

New Zealand.



ANALYSIS.

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1933, No. 21.

AN ACT to amend the Money-lenders Act, 1908.

Title.

[15th December, 1933.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Money-lenders Amendment Act, 1933, and shall be read together with and deemed part of the Money-lenders Act, 1908 (hereinafter referred to as the principal Act).

Short Title.

See Reprint
of Statutes,
Vol. VI, p. 5

2. (1) Notwithstanding anything contained in the principal Act, it shall not be lawful for any money-lender registered under that Act to carry on his business in the financial year commencing on the first

Annual license
fees payable by
money-lender.

day of April, nineteen hundred and thirty-four, or in any financial year thereafter, unless and until he has paid for each year in which he proposes to carry on business a license fee of fifteen pounds in respect of each registered address :

Provided that where later than one month after the beginning of any financial year any money-lender first becomes registered under the principal Act or registers any new address the appropriate annual license fee payable for that year shall be reduced by twenty-five shillings for each full calendar month elapsing between the beginning of that year and the date of registration.

(2) Every license fee as aforesaid shall be paid to the Clerk of the Magistrate's Court at the time of making application for registration, or renewal of registration, of the money-lender under the principal Act, or the registration of a new address, as the case may be, and on the making of such registration or renewal a license in the prescribed form shall be issued to such money-lender. Where the license is in respect of any registered address other than the principal office of the money-lender a certified copy thereof shall also be issued to him and shall be kept and exhibited by him at such first-mentioned address.

(3) Where a registered money-lender ceases to carry on his business at any registered address in respect of which a license fee has been paid under this section earlier than one month before the end of any financial year there may, if the Minister of Justice so directs, be refunded to him an amount of twenty-five shillings for each full calendar month elapsing between the date of his so ceasing to carry on business and the end of such year.

(4) The payment of such fee or the issue of such license shall not authorize the person affected to carry on business as a money-lender at any time when his registration under the principal Act is suspended or cancelled or is otherwise not in force.

3. (1) Subject to subsection three hereof, every registration of a money-lender under the principal Act made before the passing of this Act shall cease to have effect at the close of the thirty-first day of March, nineteen hundred and thirty-four, and every such registration made after the passing of this Act shall

Duration of
registration of
money-lender.

cease to have effect at the close of the thirty-first day of March next following the date of registration.

(2) Every such registration as aforesaid may from time to time be renewed, and if renewed shall have effect until the close of the thirty-first day of March next following the date from which it is renewed and, save as provided in the next succeeding subsection, shall then cease to have effect.

(3) Notwithstanding anything contained in the foregoing provisions of this section, where application for the renewal of the registration of a money-lender is made before such registration ceases to have effect such registration shall, where necessary, continue in force until the application for renewal is disposed of, unless the Magistrate otherwise directs.

(4) This section is in substitution for subsection two of section five of the principal Act, and that subsection is hereby accordingly repealed. Repeal.

4. (1) Every application for registration or renewal of registration of a money-lender under the principal Act shall be considered by a Stipendiary Magistrate exercising jurisdiction in the Magistrate's Court at which such application is lodged. Grounds for refusal of registration of money-lender.

(2) The Magistrate shall direct such registration not to be made or renewed if—

- (a) Evidence to the satisfaction of the Magistrate has not been produced of the good character of the applicant, and in the case of a firm of every partner, and in the case of a society or corporate body of the persons responsible for the management thereof :
- (b) Evidence to the satisfaction of the Magistrate has been produced that the applicant, or any person proposed to be made responsible for the management of his business as a money-lender, is not a fit and proper person to be registered :
- (c) The applicant, or any person responsible or proposed to be made responsible for the management of his business as a money-lender is then disqualified from being registered :
- (d) The applicant has not complied with the provisions of any regulations relating to registration or has not paid the appropriate license fee or license fees under section two hereof.

(3) No appeal shall lie to any Court against a decision of a Magistrate under this section.

5. (1) Where any person registered as a money-lender under the principal Act is convicted of any offence under that Act or this Act the Court—

(a) May order that such registration shall either be suspended for such time as the Court thinks fit, or shall be cancelled, and may also, if the Court thinks fit, declare any such person, or any person responsible for the management of the money-lending business carried on by the person convicted, to be disqualified from being registered under the principal Act 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 the money-lender's license or licenses and on every certified copy thereof, and shall cause copies of those particulars to be sent to the Clerk of the Magistrate's Court at which the money-lender was registered, and such Clerk shall, on receipt of such particulars, note the same on the register kept by him under the principal Act.

