, whether with the advertiser or a third party.

6.9 In effect, this is a two-stage process. First, the advertiser must determine what agreements he reasonably expects to be entered into as a result of the advertisement. Each such agreement will have an APR and the 51% test in regulation 1(2) is used to determine the representative APR. This produces a class of agreements – referred to here as ‘Relevant Agreements’ – which are expected to be entered into as a result of the advertisement and to which the representative APR applies.

6.10 Second, the advertiser must determine, again based on reasonable expectations, which of the Relevant Agreements is representative for the purposes of regulation 5(2). ‘Representative’ here means typical or characteristic of the Relevant Agreements. There is no 51% test to be applied, but the advertiser should ensure that the terms advertised (or better terms) would apply to enough business generated by the advertisement to make it truly representative of the Relevant Agreements. An example is unlikely to be representative if, for example, most borrowers entering into Relevant Agreements are likely to do so for a lower amount of credit or with higher charges than those stated.

6.11 If there is more than one product which is representative of the Relevant Agreements, either may be shown as the representative example as long as in doing so this does not lead to a misleading example, contrary to the CPRs.

6.12 The representative example must be more prominent than any other cost information and any APR trigger. Other examples may also be included, but must be less prominent than the overall representative example. The same applies to any other cost information such as the TCC per £100. The prominence rule does not however apply to non-cost information.

### **The standard information**

6.13 The standard information to be included in a representative example comprises the following where applicable:

- *the rate of interest*

This must be expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down. Where the agreement provides for compounding, the effective annual interest rate should be shown and creditors should use the same assumptions to calculate the interest rate as they do for the APR (i.e. the assumptions set out in the schedule to the TCC Regulations). The rate may be rounded to one or more decimal places (although there are no permitted tolerances, unlike for the APR). If there is more than one interest rate (e.g. purchases, cash advances, balance transfers) the rate shown must be the highest rate applicable to the most common drawdown mechanism for the particular product. Other rates (e.g. monthly or daily) may be shown in addition (separate to the representative example) but must be less prominent. If a rate applies for only a limited period, the duration of the period and the go-to rate, if known, should be shown.

- *any TCC charges*

Details of any fees or charges included in the TCC must be given. In each case the advertisement must make clear the nature of the charge and the amount if ascertainable, or a reasonable estimate. An example would be an annual fee payable to access the credit, or a charge for setting up the loan. Non-TCC charges may be included in addition but must be less prominent.

- *the total amount of credit*

This means the credit limit or the total sums made available under a consumer credit agreement. This equates to the sum available to the borrower to use and does not include financed charges – those are part of the total cost of credit<sup>12</sup>. It must be an amount which is representative of the Relevant Agreements. If the advertisement is for running-account credit, the advertiser should assume a credit limit of £1,200 unless:

- it is known that the credit limit will be less than £1,200, and
- the advertiser knows what the maximum credit limit is likely to be (for example because it does not lend above that amount).

In that case, the credit limit should be assumed to be an amount equal to that maximum (based on the creditor's reasonable expectations of the likely maximum, where necessary). Reliance on the £1200 limit when in reality the creditor doesn't lend above a particular (lower) amount could put the advertiser in breach of the CPRs (see section on general requirements above).

- *the representative APR*

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<sup>12</sup> See the recent decision of *Southern Pacific Securities 05-2 Plc v Walker and Another* [2010 UKSC 32] which confirmed that "credit" must be interpreted in accordance with section 9(4) CCA 1974 which excludes charges for credit.

This is an APR at or below which the advertiser reasonably expects, at the date on which the advertisement is published, that credit would be provided under at least 51% of the agreements which will be entered into as a result of the advertisement (unlike the 66% test for the typical APR under the previous regulations). An APR is not required in the case of an authorised non-business overdraft. Other APRs may be included in addition (subject to the CPRs), but must be less prominent and there must be no risk of confusion with the representative APR. If the interest rate or charges comprising the APR may vary during the period of the agreement, the APR must be accompanied by the word “variable” and in all cases it must be stated to be “representative”.

- *the cash price and the amount of any advance payment*

This information will only be relevant in situations where the credit is linked to the supply of specific goods or services. The total cash price of all items should be shown, together with the price of each item individually, as applicable. This information is intended to allow the borrower to see what price would be payable if they did not pay by credit and also details of any up-front payments (e.g. a deposit) that they will need to make.

- *the duration of the agreement*

How long the agreement is expected to last. This information is not required for open-end agreements, such as credit card agreements.

- *the total amount payable*

The amount of money the borrower is due to pay under the agreement, being the sum of the amount of credit advanced plus any interest and other TCC charges and any advance payments. This information is not required for open-end agreements although may be included as optional information, for example as part of an illustrative scenario.

- *the amount of each repayment of credit*

This applies irrespective of whether there is one or more than one repayment and whether this involves regular instalments. If the amounts of repayments differ, this should be made clear. Again this information is not required for open-end agreements.

## **Presentation of standard information**

6.14 Under regulation 5(6), the standard information must be clear and concise and presented together. The objective is to ensure that the borrower views the standard information as a whole. This means that the relevant information should appear in the same place – for example in a box – rather than individual pieces of the standard information being scattered around the advertisement so that they are unlikely to be seen together.

6.15 The regulation requires that each item of standard information should be given equal prominence. This means for example that it is not permissible to show the APR with greater prominence. In addition, the standard information must be more prominent than any other information in the advertisement relating to the cost of the credit and any APR trigger. This is not limited to rates and amounts triggering the representative example, but would include any other cost information – for example, a reference to fees/charges being payable (or not payable) or being lower than for other products.

6.16 The purpose is to ensure that important information concerning the cost of the credit can be viewed together as a whole, so that the borrower can assess suitability and affordability in the round. In some cases, the APR may be the key indicator, whereas in others (e.g. short-term credit) it may be more important to know the total amount payable and the periodic repayments. It is not permissible to ‘cherry pick’ particular items by making them more prominent, or by giving the same or greater prominence to cost information other than that specified.

6.17 Prominence may depend upon the nature and context of the advertising medium. The standard information should stand out from other information relating in any way to the cost of the credit, and should be easily legible (or clearly audible) for a typical consumer. The Advertisement Regulations do not however require any particular font size, nor do they limit the prominence given to other information unrelated to the cost of credit.

### **Requirement to provide a representative APR only**

6.18 Under regulation 6, certain credit advertisements must display the representative APR, but this requirement will not in itself trigger the requirement for the rest of the standard information as described above. This requirement does not apply to authorised non-business overdrafts.

6.19 Advertisements that fall within this category are those which:

- indicate in any way (whether expressly or by implication) that credit is available to persons who might otherwise consider their access to credit restricted (e.g. non-status borrowers), or
- indicate in any way that any of the terms on which credit is available is more favourable (either in relation to a limited period or generally) than corresponding terms applied in any other case or by any other creditor (this would include comparisons with any existing loan), or
- include any incentive to apply for credit or to enter into an agreement under which credit is provided.

6.20 In this situation, the representative APR must be displayed with greater prominence than the relevant indication or incentive, and must be accompanied by the word “representative”.

6.21 In effect, this is a dispensation from providing the standard information where an APR is triggered in the above cases. However, if the advertisement also includes any interest rate or cost figure, a representative example will be required and must be more prominent than the APR triggers.

6.22 The dispensation does not apply if an advertiser chooses to display an APR of its own volition rather than being required to by law. In such cases, a representative example containing all the standard information would still be required.

## **TV, radio, mobile phone and internet advertisements**

6.23 The Advertisements Regulations extend to all forms of advertising, including on television or radio, mobile phone and on the internet. They do not make any specific provision for advertisements that use such forms of media, and the above requirements must be complied with where applicable.

6.24 In particular, the standard information where triggered must be clear and concise and presented together, and must be more prominent than other cost information or APR triggers. It must also be easily legible or clearly audible. Therefore, standard information that was read out in a way that made it more difficult for the borrower to understand, for example because of the speed in which it was read out, or because it was of a lower volume than the rest of the advertisement, would breach the Advertisements Regulations.

6.25 An advertisement sent by text message that included an interest rate or any amount relating to the cost of credit would need to display a representative example, shown together and of equal prominence. It would not be permissible to include some of the required information in the text message and re-direct the borrower to another source – for example a website – for the remainder of the information.

6.26 In respect of internet advertisements, an additional aspect of prominence will be the ease with which information can be found on the internet site. For example, although “clicking” between items in order to view information could be permissible under the Advertisements Regulations, this would be subject to all the standard information being equally accessible, together and more prominent than any other information concerning the cost of the credit or other APR triggers. On this basis, a click through that enabled the consumer to see all the relevant information about the credit on offer, including all of the relevant standard information in one place might be consistent with the requirements of the Advertisements Regulations. On the other hand, a click through that only displayed some of the relevant information about the offer, but not all the standard information, would not be permissible. Similarly, a website advertisement where it was not immediately obvious to the consumer how to access the information concerning the cost of the credit would be likely to be in breach of the Advertisements Regulations.

## **Ancillary services**

6.27 The costs of an ancillary service, such as PPI or other insurance, will need to be included in the TCC and hence the APR where the ancillary service contract is mandatory or a condition of obtaining the credit on the terms and conditions marketed, and where the amount is known or ascertainable at the relevant time. In the case of advertising, regulation 8 requires that where the amount is not known or ascertainable at the time the advertisement is published, the advertisement should make clear the obligation to enter into the ancillary service contract. This is irrespective of whether an APR is stated in the advertisement and whether it includes standard information. This requirement does not apply to authorised non-business overdrafts.

6.28 The statement should be clear and concise and at least as prominent as any standard information contained in the advertisement. It must be presented together with any representative APR.

## **Security**

6.29 Under regulation 9, any credit advertisement in respect of an offer that is or may be dependent on security being provided must include this information and must specify the nature of the security required. No wording is prescribed for this, and there are no requirements concerning prominence of this information provided that it is clear and easily legible (or clearly audible).

## **Restricted expressions**

6.30 Regulation 10 contains a list of expressions that cannot be included in a credit advertisement unless certain conditions are satisfied.

## **Transitional provisions**

6.31 The Advertisement Regulations come into force on 1 February 2011, and there is no provision for their earlier application to advertisements even if the relevant agreements are otherwise subject to the new requirements.

6.32 They apply to credit advertisements published on or after 1 February 2011, or which continue to be published after that date, subject to certain limited transitional provisions in regulation 12. This provides that credit advertisements which:

- would have complied with the requirements of the 2004 Advertisements Regulations, and
- were first published or made available for publication before 1 March 2011 in a catalogue, diary or work of reference comprising at least 50 pages, provided that the date of first publication or the period during which the advertisement has effect is clearly specified in a reasonably prominent position in the publication, or

- were first published before 1 February 2011 and cease to be published before 1 March 2011,

continue to be subject to the 2004 Advertisements Regulations.

6.33 If an advertisement was published before 1 February 2011, and continues to be published on or after 1 March 2011 (and does not fall within the transitional provisions above), it will need to comply with the Advertisements Regulations from 1 February 2011. It may be necessary therefore to remove posters or websites on 31 January, so that amended versions can be put up from 1 February.

## **7. CREDITWORTHINESS CHECK**

7.1 Regulation 5 of the EU Directive Regulations introduces a new section 55B into the CCA. It applies to all regulated consumer credit agreements other than agreements secured on land and pawn broking.

7.2 It requires creditors to assess the borrower's creditworthiness before concluding a credit agreement and before significantly increasing the amount of credit to be provided under an existing agreement or the credit limit under a running-account agreement.

7.3 Section 55B does not spell out how creditors should go about assessing creditworthiness, although it does require that this must be based on sufficient information obtained from the borrower, where this is appropriate, and from a CRA where this is necessary. It is for creditors to judge when information should be sought from a borrower or a CRA.

7.4 It should be borne in mind that, although section 55B requires creditors to decide what factors should be taken into account when assessing creditworthiness, OFT guidance on Irresponsible Lending covers related matters such as affordability of credit and should therefore be read alongside this guidance.

## **8. ADEQUATE EXPLANATIONS**

8.1 Regulation 3 of the EU Directive Regulations introduces a new section 55A into the CCA. It applies to all regulated consumer credit agreements other than agreements secured on land, agreements for credit exceeding £60,260, non-business overdrafts repayable within three months or on demand and business overdrafts.

8.2 Before a credit agreement is made, section 55A requires the creditor to:

- provide the borrower with an adequate explanation of the matters set out in subsection 2,
- advise the borrower to consider the pre-contractual information and, where this is disclosed in person, that the borrower can take it away,
- give the borrower the opportunity to ask questions about the proposed credit agreement, and
- advise the borrower how to ask the creditor for further information and explanation – for example, by providing a contact telephone number.

8.3 The creditor may choose to fulfil these requirements via a credit intermediary (section 55A(5)) but the creditor is ultimately responsible for ensuring that the explanations and advice have been given. The creditor would need to be satisfied that the intermediary had given an explanation and that this was adequate in the circumstances. References below to 'the creditor' should be taken to include a credit intermediary where applicable.

### **Matters to be explained to the borrower**

8.4 The matters which must be explained (set out in section 55A(2)) are as follows:

- *(a) the features of the agreement which may make the credit to be provided under the agreement unsuitable for particular types of use*

This is not a requirement to give a view on the advisability of using credit per se in any given circumstance (although the creditor should not give misleading advice under this heading if asked). Rather, the explanation is confined to the particular features of a credit agreement which might distinguish it from other agreements or types of credit agreement and which make it unsuitable for particular types of use. Nor is this a requirement to identify all the possible uses for which the proposed credit would not be suitable, but only those for which a borrower might reasonably consider using the credit. If a borrower specifically referred to a use to which proposed credit would be put and a feature of the agreement clearly made it unsuitable for such use, the creditor should inform the borrower accordingly. For example, a

creditor should explain that a proposed credit line is not suitable for longer-term borrowing, where this is the case. On the other hand, in the case of a hire-purchase or conditional sale agreement, where the borrower could not realistically use the credit for a purpose other than that set out in the agreement, there would be no need to list the other purposes for which the credit would not be suitable.

- *(b) how much the borrower will have to pay periodically and, where the amount can be determined, in total under the agreement*

Detailed information on the cost of credit will be found in both the prescribed pre-contractual information and the credit agreement, and this more detailed information could be signposted as part of the explanation (although this is unlikely in itself to be sufficient). The purpose of the explanation is to draw together the various elements of the cost information so as to provide an overall picture of the total cost and the amount and frequency of instalments including, where appropriate, key factors which could influence the cost. For example, in the case of a credit card, the varying cost depending on the amount of monthly repayments and the implications of making only minimum repayments. The explanation should, where relevant, take account of any repayment pattern proposed by the borrower.

- *(c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the borrower in a way which the borrower is unlikely to foresee*

Some credit products are more complex than others and average customers may not understand the implications of some aspects of a credit agreement. For example, in the case of credit cards, evidence shows that borrowers do not understand how repayments are allocated or the effect this can have on the total amount they have to repay, or the possibility of risk-based re-pricing. The position is further complicated where 0% balance transfers are offered with differing timescales and differing rates depending on the use to which a card is put (balance transfer, purchases, cash advances etc). Failure to understand how these complex products work can result in individuals paying considerably more than they expected. Generally speaking the creditor should explain any features which could have an adverse effect and whose operation might not be obvious to an average borrower.

- *(d) the principal consequences for the borrower arising from a failure to make payments under the agreement at the times required by the agreement including legal proceedings and, where this is a possibility, repossession of the borrower's home*

The consequences of default should be drawn to borrowers' attention. This will depend upon the nature of the credit facility, the terms applicable to it and the practices of the creditor, but should include, for example, any additional charges made for late or missed payments,

increases in interest rates, impairment of credit status, legal action (and associated costs) and charging orders or repossession where these are a possible outcome whether by the creditor or any future owner of the debt.

- *(e) the effects of the exercise of any right to withdraw from the agreement and how and when this right may be exercised*

The creditor should explain the period during which a right of withdrawal could be exercised and what the borrower would have to do to exercise that right, including that interest may be charged for each day between the credit being drawn down and repaid. In the case of linked credit agreements, the borrower should be informed about what would happen to goods or services where he exercises his right of withdrawal – for example whether or not goods could be returned and whether the borrower would have to pay for them by alternative means if he withdraws from the credit agreement.

8.5 In the case of pawn broking agreements, section 55A(7) clarifies that only the following requirements of section 55A apply:

- to give the borrower the opportunity to ask questions about the proposed agreement,
- to explain how the borrower can exercise the right of withdrawal, and
- to explain what could happen if the borrower fails to redeem a pledged article.

### **Adequate explanations**

8.6 Section 55A does not prescribe how detailed the explanations should be, but it does require that the explanations should be adequate to enable the borrower to assess whether a proposed credit agreement is suitable for his needs and financial situation.

8.7 The requirement does not impose on the creditor responsibility for deciding whether a product is suitable (although neither does it absolve him from any legal requirement not to mis-sell), as only the borrower himself can decide in the light of his own detailed knowledge of the circumstances whether or not a product is suitable. The requirement is therefore to make comprehensible the matters specified to enable the borrower to take an informed decision.

8.8 The requirement is additional to the existing provisions in regulations 5 and 6 of the CPRs which require creditors not to omit material information which average borrowers need to take an informed decision and not to provide such information in a misleading, unclear or untimely manner.

8.9 A borrower cannot waive the requirement to be given adequate explanations. It would therefore not be acceptable for a creditor not to provide

explanations simply because he was asked not to. However, it would be reasonable for a creditor to take into account explanations which he had already recently given to the same borrower about identical or similar products in determining how much further explanation is required and to curtail explanation of specific matters to the extent that the borrower clearly demonstrated that he already understood them.

8.10 Not all aspects listed above will be relevant in all circumstances. For example, not all credit agreements will include features which may make the credit unsuitable for particular types of use and not all agreements will include features which could operate in a manner which would have a significant adverse effect on the borrower in a way which the borrower would be unlikely to foresee.

8.11 Generally speaking creditors can decide how to give the explanations – for example, whether orally, in writing or both. However, where any of the matters specified in section 55A(2)(a), (b) or (e) is explained orally to the borrower, whether personally in a face to face setting or over the telephone, an oral explanation must also be given of the matters in section 55A(2)(c) and (d), and 1(b) where relevant. This is clarified by regulation 6 of the Amendment Regulations. In addition the borrower must be advised orally to consider the pre-contractual information and, where this is disclosed in person, that the borrower can take it away.

8.12 Section 185 of the CCA is amended by Regulation 4 of the EU Directive Regulations so that in the case of joint borrowers the requirement to provide the explanation of certain matters orally does not apply to those borrowers not physically present or party to a telephone communication. However, they would still need to be provided with an adequate explanation in compliance with section 55A before the credit agreement is concluded, although this could be in written form.

## **9. PRE-CONTRACTUAL INFORMATION**

9.1 The Disclosure Regulations apply from 1 February 2011, although a creditor can choose to comply earlier. They apply to all regulated consumer credit agreements, with the following exceptions:

- an agreement secured on land to which section 58 of the CCA applies,
- an authorised non-business overdraft agreement which is for credit exceeding £60,260 or secured on land,
- any other agreement for credit exceeding £60,260,
- any other agreement secured on land, and
- an agreement entered into by the borrower wholly or predominantly for business purposes.

9.2 For these last three categories of agreement, the 2004 Disclosure Regulations or the Distance Marketing Regulations will continue to apply (as amended)<sup>13</sup>, unless the creditor chooses to provide pre-contractual information in accordance with the Disclosure Regulations. This is not an option in respect of the first two categories of agreement.

### **Pre-contract disclosure – credit agreements generally**

9.3 Regulation 3 of the Disclosure Regulations requires specified information to be disclosed to the borrower before the agreement is made. This does not however apply to certain telephone contracts, non-telephone distance contracts, excluded pawn agreements or overdraft agreements, to which separate provisions apply (see below).

9.4 Regulation 3(2) requires that the information must be provided in good time before the agreement is made. What constitutes “in good time” will depend on the precise circumstances of the transaction. In certain retail credit situations, the borrower may wish to proceed straight to the conclusion of the agreement following provision of the pre-contractual information, and the Disclosure Regulations do not preclude that if it is what the borrower wants to do.

9.5 However, the borrower must be given adequate opportunity to consider the pre-contractual information (and any accompanying explanation) before being invited to sign the credit agreement. The borrower should be able to pause and reflect on the proposed transaction, and compare with other credit offers if he wishes, before proceeding. He should not be subjected to pressure to conclude a credit agreement.

9.6 The pre-contractual information which is required to be disclosed is listed in regulation 3(4), and is largely the same as that required in the credit

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<sup>13</sup> Regulations 73-76 of the EU Directive Regulations

agreement. In addition the pre-contractual information must inform the borrower of the following:

- that the creditor will inform the borrower if a decision not to proceed with an agreement has been based on information from a CRA, and the particulars of the CRA,
- the right to request a copy of the draft agreement, and
- the period of time during which the creditor is bound by the pre-contractual information (if applicable).

