



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Moneylending

Review of the Consumer Protection Code for
Licensed Moneylenders

Consultation Paper CP 118

March 2018

Contents

Section 1: Introduction.....	3
Section 2: The licensed moneylender sector.....	4
2.1 Moneylending.....	4
2.2 Annual percentage rates and cost of credit.....	5
2.3 Regulatory framework for moneylenders.....	7
2.4 The licensed moneylender sector in Ireland.....	9
Section 3: Summary of proposals.....	13
Section 4: Responsible lending and acting in the best interests of consumers.....	15
4.1 Prohibiting targeted advertising.....	16
4.2 Prohibiting unsolicited contact on foot of referrals from consumers.....	16
4.3 Prohibiting unsolicited contact for the purposes of sales and marketing.....	17
4.4 Removing the exception to the unsolicited contact rules for non-cash credit.....	18
4.5 Preventing catalogue firms providing discounts predicated on availing of credit..	19
Section 5: Consumers availing of credit from a moneylender on a more informed and considered basis.....	19
5.1 Enhancing the existing high-cost credit warning statement.....	19
5.2 Requiring moneylenders to prompt consumers to consider alternatives.....	21
5.3 Heightened protection for consumers using moneylending loans to pay for immediate basic needs.....	22
5.4 Aggregate information to consumers with more than one moneylending loan....	24
Section 6: Reducing the possibility of consumers over-extending themselves in respect of their borrowing from licensed moneylenders.....	26
Section 7: Enhancing the professionalism of the sector.....	31
7.1 Training of staff and agents.....	32
7.2 Lending policies and procedures.....	32
7.3 Engagement with third parties acting on behalf of borrowers.....	34
7.4 Repayment books and collections.....	35
Section 8: Additional enhancements to the Moneylenders Code of Conduct.....	36

8.1 Applying relevant requirements under the 2010 Regulations to loan amounts below €200.....	36
8.2 Specific protection for vulnerable consumers.....	37
8.3 Strengthened requirements for communicating with consumers.....	37
8.3.1 Earlier signposting of MABS for consumers in arrears.....	38
8.3.2 Alignment with wording of provisions in CPC 2012.....	38
Section 9: Your views.....	40
Section 10: Making your submission.....	40
Appendix: Draft Moneylending Regulations	42

Section 1: Introduction

The Consumer Credit Act 1995 (the 1995 Act) introduced a specific regulatory regime for moneylending (as defined in the 1995 Act), reflecting the particular features of this sector and, in particular, the high cost nature of this form of credit. The responsibility for regulating the moneylending sector in accordance with the requirements of the 1995 Act was transferred to the Central Bank of Ireland (the Central Bank) in 2003 from the Office of the Director of Consumer Affairs. Since taking on this function, the Central Bank has introduced a robust licensing regime, targeted supervisory intervention and regulatory requirements over and above the protections provided in the 1995 Act. These additional protections are set out in the Consumer Protection Code for Licensed Moneylenders (the [ML Code](#)).

While a strong framework of protection already exists for those consumers who choose to avail of the services of a licensed moneylender, the purpose of this Consultation Paper is to propose a number of additional consumer protection measures to the ML Code in order to further enhance this framework, while at the same time, recognising the specific nature of the moneylending sector.

The proposed measures have been informed by the Central Bank's insights into the moneylending sector gained from our supervisory and annual licensing engagements with the sector, the Central Bank's 2013 [Report on the Licensed Moneylending Industry](#) (the ML Report) and our analysis of approaches adopted by legislative and regulatory bodies in other jurisdictions.

The proposed measures include a specific debt servicing ratio restriction for moneylending loans in order to reduce the possibility of consumers over-extending themselves and, in turn, pre-empt and subsequently prevent over-indebtedness.

The proposed measures are aimed at:

1. Further ensuring that moneylenders adopt and implement a culture of responsible lending and act in the best interests of their consumers.
2. Helping consumers availing of credit from a moneylender to do so on a more informed and considered basis.
3. Reducing the possibility of consumers over-extending themselves in respect of the proportion of their income required to service repayments on borrowing from licensed moneylenders.
4. Enhancing the professionalism of the sector.
5. Bringing requirements in line with other sectors regulated by the Central Bank.

In developing these additional measures, the Central Bank is mindful of the potentially vulnerable consumer base who typically engage with moneylenders and the high-cost nature of moneylending loans.

A number of questions are included throughout this Consultation Paper in relation to the proposed measures. We welcome views from interested parties on any, or all, of these individual questions.

Section 2: The licensed moneylending sector

2.1 Moneylending

Under the 1995 Act, “moneylending” is defined as the practice of providing credit to consumers on foot of a “moneylending agreement”¹. Credit under a moneylending agreement will usually take the form of a cash loan but may also involve the provision of goods on credit

¹ As defined in the 1995 Act, a “moneylending agreement” means “a credit agreement into which a moneylender enters, or offers to enter, with a consumer in which one or more of the following apply:
(a) the agreement was concluded away from the business premises of the moneylender or the business premises of the supplier of goods or services under the agreement,
(b) any negotiations for, or in relation to the credit were conducted at a place other than the business premises of the moneylender or the business premises of the supplier of goods or services under the agreement,
(c) repayments under the agreement will, or may, be paid by the consumer to the moneylender or his representative at any place other than the business premises of the moneylender or the business premises of the supplier of goods or services under the agreement, or
(d) where the total cost of credit to the consumer under the agreement is in excess of an APR of 23 per cent, or such other rate as may be prescribed”.

or the purchase of vouchers.

The business models operated by licensed moneylenders generally fall within the following categories, with some firms operating in more than one category:

1. Home collection firms where loans are issued and repayments are collected at the consumer's home (the majority of moneylenders fall into this category);
2. Firms operating a catalogue business model, where goods are sold by the moneylender on credit, which are operated on the basis of a consumer having a running account²;
3. Other firms comprising:
 - premium finance firms where credit is provided to consumers to fund insurance premiums, gym membership etc. which are operated on the basis of a consumer having a running account;
 - remote firms where repayments are made directly to the firm, e.g., by direct debit;
 - retail firms involved in the provision of goods on credit with repayments being made by a variety of methods, e.g., cash, direct debit; and
 - firms authorised to collect on moneylending agreements previously entered into, but not to grant further credit.

Most moneylenders do not engage in any commercial activities other than moneylending, but a small number are involved in other commercial activities including, for example, the sale and/or rental of clothing, electrical goods and furniture.

2.2 Annual percentage rates and cost of credit

While the purpose of this Consultation Paper is to seek views on the Central Bank's proposals regarding its review of the ML Code, any discussion in relation to the rules under which

² As defined in the 1995 Act, "running account" means "a facility under a credit agreement whereby the consumer is enabled to receive, from time to time, from the creditor or a third party, cash, goods or services to an amount or value such that, taking into account payments made by or to the credit of the consumer, the credit limit (if any) is not at any time exceeded".

licensed moneylenders operate invariably raises the question of the annual percentage rates (APR) charged by moneylenders.

In addition to the actual cost of credit, the APR is heavily influenced by the term of the loan as well as any collection charge included. The APRs currently being charged by moneylenders range from 0%³ to 188.45%⁴ (excluding collection charges) and up to 287.72%⁵ when including collection charges. The interest rates charged by moneylenders can therefore be very high when compared to other forms of credit, especially when the rate is presented as an APR. The commercial justifications offered by moneylenders for the APRs/costs of credit charged by them have generally included:

- the fixed costs associated with all loans (e.g., administration, office premises, cost of collection, etc.);
- the higher risk of default rates within the sector; and
- the inability of the moneylender to add additional charges on default.

All moneylending licences issued by the Central Bank include a restriction that moneylenders may only enter into moneylending agreements with consumers, subject to the term(s), APR(s) and cost(s) of credit as set out in the appendix to their individual licence. In addition, under the 1995 Act, the total amount repayable by a customer is limited to the amount specified in the moneylending agreement⁶.

The Central Bank's statutory role in respect of the licensing of a moneylender is to assess each individual application, which includes an assessment of whether or not (in the context of that application) the cost of credit to be charged is excessive or any of the terms or conditions are unfair. The 1995 Act provides that the Central Bank can refuse to grant a licence to a moneylender if it is of the opinion that the cost of credit to be charged is excessive. Since assuming responsibility for the regulation of this sector in 2003, the Central Bank has not

³ Some moneylenders offer interest free periods and are licensed to provide moneylending loans at 0% APR during this period. These moneylending agreements typically relate to goods provided on credit.

⁴ This APR of 188.45% relates to a loan with a cost of credit of €30 for every €100 borrowed over a 20-week term.

⁵ This APR of 287.72% relates to a loan with a cost of credit of €30 for every €100 borrowed over a 20-week term.

⁶ Section 112 of the 1995 Act provides that "A moneylending agreement shall be unenforceable against the borrower if it provides that the rate of charge for the credit may be increased or that any additional charge, other than legal costs, may apply in the event of a default in the payments due under the agreement".

permitted any increase to the maximum APR charged within the sector. The APRs charged have remained largely unchanged since 2003⁷. In addition, the Central Bank, through the licensing regime, has not permitted practices such as pay-day moneylending⁸, where APRs charged are typically much higher (up to 1,500% APR in the UK), to enter the Irish moneylender market and we will continue to maintain this policy position.

There has been some public discussion about introducing a legislative industry-wide cap on the rates moneylenders can charge. One of the challenges in considering rates charged by moneylenders is finding a balance between the availability of credit for consumers who do not have access to legitimate credit elsewhere, or who do not use other regulated credit providers, and the provision of short-term unsecured loans at what can be a high cost. By not permitting any increase to the maximum APR charged within the sector, the Central Bank has effectively capped the cost of credit in this sector. In addition, for small amounts of credit and for those consumers with an impaired credit history, there may be limited alternative credit options available to them. Based on the ML Report, which provided the Central Bank with an updated overview of the sector since the earlier 2007 report, 23% of customers surveyed reported having been refused a credit union or bank loan. Lower interest rate ceilings could therefore be ineffective and counterproductive and could result in excluding low income households that have repayment capacity from regulated lending, even at the high APRs charged by licensed moneylenders. Consequently, were lower interest rate ceilings introduced, there could be a risk that consumers would not view other regulated lenders as an alternative form of finance, but instead seek to avail of credit from unlicensed moneylenders.

2.3 Regulatory framework for moneylenders

As well as the requirements set out in the ML Code, moneylenders in Ireland are required to comply with a number of requirements under the 1995 Act, including:

⁷ It is worth noting that the average interest rates and APRs for household loans for consumer purposes with a floating (variable) interest rate up to one year fixation with credit institutions have increased since 2003, from 5.79% interest / 6.86% APR in January 2003 to 8.03% interest / 7.57% APR in 2017 – see [here](#).

⁸ “Pay-day” lenders typically offer very short term loans to tide borrowers over until their next pay-day. The advertised representative APRs associated with these loans in the UK can be as high as 1,200 and 1,500%.

- an annual licence renewal process (a moneylending licence sets out key information about the firm such as its maximum permitted APR and cost of credit, its terms and conditions and any restrictions that have been applied to the firm's business model). A moneylender's licence is valid for a 12 month period and must be renewed annually prior to expiry;
- requirements relating to the content of moneylending agreements and repayment books which include information relating to the APR, cost of credit and collection charges; and
- requirements regarding matters that arise during the lifetime of the moneylending agreement, such as:
 - a prohibition on applying additional charges on default, meaning that a consumer can never be asked to pay more than the "total amount payable" as stated on the moneylending agreement⁹;
 - specified collection times;
 - a prohibition on reducing the amount of a new loan for the purpose of repaying an existing loan;
 - a prohibition on selling goods or offering goods for sale while making a cash advancement to consumers; and
 - a prohibition on applying additional charges (other than a collection charge) to moneylending agreements (i.e., no separate costs, charges or expenses incidental to or relating to the negotiations for, or the granting of, the loan may be applied as an additional charge).

