

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013 (SECTION 48)
(LENDING TO SMALL AND MEDIUM-SIZED ENTERPRISES) REGULATIONS 2015
(S.I. No. 585 of 2015)

Unofficial Consolidation

This document is an unofficial consolidation of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015 (S.I. No. 585 of 2015) as amended by the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) (Amendment) Regulations 2016 (S.I. No. 280 of 2016) and by the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) (Amendment) Regulations 2018 (S.I. No. 18 of 2018). **It has been prepared by the Central Bank of Ireland for ease of reference only and is not a legal document.**

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Central Bank of Ireland, 25 January 2018

S.I. No. 585 of 2015

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013 (SECTION 48)
(LENDING TO SMALL AND MEDIUM-SIZED ENTERPRISES) REGULATIONS 2015

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CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013 (SECTION 48)
(LENDING TO SMALL AND MEDIUM-SIZED ENTERPRISES) REGULATIONS 2015

In exercise of the powers conferred on the Central Bank of Ireland (the “Bank”) by section 48 of the Central Bank (Supervision and Enforcement) Act 2013 (the “Act”), the Bank, having consulted, in accordance with section 49 of the Act, with the Minister for Finance, the Credit Union Advisory Committee and other persons that the Bank considers appropriate to consult in the circumstances and bodies that appear to the Bank to have expertise or knowledge of credit unions, hereby makes the following Regulations:

Part 1

PRELIMINARY AND GENERAL

Citation and commencement

1. (1) These Regulations may be cited as the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015.

(2) These Regulations come into operation on 1 July 2016 to the extent that they apply to regulated entities that are not credit unions.

(3) These Regulations come into operation on 1 January 2017 to the extent that they apply to credit unions.

Interpretation

2. In these Regulations—

“advertisement” means any communication the purpose of which is to advertise a product, service or regulated entity the subject of these Regulations, excluding name plaques and sponsorship material;

“all sums guarantee” means a guarantee applying not only to a specific credit facility agreement, but to all credit that may in future be provided by a regulated entity to a borrower for as long as the guarantee remains in place;

“alternative arrangement” in respect of a credit facility agreement means an agreement to discharge the borrower’s debt obligations to the regulated entity which is entered into in order to address arrears or financial difficulties and which is a variation or alternative to the terms and conditions of the credit facility agreement;

“arrears” means a payment or part of a payment due in accordance with a credit facility agreement or alternative arrangement which has not been paid by the borrower by the scheduled due date for payment and, in the case of an overdraft facility, where the borrower’s overdraft limit is exceeded for 30 consecutive days, and “in arrears” means a situation in which arrears have arisen;

“borrower” means a micro, small or medium-sized enterprise in the State with which, or in respect of which, a regulated entity is carrying out a relevant activity;

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“business credit card” means a card issued by a regulated entity to a borrower by means of which goods, services or cash may be obtained by the borrower on credit and amounts in respect of the goods, services or cash may be charged to the credit card account of the borrower maintained by the regulated entity;

“cash” includes money in any form;

¹[“Commission Recommendation 2003/361/EC” means the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;]

“complaint” means an expression of grievance or dissatisfaction by a borrower, either orally or in writing, in connection with the provision of credit or an alternative arrangement or the refusal of a regulated entity to provide credit or an alternative arrangement to a borrower;

“credit” means a deferred payment, cash loan or other similar financial accommodation, including hire purchase, invoice discounting and the letting of goods;

“credit facility agreement” means an agreement whereby a regulated entity grants or promises to grant credit to a borrower;

“Credit Review Office” means the office established under guidelines made by the Minister for Finance under section 210(1) of the National Asset Management Agency Act 2009;

“credit servicing” has the meaning assigned to it by section 28 of the Central Bank Act 1997 and “credit servicing activities” shall be construed accordingly;

“durable medium” means any instrument which enables the borrower to store information addressed to that borrower in a way accessible for future reference and for a period of time adequate for the purpose of the information, and allows the unchanged reproduction of the information stored;

“early redemption charge” means a sum to be paid by a borrower to a regulated entity in the event that a credit facility agreement or alternative arrangement is repaid early;

“financial difficulties” means a situation in which one or more of the following apply to a credit facility agreement or alternative arrangement:

- (a) the borrower is in arrears under the credit facility agreement or alternative arrangement for 3 consecutive months;
- (b) where the credit facility agreement is an overdraft facility, the approved limit on the overdraft is exceeded for 90 consecutive days;
- (c) the regulated entity has, following an assessment carried out in accordance with Regulation 17(2)(b), 17(4)(b) or 35(2)(b), determined that the borrower’s circumstances are such that Regulations 18 to 23 or Regulations 36 to 41 should be applied to the borrower’s case,

¹ Inserted by Regulation 3 of S.I. No. 18 of 2018.

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and “financial difficulties cases” shall be construed accordingly;

“guarantee” means a contract by which a person becomes bound to the regulated entity for the fulfilment of a promise or engagement or other duty of a borrower;

“invoice discounting” means the provision of credit based on the unpaid sales invoices of a borrower;

“medium-sized enterprise” means a micro, small and medium-sized enterprise that is not a micro and small enterprise;

²[“micro and small enterprise” means a micro and small enterprise within the meaning of the Commission Recommendation 2003/361/EC;]

³[“micro, small and medium-sized enterprise” means a micro, small or medium-sized enterprise within the meaning of the Commission Recommendation 2003/361/EC;]

“multi-lender credit” means credit offered or granted by 2 or more regulated entities working together to provide funds to one or more borrowers as part of the same credit arrangement;

“not co-operating” means a situation in which-

- (a) the borrower has failed to make a full and truthful disclosure to the regulated entity of the information required by the regulated entity to assess the borrower’s financial situation, within the timeframe specified by the regulated entity,
- (b) the warning letter, required in accordance with Regulation 20(8), has been issued to the borrower, and
- (c) the borrower has not carried out the action or actions within the timeframes specified in the letter referred to in subparagraph (b);

“overdraft facility” means a credit facility agreement under which a regulated entity makes available to a borrower funds in excess of the current balance in a current account with the regulated entity;

⁴ [“partner enterprise” has the meaning assigned to it under Commission Recommendation 2003/361/EC;]

“regulated entity” means a regulated financial service provider carrying out relevant activities;

“relevant activities” has the meaning assigned to it in Regulation 3(1);

“risk management officer” means the person appointed by a credit union under section 76C of the Credit Union Act 1997;

“security” means assets, undertakings, indemnities, guarantees or charges over assets offered to a

² Substituted by Regulation 3 of S.I. No. 18 of 2018.

³ Substituted by Regulation 3 of S.I. No. 18 of 2018.

⁴ Inserted by Regulation 3 of S.I. No. 18 of 2018.

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regulated entity to secure a credit facility agreement;

“special term or condition” means a term or condition that does not form part of the regulated entity’s standard terms and conditions;

“total cost of credit to the borrower” in relation to a credit facility agreement means all the costs that the borrower is required to pay in connection with the credit facility agreement and that are known to the regulated entity concerned, including-

- (a) interest, commissions, taxes and any other kind of fees, and
- (b) where the conclusion of a service contract is compulsory to obtain the credit or to obtain it on the terms and conditions marketed, costs in respect of ancillary services relating to the credit facility agreement (in particular, insurance premiums).

Scope and application

3. (1) Subject to paragraphs (2) to (4), these Regulations apply to a regulated entity–

- (a) providing or offering to provide credit to a borrower or from which a borrower is seeking to avail of credit,
- (b) entering into, offering to enter into or with which a borrower has sought to enter into a credit facility agreement, to which a borrower is a party or will be a party,
- (c) proposing or undertaking preparatory work for entering into a credit facility agreement with a borrower and any related activities,
- (d) providing or offering to provide an alternative arrangement, or
- (e) engaging in credit servicing activities,

which are, in these Regulations, referred to as “relevant activities”.

(2) These Regulations shall not apply –

- (a) where the borrower is a regulated financial service provider authorised to provide credit,
- (b) to multi-lender credit,
- (c) to credit offered or granted to special purpose vehicles, or
- (d) to credit provided through a business credit card, save for Part 1 and Regulations 7, 11(4) and 17 to 23.

