



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

**Central Bank (Supervision
and Enforcement) Act 2013
(Section 48) (Licensed
Moneylenders) Regulations 2020
Questions and Answers
2nd Edition – June 2021**

Moneylending Regulations

Questions and Answers

This document sets out answers to queries which may arise in relation to the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Licensed Moneylenders) Regulations 2020 and is published in order to assist in limiting uncertainty.

This will be posted on the 'Moneylenders' section of the Central Bank of Ireland's website and will be updated as required. Check the Central Bank website from time to time in relation to any matter of importance to you to see if the position on a query may have altered. The Central Bank reserves the right to alter its approach to any matter covered in this Question & Answers at any time.

In this document:

"Moneylending Regulations" refers to the Central Bank (Supervision and Enforcement) Act (Section 48) (Licenced Moneylenders) Regulations 2020.

This Questions and Answers has no legal status. Interested parties should consult their legal advisers concerning any matter of legal interpretation of the Moneylending Regulations.

Question 1

Q. Regulation 8(5) - Advertising of the Moneylending Regulations requires a moneylender to ensure that its marketing strategy is fair and reasonable, taking into account the particular circumstances of consumers. What examples of marketing activity may be considered acceptable under this requirement?

A. The requirement in Regulation 8(5) is intended to achieve the same outcome as the proposed targeted advertising requirement in CP118¹. For example, marketing activity where low-income consumers or named individual consumers are being targeted in a way which is not in their best interests will be deemed unacceptable.

Firms should consider a number of factors when assessing whether their marketing strategy is fair and reasonable taking into account the particular circumstances of consumers. This will include:

- the content of marketing material, for example the use of emotive language;
- the frequency and volume of marketing activity, including focus on key pressure points, such as Christmas and back to school time;
- the locations targeted;
- the method of delivery, such as physical and digital marketing; and
- targeting named individuals.

The existence of one of the above factors may render a marketing strategy in breach of Regulation 8(5) in some cases, and, in other cases, the cumulative effect of a number of factors together may mean the marketing strategy is in contravention of this requirement.

For example, we would consider that the distribution of leaflets directly outside social welfare offices, Money Advice and Budgeting Service (MABS) offices or Citizens Information Centres would breach this requirement. Conversely, the distribution of leaflets within a particular housing estate should not (in the absence of other relevant factors) breach this requirement. However, very frequent leaflet drops to a particular estate around pressure points such as Christmas would be deemed likely to be in breach of this requirement.

In assessing compliance with Regulation 8(5), the Central Bank will consider the overall likely effect of particular forms of advertising on consumers.

Question 2

Q. How should the enhanced warning statement required by Regulation 11- Warning statements of the Moneylending Regulations be displayed in character-restricted mediums?

¹ Consultation Paper 118 - Review of the Consumer Protection Code for Licensed Moneylenders.

- A. The Guidance on the Advertising Requirements of the Consumer Protection Code 2012² provides guidance on this matter in relation to the Consumer Protection Code 2012. This guidance is also relevant in the context of the Moneylending Regulations. The guidance states that where a web banner advertisement or Google advertisement is of a size that renders the inclusion of a regulatory disclosure statement impractical, the communication must contain the characters #ad and a direct link to a product specific webpage on the moneylender's website where all the regulatory requirements of the Moneylending Regulations are included.

Question 3

- Q. What constitutes a 'second or subsequent moneylending agreement' under Regulation 18-Subsequent moneylending agreements of the Moneylending Regulations?
- A. Where a moneylending agreement with a consumer exists which has not been repaid in full and the moneylender proposes to enter into an additional moneylending agreement with the same consumer, this will amount to a second moneylending agreement for the purposes of Regulation 18 of the Moneylending Regulations.

Question 4

- Q. Regulation 24 - Vulnerable consumers, of the Moneylending Regulations introduces new requirements in relation to vulnerable consumers. What 'reasonable steps' should a firm take to identify a vulnerable consumer?
- A. 'Reasonable steps' should be assessed in the individual circumstances of a case, and factors such as the method of delivery of the service are relevant. For example, in the context of online credit applications, it may not be immediately apparent that a consumer may be vulnerable.

