



Credit Contracts and Consumer Finance Amendment Regulations 2020

Patsy Reddy, Governor-General

Order in Council

At Wellington this 10th day of August 2020

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 138 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), (1BA), and (1C) of that Act.

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Regulations

1 Title

These regulations are the Credit Contracts and Consumer Finance Amendment Regulations 2020.

2 Commencement

- (1) Regulation 7 comes into force on 3 September 2020.
- (2) The rest of these regulations come into force on 1 October 2021.

3 Principal regulations

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

4 New regulations 4AAAP to 4AAAU and cross-heading inserted

Before the cross-heading *Advertisements for high-cost consumer credit contracts* above regulations 4AAA and 4AAB (as inserted by section 69 of the Credit Contracts Legislation Amendment Act 2019), insert:

Responsibility to ensure advertising complies with advertising standards

4AAAP Purpose of regulations 4AAAQ to 4AAB

Regulations 4AAAQ to 4AAB apply for the purpose of section 9C(3)(b)(i) of the Act.

4AAAQ Advertising of payment amounts

- (1) This regulation applies if an advertisement is being distributed to the public, or a section of the public, and it refers to an amount of a payment under consumer credit contracts.
- (2) The advertisement must state,—
 - (a) if ascertainable, the total amount of the payments (but only if the contract would, on the assumptions set out in Schedule 1, be paid out within 7 years of the date on which credit is first provided under the contract); or

Example

An advertisement says “Buy this TV for \$30 a week”. It is a 3-year credit contract. The advertisement must also state that the total amount of payments will be \$4,680.

- (b) in any other case, the annual interest rate or rates for the contracts covered by the advertisement (with the rate or rates being expressed in terms of a percentage).
- (3) The advertisement must also state, in the case of a credit sale that requires the debtor to make 1 or more lump sum payments (in addition to any regular payments, deposit, or trade-in allowance), the amount of each lump sum payment if ascertainable or, if not ascertainable, the method of calculating the amount.
- (4) Information referred to in subclauses (2) and (3) must be stated in a prominent manner.

4AAAR Advertising of interest rates or charges

- (1) This regulation applies if an advertisement is being distributed to the public, or a section of the public, and it refers to an interest rate or an interest charge.
- (2) The advertisement must state—
 - (a) the annual interest rate or rates for the consumer credit contracts covered by the advertisement (with the rate or rates being expressed in terms of a percentage); and

- (b) if the advertised rate or charge may vary from that advertised depending on the debtor's risk, the range of the rates or charges (for example, that the rates may range between 20% and 30% depending on the debtor's risk); and
- (c) if the contract provides for interest rates in addition to those referred to paragraphs (a) and (b), that other interest rates apply in addition to those rates; and
- (d) if an annual interest rate is fixed for the term, or any part of the term, of the contract, the period during which the annual interest rate is fixed; and
- (e) if an annual interest rate is not fixed for the term, a statement to that effect; and
- (f) each mandatory credit fee; and
- (g) the amount of those fees if ascertainable or, if that amount is not ascertainable, that other fees apply; and
- (h) where information can be found on when other fees referred to in paragraph (g) apply and how they are calculated.

Example

A creditor that refers to an interest rate in an advertisement might include the following statement: "Interest 9.95%–24.95% per annum. Establishment fee \$100."

- (3) The annual interest rate or rates stated in the advertisement—
 - (a) must be the rate or rates that are ordinarily available to debtors who meet the creditor's borrowing requirements for the contracts covered by the advertisement; and
 - (b) must be the current annual interest rate or rates, if the rate is not fixed; and
 - (c) must be stated in a prominent manner.
- (4) This regulation does not require the advertisement to state matters in relation to default interest charges.
- (5) In this regulation and regulation 4AAAS, **mandatory credit fees** includes any establishment fees and regular account management fees, but does not include fees charged to a debtor for debtor-specific decisions or actions.

4AAAS Advertising of credit fees if advertisement states there is no interest

- (1) This regulation applies if—
 - (a) an advertisement states that there is no interest under a consumer credit contract; but
 - (b) there are mandatory credit fees under the contract.
- (2) The advertisement must state the following:

- (a) each mandatory credit fee; and
 - (b) the amount of those fees if ascertainable or, if that amount is not ascertainable, that other fees apply; and
 - (c) where information can be found on when other fees referred to in paragraph (b) apply and how they are calculated.
- (3) The matters stated in subclause (2)(a) and (b) must be stated in a prominent manner.

