

FINANCIAL SERVICES (MONEYLENDING) ACT

Principal Act

Act. No. 1917-15	<i>Commencement</i>	1 .10.1917
	<i>Assent</i>	1.10.1917

Amending enactment	Relevant current provisions	Commencement date
Acts. 1934- 27	ss.2, 3(2) and (5), 4, 10-13, 15, 17 and 18 and Sch.	
1948-27	ss.5, 6, 7, 9 and 19	
1949-25	ss.5 and 6	
1983-12	s.12(1)	
1995-15	ss. 4, 5(1)(3), 12, 13(1), 16, 17 and 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

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.

Interpretation.

2.(1) In this Act, 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 6;

“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 sections 5;

“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 11) shall be appropriated to principal and interest in the proportion that the principal bears to 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 shall be deemed to be the rate of interest charged on the loan.

Re-opening of transactions of money-lender.

3.(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 adjudged 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 Act 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 2 shall not apply with respect to any such transaction.

(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.

4. 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 3(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 425 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.

5.(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 of £150, or if the licence be taken out not more than six months before the expiration thereof, of £100:

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 if 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.

(2) Subject to the provisions of this Act, 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.

6.(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 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 Act 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.

7. 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.

8.(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 if he had failed to comply with section 5.

Rules.

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

Forms of moneylenders' contracts.

10.(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.

Prohibition of compound interest and provision as to defaults.

11. 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 Act 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.

12. 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, if 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 if 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 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.

13.(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 Act ; and
- (b) supply to the assignee all information necessary to enable him to comply with the provisions of this Act 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.

14. Omitted.

Application of Act to assignees.

15.(1) Subject as hereinafter provided, the provisions of this Act 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
- (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 Act, have been void or unenforceable.

Penalties for false statements and representations.

16. 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.

17. 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.

18.(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.

Suspension and forfeiture of moneylenders' certificates.

19.(1) Where any person, being the holder of a certificate, is convicted of any offence against this Act, 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 be 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 be 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 be 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.

SCHEDULE.

Sections 2(2) and 10(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 foregoing 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.