



Credit Contracts and Consumer Finance (Exemption for Emergency Relief) Amendment Regulations 2023

Cindy Kiro, Governor-General

Order in Council

At Wellington this 13th day of February 2023

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.

Contents

		Page
1	Title	2
2	Commencement	2
3	Principal regulations	2
4	New regulation 18I inserted (Exemptions from affordability assessment requirements for emergency relief)	2
	18I Exemptions from affordability assessment requirements for emergency relief	2

Regulations

1 Title

These regulations are the Credit Contracts and Consumer Finance (Exemption for Emergency Relief) Amendment Regulations 2023.

2 Commencement

These regulations come into force on their notification in the *Gazette*.

3 Principal regulations

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

4 New regulation 18I inserted (Exemptions from affordability assessment requirements for emergency relief)

After regulation 18H, insert:

18I Exemptions from affordability assessment requirements for emergency relief

(1) This regulation applies to a contract if—

Emergency

- (a) the borrower has experienced, is experiencing, or reasonably expects to experience negative effects from the flooding or other weather-related damage that occurred or occurs in the upper North Island in January and February 2023; and

Relief

- (b) the borrower is an existing customer of the lender and the purpose of the credit to be provided under the contract is to address those negative effects; and
- (c) the contract is an overdraft or home loan—
- (i) that is entered into before the close of 31 March 2023 with a total credit limit of no more than \$10,000; or
 - (ii) in respect of which a material change is made before the close of 31 March 2023 to increase a credit limit by no more than \$10,000; and

Period over which credit is provided

- (d) the maximum term of the contract, or the period specified in the contract within which the additional credit provided under the contract in reliance on this exemption must be repaid, is—
- (i) 12 months in the case of a revolving credit contract; or
 - (ii) a period that is reasonable in any other case; and

Miscellaneous

- (e) the lender has not previously relied on the exemption in this regulation in respect of the borrower for the purpose of addressing the negative effects of the emergency referred to in this subclause; and
- (f) the lender has made reasonable inquiries and is satisfied that no other lender has previously relied on the exemption in this regulation in respect of the borrower for that purpose.

Exemption

- (2) A lender is exempt from the application of section 9C(3)(a)(ii) and (4)(a) of the Act in respect of a consumer credit contract to which this regulation applies.

Conditions of exemption

- (3) The exemption in subclause (2) is subject to the conditions that—
 - (a) the lender must at all times comply with the provisions of the Responsible Lending Code that relate to the lender responsibilities in section 9C(2)(a)(iii), (3)(c), (3)(d), and (4)(c) of the Act, as if that Code were binding; and
 - (b) before, or as soon as reasonably practicable after, the contract is entered into or materially changed, the lender must provide information to the borrower that hardship assistance is available if the borrower is experiencing, or reasonably expects to experience, any repayment difficulties or is at risk of hardship; and
 - (c) if, after the contract is entered into or materially changed, the lender becomes aware that the borrower is experiencing, or reasonably expects to experience, any repayment difficulties or is at risk of hardship, the lender must provide information, as soon as practicable, to the borrower that hardship assistance is available; and
 - (d) if the borrower at any time requests hardship assistance in respect of the obligations that arise under the contract,—
 - (i) the lender must make reasonable inquiries into whether it is likely that the borrower is able to comply with their obligations under the contract at the time the assistance is requested without suffering substantial hardship; and
 - (ii) if it is not, the lender must provide relief that is sufficient to avoid the borrower suffering substantial hardship as a result of making the payments under the contract, for example, by refinancing the credit contract on affordable terms, granting interest relief, or reducing the debt owing; and
 - (iii) the lender must provide that relief in compliance with the lender responsibility principles (*see* section 9C of the Act); and

