

House of Representatives

Supplementary Order Paper

Thursday, 8 May 2014

Credit Contracts and Financial Services Law Reform Bill

Proposed amendments

Hon Craig Foss, in Committee, to move the following amendments:

Clause 2

After *clause 2(1)* (page 10, after line 12), insert:

- (1A) The item relating to section 44 of the Personal Property Securities Act 1999 in **Schedule 3** comes into force on the day after the date on which this Act receives the Royal assent (and **section 70** of this Act applies for the purposes of that item as if it were in force).
- (1B) The item relating to the Fair Trading Act 1986 in **Schedule 3** comes into force on 17 June 2014 (and **section 70** of this Act applies for the purposes of that item as if it were in force).

In *clause 2(3)* (page 11, line 4), replace “**subsection (1) or (2)**” with “**subsection (1), (1A), (1B), or (2)**”.

Subpart 1 of Part 1 heading

In *Part 1*, delete the *subpart 1* heading (page 11, lines 12 and 13).

Clause 4

In *clause 4*, new *section 3(3)(i)*, replace “to guarantors” (page 13, line 20) with “in relation to guarantors”.

Clause 6

After *clause 6(2)* (page 15, after line 10), insert:

- (2A) In section 5, definition of **buy-back fees**, after “a particular insurer”, insert “or particular insurers”.

In *clause 6(5)*, new definition of **repossession**, after “actual possession of those goods” (page 17, lines 19 and 20), insert “, keys, or access devices”.

In *clause 6(5)*, new definition of **standard form contract terms**, *paragraph (a)*, after “be contained” (page 17, line 33), insert “(in whole or in part)”.

In *clause 6(5)*, new definition of **standard form contract terms**, *paragraph (b)*, replace “repayment waivers and extended warranties that are related to such agreements” (page 18, lines 1 to 3), with “a contract, an arrangement, a repayment waiver, or an extended warranty referred to in **section 9A(3) or (4)**”.

Clause 6A

In *clause 6A(1)*, new *section 8(1)(f)*, after “used, or” (page 18, line 7), insert “is”.

In *clause 6A(1)*, new *section 8(1)(f)*, after “domestic,” (page 18, line 8), insert “investment,”.

Clause 9

In *clause 9*, new *section 9A(1)*, after the new definition of **borrower** (page 21, after line 9), insert:

“**finance** means finance provided under a buy-back transaction

In *clause 9*, after new *section 9A(2)* (page 22, after line 2), insert:

“(3) If a security interest is or may be taken in connection with an agreement, the contract or arrangement that creates or provides for the security interest is to be treated as forming part of the agreement for the purposes of this Part.

“(4) If an agreement involves a repayment waiver or an extended warranty, the repayment waiver or extended warranty is to be treated as forming part of the agreement for the purposes of this Part.

In *clause 9*, new *section 9B(3)(b)(iii)*, replace “would be” (page 23, line 6) with “is”.

In *clause 9*, new *section 9B(3)(c)(ii)*, replace “would be” (page 23, lines 16 and 17) with “is”.

In *clause 9*, new *section 9B(3A)(b)(ii)*, replace “would be” (page 25, line 8) with “is”.

In *clause 9*, new *section 9B(3B)(b)(ii)*, replace “would be” (page 26, line 6) with “is”.

In *clause 9*, new *section 9D(1)(a)*, after “agreement” (page 27, line 12), insert “, before a relevant guarantee is given, or before a relevant insurance contract is entered into”.

In *clause 9*, after new *section 9D(2)(b)* (page 28, after line 30), insert:

“(ba) guarantors or classes of guarantors:

In *clause 9*, new *section 9G(3)*, after “**9E(2)**” (page 30, line 8), insert “**(a) to (f)**”.

In *clause 9*, new *section 9H(2)*, replace “no longer uses” (page 30, line 31) with “does not use”.

In *clause 9*, new *section 9I(6)(b)*, after “form” (page 32, line 23), insert “(if any)”.

In *clause 9*, delete new *section 9J* (page 33, lines 1 to 6).

