



Credit Contracts and Consumer Finance (Exemptions for COVID-19) Amendment Regulations 2020

Patsy Reddy, Governor-General

Order in Council

At Wellington this 31st day of March 2020

Present:

The Right Hon Jacinda Ardern presiding in Council

These regulations are made under section 138(1)(ab) of the Credit Contracts and Consumer Finance Act 2003 on the advice and with the consent of the Executive Council and 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 (Exemptions for COVID-19) Amendment Regulations 2020.

2 Commencement

These regulations come into force on 1 April 2020.

3 Principal regulations

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

4 New regulation 18D inserted (Exemptions for COVID-19 from provisions relating to consumer credit contracts)

After regulation 18C, insert:

18D Exemptions for COVID-19 from provisions relating to consumer credit contracts

- (1) A consumer credit contract is exempt from the application of the provisions of the Act that are listed in subclause (2) if—
 - (a) a registered bank is the creditor or manages the contract in circumstances that relate to securitisation or covered bond arrangements or similar arrangements; and
 - (b) the borrower is experiencing, or reasonably expects to experience, financial difficulties due to the economic or health effects of COVID-19; and
 - (c) the contract is either—
 - (i) an existing contract that is varied (or proposed to be varied) for the purpose of reducing those difficulties; or
 - (ii) a replacement contract that is entered into (or proposed to be entered into) for the purpose of reducing those difficulties.
- (2) The provisions of the Act referred to in subclause (1) are as follows:
 - (a) if an existing contract is being varied, section 9C(2)(a)(iii), but only to the extent that that provision may require the creditor to be satisfied that it is likely that the borrower will continue to make the payments under the agreement without suffering substantial hardship:
 - (b) if the contract is a replacement contract, section 9C(3)(a)(ii) (lenders must make reasonable inquiries, before entering into the agreement with a borrower, so as to be satisfied that it is likely that the borrower will make the payments under the agreement without suffering substantial hardship):

- (c) sections 17, 22(2) and (4), and 26(3) to the extent of the time limits for making disclosure and giving or sending terms:
 - (d) section 57A(1) (which relates to the obligations of creditors in relation to hardship applications).
- (3) The exemption from sections 17, 22(2) and (4), and 26(3) is subject to the condition that the registered bank must, as soon as is reasonably practicable, make the disclosure, and give or send the terms, required under the relevant section.
- (4) The exemption from section 57A(1) is subject to the condition that the registered bank must, as soon as is reasonably practicable after receiving an application for a change to the contract on grounds of unforeseen hardship,—
- (a) decide whether to agree to change the contract in accordance with the application; and
 - (b) give the borrower the notice and summary required by section 57A(1)(c)(ii) and (iii) (that is, written notice of the decision and, if the creditor does not agree to change the contract in accordance with the application, written notice setting out the registered bank’s reasons for that decision and a clear summary of the borrower’s rights under section 58 of the Act).
- (5) In this regulation,—
- borrower** includes any debtor as that term is defined in the Act
- registered bank** has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989
- replacement contract** means a contract (where a registered bank is the creditor or manages the contract in circumstances that relate to securitisation or covered bond arrangements or similar arrangements) with a borrower that replaces (in whole or in part) an existing contract—
- (a) with the same registered bank; or
 - (b) that is managed by the same registered bank in any of those circumstances.
- (6) This regulation applies only to consumer credit contracts entered into or varied on or before the close of 31 October 2020.

Rachel Hayward,
for 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 April 2020, amend the Credit Contracts and Consumer Finance Regulations 2004.

These regulations provide exemptions from certain requirements of the Credit Contracts and Consumer Finance Act 2003 where the borrower has been impacted by the effects of COVID-19.

The exemptions facilitate the recently announced 6-month mortgage repayment deferral scheme and relief from other household borrowing from registered banks.

The exemptions apply if a registered bank is the creditor (or the contract manager, in the case of securitisations, etc) and if the borrower is experiencing, or reasonably expects to experience, financial difficulties due to the economic or health effects of COVID-19. The exemptions facilitate variations of existing contracts, and entry into replacement contracts, for the purpose of reducing those difficulties.

The exemptions are from the provisions listed in *new regulation 18D(2)*, and apply subject to the conditions set out in *new regulation 18D(3) and (4)*.

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 18D* of the Credit Contracts and Consumer Finance Regulations 2004 to be appropriate because—

- requiring registered banks offering mortgage and household debt relief to borrowers impacted by the effects of COVID-19 to comply with the timing requirements for disclosure and hardship applications, and to conduct normal affordability assessments for replacement contracts (where these are issued in place of a variation) and in some cases for variations of contracts, would impose unduly onerous and burdensome requirements, given the uncertainty around affected customers' finances, the volume of applications likely to be received, and the disruptions to bank and postal operations caused by heightened alert levels to address the outbreak of COVID-19; and
- exempting those credit contracts from the specified requirements will not cause significant detriment to borrowers because—
 - all other protections and remedies under the Act remain in place in relation to those credit contracts, including the responsible lending principles to ensure borrowers make informed decisions, to exercise the care,

diligence, and skill of a responsible lender, and to treat the borrower reasonably and in an ethical manner:

- the exemptions are limited to timing, procedural and affordability assessment requirements relating to existing contracts on which repayment relief is required, are subject to conditions to protect borrowers, and will be complemented by guidance from the Commerce Commission; 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*: 31 March 2020.

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