

# DRAFT FOR CONSULTATION

## **Credit Contracts and Consumer Finance Amendment Bill**

Government Bill

### **Explanatory note**

#### **General policy statement**

The Credit Contracts and Consumer Finance Act (CCCFA) is the main law applying to credit providers. It is focused on promoting competition among credit providers and enabling consumers to make informed decisions. These goals are delivered through requiring disclosure of interest rates, fees and contract terms. The CCCFA also includes provisions that protect consumers in the event of unforeseen hardship, and against unreasonable fees and oppressive credit contracts. However there is no requirement in the CCCFA that credit providers behave responsibly when making loans to consumers. In particular, the CCCFA is not providing adequate consumer protections against unscrupulous lenders and there is evidence that their lending practices are contributing to severe financial hardship and spiralling debt among some groups of consumers.

The Bill amends the CCCFA to strengthen the protections for consumers. In particular, it introduces the principle of responsible lending. This is consistent with other financial sector reforms to improve the protections for investors. The responsible lending principle is also consistent with the improvements being made to other consumer laws through the Consumer Law Reform Bill 2011, and with aspects of the Australian National Consumer Credit Protection Act 2009.

The lender responsibility principles in the Bill are that lenders to consumers will—

- exercise reasonable care and skill; and
- provide the borrower with sufficient information to enable the borrower to make informed decisions, both at the time of entering into an agreement and in all subsequent dealings with the lender; and
- ensure that the terms of the agreement are not unduly onerous and are expressed in a clear, concise, and intelligible manner; and
- not do or say, or omit to do or say, anything that is, or is likely to be, misleading, deceptive, or confusing to the borrower; and
- make reasonable inquiries as to the borrower's—
  - financial circumstances; and
  - requirements and objectives in entering into the agreement; and
- be satisfied, before entering into the agreement, that—
  - the borrower can be reasonably expected to make the repayments under the agreement without suffering substantial hardship; and
  - the agreement is otherwise appropriate for the borrower, having regard to the borrower's circumstances, requirements and objectives; and
- not charge unreasonable credit fees; and
- not advertise, or permit to be advertised, agreements, products, or services in a manner that is, or is likely to be, misleading, deceptive, or confusing to borrowers generally, or, if the advertisement is aimed at a particular class of borrowers, to that class.

These principles will be elaborated upon, and guidance on their implementation will be provided, through a Responsible Lending Code. The CCCFA already includes the power for the Court to ban creditors that breach the Act, and that power is being expanded to apply to creditors that breach the lender responsibility principles more than twice. A breach of the lender responsibility principles will also be an indicator that the conduct of the creditor has been oppressive, in which case the credit contract may be reopened by the Court.

The principle that borrowers should have sufficient information to make informed decisions will also be reinforced by having lenders make the standard terms and costs of borrowing freely and publicly available on their websites and at their business premises. This will provide better information to the market, and enable borrowers to shop around more effectively than they can at present.

The Bill also makes various improvements to the protections for consumers in the CCCFA. For example, the disclosures required under the CCCFA can be made after the consumer credit contracts are entered into, which means the information is not necessarily available when the consumer is deciding to enter into the transaction. The Bill changes this by providing that disclosure must be made before the contract is made. The cooling off period available to borrowers after disclosure is made is increased from 3 working days to 5 working days, in line with cooling off periods in other consumer laws.

The current provisions in the CCCFA prohibiting unreasonable credit fees, allowing borrowers to apply to the lender for relief in the event of unforeseen hardship, and allowing the Courts to reopen oppressive credit contracts have not provided the desired level of protection for borrowers. The Bill clarifies the tests in these areas, and provides for explicit processes in relation to unforeseen hardship.

The only registration requirement on creditors is under the Financial Service Providers (Registration and Dispute Resolution) Act 2008. Some lenders have not registered under this Act when they should have. Borrowers from unregistered lenders do not have access to the dispute resolution services other creditors are required to provide. The Bill incentivises lenders to register by providing that unregistered creditors have no right to recover their costs of borrowing from their debtors.

