



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

Mar a leasaíodh sa Roghchoiste um Fhiontraíocht agus Straitéis
Eacnamaíochta
As amended in the Select Committee on Enterprise and Economic
Strategy

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| | |
|---|--------------|
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| Central Bank Act, 1971 | 1971, No. 24 |
| Central Bank Act, 1989 | 1989, No. 16 |
| Companies Act, 1963 | 1963, No. 33 |
| Consumer Information Act, 1978 | 1978, No. 1 |
| Credit Union Act, 1966 | 1966, No. 19 |
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| Friendly Societies Acts, 1896 to 1977 | |
| Hire-Purchase Act, 1946 | 1946, No. 16 |
| Hire-Purchase (Amendment) Act, 1960 | 1960, No. 15 |
| Hire-Purchase Acts, 1946 to 1980 | |
| Holidays (Employees) Act, 1973 | 1973, No. 25 |
| Industrial and Provident Societies Acts, 1893 to 1978 | |
| Insurance Act, 1989 | 1989, No. 3 |
| Insurance Acts, 1909 to 1990 | |
| Local Government Act, 1941 | 1941, No. 23 |
| Moneylenders Act, 1900 | 1900, c. 51 |
| Moneylenders Act, 1933 | 1933, No. 36 |
| Pawnbrokers Act, 1964 | 1964, No. 31 |

| | |
|--|--------------|
| Petty Sessions (Ireland) Act, 1851 | 1851, c. 93 |
| Sale of Goods Act, 1893 | 1893, c. 71 |
| Sale of Goods and Supply of Services Act, 1980 | 1980, No. 16 |
| Trustee Savings Banks Act, 1989 | 1989, No. 21 |



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

BILL

30

entitled

AN ACT TO REVISE AND EXTEND THE LAW RELATING TO
CONSUMER CREDIT, HIRE-PURCHASE, HIRING AND
MONEYLENDING AND TO ENABLE EFFECT TO BE
GIVEN TO COUNCIL DIRECTIVE NO. 87/102/EEC OF 22
35 DECEMBER, 1986, AS AMENDED BY COUNCIL DIREC-
TIVE NO. 90/88/EEC OF 22 FEBRUARY, 1990, AND FOR
THOSE PURPOSES TO REPEAL THE HIRE-PURCHASE
ACTS, 1946 TO 1980, AND THE MONEYLENDERS ACTS,
1900 TO 1989, AND TO REPEAL AND AMEND CERTAIN
40 PROVISIONS OF THE SALE OF GOODS AND SUPPLY OF
SERVICES ACT, 1980, TO PROVIDE THAT THE DIREC-
TOR OF CONSUMER AFFAIRS SHALL MONITOR ALL
CUSTOMER CHARGES BY CREDIT INSTITUTIONS AND
FOR THAT PURPOSE TO REPEAL SECTION 28 OF THE
45 CENTRAL BANK ACT, 1989, TO PROVIDE FOR THE
AMENDMENT AND EXTENSION OF THE PAWN-
BROKERS ACT, 1964, AND TO PROVIDE FOR CON-
NECTED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

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PART I

PRELIMINARY AND GENERAL

1.—This Act may be cited as the Consumer Credit Act, 1995.

Short title.

2.—(1) In this Act, unless the context otherwise requires—

Interpretation.

55 “the Act of 1980” means the Sale of Goods and Supply of Services
Act, 1980;

60 “advertisement” includes every form of advertising, whether in a
publication, by television or radio, by display of notices, signs, labels,
showcards or goods, by distribution of samples, circulars, catalogues,
price lists or other material, by exhibition of pictures, models or films,
or in any other way, and references to the publishing of advertisements
shall be construed accordingly;

65 “APR” means the annual percentage rate of charge, being the total
cost of credit to the consumer, expressed as an annual percentage
of the amount of credit granted and calculated in accordance with
section 11;

"authorised officer" means a person appointed under *section 8* or in relation to *Part VIII* a member of the Garda Síochána;

"borrower" in relation to a housing loan means a consumer to whom a housing loan has been made and includes a successor in title of that person and the personal representative of that person or successor in title; 5

"business name" means the name or style under which any business is carried on;

"cash" includes money in any form;

"cash price" means the money consideration for a transaction for the purchase of goods by a consumer which is not financed by credit; 10

"Central Bank" means the Central Bank of Ireland;

"collecting repayments" means, in respect of a moneylending agreement, the collection of repayments in respect of the agreement at a place other than the business premises of the moneylender; 15

"consumer" means a natural person acting outside his trade, business or profession;

"consumer hire agreement" means an agreement of more than three months duration for the bailment of goods to a hirer under which the property in the goods remains with the owner; 20

"contract of guarantee" means, in relation to any credit agreement, a contract, made at the request express or implied of the consumer, to guarantee the performance of the consumer's obligations under the agreement, and the expression "guarantor" shall be construed accordingly; 25

"cooling-off period" has the meaning assigned to it by *section 50*;

"the Council Directive" means Council Directive No. 87/102/EEC of 22 December 1986⁽¹⁾, for the approximation of the laws, regulations and administrative provisions of the Member States of the European Communities concerning consumer credit, as amended by Council Directive No. 90/88/EEC of 22 February 1990⁽²⁾, the texts of which are set out for convenience of reference in *Parts I* and *II*, respectively, of the *First Schedule*; 30

"credit" includes a deferred payment, cash loan, or any other form of financial accommodation; 35

"credit agreement" means an agreement whereby a creditor grants or promises to grant to a consumer a credit in the form of a deferred payment, a cash loan or other similar financial accommodation and includes a hire-purchase agreement;

"credit card" means a card issued by a bank or any other credit or financial institution or other person to an individual by means of which goods, services or cash may be obtained by the individual on credit and amounts in respect of the goods, services or cash may be charged to the account of the individual maintained by the bank or any other credit institution; 40
45

⁽¹⁾ O.J. No. L42, 12.2.87, p.48

⁽²⁾ O.J. No. L61, 10.3.90, p.14

“credit institution” means—

- (a) the holder of a licence granted under section 9 of the Central Bank Act, 1971,
- 5 (b) a body licensed to carry on banking under regulations made under the European Communities Act, 1972,
- (c) a building society incorporated or deemed to be incorporated under section 10 of the Building Societies Act, 1989,
- (d) a society licensed to carry on the business of a trustee savings bank under section 10 of the Trustee Savings Banks Act, 10 1989,
- (e) a life assurance undertaking which is the holder of an authorisation under the Insurance Acts, 1909 to 1990, or under regulations made under the European Communities Act, 1972,
- 15 (f) ACC Bank p.l.c.,
- (g) ICC Bank p.l.c.;

“credit intermediary” means any person, other than a credit institution, who in the course of his business arranges or purports to offer to arrange the provision of credit or a consumer hire agreement in return for a commission, payment or consideration of any kind from the provider of the credit or the hirer, as the case may be;

“creditor” means a person who grants credit under a credit agreement in the course of his trade, business or profession, and includes a group of such persons;

25 “the Director” means the Director of Consumer Affairs;

“functions” includes powers and duties;

“hirer” means a consumer who takes, intends to take or has taken goods from an owner under a hire-purchase agreement or a consumer hire agreement in return for periodical payments;

30 “hire-purchase agreement” means an agreement for the bailment of goods under which the hirer may buy the goods or under which the property in the goods will or may pass to the hirer in return for periodical payments; and where by virtue of two or more agreements, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and either the hirer may buy the goods, or the property therein will or may pass to the hirer, the agreements shall be treated for the purpose of this Act as a single agreement made at the time when the last agreement was made;

40 “hire-purchase price” means the total sum payable by the hirer under a hire-purchase agreement in order to complete the purchase of the goods to which the agreement relates, exclusive of any sum payable as a penalty or as compensation or damages for breach of the agreement;

45 “house” includes any building or part of a building used or suitable for use as a dwelling and any outoffice, yard, garden or other land appurtenant thereto or usually enjoyed therewith;

“housing loan” means an agreement for credit on the security of a

mortgage of a freehold or leasehold estate or interest in a house where—

- (a) the loan is made for the purpose of enabling the borrower to provide or improve the house or to purchase the said estate or interest, or 5
- (b) the house is to be used as the principal residence of the borrower or his dependants;

“installation charge” means the charge for—

- (a) the installing of any electric line or any gas or water pipe,
- (b) the fixing of goods to which the agreement relates to the premises where they are to be used, and the alteration of premises to enable any such goods to be used thereon, and 10
- (c) where it is reasonably necessary that any such goods should be constructed or erected on the premises where they are to be used, any work carried out for the purpose of such construction or erection; 15

“the Minister” means the Minister for Enterprise and Employment;

“moneylender” means a person who carries on the business of money-lending, or who advertises or announces himself or holds himself out in any way as carrying on that business; but does not include— 20

- (a) any pawnbroker in respect of business carried on by him in accordance with the provisions of the Pawnbrokers Act, 1964 (as amended by *section 128*),
- (b) a society which is registered as a credit union under the Industrial and Provident Societies Acts, 1893 to 1978, by virtue of the Credit Union Act, 1966, 25
- (c) a registered society within the meaning of the Friendly Societies Acts, 1896 to 1977,
- (d) a credit institution, 30
- (e) a person who supplies money for the purchase, sale or hire of goods at an APR which is less than 23 per cent. (or such other rate as may be prescribed),
- (f) a mortgage intermediary, or
- (g) a mortgage lender; 35

“moneylenders licence” means a licence granted under *section 81*;

“moneylending” means credit supplied by a moneylender to a consumer on foot of a moneylending agreement;

“moneylending agreement” means a credit agreement into which a moneylender enters, or offers to enter, with a consumer in which one or more of the following apply: 40

- (a) the agreement was concluded away from the business premises of the moneylender or the business premises of the supplier of goods or services under the agreement,

- (b) any negotiations for, or in relation to the credit were conducted at a place other than the business premises of the moneylender or the business premises of the supplier of goods or services under the agreement,
- 5 (c) repayments under the agreement will, or may, be paid by the consumer to the moneylender or his representative at any place other than the business premises of the moneylender or the business premises of the supplier of goods or services under the agreement, or
- 10 (d) where the total cost of credit to the consumer under the agreement, expressed as an annual percentage rate of charge is in excess of 23 per cent. of APR, or such other rate as the Minister may from time to time prescribe;
- "mortgage" includes charge;
- 15 "mortgage lender" means a person whose business is the making of housing loans;
- "mortgage intermediary" means any person, other than a mortgage lender or credit institution, who in return for a commission, payment or consideration of any kind in relation to the credit transaction,
- 20 arranges or purports to arrange the provision of a housing loan by a mortgage lender;
- "motor vehicle" means a vehicle intended or adapted for propulsion by mechanical means;
- "owner" means the person who lets or has let goods to a hirer under
- 25 a hire-purchase agreement or a consumer hire agreement;
- "premises" includes any building, dwelling, temporary construction, vehicle, ship or aircraft;
- "prescribe" means prescribe by regulations made by the Minister and prescribed shall be construed accordingly;
- 30 "record" means any book, document or any other written or printed material in any form including any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form;
- "regulations" means regulations made by the Minister;
- 35 "running account" means a facility under a credit agreement whereby the consumer is enabled to receive, from time to time, from the creditor or a third party, cash, goods or services to an amount or value such that, taking into account payments made by or to the credit of the consumer, the credit limit (if any) is not at any time exceeded;
- 40 "successive credit agreement" means a credit agreement entered into by a creditor and a consumer during the currency of a credit agreement which was previously concluded between that creditor and that consumer and shall be regarded as a credit agreement for the purposes of this Act;
- 45 "total cost of credit" means the total cost of the credit to the consumer being all the costs, including interest and other charges, which the consumer has to pay for the credit.

(2) In this Act a reference to a consumer, creditor, hirer, owner or

borrower includes a person to whom the consumer's, creditor's, hirer's, owner's or borrower's rights or liabilities, as the case may be, under the credit agreement have passed by assignment or operation of law.

(3) In this Act a reference to a section, Part or Schedule, is a reference to a section or Part of, or Schedule to this Act, unless there is an indication that a reference to any other enactment is intended or otherwise indicated. 5

(4) In this Act a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless there is an indication that a reference to some other provision is intended. 10

(5) Any reference in this Act to a term of an agreement includes a reference to a term which although not contained in an agreement is incorporated in the agreement by another term of the agreement. 15

(6) A word or expression that is used in this Act and is also used in the Council Directive has, unless the contrary intention appears, the meaning in this Act that it has in the Council Directive.

(7) In construing a provision of this Act, a court shall give to it a construction that will give effect to the Council Directive, and for this purpose a court shall have regard to the provisions of the Council Directive, including the preambles. 20

(8) In this Act a reference to any enactment shall be construed as a reference to that enactment as amended or adapted by or under any subsequent enactment. 25

Offences on grounds of discrimination.

3.—It shall be an offence to discriminate on grounds of sex, sexual orientation, belief, social status or area of residence in the offering, negotiating or granting of a credit agreement.

Application.

4.—(1) Subject to *subsection (2)*, this Act shall apply to all credit agreements and consumer hire agreements. 30

(2) This Act shall not apply to the following, that is to say:

(a) a credit agreement in relation to credit granted or intended to be granted by—

(i) a society which is registered as a credit union under the Industrial and Provident Societies Acts, 1893 to 1978, by virtue of the Credit Union Act, 1966, 35

(ii) any registered society within the meaning of the Friendly Societies Acts, 1896 to 1977, or

(iii) a local authority within the meaning of the Local Government Act, 1941, 40

(b) a credit agreement in the form of an authentic act signed before a notary public or a judge,

(c) a loan made by a pawnbroker under the Pawnbrokers Act, 1964 (as amended by *section 128*),

(d) a credit agreement for the provision on a continuing basis of 45

a service or a utility where the consumer has the right to pay for it, by means of instalments or deferred payments,

- (e) credit granted or made available without payment of interest or any other charge,
- 5 (f) a credit agreement under which no interest is charged provided the consumer agrees to repay the credit in a single payment, or
- (g) a credit agreement between an employer and an employee made on terms which are more favourable to the employee than terms offered generally to the public in the normal course of business.
- 10

5.—(1) The Director shall have the following functions for the purposes of this Act in addition to the other powers conferred on him by this Act—

Functions of Director.

