



Credit Contracts and Consumer Finance (Certification) Amendment Regulations 2021

Patsy Reddy, Governor-General

Order in Council

At Wellington this 19th day of April 2021

Present:

The Right Hon Jacinda Ardern presiding in Council

These regulations are made under section 138 of the Credit Contracts and Consumer Finance Act 2003 on the advice and with the consent of the Executive Council.

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Regulations

1 Title

These regulations are the Credit Contracts and Consumer Finance (Certification) Amendment Regulations 2021.

2 Commencement

These regulations come into force on 1 June 2021.

3 Principal regulations

These regulations amend the Credit Contracts and Consumer Finance Regulations 2004.

4 New regulations 24 to 26 and cross-heading inserted

Before Schedule 1, insert:

Matters in respect of Part 5A of Act (certification and fit and proper person requirements)

24 Fee for applications for certification

- (1) The fee in respect of an application for certification under section 131F of the Act is \$1,055 for each person who is one of the applicant's directors, senior managers, or proposed directors or senior managers.
- (2) The fee does not include goods and services tax.
- (3) The applicant must pay the fee to the Commission when the application for certification is made.

25 Which changes in circumstances must be notified

- (1) This regulation applies for the purpose of section 131R of the Act (which requires a certified person to notify the Commission about any prescribed change in circumstances (for example, a change in directors or senior managers) relating to a certified person).
- (2) The prescribed changes are that—
 - (a) a director or senior manager of a certified person—
 - (i) is appointed; or
 - (ii) has resigned, is removed, or otherwise ceases to hold the office or position; or
 - (iii) has been charged with, or convicted of, a crime punishable by imprisonment in New Zealand or overseas; or
 - (iv) is adjudicated bankrupt or is likely to be adjudicated bankrupt (whether in New Zealand or overseas); or

- (v) is a director or senior manager of a corporate entity that has been placed into liquidation, receivership, or voluntary administration in New Zealand or overseas; or
 - (vi) has been prohibited from acting as a director or promoter of a company or taking part directly or indirectly in the management of a company in New Zealand or overseas; or
 - (vii) has been prohibited from providing credit or other financial services in New Zealand or overseas; or
 - (viii) is a director or senior manager of another corporate entity, and a relevant proceeding or action has been commenced or taken against either or both of that corporate entity or that person as a director or senior manager of that corporate entity; or
- (b) a relevant proceeding or action has been commenced or taken against any or all of the certified person or a director or senior manager of a certified person.
- (3) In subclause (2), **relevant proceeding or action** means any of the following (other than a proceeding commenced, or action taken, by the Commerce Commission):
- (a) a civil or criminal proceeding or regulatory action (whether in New Zealand or overseas) in relation to the contravention, or involvement in the contravention, of any—
 - (i) consumer credit and fair trading laws; or
 - (ii) financial markets legislation; or
 - (iii) overseas law that regulates the supply of any financial service, any dealing in financial products, or the management of an entity:
 - (b) a regulatory or disciplinary action for a breach of a professional or industry code of conduct or the rules of a financial product market (whether in New Zealand or overseas):
 - (c) a criminal proceeding for a crime involving dishonesty.

26 Fee for notifying changes in circumstances

- (1) The fee in respect of a notification under section 131R of the Act is \$1,055 for each director or senior manager who is appointed.
- (2) The fee does not include goods and services tax.
- (3) The certified person must pay the fee to the Commission when the notification is given.

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 1 June 2021, amend the Credit Contracts and Consumer Finance Regulations 2004.

These regulations relate to the new regime requiring creditors under consumer credit contracts, including mobile traders, to hold a certification from the Commerce Commission that their directors and senior managers are fit and proper persons (*see* new Part 5A of the Credit Contracts and Consumer Finance Act 2003 (the **Credit Contracts Act**), inserted by the Credit Contracts Legislation Amendment Act 2019). Part 5A commences on 1 June 2021, and creditors are able to start applying to the Commerce Commission after that date, although the certification requirement does not apply until 1 October 2021.

New regulation 24 introduces the new fee for certification applications. The fee of \$1,055 consists of \$1,044 (excluding GST) as well as an additional charge of \$11 (excluding GST) for a Ministry of Justice criminal records check. These fees will be charged for each individual director and senior manager, unless the same individual holds both roles in respect of a single entity in which case the fee will only be charged once. The new fee for certification is payable in addition to the fee that is payable for the separate process of registration as a financial service provider (*see* the Financial Service Providers (Fees) Regulations 2010 for the latter).

New regulation 25 prescribes changes in circumstances for the purpose of section 131R of the Act, which requires a certified person to notify the Commerce Commission about prescribed matters.

New regulation 26 introduces the same fee for notifications, namely \$1,055 for each director or senior manager who is appointed.

Cost recovery impact assessment

The Ministry of Business, Innovation, and Employment produced 2 cost recovery impact assessments on 11 March 2021 to help inform the decisions taken by the Government relating to the contents of this instrument.

Copies of these cost recovery impact assessments can be found at—

- <https://www.mbie.govt.nz/assets/stage-1-cost-recovery-impact-statement-fit-and-proper-person-assessment-for-consumer-credit-providers.pdf>
- <https://www.mbie.govt.nz/assets/stage-two-cost-recovery-impact-statement-credit-contracts-legislation-amendment-act-2019-certification-fees.pdf>
- <https://www.treasury.govt.nz/publications/risa/regulatory-impact-assessment-stage-1-cost-recovery-impact-statement-consumer-credit-providers>
- <https://www.treasury.govt.nz/publications/risa/regulatory-impact-assessment-stage-2-cost-recovery-impact-statement-credit-contracts-legislation>

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

Wellington, New Zealand:

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