



An Roinn Airgeadais
Department of Finance

Capping the cost of licensed moneylenders and other regulatory matters

Public Consultation May 2019

Prepared by the Banking Division,
Department of Finance
www.gov.ie/finance

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1 Introduction

The purpose of this public consultation process is to gather views from stakeholders on whether the Government should introduce a statutory interest rate cap on licensed moneylenders in Ireland. In particular, this consultation process is concerned with whether the introduction of a cap would have a negative effect on the supply of credit and might lead to an increase in illegal moneylending or to financial exclusion for consumers of these regulated firms. A further complication is that introducing a cap on the basis of APR can lead to confusion. This issue is discussed further in this consultation paper. Views are also sought on other matters related to the regulation of licensed moneylenders.

The mission of the Department of Finance is to manage government finances and play a central role in the achievement of the government's economic and social goals. The Department's Banking Division is managing this public consultation and some of the core functions of the Banking Division include dealing with the strategies for the banking and payment sectors in Ireland, the policies relating to the provision of credit in the economy, credit and payments regulation and consumer protection.

The Social Finance Foundation (SFF) launched a report titled "Interest Rate Restrictions on Credit for Low-income Borrowers" in November 2018. The SFF requested the Centre for Co-operative Studies, University College Cork, to research and complete the report. This research was jointly funded by the Central Bank and the SFF and a link to the Report can be found in the Relevant Documentation section below.

The purpose of the interest rate restriction (IRR) research was to examine the extent and variety of interest rate restrictions within the EU and further afield and to assess the appropriateness of introducing such a restriction in the Irish market, given its specific circumstances and financial environment.

The Report included key recommendations, one of which was that a cap on interest rates and charges should be introduced, however this was conditional on having a reliable alternative available for consumers in Ireland. It is worth noting, no specific IRR model was recommended and there was no recommended level specified for an interest rate cap.¹

This public consultation is primarily to seek views as appropriate on an interest rate cap but also to seek views on other matters.

¹ Sinn Féin introduced its Consumer Credit (Amendment) Bill 2018 to cap the interest rate in moneylending agreements at 36% APR. The Bill passed Second Stage. Government proposed that Second Stage should be delayed by a year to permit examination and consideration of the UCC Report. The Department has provided its assessment of the Private Members Bill to the Committee on Finance, Public Expenditure and Reform and Taoiseach. The Committee are yet to publish this assessment in the public domain. When they do, it should be available from www.oireachtas.ie and it will also be published on the Department's website.

OVERVIEW OF THE LICENSED MONEYLENDING SECTOR

The Consumer Credit Act 1995 (CCA), *inter alia*, provides in Section 93 (as amended) for the authorisation and regulation of licensed moneylenders by the Central Bank of Ireland (Central Bank).

