



Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

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Minimum Competency Code 2011 Addendum for Debt Management Services



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INTRODUCTION

This Addendum to the Minimum Competency Code 2011 (MCC) is being introduced to establish minimum competency standards for persons providing debt management services. In addition, an amendment is being made to the footnote explaining consumer credit in order to make clear that consumer credit also includes credit falling within the scope of the European Communities (Consumer Credit Agreements) Regulations 2010. This Addendum is effective from 1 June 2014.

With effect from 1 August 2013, the regulation of debt management services (as defined) is provided for under Part 10 of the Central Bank (Supervision and Enforcement) Act 2013, which amends Part V of the Central Bank Act 1997.

For the purposes of applying the Minimum Competency Code 2011 to persons providing debt management services, the following amendments are now made:

- a definition of debt management services is included;
- transitional arrangements for persons already providing debt management services on 1 August 2013 are included;
- an additional specified function of 'providing debt management services' is included;
- a set of competencies for providing debt management services is included; and
- qualifications are recognised for the provision of debt management services.

In order to facilitate future amendments arising from changes in regulatory legislation or industry practice, the definitions of retail financial products and specified functions are also amended.

LEGAL BASIS

Pursuant to Section 50 of the Central Bank Reform Act 2010, Part 1 of the MCC is hereby amended as set out below. Amendments to Part 2 of the MCC, arising as a consequence of the amendments to Part 1, are made pursuant to the legislative provisions set out in Section 2.1 of the MCC.

DEFINITIONS

The 'Definitions' section of the MCC is hereby amended, as follows:

'debt management services' has the meaning assigned to it under Part V of the Central Bank Act 1997;

'retail financial product' means those products listed at Appendix 1, as amended from time to time.

'specified functions' means those controlled functions prescribed under the Central Bank Reform Act 2010 (Sections 20 and 22) Regulations 2011 which are set out as *'specified functions'* in Appendix 2, as amended from time to time, and any one such function is a *'specified function'*.

AMENDMENT TO PART 1 OF THE MCC

FITNESS AND PROBITY STANDARDS (MINIMUM COMPETENCY)

Amendment to Section 1.3 of the MCC, the Minimum Competency Standards

Section 1.3 of the MCC is hereby amended, as follows:

Sub-paragraphs d) and e) are re-numbered e) and f) respectively and a new sub-paragraph d) is now inserted, as follows:

d) is availing of the transitional arrangements in respect of the function to be exercised pursuant to Section 1.8 of the *Standards*, or

Amendment to Section 1.5 of the MCC, Grandfathering Arrangements

The following text is hereby added to Section 1.5 of the MCC:

The grandfathering arrangements do **not** apply to persons when providing *debt management services*.

Transitional Arrangements

The following text is hereby added to Part 1 of the MCC:

1.8 TRANSITIONAL ARRANGEMENTS FOR DEBT MANAGEMENT SERVICES

A *person* performing the *specified function* of providing *debt management services* on 1 August 2013 who does not hold a *recognised qualification* in respect of that specified function may, until 1 August 2017, perform the specified function of providing *debt management services* as if that person were a qualified person provided:

- (a) the *person* is working towards obtaining a *relevant recognised qualification*. In this regard, the *person* must:
 - i) register for the first available sitting of the relevant examination which the person could reasonably be expected to sit, and should the *person* fail to pass the examination on that occasion, each available sitting thereafter until the *person* obtains the qualification;

- ii) work towards obtaining examinations for the relevant qualification on a consistent and timely basis, until completion; and
 - iii) maintain a record of all examinations completed, results obtained and examinations scheduled for completion; **and**
- (b) the person obtains a *relevant recognised qualification* by 1 August 2017. A pro-rata adjustment to this timeframe may be applied in the same circumstances as outlined in paragraph 1.4.1(d) (ii) of the MCC in respect of new entrants.