(3) Part 2 does not apply where the borrower is a medium-sized enterprise.

(4) Part 3 does not apply where the borrower is a micro and small enterprise.

(5) For the avoidance of doubt, the provisions of these Regulations are without prejudice to a regulated

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entity's-

- (a) legal and regulatory obligations, and
- (b) legal rights to enforce any agreement including, but not limited to, any security taken in connection with a credit facility agreement.

⁵[(6) Without prejudice to paragraph 2 of Article 3 of the Annex of Commission Recommendation 2003/361/EC, for the purposes of assessing whether a borrower is a micro and small enterprise, a medium-sized enterprise or a micro, small and medium-sized enterprise, a regulated entity shall not have regard to:

- (a) the number of persons employed by a partner enterprise, or
- (b) the annual turnover and annual balance sheet total of a partner enterprise

where the borrower does not have access to the financial resources of the partner enterprise and the investment in or from the partner enterprise is less than €1,250,000.]

Outsourced activity

4. A regulated entity shall be fully responsible for discharging its obligations under these Regulations when it outsources any functions relating to a relevant activity.

Code of Conduct for Business Lending to Small and Medium Enterprises

5. The revocation of any Code of Conduct for Business Lending to Small and Medium Enterprises, or part of a Code of Conduct for Business Lending to Small and Medium Enterprises does not –

- (a) affect any investigation undertaken, or disciplinary or enforcement action undertaken by the Bank or any other person, in respect of any matter in existence at, or before, the time of the revocation, or
- (b) preclude the taking of any legal proceedings, or the undertaking of any investigation, or disciplinary or enforcement action by the Bank or any other person, in respect of any contravention of an enactment or requirement imposed under an enactment (including anything revoked by these Regulations) or any misconduct which may have been committed before the time of the revocation.

Part 2

LENDING TO MICRO AND SMALL ENTERPRISES

Preliminary

6. For the avoidance of doubt, the reference to “borrower” in this Part means a borrower which is a

⁵ Inserted by Regulation 4 of S.I. No. 18 of 2018.

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micro and small enterprise.

Unsolicited credit

7. A regulated entity shall not offer credit to a borrower or approve the provision of credit to a borrower in advance of an application by a borrower for such credit.

Expertise for business lending to micro and small enterprises and points of contact

8. (1) A regulated entity shall provide appropriate training on an on-going basis to staff concerned with relevant activities and this shall include, at a minimum, training with respect to—

- (a) the requirements of this Part,
 - (b) the regulated entity's policies and procedures for-
 - (i) the assessment of applications for credit, and
 - (ii) for dealing with borrowers in financial difficulties,
- and
- (c) where relevant, the regulated entity's lending practices in relation to the different sectors to which it provides credit.

(2) A regulated entity shall ensure that it has clear points of contact for any enquiries relating to the provision of credit or any other matters arising under these Regulations relating to lending to micro and small enterprises.

Annual meeting and credit reviews

9. (1) In this Regulation—

“credit review” means a review of-

- (a) credit facility agreements between a regulated entity and a borrower,
- (b) security held in respect of such credit facility agreements, and
- (c) alternative arrangements.

(2) A regulated entity shall, on an annual basis, offer a borrower the option of a meeting which shall, at a minimum, include a credit review.

(3) Where a borrower accepts the offer of a meeting referred to in paragraph (2), the regulated entity shall –

- (a) promptly arrange the meeting,
- (b) meet with the borrower in a manner acceptable to the borrower and this can include communication over telephone, video-conferencing or other means of electronic communication, and

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(c) perform and complete the credit review in accordance with the requirements in paragraph (5).

(4) Where a borrower requests a regulated entity to perform a credit review, the regulated entity shall perform and complete the credit review in accordance with the requirements in paragraph (5).

(5) Where a credit review is being performed pursuant to paragraphs (3) or (4), the regulated entity, having regard to the borrower's specific circumstances, shall—

(a) advise the borrower, in a durable medium, of any information that may be required from the borrower,

(b) perform and complete the credit review within a reasonable timeframe,

(c) inform the borrower, in a durable medium, of the timeframe for completion of the credit review, and

upon receipt of the required information, complete the credit review within the timeframes notified to the borrower.

(6) With respect to a credit review completed under paragraphs (3) and (4), a regulated entity shall, in a durable medium—

(a) record the results of the credit review, and

(b) inform the borrower of the results.

(7) A regulated entity shall inform the borrower, in a durable medium, of the outcome of any credit review initiated by the regulated entity, except where—

(a) there has been no engagement with the borrower,

(b) the results will not lead to a change to the credit facility agreements, and

(c) no actions are required by either party.

Provision of information - general

10. (1) A regulated entity shall ensure that information provided to a borrower is clear and comprehensible and that information of material importance is specifically brought to the attention of the borrower.

(2) A regulated entity shall not present information in a way which disguises, diminishes or obscures information of material importance.

(3) A regulated entity shall ensure that a warning statement required under Regulations 11(2), 12(2)(1) and 15(3) of these Regulations is—

(a) presented in a prominent manner,

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- (b) in a box,
- (c) in bold type, and
- (d) of a font size that is at least equal to the predominant font size used throughout the document or advertisement.

Advertising

11. (1) This Regulation applies to advertisements which refer, or relate, to a relevant activity which can be provided, or is available, to a micro and small enterprise.

(2) A regulated entity shall comply with the following:

- (a) an advertisement for credit with a variable interest rate shall contain the following warning statement:

“Warning: The cost of your repayments may increase.”;

- (b) an advertisement for credit with a fixed interest rate shall contain the following warning statement:

“Warning: You may have to pay charges if you repay early, in full or in part, a fixed-rate credit facility.”;

- (c) an advertisement for credit which contains an interest-only period shall contain the following warning statement:

“Warning: The entire amount that you have borrowed will still be outstanding at the end of the interest-only period.”;

- (d) an advertisement for credit enabling the consolidation of 2 or more debts shall contain the following warning statement:

“Warning: This new credit facility may take longer to repay than your previous credit facilities. You may pay more than if you paid over a shorter term.”.

(3) A regulated entity is not required to comply with paragraph (2) if the advertisement does not refer to the features or benefits of the product or service available or being referred to and, for the purposes of this paragraph, features and benefits include, but are not limited to, any references to the applicable interest rate or type of interest rate.

(4) Where an advertisement includes an interest rate, a regulated entity shall ensure that the advertisement states whether the interest rate is fixed or variable.

(5) Where an advertisement refers to an interest rate and a term, a regulated entity shall ensure that the advertisement displays the total cost of credit to the borrower.

(6) A regulated entity shall ensure that advertisements for credit enabling the consolidation of 2 or more debts and which offer sample figures in the advertisement indicate the difference between the total cost of credit to the borrower of the consolidated credit and the total cost of credit to the borrower of the

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individual debts that are the subject of consolidation.

Pre-contract information

12. (1) Where a borrower engages with a regulated entity prior to submitting an application for credit, the regulated entity shall-

- (a) provide the borrower with the information specified in Regulation 14(1), and
- (b) provide guidance to the borrower which may assist the borrower in making a successful credit application.