Clause 11

In *clause 11(1)*, new *section 11(1)(b)*, after “used, or” (page 33, line 24), insert “is”.

Clause 12B

Before *clause 12B(1)* (page 34, before line 29), insert:

(1AA) In section 16(1), after “credit sale”, insert “, a credit contract.”.

After *clause 12B(2)* (page 35, after line 6), insert:

(3) After section 16(2), insert:

“(3) If subsection (1) applies,—

“(a) the lessor under the lease is to be treated as a creditor;
and

“(b) the lessee under the lease is to be treated as a debtor;
and

“(c) this Act applies with all other necessary modifications
as if the lease were a credit sale, a credit contract, and a
consumer credit contract.

“(4) If a lease is to be treated as a credit contract under subsection
(1), then, for the purposes of the Financial Service Providers
(Registration and Dispute Resolution) Act 2008,—

“(a) the lease is to be treated as a credit contract; and

“(b) the lessor under the lease is to be treated as a creditor;
and

“(c) that Act applies with all other necessary modifications
as if the lease were a credit contract.”

Clause 17

In *clause 17(2)*, delete *new section 24(2A)(b)* (page 37, lines 33 and 34).

After *clause 17(2)* (page 37, after line 35), insert:

(3) After section 24(4), insert:

“(5) See **section 9H(4)** (which allows any person to request a copy
of the standard form contract terms used by a creditor).”

Clause 19

In *clause 19*, after *new section 26A(1)(ab)* (page 38, after line 27), insert:

“(ac) the name and contact details of the dispute resolution
scheme of which the new creditor is a member (un-
less the Financial Service Providers (Registration and
Dispute Resolution) Act 2008 does not require the new
creditor to be a member of such a scheme):

Clause 23

In *clause 23(2)*, new *section 40(2B)*, after “earlier” (page 42, line 2), insert “as
referred to in **subsection (2A)**”.

Clause 27

In *clause 27*, replace *new section 45(6)(c)* (page 46, line 8) with:

- “(c) the insurance is financed under the credit contract and the creditor has, in relation to the credit-related insurance contract, breached **section 9B(3B)** in any respect.”

Clause 29

In *clause 29*, insert as *subsection (2)* (page 47, after line 8):

- (2) In section 52(5)(d), after “particular insurer”, insert “or particular insurers”.

Clause 32

In *clause 32(1)*, *new section 57(1)(a)*, replace “and the debtor” (page 48, line 16) with “and, in relation to that default, the debtor”.

Clause 33

In *clause 33*, *new section 57A(1)(c)(ii)*, replace “notification” (page 49, line 21) with “notice”.

In *clause 33*, *new section 57A(4)*, replace “reflects” (page 50, line 13) with “reasonably compensates the creditor for”.

Clause 34A

In *clause 34A*, *new section 59A(1)(b)*, replace “credit contract” (page 50, line 34) with “consumer credit contract”.

Clause 38

After *clause 38(2)* (page 52, after line 23), insert:

- (3) In section 70(3)(d), after “particular insurer” insert “or particular insurers”.

Clause 40

Replace *clause 40* (page 52, lines 26 to 31) with:

40 Section 79 amended (Request disclosure for buy-back transactions)

After section 79(4), insert:

- “(5) See **section 9H(4)** (which allows any person to request a copy of the standard form contract terms used by a transferee).”

Clause 43

In *clause 43*, after *new section 83AB(2)* (page 54, after line 16), insert:

- “(2A) **Subsection (2)** applies even if a party to the contract or arrangement referred to in **subsection (2)(a)** is not a party to the credit contract (for example, a guarantor who has given a security interest over consumer goods to secure the guarantor’s obligations under a guarantee that was given in respect of the credit contract).

In *clause 43*, replace *new section 83B(1)(b) and (c)* (page 54, lines 25 to 30) with:

- “(b) enter premises, or enter premises when an occupier is not present, for—
 - “(i) the purpose of repossessing consumer goods over which there is a security interest; or
 - “(ii) any other purpose in connection with consumer goods over which there is a security interest.

