

The Credit Contracts and Consumer Finance Act

Overview of changes to consumer credit law



This guide provides an overview of the key changes to consumer credit law, most of which took effect on 6 June 2015.

Consumer credit law has changed

New Zealand's consumer credit law has changed. Almost all changes took effect on 6 June 2015 and only apply to contracts entered into after that date.

The changes are set out in the Credit Contracts and Consumer Finance Amendment Act 2014 (the Amendment Act).¹

The courts are now able to impose tougher consequences, including higher penalties, for breaking the law. The Commission now also has a broader range of enforcement tools, such as the power to issue infringement notices for some minor offences.

The key changes include:

- Lender responsibility principles, supported by guidance in a responsible lending code.²
- New rules about the repossession of consumer goods.³
- Amendments to some of the rules about disclosure.⁴

A range of other measures to strengthen consumer protection have also been introduced.

Note that the unamended Credit Contracts and Consumer Finance Act 2003, (CCCF Act (unamended)) continues to apply to most consumer credit contracts entered into before 6 June 2015.⁵

What kinds of transactions are covered in this guidance?

The Credit Contracts and Consumer Finance Act 2003 (CCCF Act) covers a range of transactions including certain types of loans, consumer leases and buy-back transactions.

What do we mean by a 'loan' in this guidance?

This guidance focuses on how the changes affect most consumer loans. There are two kinds of consumer loans:

- the first are loans where the consumer uses or intends to use the credit, wholly or predominantly for personal, domestic or household purposes,⁶ and where the lender is in the business of providing loans of this type;
- the second kind are loans that are, or may be, secured against consumer goods (no matter what the borrower intends to use the credit for).

Most of the new rules apply to both kinds of loans, but some apply only to one kind. The rules explained in this guide apply to both kinds of loans, unless specified.



1. All section and part references in this guidance are to the Amendment Act, and if relevant, the section of the principal Credit Contracts and Consumer Finance Act (2003) (CCCF Act) that is amended.
2. Part 1A.
3. Part 3A.
4. Sections 15 – 22 (amends sections 17, 19 and 21 to 25 of the CCCF Act, inserts section 26A into CCCFA Act)
5. Schedule 1 (inserts new schedule 1AA into the CCCFA Act).
6. Section 10 (amends section 11 of the CCCF Act). Section 79 and Schedule 1 of the Amendment Act (inserts Schedule 1AA into CCCF Act).

Which rules apply?

The new rules are set out in the Amendment Act.

Almost all changes took effect on 6 June 2015 and most only apply to loans entered into after this date. Generally, the provisions of the CCCF Act (unamended), and the provisions governing repossession in the Credit (Repossession) Act 1997 continue to apply to loans already in place before 6 June 2015.⁷

There are some exceptions. Some of the new rules apply to variations, hardship applications, and disclosures that occur after 6 June 2015, regardless of when the loan was entered into.

We have produced separate guidance on how the new rules will apply to contracts entered into before 6 June 2015. Go to www.comcom.govt.nz/consumer-credit-fact-sheets-post.

Changes that took effect in 2014

- From 7 June 2014, a lender cannot use ‘power of attorney’ or ‘agency’ clauses to take security over consumer goods purchased by the borrower after the contract was entered into.⁸
- From 17 June 2014, layby sales agreements that provide for interest charges or credit fees are subject to the rules under the CCCF Act.⁹



Lenders must comply with new lender responsibility principles

New lender responsibility principles apply to all lenders’ dealings with borrowers. These principles apply not only to loans, but also to credit-related insurance contracts, guarantees and buy-back transactions.

The responsible lending code (the code) elaborates on the lender responsibility principles and provides guidance as to how lenders can comply with the principles. We note that evidence of compliance with the code is not conclusive evidence of compliance with principles.¹⁰

To see the code, please refer to www.consumeraffairs.govt.nz/legislation-policy/policy-development/credit-review/responsible-lending-code.