AMENDMENT TO PART 2 OF THE MCC

MINIMUM COMPETENCY – REQUIREMENTS ON REGULATED FIRMS

Amendment to Section 2.3 of the MCC, Register of Accredited Persons

The second bullet of paragraph 2.3.1 is hereby amended as follows:

- qualification, grandfathered status, transitional status, *new entrant*, or *prescribed script function*;

Amendment to Section 2.6 of the MCC, Grandfathering Arrangements

The following sentence is hereby inserted at the end of paragraph 2.6.1:

The grandfathering arrangements do **not** apply to persons when providing *debt management services*.

Transitional Arrangements

The following text is hereby added to Part 2 of the MCC:

2.8 TRANSITIONAL ARRANGEMENTS FOR DEBT MANAGEMENT SERVICES

A regulated firm must:

- a) inform the person availing of the transitional arrangements, within three weeks of the date the Addendum is imposed, of the requirement to obtain a *relevant recognised qualification* by 1 August 2017;
- b) agree a plan for obtaining a *recognised qualification* with the person availing of the transitional arrangements and monitor the person's progress in adhering to this plan; and
- c) where an opportunity to sit an examination is not availed of by a person availing of the transitional arrangements, the *regulated firm* must document the reasons why.

Amendment to Appendix 1 of the MCC: *Retail financial products*

Footnote 13 to Appendix 1 of the MCC, which provides clarification regarding consumer credit in Category 8, Consumer Credit Agreements and Associated Insurances, is hereby amended as follows:

a credit agreement to which the European Communities (Consumer Credit Agreements) Regulations 2010 applies and cash loans, credit sale agreements, hire-purchase agreements and consumer-hire agreements to which the Consumer Credit Act, 1995 applies, other than the exceptions stated below.

The final sentence in Appendix 1 is hereby amended, as follows:

These categories may be reviewed and updated from time to time to reflect changing products and industry practice.

Amendment to Appendix 2 of the MCC: *Specified functions*

A new '*specified function*' is hereby added to Appendix 2 of the MCC, as follows:

4. providing *debt management services*, as defined in Part V of the Central Bank Act 1997;

Specified functions 4 and 5, re-numbered as 5 and 6 respectively, in Appendix 2 of the MCC are hereby amended to incorporate the additional *specified function* above, as follows:

5. acting for or on behalf of a *regulated firm* in the direct management or supervision of those *persons* who act for or on behalf of that *regulated firm* in providing *advice* to *consumers* about *retail financial products* or who arrange or offer to arrange *retail financial products* for *consumers* or who carry out the functions at (1), (2) or (4) above; and
6. adjudicating on any complaint communicated to a *regulated firm* by a *consumer* which relates to *advice* about a *retail financial product* provided to that *consumer* or the arranging or the offering to arrange of a *retail financial product* for that *consumer* or the functions at (1), (2) or (4) above.

The following sentence is hereby inserted at the end of Appendix 2:

These categories may be reviewed and updated from time to time to reflect changing functions and industry practice.

Amendment to Appendix 3 of the MCC – Minimum Competencies: Providing Debt Management Services

Appendix 3 of the MCC is hereby amended, by the addition of the following:

| SUBJECT MATTER | COMPETENCIES |
|--|---|
| 1. The concept of debt management | <ul style="list-style-type: none">√ To explain the concept of debt management and the benefits it can provide to consumers.√ To explain the role of a debt advisor and the letter of engagement. |
| 2. Legal principles | <ul style="list-style-type: none">√ To explain the main elements of a valid contract, how a contract is discharged and the remedies for breach of contract.√ To understand the covenants given by borrowers as part of the terms of a loan agreement and the potential consequences arising from the breach of a covenant.√ To understand the responsibilities and potential liability of a professional when providing advice to a consumer. |
| 3. Consumer debt | <ul style="list-style-type: none">√ To understand the most common causes of consumer debt.√ To assess different types of creditors and credit arrangements.√ To understand the different types of debt, including secured and unsecured loans, loans with and without recourse, taxation, utilities and other debts such as household, education or medical debts, and debts arising from domestic support order of a court.√ To understand contingent liabilities, such as guarantee liabilities.√ To understand the cost of credit and the components of that cost.√ To understand the impact of rent arrears and tenant rights.√ To understand the impact of mortgage arrears and the options of recourse available to the creditor, and the rights of the debtor. |
| 4. Mortgage arrears | <ul style="list-style-type: none">√ To understand the background to the causes of the mortgage debt crisis.√ To understand the short-and long-term solutions that are available for those in arrears.√ To explain the different types of mortgages, including tracker, interest only, fixed interest, variable interest, capital and interest, and Local Authority mortgages.√ To understand the repossession process for private dwellings and buy-to-let properties and the rights of the mortgagee. |
| 5. Budgeting | <ul style="list-style-type: none">√ To explain the importance of an effective budget for consumers.√ To identify ways that consumers could reduce their expenditure.√ To identify ways that consumers could maximise their income.√ To be able to prioritise consumer debts, including credit, taxation, utilities and other debts such as household, education or medical debts.√ To understand the potential impact on access to arrangements under the Personal Insolvency Act 2012 (Personal Insolvency Arrangements and Debt Settlement Arrangements) of giving |

Amendment to Appendix 3 of the MCC – Minimum Competencies: Providing Debt Management Services

| SUBJECT MATTER | COMPETENCIES |
|---|---|
| | <p>preference to a creditor that substantially reduces the amount available to the debtor to pay debts to other creditors.</p> <ul style="list-style-type: none">√ To identify the variety of payment tools available to the consumer and appropriate to the circumstances.√ To understand relevant welfare entitlements and appeals. |
| 6. The process by which appropriate advice is given to the consumer about debt management services | <ul style="list-style-type: none">√ To recognise the financial needs of various types of consumers at different stages in the debt management process, in particular the needs of distressed debtors.√ To recognise the psycho-social impact on consumers of being in debt and to understand how to deal with distressed consumers, including knowledge of referral options.√ To identify the main items of information that should be sought before providing advice to the consumer on his or her debt management needs.√ To understand the purpose and content of the Standard Financial Statement and a Prescribed Financial Statement.√ To be able to analyse information about a consumer's debt in order to accurately identify, quantify and prioritise his or her debt management needs.√ To be able to assess the extent of consumer debt.√ To understand different types of security and assess the value of security.√ To compare and contrast the different debt management solutions so as to be able to recommend to a consumer a solution appropriate to that consumer's financial situation.√ To compose a statement of suitability for a consumer setting out in clear terms the reasons underlying any recommendation made to the consumer by the firm, an explanation of the options available and the risks and consequences for the consumer of accepting any of those options.√ To explain the role of the Money Advice and Budgeting Service (MABS) in the provision of <i>debt management services</i>. |
| 7. Debt management solutions | <ul style="list-style-type: none">√ To explain, compare and contrast the main features, benefits, limitations and risks of the different debt management solutions for individual and corporate consumers, both statutory and non-statutory, including insolvency, bankruptcy, rescheduling and restructuring options, examinership, receivership and liquidation.√ To explain the impact of debt management solutions for the consumer in different circumstances.√ To identify the circumstances in which each debt management solution is appropriate.√ To explain the role of the Courts in debt management and debt enforcement.√ To explain the debt collection and debt enforcement process. |

Amendment to Appendix 3 of the MCC – Minimum Competencies: Providing Debt Management Services