4AAAT Prohibited advertising practices

- (1) An advertisement must not make any of the following representations, explicitly or by implication:
- (a) that the creditor will not inquire into the debtor’s circumstances (for example, “no credit checks”, “instant approval”, or “guaranteed acceptance”):
 - (b) that the creditor will not take into account a debtor’s circumstances in assessing whether or not to enter into a consumer credit contract (for example, “bankrupt—OK”, “bad credit history—OK”):
 - (c) that a loan has already been approved or granted, if the inquiries required by section 9C(3)(a) of the Act have not been completed (for example, “\$500 credit available in your account”).
- (2) If an advertisement includes a reference to a speed of approval in minutes or hours, it must also contain a prominent reference to responsible lending criteria or inquiries (for example, “subject to responsible lending inquiries”, “affordability tests apply”, or “after responsible lending checks”).

4AAAU Requirement for plain language in clear, concise, and intelligible manner

The matters required to be stated in regulations 4AAAQ to 4AAB must be stated in plain language in a clear, concise, and intelligible manner.

5 New regulations 4F to 4H and cross-heading inserted

After regulation 4E, insert:

Disclosure

4F Disclosure of agreed changes

- (1) This regulation applies for the purposes of section 22(1)(b) of the Act.
- (2) All of the following is information that must be disclosed, to the extent that it has changed, or will change, as a result of the variation:

Credit limit

- (a) the credit limit:

Annual interest rate

- (b) the annual interest rate or rates under the contract (with the rate or rates being expressed in terms of a percentage):
- (c) if there is more than 1 rate, how each rate applies:
- (d) if an annual interest rate is fixed for the term or any part of the term of the contract, the period during which the annual interest rate is fixed:
- (e) if an annual interest rate is determined by referring to a base rate, particulars that describe how the annual interest rate is determined, including—
 - (i) the name of the base rate or a description of it; and
 - (ii) the margin or margins (if any) above or below the base rate to be applied to determine the annual interest rate; and
 - (iii) where and when the base rate is published or, if it is not published, how the debtor may ascertain the rate; and
 - (iv) the current annual interest rate or rates:

Total interest charges

- (f) the total amount of interest charges that are payable in the future under the contract, if ascertainable (but only if the contract would, on the assumptions set out in Schedule 1, be paid out within 7 years of the date on which credit is first provided under the contract):

Credit fees and charges

- (g) if the contract is a high-cost consumer credit contract, a statement of the rate of charge under the contract, as required to be calculated in accordance with section 45H of the Act and these regulations:

Payments required

- (h) if more than 1 payment is to be made,—
 - (i) the amount of the future payments or the method of calculating the amount; and
 - (ii) if ascertainable, the number of future payments; and
 - (iii) if ascertainable, the total amount of future payments (but only if the contract would, on the assumptions set out in Schedule 1, be paid out within 7 years of the date on which credit is first provided under the contract); and
 - (iv) when the next payment is due, if ascertainable, and the frequency of future payments.

4G Disclosure of changes following exercise of power

- (1) This regulation applies for the purposes of section 23(2)(b) of the Act.

- (2) Other information that must be disclosed under section 23 of the Act is, if the contract is a high-cost consumer credit contract, a statement of the rate of charge under the contract, as required to be calculated in accordance with section 45H of the Act and these regulations.

4H Disclosure of changes to guarantors

- (1) This regulation applies for the purposes of section 26(2)(b) of the Act.
- (2) Other information that must be disclosed under section 26 of the Act is, if the contract is a high-cost consumer credit contract, a statement of the rate of charge under the contract, as required to be calculated in accordance with section 45H of the Act and these regulations.

6 Regulation 5A amended (Disclosure about dispute resolution and financial mentoring services: hardship applications, arrears, credit declined, and complaints)

- (1) Replace regulation 5A(2) and (3) with:
- (2) The other types of complaints to which section 26B(1)(c) of the Act applies are expressions of dissatisfaction that are received by a creditor from a debtor under a consumer credit contract—
- (a) in respect of which the debtor explicitly or implicitly expects a response or a resolution; and
 - (b) that relate to the financial service of being a creditor under a credit contract in respect of which the creditor must be a member of an approved dispute resolution scheme under section 48 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
- (2A) The disclosure required by section 26B(1)(c) of the Act must be made no later than 2 working days after a complaint is received or, if it is not practicable to do so, as soon as practicable after that time.
- (2B) However, the information need not be given if the complaint is earlier resolved to the complainant's satisfaction.
- (3) The information required under section 26B(2)(a) of the Act must be disclosed at the time when a payment reminder is provided by a creditor under a consumer credit contract—
- (a) in respect of a payment that is overdue for more than 10 working days; or
 - (b) if the credit limit under the contract has been exceeded for more than 10 working days.
- (2) Replace regulation 5A(5) to (7) with:
- (5) The following information must be disclosed about dispute resolution schemes (unless the Financial Service Providers (Registration and Dispute Resolution) Act 2008 does not require the creditor to be a member of such a scheme):