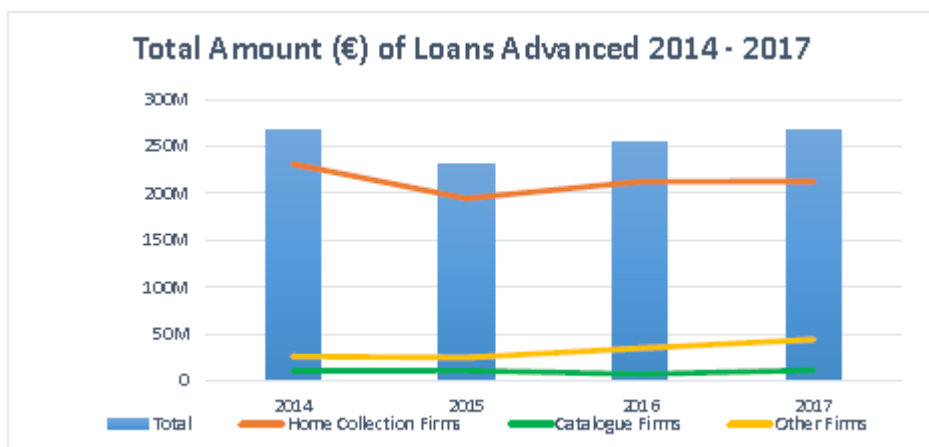
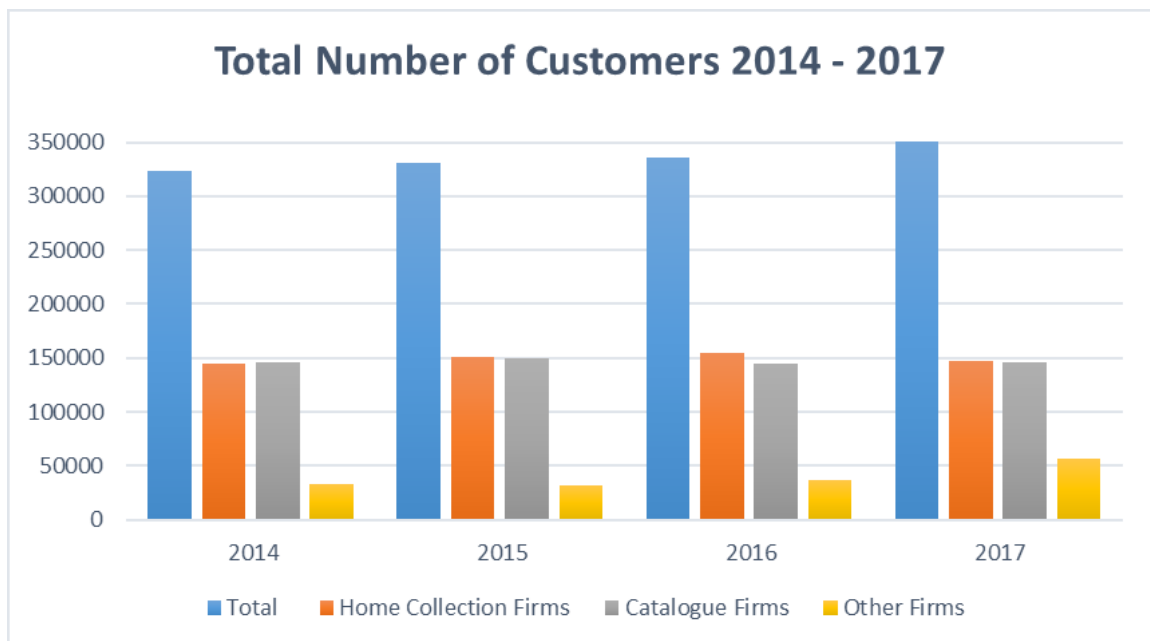
Under the CCA, “moneylending” is defined as the practice of providing credit to consumers on foot of a “moneylending agreement”, which in turn is defined as a credit agreement:

- concluded away from the business premises of the moneylender or the business premises of the supplier of goods or services under the agreement,
- where 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,
- where 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**
- 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

Currently, there are 39 licensed entities authorised by the Central Bank, according to its Moneylender Register – see <http://registers.centralbank.ie/DownloadsPage.aspx>. There are two main types of moneylender, those who operate on a home collection basis and catalogue companies. Credit in the home collection sector under a moneylending agreement will usually take the form of a cash loan. In the catalogue sector, credit is provided for the purchase of goods from the credit provider. A number of entities operate in both sectors.

The personal unsecured lending market for credit institutions, including credit unions, in Ireland is approximately €14 billion at December 2018 according to the Central Bank. The licensed moneylender sector had €153 million of loans issued at December 2017, which includes Home Collection and other forms of licenced moneylending which have an APR above 23 per cent. Licenced credit institutions can charge an APR higher than 23 per cent, for example on credit cards, but are exempt from being classified as a moneylender under the CCA. At present credit unions cannot charge a rate above 1 per cent per month in accordance with the Credit Union Act, 1997.

The following tables are taken from the 2018 Central Bank consultation paper on moneylenders:



In Ireland, moneylenders are not permitted to charge consumers any extras² such as, but not limited to, missed payments fees, late payment fees, set up fees, overdue account fees. The only permitted charge in addition to interest is a collection charge where a moneylender operates on a home collection basis. Where firms operate such a home collection business model, the moneylending agreement shall include a statement that the borrower shall have the option of making the repayment at the business premises of the moneylender and if the borrower exercises this option, that the home collection charge will not be payable.

The Moneylender Register details the maximum rates that licensed moneylenders can currently charge. The register states that each registered moneylender may have a range of additional products with lower APRs and costs of credit available. The maximum rate of APR, excluding collection charges, that moneylenders are licensed to charge ranges from 24.80% to 188.45%. The maximum rate of APR, including collection charges, ranges from 152.3% to 287.72%. Not all moneylenders operate on a home collection basis.

² The only exception being the awarding of legal costs by a Court of law.