(2) Any license or certified copy thereof 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 any person who, without reasonable cause, makes default in producing any license or certified copy so required shall, in respect of each offence, be liable on summary conviction to a fine of five pounds for each day during which the default continues.

6. Subsection two of section four of the principal Act is hereby amended by omitting the words "If a money-lender fails to register himself as required by this Act", and substituting the words "If a money-lender carries on business at any time when he is not registered under this Act or while his registration is suspended".

7. (1) No person shall knowingly send, or deliver or cause to be sent or delivered, to any person, except in response to his written request, any circular or other document advertising the name, address, or

Suspension or cancellation of registration of money-lender.

Cf. 17 & 18 Geo. V, c. 21, s. 3 (Imp.)

Section 4 of principal Act amended.

Restrictions on money-lending advertisements, &c.

Cf. 17 & 18 Geo. V, c. 21, s. 5 (Imp.)

telephone number of a money-lender, or containing an invitation—

- (a) To borrow from a money-lender ; or
- (b) To enter into any transaction involving the borrowing of money from a money-lender ; or
- (c) To apply to any place with a view to obtaining information or advice as to borrowing any money from a money-lender.

(2) Save as hereinafter provided, no person shall publish or cause to be published in any newspaper or other printed paper issued periodically for public circulation, or by means of any poster or placard, an advertisement advertising any such particulars, or containing any such invitation, as aforesaid.

(3) Nothing in the foregoing provisions of this section shall prohibit the publication by or on behalf of any money-lender of any advertisement in a newspaper or other periodical publication as aforesaid, or the exhibition of a poster or placard at any registered address of the money-lender, containing only the following particulars or any of them, namely :—

- (a) His registered name and his registered address or registered addresses and the telegraphic address or addresses and telephone number or numbers thereof :
- (b) A statement that he lends money with or without security, a statement as to the class or classes of security he will accept, and particulars of the highest and lowest sums that he is prepared to lend :
- (c) A statement of the date on which the business carried on by him was first established.

(4) No money-lender or any person on his behalf shall employ any agent or canvasser for the purpose of inviting any person to borrow money or to enter into any transaction involving the borrowing of money from a money-lender, and no person shall act as such agent or canvasser, or demand or receive directly or indirectly any sum or other valuable consideration by way of commission or otherwise for introducing or undertaking to introduce to a money-lender any person desiring to borrow money.

(5) Where any document issued or published by or on behalf of a money-lender purports to indicate the terms of interest upon which he is willing to make loans or any particular loan, the document shall either express the interest proposed to be charged in terms of a rate per centum per annum, or show the rate per centum per annum represented by the interest proposed to be charged as calculated in accordance with the provisions of the Schedule to this Act.

(6) Any person acting in contravention of any of the provisions of this section commits an offence and is liable on summary conviction to imprisonment for a period of three months or a fine of one hundred pounds or to both such imprisonment and fine.

(7) Where it is shown that a money-lending transaction was brought about by a contravention of any of the provisions of this section, the transaction shall be illegal, unless the money-lender proves that the contravention occurred without his consent or connivance.

Form of
money-lenders'
contracts.

17 & 18 Geo. V,
c. 21, s. 6 (Imp.)

8. (1) No contract for the repayment by a borrower of money lent to him or to any agent on his behalf by a money-lender after the commencement of this Act or for the payment by him of interest on money so lent, and no security given by the borrower or by any such agent as aforesaid in respect of any such contract shall be enforceable, unless a note or memorandum in writing of the contract is signed personally by the borrower, and unless a copy thereof is 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 the note or memorandum aforesaid 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 aforesaid 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 centum per annum or the rate per centum per annum represented by the interest charged as calculated in accordance with the provisions of the Schedule to this Act :

Provided that where the loan is for a term of less than twelve months it shall not be necessary to state any rate of interest if the total amount charged by way of interest is stated.

9. Any contract made after the commencement of this Act for the loan of money by a money-lender 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:

Prohibition of compound interest and provision as to defaults.

17 & 18 Geo. V, c. 21, s. 7 (Imp.)

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 money-lender under the contract, whether in respect of principal or interest, the money-lender 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.

