

# Appendix 1

## Total charge for credit rules; and certain exemptions

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

#### Interpretation

- App 1.1.1 R** (1) For the purposes of this section, references to the period for which credit is provided:
- (a) in the case of 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 a *credit agreement* under which the period for which *credit* is to be provided can be ascertained at the *relevant date* if the assumption in ■ CONC App 1.1.12 R 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 ■ CONC App 1.1.13 R.
- (2) References in this section to repayment of the *credit* under 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*.

#### Application

- App 1.1.2 R** This section applies to *regulated credit agreements* which are secured on *land* or to prospective *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.

## General provisions about calculation

### App 1.1.3 R

- (1) Any calculation under this section shall be made on the following assumptions
- (a) the assumption that the *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 *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 *lender* will not exercise any right under the *transaction* to require repayment;
 the *borrower*, in any case, performing all his obligations under the *transaction*;
  - (d) subject to (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 *borrower* or of the *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 this section
- (a) subject to (b) below and ■ CONC App 1.1.18 R, 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 a *credit agreement* for *running-account credit* or 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 this section, notwithstanding ■ CONC App 1.1.17 R, 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.

### Total charge for credit

**App 1.1.4** **R** For the purposes of 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 ■ CONC App 1.1.5 R as apply in relation to the *credit agreement* but excluding the amount of the charges specified in ■ CONC App 1.1.6 R.

### Items included in total charge for credit

**App 1.1.5** **R** Except as provided in ■ CONC App 1.1.6 R, the amounts of the following charges are included in the *total charge for credit* in relation to 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 *borrower* or a *relative* of his whether to the *lender* or any other *person*; and
- (c) a premium under a *contract of insurance*, payable under the *transaction* by the *borrower* or a *relative* of his, where the making or maintenance of the *contract of insurance* is required by the *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 *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 *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*.

### Items excluded from total charge for credit

#### App 1.1.6 R

- (1) The amounts of the following items are not included in the *total charge for credit* in relation to a *credit agreement*:
- (a) any charge payable under the *transaction* to the *lender* upon failure by the *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 *lender* to any *person* upon failure by the *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 *lender* may under the *transaction* require the *borrower* or a *relative* of his to pay to him or to another *person* on his behalf;
  - (c) any charge relating to a *credit agreement* which is a *credit agreement* to *finance* a transaction of a description referred to in (2)(a) or (b) of 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 (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 *borrower*, and
    - (ii) which is payable pursuant to an obligation incurred by the *borrower* under arrangements effected before he applies to enter into the *credit agreement*, not being arrangements under which the *borrower* is bound to enter into any *credit agreement*;
  - (e) subject to (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 *borrower* of the arrangement;
  - (g) any charge for a guarantee other than a guarantee
    - (i) which is required by the *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 *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 *borrower*;
  - (h) charges for the transfer of funds (other than charges within (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 *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 ■ CONC App 1.1.5R (c).
- (2) (1) above has effect only
  - (a) in the case of a charge within (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 (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 *lender* or a *supplier* or a *credit broker* who introduced the *borrower* and the *lender*, and
    - (ii) where the arrangements are made with a *person* chosen by the *borrower*, and
    - (iii) if, in accordance with the *transaction*, the consent of the *lender* or of a *supplier* or of the *credit broker* who introduced the *borrower* and the *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 *lender* or to the *supplier* or to the *credit broker* or on any other ground;

and references in this sub-paragraph to the *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.

**Rate of total charge for credit**

**App 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 ■ CONC App 1.1.8 R to ■ CONC App 1.1.10 R and (where it has more than one decimal place) rounded to one decimal place in accordance with ■ CONC App 1.1.8 R.

**App 1.1.8 R** The *annual percentage rate of charge* referred to in ■ CONC App 1.1.7 R 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.

**App 1.1.9 R**

- (1) Subject to (4) below, the *annual percentage rate of charge* is the rate for *i* which satisfies the equation set out in (2) below, expressed as a percentage.
- (2) The equation referred to in (1) above is

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

where

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

*K'* is the number identifying a particular instalment;

*A<sub>K</sub>* is the amount of advance *K*;

*A'<sub>K'</sub>* is the amount of instalment *K'*;

$\Sigma$  represents the sum of all the terms indicated;

*m* is the number of advances of *credit*;

*m'* is the total number of instalments;

*t<sub>K</sub>* is the interval, expressed in years, between the *relevant date* and the date of the second advance and those of any subsequent advances number three to *m*;

and

*t<sub>K'</sub>* is the interval, expressed in years, between the *relevant date* and the dates of instalments numbered one to *m'*.

- (3) In (2) above, references to instalments are references to any payment made by, or on behalf of, the *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 (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.

**Computation of time**

**App 1.1.10 R**

- (1) This rule has effect for determining the length of any period for the purposes of calculations under ■ CONC App 1.1.7 R to ■ CONC App 1.1.9 R.
- (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 (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.

**Assumptions for calculations**

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

**Assumption about the amount of credit**

- App 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 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.

**Assumption about period for which credit is provided**

**App 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*.

**Assumption about index-linked rates and amounts**

**App 1.1.14 R** Subject to ■ CONC App 1.1.15 R, 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.

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

**App 1.1.15 R** (1) This 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 ■ 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 rule

"initial standard variable rate"	means	
	(a)	the standard variable rate of interest which would be applied by the <i>lender</i> to the <i>credit agreement</i> on the date of the making of the <i>credit agreement</i> if the <i>credit agreement</i> provided for interest to be paid at the <i>lender's</i> 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 <i>lender</i> on the date of the making of the <i>credit agreement</i> in question to other <i>land-related agreements</i> 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 <i>borrower</i> 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 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 *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 (3) above) which it is to be assumed, by virtue of ■ 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.

**Assumption about changes in charges**.....

App 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.

**Assumption about time of provision of credit**.....

App 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.

**Assumptions about time of payment of charges**.....

App 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 *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 *borrower* will not make payment on that date, at the earliest date on which it may

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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.