There are two lender responsibility principles

Principle 1: Every lender must exercise the care, diligence, and skill of a responsible lender in all its dealings with borrowers and guarantors. This includes when advertising, when entering into a loan, and in all subsequent dealings relating to the loan.¹¹

Some elements of this principle are set out in specific lender responsibilities and lenders will be able to take guidance from the code as to how to comply. However, the “care, diligence and skill” principle stands alone, and to satisfy it, lenders might need to take an action which may not necessarily be specified in the lender responsibilities or in the code.

Principle 2: Lenders must comply with specific listed lender responsibilities.¹² A summary of the key lender responsibilities is set out on the next page.

Note: This is not an exhaustive list. All the lender responsibilities are set out in section 9 of the Amendment Act.

7. Section 79 and Schedule 1 (inserts Schedule 1AA into CCCF Act).
8. Section 2(2) of the Amendment Act and section 44 of the Personal Property Securities Act 1999.
9. Section 2(3) of the Amendment Act and section 36B (4) of the Fair Trading Act 1986.
10. Sections 9E and 44B.
11. Section 9 (see section 9C (1) and (2) (a)).
12. Section 9 (see section 9C (2) (b)).

What are the key lender responsibilities?

Lenders must make reasonable enquiries

Lenders must make reasonable enquiries before entering into a loan or taking a guarantee to be satisfied that:

- the credit provided will meet the borrower's needs and objectives¹³ and
- the borrower or guarantor will be able to make the payments under the loan, or comply with the guarantee, without suffering substantial hardship.¹⁴

Lenders must help borrowers and guarantors to make an informed decision

Lenders must help borrowers and guarantors make informed decisions about whether to enter into the loan or to give the guarantee. Lenders must help borrowers to make informed decisions in all subsequent dealings about the loan.¹⁵

This includes lenders ensuring that advertising and information provided to the borrower or guarantor is not likely to be misleading, deceptive or confusing. The terms of the loan or guarantee (and any variation to the loan) must be expressed in plain language in a clear, concise and intelligible manner.¹⁶

Lenders must act reasonably and ethically

Lenders must treat borrowers and guarantors reasonably and in an ethical manner including:

- when breaches of the loan occur or when other problems arise
- when a borrower suffers unforeseen hardship
- during a repossession process.¹⁷



Oppression

Lenders must make sure loans are not oppressive, that they do not induce borrowers to enter into loans in an oppressive way and that they do not exercise their rights under the loan oppressively.¹⁸ In other words, the loan and the lender's conduct must not be oppressive, harsh, unjustly burdensome, unconscionable, or in breach of reasonable standards of commercial practice.

Credit-related insurance

Lenders must make reasonable inquiries before the borrower enters into a credit-related insurance contract to be satisfied that the insurance will meet the borrower's requirements and objectives, and the borrower will be able to make the payments without suffering substantial hardship. Lenders must also assist the borrower to make an informed decision about whether to enter into the contract.

Lenders must meet all other legal obligations

Lenders must meet all their other legal obligations to the borrower and guarantor.¹⁹

This includes obligations under the Fair Trading Act 1986 (FT Act) and the Consumer Guarantees Act 1993.

The FT Act includes an obligation not to engage in misleading or deceptive conduct. Further information on the FT Act is available at www.comcom.govt.nz/what-is-the-fair-trading-act/.

What happens if lenders breach the lender responsibility principles?

If lenders breach the lender responsibility principles, the court can make a wide range of orders, including orders restricting lenders' actions and orders compensating borrowers.²⁰ For example, a District Court may order a person not to act as a creditor, lessor or transferee if that person has failed more than once to comply with the principles.²¹