As well as the 1995 Act and the requirements set out in the ML Code, moneylenders must comply with the European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010) (the 2010 Regulations). The 2010 Regulations include requirements dealing with disclosure of information to the consumer, the right of withdrawal from a moneylending agreement, the right to repay a loan early, the right to a reduction in the total cost of credit in the event of early repayment and the moneylender's obligation to assess creditworthiness. As a result of the introduction of the 2010 Regulations, certain provisions

⁹ The only exception being the awarding of legal costs by a Court of law.

of the ML Code, including General Principles 5 and 6¹⁰, were dis-applied in February 2011, due to the maximum harmonisation nature of the Consumer Credit Directive (Directive 2008/48/EC).

On an ongoing basis, the Central Bank monitors compliance with regulatory requirements through the initial and annual licensing processes, applying the fitness and probity regime, themed and firm-specific inspections or engagements, market intelligence monitoring, conducting consumer based research and monitoring industry trends including complaints made to the Financial Services and Pensions Ombudsman.

Given the high cost nature of loans provided by moneylenders and the potentially vulnerable consumer base, the Central Bank monitors this sector closely with a view to taking regulatory action, where required, to protect borrowers' interests. This has included taking action under the Central Bank's administrative sanctions regime, including for breaches of the ML Code¹¹.

2.4 The licensed moneylender sector in Ireland

In terms of the size of the moneylending sector in Ireland, there are currently 39 licensed moneylenders (down from 52 in 2003, when the Central Bank assumed responsibility for the regulation of the sector)¹².

Figure 1 below sets out the number of moneylenders licensed for each year from 2014 to 2017¹³ as well as the number of moneylenders operating within the different categories of business models in 2017¹⁴.

¹⁰ General Principles 5 and 6 provide that "A moneylender must ensure that in all its dealings with consumers and within the context of its licence, it:

5. seeks from its consumers information relevant to the product or service requested;

6. makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the consumer".

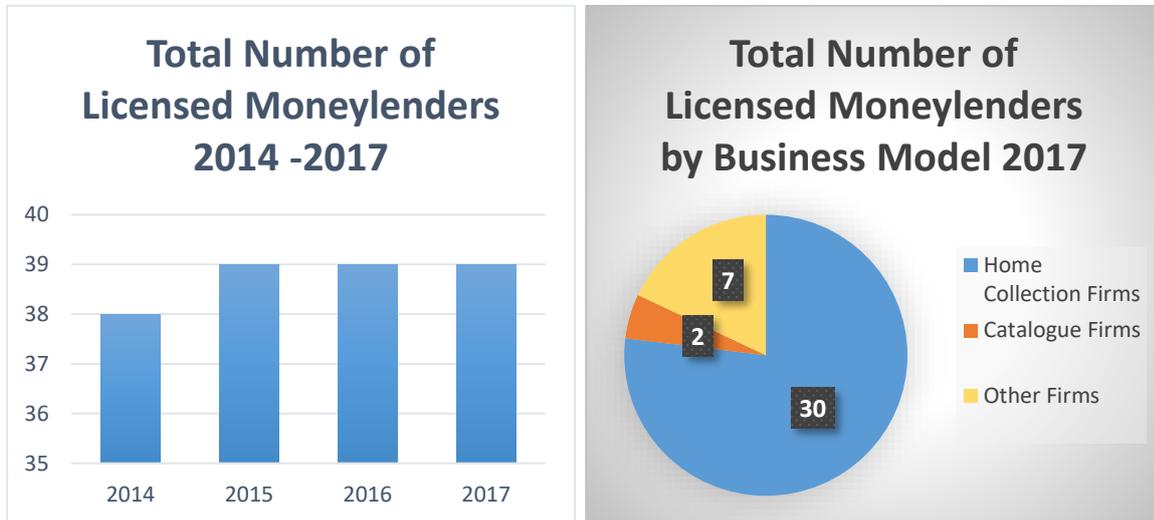
¹¹ For example, see the Central Bank's public statements on settlement agreements with moneylenders regarding breaches of regulatory requirements, including breaches of the ML Code, [here](#), [here](#) and [here](#).

¹² This figure reflects the number of firms licensed as at 31 December 2017.

¹³ Figures 1, 2 and 3 show data for this sector since the Central Bank published its ML Report.

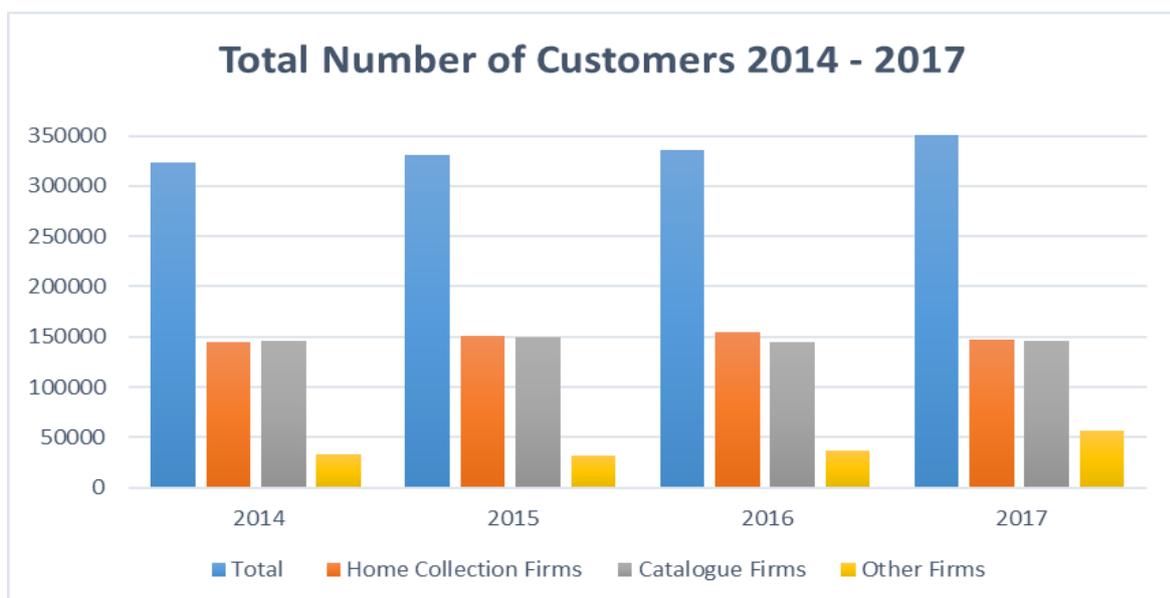
¹⁴ Where a firm operates in more than one category, it is only included once. Firms providing a home collection service are included in that category. Otherwise, firms are included within the category that represents their main business.

Figure 1



Moneylending firms range from those with in excess of 100,000 customers (two firms) to small firms with 100 to 1,000 customers¹⁵. Figure 2 below shows the total number of consumers for each year from 2014 to 2017.

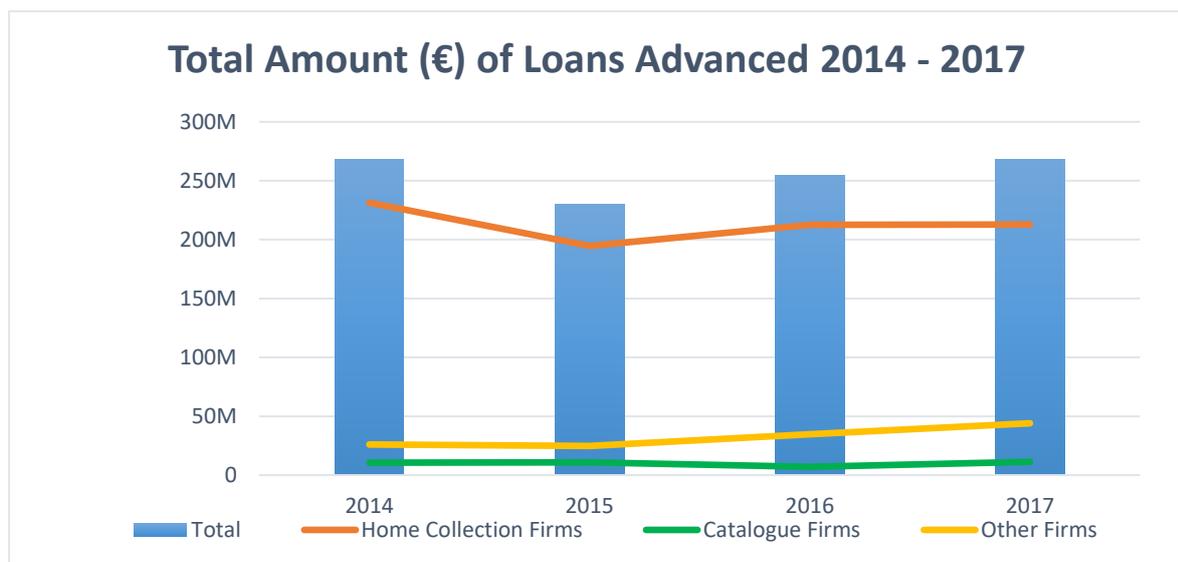
Figure 2



¹⁵ The 2017 figures are based on information provided by licensed moneylenders as part of their 2017 annual licence applications. The figures are based on point-in-time data and dependent on each firm's financial year-end, which in some cases relates to 2016 lending.

The four firms with the largest market share (based on number of consumers) account for approximately 88% of the moneylending market in Ireland. Together, home collection firms and catalogue firms account for approximately 84% of the market, both in terms of the number of consumers they provide credit to and the amount of credit advanced. In 2017, the total outstanding loan amounts within the sector were in the region of €153 million, compared to approximately €198 million in 2013. The total monetary amount of loans advanced in 2017 was approximately €268 million, compared to approximately €301 million in 2013¹⁶. Figure 3 below shows the total amount of loans advanced for each year from 2014 to 2017.

Figure 3



Based on the ML Report, the most common loan amounts advanced to consumers by moneylenders at that time were amounts between €200 and €500. The average loan offered by home collection firms who charge collection fees was €566¹⁷. For 2017, the average loan issued across the licensed moneylender sector was €445.

¹⁶ This figure is taken from the ML Report.

¹⁷ Based on the ML Report.

Based on data received as part of the 2017 annual licensing process, the terms of moneylending loans offered to consumers range between 10 weeks to 60 months. The most frequent term offered is approximately nine months¹⁸.

Our data suggests that some consumers who have access to alternative forms of credit choose to use moneylenders. Of the customers surveyed in 2013, 23% indicated that they had been refused credit elsewhere, with the majority citing ease of availability and convenience as reasons to use licensed moneylenders. This is despite the fact that nearly a third of customers surveyed were making mortgage repayments, the majority had some level of savings with another institution such as a bank/building society, credit union etc. and almost a third had borrowed from another credit provider – typically a bank/building society, credit union, etc. Our data also suggests that customers of moneylenders are more likely to be in the lower socio-economic group¹⁹.

Given the potential vulnerability of consumers dealing with moneylenders and the comparatively high cost associated with this form of credit, it is even more important that the rules with which moneylenders must comply are appropriate and robust. In the following sections of this Consultation Paper, we have summarised and outlined proposals designed to:

1. Further ensure that moneylenders adopt and implement a culture of responsible lending and act in the best interests of their consumers.
2. Help consumers availing of credit from a moneylender to do so on a more informed and considered basis.
3. Reduce the possibility of consumers over-extending themselves in respect of the proportion of their income required to service repayments on borrowing from licensed moneylenders.
4. Enhance the professionalism of the sector.
5. Bring requirements into line with other sectors regulated by the Central Bank.

In putting forward these proposals, the Central Bank is mindful that, for small amounts of credit, there are limited options available to some consumers, due, for example, to an

¹⁸ Based on the ML Report.

¹⁹ Based on the ML Report.

impaired credit rating. We believe that the proposals outlined in the following sections would preserve access to credit for consumers who choose to use licensed moneylenders, while at the same time, provide the appropriate level of protection for these consumers.

Section 3: Summary of proposals

The proposals outlined in this paper have been informed by the Central Bank's supervisory and annual licensing engagements with the sector and the ML Report. Within the scope of our specific regulatory role, we have also analysed the approaches adopted by legislative and regulatory bodies in other jurisdictions.

Based on this work, and having regard to the need for a strong framework of protections in order to ensure that the best interests of consumers of moneylending loans continue to be protected, the Central Bank is now proposing to introduce a number of additional consumer protection measures in the ML Code. The proposed enhancements can be summarised under the following headings:

(A) Responsible lending and acting in the best interests of consumers

1. Restricting the promotion of moneylending by targeted advertising or unsolicited contact.
2. Preventing catalogue firms providing discounts on goods predicated on availing of credit.

