

CONSUMER CREDIT (DESIGNATION) INSTRUMENT 2013

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of its powers under article 63 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013.

Interpretation

- B. In this instrument:

- (1) “the Act” means the Financial Services and Markets Act 2000;
- (2) “the 1980 Regulations” means the Consumer Credit (Total Charge for Credit) Regulations 1980 (SI 1980/51);
- (3) “the 1989 Order” means the Consumer Credit (Exempt Agreements) Order 1989 (SI 1989/869);
- (4) “the 2001 Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544)
- (5) “the 2007 Order” means the Consumer Credit (Exempt Agreements) Order 2007 (SI 2007/1168);
- (6) “the 2010 Regulations” means the Consumer Credit (Total Charge for Credit) Regulations 2010 (SI 2010/1011); and
- (7) “the 2013 Order” means the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013.

Designation

- C. The Financial Conduct Authority designates the following instruments, or parts of instruments, with the modifications specified in the Annex to this instrument:

- (1) the 1980 Regulations;
- (2) the 2010 Regulations;
- (3) the 2007 Order; and
- (4) article 1 and article 2 of, and Part I, Part II and Part III of Schedule 1 to, the 1989 Order.

Commencement

- D. This instrument and the designation come into force on 1 April 2014.

Amendments to the Handbook

- E. The Glossary of definitions is amended in accordance with Annex A to this instrument.

Making the Consumer Credit sourcebook (CONC)

- F. The Financial Conduct Authority makes the Consumer Credit sourcebook as set out in Annex B of this instrument.
- G. The 1980 Regulations and the 2010 Regulations, with the modifications specified in Annex A and Annex B to this instrument, are to be treated as having been made by the Financial Conduct Authority as rules under article 60M of the 2001 Order.
- H. Article 1 and article 2 of, and Part I, Part II and Part III of Schedule 1 to, the 1989 Order, with the modifications specified in Annex A and Annex B to this instrument, are to be treated as having been made by the Financial Conduct Authority as rules under article 60E(3) of the 2001 Order.
- I. The 2007 Order, with the modifications specified in Annex A and Annex B to this instrument, is to be treated as having been made by the Financial Conduct Authority as rules under section 137A of the Act for the purposes of article 60C, paragraphs (c), (d) and (e) of article 60H, article 60O and paragraphs (b), (c) and (d) of article 60Q of the 2001 Order.

Citation

- J. This instrument may be cited as the Consumer Credit (Designation) Instrument 2013.
- K. The sourcebook in the Annex to this instrument may be cited as the Consumer Credit sourcebook (or CONC).

By order of the Board of the Financial Conduct Authority
1 August 2013

Annex A Amendments to the Glossary of definitions

The following amendments to the Glossary of definitions reflect expressions used in the 1980 Regulations, the 2010 Regulations, the 2007 Order and article 1 and article 2 of, and Part I, Part II and Part III of Schedule 1 to, the 1989 Order, with the modifications necessary or expedient in consequence of the provisions of the 2013 Order.

In this Part of the Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

annual percentage rate of charge (1) (in *CONC* App 1.1) the rate of the *total charge for credit* (calculated in accordance with *CONC* App 1.1.7R).

(2) (in *CONC* App 1.2) the rate of the *total charge for credit* (calculated in accordance with *CONC* App 1.2.4R), expressed as an annual percentage of the *total amount of credit*.

assignment in accordance with article 60L of the *Regulated Activities Order*, in relation to Scotland, means assignment.

borrower in accordance with article 60L of the *Regulated Activities Order*, in relation to a *credit agreement* other than a *regulated mortgage contract*, a *person* who receives *credit* under a *credit agreement* or a *person* to whom the rights and duties of a *borrower* under a *credit agreement* have passed by *assignment* or operation of law.

borrower-lender agreement in accordance with article 60L of the *Regulated Activities Order*,

- (a) a *credit agreement*:
 - (i) to *finance* a transaction between the *borrower* and a *person* (“the supplier”) other than the *lender*; and
 - (ii) which is not made by the *lender* under *pre-existing arrangements*, or in contemplation of *future arrangements*, between the *lender* and the supplier,
- (b) a *credit agreement* to *refinance* any existing indebtedness of the *borrower*, whether to the *lender* or another *person*, or
- (c) a *credit agreement* which is:
 - (i) an *unrestricted-use credit agreement*; and

- (ii) not made by the *lender*:
 - (aa) under *pre-existing arrangements* between the *lender* and a *person* (“the supplier”) other than the *borrower*, and
 - (bb) in the knowledge that the *credit* is to be used to *finance* a transaction between the *borrower* and the supplier.

borrower-lender-supplier agreement

in accordance with article 60L of the *Regulated Activities Order*,

- (a) a *credit agreement* to *finance* a transaction between the *borrower* and the *lender*, whether forming part of that agreement or not;
- (b) a *credit agreement*:
 - (i) to *finance* a transaction between the *borrower* and a *person* (“the supplier”) other than the *lender*, and
 - (ii) which is made by the *lender* under *pre-existing arrangements*, or in contemplation of *future arrangements*, between the *lender* and the supplier; or
- (c) a *credit agreement* which is:
 - (i) an *unrestricted-use credit agreement*, and
 - (ii) made by the *lender* under *pre-existing arrangements* between the *lender* and a *person* (“the supplier”) other than the *borrower* in the knowledge that the *credit* is to be used to *finance* a transaction between the *borrower* and the supplier.

business premises

(in *CONC* App 2.1) premises for occupation for the purposes of a business (including any activity carried on by a body of *persons*, whether corporate or unincorporate) or for those and other purposes.

cash

in accordance with section 189(1) of the *CCA*, includes money in any form.

CCA

the Consumer Credit Act 1974.

CONC

the Consumer Credit sourcebook.

conditional sale agreement

in accordance with article 60L of the *Regulated Activities Order*, an agreement for the sale of *goods* or *land* under which the purchase price or part of it is payable by instalments, and the property in the *goods* or *land* is to remain with the seller (notwithstanding that the buyer is to be in possession of the *goods* or *land*) until such conditions as to the payment of

	instalments or otherwise as may be specified in the agreement are fulfilled.
<i>consumer hire agreement</i>	in accordance with article 60N of the <i>Regulated Activities Order</i> , an agreement between a <i>person</i> (“the owner”) and an <i>individual</i> (“the hirer”) for the bailment or, in Scotland, the hiring of <i>goods</i> to the hirer which: <ul style="list-style-type: none"> (a) is not a <i>hire-purchase agreement</i>; and (b) is capable of subsisting for more than three months.
<i>credit agreement</i>	in accordance with article 60B of the <i>Regulated Activities Order</i> , an agreement between an <i>individual</i> (“A”) and any other <i>person</i> (“B”) under which B provides A with <i>credit</i> of any amount.
<i>credit broker</i>	a <i>person</i> that carries on an activity, by way of business, of the kind specified in article 36A of the <i>Regulated Activities Order</i> .
<i>credit broking</i>	an activity of the kind specified in article 36A of the <i>Regulated Activities Order</i> .
<i>credit limit</i>	in accordance with article 60L of the <i>Regulated Activities Order</i> , in relation to <i>running-account credit</i> , as respects any period, the maximum debit balance which, under a <i>credit agreement</i> , is allowed to stand on the account during that period, disregarding any term of the agreement allowing that maximum to be exceeded on a temporary basis.
<i>current account</i>	(in <i>CONC</i> App 1) an account under which the customer may, by means of cheques or similar orders payable to the customer or to any other <i>person</i> or by any other means, obtain or have the use of money held or made available by the <i>person</i> with whom the account is kept and which records alterations in the financial relationship between the said <i>person</i> and the customer.
<i>finance</i>	in accordance with article 60L of the <i>Regulated Activities Order</i> , includes financing in whole or in part and “refinance” is to be read accordingly.
<i>future arrangements</i>	in relation to a <i>borrower-lender agreement</i> or a <i>borrower-lender-supplier agreement</i> , a <i>credit agreement</i> is entered into in contemplation of future arrangements between a <i>lender</i> and a <i>supplier</i> if it is entered into in the expectation that arrangements will subsequently be made between the <i>lender</i> (or the <i>lender’s associate</i>) and the <i>supplier</i> (or the <i>supplier’s associate</i>) for the supply of <i>cash</i> , <i>goods</i> or services to be <i>financed</i> by the <i>credit agreement</i> unless the arrangements are: <ul style="list-style-type: none"> (a) for the making, in circumstances specified in the <i>credit agreement</i>, of payments to the <i>supplier</i> by the <i>lender</i> (“L”) and L indicates that L is willing to make, in such circumstances, payments of the kind to <i>suppliers</i> generally; or (b) for the electronic transfer of funds from a current account held with an <i>authorised person</i> with <i>permission to accept deposits</i>.

<i>goods</i>	has the meaning in section 61(1) of the Sale of Goods Act 1979.
<i>hire-purchase agreement</i>	in accordance with article 60L of the <i>Regulated Activities Order</i> , an agreement: <ul style="list-style-type: none"> (a) which is not a <i>conditional sale agreement</i>; (b) under which <i>goods</i> are bailed or, in Scotland, hired to a <i>person</i> (“P”) in return for periodical payments by P; and (c) the property in the <i>goods</i> will pass to P if the terms of the agreement are complied with and one or more of the following occurs: <ul style="list-style-type: none"> (i) the exercise by P of an option to purchase the <i>goods</i>; (ii) the doing by any party to the agreement of any other act specified in the agreement; or (iii) the happening of any event specified in the agreement.
<i>hirer</i>	a <i>person</i> to whom <i>goods</i> are bailed or, in Scotland, hired under a <i>consumer hire agreement</i> , or a <i>person</i> to whom the rights and duties of a <i>hirer</i> under a <i>consumer hire agreement</i> have passed by assignment or operation of law.
<i>individual</i>	<ul style="list-style-type: none"> (a) a natural <i>person</i>; or (b) a <i>partnership</i> consisting of two or three <i>persons</i> not all of whom are bodies corporate; or (c) an unincorporated body of <i>persons</i> which does not consist entirely of bodies corporate and is not a <i>partnership</i>.
<i>land</i>	in accordance with section 189(1) of the <i>CCA</i> , includes an interest in land, and, in Scotland, includes heritable subjects of whatever description.
<i>land-related agreement</i>	(in <i>CONC</i> App 1.1) a <i>credit agreement</i> which is <ul style="list-style-type: none"> (a) intended primarily to <i>finance</i> the acquisition or retention of <i>land</i>; or (b) intended to <i>finance</i> the renovation or improvement of a building, or any other <i>credit agreement</i> secured by a <i>legal mortgage</i> on <i>land</i> or, in Scotland, by a standard security within the meaning of the Conveyancing and Feudal Reform (Scotland) Act 1970.
<i>legal mortgage</i>	in accordance with article 60L of the <i>Regulated Activities Order</i> , includes a charge and, in Scotland, a heritable security
<i>lender</i>	<ul style="list-style-type: none"> (a) the <i>person</i> providing <i>credit</i> under a <i>credit agreement</i>, or (b) a <i>person</i> who exercises, or has the right to exercise, the rights and

duties of a *person* who provided *credit* under such an agreement.

*limited
permission*

a *Part 4A permission* for a relevant credit activity as defined in paragraph 2G of Schedule 6 to the *Act*.

