Financial Services (Moneylending) Act

Principal Act

Act. No. 1917-15

Commencement	1.10.1917
Assent	1.10.1917

Amending enactment	Relevant current provisions	Commencement date
Act. 1934- 27	ss. 2, 3(2), (5), 4, 10-13, 15, 17-18, Sch.	
1948-27	ss. 5-7, 9, 19	
1949-25	ss. 5-6	
1983-12	s. 12(1)	
1995-15	ss. 4, 5(1), (3), 12, 13(1), 16-17, 19(2)	1.2.1996
2007-04	s. 1	19.4.2007
2008-06	ss. 2(1), (e), 4, 5(1)-(2), 6(2), (5), (7), 9, 19(1)	29.5.2008
LN. 2011/031	ss. 2-29, 30(1)-(2), 31(2), (5), 32, 33(2), 34(3)(c), 36(2), 38(2), 39, 41(1)(a)-(b), 43(1)-(2), 47(1), Schs. 1-4.	24.3.2011
2021/105	ss. 2, 3(1)-(3), 4(2)(i), 14(5), 20, Schs. 2-3	1.1.2021
Act. 2022-13	s. 33(1), (1A), Sch. 5	1.12.2022
LN. 2023/218	Sch. 5	1.8.2023
2024/130	Sch. 5	1.8.2024
2025/174	Sch. 5	1.8.2025
2026/234	Sch. 5	1.8.2026

Transposing:
Directive 2008/48/EC

English Sources:
Betting and Loans (Infants) Act 1892 (55 & 56 Vict.c.4)
Money-Lenders Act 1900 (63 & 64 Vict.c.51)
Money-Lenders Act 1901 (1 & 2 Geo.5 c.38)
Money-Lenders Act 1927 (17 & 18 Geo.5 c.21)

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AN ACT TO AMEND THE LAW AS TO THE LENDING OF MONEY AND WITH RESPECT TO PERSONS CARRYING ON BUSINESS AS MONEYLENDERS.

Short title.

1. This Act may be cited as the Financial Services (Moneylending) Act.

PART I

REGULATION OF CREDIT FALLING WITHIN SCOPE OF THIS PART

2. *Omitted*.

Interpretation.

3.(1) For the purpose of this Part–

"annual percentage rate of charge" shall have the meaning assigned to it under section 21;

"borrowing rate" means the interest rate expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down;

"consumer" means a natural person who, in transactions covered by this Act, is acting for purposes which are outside his trade, business or profession;

"creditor" means a natural or legal person who grants or promises to grant credit in the course of his trade, business or profession;

"credit agreement" means an agreement whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other similar financial accommodation, except for agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by means of instalments;

"credit intermediary" means a natural or legal person who is not acting as a creditor and who, in the course of his trade, business or profession, for a fee, which may take a pecuniary form or any other agreed form of financial consideration–

(a) presents or offers credit agreements to consumers;

(b) assists consumers by undertaking preparatory work in respect of credit agreements other than as referred to in (a); or

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(c) concludes credit agreements with consumers on behalf of the creditor;

"the Director" means such person as the Minister shall appoint;

"durable medium" means any instrument which enables the consumer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

"fixed borrowing rate" means that the creditor and the consumer agree in the credit agreement on one borrowing rate for the entire duration of the credit agreement or on several borrowing rates for partial periods using exclusively a fixed specific percentage. If not all borrowing rates are determined in the credit agreement, the borrowing rate shall be deemed to be fixed only for the partial periods for which the borrowing rates are determined exclusively by a fixed specific percentage agreed on the conclusion of the credit agreement;

"linked credit agreement" means a credit agreement where–

(a) the credit in question serves exclusively to finance an agreement for the supply of specific goods or the provision of a specific service; and

(b) those two agreements form, from an objective point of view, a commercial unit,

and, for the purpose of this definition, a commercial unit shall be deemed to exist where the supplier or service provider himself finances the credit for the consumer or, if it is financed by a third party, where the creditor uses the services of the supplier or service provider in connection with the conclusion or preparation of the credit agreement, or where the specific goods or the provision of a specific service are explicitly specified in the credit agreement;

"the Minister" means the Minister responsible for financial services;

"overdraft facility" means an explicit credit agreement whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account;

"overrunning" means a tacitly accepted overdraft whereby a creditor makes available to a consumer funds which exceed the current balance in the consumer's current account or the agreed overdraft facility;

"total amount of credit" means the ceiling or the total sums made available under a credit agreement;

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"total amount payable by the consumer" means the sum of the total amount of the credit and the total cost of the credit to the consumer;

"total cost of the credit to the consumer" means all the costs, including interest, commissions, taxes, and any other kind of fees which the consumer is required to pay in connection with the credit agreement and which are known to the creditor, except for legal costs; costs in respect of ancillary services relating to the credit agreement, in particular insurance premiums, are also included if, in addition, the conclusion of a service contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marked.

(2) In this Act or any provision made under it, except where there is express provision to the contrary–

(a) a reference to an amount in euros includes a reference to an equivalent amount in sterling; and

(b) the equivalent in sterling on a particular day of a sum expressed in euros is to be determined by converting that sum into its equivalent in sterling using the exchange rate for the euro and sterling for the previous working day.

(3) The Minister may by notice in the Gazette specify the exchange rate to be used for the purposes of subsection (2).

Agreements to which this Part applies

Application of Part.

4.(1) This Part shall apply to credit agreements.

(2) Without prejudice to sub-section (1), this Part shall not apply to credit agreements–

(a) which are secured–

(i) by a mortgage, or

(ii) by a privilege or by a right,

related to immovable property;

(b) the purpose of which is to acquire or retain property rights over the land or over an existing or projected building;

(c) involving a total amount of credit less than Euro 200 or more than Euro 75,000;

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(d) relating to hiring or leasing where an obligation to purchase the object of the agreement is not laid down either by the agreement itself or by a separate agreement. Such an obligation shall be deemed to exist if it is so decided unilaterally by the creditor;

(e) in the form of an overdraft facility and where the credit has to be repaid within one month, except for section 9;

(f) where the credit is granted free of interest and any other charges;

(g) under the terms of which the credit has to be repaid within three months and only insignificant charges are payable;

(h) where the credit is granted by an employer to his employees as a secondary activity free of interest or at annual percentage rates of charge which are lower than those prevailing on the market and which are not offered to the public;

(i) which are concluded with investment firms or credit institutions that are regulated firms within the meaning of the Financial Services Act 2019, for the purpose of allowing an investor to carry out a transaction relating to one or more of the financial instruments in paragraph 46 of Schedule 2 to that Act, where the investment firm or credit institution granting the credit is involved in the transaction;

(j) which are the outcome of a settlement reached in court or before a statutory authority;

(k) which relate to deferred payment, free of charge, of an existing debt;

(l) upon the conclusion of which the consumer is requested to deposit an item as security in the creditor's safe-keeping and where the liability of the consumer is strictly limited to that pledged item;

(m) which relate to loans granted to a restricted public under a statutory provision with a general interest purpose and at lower interest rates than those prevailing on the market or free of interest or on other terms which are more favourable to the consumer than those prevailing on the market and at interest rates not higher than those prevailing on the market.

(3) Credit agreements in the form of an overdraft facility and where the credit has to be repaid on demand or within three months, shall be subject to only sections 3, 4, 8, 9, 10, 11, the obligation in section 12(1) that the consumer credit agreement be drawn up in writing or on a durable medium, 12(2), 12(3), 12(6), 12(7), 15, 17, 19(1), 19(2)(a) to (d), 20 and 21 to 29.

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(4) An overrunning, shall be subject to sections 3, 4, 18 and 22 to 29.

(5) The Minister may make regulations in order that only sections 3, 4, 5(3) and (4), section 7(1)(a) to (f), (h) and (m) as applied by section 12(1)(a), section 8, 12(1) other than paragraphs (a) to (j), section 12(1)(h), section 12(2), (4) and (5), sections 13, 16, 17, 18, 19, 20, 21 and 22 to 29 apply to credit agreements concluded by an organisation which–

(a) is established for the mutual benefit of its members;

(b) does not make profits for any other person than its members;

(c) fulfils a social purpose required by domestic legislation;

(d) receives and manages the savings of, and provides sources of credit to, its members only; and

(e) provides credit on the basis–

(i) of an annual percentage rate of charge which is lower than that prevailing on the market or subject to a ceiling laid down by the Minister by regulations; and

(ii) whose membership is restricted to persons residing or employed in a particular location or employees and retired employees of a particular employer, or to persons meeting other qualifications laid down under national law as the basis for the existence of a common bond between the members.

(6) The Minister may make regulations exempting from the application of this Part credit agreements concluded by an organisation to which subsection (5) refers where–

(a) the total value of all existing credit agreements entered into by the organisation is insignificant in relation to the total value of all existing credit agreements in Gibraltar; and

(b) the total value of all existing credit agreements entered into by all such organisations in Gibraltar,

is less than 1% of the total value of all existing credit agreements entered into. The Director shall each year review whether the conditions for the application of any such exemption continue to exist and shall take action to withdraw the exemption where they consider that the conditions subject to which the exemption is granted are no longer met.

