



COVERSHEET

Minister	Hon Andrew Bayly	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2024	Date to be published	17 July 2024

List of documents that have been proactively released

Date	Title	Author
May 2024	Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2024	Office of the Minister of Commerce and Consumer Affairs
30 May 2024	Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2024 LEG-24-MIN-0117 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 and Consumer Finance Amendment Regulations (No 2) 2024

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2024.

Policy

- 2 The Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2024 (the **amendment regulations**) remove the regulatory burden associated with prescriptive affordability requirements and redundant COVID-19 exemptions from the Credit Contracts and Consumer Finance Regulations 2004 (the **Regulations**) under the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**).
- 3 On 19 March 2024, the Cabinet Expenditure and Regulatory Review Committee agreed to [EXP-24-MIN-0010 confirmed by CAB-24-MIN-0101 refers]:
 - 3.1.1. remove the detailed requirements for assessing the affordability of lending to the borrower from the Regulations by revoking the substance of the provisions relating to affordability, other than regulation 4AO, using section 138 of the CCCFA; and
 - 3.1.2. revoke redundant exemptions, namely regulation 18D and regulation 18E, created by the Credit Contracts and Consumer Finance (Exemptions for COVID-19) Amendment Regulations 2020 and the Credit Contracts and Consumer Finance (Exemptions for COVID-19) Amendment Regulations (No 2) 2020.
- 4 In the same meeting, Cabinet also approved the release of draft amendments to the Regulations relating to affordability for targeted consultation with affected parties as required by the CCCFA and invited my return to the Cabinet Legislation Committee in May 2024 to make these regulations.

Policy rationale

- 5 In 2021, regulations were introduced to prescribe how lenders must undertake 'reasonable inquiries' to determine whether the borrower will be able to make the repayments without suffering substantial hardship, as required by section 9C(3)(a)(ii) of the CCCFA (the **affordability regulations**). Shortly after the introduction of the affordability regulations, lenders reported increased application processing times by at least 50 per cent, fewer loan approvals, and borrowers being subjected to intrusive inquiries. Unintended impacts of the affordability regulations were confirmed by an investigation in 2022.
- 6 After considering a range of options for amending the affordability regulations to address this, I recommended to Cabinet that we revoke the detailed affordability

IN CONFIDENCE

regulations for all lending.

- 7 Cabinet has noted my intention to make amendments to the Responsible Lending Code (the **Code**) issued under the CCCFA as soon as possible. This will provide sound guidance regarding how lenders are expected to comply with the affordability obligation in section 9C(3)(a)(ii).
- 8 The COVID-19 exemptions in regulations 18D and 18E were developed to alleviate the burden of certain CCCFA obligations that were problematic in the circumstances created by the pandemic. They are being revoked on the basis they are now redundant.

The amendment regulations

- 9 The Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2024 have been prepared in accordance with the Cabinet decisions referred to in paragraph 3. These regulations are made under sections 138(1)(ab) and (abd) of the CCCFA and provide the following amendments to the Regulations:
 - 9.1 *Regulation 4*: revokes all the detailed provisions of the regulations (except regulation 4AO) setting out requirements to be applied in the assessment of likelihood of substantial hardship for the purposes of section 9C(3)(a)(ii) of the CCCFA.
 - 9.2 *Regulations 5 and 7*: makes consequential amendments to regulations 4AO and 29 respectively of the Regulations.
 - 9.3 *Regulation 6*: revokes regulations 18D and 18E of the Regulations, which relate to COVID-19 and are no longer relevant.
- 10 Cabinet agreed to retain regulation 4AO (High-cost consumer credit contracts: presumption of substantial hardship) on the basis that it does not form part of the detailed affordability requirements with which problems were identified. Rather it imposes a greater burden on high-cost credit providers through a presumption of unaffordability in certain cases. The high-cost credit provisions are currently under review.

Timing and 28-day rule

- 11 I propose that the Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2024 come into force the day after their notification in the New Zealand Gazette, with the exception of regulations 4, 5, and 7.
- 12 I seek Cabinet's authorisation to waive the 28-day rule for regulation 6 (relating to the revocation of redundant COVID-19 exemptions) on the basis that regulation 6 will have little or no effect on the public.
- 13 I propose regulations 4, 5, and 7 will come into force on 31 July 2024, which would be more than 28 days after their notification in the New Zealand Gazette, to coincide with the commencement of amendments to the Code. This will ensure lenders have adequate guidance to allow them to comply with their obligations.