*linked
transaction*

has the meaning in article 60E of the *Regulated Activities Order*; in summary, a transaction is a linked transaction in relation to a *credit agreement* (“the principal agreement”) if:

- (1) it is (or will be) entered into by the *borrower* under the principal agreement or by a *relative* of the *borrower*;
- (2) it does not relate to the provision of *security*;
- (3) it does not form part of the principal agreement; and
- (4) one of the following conditions is satisfied:
 - (a) the transaction is entered into in compliance with a term of the principal agreement;
 - (b) the principal agreement is a *borrower-lender-supplier* agreement and the transaction is *financed*, or to be *financed*, by the principal agreement;
 - (c) the following conditions are met:
 - (i) the other party is
 - (aa) the *lender*,
 - (bb) the *lender’s associate*,
 - (cc) a *person* who, in the negotiation of the transaction, is represented by a credit broker who is or was also a negotiator in negotiations for the principal agreement, or
 - (dd) a *person* who, at the time the transaction is initiated, knows that the principal agreement has been made or contemplates that it might be made;
 - (ii) the other party initiated the transaction by suggesting it to the *borrower* or the *relative* of the *borrower*; and
 - (iii) the *borrower* or the *relative* of the *borrower* enters into the transaction to induce the *lender* to enter into the principal agreement or for another purpose related to the principal agreement or to a transaction *financed* or to be *financed* by the principal agreement.

but a transaction is not a linked transaction if it is:

- (5) a *contract of insurance*;
- (6) a contract which contains a guarantee of *goods*; or
- (7) a transaction which comprises, or is effected under:
 - (a) an agreement for the operation of an account (including any savings account) for the deposit of money, or
 - (b) an agreement for the operation of a *current account*.

overdraft facility (in *CONC App 1.2*) an explicit agreement whereby a *lender* makes available to a *borrower* funds which exceed the current balance in the *borrower's current account*.

payment includes tender.

period rate of charge (in *CONC App 1.1*) means a percentage rate of charge for a period, comprising all charges included in the *total charge for credit* determined in accordance with *CONC App 1.1.4R* to *CONC App 1.1.6R*.

pre-existing arrangements in relation to a *borrower-lender agreement* or a *borrower-lender-supplier agreement*, a *credit agreement* is entered into under pre-existing arrangements between a *lender* and a *supplier* if it is entered into in accordance with, or in connection with, arrangements previously made between the *lender* (or the *lender's associate*) and the *supplier* (or the *supplier's associate*) unless the arrangements are:

- (a) for the making, in circumstances specified in the *credit agreement*, of payments to the *supplier* by the *lender* ("L") and L indicates that L is willing to make, in such circumstances, payments of the kind to *suppliers* generally, or
- (b) for the electronic transfer of funds from a current account held with an *authorised person* with *permission to accept deposits*,

but if a *lender* is an *associate* of the *supplier's*, the *credit agreement* is to be treated as entered into under pre-existing arrangements between the *lender* and the *supplier* unless the *lender* can show that this is not the case.

regulated credit agreement in accordance with article 60B of the *Regulated Activities Order*, a *credit agreement* which is not an exempt agreement under articles 60C to 60H of the *Regulated Activities Order*.

relative brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendent.

relevant credit agreement relating to the in accordance with article 60E (7) of the *Regulated Activities Order*:

purchase of land

- (a) a *borrower-lender-supplier agreement financing*:
 - (i) the purchase of *land*; or
 - (ii) the provision of dwellings on *land*;and secured by a *legal mortgage* on that *land*;
- (b) a *borrower-lender agreement* secured by a *legal mortgage* on *land*; or
- (c) a *borrower-lender-supplier agreement financing* a transaction which is a *linked transaction* in relation to:
 - (i) an agreement falling within (a), or
 - (ii) an agreement falling within (b) *financing*:
 - (aa) the purchase of *land*; or
 - (bb) the provision of dwellings on *land*,and secured by a *legal mortgage* on the *land* referred to in (a) or the *land* referred to in (c)(ii).

supplier

- (a) the *person* referred to as the *supplier* in the definitions of *borrower-lender agreement*, *borrower-lender-supplier agreement* and *restricted-use credit agreement*; and
- (b) in relation to a *credit agreement* falling within (2) (a) of the definition of *restricted-use credit agreement*, is the *lender*; and
- (c) includes a *person* to whom the rights and duties of a *person* falling within (a) or (b) have passed by *assignment* or operation of law.

total amount of credit

(in *CONC*) the *credit limit* or the total sums made available under a *regulated credit agreement*.

total cost of credit to the borrower

(in *CONC* App 1.2) all costs, including interest, commissions, taxes and any other kind of fees which are required to be paid by, or on behalf of, the *borrower* or a *relative* of the *borrower* in connection with the *regulated credit agreement*, whether payable to the *lender* or to any other *person*, and which are known to the *lender*, except for notarial costs.

unrestricted-use credit agreement

a *credit agreement* which is not a *restricted-use credit agreement*.

Amend the following definitions as shown.

- associate* ...
- (2) ...
- (2A) (in CONC), as defined in article 60L of the Regulated Activities Order, in relation to a person ("P"):
- (a) where P is an individual any person who is or who has been:
- (i) P's spouse or P's civil partner;
- (ii) a relative of P, P's spouse or P's civil partner;
- (iii) the spouse or civil partner of a relative of P or P's spouse or civil partner;
- (iv) if P is a member of a partnership, any of P's partners and the spouse or civil partner of any such person;
- (b) where P is a body corporate:
- (i) any person who is a controller ("C") of P;
- (ii) any other person for whom C is a controller.
- (3) (except in LR and CONC) (in relation to a person ("A")):
- ...
- controller* (1) (in relation to a firm or other undertaking ("B"), other than a non-directive firm or a firm within (2A)), a person ("A") who (whether acting alone or in concert):
- ...
- (2) (in relation to a non-directive firm ("B"), other than a firm within (2A)), a person ("A") who (whether acting alone or in concert):
- ...
- (2A) (in relation to a firm ("B") with limited permission where the only regulated activities (other than ones in relation to which sections 20(1) and (1A) and 23(1A) of the Act do not apply under section 39(1D) of the Act) that B carries on, or seeks to carry on, are relevant credit activities within article 6A of the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009) a person ("A") who (whether acting alone or in concert):

	(a)	<u>holds 33% or more of the <i>shares</i> in B or in a <i>parent undertaking</i> (“P”) of B;</u>
	(b)	<u>holds 33% or more of the <i>voting power</i> in B or P; or</u>
	(c)	<u>holds <i>shares</i> or <i>voting power</i> in B or P as a result of which A is able to exercise significant influence over the management of B.</u>
	(3)	for the purposes of calculations relating to (1), and (2) and (2A), the holding of <i>shares</i> or <i>voting power</i> by a <i>person</i> (“A1”) includes any <i>shares</i> or <i>voting power</i> held by another (“A2”) if A1 and A2 are acting in concert.
	...	
<i>fixed-sum credit</i>	(1)	(except in <i>CONC</i>) (in accordance with section 10(1)(b) of the Consumer Credit Act 1974) any facility under a contract, other than <i>running-account credit</i> , by which the <i>customer</i> is enabled to receive credit (whether in one amount or by instalments).
	(2)	<u>(in <i>CONC</i>) a facility under a <i>credit agreement</i> whereby the <i>borrower</i> is enabled to receive <i>credit</i> (whether in one amount or by instalments) but which is not <i>running-account credit</i>.</u>
<i>owner</i>	(1)	(in <i>RCB</i>) ...
	(2)	<u>(in <i>CONC</i>), in accordance with article 60N(3) of the <i>Regulated Activities Order</i>:</u>
	(a)	<u>the <i>person</i> who bails or, in Scotland, hires <i>goods</i> under a <i>consumer hire agreement</i>; or</u>
	(b)	<u>a <i>person</i> who exercises, or has the right to exercise, the rights and duties of a <i>person</i> who bailed or, in Scotland, hired <i>goods</i> under a <i>consumer hire agreement</i>.</u>
<i>regulated consumer hire agreement</i>	(1)	in accordance with section 15 of the Consumer Credit Act 1974 (as amended) an agreement made by a person with an individual “the hirer” for the bailment or (in Scotland) the hiring of goods to the hirer, being an agreement which
	...	
	(2)	<u>(in <i>CONC</i>) in accordance with article 60N of the <i>Regulated Activities Order</i>, a <i>consumer hire agreement</i> which is not an exempt agreement under articles 60O to 60Q of the <i>Regulated Activities Order</i>.</u>
<i>relevant date</i>	(1)	(in <i>MCOB</i> 10 (Annual percentage rate)):

...

(2) (in *CONC* App 1.1):

(a) where a date is specified in or determinable under a *credit agreement* at the date of its making as the date on which the *borrower* is entitled to require provision of anything which is the subject of the *credit agreement*) the earliest such date;

(b) in any other case, the date of making the *credit agreement*.

*restricted-use
credit
agreement*

(1) (except in *CONC*) (in accordance with section 11 of the Consumer Credit Act 1974) an agreement:

...

(2) (in *CONC*) a *credit agreement*:

(a) to *finance* a transaction between the *borrower* and the *lender*, whether forming part of that agreement or not;

(b) to *finance* a transaction between the *borrower* and a *person* (“the *supplier*”) other than the *lender*; or

(c) to *refinance* any existing indebtedness of the *borrower’s*, whether to the *lender* or another *person*,

and

(d) an agreement may fall within ~~paragraph~~ (b) even though the identity of the *supplier* is unknown at the time the agreement is made,

but

(e) a *credit agreement* is not a restricted-use credit agreement if the *credit* is in fact provided in such a way as to leave the *borrower* free to use it as the *borrower* chooses, even though certain uses would contravene that or any other agreement.

*running-
account credit*

(1) (except in *CONC*) (in accordance with section 10(1)(a) of the Consumer Credit Act 1974) ...

(2) (in *CONC*) a facility under a *credit agreement* under which the *borrower* or another *person* is enabled to receive from time to time from the *lender* or a third party *cash, goods* or services to an amount or value such that, taking into account *payments* made by or to the credit of the *borrower*, the *credit limit* (if any) is not at any

time exceeded.

- security* (1) (except in *LR* and *CONC*) (in accordance with article 3(1) of the *Regulated Activities Order* (Interpretation)) any of the following *investments* specified in that Order:
- ...
- ...
- (3) (in *CONC*) in accordance with article 60L of the *Regulated Activities Order*, in relation to a *credit agreement*, a mortgage, charge, pledge, bond, debenture, indemnity, guarantee, bill, note or other right provided by the *borrower* or at the implied or express request of the *borrower* to secure the carrying out of the obligations of the *borrower* under the agreement.
- total charge for credit* (1) (except in *CONC*) the total of the charges (determined as at the date of making the contract) specified in *MCOB* 10.4.2R as applying in relation to the *secured lending* but excluding the charges specified in *MCOB* 10.4.4R.
- (2) (in *CONC*) the true cost to the *borrower* of the *credit* provided, or to be provided, under an actual or prospective *credit agreement* calculated in accordance with *CONC* App 1.
- transaction* (1) (except in *CONC* App 1.1) only the purchase and sale of a *financial instrument*. For the purposes of the *MiFID Regulation*, excluding Chapter II, this does not include:
- ...
- (2) (in *CONC* App 1.1, except in *CONC* App 1.1.6R(1)(c)) a *credit agreement*, any transaction which is a *linked transaction*, any contract for the provision of *security* relating to the *credit agreement*, any *credit broking* contract relating to the *credit agreement* and any other contract to which the *borrower* or a *relative* of his is a party and which the *lender* requires to be made or maintained as a condition of the making of the *credit agreement*.

