

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.

The Credit Contracts and Consumer Finance Act 2003 (CCCF Act) 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, any guarantees of these contracts and buy-back transactions. The principles do not apply to consumer leases or business loans.

From 1 June 2020 credit sale contracts entered into by mobile traders will also be treated as consumer credit contracts.¹ A mobile trader is someone who, in person and not at fixed premises, offers or agrees to supply consumer goods to an individual, either under a credit sale or where the goods are partly or fully financed by an associated company under a consumer credit contract. A credit sale is a contract for the sale of goods or services where the purchase price is deferred.

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**.²

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

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.



1. Section 16A CCCF Act.
2. 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.

Lenders must comply with lender responsibility principles

Lenders must comply with the lender responsibility principles when they are considering making, or are making, a variation to a consumer credit contract. Lenders have specific responsibilities when they are making “material changes” to consumer credit contracts or buyback transactions. 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 in all its dealings with borrowers and guarantors. This includes when advertising, before entering into a contract and in all subsequent dealings relating to the contract, including when a contract is varied, and
- comply with the specific listed lender responsibilities set out in sections 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:⁴

- before making a material change to the agreement, making reasonable inquiries so as to be satisfied that the credit or finance will meet the borrowers requirements and objectives and that the borrower will make the payments under the agreement without suffering substantial hardship. In making these inquiries, lenders should follow the process set out in [regulations](#) to the Act and guidance contained in the [Responsible Lending Code](#).⁵
- A **material change** is a change to the credit limit or an additional advance that the lender did not take into account in making its original inquiries.⁶



- 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.

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.⁷

- 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 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.

3. The lender responsibility principles are set out in section 9C.
4. See section 9C(3)(c), (d), (e) and (f) which are particularly relevant to contract variations.
5. From 1 December 2021, see section 9C(3)(a).
6. From 1 December 2021, see section 9C(8).
7. Section 9C(3)(c)(i) and sections 22, 23 and 32.

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.⁸

Responsible Lending Code

The Responsible Lending Code (Code)⁹ 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.¹⁰

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 the lender must give the borrower details of the change **before** it takes effect.¹¹

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 or decreases the borrower's credit limit.¹² From 1 December 2021 if the parties to the contract agree to increase the credit limit, then the lender must conduct reasonable inquiries into the affordability and suitability of the change.¹³

disclosure must be made, either:

- within **5** working days of the date that the change takes effect, or
- with the next continuing disclosure statement due, if continuing disclosure is required.¹⁴

But lenders who make agreed changes on a high-cost consumer credit contracts cannot choose to provide disclosure with a continuing disclosure statement: they must disclose the information before any agreed change takes effect.¹⁵

8. Sections 9C(6) and 32(1)(d).

9. [Responsible Lending Code](#) (February 2021), Chapters 7 and 11 are particularly relevant to contract variations.

10. See Part I of the Disclosure Guidelines.

11. Section 22(2).

12. Section 22(3)(d). This amendment applies to existing agreements from 20 December 2019, see Schedule 1, 8(1) of the Act for application.

13. Sections 9C(8)(a) and 9C(3)(a). For more guidance on this see <https://comcom.govt.nz/business/your-responsibilities-if-you-provide-credit/the-lender-responsibility-principles>.

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

15. Section 22(5).

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.¹⁶

Where a guarantor is involved

The lender must also give full particulars of the change to any guarantor within **5** 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.¹⁷

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

The lender must provide **full particulars of the change** and comply with the rules about how disclosure must be made.

See section 22(1)(a) of the Act together with information prescribed in regulations. The Commission considers that the words "full particulars of the change" in section 22(1)(a) require lenders to provide borrowers with full particulars of any agreed change that would alter the key information required in initial disclosure under section 17 of the Act, being that information set out in Schedule 1 of the Act. For complete information on what the Commission considers must be disclosed in variation disclosure, please refer to part E of our Disclosure Guidelines.

From 1 December 2021 the lender will be required to disclose the following information if it is affected by a change agreed between the borrower and the lender.