In *clause 43*, *new section 83C(1)(b)*, replace “that time” (page 56, line 2) with “the goods are repossessed”.

In *clause 43*, *new section 83D(1)*, replace “provide a notice (a **repossession warning notice**) to” (page 57, lines 12 and 13) with “serve a notice (a **repossession warning notice**) on”.

In *clause 43*, *new section 83D(1)(c)*, replace “**83F**” (page 57, line 17) with “**83F(1)**”.

In *clause 43*, *new section 83D(3)(e)*, replace “given to” (page 58, line 3) with “served on”.

In *clause 43*, *new section 83D(4A)*, replace “disregarded” (page 58, line 15) with “excluded”.

In *clause 43*, replace *new section 83E(1)* (page 58, lines 22 to 24) with:

- “(1) A debtor may, following receipt of a repossession warning notice, voluntarily deliver the consumer goods identified in that notice to the creditor at the place specified in that notice under **paragraph (j)(ii)** of **Schedule 3A**.

In *clause 43*, *new section 83E(3)*, after “applies” (page 58, line 29), insert “with all necessary modifications”.

In *clause 43*, replace *new section 83G(2)* (page 59, lines 25 to 28) with:

- “(2) If the creditor or creditor’s agent has already commenced any enforcement action before a written complaint in relation to that enforcement action or any other enforcement action is made, or an application under section 55 is made, to the creditor, no further action may be taken to continue or complete that enforcement action until the complaint has been resolved or the application has been decided.

In *clause 43*, *new section 83G(4)*, after “settled the complaint” (page 60, lines 1 and 2), insert “referred to in **subsection (1)(a) or (2)**”.

In *clause 43*, *new section 83G(6)(d)*, after “to the creditor” (page 61, line 10), insert “under the credit contract”.

In *clause 43*, *new section 83G(7)*, after “this Part” (page 61, line 16), insert “, to any court order,”.

In *clause 43*, *new section 83G(7)*, after “**(1)**” (page 61, line 18), insert “**or (2)**”.

In *clause 43*, *new section 83H(4)*, definition of **activated**, *paragraph (d)*, after “indirect benefit” (page 63, line 2), insert “to the creditor”.

In *clause 43, new section 83HI(1)*, after “**83ZGA(1)(a)**” (page 63, line 19), insert “or prescribed for the purposes of **section 83ZGA(1)(c)**”.

In *clause 43, new section 83I(1)(b)*, replace “given to” (page 64, line 3) with “served on”.

In *clause 43*, after *new section 83I(2)* (page 64, after line 23), insert:

“(2A) **Subsection (2)** does not prevent a creditor’s agent from holding the agent’s tools of the trade that are customarily used by repossession agents or repossession employees.

In *clause 43, new section 83J(1)*, after “right of entry of premises” (page 64, lines 34 and 35), insert “for the purpose of repossessing consumer goods”.

In *clause 43*, replace *new section 83JA(1)* (page 66, lines 14 to 16) with:

“(1) This section applies if a creditor or creditor’s agent enters premises for the purpose of repossessing consumer goods, or for any other purpose in connection with consumer goods, when the occupier of the premises is not present (subject to **subsection (2A)**).

In *clause 43*, after *new section 83JA(2)* (page 66, after line 24), insert:

“(2A) **Subsection (2)(b) and (c)** applies only if the creditor or creditor’s agent enters the premises for the purpose of repossessing consumer goods.

In *clause 43, new section 83K*, insert as *new subsection (2)* (page 66, after line 33):

“(2) This section applies whether the right to enter premises is exercised—
“(a) for the purpose of repossessing consumer goods; or
“(b) for any other purpose in connection with consumer goods.

In *clause 43, new section 83M(2)*, replace “entered residential premises between the hours of 6 am and 9 pm for the purpose of repossessing consumer goods” (page 67, lines 16 to 18) with “exercised a right to enter residential premises between the hours of 6 am and 9 pm”.