- 15 (a) to keep under general review practices or proposed practices in relation to any of the obligations imposed on persons by any provision of this Act,
- (b) to carry out investigations of any such practices or proposed practices where he considers that in the public interest, such investigations are proper or the Minister so requests,
- 20 (c) to request persons engaging in or proposing to engage in such practices as are, or are likely to be, contrary to the obligations imposed on them by any provision of this Act to discontinue or refrain from such practices,
- 25 (d) to institute proceedings, after consultation with the Central Bank, in the High Court for orders requiring persons engaging or proposing to engage in any practices as are, or are likely to be, contrary to the obligations imposed on them by any provision of this Act, to discontinue or refrain from such practices (having been requested under paragraph (c) to so discontinue or refrain and failed to do so),
- 30 (e) to investigate complaints concerning possible breaches of the provisions of this Act and in deciding whether to conduct such an investigation the Director may have regard to the existence of other dispute settling procedures, and
- 35 (f) to publish Codes of Practice setting out conduct regarding credit agreements, in order to secure transparency and fairness in relation to the terms of credit agreements and the conduct of agents dealing with the consumer.
- 40

(2) The Director may provide in response to complaints or otherwise, information or advice to consumers concerning credit agreements and consumer hire agreements, and, in particular, on the obligations imposed on creditors or other persons by this Act.

45

6.—(1) The Director may, for the purposes of an investigation by him under this Act, require any person who, in the opinion of the Director is in possession of information, or has a record or thing in his power or control, that is relevant to the investigation to furnish

Powers of Director in respect of investigations.

that information, record or thing to the Director and, where appropriate, may require the person to attend before him for that purpose and the person shall comply with the requirement.

(2) A person to whom a requirement is addressed under this section shall be entitled to the same immunities and privileges as if he were a witness before a court. 5

(3) A person shall not by act or omission obstruct or hinder the Director in the performance of his functions under this Act or do any other thing which would, if the Director were a court having power to commit for contempt of court, be in contempt of such court. 10

(4) Where a person is in contempt under *subsection (3)* the Director may apply to the High Court to commit the person for such contempt.

Direction of
Director in respect
of statements and
notices.

7.—(1) The Director may by such means as he sees fit, and subject to this Act, issue a direction as to the form, content, location and size of any statement or notice required under this Act. 15

(2) Any person so directed under *subsection (1)* shall comply with that direction.

Authorised officers.

8.—(1) The Minister or the Director may appoint in writing such and so many persons to be authorised officers for the purposes of all or any of the provisions of this Act. 20

(2) The Minister or the Director may appoint in writing any person to be an authorised officer for a fixed period for the purposes of all or any of the provisions of this Act.

(3) Every authorised officer appointed under this section shall be furnished with a warrant of his appointment as an authorised officer and when exercising any power conferred on him by this section as an authorised officer shall, if requested by a person affected, produce the warrant or a copy thereof to that person. 25

(4) An appointment under this section as an authorised officer shall cease— 30

(a) in the case of an appointment made by the Minister, where the Minister revokes the appointment,

(b) in the case of an appointment made by the Director, where the Director revokes the appointment,

(c) where it is for a fixed period, upon the expiry of that period, 35
or

(d) where the person appointed is an officer of the Minister or the Director, upon his ceasing to be such an officer.

(5) An authorised officer may, for the purpose of obtaining any information which may be required in relation to the matter under investigation in order to enable the Director or the Minister, as the case may be, to exercise his functions under this Act— 40

(a) at all reasonable times enter any premises, at which there are reasonable grounds to believe that any trade or business or any activity in connection with a trade or business is, or has been, carried on, or that records in relation to such 45

trade, business or activities are kept, and search and inspect the premises and any records on the premises,

- 5 (b) secure for later inspection any premises or any part of a premises in which such records are kept or there are reasonable grounds for believing that such records are kept,
- 10 (c) require any person who carries on such trade, business or activity or any person employed therewith to produce to him such records and in the case of such information in a non-legible form to reproduce it in a legible form or to give to him such information as the officer may reasonably require in relation to any entries in such records,
- 15 (d) inspect and take copies of or extracts from any such records (including in the case of information in a non-legible form a copy of or extract from such information in a permanent legible form),
- (e) remove and retain the said records for such period as may be reasonable for further examination, subject to a warrant being issued for that purpose by the District Court,
- 20 (f) require any such person to give to the officer any information which the officer may reasonably require in regard to the trade, business or activity or in regard to the persons carrying on such trade, business or activity or employed in connection therewith,
- 25 (g) require any such person to give to the officer any other information which the officer may reasonably require in regard to such trade, business or activity,
- 30 (h) require any person by or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford the officer all reasonable assistance in relation thereto,
- 35 (i) summon, at any reasonable time, any other person employed in connection with the trade, business or activity to give to the officer any information which the officer may reasonably require in regard to such activity and to produce to the officer any records which are in that person's power or control.

40 (6) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he has obtained a warrant from the District Court authorising such entry.

(7) Where an authorised officer in the exercise of his powers under this section is prevented from entering any premises that officer or the person by whom he was appointed may apply to the District Court
45 for a warrant authorising such entry.

(8) An authorised officer appointed under this section, where he considers it necessary, may be accompanied by a member of the Garda Síochána when performing any powers conferred on an authorised officer by this Act.

50 (9) A person shall not obstruct or interfere with an authorised

officer in the exercise of his powers under this Act or give to an authorised officer information which is false or misleading.

(10) A person shall comply with any request or requirement of an authorised officer under this Act.

Prohibition on
unauthorised
disclosure of
information.

9.—A person shall not disclose confidential information obtained by him while performing his duties as an authorised officer or as a member of the staff of, or as adviser or consultant to, the Director unless he is duly authorised by the Director or a member of the staff of the Director (duly authorised in that behalf) to do so. 5

Credit
intermediaries.

10.—(1) A person shall not engage in the business of being a credit intermediary unless— 10

(a) (i) he is the holder of an authorisation (subsequently referred to in this section as “an authorisation”) granted for that purpose by the Director, and

(ii) he holds a letter of recognition from each undertaking for which he is a credit intermediary, or 15

(b) he is the holder of an authorisation as a mortgage intermediary under *section 100*:

Provided however that the provisions of this subsection do not apply to a person who holds a current written authorisation under the provisions of *section 82 (4)* and who, apart from the business to which that authorisation relates, is not otherwise engaged in the business of being a credit intermediary. 20

(2) A holder of an authorisation shall only engage in the business of being a credit intermediary in the name specified in the holder’s authorisation. 25

(3) An application for an authorisation shall be in such form as the Director may determine and shall be accompanied by a fee of—

(a) £500 for companies and partnerships, and

(b) £250 for sole traders, 30

or such other amount as may stand specified, for the time being, in regulations.

(4) An authorisation shall be valid for the period of 12 months commencing on the date specified therein and shall expire at the end of that period. 35

(5) An authorisation shall state—

(a) the true name of the holder,

(b) the name under which the holder is authorised to engage in the business of being a credit intermediary,

(c) the address of the business premises of the holder, and 40

(d) the name of each of the undertakings for which he acts as credit intermediary.

(6) The Director may refuse to grant an authorisation on one or more of the following grounds, namely, that—

5 (a) the applicant does not satisfy the conditions specified in subsection (1)(b),

(b) the applicant or any business with which he was connected was, during the previous 5 years, convicted of a criminal offence,

10 (c) the applicant is the holder of—

(i) a bookmaker's licence,

(ii) a licence for the sale of intoxicating liquor, or

(iii) a gaming licence,

15 (d) the applicant has failed to provide a current Revenue tax clearance certificate in respect of himself or his business,

(e) the applicant is not, in the opinion of the Director, a fit and proper person to carry on the business of credit intermediary, or

20 (f) the applicant has failed to comply with any regulations made under subsection (7).

(7) Regulations may provide that the holder of an authorisation shall not act or hold himself out to be a credit intermediary unless he effects a policy of professional indemnity insurance in a specified form, indemnifying him to such sum, in such manner, in respect of
25 such matters and valid for such minimum period as the Minister may prescribe.

(8) Whenever the Director refuses to grant an authorisation he shall notify in writing the applicant for the authorisation of the refusal and such applicant may within 10 days of receipt of the notification appeal
30 against such refusal to the judge of the Circuit Court within whose Circuit the business of the credit intermediary to which the authorisation relates is to be carried on.

(9) On the hearing of an appeal under this section in relation to a refusal of the Director to grant an authorisation the Circuit Court
35 may either confirm the refusal or may allow the appeal and, where an appeal is allowed, the Director shall grant the authorisation.

(10) In an appeal under this section the Director shall not be awarded or be ordered to pay costs.

(11) A decision of the Circuit Court on an appeal under this section
40 shall be final save that, by leave of that Court, an appeal from the decision shall lie to the High Court on a specified question of law.

(12) A notification referred to in subsection (8) shall be delivered personally or sent by pre-paid registered post to the business address of the applicant.

45 11.—(1) In this Act the APR shall be the equivalent, on an annual APR.

basis, of the present value of all commitments (loans, repayments and charges), future or existing, agreed by the creditor and the consumer, calculated to the nearest rounded decimal place in accordance with the method of calculation specified in the *Fourth Schedule*.

(2) The Minister may by regulations amend the method of calculation of the APR specified in the *Fourth Schedule* either generally or in relation to any form of credit covered in this Act. 5

Criteria for
calculation of APR.

12.—(1) This section shall apply to credit agreements other than housing loans.

(2) For the purpose of calculating the APR the total cost of credit to the consumer shall be determined, with the exception of the following charges: 10

- (a) charges payable by the consumer for non-compliance with any of his commitments laid down in the credit agreement,
- (b) charges other than the purchase price which, in purchases of goods or services, the consumer is obliged to pay whether the transaction is paid in cash or by credit, 15
- (c) charges for the transfer of funds and charges for keeping an account intended to receive payments towards the reimbursement of the credit, the payment of interest and other charges except where the consumer does not have reasonable freedom of choice in the matter and where such charges are abnormally high; this paragraph shall not, however, apply to charges for collection of such reimbursements or payments, whether made in cash or otherwise, 25
- (d) membership subscriptions to associations or groups and arising from agreements separate from the credit agreement, even though such subscriptions have an effect on the credit terms, 30
- (e) charges for insurance or guarantees other than those designed to ensure payment to the creditor, in the event of the death, invalidity, illness or unemployment of the consumer, of a sum equal to or less than the total amount of the credit together with relevant interest, and other charges imposed by the creditor as a condition for credit being granted. 35

(3) (a) APR shall be calculated—

- (i) in the case of a credit agreement, at the time the agreement is concluded, or 40
- (ii) in the case of an advertisement which relates to the offering of credit and mentions the APR, at the time the advertisement is published, and

(b) the calculation shall be made on the assumption that the credit agreement is valid for the period agreed and that the creditor and the consumer fulfil their obligations under the terms and by the dates agreed. 45

(4) In the case of credit agreements containing terms allowing variations in the rate of interest and the amount or level of other

charges contained in the APR but unquantifiable at the time when it is calculated, the APR shall be calculated on the assumption that interest and other charges remain fixed and will apply until the end of the credit agreement. The variability shall be indicated with equal prominence to and along with the APR.

(5) In the case of credit agreements containing terms allowing variations in the rate of interest and the amount or level of other charges contained in the APR but quantifiable at the time when it is calculated, the APR shall be calculated to take account of the rates applicable from the specific dates set out in the agreement.

(6) Where necessary, the following assumptions may be made in calculating the APR:

(a) if there is no fixed timetable for repayment, and one cannot be deduced from the terms of the credit agreement and the means for repaying the credit granted, the duration of the credit shall be deemed to be one year,

(b) unless otherwise specified, where the credit agreement provides for more than one repayment date, the credit will be made available and the repayments made at the earliest time provided for in the agreement,

(c) where the amount of credit to be provided is not specified—

(i) in the case of running account credit, where a credit limit is specified, it shall be assumed that the maximum amount of credit is provided for the duration of the agreement, and

(ii) in any other case, it shall be assumed that the amount provided shall be £1,000,

(d) where charges are payable at an unspecified date after the agreement is signed it shall be assumed that they are payable at the beginning of the agreement.

(7) A creditor shall comply with requirements of this section in relation to the calculation of the APR in respect of a credit agreement.

(8) (a) Where any APR has been calculated in a manner agreed in writing with the Director of Consumer Affairs, that APR shall be taken to have been calculated for the purpose of this Act in accordance with the provisions of *section 11* and this section.

(b) The Director of Consumer Affairs may withdraw any such consent as is given under the preceding paragraph on giving reasonable notice to that effect through the creditor.

13.—Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Laying of regulations before Houses of Oireachtas.

14.—(1) A person who—

Offences.

- (a) in *Part I*, contravenes *section 6 (1) or (3), 7 (2), 8 (9) or (10), 11 (1) or (2) or 12 (7)*,
 - (b) in *Part II*, contravenes *section 29* or regulations under *section 31*,
 - (c) in *Part III*, contravenes *section 34 or 35* or regulations under *section 36*, 5
 - (d) in *Part IV*, contravenes *section 40 (1) or 41*,
 - (e) in *Part VII*, contravenes *section 78 (4)*,
 - (f) in *Part VIII*, contravenes *section 81 (5), 92 or 93 (2) or regulations under section 98 (2)*, 10
 - (g) in *Part IX*, contravenes *section 101, 102 (3), 104, 105, 106, 108, 109, 110, 111, 112, 113 or 114*, or
 - (h) in *Part X*, contravenes *section 118, 119, 122, 123 (1) or (2) or regulations under section 117*,
- shall be guilty of a summary offence. 15

(2) A person who—

- (a) in *Part IV*, contravenes *section 43, 44 or 49*,
- (b) in *Part V*, contravenes *section 54*,
- (c) in *Part VIII*, contravenes *section 81 (19), 82, 84, 85, 86, 87, 88 (2), 91, 94 or 95*, 20
- (d) in *Part IX*, contravenes *section 100 (1) or 107*, or
- (e) in *Part X*, contravenes *section 120*,

shall be guilty of an offence.

(3) Where an offence under this Act is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to have been facilitated by any neglect on the part of any director, manager, secretary or any other officer of such body or a person who was purporting to act in any such capacity, such person shall also be guilty of an offence and shall be liable to be proceeded against and punished as if he were guilty of the first-mentioned offence. 25 30

(4) In this section, a reference to the contravention of a provision includes, where appropriate, a reference to a refusal, or a failure, to comply with that provision. 35

Penalties.