(7) The Minister may make regulations in order that only sections 3, 4, 5(3) and (4), section 7(1)(a) to (f), (h) and (m) as applied by section 12(1)(a), section 8, section 12(1) other than

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paragraphs (a) to (j), section 12(1)(c), (e) and (h), section 12(2), (4) and (5), sections 13, 18, 19, 20, 21 and 22 to 29 apply to credit agreements which provide for arrangements to be agreed by the creditor and the consumer in respect of deferred payment or repayment methods, where the consumer is already in default on the initial credit agreement and where-

(a) such arrangements would be likely to avert the possibility of legal proceedings concerning such default; and

(b) the consumer would not thereby be subject to terms less favourable than those laid down in the initial credit agreement.

Obligations of the creditor and credit intermediary

Obligation to comply with Part.

5.(1) A creditor shall take all necessary steps to ensure full compliance with this Part.

(2) For the purpose of this Part, unless otherwise provided, the obligations of the creditor shall equally apply to a credit intermediary where a credit intermediary presents or offers credit agreements to consumers, assists consumers by undertaking preparatory work in respect of credit agreements, or concludes credit agreements with consumers on behalf of the creditor.

(3) Where a credit intermediary participates or intends to participate in terms of sub-section (2), a credit intermediary shall–

(a) indicate in advertising and documentation intended for consumers, the extent of his powers in particular whether he works exclusively with one or more creditors or as an independent broker;

(b) disclose the fee, if any, payable by the consumer to the credit intermediary for his services, which fee shall be agreed by in writing or on another durable medium between the consumer and the credit intermediary before the conclusion of the credit agreement;

(c) disclose the fee, if any, payable by the consumer to the credit intermediary for his services to the creditor for the purpose of calculating the annual percentage rate of charge.

(4) Sub-section (2) does not apply to suppliers of goods or services acting as credit intermediaries in an ancillary capacity. This is without prejudice to the creditor's obligation to ensure that the consumer receives the pre-contractual information referred to under sections 7 and 8.

Obligation to provide pre-contractual information.

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6.(1) In good time before a credit agreement is concluded, a creditor and, where applicable, a credit intermediary, on the basis of the credit terms and conditions offered by the creditor, and taking into account the preferences expressed and information supplied by the consumer, shall provide to the consumer the information identified under sections 7 and 8, in order to assist the consumer in comparing different offers and reaching an informed decision on whether to conclude a credit agreement with the creditor.

(2) In assisting a consumer under sub-section (1) a creditor and, where applicable, a credit intermediary, shall provide adequate explanations to the consumer in order to place the consumer in a position enabling him to assess whether the proposed credit agreement is adapted to his needs and financial situation, where appropriate by explaining the pre-contractual information to be provided under section 7, the essential characteristics of the products proposed and specific effects they may have on the consumer, including the consequences of default in payment by the consumer.

Content of pre-contractual information.

7.(1) The information to be disclosed by a creditor or credit intermediary to consumers under section 6, other than consumers whose credit agreement is regulated by sections 8 and 9, shall be the following–

(a) the type of credit to be provided under the agreement;

(b) the identity and geographical address of the creditor and of the credit intermediary, where applicable;

(c) the total amount of credit to be provided under the agreement and the conditions governing the drawdown of credit;

(d) the duration of the credit agreement;

(e) in the case of credit in the form of deferred payment for specific goods or services or linked credit agreements, a description of the goods, services and the cash price;

(f) the borrowing rate, the conditions governing the application of that rate and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedure for changing the borrowing rate; and if different borrowing rates apply in different circumstances, the above information shall be supplied in respect of all the applicable rates;

(g) the annual percentage rate of charge and the total amount payable by the consumer illustrated by means of a representative example mentioning all the assumptions used in order to calculate that rate. Where the consumer has informed the creditor of one or more components of his preferred credit, such as the duration of the credit agreement and the total amount of credit, the creditor shall take those components

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into account; and if a credit agreement provides different ways of drawdown with different charges or borrowing rates and the creditor uses the assumptions set out in point (b) of Part II of Schedule 4, he shall indicate that other drawdown mechanisms for this type of credit agreement may result in higher annual percentage rates of charge;

(h) the amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purpose of reimbursement;

(i) where applicable, the charges for maintaining one or several accounts recording both payment transactions and drawdowns, unless the opening of an account is optional, and the charges for using a means of payment for both payment transactions and drawdowns;

(j) any other charges deriving from a credit agreement and the conditions under which those charges may be changed;

(k) where applicable, a statement that legal costs will be payable by the debtor on conclusion of the credit agreement;

(l) the obligation, if any, to enter into a contract for ancillary services relating to the consumer credit agreement, in particular insurance services, where the conclusion of such a contract is compulsory in order to obtain the credit or to obtain it on the terms and conditions marketed;

(m) the interest rate applicable in the case of late payments and the arrangements for its adjustment, and, where applicable, any charges payable by default;

(n) a warning relating to the consequences of missing payments;

(o) where applicable, the sureties which need to be identified by the debtor;

(p) in the case of a credit agreement under which payments made by a consumer do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under conditions laid down in the credit agreement or in an ancillary agreement, a clear and concise statement that such credit agreements do not provide for a guarantee of repayment of the total amount of credit drawn down under the credit agreement unless such a guarantee is given;

(q) the existence or absence of a right of withdrawal;

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(r) the consumer's right to early repayment and, where applicable, the creditor's right to compensation and the way in which compensation is to be determined in accordance with section 16;

(s) the consumer's right to be informed immediately and free of charge of information relating to his creditworthiness;

(t) if applicable, the period of time during which the creditor is bound by the pre-contractual information;

(u) the consumer's right to be supplied, on request and free of charge with a copy of the draft credit agreement; save that this provision shall not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with the consumer.

(2) The information under sub-section (1) shall be provided on paper or on another durable medium by means of the form contained in Schedule 2; and the creditor shall have discharged the obligation of providing information under this section and of providing information under sub-section (1) and (2) of section 7 of the Financial Services (Distance Marketing) Act 2006 if he has supplied the information in the form contained in Schedule 2.

(3) Should the creditor provide to the consumer additional information to the one identified under sub-section (1), a separate document shall be entered into between the creditor and the consumer, and shall be annexed to the one under sub-section (2).

(4) In the case of a voice telephone communication as referred to in sub-section (3) of section 7 of the Financial Services (Distance Marketing) Act 2006, the obligation to provide a description of the main characteristics of the financial services shall include–

(a) a reference to–

(i) the total amount of credit and the conditions governing the drawdown;

(ii) the duration of the credit agreement;

(iii) a description of the goods, services and the cash price in the case of credit in the form of deferred payment for specific goods or services or linked credit agreements;

(iv) the borrowing rate, the conditions governing the application of that rate and, where applicable, any index or reference applicable to the initial borrowing rate, as well as the periods, conditions, and procedure for changing the borrowing rate; and if different borrowing rates apply in different circumstances, the above information shall be supplied in respect of all the applicable rates; and

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(v) the amount, number and frequency of payments to be made by the consumer and where appropriate, the order in which payments will be allocated to different outstanding balances charged at different borrowing rates for the purpose of reimbursement;

(b) the annual percentage rate of charge illustrated by means of a representative example; and

(c) the total amount payable by the consumer.

(5) If the agreement has been concluded at the consumer's request using a means of distance communication which does not enable the information to be provided in accordance with sub-section (1), in particular in the case referred to in sub-section (4), the creditor shall provide the consumer with the full pre-contractual information, using the form in Schedule 2, immediately after the conclusion of the credit agreement.

Pre-contractual information relating to an overdraft facility where credit has to be repaid within three months.

8.(1) In good time before the agreement is entered into, the creditor and, where applicable, the credit intermediary, shall provide to the consumer the following information in the case of a credit agreement which takes the form of an overdraft facility and where the credit has to be repaid on demand or within three months–

(a) the type of credit to be provided under the agreement;

(b) the identity and geographical address of the creditor and of the credit intermediary, where applicable;

(c) the total amount of credit to be provided under the agreement;

(d) the duration of the credit agreement;

(e) the borrowing rate, the conditions governing the application of that rate and, where applicable, any index or reference rate applicable to the initial borrowing rate, the charges applicable from the time the credit agreement is concluded and, where applicable, the conditions under which those charges may be changed;

(f) the annual percentage rate of charge, illustrated by means of representative examples mentioning all the assumptions used in order to calculate that rate;

(g) the conditions and procedure for terminating the agreement;

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(h) an indication that the consumer may be requested to repay the amount of credit in full at any time;

(i) the interest rate applicable in the case of late payment and the arrangements for its adjustment, and, where applicable, any charges payable for default;

(j) the charges applicable from the time the agreement is concluded and, where applicable, the conditions under which those charges may be changed;

(k) the consumer's right to be informed immediately and free of charge of information relating to his creditworthiness;

(l) if applicable, the period of time during which the creditor is bound by the pre-contractual information.