(B) Consumers availing of credit from a moneylender on a more informed and considered basis

3. Enhancing the existing information and advertising requirements for moneylenders to include a prominent warning for consumers about the high cost nature of the credit and for consumers to consider alternative options that may be available to them.
4. Requiring moneylenders to prompt consumers at relevant pre-contractual points (in addition to information and advertising requirements in 3 above) that they should consider alternatives before taking out a moneylending loan.

5. Providing heightened protection for consumers using moneylending loans to pay for immediate basic needs such as accommodation, food, electricity, heating, etc.
6. Requiring moneylenders to provide aggregate information to consumers if they propose seeking a second or subsequent moneylending loan to run concurrently with an existing loan, to assist the consumer in keeping track of their total repayment obligations.

(C) Reducing the possibility of consumers over-extending themselves in respect of their borrowing from licensed moneylenders

7. Putting in place a specific limit on how much of a consumer's income can be devoted to servicing repayments on high-cost moneylending agreements.

(D) Enhancing the professionalism of the sector

8. Enhancing the professionalism of the sector through:
 - a. Requiring training of staff and agents;
 - b. Requiring moneylenders to have in place, and adhere to, written lending policies and procedures; and
 - c. Placing a greater obligation on moneylenders to engage with third parties who are advising a borrower, such as the Money Advice and Budgeting Service (MABS).
9. Putting tighter rules in place around repayment books and record-keeping generally.

(E) Additional enhancements to the ML Code

10. Making additional enhancements to the ML Code to:
 - a. Apply relevant requirements under the 2010 Regulations to loan amounts below €200, thereby streamlining the requirements with which moneylenders must comply;
 - b. Introduce specific requirements regarding vulnerable consumers, as defined by the Consumer Protection Code 2012²⁰ (CPC 2012); and

²⁰ Under the Consumer Protection Code 2012, a "vulnerable consumer" is defined as a natural person who:

- c. Strengthen the requirements regarding the manner in which moneylenders communicate with consumers, bringing it into line with requirements in other sectors regulated by the Central Bank.

While the current ML Code is issued under Section 117 of the Central Bank Act 1989, the Central Bank intends to make Regulations under Section 48 of the Central Bank (Supervision and Enforcement) Act 2013 to both replace the existing ML Code and introduce the reforms proposed in this Consultation Paper. Draft Regulations to replace the ML Code are included in the Appendix attached and incorporate all of the proposed amendments to the existing requirements outlined in this Consultation Paper²¹.

Each of these areas are outlined in more detail in Sections 4-8 below, together with the specific questions on which we are seeking views from interested parties. The Central Bank requests that reasons are given for the responses to all questions answered and that submissions which put forward arguments for changes to the proposals set out in this Consultation Paper be supported, where possible, by evidence which will aid our consideration of the issues.

Section 4: Responsible lending and acting in the best interests of consumers

The Central Bank is of the view that there is scope to strengthen the existing protections for consumers to whom moneylending agreements are marketed. The Central Bank is proposing measures that are premised upon the principle that, given the high cost nature of a licensed moneylending loan, it should be the consumer who initiates a conversation about taking out a moneylending loan, as opposed to the moneylender.

a) has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impaired or visually impaired persons); and/or

b) has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties).

²¹ It should be noted that some changes to the wording of existing requirements is necessitated to take account of the fact that the revised requirements will be issued in the form of Regulations.

4.1 Prohibiting targeted advertising

The Central Bank is of the view that moneylenders should not use such targeted advertising as a means to encourage consumers into obtaining credit via a moneylending agreement where it may be unnecessary or not in the consumer's best interests. Consequently, we are proposing to prohibit moneylenders from engaging in any form of targeted advertising to consumers. Targeted advertising is where a potential consumer's name or personal details are included in an advertisement or the advertisement is tailored or delivered in such a manner that it targets consumers who have recently repaid or are near the final repayment on a loan, consumers with low incomes or consumers for whom, due to their circumstances, availing of credit from a moneylender is unlikely to be in their best interests.

Question 1:

Do you agree with our proposal to prohibit moneylenders from engaging in targeted advertising?

Question 2:

Do you have any views on our proposed definition for "targeted advertising" as set out in the draft Regulations?

4.2 Prohibiting unsolicited contact on foot of referrals from consumers

Under the current regulatory framework, moneylenders are permitted to make unsolicited contact with a new customer on foot of a referral from another consumer²². Such referrals are commonplace in the moneylending sector²³. Where a moneylender makes contact with a

²² This practice is currently permitted under Provision 17 of the ML Code. Provision 17 provides that unsolicited contact may only be made with a consumer other than an existing consumer if the consumer has signed a statement, within the previous 6 months, giving the moneylender permission to make the unsolicited contact, or the consumer is the subject of a referral from an existing consumer.

²³ The findings in the ML Report indicate that customers are likely to initially become aware of their moneylender through referrals from friends and family, with 50% of customers introduced in this manner. Eight per cent of customers were introduced on foot of seeing an advertisement and 11% on foot of receiving leaflets/catalogues in the post.

consumer on foot of a referral, the moneylender must inform the consumer of the referral and seek consent to proceed. The moneylender must retain a record of the referral.

The ML Code also sets out the times within which an unsolicited contact may be made and the specific procedure which the moneylender must adhere to when making such contact. Moneylenders must abide by a request from a consumer not to make a further unsolicited contact to him or her and cannot reach a binding agreement with a consumer on the basis of an unsolicited contact alone, except in circumstances permitted by the EU Distance Marketing Regulations.

The Central Bank is proposing to prohibit moneylenders from making unsolicited contact with a consumer on foot of a referral from another consumer. It does not seem necessary or appropriate to permit a situation where a consumer receives an unsolicited contact from a moneylender, which would otherwise not be permitted, simply on the basis that another moneylender customer has referred the moneylender to them. This proposal would not prevent a consumer from making a recommendation to another consumer to contact the moneylender. This proposal would also bring the ML Code more in line with the position for other regulated services under the CPC 2012, which does not permit unsolicited contact based on customer referral²⁴.

Question 3:

Do you see any reason why unsolicited contact with a new customer, on foot of a referral from an existing consumer, should not be prohibited?

4.3 Prohibiting unsolicited contact for the purposes of sales and marketing

Under the current ML Code, there is no specific restriction on a moneylender making unsolicited contact with an existing consumer (i.e., a consumer who has an outstanding loan

²⁴ Provision 3.41 of the CPC 2012.

with the moneylender) for the purpose of sales and marketing. From the perspective of responsible lending and the protection of consumers' best interests, it is difficult to see why an existing consumer, who already knows of a licensed moneylender and has transacted with that moneylender, should be contacted by the moneylender to take out a further loan. This is especially the case given the relatively straightforward nature of both the driver for a consumer to consider such a loan (i.e., the need to borrow money, typically on a short-term basis) and moneylending loans themselves. In addition, unsolicited contact of this nature could encourage consumers, some of whom may be of limited means, to borrow further in circumstances where that may not be in their best interests and where the loans have not been solicited by these consumers in the first instance.

The Central Bank proposes therefore to prohibit moneylenders from making unsolicited contact with an existing consumer for the purposes of sales or marketing.

Question 4:

Do you foresee any practical difficulties with our proposal to prohibit unsolicited contact with existing consumers for the purposes of sales and marketing?

4.4 Removing the exception to the unsolicited contact rules for non-cash credit

Provision 17 of the ML Code limits the circumstances in which moneylenders are permitted to make unsolicited contact with new consumers. However, these limitations do not apply where the moneylender is providing non-cash credit to a consumer. On the basis that all types of credit from moneylenders should be subject to the same unsolicited contact requirements, the Central Bank is proposing to remove this exemption for non-cash credit.

Question 5:

Do you have any views on the proposal to remove the existing exception from the unsolicited contact rules for moneylenders providing non-cash credit?

4.5 Preventing catalogue firms providing discounts predicated on availing of credit

For firms operating under the catalogue business model, the Central Bank is aware of promotions in the form of discounts on credit purchases being offered to consumers (e.g. offering a discount on a credit order by entering a promotional code at checkout by a prescribed date). It is difficult to see the purpose of such a practice, other than to incentivise consumers to purchase goods or services on credit rather than paying in cash and/or to use credit to make a purchase they were otherwise not contemplating. To address this issue, the Central Bank proposes to prohibit moneylenders from running promotions in the form of a discount on a purchase where the discount is only available where the goods or services are purchased on credit.

Question 6:

Do you agree with the proposal outlined above in relation to the additional rules specifically targeted at discounts which are predicated on availing of credit?

Question 7:

Do you have any views on what, if any, unintended consequences may arise in implementing this proposal?

Section 5 - Consumers availing of credit from a moneylender on a more informed and considered basis

5.1 Enhancing the existing high-cost credit warning statement

Under the current ML Code, a moneylender must, prior to entering into an agreement with a consumer, prominently indicate the high-cost nature of the loan on all loan documentation

where the APR is 23% or higher. The form of the disclosure is prescribed and the current warning must state “**Warning: This is a high-cost loan**”.

In a sector providing high-cost credit, the provision of relevant information at key points is critical to assisting moneylending consumers to consider their options. Central Bank research found that the majority of moneylending customers do not shop around and consider alternatives to moneylenders before securing their moneylending loan²⁵. It also found that those who do not understand their cost of credit are less likely to shop around than those who do understand their cost of credit. The overriding catalyst for borrowing from moneylenders is convenience (40% of respondents) and ease of availability (26% of respondents). In addition, there is a willingness by moneylending customers to pay a premium for what they perceive to be convenience and ease of access to credit. Interestingly, our research found that the majority of moneylending customers surveyed had some level of savings with another institution, such as a bank/building society or a credit union.

The Central Bank proposes to enhance the pre-contract warning statement already required under the ML Code to include a prompt to consumers that alternatives, including cheaper alternatives, may be available.

We are proposing the following enhanced warning:

Warning: This is high-cost credit. Consider alternative options before applying for this credit, including cheaper alternatives from other lenders regulated by the Central Bank of Ireland.

There is no existing requirement to include any such warning statement in advertisements. The Central Bank is therefore proposing to require that this enhanced warning statement is also included in all moneylending advertisements.

²⁵ Based on the ML Report.

Question 8:

Do you see any reason why the existing warning statement should not be enhanced in the manner set out above?

Question 9:

Do you agree that the enhanced warning statement should be included in all moneylending advertisements?

5.2 Requiring moneylenders to prompt consumers to consider alternatives

The ML Code already includes information requirements, such as the requirement to assist consumers in understanding the product provided and the requirement to indicate the high-cost nature of the loan on all loan documentation where the APR is 23% or higher. The Central Bank proposes to strengthen these requirements by requiring moneylenders to include and display an Information Notice at pre-contractual points. The Information Notice would provide consumers with information about alternative credit options, among other things. Moneylenders would be required to display or include the Information Notice on the home page of their website, at the beginning of a credit application form/process, and in a visible and prominent location in their business premises.

The Information Notice would:

- Warn consumers about the high-cost nature of the credit;
- Prompt consumers to consider alternatives;
- Signpost consumers to MABS; and
- Prompt consumers in receipt of social welfare payments to check that they are receiving their full benefits.

In providing consumers with this information, together with a warning statement that a moneylending loan is high-cost credit, the Information Notice would act as a prompt for

potentially vulnerable consumers to pause and consider their situation and options before seeking high-cost credit at that time and on future occasions.

Question 10:

Do you have any views on the proposal to require moneylenders to provide consumers with an Information Notice at pre-contract points?

Question 11:

Do you have any suggestions in relation to the format and content of the enhanced warning statement (referred to at Section 5.1 above) or the Information Notice to enhance the quality, relevance or impact of the information provided?

5.3 Heightened protection for consumers using moneylending loans to pay for immediate basic needs

Special considerations arise in circumstances where the purpose of a moneylending loan is to allow the consumer to meet his or her immediate basic needs (i.e., accommodation costs, food, electricity, heating, etc.), particularly given the high-cost nature of moneylending loans. Such special considerations include whether the consumer:

- needs specialist budgeting advice;
- could access emergency funding from another source (e.g., a charitable source); or
- could reach an arrangement with a third party service provider (such as a utility company) that would avoid the consumer borrowing money at such a high rate to meet their basic needs.