In *clause 43, new section 83M(3)*, replace “nothing in **subsection (1), (2), or (2A)** prevents a debtor from agreeing, in writing, to permit the creditor or creditor’s agent to enter the premises and repossess consumer goods” (page 67, lines 24 to 27) with “**subsection (1), (2), or (2A)** (as the case may be) does not apply if the debtor has consented, in writing, to permit the creditor or creditor’s agent to enter the premises”.

In *clause 43*, after *new section 83M(3)* (page 67, after line 37), insert:

“(4) This section applies whether the right to enter premises is exercised—
“(a) for the purpose of repossessing consumer goods; or
“(b) for any other purpose in connection with consumer goods.

In *clause 43*, replace *new section 83Q(2)(b)* (page 70, lines 11 and 12) with:

“(b) after the consumer goods are repossessed, the debtor or the debtor’s agent gives the creditor a written notice that requires the creditor to offer the goods for sale within the 15 days referred to in **subsection (1)**; or

In *clause 43*, *new section 83S(2)(a)*, replace “the enforcement” (page 71, line 8) with “any enforcement”.

In *clause 43*, *new section 83S(3)(b)*, replace “disregarded” (page 71, line 23) with “excluded”.

In *clause 43*, *new section 83T(2)*, replace “place” (page 72, line 3) with “the place”.

In *clause 43*, after *new section 83Z(3)* (page 76, after line 24), insert:

“(4) Nothing in **section 83G** limits the creditor’s duty to comply with this section.

In *clause 43*, *new section 83ZA(2)*, replace “security interests that are subordinate to the security interest of the creditor selling the consumer goods” (page 76, lines 36 and 37), with “any security interests referred to in **subsection (1)**”.

In *clause 43*, *new section 83ZB(a)*, delete “in the consumer goods and their proceeds” (page 77, lines 14 and 15).

In *clause 43*, *new section 83ZB*, insert as *new subsection (2)* (page 77, after line 18):

“(2) In **subsection (1)**, **proceeds** has the same meaning as in section 16 of the Personal Property Securities Act 1999.

In *clause 43*, *new section 83ZC(1)(b)*, delete “and expenses” (page 77, line 28).

Clause 46

In *clause 46(2)*, replace *new section 88(1A)* (page 83, lines 8 to 13) with:

“(1A) The debtor under a credit contract is entitled to recover from—

“(a) the creditor under the contract the amount of the statutory damages set out in section 89 if the creditor or the creditor’s agent breaches, in connection with the contract, any of the provisions of **Part 3A**; and

“(b) the creditor’s agent the amount of the statutory damages set out in section 89 if the creditor’s agent breaches, in connection with the contract, any of the provisions of **Part 3A**.

“(1B) However, if a creditor’s agent breaches, in connection with a contract, any of the provisions of **Part 3A**, the debtor is not entitled, under **subsection (1A)**, to recover the amount of statutory damages from—

“(a) the creditor’s agent if the debtor has already recovered that amount from the creditor:

“(b) the creditor if the debtor has already recovered that amount from the creditor’s agent.”

Clause 47

After *clause 47(1)* (page 83, after line 22), insert:

(1A) In section 89(3), replace “\$100” with “\$200” in each place.

Clause 48

In *clause 48(3)*, *new section 90(3)*, replace “contravention” (page 83, line 31) with “breach”.

Clause 55

In *clause 55*, *new section 99B(1)(a)*, after “a credit contract” (page 88, line 12), insert “to which the creditor is a party”.

In *clause 55*, *new section 99B(1)(b)*, after “borrowing” (page 88, line 21), insert “under such a contract”.

Clause 58

In *clause 58*, replace *new section 102A(1)(b)* (page 91, lines 17 to 22) with:

“(b) the creditor, lessor, or transferee breaches the disclosure section by failing to give or send to the debtor, guarantor, lessee, or occupier a copy of the relevant terms within the time for giving or sending the copy of those terms that is specified in that section.

In *clause 58*, *new section 102A(5)(a)*, replace “provided” (page 91, line 36) with “served”.

In *clause 58*, *new section 102A(7)*, replace “give or send a repossession warning notice to” (page 92, line 9) with “serve a repossession warning notice on”.