(2) The information under sub-section (1) shall be provided in writing or on a durable medium, and may be provided in the form contained in Schedule 3; and the creditor shall have discharged the obligation of providing information under this section and the information under sub-section (1) and (2) to section 7 of the Financial Services (Distance Selling Marketing) Act 2006 if he has supplied the information in the form contained in Schedule 3.

(3) In the case of a voice telephony communication and where the consumer requests that the overdraft facility be made available with immediate effect, the description of the main characteristics of the financial service shall include at least the items identified under paragraphs (c), (e), (f) and (h) of sub-section (1).

(4) If the agreement has been concluded at the consumer's request using a means of distance communication which does not enable the information to be provided in accordance with sub-sections (1) and (2), including in the cases referred to in sub-section (3), the creditor shall immediately, after the conclusion of the credit agreement, fulfil his obligations under sub-sections (1) to (3) by providing the contractual information pursuant to section 12 in so far as that section is applicable.

Pre-contractual information relating to an overdraft facility where credit has to be repaid within one month.

9. Notwithstanding section 4(2)(e), in the case of a credit agreement in the form of an overdraft facility and where the credit has to be repaid within one month, the creditor shall disclose to the debtor the following information–

(a) the total amount of credit to be provided under the agreement and the conditions governing the drawdown of credit;

(b) the borrowing rate, the conditions governing the application of that rate and, where applicable, any index or reference applicable to the initial borrowing rate, as well

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as the periods, conditions and procedure for changing the borrowing rate; and if different rates apply in different circumstances, the above information shall be supplied in respect of all the applicable rates;

(c) the annual percentage rate of charge, illustrated by means of representative examples mentioning all the assumptions used in order to calculate that rate; and

(d) an indication that the consumer may be requested to repay the amount of credit in full at any time.

Creditworthiness.

10.(1) Before the conclusion of an agreement the creditor shall assess the creditworthiness of the consumer by obtaining information from the consumer.

(2) If the parties agree to change the total amount of credit after the conclusion of the credit agreement, the creditor shall–

(a) update the financial information at this disposal concerning the consumer; and

(b) assess the consumer's creditworthiness,

before the total amount of credit is significantly increased.

Rights of the consumer

Right to receive copy of agreement.

11.(1) The consumer shall be entitled to receive, free of charge, and upon request, a copy of the draft consumer credit agreement.

(2) Sub-section (1) does not apply if the creditor is, at the time of the consumer's request, unwilling to proceed to the making of the agreement with the consumer.

(3) On conclusion of the consumer credit agreement, the consumer shall be entitled to receive, free of charge, a copy of the final agreement.

Content of consumer credit agreement.

12.(1) The consumer credit agreement referred to in section 11(3) shall be drawn up in writing on paper or on another durable medium and shall contain the following information–

(a) the information listed under sub-section (a) to (f), (h), (i), (j), (k), (m), (n), and (o) of sub-section (1) to section (7);

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(b) the annual percentage rate of charge and the total amount payable by the consumer calculated at the time the credit agreement is concluded; provided that–

(i) all the assumptions used in calculating the rate shall be mentioned;

(ii) for the purpose of credit facilities granted by banking institutions, the credit agreement relating to such facilities shall be deemed to be concluded on the acceptance by the consumer in writing to the terms and conditions stipulated in the sanction letter.

(c) where capital amortisation of a credit agreement with a fixed duration is involved, the right of the consumer to receive, on request and free of charge, at any time throughout the duration of the credit agreement, a statement of account in the form of an amortisation table. The amortisation table shall contain the following information–

(i) the payments owing and the periods and conditions relating to the payment of such amounts;

(ii) a breakdown of each repayment showing capital amortisation;

(iii) the interest calculated on the basis of the borrowing rate;

(iv) where applicable, the amount of any additional costs; and

(v) where the interest is not fixed or the additional costs may be changed under the credit agreement, it shall indicate clearly and concisely that the data contained in the table will remain valid only until such time as the borrowing rate or the additional costs are changed in accordance with the credit agreement;

(d) if charges and interest are to be paid without capital amortisation, a statement showing the periods and conditions for the payment of the interest and of any associated recurrent and non-recurrent charges;

(e) the existence or absence of a right of withdrawal together with conditions attached to such right, which conditions shall include the–

(i) period during which the right may be exercised;

(ii) information concerning the obligation of the consumer to pay the capital drawn down and the interest in accordance with section 14(3)(b); and

(iii) amount of interest payable per day;

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(f) information concerning the rights resulting under sections 15 and 16 and the conditions attached to such rights;

(g) the procedure to be followed in exercising the right of termination of the credit agreement;

(h) whether or not there is a procedure to be followed should a complaint be lodged by the consumer, the redress mechanism available for the consumer and the methods for having access to it;

(i) where applicable, details of the competent supervisory authority;

(j) where applicable, other contractual terms and conditions.

(2) In the case of a credit agreement under which payments made by the consumer do not give rise to an immediate corresponding amortisation of the total amount of credit, but are used to constitute capital during periods and under conditions laid down in the credit agreement or in an ancillary agreement, the information contained in sub-section (1) shall, unless a guarantee is provided, include a clear and concise statement that such credit agreements do not provide a guarantee of repayment of the total amount of credit drawn under the credit agreement.

(3) In the case of a credit agreement falling under section 8(1), the agreement shall contain, in a clear and precise manner, the following information–

(a) the type of credit;

(b) the identities and geographical addresses of the contracting parties, and where applicable, of the credit intermediary involved;

(c) the total amount of the credit and the conditions governing the drawdown;

(d) the borrowing rate and the conditions governing the application of that rate, and, where available, any index or reference rate applicable to the initial borrowing rate, as well as the periods, conditions and procedures for changing the borrowing rate; if different borrowing rates apply in different circumstances, the above information should be made applicable to all respective rates;

(e) the annual percentage rate of charge and the total cost of the credit to the consumer, calculated at the time the credit agreement is concluded; all the assumptions used in order to calculate that rate in terms of section 21(3) to (5) in conjunction with the definitions of "total cost of credit to the consumer" and "annual percentage rate of charge" in section 3 shall be mentioned;

(f) an indication that the consumer may, at any time, upon demand be requested to repay the amount of credit in full;

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(g) conditions relating to the exercise of the right of withdrawal from the credit agreement;

(h) the charges applicable from time the agreement is concluded and, where applicable, the conditions under which those charges may be changed; and

(i) the duration of credit agreement.

(4) Should there be a change in the borrowing rate, the creditor shall–

(a) inform the consumer of such a change before the change enters into force;

(b) communicate the information in writing or on a durable medium;

(c) inform the consumer of the amount of the payments to be made after the entry into force of the new borrowing rates; and

(d) if the number or frequency of the payments changes, particulars of such payment changes.

(5) The parties may agree in the credit agreement that the information referred to in sub-section (4) is to be given to the consumer periodically in cases where the–

(a) change in the borrowing rate is caused by a change in a reference rate;

(b) new reference rate is made publicly available by appropriate means; and

(c) information concerning the new reference rate is also kept available in the premises of the creditor.

(6) Where the credit agreement covers credit in the form of an overdraft facility–

(a) the consumer is entitled to be kept regularly informed in writing or on a durable medium in writing by means of a statement of account of–

(i) the precise period to which the statement of account relates;

(ii) the amounts and dates of drawdowns;

(iii) the balance from the previous statement and the date thereof;

(iv) the new balance;

(v) the dates and amounts of payments made by the consumer;

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(vi) the borrowing rate applied;

(vii) any charges that have been applied;

(viii) where applicable, the minimum amount to be paid;

(b) should there be any increase in the borrowing rate, and before the change enters into force, the consumer is entitled to be informed in writing or on a durable medium by the creditor of the increase involved and of any charges payable.

(7) The parties may agree in the credit agreement that information concerning changes in the borrowing rate is to be given in the manner provided for in sub-section (6)(a) in the circumstances described in paragraphs (a) to (c) of sub-section (5).

Right to terminate an open-end credit agreement.

13.(1) A consumer is entitled to terminate an open-end credit agreement at any time and free of charge.

(2) A consumer credit agreement may however provide for a period of notice not exceeding one month before termination by the consumer.

(3) If provided for in the agreement, the creditor may terminate an open-end consumer credit agreement by giving the consumer not less than two months' notice in writing or on a durable medium.

(4) A creditor may not terminate the consumer's right to draw down credit under an open-end consumer credit agreement unless such termination is provided for in the agreement and is for an objectively justified reason. For these purposes, "objectively justified reasons" include suspicion by the creditor that the consumer is involved in an unauthorised or fraudulent use of a credit, or that there is significant risk that the consumer will be unable to fulfil his obligation to pay the credit.

(5) Where the creditor intends to invoke sub-section (4), he shall inform in writing or on a durable medium the consumer of the termination and the reasons leading to such termination before the date of termination or, if that is not practicable, immediately thereafter.

(6) Sub-section (5) shall not apply where provision of the information would be contrary to public policy or public security or is unlawful.

Right to withdraw.

14.(1) A consumer has a right to withdraw from a consumer credit agreement without giving any reasons.

