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Minister	Hon David Clark	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Credit Contracts Regulations and the Financial Service Providers (End of Transitional Period) Order 2021	Date to be published	9 November 2021

List of documents that have been proactively released		
Date	Title	Author
23 September 2021	Credit Contracts Regulations and the Financial Service Providers (End of Transitional Period) Order 2021	Office of the Minister of Commerce and Consumer Affairs
23 September 2021	LEG-21-SUB-0148 Minute	Cabinet Office

Information redacted

NO

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Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Legislation Committee

Credit contracts regulations and the Financial Service Providers (End of Transitional Period) Order 2021

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the:
 - 1.1 Credit Contracts and Consumer Finance (Exemptions, Annual Returns and Other Matters) Amendment Regulations 2021 (**the Exemption Regulations**);
 - 1.2 Credit Contracts and Consumer Finance (Lender Inquiries into Suitability and Affordability) Amendment Regulations 2020 Amendment Regulations 2021;
 - 1.3 Credit Contracts and Consumer Finance Amendment Regulations 2020 Amendment Regulations 2021; and
 - 1.4 Financial Service Providers (End of Transitional Period) Order 2021 (**FSP Order**).

Executive summary

- 2 This paper seeks approval for a range of regulations needed to complete implementation of recent consumer credit and financial services reforms.
- 3 The Exemption Regulations are part of the implementation of the Credit Contracts Legislation Amendment Act 2019 (**the Amendment Act**) which amends the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**). The Amendment Act strengthens the protections for borrowers against irresponsible and high-cost lending, and against predatory behaviour by mobile traders.
- 4 The Exemption Regulations give effect to decisions of Cabinet in relation to exemptions [DEV-21-MIN-0032], annual returns and other matters [DEV-21-MIN-0154]. These decisions provided for the following limited exemptions and exceptions:
 - 4.1 special purpose vehicles under securitisation and covered bond arrangements;
 - 4.2 credit provided, on an interim basis, by a non-financial service business;

- 4.3 insurance premium funding agreements; and
- 4.4 certain transitional circumstances.
- 5 The decisions also provided for the content and timing of creditors' annual returns to the Commerce Commission.
- 6 On 9 September the COVID-19 Ministerial Group's decision to defer commencement dates for the Amendment Act and associated regulations from 1 October 2021 to 1 December 2021 [CMG-21-MIN-0022]. These changes are given effect by the Credit Contracts and Consumer Finance (Lender Inquiries into Suitability and Affordability) Amendment Regulations 2020 Amendment Regulations 2021 and Credit Contracts and Consumer Finance Amendment Regulations 2020 Amendment Regulations 2021 (**the Deferral Regulations**).
- 7 Finally, the FSP Order gives effect to a Cabinet decision to set 16 December 2021 as the deadline for overseas-based financial service providers to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**) [DEV-21-MIN-0132].

Policy

The Exemption Regulations

- 8 The Exemption Regulations are part of the implementation of the Amendment Act which amends the CCCFA. The Amendment Act strengthens the protections for borrowers against irresponsible and high-cost lending, and against predatory behaviour by mobile traders.
- 9 The Exemption Regulations give effect to decisions of Cabinet on 17 March 2021 in relation to the exemptions [DEV-21-MIN-0032] and 7 July 2021 in relation to annual returns and other matters [DEV-21-MIN-0154].
- 10 The Amendment Act requires creditors under consumer credit contracts to provide annual returns to the Commerce Commission in a prescribed manner. The Exemption Regulations set the time periods and content of these annual returns. Annual returns are to be due each year from 30 June 2024, and relate to the 12-month period from 1 April to 31 March.
- 11 The Exemption Regulations also provide for a range of exceptions and exemptions:
 - 11.1 Creditors are not required to comply with prescriptive regulations for affordability and suitability assessments if the creditor has substantially completed affordability and suitability inquiries prior to 1 December 2021.
 - 11.2 Special purpose vehicles under securitisation and covered bond arrangements and credit provided, on an interim basis, by a non-financial service business, are exempt from certification by the

I N C O N F I D E N C E

Commerce Commission. The underlying lender and its directors and senior managers will be primarily responsible for compliance.

- 11.3 Insurance premium funding agreements are to be exempt from inquiries into affordability and suitability.
- 12 With regard to the transitional exception in paragraph 10.1, the Amendment Act requires that when lenders make reasonable inquiries so as to be satisfied of a matter, they must do so in accordance with regulations. The transitional provisions of the Amendment Act provide that it applies to all credit agreements entered into after the commencement of the relevant provision.
- 13 Regulations setting prescriptive requirements lenders must comply with when undertaking the above inquiries will come into force on 1 December 2021. The CCCFA does not prescribe when the inquiries into affordability and suitability have to be carried out, other than that they must be undertaken before the contract is entered into.
- 14 The transitional exemption will mean that a lender can enter into a contract without complying with the new prescriptive requirements for inquiries in the regulations, provided that the lender substantially completed reasonable inquiries into affordability and suitability and satisfied themselves of those matters before 1 December 2021. The lender will effectively need to meet those lender responsibilities as they applied before 1 December 2021.
- 15 Cabinet agreed that this transitional exemption would apply to contracts entered into before 1 June 2022. I have agreed to make a minor exception to this cut-off date, to cover borrowers who have deferred settlement dates on the purchase of a property. This applies where, for example, a borrower has received a mortgage pre-approval before 1 December 2021, and has entered into a construction contract to build a new property, and settlement will occur and the credit contract will be entered into once construction is substantially complete. This change is reflected in the Exemption Regulations.