Disclosure of agreed changes	
Credit limit of the contract The maximum amount the lender is prepared to lend to the borrower over the course of the contract.	The lender must state the maximum amount it is prepared to lend to the borrower over the course of the contract and the extent that this has changed as a result of the agreed variation.
Annual interest rate The annual interest rate is the rate that interest will be charged, expressed as a percentage rate for the year. An interest charge is a charge that accrues over time and is determined by applying a rate to an amount owing under a contract.	<p>The lender must set out the annual interest rate or rates that apply, as a percentage. If there is more than one rate, the lender must describe how and when each rate will apply and how this has changed as a result of the variation.</p> <p>If the rate is fixed for the term of the contract or any part of its term, the lender must set out the period the rate is fixed for and how this has changed as a result of the variation.</p> <p>If the annual interest rate is calculated according to a base rate, the lender must describe the base rate including:</p> <ul style="list-style-type: none">• where and when it is published, or if it is not published, how the borrower can find it;• the margin (if any) that will be applied to the base rate to work out the annual interest rate• the current annual interest rate; and• how these have changed as a result of the variation.
Total interest charges The sum of all interest charges the borrower must pay over the course of the contract.	The lender must set out the total amount of interest payable, if known, for contracts due to be repaid within seven years and the extent that this has changed as a result of the variation.
Credit fees and charges Any charges the borrower must pay under the contract or to the lender in connection with the contract (other than interest).	<ul style="list-style-type: none">• If the contract is a high-cost consumer credit contract, the lender must disclose a statement of the rate of charge under the contract (calculated in accordance with section 45H and the regulations).

16. 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.

17. Section 26.

<p>Payments required</p> <p>What payments the borrower must make under the contract.</p>	<p>If the borrower is to make more than one payment under the contract, the lender must set out:</p> <ul style="list-style-type: none"> • the amount of each payment or how the lender will calculate each payment • when the first payment is due • how often the borrower must make payments • how many payments the borrower must make, if known • the total amount of all payments over the course of the contract, if known, for contracts due to be repaid within seven years; and • how the above has changed as a result of the variation
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The Commission recommends that lenders consider disclosing the agreed changes in a way that shows the borrower the full effect of the change. Providing this information enables borrowers to understand the full impact of the variation and to make an informed decision about whether they are content with the variation.¹⁸

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 **5** 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.¹⁹

Alternatively, where the change **reduces** the borrower's obligations, or gives them more time to pay, disclosure must be provided:

- if the contract is a high-cost consumer credit contract, within 5 working days of the date the change takes effect, or
- for all other consumer credit contracts, either within 5 working days of the date that the change takes effect or with the next continuing disclosure statement.²⁰

A lender is not required to disclose information about a unilateral change to a particular borrower if the lender cannot reasonably locate them.²¹ In our view a borrower cannot be reasonably located where a lender:

- has evidence that a borrower has not received previous disclosure (for example: if disclosure sent to the borrower's last known place of residence by post is returned or if the lender is advised that e-mail disclosure sent to an information system previously specified by the borrower has not been delivered), and
- can demonstrate that they have taken other reasonable steps to locate the borrower (for example by searching all records held by the lender for contact details, attempting to contact the borrower by phone, using notifications in internet banking facilities).

18. For further details see the Disclosure Guidelines.

19. From 1 December 2021, if the unilateral change includes an increase of the credit limit under the contract the lender must make reasonable inquiries so as to be satisfied that the agreement meets the borrower's requirements and objectives and that the borrower can make repayments without suffering substantial hardship (see sections 9C(8)(b) and 9C(3)(a) of the Act). For more guidance on this see <https://comcom.govt.nz/business/your-responsibilities-if-you-provide-credit/the-lender-responsibility-principles>.

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

21. Section 23(7). This section applies from 20 December 2019 to pre-existing agreements, for more on commencement see Credit Contracts Legislation Amendment Act 2019, section 17(1).

What and how information must be disclosed

The lender must provide **full particulars of the change** and comply with the rules about how disclosure must be made.²²

From 1 December 2021, if the contract is a high-cost consumer credit contract the lender must also include a statement of the rate of charge.²³

Where a guarantor is involved

The lender must also give full particulars of a unilateral change to any guarantor within **5** 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.²⁴

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, by assignment or operation of law, the previous lender must disclose certain information about the new lender to all borrowers and guarantors within **10** working days of the date of the transfer.²⁵

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 (and guarantor):

- the name, address and contact details of the new lender
- the new lender's name and registration number under the Financial Service Providers Register

- the name and contact details of the new lender's disputes resolution scheme
- the date that the loan was or is intended to be transferred
- 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).²⁶