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(2) The consumer's right to withdraw must be exercised within a period of 14 calendar days which period starts to run either–

(a) from the day of the conclusion of the credit agreement, where a copy of the agreement is given to the consumer on the same date; or

(b) from the day when the consumer receives a copy of the agreement, where a copy of the agreement is given to the consumer at a later date,

provided that for the purpose of credit facilities granted by banking institutions which necessitate the issue of a letter of acceptance, the agreement shall be deemed to be concluded on the day the consumer accepts in writing the terms and conditions listed in the letter of acceptance.

(3) If the consumer exercises his right of withdrawal, he shall–

(a) in order to give effect to the withdrawal before the expiry of the period specified in sub-section (2), notify in writing the creditor in conformity with the information given to the consumer under section 12(1)(e). The deadline shall be deemed to have been met if that notification, if it is in writing or on a durable medium that is available and accessible to the creditor, is dispatched before the deadline expires;

(b) repay to the creditor the credit provided and pay the interest accrued on it, to be calculated on the basis of the borrowing rate in the agreement, from the date the credit was drawn down until the date it is repaid, without any undue delay and no later than 30 calendar days after giving a notification in accordance with sub-section (a),

provided that the creditor shall not be entitled to any other compensation from the consumer in the event of withdrawal, except compensation for any non-refundable charges paid by the creditor to any public administrative body.

(4) Where an ancillary service relating to a consumer credit agreement is provided by the creditor or by a third party on the basis of an agreement between the third party and the creditor, the consumer shall not be bound by the ancillary service agreement if the consumer exercises his right of withdrawal in accordance with this section.

(5) By virtue of sub-sections (1) to (4), sections 9 and 13 of the Financial Services (Distance Marketing) Act 2006 and regulations 16, 19 and 20 of the Consumer Rights on Contracts Regulations 2013 do not apply.

Linked credit agreements: Right of consumer to pursue claim against creditor.

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15.(1) Where the consumer has exercised a right of withdrawal concerning a contract for the supply of goods or services, he shall no longer be bound by a linked credit agreement.

(2) A consumer shall have the right to take action against the creditor for the fulfilment of his claim where–

(a) in order to buy goods or obtain services, the consumer enters into a credit agreement with a creditor other than the supplier of such goods or services;

(b) the creditor and the supplier of the goods or services have a pre-existing agreement where credit is made exclusively by that creditor to customers of that supplier for the acquisition of goods or services from that supplier;

(c) the consumer referred to in paragraph (a) obtains his credit pursuant to that pre-existing agreement;

(d) the goods or services covered by the linked-credit agreement are not supplied, are supplied in part, or are not in conformity with the contract for supply thereof; and

(e) the consumer has pursued his remedies against the supplier but has failed to obtain the remedy to which he is entitled in whole or in part.

(2) Sub-section (2) is without prejudice to any statutory provision or rule of law relating to joint and several liability in respect of any claim which the consumer may have against the supplier where the purchase of the goods or services from the supplier has been financed by a credit agreement.

Right to early repayment.

16.(1) A consumer shall have the right to discharge his obligations under a consumer credit agreement, in full or in part, before the time established in the agreement.

(2) If the consumer pays the creditor before the time established by the agreement–

(a) the consumer shall be entitled to a reduction of total costs of the credit consisting of the interest and the costs for the remaining duration of the credit; and

(b) the creditor shall be entitled to a fair and objectively justified compensation for possible costs directly linked to early repayment of credit; provided that the early repayment falls within a period for which the borrowing rate is fixed, and that the compensation may not exceed–

(i) 1% of the amount of credit repaid early, if the period of time between the early repayment and the agreed termination of the credit agreement exceeds one year;

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(ii) 0.5% of the amount of credit repaid early, if the period of time between the early repayment and the agreed termination of the credit agreement does not exceed one year.

(3) The limitations under sub-section (2) in terms of the amount of compensation which may be claimed by the creditor shall exceptionally not apply if the creditor proves that the loss suffered from early repayment exceeds the amount determined under sub-section (2).

(4) Compensation for early repayment under sub-section (2)(b) shall not apply–

(a) if the repayment has been made under an insurance contract intended to provide a credit repayment guarantee;

(b) in the case of an overdraft facility;

(c) if the repayment falls within a period for which the borrowing rate is not fixed; or

(d) if the amount of early repayment does not exceed Euro 3,000 within any period of 12 months.

(5) A creditor may not claim compensation which is in excess of the amount of interest which the consumer would have paid during the period between the early repayment and the agreed date of termination of the credit agreement.

(6) A consumer may claim a reduction to the compensation claimed by the creditor if the compensation claimed exceeds the loss actually suffered. For these purposes, the loss suffered shall consist of the difference between the initial agreed interest rate and the interest rate at which the creditor can lend out the money repaid early on the market at the time of early repayment. Consideration shall also be given to the impact of early repayment on administrative costs.

Rights relating to assignment of rights and set-off.

17.(1) Where the rights of the creditor under a credit agreement are assigned to a third party, the consumer shall be entitled to raise against that assignee any defence available to him against the original creditor. Such defence may also include the right to set-off; provided that set-off may only be raised subject to the provisions of the Contract and Tort Act, which shall apply irrespective of anything to the contrary contained in the credit agreement.

(2) Where the rights of the credit are assigned as provided under sub-section (1), the consumer is entitled to be informed of such assignment in writing, except where the original creditor, by agreement with the assignee, continues to service the credit towards the consumer.

Overrunning.

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18.(1) Where a consumer enters into an agreement to open a current account and the consumer is allowed an overrun, the agreement shall contain information relating to–

(a) the borrowing rate;

(b) the conditions governing the application of that rate;

(c) the index or reference rate applicable to the initial borrowing rate;

(d) the charges applicable from the time the credit agreement is concluded; and

(e) the conditions under which those charges may be changed, if applicable.

(2) In the event of a significant overrunning exceeding a period of one month, the creditor shall inform the consumer without delay, in writing or on another durable medium of the–

(a) overrunning;

(b) amount involved;

(c) borrowing rate; and

(d) penalties, charges or interests on arrears which are applicable.

(3) The information under sub-section (1) shall be in writing or on a durable medium and provided on a regular basis.

Supplementary provisions

Advertisements.

19.(1) Where a credit advertisement includes an interest rate or any figure relating to the cost of the credit to the consumer, the advertisement shall also include standard information by means of a representative example in accordance with sub-section (2).

(2) The representative example referred to in sub-section (1) shall comprise the following items of information–

(a) the borrowing rate, whether fixed, variable or both;

(b) particulars of any charges included in the total charge for credit;

(c) the total amount of credit;

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(d) the annual percentage rate of charge;

(e) the duration of the agreement except where the agreement is open ended;

(f) in the case of credit in the form of a deferred payment for specific goods or services, the cash price and the amount of any advance payment;

(g) if applicable, the total amount payable by the consumer;

(h) if applicable, the amount of each instalment for the repayment of credit.

(3) The following provisions apply–

(a) a credit advertisement shall include a clear and concise statement in respect of any obligation to enter into a contract in respect of an ancillary service relating to the credit agreement, in particular an insurance service, where–

(i) the conclusion of that service is compulsory in order to obtain the credit or to obtain it on the terms and conditions advertised;

(ii) the cost of that service cannot be determined in advance;

(b) the obligation referred to in sub-section (1) shall be advertised in a prominent way and accompanied by the annual percentage rate of charge.

20. *Omitted*.

Calculation of the annual percentage rate of charge.

21.(1) The annual percentage rate of charge means the total cost of credit to the consumer, expressed as an annual percentage of the total amount of credit.

(2) The annual percentage rate of charge, equating, on an annual basis, to the present value of all commitments (drawdowns, repayments and charges), future or existing, agreed by the creditor and the consumer, shall be calculated in accordance with the mathematical formula set out in Part I of Schedule 4.

(3) The following costs shall be included in the total cost of credit to the consumer–

(a) the costs of maintaining an account recording both payment transactions and drawdowns;

(b) the costs of using a means of payment for both payment transactions and drawdowns; and

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(c) other costs relating to payment transactions.

(4) The costs at sub-section (3) shall not be included in the total cost of credit to the consumer where the opening of the account is optional and the costs of the account have been clearly and separately shown in the credit agreement or in any other agreement made with the consumer.

(5) For the purpose of calculating the annual percentage rate of charge, the total cost of the credit to the consumer shall be determined, with the exception of any charges payable by the consumer for non compliance with any of his commitments laid down in the credit agreement and charges other than the purchase price which, for purchases of goods or services, he is obliged to pay whether the transaction is effected in cash or on credit.

(6) The calculation of the annual percentage rate of charge shall be based on the assumption that–

(a) the credit agreement is to remain valid for the period agreed and that the creditor and the consumer will fulfil their obligations under the terms and by the dates specified in the credit agreement;

(b) the borrowing rate and other charges will remain fixed in relation to the initial level and will remain applicable until the end of the credit agreement in the circumstance that the credit agreement contains a clause allowing variations in the borrowing rate and, where applicable, the charges contained in the annual percentage rate of charge but are unquantifiable at the time of calculation.

(7) Where necessary the additional assumptions set out in Part II of Schedule 4 may be used in calculating the annual percentage rate of charge.

Enforcement and monitoring.