Annex B

Making of the Consumer Credit sourcebook (CONC)

Insert the following new sourcebook after the Credit Unions New sourcebook (CREDS) in the block of the Handbook titled “Specialist Sourcebooks”.

In this Annex the text is new to the Handbook and is based on:

- (1) the 1980 Regulations;
- (2) the 2010 Regulations;
- (3) the 2007 Order; and
- (4) article 1 and article 2 of, and Part I, Part II and Part III of Schedule 1 to, the 1989 Order.

Modifications to those regulations and orders are shown by underlining to indicate new text and striking through to indicate deleted text.

~~1980 No. 51~~

~~CONSUMER CREDIT~~

~~The Consumer Credit (Total Charge for Credit) Regulations 1980~~

~~PART I~~

~~GENERAL~~

~~*Citation, commencement, interpretation and revocation*~~

~~1. (1) These Regulations may be cited as the Consumer Credit (Total Charge for Credit) Regulations 1980 and shall come into operation on 28th April 1980.~~

Consumer Credit sourcebook

[main content of sourcebook to be inserted at a later date]

Appendix 1 Designation of subordinate legislation formerly made under Part 2 of the Consumer Credit Act 1974

1 Total charge for credit rules

1.1 Total charge for credit rules for certain agreements secured on land

Interpretation

1.1.1 R ~~(2)~~ ~~In these Regulations—~~

 “the Act” means the Consumer Credit Act 1974;

 “agreement” means a consumer credit agreement;

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

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

~~or any other agreement secured by a mortgage on land or, in Scotland, by a standard security within the meaning of the Conveyancing and Feudal Reform (Scotland) Act 1970;~~

~~“period rate of charge” means a percentage rate of charge for a period, comprising all charges included in the total charge for credit determined in accordance with Part II of these Regulations;~~

~~“the relevant date” means, in a case where a date is specified in or determinable under an agreement at the date of its making as that on which the debtor is entitled to require provision of anything the subject of the agreement, the earliest such date and, in any other case, the date of the making of the agreement; and~~

~~“transaction”, except in regulation 5 (1) (c) below, means an agreement, any transaction which is a linked transaction by virtue of section 19(1)(a) of the Act, any contract for the provision of security relating to the agreement, any credit brokerage contract relating to the agreement and any other contract to which the debtor or a relative of his is a party and which the creditor requires to be made or maintained as a condition of the making of the agreement,~~

~~and, except where the contrary intention appears, other expressions used in these Regulations have the same respective meanings as in the Act.~~

- ~~(3)~~ For the purposes of ~~these Regulations~~ this section, references to the period for which credit is provided— :
- ~~(1)~~
 - (a) in the case of ~~an~~ a *credit agreement* under which the period for which *credit* is to be provided is ascertainable at the date of the making of the *credit agreement*, are references to the period beginning with the *relevant date* and ending with the end of the period for which *credit* is to be provided;
 - (b) in the case of ~~an~~ a *credit agreement* under which the period for which *credit* is to be provided can be ascertained at the *relevant*

~~date~~ if the assumption set out in ~~regulation 13 below~~ CONC App 1.1.12R is applied, are references to the period beginning with the *relevant date* and ending with the end of the period for which *credit* would be provided under the *credit agreement* if the amount given by that assumption were the amount of the *credit* so provided; and

(c) in any other case, are references to the period of one year referred to in ~~regulation 14 below~~ CONC App 1.1.13R.

- (4) References in ~~these Regulations~~ this section to repayment of the *credit* under ~~an a~~ a *credit agreement* and of the *total charge for credit* include references to any repayment or payment, as the case may require, of any part of the *credit* and of the *total charge for credit*.
- (5) ~~The Consumer Credit (Total Charge for Credit) Regulations 1977 are hereby revoked.~~

~~1A.~~ Application

1.1.2 R ~~These Regulations apply~~ This section applies to regulated ~~consumer credit agreements~~ which are secured on *land* or to prospective regulated ~~consumer credit agreements~~ which are to be secured on *land*,² except to the extent that the Consumer Credit (Disclosure of Information) Regulations 2010 apply to such agreements.

~~2.-~~ General provisions about calculation

1.1.3 R (1) Any calculation under ~~these Regulations~~ this section shall be made on the following assumptions—

(a) the assumption that the ~~debtor~~ *borrower* will not be entitled to any income tax relief relating to the *transaction* other than relief under section 19 of the Income and Corporation Taxes Act 1970 and Schedule 4 to the Finance Act 1976 (which afford relief in respect of premiums under certain policies of insurance) without any deduction under section 21 of the said Act of 1970;

(b) the assumption that no assistance is given under the Home Purchase Assistance and Housing Corporation Guarantee Act 1978;

(c) (i) in the case of a *transaction* which provides for repayment of the *credit* or of the *total charge for credit* at, or not later than, a specified time or times, the assumption that the ~~creditor~~ *lender* will not exercise any right under the *transaction* to require repayment at any other time or times;

(ii) in any other case, the assumption that the ~~creditor~~ *lender* will not exercise any right under the *transaction* to

require repayment;

the ~~debtor~~ *borrower*, in any case, performing all his obligations under the *transaction*;

- (d) subject to ~~sub-paragraph~~ (e) below, in the case of a *transaction* which provides for variation of the rate or amount of any item included in the *total charge for credit* in consequence of the occurrence after the *relevant date* of any event, the assumption that the event will not occur; and, in this sub-paragraph, “event” means an act or omission of the ~~debtor~~ *borrower* or of the ~~creditor~~ *lender* or any other event (including where the *transaction* makes provision for variation upon the continuation of any circumstance, the continuation of that circumstance) but does not include an event which is certain to occur and of which the date of occurrence, or the earliest date of occurrence, can be ascertained at the date of the making of the *credit agreement*; and
- (e) in the case of a *land-related agreement* which provides for the possibility of any variation of the rate of interest in consequence of the occurrence after the *relevant date* of any event (being an event which is certain to occur and of which the date of occurrence, or the earliest date of occurrence, can be ascertained at the date of the making of the *credit agreement*), the assumption that such a variation will, when the event occurs, take place.

(2) For the purposes of ~~these Regulations~~ this section—

- (a) subject to ~~sub-paragraph~~ (b) below and ~~regulation 18 below~~ CONC App 1.1.18R, in the case of any *credit agreement* each provision of *credit* and each repayment of the *credit* and of the *total charge for credit* shall be taken to be made:—
- (i) at the earliest time provided under the *transaction*, and
- (ii) in a case where any such provision or repayment is to be made at or not later than a specified time, at that time
- and, where any such repayment is to be made before the *relevant date*, it shall be taken to be made on the *relevant date*;
- (b) where under ~~an~~ a *credit agreement* for *running-account credit* or ~~an~~ a *credit agreement* for *fixed-sum credit* where the *credit* is not repayable at specified intervals or in specified amounts a constant *period rate of charge* in respect of periods of equal or of nearly equal length is charged, it shall be assumed for the purposes of calculations under ~~these Regulations~~ this section, notwithstanding ~~regulation 17 below~~ CONC App 1.1.17R, that—

- (i) the amount of *credit* outstanding at the beginning of a period is to remain outstanding throughout the period;
 - (ii) the amount of any *credit* provided during a period is provided immediately after the end of the period; and
 - (iii) any repayment of *credit* or of the *total charge for credit* made during a period is made immediately after the end of the period; and
- (c) the assumption that the amount of any repayment of *credit* or of the *total charge for credit* will, at the time when the repayment is made, be the smallest for which the agreement provides.
- (3) In determining the amount of the total of the interest on the *credit* which may be provided under the *credit agreement*, any subsidy receivable by any *person* under Part II of the Housing Subsidies Act 1967 shall be deducted.

PART II

TOTAL CHARGE FOR CREDIT

3. Total charge for credit

1.1.4 R For the purposes of ~~the Act~~ the *Regulated Activities Order*, the total charge for the *credit* which may be provided under an actual or prospective *credit agreement* shall be the total of the amounts determined as at the date of the making of the *credit agreement* of such of the charges specified in ~~regulation 4 below~~ CONC App 1.1.5R as apply in relation to the *credit agreement* but excluding the amount of the charges specified in ~~regulation 5 below~~ CONC App 1.1.6R.

4. Items included in total charge for credit

1.1.5 R Except as provided in ~~regulation 5 below~~ CONC App 1.1.6R, the amounts of the following charges are included in the *total charge for credit* in relation to ~~an~~ a *credit agreement*:—

- (a) the total of the interest on the *credit* which may be provided under the *credit agreement*;
- (b) other charges at any time payable under the *transaction* by or on behalf of the ~~debtor~~ borrower or a *relative* of his whether to the ~~creditor~~ lender or any other *person*; and
- (c) a premium under a *contract of insurance*, payable under the *transaction* by the ~~debtor~~ borrower or a *relative* of his, where the making or maintenance of the *contract of insurance* is required by the ~~creditor~~ lender—

- (i) as a condition of making the *credit agreement*, and
- (ii) for the sole purpose of ensuring complete or partial repayment of the *credit*, and complete or partial payment to the ~~creditor~~ *lender* of such of those charges included in the *total charge for credit* as are payable to him under the *transaction*, in the event of the death, invalidity, illness or unemployment of the ~~debtor~~ *borrower*,

notwithstanding that the whole or part of the charge may be repayable at any time or that the consideration therefor may include matters not within the *transaction* or subsisting at a time not within the duration of the *credit agreement*.

5. Items excluded from total charge for credit

1.1.6 **R** (1) The amounts of the following items are not included in the *total charge for credit* in relation to ~~an~~ *a credit agreement*:—

- (a) any charge payable under the *transaction* to the ~~creditor~~ *lender* upon failure by the ~~debtor~~ *borrower* or a *relative* of his to do or to refrain from doing anything which he is required to do or to refrain from doing, as the case may be;
- (b) any charge—
 - (i) which is payable by the ~~creditor~~ *lender* to any *person* upon failure by the ~~debtor~~ *borrower* or a *relative* of his to do or to refrain from doing anything which he is required under the *transaction* to do or to refrain from doing, as the case may be, and
 - (ii) which the ~~creditor~~ *lender* may under the *transaction* require the ~~debtor~~ *borrower* or a *relative* of his to pay to him or to another *person* on his behalf;
- (c) any charge relating to ~~an~~ *a credit agreement* which is ~~an~~ *a credit agreement* to finance a transaction of a description referred to in ~~paragraph (2)(a) or (b) of section 11(1) of the Act~~ *the definition of restricted-use credit agreement*, being a charge which would be payable if the transaction were for *cash*;
- (d) any charge (other than a fee or commission charged by a *credit broker*) not within ~~sub-paragraph (c) above~~—
 - (i) of a description which relates to services or benefits incidental to the *credit agreement* and also to other services or benefits which may be supplied to the ~~debtor~~ *borrower*, and