- (a) the name of the dispute resolution scheme of which the creditor is a member; and
 - (b) a statement to the effect that the complainant has access to a free, independent dispute resolution service, and that service may help to investigate or resolve the complaint (if it is not resolved to the complainant's satisfaction using the creditor's internal complaints process); and
 - (c) the scheme's contact details to make a complaint.
- (6) The following information must be disclosed about financial mentoring services:
- (a) a statement to the effect that, if the person has concerns about their finances, they can get free and confidential advice from an independent service; and
 - (b) the name of a building financial capability service funded by the Ministry of Social Development that provides such a service; and
 - (c) the contact details of that service.
- (7) A creditor that is required to disclose information under section 26B of the Act must ensure that any information that they disclose under that section—
- (a) is disclosed in a clear, concise, and intelligible manner; and
 - (b) is disclosed free of charge.

7 Regulation 18F amended (Exemption for credit under residential earthquake-prone building financial assistance scheme)

In regulation 18F(2)(d), after “sections 32 to 35 of the Act”, insert “(except section 32(1)(b))”.

8 New regulation 18G inserted (Exemption from disclosure about financial mentoring services)

After regulation 18F, insert:

18G Exemption from disclosure about financial mentoring services

A consumer credit contract is exempt from the application of section 26B(2)(a) of the Act if the debtor rectifies the default in payment, or the exceeding of the credit limit under the contract, within 10 working days.

9 Regulation 20 amended (Contract manager appointed by new creditor)

After regulation 20(2), insert:

- (2A) Condition AA is that that management contract, if it is entered into or varied after commencement of this subclause, requires the contract manager to comply with the Act as if the contract manager were also a creditor.

10 New regulation 22 and cross-heading inserted

After regulation 21, insert:

Other provisions about securitisation or covered bond arrangements or similar arrangements

22 Application of section 59B of Act in certain circumstances

Circumstances in which section 59B(4) of Act applies

- (1) Subclause (2) prescribes circumstances for the purpose of section 59B(4) of the Act.
- (2) The circumstances are that—
 - (a) there is a contract, for the purposes of securitisation or covered bond arrangements or similar arrangements, between a creditor (C) and a person (a **contract manager**) that—
 - (i) provides for the contract manager to collect all payments from every debtor and guarantor under 1 or more consumer credit contracts; and
 - (ii) provides for the contract manager otherwise to manage those consumer credit contracts and every guarantee; and
 - (iii) if the contract was entered into or varied after commencement of this regulation, requires the contract manager to comply with the Act as if the contract manager were also a creditor; and
 - (iv) provides for the contract manager to deal with every debtor or guarantor for those purposes accordingly.

How section 59B of Act applies in those circumstances

- (3) In the circumstances prescribed in subclause (2),—
 - (a) section 59B of the Act does not apply to the directors and senior managers of C:
 - (b) section 59B of the Act applies to the directors and senior managers of the contract manager as follows:
 - (i) those directors and senior managers must exercise due diligence to ensure that the duties and obligations of a creditor under the Act are complied with:
 - (ii) section 59B(2)(a) of the Act applies as if the nature of the business to be taken into account were the contract manager's business (for example, its size) and the nature of the consumer credit contracts that are subject to the securitisation, covered bond arrangements, or similar arrangements:
 - (c) the Act (including section 116A) applies to the directors and managers of the contract manager in respect of any breach of section 59B.

General provision

- (4) Subclause (3)(b) and (c) applies regardless of whether the contract manager is a creditor under the relevant contract or whether the contract between C and the

contract manager requires the contract manager to comply with the Act as if the contract manager were also a creditor.