The Bill also includes a small amendment to the Personal Property and Securities Act 2009 to remove the opportunity for secured creditors to use powers of attorney to extend the coverage of their security over future property a borrower might acquire.

### **Regulatory impact statement**

The regulatory impact statement will be included in the introduction version of this Bill.

**Clause by clause analysis**

The clause by clause analysis will be included in the introduction version of this Bill. For further information regarding the amendments proposed in this Bill, see <http://www.consumeraffairs.govt.nz/legislation-policy/policy-development/credit-review>.

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*Chris Tremain*

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Consultation draft

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Credit Contracts and Consumer Finance Amendment Act 2012.

**2 Commencement**

- (1) Except as provided in subsection (2), this Act comes into force on the day after the date on which it receives the Royal assent.

- (2) Section 33 comes into force 1 month after the day on which this Act receives the Royal assent.

### **3 Principal Act**

This Act amends the Credit Contracts and Consumer Finance Act 2003 (the **principal Act**).

## **Part 1**

### **Amendments to principal Act and transitional provisions**

#### Subpart 1—Amendments to principal Act

### **4 Section 3 replaced (Purposes)**

Replace section 3 with:

#### **“3 Purposes**

- “(1) The primary purpose of this Act is to protect the interests of consumers in connection with credit contracts, consumer leases, and buy-back transactions of land.
- “(2) It is also a purpose of this Act to—
- “(a) promote the confident and informed participation in markets for credit by consumers, creditors, lessors, lessees, and transferees and occupiers under buy-back transactions; and
  - “(b) promote and facilitate fair, efficient, and transparent markets for credit.
- “(3) To achieve the purposes referred to in subsections (1) and (2), this Act—
- “(a) requires creditors under consumer credit contracts, lessors under consumer leases, and transferees under buy-back transactions to be responsible lenders when they provide credit to consumers; and
  - “(b) provides for the disclosure of adequate information to consumers under consumer credit contracts and consumer leases (both before entry into, and before variation of, such agreements)—
    - “(i) to enable consumers to distinguish between competing credit arrangements or competing lease arrangements; and



- “(ii) to enable consumers to be informed of the terms of consumer credit contracts or consumer leases before they become irrevocably committed to them; and
- “(iii) to enable consumers to monitor the performance of consumer credit contracts and consumer leases; and
- “(c) provides rules about interest charges, fees, and payments in relation to consumer credit contracts; and
- “(d) enables consumers to seek reasonable changes to consumer credit contracts on the grounds of unforeseen hardship; and
- “(e) provides for the disclosure of adequate information to consumers under buy-back transactions of land and for the provision of independent legal advice to those consumers—
  - “(i) to inform consumers of the terms, the effects, and the implications of those transactions before they become irrevocably committed to them; and
  - “(ii) to enable consumers to monitor the performance of those transactions; and
- “(f) provides rules about fees in relation to buy-back transactions of land; and
- “(g) provides remedies for debtors (including consumers) in relation to—
  - “(i) oppressive credit contracts, consumer leases, and buy-back transactions of land; and
  - “(ii) oppressive conduct by creditors under credit contracts, lessors under consumer leases, and transferees under buy-back transactions of land.”

**5 Section 4 amended (Overview)**

After section 4(a), insert:

- “(ab) Part 1A deals with lenders’ responsibilities, including provisions for the development of a Responsible Lending Code and requirements to publish information about standard terms and the costs of borrowing.”.

