

The Credit Contracts and Consumer Finance Act

# Publication of standard form contract terms and cost of borrowing



This fact sheet explains the rules that apply from 6 June 2015 requiring publication of standard form contract terms and costs of borrowing.

The Credit Contracts and Consumer Finance Act 2003 (CCCF Act)<sup>1</sup> requires lenders to make publicly available their standard form contract terms and costs of borrowing, for certain consumer loans and other transactions, as described below. The CCCF Act also describes the way in which this should be done. These measures are intended to assist borrowers to compare prices and contract terms and to shop around. This will assist in promoting competition in consumer credit markets.

The CCCF Act also requires lenders to comply with **lender responsibility principles** in all their dealings with borrowers.

## When do the publication rules apply?

### Standard form contract terms

Lenders who use standard form contract terms must make those terms publicly available<sup>2</sup> for:

- consumer credit contracts
- credit contracts secured over consumer goods
- buy-back transactions
- security interests, repayment waivers and extended warranties, when these are taken out in connection with the contract.

Lenders do not have to publicise terms for consumer leases or business loans if these are not secured over consumer goods.<sup>3</sup>

### What are standard form contract terms?

The CCCF Act provides some assistance in determining what is a standard form contract term for the purposes of that Act.<sup>4</sup> The phrase encompasses standard form contract terms that are intended to be contained (in whole or in part) in a class of agreements, and the terms have been either printed or otherwise prepared by or on behalf of a lender, and are used in concluding, or as a basis for concluding, the class of loan agreements.<sup>5</sup>

The CCCF Act does not define what is a 'class' of agreements, but see below under 'Costs of borrowing' where we discuss what this phrase means.

In practice, a lender is likely to have standard form contract terms that are subject to the publication requirement where the lender has some usual or commonly used loan terms that it offers for a type of loan, rather than drafting entirely new terms for each loan. For example, lenders may have standard form contract terms for the types or classes of loan they most often enter into:<sup>6</sup>

- A lender might use a set of terms without amendment for every loan in a class of loans. A printed set of standard terms and conditions that are not open to negotiation will likely be standard form contract terms which must be published.



1. All references are to the CCCF Act as amended by the Credit Contracts and Consumer Finance Amendment Act 2014.
2. Sections 9J and 9K; also section 5 definition of "Standard form contract terms" at (b).
3. "Consumer goods" are defined in section 5 as goods that are used or acquired for use primarily for personal, domestic, or household purposes.
4. Section 5.
5. Section 5.
6. Note that a lender does not use standard form contract terms where it has ceased offering loan agreements that contain those terms: section 9J(2).

- A lender might use a set of standard terms as a starting point for negotiating loans with individual borrowers and some terms may be amended for each final loan agreement. The standard terms are likely to be standard form contract terms which must be published, even though some of the terms are routinely amended to meet the needs for individual borrowers.
- A lender might also have a set of terms that it always includes in a loan agreement even when the majority of other terms in the loan agreement are negotiated and drafted to meet the needs of individual borrowers. The set of mandatory terms are likely to be standard form contract terms which must be published.

What matters is that the lender commonly uses the terms, even if from time to time the lender agrees to change the terms, or mixes standard terms up with newly created terms.

### Costs of borrowing

Lenders must also make information about all the costs of borrowing publicly available for:

- consumer credit contracts
- credit contracts secured over consumer goods

but not for:

- buy-back transactions<sup>7</sup>
- consumer leases
- business loans that are not secured over consumer goods.

#### What are costs of borrowing?

Costs of borrowing means any or all of the following costs:

- a credit fee
- a default fee
- interest charges, including default interest charges.<sup>8</sup>

## Lenders must comply with lender responsibility principles

Lenders also need to comply with the lender responsibility principles<sup>9</sup> in all their dealings with borrowers, including when they make standard form contract terms and costs of borrowing publicly available.