(2) In good time before a borrower is bound by a credit facility agreement, the regulated entity shall provide the borrower with the following information in a durable medium:

- (a) the type of credit facility agreement;
- (b) the name and the geographical address of the regulated entity;
- (c) the total amount of credit;
- (d) the duration of the credit facility agreement;
- (e) terms and conditions applying to the credit facility agreement together with the relevant fees, charges and interest rates which will apply to the credit facility agreement including an explanation of the basis for calculation of the interest charge;
- (f) an outline of the steps to be completed to facilitate drawdown of the credit granted under the credit facility agreement;
- (g) the amount, number and frequency of payments to be made by the borrower;
- (h) if a regulated entity intends to impose a charge in respect of the provision of credit, and there is an option whereby the borrower can incorporate the charge into the amount advanced to the borrower, the option of paying the charge separately, and the overall cost to the borrower of paying the charge over the term of the credit facility agreement;
- (i) where applicable-
 - (i) the charges for maintaining an account or accounts recording payment transactions and drawdowns (unless the opening of any such account is optional),
 - (ii) any charges for using a means of payment for both payment transactions and drawdowns,
 - (iii) any other charges deriving from the credit facility agreement, and
 - (iv) the conditions under which those charges may be changed;
- (j) where the conclusion of an ancillary service contract (in particular, an insurance policy) is compulsory to obtain the credit or to obtain it on the terms and conditions marketed,

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a statement of the obligation to enter into such a contract;

- (k) the interest rate applicable in the case of late payments and the arrangements for its adjustment, and any charges payable for default or any unauthorised overdraft balance;
- (l) the following warning statement:

“Warning: If you do not meet the repayments on your credit facility agreement, your account will go into arrears. This may affect your credit rating, which may limit your ability to access credit in the future.”;
- (m) where applicable, the security sought;
- (n) a statement that there is a right of withdrawal from the credit facility agreement or that there is no such right, as the case may be, and the terms applying to that right of withdrawal;
- (o) a statement of the right of early repayment, and, where applicable, information concerning the regulated entity’s right to compensation and the way in which that compensation will be determined and for this purpose, the regulated entity shall provide a worked example of an early redemption charge specific to the borrower’s case;
- (p) a statement of the borrower’s right to be supplied, on request and free of charge, with a copy of the credit facility agreement;
- (q) where applicable, a statement that the collection of payments under the credit facility agreement may be passed to another organisation or debt-collection agency, or that the regulated entity may sell the debt;
- (r) the length of time for which the credit offer is valid.

(3) A regulated entity may issue additional credit to a borrower which is an existing customer of the regulated entity before providing the information set out in paragraph (2) in relation to that additional credit sought where the borrower has indicated that the funds sought are required within 3 working days or less.

(4) In circumstances referred to in paragraph (3), the regulated entity shall provide the information set out in paragraph (2) in relation to that credit within 3 working days of the additional credit being advanced.

Post-sale information

13. (1) A regulated entity shall, at least once a year, provide a borrower with a statement in a durable medium which shall, where applicable, include—

- (a) the period to which the statement relates,
- (b) the amounts and dates of payments made by the regulated entity to the borrower,
- (c) the balance from the previous statement and the date of that balance,

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- (d) the current balance,
- (e) the dates and amounts of payments made by the borrower to the regulated entity,
- (f) the interest rates applied,
- (g) all interest charged, and
- (h) all charges that have been applied.

(2) A regulated entity shall inform a borrower of any change in fees or charges in a durable medium before the change comes into effect.

(3) A regulated entity shall, in a durable medium, inform a borrower of any change in the interest rate and the notice shall inform the borrower-

- (a) of the date of the change to the interest rate,
- (b) of the payment amount after the entry into force of the new interest rate and, if the number or frequency of the payments changes, particulars of the changes,
- (c) that the borrower should contact the regulated entity if he or she anticipates difficulties meeting the change in repayments, and
- (d) where the change in interest rate arises as a result of a change in the interest margin on a credit facility, of the details of that change.

(4) Where there is an increase in the interest rate, a regulated entity shall provide the information referred to in paragraph (3) before the change comes into effect.

(5) Paragraph (3) shall not apply where-

- (a) the change in the interest rate is caused by a change in a reference rate which changes on a daily or weekly basis,
- (b) the new reference rate is publicly made available, and
- (c) information concerning the new reference rate is kept available on the premises of the regulated entity or on its website.

(6) Before applying a full or partial early repayment to a credit facility agreement, a regulated entity shall promptly provide the borrower, on request, with an estimation of any early redemption charge applicable, in a durable medium.

(7) Where the terms of a credit facility agreement have changed, a regulated entity shall, in a durable medium, promptly provide the guarantor with information identifying the specific changes.

(8) Subject to Regulation 26(1), a regulated entity shall provide the borrower, on request and free of charge, with a copy of any credit facility agreement between the borrower and the regulated entity.

(9) Where a regulated entity has appointed a third party to engage with a borrower in relation to its credit

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facility agreements, prior to the third party engaging with the borrower, the regulated entity shall, in a durable medium-

- (a) inform the borrower that it has appointed a third party to engage with the borrower in relation to its credit facility agreement, and
- (b) explain the role of the third party and the extent of its authority to act on behalf of the regulated entity.

Applications for credit

14. (1) A regulated entity shall publish on its website, and otherwise make available to borrowers in any office of the regulated entity dealing with lending subject to these Regulations, the following information:

- (a) that the borrower is entitled to request a meeting with the regulated entity to discuss any proposed application for credit;
- (b) the timelines which apply to the assessment of an application for credit as set out in the regulated entity's policies and procedures;
- (c) the information that may be required from a borrower in support of a borrower's application for credit;
- (d) that the regulated entity may require submission of a business plan in support of an application for credit;
- (e) a description of the information that may be required in a business plan, including information on the structure and content of the business plan;
- (f) information about Government support schemes available from or through the regulated entity;
- (g) a statement confirming whether a refused application for credit will result in a negative impact on the borrower's credit rating;
- (h) a description of the regulated entity's policies on security.

(2) A regulated entity shall acknowledge receipt of an application for credit, in a durable medium, within 5 working days of receipt of the application.

(3) Prior to entering into a credit facility agreement, a regulated entity shall gather and record sufficient information from the borrower to assess whether that credit is suitable to that borrower and the level of information gathered shall be-

- (a) appropriate to the nature and complexity of the credit facility agreement being sought by the borrower, and
- (b) to a level that allows the regulated entity to assess the borrower's likely ability to repay the debt over the duration of the agreement.

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(4) The regulated entity shall offer a credit facility agreement to a borrower only where it has satisfied itself on reasonable grounds that-

- (a) the credit is suitable to that borrower, and
- (b) the borrower will likely be able to repay the debt over the duration of the credit facility agreement.

(5) Regulations 14(3)(a) and 14(4)(a) shall not apply where the borrower is-

- (a) a person or group of persons, but not an incorporated body with an annual turnover in excess of €3 million in the previous financial year (for the avoidance of doubt a group of persons includes partnerships and other unincorporated bodies such as clubs, charities and trusts, not consisting entirely of bodies corporate), or
- (b) an incorporated body having an annual turnover of €3 million or less in the previous financial year (provided that such body shall not be a member of a group of companies having a combined turnover greater than the said €3 million).

(6) Without prejudice to paragraph (5), a regulated entity shall comply with paragraphs (3) and (4) prior to advancing additional credit to a borrower.

(7) If a regulated entity cannot make a decision within 15 working days of receipt of a completed application on whether it will grant or refuse an application for credit, the regulated entity shall inform the borrower, in a durable medium, of the reasons why the regulated entity's assessment of the application will take longer than 15 working days and the expected timeframe within which a decision will be made.

(8) Where the reason that the regulated entity cannot make a decision within 15 working days is that the regulated entity requires further information, the regulated entity shall inform the borrower, in a durable medium, of the information that it requires and the timeframe within which the information should be provided.

(9) A regulated entity shall inform the borrower, in a durable medium, whether the application for credit has been approved or refused.

Security

15. (1) Where a regulated entity seeks security in support of an application by a borrower for credit, the regulated entity shall-

- (a) ensure that any security being sought is reasonable and proportionate having due regard to-
 - (i) the nature, liquidity and value of the security offered, and
 - (ii) the value of the credit offered,

and

- (b) provide the borrower, in a durable medium, with a clear explanation of-
 - (i) why the security is required, and

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(ii) the potential consequences for the borrower of providing such security.

(2) Where a regulated entity seeks security by way of a guarantee in support of a borrower's application, the regulated entity shall, in a durable medium, provide the intended guarantor with a clear explanation of-

(a) why the guarantee is required, and

(b) the potential consequences for the guarantor of providing the guarantee.

(3) A regulated entity shall include in the explanation referred to in paragraph (2)–

(a) the following warning statement:

“Warning: As a guarantor of any credit, you will have to repay the debt amount(s), any interest and all associated charges if the borrower(s) do(es) not. Before you sign this guarantee you should get independent legal advice.”,

(b) the following warning statement where the guarantee sought is a personal guarantee:

“Warning for personal guarantors: As a guarantor of this credit, your personal assets, including your home, may be at risk if the borrower does not keep up repayments on this credit facility agreement.”, and

(c) the following warning statement where the guarantee sought is an all sums guarantee:

“Warning: This is an all sums guarantee. You are not only guaranteeing the credit in relation to this particular transaction, but also any other credit that may in the future be provided by the lender to the borrower, for as long as the guarantee remains in place.”.