9.7 Regulation 3(3) makes clear that the creditor is not required to provide pre-contractual information in situations where that information has already been provided by a credit intermediary in compliance with the Disclosure Regulations. The creditor would need to be satisfied that this was the case.

### **Manner of disclosure**

9.8 Regulation 8 sets out the manner in which the pre-contractual information must be disclosed. In most cases, the information must be disclosed by use of the form contained in schedule 1 to the Regulations – the PCI (sometimes referred to as the Standard European Consumer Credit Information form or SECCI). Separate rules apply in relation to overdrafts.

9.9 The PCI must be completed in accordance with regulation 8(3) and with the relevant notes. The asterisks and notes may be deleted as appropriate, and gridlines and boxes may be omitted. The information must however be presented in the form and order set out in the PCI, and with the same headings and sub-headings and using the same wording as applicable.

9.10 The information must be clear and easily legible, and so for example should be of a colour which is readily distinguishable from the background medium. The information must be contained in a document which is of a nature which allows the borrower to remove it from the place at which it is disclosed to him.

9.11 The creditor must include in the PCI details of any credit intermediary, if applicable. However, there may be situations where the creditor is unaware of the involvement of a credit intermediary and cannot therefore reasonably be expected to include details. This may be particularly so where the activities of the credit intermediary fall within new section 160A(2)(a) of the CCA rather than 160A(2)(b) or (c) (see chapter 18). “If applicable” should be regarded in this light.

9.12 Regulation 8(4) requires that any additional written information provided by the creditor must be in a separate document. This could be provided together with the PCI, but must be in a document which is clearly separate and distinct. However, regulation 8(4) applies only to information “relating to the credit” and would not prevent a creditor from including other kinds of information such as a reference number in the PCI, provided this was

done in such a way that ensured the information contained in the PCI was not obscured or undermined in any way.

9.13 Regulation 8(5) applies where a multiple agreement is in parts for the purposes of section 18(2) of the CCA. In such cases, it is not necessary to provide a separate PCI for each 'part agreement' provided that any information that is not common to each part agreement is set out separately within the relevant section of the PCI, and it is clear which piece of information relates to which part agreement.

### **Telephone contracts and distance contacts**

9.14 Regulation 4 applies to an agreement (other than an authorised non-business overdraft agreement) concluded by telephone.

9.15 If the agreement is a distance contract, the full regulation 3(4) information must be provided before the agreement is entered into (and may be provided orally), unless the borrower consents to receiving the more limited information set out in regulation 4(2). In the latter case, the creditor must make clear that other information is available on request and must indicate the nature of that information. The borrower's consent must be explicit.

9.16 If the agreement is concluded by telephone but is not a distance contract (for example where there were prior face-to-face discussions between the parties), the creditor must provide the information referred to in regulation 4(2)(b) before the agreement is entered into.

9.17 In any event, the full regulation 3 information must be provided by means of the PCI immediately after the agreement has been entered into. This ensures that the borrower can consider the terms and conditions of the agreement and decide whether to exercise his right of withdrawal, even before receiving a copy of the executed agreement.

9.18 Regulation 5 applies to non-telephone distance contracts, other than authorised non-business overdrafts, but only where these are made at the borrower's request using a means of distance communication (other than telephone) which does not allow the provision of full pre-contractual information. In such cases, information must be provided by means of the PCI immediately after the agreement is entered into.

9.19 Regulation 6 applies to distance contracts which are wholly or predominantly for business purposes. In such cases, information complying with regulation 3, 4 or 5 (as the case may be) must be provided either before the agreement is made or immediately after it is made. In either event this may be done orally or in writing, whether or not by means of the PCI.

9.20 Regulation 7 makes clear that for distance contracts covered by regulations 3, 4 or 5 (but not regulation 6), the borrower must be given the full contractual terms and conditions together with details of any other contractual obligations at the same time as the PCI.

## **Pawn agreements**

9.21 In the case of a new customer – i.e. one who has not entered into a pawn agreement with the creditor during the preceding three years – the pre-contractual information must be provided in the usual manner. However, for borrowers who are not new customers, the creditor does not have to provide the PCI unless the borrower requests it. In these circumstances (referred to in the Regulations as ‘excluded pawn agreements’), the creditor must inform the borrower in good time before entering into the agreement that he has the right to be provided with the pre-contractual information. If the borrower requests this, it must be provided by means of the PCI.

## **Overdrafts**

9.22 The rules regarding the provision of pre-contractual information in the case of an authorised overdraft facility are described in chapter 17.

## **Section 58 agreements**

9.23 Where section 58 of the CCA applies to an agreement the creditor must provide the borrower with a copy of the unexecuted agreement that contains information about the opportunity to withdraw prior to providing the unexecuted agreement for signature. This is separate from the Disclosure Regulations and is explained further in chapter 10.

## **Modifying agreements**

9.24 Regulation 12 applies where an agreement (other than an excluded pawn agreement) varies or supplements an earlier consumer credit agreement and gives rise to a modifying agreement for the purposes of section 82(2) of the CCA.

9.25 In such cases, it is not necessary to provide pre-contractual information before the modifying agreement is entered into, provided that:

- the creditor discloses to the borrower, in good time before the modifying agreement is made, any information which varies or supplements information in the original agreement, and
- the creditor informs the borrower that the other information remains unchanged; this must be done in writing in good time before the modifying agreement is made unless it is not possible in the circumstances, in which case the creditor must inform the borrower orally before the agreement is made that the other information remains unchanged and must confirm this in writing immediately after the agreement has been made.

9.26 Where the agreement is subject to the Distance Marketing Regulations, the creditor must comply with regulations 7 and 8 of those Regulations. This is because the special rules on modifying agreements cannot be applied to

distance contracts for non-business purposes given the scope of the relevant Directive<sup>14</sup>.

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<sup>14</sup> Directive 2002/65/EC concerning the distance marketing of consumer financial services

## **10. CREDIT AGREEMENT**

### **THE AGREEMENTS REGULATIONS**

10.1 The Agreements Regulations apply to all regulated consumer credit agreements (including all authorised overdrafts) with the following exceptions:

- an agreement secured on land,
- an agreement for credit exceeding £60,260, and
- an agreement entered into by the borrower wholly or predominantly for business purposes.

10.2 For agreements secured on land where section 58 of the CCA does not apply and the other two categories of agreement, the 1983 Agreements Regulations continue to apply (as amended) unless the creditor chooses to provide pre-contractual information in accordance with the Disclosure Regulations<sup>15</sup>.

10.3 For agreements secured on land where section 58 of the CCA does apply, the 1983 Agreements Regulations continue to apply (as amended) unless the creditor chooses to provide a copy of the unexecuted agreement containing information about the opportunity for withdrawal in accordance with the Agreements Regulations.

10.4 A creditor cannot provide pre-contractual information in accordance with the 2010 Disclosure Regulations and contractual information in accordance with the 1983 Agreements Regulations. Nor could a creditor provide pre-contractual information in accordance with the 2004 Disclosure Regulations and then provide contractual information in accordance with the 2010 Agreements Regulations.

10.5 Specific rules apply in relation to overdraft agreements, pawn agreements and modifying agreements – see below.

### **Form and content of regulated agreements**

10.6 Regulation 3 requires that an agreement must contain the information set out in column 3 of schedule 1 to the Regulations in so far as it relates to the type of agreement referred to in column 2. The information does not have to be provided in any particular order or subdivided under particular headings.

10.7 Regulation 3(2) specifies that the information must be presented in a clear and concise manner. Regulation 3(3) makes clear that this means, among other things, that the information must be easily legible and of a colour which is readily distinguishable from the background. Information is unlikely to be clear and concise if it is set out in different documents, or if it is

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<sup>15</sup> Regulation 53 of the EU Directive Regulations

interspersed to such an extent that parts of the information are unlikely to be read or to have an impact.

10.8 Statements of protection and remedies must also be included, where applicable, in accordance with schedule 2. In most cases these relate to agreements outside the scope of the Directive.

10.9 Regulation 3(7) applies where there is a principal agreement and a subsidiary agreement financing a premium for PPI or certain other insurance. In such cases, the creditor has the option of including the headings and statements of protection and remedies which are applicable solely to the principal agreement.

### **Signing of agreement**

10.10 Regulation 4 specifies the terms which are 'prescribed terms' for the purposes of section 61(1)(a) of the CCA. These must be included in the document signed by the borrower if the agreement is to be properly executed. If they are not, the agreement may not be enforced against the borrower without a court order.

10.11 Other items of information specified in schedule 1 are not required by section 61(1)(a) to be included in the signature copy, but must form part of the agreement under section 61(1)(b). As above, the information must be clear and concise, and this may be undermined if information is spread across more than one document.

10.12 Regulation 4(1) sets out the prescribed terms for the purposes of proper execution:

- the amount of credit or credit limit,
- the rate of interest (including any conditions governing the application of the rate, the period during which the rate applies and the conditions and procedure for changing the rate), and
- the timing of repayments.

10.13 Regulation 4(3) requires the agreement to be signed by the borrower (or on behalf of the borrower in the case of a partnership or unincorporated body) and by or on behalf of the creditor. The borrower must sign in the space indicated for that purpose in the agreement – for example, a signature box. The creditor does not also need to sign within a box. There are no rules on the positioning of any signature box, provided that this does not undermine other required information or make it less likely to be read.

### **Modifying agreements**

10.14 Regulation 5 applies where an agreement varies or supplements an earlier credit agreement and gives rise to a modifying agreement for the purposes of section 82(2). It does not however apply to distance contracts for non-business purposes.

10.15 Regulation 5(2) provides that where an item of contractual information falling within regulation 3(1) remains unchanged following a modifying agreement, it is sufficient for the creditor to inform the borrower by way of a clear statement that this is the case. The statement must be contained in the document that the borrower signs. The regulation 3 requirements otherwise apply in relation to any item which is varied or supplemented.

### **Pawn agreements**

10.16 Regulation 6 applies in the case of pawn agreements which include a pawn-receipt (rather than this being a separate document). In this case the receipt must contain the following information:

- the nature of the agreement,
- the parties to the agreement, and
- a statement indicating that an article has been taken in pawn and a description of the article.

10.17 The receipt must also include a notice in the form set out in schedule 3 concerning the borrower's right to redeem articles and the consequences if an article is not redeemed.

### **Statutory forms**

10.18 Regulation 7 requires that the wording of the specified forms in schedules 2 and 3 must be reproduced without alteration, except to the extent permitted.

### **Overdrafts**

10.19 The rules regarding contractual information for authorised overdraft facilities are described in chapter 17.

### **Information to be included in credit agreements**

10.20 Schedule 1 sets out the information that must be contained in a regulated agreement. The following sections highlight the key points of the respective requirements.

#### *Nature of the agreement*

10.21 Where none of the headings provided for in paragraph 1(1) of schedule 1 is applicable, in addition to inserting a heading "Credit Agreement regulated by the Consumer Credit Act 1974", the creditor is also required to provide a description of the type of credit.

### *Parties to the agreement*

10.22 The agreement must contain details of any credit intermediary involved, where relevant. However, there may be situations where the creditor is unaware of the involvement of a credit intermediary and cannot therefore reasonably be expected to include details. This may be particularly so where the activities of the credit intermediary fall within new section 160A(2)(a) of the CCA rather than 160A(2)(b) or (c) (see chapter 18). “Where relevant” should be regarded in this light

### *Provision of the credit*

10.23 Paragraph 8 of schedule 1 requires a statement indicating how and when the credit is to be drawn down under the agreement.

### *Rate of interest*

10.24 Paragraph 11 requires the agreement to indicate the rate of interest applicable. The requirement is not just about setting out the applicable rate or rates. The creditor is also required in each case to give information on any conditions that may affect the application of the rate, the period during which the rate will apply, the circumstances which allow the rate to be changed and the procedure for such a change.

10.25 Regulation 1(5) makes clear that a rate of interest must be expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down. This applies even if the period of the agreement is less than one year. Where the agreement provides for compounding, the effective annual interest rate should be shown and creditors should use the same assumptions to calculate the interest rate as they do for the APR (i.e. the assumptions set out in the schedule to the TCC Regulations). The rate may be rounded to one or more decimal places (although there are no permitted tolerances unlike the APR). If there is more than one interest rate (e.g. purchases, cash advances, balance transfers) each rate must be shown, on an annual basis, although other rates (e.g. monthly or daily) may be shown in addition. If a rate applies for only a limited period, the duration of the period and the go-to rate, if known, should be shown.

### *Total amount payable*

10.26 Paragraph 12 requires the agreement to specify how much the borrower must pay in total under the agreement. This is the sum of the total amount of credit and the TCC, plus any advance payment. In the case of a running-account agreement, where the credit limit is not known by the creditor at the time the agreement is made, the amount of credit should be assumed to be £1,200, unless it is known that the credit limit will be less than £1,200 in which case the maximum amount the creditor is likely to lend should be used (based on the creditor’s reasonable expectations of the likely maximum, where necessary).

## *Repayments*

10.27 Paragraph 14 requires the creditor to specify the number and frequency of repayments to be made by the consumer under the agreement. It is recognised that information on the number of repayments can only be given where applicable and that for some types of agreements, e.g. credit card agreements, it will not be possible to provide this information. There is no requirement for the lender to provide information on the date when repayment is due, although the creditor can include this as optional information.

## *Statement of account*

10.28 Paragraph 16 relates to the new right under section 77B to request a statement for certain fixed-sum agreements (sometimes referred to as an amortisation statement or table).

## *Statement where no credit reduction*

10.29 Paragraph 17 applies where the agreement provides that payments of interest and charges do not result in a reduction of the total amount owed. Where this is the case, the agreement must include a statement indicating the periods and conditions for the payment of interest and charges.

10.30 Paragraph 17A applies where a repayment does not reduce the amount of credit owed but is used to constitute capital under another part of the agreement or a separate agreement (e.g. an endowment type loan). Where this is the case, the agreement must include a statement that the repayments will not pay off the credit and that the borrower must repay any capital advanced at the end of the agreement (unless the agreement provides a guarantee that this will not be necessary).

## *Charges*

10.31 Paragraph 18(1) applies where the agreement requires the borrower to set up another account (e.g. a current account) in order to access the credit. Where this is the case, any charges connected with this arrangement must be stated. Paragraph 18(2) requires an indication of any charges payable for using a particular payment mechanism (e.g. cheque). Paragraph 18(3) requires an indication of any other charges deriving from the credit agreement (other than late payment charges) and the circumstances in which these may vary. In each case, a description and amount of the charge should be stated. Where necessary, estimated information may be used together with an indication that it is an estimate.

## *Notarial fees*

10.32 Paragraph 21 provides that if the agreement requires the services of a notary, the agreement must state whether any fees will be payable as a result.

### *Right of withdrawal*

10.33 Paragraph 25 requires a statement concerning the new right of withdrawal under section 66A (see chapter 11).

10.34 Paragraph 25A applies where there is no right of withdrawal under section 66A. Here, a statement is required to this effect as well as details of any other right to cancel the agreement that may apply.

### *Linked credit agreements*

10.35 Paragraph 26 is concerned with linked credit agreements to which section 75A applies (because section 75 does not). A statement is required explaining the borrower's rights under this provision (see chapter 13).

### *Early settlement*

10.36 Paragraph 28 requires the creditor to include a statement to the effect that the borrower has the right to repay the credit early in full or partially (the statutory right to repay partially does not apply to agreements secured on land). The statement should also explain what the borrower needs to do to exercise this right and, where applicable, that the creditor may charge compensation and the basis on which this would be calculated. See chapter 14 of this guidance for information on early settlement.

### *Termination by the borrower*

10.37 Paragraph 29 applies to open-end agreements, i.e. those with no fixed duration. It requires a statement setting out the borrower's right to terminate such an agreement under section 98A (see chapter 15).

### *Ombudsman scheme*

10.38 Paragraph 31 requires that all regulated agreements contain a statement explaining that the borrower has the right to take a complaint about the agreement to the FOS. If the agreement is one that has been entered into for business purposes, the statement should explain that this right may (as opposed to will) apply.

### *Supervisory authority*

10.39 Paragraph 33 requires a statement that the OFT is the supervisory authority under the CCA.

## **AMENDMENTS TO THE CCA**

### **Copy of draft agreement**

10.40 New section 55C requires the creditor to provide the borrower, on request, with a copy of the proposed credit agreement<sup>16</sup>. Breach of section 55C is actionable as a breach of statutory duty.

10.41 In the event of such a request, the creditor must provide a copy “without delay”. This is to ensure that the request is acted upon promptly to enable the borrower to decide whether to enter into the agreement.

10.42 The requirement does not apply in situations where the creditor has already decided not to proceed with the agreement.

10.43 The ability to request a copy of the draft agreement does not apply to the following types of agreement:

- an agreement secured on land,
- an agreement under which a person takes an article in pawn,
- an agreement for credit exceeding £60,260, or
- an agreement entered into by the borrower wholly or predominantly for business purposes.

### **Form and content of agreements**

10.44 Section 60(3) of the CCA, under which the OFT may waive or vary the requirements of regulations made under section 60, has been modified<sup>17</sup>. Given the maximum harmonisation nature of the Directive, it will not be possible to waive or vary requirements that implement requirements of the Directive. Therefore, new section 60(5) provides that the section 60(3) provision is only applicable to certain types of agreement, all of which are outside the scope of the Directive:

- an agreement secured on land,
- an agreement under which a person takes an article in pawn,
- an agreement for credit exceeding £60,260,
- an agreement entered into by the borrower wholly or predominantly for business purposes, and
- a consumer hire agreement.

### **Duty to supply copy of executed agreement**

10.45 New section 61A provides that the creditor must give a copy of the executed agreement (and any other document referred to in it) to the borrower

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<sup>16</sup> Regulation 6 of the EU Directive Regulations

<sup>17</sup> Regulation 7 of the EU Directive Regulations

once the agreement has been made<sup>18</sup>. If this is not done, the agreement is not properly executed and cannot be enforced against the borrower without a court order.

10.46 Section 61A does not apply where the creditor has already given the borrower a copy of the unexecuted agreement and this is identical to the executed agreement. In this event, the creditor must inform the borrower in writing that the agreement has become executed (including the date of execution), that it is in identical terms to the copy of the unexecuted agreement already provided and that the borrower is entitled to a copy of the executed agreement if he asks for it before the end of the 14 day right of withdrawal period. If the borrower asks for a copy of the executed agreement during this period, this must be provided without delay. If the creditor delays sending a copy of the executed agreement, this may have the effect of extending the right of withdrawal period.

10.47 The provisions set out in section 61A replace those set out in sections 62 and 63 (concerning the duty to supply copies of the unexecuted and executed agreement) for all types of regulated agreement other than “excluded agreements”. For the purposes of section 61A, an excluded agreement is:

- a cancellable agreement,
- an overdraft agreement to which section 61B applies,
- an agreement secured on land,
- an agreement for credit exceeding £60,260, or
- an agreement entered into by the borrower wholly or predominantly for business purposes.

10.48 In respect of the last three types of agreement, sections 62 and 63 will apply unless the creditor has opted to disclose pre-contractual information in accordance with the Disclosure Regulations, in which case the provisions set out in section 61A will apply<sup>19</sup>.

### **Statements to be provided in relation to fixed-sum agreements**

10.49 New section 77B requires that a creditor must provide the borrower, on request, a statement of account showing details of instalment payments in respect of certain types of agreement<sup>20</sup>. This must be provided free of charge. Breach of section 77B is actionable as a breach of statutory duty.

10.50 Section 77B applies in relation to agreements (other than excluded agreements) which are:

- for fixed-sum credit,

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<sup>18</sup> Regulation 8 of the EU Directive Regulations

<sup>19</sup> Regulations 10 and 11 of the EU Directive Regulations

<sup>20</sup> Regulation 26 of the EU Directive Regulations

- of fixed duration, and
- where the credit is repayable in instalments.

10.51 An excluded agreement for these purposes is:

- an agreement secured on land,
- an agreement under which a person takes an article in pawn,
- an agreement for credit exceeding £60,260, or
- an agreement entered into by the borrower wholly or predominantly for business purposes.

10.52 The borrower may request a section 77B statement at any time during the currency of the agreement unless a previous request was made less than one month before and has been complied with by the creditor.

10.53 This statement must be given “as soon as reasonably practicable” following receipt of a valid request (which may be made orally or in writing). This is in recognition that the statement may not be available instantaneously and may require some preparation; nevertheless it should be done as quickly as possible.

10.54 This statement must include a table showing details of each instalment which is or will become payable under the agreement. This is to make clear that the information contained in the table should be forward-looking and cover future payments owing. It is not intended that the table must cover payments that have already been made, although the creditor can include this as optional information. The table should show any arrears payments that were due but have not been made. An ‘instalment’ for these purposes means any payment to be made under the agreement (including any arrears outstanding) and is not limited to regular instalments of repayment of credit under the agreement.

