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AN BILLE UM CHREIDMHEAS DO THOMHALTÓIRÍ, 1994
CONSUMER CREDIT BILL, 1994

EXPLANATORY MEMORANDUM

General

The Government, on 5 January, 1994 gave its approval to the Consumer Credit Bill which, when enacted, will give effect to EU Directives [Council Directive 87/102/EEC of 22 December, 1986, as amended by Council Directive 90/88/EEC of 22 February, 1990, on the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit] which require Member States to provide a minimum level of consumer protection in the area of credit. The Bill will introduce a body of reforms which go beyond the strict requirements of the Directives, will repeal all existing consumer credit law and provide one unified piece of legislation. It will address, in an innovative and effective way, problems associated with moneylending.

The only lending exempted from the scope of the Bill is that provided by Credit Unions or Specially Authorised Loan Societies and local authorities.

Section 1 contains the short title of the Bill and provides for commencement on 1 June, 1994.

Section 2 interprets the terms set out which arise throughout the Bill.

Section 3 sets down the scope of the proposed Bill.

Section 4 confers powers on the Director of Consumer Affairs who will have responsibility for the functioning and enforcement of the legislation. He will be responsible for the licensing of moneylenders and the authorisation of mortgage intermediaries and credit intermediaries. He will oversee the advertising and operation of credit agreements generally and pursue those whom he believes have committed offences.

Section 5 empowers the Director to require persons to furnish information or records relevant to an investigation or to attend before him for that purpose. The Director may apply to the High Court to commit for contempt a person who obstructs or hinders him in the performance of his functions.

Section 6 empowers the Director to issue directions regarding the form, content, size or location of any statement or notice required under the Bill.

Section 7 empowers the Minister or the Director to authorise officers for the purposes of the provisions of the Bill and outlines the functions of such officers.

Section 8 provides for the authorisation of credit intermediaries by the Director and lays down procedures in relation to application for an authorisation. The Director is empowered to refuse to grant an authorisation on certain grounds and the applicant will have the right to appeal such refusal. A fee of £500 for companies or partnerships and £250 for sole traders must accompany an application.

Section 9 defines APR.

Section 10 sets out the criteria for the calculation of APR in respect of credit agreements other than housing loans.

Section 11 provides for the laying of regulations made before the Houses of the Oireachtas.

Section 12 provides that contravention of *Part VIII* or *sections 7, 43, 44, 49 or 54 (1) (b)* shall render a person guilty of an indictable offence and contravention of any other section shall render a person guilty of a summary offence.

Section 13 proposes penalties for offences ranging from £1,000 fine and/or up to 12 months imprisonment, on summary conviction, to £50,000 fine and/or up to 5 years imprisonment on conviction on indictment.

Section 14 provides that offences may be prosecuted summarily by the Minister or the Director. Certain offences in relation to unlicensed moneylending may only be prosecuted by a member of the Garda Síochána who may also prosecute any offence in relation to the moneylending provisions in *Part VIII* of the Bill.

Section 15 provides that a person convicted of an offence shall, unless there are special and substantial reasons otherwise, be liable for the costs of the Minister or the Director, as the case may be.

Section 16 renders certain credit agreements which do not comply with *Part III, sections 77 or 82* unenforceable against the consumer, except in particular circumstances.

Section 17 provides that the Director shall be immune from action or proceedings in relation to the powers and functions provided for him in the Bill.

Section 18 exempts certain agreements made before the commencement from the scope of the legislation.

Section 19 provides for the expenses incurred by the Minister or the Director to be paid out of moneys provided by the Oireachtas.

Section 20 provides for repeals which are specified in the *Second Schedule*.

Section 21 deals with the application of *Part II* of the Bill which relates to the content of advertisements. In this Part emphasis is placed on the provision of clear and correct information to the consumer.

Section 22 outlines the matter which advertisements must contain in relation to the cost of credit, including a clear statement of the

APR. Except in the case of housing loans, any special conditions attached to or security required in relation to a loan must be indicated.

