



**An Bille um Chosaint Tomhaltóirí (Gnólachtaí
Creidmheasa Miondíola agus Gnólachtaí Seirbhísithe
Creidmheasa a Rialáil), 2021**
**Consumer Protection (Regulation of Retail Credit and
Credit Servicing Firms) Bill 2021**

Meabhrán Míniúcháin
Explanatory Memorandum



**AN BILLE UM CHOSAINT TOMHALTÓIRÍ (GNÓLACHTAÍ
CREIDMHEASA MIONDÍOLA AGUS GNÓLACHTAÍ
SEIRBHÍSITHE CREIDMHEASA A RIALÁIL), 2021
CONSUMER PROTECTION (REGULATION OF RETAIL
CREDIT AND CREDIT SERVICING FIRMS) BILL 2021**

EXPLANATORY MEMORANDUM

The Explanatory Memorandum does not form part of the Bill and does not purport to be a legal interpretation.

Introduction

The primary objectives of the Bill are:

- To amend the Central Bank Act 1997 in order to extend the Central Bank of Ireland authorisation requirements to persons carrying on hire-purchase or consumer-hire business or providing credit indirectly and persons carrying on business relating to hire-purchase or consumer-hire agreements or the indirect provision of credit, to provide for the collection and publication of information by the Central Bank of Ireland on credit agreements, hire-purchase agreements and consumer-hire agreements and for other related purposes.
- To amend the Consumer Credit Act 1995 to provide for a limit on the interest rate that consumers may be charged under credit agreements and hire-purchase agreements, to provide for a requirement to include the annual percentage rate in a hire-purchase agreement and for other related purposes.

Provisions of the Bill

The Bill contains seventeen sections. The following paragraphs contain a brief description of these sections.

Section 1 - Definitions

Section 1 defines the Consumer Credit Act 1995 and the Central Bank Act 1997 as the “Act of 1995” and the “Act of 1997” respectively. These are the two main Acts which will be amended by this Bill.

Section 2 – Amendment of section 28 of Act of 1997

Section 2 amends section 28 of the Central Bank Act 1997 by inserting additional definitions and amending definitions. This is an important section of the Bill as it expands the range of agreements which will fall within the regulated business of a “retail credit firm” and “credit servicing firm” so that, in addition to the existing authorisation requirement in respect of the provision of credit in the form of a “cash loan”, it will encompass other forms of credit, including the indirect provision of credit, hire-purchase, including personal contract plans (PCPs) and consumer-hire agreements.

Section 3 – Amendment of section 29 of Act of 1997

Section 3 amends section 29 of the Central Bank Act 1997 to make clear that any entity which is excluded from the requirement to be authorised as a certain class of a Central Bank of Ireland ‘regulated business’ is not prohibited from carrying on such a ‘regulated business’.

Section 4 – Amendment of section 29A of Act of 1997

Section 4 amends section 29A of the Central Bank Act 1997 to provide that the existing limited discretion available to the Central Bank of Ireland to exempt certain entities (or classes of entities) from the requirement to become authorised as “retail credit firms” in relation to the provision of credit in the form of cash loans will be extended to cover the additional types of financial agreements that will come within the regulated business class of ‘retail credit firm’. (One class of entity currently exempted by the Central Bank of Ireland from the requirement to become authorised are local authorities but given the importance local authorities play in a certain segment of the mortgage market they are explicitly specified as not being a “retail credit firm” in the amended definition of “retail credit firm” as contained in section 2).

Section 5 – Further transitional provision for existing retail credit firms

Section 5 inserts a new section 34EA into the Central Bank Act 1997 to provide for appropriate standard transitional arrangements for firms which will for the first time come within the scope of Central Bank of Ireland authorisation as a “retail credit firm”. The section provides that, subject to applying to the Central Bank of Ireland for authorisation within a period of three months from the commencement of the relevant provisions, they will be deemed to be authorised by the Central Bank of Ireland and that authorisation will continue until the Central Bank of Ireland has granted or refused authorisation.

Section 6 – Amendment of section 34FA of Act of 1997

Section 6 amends section 34FA of the Central Bank Act 1997 in respect of existing authorised ‘credit servicing firms’ arising from the changes in the definition of “credit servicing firm” as set out in section 2 of the Bill.

