



# Credit Contracts and Consumer Finance Amendment Regulations 2019

Patsy Reddy, Governor-General

## Order in Council

At Wellington this 11th day of March 2019

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 138(1)(ab) of the Credit Contracts and Consumer Finance Act 2003—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Commerce and Consumer Affairs made in accordance with section 138(1A) of that Act.

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## Regulations

### 1 Title

These regulations are the Credit Contracts and Consumer Finance Amendment Regulations 2019.

### 2 Commencement

These regulations come into force on the day after the date of their notification in the *Gazette*.

### 3 Principal regulations

These regulations amend the Credit Contracts and Consumer Finance Regulations 2004 (the **principal regulations**).

### 4 New regulation 18C inserted (Exemptions from disclosure requirements for peer-to-peer lenders)

After regulation 18B, insert:

#### **18C Exemptions from disclosure requirements for peer-to-peer lenders**

- (1) Subclause (2) applies to a consumer credit contract if—
  - (a) the contract is to be entered into by means of a licensed peer-to-peer lending service; and
  - (b) a representative creditor under the contract complies with the creditor identification requirement in respect of that creditor (or more than 1 representative creditor does).
- (2) The contract is exempt from any other application of section 17 of the Act in relation to the creditor identification requirement (and, accordingly, no other creditor need comply with the requirement).
- (3) Subclause (4) applies to a consumer credit contract if—
  - (a) the contract is, or is to be, entered into by means of a licensed peer-to-peer lending service; and
  - (b) creditors under the contract take, or are to take, a guarantee of the contract; and
  - (c) a representative creditor taking the guarantee complies with the creditor identification requirement in respect of that creditor (or more than 1 such representative creditor does).
- (4) The contract is exempt from any other application of section 25 of the Act in relation to the creditor identification requirement for the guarantee (and, accordingly, no creditor other than the representative creditor mentioned in subclause (3)(c) need comply with the requirement).
- (5) Subclause (6) applies to a consumer credit contract if—

- (a) the contract is entered into by means of a licensed peer-to-peer lending service; and
  - (b) a creditor transfers rights under the contract to another creditor; and
  - (c) neither of those creditors is a representative creditor.
- (6) The contract is exempt from the application of section 26A of the Act in respect of the transfer.
- (7) In this regulation,—
- creditor identification requirement** means the requirement under section 17 or 25 of the Act for a creditor to ensure the disclosure of information set out in paragraphs (a), (aa), (ua), (ub), and (uc) of Schedule 1 of the Act (creditor’s name, address, dispute resolution scheme details, and registration details)
- licensed** means licensed under section 390 of the Financial Markets Conduct Act 2013
- peer-to-peer lending service** has the same meaning as in regulation 185 of the Financial Markets Conduct Regulations 2014
- representative creditor**, in relation to a consumer credit contract entered into by means of a licensed peer-to-peer lending service, means a creditor under the contract—
- (a) who provides the service; or
  - (b) who—
    - (i) is introduced (directly or indirectly) by a provider of the service to each other creditor under the contract; and
    - (ii) holds property or exercises rights under the contract for the benefit, or on behalf, of each other creditor.

## 5 Cross-heading above regulation 19 amended

In the cross-heading above regulation 19, replace “*Circumstances*” with “*Other circumstances*”.

Michael Webster,  
Clerk of the Executive Council.

## Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on the day after the date of their notification in the *Gazette*, amend the Credit Contracts and Consumer Finance Regulations 2004, which were made under the Credit Contracts and Consumer Finance Act 2003. The amendments exempt consumer credit contracts entered into by means of a licensed

peer-to-peer lending service from the application of sections 17, 25, and 26A of that Act in relation to certain requirements to disclose key information about creditors. Section 17 requires the disclosure of information about every creditor to every debtor before the contract is entered into. Section 25 requires the disclosure of information about every creditor to any guarantor of the contract. Section 26A applies if a creditor transfers rights under the contract to another creditor; it requires the disclosure of information about the new creditor to every debtor.

The exemptions relate to the following information:

- the creditor's name:
- the creditor's address:
- the creditor's trading name (if different):
- details of the creditor's registration on the register of financial service providers maintained under Part 2 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008:
- details of any dispute resolution scheme approved under Part 3 of that Act to which the creditor belongs.

The exemptions from the application of sections 17 and 25 apply to all creditors under the contract except for a representative creditor, whose details must be disclosed in order for the other creditors to benefit from the exemptions. The representative creditor may be a provider of the peer-to-peer lending service or a creditor who is introduced by the provider to other creditors and who holds property or exercises rights under the contract for them. The exemption from section 26A applies if neither the creditor transferring rights nor the creditor receiving them is a representative creditor under the contract.

### **Statement of reasons**

*The following statement of reasons is published for the purposes of section 138(1B) of the Credit Contracts and Consumer Finance Act 2003.*

The Minister of Commerce and Consumer Affairs, having had regard to the purposes of the Credit Contracts and Consumer Finance Act 2003 set out in section 3 of that Act (the **Act**) as required by section 138(1A)(a) of the Act, and being satisfied as to the matters set out in section 138(1A)(b) and (c)(ii) of the Act, considers the exemptions made in new regulation 18C of the Credit Contracts and Consumer Finance Regulations 2004 to be appropriate because—

- requiring all creditors under credit contracts entered into by means of a peer-to-peer lending service, rather than just a representative creditor, to comply with the creditor identification requirements of the Act would impose onerous and burdensome requirements on a large number of creditors. It would result in unnecessarily long, complex, and confusing disclosure to debtors, while also undermining the anonymity of debtors and creditors using peer-to-peer lending services; and

- exempting those credit contracts from the specific creditor identification requirements will not cause detriment to debtors, as the exemptions relate to technical disclosures of ancillary creditors' details. Exempting disclosure of such details from additional creditors above and beyond the representative creditor will not weaken the debtors' positions under the contracts nor diminish their protections under the Act; and
- the purposes of the Act to protect the interests of consumers, to promote confident and informed participation of consumers in markets for credit, to promote fair, efficient, and transparent markets for credit, and to provide remedies for consumers in relation to oppressive conduct will continue to be met.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 14 March 2019.

These regulations are administered by the Ministry of Business, Innovation, and Employment.