The issues concerned in such cases go beyond the remit of the Central Bank. However, they do require a licensed moneylender to exercise special care in considering whether to provide a loan to a consumer in such a case and, if so, on what terms.

Consequently, the Central Bank is proposing that moneylenders would be required to amend their credit application processes to ensure that where consumers are applying for credit to pay for accommodation, food, electricity, heating, etc., that they are made aware that supports may be available from other parties to assist them with these expenses without the need for credit. In addition to the proposal to require moneylenders to provide the Information Notice referred to at Section 5.2 above, which would require moneylenders to prompt consumers to consider alternatives at specified pre-contractual points, the Central Bank is also proposing to require moneylenders to include a specific question and specific information in their credit application form/process. This measure is aimed at ensuring that consumers are aware of the supports that may be available to them where they cannot afford to pay for accommodation, food, electricity, heating or other similar costs and that moneylenders make themselves available to facilitate contact between consumers and these supports. The following question and information is proposed:

Do you require this credit to pay for accommodation, food, electricity, heating or other similar costs?

- ✓ If you have answered yes to the above question, availing of credit from a moneylender may not be in your best interests. [Insert information about the debt counselling services of the Money Advice and Budgeting Service, the contact details for the Money Advice and Budgeting Service and information on any relevant charities which have notified the moneylender that they may be able to assist consumers through the provision of emergency funds or items to meet their immediate basic needs].
- ✓ If you wish, please ask us to put you in touch with the Money Advice and Budgeting Service and [insert names of the relevant charities referred to above which have notified the moneylender that they may be able to assist such consumers].
- ✓ If you would like to take time to consider your options prior to completing a credit application further, please do so. However, you can proceed with your credit application if you wish. If you choose not to proceed with your credit application today, you can contact us again should you wish to discuss future credit.

The Central Bank is proposing that this text must be highlighted in a manner which ensures that it is prominent and that moneylenders maintain a record, signed and dated by the consumer, of the fact that the moneylender has provided the consumer with the above information as part of its credit application form/process.

We are also proposing that the moneylender must include information about these requirements in its lending policies and procedures (referred to below at Section 7.2).

Question 12:

- A. Do you agree with these proposals?
- B. Do you foresee any practical difficulties arising from the implementation of these proposals?

Question 13:

What do you suggest be included within the concept of “immediate basic needs” to which these proposals would apply?

5.4 Aggregate information to consumers with more than one moneylending agreement

The Central Bank is particularly concerned about the practice of advancing additional credit to consumers who have not yet repaid an existing moneylending loan, potentially leading them into an increasing level of indebtedness. While recognising that individual circumstances may justify such further credit (and the special case of “running account” credit), the Central Bank has previously stated that it is important that staff and agents at all levels of a moneylender are fully informed of the potential negative effects that this may have on a consumer. To achieve this, moneylenders should aim to foster, embed and maintain a culture which promotes responsible lending practices that benefit consumers. As well as

carrying out the required creditworthiness assessment, and meeting the standards of the ML Code generally, a key aspect of such a culture is ensuring that the consumer is equipped to assess their financial situation and any other options that may be available to them.

In circumstances where a consumer seeks to avail of a second or subsequent loan prior to an earlier loan being repaid in full, the Central Bank is proposing that a moneylender shall not grant further credit to a consumer unless the moneylender has provided the consumer with the following consolidated information:

1. the total number of loans outstanding with the moneylender;
2. the total balance of loans, to include the principal and interest outstanding, with the moneylender;
3. the timeframe for the final loan repayment(s); and
4. the total repayment amount per week/month for all outstanding loans including the loan currently being considered, if granted.

As part of this communication, moneylenders would be required to make it clear to a consumer that the information provided relates to the consumer's moneylending agreements with that moneylender only, and does not include information in relation to any moneylending agreements with other moneylenders or with other providers of credit.

The moneylender would also be required to provide this information to a consumer, or a third party acting on his or her behalf, with his or her consent, at any stage on request and free of charge.

This measure is intended to assist consumers with more than one active moneylending agreement with the same moneylender to keep track of their total repayment obligations. Similar to the Information Notice requirement outlined at Section 5.2 above, this information would also provide consumers with the necessary information to make an informed decision as to the appropriateness of high-cost credit for their circumstances and needs. The information would also potentially prompt them to consider other lower cost options.

Question 14:

- A. Do you see any reason why the Central Bank should not prevent moneylenders from providing a second or further loan to a consumer unless the consumer is provided with the aggregate loan information set out above?
- B. Is there any other information that a moneylender should provide to the consumer at the same time?

Section 6 - Reducing the possibility of consumers over-extending themselves in respect of their borrowing from licensed moneylenders

Previous Central Bank research²⁶ found that:

- 25% of customers experienced difficulty meeting their moneylending loan repayments and, of these, 79% missed at least one repayment.
- Compared to the previous research report on this sector prepared in 2007, more moneylending customers in Ireland were holding longer-standing moneylending loan arrangements (of 5 years or more).
- 15% of customers were repaying two or more loans to their moneylender at the time of the research, with 1% having four or more loans outstanding.
- One in five consumers took out a new loan with their moneylender before another loan was paid off.

As part of its on-going regulatory oversight of the sector, the Central Bank has seen evidence of consumers with multiple moneylending loans encountering problems in repaying their loans. We have also seen some evidence of high proportions of consumers' income being devoted to paying off high cost moneylending agreements, i.e., high debt servicing ratios. Where loans have been written-off by moneylenders, the Central Bank has observed that, in certain cases, moneylenders had extended credit to consumers such that 30% or more of

²⁶ Based on the ML Report.

their weekly income was devoted to paying off the moneylending loan or loans with that moneylender. Within individual moneylenders, we have observed average debt servicing ratios ranging between 6% and 15%. We have also observed that the percentage of the consumers' income devoted to making repayments tended to increase as the monetary amount of the credit written-off by the moneylender increased. This would appear to indicate that there is a connection between the level of a consumer's income devoted to paying off moneylending loans and the likelihood that the loan would ultimately fall into arrears and be written-off by the firm.

On the basis of these observations, the Central Bank is proposing to introduce a specific debt servicing ratio restriction for moneylending loans. The Central Bank will be taking the above information, as well as further data being gathered on this topic and the outcome of planned consumer research to be conducted in 2018, into account in finalising its measures and setting the limit of the debt servicing ratio restriction. Based on the debt servicing ratios observed by us as outlined above and what we have learned from the Australian model as outlined below, it is likely that a debt servicing ratio restriction in the region of between 10% and 20% would be introduced. The restriction would be introduced with a view to reviewing, after an initial implementation period, the appropriateness of the level at which the debt servicing ratio restriction is set.

A specific debt servicing ratio restriction would introduce a limit on the monetary amount of repayments that a consumer could make to service a moneylending agreement or agreements, calculated as a percentage of their gross income (meaning the income²⁷ of a consumer before tax or other deductions). Such a restriction would reduce the possibility of consumers over-extending themselves in respect of their borrowing from licensed moneylenders by placing a clear limit on the amount of high-cost credit that can be extended to consumers.

A debt servicing ratio restriction of this nature was introduced by legislation in Australia in 2013. Lenders of small amount credit contracts (SACC)²⁸ in Australia must comply with a

²⁷ For the purposes of this Consultation Paper, income includes social welfare payments.

²⁸ Unsecured loans that have a credit limit of \$2,000 or less and a term between 16 days and one year.

“protected earnings amount” restriction for consumers who receive at least 50% of their income through government social security payments. For these consumers, SACC repayments are capped at 20% of the consumer’s gross income. This was introduced in Australia following an acknowledgment that repeat borrowing leads to a situation where repayments on high-cost credit consume an increasingly larger portion of a borrower’s income over time, leading to debt spirals. Following an independent review of the rules applying to SACC lenders in 2016, the Australian government has supported a recommendation that the protected earnings amount restriction should be extended to all consumers and lowered to 10% of their net income²⁹. The review panel considered these changes to the protected earnings amount provision would:

- assist with simplifying the responsible lending requirements³⁰;
- promote financial inclusion by ensuring that consumers do not enter into unaffordable small amount loans that absorb too large a proportion of their net income; and
- limit the possibility of a debt spiral occurring, where an increasing percentage of the consumer’s net income is used to meet repayments under each contract.

The introduction of such a measure in Ireland would apply to all moneylending consumers and not just those in receipt of social welfare payments, as is the case in Australia. We do not see any reason in principle to have lesser protections for consumers who are not in receipt of social welfare payments. We are also mindful to avoid a situation whereby moneylenders might seek to comply with the requirement by not extending credit to social welfare recipients. The relevant regulator in Australia, the Australian Securities and Investments Commission, reviewed the sector after the protected earnings amount requirements were introduced. This review found that lenders had responded to the protected earnings amount provision by:

- Ceasing to offer small amount loans to consumers who receive the majority of their income from the Australian social security service Centrelink³¹;

²⁹ See “Report 426 - Payday lenders and the new small amount lending provisions” [here](#).

³⁰ For information about the responsible lending requirements that apply to providers of Small Amount Credit Contracts in Australia, see [here](#) and [here](#).

³¹ Centrelink is part of the Department of Human Services in Australia, which delivers social security payments and services.

- Ensuring that none of their loans had repayments above the 20% cap regardless of their source of income;
- Excluding any income from Centrelink in the calculation of income; or
- Having no specific protected earnings amount policy and relying on their responsible lending policies in order to comply.

The Central Bank is proposing to apply the debt servicing ratio restriction based on what the consumer's repayment obligations would be under all moneylending agreements to which the consumer is a party, were the consumer to take out the proposed loan. This would mean that moneylenders would be restricted from extending further credit to consumers who are already paying the maximum repayments permitted under the debt servicing ratio restriction.

Such a restriction would operate independently of the requirement to assess a consumer's creditworthiness as set out in the 2010 Regulations and the lender's own lending criteria.

In addition to the above measure, the Central Bank is also proposing that the debt servicing ratio restriction would also apply to forbearance arrangements agreed with consumers in arrears on their moneylending agreement. We are proposing to build in an exception for arrears cases to permit repayments greater than the debt servicing ratio restriction to cater for circumstances where the consumer may be in a position to pay more, based on their individual circumstances. This could include, for example, where the consumer is in receipt of a lump sum at a point in time, which they wish to use to clear some or all of their debt.

The introduction of such a measure could have a significant impact on the moneylending business model in Ireland, depending on how it is designed and the limit set. The Central Bank is seeking to avoid any unintended consequences arising from the introduction of such a measure which could negatively impact upon consumers. Such unintended consequences could include:

- consumers viewing the debt servicing ratio measure as a target, as opposed to a limit;
- moneylenders seeking authorisation from the Central Bank to provide moneylending agreements with longer terms and reduced instalments to consumers which may cost

the consumer more in the long term; and

- consumers being prevented from availing of further credit from licensed moneylenders and turning to unlicensed moneylenders for credit.

To further inform our consideration of introducing this measure, the Central Bank is particularly keen to receive feedback from stakeholders, including firms and consumer groups on:

- (i) the principle of such a restriction, and what implications it might have (including any unintended consequences);
- (ii) the appropriate calculation for such a restriction (e.g., the appropriate percentage and what income measure should be used); and
- (iii) what, if any, exemptions should be considered for such a restriction.

We also welcome submissions on any variation on the debt servicing ratio restriction model described above that respondents consider would better protect the best interests of consumers.

Any submissions received in response to this particular issue, as well as our own further analysis of such a measure, including undertaking specific consumer research, will inform the Central Bank's decision on how the requirements around such a restriction should be formulated and the appropriate percentage at which the debt servicing ratio restriction should be set.

Question 15:

Are you in favour of the introduction of a debt servicing ratio restriction as outlined above?

Question 16:

Do you have any views on what percentage of income the restriction should be set at and whether it should be based on gross or net income (gross income meaning the income, before tax or other deductions, of the consumer and net income meaning the income, after tax or other deductions, of the consumer)? Please provide any data or analysis you have to

support your response.

Question 17:

Should such a restriction also apply to forbearance arrangements for moneylending consumers in arrears? Do you have any views on how it should apply in an arrears case (e.g., do you consider that different factors also need to be taken into account in such a case)?