13. Section 9 (see section 9C (3) (a) (i)).

14. Section 9 (see section 9C (3) (a) (ii) and 4(a)).

15. Section 9 (see section 9C (3) (b), 3(c)).

16. Section 9 (see sections 9C (3) (b) and 4(b)).

17. Section 9 (see section 9C (3) (d) and 4(c)).

18. Section 9 (see section 9C (3) (e) and 4(d)).

19. Section 9 (see section 9C (3) (f) and 4(e)).

20. For example, sections 59 and 63 (amends sections 93 and 96 of the CCCF Act respectively).

21. Section 9A (2) (d).

New repossession and licensing rules apply

New Zealand's repossession laws have also been updated and brought into the CCCF Act. These rules apply to loans that are secured over consumer goods – no matter what the borrower intends to use the credit for. The rules only apply where the contract allows the lender:

- to repossess those goods; or
- to enter premises or enter into premises when the occupier is not present for the purpose of repossessing those goods or for any other purpose relating to those goods.²²

The rules set out the process for repossessing consumer goods including:

- when consumer goods can be repossessed;
- what a lender has to do before repossessing consumer goods;
- what a lender or repossession agent has to do when repossessing consumer goods; and
- what happens to the loan and to the consumer goods after they have been repossessed.

The Commerce Commission is responsible for enforcing the new repossession rules.



Licensing rules

- Lenders may not take any steps to repossess consumer goods (for example entering residential premises in order to repossess goods) unless they are registered on the Financial Services Providers Register.²³ (See more information on page 9).
- Lenders may not authorise, allow or permit a repossession agent or repossession employee to repossess consumer goods unless that agent or employee is licenced or holds a certificate of approval.
- Repossession agents and repossession employees must not take repossession action (for example, by entering residential premises in order to repossess goods) unless they are:
 - specifically authorised to do so by the lender; and
 - licenced or have a certificate of approval.²⁴
- Lenders may not personally enter premises for the purpose of repossessing consumer goods unless they are licenced or hold a certificate of approval.²⁵

Penalty

Any breach of the licensing rules is an offence and on conviction individuals are liable for fines of up to \$200,000 and companies of up to \$600,000.

Note: Repossession Agents must be licenced under the Private Security Personnel and Private Investigators Act 2010 (PSPPI Act). Repossession agents must ensure that repossession employees hold a certificate of approval. Repossession agents who do not comply commit an offence, and on conviction, are liable for fines of up to \$40,000 for an individual and \$60,000 for a company.²⁶

22. Section 51 (inserts section 83C into the CCCF Act).

23. Section 83T (1).

24. Section 83T (2).

25. Section 83T (4).

26. Section 23 of the PSPPI Act.

Restrictions on security over certain goods and documents

- Lenders must not take security over certain “essential” goods:²⁷
 - beds and bedding
 - cooking equipment, including stoves
 - medical equipment
 - portable heaters
 - washing machines
 - refrigerators.
- Lenders must not take security over the following kinds of documents:
 - travel documents
 - identification documents
 - bank cards.

This list may be updated by regulations.

Secured goods must be specifically identified

- Consumer goods must be adequately described in a way that enables them to be identified, before they can be repossessed.²⁸ Lenders cannot repossess goods where they have simply described a kind of good in a security agreement, for example, a microwave.
- In order to repossess goods that the borrower acquires after the date of the loan, the lender and borrower must agree to change the loan to include these specific goods and the lender must provide variation disclosure.²⁹ This is likely to make it difficult for lenders to repossess consumer goods where they have described the security interest as being over “all present and after acquired property”.

For more information on repossession, read our guidelines at www.comcom.govt.nz/repossession-guidelines.



Repossession offences

An offence is committed if a lender (or repossession agent):

- repossesses consumer goods when the borrower is not in default³⁰
- repossesses consumer goods when the goods are not at risk³¹
- has not specifically identified the goods to be repossessed in the credit contract before:
 - repossessing those goods, or
 - entering premises in order to repossess those goods, or
 - entering premises for any other purpose in connection with those goods.³²
- has not issued the correct repossession warning notice to the persons specified in the Amendment Act³³
- does not produce the correct documents if someone is present when they enter residential premises for the purpose of repossession³⁴
- does not leave a notice and secure the premises if there is no-one present when they enter residential premises for the purpose of repossession³⁵
- enters residential premises for the purpose of repossession before 6am or after 9pm, or on a Sunday or a public holiday, without written consent – written consent must be obtained as specified in the Amendment Act³⁶
- takes a security interest over any of the essential consumer goods or documents listed in the Amendment Act.³⁷

Penalty

Any breach of the repossession rules is an offence and on conviction, individuals are liable for fines of up to \$200,000 and companies of up to \$600,000.