In *clause 58*, replace *new section 102A(11)* (page 92, lines 23 and 24) with:

“(11) In this section,—

“**disclosure section** means any of sections 17, 18, 25, 64, 70, and 72

“**relevant terms** means, in relation to—

“(a) section 17, the terms of the contract referred to in section 17(2):

“(b) section 25, the terms of the guarantee referred to in section 25(1)(a):

“(c) section 64, the terms of the lease referred to in section 64(2):

“(d) section 70, the terms of the credit-related insurance, repayment waiver, or extended warranty referred to in section 70(1) or (2) (as the case may be):

“(e) section 72, the terms of the buy-back transaction referred to in section 72(2).

Clause 60

In *clause 60(1)*, *new section 108(1)(a)(v)*, replace “:” (page 96, line 27) with “; or”.

Clause 61

In *clause 61(1)*, after *new section 111(2)(ab)* (page 97, after line 35), insert:

“(ac) issue infringement notices for infringement offences;
and”.

Clause 63

In *clause 63*, *new section 124*, insert as *new subsection (2)* (page 100, after line 16):

“(2) If a guarantee is treated as forming part of the credit contract under section 119(1), the references to the debtor in **subsection (1)(d), (e), (f), (h), and (k)** must, in relation to the guarantee, be treated as including the guarantor.”

New clause 63A

After *clause 63* (page 100, after line 25), insert:

63A Section 134 amended (Right to set-off)

In section 134(1), after “93”, insert “or **94A**”.

Subpart 2 of Part 1 heading

In *Part 1*, delete the *subpart 2* heading (page 105, lines 1 and 2).

Subpart 1 of Part 2 heading

In *Part 2*, delete the *subpart 1* heading (page 105, lines 10 to 12).

Clause 74

In *clause 74(3)*, after “**affiliated entity**” (page 106, line 13), insert “, **reserve scheme**”.

Clause 80

In *clause 80*, replace the heading to *new section 15A* (page 108, line 20) with “**FMA may prevent registration of financial service provider**”.

Clause 81

In *clause 81(2)*, *new section 16(1)(ab)*, replace “5 working days” (page 110, lines 6 and 7) with “10 working days”.

Clause 82

In *clause 82(2)*, *new section 17(1)(c)(i)*, replace “**63(ba)**” (page 110, line 37) with “**63(1)(ba)**”.

In *clause 82(4)*, replace “10 days” (page 111, line 14) with “10 working days”.

New clause 86A

After *clause 86* (page 114, after line 24), insert:

86A Section 31 amended (Searches of register)

In section 31, replace “27(a)” with “27(1)(a)”.

Clause 88

After *clause 88(3)* (page 115, after line 19), insert:

- (4) After section 37(9)(c), insert:
 - “(ca) is ordinarily resident in New Zealand; or
 - “(cb) has a place of business in New Zealand; or
 - “(cc) is in the business of providing a financial service; or”.

Clause 94

In *clause 94*, new section 52(1)(da), replace “approved schemes” (page 117, line 1) with “approved dispute resolution schemes”.

Clause 95

In *clause 95*, after the heading (page 117, after line 3), insert as *subclauses (1) and (2)*:

- (1) After section 56(1)(b), insert:
 - “(ba) the rules about the scheme do not, or no longer, comply with the requirements of section 63.”
- (2) In section 56(1)(e)(iii), replace “63(q)” with “63(1)(q)”.

In *clause 95*, replace *new section 56(3A)(b)* (page 117, lines 13 to 16) with:

- “(b) informed the Minister of adequate arrangements that it has made, or will make, to facilitate the transfer of members of the existing scheme to another approved dispute resolution scheme or schemes.”

Clause 96

Delete *clause 96(1)* (page 117, lines 19 to 22).