15.—(1) A person guilty of an offence under this Act shall be liable—

- (a) on summary conviction, to a fine not exceeding £1,000, or to imprisonment for a term not exceeding 12 months or to both, or 40
- (b) on conviction on indictment, to a fine not exceeding £50,000,

or to imprisonment for a term not exceeding 5 years or to both.

- (2) Where a person, after conviction for an offence under this Act, continues to contravene the provision concerned, he shall be guilty of an offence on every day on which the contravention continues and for each such offence he shall be liable to a fine—

(a) on summary conviction, not exceeding £200, or

(b) on conviction on indictment, not exceeding £5,000.

- 16.—(1) An offence (other than offences under *sections 82 (1), 91 and 92*) under this Act may be prosecuted summarily by the Director or the Minister or such other person as may be prescribed in relation to any particular offence. Prosecution of offences.

(2) An offence under *Part VIII* may also be prosecuted summarily by a member of the Garda Síochána.

- 15 (3) Notwithstanding the provisions of section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be commenced—

(a) at any time within 2 years from the date on which the offence was committed, or

- 20 (b) at any time within 6 months from the date on which evidence sufficient, in the opinion of the person by whom the proceedings are initiated, to justify the proceedings, comes to such person's knowledge, not being later than 5 years from the date on which the offence concerned was committed.

- 17.—Where a person is convicted of an offence under this Act the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Minister or the Director, as the case may be, the costs and expenses, measured by the court, incurred by the Minister or the Director, as the case may be, in relation to the investigation, detection and prosecution of the offence. Cost of prosecutions.

- 18.—(a) A credit agreement which does not comply with the requirements of *Part III* or *section 120* shall not be enforceable by the creditor, Unenforceability of credit agreements which contravene Act.

(b) a consumer hire agreement which does not comply with the requirements of *section 75* shall not be enforceable by the owner, or

- 40 (c) a moneylending agreement which does not comply with the requirements of *section 82* shall not be enforceable by the moneylender:

- Provided that, where a court is satisfied, in any action, that a failure to comply with any of the foregoing requirements other than that at *paragraph (c)* was not deliberate and has not prejudiced the consumer, and that it would be just and equitable to dispense with the requirement, the court may, subject to such conditions that it thinks fit to impose, decide that the agreement shall be enforceable.

Immunity of
Director.

19.—No action or other proceedings shall lie or be maintainable against the Director or any other person arising from a failure to perform or to comply with any of the functions conferred on the Director or any other person by this Act.

Transitional
provision.

20.—(1) (a) *Part III* shall not apply to any credit agreement, 5

(b) *Part VI* shall not apply to any hire-purchase agreement,

(c) *sections 85, 86 and 88* shall not apply to a moneylending agreement, and

(d) *Part IX*, other than *sections 101, 104, 110 (b), 113 (6), 114 and 116*, shall not apply to a housing loan, 10

made before the passing of this Act.

(2) The Hire-Purchase Acts, 1946 to 1980, shall continue to apply to any hire-purchase agreement or credit-sale agreement (within the meaning of the Hire-Purchase Act, 1946) made before the passing of this Act which is still in force after its passing notwithstanding the repeal of those Acts by *section 22*. 15

Expenses of
Minister and
Director.

21.—The expenses incurred by the Minister or the Director in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. 20

Repeals.

22.—The enactments specified in *column (2)* of the *Second Schedule* are hereby repealed to the extent specified in *column (3)* of that Schedule.

PART II

ADVERTISING AND OFFERING OF CREDIT 25

Application of *Part II*.

23.—Subject to this Part, this Part shall apply to any advertisement relating to the provision of consumer credit.

Advertisements
indicating cost of
credit.

24.—(1) An advertisement in which a person offers to provide or arrange the provision of credit and in which a rate of interest or any figures or any claim relating to the cost of the credit are indicated, shall also include a clear statement of the APR, using a representative example if no other means is practicable. 30

(2) An advertisement (other than one relating to a housing loan) shall, where the credit offered is subject to conditions involving the payment of any charges other than the repayment of capital and interest on the sum borrowed, specify those conditions. 35

(3) An advertisement shall, if any security is required or is required in specific circumstances in relation to the credit offered, state that such security is required.

(4) Notwithstanding *section 7* of the Consumer Information Act, 1978, it shall not be an offence for a person to provide credit at a lower rate than the rate advertised. 40

(5) Where an advertisement refers to the cost of credit, and the availability of credit at that cost is subject to any restrictions, those restrictions shall be clearly indicated.

5 (6) The statement of the APR included in any advertisement to which *subsection (1)* applies shall be afforded in the advertisement—

(a) greater prominence than a statement relating to any other rate of charge, and

(b) no less prominence than a statement relating to—

(i) any period over which payment is to be made,

10 (ii) the amount of any advance payment or the fact that no advance payment is required, and

(iii) the amount, number or frequency of any other payments or charges (other than the cash price of the goods or services) or of any repayments.

15 25.—(1) Where an advertisement refers to the availability of credit (other than a housing loan) in relation to the acquisition of goods or the provision of a service, it shall include a statement of— Advertising of credit related to goods or services.

(a) the cash price of the goods or service,

(b) the total cost of credit,

20 (c) the number and amount of instalments,

(d) the duration of the intervals between instalment payments,

(e) the number of any instalments which have to be paid before delivery of the goods, and

(f) details of any deposit payable.

25 (2) Where an advertisement relates to a hire-purchase agreement it shall contain the words "HIRE-PURCHASE AGREEMENT" which shall be afforded in the advertisement no less prominence than any other statement.

30 26.—Where an advertisement relates to the availability of credit (other than a housing loan) to be secured by a mortgage or any other loan on the consumer's principal place of residence the advertisement shall, in addition to the other requirements of this Part, contain the following statement: Advertising of credit secured on consumer's residence.

"WARNING

35 YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP PAYMENTS ON A MORTGAGE OR ANY OTHER LOAN SECURED ON IT"

and which shall be displayed in a prominent position in a visual advertisement.

Comparative
advertising.

27.—Where an advertisement purports to compare the level of repayments or cost under one or more forms of credit, the advertisement shall contain the relevant terms of each of the forms of credit referred to in the advertisement.

Advertising of
credit as being
without charge.

28.—(1) An advertisement shall not describe credit as being without interest, or any other charge, if the availability of the credit is dependent on the consumer concluding with the creditor or any other person a maintenance contract (for any goods involved) or an insurance contract or on any other condition, compliance with which would, or would be likely in the future to, involve the consumer in any cost additional to that payable if the goods were bought for cash. 5 10

(2) The cost of such maintenance contract, insurance contract or other conditions referred to in *subsection (1)* shall be specified in the advertisement. 15

Advertising of
credit to comply
with this Part.

29.—(1) A person shall not display or publish or cause to be displayed or published an advertisement to which this Part applies which does not comply with this Part.

(2) Where a person other than the provider of credit displays or publishes or causes to be displayed or published an advertisement relating to the provision of credit, the provider of that credit shall ensure that it complies with this Part. 20

(3) In any proceedings for an offence under this section it shall be a defence for the accused being the provider of credit in relation to an advertisement which contravenes this Part to show that it was displayed or published without his consent or connivance or that he made reasonable efforts to ensure that it complied with this Part or to prevent its publication. 25

(4) In any proceedings for an offence under *subsection (1)*, it shall be a defence for the accused, being a person other than the provider of credit, to show that he is a person whose business it is to publish or arrange for the publication of advertisements and that he received the advertisement in question for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would constitute a contravention of *subsection (1)*. 30 35

(5) For the purposes of this section an advertisement published by displaying it shall be treated as published on every day on which it is displayed.

Offence.

30.—Where a supplier of goods or services contravenes any provision of this Part in relation to the advertising or offering of credit and that supplier is not the provider of the credit advertised or offered the provider of the credit shall also be guilty of an offence: 40

Provided that it shall be a defence in any proceedings for that provider of credit to show that he was unaware the contravention had taken place or had taken all reasonable measures to prevent it taking place. 45

Regulations relating
to advertising of
credit.

31.—(1) The Minister may, after consultation with the Director, the Minister for Finance and the Central Bank, by regulations from time to time make such further provision as he considers necessary

for the purposes of this Part, with regard to the form or content of advertisements relating to the availability or the cost or the provision of credit to consumers.

- 5 (2) Where the Minister proposes to make any regulations under this section relating to housing loans he shall consult the Minister for the Environment before making any such regulations.

PART III

FORM AND CONTENT OF CREDIT AGREEMENTS

- 10 32.—This Part shall apply to all credit agreements other than housing loans. *Application of Part III.*

33.—(1) Subject to *subsection (6)*, a credit agreement and any contract of guarantee relating thereto shall be made in writing and signed by the consumer and by or on behalf of all other parties to it, and— *Requirements relating to contents of certain credit agreements.*

- 15 (a) a copy of the credit agreement shall be—
- (i) handed personally to the consumer upon the making of the agreement, or
 - (ii) delivered or sent by prepaid registered post within 10 days of the making of the agreement by the creditor to the consumer, and
- 20
- (b) a copy of the credit agreement and any contract of guarantee shall be—
- (i) handed personally to any guarantor upon the making of the agreement, or
 - (ii) sent within 10 days of the making of the agreement by the creditor to any guarantor.
- 25

(2) Subject to *subsection (6)*, a credit agreement or any contract of guarantee relating thereto, shall—

- 30 (a) contain the names and addresses of all parties to the agreement at the time of its making, including, where applicable, the name and address of the owner of any goods supplied under the agreement,
- (b) contain a statement that the consumer has a right to determine the agreement without penalty, and—
- 35 (i) may exercise this right by giving or sending written notice to this effect to the creditor within a period of 10 days of the date of receipt of the agreement, or a copy thereof by the consumer (the cooling-off period), or
- 40 (ii) may indicate that he does not wish to exercise this right by signing a statement to this effect, this signature to be separate from, and additional to, the consumer's signature in relation to any of the terms of the agreement,

- (c) contain a statement of the APR and a statement of the conditions under which the APR may be amended,
- (d) contain, where applicable, a statement of—
 - (i) a description of the goods or services covered by the agreement, 5
 - (ii) the cash price, the credit advanced and the price payable under the credit agreement,
 - (iii) the amount, number and frequency or dates of the payments which the consumer must make to repay the credit, 10
 - (iv) the payments for interest and any other charges,
 - (v) the total amount repayable under the agreement, and
 - (vi) the intervals at which interest is calculated under the agreement,
- (e) contain a statement of the charges not included in the calculation of the annual percentage rate of charge but which have to be paid by the consumer in given circumstances together with a statement identifying such circumstances showing— 15
 - (i) where the exact amount is known, that amount, or where it is not known, an estimate of the amount, 20
 - (ii) an indication that the consumer will be entitled, as provided under *section 53*, to a reduction if he repays early,
 - (iii) who where applicable owns the goods (if ownership does not pass immediately to the consumer) and the terms on which the consumer becomes the owner of them, 25
 - (iv) a description of the security required, if any, which shall include cases where deeds of property are lodged without any registerable interest being secured upon them, 30
 - (v) an indication of the insurance required, if any, and, when the choice of insurer is not left to the consumer, an indication of the cost thereof, 35
- (f) contain a statement to the effect that where a creditor's rights under the agreement are assigned to a third party how such assignment is to be effected,
- (g) contain, where applicable, a statement to the effect that a consumer who, without reasonable cause, fails to give information to the owner as to the whereabouts of the goods commits an offence, 40
- (h) in the case of a hire-purchase agreement, contain in a prominent position the words "HIRE-PURCHASE AGREEMENT" and the following notice: 45

"It is the duty of the hirer to take all reasonable care of

the goods which are the subject of this hire-purchase agreement",

- 5 (i) contain a statement regarding any costs which will be payable by the consumer in respect of a breach of his contractual obligations under the agreement.

(3) A credit agreement operated by means of a credit card shall contain a statement of—

(a) the amount of the credit limit, if any, and

(b) the terms of repayment or the means of determining them.

- 10 (4) A credit agreement operated by means of a running account shall contain a statement of—

(a) the amount of the credit limit, if any, or the method of determining it, and

(b) the terms of use and repayment.

- 15 (5) A creditor who is a party to any credit agreement to which this section applies shall ensure that the agreement complies with this section.

(6) This section shall not apply to—

(a) a consumer hire agreement,

- 20 (b) a credit agreement in relation to credit granted or made available without payment of interest or any other charge,

(c) a credit agreement under which no interest is charged provided that the consumer agrees to repay the credit in a single payment, or

- 25 (d) a credit agreement in relation to credit in the form of advances on a current account granted by a credit institution, other than on credit card accounts.

- 30 34.—(1) A consumer shall be informed by the creditor at the time, or before, an agreement is made in respect of the granting of credit in the form of an advance on a current account granted by a bank or other credit or financial institution, other than on credit card accounts, of—

Advances on
current account.

(a) the credit limit, if any,

- 35 (b) the annual rate of interest and the charges applicable from the time the agreement is concluded and the conditions under which these may be amended,

(c) the procedure for determining the agreement.

- 40 (2) The information required under subsection (1) shall be confirmed by the creditor in writing to the consumer within 10 days of the making of the agreement, and during the period of the agreement, the consumer shall be informed by the creditor of any change in the annual rate of interest or in the relevant charges at or before the time such change occurs and such information may be given in a statement

of account and in an advertisement published in a national newspaper published and circulating in the State.

(3) (a) Where any sum is advanced to a consumer by way of an overdraft tacitly accepted by both parties which extends beyond a period of three consecutive months, he shall be informed of the annual rate of interest and other charges applicable and of any subsequent amendment of those charges. 5

(b) The information required to be given in *paragraph (a)* may be given in a statement of account and in an advertisement published in a national newspaper published and circulating in the State. 10

Notice of important information to be included in credit agreements.

35.—(1) A credit agreement other than an overdraft facility or a moneylending agreement shall contain, on the front page of the agreement, a notice in the form set out in *Part I* of the *Third Schedule*. 15

(2) A creditor who is a party to any credit agreement referred to in *subsection (1)* shall ensure that the agreement complies with that subsection.

Regulations relating to agreements.

36.—The Minister may, after consultation with the Minister for Finance, by regulations make provision in relation to the form and content of credit agreements or of any class of credit agreements. 20

PART IV

MATTERS ARISING DURING CURRENCY OF CREDIT AGREEMENTS

Assignment of creditor's rights.