10.55 The borrower can separately request a statement under section 77, setting out the total sum paid to date, any sum which has become payable but remains unpaid (including the amount and date in each case), and any sum which will become payable (including amounts and dates).

10.56 The statement under section 77 must include the following information:

- the date on which the instalment is due,
- the amount of the instalment,
- any conditions relating to payment of the instalment (e.g. method of payment required), and
- a breakdown of each instalment showing how much of it is made up of capital repayment, interest payment and other charges (this is not limited to charges included in the TCC).

10.57 Where the rate of interest or charges may be varied, the statement must indicate clearly and concisely that the information in the table is valid only until the rate or charges are varied.

## **AMENDMENTS TO THE 1983 AGREEMENTS REGULATIONS**

10.58 Schedule 1 to the 1983 Agreements Regulations has been amended in respect of the new rights of withdrawal and partial early settlement<sup>21</sup>.

10.59 Information concerning the right of withdrawal as set out in paragraph 23A of schedule 1 must be provided in respect of business agreements regulated by the CCA. Information concerning early settlement as set out in paragraph 24A must also be provided in such cases, and in relation to agreements for credit exceeding £60,260.

10.60 A corresponding change is made to schedule 8 in relation to modifying agreements and partial early settlement<sup>22</sup>.

10.61 Schedule 2 has been amended so that the requirement in forms 14-16 to provide an example of the amount the borrower would repay if he exercised his right to early settlement only needs to be provided in relation to agreements secured on land, and to require the provision of information on the right to partial early settlement<sup>23</sup>.

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<sup>21</sup> Regulation 54 of the EU Directive Regulations

<sup>22</sup> Regulation 55 of the EU Directive Regulations

<sup>23</sup> Regulation 56 of the EU Directive Regulations

## **11. RIGHT OF WITHDRAWAL**

11.1 The borrower has a right to withdraw from a credit agreement without giving any reason, within 14 days. He must repay the amount of the credit and any accrued interest. New section 66A of the CCA sets out this new right and how it is to be exercised<sup>24</sup>. The right of withdrawal applies to all regulated consumer credit agreements with the exception of:

- agreements for credit exceeding £60,260,
- agreements secured on land,
- restricted-use credit agreements to finance the purchase of land, and
- agreements for bridging loans in connection with the purchase of land.

11.2 The right of withdrawal under section 66A is a right to withdraw from the credit agreement only. Its purpose is to provide the borrower with an opportunity to change his mind if on reflection he feels that the credit agreement is not right for him. It is not intended to allow the borrower to return goods or cancel services which the credit agreement has been used to purchase. The borrower must pay for the goods or services in some other way (unless there is a separate right of withdrawal from the supply contract).

11.3 Some agreements to which the right of withdrawal applies would previously have been cancellable agreements under section 67 of the CCA. Where the right of withdrawal applies, it replaces any cancellation rights that would previously have arisen under that section. The provisions on cancellable agreements continue to apply to agreements for credit exceeding £60,260 and hire agreements, where these qualify as cancellable agreements. See also below under “Other cancellation rights”.

11.4 The existing right to withdraw from a prospective agreement under section 57 of the CCA is unaffected by the section 66A right of withdrawal. The borrower can therefore withdraw from an agreement before or after it is made.

### **Exercising the right of withdrawal**

11.5 In order to withdraw from a credit agreement, the borrower must give notice to the creditor before the end of the period of 14 days beginning with the day after the “relevant day” (sections 66A(2) and (3) of the CCA, as amended by regulation 8 of the Amendment Regulations).

11.6 The “relevant day” is whichever is the latest of:

- the day on which the agreement is made,

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<sup>24</sup> Regulation 13 of the EU Directive Regulations

- the day on which the creditor first informs the borrower of the credit limit expressed as a sum of money (e.g. where this is notified to the borrower when he or she is sent a credit card after the agreement has been entered into),
- the day on which the borrower receives a copy of the executed agreement or is informed that this is identical to the unexecuted agreement and that he is entitled to a copy of the executed agreement (where section 61A applies), or
- the day on which the borrower receives a copy of the executed agreement (where section 63 applies).

11.7 The borrower does not have to wait until the agreement has been concluded or all of the information has been provided before withdrawing. For example if the borrower signs the agreement and posts it back to the creditor, he or she can withdraw before receiving a copy of the executed agreement. This ensures that there is no gap between the borrower's right to withdraw from a prospective agreement under section 57 and the right to withdraw under section 66A.

11.8 Notice of withdrawal may be given orally or in writing. It must be given using the contact details provided in the credit agreement for the giving of notice. There is no particular format or wording that must be used for the notice. A creditor is not prohibited from suggesting a particular format or wording to borrowers but cannot refuse to accept a notice in a different format or wording.

11.9 If the notice of withdrawal is faxed, e-mailed or sent by other electronic means, it is considered to have been given at the time of transmission. If the notice of withdrawal is posted, it is considered to have been given at the time of posting (so the notice must be despatched before the end of the 14-day period but does not have to be received before then). Oral notice is considered to be received at the time it is given.

11.10 The creditor is free to specify in the agreement that notice should be given to a third party acting on his behalf (e.g. an agent or the retailer in the case of an agreement used to purchase particular goods or services) (section 66A(12)).

11.11 New section 82(6A) of the CCA makes special provisions for modifying agreements.<sup>25</sup>

## **Repaying the money**

11.12 The borrower must repay the credit that has been provided and any interest that has accrued between the credit having been provided and repaid, under section 66A(9)(a). In most cases, the credit will have been provided

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<sup>25</sup> Regulation 15 of the EU Directive Regulations

when the borrower receives the money. However, in other cases the borrower will not receive the money but rather will receive the benefit of it. For example, in the case of a hire-purchase agreement, the credit is provided in the sense that the borrower enters into the agreement to acquire the goods, thereby receiving the benefit of the credit. In the case of a credit card agreement, credit is provided when the borrower uses the card to make a purchase or makes a balance transfer.

11.13 The borrower is not liable to pay any other fees or charges (except any non-returnable charges paid by the creditor to any public administrative body) and the creditor cannot claim any compensation from the borrower (section 66A(9)(b)). If an administration or arrangement fee is due to be paid, the borrower will not have to pay this. If the borrower has already paid such a fee it must be refunded without delay, unless the borrower elects to deduct the fee from the amount he or she is repaying.

11.14 The borrower must repay the credit and any interest that has accrued without undue delay, and in any event no later than 30 days after having given notice (section 66A(10)). The 30 days begin with the day after the day on which notice has been given. If the borrower does not repay the money, it is considered a debt to the creditor and the creditor can seek to recover it. However, failure to repay the credit does not negate the withdrawal or reactivate the agreement.

11.15 The credit agreement must contain the information necessary to enable the borrower to withdraw from the agreement and repay the credit and accrued interest. The information should be clear and concise, and readily comprehensible by the borrower. In particular, the agreement should indicate the amount of interest payable per day (expressed as a sum of money) and how and to whom the money must be paid. The creditor is free to specify in the agreement that the money should be paid to a third party acting on his behalf.

11.16 If the agreement is for running-account credit (typically a credit card), the creditor will not know the amount of interest payable per day as this will depend on how much credit, if any, the borrower draws down. In this case, the creditor must give the borrower this information on request without delay (although he does not have to wait for a request and could provide the information unprompted once he has received notice of withdrawal). The agreement must in any case indicate the rate of interest payable under the agreement and it would be open to the creditor to include a daily rate (in addition to the annual rate) to facilitate calculation of accrued interest.

11.17 It should also be clear from the agreement when interest starts and stops being payable – for example, whether it is payable for the day on which payment is made and whether payment is deemed to be received on that date or when the money actually reaches the creditor. In the latter case, different ways of repaying the credit may affect the time by which the credit is repaid and therefore the interest due (e.g. an electronic payment as opposed to

posting a cheque). The effect of such differences should be made clear in the agreement so that the borrower can work out how much interest to pay.

11.18 If the borrower mis-calculates and pays less than he is required to (for example because he has worked out the number of days' interest incorrectly), the creditor should notify him promptly and indicate the amount of the shortfall so that the borrower can rectify this. If the borrower overpays, the creditor should refund the excess promptly.

11.19 In general, the creditor should put in place procedures for withdrawal and repayment that are clear and simple for the borrower and enable the matter to be concluded as quickly as possible. If the borrower asks the creditor to confirm any details, for example how much he must repay and by when, the creditor should respond promptly.

11.20 The effect of the withdrawal is that the agreement is treated as never having been entered into (section 66A(7)(a)). Once the borrower has withdrawn from the agreement, neither party has any obligations under the agreement, or under statute other than as set out in section 66A. If the borrower does not repay the money, the creditor is entitled to take action to recover the money, recover possession of the goods or enforce any security.

11.21 Section 66A(7)(a) is intended to be binding on the parties to the agreement rather than more generally. CRAs could have regard to section 66A(7)(a) and treat agreements where the borrower has exercised the right of withdrawal as never having existed, removing the agreement from their database. However, they could also record the agreement as having been repaid. The important thing is that the consumer should not be disadvantaged in any way by having withdrawn from and repaid a credit agreement.

### **Ancillary service contracts**

11.22 If the borrower has a contract for an ancillary service relating to the provision of credit under the agreement with the creditor or a third party on behalf of the creditor, this ancillary contract falls away when the borrower withdraws from the credit agreement and is also treated as never having been entered into (section 66A(7)(b)).

11.23 Typically this may be PPI or other insurance related to the credit agreement. However, an ancillary service contract is not the contract for the supply of the goods or services that the credit is used to finance, or anything that would be considered ancillary to that supply contract, such as a warranty or servicing agreement or insurance on the product.

11.24 Where the creditor has arranged for a third party to provide the ancillary service rather than providing it himself, the creditor must notify the third party without delay that the borrower has withdrawn from the credit

## **Hire-purchase, conditional sale and credit-sale agreements**

11.25 Section 66A(11) makes specific provision regarding hire-purchase, conditional sale and credit-sale agreements. This makes it clear that once the borrower has repaid any credit and interest that is due to be repaid under section 66A(9)(a), title to the goods passes to the borrower. In the case of a hire-purchase, conditional sale or credit-sale agreement, a single agreement typically covers both the credit and the supply of the goods. Because the agreement no longer exists once the borrower has withdrawn from it, there could otherwise have been doubt about whether title had passed to the borrower even though he or she had paid the money as required by section 66A(9)(a).

11.26 In particular for a hire-purchase agreement, title to the goods normally passes when the option to purchase fee is paid at the end of the agreement. However, under section 66A(9), the borrower is only liable to pay the credit provided (the purchase price of the goods) and the interest accrued. The borrower is not liable to pay an option to purchase fee. Therefore, section 66A(11) provides a legislative trigger for passage of title to replace the option to purchase fee where the full purchase price has been paid (either in cash or by means of an alternative credit agreement).

11.27 Section 66A(11) provides that title will pass to the borrower on the same terms as would have applied had the borrower not withdrawn from the agreement. This is to ensure that any terms relating to the supply of goods that would have applied when the borrower got title to the goods under the original agreement will continue to apply even though the borrower has withdrawn from the credit agreement and title now passes under statute. The borrower will not, therefore, lose the benefit of any consumer protections that would have applied under other legislation relating to the sale and supply of goods. As indicated above the borrower is only liable to repay the credit provided and accrued interest and section 66A(9) makes clear that the borrower is not liable to pay any compensation, fees or charges, which would include an option to purchase fee.

### **Other cancellation rights**

11.28 Some credit agreements have cancellation rights under the Distance Marketing Regulations or the Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008, SI 2008/1816. Where the borrower has the new right of withdrawal from a credit agreement under section 66A applies, this right will apply instead of the cancellation rights under those regulations. The provisions in section 66A will govern the rights and responsibilities of the borrower in relation to the credit agreement. However, where there is no right to withdraw from the credit agreement under

section 66A, the cancellation rights under those other regulations will continue to apply<sup>26</sup>.

11.29 If the borrower has a right to cancel the supply contract for goods or services, and the credit agreement falls automatically on the exercise of that right, the conditions in those other regulations will govern the termination of the credit agreement. This means that different conditions may apply depending on whether the borrower withdraws from the supply contract with the intention of cancelling the purchase altogether, or withdraws from the credit agreement with the intention of paying for the goods in a different way. However, there will be no circumstances where there are concurrent or overlapping rights to cancel the credit agreement. The creditor may need to confirm the borrower's intention if there is doubt about whether the borrower is intending to withdraw from the credit agreement or whether he is looking to cancel the supply of goods or services.

### **Amendment Regulations**

11.30 Regulation 8 of the Amendment Regulations corrects section 66A so that the "relevant" day is 14 days beginning with the day after the day on which the latest of the things in section 66A(3) occurs. If a creditor complies with the new regime early as described in chapter 3, the amendment does not apply where the "relevant day" falls on or before 26 August 2010, the day the Amendment Regulations come into force.

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<sup>26</sup> Regulations 89 and 94-96 of the EU Directive Regulations amend relevant provisions of the Distance Marketing Regulations and the Cancellation of Contracts Regulations

## **12. INTEREST RATE CHANGES**

12.1 New section 78A of the CCA requires that, in most cases, the creditor must inform the borrower in writing prior to any variation in the rate of interest<sup>27</sup>. This applies to agreements entered into on or after the date the new provision becomes effective, and also to open-end agreements that are already in existence at that date. The effective date is 1 February 2011 unless the creditor chooses to comply earlier.

12.2 Section 78A applies to all regulated consumer credit agreements other than agreements secured on land and unauthorised overdrafts.

12.3 The information that must be given to the borrower concerns:

- the variation in the rate of interest (including the new rate of interest),
- the amount of payments to be made under the agreement (expressed as a sum of money where practicable) where this changes as a result of the variation, and
- details of any change in the number or frequency of payments.

12.4 For some agreements (e.g. running-account credit) it will not be possible to predict the amount of future payments because of the nature of the credit provided. In this situation it will be sufficient for the creditor to inform the borrower that the amount to be repaid may vary as a result of the change in the interest rate depending upon any balance outstanding at the time the change comes into effect. If the amount of the minimum repayment, expressed as a sum of money or a percentage of the balance outstanding, changes as a result of the variation, this should be made clear.

12.5 In certain limited circumstances, advance notification of interest rate changes is not required (section 78A(2)). This applies only if all of the following conditions are satisfied:

- the agreement between the creditor and the borrower provides that the relevant information is to be provided periodically, in writing, at such times as may be provided for in the agreement,
- the agreement provides that the rate of interest can be varied in line with a change to a relevant reference rate,
- details of that reference rate are publicly available,
- information about the reference rate is available on the premises of the creditor (this should include all premises normally used by borrowers and the details should be publicised with reasonable prominence), and

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<sup>27</sup> Regulation 27 of the EU Directive Regulations

- the variation of the rate of interest results from and is in line with a change to the reference rate.

12.6 The legislation does not define the term “reference rate”. This will generally be a rate which is external to the parties (e.g. the Bank of England base rate). However, it could also include a creditor's own reference rate provided it is something clearly identifiable as their standard reference rate and is published as such (and is not merely a device to avoid individual notification of rate changes).

12.7 The legislation also does not define the term “periodically”. It would be open to the parties to agree that particulars of the variation will be included with the next periodic statement under section 77A or 78 if not provided before then.

12.8 Details of the change to the reference rate must be publicly available, in such a way as to bring it to the attention of borrowers. The means for doing so should be appropriate to the nature of the credit. For example, an advertisement in a national newspaper should be reasonably prominent, and the newspaper should be chosen to ensure so far as possible that it is likely to be seen by relevant borrowers. A notice in a branch office should similarly be reasonably prominent and easily legible. A website notice may not be sufficient in the absence of an e-mail link or other notification.

12.9 Regulation 2 of the Consumer Credit (Notice of Variation of Agreements) Regulations 1977, SI 1977/328 (the Variation Regulations) has been amended to provide that there is no longer a requirement to give at least seven days' notice before a variation to a regulated agreement has effect<sup>28</sup>. The requirement is now that notice must be given before the variation takes effect. In the case of changes which are to the borrower's disadvantage, notification should be made in sufficient time to enable the borrower to be aware of the variation and to act upon it if they wish.

12.10 The existing special variation procedure contained in regulation 3 of the Variation Regulations has also been amended (other than in respect of agreements secured on land)<sup>29</sup>. There is no longer a minimum period of time during which such notification must take place. The notification must be made in sufficient time before the variation takes effect to enable the borrower to be aware of the variation and to act upon that information if they wish. In deciding an appropriate notice period, creditors should have regard to the UTCCRs, as well as the standards set out in industry codes of practice such as the Lending Code where applicable.

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<sup>28</sup> Regulation 48 of the EU Directive Regulations

<sup>29</sup> Regulation 49 of the EU Directive Regulations

12.11 There is special provision for overdraft agreements. The requirement to give notice of a variation of any interest rate or charges under the agreement applies only if the rate or charge increases.

12.12 Section 82(1) will no longer apply to variations in interest rates in agreements not secured on land or to excluded overdraft agreements<sup>30</sup>.

12.13 A consequential amendment has been made to the Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983, SI 1983/1557 so that future copies of the agreement that the creditor provides to the borrower will reflect variations made under section 78A, as is currently the case under section 82<sup>31</sup>.

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<sup>30</sup> Regulation 28 of the EU Directive Regulations

<sup>31</sup> Regulation 18 of the Amendment Regulations

## **13. LINKED CREDIT AGREEMENTS**

13.1 New section 75A<sup>32</sup> supplements section 75 of the CCA and applies in certain situations where section 75 does not apply.

13.2 Borrowers should look first at section 75 to see whether it applies. Any borrower who would previously have had a claim under section 75 will continue to have a claim under section 75.

13.3 Section 75A applies only if section 75 does not apply, and only if all of the following conditions are satisfied:

- the cash price of the goods or services is more than £30,000,
- the amount of the credit agreement used to purchase the goods or services is £60,260 or less,
- the goods or services are purchased under a “linked credit agreement” (defined in section 75A(5)), where the credit exclusively finances a contract for the supply of specific goods or services and where:
  - the creditor uses the supplier in connection with the preparation or making of the credit agreement, or
  - the goods or services are explicitly specified in the credit agreement,
- there has been a breach of contract (e.g. the goods or services are not supplied, are supplied only in part or are not in conformity with the contract for supply), and
- the borrower is unable to obtain satisfaction from the supplier.

13.4 Section 75A does not apply where credit has been provided for general purposes rather than for the purchase of specific goods or services, and so will not typically apply to credit cards (although section 75 may do). Nor does it apply to agreements secured on land or agreements entered into predominantly for business purposes.

13.5 The definition of “linked credit agreement” envisages a close connection between the creditor and supplier in relation to the particular credit agreement. Given this, and the fact that section 75A covers higher value purchases, it is expected that the arrangements between the creditor and supplier would include provision for dealing with breach of contract complaints made by borrowers.

13.6 If section 75A does apply, the borrower must pursue the supplier first before bringing a claim against the creditor. Unlike section 75, the borrower cannot choose to pursue the creditor instead of (or as well as) the supplier.

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<sup>32</sup> Regulation 25 of the EU Directive Regulations

13.7 Under section 75A(2), the borrower can pursue the creditor if any of the following conditions is met:

- the supplier cannot be traced,
- the borrower has contacted the supplier but the supplier has not responded,
- the supplier is insolvent, or
- the borrower has taken reasonable steps to pursue his claim against the supplier but has not obtained satisfaction for his claim (this need not include the borrower taking legal action).

13.8 Section 75A(4) provides that the borrower is considered to have obtained satisfaction where he has accepted a replacement product or service or other compensation from the supplier in settlement of his claim.

13.9 Whether or not the borrower has taken reasonable steps to pursue his claim will depend on the circumstances of each situation and the conduct of both the borrower and the supplier. The borrower should consider whether the supplier has an internal complaints procedure that he may follow. If this fails to resolve the problem within a reasonable period, the borrower can approach the creditor under section 75A. He or she may choose instead to contact the FOS or a relevant trade body but is not obliged to do so. Nor is the borrower obliged to pursue litigation against the supplier.

13.10 The borrower may consider taking independent legal advice or consulting a relevant advisory body (such as a local Citizen's Advice Bureau) before deciding what steps to take. In all cases, it will be advisable for the borrower to keep records of what he has done to seek redress from the supplier, the dates of any contact and any response received from the supplier.

## **14. EARLY SETTLEMENT**

14.1 Regulation 30 of the EU Directive Regulations amends section 94 of the CCA to give borrowers the right to make partial early repayments of a credit agreement (there is already a right to repay a credit agreement in full). One or more partial early repayment may be made at any time during the life of the credit agreement. This new right applies to all types of credit agreement regulated by the CCA with the exception of agreements secured on land.

14.2 The right to repay early in part is described as “partial early settlement”, although the credit agreement is not being settled by the payment and part of it will remain to be paid off.

14.3 The provisions on partial early settlement are largely the same as those for full early settlement and the framework operates in much the same way.