In *clause 96(2)*, replace *new section 57(4)* (page 117, line 24 to page 118, line 7) with:

- “(4) The Minister’s notice may also require the person responsible for the scheme to do 1 or more of the following:
 - “(a) notify members of the scheme of adequate arrangements that have been, or will be, made to facilitate the transfer of members of the scheme to another approved dispute resolution scheme or schemes:
 - “(b) make clear to those members that those members may—
 - “(i) apply to join another approved dispute resolution scheme or schemes in accordance with those arrangements; or
 - “(ii) apply to join any other approved dispute resolution scheme:
 - “(c) remind each of its members of the member’s obligation—
 - “(i) to continue to be a member of an approved dispute resolution scheme, as required by section 48; and

- “(ii) to notify the Registrar that the member has transferred to another approved dispute resolution scheme, and details of that scheme, as required by section 17.”

Subpart 2 of Part 2 heading

In *Part 2*, delete the *subpart 2* heading (page 123, lines 21 and 22).

New clause 109

After *clause 108* (page 123, after line 25), insert:

109 Consequential revocations

The following are revoked:

- (a) Financial Service Providers (Appointment of Reserve Scheme) Order 2010 (SR 2010/251):
- (b) Financial Service Providers (Dispute Resolution—Reserve Scheme Fees) Rules 2010 (SR 2010/397):
- (c) Financial Service Providers (Dispute Resolution—Reserve Scheme) Rules 2010 (SR 2010/250).

Schedule 1

In *Schedule 1*, new *Schedule IAA*, *clause 1*, replace the definition of **2013 Act** (page 124, lines 9 and 10) with:

2013 Act means **Part 1 and Schedules 1 to 3 of the Credit Contracts and Financial Services Law Reform Act 2013**

In *Schedule 1*, new *Schedule IAA*, *clause 2(1)*, replace “**subclause (2)**” (page 124, line 29) with “**subclauses (2) and (3)**”.

In *Schedule 1*, new *Schedule IAA*, *clause 2(2)(a)*, replace “**sections 17 and 40**” (page 125, lines 3 and 4) with “**section 17**”.

In *Schedule 1*, new *Schedule IAA*, *clause 2(2)(a)*, replace “those sections” (page 125, line 6) with “that section”.

In *Schedule 1*, new *Schedule IAA*, replace *clause 2(2)(e)* (page 125, lines 28 to 32) with:

- (e) the lender responsibility principles (*see* **section 9B(2)** of the principal Act, as inserted by **section 9** of the **2013 Act**) apply only to the following:
 - (i) a variation of a contract where the variation takes effect on or after the commencement of **section 9** of the **2013 Act**:
 - (ii) an application under section 55 of the principal Act made on or after the commencement of **section 9** of the **2013 Act**.

In *Schedule 1*, new *Schedule IAA*, after *clause 2(2)* (page 125, after line 35), insert:

- (3) If a provision of the principal Act as amended or inserted by the **2013 Act** applies in relation to an existing agreement under **subclause (2)**, sections 93 and 96 of the principal Act (as

amended by **sections 49 and 53** of the **2013** Act) apply to a breach of that provision in relation to the existing agreement if the breach occurs on or after the commencement of this clause.

Schedule 2

In *Schedule 2, new Schedule 3A, new paragraph (d)(i)*, replace “given to” (page 127, line 30) with “served on”.

In *Schedule 2, new Schedule 3A, new paragraph (e)*, replace “given to” (page 128, line 2) with “served on”.

In *Schedule 2, new Schedule 3A, new paragraph (k)(i)(D)*, replace “given to” (page 128, line 36) with “served on”.

In *Schedule 2, new Schedule 3B, after new paragraph (e)* (page 130, after line 11), insert:

- (ea) a statement of what it means to reinstate the credit contract or to settle the credit contract (including a brief description of the consequences of reinstating or settling the credit contract):

Schedule 3

In *Schedule 3*, replace the item relating to the Income Tax Act 2007 (page 134, lines 14 to 17), with:

Income Tax Act 2007 (2007 No 97)

In section FA 15(4)(a), replace “costs and expenses referred to in section 31(2)(c) and (d) of the Credit (Repossession) Act 1997” with “costs referred to in **section 83Y(2)(a) and (b)** of the Credit Contracts and Consumer Finance Act 2003”.