Section 23 sets out the essential elements for all advertisements offering credit in respect of goods and services, except housing loans. They shall state the cash price, the number, amount and frequency of repayments, details of any payments to be made prior to acquisition, including deposit, if any, and the total cost of the credit to the consumer.

Section 24 requires that advertisements for credit (other than a housing loan) secured by a mortgage or loan on the consumers residence, shall include a prominent warning regarding the consequences of failure to maintain payments.

Section 25 provides that comparative advertising shall contain the terms of each of the credit agreements referred to in the advertisement.

Section 26 prohibits advertising of credit as being without charge if it is conditional on further additional expenditure by the consumer.

Section 27 prohibits the display or publication of false, misleading or non-compliant advertising.

Section 28 creates an offence of which a supplier of goods and services who is not a provider of credit and who contravenes the advertising provisions shall be guilty, except in certain circumstances.

Section 29 empowers the Minister to make further provision by regulations regarding the form or content of advertisements relating to the availability or the cost or the provision of credit to consumers after consultation with the Minister for Finance and the Central Bank. Where the regulations refer to advertisements for housing loans the Minister will consult with the Minister for the Environment beforehand.

Section 30 deals with the application of *Part III* in relation to the form and content of credit agreements other than housing loans which are dealt with in *Part IX*.

Section 31 requires that credit agreements must be in writing and signed by or on behalf of all the parties involved. The consumer shall be given a copy within ten days of signature and may exercise the right to withdraw within a ten day cooling off period.

The agreement must contain:

- the APR,
- a description of the goods or services covered,
- the cash price and the credit price,
- the amount and number of the repayments,
- the amount of interest to be paid,
- the total amount repayable,
- the intervals at which interest is calculated,
- in the case of a credit card, the credit limit and the terms of repayment.

Section 32 defines requirements in relation to agreements making credit available without charge which are broadly similar to the provisions of *section 31*. Details of the circumstances in which any charge may be made for the credit must be provided to the consumer.

Section 33 requires that where a bank agrees to grant overdraft facilities to a consumer it must inform him of the credit limit, the APR, and the procedure for terminating the facility. The information must be confirmed in writing within ten days.

In the case of tacitly agreed overdrafts which extend beyond three months the information provisions are less onerous.

Section 34 requires that a credit agreement other than a money-lending agreement shall contain specific information set out in prescribed form on the front page.

Section 35 empowers the Minister to prescribe the form and content of credit agreements by regulations.

Section 36 protects the consumer's rights under a credit agreement which the creditor may have assigned to a third party.

Section 37 protects the rights of the consumer in cases where a bill of exchange or a promissory note is used in a credit transaction.

Section 38 provides that the existence of a credit agreement shall not affect the rights of a consumer under the Sale of Goods and Supply of Services Act, 1980.

Section 39 gives the consumer a right of action in certain circumstances against the provider of credit as well as against the supplier of goods or services.

Section 40 creates a duty for a creditor to supply documents and information requested by a consumer who is party to an agreement.

Section 41 requires a consumer to keep goods comprised in a credit agreement under his control and within ten days of receiving a request in writing about their whereabouts inform the creditor.

Section 42 sets out the criteria for the appropriation of payments in cases where two or more credit agreements exist between a consumer and a creditor and the consumer makes a payment which is not sufficient to discharge the total amount due.

Section 43 requires that written communications from creditors to consumers must be contained in sealed envelopes addressed and marked as specified and may only be sent in certain specific circumstances to a consumer's employer or a member of his family.

Section 44 prohibits and restricts visits and telephone calls by the creditor to the consumer, his employer or his family.

Section 45 provides that except for housing loans where a successive credit agreement varies or supplements an earlier agreement it shall be regarded as revoking the earlier agreement and consisting of the combined terms of both agreements. The rights conferred on the consumer in relation to the earlier agreement shall stand.

Section 46 empowers the Director to apply to the High Court for a declaration that the total cost of credit or any charge provided for in

a credit agreement, other than one advanced by a bank or mortgage lender, is excessive.

Section 47 empowers the court, where it has, has decided by virtue of *section 46* that the total cost of credit or any charge is excessive to reopen the agreement so as to do justice between the parties and in the case of a moneylending agreement may order the Director to revoke, suspend or alter the licence of the holder concerned.

