

The Credit Contracts and Consumer Finance Act

How the changes to consumer credit law apply to contracts

entered into before 6 June 2015



New Zealand's consumer credit law has changed and most changes took effect on 6 June 2015. This fact sheet explains when and how the rules affect consumer credit contracts entered into *before* 6 June 2015.

Rules in force from 6 June 2015

The Credit Contracts and Consumer Finance Act 2003 (CCCF Act) has been amended. The changes are set out in the Credit Contracts and Consumer Finance Amendment Act 2014 (Amendment Act).

The new rules apply to all credit contracts (including consumer credit contracts) entered into on or after 6 June 2015. All section references in this guidance are to the Amendment Act, unless otherwise specified.

The previous rules – including the CCCF Act before it was amended (CCCF Act (unamended)) and the Credit (Repossession) Act 1997 – continue to apply to all credit contracts (including consumer credit contracts) entered into before 6 June 2015.

There are some exceptions that apply to consumer credit contracts. This fact sheet describes those exceptions, and explains when and how the new rules affect consumer credit contracts that have been entered into before 6 June 2015.¹

These exceptions are set out in Schedule 1 of the Amendment Act.²



What do we mean by “pre-existing consumer credit contracts” in this guidance?

The CCCF Act covers a range of transactions, including certain types of loans, some credit sale transactions, consumer leases and buy-back transactions.

The rules described in this guidance apply to consumer credit contracts that have been entered into before 6 June 2015 where:

- the borrower is a natural person, and
- the borrower enters into the contract primarily for personal, domestic or household purposes, and
- credit fees or interest are or may be charged under the contract or the lender takes or could take a security interest, and
- the lender is in the business of providing credit.³

In this guidance, we refer to these as **pre-existing consumer credit contracts**.



1. Some of the new rules will affect buy-back agreements and consumer leases that were entered into before 6 June 2015. These rules are not covered in this fact sheet.
 2. Section 79 and Schedule 1 insert Schedule 1AA into the CCCF Act.
 3. Section 11 (1) of the CCCF Act.

Which rules apply to pre-existing consumer credit contracts?

In general terms, the following rules apply to pre-existing consumer credit contracts. These rules are explained further throughout this fact sheet.

- When a pre-existing consumer credit contract is varied, and the variation takes effect on or after 6 June 2015:
 - > lenders must comply with responsible lending principles when making the variation
 - > lenders must provide variation disclosure containing full details of the variation to the borrower without exception.
- New rules apply to all hardship applications made on or after 6 June 2015, including those where the contract was entered into before 6 June 2015:
 - > Lenders must comply with responsible lending principles when considering these applications.
 - > Borrowers may be able to make a hardship application even if they are in default.
 - > There are rules about what a lender has to do when considering a hardship application.
- Most borrowers can request more information under request disclosure on or after 6 June 2015 for pre-existing consumer credit contracts than they were able to under the CCCF Act (unamended).
- For credit card contracts in place before 6 June 2015, lenders must provide minimum repayment warnings on credit card statements given or sent on or after 6 June 2015. The form of the minimum repayment warning is set out by regulation.⁴
- If a lender transfers their rights under a pre-existing consumer credit contract to another lender on or after 6 June 2015, the original lender must provide specified information to the borrower about the new lender. This rule applies unless the transfer happens in circumstances described in regulations relating to securitisation and covered bond arrangements.⁵

What is variation, continuing, and request disclosure?



- **Variation disclosure** is specific information lenders must give borrowers if changes are made to a consumer credit contract.
- **Continuing disclosure** is specific information lenders must give borrowers throughout the life of a consumer credit contract.
- **Request disclosure** is specific information lenders must give borrowers if they ask for it.

The CCCF Act sets out what the specific information is in each case and sets out rules about when and how a lender must make variation, continuing, and request disclosure.