In *Schedule 3*, item relating to the Insolvency Act 2006, after the item relating to section 129 (page 134, after line 24), insert:

In section 130(2), replace “postpossession” with “post-repossession”.

In *Schedule 3*, item relating to the Private Security Personnel and Private Investigators Act 2010, before the item relating to *new section 8A* (page 136, before line 12), insert:

In section 5(4)(b), after “destruction agent,”, insert “repossession agent,”.

In *Schedule 3*, item relating to the Private Security Personnel and Private Investigators Act 2010, after the item relating to *new section 45(1A)* (page 137, after line 5), insert:

In section 53(1)(a), after “14,”, insert “**16A**,”.

Replace section 55(b) with:

- “(b) in the case of a crowd controller employee or a repossession employee, as a responsible employee of any person.”

In section 60(2)(a), after “14,”, insert “**16A**,”.

In *Schedule 3*, item relating to *new section 126A* of the Private Security Personnel and Private Investigators Act 2010, replace the heading (page 138, lines 11 and 12) with “**Transitional provisions relating to repossession agents and repossession employees**”.

In *Schedule 3*, item relating to *new section 126A* of the Private Security Personnel and Private Investigators Act 2010, after *new section 126A(3)* (page 138, after line 22), insert:

- “(4) In the case of an applicant for a licence as a repossession agent, section 62(j) must be applied as if the ground for disqualification is that the individual has not, within the preceding 5 years, had 12 months’ relevant experience—
- “(a) of carrying on a business of repossessing consumer goods on behalf of a creditor (whether that business is carried on by himself or herself or in partnership with any other person); or
- “(b) of repossessing consumer goods in the course of his or her employment, or engagement as a contractor, by a person who carries on a business referred to in **paragraph (a)** or by a creditor.
- “(5) **Subsection (4)** also applies for the purposes of section 63(1)(f) (as well as section 62(j)).
- “(6) **Subsections (4) and (5)** do not apply to applications for licences made after the date that is 5 years after the date on which this section comes into force.”

Explanatory note

This Supplementary Order Paper amends the Credit Contracts and Financial Services Law Reform Bill. The amendments include—

- amending *clause 2* to provide for consequential amendments to the Personal Property Securities Act 1999 and the Fair Trading Act 1986 (in *Schedule 3*) to come into force, respectively, on the day after the Bill receives the Royal assent and 17 June 2014;
- removing unnecessary subpart headings to facilitate the division of the Bill into 2 Bills;
- providing for collateral security agreements, repayment waivers, and extended warranties to be treated as agreements for the purposes of the lender responsibility principles in *new Part 1A (new section 9A(3) and (4))* of the Credit Contracts and Consumer Finance Act 2003 (the **Act**). This will allow, for example, the principles to extend to a mortgage or other security interest that is taken in connection with the credit contract;
- making various amendments to section 16 of the Act to clarify, for example, that if a lease is treated as a consumer credit contract, the lessor must be treated as a creditor and the lessee must be treated as a debtor

(*clause 12B*). In addition, *new section 16(4)* expressly clarifies that such a lease is a credit contract for the purposes of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **FSP Act**):

