

MAY 2020

Mobile Trader Guidelines



Purpose of Guidelines

- 1 The laws that mobile traders must comply with are changing and from **1 June 2020** all mobile traders must:
 - 1.1 comply with the Credit Contracts and Consumer Finance Act 2003 (**CCCF Act**) for all contracts they enter into **on or after 1 June 2020** for the sale of goods¹ where payment of the purchase price is deferred (regardless of whether credit fees and interest are charged);
 - 1.2 be aware of changes to the Fair Trading Act 1986 (the **FT Act**) that affect disclosure and cancellation rules for layby sale contracts.
- 2 These new obligations apply in addition to existing obligations under laws like the FT Act and the Consumer Guarantees Act 1993.
- 3 The extent to which mobile traders will need to change the way they operate will depend on the type of contracts they offer. Mobile traders who allow customers to defer payment and charge credit fees or interest are already required to comply with the CCCF Act for those contracts, be registered on the FSP register and be a member of an approved dispute resolution scheme.
- 4 Mobile traders which are not already required to comply with the CCCF Act will need to review their contracts and their business practices.
- 5 There are other changes to credit laws coming, including a requirement for mobile traders to be registered on the Financial Service Providers Register and be certified by the Commission. You can find out more about these changes [here](#).
- 6 These guidelines explain the new rules set out in the CCCF Act and FT Act that apply from 1 June 2020.
- 7 These guidelines are not exhaustive and are not intended to be legally binding. We may revise the guidelines from time to time based on our experience, legislative or case-law changes.

Who is a Mobile Trader?

- 8 The new rules apply to contracts entered into by **mobile traders**.² You are a mobile trader if:
 - 8.1 **outside of fixed premises** and, **in person**, you offer or agree to supply **consumer goods**³ to a natural person (an individual); and
 - 8.2 payment of any part of the purchase price of those goods is:
 - 8.2.1 deferred; or
 - 8.2.2 financed by a **consumer credit contract** under which the lender is an associated person⁴ of the seller.

1. In some cases a lease of goods is treated as a credit sale. See our guidance on leases that are treated this way [here](#).

2. See CCCF Act, s 5(1) as inserted by the Credit Contracts Legislation Amendment Act 2019 (CCLAA), s6(1).

3. Goods that are used or acquired for use primarily for personal, domestic or household purposes.

4. As defined in s 8A of the CCCF Act.

What is deferred payment?

- 9 From 1 June 2020, mobile traders must comply with the CCCF Act for all contracts they enter into with individuals where payment of any part of the purchase price is deferred. Deferred payment occurs when part or all of the purchase price is to be paid on a different date or dates from the day on which the agreement was entered into.
- 10 Under the CCCF Act these sales where payment is deferred are known as **credit sales**. From 1 June 2020 all credit sales entered into by a mobile trader will be treated as consumer credit contracts for the purposes of the CCCF Act.⁵
- 11 It is important to note that sales where payment is deferred will be a credit sale, and therefore a consumer credit contract, regardless of whether or not credit fees or interest are charged.

What does it mean to operate outside of fixed premises?

- 12 Fixed premises are permanent structures, such as offices, shops and warehouses. For the purposes of these rules, you will operate outside of fixed premises if any part of your business involves you offering or agreeing to supply goods to consumers in-person from somewhere other than fixed premises.
- 13 This means that, regardless of whether you also operate from fixed premises, if you offer or agree to supply goods using mobile methods, such as door to door selling, street selling or mobile shops (eg, truck shops) you are a mobile trader.

Example

Trucks R Us sells consumer goods, including clothing and electrical goods, on deferred payment terms. It is based in an office and warehouse in central Auckland and makes 75% of its sales online through its website and social media, with the other 25% of sales coming from salespeople who operate out of a small fleet of trucks throughout suburban Auckland. It does not charge any fees or interest to its customers.

Although most of its sales are made through its website and social media, Trucks R Us is a mobile trader because it makes in-person offers (through its salespeople) to supply consumer goods on deferred payment terms and part of its business occurs outside of fixed premises (eg, in trucks).



5. CCCF Act, s 16A(1) as inserted by CCLAA, s 15.

All mobile trader credit sales are consumer credit contracts

- 14 If you meet the definition of a mobile trader all of the credit sales you enter (and not just those made outside of fixed premises) are treated as consumer credit contracts for the purposes of the CCCF Act and you are treated as a creditor for those transactions.⁶ Again, that is the case whether or not credit fees or interest are charged.