### **AMENDMENTS TO THE CCA**

#### **Partial early settlement**

14.4 The borrower’s right to settle early in part is set out in section 94(3). The borrower is entitled to discharge part of his indebtedness at any time by taking the steps set out in section 94(4). Having done so, his indebtedness is reduced by an amount equal to the sum of the amount paid and any rebate allowable under section 95, less any compensation which the creditor may claim under section 95A (see below).

14.5 The borrower must give notice to the creditor of his intention to repay early in part. It is important that the creditor knows whether the payment is intended to be a partial early settlement rather than say an advance payment because the borrower is going on holiday.

14.6 Notice can be given before or at the same time as a partial early settlement is made. However, the payment must be made no later than 28 days after the notice is received by the creditor (or any later date specified by the borrower in the notice), or notice will have to be given again (section 94(4)(c)).

14.7 Notice can be given orally or in writing, and there is no format or wording that must be followed. The borrower should say whatever is necessary to make his or her intentions clear. If the creditor is in any doubt as to the borrower’s intentions, he should check with the borrower to clarify. A creditor is not prohibited from suggesting a particular format or wording to borrowers but cannot refuse to accept a notice in a different format or wording.

14.8 If the borrower has missed payments under the agreement and is in arrears, any payment will be used first to pay off the arrears and any interest accrued. If this is the case the “early settlement” under section 94(4)(b) is considered to be the amount paid before it is contractually due (the amount paid by the borrower less any arrears and accrued interest) rather than the whole of the payment.

14.9 Section 95 has been amended so that regulations may provide for a rebate in the case of partial early settlement as well as full early settlement. See below under “Further information” and in Appendix A for detailed guidance on this.

14.10 New section 97A<sup>33</sup> gives the borrower who has made a partial early settlement the right to request information from the creditor about the effect of that partial early settlement, either at the time of making the payment or subsequently. The request only has to be fulfilled once payment has been made. The creditor does not have to meet any request for information about the effect of an intended or possible partial early settlement. However, there is nothing to prevent the creditor from responding to such a request on a non-statutory basis, for example if a borrower wants to make a partial early settlement that is sufficient to reduce the duration of the loan or the amount of the instalment payments to a particular extent.

14.11 The information must be provided within 7 working days after the creditor has received the request, provided that payment has been received.

14.12 Section 97A(2) sets out the information the creditor must provide. This is much the same information as must be provided now in response to a request for a settlement statement for full early settlement under section 97 and includes the amount of any rebate or compensation and the amount of the borrower’s remaining indebtedness at the date of the statement. The information must be provided in writing but does not have to be in any particular format.

14.13 There is no specific penalty for failure to comply with section 97A, although this could lead to enforcement action under Part 8 of the Enterprise Act 2002 and could reflect adversely on fitness to hold a credit licence.

14.14 A partial early settlement reduces the amount outstanding on the loan. Therefore, either the duration of the agreement will be reduced or the amount of the instalment payments will be reduced or a combination of the two. The legislation does not mandate any particular outcome. The creditor may stipulate a particular outcome in the agreement or may agree this with the borrower at the time of early settlement.

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<sup>33</sup> Regulation 34 of the EU Directive Regulations.

14.15 The provisions on modifying agreements in section 82 have been amended to make it less burdensome for creditors to agree a particular outcome with the borrower<sup>34</sup>. Section 82(2) does not apply if the modifying agreement varies the amount of the repayments or the duration of the agreement as a result of partial early settlement. In such cases, the modifying agreement is not treated as having the effect of remaking the agreement on the old terms with the modifications. Therefore, the requirements on pre-contractual information and adequate explanations would not apply to the change.

14.16 An amendment has also been made to section 120 in respect of partial early settlement of a pawn broking agreement<sup>35</sup>. If the amount borrowed falls below £75 as a result of partial early settlement, the provisions in the CCA on the consequences of failure to redeem the pawn will apply as if the amount of the credit was still above £75.

### **Compensation payable under section 95A – full and partial early settlement**

14.17 Under new section 95A<sup>36</sup>, creditors are allowed to claim compensation in certain circumstances for costs incurred as a result of full or partial early settlement. This is subject to certain specific conditions and to an overarching obligation that the compensation must be fair and objectively justified.

14.18 Compensation can only be claimed if the early settlement is made during a period for which the credit agreement provides for the rate of interest on the credit to be fixed. It cannot be claimed where the agreement allows for the rate to be varied by the creditor. If there is an initial fixed-rate period, compensation can be claimed only if early settlement occurs during that period.

14.19 Compensation can only be claimed if the creditor has incurred a cost as a direct result of the early settlement being made at that particular time. In other words, the cost must be directly linked to the early settlement happening at that time rather than at a different time or rather than resulting indirectly from it. The creditor would need to be able to demonstrate this if challenged.

14.20 If the creditor has incurred a cost but that cost would have been incurred regardless of when the early settlement was made, he cannot claim compensation for it. For example, the creditor cannot claim compensation under section 95A for the administrative cost of processing the early settlement as this cost would have been incurred regardless of when the early settlement was made. However, the creditor could claim compensation if interest rates at the time of early settlement were lower than the rate in the agreement and the creditor had to re-lend or invest the money at a lower rate.

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<sup>34</sup> Regulation 29 of the EU Directive Regulations

<sup>35</sup> Regulation 35 of the EU Directive Regulations

<sup>36</sup> Regulation 32 of the EU Directive Regulations

14.21 In addition, compensation may be claimed only where the following conditions are met:

- The amount of a single early settlement exceeds £8,000, or the total of early settlements in any 12 month period exceeds £8,000. In the latter case, compensation can only be claimed when the "trigger point" of £8,000 has been passed. It can be claimed on the whole of the payment that passes the trigger point and any subsequent payments within the period, but not on payments made before the trigger point has been reached. So, if the borrower makes a single repayment of £9,000, the section 95A compensation can be claimed on the whole amount. If the borrower makes multiple repayments of 4 x £2,000 and 1 x £1,000 (in that order), compensation can only be claimed on the £1,000. If the borrower makes multiple repayments of 3 x £3,000, compensation can be claimed on the third payment (because that is the one that activates the trigger).
- The early settlement is not made to repay an overdraft on a current account.
- The early settlement is not made under a PPI policy, whether provided by the creditor or by a third party. This means a policy designed to meet repayments on a specific debt or debts more generally (e.g. in the event of loss of income through illness or unemployment) rather than a policy designed to provide a lump sum to be used as the policy holder sees fit.

14.22 Under section 95A(3), the compensation must be fair and objectively justified. This is an over-arching obligation, which goes beyond merely satisfying the above conditions. The creditor will need to ensure that he can demonstrate, if challenged, that the compensation is fair and objectively justified in the particular circumstances.

14.23 Finally, the amount of the compensation claimed cannot exceed certain limits set in sections 95A(3)(c) and 95A(4). If the agreement has more than a year to run after the early settlement is made, the amount of the compensation must not exceed 1% of the amount repaid early. If the agreement has a year or less to run, the compensation must not exceed 0.5% of the amount repaid early.

14.24 The creditor must include information in both the PCI and the agreement itself about his right to claim this compensation and the way in which it will be determined.

14.25 Section 95A applies only where the borrower gives notice of early settlement on or after 1 February 2011 and where the agreement has been entered into on or after 11 June 2010.

## **Full early settlement only**

14.26 New section 94(6)<sup>37</sup> provides that notice of full early settlement no longer has to be given in writing (unless the agreement is secured on land). It can also be given orally, by telephone or in person.

14.27 Section 97(1)<sup>38</sup> has been amended so that the borrower's request for a settlement statement no longer has to be in writing (unless the agreement is secured on land). It can be given orally, by telephone or in person.

## **THE EARLY SETTLEMENT REGULATIONS 2004**

### **Amendments**

14.28 A number of amendments have been made to The Consumer Credit (Early Settlement) Regulations 2004, SI 2004/1483 (ESR 2004 as amended), largely to provide for partial early settlement, by regulations 79-83 of the EU Directive Regulations.

14.29 In regulation 1, the term "the relevant date" is now defined in the ESR 2004; the definition is unchanged. Regulation 1(3) has been deleted so that creditors are no longer required to use the time periods set out in the 1980 TCC Regulations for calculating the rebate. They may continue to do so if they choose, or they may prefer to use the time periods used in the new APR calculation under the TCC Regulations. The term "Total Charge for Credit Regulations" now means the TCC Regulations rather than the 1980 TCC Regulations (except in relation to agreements secured on land for which the creditor has not chosen to apply the Disclosure Regs).

14.30 Regulation 2 regarding the borrower's entitlement to a rebate has been redrafted to provide in regulation 2(1A)(b) for a rebate in the event of a partial early settlement made under section 94(3). The effect is unchanged as far as full early settlement is concerned.

14.31 Paragraphs (a) and (d) of regulation 3 have been amended so that only the portion of these items that relates to the period before the settlement date can be excluded from the calculation of the rebate.

14.32 Regulation 4(2) has been amended so that it now refers to "any repayment of credit not made at a time or a rate provided for in the agreement (other than one made under section 94(3) of the Act)". This allows creditors, when calculating the rebate, to treat missed payments and late payments (but not partial early settlements) as having been made at the times provided for in the agreement if they choose. The previous formulation only allowed creditors

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<sup>37</sup> Regulation 30 of the EU Directive Regulations.

<sup>38</sup> Regulation 33 of the EU Directive Regulations.

to do this for late payments. Alternatively the creditor may use the real payment schedule that the consumer has kept to with regard to any late or missed payments. This may well increase the sum the consumer owes as interest may have accrued on late or missed payments. Any charges due in the case of late or missed payments would be in addition to this.

14.33 Regulation 4(3) and the Schedule have been deleted but example calculations for full early settlement can be found in Appendix A of the guidance.

14.34 A new regulation 4A sets out a formula (F-K-P) for calculating a rebate following partial early settlement. The features of the rebate calculation for partial early settlement are the same as those for full early settlement (albeit that there are more steps in the calculation) – the legislation provides for a formula, a 28 day settlement date and the possibility of a 30 day deferral in certain circumstances. Details of how to use the formula and example calculations for partial early settlement can be found at Appendix A of this guidance.

14.35 As with full early settlement, the rebate calculation for partial early settlement is intended to provide a baseline or minimum. Creditors are free to use a different method of calculation for full and partial early settlement as long as it gives a rebate at least as generous to the borrower as that calculated using the rebate formulae in the ESR 2004 as amended.

14.36 Regulation 5 on the settlement date for the calculation of the rebate has been amended to make provision for partial early settlement. Regulation 5(1) applies only to full early settlement and a new regulation 5(2) has been added for partial early settlement, which mirrors regulation 5(1)(a) for full early settlement (sub-paragraphs (b) and (c) not being considered relevant for partial early settlement).

## **Further information**

14.37 This section includes additional guidance on aspects of the ESR 2004 as amended. Some of this has been reproduced and updated from the “Guidance Notes on the Consumer Credit (Early Settlement) Regulations 2004” published in May 2005, for ease of reference.

### *Payments due in periods after early settlement requests*

14.38 Consumers will owe any payments due in the 28 days following receipt of an early settlement request. Account must be taken of that when the early settlement figure is worked out. If the formula is applied on the assumption that they have paid these amounts, at the due dates, then the amounts must be paid, on those dates, in addition to the sum the formula calculates as owing. If the formula is applied on the assumption that they have not been paid then the amounts will be factored into the sum the formula calculates as owing and the formula would then apply interest from the date the instalment

was due until the settlement date and hence increase the amount outstanding slightly. This may arise, for example, if the creditor and debtor agree to a deferral of payment of instalments due during the period up to the settlement date. Of course, any delayed payments will need to be totalled and added to the early settlement figure upon final payment. This is largely an issue for full early settlement since the agreement continues in force after partial early settlement and payments would continue to be made.

#### *Date of actual early settlement payment*

14.39 Under regulations 5(1)(a) and 5(2), which apply where the consumer has written in requesting to settle early in full or giving notice of partial early settlement, the settlement date becomes 28 days after receipt of the request or notice if the consumer pays no later than that date. Regulations 5(1)(a) and 5(2) permit the consumer to specify a later date in the request as the date of early settlement. This then overrides the usual 28-day period, and does not require the creditor's agreement. Regulation 6 in turn permits the creditor to defer the settlement date for the purpose of calculating the rebate by 30 days/one month if the terms of the loan is over one year (although the actual payment date would remain the same).

14.40 If the consumer wishes to pay before the settlement date provided for in regulations 5(1)(a) or 5(2) then he can but the creditor need give him no special concessions. The consumer is merely providing free working capital to the creditor. If the consumer makes a partial early settlement later than 28 days after notice was received, he or she must give notice again to trigger the rebate calculation.

#### *Breach of contract charges*

14.41 Creditors may have levied charges under the agreement due to breaches of the terms by the consumer. For full early settlement, these would probably be easiest sorted by a separate charge at the point of early settlement. For partial early settlement, any charge would have to be factored into the rebate calculation (as part of K).

#### *Other fees and charges*

14.42 Sometimes consumers request that charges such as arrangement fees are added to the amount borrowed. This means that they become part of the advance of the loan and are treated as such in the formula. The interest due in respect of such charges will be part of the amount subject to a rebate on early settlement. If the charges are part of the TCC, they will be brought into account both as part of the advance and – by virtue of the TCC Regulations – in calculating the APR.

### *Balloon payments and option to purchase fees*

14.43 If an amount is part of the TCC and is not excluded from the rebate calculation under regulation 3(2) of the ESR 2004 as amended, it has to be included in the rebate calculation. For a loan with a large final balloon payment or an option to purchase fee, the principle is the same for partial early settlement as for full early settlement. If that final balloon payment or option to purchase fee would be included in the rebate calculation for full early settlement, then it must be included for partial early settlement.

14.44 Where a payment would normally be made at the end of the agreement, that payment can effectively be "ring fenced" so that any partial early settlement pays off the rest of the loan first. If the consumer gets to the point where he or she has paid off the rest of the loan except for a final balloon payment, he or she cannot then make a partial early settlement of the final balloon payment because that would mean that the consumer was paying less than the amount of the final payment set out in the agreement.

### *Compensation under section 95A*

14.45 Under section 95A, creditors can claim compensation for costs incurred only as a result of early repayment during a period for which the interest rate is fixed, subject to certain criteria (see above). For the purposes of calculating K in the rebate formula for partial early settlement, the partial early settlement must be treated as though it were reduced by the amount of any compensation claimed under section 95A (see K(ii) in regulation 4A of the ESR 2004 as amended)<sup>39</sup>. For full early settlement, the amount of any compensation claimed under section 95A should be added to the outstanding amount the consumer has to repay.

### *Variable rate agreements*

14.46 Regulation 7 of the ESR 2004 as amended provides that for the calculation of the rebate, the interest rate is "in respect of any period of time commencing on or after the settlement date, the rate ..... subsisting at that date". In other words, any variation occurring on or after the settlement date should be disregarded in determining the amount payable on early settlement. It is implicit in this (backed up by the reference in regulation 3 to calculating the rebate by reference to all sums paid) that creditors should also take account of variations occurring *prior* to the settlement date. So when calculating the rebate, the APR (r in the formula in regulation 4(1) of the ESR 2004 as amended) should be recalculated to reflect any changes in interest rates.

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<sup>39</sup> Regulation 82 of the EU Directive Regulations

### *Related purchases financed by the credit*

14.47 Often PPI or Guaranteed Asset Protection (GAP) will be additional products purchased by the consumer and financed under the agreement. If the PPI and GAP is so financed, the charges on that part of the loan will also be subject to a rebate on full early settlement.

14.48 There are issues here relating to section 18 of the CCA (multiple agreements). If the PPI or GAP is part of an overall loan, then it should be covered by the early settlement rebate calculation. If it is regarded as a separate agreement, then it should be clear to the consumer that he has the option of settling both, and will be entitled to a rebate calculation on both.

14.49 Whether the PPI or GAP is financed by credit or not, there is a separate issue of whether the policy can be wound up and any refund provided by the insurance company in the event of full early settlement. This would be down to the terms and conditions of the policy (subject to the UTCCRs).

## **CHANGES TO THE SETTLEMENT INFORMATION REGULATIONS 1983**

14.50 The Consumer Credit (Settlement Information) Regulations 1983, SI 1983/1564 have been amended so that information on any compensation the creditor intends to claim under section 95A of the CCA must be included in the settlement statement for full early settlement. Also, paragraphs 7(b) and (c) of the schedule have been omitted so that the settlement statement no longer has to say that information and advice can be obtained from the OFT, Local Authority Trading Standards Services or a Citizens Advice Bureau.

## **15. TERMINATION OF AGREEMENTS**

15.1 New section 98A deals with the termination of open-end agreements and the termination or suspension of the right to draw down under such agreements<sup>40</sup>. It applies to agreements that are in existence or that are entered into on 1 February 2011 (unless the creditor chooses to comply earlier). Section 98A applies to all regulated consumer credit agreements other than agreements secured on land and overdraft agreements.

### **Termination of the agreement**

15.2 Under section 98A(1), the borrower is entitled to terminate an open-end agreement free of charge at any time by providing notice of his intention to the creditor. The credit agreement may require that a period of notice is given by the borrower but that period cannot exceed one month. It is also open to the creditor to require that the notice should be given in writing. If the creditor does not stipulate in the agreement that notice is to be given in writing, the borrower may give notice orally by any means.

15.3 Under section 98A(3), the borrower must be notified in writing before an open-end agreement can be terminated by the creditor. In addition, the termination cannot take effect until after a period of two months (or any longer period agreed between the parties) has expired, beginning with the day after the day the notice of termination is served by the creditor.

### **Termination or suspension of the right to draw down**

15.4 Under section 98A(4), there are limits on the creditor's right to terminate or suspend the borrower's right to draw down credit under an open-end agreement. This could involve a temporary suspension of the ability to draw down, or something more permanent pending full termination of the agreement. However, declining a transaction because it would exceed the credit limit would not amount to "temporary suspension" for these purposes as the borrower would still be entitled to draw down on the facility (if they repay part of the existing balance first or draw down a smaller amount which is within the agreed credit limit).

15.5 Termination or suspension of the right to draw on credit is subject to the following conditions:

- the creditor must serve a notice in writing on the borrower before the termination or suspension, or if that is not practicable, immediately afterwards,
- the creditor must give reasons for the termination or suspension, and
- those reasons must be objectively justified.

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<sup>40</sup> Regulations 38 and 39 of the EU Directive Regulations

15.6 The legislation does not give an exhaustive list of objectively justified reasons, but makes clear that examples could include where the borrower makes an unauthorised or fraudulent use of the credit, or permits another person to do so, or where there is a significantly increased risk that the borrower will be unable to fulfil their obligation to repay the credit borrowed.

15.7 Other reasons may also be objectively justified depending on the circumstances. Such reasons could include, for example, the occurrence of any event entitling the creditor to terminate the agreement (if provided for under the agreement), or any requirements of law that would require termination or suspension, or any of the matters referred to below.

15.8 There are a limited number of situations where it is recognised that it would not be appropriate to give notice to the borrower, either before or after the termination or suspension. This would be the case where the giving of such information is prohibited by any EU obligation, or where it would (or would be likely to) prejudice the prevention or detection of crime, the apprehension or prosecution of offenders or the administration of justice. For example, if a borrower was suspected of being involved in terrorism or fraudulent behaviour, informing him that his credit line was being, or had been, frozen and the reasons for this might alert him to the fact that he was under suspicion or constitute ‘tipping off’ under anti-money laundering legislation. However, in all cases the creditor must only act on the basis of objectively justifiable reasons.

15.9 The new provision does not affect any right of the creditor or the borrower to terminate an agreement for breach of contract.

### **Consequential amendments**

15.10 Section 87 of the CCA (the need for a default notice) has been amended so that this section is disapplied in circumstances where the new provisions concerning the termination or suspension of a credit line would apply<sup>41</sup>.

15.11 The PSRs have also been amended. Regulation 52 of the PSRs lists certain provisions of the CCA that take precedence over the equivalent provisions in the PSRs. The new CCA provisions concerning the termination or suspension of a credit line have been added to that list<sup>42</sup>.

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<sup>41</sup> Regulation 37 of the EU Directive Regulations

<sup>42</sup> Regulation 97 of the EU Directive Regulations

## **16. ASSIGNMENT OF RIGHTS**

16.1 Where any rights of a creditor under a consumer credit agreement (for example the right to be repaid the money) are sold or transferred to a third party, notice of that assignment must be given to the borrower as soon as reasonably possible, except in the circumstances described below. This requirement applies to all regulated consumer credit agreements other than agreements secured on land. This requirement is in new section 82A of the CCA<sup>43</sup>.

16.2 It is the responsibility of the assignee (the creditor acquiring the rights) to ensure that notice is given. However, he does not have to give notice himself, but can agree with the assignor (the creditor assigning the rights) that the assignor will give notice instead, depending on what is more sensible in the circumstances. It is important, however, that notice is given as soon as reasonably possible and in a way that is clearly understandable by the borrower.