The register also shows the “Associated Maximum Cost of Credit per €100 Borrowed” for each moneylender. This is expressed as a simple percentage. It should be noted that this is NOT an APR (See Box 1 below for further information on APR). For loans up to one year, the range runs from 25% for a term of 25 weeks to 56% for a term of 52 weeks. The register shows five moneylenders with loan terms in excess of one year.

For those moneylenders charging collection charges, the register shows the range runs from 3 cent in the euro up to a maximum of 14 cent in the euro.

Also, under the CCA for the purpose of collecting repayments, moneylenders and collection agents are not permitted to visit or telephone a consumer without their consent between the hours of nine o'clock in the evening on any week day and ten o'clock in the morning on the following day, or at any time on a Sunday or a public holiday. Borrowers can give consent for contact between eight and ten a.m. on any week day.

Complaints by consumers against licensed moneylenders may be investigated by the Financial Services and Pensions Ombudsman.

ANNUAL PERCENTAGE RATE (APR)

APR can be confusing. As APR is expressed in percentage terms, it is often taken to be the actual interest rate whereas it is the yearly rate of charge and includes all of the known costs involved, such as set-up and any other mandatory charges and the interest rate expressed as an annual percentage. The term of the loan has a huge effect. The relevant nominal interest rate and the actual cost of credit are different to the APR and the calculations required to go from the actual cost of credit (including charges) to APR and *vice versa* are very complex, particularly when the term of the loan is less than one year. Specialist models/programmes are generally used. The APR does not capture the total cost of credit in monetary amounts to the consumer. Rather, it is the total cost of credit expressed as an annual percentage of the amount of credit granted, and the APR calculation reflects not just money (amount loaned, repayment amount and total costs to the borrower), but also time (loan term and frequency of repayments).

APR is useful when used to compare loans of the same amount and term.

With loan terms below one year, APRs increase dramatically as the term gets shorter. For example, when we look in detail at a loan of €100 with a cost of credit of €25 applied to it, we get exceedingly varied APR rates depending on the term duration.

- Where the term is set to 4 weeks, the APR for this would be c. 11,455%.
- Where the terms is set to 13 weeks, the APR would be c. 455%.
- Where the terms is set to 26 weeks, the APR would be c. 144%.
- With a term of 52 weeks, the APR would be c. 58%.

MONEYLENDERS REVIEW – RELEVANT DOCUMENTATION

The Central Bank undertook a public consultation in March 2018 to review its Consumer Protection Code for Licensed Moneylenders (ML Code). Links to relevant papers are below:

Central Bank papers:

Central Bank Consultation Paper 118 <https://centralbank.ie/docs/default-source/publications/consultation-papers/cp118/cp118---review-of-the-consumer-protection-code-for-licensed-moneylenders.pdf?sfvrsn=4> (March 2018)

Central Bank Press Release: ["Consultation Paper proposes targeted measures to enhance protections for customers of moneylenders"](#) (March 2018)

Central Bank ["Report on the licensed Moneylending Industry"](#) (November 2013)

Central Bank ["Consumer Protection Code for Licensed Moneylenders"](#) (January 2009)

Other relevant papers:

Joint Report by the G20 OECD Task Force on Financial Consumer Protection, FinCoNet and the OECD International Network on Financial Education: ["Short-term consumer credit: provision, regulatory coverage and policy responses"](#)

Mary Faherty, Olive McCarthy and Noreen Byrne, Centre for Co-operative Studies, University College Cork on behalf of the Social Finance Foundation ["Interest Rate Restrictions on Credit for Low Income Borrowers"](#)

Jose Ignacio Cuesta and Alberto Sepulveda ["Price Regulation in Credit Markets: A Trade-off between Consumer Protection and Credit Access"](#) (Chile)

Elaine Kempson, Anna Ellison, Claire Whyley and Paul Jones - Joseph Rowntree Foundation ["Is a not-for-profit home credit business feasible?"](#)

2. Consultation Period

The consultation period will run from 31st May 2019 to 31st July 2019. Any submissions received after this date may not be considered.

HOW TO RESPOND

The preferred means of response is by email to: consumer.protection@finance.gov.ie

Alternatively, you may respond by post to:

Consumer Protection – Public Consultation,
Banking Division,
Department of Finance,
Government Buildings,
Upper Merrion Street,
Dublin 2.
D02 R583

Please include contact details if you are responding by post.