The lender responsibility principles<sup>10</sup> are that every lender must:

- exercise the care, diligence and skill of a responsible lender in any advertising, before they enter into an agreement, and in all subsequent dealings relating to the agreement; and must
- comply with the lender responsibilities specified in section 9C(3) (*lenders and borrowers*), 9C(4) (*lenders and guarantors*) and 9C(5) (*lenders and insurance*) of the CCCF Act.

The specific lender responsibilities<sup>11</sup> most relevant to publishing standard form contract terms and costs of borrowing include the lender:

- helping the borrower to reach an informed decision<sup>12</sup> about whether or not to enter into the contract and to be reasonably aware of the full implications of doing so, including by ensuring that:
  - advertising is not likely to be misleading, deceptive or confusing to borrowers
  - the terms of the contract are expressed in plain language in a clear, concise and intelligible manner
  - any information provided by the lender to the borrower is not presented in a way that is likely to be misleading, deceptive or confusing.



7. Buy-back transactions are included in the requirement to publish standard form contract terms (section 9J), but they are not included in the requirement to publish costs of borrowing (section 9K).

8. Sections 5 and 9K.

9. Section 9C(1).

10. The lender responsibility principles are set out in section 9C(2).

11. Sections 9C(3), 9C(4) and 9C(5).

12. Section 9C(3)(b).

## Making publicly available any standard form contract terms

If a lender uses standard form contract terms for consumer credit contracts or credit contracts secured over consumer goods, it must make these terms publicly available.<sup>13</sup>

A lender can make standard terms available in two ways:<sup>14</sup>

- If the lender has an internet site, the lender must display prominently and clearly a copy of the standard form contract terms on that site.
- If the lender has business premises that are accessible to the public, the lender must display prominently and clearly on those premises a notice stating that a copy of the standard form contract terms is available on request (free of charge).

**Business premises** has an extended meaning:

Business premises includes, in this instance, a vehicle,<sup>15</sup> stand or stall where goods are offered or displayed for sale, or from which goods may be ordered and sold as a credit sale.<sup>16</sup>

This means that mobile premises, such as truck shops, are “business premises” at which standard form contract terms need to be displayed.

If the lender receives a request from anyone for a copy of its standard form contract terms, the lender must immediately supply a copy free of charge.<sup>17</sup> A copy can be provided by electronic communication, such as email, if the requestor agrees.

## Lenders must make information about their costs of borrowing publicly available

Every lender must make information about all the costs of borrowing publicly available for each class of credit contracts that it offers.<sup>18</sup>

The costs of borrowing information<sup>19</sup> that needs to be made available is:

- any credit fee
- any default fees
- any interest charge, including annual rates of interest, and default interest.<sup>20</sup>

The CCCF Act does not explain how lenders should identify the credit contracts which make up a ‘**class of credit contract**’. Lenders should take a common sense approach to identifying the different classes of credit contracts they offer, taking into account distinctions such as the amount, term and price of their offering, any distinct purpose of a loan (eg, a car loan or a mortgage), and whether a loan is secured or unsecured.

Credit contracts relating to the same or similar type of loan which share the same or substantially similar terms are likely to be a class of credit contract. Groups of credit contracts which use different standard form contract terms are likely to be different classes of credit contracts.

The Credit Contracts and Consumer Finance Regulations 2004 prescribe exactly what information about the costs of borrowing should be made publicly available.



13. Section 9J(1).

14. Section 9J(3).

15. As defined in section 2 (1) of the Land Transport Act 1998.

16. Section 9L.

17. The responsibility to provide a free copy applies regardless of whether or not the lender has publicly displayed the information: section 9J(4).

18. Lenders do not have to ensure costs of borrowing are publicly available for business loans not secured over consumer goods.

19. Section 5: definition of “costs of borrowing.”

20. Section 9K(3).

## Information about credit fees and default fees

The costs of borrowing information must contain a description of the credit fees and default fees that are or may become payable, including:<sup>21</sup>

- when each fee is, or will become, payable, and
- the amount (or maximum amount) of each fee if ascertainable, or, if not, the method of calculating the fee.