Question 18:

Do you have views on the potential impact the introduction of a debt servicing ratio restriction, as outlined above, might have on consumers and the licensed moneylending sector?

Question 19:

Are there any circumstances which you consider should be exempted from such a debt servicing ratio restriction?

Question 20:

How would such a restriction operate in the case of “running account” credit provided by moneylenders? For example, should it operate on the basis of the consumer’s credit limit on that account?

Section 7 – Enhancing the professionalism of the sector

Moneylenders are required to comply with the Fitness and Probity Regime introduced by the Central Bank under the Central Bank Reform Act 2010. The Fitness and Probity Regime applies to persons in senior positions in moneylending firms, referred to in the legislation as Controlled Functions (CFs) and Pre-Approval Controlled Functions (PCFs). The core function of the Fitness and Probity Regime is to ensure that persons in senior positions are competent, capable, honest, ethical and of integrity and also financially sound. In addition, moneylenders are responsible for ensuring that all individuals performing a CF (including PCFs) meet the required Fitness and Probity Standards, both prior to their appointment and on an on-going

basis. As part of its on-going regulatory engagement with moneylenders, the Central Bank witnesses varying practices with regards to the standards adopted by moneylenders in terms of training, adherence to lending policies and procedures, in particular the approach taken to creditworthiness assessments, and record-keeping. The Central Bank is also advised, through its engagements with stakeholders, that third parties assisting consumers are not always provided with all documentation requested. The proposals outlined below are intended to foster more consistent and professional standards across all moneylending firms.

7.1 Training of staff and agents

The Central Bank expects senior management of all regulated firms, including moneylenders, to apply the highest standards to their staff in respect of the conduct of their roles and to have an appropriate training programme in place to support these standards. In light of the issues outlined above and, in particular, the varying standards observed across the moneylending industry, the Central Bank proposes to require moneylenders to provide on-going training to agents and staff. We are proposing that a moneylender would have an appropriate training programme in place to ensure that employees and agents receive appropriate training in relation to the firm's lending policies and procedures (see proposal at Section 7.2 below). The Central Bank is seeking to put in place a specific requirement in respect of training that acts as a basis to enhance the standards in the industry by making this a formal requirement.

Question 21:

Do you agree with the proposal to introduce an explicit requirement that moneylenders provide on-going training to staff and agents in respect of the firm's lending policies and procedures?

7.2 Lending policies and procedures

Moneylenders must comply with various conduct of business requirements in respect of the manner in which they grant moneylending credit to consumers. For instance, for credit above

€200, Regulation 11 of the 2010 Regulations requires moneylenders to “*assess the consumer’s creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary on the basis of a consultation of the relevant database*”. However, moneylenders are not currently specifically required to have written lending policies and procedures in place. This can lead to inconsistency in how moneylenders and their staff and agents deal with their customers, including the manner in which they assess creditworthiness.

The Central Bank proposes to introduce a requirement that a moneylender must have written lending policies and procedures in place that are approved by the Board of Directors or owners of the firm. The Central Bank believes that an explicit requirement for moneylenders to have written lending policies and procedures in place will help to ensure that the existing requirements are formally and properly enshrined in the processes of each firm. Introducing such a requirement is intended therefore to ensure, and provide a means of testing, that moneylenders have documented lending policies and procedures in place and that their agents and staff consistently comply with them.

Section 99 of the 1995 Act prohibits moneylenders from withholding any amount of a new loan from a consumer for the purposes of repayment of an existing loan, helping to prevent consumers from entering a debt spiral. The Central Bank is proposing to complement this important legislative provision by requiring moneylenders to include information in their lending policies and procedures about the safeguards the moneylender has in place to ensure that Section 99 is complied with.

Generally, this measure would aim to ensure:

- consistency of approach by the moneylender to applications for credit;
- that the documented lending policies and procedures address how the moneylender deals with applications for credit from consumers;
- that the criteria applied by the moneylender to assess an application for credit is clearly set out in its lending policies and procedures and as such, only consumers who can demonstrate ability to afford the credit would get access to it;
- that employees and agents are aware of the supports available to them in carrying out their roles in the lending process;

- that the lending policies and procedures include information about:
 - how the moneylender maintains a record of the steps taken to assess an application for credit and a record of the lending decision in every case;
 - as outlined above, the safeguards the moneylender has in place to ensure that Section 99 of the 1995 Act is complied with;
 - the safeguards which the moneylender has in place to ensure that consumers are not offered or approved unsolicited credit facilities; and
- that the lending policies and procedures are fully adhered to at all times and any breaches are adequately dealt with and that the moneylender safeguards against future occurrence.

To complement this measure, moneylenders would also be required to retain copies of all proof of a consumer's income and expenditure which is being relied upon for the purpose of assessing the consumer's creditworthiness.

Question 22:

- A. Do you agree with the proposal to require moneylenders to have written lending policies and procedures in place?
- B. If you agree with the proposal, should moneylenders be required to address any other matters within their lending policies and procedures?

Question 23:

Do you have any comments on the proposal to require moneylenders to retain records of income and expenditure relied upon to assess a consumer's creditworthiness?

7.3 Engagement with third parties who are acting on behalf of borrowers

It is important for the protection of consumers' best interests that, where a consumer has nominated a third party to engage with a moneylender on their behalf, the moneylender engages with that third party as envisaged by the consumer. The Central Bank has received

feedback that this is not always the case and, in particular, that moneylenders do not always provide complete documentation to such third parties.

The Central Bank is proposing therefore to introduce an explicit requirement that moneylenders:

- liaise with a third party nominated by the consumer to act on his or her behalf, at the consumer's request and with the consumer's written consent; and
- furnish third parties with all consumer records referred to in the request within 10 working days of a written request from a third party acting on behalf of the consumer where the consumer has provided written consent.

These requirements would not prevent a moneylender from contacting a consumer directly in relation to other matters. Where any requested record is not available, or has not been retained, the moneylender would be required to advise the third party of this fact as part of its written response.

Question 24:

Do you have any comments on the proposal to introduce explicit obligations on moneylenders to engage with third parties who are acting on behalf of borrowers?

7.4 Repayment books and collections

Moneylenders are subject to a number of requirements in respect of repayment books and the collection of repayments. These are of particular relevance to moneylenders who provide a home collection service. The Central Bank has observed cases where the practices of a moneylender, while perhaps not in contravention of these specific requirements, do not appear to best protect consumers' interests. In particular, where repayment books are removed, that fact is not always receipted and recorded. Similarly, customers' details contained in repayment books are not always kept up-to-date. In addition, the Central Bank is aware of instances of firms collecting repayments at locations which are not appropriate or secure.

Existing regulatory requirements do not explicitly or fully address these issues. The Central Bank proposes therefore to require moneylenders to require that:

- the removal of repayment books is recorded and receipted;
- customer details contained in repayment books are regularly confirmed and updated;
and
- collections are only made at pre-agreed locations which are appropriate and secure.

Question 25:

Do you agree with the proposals outlined above in relation to the additional rules specifically targeted at tightening the rules in place around repayment books and collections?

Section 8 - Additional enhancements to the Moneylenders Code of Conduct

The Central Bank is also proposing further technical amendments to the ML Code to reduce complexity within the existing regulatory framework and to bring the requirements in line with other regulatory requirements.

8.1 Applying relevant requirements under the 2010 Regulations to loan amounts below €200

As set out in further detail in Section 2 of this paper, moneylenders must comply with both the ML Code and the 2010 Regulations (for moneylending loans involving a total amount of credit of €200 or more (up to €75,000)). Due to the maximum harmonisation nature of the 2010 Regulations, several provisions of the ML Code have been dis-applied for loans also coming within the scope of the 2010 Regulations. This means that moneylenders must comply with different requirements, for example, “Knowing the Consumer” and “Suitability”

requirements, depending on whether the loan is above or below €200. In order to address this unnecessary complexity, the Central Bank proposes to replace the ML Code requirements that have already been dis-applied for credit within scope of the 2010 Regulations and to extend the application of the relevant requirements in the 2010 Regulations to loans below €200. As a result, moneylenders would be required to comply with all of the revised ML Code requirements, regardless of the amount of the loan. It would also mean that moneylenders would be required to comply with the relevant requirements set out in the 2010 Regulations where a loan is below €200.

8.2 Specific protection for vulnerable consumers

The Central Bank is proposing to replicate the specific requirement relating to vulnerable consumers, as well as the definition of “vulnerable consumer”, from the CPC 2012. This specific requirement was introduced in 2012, following a review of the Consumer Protection Code 2006 (CPC 2006). There is no explicit equivalent requirement in the ML Code. Consistent with the reasons for introducing the requirement for other sectors in the CPC 2012³², e.g., concerns raised about the sales of financial products and services to older persons and those with possible diminished capacity, we are now proposing to introduce an explicit requirement for moneylenders to identify vulnerable consumers and provide reasonable arrangements and assistance to facilitate them.

8.3 Strengthened requirements for communicating with consumers

We are proposing to introduce a new requirement that a moneylender must ensure that the level of contact and communications from the moneylender with a consumer, or any third party acting on its behalf, is proportionate and not excessive. There is currently no requirement in the ML Code specific to this issue. Moneylenders are already required to act professionally and with due skill, care and diligence in the best interests of their consumers under the existing requirements. We believe that there is scope to enhance the existing

³² For more information, see the Central Bank’s consultation papers published prior to introducing CPC 2012 [here](#) and [here](#).

protection for consumers by specifically requiring that the level of contact and communication is proportionate and not excessive. Such a requirement may be especially important for consumers who have missed payments but will also be relevant in other scenarios, such as when moneylenders and their agents are collecting repayments at the consumer's home. Such a requirement would be consistent with requirements we have in place under other Central Bank codes and regulations³³.

8.3.1 Earlier signposting of MABS for consumers in arrears

We are proposing an amendment to the requirement for moneylenders to advise borrowers about debt counselling services from bodies such as MABS, to require that consumers are sign-posted to such services sooner. At present, moneylenders must inform consumers about debt counselling services upon the sixth default or missed repayment. We are proposing to amend this to the third default or missed repayment. Again, amending this requirement would be more consistent with requirements we have in place under other Central Bank codes and regulations, where we require information about MABS to be provided sooner³⁴.

8.3.2 Alignment with wording of provisions in CPC 2012

As set out above, many of the provisions in the current ML Code are primarily based on provisions from the CPC 2006, that were considered appropriate to apply to the licensed moneylending sector. CPC 2006 has since been replaced by the CPC 2012, where the wording of the requirements were refined in some instances. As part of our current review of the ML Code, we have considered the wording of equivalent provisions as they now appear in the CPC 2012. On foot of this analysis, we are proposing limited alignment with the wording of equivalent provisions from the CPC 2012, where considered appropriate.

³³ Provision 8.13 of CPC 2012, Provision 22 of the Code of Conduct on Mortgage Arrears 2013 and Regulations 20 and 38 of the Central Bank (Supervision and Enforcement Act 2013)(Section 48)(Lending to Small and Medium-Sized Enterprises) Regulations 2015.

³⁴ Provision 8.6 of CPC 2012 requires the information to be provided where an account remains in arrears 31 days after the arrears arose. Provision 23 of the Code of Conduct on Mortgage Arrears 2013 also requires regulated firms to provide borrowers with this information where arrears arise on a borrower's mortgage loan account and remain outstanding 31 calendar days from the date the arrears arose.

In relation to the provision of statements, we propose to amend the existing ML Code requirement (to issue statements only where a moneylender collects payment by way of direct debit) in order to apply the requirement more generally and align it with the CPC 2012 requirement³⁵. Our proposed amendment will not apply to moneylenders who operate through the home collection model as they are required under the 1995 Act to supply a repayment book to consumers and update it as repayments are made.

In relation to complaint handling specifically, the CPC 2012 includes additional requirements³⁶ as regards seeking to resolve any complaints made by consumers, maintaining up-to-date records for complaints, undertaking analysis of the complaints register and reporting that analysis to relevant functions and officers. The Central Bank is proposing to include these additional requirements in the revised requirements for moneylenders.