16.3 Notice does not have to be given where arrangements for servicing the credit are unchanged as far as the borrower is concerned. For example, if Creditor A sells his rights under a credit agreement to Creditor B but Creditor A still collects the borrower's repayments in the same way and is the only point of contact for the borrower on matters regarding the agreement, notice does not have to be given.

16.4 Where notice has not been given, and arrangements for servicing the credit do subsequently change, the borrower must be informed of the assignment on or before the date that change happens. Again, this must be readily comprehensible to the borrower.

16.5 The definition of "creditor" in section 189 of the CCA applies to this new requirement on assignment of rights. This means that when an assignee purchases debts (or otherwise acquires rights under a credit agreement) it also acquires certain obligations to the borrower including the duty to comply with CCA requirements (such as the rules on statements and notices and other post-contractual information). The assignee becomes the creditor under the agreement. This ensures that essential consumer protections under the CCA cannot be circumvented by assigning the debt to a third party.

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<sup>43</sup> Regulation 36 of the EU Directive Regulations.

## **17. OVERDRAFTS**

17.1 There are a number of changes to the CCA and associated regulations in relation to overdrafts. These apply to :

- overdrafts which have been specifically agreed in advance of overdrawing – i.e. where the amount by which the account holder can overdraw on the current account has been determined in advance (generally called "authorised" overdrafts), and
- the feature of a current account agreement that allows for the possibility of the account holder exceeding the balance in their current account or exceeding an agreed overdraft limit (generally referred to as "unauthorised", "tacit" or "not pre-arranged" overdrafts).

17.2 The former is defined in the implementing regulations as an "*authorised overdraft agreement*" and the latter is described as "*a current account agreement where there is the possibility that the account-holder may be allowed to overdraw on the current account without a pre-arranged overdraft or exceed a pre-arranged overdraft limit*".

17.3 In relation to authorised overdrafts, the regulations distinguish between "*authorised business overdraft agreements*" and "*authorised non-business overdraft agreements*"<sup>44</sup> according to whether the agreement is entered into wholly or predominantly for the purposes of the borrower's business<sup>45</sup>.

17.4 There are lighter touch requirements for authorised overdrafts which are repayable on demand or within three months (probably the case with all UK non-business overdrafts).

17.5 Other authorised non-business overdrafts (which are not repayable on demand or within three months) are treated in the same way as other forms of consumer lending and are not discussed further in this chapter.

17.6 Overdrafts were previously exempt from Part V (entry into credit or hire agreements) of the CCA with the exception of section 56 on antecedent negotiations. This was by virtue of section 74(1)(b). The exemption was however subject to conditions specified in a determination by the OFT, including that certain information be provided to the borrower at the time or before the agreement was concluded. Section 74 is amended so that more of the requirements in Part V will now apply to authorised overdrafts and this is no longer dependent on an OFT determination<sup>46</sup>.

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<sup>44</sup> Regulation 19 of the EU Directive Regulations

<sup>45</sup> The CCA applies only to certain business lending, namely credit up to £25,000 to sole traders, small partnerships and other unincorporated bodies

<sup>46</sup> Regulations 17 and 20 of the EU Directive Regulations

## **Authorised non-business overdrafts repayable on demand or within three months**

17.7 The following provisions of Part V of the CCA apply to authorised non-business overdrafts repayable on demand or within three months:

- section 55 (disclosure of information regulations),
- section 55B (assessment of creditworthiness),
- section 55C (copy of draft agreement),
- section 56 (antecedent negotiations),
- section 60 (regulations on form and content of agreements) and
- section 61B (duty to supply copy of overdraft agreement).

### *Pre-contractual information*

17.8 Regulations 10 and 11 of the Disclosure Regulations (made under section 55 of the CCA) apply to this type of overdraft, unless the agreement is secured on land or for credit exceeding £60,260.

17.9 Regulation 10(3) sets out the information which must be disclosed to the borrower in good time before the agreement is made.

17.10 However, regulation 10(4) provides that the full list of information set out in regulation 10(3) may not have to be given:

- (a) where the agreement is made over the telephone (whether or not it is a distance contract),
- (b) where it is made at the borrower's request using a means of distance communication (other than telephone) which would not enable the provision of the required information before the agreement is made, or
- (c) where the borrower requests the overdraft to be made available with immediate effect.

17.11 In the case of (a), where a distance contract is made by telephone, the information set out in regulation 10(3) must be provided unless the borrower explicitly consents to receive the more limited information set out in regulation 10(5)<sup>47</sup>. In either case the information may be provided orally.

17.12 In the case of a non-distance contract made by telephone (for example where the contract is concluded over the telephone but oral representations were made previously in the borrower's presence), the pre-contractual information can be limited to regulation 10(5)(b) and may be provided orally.

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<sup>47</sup> Regulation 37 of the Amendment Regulations

17.13 In the case covered by (b), a distance contract made using a means of distance communication (other than telephone) which does not enable the provision of information before the agreement is made, there is no requirement to provide pre-contractual information under the Disclosure Regulations. However, the creditor will need to provide a copy of the agreement in accordance with the Agreements Regulations.

17.14 In a case covered by (c), where the borrower requests an immediate overdraft (for example in a bank branch), and (a) and (b) do not apply, the pre-contractual information can be limited to the items specified in regulation 10(8) and can be provided orally.

17.15 Regulation 11 requires the pre-contractual information to be provided in writing except where an agreement is made over the telephone or where the borrower requests an immediate overdraft. It may be provided by means of the ECCI set out in schedule 3 to the Disclosure Regulations, but this is not mandatory. Regulation 11(2) specifies how the ECCI is to be used. If the ECCI is not used, all information must be equally prominent. There are corresponding changes to the Distance Marketing Regulations<sup>48</sup>.

17.16 Where a current account has two or more joint account-holders, and the overdraft is being made by telephone (whether or not at a distance) or with immediate effect, the creditor can comply with the pre-contractual information requirements by disclosing the information only to one account-holder, provided that each account-holder has previously given the creditor their consent to this<sup>49</sup>.

17.17 Section 55 has been amended so that the sanction of unenforceability without a court order where relevant pre-contractual information has not been provided applies to all types of agreement to which the regulations under section 55 apply including overdrafts<sup>50</sup>.

### *Copy of draft agreement*

17.18 New section 55C requires the creditor, if requested, to provide the borrower with a copy of the prospective agreement without delay, unless at the time the request is made the creditor intends to reject the application. This obligation does not apply to overdrafts secured on land or for credit exceeding £60,260. Breach of section 55C is actionable as a breach of statutory duty.

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<sup>48</sup> Regulations 85-88 of the EU Directive Regulations

<sup>49</sup> Regulation 10(9) of the Disclosure Regulations

<sup>50</sup> Regulations 16 and 18 of the EU Directive Regulations

### *Information to be included in the agreement*

17.19 The Agreements Regulations make provision for the information that must be included in the overdraft agreement. Regulations 5 and 8 apply to non-business overdrafts that are repayable on demand or within three months, including those that are secured on land or for credit exceeding £60,260.

17.20 Regulation 8(1) provides that the agreement must be in writing and must contain the specified information. However, regulation 8(1)(g) – the TCC together with the assumptions used to calculate it – does not apply to authorised non-business overdrafts secured on land. Where 8(1)(g) applies, the TCC must be calculated using the same assumptions as would be used to calculate an APR – i.e. that the overdraft limit is drawn down in full and repaid within three months (in the case of an open-end agreement).

17.21 The information must be clear and concise, and must be easily legible and of a colour which is readily distinguishable from the background medium.

### *Duty to supply a copy of the executed agreement*

17.22 New section 61B<sup>51</sup> requires a document containing the terms of the agreement to be given to the borrower. If section 61B is not complied with, the agreement cannot be enforced against the borrower without a court order<sup>52</sup>. Section 61B also makes provision for when that agreement must be provided:

17.23 For authorised non-business overdrafts where the Disclosure Regulations apply (i.e. those that are not secured on land and are not for credit exceeding £60,260):

- where the creditor has, as required by the Disclosure Regulations, provided the borrower with the full pre-contractual information set out in regulation 10(3), the document can be provided after the agreement is made;
- where the creditor is permitted by the Disclosure Regulations to provide the more limited information referred to in regulation 10(3)(c), (e), (f), (h) and (k) or 10(5), the document must be provided immediately after the agreement is made (this covers authorised non-business overdrafts that are made by telephone and those that are requested with immediate effect);
- where the agreement was made at the borrower's request using a means of distance communication (other than telephone) which does not enable the provision of the PCI before the agreement is

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<sup>51</sup> Regulation 9 of the EU Directive Regulations

<sup>52</sup> Section 61B(3) and regulation 12 of the EU Directive Regulations

made, the document must be provided immediately after the agreement is made.

17.24 For authorised non-business overdrafts where the Disclosure Regulations do not apply (i.e. those that are secured on land or are for credit exceeding £60,260), there is no requirement to provide pre-contractual information in accordance with those regulations. The creditor must, however, provide a copy of the contract.

17.25 For these overdrafts, where the agreement is made at the borrower's request using a means of distance communication (other than telephone) which does not enable the provision of PCI before the agreement is made, the document must be provided immediately after the agreement is made. In all other cases, the creditor must choose to do one of the following:

- provide the document before or at the time the agreement is made,
- provide the information set out in regulation 10(3) of the Disclosure Regulations before the agreement is made and provide the document after the agreement is made, or
- provide only the information set out in regulation 10(3)(c), (e), (f), (h) and (k), of the Disclosure Regulations before the agreement is made and provide the document immediately after the agreement is made.

17.26 Where the creditor chooses to do the second or third bullet, the information that is provided before the agreement is made may be provided orally or in writing.

### *Post-contractual information*

17.27 New section 78A requires creditors to give borrowers information on changes to the rate of interest (see chapter 12). It does not apply to overdrafts secured on land. The requirement applies only where the rate increases.

17.28 Section 82 is amended so that the requirement to give notice does not apply to a variation in the rate of interest on a secured overdraft, or a variation in non-interest charges for all types of overdraft, unless the rate or charge increases<sup>53</sup>.

17.29 In addition, the schedule to The Consumer Credit (Running-Account Credit Information) Regulations 1983, SI 1983/1570 is amended in respect of authorised non-business overdrafts<sup>54</sup>. The information provided to the borrower must include the date of the previous statement and the rate of interest and (if the rate changed during the period) when each rate applied.

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<sup>53</sup> Regulation 28 of the EU Directive Regulations

<sup>54</sup> Regulation 63 of the EU Directive Regulations

## **Authorised business overdrafts**

17.30 The following provisions of Part V of the CCA apply to authorised business overdrafts:

- section 55B (assessment of creditworthiness),
- section 56 (antecedent negotiations),
- section 60 (regulations on form and content of agreement, and
- section 61B ((duty to supply copy of overdraft agreement).

### *Pre-contractual information*

17.31 The Disclosure Regulations (which are made under section 55 of the CCA) do not apply to business overdrafts. There is no actual requirement to provide pre-contractual information. However, the creditor will be required to provide a copy of the agreement (see below).

### *Information to be included in the agreement*

17.32 As above, regulations 5 and 8 of the Agreements Regulations apply to all authorised business overdrafts to which the CCA applies, although regulation 8(1)(g) – the TCC, together with the assumptions used to calculate it – does not apply.

17.33 The agreement must be in writing and must contain the specified information. This must be clear and concise, and must be easily legible and of a colour which is readily distinguishable from the background medium.

### *Duty to supply a copy of the executed agreement*

17.34 There is no requirement to provide a draft agreement in accordance with section 55C of the CCA. The creditor must, however, provide a copy of the unexecuted agreement in accordance with section 61B.

17.35 Where the agreement is made at the borrower's request using a means of distance communication (other than telephone) which does not enable the provision of PCI before the agreement is made, the document must be provided immediately after the agreement is made.

17.36 In all other cases, the creditor must choose to do one of the following:

- provide the document before or at the time the agreement is made,
- provide the information set out in regulation 10(3) of the Disclosure Regulations before the agreement is made and provide the document after the agreement is made, or

- provide only the information set out in regulation 10(3)(c), (e), (f), (h) and (k), of the Disclosure Regulations before the agreement is made and provide the document immediately after the agreement is made.

17.37 Where the creditor chooses to do the second or third bullet, the information that is provided before the agreement is made may be provided orally or in writing.

### *Post-contractual information*

17.38 New section 78A requires creditors to give borrowers information on changes to the rate of interest (see chapter 12). It does not apply to overdrafts secured on land. The requirement applies only where the rate increases.

17.39 Section 82 is amended so that the requirement to give notice does not apply to a variation in the rate of interest on a secured overdraft, or a variation in non-interest charges for all types of overdraft, unless the rate or charge increases<sup>55</sup>.

### **Overdrafts which are not pre-arranged**

17.40 Where a current account agreement allows the possibility of the account-holder overdrawing without a pre-arranged overdraft or exceeding a pre-arranged overdraft limit, such overdrawing will give rise to a credit agreement for CCA purposes. This credit agreement continues to be excluded from Part V of the CCA (except section 56) but the exclusion is no longer dependant on an OFT determination.

17.41 New section 74A sets out the information which must be provided where a current account agreement allows the possibility of overdrafts which are not pre-arranged<sup>56</sup>. The current account agreement must include the information specified in section 74A(2), including the rate of interest and any charges applicable to such overdrawing, and the conditions under which these may be varied. Section 74A(3) requires the creditor to notify the specified information to the account-holder at least annually, in writing<sup>57</sup>, except in the case of overdrafts secured on land.

17.42 New section 74B sets out the information which must be given where the account-holder overdraws on a current account without a pre-arranged overdraft, or exceeds a pre-arranged overdraft limit, and the amount of the overdrawing is significant<sup>58</sup>.

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<sup>55</sup> Regulation 28 of the EU Directive Regulations

<sup>56</sup> Regulation 21 of the EU Directive Regulations

<sup>57</sup> Regulation 9 of the Amendment Regulations

<sup>58</sup> Regulation 22 of the EU Directive Regulations

17.43 In such cases, the information must include the amount of the overdraft or excess and the rate of interest and charges payable, including any penalties or interest on charges. It must be given without delay once the period of the significant overdrawn exceeds one month (or three months in the case of overdrafts secured on land) unless the information has already been given during that period. In either case it must be given in writing.

17.44 When the provisions have been triggered and are then triggered again by an increase in the overdrawn, where this increase is significant, it triggers the provision of further overdraft statements.

17.45 Section 74B does not define what should be considered to be "significant" in all circumstances. This may depend on a range of factors including the borrower's financial circumstances. However, it does clarify that the overdrawn will always be considered to be significant if:

- the account-holder is liable to pay a charge for which he would not otherwise be liable,
- the overdrawn is likely to have an adverse effect on the account-holder's ability to receive further credit (whether from the same or a different creditor), including any impact it could have on his credit rating, or
- the amount of the overdrawn otherwise appears significant, having regard to all the circumstances.

17.46 The imposition of a charge for an overdraft that is not pre-arranged will therefore render the overdrawn 'significant' for these purposes, as will any increase in the rate of interest payable. Where there is an increase in overdrawn, even by a small amount, the creditor should take into account the existing overdrawn when deciding whether that new overdrawn is significant (for example, if there will be a further increase in the rate of interest payable or another charge) as this is part of the overall circumstances. Where the new overdrawn is significant, the creditor must provide the information required by section 74B in relation to that overdrawn.

17.47 The information requirement in section 74B will then be triggered one month after the overdrawn which triggered the charge began (or three months in the case of overdrafts secured on land) although, as noted above, the creditor may provide this information at an earlier stage.

17.48 In addition, section 77A (statements to be provided in relation to fixed-sum credit agreements) is amended to clarify that it does not apply to overdrafts which are not pre-arranged<sup>59</sup>.

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<sup>59</sup> Regulation 23 of the EU Directive Regulations

## **18. CREDIT INTERMEDIARIES**

18.1 New section 160A of the CCA imposes requirements on credit intermediaries to disclose information to the borrower and the creditor<sup>60</sup>. It applies to all regulated consumer credit agreements other than agreements secured on land. The requirement to disclose information in advertisements does not apply in respect of business lending. Breach of the requirements is an offence for which the penalty is a fine.

### **Definition of credit intermediary**

18.2 The term “credit intermediary” is defined in section 160A(1). A credit intermediary is someone who carries out certain activities (listed in section 160A(2)) in relation to borrowers in return for a fee or other financial consideration and is not a creditor (creditor includes an agent of the creditor). This may be a fee payable by the borrower, a fee or commission from a third party (e.g. a creditor) or payment in kind.

18.3 The activities in section 160A(2) are:

- (a) recommending or making available prospective credit agreements to borrowers,
- (b) helping borrowers by undertaking other preparatory work in relation to prospective agreements or
- (c) entering into a credit agreements on behalf of creditors.

18.4 The action of recommending or making available prospective credit agreements does not include merely providing information about credit agreements. The activities mentioned must also be carried out by the person for him to be a credit intermediary. Therefore, the display by a person of leaflets advertising the credit agreements of others (e.g credit cards), for example, or the display of advertisements in a newspaper or on a website, would not be considered the carrying out by that person of the activity of recommending or making available prospective credit agreements.

18.5 Co-branding or affinity partners (e.g. charities or special interest groups) that allow their identity to be used to promote credit products e.g. by including advertisements for credit cards banded with their name in the literature sent to members would not be “recommending or making available” credit agreements to particular borrowers. This would also apply in other like situations.

18.6 Most businesses that currently engage in “credit brokerage” as defined in section 145 of the CCA will also be credit intermediaries. However, in some cases a credit intermediary may not also be a credit-broker. For example,

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<sup>60</sup> Regulation 41 of the EU Directive Regulations

someone who provides advice to prospective borrowers or assists them in filling in forms would be a credit intermediary (as long as there was a charge for the service) but this activity alone would not qualify as “credit brokerage” if that person did not introduce prospective borrowers to a creditor or credit-broker.

18.7 The OFT publication “Do You Need A Credit Licence?” provides guidance on credit brokerage and the need for a consumer credit licence<sup>61</sup>.

### **Requirement to disclose extent of independence**

18.8 Under section 160A(3), a credit intermediary must disclose in advertisements and documentation intended for borrowers the extent to which he is acting independently and in particular whether he works exclusively with one or more creditors.

18.9 An intermediary’s independence could be affected by his business arrangement with a creditor (or a credit-broker or intermediary) or by the method of remuneration. An intermediary would not be independent where he is tied in any way to a creditor, works exclusively with one or more creditors, only offers the products of a particular creditor (or creditors) or gives preference to those products (e.g. if he is influenced by differential commission rates, volume overrides or other benefits). He may also not be independent where he does not offer certain products or does not offer them on competitive terms. This might be by agreement with another person, or because of different levels of fee or commission available.

18.10 However, if the intermediary can nevertheless still access a truly representative range of products from the whole market on competitive terms, and is not constrained in this, whether or not by agreement with a creditor, he may be able to describe himself an independent.

18.11 If an intermediary is not genuinely independent, he must disclose to the borrower any limitations on his independence. The disclosure must be included in all relevant advertising and documentation relating to the activities listed in section 160A(2).

18.12 The term “documentation” is not intended to mean every document which the intermediary publishes or produces or has produced for him. It is intended to refer rather to a collection or package of documents. Therefore, if the borrower is given, for example, information on several different credit agreements, a leaflet about the credit intermediary and a compliments slip, the disclosure does not have to be made on every document, but may be made in respect of the group of documents as a whole. The intermediary may therefore decide to print the information on a number of key documents at least one of which will be given to every borrower, or on one particular document that he always gives to borrowers. The important thing is that all

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<sup>61</sup> [http://www.of.gov.uk/advice\\_and\\_resources/small\\_businesses/offering-credit/](http://www.of.gov.uk/advice_and_resources/small_businesses/offering-credit/)

borrowers get at least one document with the disclosure in all cases, and this is reasonably prominent so that the borrower's attention is drawn to it.

18.13 The "documentation" on which the disclosure must be made is that which the credit intermediary produces himself or has produced for him. It is not intended to cover material which the credit intermediary provides on behalf of a creditor and is clearly identifiable as the creditor's document rather than the credit intermediary's (and does not promote the intermediary's services).

18.14 There is no particular format in which the information must be disclosed. This will depend on what is appropriate in the circumstances. However, it should be clear and easily comprehensible. It should also be reasonably prominent and disclosed in such a way that the borrower is likely to see it and take note. In some cases it may be necessary to draw the borrower's attention to the disclosure, particularly if it is provided as part of a group of documents.

### **Requirement to disclose fee payable by borrower**

18.15 Under section 160A(4), the intermediary must disclose to the borrower any fee he is charging the borrower for his services and get the borrower's agreement in writing to pay the fee. This must be done before the borrower enters into a relevant credit agreement.

18.16 The disclosure should include the amount (or likely amount) of the fee, what it covers, and how and when it is payable, so that the borrower is able to give informed consent to pay it. If the borrower is entitled to a refund if the credit agreement is not concluded, this too should be made clear.