Example

Using the example above - although Trucks R Us does not charge fees or interest and only 25% of its sales are made using mobile methods, all of the credit sales it makes (including those made through its website and social media) are consumer credit contracts to which the CCCF Act applies.

If Trucks R Us only offered or agreed to supply consumer goods through its website or social media it would not be a mobile trader, because this business model does not involve an in-person offer or agreement.

Rules that apply to mobile traders

- 15 From 1 June 2020, lenders will need to comply with obligations including the lender responsibility principles.

Lender Responsibility Principles

- 16 The CCCF Act contains a suite of lender responsibilities that all lenders, including mobile traders, must comply with.⁷ The lender responsibility principles impose obligations on lenders when advertising, before entering into a loan, and during all subsequent dealings with borrowers and guarantors.
- 17 If you enter into a credit sale (or any other form of consumer credit contract) you must comply with these lender responsibility principles. If you breach the principles, the court can make a wide range of orders, including orders restricting lenders' actions and orders compensating borrowers. For example, a District Court may order that a person cannot act as a creditor if that person has failed more than once to comply with the principles.
- 18 For further guidance about how to comply with the Lender Responsibility Principles see the [Responsible Lending Code](#) issued by the Minister of Consumer Affairs. The Commission has also published [guidance](#) about the lender responsibility principles.

6. Section 16A(2) of the CCCF Act as inserted by s 15 of the CCLAA.

7. Part 1A of the CCCF Act.

Disclosure obligations

- 19 All lenders must make initial disclosure of important information relevant to the deferred payment contract at the outset⁸ and then make continuing,⁹ variation,¹⁰ request,¹¹ guarantee¹² and transfer¹³ disclosure over the life of the contract as required.
- 20 Because mobile traders who enter into credit sales are deemed to be creditors, the CCCF Act disclosure rules apply to all credit sales and other consumer credit contracts entered into by a mobile trader – including those that also meet the definition of a layby sale under the FT Act.¹⁴ Where a credit sale is also a layby sale the disclosure requirements in the FT Act do not apply.¹⁵ You must instead follow the CCCF Act disclosure requirements.
- 21 For further guidance see the Commission’s [disclosure guidelines](#).

Restrictions on fees and other charges

- 22 The CCCF Act places constraints upon fees and other charges that you may charge under a credit sale or any other consumer credit contract.¹⁶ In particular, you must make sure that:
 - 22.1 you disclose all fees the borrower must pay;
 - 22.2 you clearly describe those fees;
 - 22.3 the amount of credit and default fees is reasonable;
 - 22.4 you pass on any third-party fees at cost.
- 23 There are significant consequences for breaching the fees provisions. It is an offence, punishable by a maximum fine of \$600,000, to provide for an unreasonable fee in a credit contract. Further, a court may make a range of orders¹⁷ for breaches of the reasonable fees restriction, including ordering refunds and compensation.
- 24 For further information about fees and other charges see the Commission’s [Credit Fee Guidelines](#).



8. Section 17 of the CCCF Act.
9. Sections 18 to 21 of the CCCF Act.
10. Sections 22 and 23 of the CCCF Act.
11. Section 24 of the CCCF Act.
12. Sections 25 and 26 of the CCCF Act.
13. Section 26A of the CCCF Act.
14. As defined in s 36B of the FT Act.
15. Section 17 of the CCCF Act and sch 1 to the CCCF Act, as amended by s 55 of the CCLAA.
16. Sections 41 to 45 of the CCCF Act.
17. Section 94 of the CCCF Act.

Mobile trader contracts that are also layby sales agreements

- 25 Some credit sales can also be layby sales which are also covered by the FT Act. Layby sales are credit sales with the following features:
- 25.1 The price of the goods is less than \$30,000;
 - 25.2 The price is payable over at least 3 payments (or 2 payments if the agreement says it is a layby);
 - 25.3 The consumer has to make at least one payment before they get the goods.
- 26 For these contracts, mobile traders must give customers disclosure under the CCCF Act (see the Commission's guidance on [disclosure](#)).¹⁸ but, unlike for most consumer credit contracts, borrowers will be able to cancel the contract at any time before they have received the goods.¹⁹
- 27 For further information see the Commission's guidance on [layby sales agreements](#) including the cancellation rules.

18. Section 36C(2) of the FT Act as amended by s58 of the CCLAA

19. Sections 36F and 36G of the FT Act 1986 and Section 29 of the CCCF Act, as amended by s 21 of the CCLAA.

This is a guideline only and reflects the Commission's view. 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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