Question 26:

Do you have any comments on the changes proposed above, that is:

- A. Applying relevant requirements under the 2010 Regulations to loan amounts below €200;
- B. Introducing a specific protection for vulnerable consumers;
- C. Introducing strengthened requirements for communicating with consumers;
- D. Requiring that consumers in arrears are signposted to MABS earlier; and
- E. Aligning the wording of requirements with the wording of similar provisions in the CPC 2012, where appropriate.

Question 27:

Do you have comments on the attached draft Regulations? In your response, please quote the number of the specific provision(s) which give rise to your concerns and, if possible, suggest alternative drafting or solutions.

Question 28:

³⁵ Provision 6.5 CPC 2012.

³⁶ Provisions 10.11 and 10.12 CPC 2012.

Do you have any suggestions for further reform in the moneylending sector, e.g., are there any gaps or areas omitted from the protections proposed in this Consultation Paper?

Question 29:

Do you have any other views on the overall function and risks of the licensed moneylending sector in Ireland?

Section 9: Your views

Draft Regulations are attached in the Appendix to this Consultation Paper to replace the existing ML Code and give effect to the above reforms in Sections 4-8 of this paper. We would welcome your views on the proposed requirements.

Section 10: Making your submission

The closing date for submissions in respect of this Consultation Paper is 27 June 2018. Comments and views are welcome from all interested parties on the issues highlighted in this paper and on the provisions proposed in the draft Regulations. In addition, views are welcome on any other issues that may be relevant to the review of the ML Code.

The Central Bank requests that reasons are given for the responses to all questions answered and that submissions which put forward arguments for changes to the proposals set out in this Consultation Paper be supported, where possible, by evidence which will aid our consideration of the issues.

Please make your submissions in writing and, if possible, by e-mail (see details below). When addressing any issue raised in this Consultation Paper, please use the headings and/or numbering in this paper to identify the section you are referring to. If you are raising an issue that is not referred to in this paper, please indicate this in your submission.

The Central Bank intends to make submissions available on its website after the deadline for

receiving submissions has passed. Because of this, please do not include commercially sensitive material in your submission, unless you consider it essential. If you do include such material, please highlight it clearly so that reasonable steps may be taken to avoid publishing that material. This may involve publishing submissions with the sensitive material deleted and indicating the deletions.

While as indicated above, the Central Bank will take reasonable steps to avoid publishing confidential or commercially sensitive material, the Central Bank makes no guarantee that it will not publish any such information and accepts no liability whatsoever for the stakeholders' consultation responses that are subsequently published by the Central Bank. Therefore, please be aware that you are making a submission on the basis that you consent to us publishing it in full.

Submissions should be marked "Moneylending Regulations" and sent by email to consumerprotectionpolicy@centralbank.ie.

In the event that you are unable to send your response electronically, please forward it by post before 27 June 2018 to:

Consumer Protection: Policy and Authorisations
"Moneylending Regulations"
Central Bank of Ireland
PO Box 559
New Wapping Street
North Wall Quay
Dublin 1

Appendix

Draft Moneylending Regulations

STATUTORY INSTRUMENTS

S.I. No. of 201X

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013 (SECTION 48)
(LICENSED MONEYLENDERS) REGULATIONS 201X³⁷

³⁷ These Regulations are in draft form for the purposes of this consultation process. The Central Bank of Ireland reserves the right to make amendments to these Regulations, as it deems appropriate.

S.I. No. of 201X

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013
(SECTION 48) (LICENSED MONEYLENDERS) REGULATIONS 201X

In exercise of the powers conferred on the Central Bank of Ireland (the “Bank”) by section 48 of the Central Bank (Supervision and Enforcement) Act 2013 (the “Act”), the Bank, having consulted, in accordance with section 49 of the Act, with the Minister for Finance and other persons that the Bank considers appropriate to consult in the circumstances, hereby makes the following regulations:

Part 1

Preliminary and General

Citation and Commencement

1. (1) These Regulations may be cited as the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Licensed Moneylenders) Regulations 201X.
- (2) These Regulations come into operation on X.

Interpretation

2. (1) In these Regulations:

“advertisement” means any commercial communication paid for by a moneylender, which is addressed to the consumer public or a section of it, the purpose being to advertise a product, service or moneylender the subject of these Regulations, excluding name plaques, sponsorship material and a prospectus drawn up in accordance with the Prospectus Directive (2003/71/EC), as amended or replaced;

“advertised product or service” means the product or service that is the subject of an advertisement;

“arrears” in relation to a moneylending agreement means where a consumer has not made a repayment, or only makes a partial repayment, as set out in the original moneylending agreement, by the scheduled due date;

“associate” in relation to a person means:

- (a) an undertaking in the same group as that person;
- (b) any other person whose business, private or familial relationship (other than as arises solely because that person is a client of the firm) with the first person or its associate might reasonably be expected to give rise to a common interest between them which may involve a conflict of interest in dealings with third parties;
- (c) any other person whose business, private or familial relationship (other than as arises solely because that person is a client of the firm) with the first person is such that he has influence over that person’s judgment as to how to invest his property or exercise any rights attaching to his investments;

“Bank” means the Central Bank of Ireland;

“business day” means any day except Saturday, Sunday, bank holidays and public holidays;

“certified person” has the meaning given to it at section 55 of the Investment Intermediaries Act, 1995;

“charge” means any cost or fee which a consumer must pay in connection with a product or service provided by a moneylender;

“complaint” refers to an expression of grievance or dissatisfaction by a consumer, either orally or in writing, in connection with:

- (a) the provision or the offer of the provision of a product or service to a consumer by a moneylender;
- (b) the failure or refusal of a moneylender to provide a product or service to a consumer;

“connected party” includes a partner, officer, controller, related undertaking, subsidiary, employee or person authorised to engage in the business of moneylending on behalf of a moneylender, including any associate of the person concerned;

“Consumer Protection Code for Licensed Moneylenders” means the Consumer Protection Code for Licensed Moneylenders 2009 issued by the Bank under section 117 of the Central Bank Act, 1989 and section 8(H)(1)(f) of the 1995 Act;

“durable medium” means any instrument which enables the consumer to store information addressed to that consumer in a way accessible for future reference and for a period of time adequate for the purpose of the information, and allows the unchanged reproduction of the information stored;

“employee” means a person employed under a contract of service or a person otherwise employed by a moneylender;

“existing consumer” means a consumer who has outstanding credit with the moneylender;

“Financial Services and Pensions Ombudsman” has the meaning given to it at section 2(1) of the Central Bank Act, 1942;

“group” includes a company, any subsidiary and any related undertaking;

“income” means the income of a consumer before the deduction of tax or other deductions;

“Money Advice and Budgeting Service” means the money advice and budgeting service established by the State to provide money advice services;

“officer” means, in relation to a moneylender, a director, chief executive, manager or company secretary, by whatever name called;

“outsourced activity” means an activity where a moneylender employs another person, other than a natural person who is an employee of the moneylender under a contract of service, to carry out an activity on its behalf;

“person” means a natural person or a legal person;

“record” means any document, file or information, whether stored electronically or otherwise, and which is capable of being reproduced in a legible form;

“related undertaking” means a related company within the meaning of Part 1 of the Companies Act 2014;

“subsidiary” means a subsidiary within the meaning of Part 1 of the Companies Act 2014;

“targeted advertising” means any advertisement that:

- (a) contains a consumer’s name or personal details;

(b) is tailored or delivered in such a manner as to target consumers who have recently made full repayment of a moneylending agreement or who have a moneylending agreement nearing full repayment;

(c) is tailored or delivered in such a manner as to target consumers with low incomes;

(d) is tailored or delivered in such a manner as to target consumers for whom, due to their circumstances, availing of credit from a moneylender may not be in their best interests;

“the 1995 Act” means the Consumer Credit Act 1995;

“total amount of credit” in relation to a moneylending agreement means the limit of the credit, or the total sum, made available under the moneylending agreement;

“undertaking” means an undertaking within the meaning of Part 6 of the Companies Act 2014;

“unsolicited contact” means contact with a consumer without prior written agreement by way of personal visit or telephone call, but not including written contact with the consumer;

“vulnerable consumer” means a natural person who:

(a) has the capacity to make his own decisions but who, because of individual circumstances, may require assistance to do so;

(b) has limited capacity to make his own decisions and who requires assistance to do so.

(2) In these Regulations, “APR”, “consumer”, “credit”, “financial accommodation”, “moneylender”, “moneylending”, “moneylending agreement” and “running account” have the meaning given to them at section 2(1) of the 1995 Act.

(3) In these Regulations, a moneylender, as defined at section 2(1) of the 1995 Act, shall include a representative of a moneylender.

Scope and application

3. These Regulations apply to a moneylender licensed under the 1995 Act when engaged in the activity of moneylending.

Consumer Protection Code for Licensed Moneylenders

4. The revocation of the Consumer Protection Code for Licensed Moneylenders, or part of the Consumer Protection Code for Licensed Moneylenders does not:
- (a) affect any direction given by the Bank, investigation undertaken, or disciplinary, sanctioning or enforcement action undertaken by the Bank or any other person, in respect of any matter in existence at, or before, the time of the revocation;
 - (b) preclude the taking of any legal proceedings, or the undertaking of any investigation, or disciplinary, sanctioning or enforcement action by the Bank or any other person, in respect of any contravention of an enactment or requirement imposed under an enactment, or any misconduct which may have been committed before the time of the revocation.

Application of the European Communities (Consumer Credit Agreements) Regulations 2010 to credit below €200 provided under a moneylending agreement

5. With the exception of Regulations 7(3), 8(4), 11(3), 13(7), 13(9) and 20(1) of the European Communities (Consumer Credit Agreements) Regulations 2010, Regulations 7, 8, 11, 13 and 20 of the European Communities (Consumer Credit Agreements) Regulations 2010 shall apply in respect of a moneylending agreement within the scope of these Regulations and involving a total amount of credit of less than €200.

Part 2

General Requirements

General Principles

6. A moneylender shall ensure that in all its dealings with consumers and within the context of its licence, it:
- (a) acts honestly, fairly and professionally in the best interests of its consumers and the integrity of the market;
 - (b) acts with due skill, care and diligence in the best interests of its consumers;

- (c) does not recklessly, negligently or deliberately mislead a consumer as to the real or perceived advantages or disadvantages of any product or service;
- (d) has and employs effectively the resources, policies and procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with relevant financial services legislation;
- (e) seeks to avoid conflicts of interest;
- (f) corrects errors and handles complaints speedily, efficiently and fairly;
- (g) does not exert undue pressure or undue influence on a consumer;
- (h) ensures that any outsourced activity complies with the requirements of these Regulations;
- (i) without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services.

Expertise for engaging in moneylending

7. A moneylender shall provide appropriate training on an on-going basis to employees and agents concerned with moneylending activities and this shall include, at a minimum, training with respect to the policies and procedures the moneylender has in place to comply with Regulation 27.

Part 3

Information requirements

Advertising

8. (1) A moneylender shall ensure that all its advertisements are fair and not misleading to consumers.

(2) A moneylender shall ensure that an advertisement shall not influence a consumer's attitude to the advertised product or service of the moneylender either by inaccuracy, ambiguity, exaggeration or omission.

(3) A moneylender shall ensure that in all its advertisements:

- (a) the name of the moneylender shall be clearly shown;
- (b) the nature or type of the advertised product or service shall be clear and not disguised in any way;
- (c) the advertisement shall be designed and presented so that any reasonable consumer knows immediately that it is an advertisement;
- (d) the design and presentation of the advertisement shall allow it to be clearly understood;
- (e) where small print or footnotes are used, such print or footnotes should be of sufficient size and prominence to be clearly legible;
- (f) small print or footnotes shall, where appropriate, be linked to the relevant part of the main text of the advertisement;
- (g) warnings and product specific information shall be clear and shall not be obscured or disguised in any way by the content, design or format of the advertisement;
- (h) any statement shall be true and not misleading at the time it is made and any assumptions on which it is based shall be reasonable and stated clearly;
- (i) any recommendations or commendations quoted shall be complete, fair, accurate and not misleading at the time of issue, and relevant to the advertised product or service;
- (j) a recommendation or commendation may not be used without the consent of the author and, if the author is an employee of the moneylender or a connected party of the moneylender, or has received any payment from the moneylender or a connected party of the moneylender for the recommendation or commendation, the advertisement shall state that fact;
- (k) comparisons or contrasts shall be based either on facts verified by the moneylender or on reasonable assumptions stated within the advertisement and shall be presented in a fair and balanced way and not omit anything material to the comparison or contrast;

- (1) any material differences identified between products shall be set out clearly.
- (4) A moneylender shall not engage in any form of targeted advertising of credit to consumers, including existing consumers.
- (5) A moneylender shall ensure that all advertisements contain the following warning statement:

“Warning: This is high-cost credit. Consider alternative options before applying for this credit, including cheaper alternatives from other lenders regulated by the Central Bank of Ireland.”