### **Requirement to disclose fee to creditor**

18.17 Under section 160A(5), the intermediary must disclose to the creditor any fee charged to the borrower for the intermediary's services, so that the creditor can take it into account when calculating the APR for the credit agreement. Under the TCC Regulations, the APR may not be correct if the intermediary has charged (or will be charging) the borrower a fee for services in relation to the credit agreement and this has not been factored into the APR calculation. It will be up to the parties involved to arrange how and when this disclosure is made.

18.18 Section 160(5) applies only where the APR is to be ascertained by the creditor rather than by the credit intermediary. However, the creditor will want to be able to verify the calculation to ensure that the APR is correct and the agreement is properly executed. If the agreement is not properly executed, it will be unenforceable against the borrower without a court order.

## **19. CREDIT REFERENCE AGENCIES**

19.1 New section 157(A1) of the CCA<sup>62</sup> requires creditors to provide information to borrowers when rejecting applications for credit on the basis of consultation of a CRA database. Failure to do so is an offence for which the penalty is a fine. It applies to all regulated consumer credit agreements other than agreements secured on land.

19.2 When a creditor informs a borrower that he is rejecting an application for credit, and that rejection is based, in whole or part, on information obtained from a CRA, the creditor must tell the borrower that the rejection is based on consultation of a CRA database, and provide particulars of the CRA. The particulars must include at least the name, geographical address and telephone number of the CRA, but the creditor is free to include other relevant information such as an e-mail address.

19.3 The requirement is not intended to change a creditor's normal business practice for notifying borrowers of the result of an application for credit, or the manner or timing of this. But when the creditor informs the borrower that their application has been rejected, and that rejection is based on information obtained from a CRA, he must at the same time provide the required information.

19.4 Consultation of a CRA database may well not be the only basis on which an application for credit has been rejected. Other sources of information may also be relevant in the creditor's decision, for example the creditor's own database and the application form. But when consultation of a CRA database is a basis, however small, for rejecting the application, the required information must be provided.

19.5 The creditor is not required to disclose information in certain circumstances, for example if it would contravene the Data Protection Act 1998, put someone at serious risk of violence or prejudice the prevention or detection of crime. These exceptions are set out in section 157(2A) of the CCA. For the sake of consistency, these exceptions are also being applied to the existing requirement in section 157(1) to disclose on request whether a CRA database has been consulted when considering an application for credit.

19.6 The new requirement applies to creditors irrespective of whether they act themselves or through an agent such as a credit-broker or intermediary. If the creditor is not in direct contact with the borrower, he must ensure that the relevant information is provided on his behalf to the borrower.

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<sup>62</sup> Regulation 40 of the EU Directive Regulations

## **APPENDIX A: WORKED EXAMPLES FOR THE REBATE CALCULATION AND PARTIAL EARLY SETTLEMENT**

This Appendix relates to chapter 14 on early settlement. It includes example calculations for early settlement using the rebate formulae in The Consumer Credit (Early Settlement) Regulations 2004 (SI 2004/1483) as amended by the EU Directive Regulations (the ESR as amended). The regulation numbers referred to in the examples are those in the ESR 2004 as amended.

The worked examples for the rebate calculation for full early settlement are largely unchanged from those attached to the original Guidance Notes on the Consumer Credit (Early Settlement) Regulations 2004, published in May 2005. This exception is Example 3, which has been amended to reflect paragraph 14.46 in chapter 14 of this guidance.

The time periods used in the calculations are those set out in the 1980 TCC Regulations. Creditors have been required to use these for calculating the rebate, by regulation 1(3) of the ESR 2004 as amended by the EU Directive Regulations. However, regulation 1(3) has been deleted and creditors are no longer required to calculate time periods in accordance with the 1980 TCC Regulations. They may continue to do so if they wish or they may prefer to use the time periods they use in the new APR calculation under the TCC Regulations.

## **Full early settlement**

In all cases, the rebate for full early settlement is determined by calculating the difference between the total amount of the repayments of credit that would fall due for repayment after the settlement date if early settlement did not take place and the amount given by the actuarial formula in regulation 4(1) of the ESR 2004 as amended (Formula 1 at the end of this Appendix).

### **Example 1 – medium term, medium value loan**

A loan of £5,000 is repayable by 48 monthly instalments of £134.57, starting one month after 1 March 2010 (the relevant date). The monthly repayments include interest and all other charges included in the total charge for credit. Thus the total amount repayable = £134.57 x 48 = £6,459.36. The total charge for credit = £6,459.36 – £5,000 = £1,459.36.

The debtor gives notice requesting full early settlement to take place immediately after payment of the 12th instalment (i.e. after one year) so that the settlement date is 1 March 2011.

Assuming that no charges are excluded from the calculation of the rebate under regulation 3(2) of the ESR 2004 as amended, the APR on the loan required for the calculation of the rebate is 14.0% per annum.

The instalments are exact numbers of calendar months from the settlement date and the periods are calculated in months, counting each month equal to one-twelfth of a year.

Hence, for the purposes of the calculation in regulation 4(1) of the ESR 2004 as amended (Formula 1 at the end of this Appendix):

$$\begin{aligned}A_1 &= 5,000 \\B_1 &= 134.57 = B_2 = \dots = B_{48} \\r &= 14.0/100 = 0.140 \\m &= 1 \\n &= 12 \\a_1 &= 1 \text{ (working in periods of whole years)} \\b_1 &= 11/12 \\b_2 &= 10/12 \\b_3 &= 9/12 \\&: \\b_{11} &= 1/12 \\b_{12} &= 0/12 = 0\end{aligned}$$

Then the amount owing at the settlement date, immediately after payment of the 12th instalment, is:

$$5,000 \times (1.140)^1 - (134.57 \times 1.140^{(11/12)} + 134.57 \times 1.140^{(10/12)} + \dots + 134.57 \times 1.140^{(1/12)} + 134.57 \times 1.140^{(0/12)})$$

$$= 5,700.00 - (151.74 + 150.10 + 148.47 + 146.85 + 145.26 + 143.68 + 142.12 + 140.58 + 139.05 + 137.54 + 136.05 + 134.57)$$

$$= 5,700.00 - 1,716.01 = \text{£}3,983.99.$$

The rebate in this case would be £860.53. This is calculated by deducting the early settlement figure of £3,983.99 from the total payments outstanding after the date assumed for calculating the rebate which is £4,844.52 (= 36 x £134.57).

If the creditor receives a request from the debtor for early settlement immediately after payment of the 12th instalment and regulation 5(1)(a) applies (making the settlement date 28 days after the debtor's notice is received) then the settlement date will be 29 March 2011.

The periods involved are no longer an exact number of months (or weeks) and have been counted in years and days (or weeks where the periods are an exact number of weeks).

Hence, for the purposes of the calculation in regulation 4(1):

$$A_1 = 5,000$$

$$B_1 = 134.57 = B_2 = \dots = B_{48}$$

$$r = 14.0/100 = 0.140$$

$$m = 1$$

$$n = 12$$

$a_1 = 393$  days = 1 year 28 days (working in periods of years and days, since not a whole number of weeks)

$b_1 = 0$  years 362 days

$b_2 = 0$  years 332 days

$b_3 = 0$  years 301 days = 43 weeks

$b_4 = 0$  years 271 days

$b_5 = 0$  years 240 days

$b_6 = 0$  years 209 days

$b_7 = 0$  years 179 days

$b_8 = 0$  years 148 days

$b_9 = 0$  years 118 days

$b_{10} = 0$  years 87 days

$b_{11} = 0$  years 56 days = 8 weeks

$b_{12} = 0$  years 28 days = 4 weeks

Then the amount owing at the settlement date of 29 March 2011 =

$$5,000 \times (1.140)^{(1+28/365.25)} - (134.57 \times 1.140)^{(362/365.25)} + 134.57 \times 1.140^{(332/365.25)} + 134.57 \times 1.140^{(43/52)} + 134.57 \times 1.140^{(271/365.25)} + 134.57 \times 1.140^{(240/365.25)} + 134.57 \times 1.140^{(209/365.25)} + 134.57 \times 1.140^{(179/365.25)} + 134.57 \times 1.140^{(148/365.25)} + 134.57 \times 1.140^{(118/365.25)} + 134.57 \times 1.140^{(87/365.25)} + 134.57 \times 1.140^{(8/52)} + 134.57 \times 1.140^{(4/52)}$$

$$= 5,757.54 - (153.23 + 151.59 + 149.97 + 148.31 + 146.67 + 145.05 + 143.49 + 141.91 + 140.39 + 138.84 + 137.31 + 135.93)$$

$$= 5,757.54 - 1,732.69 = \text{£}4,024.85.$$

The rebate is calculated by deducting the early settlement figure of £4,024.85 from the total payments outstanding after the date assumed for calculating the rebate which is £4,844.52 (=36 x £134.57), giving a rebate of £819.67.

If the creditor elects to defer the settlement date by a further month under regulation 6, this makes the date for calculating the rebate the 28<sup>th</sup> day after the payment date for the 13<sup>th</sup> instalment (29 April 2011).

Hence, for the purposes of the calculation in regulation 4(1):

$$n = 13$$

$a_1 = 424$  days = 1 year 59 days (working in periods of years and days, since not a whole number of weeks)

$b_1 = 393$  days = 1 year 28 days (working in periods of years and days, since not a whole number of weeks)

$b_2 = 0$  years 363 days

$b_3 = 0$  years 332 days

$b_4 = 0$  years 302 days

$b_5 = 0$  years 271 days

$b_6 = 0$  years 240 days

$b_7 = 0$  years 210 days = 30 weeks

$b_8 = 0$  years 179 days

$b_9 = 0$  years 149 days

$b_{10} = 0$  years 118 days

$b_{11} = 0$  years 87 days

$b_{12} = 0$  years 59 days

$b_{13} = 0$  years 28 days = 4 weeks

Then the loan outstanding as at 29 April 2011, using the calculation in regulation 4(1)

$$= 5,000 \times (1.140)^{(1+59/365.25)} - (134.57 \times 1.140)^{(1+28/365.25)} + 134.57 \times 1.140^{(363/365.25)} + 134.57 \times 1.140^{(332/365.25)} + 134.57 \times 1.140^{(302/365.25)} + 134.57 \times 1.140^{(271/365.25)} + 134.57 \times 1.140^{(240/365.25)} + 134.57 \times 1.140^{(30/52)} + 134.57 \times 1.140^{(179/365.25)} + 134.57 \times 1.140^{(149/365.25)} + 134.57 \times 1.140^{(118/365.25)} + 134.57 \times 1.140^{(87/365.25)} + 134.57 \times 1.140^{(59/365.25)} + 134.57 \times 1.140^{(4/52)}$$

$$= 5,821.93 - (154.96 + 153.29 + 151.59 + 149.97 + 148.31 + 146.67 + 145.14 + 143.49 + 141.96 + 140.39 + 138.84 + 137.45 + 135.93)$$

$$= 5,821.93 - 1,887.99 = \text{£}3,933.94.$$

The above calculation assumes that the borrower will pay on the due date the instalment due between the date of request for early settlement and the settlement date assumed for calculating the rebate (i.e. the 13th repayment of £134.57 due on 1 April 2011). If the borrower does make this payment on 1 April 2011, the rebate would be £776.01 which is calculated by deducting the early settlement figure of £3,933.94 from the total payments outstanding after the date assumed for calculating the rebate which is £4,709.95 (= 35 x £134.57).

If it is agreed that the borrower does not make the payment on 1 April 2011 but defers paying until the settlement date then the period  $b_{13}$  in the above formula will be 0 rather than 28 days and the amount outstanding will be  $5,821.93 - 1,886.63 = £3,935.30$ . In this case, the rebate would be £774.65 which is calculated by deducting the early settlement figure of £3,935.30 from the total payments outstanding after the date assumed for calculating the rebate which is £4,709.95 ( $=35 \times £134.57$ ).

### Example 2 – longer term, high value loan

A loan of £10,000 is repayable by 180 monthly instalments of £139.51 starting one month after 1 January 2006 (the relevant date). The monthly repayments include interest and all charges included in the total charge for credit. Thus total amount repayable =  $£139.51 \times 180 = £25,111.80$ . The total charge for credit =  $£25,111.80 - £10,000 = £15,111.80$ .

Immediately after payment of the 72nd instalment (ie after six years) the creditor receives notice from the borrower requesting early settlement.

Assuming that no charges are excluded from the calculation of the rebate under regulation 3(2), the APR on the loan required for the calculation of the rebate is 16.0% per annum.

The creditor opts to defer the settlement date so that the settlement date for the purposes of calculating the rebate is 28 February 2012 (i.e. 28 days under regulation 5(1)(a) + 30 days under regulation 6 and thus the 58th day after the payment date of the 72nd instalment on 1 January 2012). The periods involved have been counted in years and days (or weeks where the periods are an exact number of weeks).

Hence, for the purposes of the calculation in regulation 4(1):

$$A_1 = 10,000$$

$$B_1 = 139.51 = B_2 = \dots = B_{180}$$

$$r = 16.0/100 = 0.160$$

$$m = 1$$

$$n = 73$$

$$a_1 = 2249 \text{ days} = 6 \text{ year } 58 \text{ days (working in periods of years and days, since period is not a whole number of weeks – NB number of days allows for leap year in 2008)}$$

$$b_1 = 2218 \text{ days} = 6 \text{ years } 27 \text{ days}$$

$$b_2 = 2190 \text{ days} = 5 \text{ years } 364 \text{ days}$$

$$b_3 = 2159 \text{ days} = 5 \text{ years } 333 \text{ days}$$

$$b_4 = 2129 \text{ days} = 5 \text{ years } 303 \text{ days}$$

$$b_5 = 2098 \text{ days} = 5 \text{ years } 272 \text{ days}$$

$$b_6 = 2068 \text{ days} = 5 \text{ years } 242 \text{ days}$$

$$b_7 = 2037 \text{ days} = 5 \text{ years } 211 \text{ days} = 291 \text{ weeks}$$

$$b_8 = 2006 \text{ days} = 5 \text{ years } 180 \text{ days}$$

$$b_9 = 1976 \text{ days} = 5 \text{ years } 150 \text{ days}$$

$$b_{10} = 1945 \text{ days} = 5 \text{ years } 119 \text{ days}$$

$b_{11} = 1915 \text{ days} = 5 \text{ years } 89 \text{ days}$   
 $b_{12} = 1884 \text{ days} = 5 \text{ years } 58 \text{ days}$   
 $b_{13} = 1853 \text{ days} = 5 \text{ years } 27 \text{ days}$   
 $b_{14} = 1825 \text{ days} = 4 \text{ years } 364 \text{ days}$   
 :  
 $b_{72} = 0 \text{ years } 58 \text{ days}$   
 $b_{73} = 0 \text{ years } 27 \text{ days}$

Then the loan outstanding as at 28 February 2012, using the calculation in regulation 4(1) is:

$$\begin{aligned}
 & 10,000 \times (1.160)^{\frac{(6+58/365.25)}{(5+333/365.25)}} - (139.51 \times 1.160)^{\frac{(6+27/365.25)}{(5+303/365.25)}} + 139.51 \times 1.160^{\frac{(5+364/365.25)}{(5+272/365.25)}} + \\
 & 139.51 \times 1.160^{\frac{(5+242/365.25)}{(5+242/365.25)}} + 139.51 \times 1.160^{\frac{(5+291/52)}{(5+303/365.25)}} + 139.51 \times 1.160^{\frac{(5+180/365.25)}{(5+272/365.25)}} + \\
 & 139.51 \times 1.160^{\frac{(5+150/365.25)}{(5+150/365.25)}} + 139.51 \times 1.160^{\frac{(5+119/365.25)}{(5+119/365.25)}} + 139.51 \times 1.160^{\frac{(5+89/365.25)}{(5+89/365.25)}} + \\
 & 139.51 \times 1.160^{\frac{(5+58/365.25)}{(5+58/365.25)}} + 139.51 \times 1.160^{\frac{(5+27/365.25)}{(5+27/365.25)}} + 139.51 \times 1.160^{\frac{(4+364/365.25)}{(4+364/365.25)}} + \dots \\
 & + 139.51 \times 1.160^{\frac{(58/365.25)}{(58/365.25)}} + 139.51 \times 1.160^{\frac{(27/365.25)}{(27/365.25)}}
 \end{aligned}$$

$$\begin{aligned}
 & = 24,945.00 - (343.65 + 339.73 + 335.48 + 331.41 + 327.26 + 323.30 + 320.13 + \\
 & 315.25 + 311.43 + 307.54 + 303.81 + 300.01 + 296.25 + 292.87 + \dots + 142.84 + \\
 & 141.05) \\
 & = 24,945.00 - 16,635.44 = \text{£}8,309.56.
 \end{aligned}$$

The above calculation assumes that the borrower will pay on the due date the instalment due between the date of request for early settlement and the settlement date assumed for calculating the rebate (i.e. the 73rd repayment of £139.51 due on 1 February 2012). If the borrower does make this payment on 1 February 2012, the rebate would be £6,618.01 which is calculated by deducting the early settlement figure of £8,309.56 from the total payments outstanding after the date assumed for calculating the rebate which is £14,927.57 (= 107 x £139.51).

If it is agreed that the borrower does not make the payment on 1 February 2012 but defers paying until the settlement date then the period  $b_{73}$  in the above formula will be 0 rather than 27 days and the amount outstanding will be

$$= 24,945.00 - 16,633.90 = \text{£}8,311.10.$$

(Of course, any delayed payment will need to be added to the early settlement figure upon final payment.)

In this case, the rebate would be £6,616.47 which is calculated by deducting the early settlement figure of £8,311.10 from the total payments outstanding after the date assumed for calculating the rebate which is £14,927.57 (= 107 x £139.51).

### Example 3 – short term, medium value, variable interest loan

A loan of £5,000 is repayable by 24 monthly instalments starting one month after 1 January 2006 (the relevant date). The rate of interest charged on the loan is variable and the instalments paid vary according to the rate of interest charged. At the outset of the loan, the monthly repayments of £229.73 include interest and all other charges included in the total charge for credit. Thus the total amount repayable = £229.73 x 24 = £5,513.52. Total charge for credit = £5,513.52 – £5,000 = £513.52.

Assuming that no charges are excluded from the calculation of the rebate under regulation 3(2), the original APR on the loan is 10.0% per annum (the calculation assumes monthly instalments of £229.73 for the duration of the contract).

Immediately after the payment of the 6th instalment, the interest rate charged increases and the monthly instalments are increased to £232.95.

Immediately after payment of the 12th instalment (ie after one year) the creditor receives notice from the debtor requesting early settlement. Regulation 5(1)(a) applies (making the settlement date 28 days after the debtor's notice is received) so the settlement date will be 29 January 2007. The periods involved have been counted in years and days (or weeks where the periods are an exact number of weeks).

Assuming that no charges are excluded from the calculation of the rebate under regulation 3(2), the APR on the loan required for the calculation of the rebate is 11.12% per annum (it is implicit in regulation 7 that lenders should take account of variations in interest rates occurring prior to the settlement date). The calculation of the new APR assumes monthly instalments of £229.73 for the first six months and £232.95 for the remaining 18 months.

Hence, for the purposes of the calculation in regulation 4(1):

$$A_1 = 5,000$$

$$B_1 = 229.73 = B_2 = \dots = B_6$$

$$B_7 = 232.95 = B_8 = \dots = B_{12}$$

$$r = 11.1/100 = 0.111$$

$$m = 1$$

$$n = 12$$

$$a_1 = 393 \text{ days} = 1 \text{ year } 28 \text{ days (working in periods of years and days, since not a whole number of weeks)}$$

$$b_1 = 0 \text{ years } 362 \text{ days}$$

$$b_2 = 0 \text{ years } 334 \text{ days}$$

$$b_3 = 0 \text{ years } 303 \text{ days}$$

$$b_4 = 0 \text{ years } 273 \text{ days} = 39 \text{ weeks}$$

$$b_5 = 0 \text{ years } 242 \text{ days}$$

$$b_6 = 0 \text{ years } 212 \text{ days}$$

$$b_7 = 0 \text{ years } 181 \text{ days}$$

$$b_8 = 0 \text{ years } 150 \text{ days}$$

- $b_9 = 0$  years 120 days
- $b_{10} = 0$  years 89 days
- $b_{11} = 0$  years 59 days
- $b_{12} = 0$  years 28 days = 4 weeks

Then the loan outstanding as at 29 January 2007, using by the calculation in regulation 4(1), is:

$$\begin{aligned}
 & 5,000 \times (1.111)^{(1+28/365.25)} - (229.73 \times 1.111)^{(362/365.25)} + 229.73 \times 1.111^{(334/365.25)} + \\
 & 229.73 \times 1.111^{(303/365.25)} + 229.73 \times 1.111^{(39/52)} + 229.73 \times 1.111^{(242/365.25)} + 229.73 \times \\
 & 1.111^{(212/365.25)} + 232.95 \times 1.111^{(181/365.25)} + 232.95 \times 1.111^{(150/365.25)} + 232.95 \times \\
 & 1.111^{(120/365.25)} + 232.95 \times 1.111^{(89/365.25)} + 232.95 \times 1.111^{(59/365.25)} + 232.95 \times 1.111^{(4/52)} \\
 & 1.111 + 232.95 \times 1.111 + 232.95 \times 1.111 + 232.95 \times 1.111 + 232.95 \times 1.111
 \end{aligned}$$

$$\begin{aligned}
 & = 5,600.01 - (254.99 + 252.94 + 250.69 + 248.60 + 246.32 + 244.20 + 245.42 + \\
 & 243.24 + 241.15 + 239.00 + 236.94 + 234.84) \\
 & = 5,600.01 - 2,938.33 = \text{£}2,661.68.
 \end{aligned}$$

In this case, the rebate would be £133.72 which is calculated by deducting the early settlement figure of £2,661.68 from the total payments outstanding after the date assumed for calculating the rebate which is £2,795.40 (= 12 x £232.95).