37.—Where a creditor's rights under a credit agreement are assigned to a third person, the consumer shall be entitled to plead against that third person any defence which was available to him against the original creditor including set-off. 25

Use of bills of exchange, etc.

38.—(1) Where a bill of exchange or a promissory note is given to a creditor by a consumer as part of, or in connection with, a credit agreement, or is given as security for a credit agreement, the existence of the bill or note shall not affect the rights and protections available to the consumer by virtue of this Act. 30

(2) Where a bill of exchange or a promissory note is negotiated by the creditor to a third party, the consumer may, notwithstanding anything in the Bills of Exchange Act, 1882, in any proceedings for the enforcement of the bill or note, plead against that third party any defence available to him against the creditor. 35

Liability regarding goods and services.

39.—(1) The existence of a credit agreement shall not in any way affect the rights of the consumer under the Act of 1980 against the supplier of goods or services purchased by means of such an agreement in cases where the goods or services are not supplied or are otherwise not in conformity with the contract for their supply. 40

(2) Where—

(a) in order to buy goods or obtain services, a consumer enters

into a credit agreement with a person other than the supplier of them,

5 (b) the creditor and the supplier of the goods or services have a pre-existing agreement whereunder credit is made available exclusively by that creditor to customers of that supplier for the acquisition of goods or services from the supplier,

(c) the consumer referred to in *paragraph (a)* obtains his credit pursuant to that pre-existing agreement,

10 (d) the goods or services covered by the credit agreement are not supplied, or are supplied only in part, or are not in conformity with the contract for the supply of them, and

15 (e) the consumer has pursued his remedies against the supplier but has failed to obtain the satisfaction to which he is entitled,

the consumer shall have the right to take proceedings against the creditor.

(3) This section does not apply to housing loans.

20 40.—(1) Subject to *subsection (4)*, a creditor shall, except for a housing loan, during the currency of the credit agreement provide, within 10 days of receipt of a written request by a consumer who is party to the agreement or if that consumer so requires any person specified by him in the request, a copy of the written agreement or a statement of—

Duty of creditor to supply documents and information.

25 (a) the amount paid,

(b) the amount, if any, due but unpaid, and date and amount of each instalment that remains unpaid, and

(c) the total amount outstanding and the date and amount of each outstanding instalment,

30 under the agreement.

(2) A creditor shall not, without reasonable cause, fail to comply within 10 days with a request under *subsection (1)*.

35 (3) If the default described in *subsection (2)* continues for a further period of 14 days, then while the default so continues, the creditor shall not be entitled to enforce the agreement, or any right to recover goods, and any person shall not be entitled to enforce a security given under the agreement.

40 (4) *Subsection (1)* does not apply to a request made less than 4 weeks after a previous request under that subsection relating to the same credit agreement which was complied with.

(5) The request referred to in *subsection (1)* shall, subject to *subsection (6)*, be accompanied by a fee of £2 or such other amount as may stand specified for the time being in regulations.

45 (6) *Subsection (5)* shall not apply where the request is in relation to a moneylending agreement.

Duty of consumer to give information as to whereabouts of goods.

41.—Where by virtue of a credit agreement (other than a housing loan) a consumer is under a duty to keep the goods comprised in the agreement in his possession or control, the consumer shall, within 10 days of receipt of a request in writing from the creditor inform the creditor where the goods are.

5

Appropriation of payments.

42.—(1) Subject to *subsection (3)*, where there are two or more credit agreements between a consumer and the same creditor and where the consumer makes a payment which is not sufficient to discharge the amount then due under all the agreements, the consumer shall be entitled to appropriate the payment towards the agreements as he sees fit and, if he fails to do so, the payment shall, subject to *subsection (2)*, be appropriated by the creditor towards the agreements in proportion to the amounts due under the agreements.

10

(2) Where all the credit agreements to which *subsection (1)* applies are hire-purchase agreements, and one-third of the hire-purchase price has been paid under each of the agreements, the owner may, if the hirer has failed to do so, appropriate the payment as he sees fit otherwise the payment shall, by virtue of *subsection (1)*, be appropriated towards the agreements in proportion to the amounts due under the agreements.

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(3) This section does not apply where any of the agreements is a housing loan.

Restrictions on written communications by creditors.

43.—(1) A creditor or a person acting on his behalf shall not send to a consumer any written communication relating to a credit agreement with that consumer unless the communication is sent in a sealed envelope having nothing written or printed thereon, other than—

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(a) the name and address of the consumer and,

(b) at the discretion of the sender, the word "personal".

(2) Subject to *subsection (3)*, a creditor or a person acting on his behalf shall not send any written communication in connection with a credit agreement with that consumer to the consumer's employer or to any member of the consumer's family unless that employer or family member is a party to the agreement.

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(3) Where the credit agreement referred to in *subsection (2)* is a housing loan, the creditor or a person acting on his behalf may—

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(a) for the purposes of the Family Home Protection Act, 1976, send any written communication connected with the agreement to the consumer's spouse, or

(b) where the written consent of the consumer has been given, send any written communication connected with the agreement to any member of the consumer's family or to a person designated by the consumer.

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Visits and telephone calls by creditors.

44.—A creditor or a person acting on his behalf shall not visit or telephone—

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(a) a consumer without his consent—

(i) at his place of employment or business unless the

consumer resides at that place and all reasonable efforts to make contact with him have failed,

(ii) at any place,

5 (I) between the hours of 9 o'clock in the evening on any week day and 9 o'clock in the morning on the following day, or

(II) at any time on a Sunday or a public holiday (within the meaning of the Holidays (Employees) Act, 1973),

10 (b) a consumer's employer or any member of the consumer's family unless that employer or family member is a party to the agreement, without the consent of the consumer, given in writing and separate from any other term of agreement,

15 for any purposes connected with a credit agreement other than the service of a document in connection with legal proceedings.

45.—(1) Subject to *subsection (2)* where a successive credit agreement varies or supplements an earlier agreement, it shall be regarded as— Successive credit agreements.

20 (a) having revoked the earlier agreement, and

(b) consisting of the combined terms of both agreements, and

any rights conferred on a consumer by this Act in relation to the earlier agreement shall also have effect in relation to the successive agreement.

25 (2) This section does not apply to a housing loan or an overdraft facility.

46.—(1) Subject to *subsection (4)* a court may decide in any particular case coming before it, by an application under *subsection (3)*, that the total cost of credit provided for in any credit agreement is Excessive rates of charge for credit.
30 excessive.

(2) In making the decision referred to in *subsection (1)* the court shall have regard to all relevant factors including—

35 (a) interest rates prevailing at the time the agreement was made or, where applicable, interest rates prevailing at any time during the currency of the agreement,

(b) the age, business competence and level of literacy and numeracy of the consumer,

(c) the degree of risk involved for the creditor and the security provided,

40 (d) the creditor's costs including the cost of collection of repayments, and

(e) the extent of competition for the type of credit concerned.

(3) The Director, a consumer or a person acting on the consumer's behalf may apply to the court of competent jurisdiction for a declaration that the total cost of credit provided for in any credit agreement is excessive.

(4) This section does not apply to any credit agreement relating to credit advanced by a credit institution or a mortgage lender. 5

Power of court to re-open credit agreement where charge is excessive.

47.—(1) Where a court has decided by virtue of *section 46*, that the total cost of credit is excessive, it may re-open the credit agreement so as to do justice between the parties and may decide to do any one or more of the following: 10

(a) relieve the consumer from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of such total cost of credit;

(b) set aside, either wholly or in part the agreement against the consumer; 15

(c) revise or alter the terms of the agreement; or

(d) order the repayment to the consumer of the whole or part of any sums paid.

(2) Where an agreement to which *subsection (1)* relates is a money-lending agreement the court may also order the Director to revoke, suspend or alter the moneylending licence of the holder concerned either immediately or as from such date as the court may decide. 20

Use of terms which are not fair and reasonable.

48.—(1) (a) The Director, on a request being made to him in that behalf or on his own initiative, may request any person subject to *subsection (6)* engaging or proposing to engage in the provision of credit to consumers to discontinue or refrain from the use of any particular term in a credit agreement the use of which, in the Director's opinion, is not fair and reasonable. 25

(b) Where the Director has made a request under *paragraph (a)* and that request has not been complied with, the Director may apply to the High Court for a declaration that the use of any particular term in a credit agreement is not fair and reasonable. 30

(2) A court may decide in any case coming before it, whether by way of proceedings by the creditor or the consumer or by an application to it by the Director under this section, that the use of any term in a credit agreement is not fair and reasonable. 35

(3) The Director may apply to the High Court for a declaration that the use of any term in a credit agreement is not fair and reasonable. 40

(4) In deciding whether the use of any term is fair and reasonable, the court shall have regard to all relevant factors including any of the following:

(a) the strength of the bargaining positions of the parties relative to each other, taking into account (among other things) alternative means by which the consumer's requirements could have been met; 45

- (b) whether the consumer received an inducement to enter into the agreement, or in accepting it had an opportunity of entering into a similar agreement with other persons, but without having to accept similar terms;
- 5 (c) whether the consumer knew or ought reasonably to have known of the existence and extent of any terms (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties);
- 10 (d) where the term of an agreement excludes or restricts any relevant liability if some condition is not complied with, whether it was reasonable at the time of the agreement to expect that compliance with that condition would be practicable;
- 15 (e) whether any goods involved were manufactured, processed or adapted to the special order of the consumer;
- (f) the age, business competence and level of literacy and numeracy of the consumer; and
- (g) the length of time allowed for repayment given the financial circumstances of the consumer at the time the agreement was made.
- 20

(5) Where a court has decided that the use of any term in a credit agreement is not fair and reasonable the court may decide on the appropriate remedy to take in the consumer's interest including any of the following:

- 25 (a) declaring the agreement to be unenforceable in relation to the case coming before it;
- (b) declaring the particular term to be unenforceable in relation to the case coming before it;
- (c) revising or altering any term of the agreement;
- 30 (d) ordering the repayment to the consumer of all or part of any sums paid to the creditor;
- (e) ordering the payment to the consumer by the creditor of such sum as it may consider appropriate; or
- (f) ordering any other action which it deems appropriate.

35 49.—(1) A person shall not make a demand for payment or assert a present or prospective right to payment in respect of a credit agreement which is unenforceable by virtue of *section 18*.

Making demands and threats in relation to unenforceable agreements.

(2) A person shall not, with a view to obtaining payment in respect of a credit agreement which is unenforceable by virtue of *section 18*—

- 40 (a) threaten to bring any legal proceedings,
- (b) place or cause to be placed the name of any person on a list of defaulters or debtors or threaten to do so, or
- (c) invoke or cause to be invoked any other collection procedure or threaten to do so.

(3) In any proceedings for an offence under this section, it shall be a defence for the person to show that he had reasonable cause to believe that there was a right to payment.

Cooling-off period.

50.—(1) Subject to *subsections* (2) and (4), a consumer may determine a credit agreement within 10 days of receiving it or a copy thereof ("the cooling-off period") by giving written notice to this effect to the creditor or the owner, as the case may be. 5

(2) A consumer may forego his right to a cooling-off period in any credit agreement by signing a statement to this effect separately from any other term of the agreement. 10

(3) A statement by which a consumer forgoes the right to a cooling-off period shall carry in a prominent position:

"WARNING
THIS DOCUMENT MEANS YOU ARE GIVING UP YOUR
RIGHT TO A 10 DAY PERIOD TO RECONSIDER YOUR
COMMITMENT TO THE CREDIT AGREEMENT." 15

(4) This section does not apply to a housing loan or credit availed of by means of a credit card.

PART V

MATTERS ARISING ON TERMINATION OF CREDIT AGREEMENTS OR ON DEFAULT 20

Application of Part
V.

51.—This Part shall apply to any credit agreement other than a housing loan.

Indebtedness may
be discharged
before time fixed by
agreement.

52.—(1) A consumer shall at any time be entitled to discharge his obligations under a credit agreement other than a hire-purchase agreement before the time fixed by the agreement for termination, by giving notice of termination in writing to the creditor or the owner, as the case may be, of his intention to determine the agreement and where he does so he shall be allowed by the creditor or owner, as the case may be, a reduction in the total cost of credit under the agreement calculated, subject to *subsection* (2), in accordance with any method or formula approved for that purpose— 25 30

(a) by the Central Bank in the case of a credit agreement where the creditor is a credit institution, or

(b) by the Director in any other case. 35

(2) The Minister, with the consent of the Minister for Finance, and after consultation with the Central Bank, may, in lieu of any formula specified under *subsection* (1) by the Central Bank, prescribe a formula for the calculation under that subsection.

Reduction where
amount owed
becomes payable
before time fixed by
agreement.

53.—(1) Where, for any reason, the amount owed by a consumer under a credit agreement becomes payable before the time fixed by the agreement, or any sum becomes payable by him before the time so fixed, the consumer shall be entitled to a reduction in the total cost of credit calculated, subject to *subsection* (2), in accordance with any method or formula approved for that purpose— 40 45

(a) by the Central Bank in the case of a credit agreement where the creditor is a credit institution, or

(b) by the Director in any other case.

- 5 (2) The Minister, with the consent of the Minister for Finance, and after consultation with the Central Bank, may, in lieu of any formula specified under *subsection (1)* by the Central Bank, prescribe a formula for the calculation under that subsection.

54.—(1) Subject to *section 59* a creditor shall not enforce a provision of a credit agreement by—

Limitation on creditor's right of enforcement.

- 10 (a) demanding early payment of any sum,
(b) recovering possession of any goods (save where the goods are in imminent danger of being damaged or stolen), or
(c) treating any right conferred on the consumer by the agreement as determined, restricted or deferred;

15 unless he has served on the consumer, at least 10 days before he proposes to take any action, a notice which shall specify the following:

- (i) details of the agreement sufficient to identify it;
(ii) the name and address of the creditor;
(iii) the name and address of the consumer;
20 (iv) the term of the agreement to be enforced; and
(v) a statement of the action he intends to take to enforce the term of the agreement, the manner and circumstances in which he intends to take such action and the date on or after which he intends to take such action.