27. Unless the seller of those goods has taken a security interest over those goods to secure the borrower’s obligation to pay all or part of the purchase price of those goods. See section 83ZN.

28. Section 83F.

29. Section 83F (1) (b) (i).

30. Section 83E.

31. Ibid.

32. Section 83F.

33. Section 83G.

34. Section 83O.

35. Section 83P.

36. Section 83S.

37. Section 83ZN.

Disclosure

Lenders must publish their standard form contract terms and costs of borrowing

Lenders must make both their standard form contract terms (if they use standard form contract terms) and their costs of borrowing publicly available for each type of loan they offer.³⁸

The cost of borrowing includes:

- credit fees
- default fees
- annual rates of interest
- default interest rates.³⁹

Lenders must display their standard form contract terms and cost of borrowing information prominently and clearly on any website they have.⁴⁰ If lenders are operating from business premises that are accessible to the public, they will have to prominently and clearly display a notice which states that this information is available on request, free of charge.⁴¹ Regulations may prescribe the way that the cost of borrowing information is provided.

If a borrower requests this information, the lender must immediately give it to them in the prescribed form (if it has been prescribed by regulation)⁴² free of charge.

Other changes to disclosure

A number of other changes have been made to the disclosure provisions. Three of these changes are described below. (Note: some of these disclosure provisions also apply to existing loans. We have produced separate guidance on how the rules apply to contracts entered into before 6 June 2015. Go to www.comcom.govt.nz/consumer-credit-fact-sheets-post.)

The changes to the disclosure provisions apply to loans where the consumer uses or intends to use the credit, wholly or predominantly for personal, domestic or household purposes, and where the lender is in the business of providing loans of this type.



Initial disclosure must be made before the loan is signed

Lenders must give borrowers specified, key information about the terms of the loan **before** they sign.⁴³ This is known as initial disclosure. (Prior to 6 June 2015, lenders had up to 5 days **after** entering the loan to make disclosure).

New continuing disclosure obligations

Before 6 June 2015, lenders did not have to provide information if loan repayments were a fixed amount and were known to the borrower. From 6 June 2015, lenders must provide a statement every 6 months showing payments and charges (this is called *continuing disclosure*).⁴⁴

New rules requiring minimum repayment warnings for credit card statements

Lenders must give a minimum repayment warning on continuing disclosure statements for credit card statements issued on or after 6 June 2015. The form of the warning is set out by regulations.⁴⁵

Other measures to strengthen consumer protection

There are a number of extra consumer protections for loans where the consumer uses or intends to use the credit, wholly or predominantly for personal, domestic or household purposes, and where the lender is in the business of providing loans of this type.

Cancellation period extended

Borrowers have 5 working days to cancel a loan. (Before 6 June 2015, the period for cancelling was 3 working days.)⁴⁶

Default interest restricted to the amounts in default

Lenders may apply a default interest rate to the amount that the borrower is in default, not to the whole balance of a loan.⁴⁷

38. Section 9 (see sections 9J and 9K).

39. Section 9K (3), section 6 (amends section 5 of the CCCF Act).

40. Section 9 (see sections 9J (3) (a) and 9K (3) (a)).

41. Section 9 (see sections 9J (3) (b) and 9K (3) (b)).

42. Section 9 (see sections 9J (4), 9K (4), and 9K(6)).

43. Section 15 (amends section 17 of the CCCF Act).

44. Section 17 (repeals section 21 (1) (a) of the CCCF Act).

45. Credit Contracts and Consumer Finance Regulations 2004, regulation 4B.

46. Section 23 (amends section 27 of the CCCF Act).

47. Section 28 (amends section 40 of the CCCF Act).

Borrowers can make hardship applications when they are in default

A borrower can make a hardship application where, due to an unforeseen hardship, the borrower is facing difficulties meeting their loan obligations. If approved, the lender may agree to a change to their contract.