| SUBJECT MATTER | COMPETENCIES |
|---|--|
| 8. Personal taxation | <ul style="list-style-type: none">√ To understand the main schedules under which Income Tax is assessed and identify the types of income which fall under each schedule.√ To understand the main Income Tax reliefs and credits that can be claimed by a <i>consumer</i>.√ To understand a <i>consumer's</i> Income Tax liability, given details of his or her earnings and reliefs.√ To understand when an Inheritance Tax liability could arise on the inheritance of an asset.√ To understand when a Capital Gains Tax liability could arise on the disposal of an asset.√ To assess liability for Local Property Tax. |
| 9. Negotiation | <ul style="list-style-type: none">√ To understand the various types of creditors and their rights.√ To assess the approach of the different types of creditors and their possible approach to debt management solutions.√ To understand how to prepare for negotiating with the different types of creditors.√ To be able to negotiate effectively with creditors on behalf of the consumer. |
| 10. Best practice | <ul style="list-style-type: none">√ To be able to identify conflicts of interest and manage them appropriately.√ To describe the importance of confidentiality in relation to the collection, maintenance and processing of personal data related to <i>consumers</i>.√ To understand responsibilities under data protection legislation.√ To recognise the ethical issues arising in relation to the conduct of business.√ To advise a <i>consumer</i> in relation to the procedures involved in complaints handling and the use of alternative dispute resolution channels.√ To explain the management and protection of consumer funds put in place by the Payment Services Directive. |
| 11. Legislation, regulation and compliance | <ul style="list-style-type: none">√ To discuss why Governments seek to regulate financial services companies.√ To distinguish between structural, systemic, prudential and <i>consumer</i> protection regulation.√ To describe the main functions of the Central Bank of Ireland, including its enforcement powers.√ To describe the main functions of the National Consumer Agency in relation to the provision of financial services to <i>consumers</i>.√ To describe the main functions of other regulatory bodies, including the Commission for Energy Regulation (CER) and the |

Amendment to Appendix 3 of the MCC – Minimum Competencies: Providing *Debt Management Services*

SUBJECT MATTER COMPETENCIES

Commission for Communications Regulation (ComReg).

- √ To describe the main functions of the Financial Services Ombudsman.
- √ To explain the main regulatory requirements which directly apply to the activity of providing *debt management services* to consumers, including in particular:
 - The Authorisation Requirements and Standards for Debt Management Firms, as amended from time to time, issued by the Central Bank;
 - relevant provisions of the Central Bank Act 1997 in relation to *debt management services*;
 - the relevant provisions of the Central Bank Reform Act 2010 in relation to fitness and probity;
 - the provisions of relevant Codes of Conduct, issued by the Central Bank, including the Consumer Protection Code 2012 and the Code of Conduct on Mortgage Arrears 2013, as amended from time to time;
 - the provisions of the Minimum Competency Code 2011, as amended from time to time, issued by the Central Bank;
 - the provisions of relevant codes of conduct issued by the Commission for Energy Regulation (CER), the Commission for Communications Regulation (ComReg) and Local Authorities.
 - obligations on financial services providers as *designated persons* under the Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010;
 - the details of the Financial Services Ombudsman Scheme, and how a *consumer* can access the Scheme;
 - the provisions of the Data Protection Acts 1988 and 2003 related to the maintenance, disclosure and use of personal data and the Equal Status Acts 2000-2008.

Amendment to Appendix 4 of the MCC – Recognised Qualifications

Appendix 4 of the MCC is hereby amended, as follows:

| Category of <i>specified function</i> | Qualification recognised by the Central Bank |
|--|--|
| 3 Providing <i>debt management services</i> , as defined in Part V of the Central Bank Act 1997. | <ul style="list-style-type: none">• Accredited Product Adviser (Debt Management Services) (<i>Institute of Banking School of Professional Finance, LIA and The Insurance Institute of Ireland</i>)• Accredited Product Professional (Debt Management Services) (<i>National College of Ireland</i>) |

Paragraph 3, re-numbered as 4, is hereby amended to incorporate the additional specified function above, as follows:

| | |
|--|--|
| 4 Adjudicating on any complaint communicated to a regulated firm by a <i>consumer</i> which relates to <i>advice</i> about a <i>retail financial product</i> provided to that <i>consumer</i> or the arranging of a <i>retail financial product</i> for that <i>consumer</i> or the activities at 1, 2 or 3 above. | <ul style="list-style-type: none">• Licentiate of the Association of Compliance Officers in Ireland• Solicitor Member of the Law Society of Ireland• Barrister-at-Law called to the Bar of Ireland |
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