- (ii) which is payable pursuant to an obligation incurred by the ~~debtor~~ borrower under arrangements effected before he applies to enter into the credit agreement, not being arrangements under which the ~~debtor~~ borrower is bound to enter into any ~~personal~~ credit agreement;
 - (e) subject to ~~paragraph~~ (2) below, any charge under arrangements for the care, maintenance or protection of any *land* or *goods*;
 - (f) charges for money transmission services relating to an arrangement for a *current account*, being charges which vary with the use made by the ~~debtor~~ borrower of the arrangement;
 - (g) any charge for a guarantee other than a guarantee—
 - (i) which is required by the ~~creditor~~ lender as a condition of making the credit agreement, and
 - (ii) the purpose of which is to ensure complete or partial repayment of the *credit*, and complete or partial payment to the ~~creditor~~ lender of such of those charges included in the *total charge for credit* as are payable to him under the *transaction*, in the event of the death, invalidity, illness or unemployment of the ~~debtor~~ borrower;
 - (h) charges for the transfer of funds (other than charges within ~~sub-paragraph~~ (f) above) and charges for keeping an account intended to receive payments towards the repayment of the *credit* and the payment of interest and other charges, except where the ~~debtor~~ borrower does not have reasonable freedom of choice in the matter and where such charges are abnormally high; but this sub-paragraph does not exclude from the *total charge for credit* charges for collection of the payments to which it refers, whether such payments are made in *cash* or otherwise;
 - (i) a premium under a *contract of insurance* other than a *contract of insurance* referred to in ~~regulation 4(e) above~~ CONC App 1.1.5R(c).
- (2) ~~Paragraph~~ (1) above has effect only—
- (a) in the case of a charge within ~~sub-paragraph~~ (e), where, in pursuance of the arrangements—
 - (i) the services are to be performed if, after the date of the making of the credit agreement, the condition of the *land* or *goods* becomes, or is in immediate danger of becoming, such that the *land* or *goods* cannot

reasonably be enjoyed or used, and

- (ii) the charge will not accrue unless the services are performed; and
- (b) in the case of any other charge within ~~sub-paragraph (e)~~—
- (i) where provision of substantially the same description as that to which the arrangements relate is available under comparable arrangements from a *person* who is not the ~~creditor~~ *lender* or a *supplier* or a *credit broker* who introduced the ~~debtor~~ *borrower* and the ~~creditor~~ *lender*, and
 - (ii) where the arrangements are made with a *person* chosen by the ~~debtor~~ *borrower*, and
 - (iii) if, in accordance with the *transaction*, the consent of the ~~creditor~~ *lender* or of a *supplier* or of the *credit broker* who introduced the ~~debtor~~ *borrower* and the ~~creditor~~ *lender* is required to the making of the arrangements, where the *transaction* provides that such consent may not be unreasonably withheld whether because no incidental benefit will or may accrue to the ~~creditor~~ *lender* or to the *supplier* or to the *credit broker* or on any other ground;

and references in this sub-paragraph to the ~~creditor~~ *lender*, a *supplier* and a *credit broker* include references to his near relative, his partner and a member of a group of which he is a member, to any *person* nominated by him or any such person in relation to the arrangements, and to a near relative of his partner; and “near relative” means, in relation to any *person*, the husband, wife, father, mother, brother, sister, son or daughter of that person and “group” means the *person* (including a company) having control of a company together with all the companies directly or indirectly controlled by him.

PART III

RATE OF TOTAL CHARGE FOR CREDIT

~~6.~~ Rate of total charge for credit

1.1.7 R The rate of the *total charge for credit* in the case of an actual or prospective *credit agreement* shall be the *annual percentage rate of charge* determined in accordance with the following provisions of ~~this Part of these Regulations~~ CONC App 1.1.8R to CONC App 1.1.10R and (where it has more than one decimal place) rounded to one decimal place in accordance with ~~regulation~~ 6A below CONC App 1.1.8R.

~~6A.~~

1.1.8 R The *annual percentage rate of charge* referred to in ~~regulation 6 above~~
CONC App 1.1.7R shall be rounded to one decimal place as follows—

- (a) where the figure at the second decimal place is greater than or equal to 5, the figure at the first decimal place shall be increased by one and the decimal place (or places) following the first decimal place shall be disregarded; and
- (b) where the figure at the second decimal place is less than 5, that decimal place and any decimal places following it shall be disregarded.

~~7.-~~

1.1.9 R (1) Subject to ~~paragraph (4) below~~, the *annual percentage rate of charge* is the rate for *i* which satisfies the equation set out in ~~paragraph (2) below~~, expressed as a percentage.

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

$$\sum_{K=1}^{K=m} \frac{A_K}{(1+i)^{tK}} = \sum_{K'=1}^{K'=m'} \frac{A'_{K'}}{(1+i)^{tK'}}$$

where

K is the number identifying a particular advance of *credit*;

K' is the number identifying a particular instalment;

A_K is the amount of advance *K*;

A'_{K'} is the amount of instalment *K'*;

Σ represents the sum of all the terms indicated;

m is the number of advances of *credit*;

m' is the total number of instalments;

tK is the interval, expressed in years, between the *relevant date* and the date of the second advance and those of any subsequent advances numbered three to *m*; and

tK' is the interval, expressed in years, between the *relevant date* and the dates of instalments numbered one to *m'*.

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

- (a) a repayment of all or part of the *credit* under the credit agreement;
- (b) a payment of all or part of the *total charge for credit*; or

(c) both a repayment of all or part of the *credit* and a payment of all or part of the *total charge for credit*.

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

~~8.~~

~~9.~~

~~10.~~

~~11.~~ Computation of time

1.1.10 R (1) This ~~regulation rule~~ has effect for determining the length of any period for the purposes of calculations under ~~this Part of these Regulations~~ CONC App 1.1.7R to CONC App 1.1.9R.

(2) A period which is not a whole number of calendar months or a whole number of weeks shall be counted in years and days.

(3) Subject to ~~paragraph~~ (4) below, a period which is a whole number of calendar months or a whole number of weeks shall be counted in calendar months or in weeks, as the case may be.

(4) Where a period is both a whole number of calendar months and a whole number of weeks and—

(a) one repayment only is to be made, the period shall be counted in calendar months, or

(b) more than one repayment is to be made—

(i) if all such repayments are to be made at intervals from the *relevant date* of one or more weeks, the period shall be counted in weeks, and

(ii) in any other case, the period shall be counted in calendar months.

(5) A period which is to be counted—

(a) in calendar months shall be taken to be of a length equal to the relevant number of twelfth parts of a year, and

(b) in weeks, shall be taken to be of a length equal to the relevant number of fifty-second parts of a year.

(6) A day may be taken to be either—

(a) one three hundred and sixty-fifth part of a year or, if it is a leap

year, one three hundred and sixty-sixth part of a year; or

(b)
$$\frac{1}{365.25}$$

of a year.

(7) Every day shall be taken to be a working day.

PART IV

ASSUMPTIONS FOR CALCULATIONS

12.- ~~Effect of Part IV~~ Assumptions for calculations

- 1.1.11 R (1) The provisions of ~~this Part of these Regulations~~ CONC App 1.1.11R to CONC App 1.1.18R shall have effect as the case may require for the purpose of the calculation of the *total charge for credit* under ~~Part H~~ CONC App 1.1.4R to CONC App 1.1.6R above and of the rate of such charge under ~~Part III~~ CONC App 1.1.7R to CONC App 1.1.10R above in relation to any actual or prospective *credit agreement* in respect of matters necessary for the calculation which cannot be ascertained by the ~~creditor~~ lender at the date of the making of the *credit agreement*.
- (2) In a case where apart from this paragraph ~~regulation 13 below~~ CONC App 1.1.12R and one or more other provisions of ~~this Part~~ CONC App 1.1.11R to CONC App 1.1.18R would fall to be applied, the said ~~regulation 13~~ CONC App 1.1.12R shall be applied first.

13. Assumption about the amount of credit

- 1.1.12 R Where the amount of the *credit* to be provided under the *credit agreement* cannot be ascertained at the date of the making of the *credit agreement*,—
- (a) in the case of ~~an~~ a *credit agreement* for *running-account credit* under which there is a *credit limit*, that amount shall be taken to be such *credit limit*; and
- (b) in any other case, that amount shall be taken to be £100.

14. Assumption about period for which credit is provided

- 1.1.13 R Where the period for which *credit* is to be provided is not ascertainable at the date of the making of the *credit agreement*, it shall be assumed that *credit* is provided for one year beginning with the *relevant date*.

15. Assumption about index-linked rates and amounts

- 1.1.14 R Subject to ~~regulation 15A below~~ CONC App 1.1.15R, where the rate or amount of any item included in the *total charge for credit* or the amount of any repayment of *credit* under a *transaction* falls to be ascertained

thereunder by reference to the level of any index or other factor in accordance with any formula specified therein, the rate or amount, as the case may be, shall be taken to be the rate or amount so ascertained, the formula being applied as if the level of such index or other factor subsisting at the date of the making of the *credit agreement* were that subsisting at the date by reference to which the formula is to be applied.

15A.- Assumptions about variations of interest rates in land-related agreements

1.1.15 **R** (1) This ~~regulation~~ rule applies to any *land-related agreement* which provides for the possibility of any variation of the rate of interest if it is to be assumed, by virtue of ~~regulation 2(1)(e) above~~ CONC App 1.1.3R(1)(e), that the variation will take place but the amount of the variation cannot be ascertained at the date of the making of the *credit agreement*.

(2) In this ~~regulation~~ rule—
“initial standard variable rate” means—

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

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

“varied rate” means any rate of interest charged when a variation of the rate of interest is to be assumed to take place by virtue of ~~regulation 2(1)(e) above~~ CONC App 1.1.3R(1)(e).

(3) Where a *land-related agreement* provides a formula for calculating a varied rate by reference to a standard variable rate of interest applied by the ~~creditor~~ lender, or any other fluctuating rate of interest, but does not enable the varied rate to be ascertained at the date of the making of the *credit agreement* because it is not known on that date what the standard variable rate will be or (as the case may be) at what

level the fluctuating rate will be fixed when the varied rate falls to be calculated, it shall be assumed that that rate or level will be the same as the initial standard variable rate.

- (4) Where a *land-related agreement* provides for the possibility of any variation in the rate of interest (other than a variation referred to in ~~paragraph~~ (3) above) which it is to be assumed, by virtue of ~~regulation 2(1)(e) above~~ CONC App 1.1.3R (1)(e), will take place but does not enable the amount of that variation to be ascertained at the date of the making of the *credit agreement*, it shall be assumed that the varied rate will be the same as the initial standard variable rate.

16. Assumption about changes in charges

1.1.16 R Where—

- (a) the period for which the *credit* or any part thereof is to be or may be provided cannot be ascertained at the date of the making of the *credit agreement*; and
- (b) the rate or amount of any item included in the *total charge for credit* will change at a time provided in the *transaction* within one year beginning with the *relevant date*,

the rate or amount shall be taken to be the highest rate or amount at any time obtaining under the *transaction* in that year.

17. Assumption about time of provision of credit

1.1.17 R Where the earliest date on which *credit* is to be provided cannot be ascertained at the date of the making of the *credit agreement*, it shall be assumed that *credit* is provided on that date.

18. Assumptions about time of payment of charges

1.1.18 R In the case of any *transaction* it shall be assumed—

- (a) that a charge payable at a time which cannot be ascertained at the date of the making of the *credit agreement* shall be payable on the *relevant date* or, where it may reasonably be expected that a ~~debtor~~ borrower will not make payment on that date, on the earliest date at which it may reasonably be expected that he will make payment; or
- (b) where more than one payment of a charge of the same description falls to be made at times which cannot be ascertained at the date of the making of the *credit agreement*, that the first such payment will be payable on the *relevant date* (or, where it may reasonably be expected that a ~~debtor~~ borrower will not make payment on that date, at the earliest date on which it may reasonably be expected that he will make payment), that the last such payment will be payable at the end of the period for which *credit* is provided and that all other such payments

(if any) will be payable at equal intervals between such times,
as the case may require.