Lenders must comply with the lender responsibility principles when assessing hardship applications, and provide written reasons if they decline a hardship application.⁴⁸

Borrowers can make a hardship application where they are already in default, providing:

- they have been in default for less than 2 months, or
- they have not missed four consecutive payments.⁴⁹

Also, borrowers can make a hardship application up to 2 weeks after receiving a repossession warning notice or Property Law Act notice.⁵⁰ Lenders may not repossess consumer goods while a hardship application is being considered, unless the goods are at risk.⁵¹

Lenders must follow specified timeframes in processing hardship applications.⁵² Lenders cannot charge credit fees in relation to the hardship application.⁵³

These rules apply to all hardship applications made on or after 6 June 2015, regardless of when the loan was entered into.

Oppression

Loans are oppressive if they are harsh, unjustly burdensome, unconscionable, or in breach of reasonable standards of commercial practice.⁵⁴

The courts or disputes tribunal have a broad discretion to re-open a loan. From 6 June 2015, there are more factors that the courts or dispute tribunals must take into account when deciding whether a loan is oppressive. The further factors a court or disputes tribunal must take into account include:

- the relative bargaining powers of the parties;
- whether the borrower was reasonably able to protect their own interests;

- whether the borrower received independent legal advice about the loan;
- how the costs of the loan compare to the same or substantially similar arrangements; and
- whether the loan documentation is in plain language.⁵⁵

In addition, the court or disputes tribunal can consider whether the lender has complied with the lender responsibility principles in entering into the loan.

We have produced guidance on hardship applications. Go to www.comcom.govt.nz/applying-for-hardship.

Infringement offences

Infringement offences have been introduced for some minor breaches of the disclosure and repossession provisions.⁵⁶

Infringement offences

A lender commits an infringement offence if they fail to:

- include all of the key information required for initial disclosure
- include all of the key information required for continuing disclosure
- provide disclosure within the required timeframes
- disclose the terms of credit-related insurance, repayment waiver, or extended warranty before these are arranged
- comply with a borrower's or guarantor's request for disclosure within applicable timeframes
- provide a copy of a standard form contract when requested.⁵⁷

Lenders or their repossession agents commit an infringement offence if they fail to:

- include the required information in a repossession notice⁵⁸
- produce a document or information on entering premises for the purposes of repossessing goods when there is someone present.⁵⁹

48. Section 39 (inserts s 57A into the CCCF Act).

49. Section 38 (amends s 57 of the CCCF Act).

50. Ibid.

51. Section 83J.

52. Section 39 (inserts new section 57A into the CCCF Act).

53. Section 39 (inserts section 57A (3) and 57A (4) into the CCCF Act).

54. Section 118 of the CCCF Act.

55. Section 74 (replaces section 124 in the CCCF Act).

56. Section 70 (inserts sections 105A to 105F into the CCCF Act.)

57. Section 68 (inserts s 102A into the CCCF Act).

58. Section 68 (replaces section 103 and inserts section 102A into the CCCF Act. See s 102A(5))

59. Section 68 (replaces section 103 and inserts section 102A into the CCCF Act. See s 102A(6))

Infringement notices

The Commission can issue infringement notices requiring lenders to pay an infringement fee if they commit any of the offences set out in the box on the previous page.

An infringement notice imposes an infringement fee where:

- the Commission considers, on reasonable grounds, that a person is committing or has committed an infringement offence;⁶⁰ and
- no criminal proceedings or infringement notices have already been issued for the offence.

The infringement fee is currently \$1,000 for any one infringement offence and can be changed by regulation.⁶¹ The recipient of an infringement notice must either pay the fee or challenge the notice within 28 days of receiving the infringement notice.