Section 48 empowers the Director to request any person other than a bank or mortgage lender to refrain from the use of any term in a credit agreement which, in the opinion of the Director, is not fair or reasonable. If such request is not complied with the Director may apply to the High Court for a declaration that the use of such a particular term is not fair or reasonable. Except in the case of a housing loan a Court may decide in any case, whether by proceedings by the creditor or the Director, that the use of any term is not fair or reasonable and the appropriate remedy to take in the consumer's interest.

Section 49 prohibits demands for payment or making threats in relation to unenforceable agreements.

Section 50 gives the consumer a right to terminate a credit agreement except a housing loan by giving written notice to this effect within ten days of receipt. He may forego this right by signing a statement to that effect separate to the agreement.

Section 51 deals with the application of *Part V* relating to matters arising on termination of credit agreements or on default.

Section 52 entitles a consumer at any time to discharge his obligations under a credit agreement, other than a hire purchase agreement (for which provision is made in *Part VI*) before the time fixed for termination, and be allowed a reduction in the total cost of credit in accordance with a specified formula.

Section 53 entitles the consumer to a reduction in the total cost of credit, calculated in accordance with a formula, where for any reason the amount owed in a credit agreement, or any sum, becomes payable before the time fixed by the agreement.

Section 54 limits the rights of the creditor to enforce an agreement and prescribes the steps to be taken by a creditor to enforce provisions of the agreement or recover possession of goods in non-default cases and in the case of breach by the consumer.

Section 55 empowers the court to ensure that no unjustified enrichment of the creditor ensues from compensation or recovery of goods in any action.

Section 56 deals with the application of *Part V* in relation to hire-purchase agreements.

Section 57 provides that the cash price shall be made available in writing to the hirer and sets out the conditions under which this provision is complied with.

Section 58 stipulates that any sum payable by the hirer under a hire purchase agreement by way of a deposit or other initial payment shall form part of the hire purchase price.

Section 59 restricts the rights of the owner to recover possession of

goods, let under a hire purchase agreement, from the hirer otherwise than by legal proceedings where one third of the total cost payable under the agreement has been paid.

Section 60 empowers the court, pending the hearing and on hearing an action in relation to proceedings taken under *section 59*, to take certain steps as specified. Where legal proceedings have commenced the owner is prohibited from enforcing payment other than in those proceedings.

Section 61 sets out the hirer's right to terminate the agreement under specified conditions and consequences.

Section 62 where the hirer fails to take reasonable care of the goods, he shall be liable to pay damages for such failure.

Section 63 limits the liability of the guarantor where an owner has recovered possession of goods let under a hire purchase agreement to the amount which would have been payable by the hirer if he had determined the agreement under *section 61*.

Section 64 provides that where, before taking legal proceedings to recover goods let under a hire purchase agreement, the owner made a written request to the hirer to surrender the goods, the hirer's possession of the goods shall be deemed to be adverse to the owner.

Sections 65 to 79 transpose and repeal Part III (sections 26 to 35, 37 and 38) of the Sale of Goods and Supply of Services Act, 1980, cited as the Hire Purchase Acts, 1946 to 1980 as follows:

65. implied terms as to title;
66. letting by description;
67. implied undertakings as to quality or fitness;
68. samples;
69. statements purporting to restrict the rights of hirer;
70. exclusion of implied terms and conditions;
71. liability of persons conducting negotiations antecedent to hire purchase agreements;
72. application of sections 12 and 15 to 19 of the Sale of Goods and Supply of Services Act, 1980, to hire-purchase agreements;
73. application of section 13 of the Sale of Goods and Supply of Services Act, 1980, to hire purchase of motor vehicles;
74. antecedent negotiations and representations;
75. international hire purchase agreements;
76. goods let otherwise than under hire purchase agreements.

Section 77 details the form and content of a consumer hire agreement which must be made in writing, contain a statement of the hirer's rights to terminate the agreement, contain a description of the goods, purchase price etc.

Section 78 provides for the right of the hirer to terminate a consumer hire agreement by giving notice to the owner.