When responding, please indicate whether you are contributing to the consultation process as a professional adviser, representative body, business representative or member of the public.

FREEDOM OF INFORMATION

Responses to this consultation are subject to the provisions of the Freedom of Information Acts. Parties should also note that responses to the consultation may be published on the website of the Department of Finance. Parties should clearly indicate where their responses contain personal information, commercially sensitive information or confidential information which they would not wish to be released under FOI or published.

MEETINGS WITH STAKEHOLDERS

The Department of Finance may also invite key stakeholders to meet with them, including representative bodies and other interested groups or individuals.

AFTER THE CONSULTATION

Policy issues from this public consultation will form part of the Minister for Finance's considerations in relation to the applicable legislation.

3. Consultation Questions

In responding to this consultation you are invited to:

- Give your views on the specific questions set out below. You don't have to answer every question – you can choose to answer any or all of the questions.
- Provide details of any alternative approaches or options you feel might be beneficial in dealing with the issues being addressed.
- Provide details of relevant issues not covered in this paper.
- Comment generally on the direction you would like to see policy in this area develop.

Your views are important as they may help influence the policy to be applied in the future particularly if you have direct or indirect experience of the moneylending sector.

4. Questions on moneylending

Charges made by moneylenders in Ireland consist of interest and collection charges. In accordance with section 112 of the CCA, no additional charges or increased interest rates are permitted in the event of a default in repayments. No other administrative fees or charges are permitted under section 102 of the Act.

1. Interest Rates

Other jurisdictions have varied approaches in the manner with which they choose to manage the level of interest charged for the provision of short-term consumer credit.

The current legislative framework in Ireland permit moneylenders to enter into moneylending agreements subject to the term(s), APR(s), cost(s) of credit and collection charge(s) (if applicable) as set out in the licence issued by the Central Bank to the individual moneylender. The licence states the maximum APR (including the collection charge, if applicable) and the maximum cost of credit per €100 for a specified term.

Under the CCA, the Central Bank may refuse to grant a license to a moneylender if, in its opinion, the cost of credit to be charged is excessive or the terms and conditions of loans are unfair. As the CCA does not define “excessive”, the Central Bank, which took over responsibility for moneylenders in 2003, has continued to license moneylenders at the maximum rate in their last license issued by the Director of Consumer Affairs, which was the previous licensing authority. So, while Ireland does not have a statutory interest rate cap, it has a *de facto* cap of 188.45% APR (excluding collection charges) and 287.72% APR (including collection charges). In addition, the Central Bank has not licensed any moneylender to provide a “pay-day³” loan service such as exists in other jurisdictions including the UK.

The maximum cost of credit per €100, for moneylenders with collection charges, ranges from 40% for 46 weeks (annual equivalent is 45.2%) to 30% for 20 weeks (annual equivalent is 78%). This maximum cost of credit does include collection charges, if applicable.

The OECD Report on Short-term Consumer Credit (see relevant documents in Section 1) concluded that caps on costs of short-term credit are effective in reducing costs for consumers, if they do not exclude the most vulnerable from the formal short-term credit market through reduced supply and/or higher underwriting standards. The Report also contains information about the different approaches used in other selected jurisdictions. Some have caps in relation to interest rates and/or fees. Other jurisdictions cap APR (covers interest and mandatory fees), while others cap the maximum total cost of credit.

³ 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%.

Interest rate caps based on APR

- Fixed cap examples range from 14% APR in The Netherlands up to 100% APR in Georgia – although some also permit additional fees in the event of delayed payment or default. It should be noted that in the case of The Netherlands, the OECD reports that regulatory arbitrage is a feature as operators now service the high cost credit sector from other EU countries.
- Variable caps generally set a cap above a reference rate, examples include:
 - the APR cannot exceed 3 times the average APR of consumer loans for a previous set period (Estonia);
 - the APR cannot be more than 25% higher, in one case plus an additional margin of 4%, than the average in the previous quarter (Italy).

Nominal interest rate caps

- Relative nominal interest rate cap - where the rate charged cannot exceed twice a reference rate (Armenia).
- Fixed nominal interest rate caps, e.g. 20% (Japan), 35% (Chile)
- Fixed annual nominal interest rates (i.e. applied pro rata to the term), e.g. 75% per annum in Lithuania, which also caps other costs in the total cost of credit at 0.04%.
- Fixed monthly nominal interest rates, e.g. 4% per month in Singapore, which has a further safeguard that interest and fees cannot exceed 100% of the amount borrowed.
- Staggered reduced caps on short-term loans: cap of 5% per month on the first loan in a calendar year and 3% for all subsequent loans in the same calendar year (South Africa).

