



Credit Contracts and Consumer Finance Amendment Regulations 2022

Rt Hon Dame Helen Winkelmann, Administrator of the Government

Order in Council

At Wellington this 7th day of June 2022

Present:

Her Excellency the Administrator of the Government 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(1BA) of that Act.

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Regulations

1 Title

These regulations are the Credit Contracts and Consumer Finance Amendment Regulations 2022.

2 Commencement

These regulations come into force on 7 July 2022.

3 Principal regulations

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

4 Regulation 4AE amended (Interpretation)

In regulation 4AE, definition of **listed outgoings**, replace paragraph (d) with:

(d) any regular or frequently recurring outgoings other than savings and investments (for example, gym memberships, entertainment costs, or tithing) that are material to the estimate of relevant expenses and that the borrower is unable or unwilling to cease after the agreement is entered into or materially changed

5 Regulation 4AK amended (Lenders must do initial estimate of borrower's likely relevant expenses)

(1) Replace regulation 4AK(2)(a)(i) with:

(i) asking the borrower about their relevant expenses and ensuring, to the extent that the initial estimate is based on this information (rather than on information under subparagraph (ii) or (iii) or paragraph (c)), that the information is obtained in sufficient detail to minimise the risk of relevant expenses being missed or underestimated to an extent that is material to the estimate:

(2) Revoke regulation 4AK(2)(b).

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 7 July 2022, make 2 changes to the Credit Contracts and Consumer Finance Regulations 2004 in relation to the rules about lender inquiries into affordability. Those rules apply for the purpose of section

9C of the Credit Contracts and Consumer Finance Act 2003, which requires lenders to make reasonable inquiries before entering into agreements with borrowers, so as to be satisfied that it is likely that the borrower will make the payments under the agreement without suffering substantial hardship. Those rules also apply before lenders make a material change to agreements. The general rules require lenders to estimate the borrower's likely income and expenses.

Regulation 4 affects borrowers who seek credit or finance at a time when they are also making regular or frequently recurring outgoings for savings and investments that they are unable or unwilling to cease after the agreement is entered into.

Currently, the general rules require lenders to be satisfied on reasonable grounds that it is likely that the borrower will make the payments under the agreement without suffering substantial hardship because the borrower's likely income exceeds their likely relevant expenses. The current rules require that those types of savings and investments are treated as listed outgoings (and therefore relevant expenses).

The amendment removes savings and investments from the list of things that are given as examples of listed outgoings in regulation 4AE, and instead says that savings and investments are not listed outgoings. This will increase the likelihood of a borrower's income exceeding their expenses (for the purpose of the lender's assessment of whether it is likely that the borrower will make the payments under the agreement without suffering substantial hardship) by the amount that the borrower intends to continue to pay for savings and investments.

This amendment does not affect KiwiSaver and other superannuation contributions that are deducted at source, which are not counted as income.

Regulation 5 amends regulation 4AK to clarify the nature of the lender's duty to do an initial estimate of the borrower's likely relevant expenses. To the extent that an estimate is based on information obtained by asking the borrower about their expenses (rather than based on obtaining transaction records or using information the lender already holds), the lender's duty includes ensuring that the information used to make the initial estimate is obtained in sufficient detail to minimise the risk of relevant expenses being missed or underestimated to an extent that is material to the estimate. To the extent that the initial estimate is based on obtaining transaction records or using information the lender already holds, the requirement (as currently stated in regulation 4AK(2)(b)) is not part of the duty.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 9 June 2022.

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