Section 7 – Further transitional provision for existing credit servicing firms

Section 7 inserts a new section 34FB into the Central Bank Act 1997 to provide for appropriate standard transitional arrangements for firms which will for the first time come within the scope of Central Bank of Ireland authorisation as a “credit servicing firm”. The section, which mirrors the provisions contained in section 5 in respect of “retail credit firms”, provides that, subject to applying to the Central Bank of Ireland for authorisation within a period of three months from the commencement of the relevant provisions, existing credit servicing firms will be deemed to be authorised by the Central Bank of Ireland and that authorisation will continue until the Central Bank of Ireland has granted or refused authorisation.

Section 8 – Amendment of section 34G of Act of 1997

Section 8 amends section 34G of the Central Bank Act 1997 to take account of the wider range of financial agreements which will now fall within the scope of “credit servicing firms”.

Section 9 – Collection and publication of information on relevant agreements

Section 9 inserts a new section 36EA into the Central Bank Act 1997 to provide that the Minister for Finance may request the Central Bank of Ireland, using powers it has under the Central Bank Acts, to collect and publish information on credit, hire-purchase (including PCP) and

consumer-hire agreements. This will facilitate the publication of statistical data on the level of financial accommodation provided by “regulated businesses”.

Section 10 – Amendment of section 2 of Act of 1995

Section 10 amends section 2 of the Consumer Credit Act 1995 by inserting additional definitions and substituted definitions. It provides that the authorisation category of “retail credit firms” will replace the current provision under that Act which provides that the Central Bank may prescribe individual firms to be a “credit institution” for the purposes of that Act. Such an individual listing will become redundant in the light of the new authorisation requirements provided for in section 2 of this Bill. A limited technical change is also being made to the definition of “APR” in the 1995 Act, as well as a cross reference to the Central Bank Act 1997.

Section 11 – Amendment of section 9 of Act of 1995

Section 11 amends section 9 of the Consumer Credit Act 1995 to make clear that the APR provisions shall apply to credit and hire purchase (including PCP) agreements and that the Central Bank of Ireland may by regulations amend the method of calculating the APR in relation to credit or hire purchase agreements.

Section 12 – Amendment of section 12 of Act of 1995

Section 12 amends section 12 of the Consumer Credit Act 1995 to provide that a contravention of Part IIA of the 1995 Act constitutes an offence.

Section 13 – Insertion of Part IIA in Act of 1995

Section 13 inserts a new Part IIA, which comprises sections 28A and 28B, into the Consumer Credit Act 1995.

Section 28A provides that, in respect of a credit agreement, other than a moneylending agreement, which falls within the scope of the Consumer Credit Act 1995, the APR on the agreement shall not be greater than 23 per cent. It also provides that a creditor shall not be entitled to enforce a credit agreement against a consumer where this requirement is not met except where a court was satisfied that a failure to comply with such a requirement was not deliberate and has not prejudiced the consumer and that it would be just and equitable to decide that the agreement shall be enforceable.

Section 28B provides that the requirements, as contained in section 28A in respect of credit agreements, will also apply to hire-purchase agreements.

Section 14 – Amendment of section 58 of Act of 1995

Section 14 inserts a new requirement in section 58 of the Consumer Credit Act 1995 to provide that that hire-purchase agreements shall, along with other information specified in that section, state the APR.

Section 15 – Amendment of Central Bank (Supervision and Enforcement) Act 2013

Section 15 amends section 3 of the Central Bank (Supervision and Enforcement) Act 2013 to provide that a “hirer” in relation to a hire-purchase (PCP) or consumer-hire agreement shall be a “customer” for the purposes of that Act.

Section 16 – Amendment of Financial Services and Pensions Ombudsman Act 2017

Section 16 amends section 2 of the Financial Services and Pensions Ombudsman Act 2017 to provide that a “consumer” for the purposes of that Act includes a consumer who was in relation to, inter alia, a hire-purchase (including PCP) or a consumer-hire agreement, a customer of the financial

services provider in a case where a credit servicing firm undertakes credit servicing in respect of that agreement.

Section 17 – Short title and commencement

Section 17 sets out the short title and provides for commencement provisions.

*An Roinn Airgeadais,
Meitheamh, 2021.*