(4) Where an offer of credit to a borrower is subject to a guarantee, the regulated entity making the offer shall outline in the guarantee documentation the obligations of the guarantor and shall, where relevant, include the warning statements referred to in paragraph (3) in the guarantee documentation.

(5) Where security is held by a regulated entity and any credit facility agreement to which it relates has been repaid, the regulated entity shall inform the borrower, in a durable medium, that the regulated entity holds security in relation to that credit facility agreement.

(6) With reference to paragraph (5), where the security is not held in relation to other credit facility agreements, the regulated entity shall also inform the borrower, in a durable medium, of a right to request the return of the security.

(7) A regulated entity shall, where requested by a borrower, as soon as practicable, return any security held by the regulated entity to the borrower when all credit for which the security is pledged has been repaid.

(8) Where a guarantee is held by a regulated entity and any credit facility agreement to which it relates has been repaid, the regulated entity shall inform the guarantor, in a durable medium, that the guarantee

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is extinguished or, in the case of an all sums guarantee, that the guarantee remains in place.

(9) Where security on a credit facility has been realised, a regulated entity shall immediately inform the borrower and where applicable, the guarantor, in a durable medium, of the following:

- (a) the amount obtained for the security;
- (b) the balance of any residual debt or overpayment after the proceeds in respect of the realised security have been applied;
- (c) if there is any residual debt, information about how the deficit is to be repaid;
- (d) details about the interest rate to be applied;
- (e) if there is a surplus, information on how any surplus is to be paid to the borrower or guarantor;
- (f) costs for the realisation of the security where these costs are ultimately borne by the borrower.

Refusing or withdrawing credit

16. (1) When a regulated entity is refusing a borrower's credit application, the regulated entity shall, at the time it first informs the borrower of the refusal, provide the borrower with the following information in a durable medium:

- (a) an explanation of the reasons why the application for credit was refused and this explanation shall-
 - (i) identify the application or part thereof that was refused, and
 - (ii) be specific to the borrower's application or part thereof;
- (b) information on the regulated entity's internal appeals procedure established pursuant to Regulation 24 and information on how to appeal a decision by the regulated entity to refuse an application for credit;
- (c) where the regulated entity's decisions are subject to review by the Credit Review Office, information about the role of the Credit Review Office and the contact details for the Credit Review Office;
- (d) a link to the website for the Irish Government's Supporting SMEs online guide or any other equivalent website in place for the time being;
- (e) information about the borrower's right to make a complaint under the regulated entity's complaints procedure established pursuant to Regulation 25.

(2) Where a regulated entity decides to withdraw or amend a credit facility agreement, the regulated entity shall promptly provide the borrower with the following information in a durable medium:

- (a) an explanation of the reasons for the decision to withdraw or amend the credit facility

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agreement;

- (b) information on the regulated entity's internal appeals procedure established pursuant to Regulation 24 and information on how to appeal a decision by the regulated entity to withdraw or reduce credit;
- (c) the information referred to in subparagraphs (c), (d) and (e) of paragraph (1).

Arrears

17. (1) Where a borrower notifies a regulated entity that it may be at risk of going into arrears or a borrower in arrears notifies a regulated entity that it is concerned about going into financial difficulties, the regulated entity shall offer the borrower the option of an immediate review of the borrower's credit facility agreements, alternative arrangements and security, as appropriate.

(2) Where the borrower agrees to the review referred to in paragraph (1), the regulated entity shall-

- (a) perform the review and identify what options are available to the borrower to address the borrower's anticipated arrears or financial difficulties, having regard to the particular circumstances of the borrower, and
- (b) assess if the borrower's circumstances are such that Regulations 18 to 23 should be applied to the borrower's case.

(3) Where a review referred to in paragraph (1) is performed, the regulated entity shall, in a durable medium, inform the borrower of the outcome of the review and any recommended course of action which the borrower should take pursuant to the review.

(4) Where a borrower remains in arrears for 15 working days after the arrears first arose, the regulated entity shall, where the borrower continues to be in arrears, promptly-

- (a) contact the borrower to confirm to the borrower that it is in arrears and, where possible, to identify the reason why the borrower is in arrears, and
- (b) based on the information available to the regulated entity, assess whether the borrower's circumstances are such that Regulations 18 to 23 should be applied to the borrower's case.

(5) A regulated entity shall, in a durable medium, promptly inform the borrower of the outcome of the assessment referred to in paragraph (4) and any course of action which the borrower should take pursuant to the regulated entity's assessment.

(6) Without prejudice to the requirement for a regulated entity to comply with Regulations 18 to 23 in financial difficulties cases, where a regulated entity determines that, as part of the assessment referred to in paragraphs (2) and (4), the borrower's circumstances are such that Regulations 18 to 23 should be applied to the borrower's case, the regulated entity shall comply with Regulations 18 to 23 in respect of that borrower.

(7) A regulated entity shall not be required to comply with paragraph (4) where-

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- (a) the borrower has notified the regulated entity that it is at risk of going into arrears and the regulated entity is engaging with the borrower in relation to the arrears in accordance with paragraphs (1) to (3), or
- (b) the borrower in arrears has already notified the regulated entity that it is concerned about going into financial difficulties and the regulated entity is engaging with the borrower in relation to the arrears in accordance with paragraphs (1) to (3).

Policy for financial difficulties cases

18. (1) A regulated entity shall establish and maintain in writing policies and procedures for dealing with borrowers in financial difficulties.

(2) A regulated entity shall adhere to the policies and procedures referred to in paragraph (1).

(3) The policies and procedures referred to in paragraph (1) shall have the core objective of assisting the borrower to resolve the financial difficulties and shall, at a minimum, provide for the following matters:

- (a) the procedure that the regulated entity will apply when dealing with borrowers in financial difficulties and how it will implement the procedure;
- (b) the information to be sought from borrowers in financial difficulties;
- (c) that the information sought from borrowers is relevant to assessing the financial situation of borrowers;
- (d) that an alternative arrangement may be agreed with borrowers, where appropriate;
- (e) a description of the types of alternative arrangements that may be offered by the regulated entity to those borrowers in financial difficulties;
- (f) the criteria which the regulated entity will apply when considering which alternative arrangement, if any, is appropriate to a borrower in financial difficulties and the criteria shall, at a minimum, include the following:
 - (i) the viability of the business;
 - (ii) any links with personal debt of the owners of the borrower who are concerned in its management that impacts on the business of the borrower;
 - (iii) any business debt related to property and other investments;
 - (iv) the borrower's current and future repayment capacity;
 - (v) the borrower's previous repayment history;
 - (vi) whether the borrower has any business debt other than the credit facility in financial difficulties, and if so the overall business indebtedness of the borrower;

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- (vii) the information provided by the borrower;
- (g) identify the dedicated contact points to which the regulated entity has assigned responsibility for dealing with borrowers in financial difficulties;
- (h) facilitate separate consideration of debt related to the business of the borrower, debt related to property and other investments or personal debt of the owners of the borrower who are concerned in its management that impact on the business;
- (i) provide for consideration of a financial difficulties case on the specific facts of that case;
- (j) set out that the regulated entity shall consider all reasonable options available before suggesting that a borrower dispose of assets essential to the running of the business, trade or profession of the borrower;
- (k) include the following statement:
 - “A key objective of this policy is to assist borrowers to resolve their financial difficulties.”;
- (l) if a regulated entity cannot make a decision on whether it will facilitate an alternative arrangement within 15 working days from receipt of the information needed in order to allow it to consider the application, specify that the borrower shall be informed promptly of-
 - (i) how long it will take to complete its consideration of whether to facilitate an alternative arrangement, and
 - (ii) the reasons why it will take longer than 15 working days.