**6 Section 5 amended (Interpretation)**

- (1) In section 5, replace the definition of **credit fees** with:
- “**credit fees** means fees or charges payable by the debtor under a credit contract, or payable by the debtor to, or for the benefit of, the creditor in connection with a credit contract (including any insurance premiums payable if the creditor requires the debtor to obtain insurance cover from a particular insurer), and—
- “(a) includes—
- “(i) establishment fees:
  - “(ii) prepayment fees (whether in relation to part prepayments or full prepayments):
  - “(iii) fees and charges passed on by the creditor to an associated person; but
- “(b) does not include—
- “(i) interest charges:
  - “(ii) charges for an optional service:
  - “(iii) default fees or default interest charges:
  - “(iv) government charges, duties, taxes, or levies:
  - “(v) fees and charges passed on to a person, body, or agency that is not an associated person”.
- (2) In section 5, insert in their appropriate alphabetical order:
- “**costs of borrowing**, in relation to a credit contract, means any or all of the following costs:
- “(a) a credit fee:
  - “(b) a default fee:
  - “(c) interest (including default interest charges)
- “**lender responsibility principles** means the principles set out in section 9B(2)
- “**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act
- “**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act
- “**prescribed** means prescribed by regulations made under this Act

“**Responsible Lending Code** or **Code** means the Code prepared under section 9E”.

**7 New Part 1A inserted**

After section 9, insert:

**“Part 1A  
“Lender responsibilities**

*“Interpretation*

**“9A Interpretation**

In this Part, unless the context otherwise requires,—

**“agreement—**

**“(a) means—**

**“(i) a consumer credit contract:**

**“(ii) a consumer lease:**

**“(iii) a buy-back transaction of land; and**

**“(b) includes an agreement for credit-related insurance**

**“borrower** means any person who has entered into, or is seeking to enter into, an agreement with a lender

**“lender** means—

**“(a) a creditor:**

**“(b) a lessor:**

**“(c) a transferee**

**“standard terms—**

**“(a) means terms that are intended to be contained in an agreement that—**

**“(i) has been printed or otherwise prepared by, or on behalf of, the lender; and**

**“(ii) is used by the lender in concluding, or as a basis for concluding, such an agreement; and**

**“(b) includes terms in repayment waivers and extended warranties that are related to such agreements.**

*“Principles*

**“9B Lender responsibility principles**

**“(1) Every lender must, at all times, have regard to, and comply with, all the principles specified in subsection (2).**

- “(2) The principles are that lenders will, in relation to an agreement with a borrower,—
- “(a) exercise reasonable care and skill; and
  - “(b) provide the borrower with sufficient information to enable the borrower to make informed decisions, both at the time of entering into an agreement and during all subsequent dealings with the lender; and
  - “(c) ensure that the terms of the agreement are not unduly onerous and are expressed in a clear, concise, and intelligible manner; and
  - “(d) not do or say, or omit to do or say, anything that is, or is likely to be, misleading, deceptive, or confusing to the borrower; and
  - “(e) make reasonable inquiries as to the borrower’s—
    - “(i) financial circumstances; and
    - “(ii) requirements and objectives in entering into the agreement; and
  - “(f) be satisfied, before entering into an agreement, that—
    - “(i) the borrower can be reasonably expected to make the repayments under the agreement without suffering substantial hardship; and
    - “(ii) the agreement is otherwise appropriate for the borrower, having regard to the borrower’s circumstances, requirements, and objectives; and
  - “(g) not charge unreasonable credit fees; and
  - “(h) not advertise, or permit to be advertised, agreements, products, or services in a manner that is, or is likely to be, misleading, deceptive, or confusing to borrowers generally or, if the advertisement is aimed at a particular class of borrowers, to that class.

*“Responsible Lending Code*

**“9C Purpose of Responsible Lending Code**

The purpose of the Responsible Lending Code is to—

- “(a) elaborate on the lender responsibility principles specified in section 9B(2); and
- “(b) offer guidance on how those principles may be implemented by lenders.