2010 No. 1011

CONSUMER CREDIT

The Consumer Credit (Total Charge for Credit) Regulations 2010

1.2 Total charge for credit rules for other agreements

1. Citation and commencement

- (1) ~~These Regulations may be cited as the Consumer Credit (Total Charge for Credit) Regulations 2010.~~
- (2) ~~These Regulations shall come into force—~~
 - (a) ~~on 1st February 2011, or~~
 - (b) ~~in relation to a prospective or actual regulated consumer credit agreement, on the date and at the time Parts 1 to 3 of the Consumer Credit (EU Directive) Regulations 2010 apply to such an agreement, being a date before 1st February 2011.~~

2. Interpretation

- (1) ~~In these Regulations—~~
 - ~~“annual percentage rate of charge”~~ means the rate of the total charge for credit (calculated in accordance with regulation 4), expressed as an annual percentage of the total amount of credit;
 - ~~“current account”~~ means an account under which the customer may, by means of cheques or similar orders payable to the customer or to any other person or by any other means, obtain or have the use of money held or made available by the person with whom the account is kept and which records alterations in the financial relationship between the said person and the customer;
 - ~~“overdraft facility”~~ means an explicit agreement whereby a creditor makes available to a debtor funds which exceed the current balance in the debtor's current account;
 - ~~“total amount of~~ means the credit limit or the total sums

~~credit~~ made available under a consumer credit agreement;

~~“total cost of credit to the debtor”~~ means all costs, including interest, commissions, taxes and any other kind of fees which are required to be paid by or on behalf of the debtor or a relative of the debtor in connection with the consumer credit agreement, whether payable to the creditor or to any other person, and which are known to the creditor, except for notarial costs.

1.2.1 R ~~(2)~~ In these Regulations this section—
(1)

- (a) a reference to a rate of interest is a reference to the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of *credit* drawn down;
- (b) ~~a reference to a consumer credit agreement is to a consumer credit agreement regulated by the Consumer Credit Act 1974.~~
- (c) a reference to an open-end ~~consumer~~ *regulated credit agreement* is to a ~~consumer~~ *regulated credit agreement* of no fixed duration and includes credits which must be repaid in full within or after a period but, once repaid, become available to be drawn down again.

3. Application

1.2.2 R ~~These Regulations~~ This section shall not apply to ~~consumer regulated credit agreements~~ which are secured on *land* or to prospective ~~consumer regulated credit agreements~~ which are to be secured on *land* except to the extent that the Consumer Credit (Disclosure of Information) Regulations 2010 apply to such agreements.

4. Total charge for credit

- 1.2.3 R (1) The *total charge for credit* which may be provided under an actual or prospective ~~consumer regulated credit agreement~~ shall be the *total cost of credit to the borrower* ~~debtor~~ determined in accordance with the requirements in ~~paragraphs~~ (2) to (5) below.
- (2) Subject to ~~paragraph~~ (3), the following costs shall be included in the *total cost of credit to the borrower* ~~debtor~~—
- (a) the costs of maintaining an account recording both payment transactions and drawdowns;

- (b) the costs of using a means of payment for both payment transactions and drawdowns;
 - (c) other costs relating to payment transactions.
- (3) The costs at ~~paragraph~~ (2) shall not be included in the *total cost of credit to the borrower* ~~debtor~~ where—
- (a) the opening of the account is optional and the costs of the account have been clearly and separately shown in the ~~consumer~~ *regulated credit agreement* or in any other agreement made with the ~~debtor~~ *borrower*;
 - (b) in the case of an *overdraft facility* the costs do not relate to that facility.
- (4) Costs in respect of an ancillary service shall be included in the *total cost of credit to the borrower* ~~debtor~~ if the conclusion of a service contract is compulsory in order to obtain the *credit* or to obtain it on the terms and conditions marketed.
- (5) The *total cost of credit to the borrower* ~~debtor~~ shall not include—
- (a) any charges payable by or on behalf of the ~~debtor~~ *borrower* or a *relative* of his for non-compliance with his commitments contained in the ~~consumer~~ *regulated credit agreement*;
 - (b) charges which, for purchases of *goods* or services, he or a *relative* of his is obliged to pay whether the transaction is effected in *cash* or on *credit*.
- (6) In ~~paragraph~~ (4), the reference to an ancillary service means a service that relates to the provision of *credit* under the ~~consumer~~ *regulated credit agreement* and includes in particular an insurance or payment protection policy.

5. Calculation of the annual percentage rate of charge

1.2.4 **R** The *annual percentage rate of charge* shall be calculated in accordance with the mathematical formula set out in ~~the Schedule to these Regulations~~ CONC App 1.2.6R.

6. Assumptions for calculation

1.2.5 **R** For the purposes of calculating the *total charge for credit* and the *annual percentage rate of charge*—

- (a) it shall be assumed that the ~~consumer~~ *regulated credit agreement* is to remain valid for the period agreed and that the ~~creditor~~ *lender* and the ~~debtor~~ *borrower* will fulfil their obligations under the terms

and by the dates specified in that agreement;

- (b) in the case of a ~~consumer~~ regulated credit agreement allowing variations in—
 - (i) the rate of interest, or
 - (ii) where applicable, charges contained in the *annual percentage rate of charge*,

where these cannot be quantified at the time of calculation, it shall be assumed that they will remain at the initial level and will be applicable for the duration of the agreement;

- (c) where not all rates of interest are determined in the ~~consumer~~ regulated credit agreement, a rate of interest shall be assumed to be fixed only for the partial periods for which the rate of interest is determined exclusively by a fixed specific percentage agreed when the agreement is made;
- (d) where the duration of the ~~consumer~~ regulated credit agreement cannot be determined at the date of calculation and where different rates of interest and charges are to be offered for limited periods during that agreement, the rate of interest and the charge shall be assumed to be at the highest level for the duration of the agreement;
- (e) where there is a fixed rate of interest agreed in relation to an initial period under a ~~consumer~~ regulated credit agreement, at the end of which a new rate of interest is determined and subsequently periodically adjusted according to an agreed indicator, it shall be assumed that, at the end of the period of the fixed rate of interest, the rate of interest is the same as at the time of making the calculation, based on the value of the agreed indicator at that time;
- (f) where the ~~consumer~~ regulated credit agreement gives the ~~debtor~~ *borrower* freedom of drawdown, the *total amount of credit* shall be assumed to be drawn down immediately and in full;
- (fa) where the ~~consumer~~ regulated credit agreement imposes, amongst the different ways of drawdown, a limitation with regard to the amount of *credit* and period of time, the amount of *credit* shall be assumed to be the maximum amount provided for in the agreement and to be drawn down on the earliest date provided for in the agreement;
- (g) where the ~~consumer~~ regulated credit agreement provides different ways of drawdown with different charges or rates of interest, the *total amount of credit* shall be assumed to be drawn down at the highest charge and rate of interest applied to the most common drawdown mechanism for the *credit* product to which the

agreement relates;

- (h) for the purposes of ~~paragraph~~ (g), the most common drawdown mechanism for a particular *credit* product shall be assessed on the basis of the volume of transactions for that product in the preceding 12 months, or expected volumes in the case of a new *credit* product;
- (i) in the case of an *overdraft facility*, the *total amount of credit* shall be assumed to be drawn down in full and for the entire duration of the ~~consumer~~ *regulated credit agreement*;
- (j) for the purposes of ~~paragraph~~ (i) if the duration of the *overdraft facility* is not known it shall be assumed that the duration of the facility is three months;
- (k) in the case of an open-end ~~consumer~~ *regulated credit agreement*, other than an *overdraft facility*, it shall be assumed that the *credit* is provided for a period of one year starting from the date of the initial drawdown, and that the final payment made by the ~~debtor~~ *borrower* clears the balance of capital, interest and other charges, if any;
- (l) for the purposes of ~~paragraph~~ (k)—
 - (i) the capital is repaid by the ~~debtor~~ *borrower* in equal monthly payments, commencing one month after the date of initial drawdown;
 - (ii) in cases where the capital must be repaid in full, in a single payment, within or after each payment period, successive drawdowns and repayments of the entire capital by the ~~debtor~~ *borrower* shall be assumed to occur over the period of one year;
 - (iii) interest and other charges shall be applied in accordance with those drawdowns and repayments of capital and as provided for in the ~~consumer~~ *regulated credit agreement*;
- (m) in the case of a ~~consumer~~ *regulated credit agreement*, other than an *overdraft facility*, or an open-end ~~consumer~~ *regulated credit agreement* —
 - (i) where the date or amount of a repayment of capital to be made by the ~~debtor~~ *borrower* cannot be ascertained, it shall be assumed that the repayment is made at the earliest date provided for under the ~~consumer~~ *regulated credit agreement* and is for the lowest amount for which the ~~consumer~~ *regulated credit agreement* provides;
 - (ii) where it is not known on which date the ~~consumer~~

regulated credit agreement is made, the date of the initial drawdown shall be assumed to be the date which results in the shortest interval between that date and the date of the first payment to be made by the ~~debtor~~ *borrower*;

- (n) where the date or amount of a payment to be made by the ~~debtor~~ *borrower* cannot be ascertained on the basis of the ~~consumer~~ *regulated credit agreement* or the assumptions set out in ~~paragraphs~~ (i) to (m), it shall be assumed that the payment is made in accordance with the dates and conditions required by the ~~creditor~~ *lender* and, when these are unknown—
- (i) interest charges are paid together with repayments of capital;
 - (ii) a non-interest charge expressed as a single sum is paid on the date of the making of the ~~consumer~~ *regulated credit agreement*;
 - (iii) non-interest charges expressed as several payments are paid at regular intervals, commencing with the date of the first repayment of capital, and if the amount of such payments is not known they shall be assumed to be equal amounts;
 - (iv) the final payment clears the balance of capital, interest and other charges, if any;
- (o) in the case of an agreement for *running-account credit*, where the *credit limit* applicable to the *credit* is not yet known, that *credit limit* shall be assumed to be £1,200.

SCHEDULE

Calculation of the Annual Percentage Rate of Charge

Regulation 5

1.2.6 R (1) The *annual percentage rate of charge* (“APR”) is calculated by means of the equation in ~~paragraph~~ (2) which equates, on an annual basis, the total present value of drawdowns with the total present value of repayments and payments of charges.

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

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

where

X is the APR;

m is the number of the last drawdown;

k is the number of a drawdown, thus $1 \leq k \leq m$;

C_k is the amount of drawdown k ;

t_k is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus $t_1 = 0$;

m' is the number of the last repayment or payment of charges;

l is the number of a repayment or payment of charges;

D_l is the amount of a repayment or payment of charges;

S_l is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges.

(3) For the purposes of ~~paragraph (2)~~—

- (a) the amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals;
- (b) the starting date shall be that of the first drawdown;
- (c) intervals between dates used in the calculations shall be expressed in years or in fractions of a year;
- (d) a year is assumed to have 365 days (366 days for leap years), 52 weeks or 12 equal months;
- (e) an equal month is assumed to have 30.41666 days (365/12) regardless of whether or not it is a leap year;
- (f) the result of the calculation shall be expressed with an accuracy of at least one decimal place; if the figure at the following decimal place is greater than or equal to 5, the figure at that particular decimal place shall be increased by one;
- (g) the equation can be rewritten as set out in ~~sub-paragraph (h)~~ using a single sum and the concept of flows (A_k), which will be positive or negative, either paid or received during periods 1 to k , expressed in years;
- (h) the equation referred to in ~~sub-paragraph (g)~~ is—

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

S being the present balance of flows; if the aim is to maintain the equivalence of flows, the value will be zero.