11 New regulation 23 and cross-heading inserted

After regulation 22, insert:

Disclosure before debt collection starts

23 Disclosure before debt collection starts

- (1) All of the following information is the information that must be disclosed under section 132A of the Act concerning the contract as is applicable:

Information about credit contract

- (a) the full name and contact details of the creditor at the date of the credit contract;
- (b) the date of the credit contract;
- (c) information that will help the debtor identify the credit contract (for example, the debtor's purpose of the credit when the credit contract was entered into or the product type or name):

Statement about debt to be collected

- (d) a statement as required by subclause (3) or (4):

Information about debt collection

- (e) the full name and contact details of the debt collector;
- (f) information about ways in which the debtor can make a complaint about the debt collector, including—
 - (i) unless the Financial Service Providers (Registration and Dispute Resolution) Act 2008 does not require the creditor to be a member of a dispute resolution scheme, a statement to the effect that—
 - (A) the debtor has access to a free, independent dispute resolution service; and
 - (B) that service may help to investigate or resolve the complaint (if it is not resolved to the debtor's satisfaction using the creditor's internal complaints process); and
 - (C) the name and contact details of the dispute resolution scheme of which the creditor is a member;
 - (ii) the contact details of the Commerce Commission:

Other information

- (g) a statement of the debtor's right under section 55 of the Act, and advice as to how an application under that section may be made:

- (h) a statement to the effect that, if the person has concerns about their finances, they can get free and confidential advice from an independent service:
 - (i) the name and contact details of a building financial capability service funded by the Ministry of Social Development that provides such a service.
- (2) The contact details referred to in subclause (1)(i) must be provided on the first page of the disclosure statement (or near the front if the statement has no pages).

Statement about debt to be collected

- (3) If the contract is a consumer credit contract in connection with which continuing disclosure under section 18 of the Act is required, the statement required by subclause (1)(d) must disclose—

Matters disclosed under section 19

- (a) the following information for the period (the **statement period**) starting with the closing date of the period covered by the last continuing disclosure statement under section 19 of the Act and ending with the date on which the disclosure under section 132A of the Act is made:
 - (i) the opening and closing dates of the statement period; and
 - (ii) the opening and closing unpaid balances; and
 - (iii) the date, amount, and a description of each advance during the statement period; and
 - (iv) the date and amount of each interest charge debited to the debtor's account during the statement period; and
 - (v) the date and amount of each amount paid by the debtor to the creditor, or credited to the debtor, during the statement period; and
 - (vi) the date, amount, and a description of each fee or charge debited to the debtor's account during the statement period; and

Extra information

- (b) to the extent that the amounts referred to in paragraph (a) do not include any default fees yet to be debited, the total amount of those fees, and the total amount to be collected (as increased by those further fees), to the extent that those amounts are ascertainable at the time of disclosure; and
- (c) the rates of any ongoing interest charges, credit fees, and default fees that will be charged under the contract, to the extent that they are ascertainable at the time of disclosure.

Example

Debt collection is about to start in June under a consumer credit contract. The last continuing disclosure statement was on 1 May.

Section 132A disclosure is made on 1 June. The unpaid balance is now \$100 (which must be disclosed under paragraph (a)(ii)). The unpaid balance includes default fees of \$10 that the creditor debited on 25 May (which must be disclosed under paragraph (a)(vi)).

The contract provides that, if debt collection starts, further default fees totalling \$15 can be debited. Those fees are ascertainable. Those total default fees of \$15 must be disclosed under paragraph (b), along with the total amount to be collected, which is \$115 (\$100 as increased by \$15).

The contract also provides that, if debt collection starts, charges of \$1 per phone call, and default interest charges of y% of the unpaid balance, may be debited. It is not ascertainable how many telephone calls may be needed. The rate of \$1 per telephone call and the rate of y% must be disclosed under paragraph (c).

- (4) If the contract is not a consumer credit contract in connection with which continuing disclosure under section 18 of the Act is required, the statement required by subclause (1)(d) must disclose—
- (a) the unpaid balance before any default fees relating to the debt collection are debited to the debtor under the contract; and
 - (b) the total amount of any default fees to be debited to the debtor under the contract, and the total amount to be collected (as increased by those further fees), to the extent that those amounts are ascertainable at the time of disclosure; and
 - (c) the rates of any ongoing interest charges, credit fees, and default fees that will be charged under the contract, to the extent that they are ascertainable at the time of disclosure; and
 - (d) if section 21(1)(b) of the Act applies, information about the website at which the debtor can access information under that section.

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 amend the Credit Contracts and Consumer Finance Regulations 2004 and most come into force on 1 October 2021.

These regulations have 5 main effects, as follows.