Exceptions to transfer disclosure

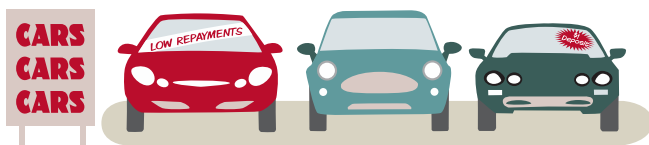
Transfer disclosure is not required if the transfer is for securitisation or covered bond arrangements, or similar arrangements.²⁷

Transfer disclosure is not required if a particular borrower or guarantor cannot be reasonably located.²⁸

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.²⁹ The information in the disclosure document must be clear and concise so that a reasonable person will see it. 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.³⁰

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.³¹



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22. Section 23(2), together with any information also prescribed in regulations. The standard requirements for disclosure set out in s 32.
23. Credit Contracts and Consumer Finance Regulations 2004, regulation 4G(2). For commencement see Credit Contracts and Consumer Finance Amendments Regulations 2020, section 2. For information about how to calculate the rate of charge please see Attachment 3 to our high cost credit guidelines available at <https://comcom.govt.nz/business/your-responsibilities-if-you-provide-credit/high-cost-loans>.
24. Section 26.
25. Section 26A.
26. Section 26A(1).
27. Section 26A(3) and Credit Contracts and Consumer Finance Amendment Regulations (No.2) 2015, regulation 19.
28. Section 26A(4). This section applies from 20 December 2019 to pre-existing agreements, for more on commencement see Schedule 1AA, 8(2) of the Act and Credit Contracts Legislation Amendment Act 2019, section 19.
29. The variation disclosure obligations also apply to variations of consumer leases (section 65) and buy-back transactions (section 77).
30. Section 32(1)(c) and (d).
31. Sections 9C(6) and 32.

A lender must provide variation disclosure by either:

- giving a written disclosure statement containing the information required by the Act to the borrower or guarantor in person
- posting a disclosure statement to the borrower's or guarantor's last known place of residence or to an address specified by the borrower or guarantor for this purpose, or
- using electronic communications, provided the borrower or guarantor has agreed to this, and that the information remains readily and reasonably accessible, stored in a permanent and legible form so that it can be referred to again throughout the life of the contract.³² This includes:
 - emailing or texting the borrower a link to the lender's website, or an electronic communication that otherwise allows the borrower or guarantor to access the disclosure statement;
 - emailing (or faxing) a disclosure statement to the borrower or guarantor; and
 - any other electronic means of communications that may be agreed between the borrower or guarantor and the lender notifies the borrower or guarantor of how to access the disclosure statement.³³

If a place of residence, or electronic information system (like an email address or fax machine) are the same for two or more persons, a disclosure statement sent to that residence or stored in that system is to be treated as disclosure to all people living at the residence or using those systems.³⁴



Where the contract gives the lender the right to vary parts of the contract the lender must meet the standard disclosure obligations.³⁵ The lender can choose to make the disclosure of those unilateral changes via general publication of the changes by:³⁶

- displaying information about the changes prominently at their place of business;
- advertising the changes at least once in the daily newspapers published 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 Invercargill; and
- posting information about the changes on their website (if they have one).

From 1 May 2020 high-cost consumer credit lenders are not able to make disclosure by publishing their unilateral changes or by providing the disclosure to their borrowers with the next continuing disclosure statements. Instead, high-cost consumer credit lenders must provide disclosure of unilateral changes within 5 working days of the change taking effect.³⁷

In practice, the Commission considers that the circumstances in which publication of unilateral changes can be advertised are likely to be limited. Most unilateral changes will result in consequential changes to particular contracts, for example changes to the total amount payable under the contract or the regular repayment amount, which are required to be disclosed as “full particulars of the change”. We therefore expect most unilateral changes will need to be disclosed individually to particular borrowers.

32. Section 35(1A).

33. Section 35(1)(c)-(e). Amendments to section 35 apply to the process for the disclosure of information under existing agreements where disclosure is made after commencement, see Schedule 1AA, 8(3). Commencement is from 20 December 2019; see Credit Contracts Legislation Amendment Act 2019, section 2.

34. Section 35(2).

35. See sections 32 and 35 of the Act.

36. Section 23(4) and Credit Contracts and Consumer Finance Regulations 2004, regulation 5.

37. Section 23(8).

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

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.

Need to know more about disclosure?

We have a series of fact sheets 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.

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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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