**“9D Content of Responsible Lending Code**

- “(1) In order to achieve its purpose, the Responsible Lending Code may set out any, or all, of the following:
- “(a) the nature and extent of inquiries a lender should make before entering into an agreement:
  - “(b) the processes, practices, or procedures that a lender should follow—
    - “(i) to verify information provided by a borrower:
    - “(ii) to assess whether the relevant agreement is suitable for, and otherwise meets the requirements of, the borrower:
    - “(iii) to ensure that advertisements for agreements, products, or services are not misleading, deceptive, or confusing:
    - “(iv) to ensure that fees are not unreasonable:
    - “(v) to ensure that borrowers have sufficient information to enable them to make informed decisions:
  - “(c) any other matter that promotes the lender responsibility principles (set out in section 9B(2)) and is not inconsistent with any other enactment.
- “(2) The Code may also contain different provisions in relation to particular—
- “(a) lenders:
  - “(b) classes of lenders:
  - “(c) agreements:
  - “(d) classes of agreements.

*“How Responsible Lending Code made and administered*

**“9E Preparation of Responsible Lending Code**

- “(1) The Minister must—
- “(a) prepare the Responsible Lending Code; and
  - “(b) ensure that the Code is published not later than 2 years after this section comes into force.
- “(2) The Minister may use any process that the Minister considers appropriate to develop the Code, but must—
- “(a) publish a draft Code and release it to the public:

- “(b) consult persons, or representatives of such persons, that the Minister considers will be substantially affected by the Code:
- “(c) consider comments received on the draft Code:
- “(d) prepare a revised Code in response to comments received:
- “(e) consult the Minister of Commerce and the Minister of Finance:
- “(f) consider comments received from those Ministers:
- “(g) prepare the final Code.

**“9F Responsible Lending Code comes into force by notice in Gazette**

- “(1) After the Minister has prepared the final version of the Code, as provided for in section 9E(2), the Minister must give notice in the *Gazette* of the date or dates on which the provisions of the Code come into force.
- “(2) The notice may state different dates for different provisions, but no date may be before the 28th day after the date on which the notice is published in the *Gazette*.
- “(3) Each provision in the Code comes into force on the date stated in the notice that applies to the provision.
- “(4) The Code and the notice are each regulations for the purposes of the Regulations (Disallowance) Act 1989, but are not regulations for the purposes of the Acts and Regulations Publication Act 1989.
- “(5) The Ministry must ensure that the Code is available at all reasonable times on an Internet site maintained by or on behalf of the Ministry.

**“9G Amendment of Responsible Lending Code**

- “(1) The Minister may, at any time, amend or replace the Responsible Lending Code.
- “(2) Sections 9E and 9F apply, with any necessary modifications, to any amendment to, or replacement of, the Code.
- “(3) However, in the case of a minor amendment that does not materially affect the Code, the Minister need not comply with section 9E(2).

*“Publication of standard terms and disclosure  
of costs of borrowing*

**“9H Publication of standard terms**

- “(1) Every lender who, in relation to an agreement, uses standard terms must ensure that information about those terms is publicly available.
- “(2) Without limiting subsection (1),—
- “(a) if the lender has an Internet site, the lender must display prominently and clearly a copy of the standard terms on that site; and
- “(b) if the lender operates from business premises, the lender must display prominently and clearly a copy of the standard terms in a publicly accessible area of those premises.
- “(3) The lender must, at the request of any person, supply a copy of its standard terms, free of charge, to that person.
- “(4) The information referred to in subsection (1) may be prescribed.

**“9I Publication of costs of borrowing**

- “(1) Every lender must ensure that information about all the costs of borrowing in relation to every type of agreement offered by that lender to a borrower is publicly available.
- “(2) Without limiting subsection (1),—
- “(a) if the lender has an Internet site, the lender must display prominently and clearly the lender’s fees and annual rates of interest in relation to every type of agreement referred to in subsection (1) on that site; and
- “(b) if the lender operates from business premises, the lender must display prominently and clearly those fees and rates of interest in a publicly accessible area of those premises.
- “(3) The publication required under subsection (1) must—
- “(a) contain the prescribed information; and
- “(b) be in the prescribed form.