- amending the changes to request disclosure (*clauses 17 and 40*) to ensure that a request for a copy of a lender's standard form contract terms is complied with under *new section 9H(4)* (which provides for immediate compliance):
- amending *new section 26A* in *clause 19* (which requires disclosure of the transfer of a creditor's rights under a consumer credit contract). The amendment requires the disclosure to include the name and contact details of the dispute resolution scheme of which the new creditor is a member:
- amending *new section 45(6)* (in *clause 27*), which relates to when a creditor must not charge a commission in connection with credit-related insurance. *New section 45(6)(c)* prevents a commission being charged if the insurance is financed under the credit contract. The amendment adds a requirement that the creditor has breached *new section 9B(3B)* (which relates to the lender responsibility principles that require the creditor to make reasonable inquiries and to assist the debtor to make an informed decision):
- making various changes to *new Part 3A* (relating to repossession), including—
 - clarifying that the Part applies to a guarantor who has given a security interest over consumer goods to secure the guarantor's obligations under a guarantee that was given in respect of a credit contract (*new section 83AB(2A)*):
 - clarify that some of the protections extend to situations where a creditor or a creditor's agent enters premises other than for the purpose of repossessing the consumer goods. This includes the duty to act in accordance with the lender responsibility principles (*new section 83K*) and the prohibition on entering residential premises at certain times (*new section 83M*). This is consistent with the application of the Credit (Repossession) Act 1997:
 - amending various provisions to refer consistently to the service of notices rather than the giving of notices:
 - amending *new section 83G* (which relates to the effect of complaints on the creditor's enforcement rights) to clarify how the provision works where the creditor or creditor's agent has already commenced an enforcement action before the complaint is made:
 - amending *new section 83HI* (prohibition against the connection or use of a disabling device in connection with certain goods) to ensure that the prohibition extends to consumer goods that are prescribed for the purposes of *new section 83ZGA(1)(c)*:
 - amending *new section 83I* (which prevents creditors and creditors' agents from holding keys or other devices that enable access to

- consumer goods) to clarify that the provision does not prevent a creditor's agent from holding the agent's ordinary tools of the trade:
- amending *new section 83Q(2)(b)* to clarify how a debtor may require a creditor to offer consumer goods for sale within 15 days of the service of the post-repossession notice:
 - amending *new section 83ZB* (which extinguishes various security interests in the consumer goods and their proceeds) to clarify that the term proceeds has the same meaning as in the Personal Property Securities Act 1999:
- amending *clause 46* to clarify when a debtor can obtain statutory damages from a creditor or a creditor's agent for breaches of *new Part 3A*:
 - amending *clause 47* to increase the minimum amount of statutory damages under section 89 of the Act from \$100 to \$200 (for consistency with increases made in *clause 47(1AB)*, which doubled certain amounts of statutory damages from \$3,000 to \$6,000):
 - amending *new section 102A* of the Act (which relates to infringement offences) in *clause 58* to clarify that an infringement offence includes a failure to give or send to the debtor, guarantor, lessee, or occupier a copy of the terms of the relevant credit contract, guarantee, lease, buy-back transaction, credit-related insurance, repayment waiver, or extended warranty (as the case may be) in accordance with a disclosure section:
 - amending *clause 61* to ensure that the Commerce Commission's functions expressly include issuing infringement notices:
 - amending *clause 63 (new section 124)*, which sets out guidelines for re-opening credit contracts. The amendment clarifies how the provision applies in relation to a guarantor when a guarantee is treated as being part of the credit contract for the purposes of the oppression provisions in Part 5:
 - amending *clause 81*, which amends section 16 of the FSP Act. The amendment increases the time within which a financial service provider must notify the Registrar of the details of its dispute resolution scheme (from 5 working days after receiving notification of registration under the FSP Act to 10 working days):
 - amending *clause 95* to ensure that the Minister may withdraw the approval of an approved dispute resolution scheme under section 56 of the FSP Act if the rules about the scheme do not, or no longer, comply with the requirements of section 63:
 - amending *clauses 95 and 96* to clarify the process of withdrawing the approval of a scheme and to provide for arrangements to facilitate the transfer of members:
 - consequentially revoking various orders and rules to take into account the removal of the reserve scheme provisions in the FSP Act:
 - amending the transitional provisions in *Schedule 1* to confirm that the lender responsibility principles apply to hardship applications (under existing credit contracts) that are made after commencement of *new Part 1A*. In addition, the transitional provisions clarify that sections 93 and 96

of the Act (court orders and injunctions), as amended by this Bill, apply to an existing agreement where an amended or inserted provision applies to the existing agreement:

- amending the post-repossession notice in *new Schedule 3B* to require the notice to explain what it means to reinstate or settle the credit contract:
- amending the transitional provisions for the amendments to the Private Security Personnel and Private Investigators Act 2010 in *Schedule 3*. The amendments facilitate the granting of licences to repossession agents by clarifying the requirements of that Act relating to the previous experience of an applicant:
- making other minor or technical drafting changes.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.