## Information about interest rates

Lenders must make the following information about interest rates publicly available:<sup>22</sup>

- the **annual interest rate or rates, and default interest rate** (with the rate or rates being expressed in terms of a percentage), and
- if there is more than one rate, how or when each rate applies, and
- if an annual interest rate is fixed for a period, the period during which the annual interest rate is fixed, and
- if an annual interest rate or default interest rate is variable or adjustable, a statement to that effect.

The interest rate or rates made publicly available must:

- be the rate or rates that are **ordinarily** available to borrowers who meet the lender's borrowing requirements for that class of credit contracts, and
- be the current annual interest rate or rates (if the rate is variable or adjustable), and
- if the interest rate is expressed as a range, must be accompanied by a brief description of the factors that the lender may consider to determine the specific interest rate for particular classes of borrower (eg "between 5 and 10%, depending on the borrower's credit history.")<sup>23</sup>

## Where higher interest rates apply

If a higher interest rate than the rates made publicly available might apply to a specific borrower, or class of borrowers, or in specific situations, the costs of borrowing information must include:<sup>24</sup>

- a statement to that effect, and
- a brief description of the factors that the lender may consider to determine the specific interest rate for that borrower or those borrowers or situations (if applicable), and
- the margin (or maximum margin) that may be added or the interest rate (or maximum interest rate) that may apply (if known).

## Information about default interest

Where a higher interest rate applies because of a default in payment or the credit limit being exceeded, this is referred to as a default interest rate. A lender must make the same information available for default interest rates as it does for annual interest rates, and must separate out the default interest rates from the information on annual interest rates.<sup>25</sup>

## Information about charging interest

If interest charges are debited under the contract more frequently than repayments are due under the contract, the lender must include in the costs of borrowing information a brief description of the frequency with which interest charges may be debited under the contract.<sup>26</sup>



21. Regulation 4D.

22. Regulation 4B.

23. Section 9K(5). Also refer to the discussion of the Credit Contracts and Consumer Finance Regulations 2004 which follows for information which must be disclosed.

24. Regulation 4B(3)

25. Regulation 4B.

26. Regulation 4C.

## How a lender makes costs of borrowing information publicly available

Lenders can make information about the costs of borrowing available in two ways:<sup>27</sup>

- If the lender has an internet site, the lender must display prominently and clearly on that site the costs of borrowing.
- If the lender has business premises that are accessible to the public, the lender must display prominently and clearly on those premises a notice stating that the costs of borrowing information is available on request (free of charge).



As above, “business premises” has an extended meaning that includes mobile premises, such as truck shops.<sup>28</sup>

As above, the lender must also provide a copy of the costs of borrowing information free upon request – regardless of whether it is also displaying the information required online or at the business premises.<sup>29</sup>

## Publishing costs of borrowing on internet sites

Lenders must ensure that, for each class of credit contract, each part of the costs of borrowing is presented with the other parts in a way that enables a borrower to readily ascertain the **total costs** of borrowing.

For example, interest rates and fees for a class of contracts can be presented together on the same webpage or with prominent links between the pages where this set of information can be found.<sup>30</sup>

Lenders must also ensure that the information about the costs of borrowing is accessible at all reasonable times.<sup>31</sup>

## When a borrower requests information

If someone requests information about a lender’s costs of borrowing, the lender must include either:<sup>32</sup>

- the date from which the information applies, or
- the date on which the information is supplied.

For example, the information might state “fees and interest are current as at 6 June 2015.”

27. Section 9J(3).

28. Section 9(L).

29. This responsibility applies whether or not the lender has displayed the information on an internet site or has displayed a notice at its business premises that are accessible to the public: section 9K(4).

30. Regulation 4A(3).

31. Regulation 4A(3)(b).

32. Regulation 4A(4)

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