If the creditor elects to defer the settlement date by a month under regulation 6, this makes the settlement date for calculating the rebate 28 February 2007. Then, for the purposes of the calculation in regulation 4(1):

- $n = 13$
- $a_1 = 423$  days = 1 year 58 days (working in periods of years and days, since not a whole number of weeks)
- $b_1 = 392$  days = 56 weeks
- $b_2 = 0$  years 364 days = 52 weeks
- $b_3 = 0$  years 333 days
- $b_4 = 0$  years 303 days
- $b_5 = 0$  years 272 days
- $b_6 = 0$  years 242 days
- $b_7 = 0$  years 211 days
- $b_8 = 0$  years 180 days
- $b_9 = 0$  years 150 days
- $b_{10} = 0$  years 119 days = 17 weeks
- $b_{11} = 0$  years 89 days
- $b_{12} = 0$  years 58 days
- $b_{13} = 0$  years 27 days

Then the loan outstanding as at 28 February 2007, using the calculation in regulation 4(1), is:

$$\begin{aligned}
 & 5,000 \times (1.111)^{\frac{(1+58/365.25)}{(333/365.25)}} - (229.73 \times 1.111)^{\frac{(56/52)}{(303/365.25)}} + 229.73 \times 1.111^{\frac{(52/52)}{(272/365.25)}} + 229.73 \times \\
 & 1.111^{\frac{(242/365.25)}{(242/365.25)}} + 229.73 \times 1.111^{\frac{(211/365.25)}{(211/365.25)}} + 229.73 \times 1.111^{\frac{(180/365.25)}{(180/365.25)}} + 229.73 \times \\
 & 1.111^{\frac{(150/365.25)}{(150/365.25)}} + 232.95 \times 1.111^{\frac{(17/52)}{(17/52)}} + 232.95 \times 1.111^{\frac{(89/365.25)}{(89/365.25)}} + 232.95 \times \\
 & 1.111^{\frac{(58/365.25)}{(58/365.25)}} + 232.95 \times 1.111^{\frac{(27/365.25)}{(27/365.25)}} + 232.95 \times 1.111^{\frac{(27/365.25)}{(27/365.25)}} + 232.95 \times \\
 & 1.111^{\frac{(27/365.25)}{(27/365.25)}} + 232.95 \times 1.111^{\frac{(27/365.25)}{(27/365.25)}}
 \end{aligned}$$

$$= 5,648.63 - (257.31 + 255.23 + 252.87 + 250.69 + 248.46 + 246.32 + 247.55 + 245.35 + 243.24 + 241.11 + 239.00 + 236.88 + 234.77)$$

$$= 5,648.63 - 3,198.78 = \text{£}2,449.85.$$

The above calculation assumes that the borrower will pay on the due date the instalment due between the date of request for early settlement and the settlement date assumed for calculating the rebate (i.e. the repayment of £232.95 due on 1 February 2007). If the borrower does make this payment on 1 February 2007, the rebate would be £112.60 which is calculated by deducting the early settlement figure of £2,449.85 from the total payments outstanding after the date assumed for calculating the rebate which is £2,562.45 (=11 x £232.95).

If it is agreed that the borrower does not make the payment on 1 February 2007 but defers paying until the settlement date then the period  $b_{13}$  in the above formula will be 0 rather than 28 days and the amount outstanding will be

$$= 5,648.63 - 3,196.96 = \text{£}2,451.67.$$

(Of course, any delayed payment will need to be added to the early settlement figure upon final payment.)

In this case, the rebate would be £110.78 which is calculated by deducting the early settlement figure of £2,451.67 from the total payments outstanding after the date assumed for calculating the rebate which is £2,562.45 (= 11 x £232.95).

#### **Example 4 – short term, lower value loan**

A loan of £300 is repayable by 28 weekly instalments of £12.80, starting one week after 1 January 2006 (the relevant date). The weekly repayments include interest and all other charges included in the total charge for credit. Thus the total amount repayable = £12.80 x 28 = £358.40. The total charge for credit = £358.40 – £300 = £58.40.

On 16 May 2006, two days after payment of the 19th instalment, the creditor receives notice from the debtor requesting early settlement.

Assuming that no charges are excluded from the calculation of the rebate under regulation 3(2), the APR on the loan required for the calculation of the rebate is 92.8% per annum.

If regulation 5(1)(a) applies, the settlement date will be 28 days after the debtor's notice is received i.e. on 13 June 2006. Since the period for repayment of credit is not over a period greater than one year, it is not possible for the creditor to opt to defer the settlement date under regulation 6.

The periods involved are not exact number of weeks (or months) and have been counted in years and days (or weeks where the periods are an exact number of weeks). Hence, for the purposes of the calculation in regulation 4(1):

$$A_1 = 300$$

$$B_1 = 12.80 = B_2 = \dots = B_{23}$$

$$r = 92.8/100 = 0.982$$

$$m = 1$$

$$n = 23$$

$$a_1 = 0 \text{ years } 163 \text{ days (working in periods of years and days)}$$

$$b_1 = 0 \text{ years } 156 \text{ days}$$

$$b_2 = 0 \text{ years } 149 \text{ days}$$

$$b_3 = 0 \text{ years } 142 \text{ days}$$

$$b_4 = 0 \text{ years } 135 \text{ days}$$

$$b_5 = 0 \text{ years } 128 \text{ days}$$

$$b_6 = 0 \text{ years } 121 \text{ days}$$

$$b_7 = 0 \text{ years } 114 \text{ days}$$

$$b_8 = 0 \text{ years } 107 \text{ days}$$

$$b_9 = 0 \text{ years } 100 \text{ days}$$

$$b_{10} = 0 \text{ years } 93 \text{ days}$$

$$b_{11} = 0 \text{ years } 86 \text{ days}$$

$$b_{12} = 0 \text{ years } 79 \text{ days}$$

$$b_{13} = 0 \text{ years } 72 \text{ days}$$

$$b_{14} = 0 \text{ years } 65 \text{ days}$$

$$b_{15} = 0 \text{ years } 58 \text{ days}$$

$$b_{16} = 0 \text{ years } 51 \text{ days}$$

$$b_{17} = 0 \text{ years } 44 \text{ days}$$

$$b_{18} = 0 \text{ years } 37 \text{ days}$$

$$b_{19} = 0 \text{ years } 30 \text{ days}$$

$$b_{20} = 0 \text{ years } 23 \text{ days}$$

$$b_{21} = 0 \text{ years } 16 \text{ days}$$

$$b_{22} = 0 \text{ years } 9 \text{ days}$$

$$b_{23} = 0 \text{ years } 2 \text{ days}$$

Then the loan outstanding as at 13 June 2006, using the calculation in regulation 4(1), is:

$$300 \times (1.928)^{\frac{163}{365.25}} - (12.80 \times 1.928)^{\frac{(156/365.25)}{(2/365.25)}} + 12.80 \times 1.928^{\frac{(149/365.25)}{(9/365.25)}} + \dots + 12.80$$

$$= 402.12 - (16.94 + 16.73 + 16.52 + 16.32 + 16.11 + 15.91 + 15.71 + 15.51 + 15.32 + 15.13 + 14.94 + 14.75 + 14.57 + 14.39 + 14.21 + 14.0 + 13.85 + 13.68 + 13.51 + 13.34 + 13.17 + 13.01 + 12.85)$$

$$= 402.12 - 340.50 = \text{£}61.62.$$

The above calculation assumes that the borrower will pay on the due dates the instalments due between the date of request for early settlement and the settlement date assumed for calculating the rebate (i.e. the 20th, 21st, 22nd and 23rd repayments of £12.80 due on 21 May, 28 May, 4 June and 11 June 2006). If the borrower does make these payments as they fall due, the rebate would be £2.38 which is calculated by deducting the early settlement figure of £61.62 from the total payments outstanding after the date assumed for calculating the rebate which is £64.00 (= 5 x £12.80).

If it is agreed that the borrower does not make the repayments after the 19th instalment on the due dates but defers paying until the settlement date then the periods  $b_{20}$ ,  $b_{21}$ ,  $b_{22}$  and  $b_{23}$  in the above calculation will be 0 rather than 23, 16, 9 and 2 days respectively and the amount outstanding will be

$$= 402.12 - 339.33 = \text{£}62.79.6.$$

(Of course, any delayed payment will need to be totalled and added to the early settlement figure upon final payment.)

In this case, the rebate would be £1.21 which is calculated by deducting the early settlement figure of £62.79 from the total payments outstanding after the date assumed for calculating the rebate which is £64.00 (= 5 x £12.80).

### **Example 5 – medium term, medium value loan, with charges**

A loan of £4,000 is repayable by 24 monthly instalments of £200 starting one month after 1 January 2006 (the relevant date). In addition, a set-up fee of £100 is charged on 15 January 2006 (halfway through the first month after the relevant date) and a further charge of £75 is levied at the end of the first month (in addition to the instalment of £200 due at that date). This £75 charge is included in calculating the APR for the loan but the creditor has chosen to exclude this charge under regulation 3(2) for the purposes of calculating the rebate. Thus, the APR for the loan is 25.3% per annum (calculated assuming 24 monthly payments of £200.00 plus the set up fee of £100 payable on 15 January 2006 and the additional charge of £75 payable at the end of the first month).

Thus total amount repayable = £200.00 x 24 + £100 + £75 = £4,975.00. Total charge for credit = £4,975 – £4,000 = £975.00.

Immediately after payment of the 9th instalment, the creditor receives notice from the debtor requesting early settlement.

Assuming that the £75 charges is excluded from the calculation of the rebate under regulation 3(2), the APR on the loan required for the calculation of the rebate is 22.9% per annum (the calculation assumes monthly instalments of £200.00 for 24 months and the set up fee of £100.00 paid on 15 January 2006).

Regulation 5(1)(a) applies (making the settlement date 28 days after the debtor's notice is received) so the settlement date will be 29 October 2006. The periods involved must be counted in years and days (or weeks where the period is an exact number of weeks). Hence, for the purposes of the calculation in regulation 4(1):

$$\begin{aligned}
 A_1 &= 4,000 \\
 B_1 &= 100.00 \\
 B_2 &= 200.00 = B_3 = \dots = B_{24} \\
 r &= 22.9/100 = 0.229 \\
 m &= 1 \\
 n &= 10 \\
 a_1 &= 0 \text{ year } 301 \text{ days (working in periods of years and days)} = 43 \text{ weeks} \\
 b_1 &= 0 \text{ years } 287 \text{ days} = 41 \text{ weeks} \\
 b_2 &= 0 \text{ years } 270 \text{ days} \\
 b_3 &= 0 \text{ years } 242 \text{ days} \\
 b_4 &= 0 \text{ years } 211 \text{ days} \\
 b_5 &= 0 \text{ years } 181 \text{ days} \\
 b_6 &= 0 \text{ years } 150 \text{ days} \\
 b_7 &= 0 \text{ years } 120 \text{ days} \\
 b_8 &= 0 \text{ years } 89 \text{ days} \\
 b_9 &= 0 \text{ years } 58 \text{ days} \\
 b_{10} &= 0 \text{ years } 28 \text{ days} = 4 \text{ weeks}
 \end{aligned}$$

Then the loan outstanding as at 29 October 2006, using the calculation in regulation 4(1), is:

$$\begin{aligned}
 &4,000 \times (1.229)^{\frac{43}{52}} - (100.00 \times 1.229^{\frac{(41)}{52}} + 200.00 \times 1.229^{\frac{(270)}{365.25}} + 200.00 \times \\
 &1.229^{\frac{(242)}{365.25}} + 200.00 \times 1.229^{\frac{(211)}{365.25}} + 200.00 \times 1.229^{\frac{(181)}{365.25}} + 200.00 \times \\
 &1.229^{\frac{(150)}{365.25}} + 200.00 \times 1.229^{\frac{(120)}{365.25}} + 200.00 \times 1.229^{\frac{(89)}{365.25}} + 200.00 \times \\
 &1.229^{\frac{(58)}{365.25}} + 200.00 \times 1.229^{\frac{(4)}{52}})
 \end{aligned}$$

$$= 4,743.65 - (117.65 + 232.93 + 229.28 + 225.30 + 221.52 + 217.67 + 214.02 + 210.31 + 206.66 + 203.20)$$

$$= 4,743.65 - 2,078.54 = \text{£}2,665.11.$$

In this case, the rebate would be £334.89 which is calculated by deducting the early settlement figure of £2,665.11 from the total payments outstanding after the date assumed for calculating the rebate which is £3,000.00 (= 15 x £200.00).

If the creditor elects to defer the settlement date by 30 days under regulation 6, this makes the date for calculating the rebate the 28 November 2006 after the payment date for the 10th instalment.

For the purposes of the calculation in regulation 4(1):

- $n = 11$
- $a_1 = 0$  year 331 days (working in periods of years and days)
- $b_1 = 0$  years 317 days
- $b_2 = 0$  years 300 days
- $b_3 = 0$  years 272 days
- $b_4 = 0$  years 241 days
- $b_5 = 0$  years 211 days
- $b_6 = 0$  years 180 days
- $b_7 = 0$  years 150 days
- $b_8 = 0$  years 119 days = 17 weeks
- $b_9 = 0$  years 88 days
- $b_{10} = 0$  years 58 days
- $b_{11} = 0$  years 27 days

Then the loan outstanding to be repaid on 28 November 2006 using the calculation in regulation 4(1) is:

$$\begin{aligned}
 & 4,000 \times (1.229)^{\frac{331}{365.25}} - (100.00 \times 1.229^{\frac{(317/365.25)}{}} + 200.00 \times 1.229^{\frac{(300/365.25)}{}} + 200.00 \\
 & \times 1.229^{\frac{(272/365.25)}{}} + 200.00 \times 1.229^{\frac{(241/365.25)}{}} + 200.00 \times 1.229^{\frac{(211/365.25)}{}} + 200.00 \times \\
 & 1.229^{\frac{(180/365.25)}{}} + 200.00 \times 1.229^{\frac{(150/365.25)}{}} + 200.00 \times 1.229^{\frac{(17/52)}{}} + 200.00 \times \\
 & 1.229^{\frac{(88/365.25)}{}} + 200.00 \times 1.229^{\frac{(58/365.25)}{}} + 200.00 \times 1.229^{\frac{(27/365.25)}{}}) \\
 & = 4,821.86 - (119.60 + 236.91 + 233.19 + 229.15 + 225.30 + 221.39 + 217.67 + \\
 & 213.95 + 210.19 + 206.66 + 203.07) \\
 & = 4,821.86 - 2,317.08 = \text{£}2,504.78.
 \end{aligned}$$

The above calculation assumes that the borrower will pay on the due date the instalment due between the date of request for early settlement and the settlement date assumed for calculating the rebate (i.e. the repayment of £200.00 due on 1 November 2006). If the borrower does make this payment on 1 November 2006, the rebate would be £295.22 which is calculated by deducting the early settlement figure of £2,504.78 from the total payments outstanding after the date assumed for calculating the rebate which is £2,800.00 (= 14 x £200.00).

If it is agreed that the borrower does not make the payment on 1 November 2006 but defers paying until the settlement date then the period  $b_{11}$  in the above calculation will be 0 rather than 28 days and the amount outstanding will be

$$= 4,821.86 - 2,314.01 = \text{£}2,507.85.$$

(Of course, any delayed payment will need to be added to the early settlement figure on final payment.)

In this case, the rebate would be £292.15 which is calculated by deducting the early settlement figure of £2,507.85 from the total payments outstanding after the date assumed for calculating the rebate which is £2,800.00 (= 14 x £200.00).

## **Partial early settlement**

The method for calculating a rebate for partial early settlement in accordance with the ESR 2004 as amended involves:

- calculating the amount owing at the settlement date using the actuarial formula in regulation 4(1) of the ESR 2004 as amended (Formula 1 at the end of this Appendix) and deducting the amount of the partial early settlement;
- using that figure to calculate the new rescheduled settlements (K); and
- deducting that figure and the amount of the partial early settlement (P) from the amount that would have had to be repaid if early settlement did not take place (F).

Hence the calculation of the rebate in the event of partial early settlement can be expressed as the formula  $F - K - P$  (Formula 2 at the end of this Appendix).

The amount of the rebate depends on how the outstanding amount after partial early settlement is to be repaid following the settlement date. The legislation does not mandate a particular outcome. Two possible approaches are set out in the following examples: the same term with reduced future repayments of credit and a reduced term with the same future repayments of credit. A reduced term will result in a larger rebate than reduced future payments. These examples use Formula 3 at the end of this Appendix. The use of this formula for calculating the rescheduled payments is optional. Creditors may use this formula or, if they already offer partial early settlement on some credit products and have their own method of working out the rescheduled payments, they may continue to use that.

The example calculations below assume that the creditor is not claiming compensation under section 95A of the CCA. If compensation is being claimed under section 95A, for the purpose of calculating K, the partial early settlement made by the consumer should be treated as though it were reduced by the amount of any compensation claimed under section 95A

### **Example 1 - Rebate calculated at date of partial early settlement**

A loan of £5,000 is repayable by 48 monthly instalments of £134.57, starting one month after 1 March 2011 (the relevant date). The monthly repayments include interest and all other charges included in the total charge for credit. Thus the total amount repayable =  $£134.57 \times 48 = £6,459.36$ . The total charge for credit =  $£6,459.36 - £5,000 = £1,459.36$ .

The debtor gives notice and at the same time makes a partial early settlement of £1,000.00 immediately after the 12<sup>th</sup> instalment, on 1 March 2012 (i.e. after one year). In this case, the creditor chooses not to apply a 28 day settlement date under regulation 5(2) but uses the date of payment as the settlement date.

The amount owing at the settlement date of 1 March 2012, before the partial early settlement is made, is £3,983.99, calculated using the formula in regulation 4(1) (Formula 1 at the end of this Appendix) as per Example 1 for full early settlement.  $P = £1,000.00$ , leaving  $£3,983.99 - £1,000.00 = £2,983.99$  as the outstanding amount to be repaid after the partial early settlement.

The amount of the rebate depends on how the outstanding amount after partial early settlement is to be repaid following the settlement date.

*(i) Same term, reduced future repayments of credit*

If the repayment term is kept the same and the reduced future repayments of credit are of equal amount, then the revised future repayment amounts  $E_x$  could be calculated as follows (using the optional Formula 3 for rescheduled payments at the end of this Appendix):

Amount outstanding after partial early settlement = £2,983.99

$$E_1 = E_2 = \dots = E_{36}$$

$$r = 14.0/100 = 0.140$$

$$q = 36$$

$$e_1 = 1/12$$

$$e_2 = 2/12$$

$$e_3 = e/12$$

:

$$e_{35} = 35/12$$

$$e_{36} = 36/12$$

Then the revised settlements after the settlement date would be:

$$2983.99 = E_1/1.140^{(1/12)} + E_2/1.140^{(2/12)} + \dots + E_{35}/1.140^{(35/12)} + E_{36}/1.140^{(36/12)}$$

$$= E_1 \times (0.98914 + 0.97840 + \dots + 0.68238 + 0.67497) \text{ (since } E_1 = E_2 = \dots = E_{36}\text{)}$$

$$= E_1 \times 29.60496$$

$$\text{So } E_1 = 2983.99/29.60496 = £100.79.$$

(In this case, as the payment term remains the same, and all the repayments are to remain equal, this is the same result as multiplying the original repayment by the ratio of the loan outstanding after partial settlement to that outstanding before partial settlement ie the new repayment =  $£134.57 \times 2,983.99/3,983.99 = £100.79$ .)

The rebate in this case would be £216.08. This is calculated using the formula in regulation 4A(2) (Formula 2 at the end of this Appendix), by deducting the partial early settlement of £1,000.00 (P) together with the total payments now outstanding (=  $36 \times £100.79 = £3,628.44 = K$ ) from the total amount of the repayments of credit that would fall due for payment after the settlement date if partial early settlement had not taken place (=  $36 \times £134.57 = £4,844.52 = F$ ).

