



Credit Contracts and Consumer Finance (Exemptions, Annual Returns, and Other Matters) Amendment Regulations 2021

Patsy Reddy, Governor-General

Order in Council

At Wellington this 27th day of September 2021

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) to the extent that the regulations are made under section 138(1)(a) to (aba) of that Act, on the recommendation of the Minister of Commerce and Consumer Affairs made in accordance with section 138(1A) of that Act; and
- (c) to the extent that the regulations are made under section 138(1)(abb) or (abc) or (abd) of that Act, on the recommendation of the Minister of Commerce and Consumer Affairs made in accordance with section 138(1BA) of that Act; and
- (d) to the extent that the regulations are made under section 138(1)(jb) of that Act, on the recommendation of the Minister of Commerce and Consumer Affairs made in accordance with section 138(1BB) of that Act.

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Regulations

1 Title

These regulations are the Credit Contracts and Consumer Finance (Exemptions, Annual Returns, and Other Matters) Amendment Regulations 2021.

2 Commencement

- (1) These regulations come into force on 1 October 2021 except as provided in subclause (2).
- (2) Regulations 4, 5, 8, 9, and 10 come into force on 1 December 2021.

3 Principal regulations

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

4 New regulation 2A inserted (Transitional, savings, and related provisions)

After regulation 2, insert:

2A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

5 Regulation 4AAAR amended (Advertising of interest rates or charges)

In regulation 4AAAR(2)(d), replace “fixed for the term, or any part of the term,” with “fixed for part, but not all, of the term”.

6 New regulation 18H inserted (Exemptions for insurance premium funding agreements)

After regulation 18G, insert:

18H Exemptions for insurance premium funding agreements

(1) A consumer credit contract is exempt from the application of section 9C(3)(a) of the Act to the extent that—

- (a) the contract is a premium funding agreement; and
- (b) the consumer is not required to pay default interest charges, default fees, or credit fees (except for establishment fees) in respect of the contract.

(2) For the purposes of this regulation,—

insurance contract means a contract of insurance within the meaning of the Insurance (Prudential Supervision) Act 2010

premium funding agreement means an agreement under which—

- (a) a creditor agrees to make an advance to the consumer that must be applied only to either or both of the following purposes:
 - (i) to pay an amount payable for premiums under an insurance contract;
 - (ii) to pay other amounts in connection with an insurance contract (including fees for advice or services provided in connection with the insurance contract and taxes payable in connection with the insurance contract); and
- (b) if the consumer is required to provide a security interest, the property that is subject to the security interest is limited to the consumer’s rights and interests in the insurance contract; and
- (c) the consumer has the right to cancel at any time, while incurring no further liability for payment.

7 New regulations 27 and 28 inserted

After regulation 26, insert:

27 Exemption from certification if securitisation or covered bond arrangements or similar arrangements

A person (C) is exempt from the certification requirement under section 131B of the Act to the extent of services that C provides in the following circumstances:

- (a) there is a contract, for the purposes of securitisation or covered bond arrangements or similar arrangements, between C and a person (a **contract manager**) that meets the requirements set out in regulation 22(2); and
- (b) the contract manager is either certified under section 131B of the Act or exempt from that certification requirement under section 131C of the Act.

28 Exemptions if credit provided, on interim basis, by non-financial service business

(1) This regulation applies if—

- (a) a person whose only or principal business is the provision of goods or services that are not financial services (within the meaning of section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008) (R) provides credit under consumer credit contracts to its customers in order to facilitate the provision of goods or services to those customers; and
- (b) R and another person (C) have agreed in writing that—
 - (i) C will comply with, or ensure that R complies with, the lender responsibilities under section 9C of the Act before the consumer credit contracts are entered into; and
 - (ii) C will make the final lending decisions, including being satisfied that it is likely that the test in section 9C(3)(a) or (5)(a) of the Act (as the case may be) is met (for example, that it is likely that the credit or finance provided under the agreement will meet the borrower's requirement and objectives and that the borrower will make the payments under the agreement without suffering substantial hardship); and
- (c) it is a term of the consumer credit contracts that R will assign the consumer credit contracts to C; and
- (d) it is within the ordinary course of R's business for that assignment to take place within 1 working day of providing the credit; and
- (e) C is registered as a creditor on the register of financial service providers, and is a member of a dispute resolution scheme, under the Financial Service Providers (Registration and Dispute Resolution) Act 2008; and

- (f) C is certified under section 131B of the Act or exempt from that certification requirement under section 131C of the Act.
- (2) To the extent of services that R provides under consumer credit contracts described in subclause (1), R is exempt from the certification requirement under section 131B of the Act.