22. It shall be the responsibility of the Director under this Part to–

(a) monitor the working and effectiveness of this Part and take such measures as the Director deems necessary in order to ensure compliance with this Part;

(b) supervise the creditors and credit intermediaries in order to ensure compliance by them with the obligations identified under this Part;

(c) ensure that the rights granted to consumers by this Part are not diminished by any other enactment or rule of law.

Offences.

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23.(1) Any person who contravenes or fails to comply with any of the provisions of this Part shall be guilty of an offence.

(2) Proceedings in respect of an offence against this Part shall be commenced within three years from the commission of the offence.

(3) Any person guilty of an offence against this Part shall on conviction be liable to a fine at level 5 on the standard scale.

(4) Any proceedings undertaken under this Part shall be without prejudice to the right of the consumer to undertake any action to seek compensation due to any loss or damage incurred by him as a result of the breach of this Part.

Act to prevail.

24.(1) The provisions of this Part shall prevail and apply notwithstanding anything to the contrary contained in any credit agreement entered into by the consumer.

(2) Any waiver by the consumer of any of the rights granted to him by this Part shall be null and void.

Application of existing law.

25.(1) Where there is a conflict between the provisions of this Part and Part II in respect of a credit agreement to which this Part applies by virtue of section 4, the provisions of this Part shall prevail.

(2) For the avoidance of doubt, Part II shall continue to apply in respect of a credit agreement to which this Part does not apply by virtue of section 4.

(3) A licence granted to a moneylender under Part II shall clearly state whether the moneylender is authorised to enter into credit agreements to which this Part applies, and any such licence shall be granted subject to the provisions of this Part being honoured at all times by the moneylender.

Continuity of the law.

26.(1) This Part shall only apply in relation to credit agreements that are concluded after the coming into force of this Part.

(2) Notwithstanding subsection (1), sections 12(4) to (7), 13, 17, 18(2) and 18(3) apply to open-end credit agreements concluded prior to the coming into force of this Part.

Regulations.

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27.(1) The Minister may, by regulations, prescribe anything requiring to be prescribed and generally do anything requiring to be done pursuant to the provisions of this Part.

(2) Without prejudice to the generality of sub-section (1) the Minister may, by regulations–

(a) provide for applications for authorisations, fees, forms and offences as he may deem appropriate in order to make better provision for the execution of this Part;

(b) amend the Schedules;

(c) make such provision as he deems appropriate in cases where a condition subject to which an authorisation is granted has been breached, including penalties, withdrawal or suspension of the authorisation or other sanctions;

(d) make such provision as he deems appropriate to apply this Part, or parts thereof, to credit agreements which provide for arrangements to be agreed by the creditor and the consumer in respect of deferred payment or repayment methods, where the consumer is already in default on the initial credit agreement.

Codes of practice.

28.(1) The Director shall, with the prior consent of the Minister, cause to be published in the form of codes of practice, statements setting out the criteria and any variation in the criteria from time to time by reference to which the Director proposes to exercise his functions under this Part.

(2) The Director shall, with the prior consent of the Minister, publish in the form of codes of practice under this Part, criteria to facilitate compliance in Gibraltar with the provisions of this Part.

(3) A code of practice published under this section shall be admissible in evidence in any action commenced in connection with the operation of this Part.

Alternative dispute resolution.

29.(1) Any dispute between parties to an agreement to which this Part applies may be put to the Director for resolution.

(2) For the purposes of this section, the Director may deal with the dispute as if an arbitration agreement between the parties to the dispute to which the Arbitration Act applies subsisted appointing him sole arbitrator.

PART II

MISCELANEOUS PROVISIONS

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Interpretation of Part.

30.(1) In this Part, unless the context otherwise requires,–

"interest" does not include any sum lawfully charged in accordance with the provisions of this Act by a moneylender for or on account of costs, charges or expenses, but save as aforesaid, includes any amount, by whatsoever name called, in excess of the principal, paid or payable to a moneylender in consideration of or otherwise in respect of a loan;

"certificate" means a certificate granted under section 34 and 33;

"Minister" means the Minister with responsibility for finance;

"moneylender" includes every person whose business is that of moneylending, or who advertises or announces himself or holds himself out in any way as carrying on that business or actually carries on that business, whether solely or jointly with any other business, trade or calling but does not include,–

(a) any pawnbroker in respect of business carried on by him in accordance with the provisions of the law for the time being in force in relation to pawnbrokers; or

(b) any registered society within the meaning of the Friendly Societies Act, or any society registered or having rules registered or certified under that Act or under any other enactment; or

(c) any body corporate, incorporated or empowered by a special law to lend money in accordance with such special law; or

(d) any person bona fide carrying on the business of banking or insurance or bona fide carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money; or

(e) any body corporate for the time being exempted from this Act or any provision thereof by order of the Minister;

"moneylender's licence" means a licence granted under section 34 and 33;

"principal" means in relation to a loan the amount actually lent to the borrower.

(2) Where by a contract for the loan of money by a moneylender the interest charged on the loan is not expressed in terms of a rate, any amount paid or payable to the moneylender under the contract (other than simple interest charged in accordance with the proviso to section 39) shall be appropriated to principal and interest in the proportion that the principal bears to

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the total amount of the interest, and the rate per cent per annum represented by the interest charged as calculated in accordance with the provisions of the Schedule 1 shall be deemed to be the rate of interest charged on the loan.

Re-opening of transactions of money-lender.

31.(1) Where proceedings are taken in any court by a moneylender for the recovery of any money lent, or the enforcement of any agreement or security made or taken in respect of money lent, and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals, or any other charges, are excessive, and that, in either case, the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief, the court may re-open the transaction, and take an account between the moneylender and the person sued, and may, notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken between them, and relieve the person sued from payment of any sum in excess of the sum ad judged by the court to be fairly due in respect of such principal, interest and charges, as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable, and if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to repay it, and may set aside, either wholly or in part, or revise, or alter, any security given or agreement made in respect of the money lent by the moneylender, and if the moneylender has parted with the security may order him to indemnify the borrower or other person sued.

(2) Any court in which proceedings might be taken for the recovery of money lent by a moneylender shall have and may, at the instance of the borrower, his trustee in bankruptcy, surety or other person liable, exercise the like powers as may be exercised under this section, where proceedings are taken for the recovery of money lent, and the court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under this Part by the borrower, his trustee in bankruptcy, surety or other person liable, notwithstanding that the time for repayment of the loan, or any instalment thereof, may not have arrived, or that the right of action for recovery of the money lent is barred.

(3) On any application relating to the admission or amount of a proof by a moneylender in any bankruptcy proceedings, the court may exercise the like powers as may be exercised under this section when proceedings are taken for the recovery of money.

(4) The foregoing provisions of this section shall apply to any transaction which, whatever its form may be, is substantially one of moneylending by a moneylender.

(5) The powers of a court under this section shall extend to any transaction effected under a special contract made in accordance with section 11 of the Pawnbrokers Act, and accordingly, for the purposes of this section, the provisions of paragraph (a) of the definition of "moneylender" in section 30 shall not apply with respect to any such transaction.

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(6) Nothing in the foregoing provisions of this section shall affect the rights of any bona fide assignee or holder for value without notice.

(7) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any court.

Presumption that interest is excessive.

32. Where, in any proceedings in respect of any money lent by a moneylender, or in respect of any agreement or security made or taken in respect of money lent, it is found that the interest charged exceeds the rate of 25 per cent per annum or such other percentage per annum as the Minister may, by notice in the Gazette determine, or the corresponding rate in respect of any other period, the court shall, unless the contrary is proved, presume for the purposes of section 31(1), that the interest charged is excessive and that the transaction is harsh and unconscionable, but this provision shall be without prejudice to the powers of the court under that section where the court is satisfied that the interest charged, although not exceeding 25 per cent per annum or such other percentage per annum as the Minister may, by notice in the Gazette, determine, is excessive.

Licences to be taken out by money-lenders.

33.(1) Every moneylender, whether carrying on business alone or as a partner in a firm, shall take out annually in respect of every address at which he carries on his business as such, a licence, which shall expire on the 31st day of December in every year, and, subject as hereinafter provided, there shall be charged on every moneylender's licence a duty in accordance with Schedule 5:

Provided that–

(a) where moneylender's licences are taken out by two or more moneylenders in respect of any address or addresses at which they carry on their business as partners in a firm, the Financial Secretary shall remit, or if the duty has been paid repay, to the firm a sum equal to the aggregate of the duties charged on such number of the licences taken out as exceeds the number of the addresses in respect of which they are taken out; and

(b) where it is proved to the satisfaction of the Financial Secretary that there is in force a licence for carrying on the business of a pawnbroker at any premises in respect of which a moneylender's licence is taken out by the person carrying on the business, the Financial Secretary shall remit, or it the duty has been paid repay, to that person such part of the duty charged on the moneylender's licence as is equal to the amount of the duty paid in respect of the licence for carrying on the business via pawnbroker, or where in any such case moneylender's licences are taken out by partners in a firm in respect of the premises, the remission or repayment shall be made to the firm.

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(1A) The Minister may amend Schedule 5 by Notice published in the Gazette.