(ii) *Reduced future term, same repayments of credit*

If repayment amounts are kept the same as before the partial early settlement then the outstanding term will be shortened. In this case the number of future repayments,  $q$ , might be determined such that

$$E_1/1.140^{(1/12)} + E_2/1.140^{(2/12)} + \dots + E_{q-1}/1.140^{((q-1)/12)} + E_q/1.140^{(q/12)} < 2983.99 < E_1/1.140^{(1/12)} + E_2/1.140^{(2/12)} + \dots + E_q/1.140^{(q/12)} + E_{q+1}/1.140^{((q+1)/12)}$$

where  $E_1 = E_2 = \dots = E_q$

$$\text{For } q = 25 \text{ (the number of future repayments), } E_1/1.140^{(1/12)} + E_2/1.140^{(2/12)} + \dots + E_{24}/1.140^{((q-1)/12)} + E_{25}/1.140^{(q/12)} \\ = E_1 \times 21.75898 = 134.57 \times 21.75898 = 2928.11$$

$$\text{For } q = 26 \text{ (the number of future repayments), } E_1/1.140^{(1/12)} + E_2/1.140^{(2/12)} + \dots + E_{25}/1.140^{((q-1)/12)} + E_{26}/1.140^{(q/12)} \\ = E_1 \times 22.51182 = 134.57 \times 22.51182 = 3029.42$$

Hence, in this case there would be 25 future payments of £134.57, leaving a remaining payment of £2,983.99 – £2,928.11 = £55.88 if paid at the date of settlement. If the outstanding amount is paid at a later date then the amount would be increased with interest at 14% per annum. Thus if paid as a final repayment after 26 months, the payment would be £55.68 x 1.140<sup>(26/12)</sup> = £74.23.

If a payment of £74.23 is made as the 26th repayment, the rebate will be £406.04. This is calculated using the formula in regulation 4A(2) (Formula 2 at the end of this Appendix), by deducting the partial early settlement figure of £1,000.00 (P) together with the total payments now outstanding (= 25 x £134.57 + £74.23 = £3,438.48 = K) from the total payments outstanding after the settlement date had partial settlement not taken place (= 36 x £134.57 = £4,844.52 = F).

**Example 2 - Rebate calculated at 28 days under regulation 5(2)**

A loan of £5,000 is repayable by 48 monthly instalments of £134.57, starting one month after 1 March 2011 (the relevant date). The monthly repayments include interest and all other charges included in the total charge for credit. Thus the total amount repayable = £134.57 x 48 = £6,459.36. The total charge for credit = £6,459.36 – £5,000 = £1,459.36.

The debtor gives notice and at the same time makes a partial early settlement of £1,000.00 immediately after the 12<sup>th</sup> instalment, on 1 March 2012 (i.e. after one year). If the creditor chooses to apply a 28 day settlement date under regulation 5(2), making the settlement date 28 days after the consumer's notice is received, then the settlement date will be 29 March 2012 (the early settlement may be applied to the consumer's account at any time before this but the amount of the rebate is calculated at 28 days after notice is received). The periods involved are no longer an exact number of months (or weeks) and have been counted in years and days (or weeks where the periods are an exact number of weeks).

The amount owing at the settlement date of 29 March 2012, before partial early settlement is made, is £4,024.85, calculated using the formula in regulation 4(1) of the (Formula 1 at the end of this Appendix), as per Example 1 for full early settlement. P

= £1,000.00, leaving £4,024.85 -£1,000.00 = £3,024.85 as the outstanding amount to be repaid after the partial early settlement.

Again, the amount of the rebate depends on how the outstanding amount after partial early settlement is to be repaid following the settlement date.

*(i) Same term, reduced future repayments of credit*

If the repayment term is kept the same and the reduced future repayments of credit are of equal amount, then the revised future repayment amounts  $E_x$  could be calculated as follows (using the optional Formula 3 for rescheduled payments at the end of this Appendix):

Amount outstanding after partial early settlement = 3,024.85

$$E_1 = E_2 = \dots = E_{36}$$

$$r = 14.0/100 = 0.140$$

$$q = 36$$

$$e_1 = 0 \text{ years } 3 \text{ days}$$

$$e_2 = 0 \text{ years } 33 \text{ days}$$

$$e_3 = 0 \text{ years } 64 \text{ days}$$

:

$$e_{12} = 338 \text{ days (NB number of days here and subsequently allows for leap year in 2012)}$$

$$e_{13} = 369 \text{ days} = 1 \text{ year } 3 \text{ days (working in periods of years and days, since period is not a whole number of weeks; in this case the leap year affects the number of days but not the number of years and days)}$$

$$e_{14} = 399 \text{ days} = 57 \text{ weeks}$$

:

$$e_{34} = 1009 \text{ days} = 2 \text{ year } 278 \text{ days}$$

$$e_{35} = 1040 \text{ days} = 2 \text{ year } 309 \text{ days}$$

$$e_{36} = 1068 \text{ days} = 2 \text{ year } 337 \text{ days}$$

Then the revised repayments after the settlement date would be:

$$3024.85 = E_1/1.140^{(3/365.25)} + E_2/1.140^{(33/365.25)} + E_3/1.140^{(64/365.25)} + \dots \\ + E_{12}/1.140^{(338/365.25)} + E_{13}/1.140^{(1+3/365.25)} + E_{14}/1.140^{(57/52)} + \dots \\ + E_{34}/1.140^{(2+278/365.25)} + E_{35}/1.140^{(2+309/365.25)} + E_{36}/1.140^{(2+337/365.25)}$$

$$= E_1 \times (0.99892 + 0.98823 + 0.97730 + \dots + 0.88581 + 0.87625 + 0.86621 + \dots + 0.69643 + 0.68873 + 0.68185) \text{ (since } E_1 = E_2 = \dots = E_{36})$$

$$= E_1 \times 29.89121$$

$$\text{So } E_1 = 3,024.85/29.89121 = \text{£}101.20.$$

(In this case, as the payment term remains the same, and all the repayments are to remain equal, this is broadly the same result as multiplying the original repayment by the ratio of the loan outstanding after partial settlement to that outstanding before partial settlement ie new repayment = £134.57 x 3024.85/4024.85 = £101.14. The difference is due to calculating the time periods in a different way.)

The rebate in this case would be £201.32. This is calculated using the formula in regulation 4A(2) (Formula 2 at the end of this Appendix), by deducting the partial early settlement figure of £1,000.00 (P) together with the total payments now outstanding (= 36 x £101.20 = £3,643.20 = K) from the amount of repayments of credit that would fall due for payment after the settlement date had partial early settlement not taken place (= 36 x £134.57 = £4,844.52 = F).

*(ii) Reduced future term, same repayments of credit*

If repayment amounts are kept the same as before the partial early settlement then the outstanding term will be shortened. In this case the number of future repayments, q, needs to be determined such that

$$E_1/1.140^{(3/365.25)} + E_2/1.140^{(33/365.25)} + E_3/1.140^{(64/365.25)} + \dots + E_{q-1}/1.140^{((q-1)/365.25)} + E_q/1.140^{(q/365.25)}$$

$$< 3024.85 < E_1/1.140^{(3/365.25)} + E_2/1.140^{(33/365.25)} + E_3/1.140^{(64/365.25)} + \dots + E_q/1.140^{(q/365.25)} + E_{q+1}/1.140^{((q+1)/365.25)}$$

where  $E_1 = E_2 = \dots = E_q$

and in this case the time periods involved are counted in years and days (or weeks where the periods are an exact number of weeks).

$$\text{For } q = 25, E_1/1.140^{(3/365.25)} + E_2/1.140^{(33/365.25)} + \dots + E_{25}/1.140^{(2+3/365.25)} \\ = E_1 \times 21.96960 = 134.57 \times 21.96960 = 2956.45$$

$$\text{For } q = 26, E_1/1.140^{(3/365.25)} + E_2/1.140^{(33/365.25)} + \dots + E_{25}/1.140^{(2+3/365.25)} + E_{26}/1.140^{(2+33/365.25)} \\ = E_1 \times 22.73001 = 134.57 \times 22.73001 = 3058.78.$$

Hence, in this case there would be 25 future payments of £134.57 leaving a remaining payment of £3,024.85 – £2,956.45 = £68.40 if paid at the date of settlement. If the outstanding amount is paid at a later date then the amount would be increased with interest at 14% per annum. Thus if paid as a final 26th future repayment one month after the 25th future repayment of £134.57, the payment would be £68.40 x 1.140<sup>(2+33/365.25)</sup> = £89.95.

If a payment of £89.95 is made as the 26th repayment, the rebate will be £390.32. This is calculated using the formula in regulation 4A(2) (Formula 2 at the end of this Appendix), by deducting the partial early settlement figure of £1,000.00 (P) together with the total payments now outstanding (= 25 x £134.57 + £89.95 = £3,454.20 = K) from the total payments outstanding after the settlement date had partial settlement not taken place (= 36 x £134.57 = £4,844.52 = F).

**Example 3 - Rebate calculated at 28 days and deferred by a month under regulation 6**

A loan of £5,000 is repayable by 48 monthly instalments of £134.57, starting one month after 1 March 2011 (the relevant date). The monthly repayments include interest and all other charges included in the total charge for credit. Thus the total amount repayable = £134.57 x 48 = £6,459.36. The total charge for credit = £6,459.36 – £5,000 = £1,459.36.

The debtor gives notice and at the same time makes a partial early settlement of £1,000.00 immediately after the 12<sup>th</sup> instalment, on 1 March 2012 (i.e. after one year). If the creditor elects to defer the 28 day settlement date by a further month for the calculation of the rebate under regulation 6, the settlement date for calculating the rebate is 29 April 2012. The periods involved are no longer an exact number of months (or weeks) and have been counted in years and days (or weeks where the periods are an exact number of weeks).

The amount owing at the settlement date of 29 April 2012, before the partial early settlement is made (assuming payment of the 13<sup>th</sup> instalment on 1 April 2012), is £3,933.94, calculated using the formula in regulation 4(1) (Formula 1 at the end of this Appendix) as per Example 1 for full early settlement.  $P = £1,000.00$  leaving  $£3,933.94 - £1,000.00 = £2,933.94$  as the outstanding amount to be repaid.

Again, the amount of the rebate depends on how the outstanding amount after partial early settlement is to be repaid following the settlement date.

*(i) Same term, reduced future repayments of credit*

If the repayment term is to be kept the same and the reduced future repayments of credit are of equal amount, then the revised future repayment amounts  $E_x$  could be calculated as follows:

Amount outstanding at the settlement date = 2,933.94

$$E_1 = E_2 = \dots = E_{36}$$

$$r = 14.0/100 = 0.140$$

$$q = 35$$

$$e_1 = 0 \text{ years } 2 \text{ days}$$

$$e_2 = 0 \text{ years } 33 \text{ days}$$

$$e_3 = 0 \text{ years } 63 \text{ days} = 9 \text{ weeks}$$

:

$$e_{11} = 307 \text{ days (NB number of days here and subsequently allows for leap year in 2012)}$$

$$e_{12} = 338 \text{ days}$$

$$e_{13} = 368 \text{ days} = 1 \text{ year } 2 \text{ days (working in periods of years and days, since period is not a whole number of weeks; in this case the leap year affects the number of days but not the number of years and days)}$$

:

$$e_{33} = 978 \text{ days} = 2 \text{ years } 247 \text{ days}$$

$$e_{34} = 1009 \text{ days} = 2 \text{ years } 278 \text{ days}$$

$$e_{35} = 1037 \text{ days} = 2 \text{ years } 306 \text{ days}$$

Then the revised repayments after the settlement date calculated would be:

$$2933.94 = E_1/1.140^{(2/365.25)} + E_2/1.140^{(33/365.25)} + E_3/1.140^{(9/52)} + \dots + E_{11}/1.140^{(307/365.25)} + E_{12}/1.140^{(338/365.25)} + E_{13}/1.140^{(1+2/365.25)} + \dots + E_{33}/1.140^{(2+247/365.25)} + E_{34}/1.140^{(2+278/52)} + E_{35}/1.140^{(2+306/365.25)}$$

$$= E_1 \times (0.99928 + 0.98823 + 0.97758 + \dots + 0.89572 + 0.88581 + 0.87656 + \dots + 0.70422 + 0.69643 + 0.68947) \text{ (since } E_1 = E_2 = \dots = E_{35})$$

$$= E_1 \times 29.21456$$

$$\text{So } E_1 = 2,933.94/29.21456 = \text{£}100.43.$$

(In this case, as the payment term remains the same, and all the repayments are to remain equal, this is broadly the same result as multiplying the original repayment by the ratio of the loan outstanding after partial settlement to that outstanding before partial settlement ie new repayment =  $\text{£}134.57 \times 2933.94/3933.94 = \text{£}100.36$ . The difference is due to calculating time periods in a different way under the 1980 TCC Regulations.)

The rebate in this case would be  $\text{£}194.90$ . This is calculated using the formula in regulation 4A(2) (Formula 2 at the end of this Appendix), by deducting the partial early settlement figure of  $\text{£}1,000.00$  (P) together with the total payments now outstanding ( $= 35 \times \text{£}100.43 = \text{£}3,515.05 = K$ ) from the total payments outstanding after the settlement date had partial early settlement not taken place ( $= 35 \times \text{£}134.57 = \text{£}4,709.95 = F$ ).

(ii) *Reduced future term, same repayments of credit*

If the repayment amounts are kept the same as before the partial early settlement then the outstanding term will be shortened. In this case the number of future repayment, q, needs to be determined such that

$$E_1/1.140^{(2/365.25)} + E_2/1.140^{(33/365.25)} + E_3/1.140^{(9/52)} + \dots + E_{q-1}/1.140^{((q-1)/365.25)} + E_q/1.140^{(q/365.25)} < 2933.94 < E_1/1.140^{(2/365.25)} + E_2/1.140^{(33/365.25)} + E_3/1.140^{(9/52)} + \dots + E_q/1.140^{(q/365.25)} + E_{q+1}/1.140^{((q+1)/365.25)}$$

where  $E_1 = E_2 = \dots = E_q$

and in this case the time periods involved are counted in years and days (or weeks where the periods are an exact number of weeks).

$$\text{For } q = 24, E_1/1.140^{(2/365.25)} + E_2/1.140^{(33/365.25)} + \dots + E_{24}/1.140^{(1+337/365.25)} = E_1 \times 21.20435 = 134.57 \times 21.20435 = 2853.47$$

$$\text{For } q = 25, E_1/1.140^{(3/365.25)} + E_2/1.140^{(33/365.25)} + \dots + E_{24}/1.140^{(1+337/365.25)} + E_{25}/1.140^{(2+2/365.25)} = E_1 \times 21.97327 = 134.57 \times 21.97327 = 2956.94.$$

Hence, in this case there would be 24 future payments of  $\text{£}134.57$  leaving a remaining payment of  $\text{£}2,933.94 - \text{£}2,853.47 = \text{£}80.47$  if paid at the date of settlement. If the outstanding amount is paid at a later date then the amount would be increased with interest at 14% per annum. Thus if paid as a final 25<sup>th</sup> future repayment one month after the 24th future repayment of  $\text{£}134.57$ , the payment would be  $\text{£}80.47 \times 1.140^{(2+2/365.25)} = \text{£}104.65$ .

If a payment of  $\text{£}104.65$  is made as the 25th repayment, the rebate will be  $\text{£}375.62$ . This is calculated using the formula in regulation 4A(2) (Formula 2 at the end of this Appendix), by deducting the partial early settlement figure of  $\text{£}1,000.00$  (P) together with the total payments now outstanding ( $= 24 \times \text{£}134.57 + \text{£}104.65 = \text{£}3334.33 = K$ )

from the total payments outstanding after the settlement date had partial early settlement not taken place ( $= 35 \times £134.57 = £4709.95 = F$ ).

**Example 4 - Missed payment (account in arrears) – rebate calculated at date of payment**

A loan of £5,000 is repayable by 48 monthly instalments of £134.57, starting one month after 1 March 2011 (the relevant date). The monthly repayments include interest and all other charges included in the total charge for credit. Thus the total amount repayable =  $£134.57 \times 48 = £6,459.36$ . The total charge for credit =  $£6,459.36 - £5,000 = £1,459.36$ .

If there are missing payments which have not been paid by the time a partial early settlement is made, the amount paid as a partial early settlement may be reduced by the amount of any arrears and accrued interest.

For example, the borrower failed to make the eighth payment of £134.57 due on 1 November 2011. He makes a partial early settlement of £1,000.00 immediately after the 12<sup>th</sup> instalment, on 1 March 2012. The amount owing at this date, before the partial early settlement is made, is calculated using the formula in regulation 4(1) as per Example 1 for full early settlement. It is calculated assuming all missed payments were paid on the due date and is therefore £3,983.99. The value of the missing payment plus interest is  $134.57 \times 1.140^{(4/12)} = £140.58$ . The amount put towards the partial early settlement (P) is  $£1,000.00 - £140.58 = £859.42$ . The starting amount used to calculate the new term or new repayments is  $£3,983.99 - £859.42 = £3,124.57$ .

If the borrower has asked for the repayment term to be kept the same and the reduced future repayments of credit to be of equal amount, then the revised future repayment amounts  $E_x$  could be calculated as follows (using the optional formula for rescheduled payments):

Amount outstanding after partial early settlement = £3,124.57

$$E_1 = E_2 = \dots = E_{36}$$

$$r = 14.0/100 = 0.140$$

$$q = 36$$

$$e_1 = 1/12$$

$$e_2 = 2/12$$

$$e_3 = e/12$$

:

$$e_{35} = 35/12$$

$$e_{36} = 36/12$$

Then the revised repayments after the settlement date would be:

$$2983.99 = E_1/1.140^{(1/12)} + E_2/1.140^{(2/12)} + \dots + E_{35}/1.140^{(35/12)} + E_{36}/1.140^{(36/12)}$$

$$= E_1 \times (0.98914 + 0.97840 + \dots + 0.68238 + 0.67497) \text{ (since } E_1 = E_2 = \dots = E_{36}\text{)}$$

$$= E_1 \times 29.60496$$

So  $E_1 = 3124.57/29.60496 = \text{£}105.54$ .

The rebate in this case would be  $\text{£}185.66$ . This is calculated using the formula in regulation 4A(2) (Formula 2 at the end of this Appendix), by deducting the partial early settlement of  $\text{£}859.42$  (P) together with the total payments now outstanding ( $= 36 \times \text{£}105.54 = \text{£}3,799.44 = K$ ) from the total amount of the repayments of credit that would fall due for payment after the settlement date if partial early settlement had not taken place ( $= 36 \times \text{£}134.57 = \text{£}4,844.52 = F$ ).

### 1) Rebate formula for full early settlement (regulation 4(1))

$$\sum_{i=1}^m A_i (1+r)^{a_i} - \sum_{j=1}^n B_j (1+r)^{b_j}$$

where:

$A_i$  = the amount of  $i$ th advance of credit

$B_j$  = the amount of the  $j$ th repayment of credit

$r$  = the annual rate equivalent of the APR/100 (ie if rate of interest is 12%,  $r = 0.12$ )

$m$  = the number of advances of credit made before the settlement date

$n$  = the number of repayments of credit made before the settlement date

$a_i$  = the time between the  $i$ th advance of credit and the settlement date expressed in years and days, or whole weeks or months, as appropriate, and

$b_j$  = the time between the  $j$ th repayment of credit and the settlement date expressed in years and days, or whole weeks or months, as appropriate

Settlement date = up to 28 days plus one month (or 30 days) from date of notification of early settlement, depending on the particular circumstances.

### 2) Rebate formula for partial early settlement (regulation 4A)

$$F - K - P$$

where:

F = the total amount of repayments of credit that would fall due for payment after the settlement date if early settlement did not take place,

K = the total amount of repayments of credit that will fall due for payment after the settlement date if early settlement takes place; in calculating K—

- (i) the amount of the credit outstanding from the debtor and the amount of the accrued charges remaining unpaid by the debtor under the agreement on the settlement date if early settlement did take place is to be determined in accordance with the formula given in regulation 4(1); and
- (ii) the amount paid by the debtor to the creditor where early settlement takes place shall be treated as though it were reduced by the amount (if any) which the creditor may claim under section 95A(1) of the Act,

and

P = the amount paid by the debtor to the creditor where early settlement takes place.

### 3) Optional formula for calculating rescheduled payments

$$S - P = \sum_{x=1}^q E_x (1+r)^{e_x}$$

where:

S = amount that remains to be paid calculated at the settlement date (the figure given by the first formula)

P = amount of the partial early settlement

q = the number of loan instalment repayments to be made after the settlement date

$E_x$  = the amount of  $x$ th repayment of credit after the settlement date

$r$  = the annual rate equivalent of the APR/100 (ie if rate of interest is 12%,  $r = 0.12$ )

$e_x$  = the time from the settlement date to payment of the  $x$ th repayment, (if following the 1980 TCC Regulations these would be expressed in years and days, or whole weeks or months, as appropriate).