25 (2) A creditor shall not, by reason of any breach by a consumer of an agreement—

- (a) determine the agreement,
(b) demand early payment of any sum,
(c) recover possession of the goods,
30 (d) treat any right conferred on the consumer by the agreement as determined, restricted or deferred, or
(e) enforce any security,

unless he has served on the consumer, not less than 10 days before he proposes to take any action, a notice which shall specify the
35 following:

- (i) details of the agreement sufficient to identify it;
(ii) the name and address of the creditor;
(iii) the name and address of the consumer;
(iv) the nature of the alleged breach;

(v) either—

(I) if the breach is capable of remedy, what action is required to remedy it and the date before which that action is to be taken, which date shall be not less than 21 days after the date of service of the notice, or 5

(II) if the breach is not capable of remedy, the sum, if any, required to be paid as compensation for the breach and the date before which it is to be paid, which date shall be not less than 21 days after the date of service of the notice; and 10

(vi) information about the consequences of failure to comply with the notice.

(3) If the consumer takes the action specified under *subparagraphs* (v) (I) or (v) (II) of *subsection* (2), before the date specified for that purpose in the notice, the breach shall be treated as not having occurred, in any records maintained for information on the consumer's credit record. 15

(4) Notwithstanding this section, a creditor may apply to a court of competent jurisdiction in any particular case to have the provisions of this section dispensed with where the court is satisfied that it would be just and equitable to do so. 20

Unjustified enrichment to the creditor.

55.—Where a creditor is compensated or recovers possession of goods in any action by virtue of this Act the court shall ensure that the compensation or repossession does not entail any unjustified enrichment of the creditor. 25

PART VI

HIRE-PURCHASE AGREEMENTS

Application of Part VI.

56.—This Part shall apply where a credit agreement is a hire-purchase agreement.

Requirement to state cash price.

57.—(1) Before any hire-purchase agreement is entered into in respect of any goods, the owner shall state in writing the cash price to the prospective hirer, other than in the agreement. 30

(2) *Subsection* (1) shall be deemed to have been complied with—

(a) if the hirer has inspected the goods or like goods and at the time of his inspection tickets or labels were attached to or displayed with the goods clearly stating the cash price, either of the goods as a whole or of all the different articles or sets of articles comprised therein, or 35

(b) if the hirer has selected the goods by reference to a catalogue, price list or advertisement which clearly stated the cash price of the goods as a whole or of all the different articles or sets of articles comprised therein. 40

Deposit forms part of hire-purchase price.

58.—Any sum payable by the hirer under a hire-purchase agreement by way of a deposit or any other initial payment, or credited or to be credited to the hirer under such an agreement on account of 45

any such deposit or payment, whether that sum is to be or has been paid to the owner or to any other person or is to be or has been discharged by a payment of money or by the transfer or delivery of goods or by any other means, shall form part of the hire-purchase price.

59.—(1) Subject to *subsection (3)*, where goods have been let under a hire-purchase agreement and one-third of the hire-purchase price has been paid or tendered by or on behalf of the hirer or any guarantor, the owner shall not enforce any right to recover possession of the goods from the hirer otherwise than by legal proceedings.

Limitation on right of owner to recover possession.

(2) If an owner recovers possession of goods in contravention of *subsection (1)*, the hire-purchase agreement, if not previously determined, shall determine, and—

(a) the hirer shall be released from all liability under the agreement, and shall be entitled to recover from the owner all sums paid by the hirer under the agreement or under any security given by him in respect thereof, and

(b) any guarantor shall be entitled to recover from the owner in an action all sums paid by him under the contract of guarantee or under any security given by him in respect thereof.

(3) Where the owner of a motor vehicle let under a hire-purchase agreement has commenced legal proceedings to recover possession of the vehicle from the hirer and it has been abandoned or left unattended in circumstances which have resulted or are likely to result in damage to the vehicle, the owner shall be entitled to enforce a right to recover possession of the vehicle and to retain possession thereof pending the outcome of the proceedings.

(4) If a hirer refuses to give up possession of goods to an owner whose right to recover possession is restricted by *subsection (1)*, the hirer shall not be liable, by reason only of the refusal, for conversion of the goods.

(5) In this section a reference to the hire-purchase price includes any installation charge provided for in the hire-purchase agreement.

60.—(1) Where legal proceedings by virtue of *section 59* have been commenced the owner shall not enforce or attempt to enforce payment other than in those proceedings or any negotiations connected with those proceedings.

Powers of court in actions for recovery of possession in relation to hire-purchase agreements.

(2) Pending the hearing of an action, or any settlement, in relation to such proceedings the court may, on the application of the owner, make such order as it thinks fit for the protection of the goods.

(3) On hearing the action, the court may, without prejudice to any other power—

(a) order the delivery of the goods to the owner,

(b) order such delivery but postpone its operation subject to such conditions as the court thinks fit, or

(c) order—

(i) the transfer to the hirer of title to part of the goods, and

- (ii) delivery of the remainder to the owner, subject to such conditions as the court thinks fit.

(4) Where the operation of an order is postponed under *subsection (3) (b)* the agreement shall continue to operate except that—

- (a) no further sum shall become payable on account of the unpaid balance except as provided for in the order, and 5
(b) the court may modify the terms of the agreement as it thinks fit.

Termination of hire-purchase agreements by the hirer.

61.—(1) A hirer shall, at any time before the final payment under a hire-purchase agreement is due, be entitled to determine the agreement by giving notice of termination in writing to the owner or any person entitled or authorised to receive the sums payable under the agreement. 10

(2) Where a hirer determines a hire-purchase agreement under *subsection (1)*, he shall be liable to pay to the owner the amount, if any, by which one-half of the hire-purchase price under the agreement exceeds the total of the sums paid and the sums due immediately before the termination, or such less amount as may be specified in the agreement. 15

(3) Where a hirer determines a hire-purchase agreement under *subsection (1)*, he shall have an option to purchase the goods and he may exercise that option by notifying the owner and paying him the difference between the amount already paid under the agreement and the hire-purchase price under the agreement after that latter amount has been reduced as specified in *section 52* or *53*, as the case may be. 20 25

(4) Where a hirer has determined a hire-purchase agreement under *subsection (1)* and has not exercised the option to purchase under *subsection (3)* but wrongfully retains possession of the goods, then, in any action brought by the owner to recover possession of the goods from the hirer, the court shall, unless it is satisfied that having regard to the circumstance it would not be just and equitable to do so, order the goods to be delivered to the owner without giving the hirer the option to purchase by virtue of that subsection. 30

Liability for failure to take reasonable care of goods.

62.—Where a hire-purchase agreement has been determined under *section 61*, the hirer shall, if he has failed to take reasonable care of the goods, be liable to pay damages for the failure. 35

Liability of guarantor where goods are returned to the owner.

63.—Where an owner has recovered possession of goods let under a hire-purchase agreement, whether as a result of legal proceedings or otherwise, the liability of the guarantor shall be limited to the amount which would have been payable by the hirer if he had determined the agreement under *section 61*. 40

Evidence of adverse detention in actions by owners to recover possession of the goods.

64.—Where, in an action by an owner of goods which have been let under a hire-purchase agreement to enforce a right to recover possession of the goods from the hirer, the owner proves that, before the commencement of the action and after the right to recover possession of the goods accrued, the owner made a request in writing to the hirer to surrender the goods, the hirer's possession of the goods shall, for the purpose of the owner's claim to recover possession thereof, be deemed to be adverse to the owner. 45

65.—(1) In every hire-purchase agreement, other than one to which subsection (2) applies, there shall be— Implied terms as to title.

5 (a) an implied condition on the part of the owner that he will have a right to sell the goods at the time when the property is to pass, and

10 (b) an implied warranty that the goods are free, and will remain free until the time when the property is to pass, from any charge or encumbrance not disclosed to the hirer before the agreement is made and that the hirer shall have and enjoy quiet possession of the goods except so far as it may be disturbed by any person entitled to the benefit of any charge or encumbrance so disclosed.

15 (2) In a hire-purchase agreement, in the case of which there appears from the agreement or is to be inferred from the circumstances of the agreement an intention that the owner should transfer only such title as he or a third person may have, there shall be—

(a) an implied warranty that all charges or encumbrances known to the owner have been disclosed to the hirer before the agreement is made, and

20 (b) an implied warranty that neither—

(i) the owner, nor
(ii) in a case where the parties to the agreement intend that any title which may be transferred shall be only such title as a third person may have, that person, nor

25 (iii) anyone claiming through or under the owner or that third person otherwise than under a charge or encumbrance disclosed to the hirer before the agreement is made,

30 will disturb the hirer's quiet possession of the goods.

(3) Nothing in this section shall prejudice the operation of any other enactment or rule of law whereby any condition or warranty is to be implied by a hire-purchase agreement.

35 66.—(1) Where under a hire-purchase agreement goods are let by description, there shall be an implied condition that the goods will correspond with the description, and if under the agreement the goods are let by reference to a sample as well as a description it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. Letting by description.

40 (2) Goods shall not be prevented from being let by description by reason only that, being exposed for sale or hire, they are selected by the hirer.

45 (3) A reference to goods on a label or other descriptive matter accompanying goods exposed for sale or hire may constitute or form part of a description.

Implied
undertakings as to
quality or fitness.

67.—(1) Except as provided by this section and subject to the provisions of any other enactment, there is no implied condition or warranty as to the quality or fitness for any particular purpose of goods let under a hire-purchase agreement.

(2) Where the owner lets goods under a hire-purchase agreement in the course of a business, there is an implied condition that the goods are of merchantable quality within the meaning of section 14 (3) of the Sale of Goods Act, 1893, except that there shall be no such condition—

(a) as regards defects specifically drawn to the hirer's attention before the agreement is made, or

(b) if the hirer examines the goods before the agreement is made, as regards defects which that examination ought to have revealed.

(3) Where the owner lets goods under a hire-purchase agreement in the course of a business and the hirer, expressly or by implication, makes known to the owner or the person by whom any antecedent negotiations are conducted, any particular purpose for which the goods are being hired, there shall be an implied condition that the goods supplied under the agreement are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the hirer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the owner or that person.

(4) An implied condition or warranty as to quality or fitness for a particular purpose may be annexed to a hire-purchase agreement by usage.

(5) The foregoing provisions of this section apply to a hire-purchase agreement made by a person who in the course of a business is acting as agent for the owner as they apply to an agreement made by the owner, except where the owner is not letting in the course of a business and either the hirer knows that fact or reasonable steps are taken to bring it to the notice of the hirer before the agreement is made.

Samples.

68.—Where under a hire-purchase agreement goods are let by reference to a sample, there shall be an implied condition—

(a) that the bulk will correspond with the sample in quality, and

(b) that the hirer will have a reasonable opportunity of comparing the bulk with the sample, and

(c) that the goods will be free from any defect, rendering them unmerchantable within the meaning of section 14 (3) of the Sale of Goods Act, 1893, which would not be apparent on reasonable examination of the sample.

Statements
purporting to
restrict rights of
hirer.

69.—(1) Subsections (2) and (3) apply to any statement likely to be taken as indicating that a right or the exercise of a right conferred by or a liability arising by virtue of section 65, 66, 67 or 68 is restricted or excluded otherwise than under section 70.

(2) A person in the course of business shall not do any of the following things in relation to a statement to which *subsection (1)* refers:

- 5 (a) display on any part of any premises a notice that includes any such statement;
- (b) publish or cause to be published an advertisement which contains any such statement;
- (c) supply goods bearing, or goods in a container bearing, any such statement; or
- 10 (d) otherwise furnish or to cause to be furnished a document including any such statement.

(3) For the purposes of this section a statement to the effect that goods will not be exchanged, or that money will not be refunded, or that only credit notes will be given for goods returned, shall be treated
15 as a statement to which *subsection (1)* refers unless it is so clearly qualified that it cannot be construed as applicable in circumstances in which the hirer may be seeking to exercise a right conferred by any provision of a section mentioned in *subsection (1)*.

(4) A person in the course of a business shall not furnish to a hirer
20 goods bearing, or goods in a container bearing, or any document including, any statement, irrespective of its legal effect, which sets out, limits or describes rights conferred on a hirer or liabilities to the hirer in relation to the goods or any statement likely to be taken as such a statement, unless that statement is accompanied by a clear and
25 conspicuous declaration that the contractual rights which the hirer enjoys by virtue of *section 65, 66, 67 or 68* are in no way prejudiced by the relevant statement.

70.—(1) An express condition or warranty does not negative a
30 condition or warranty implied by this Part unless inconsistent therewith.

Exclusion of implied terms and conditions.

(2) A term of a hire-purchase agreement or any other agreement exempting from all or any of the provisions of *section 65* shall be void.

(3) A term of a hire-purchase agreement or any other agreement exempting from all or any of the provisions of *section 66, 67 or 68*
35 shall be void and shall not be enforceable unless it is shown that it is fair and reasonable.

(4) *Subsection (3)* shall not prevent a court from holding, in accordance with any rule of law, that a term which purports to exclude or restrict any of the provisions of *section 66, 67 or 68* is not a term of
40 the hire-purchase agreement.

(5) Any reference in this section to a term exempting from all or any of the provisions of any section of this Part is a reference to a term which purports to exclude or restrict, or has the effect of excluding or restricting, the operation of all or any of the provisions
45 of that section, or the exercise of a right conferred by any provision of that section, or any liability of the owner for breach of a condition or warranty implied by any provision of that section.

Liability of persons conducting negotiations antecedent to hire-purchase agreements.

71.—Where goods are let under a hire-purchase agreement to a hirer, the person, if any, by whom the antecedent negotiations were conducted shall be deemed to be a party to the agreement and that person and the owner shall, jointly and severally, be answerable to the hirer for breach of the agreement and for any misrepresentations made by that person with respect to the goods in the course of the antecedent negotiations. 5

Application of sections 12 and 15 to 19 of Act of 1980 to hire-purchase agreements.

72.—Where goods are let under a hire-purchase agreement, section 12 (which relates to warranties for spare parts and servicing) of the Act of 1980 and sections 15 to 19 (which relate to guarantees and undertakings) of the Act of 1980 shall have effect as if a contract for the sale of goods were a hire-purchase agreement, the buyer were the hirer and the person by whom the antecedent negotiations were conducted were the seller. 10

Application of section 13 of Act of 1980 to hire-purchase of motor vehicles.

73.—Where a motor vehicle is let under a hire-purchase agreement, section 13 (which relates to an implied condition on sale of motor vehicles) of the Act of 1980 shall have effect as if a contract for sale were a hire-purchase agreement, the buyer were the hirer and the person by whom the antecedent negotiations were conducted were the seller, and the owner shall, jointly with that person and severally, be answerable to the hirer for breach of the implied condition. 15 20

Antecedent negotiations and representations.