Responsibility to ensure advertising complies with advertising standards

New regulations 4AAAP to 4AAAU set advertising standards. Creditors have a responsibility to ensure that any advertising complies with the advertising standards set out

in the regulations and is not, or is not likely to be, misleading, deceptive, or confusing to borrowers.

Disclosure

New regulation 4F prescribes other information that creditors must disclose under section 22 of the Credit Contracts and Consumer Finance Act 2003 (the **Act**) (which relates to variation disclosure if the parties to the contract agree to change the contract).

New regulation 4G prescribes information that creditors must disclose about the rate of charge under a high-cost consumer credit contract if the rate changes after a creditor exercises a power under the contract to change certain matters.

New regulation 4H prescribes information that creditors must disclose to every guarantor under a guarantee about the rate of charge under a high-cost consumer credit contract.

The new rules apply to disclosures that must be made on or after 1 October 2021.

Disclosure under section 26B of the Act

Regulation 5A is being inserted by section 69 of the Credit Contracts Legislation Amendment Act 2019 for the purposes of section 26B of the Act, which requires disclosure about dispute resolution schemes and financial mentoring services in certain circumstances relating to hardship applications, arrears, when credit is declined, and complaints.

These regulations—

- make amendments to that regulation 5A that further prescribe when and what must be disclosed:
- give an exemption to certain contracts, in *new regulation 18G*, from the requirement to make disclosure about financial mentoring services if the debtor remedies the default within 10 working days.

Other provisions about securitisation or covered bond arrangements or similar arrangements

New regulation 22 relates to section 59B of the Act, which requires every director and senior manager of a creditor under a consumer credit contract to exercise due diligence to ensure that the creditor complies with its duties and obligations under the Act. However, section 59B(4) of the Act says that in any circumstances prescribed under section 138(1)(da) (being circumstances that relate to securitisation or covered bond arrangements or similar arrangements), section 59B applies as stated in the regulations.

New regulation 22 prescribes circumstances for the purposes of section 59B(4) of the Act and how section 59B of the Act applies in those circumstances. In essence, in those circumstances, section 59B will apply by requiring the directors and senior managers of a contract manager (that is appointed by a creditor) to exercise due dili-

gence to ensure that the duties and obligations of a creditor under the Act are complied with.

To avoid doubt,—

- if the circumstances prescribed in *new regulation 22* are not met, and arise because the rights of a person who provides credit under a consumer credit contract (an **original creditor**) are transferred (whether by assignment or by operation of law) to another creditor (the **new creditor**), section 59B of the Act applies to the directors and senior managers of the new creditor:
- *new regulation 22* does not limit the obligations of any creditor (*see* section 5 of the Act). Regardless of whether the circumstances prescribed in *new regulation 22* are met, and how they arise, the creditor (whether the original creditor or any new creditor to whom the rights of a creditor are transferred, such as a securitisation trustee) remains liable as creditor under the Act (*see* section 135 of the Act).

Disclosure before debt collection starts

New regulation 23 prescribes the information that must be disclosed under section 132A of the Act (which relates to disclosure before debt collection starts) concerning the contract, as is applicable.

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 Act set out in section 3 of 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 exemption made in *new regulation 18G* to be appropriate because—

- requiring creditors to provide disclosure about financial mentoring services with every payment reminder within 10 working days of a default in payment or the credit limit being exceeded would be unduly onerous or burdensome, because—
 - the addition of a disclosure to a payment reminder may increase the cost of sending the payment reminder:
 - creditors may send a number of payment reminders in the first 10 working days after a default, requiring a cumulatively large number of disclosures:
 - the exempted disclosures would have minimal benefit to debtors, as short-term defaults (for example, dishonoured direct debits) are relatively common, but are usually quickly rectified and do not indicate that a borrower is in financial distress:

- exempting those consumer credit contracts from the specified requirements will not cause significant detriment to debtors because the exemption is limited to defaults in payment that are rectified within 10 working days, and debtors with longer-term defaults (who are more likely to be in financial difficulty) will continue to receive details of financial mentoring services:
- the purposes of the Act to protect the interests of consumers, to promote confident and informed participation by 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.

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 24 September 2018 to help inform the decisions taken by the Government relating to the contents of this instrument.

Copies of this impact statement can be found at—

- <https://www.mbie.govt.nz/assets/c09d5636b6/coversheet-consumer-credit-regulation-review.pdf>
- <https://treasury.govt.nz/publications/risa/regulatory-impact-assessment-consumer-credit-regulation-review>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 13 August 2020.

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