The above information is a selection from the OECD Report and further information may be found in the Report – a link to it is available under Relevant Documentation in Section 1 of this paper.

The introduction of a cap must take account of the effect that it may have upon this market and whether it would reduce the number of licensed moneylenders. If that was to occur, there is concern that reduced supply in the licensed sector would lead to affected consumers turning to illegal moneylenders. At present, there is no information on the level of illegal moneylending in Ireland and acquiring data on it through research is very difficult given the nature of the topic. However, the Personal Micro Credit Task Force, which was established at the behest of SFF, have engaged an independent social researcher, Dr Stuart Stamp, to investigate unlicensed moneylending. The Department of Finance is financially supporting this research in conjunction with the SFF and the Citizens Information Board.

This research is expected to give some insight about the possibility that affected consumers may move to unlicensed moneylenders in the event that the licensed sector is reduced, or ceases to operate on foot of a legislative change capping the rates. The report is expected later this year.

Q1.1 Should a statutory interest rate cap be introduced in Ireland? Please provide the rationale for your answer.

Q1.2 If you feel a cap should be introduced, should it be introduced as soon as possible or should its introduction be linked to the availability of reliable alternative sources of credit, as recommended in the UCC Report?

Q1.3 If an interest rate cap is introduced, which model do you feel would be the most beneficial and transparent for consumers? Options include:

- fixed or relative (to a reference rate) APR caps;
- fixed or relative (to a reference rate) nominal interest rate caps;
- nominal interest rate caps that vary by the term of the loan and/or the value of the loan; or
- staggered nominal interest rate caps (for loans in the same calendar year).

Alternatively, please suggest a model of your own choice.

Q1.4 Having selected or outlined a model for the capping of interest rates, what level(s) of interest do you feel would be most appropriate, in terms of benefitting consumers and maintaining the regulated supply of credit? Please provide the rationale for your answer.

2. Charges and Fees

As noted above, apart from collection charges, moneylenders in Ireland cannot impose any charges or fees for the establishment or administration of a loan or in respect of late repayment or default. The system is clear and appears to work well.

With regard to home collection charges, moneylenders in this sector argue that home collection is a necessary part of their business model as it keeps bad debts and missed repayments to a lower level than they would otherwise be. However, it should be acknowledged that it is also a key sales channel for them as well. According to the IRR Report, *customers report satisfaction with the convenience and ease with which they can borrow from and repay moneylenders.*

However, operating home collection is costly. The amount that moneylenders may charge for the service is stipulated on their licences and in the Central Bank's Register of Moneylenders. The amount varies by moneylender, for those that do home collection. It ranges from 3 cent in the euro to 14 cent in the euro.

Consumers can avoid paying collection charges by making repayments at the moneylender's office. However, the CCA permits collection charges "in respect of the payment of repayments

at a location other than the business premises of the moneylender". This provision does not seem to adequately capture the current realities of technological developments since 1995.

Q2.1 Should the prohibition on charges other than collection charges continue?

Q2.2 Should a statutory maximum home collection charge be introduced?

Q2.3 If one is stipulated in legislation, should it be on the basis of;

- the current model of X cent in the euro borrowed (i.e. a fixed cost) or
- the number of visits, with a flat rate fee per visit?

Q2.4 Having selected or outlined a model for the home collection charge, what level(s) of charge do you feel would be most appropriate, in terms of benefitting consumers and maintaining the regulated supply of credit? Please provide the rationale for your answer.

Q2.5 Should specific repayment options be required to be included for consumers – such as Post Office repayment, standing order, direct debit, on-line transfer? Please list all repayment options you consider appropriate.

Q2.6 How should the provisions in respect of collection charges be changed to reflect the alternative repayment options?

3. Maximum Repayment Amounts

In Ireland, moneylender's licences already set out the maximum cost of credit that they can charge. This includes home collection charges, where relevant.

At the moment, as noted above, it varies by moneylender. If policy decisions are reached on an interest rate cap and a cap on home collection charges, there will be, in effect, a statutory cap on the maximum charge for the cost of credit. Depending on policy choices, the extension of a loan term could reduce the APR without reducing the actual cost of the credit.