Standard information for borrowers in financial difficulties

19. (1) A regulated entity shall prepare and make available to borrowers an information booklet containing the following information:

- (a) a description of the regulated entity’s procedures for dealing with borrowers in financial difficulties, including relevant timelines;
- (b) an explanation that the regulated entity may offer the borrower an alternative arrangement to assist the borrower to resolve the financial difficulties, subject to the borrower meeting the regulated entity’s alternative arrangement assessment criteria and to an individual assessment of the borrower’s situation;
- (c) the type of criteria which may apply to the borrower’s financial difficulties case to determine whether an alternative arrangement is suitable to resolve those financial difficulties;
- (d) a statement emphasising that it is in the borrower’s interest to engage with the regulated entity about arrears or financial difficulties;

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- (e) an explanation of the meaning of not co-operating under these Regulations and the implications for the borrower of not co-operating, including—
 - (i) the impact on the regulated entity’s consideration of an alternative arrangement,
 - (ii) the impact of such a classification on the regulated entity’s consideration of it exercising any existing legal or contractual rights to enforce security, and
 - (iii) where security is realised, that the borrower will remain liable for any outstanding debt;
- (f) an explanation that the regulated entity may be entitled to impose additional fees or charges on borrowers in financial difficulties in accordance with the terms and conditions of the credit facility agreement;
- (g) a list of the information which the regulated entity may request from the borrower when assessing the borrower’s case;
- (h) a statement that the financial difficulties may impact on the borrower’s credit rating;
- (i) a link to these Regulations and a brief summary of the purpose of these Regulations;
- (j) an explanation that the data relating to the borrower’s arrears may be shared with a relevant credit reference agency or credit register, where permitted by contract or required by law;
- (k) confirmation that where a borrower enters financial difficulties, the regulated entity will—
 - (i) appoint a designated contact point, and
 - (ii) inform the borrower of the relevant contact details of the designated contact point;
- (l) a statement advising borrowers that they may employ third party advisers who may accompany the borrower during discussions with the regulated entity whether these discussions are face to face or not;
- (m) an explanation of the regulated entity’s internal appeals process in respect of a regulated entity’s decision on whether to grant an alternative arrangement and the timeframes involved;
- (n) where the regulated entity’s decisions in relation to alternative arrangements are subject to review by the Credit Review Office, information about the role of the Credit Review Office and the contact details for the Credit Review Office;
- (o) information regarding the borrower’s right to make a complaint in accordance with

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Regulation 25, including information regarding the regulated entity's procedure for handling complaints.

(2) Where a regulated entity has or operates a website, a regulated entity shall have a dedicated webpage on its website for borrowers in, or concerned about, financial difficulties which shall contain or directly link to the information booklet referred to in paragraph (1).

(3) The dedicated webpage referred to in paragraph (2) shall—

- (a) contain a statement highlighting the importance of the borrower engaging with the regulated entity to address the financial difficulties, and
- (b) be prominently and directly linked on the regulated entity's home page.

Communicating with borrowers in financial difficulties

20. (1) When contacting a borrower in financial difficulties, a regulated entity shall ensure that—

- (a) the level of contact and communications made by the regulated entity, and any third party acting on the regulated entity's behalf, with the borrower is proportionate and not excessive, taking into account the particular circumstances of the borrower,
- (b) communications with the borrower are not aggressive, intimidating or harassing,
- (c) the borrower is given sufficient time to complete an action to which it has committed before follow-up communication is attempted, and
- (d) steps are taken to agree when the next communication will take place and the method of such communication.

(2) In deciding what constitutes sufficient time for the purposes of paragraph (1)(c), a regulated entity shall give consideration to the action the borrower has committed to carry out, including whether it may require assistance or co-operation from a third party in carrying out the action.

(3) Within 10 working days of the borrower entering financial difficulties, the regulated entity shall inform the borrower, in a durable medium, of the following:

- (a) the status of the account;
- (b) the applicability of these Regulations;
- (c) the availability of the information booklet required under Regulation 19, including details of where it can be located on the regulated entity's website and information on how a borrower can receive a printed copy of the information booklet from the regulated entity;
- (d) the type of information that may be requested from the borrower by the regulated entity or a reference to where this information is available;
- (e) any impact of the financial difficulties on other credit facilities held by the borrower with that regulated entity;

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- (f) that it is in the borrower's interest to engage with the regulated entity about arrears or financial difficulties;
- (g) the option of an immediate review of the borrower's credit facilities, alternative arrangements and security.

(4) Within 10 working days of the borrower first entering financial difficulties, the regulated entity shall inform any guarantor, in a durable medium, of the status of the borrower's account.

(5) When the borrower enters financial difficulties, the regulated entity shall—

- (a) appoint a designated contact point, consisting of employees, officers or agents of the regulated entity, and
- (b) inform the borrower, in a durable medium, of the designated contact point and its contact details.

(6) The regulated entity shall inform the borrower promptly, in a durable medium, if the designated contact point changes.

(7) Without prejudice to any other timeframes prescribed by these Regulations, a regulated entity shall respond to all written communications from a borrower regarding financial difficulties or arrears within 10 working days of the date of receipt of those communications.

(8) Prior to classifying a borrower as not co-operating, a regulated entity shall issue a warning letter informing the borrower and any guarantor, in a durable medium, of the following:

- (a) that the borrower will be classified as not co-operating if it does not perform specific actions to enable the regulated entity to complete an assessment of the borrower's circumstances;
- (b) that the specific actions set out in the letter referred to in subparagraph (a) are to be carried out within a specified time period which shall not be shorter than 20 working days from the date of the warning letter;
- (c) an outline of the implications for the borrower of not co-operating, including—
 - (i) the impact on the regulated entity's consideration of an alternative arrangement,
 - (ii) the impact of such a classification on the regulated entity's consideration of it exercising any existing legal or contractual rights to enforce security, and
 - (iii) where security is realised, that the borrower will remain liable for any outstanding debt.

(9) A regulated entity shall ensure that the specific actions referred to in paragraph (8)(a) are reasonable and proportionate.

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(10) Where a regulated entity has classified a borrower as not co-operating following a period whereby the borrower has been given the opportunity to co-operate in line with paragraph (8), the regulated entity shall-

- (a) notify the borrower and any guarantor, in a durable medium, that the borrower has been classified as not co-operating, and
- (b) inform the borrower and any guarantor, in a durable medium, of-
 - (i) the impact of such a classification on the regulated entity's consideration of an alternative arrangement,
 - (ii) the impact of such a classification on the regulated entity's consideration of it exercising any existing legal or contractual rights to enforce security, and
 - (iii) where security is realised, that the borrower will remain liable for any outstanding debt.

Independent reviews

21. (1) Where a borrower is in financial difficulties and a regulated entity requires an independent review of the borrower's business by a third party in order to assess the future viability of the business, the regulated entity shall, in a durable medium, provide the borrower with-

- (a) an explanation of the reasons for the review,
- (b) information on what will be covered by the review,
- (c) the name of the person carrying out the review, and
- (d) information on any costs to be borne by the borrower.

(2) Where there is a guarantee in place in relation to a credit facility agreement the regulated entity shall inform the guarantor, in a durable medium, where it requires the independent review referred to in paragraph (1).

(3) A regulated entity shall promptly provide the borrower, in a durable medium, with a copy of any report provided to the regulated entity following the review referred to in paragraph (1).

(4) Where a borrower bears any cost of the review referred to in paragraph (1), the cost of the review must be proportionate to the amount of credit provided under a credit facility agreement and the size and complexity of the borrower's business.

Alternative arrangements

22. (1) Where a regulated entity offers an alternative arrangement to a borrower, the regulated entity shall include the following information, in a durable medium, in the offer documentation:

- (a) the timeframe for the borrower to avail of the offer of the alternative arrangement;
- (b) the new repayment amounts on the credit facility under the proposed alternative arrangement, as applicable, and the number and frequency of those repayment amounts;

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- (c) the term of the alternative arrangement;
- (d) the implications arising from an alternative arrangement including the impact on-
 - (i) the term of the credit facility agreement,
 - (ii) the balance outstanding on the account, and
 - (iii) the monetary amount of any arrears on the account;
- (e) the frequency with which the alternative arrangement will be reviewed and the criteria against which the borrower's financial difficulties will be assessed;
- (f) if known, details of any residual debt remaining at the end of an alternative arrangement and owed by the borrower and, if not known, details of how any residual debt will be determined;
- (g) how interest and charges will be applied to the credit facility as a result of the alternative arrangement;
- (h) how the alternative arrangement will be reported by the regulated entity to a relevant credit reference agency or credit register and that it may impact on the borrower's credit rating;
- (i) a statement highlighting the borrower's right to seek independent legal and financial advice, and a recommendation that they should do so.