Compliance

- 14 The Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2024

IN CONFIDENCE

comply with:

- 14.1 the principles of the Treaty of Waitangi;
 - 14.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 14.3 the principles and guidelines set out in the Privacy Act 2020 (if the regulations raise privacy issues, indicate whether the Privacy Commissioner agrees that they comply with all relevant principles);
 - 14.4 relevant international standards and obligations;
 - 14.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 15 *The revocation of COVID-19 exemption provisions:* Section 138(1A) (as modified to reflect the exemptions are being revoked) requires the Minister, before recommending that regulations be made under section 138(1)(ab), to:
- 15.1 have regard to the purposes of the CCCFA;
 - 15.2 be satisfied that the exemptions are no longer appropriate because they are now redundant.
- 16 *The revocation of affordability provisions:* Section 138(1BA) of the CCCFA provides that the Minister may recommend regulations under section 138(1)(abd) only after consulting the persons or representatives of the persons who the Minister considers will be substantially affected by the regulations.
- 17 I am satisfied that the statutory conditions in paragraphs 13 and 14 have been met. As required by section 138(1B), I have provided a statement of reasons for making the recommendation that will be published together with the amendment regulations.

Regulations Review Committee

- 18 There are no grounds for the Regulations Review Committee to draw the Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2024 to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 19 The Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2024 has been certified by the Parliamentary Counsel Office as being in order for submission to Executive Council, subject to the Minister being satisfied that the requirements of section 138 are met and to a waiver of the 28-day rule.

Impact Analysis

- 20 A regulatory impact assessment was prepared in accordance with the necessary requirements and was submitted at the time that Cabinet approval of the policy relating to the relevant regulations was sought [EXP-24-MIN-0010].

Publicity

- 21 The Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2024 will be notified in the Gazette and published on Parliamentary Counsel Office's 'New Zealand Legislation' website. The Ministry of Business, Innovation and Employment (**MBIE**) intends to notify stakeholders when the regulations have been made.

Proactive release

- 22 This paper will be published on MBIE's website within 30 business days of Cabinet's decision, subject to withholdings as appropriate consistent with the Official Information Act 1982.

Consultation

- 23 In preparing this Cabinet paper, MBIE has consulted with the Commerce Commission, the Financial Markets Authority, the Reserve Bank, and The Treasury. The Department of Prime Minister and Cabinet was informed.
- 24 On 26 April 2024, MBIE released an exposure draft of the amendment regulations and received and considered 10 submissions from lenders and consumer advocates.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 19 March 2024 the Cabinet Expenditure and Regulatory Review Committee agreed to [EXP-24-MIN-0010 refers] –
 - 1.1 remove the detailed requirements for assessing the affordability of lending to the borrower from the Credit Contracts and Consumer Finance Regulations 2004 (the **Regulations**);
 - 1.2 give effect to the decision in paragraph 1.1 above by revoking the substance of the provisions relating to affordability, other than regulation 4AO, from the Regulations, using section 138 of the Credit Contracts and Consumer Finance Act 2003 (the **CCCFA**); and
 - 1.3 revoke redundant COVID-19 exemptions, namely regulations 18D and 18E from the Regulations;
- 2 **note** that the Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2024 give effect to the decision referred to in paragraph 1 above;
- 3 **note** section 138(1A) requires the Minister, before recommending that regulations be made under section 138(1)(ab), to;
 - 3.1 have regard to the purposes of the CCCFA;
 - 3.2 be satisfied that the exemptions are no longer appropriate because they are now redundant;
- 4 **note** that section 138(1BA) of the CCCFA provides that the Minister may recommend regulations under section 138(1)(abd) only after consulting the persons or representatives of the persons who the Minister considers will be substantially

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

affected by the regulations;

5 **note** the advice of the Minister that the statutory requirements have been met;

6 **note** that a waiver of the 28-day rule is sought:

6.1 so that regulation 6 can come into force on the day after their notification in the Gazette

6.2 on the grounds that regulation 6 will have little or no effect on the public;

7 **agree** to waive the 28-day rule so that the regulations can come into force on the day after their notification in the New Zealand Gazette, with exception to regulations 4, 5, and 7, which will come into force on 31 July 2024 to coincide with the commencement of amendments to the Responsible Lending Code;

8 **authorise** the submission to the Executive Council of the Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2024.

Authorised for lodgement

Hon Andrew Bayly

Minister of Commerce and Consumer Affairs

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