

The Credit Contracts and Consumer Finance Act

Making variations to consumer credit contracts



This fact sheet explains lenders' obligations when they make changes to any consumer credit contract. It also sets out the rules which apply when a consumer credit contract is transferred from one lender to another.

This fact sheet applies to changes to all consumer credit contracts, regardless of whether the contract was entered into before or after 6 June 2015.¹

The Credit Contracts and Consumer Finance Act 2003 (CCCF Act)² includes two related but separate sets of obligations on lenders when they make changes to their contracts:

1. Lenders must comply with the **lender responsibility principles**; and
2. Lenders must also give the borrower specified information about the variation of the contract. This is known as **variation disclosure**.

When does a lender have to comply with lender responsibility principles and variation disclosure rules?

The lender responsibility principles apply to consumer credit contracts, credit contracts secured over consumer goods, any guarantees of these transactions and buy-back transactions. The principles do not apply to consumer leases or business loans if these are not secured over consumer goods.

There are variation disclosure rules that apply to consumer credit contracts (and guarantees of consumer credit contracts), buy-back transactions and consumer leases. There are no variation disclosure rules for business loans.

Most credit transactions entered into by consumers are consumer credit contracts. The information in this fact sheet therefore relates to changes to **consumer credit contracts**.³

For more information about guarantees, buy-back transactions or consumer leases please refer to our fact sheets:

- *Guarantee disclosure under a consumer credit contract* at www.comcom.govt.nz
- *Buy-Backs* at www.comcom.govt.nz
- *Consumer Leases* at www.comcom.govt.nz



1. Schedule 1AA of the Credit Contracts and Consumer Finance Act 2003 (CCCF Act) is inserted by section 79 and Schedule 1 of the Credit Contracts and Consumer Finance Amendment Act 2014 (Amendment Act). Clauses 3(2)(b) and (d) of Schedule 1AA apply the variation disclosure and transfer disclosure amendments and clause 3(2)(f) applies the responsible lending principles to variations of consumer credit contracts, where those contracts are entered into before 6 June 2015.
2. All references in this guidance are to the CCCF Act as amended by the Credit Contracts and Consumer Finance Amendment Act 2014.
3. Consumer credit contracts are loans entered into by lenders with individuals, where the borrower intends to use the credit wholly or predominantly for personal domestic or household use, where the lender charges interest and/or fees and/or takes security for the loan, and where the lender is in the business of providing credit.

The relevant lender responsibility principles and variation disclosure rules are set out below.

This fact sheet also sets out lenders' obligations to provide information when they **transfer** an existing consumer credit contract to another lender.

Lenders must comply with lender responsibility principles

Lenders must comply with the lender responsibility principles⁴ when they are considering making, or are making, a variation to a consumer credit contract on or after 6 June 2015. The disclosure rules discussed below apply in addition to these responsibilities.

The lender responsibility principles are that every lender must:

- exercise the care, diligence and skill of a responsible lender when they advertise, before entering a contract and in all subsequent dealings relating to the contract, including when a contract is varied; and
- 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 most relevant to agreed or unilateral changes or transfers of consumer credit contracts include the lender:⁵

- helping the borrower to reach informed decisions including by ensuring that:
 - any variation to the consumer credit contract is expressed in plain language in a clear, concise and intelligible manner
- any information provided to the borrower after the contract has been entered into is not presented in a way that is likely to be misleading, deceptive or confusing

The lender responsibility to ensure that any variation is expressed in plain language in a clear, concise and intelligible manner applies to any variation document. The lender must also comply with the variation disclosure rules discussed later in this fact sheet.⁶

The lender responsibility to ensure that any information provided to the borrower is not likely to be misleading, deceptive or confusing also applies to information relating to the variation which is provided by the lender to the borrower other than through the variation disclosure document. For example, the responsibility applies to information about fixing an interest rate.

- treating the borrower and their property reasonably and in an ethical manner
- ensuring the contract is not oppressive and the lender does not exercise a right or power in an oppressive way, and
- meeting 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.

The same lender responsibilities apply to lenders in their dealings with guarantors. A guarantor is a person who has agreed to be responsible for a borrower's debt or the performance of the borrower's obligations if the borrower fails to pay that debt or perform those obligations.

The variation disclosure document also must not be likely to mislead or deceive a reasonable person with regard to any material information. However, this obligation arises under the requirements for variation disclosure and not under the lender responsibility principles.⁷

Where a variation materially changes an existing consumer credit contract (for example by increasing a credit limit or advancing further credit) a responsible lender which is careful, diligent and skilled could be expected to take steps or adopt practices in addition to the specific lender responsibilities set out above. For example, this may include making inquiries to be satisfied that the credit provided will meet the borrower's requirements and objectives, and that the borrower can make the payments without suffering substantial hardship.