(2) If a regulated entity decides not to offer an alternative arrangement to a borrower, the regulated entity shall, in a durable medium-

- (a) inform the borrower of the reasons, with reference to the specific criteria applied, for not offering an alternative arrangement,
- (b) advise the borrower of the next steps the regulated entity may take,
- (c) inform the borrower of its right to appeal the regulated entity's decision, and
- (d) refer the borrower to the relevant section concerning appeals in the regulated entity's information booklet required under Regulation 19.

(3) If a borrower declines to accept an offer of an alternative arrangement made by the regulated entity, the regulated entity shall, in a durable medium-

- (a) advise the borrower of the next steps the regulated entity may take,
- (b) inform the borrower of its right to appeal the terms and conditions applying to the alternative arrangement proposed, and
- (c) refer the borrower to the relevant section concerning appeals in the regulated entity's information booklet required under Regulation 19.

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Operation of alternative arrangements

23. When an alternative arrangement comes to an end, a regulated entity shall promptly review the borrower's situation in order to assess whether a further alternative arrangement is necessary.

Appeals

24. (1) A regulated entity shall establish and implement an internal appeals procedure allowing a borrower to appeal at least the following decisions of the regulated entity:

- (a) the refusal of a credit application;
- (b) a special term or condition which is required by the regulated entity in order to grant credit, including with respect to security and guarantees required by the regulated entity;
- (c) the withdrawal or reduction of a credit facility;
- (d) a special term or condition which is required by the regulated entity in order to provide an alternative arrangement;
- (e) the refusal to offer an alternative arrangement to a borrower;
- (f) the classification of a borrower as not co-operating.

(2) The procedure referred to in paragraph (1) shall provide-

- (a) that an appeal be conducted by an appeals panel as soon as is reasonably practicable after the borrower makes the appeal, and
- (b) without prejudice to the generality of subparagraph (a), that if the regulated entity cannot make a decision on the appeal within 15 working days following the submission of the appeal by the borrower to the regulated entity, the regulated entity shall promptly inform the borrower before the expiry of 15 working days, in a durable medium –
 - (i) how long it will take to reach its decision, and
 - (ii) the reasons why it will take longer than 15 working days.

(3) This Regulation shall not apply in respect of matters for which a borrower has a right of appeal under the Credit Union Act 1997.

(4) The appeals panel shall be comprised of at least 2 decision makers who have–

- (a) not been involved in the borrower's case previously, and
- (b) sufficient knowledge and experience to conduct the appeal.

(5) A regulated entity shall allow the borrower a reasonable period of time to consider submitting an appeal to the appeals panel and this period of time shall be at least 20 working days from the date of notification of the decision of the regulated entity.

(6) The regulated entity shall, within 5 working days of receipt of the appeal, in a durable medium-

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- (a) acknowledge the receipt of each appeal, and
- (b) provide the borrower with the name and contact details of one or more individuals appointed by the regulated entity to be the borrower's point of contact in relation to the appeal, until the appeals panel adjudicates on the appeal.

(7) Within 5 working days of the completion of an appeal, a regulated entity shall in a durable medium-

- (a) notify the borrower of the decision of the appeals panel,
- (b) explain the reasons for the decision,
- (c) where the borrower's appeal is upheld, in whole or in part, set out the terms of any offer being made in a clear and comprehensible manner, and
- (d) where the regulated entity's decisions are subject to review by the Credit Review Office-
 - (i) inform the borrower of its right to refer the matter to the Credit Review Office,
 - (ii) provide the borrower with information about the role of the Credit Review Office, and
 - (iii) provide the borrower with the contact details of the Credit Review Office.

Handling complaints

25. (1) A regulated entity shall make all reasonable efforts to resolve any complaints made by a borrower.

(2) A regulated entity shall establish, maintain and adhere to a written procedure for the proper handling of complaints.

(3) The procedure referred to in paragraph (2) does not apply where-

- (a) the complaint has been resolved to the borrower's satisfaction within 5 working days, and
- (b) a record of the outcome referred to in subparagraph (a) is maintained by the regulated entity.

(4) When a regulated entity receives an oral complaint, it shall offer the borrower the opportunity to have this handled in accordance with the procedure referred to in paragraph (2).

(5) The procedure referred to in paragraph (2) shall, at a minimum, provide that-

- (a) the regulated entity shall, within 5 working days of a complaint being received-
 - (i) acknowledge, in a durable medium, the complaint, and
 - (ii) provide the borrower with the name of an individual or individuals appointed

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by the regulated entity to be the borrower's point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further,

- (b) the regulated entity shall provide the borrower with a regular update, in a durable medium, on the progress of the investigation of the complaint at intervals of not greater than 20 working days, starting from the date on which the complaint was made,
- (c) the regulated entity shall attempt to investigate and resolve a complaint within 40 working days of having received the complaint,
- (d) where the 40 working days referred to in subparagraph (c) have elapsed and the complaint has not been resolved, the regulated entity shall inform the borrower—
 - (i) of the anticipated timeframe within which the regulated entity expects to resolve the complaint,
 - (ii) that the borrower may be in a position to make a complaint to the [Financial Services and Pensions Ombudsman]⁶ and that the borrower's ability to do so will depend on whether, *inter alia*, the borrower falls within the scope of the class of persons who can make complaints to the [Financial Services and Pensions Ombudsman], and
 - (iii) of the contact details of the [Financial Services and Pensions Ombudsman].
- (e) within 5 working days of the completion of the investigation, the regulated entity shall in a durable medium, inform the borrower—
 - (i) of the outcome of the investigation,
 - (ii) where applicable, of the terms of any offer or settlement being made,
 - (iii) that the borrower may be in a position to make a complaint to the [Financial Services and Pensions Ombudsman] and that the borrower's ability to do so will depend on whether, *inter alia*, the borrower falls within the scope of the class of persons who can make complaints to the [Financial Services and Pensions Ombudsman], and
 - (iv) of the contact details of the [Financial Services and Pensions Ombudsman].

(6) A regulated entity shall establish and maintain a register of all complaints from borrowers subject to the procedure required under paragraph (2) and this register shall contain-

- (a) details of each complaint,

⁶ With effect from the establishment date of 1 January 2018 (S.I. No. 525 of 2017), references to the Financial Services Ombudsman are to be construed as references to the Financial Services and Pensions Ombudsman (section 29(3) of the Financial Services and Pensions Ombudsman Act 2017).

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- (b) the date the complaint was received,
- (c) a summary of the regulated entity's response including the date of the response,
- (d) details of any other relevant correspondence or records,
- (e) the action taken to resolve each complaint,
- (f) the date the complaint was resolved, and
- (g) where relevant, the current status of the complaint which has been referred to the [Financial Services and Pensions Ombudsman].

(7) A regulated entity shall maintain up to date and comprehensive records for each complaint received from a borrower.

(8) A regulated entity shall undertake an analysis of the complaints register required under paragraph (6) on a regular basis including investigating whether complaints indicate an isolated issue or a more widespread issue for borrowers.

(9) The analysis referred to in paragraph (8) shall be reported to the regulated entity's-

- (a) risk committee or audit committee or, in the case of credit unions, risk management officer, and
- (b) management body.

Records and compliance

26. (1) A regulated entity shall retain all records for 6 years from the date on which the regulated entity ceased to provide the credit facility agreement, alternative arrangement or credit servicing activities to the borrower concerned.

(2) A regulated entity shall prepare and maintain records to demonstrate compliance with this Part.

(3) A regulated entity shall maintain records of all applications for credit and the decision on those applications to which this Part applies.

(4) A regulated entity shall maintain all documents relating to credit applications which have been refused for at least 12 months or if the decision to refuse the credit application is appealed under Regulation 24, for at least 12 months after the conclusion of the appeal.

(5) A regulated entity shall ensure that in all its dealings with borrowers it has and employs effectively the resources, systems and control checks that are necessary for compliance with these Regulations.