8 Regulation 28 amended (Exemptions if credit provided, on interim basis, by non-financial service business)

After regulation 28(2) (as inserted by regulation 7 of these regulations), insert:

- (3) To the extent of services that R provides under consumer credit contracts described in subclause (1), the directors and senior managers of R are exempt from the duty under section 59B of the Act.
- (4) C is a creditor under those consumer credit contracts from the time when the relevant consumer credit contract is entered into.

9 New regulation 29 and cross-heading inserted

After regulation 28, insert:

Annual returns

29 Requirements in relation to annual returns

- (1) This regulation prescribes requirements in relation to annual returns for the purposes of section 116AAA of the Act.
- (2) The date by which the annual return must be provided is 30 June in each year.
- (3) The 12-month period to which an annual return must relate is the preceding 1 April to 31 March.
- (4) An annual return must contain the following information:
 - (a) the number of high-cost consumer credit contracts and related consumer credit contracts entered into; and
 - (b) the number of other credit contracts entered into that are consumer credit contracts or contracts that the creditor has treated as consumer credit contracts; and
 - (c) the number of material changes (within the meaning of section 9C(8) of the Act) to credit contracts that are consumer credit contracts or contracts that the creditor has treated as consumer credit contracts; and
 - (d) for each type of credit contract entered into, or material change to a credit contract, that is described in paragraphs (a) to (c),—
 - (i) the total dollar amount to be advanced, or total credit limit, as applicable; and
 - (ii) the number of times that the creditor has relied on each exception in these regulations (*see* regulations 4AF(1)(b), 4AG, and 4AH)

from the requirements in either or both of regulation 4AF (general rule: full income and expense estimates required in certain cases) and 4AI (general rule in other cases).

10 New Schedule 1AA inserted

Insert the Schedule 1AA set out in the Schedule of these regulations as the first schedule to appear after the last clause of the principal regulations.

Schedule
New Schedule 1AA inserted

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Schedule 1AA
Transitional, savings, and other related provisions

r 2A

Part 1
Provisions relating to Credit Contracts and Consumer Finance
(Lender Inquiries into Suitability and Affordability) Amendment
Regulations 2020

- 1 Certain agreements where inquiries substantially completed before 1 December 2021**
- (1) This clause applies if,—
- (a) before 1 December 2021, a lender substantially completes reasonable inquiries into the matters referred to in section 9C(3)(a) or (5)(a) of the Act (as the case may be) in relation to an agreement or insurance contract and is satisfied that it is likely that the test in those provisions is met (for example, that it is likely that the credit or finance provided under the agreement will meet the borrower’s requirement and objectives and that the borrower will make the payments under the agreement without suffering substantial hardship); and
 - (b) before 1 June 2022,—
 - (i) the lender enters into the agreement or insurance contract, or makes the material change to the agreement, in relation to which the inquiries were made; or
 - (ii) the lender offers, for the purpose of enabling the acquisition of identified land or residential premises or the construction or alteration of a building or structure on identified land, to enter into the agreement, or to make the material change to the agreement, in relation to which the inquiries were made; and
 - (c) if paragraph (b)(ii) applies, the lender eventually enters into that agreement, or makes that material change, for the same purpose (namely, in respect of the same identified land or residential premises).
- (2) Regulations 4AA, 4AB, 4AF, and 4AI do not apply to the lender unless the lender ceases to be satisfied (for example, because of a change in the borrower’s financial circumstances) that it is likely that the test in section 9C(3)(a) or (5)(a) of the Act is met.

- (3) This clause does not limit the interpretation of the requirement in section 9C(3) that reasonable inquiries must be made before entering into the agreement.

Part 2

Provisions relating to Credit Contracts and Consumer Finance (Exemptions, Annual Returns, and Other Matters) Amendment Regulations 2021

2 First annual return due 30 June 2024

- (1) This clause prescribes requirements in relation to annual returns for the purposes of section 116AAA of the Act.
- (2) The date by which the first annual return must be provided is 30 June 2024.
- (3) The 12-month period to which that first annual return must relate is 1 April 2023 to 31 March 2024.
- (4) Despite regulation 29, there are no requirements for annual returns for periods ending 31 March 2021 or 31 March 2022 or 31 March 2023.

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 variously come into force on 1 October 2021 or 1 December 2021, make the following changes to the Credit Contracts and Consumer Finance Regulations 2004 (the **regulations**).

Regulation 4AAAR is amended to remove the need for advertisements for consumer credit contracts to state the period during which the interest rate is fixed, if the annual interest rate is fixed for the entire period of the contract.