(2) Subject to the provisions of this Part, moneylender's licences shall be in such form as the Minister may direct, and shall be granted on payment of the appropriate duty by any revenue officer authorized by the Minister to grant them, and regulations made by the Minister may make provision as to the procedure to be followed in making application for moneylenders' licences:

Provided that a moneylender's licence shall be taken out by a moneylender in his true name, and shall be void if it be taken out in any other name, but every moneylender's licence shall also show the moneylender's authorized name and authorized address.

(3) A person who–

(a) takes out a moneylender's licence in any name other than his true name; or

(b) carries on business as a moneylender without having in force a proper moneylender's licence authorizing him so to do, or, being licensed as a moneylender, carries on business as such in any name other than his authorized name, or at any other place than his authorized address or addresses ; or

(c) enters into any agreement in the course of his business as a moneylender with respect to the advance or repayment of money, or takes any security for money, in the course of his business as a moneylender, otherwise than in his authorized name;

is guilty of an offence and is liable on conviction to a fine at level 3 on the standard scale:

Provided that, on a second or subsequent conviction of any person (other than a company) for an offence under this subsection, the court may, in lieu of or in addition to ordering the offender to pay such fine, order him to be imprisoned for three months, and an offender being a company is on a second or subsequent conviction liable to a fine at level 4 on the standard scale.

Certificate required for grant of moneylender's licence.

34.(1) A moneylender's licence shall not be granted except to a person who holds a certificate granted in accordance with the provisions of this section authorizing the grant of the licence to that person, and a separate certificate shall be required in respect of every separate licence. Any moneylender's licence granted in contravention of this section shall be void.

(2) Certificates under this section shall be granted by the Minister.

(3) Every certificate granted to a moneylender shall show his true name and the name under which, and the address at which, he is authorized by the certificate to carry on business as such, and a certificate shall not authorize a moneylender to carry on business at more than

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one address, or under more than one name, or under any name which includes the word "bank, " or otherwise implies that he carries on banking business, and no certificate shall authorize a moneylender to carry on business under any name except–

(a) his true name; or

(b) the name of a firm in which he is a partner, not being a firm required by the Business Names Registration Act to be registered; or

(c) a business name, whether of an individual or of a firm in which he is a partner, under which he or the firm was, on the 23rd day of July, 1948, registered for not less than three years both as a moneylender under this Part and under the Business Names Registration Act.

(4) A certificate shall come into force on the date specified therein, and shall expire on the next following 31st day of December.

(5) The Minister shall make rules with respect to the procedure to be followed in making applications for certificates (including the notices to be given of intention to make such an application), and certificates shall be in such form as may be prescribed by rules so made.

(6) A certificate shall not be refused except on some one or more of the following grounds:–

(a) that satisfactory evidence has not been produced of the good character of the applicant, and in the case of a company of the persons responsible for the management thereof;

(b) that satisfactory evidence has been produced that the applicant, or any person responsible or proposed to be responsible for the management of his business as a moneylender, is not a fit and proper person to hold a certificate;

(c) that the applicant, or any person responsible or proposed to be responsible for the management of his business as a moneylender, is by order of a court disqualified for holding a certificate;

(d) that the applicant has not complied with the provisions of any rules made under this section with respect to applications for certificates.

(7) Any person aggrieved by the refusal of the Minister to grant a certificate may appeal to the Supreme Court on a point of law.

Prohibition of charge for expenses on loans by moneylenders.

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35. Any agreement between a moneylender and a borrower or intending borrower for the payment by the borrower or intending borrower to the moneylender of any sum on account of costs, charges or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan shall be illegal, and if any sum is paid to a moneylender by a borrower or intending borrower as for or on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the borrower or intending borrower, or, in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and that amount shall be deemed to be reduced accordingly.

Prohibition of moneylenders using name of bank.

36.(1) No business shall be licensed as a moneylender under any name including the word "bank", or under any name implying that he carries on banking business.

(2) A moneylender who, in the course of carrying on the moneylending business, issues or publishes, or causes to be issued or published, any circular, notice, advertisement, letter, account or statement of any kind containing expressions which might reasonably be held to imply that he carries on banking business, is liable (in summary conviction to the like penalties as it' he had failed to comply with section 33.

Rules.

37. The Minister may make rules prescribing forms and generally for carrying out the purposes of this Act.

Forms of moneylenders' contracts.

38.(1) No contract for the repayment by a borrower of money lent to him or to any agent on his behalf by a moneylender, or for the payment by him of interest on money so lent and no security given by the borrower or by any such agent in respect of any such contract shall be enforceable, unless a note or memorandum in writing of the contract be made and signed personally by the borrower, and unless a copy thereon be delivered or sent to the borrower, within seven days of the making of the contract; and no such contract or security shall be enforceable if it is proved that such note or memorandum was not signed by the borrower before the money was lent or before the security was given as the case may be.

(2) The note or memorandum shall contain all the terms of the contract, and in particular shall show the date on which the loan is made, the amount of the principal of the loan, and, either the interest charged on the loan expressed in terms of a rate per cent per annum, or the rate per cent per annum represented by the interest charged as calculated in accordance with the provisions of the Schedule 1.

Prohibition of compound interest and provision as to defaults.

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39. Subject as hereinafter provided, any contract made for the loan of money by a moneylender shall be illegal in so far as it provides directly or indirectly for the payment of compound interest or for the rate or amount of interest being increased by reason of any default in the payment of sums due under the contract:

Provided that provision may be made by any such contract that if default is made in the payment upon the due date of any sum payable to the moneylender under the contract, whether in respect of principle or interest the moneylender shall be entitled to charge simple interest on that sum from the date of the default until the sum is paid, at a rate not exceeding the rate payable in respect of the principal apart from any default, and any interest so charged shall not be reckoned for the purposes of this Part as part of the interest charged in respect of the loan.

Obligation of moneylender to supply information as to state of loan and copies of documents relating thereto.

40. In respect of every contract for the repayment of money lent by a moneylender, the moneylender shall, on any reasonable demand in writing being made by. the borrower at any time during the continuance of the contract and on tender by the borrower of the sum of it for expenses, supply to the borrower or, it the borrower so requires, to any person specified in that behalf in the demand, a statement signed by the moneylender or his agent showing–

(a) the date on which the loan was made, the amount of the principal of the loan and the rate per cent per annum of interest charged;

(b) the amount of any payment already received by the moneylender in respect of the loan and the date on which it was made;

(c) the amount of every sum due to the moneylender, but unpaid, and the date upon which it became due, and the amount of interest accrued due and unpaid in respect of every such sum; and

(d) the amount of every sum not yet due which remains outstanding, and the date upon which it will become due.

(2) A moneylender shall, on any reasonable demand in writing by the borrower, and on tender of a reasonable sum for expenses, supply a copy of any document relating to a loan made by him or any security therefor, to the borrower, or it the borrower so requires, to any person specified in that behalf in the demand.

(3) If a moneylender to whom a demand has been made under this section fails without reasonable excuse to comply therewith within one month after the demand has been made, he shall not, so long as the default continues, be entitled to sue for or recover any sum due under the contract on account either of principal or interest, and interest shall not be chargeable in respect of the period of the default, and if such default is made or continued after proceedings have ceased to lie in respect of the loan, the moneylender is guilty of an offence and is liable

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on summary conviction to a fine at level 1 on the standard scale for every day on which the default continues.

Notice and information to be given on assignment of moneylenders debts.

41.(1) Where any debt in respect of money lent by a moneylender or in respect of interest on any such debt or the benefit of any agreement made or security taken in respect of any such debt or interest is assigned to any assignee, the assignor (whether he is the moneylender by whom the money was lent or any person to whom the debt has been previously assigned) shall, before the assignment is made–

(a) give to the assignee notice in writing that the debt, agreement or security is affected by the operation of this Part; and

(b) supply to the assignee all information necessary to enable him to comply with the provisions of this Part relating to the obligation to supply information as to the state of loans and copies of documents relating thereto,

and a person who acts in contravention of any of the provisions of this section is liable to indemnify any other person who is prejudiced by the contravention, and is also guilty of an offence, and is, in respect of each offence, liable on conviction on indictment to imprisonment for two years and to a fine, and is liable on summary conviction to imprisonment for three months or to a fine at level 3 on the standard scale.

(2) In this section, "assigned" means assigned by any assignment inter vivos other than an assignment by operation of law, and the expression "assignor" and "assignee" have corresponding meanings.

42. *Omitted.*

Application of Act to assignees.

43.(1) Subject as hereinafter provided, the provisions of this Part shall apply as respects any debt to a moneylender in respect of money lent by him or in respect of interest on money so lent or of the benefit of any agreement made or security taken in respect of any such debt or interest, notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee and, except where the context otherwise requires, references in this Act to a moneylender shall accordingly be construed as including any such assignee:

Provided that notwithstanding anything in this Act–

(a) any agreement with, or security taken by a moneylender in respect of money lent by him shall be valid in favour of any bona fide assignee or holder for value without notice of any defect due to the operation of this Act and of any person deriving title under him; and

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(b) any payment or transfer of money or property made bona fide by any person, whether acting in a fiduciary capacity or otherwise, on the faith of the validity of any such agreement or security, without notice of any such defect shall, in favour of that person, be as valid as it would have been if the agreement or security had been valid; and

(c) for the purposes of this Act, the provisions of section 3 of the Conveyancing Act, 1882, shall apply as if the expression "purchaser" included a person making any such payment or transfer.