10. Where by a contract for the loan of money by a money-lender the interest charged on the loan is not expressed in terms of a rate, any amount paid or payable to the money-lender under the contract (other than simple interest charged in accordance with the proviso to section nine hereof) 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 centum per annum represented by the interest charged as calculated in accordance with the provisions of the Schedule to this Act shall be deemed to be the rate of interest charged on the loan.

Appropriation between principal and interest in certain cases of moneys payable to money-lender.

17 & 18 Geo. V, c. 21, s. 15 (2) (Imp.)

11. (1) In respect of every contract for the repayment of money lent by a money-lender, whether made before or after the commencement of this Act, the money-lender 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 one shilling 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 money-lender or his agent showing—

Obligation of money-lender to supply information as to state of loan and copies of documents relating thereto.

17 & 18 Geo. V, c. 21, s. 8 (Imp.)

- (a) The date on which the loan was made, the amount of the principal of the loan, and the rate per centum per annum of interest charged, or, where the loan is for a term of less than twelve months, the total amount charged by way of interest ; and
- (b) The amount of any payment already received by the money-lender in respect of the loan and the date on which it was made ; and
- (c) The amount of every sum due to the money-lender, 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 ; and
- (e) Particulars of all amounts by way of expenses, inquiries, and other matters charged in connection with the loan.

(2) A money-lender 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 money-lender 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 money-lender shall be liable on summary conviction to a fine of five pounds for every day on which the default continues.

Repeal.

(4) Paragraph (d) of subsection one of section four of the principal Act is hereby repealed.

Section 3 of
principal Act
amended.

12. (1) Subsection three of section three of the principal Act is hereby amended by inserting, after the words "Provided that", the words "except by leave of the Court".

(2) No application shall be made to the Court under subsection three of section three of the principal Act, as amended by the last preceding subsection, in respect of any transaction that has been closed more than two years before the passing of this Act.

13. Where in respect of any moneys lent by a money-lender, whether in one or more transactions, arrangements are made for the repayment thereof with moneys borrowed for that purpose from any other money-lender or money-lenders, a Court, at the instance of the borrower or surety or other person liable, shall have power under subsection three of section three of the principal Act to reopen all such transactions as if they were parts of the one transaction and make in respect thereof and the several parties thereto such orders as it thinks fit.

Section 3 of
principal Act
extended.

14. (1) Where (in any proceedings in respect of any money lent by a money-lender after the commencement of this Act or in respect of any agreement or security made or taken after the commencement of this Act in respect of money lent either before or after the commencement of this Act) it is found that the interest charged exceeds the rate of forty-eight per centum per annum or the corresponding rate in respect of any other period, the Court shall, unless the contrary is proved, presume, for the purposes of section three of the principal Act, 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 forty-eight per centum per annum, is excessive:

Section 3 of
principal Act
further extended.
17 & 18 Geo. V,
c. 21, s. 10 (Imp.)

Provided that the foregoing provisions of this subsection shall not apply in any case where the amount of the loan is less than twenty-five pounds and the term thereof less than three months.

(2) Where any Court reopens a transaction of a money-lender under the said section three of the principal Act, the Court may require the money-lender to produce any license granted to him under this Act and any certified copy thereof, and may cause such particulars as the Court thinks desirable to be endorsed on such license and certified copy, and a copy of the particulars to be sent to the Clerk of the Magistrate's Court at which he was registered.

(3) The powers of a Court under subsection three of the said section three of the principal Act (which enables a Court at the instance of the borrower, surety, or other person liable, to exercise its powers under that section with respect to the reopening of the transactions of money-lenders, although no proceedings are taken for the recovery of the money lent, and notwithstanding that the time for repayment may not have arrived) may, in the event of the bankruptcy of the borrower, be exercised at the instance of the Official Assignee in Bankruptcy notwithstanding that he may not be a person liable in respect of the transaction.

(4) The powers of a Court under the said subsection three of section three of the principal Act may be exercised notwithstanding that the money-lender's right of action for the recovery of the money lent is barred.

Regulations.

15. The powers conferred on the Governor-General by section five of the principal Act to make regulations for the matters therein specified are hereby extended to enable him to make all such regulations as may be necessary for giving full effect to the provisions of this Act.

SCHEDULE.

Schedule.

**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 this 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 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.