74.—(1) In this Part “antecedent negotiations”, in relation to a hire-purchase agreement, means any negotiations or arrangements with the hirer whereby he was induced to make the agreement or which otherwise promoted the transaction to which the agreement relates; and any reference to the person by whom any antecedent negotiations were conducted is a reference to that person by whom the negotiations or arrangements in question were conducted or made in the course of a business carried on by him. 25

(2) (a) For the purposes of this Part any negotiations conducted or arrangements or representations made by a servant or agent, if conducted or made by him in the course of his employment or agency, shall be treated as conducted or made by his employer or principal; and anything received by a servant or agent, if received by him in the course of his employment or agency, shall be treated as received by his employer or principal. 30 35

(b) In this subsection “representations” includes any statement or undertaking, whether constituting a condition or a warranty or not, and references to making representations shall be construed accordingly. 40

PART VII

CONSUMER HIRE AGREEMENTS

Form and content of consumer hire agreements.

75.—(1) A consumer hire agreement shall be made in writing and signed by the hirer and by or on behalf of all other parties to the agreement and a copy of the agreement shall be— 45

(a) handed personally to the hirer by the owner upon the making of the agreement, or

(b) delivered, or sent by prepaid registered post to the hirer by the owner within 10 days of the making of the agreement.

(2) A consumer hire agreement shall—

5 (a) contain a statement that the hirer has a right to determine the agreement, and

(i) may exercise this right by giving written notice to this effect to the owner within 10 days of the date of receipt of the agreement or a copy thereof by the hirer (the cooling-off period), or

10 (ii) may indicate that he does not wish to exercise this right by signing a statement to this effect, this signature to be separate from, and additional to, the hirer's signature in relation to any of the terms of the agreement,

15 (b) contain—

(i) a comprehensive description of the goods,

(ii) the cash price of the goods,

20 (iii) the number and frequency of payments to be paid under the agreement and the amount of each payment (including taxes),

(iv) the total amount payable under the agreement (including taxes). Where the agreement is not for a specified period, it shall, for the purposes of calculating this amount, be assumed to be for 5 years,

25 (v) the names and addresses of the supplier of the goods and of any person involved in the agreement,

30 (vi) a statement of any compulsory payments, administration or hidden costs to be paid which are ancillary to the agreement whether or not such payments are payable to the owner,

(vii) a statement to the effect that the owner's rights under the agreement are assigned to a third party where such transfer is to be effected,

35 (viii) a statement of the cost of early termination of the agreement and any conditions relating to such termination, and

(ix) clear details of the costs and penalties to be applied in the case of breach of contract,

40 (c) on any application or proposal form for and copy of the agreement, contain in a prominent position on its front page, and enclosed by a boxed boundary line, the following notice:

"Important Notice

45 This is a hiring agreement only. The goods remain the property of the owner for the duration of the agreement", and

- (d) contain a statement to the effect that a hirer who, without reasonable cause, fails to give such information as required by *section 41* to the owner as to the whereabouts of the goods commits an offence.

Application of
sections 66 to 74 to
consumer hire
agreement.

76.—Where goods are let under a consumer hire agreement, the provisions of *sections 66* to *75* shall apply to the letting agreement as if it were a hire-purchase agreement and in every such agreement there is an implied warranty that the goods are free, and will remain free, from any charge or encumbrance not disclosed, before the agreement is made, to the person taking the goods and that that person will enjoy quiet possession of the goods except so far as it may be disturbed by any person entitled to the benefit of any charge or encumbrance so disclosed.

Right of hirer to
determine consumer
hire agreement.

77.—(1) A hirer shall, at any time, be entitled to determine a consumer hire agreement by giving notice of termination to the owner or any person entitled to receive the sums payable under the agreement.

(2) Where a notice is given under *subsection (1)* the agreement shall be determined after the expiration of the period of 3 months (or such lesser period as may be specified in the agreement) from the date of receipt of the notice.

Advertising of
consumer hire
agreements.

78.—(1) An advertisement in which a person offers to arrange a consumer hire agreement or indicates the availability of a consumer hire agreement shall include the following statement—

“This is a hiring agreement only. The goods in question are the property of the owner and will not become the property of the hirer during the term of this agreement”.

(i) which shall be afforded no less prominence than the sum of any amount payable by the hirer, and

(ii) in the case of a visual advertisement, shall be enclosed by a boxed boundary line.

(2) Where any figures relating to the amount payable by a hirer under a consumer hire agreement are indicated in any advertisement to which *subsection (1)* applies, those figures shall be clearly displayed and shall be fully inclusive of all amounts payable, including taxes.

(3) Where any figures relating to the amount payable by a hirer under a consumer hire agreement are indicated in any advertisement to which *subsection (1)* applies, and those figures indicate the amount payable for part of the agreement only, that fact shall also be clearly indicated in the advertisement.

(4) A person shall not display or publish or cause to be displayed or published an advertisement to which this section applies which does not comply with the section.

Hirer to take
reasonable care of
goods.

79.—A hirer shall take all reasonable care of goods which are let to him under a consumer hire agreement and shall be liable to the owner if he fails to take such care.

PART VIII

PROVISIONS RELATING TO MONEYLENDING

80.—This Part shall apply where a credit agreement is a money-
lending agreement or to any transaction which, whatever its form
5 may be, is substantially one of moneylending.

Application of Part
VIII.

81.—(1) The Director having taken due regard of any objection
by a third party to the issue of a licence, may grant to a person a
licence (“a moneylenders licence”) upon such terms and conditions
10 as he sees fit authorising that person to engage in the business of
moneylending in any particular District Court District or Districts
upon application to the Director in that behalf.

Moneylenders
licence.

(2) (a) An application for a moneylenders licence shall be in
writing in such form as the Director may determine and
15 shall contain—

- (i) an itemised statement of the proposed total cost of
credit,
- (ii) details of collection and all other charges not included
therein,
- 20 (iii) details of the applicant’s terms and conditions,
- (iv) the name of any District Court District in which the
applicant proposes to engage in the business of
moneylending,
- 25 (v) a copy of an advertisement in one of the newspapers
circulating in that area of the applicant’s intention to
apply for said licence and giving such other details as
the Director may require, and
- (vi) such other information as the Director may reasonably
require,

30 (b) An application for a moneylenders licence shall be
accompanied by—

- (i) a fee of £1,000 for the applicant to engage in the
business of moneylending in one District Court Dis-
trict, and
- 35 (ii) a further fee of £500 in respect of each additional
District Court District in which the applicant proposes
to engage in the business of moneylending.

(3) The fees referred to in *subsection (2)* may be varied by regu-
lations.

40 (4) The fees referred to in *subsection (2)* shall not be refundable in
whole or in part save at the discretion of the Director.

(5) The holder of the moneylenders licence shall display in a
prominent position a copy of the licence and any terms or conditions
attached thereto in any business premises where the holder engages
45 in the business of moneylending.

(6) A moneylenders licence shall be valid for the period of 12 months commencing on the date specified therein and shall expire at the end of that period.

(7) A moneylenders licence shall state—

- (a) the true name and business name (if any) of the holder, 5
- (b) the name under which the holder is authorised by the licence to engage in the business of moneylending,
- (c) the address of the business premises of the holder, and
- (d) the District Court District or Districts in which the holder is authorised to engage in the business of moneylending in respect of which the licence is granted, 10
- (e) an itemised statement of the APR to be charged in relation to moneylending agreements by the holder,
- (f) details of collection and other charges not included therein,
- (g) statement of the licence holder's terms and conditions, and 15
- (h) any restrictions to the licence.

(8) The Director may refuse to grant a moneylenders licence on one or more of the following grounds that:

- (a) the applicant or any business with which he was connected was, during the previous 5 years, convicted of an offence for contravening *section 82*, 20
- (b) a court has, during the previous 2 years, decided pursuant to *section 46* in relation to an agreement between the applicant and a consumer that the total cost of credit was excessive, 25
- (c) the applicant is the holder of—
 - (i) a bookmaker's licence,
 - (ii) a licence for the sale of intoxicating liquor, or
 - (iii) a gaming licence,
- (d) the applicant has failed to provide a current Revenue tax clearance certificate in respect of himself or his business, or 30
- (e) that the applicant or any person responsible or proposed to be responsible for the management of his business in relation to moneylending is by order of a court disqualified from holding a licence, 35
- (f) the applicant is not, in the opinion of the Director, a fit and proper person to carry on the business of moneylending,
- (g) in the Director's opinion, the cost of credit to be charged is excessive or any of the terms or conditions attaching thereto are unfair. 40

(9) The holder of a moneylenders licence shall only engage in the business of moneylending in the name specified in the holder's licence.

5 (10) The Director may suspend or revoke or vary the terms of a moneylenders licence on the grounds that any of the terms or conditions under which it was granted are no longer being met.

10 (11) Whenever the Director proposes to suspend, revoke or to vary the terms and conditions of a moneylenders licence he shall notify the holder of the licence of his proposal and of the reasons for such proposal and shall, if any representations are made to him in writing by such holder within 14 days of the notification, consider the representations.

15 (12) Whenever the Director refuses to grant a moneylenders licence or decides, having considered any representations that may have been made by the holder of a licence, to revoke or suspend the licence or to vary any term or condition of the licence, he shall notify in writing the applicant for, or as the case may be, the holder of, the licence of the refusal or decision and the grounds for such refusal or decision and such applicant or such holder may within 7 days of receipt of notification appeal against such refusal or such decision to the judge 20 of the Circuit Court within whose Circuit the business of moneylending to which the licence relates is to be carried on.

25 (13) On the hearing of an appeal under this section in relation to a refusal of the Director to grant a moneylenders licence or in relation to a decision of the Director to suspend, revoke, or vary the terms and conditions of a moneylenders licence, the Circuit Court may either confirm the refusal or decision or may allow the appeal and, where an appeal is allowed, the Director shall grant the licence or shall not suspend, revoke, or vary the terms and conditions of the licence as the case may be.

30 (14) In an appeal under this section the Director shall not be awarded or ordered to pay costs.

35 (15) A decision of the Circuit Court on an appeal under this section shall be final save that, by leave of that Court, an appeal from the decision shall lie to the High Court on a specified question of law.

(16) Where the holder of a moneylenders licence makes an appeal under *subsection (12)*, he may make an application to the court to have a revocation, suspension or variation of the licence suspended until the appeal is determined or withdrawn.

40 (17) A notification referred to in *subsection (12)* shall be delivered personally or sent by pre-paid registered post to the business address of the applicant for a moneylenders licence or the holder of the moneylenders licence concerned, as the case may be, and where the notification relates to a suspension or a revocation of a moneylenders 45 licence or to a variation of any term or condition of the licence then that revocation or variation shall take effect upon the expiration of the 7 days allowed for an appeal.

50 (18) The Director may, at his discretion, when granting a moneylenders licence restrict the holder of the licence to engage in the business of moneylending to a particular District Court District or part thereof.

(19) A person shall not wilfully give any information which is false or misleading in respect of an application for a moneylenders licence.

Prohibition on
engaging in business
of moneylending
without licence.

82.—(1) A person shall not engage in the business of moneylending on his own behalf unless—

(a) he is the holder of a moneylenders licence, and

(b) he maintains a business premises for that purpose which is not used as a residence by any person.

5

(2) Where a member of the Garda Síochána has reasonable cause to suspect that a person in a public place is engaging in the business of moneylending in contravention of *subsection (1)*, the member may, without warrant, stop, question, search and remove from that person any documents or money which the member reasonably believes may be in that person's possession for the purpose of moneylending.

10

(3) In this section "public place" means any place to which the public have access whether as of right or by permission and whether subject to or free of charge; and the doorways, entrances and gardens abutting onto a public place and any ground or car-park adjoining and open to a public place shall be treated as forming part of a public place.

15

Moneylender to
issue authorisation
to persons engaging
in moneylending on
his behalf.

83.—A holder of a moneylenders licence shall issue, in writing in such form specified by the Director, to any person engaging in the business of moneylending on his behalf including collecting repayments, authorisation to so engage or collect signed by, or on behalf of, the licence holder.

20

Loan or other credit
to be advanced in
full.

84.—Where credit is made available to a consumer by means of a moneylending agreement that credit shall not be reduced by the moneylender or a person acting on his behalf by any amount in respect of:

25

(a) repayment of the credit or any charges related thereto, or

(b) repayment of a previous credit or any charge related thereto,

and no payment in respect of the credit shall be required of the consumer by the moneylender or a person acting on his behalf before the due date of the first repayment instalment.

30

Repayment book.

85.—(1) A moneylender shall, in respect of every moneylending agreement, supply to the consumer a book or document ("repayment book") in which to record repayments made under the agreement which shall be completed and maintained by the moneylender in accordance with this section and shall be separate from the agreement.

35

(2) (a) A moneylender shall, in respect of a moneylending agreement, enter in a repayment book before supplying it to a consumer the following information:

(i) an agreement number or other reference to enable the agreement to be identified,

40

(ii) the name and address of the moneylender (as specified on his moneylenders licence),

(iii) the name and address of the consumer,

(iv) the amount of the credit being advanced,

45

- (v) the date the credit is advanced,
- (vi) the amount of each repayment instalment,
- (vii) the rate of interest to be charged (including the APR expressed as £ per £100 borrowed) on foot of the credit advanced,
- (viii) the amount of each collection charge (if any),
- (ix) the number of repayment instalments,
- (x) the total amount payable in respect of the loan, and
- (xi) the date of expiry of the loan.

10 (b) A repayment book shall also include a record of repayments in the form set out in the *Fifth Schedule* and in which, on the occasion of each repayment, the person to whom the repayment is made shall enter the following:

- (i) the date the repayment is made,
- 15 (ii) the amount of the repayment,
- (iii) the amount still outstanding after deduction of the repayment, and
- (iv) the signature of the person to whom the repayment is made.

20 86.—(1) A moneylender shall maintain in respect of every money-lending agreement to which he is a party a record of the agreement which he shall retain for a period of 5 years after expiry of the agreement which shall include the following information:

Records to be maintained by moneylender.