4. The lender responsibility principles are set out in section 9C.
5. See section 9C(3)(c), (d), (e) and (f) which are particularly relevant to contract variations.
6. Section 9C(3)(c)(i) and sections 22, 23 and 32.
7. Sections 9C(6) and 32(1)(d).

Responsible Lending Code

The Responsible Lending Code (Code)⁸ sets out useful guidance to lenders on how they can comply with the lender responsibility principles, including in relation to contract variations. While the Code provides useful guidance to lenders, evidence of compliance with the Code is not conclusive evidence of compliance with the lender responsibility principles.

Lenders will need to identify any changes to their lending and contract management practices that are necessary to comply with the lender responsibility principles.

Variation and transfer disclosure rules

The disclosure rules in the CCCF Act apply to consumer credit contracts which are varied in the following three ways:

- where both the lender and borrower agree to change the contract, including where the lender agrees to change a contract as a result of a hardship application (**agreed changes**)
- where the contract gives the lender the right to vary certain parts of the contract, and the lender does so (**unilateral changes**)
- when the contract is **transferred** from one lender to another.

In some circumstances, a lender may also have to provide variation disclosure to any guarantor.

Agreed changes

When does a lender need to disclose an agreed variation?

If both the lender and borrower agree to change the contract, as a general rule, the lender must give the borrower details of the change **before** it takes effect.⁹

Depending on what the change is and whether it has been agreed as a result of a hardship application, the lender may be able to choose to give details of the change to the borrower with the next continuing disclosure statement, if continuing disclosure is required. For some changes, the lender must also give details of the variation to any guarantor. The disclosure obligations in these different situations are explained further below.

Where an agreed change is made (other than in the case of a hardship application) and the agreed change:

- reduces the borrowers' obligations (for example by reducing an administration fee)
- gives the borrower more time to make a payment
- releases some or all of a security, or
- increases the borrower's credit limit;

disclosure must be made, either:

- within **five** working days of the date that the change takes effect, or
- with the next continuing disclosure statement due, if continuing disclosure is required.¹⁰



8. Responsible Lending Code (March 2015), Chapters 7 and 11 are particularly relevant to contract variations.
<https://www.consumerprotection.govt.nz/assets/PDFs/responsible-lending-code.pdf>

9. Section 22(2).

10. Section 22(3) and (4).

Where agreed changes are made as a result of a hardship application

If changes are made to a contract because of a hardship application, then the lender must disclose full details of the change **before** the change takes effect.¹¹

Where a guarantor is involved

The lender must also give full particulars of the change to any guarantor within **five** working days of the day the change is agreed if the change **increases** the borrower's obligations or **reduces** the time the borrower has to make a payment.¹²

What information must be disclosed where a lender is making agreed changes?

A lender must provide full details of the change and any information prescribed in regulations.¹³

Details of how the lender must provide the variation disclosure are explained below.

Unilateral changes

When does a lender need to disclose a unilateral variation?

Some contracts specifically allow lenders to make a unilateral change to terms of a contract without having to agree the change with the borrower. For example a contract might expressly state that a lender can change the amount of a fee.

A lender must give the borrower details of a unilateral change within **five** working days of the date the change takes effect if the change is to:

- the interest rate or the way interest is calculated or charged
- the amount or timing of any payment or how it is calculated
- the amount of fees or charges or how fees or charges are calculated
- when or how often fees or charges are imposed, or
- the amount of a credit limit under the contract.

Alternatively, where the change **reduces** the borrower's obligations, or gives them more time to pay, a lender may choose to provide disclosure either:

- within **five** working days of the date that the change takes effect, or
- with the next continuing disclosure statement due, if continuing disclosure is required.¹⁴

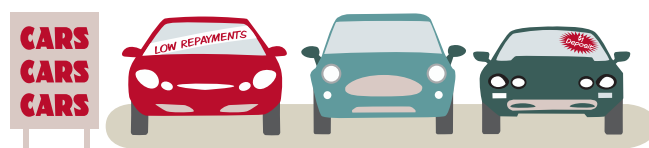
Where a guarantor is involved

The lender must also give full particulars of a unilateral change to any guarantor within **five** working days of the day the change takes effect, if the change **increases** the borrower's obligations or **reduces** the time the borrower has to make a payment.¹⁵

What information must be disclosed where a lender is making unilateral changes?

A lender must provide full details of the change and any information prescribed in regulations.¹⁶

Details of how the lender must provide variation disclosure are explained later in this guidance.



Where the contract is transferred from one lender to another

When does a lender need to disclose a transfer?