Section 79 provides that an advertisement relating to a consumer hire agreement shall include a statement to the effect that the goods remain the property of the owner. Where any amount payable is

shown in the advertisement, such figures shall be clearly displayed and fully inclusive.

Section 80 deals with the application of *Part VIII* in relation to moneylending.

Section 81 provides that the Director may grant a moneylenders licence as he sees fit. The minimum criteria to be met by applicants for a licence, the fees involved and the conditions pertaining to the granting of a licence are specified. The grounds on which the Director may refuse, suspend, revoke or alter a licence and the process of appeal against his action through the Circuit Court are indicated.

Section 82 prohibits unlicensed persons from engaging in the business of moneylending and spells out the conditions to be met by licensed moneylenders.

Section 83 provides that the full credit amount referred to in a moneylending agreement is advanced to the consumer. Deduction in respect of charges, interest or the initial repayment instalment is disallowed.

Section 84 requires a moneylender to supply a repayment book to the consumer. The book must contain minimum specified information relevant to the agreement and must be maintained in a set manner.

Section 85 provides that, for each agreement to which he is a party, a moneylender must maintain a record of that agreement. This record shall be kept for 5 years after expiry of the agreement and contain detailed information about the agreement and repayments made by the consumer including charges and interest. These records shall be treated as confidential and may only be revealed to authorised officers.

Section 86 prohibits a moneylender from charging a consumer in respect of expenses relating to the negotiation or granting of the loan. Provision is made that where these charges have been paid by a consumer they are recoverable.

Section 87 addresses the question of charges payable under an agreement in respect of repayments made away from the business premises of the moneylender. It shall be made clear to the consumer that this charge is being made and that the consumer has the option of avoiding the charge by making repayments at the moneylender's business premises.

Section 88 prohibits a person from using any document belonging to another person for the purpose of moneylending and provides members of the Garda Síochána with the necessary powers of seizure.

Section 89 empowers members of the Garda Síochána to request persons suspected of collecting repayments to produce a moneylenders licence or authorisation.

Section 90 provides that persons suspected by a member of the Garda Síochána of being in breach of a moneylending provision may, without warrant, be arrested or may be required to give his name and address.

Section 91 prohibits collection of repayments between the hours of 9 p.m. and 10 a.m. weekdays or at any time on a Sunday or public holiday.

Section 92 prohibits a person collecting repayments on a money-lending agreement from selling or offering for sale goods which are to be bought on credit.

Section 93 prohibits increased charges or additional charges, other than legal costs in the event of default of payments due under a moneylending agreement.

Section 94 provides that a moneylenders licence granted under the Moneylenders Act, 1933 (repealed by *section 20*) which is in force before the enactment of the Bill shall remain valid.

Section 95 empowers the Minister to make Regulations to the effect that a person or class of persons shall not be regarded as engaging in the business of moneylending. The Minister may also regulate the form or content of moneylending agreements and advertisements for moneylending.

Section 96 deals with the application and interpretation of *Part IX*, which applies to a housing loan made by a mortgage lender and interprets the terms set out which arise.

Section 97 sets out the conditions whereby a person may engage in the business of being a mortgage intermediary. The Director may determine the form of an application for an authorisation for which the fees set out in *section 8* for credit intermediaries are payable. An authorisation valid for 12 months, must contain minimum information and may be refused by the Director on certain specified grounds. The Minister may, by Regulations, provide that the holder of an authorisation effects a policy of professional indemnity insurance. Persons aggrieved by the granting or refusal to grant an authorisation may appeal to the Circuit Court.

Section 98 provides that a borrower may make early repayment of the whole or part of a housing loan without being liable to pay any redemption fee. The exemption from redemption fees shall not apply where the loan agreement provides that the rate of interest is fixed at the time of redemption. The Minister, may, in consultation with the Minister for the Environment, alter the conditions under which a redemption fee is payable. Where a redemption fee is payable this must be stated on information and application forms and other documents pertaining to the loan. Such statement shall also explain the method of calculating the fee.

Section 99 details the charges which are excluded in determining the total cost of credit for the purpose of calculating the APR in relation to a housing loan. Charges which the consumer would have to pay whether purchasing by cash or credit as well as charges for non-compliance and certain specified insurance charges are excluded.

