

**NOTES ON :**

The Draft Consumer Credit  
(Total Charge For Credit)  
(Amendment) Regulations 2012

MAY 2012

# Department for Business, Innovation and Skills — Notes on:

## THE DRAFT CONSUMER CREDIT (TOTAL CHARGE FOR CREDIT) (AMENDMENT) REGULATIONS 2012

1. The Consumer Credit (Total Charge for Credit) (Amendment) Regulations 2012 (“Amendment Regulations”) amend the Consumer Credit (Total Charge for Credit) Regulations 2010 (S.I. 2010/1011) (“TCC Regulations”), so as to implement Directive 2011/90 providing additional assumptions for the calculation of the annual percentage rate of charge (“2011 Directive”).
2. The 2011 Directive replaces Part II of Annex I of the Consumer Credit Directive 2008/48 (“CCD”).
3. Part II of Annex I of the CCD contained 10 assumptions to be used when calculating the annual percentage rate of charge, and these assumptions were transposed into domestic law in Regulation 6 of the TCC Regulations.
4. The 2011 Directive also contains 10 assumptions:  
  
Assumptions (a), (c), (h) and (j) are unchanged, and correspond to assumptions (a), (b), (g) and (j) of the CCD Annex I.  
Assumptions (b), (d) and (i) correspond, with minor changes, to assumptions (c), (h) and (i) of the CCD Annex I.  
Assumptions (e), (f) and (g) are new and replace assumptions (d), (e) and (f) of the CCD Annex I.
5. The Amendment Regulations make such amendments to the assumptions of the TCC Regulations to make them conform to the assumptions of the 2011 Directive.
6. The approach of the Amendment Regulations is to not go beyond what is required by the 2011 Directive. **The purpose of these Amendment Regulations is not to make general improvements to the TCC Regulations, but merely to ensure that they reflect the assumptions as set out in the 2011 Directive.**
7. The Commission has provided Guidance on how it interprets the assumptions in the 2011 Directive, and the UK Guidance will be revised in due course to reflect the new assumptions. Although the Court of Justice of the European Union would take the Commission Guidance into account when interpreting the CCD as amended by the 2011 Directive, the Commission Guidance does not have the status of legislation and is legally non-binding. For that reason, we are not transposing the Commission’s Guidance into the TCC Regulations.
8. The Government’s current approach to implementing EU legislation is to copy-out the EU legislation as far as is possible – i.e. as far as UK drafting conventions and clarity permits.

9. The Amendment Regulations, therefore use the language of the 2011 Directive to a large extent, but depart from this wording where necessary to be consistent with the drafting style of the TCC Regulations.

10. The standard changes in language are:

<b>CCD + 2011 Directive</b>	<b>TCC Regs + Amendment Regs</b>
Credit agreement	Consumer credit agreement
Deemed	Assumed
Borrowing rate	Rate of interest
Consumer	Debtor
If	Where

11. We have inserted a definition of “open-end consumer credit agreement” to transpose the definition found in assumption (e) of the 2011 Directive.

12. We correct a typographical error found in paragraph 3(g) to the Schedule of the TCC Regulations (Regulation 5).

13. Regulation 4 of the Amendment Regulations replace in full Regulation 6 of the TCC Regulations. However, only paragraphs (j) to (n) of Regulation 6 are in substance amended.

14. In line with the Government’s current commitment to review the effectiveness of legislation on a regular basis, the Amendment Regulations contain a standard Review provision (Regulation 6).

15. The table below sets out the current (‘old’) TCC regulation number; which assumption of the CCD Annex (‘Old Assumption’) it transposed; how the old assumption compares to its corresponding new assumption; the paragraph number in the new Regulation 6 where the new assumption is transposed; and how the new Regulation 6 paragraph compares to its corresponding old paragraph.

<b>Old TCC Reg nr</b>	<b>Which Old CCD Annex assumption (or CCD provision) the Old TCC Reg transposes</b>	<b>How New Annex assumption differs from Old Annex assumption</b>	<b>New TCC Reg, as amended by the Amendment Regulations</b>	<b>How New TCC Reg differs from Old TCC Reg</b>
		New definition in New Assumption (e)	2(1)	New
6(a)	CCD Art 19(3)		6(a)	No change

<b>Old TCC Reg nr</b>	<b>Which Old CCD Annex assumption (or CCD provision) the Old TCC Reg transposes</b>	<b>How New Annex assumption differs from Old Annex assumption</b>	<b>New TCC Reg, as amended by the Amendment Regulations</b>	<b>How New TCC Reg differs from Old TCC Reg</b>
6(b)	CCD Art 19(4)		6(b)	No change
6(c)	CCD Art 3(k)		6(c)	No change
6(d)	(i)	New Assumption (i) replicates Old Assumption (i) except that the words “interest rates” and “interest rate” are replaced by the words “borrowing rates” and “borrowing rate”.	6(d)	No change
6(e)	(j)	New Assumption (j) is the same as Old Assumption (j)	6(e)	No change
6(f)	(a)	New Assumption (a) is the same as Old Assumption (a)	6(f)	No change
6(g)	(b)	New Assumption (c) is the same as Old Assumption (b)	6(g)	No change
6(h)			6(h)	No change
6(i)	(c)	New Assumption (b) is the same as Old Assumption (c), except that it adds the words “of credit” after the word “amount”, and the word “credit” before the word “agreement”	6(fa)	Addition of words “of credit” Moved to its new position to reflect the new order of the assumptions in the 2011 Directive
6(j)	(d)	Old Assumption (d) is subsumed into New Assumption (e)	6(k)	New: transposition of New Assumption (e)
6(k)		DELETED		6(k) clarified 6(j), but 6(j) has now been replaced
6(l)		DELETED		The provision found in TCC Regulation 6(l) does not have an equivalent provision in the New Assumptions

<b>Old TCC Reg nr</b>	<b>Which Old CCD Annex assumption (or CCD provision) the Old TCC Reg transposes</b>	<b>How New Annex assumption differs from Old Annex assumption</b>	<b>New TCC Reg, as amended by the Amendment Regulations</b>	<b>How New TCC Reg differs from Old TCC Reg</b>
			6(l)	New: transposition of second and third sentence of New Assumption (e)(ii)
6(m)	(e)	Old Assumption (e) is subsumed into New Assumption (f)	6(m)	New: transposition of New Assumption (f)
6(n)	(f)	Old Assumption (f) is subsumed into New Assumption (f)	6(m)	New: transposition of New Assumption (f)
6(o)	(g)	Old Assumption (g) is moved to New Assumption (h)	6(o)	No Change
6(p)	(h)	Old Assumption (h) is moved to New Assumption (d) with the word “overdraft facility” substituted for “credit agreement” in the second sentence	6(i)	No Change
6(q)	(h)	Old Assumption (h) is moved to New Assumption (d) with the word “overdraft facility” substituted for “credit agreement” in the second sentence	6(j)	The words “consumer credit agreement” have been changed to “overdraft facility”

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