Other credit regulations

- 16 On 9 September 2021, the COVID-19 Ministerial Group agreed to defer the remaining commencement dates for the Amendment Act and associated regulations from 1 October 2021 to 1 December 2021, with the exception of the requirement for creditors to be certified by the Commerce Commission by 1 October 2021 [CMG-21-MIN-0022]. This change provides relief to lenders whose preparations for the Amendment Act have been impacted by COVID-19 and changes to alert levels.
- 17 The commencement dates of the Amendment Act were amended on 13 September 2021 by Order in Council.
- 18 To implement the rest of Cabinet's decision, the Deferral Regulations amend the Credit Contracts and Consumer Finance (Lender Inquiries into Suitability and Affordability) Amendment Regulations 2020 and the Credit Contracts and

IN CONFIDENCE

Consumer Finance Amendment Regulations 2020. These now come into force on 1 December 2021.

The FSP Order

- 19 The FSP Act requires financial service providers to register on the Financial Service Provider Register. The Financial Services Legislation Amendment Act 2019 introduced changes requiring overseas-based providers to register as well. The FSP Order gives effect to Cabinet's agreement to set 16 December 2021 as the deadline for overseas-based financial service providers to be registered under the FSP Act [DEV-21-MIN-0132].

Timing and 28-day rule

- 20 The Exemption Regulations will commence on 1 December 2021. This is the same date that the remaining provisions of the Amendment Act commence.
- 21 The Deferral Regulations come into force on 30 September 2021. This is the day before the regulations that they amend were scheduled to come into force.
- 22 A waiver of the 28-day rule is sought for the Deferral Regulations on the grounds that early commencement is needed for the amendments to effectively defer the commencement of the amended regulations.
- 23 The FSP Order commences on 15 December 2021.

Compliance

- 24 The attached regulations and FSP Order comply with:
- 24.1 the principles of the Treaty of Waitangi;
 - 24.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 24.3 the principles and guidelines set out in the Privacy Act 2020;
 - 24.4 relevant international standards and obligations; and
 - 24.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
- 25 Section 138(1A) of the CCCFA provides that the Minister may only recommend that exemptions are made under section 138(1)(aba) if he or she:
- 25.1 has had regard to the purposes of the CCCFA; and
 - 25.2 is satisfied that the exemption would not cause significant detriment to borrowers under credit contracts; and

- 25.3 is satisfied that compliance with the relevant provision or provisions of the CCCFA would, in the circumstances, require a creditor or a class of creditors to comply with requirements that are unduly onerous or burdensome.
- 26 Section 138(1BA) provides that the Minister may only recommend that regulations are made under 138(1)(abb) (declaring a person or class of persons to be creditors), (abc) (advertising) or (abd) (inquiries) after consulting the persons or representatives of the persons who the Minister considers will be substantially affected by the regulations.
- 27 Section 138(1BB) provides that the Minister may only recommend that regulations are made under subsection (1)(jb) (annual returns) after consulting the Commerce Commission and representatives of the creditors that would be affected.
- 28 Section 138(1C) provides that the Minister may only recommend that regulations be made under subsection (1)(da) if he or she is satisfied that the circumstances that are prescribed relate to a securitisation or covered bond arrangement or any similar arrangement.
- 29 I am satisfied that these statutory conditions have been met.

Regulations Review Committee

- 30 There are no grounds for the Regulations Review Committee to draw the attached regulations or FSP Order to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

- 31 The attached regulations and FSP Order were certified by the Parliamentary Counsel Office (**PCO**) as being in order for submission to Cabinet.

Impact Analysis

- 32 When policy decisions on the Exemption Regulations were sought, the Regulatory Impact Analysis Team at the Treasury determined that the regulatory proposals relating to exemptions, and the content and timing of annual returns requirements in the CCCFA, were exempt from the requirement to provide a Regulatory Impact Statement on the basis that they have no, or minor, impacts on businesses, individuals or not-for-profit entities.

Publicity

- 33 The Ministry of Business, Innovation & Employment (**MBIE**) will notify key affected stakeholders of the Exemption Regulations and FSP Order, and publish the Cabinet Paper on its website for public access.

Proactive release

- 34 I intend to release this paper proactively, subject to any redactions consistent with the Official Information Act 1982, within 30 days. MBIE will publish a copy of this paper on its website.

Consultation

- 35 The Treasury has been consulted on this paper and the draft Exemption Regulations. PCO has been consulted on this paper. The Commerce Commission has been consulted on the draft Exemption Regulations.
- 36 In 2020, MBIE carried out public consultation on the content of annual returns and received feedback from lenders and consumer advocates.
- 37 Private sector stakeholders including members of the New Zealand Bankers' Association, the Financial Services Federation, other premium insurance providers and their legal representatives have been consulted on the draft exemptions. Their submissions have been taken into account in the Exemption Regulations.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Cabinet Legislation Committee:

Exemption Regulations

- 1 **note** that on 17 March 2021 and 7 July 2021, the Cabinet Economic Development Committee agreed to exemptions, annual return requirements and other matters to support the implementation of the Credit Contracts Legislation Amendment Act 2019 [DEV-21-MIN-0032 and DEV-21-MIN-0154];
- 2 **note** that the Credit Contracts and Consumer Finance (Exemptions, Annual Returns and Other Matters) Amendment Regulations 2021 will give effect to the decisions referred to in recommendation 1 above;

Other credit regulations

- 3 **note** that on 9 September 2021, the COVID-19 Ministerial Group:
- 3.1 agreed to defer the remaining commencement dates for the Credit Contracts Legislation Amendment Act 2019 and associated regulations from 1 October 2021 to 1 December 2021, with the exception of the requirement for creditors to be certified by the Commerce Commission by 1 October 2021; and
- 3.2 agreed to any other dates in regulations set relative to 1 October 2021 also being deferred by 2 months [CMG-21-MIN-0022];

- 4 **note** that the Credit Contracts and Consumer Finance (Lender Inquiries into Suitability and Affordability) Amendment Regulations 2020 Amendment Regulations 2021 and Credit Contracts and Consumer Finance Amendment Regulations 2020 Amendment Regulations 2021 (**Deferral Regulations**) give effect to the decisions referred to in recommendation 3 above;

FSP Order

- 5 **note** that on 23 June 2021, the Cabinet Economic Development Committee agreed for an Order in Council to be made for the purpose of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 setting 16 December 2021 as the deadline for registration by overseas-based providers newly subject to that Act [DEV-21-MIN-0132];
- 6 **note** that the Financial Service Providers (End of Transitional Period) Order 2021 will give effect to the decision referred to in recommendation 5 above;

General

- 7 **authorise** the submission to the Executive Council of the:
- 7.1 Credit Contracts and Consumer Finance (Exemptions, Annual Returns and Other Matters) Amendment Regulations 2021;
 - 7.2 Credit Contracts and Consumer Finance (Lender Inquiries into Suitability and Affordability) Amendment Regulations 2020 Amendment Regulations 2021;
 - 7.3 Credit Contracts and Consumer Finance Amendment Regulations 2020 Amendment Regulations 2021; and
 - 7.4 Financial Service Providers (End of Transitional Period) Order 2021;
- 8 **note** that the Credit Contracts and Consumer Finance (Exemptions, Annual Returns and Other Matters) Amendment Regulations 2021 will come into force on 1 December 2021;
- 9 **note** that a waiver of the 28-day rule is sought:
- 9.1 so that the Deferral Regulations can come into force on 30 September;
 - 9.2 on the grounds that early commencement is needed for the deferral of the amended regulations to be effective;
- 10 **agree** to waive the 28-day rule so that the Deferral Regulations can come into force on 30 September;
- 11 **note** that the Financial Service Providers (End of Transitional Period) Order 2021 will commence on 15 December 2021;

I N C O N F I D E N C E

- 12 **note** that section 138(1A) of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) provides that the Minister may only recommend that exemption regulations are made under section 138(1)(aba) if he or she:
- 12.1 has had regard to the purposes of the CCCFA;
 - 12.2 is satisfied that the exemption would not cause significant detriment to borrowers under credit contracts; and
 - 12.3 is satisfied that compliance with the relevant provision or provisions of the CCCFA would, in the circumstances, require a creditor or a class of creditors to comply with requirements that are unduly onerous or burdensome;
- 13 **note** that section 138(1BA) provides that the Minister may only recommend that regulations are made under 138(1)(abb) (declaring a person or class of persons to be creditors), (abc) (advertising) or (abd) (inquiries) after consulting the persons or representatives of the persons who the Minister considers will be substantially affected by the regulations;
- 14 **note** that section 138(1BB) provides that the Minister may only recommend that regulations are made under subsection (1)(jb) after consulting the Commerce Commission and representatives of the creditors that would be affected;
- 15 **note** that section 138(1C) provides that the Minister may only recommend that regulations be made under subsection (1)(da) if he or she is satisfied that the circumstances that are prescribed relate to a securitisation or covered bond arrangement or any similar arrangement;
- 16 **note** that the Minister of Commerce and Consumer Affairs advises that the statutory conditions referred to in recommendations 12 to 15 have been met.

Authorised for lodgement

Hon Dr David Clark

Minister of Commerce and Consumer Affairs