Responsible lending principles apply to pre-existing consumer credit contracts varied on or after 6 June 2015

The lender responsibility principles apply when a pre-existing consumer credit contract is varied and the variation takes effect on or after 6 June 2015. A lender must exercise the care, diligence and skill of a responsible lender when making the variation.⁶

Specifically, a lender must:⁷

- help the borrower to reach informed decisions including by ensuring that:
 - > any variation to that consumer credit contract is expressed in plain language in a clear, concise and intelligible manner,⁸ and
 - > any information provided to the borrower after the agreement has been entered into is not presented in a way that is likely to be misleading, deceptive or confusing⁹
- treat the borrower and their property reasonably and in an ethical manner¹⁰

4. Regulation 5 of the Credit Contracts and Consumer Finance Amendment Regulations 2015 inserts new regulation 4E (under section 138 of the CCCF Act).
5. Regulation 19 of Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2015.
6. Section 79 and Schedule 1 insert Schedule 1AA into the CCCF Act (see clauses 3 (2) (b) and 3 (2) (f) (i) of Schedule 1AA); also refer to section 9 which inserts Part 1A into the CCCF Act (see sections 9C (2) and 9C (3) (c) (i) in Part 1A)).
7. Section 79 and Schedule 1 insert Schedule 1AA into the CCCF Act (see clauses 3 (2) (f) (i) of Schedule 1AA).
8. Section 9 inserts Part 1A into the CCCF Act (see section 9C (3) (c) (i) in Part 1A).
9. Section 9 inserts Part 1A into the CCCF Act (see section 9C (3) (c) (ii) in Part 1A).
10. Section 9 inserts Part 1A into the CCCF Act (see section 9C (3) (d) in Part 1A).

- ensure the agreement is not oppressive and the lender does not exercise a right or power in an oppressive way,¹¹ and
- meet all other legal obligations the lender has to the borrower, such as those under the Fair Trading Act 1986 and the Consumer Guarantees Act 1993.¹²

Where a variation materially changes a pre-existing consumer credit contract (for example by increasing a credit limit or advancing further credit) a careful, diligent and responsible lender also might need to take steps or adopt practices in addition to the specific lender responsibilities set out above. For example, this may include making inquiries about whether or not the borrower can make payments without suffering substantial hardship or whether the credit provided will meet the borrower's requirements and objectives.

Making variation disclosure

Under the CCCF Act (unamended), lenders do not have to disclose some changes to consumer credit contracts, particularly in some specified circumstances, where the change is beneficial to the borrower, or where the borrower's obligations are reduced.

Under the Amendment Act, lenders must disclose full details of **all** changes to pre-existing consumer credit contracts that take effect on or after 6 June 2015 that:

- are agreed between the borrower and lender,¹³ or
- the lender makes unilaterally, using a power under the contract, if the changes relate to interest rates, payments, fees or the amount of a credit limit under the contract.¹⁴



How and when must lenders disclose these changes?

If the variation, in some specified circumstances, is either beneficial to the borrower or results in a reduction of the borrower's obligations, lenders must disclose full details of the variation:

- within **5** working days of the day that the change takes effect, or
- if the lender is required to make continuing disclosure, when the next continuing disclosure statement is due.^{15 16}

These obligations are in addition to the lender's variation disclosure requirements under the CCCF Act (unamended).

Note: Where the variation is not beneficial to the borrower or the borrower's obligations are not reduced in the circumstances specified in the CCCF Act (unamended), the lender is already required to provide full disclosure under the CCCF Act (unamended):

- before the change takes effect where the change has been agreed,¹⁷ or
- within **5** working days if the lender has made the change unilaterally using a power under the contract.¹⁸

Note: For more information on variation disclosure see our fact sheet at www.comcom.govt.nz/making-variations-to-consumer-credit-contracts.