Q3.1 Do you have any comment on this?

4. Home Collection Practices

Moneylenders are currently permitted to undertake house visits for collection of repayments. These visits are restricted to certain time periods. Moneylenders and collection agents are not permitted to visit or telephone a consumer without their consent between the hours of nine o'clock in the evening on any week day and ten o'clock in the morning on the following day, or at any time on a Sunday or a public holiday. Borrowers can give consent for contact between 8 a.m. and 10 a.m. on any week day.

Q4.1 Given the changes that have taken place in lifestyles since 1995, do you think that these contact provisions require changing and if so, how should they be changed?

5. Digitalisation

There have been numerous advances with digital technology in recent years. A lot of positive change has been introduced in the banking market with digital payments readily available to most consumers having access via personal devices such as mobile phones, tablets and PCs or online in their financial institution or local library.

However, the CCA dictates that a repayment book must be provided and updated by moneylenders for their consumers.

Section 100 of the CCA states:

“A moneylender shall, in respect of every moneylending agreement, supply to the borrower a book or document (“repayment book”) in which to record repayments made under the agreement which shall be completed and maintained by the moneylender”

Q5.1 In light of technology advances, should the option be made available to consumers to receive a digital record of their transactions instead of a hard copy?

6. Registration and Regulation

Moneylenders are currently required to register for district court areas in which they can operate. A large proportion cover all districts in the Republic of Ireland.

Section 93 of the CCA states:

“A person who intends to apply for a moneylender's licence shall before making such application cause to be published, in any national or local newspaper published in the State and circulating in the district court district that the applicant intends to engage or engages in the business of moneylending, notice of his intention.”

Q6.1 Do you think the district court method is still an appropriate method of licensing moneylenders?

Current regulation means that a Moneylender's licence must be renewed annually with the Central Bank. Companies in other markets / industries are not required to renew their licences as frequently or at all. This has the advantage that each moneylender does have to satisfy the Central Bank each year that he/she is an appropriate person to continue in the business. On the other hand, it does impose a high regulatory burden, including costs, on moneylenders and it ties up staff in the Central Bank that could otherwise be deployed more effectively.

Section 93 of the CCA states:

“A moneylender's licence shall be valid for the period of 12 months commencing on the date specified therein and shall expire at the end of that period.”

Q6.2 Should the Central Bank, at its discretion, be given the power to issue licences to moneylenders for periods longer than one year?

If so, should there still be a maximum period for such a licence, e.g. 3 or 4 years or should such licences be without any time limit?

7. Advertising

Currently there are recognised “peak times” for consumers seeking access to credit from moneylenders. These include the likes of Christmas, communions, confirmations and “back to school”. The 2013 Central Bank Report on the Licensed Moneylending Industry reported that 8% of customers were introduced on foot of advertising with a further 11% on foot of receiving leaflets / catalogues in the post.

The CCA includes provisions in relation to advertising in Part II “Advertising and Offering of Financial Accommodation” of the Act.

Amongst the provisions, Section 20 of the CCA states:

“Subject to subsection (2), this Part applies to any advertisement, published or displayed for the purpose of a business carried on by the advertiser indicating willingness to—

- a) provide or to arrange the provision of credit,
- b) enter into a hire-purchase or consumer-hire agreement for the letting of goods by the advertiser, or
- c) arrange the letting of goods under a hire-purchase or consumer-hire agreement by another person, to a consumer.”

Section 21 of the CCA states:

“An advertisement in which a person offers to provide or arrange the provision of credit shall, if mentioning a rate of interest, contain a clear and prominent statement of the APR, using a representative example if no other means is practicable, and no other rate of interest shall be included in the advertisement.”

Q7.1 In your opinion, should there be further requirements or restrictions on advertising by moneylenders?

Q7.2 If you feel it is appropriate for moneylenders to advertise, please suggest a model of your own choice for use in the advertisement to illustrate the repayment which may be applicable.

8. Terminology

Currently, the term “moneylenders” can be interpreted as referring to legal or illegal operators in the market. The term itself may have negative connotations for some.

Q8.1 Should consideration be given to renaming licensed moneylenders on a legislative basis - for example, as “high cost credit providers” to more effectively differentiate them from illegal operators?

Q8.2 In your opinion, would such an approach be beneficial? If so, what name would you suggest using and why?

9. Additional Comments

Q9 Do you have any additional comments or observations that you wish to add to your submission?



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