2 Exempt agreements

2.1 **Exemption of certain credit agreements secured on land**

Interpretation

~~1989 No. 869~~

CONSUMER CREDIT

The Consumer Credit (Exempt Agreements) Order 1989

Citation, commencement, interpretation and revocation

1. (1) This Order may be cited as the Consumer Credit (Exempt Agreements) Order 1989 and shall come into force on 19th June 1989.

(2) In this Order

“the Act” means the Consumer Credit Act 1974;

“business premises” means premises for occupation for the purposes of a business (including any activity carried on by a body of persons, whether corporate or unincorporate) or for those and other purposes;

and references to the total charge for credit and the rate thereof are respectively references to the total charge for credit and the rate thereof calculated in accordance with the Consumer Credit (Total Charge for Credit) Regulations 2010.

(2A) In relation to a consumer credit agreement secured on land paragraph (2) shall apply as if for the words “Consumer Credit (Total Charge for Credit) Regulations 2010” there were substituted “Consumer Credit (Total Charge for Credit) Regulations 1980.”

(3) The Orders specified in Schedule 2 to this Order are hereby revoked.

Exemption of certain credit agreements secured on land

~~2.~~

2.1.1

R (1)

~~The Act shall not regulate a consumer credit agreement which falls within section 16(2) of the Act, being an agreement to which this paragraph applies.~~

This section specifies:

- (a) the persons or classes of persons to whom the exemption in article 60E(2) of the *Regulated Activities Order* applies; and
- (b) the agreements or classes of agreement to which the exemption in article 60E(2) of the *Regulated Activities Order* applies.

(2) ~~Where the creditor *lender* is a body specified in Part 1 of Schedule 1 to this Order, or a deposit taker (within the meaning given by section 16(10) of the Act), paragraph (1) *CONC App 2.1.2R* or an authorised person with permission to accept deposits, article 60E(2) of the *Regulated Activities Order* applies only to—~~

- (a) ~~a debtor-creditor-supplier agreement~~ *borrower-lender-supplier agreement* falling within (a) or (c) of the definition of *relevant credit agreement relating to the purchase of land*; ~~section 16(2)(a) or (c) of the Act;~~
- (b) ~~a debtor-creditor agreement~~ *borrower-lender agreement* secured by any ~~land mortgage~~ *legal mortgage on land to finance—*
 - (i) the purchase of *land*; or
 - (ii) the provision of dwellings or *business premises* on any *land*; or
 - (iii) subject to paragraph (3) below, the alteration, enlarging, repair or improvement of a dwelling or *business premises* on any *land*;
- (c) ~~a debtor-creditor agreement~~ *borrower-lender agreement* secured by any ~~land mortgage~~ *legal mortgage on land to refinance* any existing indebtedness of the ~~debtor~~ *borrower*, whether to the ~~creditor~~ *lender* or another *person*, under any agreement by which the ~~debtor~~ *borrower* was provided with *credit* for any of the purposes specified in heads (b)(i) to (iii) of sub-paragraph (b) above.

(3) ~~Head (iii) of sub-paragraph (b) of paragraph (2)(b)(iii) above applies only—~~

- (i) where the ~~creditor~~ *lender* is the ~~creditor~~ *lender* under—
 - (a) an agreement (whenever made) by which the ~~debtor~~

borrower is provided with *credit* for any of the purposes specified in ~~head (2)(b)(i) and head (2)(b)(ii) of that sub-paragraph~~; or

- (b) an agreement (whenever made) *refinancing* an agreement under which the ~~debtor~~ *borrower* is provided with *credit* for any of the said purposes,

being, in either case, an agreement relating to the *land* referred to in ~~the said head (2)(b)(iii)~~ and secured by a ~~land mortgage~~ *legal mortgage* on that *land*; or

- (ii) where a ~~debtor-creditor agreement~~ *borrower-lender agreement* to *finance* the alteration, enlarging, repair or improvement of a dwelling, secured by a ~~land mortgage~~ *legal mortgage* on that dwelling, is made as a result of any such services as are described in section 4(3)(e) of the Housing Associations Act 1985 which are certified as having been provided by—

- (a) a *local authority*;
- (b) a housing association within the meaning of section 1 of the Housing Associations Act 1985 or article 3 of the Housing (Northern Ireland) Order 1992;
- (c) a body established by such a housing association for the purpose of providing such services as are described in the said section 4(3)(e) of the Housing Associations Act 1985;
- (d) a charity;
- (e) the National Home Improvement Council;
- (f) the Northern Ireland Housing Executive; or
- (g) a body, or a body of any description, that has been approved by the Secretary of State under section 169(4)(c) of the Local Government and Housing Act 1989 or the Department of the Environment for Northern Ireland under article 103(4)(c) of the Housing (Northern Ireland) Order 1992.

- (4) Where the ~~creditor~~ *lender* is a body specified in ~~Part II of Schedule 1 to this Order, paragraph (1) above~~ *CONC App 2.1.3R*, the exemption in article 60E(2) of the *Regulated Activities Order* applies only to an agreement of a description specified in ~~that Part that rule~~ in relation to that body and made pursuant to an enactment or for a purpose so specified.

- (5) Where the ~~creditor~~ *lender* is a body specified in ~~Part III of Schedule 1 to this Order, paragraph (1) above~~ CONC App 2.1.4R, the exemption in article 60E (2) of the *Regulated Activities Order* applies only to an agreement of a description falling within ~~Article 2(2)(a) to (e) above~~ CONC App 2.1.1R(2)(a) to (c), being an agreement advancing money on the security of a dwelling-house.

SCHEDULE 1

BODIES WHOSE AGREEMENTS OF THE SPECIFIED DESCRIPTION ARE EXEMPT AGREEMENTS

PART I

2.1.2 R

INSURANCE COMPANIES

Abbey Life Assurance Company Limited
Abbey Life Pension and Annuities Limited
Albany Life Assurance Company Limited
Allchurches Life Assurance Limited
Alliance Assurance Company Limited
Allied Dunbar Assurance PLC
Ambassador Life Assurance Company Limited
American Life Insurance Company
Ansvar Insurance Company Limited
Atlas Assurance Company Limited
Australian Mutual Provident Society
Avon Insurance PLC
Black Horse Life Assurance Company Limited
Bradford Insurance Company Limited
Britannic Assurance Public Limited Company

The British & European Reinsurance Company Limited
British Equitable Assurance Company Limited
The British Life Office Limited
The British Oak Insurance Company Limited
British Reserve Insurance Company Limited
Caledonian Insurance Company
The Cambrian Insurance Company Limited
The Canada Life Assurance Company
Cannon Assurance Limited
Car and General Insurance Corporation Limited
City of Westminster Assurance Company Limited
City of Westminster Assurance Society Limited
Clerical, Medical and General Life Assurance Society
Colonial Life (UK) Limited
The Colonial Mutual Life Assurance Society Limited
Commercial Union Assurance Company plc
Commercial Union Pensions Management Limited
Commercial Union Life Assurance Company Limited
Confederation Life Insurance Company
The Contingency Insurance Company Limited
Co-operative Insurance Society Limited
Cornhill Insurance Public Limited Company
Criterion Insurance Company Limited
Crown Life Assurance Company Limited
Crown Life Insurance Company Limited
Crown Life Pensions Limited
Crusader Insurance PLC

The Dominion Insurance Company Limited
Eagle Star Insurance Company Limited
Ecclesiastical Insurance Office plc
Economic Insurance Company Limited
English & American Insurance Company Limited
The Equitable Life Assurance Society
Equico International Limited
Equity & Law Life Assurance Society plc
Essex and Suffolk Insurance Company Limited
Excess Insurance Company Limited
Federation Mutual Insurance Limited
Fine Art and General Insurance Company Limited
Friends' Provident Life Office
FS Assurance Limited
General Accident Fire and Life Assurance Corporation Public Limited Company
General Accident Life Assurance Limited
General Accident Linked Life Assurance Limited
General Portfolio Life Insurance Public Limited Company
Gisborne Life Assurance Company Limited
Gresham Life Assurance Society Limited
Guardian Assurance plc
Guardian Royal Exchange Assurance plc
Hill Samuel Life Assurance Limited
The Ideal Insurance Company Limited
The Imperial Life Assurance Company of Canada
Irish Life Assurance plc

The Iron Trades Employers Insurance Association Limited
Legal and General Assurance Society Limited
The Licenses and General Insurance Company Limited
The Life Association of Scotland Limited
London Aberdeen & Northern Mutual Assurance Society Limited
London and Manchester Assurance Company Limited
London and Manchester (Pensions) Limited
London & Scottish Assurance Corporation Limited
The London Assurance
The London Life Association Limited
The Manufacturers Life Insurance Company
Marine and General Mutual Life Assurance Society
Maritime Insurance Company Limited
Medical Sickness Annuity & Life Assurance Society Limited
The Mercantile and General Reinsurance Company plc
Midland Assurance Limited
The Motor Union Insurance Company Limited
Minister Insurance Company Limited
Municipal Life Assurance Limited
Municipal Mutual Insurance Limited
NALGO Insurance Association Limited
National Employers' Life Assurance Company Limited
National Employers' Mutual General Insurance Association Limited
The National Farmers Union Mutual Insurance Society Limited
National House-Building Council
The National Insurance and Guarantee Corporation PLC
The National Mutual Life Association of Australasia Limited

National Mutual Life Assurance Society
National Provident Institution
National Vulcan Engineering Insurance Group Limited
N.E.L. Pensions Limited
The New Zealand Insurance plc
North British & Mercantile Insurance Company Limited
The Northern Assurance Company Limited
Norwich Union Asset Management Limited
Norwich Union Fire Insurance Society Limited
Norwich Union Insurance Group (Pensions Management) Limited
Norwich Union Life Insurance Society
NRG London Reinsurance Company Limited
Oaklife Assurance Limited
The Ocean Accident & Guarantee Corporation Limited
The Orion Insurance Company P.L.C.
Pearl Assurance Public Limited Company
Pensions Management (SWF) Limited
Permanent Insurance Company Limited
Phoenix Assurance Public Limited Company
Pioneer Mutual Insurance Company Limited
Prolific Life and Pensions Limited
Property Growth Pensions & Annuities Limited
Provident Life Association Limited
Provident Mutual Life Assurance Association
Provincial Insurance Public Limited Company
The Prudential Assurance Company Limited
Railway Passengers Assurance Company

Refuge Assurance, public Limited company
Regency Life Assurance Company Limited
The Reliance Fire and Accident Insurance Corporation Limited
The Reliance Marine Insurance Company Limited
Reliance Mutual Insurance Society Limited
Royal Exchange Assurance
Royal Insurance Public Limited Company
Royal Insurance (Int.) Limited
Royal Insurance (U.K.) Limited
Royal Life Insurance Limited
Royal Life (Unit Linked Assurances) Limited
Royal Life (Unit Linked Pension Funds) Limited
The Royal London Mutual Insurance Society Limited
The Royal National Pension Fund for Nurses
Royal Reinsurance Company Limited
Schroder Life Assurance Limited
Scottish Amicable Life Assurance Society
Scottish Equitable Life Assurance Society
Scottish General Insurance Company Limited
Scottish Insurance Corporation Limited
The Scottish Life Assurance Company
The Scottish Mutual Assurance Society
The Scottish Provident Institution
Scottish Union and National Insurance Company
Scottish Widows' Fund and Life Assurance Society
Sentinel Life plc
Skandia Life Assurance Company Limited