- 25 (a) the agreement number or other reference to identify the agreement,
- (b) the name and address of the consumer,
- (c) the amount of the credit advanced under the agreement,
- (d) the date the credit is advanced,
- (e) the amount of each repayment instalment,
- 30 (f) the rate of interest charged including the APR,
- (g) the amount of each collection charge (if any),
- (h) the number of instalments,
- (i) the total amount payable in respect of the loan, and
- (j) a Schedule showing, in respect of each repayment—

- 35 (i) the date the repayment is made,
- (ii) the amount of the repayment,

(iii) the amount still outstanding after deduction of the repayment, and

(iv) the name of the person to whom the repayment is made.

(2) A moneylender or a person acting on his behalf shall not reveal to any person other than to the consumer concerned or a person authorised by the consumer, a court, the Minister, the Director or any authorised officer any of the contents of records maintained by him under this section. 5

Prohibition of charges for expenses on loans by moneylenders.

87.—(1) A moneylender shall not make or attempt to make an agreement with a consumer who has borrowed or intends to borrow credit from that moneylender for any sum (other than a collection charge), account of costs, charges or expenses incidental to or relating to the negotiations for, or the granting of, the loan. 10

(2) If any sum is paid by a consumer who has borrowed or intends to borrow credit from a moneylender for or on account of such costs, charges or expenses that sum shall be recoverable as a debt due to the consumer, or in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and that amount shall be deemed to be reduced accordingly. 20

Moneylending agreements which include a collection charge.

88.—(1) Where the amount payable under a moneylending agreement includes a collection charge in respect of the payment of repayments at a location other than the business premises of the moneylender, the agreement shall include the following:

(a) a clear indication of the amount of that charge, 25

(b) a statement that the consumer shall have the option of making the repayment at the business premises of the moneylender,

(c) a statement that if the consumer exercises the option, the charge will not be payable, and 30

(d) a statement that the consumer may indicate his unwillingness to avail of the option by signing a statement to this effect which has been explained to the consumer in a manner specified by the Director, this signature to be additional to the consumer's signature in relation to any of the terms of the agreement. 35

(2) A moneylender shall ensure that any moneylending agreement entered into with him complies with this section.

Presumption.

89.—Where in a prosecution for a contravention of this Part it is shown to a court that the accused had in his possession or control any document or sum of money in circumstances which give rise to the reasonable inference that such documents or money were kept for the purpose of moneylending, it shall be presumed, unless the contrary is shown, that the accused, at the time of such possession or control, was engaged in the business of moneylending. 40 45

90.—(1) If a judge of the District Court is satisfied on the sworn information of a member of the Garda Síochána that there are reasonable grounds for suspecting that any premises or any part of any premises is being used for the purposes of moneylending contrary to the provisions of this Part or that evidence of an offence for contravening this Part may be found in such premises, the judge may issue a warrant authorising any member of the Garda Síochána, accompanied by other members of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter, if need be by force, and search the premises and any person found therein and seize and retain any document or thing which such member has reason to believe may be evidence of the commission of an offence for contravening this Part.

Search warrants.

(2) A person shall not obstruct or interfere with a member of the Garda Síochána acting under the authority of a warrant under subsection (1).

91.—(1) A person shall not have in his possession or control for the purposes of moneylending any document belonging to another person.

Prohibition of having possession of documents belonging to another person for moneylending.

(2) Where a member of the Garda Síochána has reasonable cause to suspect that a person is in possession or control of a document in contravention of subsection (1), the member may without warrant, stop and search (if need be by force) the person and seize the document.

(3) A person shall not obstruct or interfere with a member of the Garda Síochána acting under subsection (2).

(4) In this section "document" includes every book, card, order, voucher or other document issued to any person.

92.—(1) Where a member of the Garda Síochána has reasonable cause to suspect that a person is engaged in the business of moneylending he may require that person to produce his moneylenders licence or authorisation from the holder of a moneylenders licence to collect repayments on the licence holder's behalf.

Obligation to produce to member of Garda Síochána moneylenders licence or authorisation.

(2) A person shall not obstruct or interfere with a member of the Garda Síochána acting under subsection (1) and shall comply with any requirement made of him under that subsection.

93.—(1) If a member of the Garda Síochána has reasonable cause to suspect that a person has contravened this section, section 82, section 91 or 92, the member may—

Powers of arrest.

(a) arrest that person without warrant, or

(b) require the person to give his name and address and, if the person fails or refuses to do so or gives a name or address that member reasonably suspects to be false or misleading, the member may arrest that person without warrant.

(2) A person shall not refuse to give his name or address when required under *subsection (1)*, or give a name or address which is false or misleading.

Prohibition of collecting repayments at certain times.

94.—A person shall not engage in the business of collecting repayments whether personally or by his employee or agent— 5

(a) between the hours of 9 o'clock in the evening on any week day and 10 o'clock in the morning on the following day, or

(b) at any time on a Sunday or a public holiday (within the meaning of the Holidays (Employees) Act, 1973). 10

Prohibition of selling goods while collecting repayments.

95.—A person on the occasion that a cash advance is made to a consumer under a moneylending agreement, shall not sell or offer for sale any goods to that consumer.

Prohibition on increased charges for credit on default.

96.—A moneylending agreement shall be unenforceable against the consumer if it provides that the rate of charge for the credit may be increased or that any additional charge, other than legal costs, may apply in the event of a default in the payments due under the agreement. 15

Continuity of licences granted under Moneylenders Act, 1933.

97.—Any moneylenders licence granted under the Moneylenders Act, 1933 (repealed by *section 22*) that is in force immediately before the passing of this Act shall continue in force after such passing as if granted under the corresponding provision of this Part to that repealed. 20

Regulations.

98.—(1) The Minister may prescribe that a person or class of persons shall not be regarded, for the purposes of this Part, as engaging in the business of moneylending. 25

(2) The Minister may, by regulations, make such provision as he considers necessary for the purposes of this Part with regard to the form or content of moneylending agreements or the advertising of moneylending agreements. 30

PART IX

HOUSING LOANS MADE BY MORTGAGE LENDERS

Application and interpretation of Part IX.

99.—(1) This Part shall apply to a housing loan made by a mortgage lender.

(2) In this Part— 35

“endowment loan” means a housing loan which is to be repaid out of the proceeds of an insurance policy on its maturity, other than a policy providing mortgage protection insurance only;

“information document” means any document, leaflet, notice, circular, pamphlet, brochure, film, video or facsimile issued to the general public or to certain persons (whether solicited or not) for the purpose of giving information in relation to housing loans; 40

“insurance commission” means a payment or other remuneration, reward or benefit in kind, paid or payable by or on behalf of the insurer to any person in connection with the insurance business of the insurer and includes the time allowed by the insurer to that person
5 for the payment by that person to the insurer of premiums received by that person for the insurer for contracts of insurance entered into by the insurer;

“insurance intermediary” means an insurance agent or insurance broker within the meaning of the Insurance Act, 1989;

10 “insurer” has the meaning assigned to it by the Insurance Act, 1989;

“mortgage agent” means any or all of the following:

- (a) a mortgage lender,
- (b) a mortgage intermediary,
- (c) an insurer, or
- 15 (d) an insurance intermediary;

“subsidiary” has the same meaning assigned to it by section 155 of the Companies Act, 1963.

100.—(1) A person shall not engage in the business of being a mortgage intermediary unless— Mortgage intermediaries.

20 (a) he is the holder of an authorisation (subsequently referred to in this section as an “authorisation”) granted for that purpose by the Director, and

(b) he holds an appointment in writing from each undertaking for which he is an intermediary.

25 (2) A holder of an authorisation shall only engage in the business of being a mortgage intermediary in the name specified in the holder’s authorisation.

(3) An application for an authorisation shall be in such form as the Director may determine and be accompanied by a fee as specified in
30 section 10 (3).

(4) The fee referred to in subsection (3) may be varied by the Minister by regulations.

(5) An authorisation shall be valid for the period of 12 months commencing on the date specified therein and shall expire at the end
35 of that period.

(6) An authorisation shall state—

- (a) the true name of the holder,
- (b) the name under which the holder is authorised to engage in the business of being a mortgage intermediary, and
- 40 (c) the address of the business premises of the holder.

(7) The Director may refuse to grant an authorisation on one or more of the following grounds, namely, that:

- (i) the applicant does not satisfy the condition specified in subsection (1) (b),
- (ii) the applicant or any business with which he was connected was, during the previous 5 years, convicted of a criminal offence, 5
- (iii) the applicant is the holder of —
 - (i) a bookmaker's licence,
 - (ii) a licence for the sale of intoxicating liquor, or
 - (iii) a gaming licence,
- (iv) the applicant has failed to provide a current Revenue tax clearance certificate in respect of himself or his business, 10
- (v) the applicant is not, in the opinion of the Director, a fit and proper person to carry on the business of mortgage intermediary, or
- (vi) the applicant has failed to comply with regulations made under subsection (8). 15

(8) Regulations may provide that the holder of an authorisation shall not act or hold himself out to be a mortgage intermediary unless he effects a policy of professional indemnity insurance in a specified form, indemnifying him to such sum, in such manner, in respect of such matters and valid for such minimum period as the Minister may prescribe. 20

(9) Whenever the Director refuses to grant an authorisation he shall notify in writing the applicant for the authorisation of the refusal and such applicant may within 7 days of receipt of notice appeal against such refusal to the judge of the Circuit Court within whose Circuit the business of the mortgage intermediary to which the authorisation relates is to be carried on. 25

(10) On the hearing of an appeal under this section in relation to a refusal of the Director to grant an authorisation the Circuit Court may either confirm the refusal or may allow the appeal and, where an appeal is allowed, the Director shall grant the authorisation. 30

(11) In an appeal under this section the Director shall not be awarded or ordered to pay costs.

(12) A decision of the Circuit Court on an appeal under this section shall be final save that, by leave of that Court, an appeal from the decision shall lie to the High Court on a specified question of law. 35

(13) A notification referred to in subsection (9) shall be delivered personally or sent by pre-paid registered post to the business address of the applicant. 40

Redemption of housing loans.

101.—(1) Subject to subsection (3), a borrower may, at any time before the time agreed, repay to the mortgage lender the whole or any part of a housing loan and shall not be liable to pay any redemption fee in relation to the loan or any part of the loan.

(2) The exemption from redemption fees in *subsection (1)* shall not apply to a housing loan in respect of which the mortgage or loan agreement provides that the rate of interest:

- (a) may not be changed, or
- 5 (b) may not be changed over a period of at least one year, or
- (c) may not, for a period of at least 5 years, exceed the rate applicable on the date of the making of the said agreement by more than 2 per cent.

(3) The exemption from redemption fees in *subsection (1)* shall
10 apply at any time during the period of the loan at which the period referred to in *paragraph (b)* or *(c)* of *subsection (2)* have elapsed.

(4) The Minister may, by regulations, after consultation with the Director and the Minister for the Environment, vary—

- (a) the period referred to in *subsection (2) (b)*, or
- 15 (b) the period of years or the rate of interest referred to in *subsection (2) (c)*.

(5) A mortgage agent shall, where a redemption fee is payable on a housing loan by virtue of *subsection (2)*, ensure that a statement to that effect, specifying how the amount of such fee is to be calculated,
20 shall be included in or attached to:

- (a) any information document which refers or relates to such a loan,
- (b) any application form issued for the purpose of applying for such a loan or, where application for the loan is made
25 otherwise than by way of an application form, such a statement shall be sent to the applicant within 10 days of the receipt of the application,
- (c) any document sent to the applicant approving the loan, and
- (d) any communication in relation to a variation of, or any offer
30 to vary, the terms of the housing loan which would have the effect of making the loan liable to a redemption fee in accordance with *subsection (2)*.

(6) In this section “redemption fee” means, in relation to a housing loan, any sum in addition to principal and any interest due on such
35 principal (without regard to the fact of the redemption of the loan) at the time of redemption of the whole or part of the loan.

102.—(1) For the purpose of calculating the APR in relation to a housing loan the total cost of credit to the borrower shall be determined with the exception of the following charges—

Criteria for calculation of APR in relation to housing loans.

- 40 (a) charges other than the purchase price which the consumer is obliged to pay whether the transaction is paid for in cash or by credit including Government duties or taxes on the purchase or acquisition of the property, and fees payable

by the borrower to his own agent for the carrying out of legal and other procedures associated with the acquisition of the property,

(b) charges payable by the borrower for non-compliance with any of his commitments laid down in the credit agreement, 5

(c) charges for insurance on the life of the borrower or for insurance against property damage which are designed to ensure payment to the creditor of credit outstanding in the event of the death of the borrower, or insurable damage to the property the subject of the credit agreement, before termination of the agreement. 10

(2) In calculating the APR in relation to a housing loan, the following assumptions shall be made:

(a) the creditor and the prospective borrower fulfil their obligations under the terms of the contract, 15

(b) in the case of credit agreements providing for variations in the rate of interest or other charges which are unquantifiable at the time of calculation, the APR shall be calculated on the assumption that the future rates of interest or charges are the current variable rates which will remain fixed and will apply until the end of the credit agreement. In circumstances in which the initial or subsequent interest rate is fixed for a specific period or periods, the calculation shall assume that the fixed rate or rates shall apply only for the period or periods specified and that the rates applicable to other periods of the contract are the current variable rates which will remain fixed for those periods, 20 25

(c) that the borrower is not entitled to any income tax relief or any other benefit not granted by the creditor under, or relating to, the transaction, 30

(d) where charges are payable at an unspecified date after the agreement is signed it shall be assumed that they are payable at the beginning of the agreement,

(e) in the case of advertising, the calculation shall be based on a typical example. 35

(3) A mortgage lender shall comply with the requirements of this section in relation to the calculation of the APR in respect of a housing loan.

Valuation reports.

103.—(1) Where a mortgage lender—

(a) gives approval to the making of a housing loan; or 40

(b) refuses to make a housing loan,

the applicant for the loan shall, at the time he is notified of the approval of the loan or of the refusal to give such approval, be furnished by the mortgage lender with a copy of the report ("valuation report") made to the mortgage lender on the value of the security. 45

(2) The mortgage lender shall attach to or include in every valuation report furnished to an applicant in accordance with *subsection (1)* a note stating clearly the nature and purpose of the report.

(3) There shall be no charge made to the applicant for a valuation report if the loan application is refused.

5 104.—(1) Any insurance which a mortgage lender may require a borrower to effect and keep effected on property mortgaged to the lender may be effected by the borrower with any insurer and through any intermediary. Insurance of mortgaged property.