Section 100 provides that when a mortgage lender notifies an applicant of the approval or refusal of a housing loan, a copy of the valuation report shall be furnished to the applicant.

Section 101 provides that insurance which a mortgage lender requires a borrower to effect on property mortgaged to the lender may be effected by the borrower with any insurer. The mortgage lender is prohibited from imposing a requirement which differentiates as between insurance effected through the agency of the mortgage lender and insurance otherwise effected and also from requiring the borrower to pay a fee which the borrower would not pay if the insurance was effected through the agency of the mortgage lender.

Section 102 prohibits the mortgage lender from passing on to the borrower costs incurred by the mortgage lender in respect of the legal investigation of title to property offered as security by the borrower, shall be paid by the mortgage lender and shall not be passed on to the borrower.

Section 103 imposes the liability on a mortgage lender, except in certain specified cases subject to certain provisions, to arrange a life assurance policy providing, in the event of the death of a borrower before the housing loan is repaid, for payment of a sum equal to the amount outstanding at time of death.

Section 104 prohibits a mortgage agent from making or offering a housing loan subject to a condition that any other service, whether or not in connection with the loan, shall be provided by that agent, subsidiary or associated body.

Section 105 defines the wording to be used in specified communications referring or relating to a housing loan to the effect that a home is at risk if mortgage payments are not kept up. Where the interest rate is variable a notice to the effect that payment rates may be adjusted, shall also be included.

Section 106 provides that an agreement for a housing loan shall contain a notice as specified in the Third Schedule to the Bill.

Section 107 requires a mortgage lender to issue, at the time the loan is made, a copy of the mortgage deed, and at specified times after the making of the loan a statement of the total amount outstanding.

Section 108 requires a mortgage lender to disclose certain charges payable by the borrower. A statement of this fact shall be included in or attached to any communications referring or relating to the loan.

Section 109 requires a mortgage lender, where a fee is payable by an applicant for a housing loan in respect of any matter involved in securing such loan, to provide a statement, which specifies the amount payable and other related conditions, included in or attached to any communication referring or relating to the loan.

Section 110 provides that any communication referring or relating to an endowment loan shall contain a wording to the effect that there is no guarantee that the proceeds of the insurance policy will be sufficient to repay the loan in full when it becomes due for repayment. Where there is a possibility that during the course of the loan, the borrower may be required to or advised to increase the payments, in order to secure an increase in the proceeds of the policy on maturity, a loan approval document shall contain a statement of this possibility. Where the early surrender of the insurance policy in respect of an endowment loan may result in a loss or very little return to the consumer any communication sent to the consumer shall contain a statement of this possibility. Within specified periods an insurer underwriting an insurance policy in respect of an endowment, shall issue to the borrower a statement setting out the value of the policy as estimated by the insurer, at such date.

Section 111 requires that any communication in relation to arrears of payments due on a housing loan shall state the amount of the increase in interest and other charges payable in respect of such arrears. Where any communication refers to the possibility of repossession, proceedings being taken under the mortgage shall contain an estimate of the cost to the borrower of such proceedings.

Section 112 empowers the Director to give a direction to a mortgage agent in relation to any advertisement by or on behalf of such agent in relation to a housing loan, and he may direct such advertisement be withdrawn.

Section 113 protects the borrower in the event of a mortgage lender being wound-up. Such borrower shall not be liable to pay repayments, except at the times and subject to the conditions set out in the mortgage. A liquidator shall not dispose of a mortgage lender's housing loan assets on terms which are not just and equitable in the opinion of the High Court.

Section 114 empowers the Minister to make regulations requiring a person engaging in the business of providing credit or securing credit, to display in the prescribed form at any premises where such business is carried on and to which the public have access, information, as prescribed, about that business.

Section 115 prohibits a creditor from inserting in any credit agreement, proposal form or application form, provisions which require the consumer to indicate positively that he does not wish to purchase any goods or avail of any service in relation to the agreement. The creditor shall be liable for payment of any amount due to a third party as a result of the use of such a provision.