Standard Life Assurance Company
Standard Life Pension Funds Limited
The State Assurance Company Limited
Suffolk Life Annuities Limited
Sun Alliance and London Assurance Company Limited
Sun Insurance Office Limited
Sun Life Assurance Company of Canada
Sun Life Assurance Society plc
Target Life Assurance Company Limited
Teachers Assurance Company Limited
Trident Investors Life Assurance Company Limited
Trident Life Assurance Company Limited
Trinity Insurance Company Limited
UK Life Assurance Company Limited
United British Insurance Company Limited
United Friendly Insurance plc
United Kingdom Temperance and General Provident Institution
United Standard Insurance Company Limited
The University Life Assurance Society
The Victory Reinsurance Company Limited
Wesleyan and General Assurance Society
The Western Australian Insurance Company Limited
The White Cross Insurance Company Limited
World-Wide Reassurance Company Limited
The Yorkshire Insurance Company Limited
Zurich Life Assurance Company Limited
FRIENDLY SOCIETIES

The Ancient Order of Foresters Friendly Society
Anglo-Saxons Friendly Society
Blackburn Philanthropic Mutual Assurance Society
British Benefit Society
British Order of Ancient Free Gardeners' Friendly Society
Brunel Assurance Society
Cirencester Benefit Society
Civil Servants' Annuities Assurance Society
Colmore Friendly Society
Coventry Assurance Society
Dentists' Provident Society
Devon and Exeter Women's Equitable Benefit Society
The Exeter Equitable Friendly Society
Grand United Order of Oddfellows Friendly Society
The Hampshire and General Friendly Society
Harvest Friendly Society
Hearts of Oak Benefit Society
The Ideal Benefit Society
Independent Order of Oddfellows Kingston Unity Friendly Society
The Independent Order of Odd Fellows Manchester Unity Friendly Society
The Independent Order of Rechabites, Salford Unity, Friendly Society
Leeds District of the Ancient Order of Foresters Investment Association
Leek Assurance Collecting Society
The Leicester District Foresters' Investment Society
Liverpool Victoria Friendly Society
The Manchester and Districts of the Ancient Order of Foresters Investment Association

National Deposit Friendly Society

National Equalized Druids Friendly Society

National United Order of Free Gardeners Friendly Society

New Tab Friendly Society

Northumberland and Durham Miners' Permanent Relief Fund Friendly Society

Nottingham Oddfellows Assurance Friendly Society

The Order of Druids Friendly Society

The Order of the Sons of Temperance Friendly Society

Original Holloway Society

Pioneer Benefit Society

Preston Catholic Collecting Society

Preston Shelley Assurance Collecting Society

Provident Reliance Friendly Society

Rational and County Assurance Society

Royal Liver Friendly Society

Scottish Friendly Assurance Society

The Scottish Legal Life Assurance Society

The Shepherds Friendly Society

Sons of Scotland Temperance Friendly Society

Stepney District Distressed Members' Pension Benevolent Fund

The Sussex Widow and Orphans Society

Teachers Provident Society

Time Assurance Society

Tunbridge Wells Equitable Friendly Society

Tunstall and District Assurance Collecting Society

United Ancient Order of Druids Friendly Society

United Kingdom Civil Service Benefit Society

United Patriots' National Benefit Society

West Surrey General Benefit Society

Widow and Orphan Fund of the Woolwich District of the Independent Order of Odd Fellows, Manchester Unity Friendly Society

Widow and Orphans' Fund, Stepney District of the Independent Order of Odd Fellows, Manchester Unity Friendly Society

Widow, Widowers and Orphans' Fund of the Godalming District of the Independent Order of Oddfellows, Manchester Unity, Friendly Society

Wiltshire Holloway Benefit Society

CHARITIES

The Central Board of Finance of the Church of England

Church Commissioners

The Church of England Pensions Board

The Church of Scotland

The Church of Scotland General Trustees

Church of Scotland Trust

The Representative Body of the Church in Wales

Timber Trades Benevolent Society

The Winchester Diocesan Board of Finance

York Diocesan Board of Finance Limited

AGRICULTURAL CORPORATIONS

The Agricultural Mortgage Corporation Public Limited Company

The Scottish Agricultural Securities Corporation Public Limited Company

OTHER BODIES

General Practice Finance Corporation Limited

2.1.3 R

PART II

Bodies

Description of Agreement and Enactments

Corporate

LAND IMPROVEMENT COMPANIES

The Lands Improvement Company: ~~Agreements of a description falling within section 16(2) of the Act~~ Relevant credit agreements relating to the purchase of land, being agreements made pursuant to—

- (a) the Lands Improvement Company's Acts 1853 to 1969; or
- (b) the Improvement of Land Acts 1864 and 1899.

BODIES CORPORATE NAMED OR SPECIFICALLY REFERRED TO IN A PUBLIC GENERAL ACT - UNITED KINGDOM

The Greater London Authority: ~~Agreements of a description falling within section 16(2) of the Act~~ Relevant credit agreements relating to the purchase of land, being agreements made under the Authority's power to give financial assistance under section 30 of the Greater London Authority Act 1999.

Homes and Communities Agency: ~~Agreements of a description falling within section 16(2) of the Act~~ Relevant credit agreements relating to the purchase of land, being agreements made under the Agency's powers to give financial assistance under section 19 of the Housing and Regeneration Act 2008.

The Eastern Electricity Board: Agreements of a description falling within ~~article 2(2)(a) to (e)~~ CONC App 2.1.1R(2)(a) to (c), being agreements made between the Board and employees or prospective employees of the Board pursuant to section 2(5) of the Electricity Act 1947.

The Electricity Council: Agreements of a description falling within ~~article 2(2)(a) to (e)~~ CONC App 2.1.1R(2)(a) to (c), being agreements made between the Council and employees or prospective employees of the Council pursuant to section 2(5) of the Electricity Act 1947, as applied in relation to the Council by section 3(6) of the Electricity Act 1957.

The London Docklands Development Corporation: Agreements of a description falling within ~~article 2(2)(a) to (e)~~ CONC App 2.1.1R(2)(a) to (c), being agreements made pursuant to section 136 of the Local Government, Planning and Land Act 1980.

The London Electricity Board: Agreements of a description falling within ~~article 2(2)(a) to (e)~~ CONC App 2.1.1R(2)(a) to (c), being agreements made between the Board and employees or prospective employees of the Board pursuant to section 2(5) of the Electricity Act 1947.

The North Eastern Electricity Board: Agreements of a description falling within ~~article 2(2)(a) to (e)~~ CONC App 2.1.1R(2)(a) to (c), being agreements made between the Board and employees or prospective employees of the Board pursuant to section 2(5) of the Electricity Act 1947.

Sea Fish: ~~Agreements of a description falling within section 16(2) of the Act~~

Industry Authority:	<u>Relevant credit agreements relating to the purchase of land</u> , being agreements made pursuant to section 3(1)(e) and (f) of the Fisheries Act 1981.
The South Eastern Electricity Board:	Agreements of a description falling within article 2(2)(a) to (e) <u>CONC App 2.1.1R(2)(a) to (c)</u> , being agreements made between the Board and employees or prospective employees of the Board pursuant to section 2(5) of the Electricity Act 1947.
The South Western Electricity Board:	Agreements of a description falling within article 2(2)(a) to (e) <u>CONC App 2.1.1R(2)(a) to (c)</u> , being agreements made between the Board and employees or prospective employees of the Board pursuant to section 2(5) of the Electricity Act 1947.
The Southern Electricity Board:	Agreements of a description falling within article 2(2)(a) to (e) <u>CONC App 2.1.1R(2)(a) to (c)</u> , being agreements made between the Board and employees or prospective employees of the Board pursuant to section 2(5) of the Electricity Act 1947.
The Yorkshire Electricity Board:	Agreements of a description falling within article 2(2)(a) to (e) <u>CONC App 2.1.1R(2)(a) to (c)</u> , being agreements made between the Board and employees or prospective employees of the Board pursuant to section 2(5) of the Electricity Act 1947.

NORTHERN IRELAND

Eastern Health and Social Services Board:	Agreements of a description falling within section 16(2) of the Act <u>Relevant credit agreements relating to the purchase of land</u> , being agreements made pursuant to article 59 of and Schedule 9 to the Health and Personal Social Services (Northern Ireland) Order 1972.
Northern Health and Social Services Board:	Agreements of a description falling within section 16(2) of the Act <u>Relevant credit agreements relating to the purchase of land</u> , being agreements made pursuant to article 59 of and Schedule 9 to the Health and Personal Social Services (Northern Ireland) Order 1972.
Southern Health and Social Services Board:	Agreements of a description falling within article section 16(2) of the Act <u>Relevant credit agreements relating to the purchase of land</u> , being agreements made pursuant to article 59 of and Schedule 9 to the Health and Personal Social Services (Northern Ireland) Order 1972.
Welsh Ministers	Agreements of a description falling within section 16(2) of the Act <u>Relevant credit agreements relating to the purchase of land</u> , being agreements falling within article 2(2)(a) to (e) <u>CONC App 2.1.1R(2)(a) to (c)</u> which are made pursuant to section 36 of the New Towns Act 1981 and which related to property of the Commission for the New Towns transferred to them under a scheme made under section 51(1) of the Housing and Regeneration Act 2008.

Western
Health and
Social
Services
Board:

~~Agreements of a description falling within a section 16(2) of the Act,~~
Relevant credit agreements relating to the purchase of land being
agreements made pursuant to article 59 of and Schedule 9 to the Health and
Personal Social Services (Northern Ireland) Order 1972.

2.1.4 R

PART III

**BODIES CORPORATE NAMED OR SPECIFICALLY REFERRED
TO IN AN ORDER MADE UNDER SECTION 156(4), 444(1) OR
447(2)(a) OF THE HOUSING ACT 1985**

Abbey Life Executive Mortgages Limited
Abbey Life Funding Limited
Abbey Life Home Loans Limited
Abbey Life Home Services Limited
Abbey Life Mortgage Finance Limited
Abbey Life Mortgage Loans Limited
Abbey Life Mortgage Securities Limited
Abbey Life Residential Loans Limited
Albion Home Loans Limited
Alliance & Leicester Mortgage Loans Limited
Alliance & Leicester Mortgage Loans (No. 2) Limited
Alliance & Leicester Mortgage Loans (No. 3) Limited
Alliance & Leicester Mortgage Loans (No. 4) Limited
Bradford & Bingley Homeloans Limited
Bradford & Bingley Homeloans Management Limited
Bradford & Bingley Loans Limited
Bradford & Bingley Management Limited
Bradford & Bingley Mortgages Limited
Bradford & Bingley Mortgage Management Limited
Bradford & Bingley Secured Loans Limited

Bradford & Bingley Secured Loans Management Limited
Britannia Mortgage Company Number One Limited
Britannia Mortgage Company Number Two Limited
Chelsea Mortgage Services Limited
CIS Home Loans Limited
CIS Mortgage Finance Limited
CIS Mortgage Maker Limited
CIS Residential Mortgages Limited
CL Mortgages Limited
Darlington Mortgage Services Limited
Derbyshire Home Loans Limited
General Portfolio Finance Limited
Gracechurch Mortgage Finance (No. 2) PLC
Gracechurch Mortgage Finance (No. 3) PLC
Halifax Loans Limited
Halifax Loans (No. 2) Limited
Halifax Loans (No. 3) Limited
Halifax Loans (No. 4) Limited
HMC First Home National PLC
Home Loans Direct Limited
Home Loans Direct Funding PLC
Household Mortgage Corporation PLC
Ipswich Mortgage Services Limited
LBS Mortgages Limited
Leamington Mortgage Corporation Limited
Leeds & Holbeck Mortgage Corporation Limited
Leeds & Holbeck Mortgage Funding Limited

Legal and General Mortgage Services Limited
Lombard Home Loans Limited
London and Manchester (Mortgages) (No. 1) Limited
London and Manchester (Mortgages) (No. 2) Limited
London and Manchester (Mortgages) (No. 3) Limited
London and Manchester (Mortgages) (No. 4) Limited
London and Manchester (Mortgages) (No. 5) Limited
Market Harborough Mortgages Limited
The Mortgage Corporation Limited
The National Home Loans Corporation plc
National Mutual Home Loans plc
National Westminster Home Loans Limited
Newbury Mortgage Services Limited
Northern Rock Mortgage Services Limited
North Yorkshire Mortgages Limited
Norwich and Peterborough (LBS) Limited
Norwich Union Mortgage Finance Limited
Royal London Homebuy Limited
Saffron Walden Mortgage Services Limited
Secured Residential Funding PLC
Stroud and Swindon Mortgage Company Limited
Stroud and Swindon Mortgage Company (No. 2) Limited
Sun Life of Canada Home Loans Limited
Wesleyan Home Loans Limited
West Bromwich Mortgage Company Limited

2.2 Exemption for high net worth borrowers and hirers and exemption relating to businesses

2007 No. 1168

CONSUMER CREDIT

The Consumer Credit (Exempt Agreements) Order 2007

Citation and Commencement

1. This Order may be cited as the Consumer Credit (Exempt Agreements) Order 2007 and shall come into force on 6th April 2008.