**“9J Application of sections 9H and 9I to repayment waiver or extended warranty**

Sections 9H and 9I also apply in relation to repayment waivers and extended warranties and, in such cases, a waiver or warranty is to be treated as if it were an agreement.”

**8 Section 17 amended (Initial disclosure)**

Replace section 17(1) with:

- “(1) Every creditor under a consumer credit contract must ensure that disclosure of as much of the key information set out in Schedule 1 as is applicable to the contract is made to every debtor under the contract before the contract is made.”

**9 Section 22 amended (Disclosure of agreed changes)**

Repeal section 22(3).

**10 Section 23 amended (Disclosure of changes following exercise of power)**

Repeal section 23(5).

**11 Section 24 amended (Request disclosure)**

- (1) After section 24(2)(f), insert:

“(fa) a copy of the creditor’s standard terms (if any), as required to be made available under section 9H:

“(fb) a statement containing as much of the information specified in section 19 as is applicable to the consumer credit contract:”.

- (2) After section 24(2), insert:

“(2A) To avoid doubt, subsection (2)(fb) applies despite anything to the contrary in section 21.”.

**12 Section 27 amended (Right to cancel consumer credit contract)**

In section 27(1), replace “3 working days of” with “5 working days after” in each place.

**13 Section 32 amended (Disclosure standards)**

After section 32(1)(b), insert:



“(ba) be made in the form prescribed by regulations (if any); and”.

**14 Section 40 amended (Default interest charges)**

In section 40(2)(a), replace “and while the default continues” with “, but only in respect of the amount of the default, and only while the default continues”.

**15 Section 41 replaced (Unreasonable credit fee or default fee)**

Replace section 41 with:

**“41 Unreasonable credit fee or default fee**

“(1) A consumer credit contract must not provide for a credit fee or a default fee that is unreasonable.

“(2) If the Commission, a debtor, or a guarantor considers that a credit fee or default fee is unreasonable, that person may apply to the court for orders under this section.

“(3) If the court is satisfied, having regard to the matters specified in this subpart (as applicable in the particular case), that the fee is unreasonable, it may—

“(a) order that—

“(i) the fee, and any interest paid or payable in relation to that fee, must be reduced by a specified amount (in which case only the reduced fee or interest is payable to the creditor or, if the fee or interest has been debited under the consumer contract, the creditor must refund the amount by which the fee or interest was reduced); or

“(ii) the fee or interest must not be imposed or debited (in which case no fee or interest is payable to the creditor or, if the fee or interest has been debited, the creditor must refund the amount of the fee or interest); and

“(b) make any other order it thinks fit for the purpose of giving effect to an order under paragraph (a).”

**16 Section 43 replaced (Prepayment fees)**

Replace section 43 with:

**“43 Prepayment fees**

- “(1) A fee payable in relation to a part prepayment (other than a fee relating to administrative costs) is unreasonable only if it exceeds a reasonable estimate of the creditor’s loss arising from the part prepayment.
- “(2) A fee payable in relation to a full prepayment (other than a fee relating to administrative costs) is only unreasonable if it exceeds a reasonable estimate of the creditor’s loss arising from the full prepayment (as calculated in accordance with section 54).”

**17 Section 44 replaced (Other credit fees and default fee)**

Replace section 44 with:

**“44 Credit fees other than establishment fees and prepayment fees**

- “(1) In determining whether a credit fee is unreasonable, the court must have regard to—
- “(a) the matters giving rise to the fee; and
  - “(b) the amount of the fee; and
  - “(c) whether that amount exceeds the creditor’s reasonable costs in performing and documenting the credit contract.
- “(2) Subsection (1) does not apply to a credit fee or charge that is—
- “(a) an establishment fee (*see* section 42); or
  - “(c) a fee payable on a full or part prepayment of a consumer credit contract, other than a fee that is directly attributable to the administrative costs incurred by the creditor in relation to the prepayment (*see* section 43).