(2) Nothing in this section shall render valid for any purpose any agreement, security, or other transaction which would, apart from the provisions of this Part, have been void or unenforceable.

Penalties for false statements and representations.

44. A person who, being a moneylender, or the manager, agent or clerk of a moneylender, or a director, manager or other officer of a corporation carrying on the business of a moneylender, by any false, misleading or deceptive statement, representation or promise, or by any dishonest concealment of material facts, fraudulently induces or attempts to induce any person to borrow money or to agree to the terms on which money is or is to be borrowed, is guilty of an offence and is liable on conviction on indictment to imprisonment for two years and to a fine.

Soliciting minor to make affidavit in connection with loan.

45. A person who, except under the authority of any court, solicits a minor to make an affidavit or statutory declaration for the purpose of or in connection with any loan, is liable, if convicted on summary conviction, to imprisonment for one month, and to a fine at level 3 on the standard scale, and if convicted on indictment, to imprisonment for three months, or to a fine of at level 4 on the standard scale.

Avoiding contract for payment of loan advanced during minority.

46.(1) If a minor who has contracted a loan which is void in law, agrees after he comes of age to pay any money which in whole or in part represents or is agreed to be paid in respect of any such loan, and is not a new advance, such agreement. and any instrument, negotiable or other, given in pursuance of or for carrying into effect such agreement or otherwise in relation to the payment of money representing or in respect of such loan shall, as far as it relates to money which represents or is payable in respect of such loan, and is not a new advance, be void absolutely as against all persons whomsoever.

(2) For the purposes of this section any interest, commission or other payment in respect of such loan shall be deemed to be a part of such loan.

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Suspension and forfeiture of moneylenders' certificates.

47.(1) Where any person, being the holder of a certificate, is convicted of any offence against this Part, the court–

(a) may order that any certificates held by that person. and in the case of a partner in a firm by any other partner in the firm, shall either he suspended for such time as the court thinks fit, or shall be forfeited, and may also, if the court thinks fit, declare any such person, or any person responsible for the management of the moneylender business carried on by the person convicted, to be disqualified for obtaining a certificate for such time as the court thinks fit; and

(b) shall cause particulars of the conviction and of any order made by the court under this subsection to he endorsed on every certificate, held by the person convicted or by any other person affected by the order, and shall cause copies of those particulars to be sent to the authority by whom any certificate so endorsed was granted, and to the Financial Secretary:

Provided that where by order of a court a certificate held by any person is suspended or forfeited, or any person is disqualified for obtaining a certificate he may, whether or not he is the person convicted, appeal against the order in the same manner as any person convicted may appeal against his conviction, and the court may, if it thinks fit, pending the appeal, defer the operation of the order.

(2) Any certificate required by a court for endorsement in accordance with the foregoing provisions of this section shall he produced, in such manner and within such time as may be directed by the court, by the person by whom it is held, and a person who, without reasonable cause, makes default in producing any certificate so required is guilty of an offence and is, in respect of each offence, liable on summary conviction to a fine at level 1 on the standard scale for each day during which the default continues.

(3) Where a certificate held by any person is ordered to be suspended or to be forfeited under the foregoing provisions of this section, any moneylender's licences granted to that person, whether in pursuance of that or any other certificate, shall be suspended during the period for which the certificate is ordered to be suspended or become void, as the case may be.

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SCHEDULE 1.

sections 30(2) and 38(2).

CALCULATION OF INTEREST WHERE THE INTEREST CHARGED ON A LOAN IS NOT EXPRESSED IN TERMS OF A RATE.

1. The amount of principal outstanding at any time shall be taken to be the balance remaining after deducting from the principal the total of the portions of any payments appropriated to principal in accordance with the provisions of the Act.

2. The several amounts taken to be outstanding by way of principal during the several periods ending on the dates on which payments are made shall be multiplied in each case by the number of calendar months during which those amounts are taken to be respectively outstanding, and there shall be ascertained the aggregate amount of the sum so produced.

3. The total amount of the interest shall be divided by one-twelfth part of the aggregate amount mentioned in paragraph 2 of this Schedule, and the quotient, multiplied by one hundred, shall be taken to be the rate of interest per cent per annum.

4. If having regard to the intervals between successive payments it is desired so to do, the calculation of interest may be made by reference to weeks instead of months, and in such a case the lore going paragraphs of this Schedule shall have effect as though in paragraph 2 the word ‘weeks’ were substituted for the words calendar months’, and in paragraph 3 the words ‘one-fifty-second’ were substituted for the words ‘one-twelfth’.

5. Where any interval between successive payments is not a number of complete weeks or complete months, the foregoing paragraphs shall have effect as though one day were one-seventh part of a week or one-thirtieth part of a month, as the case may be.

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SCHEDULE 2

Section 7(2)

STANDARD EUROPEAN CONSUMER CREDIT INFORMATION

1. Identity and contact details of the creditor/credit intermediary.

Creditor Address Telephone number (*) E-mail address (*) Fax number (*) Web address	[Identity] [Geographical address to be used by the consumer]
If applicable Credit intermediary Address Telephone number E-mail address (*) Fax number (*) Wed address	 [Identity] [Geographical address to be used by the consumer]

(1) This information is optional for the creditor.

Wherever 'if applicable' is indicated, the creditor must fill in the box if the information is relevant to the credit product or delete the respective information or the entire row if the information is not relevant for the type of credit considered.

Indications between square brackets provide explanations for the creditor and must be replaced with the corresponding information.

2. Description of the main features of the credit product.

The type of credit	
The total amount of credit *This means the ceiling or the total sums made available under the credit agreement.*	
The conditions governing the drawdown *This means how and when you will obtain the money.*	
The duration of the credit agreement	
Instalments and, where appropriate, the order in which instalments will be allocated	You will have to pay the following: [The amount, number and frequency of payments to be made by the consumer]

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	Interest and/or charges will be payable in the following manner:
The total amount you will have to pay *This means the amount of borrowed capital plus interest and possible costs related to your credit.*	[Sum of total amount of credit and total cost of credit]
If applicable The credit is granted in the form of a deferred payment for a good or service or is linked to the supply of specific goods or the provision of a service Name of good/service Cash price	
If applicable Sureties required *This is a description of the security to be provided by you in relation to the credit agreement*	[Kind of sureties]
If applicable *Repayments do not give rise to immediate amortisation of the capital*	

Costs of the credit.

The borrowing rate or, if applicable, different borrowing rates which apply to the credit agreement	[% — fixed or, — variable (with the index or reference rate applicable to the initial borrowing rate), — periods],
Annual Percentage Rate of Charge (APR) *This is the total cost expressed as an annual percentage of the total amount of credit.* *The APR is there to help you compare different offers.*	[% A representative example mentioning all the assumptions used for calculating the rate to be set out here]
Is it compulsory, in order to obtain the credit or to obtain it on the terms and conditions marketed, to take out - — an insurance policy securing the credit, or — another ancillary service contract, If the costs of these services are not known by the creditor they are not included in the APR.	Yes/no [if yes, specify the kind of insurance] Yes/no [if yes, specify the kind of ancillary service]

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Related costs	
If applicable Maintaining one or more accounts is required for recording both payment transactions and drawdowns	
If applicable Amount of costs for using a specific means of payment (e.g. a credit card)	
If applicable Any other costs deriving from the credit agreement	
If applicable Conditions under which the abovementioned costs related to the credit agreement can be changed	
If applicable Obligation to pay legal costs	
Costs in the case of late payments *Missing payments could have severe consequences for you (e.g. forced sale) and make obtaining credit more difficult.*	You will be charged […… (applicable interest rate and arrangements for its adjustment and, where applicable, default charges)] for missing payments.

4. Other important legal aspects.

Right of withdrawal *You have the right to withdraw from the credit agreement within a period of 14 calendar days.*	Yes/no
Early repayment *You have the right to repay the credit early at any time in full or partially.*	
If applicable The creditor is entitled to compensation in the case of early repayment	[Determination of the compensation (calculation method) in accordance with section 16 of this Act]
Consultation of a database *The creditor must inform you immediately and without charge of the result of a consultation of a database, if a credit application is rejected on the basis of such a consultation. This does not apply if the provision of such information is prohibited*	

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by Gibraltar law or is contrary to objectives of public policy or public security.	
Right to a draft credit agreement *You have the right, upon request, to obtain a copy of the draft credit agreement free of charge. This provision does not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with you.*	
If applicable The period of time during which the creditor is bound by the pre-contractual information	This information is valid from … until …

If applicable

5. Additional information in the case of distance marketing of financial services.

(a) concerning the creditor	
If applicable Representative of the creditor in Gibraltar Address Telephone number (*) E-mail address (*) Fax number (*) Web address (*)	[Identity] [Geographical address to be used by the consumer]
If applicable Registration	[The trade register in which the creditor is entered and his registration number or an equivalent means of identification in that register]
If applicable The supervisory authority	
(b) concerning the credit agreement	
If applicable Exercise of the right of withdrawal	[Practical instructions for exercising the right of withdrawal indicating, inter alia, the period for exercising the right, the address to which notification of exercise of the right of withdrawal should be sent and the consequences of non-exercise of that right]
If applicable The law taken by the creditor as a basis for the establishment of relations with you before the conclusion of the credit contract	
If applicable	[Relevant clause to be set out here]

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Clause stipulating the governing law applicable to the credit agreement and/or the competent court	
If applicable Language regime	Information and contractual terms will be supplied in [specific language]. With your consent, we intend to communicate in [specific language/languages] during the duration of the credit agreement.
(c) concerning redress	
Existence of and access to out-of-court complaint and redress mechanism	[Whether or not there is an out-of-court complaint and redress mechanism for the consumer who is party to the distance contract and, if so, the methods of access to it]
(*) This information is optional for the creditor.	