Exemption for high net worth ~~debtors~~ borrowers and hirers

- 2.2.2.1 R The Consumer Credit Act 1974 shall not regulate a consumer credit agreement or a consumer hire agreement where—
- (a) the debtor or hirer is a natural person;
 - (aa) in the case of a consumer credit agreement other than an agreement secured on land, the agreement is for credit which exceeds £60,260;
 - (b) the agreement includes a declaration made by him complying with (1) article 3 and Schedule 1; For the purposes of articles 60H(c) and 60Q(b) of the Regulated Activities Order, a declaration made by the borrower or hirer which provides that the borrower or hirer agrees to forgo the protection and remedies that would be available to the borrower or hirer if the agreement were a regulated credit agreement or a regulated consumer hire agreement must comply with CONC App 2.2.2R and CONC App 2.2.6R.
 - (e) (2) For the purposes of articles 60H(d) and 60Q(c) of the Regulated Activities Order, a statement of high net worth in relation to the income or assets of the borrower or hirer (referred to in this section as a statement of high net worth) must complying with articles 4 and 5 and Schedule 2 has been made in relation to him; CONC App 2.2.3R, CONC App 2.2.4R and CONC App 2.2.7R.
 - (d) (3) For the purposes of articles 60H(e) and 60Q(d) of the Regulated Activities Order, that the statement in (2) must be was made during the period of one year ending with the day on which the agreement was made; and,
 - (e) before the agreement was made a copy of that statement was provided to the debtor or hirer and, if the statement was not made by the creditor or owner, to the creditor or owner.
- 3.2.2.2 R A declaration for the purposes of article 2(b)— articles 60H(c) and 60Q(b) of the Regulated Activities Order shall—

- ~~(a)~~ (1) be set out in the ~~consumer~~ *consumer credit agreement* or *consumer hire agreement* no less prominently than other information in the agreement and be readily distinguishable from the background medium; and
- ~~(b)~~ (2) be signed by the ~~debtor~~ *borrower* or *hirer*, unless the agreement is so signed.

4.

- 2.2.3 R (1) Subject to ~~article 5~~ *CONC App 2.2.4R*, a statement of high net worth shall be signed by—
- (a) the ~~creditor~~ *lender* or *owner*; or
 - (b) an accountant who is a member of any of the bodies listed in ~~paragraph~~ (2).
- (2) The bodies referred to in ~~paragraph~~ (1)(b) are:
- (a) the Institute of Chartered Accountants in England and Wales;
 - (b) the Institute of Chartered Accountants of Scotland;
 - (c) the Institute of Chartered Accounts in Ireland;
 - (d) the Association of Chartered Certified Accountants;
 - (e) the Chartered Institute of Management Accountants;
 - (f) the Chartered Institute of Public Finance and Accountancy;
 - (g) a professional body for accountants established in a jurisdiction outside the United Kingdom.

5.

- 2.2.4 R A person who is—
- ~~(a)~~ (1) the ~~creditor~~ *lender* or *owner*;
 - ~~(b)~~ (2) an employee or agent of the ~~creditor~~ *lender* or *owner* or a *person* who otherwise acts on behalf of the ~~creditor~~ *lender* or *owner* in relation to the ~~consumer~~ *consumer credit agreement* or *consumer hire agreement*; or
 - ~~(c)~~ (3) an *associate* of the ~~creditor~~ *lender* or *owner*,

may only make a statement of high net worth if the ~~creditor~~ *lender* or

owner is a person who has ~~permission under Part 4A~~ permission of the Financial Services and Markets Act 2000 to accept deposits.

Declaration for exemption relating to businesses

- 6.2.2.5 R A declaration for the purposes of ~~section 16B(2) of the Consumer Credit Act 1974~~ articles 60C or 60O of the Regulated Activities Order shall—
- (a) (1) comply with ~~Schedule 3~~ CONC App 2.2.8R;
 - (b) (2) be set out in the ~~consumer credit agreement~~ or *consumer hire agreement* no less prominently than other information in the agreement and be readily distinguishable from the background medium; and
 - (c) (3) be signed by the ~~debtor~~ borrower or *hirer* or where the ~~debtor~~ borrower or *hirer* is a *partnership* or unincorporated body of persons be signed by, or on behalf of, the ~~debtor~~ borrower or *hirer*, unless the agreement is so signed.

SCHEDULE 1

DECLARATION BY HIGH NET WORTH ~~DEBTOR~~ BORROWER OR HIRER

- 2.2.6 R The declaration for the purposes of ~~article 2 (b)~~ articles 60H(c) and 60Q(b) of the Regulated Activities Order must have the following form and content-

“Declaration by high net worth ~~debtor~~ borrower or hirer

(section 16A (1) (b) Consumer Credit Act 1974 articles 60H and 60Q of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)

I confirm that I have received a copy of the statement of high net worth made in relation to me for the purposes of ~~section 16A (1) (c) Consumer Credit Act 1974~~ article 60H(d) or article 60Q(c) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

I understand that by making this declaration I will not have the benefit of the protection and remedies that would be available to me under the Financial Services and Markets Act 2000 or the Consumer Credit Act 1974 if this agreement were a regulated agreement under ~~that Act~~ those Acts.

I understand that this declaration does not affect the powers of the court to make an order under section 140B of the Consumer Credit Act 1974 in relation to a credit agreement where it determines that the relationship between the ~~creditor~~ lender and the ~~debtor~~ borrower is unfair to the ~~debtor~~

borrower.*

I am aware that if I am in any doubt as to the consequences of making this declaration then I should seek independent legal advice”.

**This section should be omitted in the case of a consumer hire agreement*

SCHEDULE 2

STATEMENT OF HIGH NET WORTH

2.2.7 **R** A statement of high net worth for the purposes of ~~article 2(e)~~ articles 60H(d) and 60Q(c) of the *Regulated Activities Order* must have the following form and content:

“Statement of High Net Worth

(~~section 16A (1) (e) Consumer Credit Act 1974~~ articles 60H and 60Q of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)

I/We* (insert full name) of (insert address and postcode)..... confirm that I am/we* are a person qualified to make a statement of high net worth under ~~article 4 of the Consumer Credit (Exempt Agreements) Order 2007~~ rules made by the Financial Conduct Authority, by virtue of the fact that

In my/our* opinion (insert full name of ~~debtor~~ borrower or hirer)

.....

of (insert address and post code of ~~debtor~~ borrower or hirer)

.....

.....

is an individual of high net worth because he/she*-

(a) received during the previous financial year net income totalling an amount of not less that £150,000*; and/or

(b) had throughout that year net assets with a total value of not less than £500,000*.

(insert one of the following declarations as appropriate)

I/We* declare that I am/we are* not connected to [insert name of the ~~creditor(s)~~ lender(s)/owner(s)][any person who is a ~~creditor~~ lender/owner offering ~~consumer~~-credit agreements/consumer hire agreements*].

I/We* declare that I am/we are* [connected to] [insert name of ~~creditor(s)~~ lender(s)/owner(s)] as I am/we are* [the ~~creditor(s)~~ lender(s)/owner(s)/an

employee of/an agent of the ~~creditor(s)~~ lender(s)//owner(s)/a person who otherwise acts on behalf of the ~~creditor(s)~~ lender(s)//owner(s) in relation to the ~~consumer~~ credit agreement/consumer hire agreement/an associate of the ~~creditor(s)~~ lender(s)//owner(s)].*

I/We declare that I am/we are*/[a/an] ~~creditor(s)~~ lender(s)/owner(s) offering ~~consumer~~ credit agreements/consumer hire agreements/ an employee of/an agent of/a person who otherwise acts on behalf of/ an associate of ~~creditor(s)~~ lender(s)/owner(s) offering ~~consumer~~ credit agreements/consumer hire agreements.*

In this statement-

- (a) “associate” shall be construed in accordance with ~~section 184 of the Consumer Credit Act 1974~~ article 60L of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
- (b) “financial year” means a period of one year ending with 31st March;
- (c) “net assets” shall not include –
 - (i) the value of the ~~debtor’s~~ borrower’s or hirer’s primary residence or any loan secured on that residence;
 - (ii) any rights of the ~~debtor-borrower~~ or hirer under a qualifying contract of insurance within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (~~S.I. 20001/544~~); and
 - (iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of the service of the ~~debtor borrower~~ or hirer or on his retirement and to which he is (or his dependents are), or may be, entitled.
- (d) “net income” means the total income of the ~~debtor-borrower~~ or hirer from all sources reduced by the amount of income tax and national insurance contributions payable in respect of it; and
- (e) “previous financial year” means the financial year immediately preceding the financial year during which the statement is made”.

**Delete as appropriate.*

SCHEDULE 3

DECLARATION FOR EXEMPTION RELATING TO BUSINESSES

2.2.8 R A declaration for the purposes of ~~article 6~~ articles 60C or 60O of the Regulated Activities Order must have the following form and content-

“Declaration for exemption relating to businesses

**(sections 16B and 189 (1) and (2) Consumer Credit Act 1974 articles
60C and 60O of the Financial Services and Markets Act 2000
(Regulated Activities) Order 2001)**

I am/We are* entering this agreement wholly or predominantly for the purposes of a business carried on by me/us or intended to be carried on by me/us.

I/We* understand that I/We* will not have the benefit of the protection and remedies that would be available to me/us* under the Financial Services and Markets Act 2000 or under the Consumer Credit Act 1974 if this agreement were a regulated agreement under ~~that~~ those Acts.

I/We* understand that this declaration does not affect the powers of the court to make an order under section 140B of the Consumer Credit Act 1974 in relation to a credit agreement where it determines that the relationship between the ~~creditor~~ lender and the ~~debtor~~ borrower is unfair to the ~~debtor~~ borrower.**

I am/We are aware that, if I am/we are in any doubts as to the consequences of the agreement not being regulated by the Financial Services and Markets Act 2000 or the Consumer Credit Act 1974, then I/we* should seek independent legal advice.”.

**Delete as appropriate.*

***This section should be omitted in the case of a consumer hire agreement*