If a lender transfers a consumer credit contract to another lender, the previous lender must disclose certain information about the new lender to all borrowers and guarantors within **ten** working days of the date of the transfer.¹⁷

This disclosure is not required where the transfers relate to securitisations and covered bonds.¹⁸

11. The mechanisms for delayed disclosure provided in section 22(3)(a) and (b) of the CCCF Act do not apply to changes made following hardship applications. The general rule in section 22(2) that disclosure must be made before the change takes effect therefore applies to all changes made following a hardship application.

12. Section 26.

13. As at 6 June 2015, no relevant regulations have been made.

14. Section 23(5) and (6).

15. Section 26.

16. As at 6 June 2015, no relevant regulations have been made.

17. Section 26A.

18. Credit Contracts and Consumer Finance Amendment Regulations (No.2) 2015, Regulation 19.

What information must be disclosed when a contract is transferred to a new lender?

Where the contract has been transferred to another lender, the previous lender must tell the borrower:

- the name, address and contact details of the new lender
- the new lender's name and registration number on the register of financial service providers
- the name and contact details of the new lender's disputes resolution scheme
- the date of the transfer
- the impact of the transfer on the borrower (eg, if the bank account for payments has changed), and
- that the transfer does not affect the terms of the contract with the borrower (other than terms relating to the identity of the creditor).¹⁹

How must a lender provide variation disclosure?

For all types of variations to consumer credit contracts, a lender must provide variation disclosure in writing, either in a single document or in a series of related documents.²⁰ The information in the disclosure document must be clear and concise. It must also be expressed in a manner likely to bring the information to the attention of a reasonable person and it must not be likely to deceive or mislead that person with regard to any material information.²¹

The lender responsibility to ensure any information provided by the lender is not misleading, deceptive or confusing applies to any information provided by the lender when a variation is made, for example, to any other information about the transaction. The only information that this responsibility does not apply to is the disclosure statements themselves, because these statements are already subject to specific disclosure standards, which prohibit deceptive or misleading information.²²

A lender must provide variation disclosure by either:

- giving a disclosure statement to the borrower (and any guarantor) in person
- posting a disclosure statement to the borrower's (and any guarantor's) last known address or to an address specified by the borrower for this purpose, or
- emailing or faxing a disclosure statement to the borrower (and any guarantor), as long as they have agreed to this form of communication and the information is readily accessible for future reference.²³

If a lender is making a unilateral change to the interest rate, fees or charges a borrower may have to pay under a contract, and this is allowed under the contract, then the lender may instead disclose by:

- displaying information about the changes prominently at their place of business
 - advertising the changes at least once in all the following areas in which they do business: Whangarei, Auckland, Hamilton, Rotorua, Hawkes Bay, New Plymouth, Palmerston North, Wellington, Nelson, Christchurch, Dunedin and Invercargill²⁴
- and*
- posting information about the changes on their website (if they have one).²⁵



19. Section 26A(1).

20. The variation disclosure obligations also apply to variations of consumer leases (section 65) and buy-back transactions (section 77).

21. Section 32(1)(c) and (d).

22. Sections 9C(6) and 32.

23. Section 35(1) and section 32(4) and (5).

24. Credit Contracts and Consumer Finance Regulations 2004, Regulation 5.

25. Section 23(4), Credit Contracts and Consumer Finance Regulations 2004, Regulation 5.

Disclosure under a consumer credit contract

A lender must provide disclosure to the borrower:

- at the start of the contract (**initial** disclosure)
- and to anyone who is guaranteeing the borrower's obligations under a contract (**guarantee** disclosure).

A lender may also have to provide disclosure to the borrower and any guarantor:

- during the term of the contract (**continuing** disclosure)
- any time the contract is altered (**variation** disclosure)
- if the borrower (or guarantor) asks for it (**request** disclosure)
- where a loan is transferred from one lender to another (**transfer** disclosure)

You can read more about the different types of disclosure at www.comcom.govt.nz

Need to know more about disclosure?

We have a series of fact sheets on disclosure for contracts entered into before 6 June 2015 available at www.comcom.govt.nz, including:

- Disclosure
- Initial Disclosure under a Consumer Credit Contract
- Continuing Disclosure under a Consumer Credit Contract
- Guarantee Disclosure under a Consumer Credit Contract
- Request Disclosure under a Consumer Credit Contract.

Updated fact sheets on how the disclosure rules apply on or after 6 June 2015 are being progressively added to the website.

Lenders and borrowers

The CCCF Act uses a number of different terms to describe lenders and borrowers, depending on the transaction:

- responsible lending – lenders and borrowers
- consumer credit contracts – creditors and debtors
- consumer leases – lessors and lessees
- buy-back transactions – transferees and occupiers.

In these fact sheets we use the terms **lender** and **borrower** to talk generally about credit transactions, but use the specific terms for consumer leases and buy-back transactions where it makes things clearer.

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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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