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SCHEDULE 3

Section 8(2)

EUROPEAN CONSUMER CREDIT INFORMATION FOR

(1) overdrafts

(2) consumer credit offered by certain credit organisations

(3) debt conversion

3. Identity and contact details of the creditor/credit intermediary.

Creditor Address Telephone number (*) E-mail address (*) Fax number (*) Web address (*)	[Identity] [Geographical address to be used by the consumer]
If applicable Credit intermediary Address Telephone number (*) E-mail address (*) Fax number (*) Web address (*)	[Identity] [Geographical address to be used by the consumer]
(*) This information is optional for the creditor.	

Wherever 'if applicable' is indicated, the creditor must fill in the box if the information is relevant to the credit product or delete the respective information or the entire row if the information is not relevant for the type of credit considered.

Indications between square brackets provide explanations for the creditor and must be replaced with the corresponding information.

2. Description of the main features of the credit product.

The type of credit	
The total amount of credit *This means the ceiling or the total sums made available under the credit agreement.*	
The duration of the credit agreement	
If applicable You may be requested to repay the amount of credit in	

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full on demand at any time.	

3. Costs of the credit.

The borrowing rate or, if applicable, different borrowing rates which apply to the credit agreement	[% — fixed or, — variable (with the index or reference rate applicable to the initial borrowing rate)],
If applicable The annual percentage rate of charge (APR) *This is the total cost of credit expressed as an annual percentage of the total amount of credit. The APR is there to help you compare different offers.*	[% A representative example mentioning all the assumptions used for calculating the rate to be set out here]
If applicable Costs If applicable The conditions under which those costs may be changed	[The costs applicable from the time the credit agreement is concluded]
Costs in the case of late payments	You will be charged […… (applicable interest rate and arrangements for its adjustment and, where applicable, default charges)] for missing payments.

4. Other important legal aspects.

Termination of the credit agreement	[The conditions and procedure for terminating the credit agreement]
Consultation of a database *The creditor must inform you immediately and without charge of the result of a consultation of a database if a credit application is rejected on the basis of such a consultation. This does not apply if the provision of such information is prohibited by Gibraltar law or is contrary to objectives of public policy or public security.*	
If applicable The period of time during which the creditor is bound by the pre-contractual information	This information is valid from … until…

If applicable

5. Additional information to be given where the pre-contractual information is provided by certain credit organisations or relates to a consumer credit for debt conversion.

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Instalments and, where appropriate, the order in which instalments will be allocated	You will have to pay the following: [Representative example of an instalment table including the amount, number and frequency of payments to be made by the consumer]
The total amount you will have to pay	
Early repayment *You have the right to repay the credit early at any time in full or partially.* If applicable The creditor is entitled to compensation in the case of early repayment	[Determination of the compensation (calculation method) in accordance with section 16 of this Act]

If applicable

6. Additional information to be given in the case of distance marketing of financial services.

(a) concerning the creditor	
If applicable Representative of the creditor in Gibraltar Address Telephone number (*) E-mail address (*) Fax number (*) Web address (*)	[Identity] [Geographical address to be used by the consumer]
If applicable Registration	[The trade register in which the creditor is entered and his registration number or an equivalent means of identification in that register]
If applicable The supervisory authority	
(b) concerning the credit agreement	
Right of withdrawal *You have the right to withdraw from the credit agreement within a period of 14 calendar days.* If applicable Exercise of the right of withdrawal	Yes/no [Practical instructions for exercising the right of withdrawal indicating, inter alia, the address to which notification of exercise of the right of withdrawal should be sent and the consequences of non-exercise of that right]
If applicable The law taken by the creditor as a basis for the establishment of relations with you before the conclusion of the credit contract	
If applicable	[Relevant clause to be set out here]

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Clause stipulating the law applicable to the credit agreement and/or the competent court	
If applicable Language regime	Information and contractual terms will be supplied in [specific language]. With your consent, we intend to communicate in [specific language/languages] during the duration of the credit agreement.
(c) concerning redress	
Existence of and access to out-of-court complaint and redress mechanism	[Whether or not there is an out-of-court complaint and redress mechanism for the consumer who is party to the distance contract and, if so, the methods of access to it]
(*) This information is optional for the creditor.	

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SCHEDULE 4

Section 21(2) and (7)

I. The basic equation expressing the equivalence of drawdowns on the one hand and repayments and charges on the other.

The basic equation, which establishes the annual percentage rate of charge (APR), equates, on an annual basis, the total present value of drawdowns on the one hand and the total present value of repayments and payments of charges on the other hand, i.e. -

$$\sum_{k=1}^{m} C_k(1+X)^{-t_k} = \sum_{l=1}^{m'} D_l(1+X)^{-s_l}$$

where -

— X is the APR,

— m is the number of the last drawdown,

— k is the number of a drawdown, thus $1 \leq k \leq m$,

— C_k is the amount of drawdown k,

— t_k is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus $t_1 = {}_0$,

— m' is the number of the last repayment or payment of charges,

— l is the number of a repayment or payment of charges,

— D_l is the amount of a repayment or payment of charges,

— $^{S}{}_{l}$ is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges.

Remarks–

(a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.

(b) The starting date shall be that of the first drawdown.

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(c) Intervals between dates used in the calculations shall be expressed in years or in fractions of a year. A year is presumed to have 365 days (or 366 days for leap years), 52 weeks or 12 equal months. An equal month is presumed to have 30,41666 days (i.e. 365/12) regardless of whether or not it is a leap year.

(d) The result of the calculation shall be expressed with an accuracy of at least one decimal place. If the figure at the following decimal place is greater than or equal to 5, the figure at that particular decimal place shall be increased by one.

(e) The equation can be rewritten using a single sum and the concept of flows (AO, which will be positive or negative, in other words either paid or received during periods 1 to k, expressed in years, i.e. -

$$S = \sum_{k=1}^{n} A_k (1 + X)^{-t_k},$$

S being the present balance of flows. If the aim is to maintain the equivalence of flows, the value will be zero.

II. Additional assumptions for the calculation of the annual percentage rate of charge.

(a) if a credit agreement gives the consumer freedom of drawdown, the total amount of credit shall be deemed to be drawn down immediately and in full;

(b) if a credit agreement provides different ways of drawdown with different charges or borrowing rates, the total amount of credit shall be deemed to be drawn down at the highest charge and borrowing rate applied to the most common drawdown mechanism for this type of credit agreement;

(c) if a credit agreement gives the consumer freedom of drawdown in general but imposes, amongst the different ways of drawdown, a limitation with regard to the amount and period of time, the amount of credit shall deemed to be drawn down on the earliest date provided for in the agreement and in accordance with those drawdown limits;

(d) if there is no fixed timetable for repayment, it shall be assumed–

(i) that the credit is provided for a period of one year; and

(ii) that the credit will be repaid in 12 equal instalments and at monthly intervals;

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(e) if there is a fixed timetable for repayment but the amount of such repayments is flexible, the amount of each repayment shall be deemed to be the lowest for which the agreement provides;

(f) unless otherwise specified, where the credit agreement provides for more than one repayment date, the credit is to be made available and the repayments made on the earliest date provided for in the agreement;

(g) if the ceiling applicable to the credit has not yet been agreed, that ceiling is assumed to be EUR 1 500;

(h) in the case of an overdraft facility the total amount of credit shall be deemed to be drawn down in full and for the whole duration of the credit agreement. If the duration of the credit agreement is not known the annual percentage rate of charge shall be calculated on the assumption that the duration of the credit is three months;

(i) if different interest rates and charges are offered for a limited period or amount, the interest rate and the charges shall be deemed to be the highest rate for the whole duration of the credit agreement;

(j) for consumer credit agreements for which a fixed borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator, the calculation of the annual percentage rate shall be based on the assumption that, at the end of the fixed borrowing rate period, the borrowing rate is the same as at the time of calculating the annual percentage rate, based on the value of the agreed indicator at that time.

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SCHEDULE 5

section 33(1)

Moneylender's Licence duty	- £194.50
Moneylender's Licence duty (if taken out not more than six months before the expiration thereof)	- £129.50

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