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Part 3

LENDING TO MEDIUM-SIZED ENTERPRISES

Preliminary

27. For the avoidance of doubt, the reference to “borrower” in this Part means a borrower which is a medium-sized enterprise.

Annual meeting and reviews

28. A regulated entity shall, on an annual basis, offer a borrower the option of a meeting which shall, at a minimum, include a review of-

- (a) credit facility agreements between the regulated entity and the borrower,
- (b) security held in respect of such credit facility agreements, and
- (c) alternative arrangements.

Provision of information - general

29. (1) A regulated entity shall ensure that information provided to a borrower is clear and comprehensible and that information of material importance is specifically brought to the attention of the borrower.

(2) A regulated entity shall not present information in a way which disguises, diminishes or obscures information of material importance.

⁷[(3) A regulated entity shall ensure that a warning statement required under Regulation 33(3) of these Regulations is—

- (a) presented in a prominent manner,
- (b) in a box,
- (c) in bold type, and
- (d) of a font size that is at least equal to the predominant font size used throughout the document or advertisement.]

Pre-contract information

30. In good time before a borrower is bound by a credit facility agreement, the regulated entity shall provide the borrower with the following information in a durable medium:

- (a) the type of credit facility agreement;
- (b) the total amount of credit;
- (c) the duration of the credit facility agreement;

⁷ Inserted by Regulation 4 of S.I. No. 280 of 2016.

- (d) terms and conditions applying to the credit facility agreement together with the relevant fees, charges and interest rates which will apply to the credit facility agreement including an explanation of the basis for calculation of the interest charge;
- (e) an outline of the steps to be completed to facilitate drawdown of the credit granted under the credit facility agreement;
- (f) the amount, number and frequency of payments to be made by the borrower;
- (g) the interest rate applicable in the case of late payments and the arrangements for its adjustment, and any charges payable for default or any unauthorised overdraft balance;
- (h) where applicable, a statement that the collection of payments under the credit facility agreement may be passed to another organisation or debt-collection agency, or that the regulated entity may sell the debt.

Post-sale information

31. (1) A regulated entity shall, at least once a year, provide a borrower with a statement in a durable medium which shall, where applicable, include all interest rates applied.

(2) A regulated entity shall inform a borrower of any change in fees or charges in a durable medium before the change comes into effect.

(3) A regulated entity shall, in a durable medium, inform a borrower of-

- (a) any change in the interest rate where the change in interest rate arises as a result of a change in the interest margin on a credit facility, and
- (b) the details of that change.

Applications for credit

32. A regulated entity shall publish on its website, and otherwise make available to borrowers in any office of the regulated entity dealing with lending subject to these Regulations, the timelines which apply to the assessment of an application for credit as set out in the regulated entity's policies and procedures.

Security

33. (1) Where a regulated entity seeks security in support of an application by a borrower for credit, the regulated entity shall –

- (a) ensure that any security being sought is reasonable and proportionate having due regard to-
 - (i) the nature, liquidity and value of the security offered, and
 - (ii) the value of the credit offered,
- and
- (b) provide the borrower, in a durable medium, with a clear explanation of–

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- (i) why the security is required, and
- (ii) the potential consequences for the borrower of providing such security.

(2) Where a regulated entity seeks security by way of a guarantee in support of a borrower's application, the regulated entity shall, in a durable medium, provide the intended guarantor with a clear explanation of-

- (a) why the guarantee is required, and
- (b) the potential consequences for the guarantor of providing the guarantee.

(3) A regulated entity shall include in the explanation referred to in paragraph (2)–

- (a) the following warning statement:

“Warning: As a guarantor of any credit, you will have to repay the debt amount(s), any interest and all associated charges if the borrower(s) do(es) not. Before you sign this guarantee you should get independent legal advice.”,

- (b) the following warning statement where the guarantee sought is a personal guarantee:

“Warning for personal guarantors: As a guarantor of this credit, your personal assets, including your home, may be at risk if the borrower does not keep up repayments on this credit facility agreement.”, and

- (c) the following warning statement where the guarantee sought is an all sums guarantee:

“Warning: This is an all sums guarantee. You are not only guaranteeing the credit in relation to this particular transaction, but also any other credit that may in the future be provided by the lender to the borrower, for as long as the guarantee remains in place.”.

(4) Where an offer of credit to a borrower is subject to a guarantee, the regulated entity making the offer shall outline in the guarantee documentation the obligations of the guarantor and shall, where relevant, contain the warning statements referred to in paragraph (3) in the guarantee documentation.

(5) A regulated entity shall, where requested by a borrower, as soon as practicable, return any security held by the regulated entity to the borrower when all credit for which the security is pledged has been repaid.

(6) Where a guarantee is held by a regulated entity and any credit facility agreement to which it relates has been repaid, the regulated entity shall inform the guarantor, in a durable medium, that the guarantee is extinguished or, in the case of an all sums guarantee, that the guarantee remains in place.

(7) Where security on a credit facility has been realised, a regulated entity shall immediately inform the borrower and where applicable, the guarantor, in a durable medium, of the following:

- (a) the amount obtained for the security;

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- (b) the balance of any residual debt or overpayment after the proceeds in respect of the realised security have been applied;
- (c) if there is any residual debt, information about how the deficit is to be repaid;
- (d) details about the interest rate to be applied;
- (e) if there is a surplus, information on how any surplus is to be paid to the borrower or guarantor;
- (f) costs for the realisation of the security where these costs are ultimately borne by the borrower.

Refusing or withdrawing credit

34. (1) When a regulated entity is refusing a borrower's credit application, the regulated entity shall, at the time it first informs the borrower of the refusal, provide the borrower with an explanation of the reasons why the application for credit was refused, in a durable medium.

(2) Where a regulated entity decides to withdraw or amend a credit facility agreement it shall, in a durable medium, promptly provide the borrower with an explanation of the reasons for the decision to withdraw or amend the credit facility agreement.

Arrears

35. (1) Where a borrower notifies a regulated entity that it may be at risk of going into arrears or a borrower in arrears notifies a regulated entity that it is concerned about going into financial difficulties, the regulated entity shall offer the borrower the option of an immediate review of the borrower's credit facility agreements, alternative arrangements and security, as appropriate.

(2) Where the borrower agrees to the review referred to in paragraph (1), the regulated entity shall-

- (a) perform the review, and
- (b) assess if the borrower's circumstances are such that Regulations 36 to 41 should be applied to the borrower's case.

(3) Without prejudice to the requirement for regulated entities to comply with Regulations 36 to 41 in financial difficulties cases, where a regulated entity determines that, as part of the assessment referred to in paragraph (2), the borrower's circumstances are such that Regulations 36 to 41 should be applied to the borrower's case, the regulated entity shall comply with Regulations 36 to 41 in respect of that borrower.

Policy for financial difficulties

36. (1) A regulated entity shall establish and maintain in writing policies and procedures for dealing with borrowers in financial difficulties.

(2) A regulated entity shall adhere to the policies and procedures referred to in paragraph (1).

(3) The policies and procedures referred to in paragraph (1) shall have the core objective of assisting the borrower to resolve the financial difficulties and shall, at a minimum, provide for the following

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matters:

- (a) the procedure that the regulated entity will apply when dealing with borrowers in financial difficulties and how it will implement the procedure;
- (b) the information to be sought from borrowers in financial difficulties;
- (c) that the information sought from borrowers is relevant to assessing the financial situation of borrowers;
- (d) that an alternative arrangement may be agreed with borrowers, where appropriate;
- (e) a description of the types of alternative arrangements that may be offered by the regulated entity to those borrowers in financial difficulties;
- (f) identify the dedicated contact points to which the regulated entity has assigned responsibility for dealing with borrowers in financial difficulties;
- (g) provide for consideration of a financial difficulties case on the specific facts of that case;
- (h) include the following statement:
 - “A key objective of this policy is to assist borrowers to resolve their financial difficulties.”;
- (i) if a regulated entity cannot make a decision on whether it will facilitate an alternative arrangement within 15 working days from receipt of the information needed in order to allow it to consider the application, specify that the borrower shall be informed promptly of-
 - (i) how long it will take to complete its consideration of whether to facilitate the alternative arrangement, and
 - (ii) the reasons why it will take longer than 15 working days.