**“44A Default fees**

In determining whether a default fee is unreasonable, the court must have regard to—

- “(a) the nature of the default; and
- “(b) the amount of the fee; and
- “(c) whether that amount exceeds a reasonable estimate of the creditor’s financial loss arising from the default (including the creditor’s average reasonable administrative costs).”

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- 18 Section 45 amended (Fees or charges passed on by creditor)**  
Repeal section 45(5).
- 19 Section 51 amended (Amount required for full prepayment)**  
In section 51(1), after “section 52”, insert “(in the case of a rebate of insurance) or section 52A (in the case of a repayment waiver)”.
- 20 Section 52 amended (Rebate of insurance)**  
In section 52(1), replace “The amount to be deducted” with “In the case of a rebate of insurance, the amount to be deducted”.
- 21 New section 52A inserted (Rebate of repayment waiver)**  
After section 52, insert:  
**“52A Rebate of repayment waiver**  
“(1) In the case of a repayment waiver, the amount to be deducted under section 51 is an amount equal to a proportionate rebate of the additional consideration paid for that waiver.  
“(2) The rebate must be calculated using the procedure (if any) prescribed for the purposes of this section.”
- 22 Section 57 amended (Application may not be made in certain circumstances)**  
(1) Replace section 57(1)(a) with:  
“(a) the debtor has—  
“(i) defaulted in a payment; and  
“(ii) been in default for 2 months or less; or”.  
(2) After section 57(2), insert:  
“(3) Nothing in subsection (1) prevents a debtor from making an application if the creditor, at the creditor’s discretion, agrees that an application may be made.”
- 23 New section 57A inserted (Obligations of creditor in relation to application)**  
After section 57, insert:

**“57A Obligations of creditor in relation to application**

- “(1) On receipt of an application by a debtor under section 55, the creditor must do the following:
- “(a) within 5 working days after receiving the application, acknowledge receipt and (if necessary to decide the application) request any further information from the debtor;
  - “(b) within 20 working days after receiving the application,—
    - “(i) decide whether or not to grant the application; and
    - “(ii) provide written notification to the debtor of that decision; and
    - “(iii) if the creditor declines the application, provide written notice to the debtor, setting out—
      - “(A) the creditor’s reasons for declining the application; and
      - “(B) a clear summary of the debtor’s rights under section 58.
- “(2) A creditor must not, in relation to an application, charge—
- “(a) an application fee, or any other fee, in relation to an application (for example, a default fee); or
  - “(b) any default interest charge.
- “(3) However, in respect of a successful application, nothing in subsection (2)(a) prevents a creditor from charging a credit fee that reflects the costs incurred by the creditor in documenting the changes to the credit contract.
- “(4) To avoid doubt, subsection (2) applies in relation to all applications, whatever the outcome.”

**24 Section 58 amended (Changes by court)**

Replace section 58(1) with:

- “(1) The debtor may apply to the court to change the terms of the contract if—
- “(a) the creditor fails, within the time specified in section 57A(1)(b), to notify the debtor of its decision on the application; or
  - “(b) the creditor does not agree to change the consumer credit contract in accordance with the application.”

- 25 Section 66 repealed (Variation disclosure not required)**  
Repeal section 66.
- 26 Section 67 amended (Request disclosure for consumer leases)**  
After section 67(2)(b), insert:  
“(ba) a copy of the lessor’s standard terms and conditions (if any), being a copy of the standard terms required under section 9H:”.
- 27 Section 70 amended (Disclosure of credit-related insurance, repayment waiver, or extended warranty)**
- (1) In section 70(1), replace “within 15 working days of the day on which the credit-related insurance is arranged” with “on or before the date on which the credit-related insurance is arranged”.
- (2) In section 70(2), replace “within 15 working days of the day on which the repayment waiver or extended warranty is arranged” with “on or before the date on which the repayment waiver or extended warranty is arranged”.
- 28 Section 78 repealed (Variation disclosure not required)**  
Repeal section 78.
- 29 Section 79 amended (Request disclosure for buy-back transactions)**  
After section 79(2)(b), insert:  
“(ba) a copy of the lessor’s standard terms and conditions (if any), being a copy of the standard terms required under section 9H:”.
- 30 New section 99A inserted (Enforcement prohibited if creditor unregistered)**  
After section 99, insert:  
**“99A Enforcement prohibited if creditor unregistered**  
“(1) If a creditor required to be registered under Part 2 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 is not registered under that Act,—