Section 116 stipulates that a person shall not, with a view to financial gain, send to a minor any document inviting the minor to borrow credit, obtain services on credit or apply for information or advice on borrowing or obtaining credit or hiring goods.

Section 117 prevents any obligation imposed by the Bill being limited or excluded by any term in an agreement.

Section 118 requires a creditor to provide a consumer, on request, with the name and address of any person from whom the creditor has sought information concerning the financial standing of the consumer. The consumer may in turn, request from the person named a copy of any information held.

Section 119 provides that where a consumer is given information under *section 118* which he considers incorrect he may give notice to the person from whom the information was received, requiring the correction of that information. If the consumer remains aggrieved he may request the Director to investigate the matter. The Director may in such instance make any direction he considers appropriate.

Section 120 amends the Sale of Goods and Supply of Services Act, 1980 by redefining a hire purchase agreement in line with the definition contained in this Bill and by allowing for a Ministerial Order providing for a customer to withdraw his acceptance from specified contracts in certain circumstances.

Section 121 amends each provision mentioned in Part I of the Sixth Schedule of the Pawnbrokers Act, 1964.

*An Roinn Fiontar agus Fostaíochta,
Eanáir, 1994.*

Wt. P33954/B/1. 1,325. 1/94. Cahill. (X26979). G.16.

wound-up. Such borrower shall not be liable to

AN ACT TO AMEND THE CONSUMER CREDIT BILL, 1994

Enacted at Ottawa
this 1st day of June 1994

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY AND GENERAL

- | Section | |
|---------|--|
| 1 | Short title and commencement |
| 2 | Interpretation |
| 3 | Application |
| 4 | Functions of Director |
| 5 | Power of Director in respect of investigations |
| 6 | Direction of Director in respect of statements and notices |
| 7 | Authorized officers |
| 8 | Credit information |
| 9 | APR |
| 10 | Criteria for calculation of APR |
| 11 | Laying of regulations before Houses of Parliament |
| 12 | Offences |
| 13 | Penalties |
| 14 | Prosecution of offences |
| 15 | Cost of proceedings |
| 16 | Liability of persons who are not registered as |
| 17 | Members of Director |
| 18 | Transitional provisions |

Section 112 empowers the Director to give a direction to a mortgage agent in relation to any advertisement by or on behalf of such agent in relation to a housing loan, and he may direct such advertisement be withdrawn.

Section 113 protects the borrower in the event of a mortgage lender being wound-up. Such borrower shall not be liable to pay repayments, except at the times and subject to the conditions set out in the mortgage. A liquidator shall not dispose of a mortgage lender's housing loan assets on terms which are not just and equitable in the opinion of the High Court.

Section 114 empowers the Minister to make regulations requiring a person engaging in the business of providing credit or securing credit, to display in the prescribed form at any premises where such business is carried on and to which the public have access, information, as prescribed, about that business.

Section 115 prohibits a creditor from inserting in any credit agreement, proposal form or application form, provisions which require the consumer to indicate positively that he does not wish to purchase any goods or avail of any service in relation to the agreement. The creditor shall be liable for payment of any amount due to a third party as a result of the use of such a provision.

Section 116 stipulates that a person shall not, with a view to financial gain, send to a person any document inviting the latter to borrow credit, obtain services on credit or apply for information or advice on borrowing or obtaining credit or hiring goods.

Section 117 prevents any obligation imposed by the Bill being limited or excluded by any term in an agreement.

Section 118 requires a creditor to provide a consumer, on request, with the name and address of any person from whom the creditor has sought information concerning the financial standing of the consumer. The consumer may in turn, request from the person named a copy of any information held.

Section 119 provides that where a consumer is given information under section 118 which he considers incorrect he may give notice to the person from whom the information was received, requiring the correction of that information. If the consumer remains aggrieved he may request the Director to investigate the matter. The Director may in such instance make any direction he considers appropriate.

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Section 121 amends each provision mentioned in Part I of the Sixth Schedule of the Pawnbrokers Act, 1964.

An Rialaíon Fiontar agus Fábaischéil
Eanáir, 1994.