Hardship applications

Responsible lending principles will apply when lenders consider hardship applications

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

- Section 9 inserts Part 1A into the CCCF Act (see section 9C (3) (e) in Part 1A).
- Section 9 inserts Part 1A into the CCCF Act (see section 9C (3) (f) in Part 1A).
- Section 79 and Schedule 1 insert Schedule 1AA into the CCCF Act (see clause 3 (2) (b) of Schedule 1AA; also see section 18, which amends section 22 of the CCCF Act).
- Section 79 and Schedule 1 insert Schedule 1AA into the CCCF Act (see clause 3 (2) (b) of Schedule 1AA; also see section 19, which amends section 23 (l) of the CCCF Act).
- Or where there is a class of change made by a lender exercising a power under a contract specified in any Regulations, refer to section 19 (4).
- Section 79 and Schedule 1 insert Schedule 1AA into the CCCF Act (see clause 3 (2) (b) of Schedule 1AA; also see section 18 (3) which inserts section 22 (4) into the CCCF Act; also see section 19 (5) which inserts section 23 (6) into the CCCF Act).
- Section 22 (1) and (2) of the CCCF Act.
- Section 23 (1) (2) and (3) of the CCCF Act.

From 6 June 2015, lenders must comply with the lender responsibility principles when considering any hardship applications from borrowers under pre-existing consumer credit contracts.¹⁹ This includes treating the borrower and their property (or property in their possession) reasonably and in an ethical manner.²⁰ The Responsible Lending Code provides useful guidance on compliance with responsible lending principles including in relation to hardship, in particular at paragraphs 12.9 to 12.11.²¹ Please also refer to our earlier comments in this fact sheet on how the responsible lending principles apply to variations on pre-existing contracts.

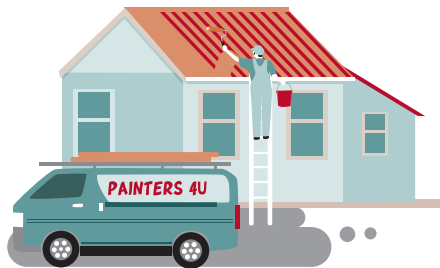
Borrowers can make hardship applications even if they are in default

The Amendment Act sets out rules about how hardship applications can be made, when they can be made and how a lender must deal with them. These rules apply to all hardship applications made on or after 6 June 2015, regardless of when the consumer credit contract was entered into.²²

The application needs to be in writing, the borrower must specify their reasons for not being able to meet their obligations, and the borrower must provide the application to the lender.

Borrowers can make hardship applications even if they are in default. But there are limitations:

- A borrower cannot make a hardship application if they have been in default for 2 weeks after receiving a Property Law Act notice.²³



- If a borrower has failed to make four consecutive payments on or before the due date, they cannot make a hardship application.²⁴
- A borrower cannot make a hardship application if they are more than 2 months in default.²⁵

If the borrower remedies the default (to the extent it can be remedied), they can then apply for hardship.²⁶

Process for considering hardship applications

Lenders must follow certain processes and meet specified timeframes when considering hardship applications.²⁷

Lenders cannot charge borrowers a fee for considering a hardship application.²⁸ For more information, see our updated fact sheet on hardship at www.comcom.govt.nz/applying-for-hardship.

New disclosure obligations

Request disclosure

Under the CCCF Act, lenders must provide certain information to borrowers or guarantors if they ask for it. For more on these obligations, see our request disclosure fact sheet. www.comcom.govt.nz/request-disclosure.

From 6 June 2015, in addition to the information lenders are already required to provide, borrowers and guarantors can ask for:

- a copy of any continuing disclosure statement (if the lender is obliged to provide continuing disclosure) for any reasonable statement period
- a copy of the contract between the borrower and lender.²⁹

19. Section 79 and Schedule 1 insert Schedule 1AA into the CCCF Act (see clause 3 (2) (f) (ii) of Schedule 1AA).

20. Section 9 inserts Part 1A into the CCCF Act (see section 9C (3) (d) (ii) in part 1A).

21. <http://www.consumeraffairs.govt.nz/pdf-library/legislation-policy-pdfs/responsible-lending-code.pdf>