- “(a) neither the creditor nor any other person may, in relation to a credit contract,—
    - “(i) enforce any right in relation to the costs of borrowing; or
    - “(ii) require the debtor or any other person to make early repayment of money due under that contract on the basis of a failure by the debtor or other person to pay the costs of borrowing; and
  - “(b) neither the debtor nor any other person is liable for the costs of borrowing in relation to any period during which the creditor is unregistered.
- “(2) However, subsection (1)(b) does not apply in relation to fees passed on to a third party (*see* section 45) unless that third party is an associated person.
- “(3) On becoming registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008, the creditor may enforce the creditor’s rights in relation to the costs of borrowing, but only—
- “(a) if the creditor has given written notice to the debtor, containing the information specified in subsection (4); and
  - “(b) in relation to costs directly attributable to periods after such notice has been given to the debtor.
- “(4) The notice required under subsection (3)(a) must clearly inform the debtor—
- “(a) that the creditor has become registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008; and
  - “(b) of the date on which the creditor became registered; and
  - “(c) that the debtor is, from the date on which notice was given, liable for the costs of borrowing; and
  - “(d) that the debtor has no liability for the costs of borrowing that would otherwise have accrued before the date on which the notice was given.”

### **31 Section 103 amended (Offences)**

In section 103(1), replace “sections 17 to 69, 71 to 74,” with “sections 17 to 74”.

**32 Section 108 amended (Power to order certain persons not to act as creditors, lessors, transferees, or buy-back promoters)**

Replace section 108(1)(a)(v) with:

“(v) has failed, more than once, to comply with any of the provisions of—

“(A) this Act (including, to avoid doubt, the lender responsibility principles (*see* section 9B(2)):

“(B) the Credit Contracts Act 1981; or”.

**33 Section 124 amended (Guidelines for reopening credit contracts, consumer leases, and buy-back transactions)**

(1) In section 124, replace “the court must have regard to” with “the court must, to the extent that they are applicable in the particular circumstances, have regard to”.

(2) Replace section 124(b) and (c) with:

“(b) whether the creditor has, in relation to any aspect of the agreement (including the creditor’s conduct in entering into the agreement), complied with the lender responsibility principles (*see* section 9B(2)); and

“(c) the relative bargaining power of the parties; and

“(d) whether, taking account of the particular indebted person’s characteristics (for example, his or her age or physical or mental condition), that person or (if represented by another person) the person’s representative was reasonably able to protect the indebted person’s interests; and

“(e) whether, before entering into the agreement, the borrower obtained legal or other professional advice in relation to that agreement; and

“(f) whether the credit provider, or any person acting in the interests of that provider, subjected the indebted person to unfair pressure or tactics or otherwise unfairly influenced the indebted person to enter into the arrangement and, if so, the nature and extent of that unfair conduct; and