- (iv) the lender must provide that relief irrespective of whether the borrower's request is, or may be treated as, also an application for relief under section 55 of the Act; and
 - (e) the information required by paragraphs (b) and (c) must summarise the effects of all of the conditions required by this subclause in a clear, concise, and intelligible manner.
- (4) In this regulation,—
- borrower** has the meaning in section 9B of the Act and includes any debtor as that term is defined in the Act
- existing customer** means a person that is already a party to, or guarantor of, a consumer credit contract with the lender, or a person that has a transactional account with the lender, before the lender relies on this exemption for the purpose of addressing the negative effects of the emergency referred to in subclause (1)
- material change** has the same meaning as in section 9C(8) of the Act
- upper North Island** means a place, or places, in all or any of the following regions:
- (a) Auckland;
 - (b) Bay of Plenty;
 - (c) Northland;
 - (d) Waikato.

Rachel Hayward,
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 their notification in the *Gazette*, amend the Credit Contracts and Consumer Finance Regulations 2004.

These regulations provide an exemption (*new regulation 18I*) from certain requirements of the Credit Contracts and Consumer Finance Act 2003 (the **Act**) where an existing customer of a lender is experiencing negative effects from the flooding and other weather-related damage that occurred or occurs in the upper North Island in January and February 2023. The exemption applies to credit provided, for the purpose of addressing those negative effects, up to a \$10,000 limit and for a temporary period of up to 12 months.

The effect of *new regulation 18I* is that the lender will not need to comply with section 9C(3)(a)(ii) and (4)(a) of the Act in respect of an overdraft or home loan to which

new regulation 18I applies. Those provisions relate to making reasonable inquiries about whether it is likely that the borrower will make the payments under an agreement without suffering substantial hardship and whether the guarantor will be able to comply with a guarantee without suffering substantial hardship.

The exemption is subject to conditions in *new regulation 18I(3)*. One condition requires the lender to provide hardship assistance to the borrower after the credit is provided if the borrower requests assistance. The lender must provide relief that is sufficient to avoid the borrower suffering substantial hardship as a result of making the payments under the contract, for example, by refinancing the credit contract on affordable terms, granting interest relief, or reducing the debt owing.

The exemption conditions about hardship assistance do not limit subpart 8 of Part 2 of the Act, which relates to unforeseen hardship. That subpart entitles a debtor to apply for certain changes to an existing contract if they are unable reasonably to meet their obligations under it because of an unforeseen event.

A breach of a condition of the exemption would have the effect that the borrower could seek statutory damages or compensation, or the Commerce Commission could seek a pecuniary penalty, under the Act for a breach of section 9C(3)(a)(ii) of the Act, or the guarantor could have corresponding remedies for a breach of section 9C(4)(a) of the Act.

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 (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 exemptions made in *new regulation 18I* of the Credit Contracts and Consumer Finance Regulations 2004 to be appropriate because—

- requiring lenders to perform an affordability assessment for lending to address the effects of upper North Island flooding would impose unduly onerous and burdensome requirements, given—
 - lending is required urgently by some affected borrowers; and
 - an affordability assessment in accordance with section 9C(3)(a)(ii) of the Act is time consuming and requires seeking detailed information from borrowers; and
- exempting the credit contracts from the specified requirements will not cause significant detriment to borrowers because—
 - the amount of credit available under the exemption is limited to \$10,000 and the exemption applies only to certain forms of credit (temporary

- overdrafts and home loans) that are considered less likely to result in substantial hardship; and
- the exemption is limited to existing customers seeking credit for specific purposes over a limited time period; and
 - under the conditions of the exemption, lenders will be required to implement processes to ensure that, if lending is unaffordable, hardship assistance is provided; and
 - under the conditions of the exemption, lenders will be required to provide hardship assistance that addresses the unaffordable lending and prevents the borrower from suffering substantial hardship; and
 - other key lender responsibilities, such as those under section 9C(2)(a)(ii) (exercising the care, diligence, and skill of a responsible lender before entering into an agreement to provide credit) and section 9C(3)(a)(i) (making reasonable inquiries so as to be satisfied that it is likely that the credit will meet the borrower's requirements and objectives), will continue to apply; 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 2019.

Date of notification in *Gazette*: 13 February 2023.

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