Pre-contract information

9. A moneylender shall, prior to entering into a moneylending agreement with a consumer, prominently indicate the high-cost nature of the credit on all documentation relating to the moneylending agreement where the APR is 23 per cent or higher, in the following form:

“Warning: This is high-cost credit. Consider alternative options before applying for this credit, including cheaper alternatives from other lenders regulated by the Central Bank of Ireland.”

Provision of Information to certain consumers

10. A moneylender shall:
- (a) include the following question, in bold type, on the front page or at, or near, the beginning of any application form or process relating to a moneylending agreement, regardless of whether the means of application or process is paper based or otherwise:
- “Do you require this credit to pay for accommodation, food, electricity, heating or other similar costs?”
- (b) immediately following the question referred to in paragraph (a), provide the consumer with the information set out in Annex I of these Regulations in the form prescribed in that Annex I;
- (c) ensure that the information set out in Annex I is
- (i) presented in a prominent manner,

- (ii) in a box,
 - (iii) in bold type, and
 - (iv) of a font size that is at least equal to the predominant font size used throughout the document;
- (d) following a request from a consumer, facilitate contact between the consumer and MABS and any charity which has notified the moneylender that it may be in a position to assist consumers in paying for accommodation, food, electricity, heating and other similar costs;
- (e) maintain a record, signed and dated by the consumer, of
- (i) the information provided to the consumer in accordance with paragraphs (a) to (b) and Annex I, and
 - (ii) the date on which the information set out in paragraphs (a) to (b) and Annex I is provided to the consumer.

Warning Statements for guarantors

11. If credit is being offered to a consumer by a moneylender subject to a guarantee, the guarantee documentation shall clearly outline the obligations of the guarantor and shall contain the following warning statement:

“Warning: As a guarantor of this credit, you will have to pay off the credit, the interest and all associated charges up to the level of your guarantee if the borrower does not. Before you sign this guarantee, you should get independent legal advice.”

Warning Statements

12. A moneylender shall ensure that a warning statement required under Regulations 8(5), 9 and 11 of these Regulations is

- (a) presented in a prominent manner,
- (b) in a box,
- (c) in bold type, and

(d) of a font size that is at least equal to the predominant font size used throughout the document or advertisement.

Disclosure requirements

13. (1) A moneylender shall only use a regulatory disclosure statement as set out in Regulation 13(4), in connection with moneylending activities or other activities for which the moneylender is regulated by the Bank, and in the following documentation, communications and sections of the moneylender's website:

(a) on the moneylender's business stationery, including moneylending agreements, repayment books and authorisation cards;

(b) on the section of the moneylender's website that relates to moneylending or other activities for which the moneylender is regulated by the Bank;

(c) in the moneylender's advertisements, catalogues and brochures;

(d) in the moneylender's electronic communications with consumers, excluding text messages, where such communications are in connection with moneylending activities or other activities for which the moneylender is regulated by the Bank.

(2) A moneylender shall only use the regulatory disclosure statement in communications with a consumer where such communications relate solely to moneylending activities or other activities in respect of which the moneylender is regulated by the Bank.

(3) A moneylender shall have separate sections on any website it operates for moneylending activities and other activities for which the moneylender is regulated by the Bank, and any other activities which it carries out.

(4) A moneylender shall use a regulatory disclosure statement in the following format;

“[Full legal name of moneylender (insert all trading name(s) used by the moneylender)] is regulated by the Central Bank of Ireland”

(5) A moneylender shall not insert additional text into the wording of the regulatory disclosure statement as set out in paragraph (4).

(6) A moneylender shall ensure that its regulatory disclosure statement is not presented in such a way as to appear to be an endorsement by the Bank of the moneylender or its products or services.

Information notice on website and application form

14. (1) If the APR of a moneylending agreement is 23 per cent or higher, a moneylender shall display the information set out in Annex II of these Regulations in the form prescribed in that Annex:

- (a) where it operates a website, on the home page of the website;
- (b) on the front page or at, or near, the beginning of any application form or process relating to a moneylending agreement, regardless of whether the means of application or process is paper based or otherwise.

(2) For the purpose of paragraph (1) it shall not be sufficient for the moneylender to provide the information through a link to that information.

Information notice at premises

15. (1) A moneylender shall display the information set out in Annex II of these Regulations in any of the moneylender's premises from which it engages with consumers in respect of moneylending activities and such information shall be -

- (a) as set out in Annex II of these Regulations,
- (b) in poster form,
- (c) A4 in size,
- (d) in typeface that is 18 points in size, and
- (e) in bold font.

(2) The information provided by a moneylender in accordance with paragraph (1) shall be displayed -

- (a) in an area inside the premises from which the moneylender engages in moneylending activities, and

(b) where it is clearly visible from the location at which consumers would ordinarily deal with the moneylender or an employee or agent of the moneylender.

(3) For the purpose of paragraph (2), where the premises from which the moneylender engages in moneylending activities -

(a) are not enclosed, or

(b) are of a kind where a consumer can approach the moneylender, or an employee or agent of the moneylender, without going through a door,

the information shall be displayed so that it is clearly visible on a counter, desk, table or other item of furniture at which the moneylender, or an employee or agent of the moneylender would deal with the consumer.

Post-contract information

16. Except in the case of a moneylending agreement under which repayments are collected from the consumer at an agreed location in accordance with the 1995 Act and Regulation 35, a moneylender shall issue statements:

(a) at least monthly to consumers who pay weekly;

(b) at least quarterly to consumers who pay monthly.

Provision of information to guarantors

17. If a moneylender has advanced credit to a consumer subject to a guarantee, the moneylender shall notify the guarantor, on paper or on another durable medium, if:

(a) the terms of the moneylending agreement change; or

(b) the amount guaranteed by the guarantor is to be increased.

Subsequent moneylending agreements

18. (1) A moneylender shall not enter into a second or subsequent moneylending agreement with a consumer unless the moneylender has provided the consumer with the following information, in a durable medium, aggregated to include the second or subsequent moneylending agreement in question -

- (a) the total number of moneylending agreements between the moneylender and the consumer,
 - (b) the total balance of credit outstanding between the consumer and the moneylender,
 - (c) the timeframe for final repayment by the consumer on the moneylending agreement with the longest remaining term, and
 - (d) the total repayment amount, for the consumer, per week or month for all moneylending agreements, as most appropriate to the frequency of scheduled repayments for those moneylending agreements.
- (2) A moneylender shall make it clear that the information provided in accordance with paragraph (1) relates solely to moneylending agreements, including the second or subsequent moneylending agreement in question, between that moneylender and the consumer and that it does not relate to any agreements for the provision of credit from other moneylenders or other providers of credit.
- (3) A moneylender shall provide the information outlined in paragraph (1) to a consumer, or a third party acting on his or her behalf, with his consent, on request and free of charge.
- (4) Paragraph (3) does not apply to a request made by a consumer less than 4 weeks after a previous request by that consumer which was complied with by the moneylender.

Conduct of business requirements

Unsolicited credit facilities

19. (1) A moneylender shall not offer credit to a consumer or approve the provision of credit to a consumer in advance of an application by a consumer for the credit.
- (2) A moneylender may only increase the limit on a consumer's running account following an application from a consumer for an increase to the limit on the consumer's running account.

Unsolicited contact

20. (1) When contacting a consumer, other than an existing consumer, a moneylender may make an unsolicited contact, only if:

- (a) the consumer has signed a statement, within the previous 6 months, giving the moneylender permission to make unsolicited contact;
 - (b) the consumer is the subject of a referral received by the moneylender from one of the following:
 - (i) a person authorised by the Bank to provide financial services in the State;
 - (ii) a person within the same group as the moneylender;
 - (iii) a solicitor;
 - (iv) a certified person.
- (2) When a moneylender contacts a consumer following a referral as referred to at paragraph (1)(b), the moneylender shall inform the consumer that such a referral has been made and ask the consumer for consent to proceed with an unsolicited contact.
- (3) A moneylender shall ensure that, when it makes an unsolicited contact on foot of a referral as referred to at paragraph (1)(b), it retains a record of the referral.
- (4) A moneylender shall not make an unsolicited contact to an existing consumer for the purposes of sales or marketing.
- (5) An unsolicited contact by a moneylender to a consumer, other than an existing consumer, may only be made between 9.00 a.m. and 9.00 p.m., from Monday to Saturday, excluding bank holidays and public holidays, unless otherwise requested by the consumer of the moneylender.
- (6) When making an unsolicited contact in accordance with these Regulations, a moneylender shall immediately and in the following order:
- (a) identify himself by name and identify the name of the moneylender on whose behalf the person is contacting the consumer and the commercial purpose of the contact;
 - (b) inform the consumer that the telephone contact is being recorded, if that is the case;

(c) where relevant, disclose to the consumer, the source of the business lead or referral supporting the personal visit or telephone contact;

(d) confirm that the consumer wishes the personal visit or telephone contact to proceed and if not, end the telephone contact or personal visit immediately.

(7) A moneylender shall adhere to a request from a consumer not to make an unsolicited contact to him and this request shall be recorded by the moneylender.

(8) A moneylender shall not reach a binding agreement with a consumer on the basis of unsolicited contact alone.

Communications

21. (1) A moneylender shall ensure that the level of contact and communications from the moneylender to a consumer is proportionate and not excessive.

(2) A moneylender shall ensure that, where it intends to record a telephone conversation with a consumer, the moneylender informs the consumer, at the outset of the conversation, that the telephone conversation is being recorded.

(3) A moneylender shall ensure that, where it communicates with a consumer using electronic media, that the moneylender has in place appropriate arrangements to ensure the security of information received from the consumer and the secure transmission of information to the consumer.

(4) A moneylender shall ensure that all printed information it provides to consumers is of a print size that is clearly legible.

Prohibition on incentivising credit purchases

22. A moneylender providing goods or services to a consumer, in connection with a moneylending agreement, shall not offer any discount to a consumer to purchase goods or services on credit, where the discount is only available if the goods or services are purchased by the consumer on credit.

Knowing the consumer

23. Without prejudice to a moneylender's other legal and regulatory obligations, a moneylender shall ensure that, where a consumer refuses to provide information sought by the moneylender in compliance with these Regulations, the refusal by the consumer is noted on that consumer's records.

Vulnerable Consumers

24. (1) A moneylender shall take reasonable steps to identify consumers that are vulnerable consumers.

(2) If a moneylender has identified that a consumer is a vulnerable consumer, the moneylender shall ensure that the vulnerable consumer is provided with such reasonable arrangements and assistance that may be necessary to facilitate the vulnerable consumer in dealing with the moneylender.

(3) A moneylender shall maintain a list of its vulnerable consumers who are the subject of these Regulations.

Preservation of a consumer's rights

25. A moneylender shall not, in any communication or agreement with a consumer, exclude or restrict, or seek to exclude or restrict any of the following:

(a) any legal liability or duty of care of the moneylender to a consumer under applicable law;

(b) any other duty to act with skill, care and diligence which is owed by the moneylender to a consumer in connection with the provision to that consumer of financial services;

(c) any liability owed by a moneylender to a consumer for failure to exercise the degree of skill, care and diligence that may reasonably be expected of the moneylender in the provision of a financial service.

Debt Servicing Ratio Restriction

26. (1) A moneylender shall not enter into any moneylending agreement with a consumer where the total repayments due by the consumer pursuant to all moneylending agreements to which the consumer is party would amount to more than X per cent of the consumer's income when calculated on a weekly basis.

(2) For the purpose of paragraph (1), where a consumer is in receipt of income at irregular intervals, the moneylender shall calculate the consumer's income based on the consumer's average weekly income, which shall be calculated based on at least a 4 week period which is within 6 weeks of the date on which the consumer applied to the moneylender for credit.