“(g) the terms of comparable agreements offered by other creditors, including—

- “(i) the costs of borrowing under those agreements; and
  - “(ii) whether the agreement under consideration imposes significantly more onerous terms on the debtor than would be imposed under those comparable agreements; and
  - “(h) the amount payable by the indebted person; and
  - “(i) the amount of any payment required as a condition of the full repayment under the arrangement, including the credit provider’s expenses and the likelihood that the amount repaid could be reinvested on similar terms; and
  - “(j) the form of the arrangement, including whether it is expressed in plain language, is legible, and is clearly presented; and
  - “(k) whether the terms of the arrangement—
    - “(i) allow the indebted person to be reasonably able to comply with his or her obligations under the arrangement; and
    - “(ii) are reasonably necessary to protect the interests of the credit provider; and
  - “(l) the length of time the indebted person has had to remedy any default; and
  - “(m) if the credit provider has refused to release, or has agreed to release subject to conditions, a security interest relating to an arrangement, the obligations secured by the security interest and the extent of security that remains after the release or conditional release; and
  - “(n) whether action by the credit provider in relation to the enforcement of, or recovery under, the arrangement was reasonable in the circumstances; and
  - “(o) any other matters that the court thinks fit.”
- (3) After section 124, insert as subsection (2):
- “(2) In subsection (1),—
- “**arrangement** means, as the case may be, a contract, lease, or buy-back transaction
- “**credit provider** means, as the case may be,—
- “(a) the creditor in a contract:
  - “(b) the lessor of a lease:
  - “(c) the transferee in a buy-back transaction



“**indebted person** means, as the case may be,—

“(a) a debtor under a contract:

“(b) a lessee under a lease:

“(c) an occupier under a buy-back transaction.”

**34 Section 138 amended (Regulations)**

(1) Replace section 138(1)(d) with:

“(da) prescribing the particular matters required to meet all or any of the requirements under this Act for publication, disclosure, notice, or other provision of information:

“(db) prescribing the form of statements that must be used to meet all or any of the requirements under this Act for publication, disclosure, notice, or other provision of information:

“(dc) prescribing how the information to be disclosed must be presented, including, but not limited to, requirements as to the precise manner of disclosure:”.

(2) In section 138(1)(h), after “section 52” insert “or 52A”.

(3) After section 138(1), insert:

“(1A) For the purposes of subsection (1)(da) and (dc), regulations may prescribe different requirements for different types or classes of disclosure, lender, or transaction.”

**35 Schedule 1 amended**

(1) Replace paragraph (s) with:

“(s) a statement of the debtor’s cancellation rights under section 27:

“*Debtor’s right to apply for relief on grounds of hardship*

“(sa) a statement of the debtor’s right under section 55, and advice as to how such an application may be made:”.

(2) After paragraph (u), insert:

“*Dispute resolution*

“(ua) the name and contact details of the dispute resolution scheme of which the creditor is a member (unless the Financial Service Providers (Registration and Dispute Resolution) Act 2008 does not require the creditor to be a member of such a scheme):”.

## Subpart 2—Transitional provisions

### **36 Application of amendments to existing agreements**

- (1) Except as provided for in subsection (2), the amendments to the principal Act in subpart 1 do not apply to existing agreements.
- (2) The amendments referred to in subsection (1) apply in relation to existing agreements as follows:
  - (a) the amendments relating to request disclosure apply only in relation to requests made on or after the commencement of this section;
  - (b) the amendments relating to disclosure of contract variations apply only to variations made on or after the commencement of this section;
  - (c) the amendments relating to hardship applications apply only to applications made on or after the commencement of this section;
  - (d) the lender responsibility principles (*see* section 9B(2)) apply only to a variation of a contract where the variation is made on or after the commencement of this section;
  - (e) the amendments made by sections 15 to 18 (fees) apply only to fees incurred on or after the commencement of this section.
- (3) In this section, **existing agreement** means any agreement entered into before this section came into force.

## **Part 2**

### **Amendments to Personal Property Securities Act 1999**

#### **37 Amendments to Personal Property Securities Act 1999**

- (1) This section amends the Personal Property Securities Act 1999.
- (2) In section 44, before the example, insert as subsection (2):
  - “(2) However, in relation to an appropriation of after-acquired property that is consumer goods, such appropriation—
    - “(a) must be made by the debtor, either personally or by the debtor’s agent; and

“(b) cannot be made by the creditor acting as the debtor’s attorney or agent.”