If a notice is challenged, and we do not accept that the challenge is valid, the matter will proceed to a court hearing.⁶²

Alternatively, the Commission can choose to prosecute a lender for committing an infringement offence. If convicted of an infringement offence, an individual is liable for a fine not exceeding \$10,000 and for a company, a fine not exceeding \$30,000.⁶³

Infringement notices not available in some circumstances

Infringement notices are not available where there is a complete failure to:

- give or send a disclosure statement;
- serve a repossession warning notice; or
- produce the required documents on entry to premises for the purpose of repossessing goods when there is someone present.⁶⁴

Anyone who commits any of these three offences is liable on conviction to fines of up to \$200,000 for an individual and up to \$600,000 for companies.⁶⁵

Exemption for pawnbrokers from some provisions

From 6 June 2015, most pawnbroking transactions are no longer subject to Part 2 of the CCCF Act.⁶⁶ Part 2 contains a number of important provisions including provisions about disclosure, fees and interest provisions. This part of the Act no longer applies to pawnbroking transactions if:

- the contract was entered into by a pawnbroker in the ordinary course of the pawnbroker's business, in accordance with the Secondhand Dealers and Pawnbroker's Act (2004) (SDP Act);⁶⁷ and
- when the borrower defaults or does not redeem the goods, the only course of action open to the pawnbroker is to sell the goods after the date of redemption and retain the redemption price.⁶⁸

Instead, the SDP Act applies to pawnbroking transactions, including its provisions in relation to disclosure, fees and interest. The SDP Act is enforced by the police, and is administered by the Ministry of Justice.

However, two key aspects of the CCCF Act apply to pawnbrokers:

- The lender responsibility principles set out at Part 1A;⁶⁹
- The oppression provisions (see Part 5 of the CCCF Act,⁷⁰ and the discussion on oppression in this guidance).



60. Section 70 (inserts new 105C into the CCCF Act).

61. Section 70 (inserts section 105A into the CCCF Act).

62. Section 21 of the Summary Proceedings Act (1957).

63. Section 68 (inserts section 102A (8) into the CCCF Act).

64. Section 68 (inserts sections 102A (2) and 102A (7) into the CCCF Act).

65. Section 68 (inserts section 103 into the CCCF Act).

66. Section 13 (inserts section 15A into the CCCF Act).

67. Section 13 (inserts section 15A (1) (a) into the CCCF Act).

68. Section 13 (inserts section 15A (1) (b) into the CCCF Act).

69. Section 9.

70. Sections 73 and 74 (amends Part 5 of the CCCF Act).

Lenders must be registered

A financial service provider⁷¹ is required to be registered on the Financial Service Providers Register (FSP register) and a member of a dispute resolution scheme.^{72,73} If lenders claim to be registered when they are not, this is potentially a breach of the FT Act and the Financial Service Providers (Registration and Dispute Resolution) Act 2008.⁷⁴

These rules mean that lenders who are required to be registered, but who have not registered, cannot require borrowers to pay most credit fees or interest for the period the lender is unregistered.⁷⁵

Lenders who are not required to register must comply with all other relevant obligations under the CCCF Act, including the lender responsibility principles.

Higher penalties

Maximum penalties for each breach of consumer credit law have increased substantially – up to \$200,000 for an individual and \$600,000 for a company.



Registration as a financial service provider is NOT an official approval of an individual, business, or organisation and does not necessarily indicate that the provider is licensed or regulated in New Zealand or any other country.

71. Section 4 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

72. Financial Services Providers Register, available at www.fspr.govt.nz. For information on who must be registered, check the website <http://www.business.govt.nz/fsp/about-the-fspr/frequently-asked-questions-faqs/registration-who>.

73. Sections 11(1) and 48 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008. There are some exceptions and exemptions in Section 7 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and the Financial Service Providers (Exemptions) Regulations 2010.

74. Section 13(f) of the Fair Trading Act 1986 and sections 11(2) and 12 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

75. Section 65 (inserts section 99B into CCCF Act).

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This fact sheet provides guidance only. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

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