Lending policy and procedures

27. (1) A moneylender shall establish, maintain and adhere to written lending policies and procedures, which shall comply with these Regulations, and these lending policies and procedures shall be approved by the board of directors of the moneylender or the entity or persons which control the moneylender.

(2) The approval of a moneylender's lending policies and procedures by the board of directors of the moneylender, or the entity or persons which control the moneylender, shall constitute an affirmation on the part of the board of directors of the moneylender, or the entity or persons which control the moneylender, that the moneylender's policies and procedures comply with these Regulations and any other legal and regulatory requirements with which the moneylender must comply.

(3) A moneylender shall at all times adhere to the lending policies and procedures referred to in paragraph (1).

(4) A moneylender shall carry out an annual review to ensure that it is acting in compliance with the moneylender's lending policies and procedures and the moneylender shall report the results of the annual review to the board of directors of the moneylender or the entity or persons which control the moneylender.

(5) A moneylender's lending policies and procedures referred to in paragraph (1) shall have the core objectives of ensuring:

- (a) consistency of approach by the moneylender in its dealings with consumers;
- (b) that all regulatory requirements as regards suitability of the moneylender's activities for its consumers and the creditworthiness of the moneylender's consumers, including the requirements to act in the best interests of consumers, are complied with by the moneylender.

(6) A moneylender's lending policies and procedures referred to in paragraph (1) shall, at a minimum, provide for the following matters -

- (a) the lending policies and procedures that the moneylender will apply when dealing with applications for credit from consumers, including vulnerable consumers,
- (b) the information to be sought from consumers applying for credit,
- (c) the criteria which the moneylender will apply when considering an application for credit,

(d) the inclusion of the following statement in a moneylender's lending policies and procedures:

“The core objectives of this policy is to ensure that we approach all applications for new and additional credit consistently and to ensure that we meet all of our regulatory requirements as regards suitability of the product and the creditworthiness of consumers and to act in the best interests of consumers.”,

(e) the supports available to employees and agents of the moneylender involved in the consideration of applications for credit,

(f) the safeguards which the moneylender has in place to ensure that Section 99 of the 1995 Act is complied with,

(g) the manner in which the moneylender will maintain a record of the steps taken to assess an application for credit,

(h) the manner in which the moneylender will maintain a record of all lending decisions, and

(i) the safeguards which the moneylender has in place to ensure that consumers are not offered or approved unsolicited credit facilities, by the moneylender or by an employee or agent of the moneylender, in advance of an application for credit by a consumer.

Errors

28. A moneylender shall:

(a) speedily, efficiently and fairly, correct an error in any charge or price levied on, or quoted to, a consumer in respect of any product or service the subject of these Regulations;

(b) where it considers that there may have been a material charging or pricing error, without delay, inform the Bank of its proposals for correcting any such error as may have occurred in accordance with paragraph (a) above. If any such information is provided verbally to the Bank in the first instance, it shall be provided to the Bank in writing on the next business day;

(c) notify all affected consumers, both current and former, in a timely manner and in such form as may be agreed with the Bank, of any material charging or pricing error that impacted negatively on the cost of the service or the value of the product provided by the moneylender to the consumer.

Handling Complaints

29. (1) A moneylender shall make all reasonable efforts to resolve any complaints made by a consumer.

(2) A moneylender shall establish, maintain and adhere to a written procedure for the proper handling of complaints.

(3) The procedure referred to in paragraph (2) does not apply where:

(a) the complaint has been resolved to the complainant's satisfaction within 5 business days of the making of the complaint to the moneylender;

(b) a record of the outcome referred to in paragraph (3) (a) is maintained by the moneylender.

(4) When a moneylender receives an oral complaint, or a complaint by any other communication channel, it shall offer the consumer the opportunity to have the complaint handled in accordance with the moneylender's complaints handling procedure.

(5) The procedure referred to in paragraph (2) shall, at a minimum, provide that:

(a) the moneylender shall, within 5 business days of the complaint being received –

(i) acknowledge, in a durable medium, the complaint, and

(ii) provide the complainant with the name of an individual or individuals appointed by the moneylender to be the complainant's point of contact in relation to the complaint until the complaint is resolved or cannot be processed any further;

(b) the moneylender shall provide the complainant with a regular update, in a durable medium, on the progress of the investigation of the complaint at intervals

of not greater than 20 business days, starting from the date on which the complaint was made;

(c) the moneylender shall attempt to investigate and resolve a complaint within 40 business days of having received the complaint;

(d) where 40 business days have elapsed and the complaint has not been resolved, the moneylender shall inform the complainant -

(i) of the anticipated timeframe within which the moneylender expects to resolve the complaint,

(ii) of the consumer's right to refer the matter to the Financial Services and Pensions Ombudsman, and

(iii) of the contact details of the Financial Services and Pensions Ombudsman;

(e) within 5 business days of the completion of the investigation, the moneylender shall, in a durable medium, inform the consumer –

(i) of the outcome of the investigation,

(ii) where applicable, of the terms of any offer or settlement being made to the consumer,

(iii) of the consumer's right to refer the matter to the Financial Services and Pensions Ombudsman, and

(iv) of the contact details of the Financial Services and Pensions Ombudsman.

(6) A moneylender shall establish and maintain an up-to-date register of all complaints received from consumers, subject to the procedure required under paragraph (2) and this register shall contain -

(a) the details of each complaint,

(b) the date the complaint was received,

- (c) a summary of the moneylender's response, including the date of the response,
- (d) details of any other relevant correspondence or records,
- (e) the action taken to resolve each complaint,
- (f) the date the complaint was resolved, and
- (g) where relevant, the current status of a complaint which has been referred to the Financial Services and Pensions Ombudsman.

(7) A moneylender shall undertake an analysis of the complaints' register required to be maintained by the moneylender under paragraph (6) on a regular basis, and at least each quarter of a year, including investigating whether complaints indicate an isolated issue or a more widespread issue for consumers.

(8) The analysis referred to in paragraph (7) shall be reported to and considered by the moneylender's staff responsible for the risk or audit function and the officers of the moneylender.

Consumer Records

30. (1) A moneylender shall maintain up-to-date records containing at least the following:

- (a) a copy of all documents required for consumer identification and profile;
- (b) the consumer's contact details;
- (c) all information and documents prepared in compliance with these Regulations;
- (d) details of products and services provided to the consumer;
- (e) all documents evidencing a consumer's income and expenditure which is relied upon by the moneylender for the purpose of assessing the consumer's creditworthiness;
- (f) all correspondence with the consumer and details of any other information provided to the consumer in relation to the relevant product or service;

- (g) details of each complaint received from a consumer by the moneylender;
 - (h) all documents or applications completed or signed by the consumer;
 - (i) copies of all documents submitted by the consumer in support of an application for the provision of a service or product;
 - (j) all other relevant information concerning the consumer.
- (2) A moneylender shall retain details of individual transactions for 6 years after the date on which the particular transaction is discontinued or completed.
- (3) A moneylender shall retain all other records for 6 years from the date on which the moneylender ceased to provide any product or service to the consumer concerned.
- (4) A moneylender shall maintain complete and readily accessible records.

Outsourced Activity

31. A moneylender shall remain fully responsible for discharging its obligations under these Regulations when it outsources any functions relating to moneylending.

Liaising with third parties

32. (1) At the consumer's request and with the consumer's written consent, a moneylender shall liaise with a third party nominated by the consumer to act on his behalf.

(2) Paragraph (1) shall not prevent the moneylender from contacting the consumer directly in relation to other permitted matters.

Provision of records to third parties

33. (1) Upon receipt of a written request for copies of consumer records, from a third party acting on behalf of a consumer, a moneylender shall furnish the third party with all consumer records referred to in the request within 10 business days, where the consumer has provided written consent.

(2) If any consumer record requested pursuant to paragraph (1) is not available, or has not been retained, the moneylender shall advise the third party that such record is not available, as part of its written response.

Arrears

34. (1) A moneylender shall establish, maintain and adhere to written procedures for the handling of arrears cases.

(2) A moneylender shall not enter into any forbearance terms with a consumer in respect of arrears where the repayment amounts under any such forbearance terms amount to more than X per cent of the consumer's income when calculated on a weekly basis, unless it is clearly in the consumer's best interests based on the consumer's individual circumstances.

(3) For the purpose of paragraph (2), where a consumer is in receipt of income at irregular intervals, the moneylender shall calculate income based on the consumer's average weekly income, which shall be calculated based on at least a 4 week period which is within 6 weeks of the date of offer of the forbearance terms.

(4) A moneylender shall advise consumers upon the third default or missed payment under a moneylending agreement, whether consecutive or otherwise, during the currency of a moneylending agreement, of relevant debt counselling services, and the contact details for such services including the name and address of a local Money Advice and Budgeting Service office.

(5) This Regulation shall not apply to circumstances where –

(a) a consumer is unable to make one or more repayments in accordance with a moneylending agreement under which repayments are paid by the consumer to the moneylender or his representative at any place other than the business premises of the moneylender or the business premises of the supplier of goods or services under the agreement, due to the consumer being unavailable to make the repayment at the usual time and location, and

(b) the moneylender has agreed to this variation of the repayment schedule with the consumer in advance of the repayment falling due.

(6) A moneylender shall maintain a record of such agreement to vary a repayment schedule as referred to in paragraph (5).

Home Collections

35. (1) A moneylender shall ensure that:

(a) any removal of a repayment book from a consumer is properly recorded and that a receipt in a durable medium is issued to the consumer;

(b) a consumer's personal details contained in repayment books are regularly confirmed and updated.

(2) If a moneylender provides a collection service, in respect of repayments due under a moneylending agreement, the moneylender shall, before making any collection of repayments, agree with the consumer the location for such collection, which shall be appropriate and secure.

Debt Collection

36. If a moneylender engages the services of a third party to collect debts on its behalf, the moneylender shall have in place a written contractual arrangement with that third party which ensures that its consumers are treated in accordance with the provisions of these Regulations and the relevant provisions of the 1995 Act.

Compliance with these Regulations

37. A moneylender shall ensure that in all its dealings with consumers it maintains and employs effectively the resources, systems and control checks that are necessary for compliance with these Regulations.

Annex I

- ✓ If you have answered yes to the above question, availing of credit from a moneylender may not be in your best interests [Insert information about the debt counselling services of the Money Advice and Budgeting Service, the contact details for the Money Advice and Budgeting Service and information on any relevant charities which have notified the moneylender that they may be able to assist consumers through the provision of emergency funds or items to meet their immediate basic needs].
- ✓ If you wish, please ask us to put you in touch with the Money Advice and Budgeting Service and [insert names of the relevant charities referred to above which have notified the moneylender that they may be able to assist such consumers].
- ✓ If you would like to take time to consider your options prior to completing a credit application further, please do so. However, you can proceed with your credit application if you wish. If you choose not to proceed with your credit application today, you can contact us again should you wish to discuss future credit.

Annex II

Information Notice about credit from a licensed moneylender

Warning: This is high-cost credit.

[Name of moneylender] is the provider of high-cost credit.

Consider alternative options before applying for this credit, including cheaper alternatives from other lenders regulated by the Central Bank of Ireland.

For example:

- ✓ Shop around as you may be able to obtain credit at significantly cheaper interest rates.
- ✓ If you are struggling to manage your finances, talk to your creditors to agree a payment plan and ask the Money Advice and Budgeting Service for help.
- ✓ If you are in receipt of social welfare payments, check that you are receiving your full social welfare entitlements by contacting your local Citizens Information Office.

Our moneylending agreements have an APR of [insert interest rate as APR] with a cost of credit of [insert cost of credit in euro] per €100 borrowed.

or

Our moneylending agreements range from having an APR of [insert lowest interest rate product provided as APR] with a cost of credit of [insert lowest cost of credit in

euro] per €100 borrowed, to an APR of [insert highest interest rate product provided as APR] with a cost of credit of [insert highest cost of credit in euro] per €100 borrowed.

Licensed moneylenders must assess your creditworthiness in accordance with regulatory requirements. Before providing credit, we will seek such information from you.

Signed for and on behalf of the CENTRAL BANK OF IRELAND
on [•]

PHILIP LANE,
Governor of the Central Bank of Ireland



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem