



COVERSHEET

Minister	Hon Dr David Clark	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Credit Contracts and Consumer Finance Amendment Regulations 2022	Date to be published	18 July 2022

List of documents that have been proactively released		
Date	Title	Author
June 2022	<i>Credit Contracts and Consumer Finance Amendment Regulations 2022</i>	<i>Office of the Minister of Commerce and Consumer Affairs</i>
2 June 2022	<i>Credit Contracts and Consumer Finance Amendment Regulations 2022</i> <i>LEG-22-MIN-0087 Minute</i>	<i>Cabinet Office</i>

Information redacted

YES / NO

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In Confidence

Office of the Minister of Commerce and Consumer Affairs

Cabinet Legislation Committee

Credit Contracts and Consumer Finance Amendment Regulations 2022

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Credit Contracts and Consumer Finance Amendment Regulations 2022 (**Amendment Regulations**).

Policy

- 2 In January 2022, I initiated an investigation into the impacts of recent legislative and regulatory changes under the Credit Contracts and Consumer Finance Act 2003 (**the CCCFA**) that came into effect on 1 December 2021. This investigation has now concluded, and I will come back to Cabinet later in June regarding the final report of the investigation and further changes.
- 3 While the investigation was still ongoing, Cabinet agreed to progress a series of initial changes to the Credit Contracts and Consumer Finance Regulations 2004 (**the Regulations**) and the Responsible Lending Code (**the Code**) [CAB-22-MIN-0012]. These changes were as follows:

Initial proposals to address specific issues related to scope and treatment of expenses

- 3.1 amend the Regulations to exclude savings and investments from the definition of the listed outgoings;
- 3.2 amend the Regulations and the Code to:
 - 3.2.1 clarify that when lenders ask borrowers about their likely living expenses, and these are benchmarked against statistical data about household expenses, there is no need to inquire into their current living expenses from recent bank transactions;
 - 3.2.2 clarify that when lenders estimate expenses from recent bank transaction records, lenders can ask the borrower about how expenses are likely to change once the contract is entered into; and
 - 3.2.3 clarify the requirement to obtain information in sufficient detail to minimise underestimation only relates to information received from borrowers (e.g. ensuring that expense categories on application forms are sufficiently detailed) rather than relating to information from bank transaction records etc;

Initial proposals to address specific issues related to surplus, adjustments, and buffers

- 3.3 amend the Code to further clarify when a 'reasonable surplus' is required and how it should be set; and

Initial proposals to address specific issues related to exceptions

- 3.4 amend the Code to remove the current example for when affordability is 'obvious' and consider alternative guidance and examples in consultation with stakeholders.
- 4 These changes to the Regulations and the Code represented a 'no regrets' approach, in line with the intent of the Act and in advance of the investigation's conclusion, to allow us to respond expeditiously to the concerns raised by consumers and lenders. The changes will help to ensure the Regulations do not unduly restrict access to safe credit for New Zealanders, including first home buyers, in the near term.
- 5 The Amendment Regulations give effect to Cabinet's decisions in paragraphs 3.1 and 3.2.3 above. The remaining policy decisions will be given effect to by changes to the Code, which I will issue separately when the Amendment Regulations are made.

Response to public consultation

- 6 As signalled, the Ministry of Business, Innovation and Employment (**MBIE**) undertook public consultation on an exposure draft of the Amendment Regulations and the changes to the Code. This was to ensure that these changes would work in practice. Submitters were broadly positive about the changes but had suggestions for refining the wording of the Amendment Regulations and the Code. These have been taken into consideration when finalising the Amendment Regulations and the Code.

Timing and 28-day rule

- 7 The Amendment Regulations will come into force on 7 July 2022. I intend for the changes to the Code to come into effect on the same date.

Compliance

- 8 The Amendment Regulations comply with:
- 8.1 the principles of the Treaty of Waitangi;
 - 8.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 8.3 the principles and guidelines set out in the Privacy Act 2020;
 - 8.4 relevant international standards and obligations;

- 8.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 9 There are no grounds for the Regulations Review Committee to draw the Amendment Regulations or Order to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 10 The Amendment Regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 11 Treasury's Regulatory Impact Analysis team has determined that the proposal to make changes to the Credit Contracts and Consumer Finance Regulations 2004 is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on business, individuals, and not-for-profit entities.

Publicity

- 12 MBIE intends to notify stakeholders of the approval of these Amendment Regulations.

Proactive Release

- 13 I intend to release this paper proactively in whole within 30 business days. MBIE will publish a copy on its website.

Consultation

- 14 The Treasury, Financial Markets Authority, Commerce Commission and the Reserve Bank were consulted on this paper.
- 15 The proposals in this paper were publicly consulted on through an exposure draft. Twenty-three submissions were received from lenders, consumer advocates, industry bodies and dispute resolution schemes.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that, in January 2022, I initiated an investigation into the impacts of the parts of the Credit Contracts Legislation Amendment Act 2019 and Credit Contracts and Consumer Finance (Lender Inquiries into Suitability and Affordability) Amendment Regulations 2020 that came into force on 1 December 2021;

- 2 note that on 28 February 2022, Cabinet agreed to amend the Credit Contracts and Consumer Finance Regulations 2004 (the Regulations) and the Responsible Lending Code (the Code) to address some of the specific issues identified as follows [CAB-22-MIN-0012]:

Initial proposals to address specific issues related to scope and treatment of expenses

- 2.1 amend the Regulations to exclude savings and investments from the definition of the listed outgoings;
- 2.2 amend the Regulations and the Code to:
- 2.2.1 clarify that when lenders ask borrowers about their likely living expenses, and these are benchmarked against statistical data about household expenses, there is no need to inquire into their current living expenses from recent bank transactions;
 - 2.2.2 clarify that when lenders estimate expenses from recent bank transaction records, lenders can ask the borrower about how expenses are likely to change once the contract is entered into; and
 - 2.2.3 clarify the requirement to obtain information in sufficient detail to minimise underestimation only relates to information received from borrowers (e.g. ensuring that expense categories on application forms are sufficiently detailed) rather than relating to information from bank transaction records etc;

Initial proposals to address specific issues related to surplus, adjustments, and buffers

- 2.3 amend the Code to further clarify when a 'reasonable surplus' is required and how it should be set;

Initial proposals to address specific issues related to exceptions

- 2.4 amend the Code to remove the current example for when affordability is 'obvious' and consider alternative guidance and examples in consultation with stakeholders.

- 3 note that the Credit Contracts and Consumer Finance Amendment Regulations 2022 give effect to the policy decisions in paragraphs 2.1 and 2.2.3 above;
- 4 note that the other policy decisions will be given effect to by changes to the Code, which the Minister of Commerce and Consumer Affairs will issue when the Credit Contracts and Consumer Finance Amendment Regulations 2022 are made;
- 5 authorise the submission to the Executive Council of the Credit Contracts and Consumer Finance Amendment Regulations 2022;

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

- 6 note that the Credit Contracts and Consumer Finance Amendment Regulations 2022 will come into force on 7 July 2022;
- 7 note that the changes to the Code will come into effect on 7 July, to coincide with the Credit Contracts and Consumer Finance Amendment Regulations 2022.

Authorised for lodgement

Hon Dr David Clark

Minister of Commerce and Consumer Affairs