New regulation 18H provides exemptions for insurance premium funding agreements from the requirements that lenders must make inquiries under section 9C(3)(a) of the Credit Contracts and Consumer Finance Act 2003 (the **Act**) (which relates to the affordability and suitability of consumer credit contracts). The exemption from those requirements also has the consequence of exempting lenders from the associated requirement under section 9C(5A) of the Act, which is to comply with the regulations relating to those reasonable inquiries.

New regulations 27 and 28 are exemptions from the new certification requirement. That requires 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.

New regulation 27 mirrors the current exemptions for securitisation or covered bond arrangements or similar arrangements.

New regulation 28 mirrors an existing exemption for credit provided, on an interim basis, by a non-financial service business (**R**) (*see* regulation 10 of the Financial Service Providers (Exemptions) Regulations 2010). This applies if the credit is provided in order to facilitate the provision of goods or services to customers and if the non-financial service business, in the ordinary course of its business, assigns the credit contracts to another person (an **underlying lender**) within 1 working day of providing the credit.

New regulation 28(4) is made under section 138(1)(abb) of the Act and declares the underlying lenders to be creditors from the time when the credit contracts are entered into (rather than from assignment). One effect of *new regulation 28* is that the underlying lender is liable for responsible lending obligations and other pre-contract responsibilities. For the avoidance of doubt, R is still a creditor and is liable for the breach of any of the obligations in the Act or the regulations except for the duties from which they are specifically exempt under *new regulation 28*.

New regulation 29 prescribes requirements in relation to annual returns for the purposes of section 116AAA of the Act, including the date by which the return must be provided and the 12-month period to which it must relate.

New Schedule 1AA contains transitional provisions.

Clause 1 relates to section 9C(5A) of the Act, which provides that the requirement to make reasonable inquiries so as to be satisfied of a matter (*see* section 9C(3)(a) and (5)(a)) includes a requirement to comply with new regulations (*see* new regulations 4AA to 4AO, which will now come into force on 1 December 2021).

The clause contains exceptions from the requirement to comply with those new regulations in 2 cases, as follows:

- the first case is agreements entered into before 1 June 2022:
- the second case is agreements relating to specific land or residential premises, if the lender offered the credit before 1 December 2021.

Clause 1 has the effect of excepting lenders from the new regulations if the lender has substantially completed reasonable inquiries before 1 December 2021 and is satisfied that it is likely that the test in those provisions is met (for example, that it is likely that the credit or finance provided under the agreement will meet the borrower's requirement and objectives and that the borrower will make the payments under the agreement without suffering substantial hardship).

However, section 9C(3)(a) of the Act may still require further inquiries (for example, if the borrower's financial situation changes between the pre-1 December 2021 suitability and affordability assessment and the entry into the agreement). In that case, if those inquiries mean that the lender is no longer satisfied that it is likely that the test in those provisions is met, then the exception in *clause 1* no longer applies, and the lender has to comply with the requirements in the new regulations.

Clause 2 provides that the first annual return must be provided by 30 June 2024.

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

- requiring creditors under insurance premium funding agreements to perform the inquiries and assessment required by section 9C(3)(a) of the Act would be unduly onerous or burdensome, because—
 - insurance premium funders would incur significant costs from assessing affordability and suitability:
 - the terms of the agreements are such that they are similar in overall effect to a regular instalment plan provided by an insurer, which would not be regulated under the Act:
 - the assessment of affordability and suitability would have minimal benefit to borrowers, as the agreement can only be used to pay for insurance and the borrower is able to cancel the agreement at any time:
- exempting those consumer credit contracts from the specified requirements will not cause significant detriment to debtors because—
 - the borrower can cancel the agreement at any time with no further liability for payment:
 - the lender will continue to be subject to all other obligations of the Act, including the lender responsibility to exercise the care, diligence, and skill of a responsible lender before entering into an agreement to provide credit:
- 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.

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 28(3)* of the Credit Contracts and Consumer Finance Regulations 2004 to be appropriate because—

- requiring directors and senior managers of a non-financial service business to meet the duties in section 59B of the Act would be unduly onerous and burdensome because, in the circumstances of the exemption, the non-financial service business does not design, or exercise control over, compliance with most of the obligations of the Act:
- the exemption will not cause significant detriment to debtors because—
 - the underlying lender, which is responsible for ensuring compliance with the Act and making the final lending decision, will be declared a creditor for the period prior to assignment, including during the period that a borrower decides to enter into the credit contract:
 - the directors and senior managers of the underlying lender will be subject to the duty under section 59B of the Act:
- 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.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 30 September 2021.

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