22. Section 79 and Schedule 1 insert Schedule 1AA into the CCCF Act (see clause 3 (2) (e) of Schedule 1AA).

23. Section 38 amends section 57 of the CCCF Act (see amended section 57 (1) (a) (i)). Amended section 57 (1) (a) (i) refers to a 'repossession warning notice' or a notice under section 199 of the Property Law Act. However, there is no obligation to give repossession warning notices on pre-existing contracts. They are called prepossession notices under the Credit Repossession Act. This could mean that a debtor could make a hardship application on a pre-existing contract having received a prepossession notice but a debtor on a post 6 June 2015 contract who has received a repossession warning notice cannot.

24. Section 38 amends section 57 of the CCCF Act (see amended section 57 (1) (a) (ii)).

25. Section 38 amends section 57 of the CCCF Act (see amended section 57 (1) (a) (iii)).

26. Section 38 amends section 57 of the CCCF Act (see replaced section 57(2)).

27. Section 39 inserts section 57A into the CCCF Act.

28. Section 39 inserts section 57A (3) and 57A (4) into the CCCF Act. Note that if the application is successful, a lender may charge a credit fee that reasonably compensates the creditor for documenting the changes to the credit contract.

29. Section 79 and Schedule 1 insert Schedule 1AA into the CCCF Act (see clause 3 (2) (a) of Schedule 1AA; also see section 20 which amends section 24 of the CCCF Act).

Minimum repayment warnings for credit card statements

In some circumstances lenders are required to regularly provide borrowers with specific information about credit card contracts. This is called “continuing disclosure” and it is made in continuing disclosure statements. For credit card contracts, lenders must provide minimum repayment warnings on credit card statements which are given or sent after 6 June 2015.

Minimum repayment warnings for credit card statements

The form of the minimum repayment warning for credit card statements is set out by regulations and is as follows:³⁰

“If you make only the minimum payment each month, you will pay more interest and it will take you longer to pay off your balance. Visit www.sorted.org.nz/tools/debt-calculator to calculate how you can pay off your credit card balance faster and pay less in interest.”*

The format, font and font size of the minimum repayment warning must be easily readable. The warning must be presented reasonably close to the amount stated as the minimum payment for each payment period.

No minimum repayment warning is needed where:

- the closing unpaid balance of the credit card is under \$100, or
- an interest free period applies to the closing unpaid balance, or
- a payment arrangement between the lender and the borrower replaces the minimum payment that would otherwise be required.

Contracts transferred to another lender

Where a lender transfers their rights under a pre-existing consumer credit contract to another lender on or after 6 June 2015, the lender must provide disclosure of the following information to the borrower within 10 working days of the day that the transfer takes effect:³¹

- the name, address and other contact details of the new lender
- the new lender’s registration number in the register of financial service providers, and the name under which the new lender is registered
- the name and contact details of the dispute resolution scheme of which the new lender is a member (unless they are not required to be a member of a scheme)³²
- the date on which the rights were or will be transferred to the new lender
- the impact (if any) of the transfer on the borrower (for example whether the borrower will need to make payments to a different bank account)
- that the transfer does not affect the terms of the contract, other than changing the identity of the lender.

Lenders may not need to make this disclosure in some circumstances related to transfers as part of securitisation or covered bond arrangements. The details of these circumstances are set out by regulations.³³



**Replace with other payment period, if applicable.*

30. Regulation 5 of the Credit Contracts and Consumer Finance Amendment Regulations 2015 inserts new regulation 4E into the Credit Contracts and Consumer Finance Regulations 2004 (the principal regulations).
31. Section 79 and Schedule 1 insert Schedule 1AA into the CCCF Act (see clause 3 (2) (d) of Schedule 1AA); also see section 22, which inserts section 26A into the CCCF Act.
32. Financial Services Providers Register, available at www.fspr.govt.nz.
33. Regulation 19 of Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2015.

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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