Guidance on the identification of vulnerable consumers is provided in the Consumer Protection Code 2012 Guidance³. As the vulnerable consumer provisions in the Moneylending Regulations largely follow the Consumer Protection Code 2012 requirements, this guidance is also relevant to moneylenders. This guidance states that identification of a consumer's vulnerability or otherwise will require the exercise of judgement and common sense and should be based on a consumer's ability to make a particular decision at a point in time. This guidance also directs firms to websites which may be of assistance to regulated entities when dealing with vulnerable consumers.

² <https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/other-codes-of-conduct/7-gns-4-2-7-guidance-on-the-advertising.pdf?sfvrsn=6>

³ <https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/other-codes-of-conduct/9-gns-4-2-7-code-guidance-document.pdf?sfvrsn=6>

Question 5

Q. Under Regulation 26(6) – Lending policy and procedures, of the Moneylending Regulations, a moneylender is required to have written policies and procedures which include the criteria that the moneylender will apply when considering an application for credit. What information should a moneylender consider when considering a credit application?

A. Moneylenders must ensure that their lending policies and practices are responsible. This means seeking to ensure that the borrower can afford to repay a loan without suffering hardship, in addition to assessing the credit risk to the firm. Weak lending and arrears management practices are neither in the consumer's nor the moneylender's interest.

As regulated firms, licensed moneylenders can play an important role in providing credit to consumers who do not use other regulated credit providers. This role must be balanced with the duty to lend responsibly, particularly given the high-cost nature of moneylending loans. If a consumer cannot afford to repay credit, then his/her level of debt will increase and often become unsustainable, resulting in anxiety and hardship. It can also lead to increasing levels of late payments and bad debts for moneylenders. Although higher costs of credit can more easily be justified for occasional, short-term lending, moneylenders should be mindful of consumer's continued use of this form of credit, especially when used for non-essential expenditure.

While the Central Bank acknowledges that the home collection credit industry may lend itself to building on-going relationships with consumers, such on-going relationships should not be solely relied upon when assessing consumers' creditworthiness. When assessing creditworthiness, moneylenders should consider:

- all existing loans;
- any arrears a consumer may have; and
- appropriate evidence of the consumer's income, expenditure and ability to repay, before advancing each loan.

The responsibility rests with the moneylender to maintain evidence in order to demonstrate compliance with Regulation 29(1) (e) – Consumer records of the Moneylending Regulations and Regulation 11 of the European Communities (Consumer Credit Agreements) Regulations 2010, where a firm is obligated to assess creditworthiness of consumers in this regard. This is likely to be a future area of supervisory focus for the Central Bank and, as in other areas, we will take steps to enforce compliance where necessary (including through monetary or other penalties).

In addition to this, moneylenders should consider the [European Banking Authority Guidelines on Loan Origination and Monitoring \(EBA Guidelines\)](#) published in May 2020 and ensure that internal systems and controls are updated as necessary in order to be in a position to demonstrate compliance with these guidelines, as appropriate. These EBA Guidelines will apply from 30 June 2021. Further guidance on assessing creditworthiness can be found in [Annex 2 of the EBA Guidelines](#).

Question 6

- Q. With reference to Regulation 28 - Handling complaints of the Moneylending Regulations, can a consumer make a complaint in relation to the failure or refusal of a moneylender to provide a product or service to a consumer?
- A. In the first instance a consumer is entitled to make a formal complaint about a decision not to extend credit by a moneylender. If they are not satisfied with the outcome of their complaint, a moneylender must provide a final response and details for the Financial Services and Pensions Ombudsman, to enable a consumer to escalate their complaint to the Financial Services and Pensions Ombudsman, if they so desire.

Question 7

- Q. Under Regulation 31 - Liaising with third parties nominated by the consumer to act on the consumer's behalf in relation to an arrears situation of the Moneylending Regulations, is a moneylender required to liaise with more than one third party at a time nominated by a consumer?
- A. A consumer can nominate a third party to act on their behalf in an arrears situation, for example MABS. We would not ordinarily expect a moneylender to be required to liaise with more than one third party, nominated by a consumer, at a time. However, there may be circumstances where it is appropriate that moneylenders should consider liaising with more than one third party on behalf of a consumer, at the consumer's request. Consequently, all cases need to be considered on a case-by-case basis.