Standard information for borrowers in financial difficulties

37. (1) A regulated entity shall prepare and make available to borrowers an information booklet containing the following information:

- (a) a description of the regulated entity’s procedures for dealing with borrowers in financial difficulties, including relevant timelines;
- (b) a statement emphasising that it is in the borrower’s interest to engage with the regulated entity about arrears or financial difficulties;
- (c) an explanation that the regulated entity may be entitled to impose additional fees or charges on borrowers in financial difficulties in accordance with the terms and conditions of the credit facility agreement;

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- (d) a list of the information which the regulated entity may request from the borrower when assessing the borrower's case;
- (e) a statement that the financial difficulties may impact on the borrower's credit rating;
- (f) an explanation of the regulated entity's internal appeals process in respect of a regulated entity's decision on whether to grant an alternative arrangement and the timeframes involved.

(2) Where a regulated entity has or operates a website, a regulated entity shall have a dedicated webpage on its website for borrowers in, or concerned about, financial difficulties which shall contain or directly link to the information booklet referred to in paragraph (1).

(3) The dedicated webpage referred to in paragraph (2) shall-

- (a) contain a statement highlighting the importance of the borrower engaging with the regulated entity to address the financial difficulties, and
- (b) be prominently and directly linked on the regulated entity's home page.

Communicating with borrowers in financial difficulties

38. (1) When contacting a borrower in financial difficulties, a regulated entity shall ensure that the level of contact and communications made by the regulated entity, and any third party acting on the regulated entity's behalf, with the borrower is proportionate and not excessive, taking into account the particular circumstances of the borrower.

(2) Within 10 working days of the borrower entering financial difficulties, the regulated entity shall inform the borrower, in a durable medium, of the following:

- (a) the status of the account;
- (b) the applicability of these Regulations;
- (c) the availability of the information booklet required under Regulation 37, including details of where it can be located on the regulated entity's website and information on how a borrower can receive a printed copy of the information booklet from the regulated entity;
- (d) the type of information that may be requested from the borrower by the regulated entity or a reference to where this information is available;
- (e) any impact of the financial difficulties on other credit facilities held by the borrower with that regulated entity;
- (f) that it is in the borrower's interest to engage with the regulated entity about arrears or financial difficulties;
- (g) the option of an immediate review of the borrower's credit facilities, alternative arrangement and security.

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(3) Within 10 working days of the borrower entering financial difficulties, the regulated entity shall inform any guarantor, in a durable medium, of the status of the borrower's account.

(4) Without prejudice to any other timeframes prescribed by these Regulations, a regulated entity shall respond to all written communications from a borrower regarding financial difficulties or arrears within 10 working days of the date of receipt of those communications.

Independent reviews

39. Where a borrower is in financial difficulties and there is a guarantee in place in relation to a credit facility agreement, the regulated entity shall inform the guarantor, in a durable medium, where it requires an independent review of the borrower's business by a third party in order to assess the future viability of the business.

Alternative arrangements

40. (1) Where a regulated entity offers an alternative arrangement to a borrower, the regulated entity shall include the following information, in a durable medium, in the offer documentation:

- (a) the timeframe for the borrower to avail of the offer of the alternative arrangement;
- (b) the new repayment amounts on the credit facility under the proposed alternative arrangement, as applicable, and the number and frequency of those repayment amounts;
- (c) the term of the alternative arrangement;
- (d) the implications arising from an alternative arrangement including the impact on-
 - (i) the term of the credit facility agreement,
 - (ii) the balance outstanding on the account, and
 - (iii) the monetary amount of any arrears on the account;
- (e) if known, details of any residual debt remaining at the end of an alternative arrangement and owed by the borrower and, if not known, details of how residual debt will be determined;
- (f) how interest and charges will be applied to the credit facility as a result of the alternative arrangement.

(2) If a regulated entity decides not to offer an alternative arrangement to a borrower, the regulated entity shall, in a durable medium-

- (a) inform the borrower of the reasons, with reference to the specific criteria applied, for not offering an alternative arrangement,
- (b) inform the borrower of its right to appeal the regulated entity's decision, and
- (c) refer the borrower to the relevant section concerning appeals in the regulated entity's information booklet required under Regulation 37.

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(3) If a borrower declines to accept an offer of an alternative arrangement made by the regulated entity, the regulated entity shall, in a durable medium–

- (a) inform the borrower of its right to appeal the terms and conditions applying to the alternative arrangement proposed, and
- (b) refer the borrower to the relevant section concerning appeals in the regulated entity’s information booklet required under Regulation 37.

Operation of alternative arrangements

41. When an alternative arrangement comes to an end, a regulated entity shall promptly review the borrower’s situation in order to assess whether a further alternative arrangement is necessary.

Appeals

42. (1) A regulated entity shall establish and implement an internal appeals procedure allowing a borrower to appeal at least the following decisions of the regulated entity:

- (a) a special term or condition which is required by the regulated entity in order to provide an alternative arrangement;
- (b) the refusal to offer an alternative arrangement to a borrower.

(2) The procedure referred to in paragraph (1) shall provide that if the regulated entity cannot make a decision on the appeal within 15 working days following the submission of the appeal by the borrower to the regulated entity, the regulated entity shall promptly inform the borrower before the expiry of 15 working days, in a durable medium–

- (a) how long it will take to reach its decision, and
- (b) the reasons why it will take longer than 15 working days.

(3) A regulated entity shall allow the borrower a reasonable period of time to consider submitting an appeal and this period of time shall be at least 20 working days from the date of notification of the decision of the regulated entity.

(4) Where the regulated entity’s decisions are subject to review by the Credit Review Office, the regulated entity shall, in a durable medium–

- (a) inform the borrower of its right to refer the matter to the Credit Review Office, and
- (b) provide the borrower with the contact details of the Credit Review Office.

Handling complaints

43. (1) A regulated entity shall make all reasonable efforts to resolve any complaints made by a borrower.

(2) A regulated entity shall establish, maintain and adhere to a written procedure for the proper handling of complaints.

(3) The procedure referred to in paragraph (2) does not apply where–

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- (a) the complaint has been resolved to the borrower's satisfaction within 5 working days, and
- (b) a record of the outcome referred to in subparagraph (a) is maintained by the regulated entity.

(4) The procedure referred to in paragraph (2) shall, at a minimum, provide that-

- (a) the regulated entity shall, within 5 working days of the complaint being received-
 - (i) acknowledge, in a durable medium, the complaint, and
 - (ii) provide the borrower with the name of an individual or individuals appointed by the regulated entity to be the borrower's point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further,
- (b) the regulated entity shall provide the borrower with a regular update, in a durable medium, on the progress of the investigation of the complaint at intervals of not greater than 20 working days, starting from the date on which the complaint was made,
- (c) the regulated entity shall attempt to investigate and resolve a complaint within 40 working days of having received the complaint,
- (d) where the 40 working days referred to in subparagraph (c) have elapsed and the complaint has not been resolved, the regulated entity shall inform the borrower of the anticipated timeframe within which the regulated entity expects to resolve the complaint, and
- (e) within 5 working days of the completion of the investigation, the regulated entity shall in a durable medium, inform the borrower-
 - (i) of the outcome of the investigation, and
 - (ii) where applicable, of the terms of any offer or settlement being made.

Records and compliance

44. (1) A regulated entity shall prepare and maintain records to demonstrate compliance with this Part.
- (2) A regulated entity shall maintain records of all applications for credit and the decision on those applications to which this Part applies.
- (3) A regulated entity shall maintain all documents relating to credit applications which have been refused for at least 12 months [...⁸].
- (4) A regulated entity shall ensure that in all its dealings with borrowers it has and employs effectively the resources, systems and control checks that are necessary for compliance with these Regulations.

⁸ The following text was deleted by Regulation 5 of S.I. No. 280 of 2016: "or if the decision to refuse the credit application is appealed under Regulation 42, for at least 12 months after the conclusion of the appeal".

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Signed for and on behalf of the Central Bank of Ireland

17 December 2015.

CYRIL ROUX,
Deputy Governor (Financial Regulation).

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