10 (2) When the mortgage lender requires a borrower to effect such insurance for the first time as respects a mortgaged property, he shall, at the same time, notify him in writing that the insurance may be so effected and of the nature and extent of the required insurance.

(3) A mortgage lender shall not impose a requirement in regard to the nature and extent of insurance on mortgaged property which differentiates as between insurance effected through the agency of the mortgage lender and insurance otherwise effected.

15 (4) A mortgage lender shall not impose a condition on a borrower in relation to insurance on mortgaged property which would require the borrower to pay a fee to the mortgage lender or to incur a cost which, in either case, would not be paid or incurred by a borrower effecting insurance through the agency of the mortgage lender.

20 105.—Any costs incurred by a mortgage lender in respect of, arising from or in connection with, the legal investigation of title to any property offered as security by a borrower shall be paid by the mortgage lender and shall not be recoverable from the borrower either as a fee specifically stated to be in respect of such costs or as 25 part of any fee or other charge in respect of the loan. Costs of legal investigation of title.

30 106.—(1) Subject to the provisions of this section, a mortgage lender shall arrange, through an insurer or an insurance intermediary, a life assurance policy providing, in the event of the death of a borrower before a housing loan made by the mortgage lender has been repaid, for payment of a sum equal to the amount of the principal estimated by the mortgage lender to be outstanding in the year in which the death occurs on the basis that payments have been made by the borrower in accordance with the mortgage, such sum to be employed in repayment of the principal. Mortgage protection insurance.

35 (2) *Subsection (1)* shall apply as respects all housing loans except—

(a) where the house in respect of which the loan is made is, in the mortgage lender's opinion, not intended for use as the principal residence of the borrower or of his dependants,

40 (b) loans to persons who belong to a class of persons which would not be acceptable to an insurer, or which would only be acceptable to an insurer at a premium significantly higher than that payable by borrowers generally,

(c) loans to persons who are over 50 years of age at the time the loan is approved,

45 (d) loans to persons who, at the time the loan is made, have otherwise arranged life assurance, providing for payment of a sum, in the event of death, of not less than the sum referred to in *subsection (1)*.

(3) A person who does not belong to a class referred to in *paragraph (b) of subsection (2)* shall not be required by virtue of this section to undergo a medical examination as a condition of a policy but nothing in this section shall prevent a person belonging to such a class from being required to undergo a medical examination.

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(4) A policy under this section may, in the case of a loan made jointly to two or more borrowers, apply to such of the borrowers as may be designated by the mortgage lender, due regard being had to the wishes of such borrowers.

(5) Where the proceeds of a policy under this section exceed the amount due to the mortgage lender on the loan, any such excess shall be payable to the surviving borrower or to the estate of the deceased borrower as the case may be.

Prohibition on
linking of services.

107.—(1) A mortgage agent shall not make or offer to make to any person, or arrange or offer to arrange for any person, a housing loan which would be subject to a condition that any financial services, conveyancing services, auctioneering services or other services relating to land which that person may require, whether or not in connection with the loan, shall be provided by the agent or through a subsidiary or other associated body of such agent.

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(2) Where, in connection with the making or arranging of a housing loan, more than one service is made available by a mortgage agent or one or more of his subsidiaries, the agent shall not, and shall ensure that each of his subsidiaries does not, make the services available on terms other than terms which distinguish the consideration payable for each service so made available; nor shall any of the subsidiaries make the services available on terms other than terms which make that distinction.

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(3) Where a person is providing auctioneering services, or constructing houses for sale, and is also a mortgage intermediary, he, or a subsidiary or other associated body, shall not sell, offer to sell or arrange to sell a house which is to be purchased with the aid of a housing loan, on terms which differentiate as between a person who purchases the house with the aid of a housing loan arranged by or on behalf of such intermediary and a person who purchases the house with the aid of a housing loan otherwise arranged.

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Warning on loss of
home.

108.—(1) A mortgage agent shall ensure that—

(a) an information document,

(b) an application form for a housing loan, or

(c) any document approving a housing loan,

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shall include the following notice:

“WARNING—YOUR HOME IS AT RISK IF YOU DO NOT
KEEP UP PAYMENTS ON A MORTGAGE OR ANY OTHER
LOAN SECURED ON IT.”.

(2) A mortgage agent shall ensure that, where the interest rate for a housing loan is variable—

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(a) an information document,

- (b) an application, or
- (c) any document approving that loan,

shall, following the notice required under *subsection (1)*, include the following:

5 "THE PAYMENT RATES ON THIS HOUSING LOAN MAY
BE ADJUSTED BY THE LENDER FROM TIME TO TIME."

109.—(1) An agreement for a housing loan shall contain on the front page a notice in the form set out in *Part II* of the *Third Schedule*.

Notice of important information to be included in a housing loan agreement.

(2) A mortgage lender who is a party to an agreement referred to in *subsection (1)* shall ensure that the agreement complies with that subsection.

110.—A mortgage lender shall in respect of a housing loan, issue to the borrower:

Duties of mortgage lender to supply documents and information.

15 (a) at the time the loan is made, or as soon as may be practicable thereafter a copy of the mortgage deed (including any contract relating thereto) which copy shall be additional to any copy of such mortgage deed issued to his legal representative, and

20 (b) a statement of the total amount outstanding on the loan on a specified date occurring not more than one year after the making of the loan and at intervals of not more than one year thereafter until the loan is fully repaid, such statement being issued as soon as practicable after the date specified.

25 111.—(1) The Minister may, after consultation with the Minister for the Environment, by regulations, make provision requiring the disclosure to the borrower of specified information relating to any insurance commission, introduction fee or other inducement, charge or expense that may be payable to any person or retained by any person on foot of an insurance policy taken out by the borrower in connection with the making of a housing loan, or on foot of the making of such loan.

Disclosure of charges, agency introduction fees, commissions and expenses.

(2) Regulations under this section may in particular specify:

35 (a) the nature of the information to be disclosed, including information on the manner in which any commission, fee, or other inducement, charge or expense is to be determined, the amount or value of same and the arrangements for the payment or provision of same,

40 (b) the circumstances in which and the time at which the information is to be disclosed,

(c) the manner of disclosure of the information.

45 (3) (a) *Subsection (2)* is without prejudice to the generality of *subsection (1)* and accordingly regulations under this section may make provision for matters other than those mentioned in *subsection (2)* or further provision as to any of the matters there mentioned.

(b) Regulations made under this section may:

- (i) include such consequential, incidental, transitional or supplementary provisions as may be considered appropriate by the Minister to be necessary or proper for the purposes of this section; 5
- (ii) apply either generally or by reference to a specified class or classes of loans, insurance, mortgage agents, or persons or by reference to any other matter that is considered appropriate by the Minister.

(4) Where, in connection with the making of a housing loan, a mortgage lender or mortgage intermediary acts exclusively for a particular insurer, he shall at the first reasonable opportunity and in any event before any commitment is made by the borrower, disclose this fact to the borrower and the possibility that such insurance may also be available from other insurers. 10 15

(5) Where, in connection with the making of a housing loan, a mortgage intermediary acts exclusively for a particular mortgage lender, he shall at the first reasonable opportunity and in any event before any commitment is made by the borrower, disclose this fact to the borrower and the possibility that the borrower may obtain a housing loan from another mortgage lender. 20

Disclosure of other fees.

112.—Where a fee is payable by an applicant for a housing loan in respect of any of the following matters—

- (a) the making, accepting or administering of an application for a loan, 25
- (b) the valuation of the security for the loan,
- (c) legal services in connection with the loan,
- (d) services provided by a mortgage agent in relation to the loan, or
- (e) non-acceptance of an offer or approval of a loan, 30

the mortgage agent shall ensure that a statement of reasonable prominence that such a fee is payable and specifying the amount of the fee or how such amount is determined and the circumstances in which it may be refunded, if such is the case shall be included in or attached to: 35

- (i) any information document issued by or on behalf of the mortgage agent which refers or relates to such a loan,
- (ii) any application form issued for the purposes of applying for such a loan or, where application for the loan is made otherwise than by way of an application form, issued to the applicant within 10 days of the receipt of the application, and 40
- (iii) any document sent to the applicant approving the loan, in relation to the matters specified in paragraphs (b), (c), (d) and (e). 45

- 113.—(1) A mortgage agent shall ensure that an information document which refers or relates to an endowment loan, an application form issued to a person for the purpose of applying for such a loan, and any document approving such a loan shall contain in a prominent position the following notice: Endowment loans.

“WARNING

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.”.

- 10 (2) Where an application for an endowment loan is made, otherwise than by way of an application form, the applicant shall be supplied with a notice in accordance with *subsection (1)* within 10 days of the receipt of the application.

- 15 (3) *Subsections (1) and (2)* shall not apply where the insurer underwriting the insurance policy in respect of an endowment loan guarantees that the proceeds of the policy at the initial premium will be sufficient to repay the loan in full when it becomes due for repayment or where the mortgage lender undertakes to accept the proceeds in full and final settlement of the loan debt.

- 20 (4) Where there is a possibility that, during the lifetime of an endowment loan, the borrower may be required or advised by the insurer or mortgage lender to increase the amount of the premium payments on the insurance policy relating to the loan, in order to secure an increase in the proceeds of the policy on maturity, then the document sent to the applicant approving the loan shall contain a statement of this possibility in a prominent position.

- 25 (5) Where the possibility exists that early surrender of the insurance policy in respect of an endowment loan may result in a return to the consumer which would be less than he has paid in premia and other charges, any document referred to in *subsection (1)* shall contain a statement of this possibility.

- 35 (6) An insurer underwriting an insurance policy in respect of an endowment loan shall within 5 years of the policy being issued and every 5 years thereafter, until such time as the endowment loan is repaid, issue or cause to be issued to the borrower, a statement setting out the value of the policy as estimated by the insurer, at such date together with a comparison of this valuation to the valuation at such date projected at the time the policy was first written, and a revised estimate of its valuation at maturity.

- 40 114.—(1) Where it is the policy of a mortgage lender to charge interest in respect of arrears on housing loans or on housing loans of a particular type, any information document relating to, application form for, or document approving, such a loan and any communication in relation to arrears of payments due on such a loan shall state the amount of the increase in interest and other charges which a borrower may become liable to pay in respect of such arrears.

Disclosure of interest rate and penalties to be applied to arrears on housing loans.

- 50 (2) Any communication issued by or on behalf of a mortgage lender to a borrower which refers to the possibility of possession proceedings being taken under the mortgage, shall contain an estimate of the cost to the borrower of such proceedings.

115.—(1) The Director may, if he considers it expedient to do so give a direction to a mortgage agent in relation to the matter and form of any advertisement or information document displayed or published by or on behalf of such agent in relation to a housing loan and may direct that such advertisement or information document be withdrawn. 5

(2) Without prejudice to the generality of *subsection (1)*, a direction under this section may do all or any one or more of the following—

(a) prohibit the issue by a mortgage agent of advertisements or information documents of any specified description, 10

(b) require a mortgage agent to modify advertisements or information documents of a specified description in a specified manner,

(c) prohibit the issue by a mortgage agent of any advertisements or information documents which are, or are substantially, repetitions of a specified advertisement or information document, 15

(d) require a mortgage agent to withdraw any specified advertisement or information document or any advertisement or information document of a specified description, or 20

(e) require a mortgage agent to include specified information in any advertisement or information document to be published by it or on its behalf or in any statement to the public made by it or on its behalf.

(3) Where the Director intends to give a direction under this section in relation to a bank or building society he shall inform the Central Bank of his intention not later than the time on which the direction is given. 25

116.—(1) Where a mortgage lender (being a corporate entity) is being wound-up, a borrower shall not be liable to pay the amount payable in respect of a housing loan except at the time or times, and subject (as may be appropriate) to the conditions, set out in the mortgage or other security. 30

(2) A liquidator in the exercise of his powers under section 231 (2) (a) of the Companies Act, 1963, shall not dispose of any of the mortgage lender's assets constituting housing loans on terms as respects the loans other than terms which the High Court is satisfied are just and equitable and which the borrowers would have been reasonably entitled to expect if the mortgage lender had not been wound-up. 35 40

PART X

MISCELLANEOUS

117.—Regulations may require a person who engages in the business of providing credit to or securing the provision of credit for a consumer to display in the prescribed manner at any premises where the business is carried on and to which the public have access prescribed information about that business relating to the provision of credit. 45

118.—(1) A person shall not insert in any credit agreement or consumer hire agreement or in any proposal form or application form used in connection with the agreement 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.

Restrictions as to use of inertia selling provisions in credit agreements.

(2) Where any amount is due to a third party as a result of the use of a provision as described in *subsection (1)*, the creditor shall be liable for payment of that amount.

119.—A person shall not knowingly, with a view to financial gain, send to a minor any document inviting the minor to—

Circulars to minors.

(a) borrow credit,

(b) obtain services on credit, or

(c) apply for information or advice on borrowing credit or otherwise obtaining credit or hiring goods.

120.—Except where otherwise provided for in this Act, a creditor or an owner shall not in any credit agreement or consumer hire agreement as the case may be—

Exclusion of obligations or rights.

(a) exclude or restrict any liability imposed on any person or any right conferred on a consumer, or

(b) impose any further liability in addition to any liability imposed on a consumer by this Act.

121.—A person shall not in the course of a business do any of the following:

Statements purporting to exclude or restrict liabilities or rights.

(a) display on any part of any premises a notice,

(b) publish or cause to be published an advertisement,

(c) supply goods bearing or goods in a container bearing a statement, or

(d) furnish or cause to be furnished a document,

which purports to exclude or restrict any liability imposed on any person or any right conferred on a consumer by this Act.

122.—(1) Subject to *subsection (2)*, a creditor or owner shall in respect of a refusal by him to enter into a credit agreement or a consumer hire agreement, as the case may be, give to the consumer the name and address of any person from whom the creditor or the owner, as the case may be, has sought information concerning the financial standing of the consumer, within 14 days, after receiving a request in writing to that effect from the consumer.

Duty to disclose information concerning financial standing of consumer.

(2) *Subsection (1)* does not apply to a request—

(a) received more than 28 days after the refusal, or

(b) which relates to information to which the Data Protection Act, 1988, applies being data within the meaning of that Act.

(3) Subject to *subsection (4)*, a person who has supplied information to a creditor or an owner in respect of the financial standing of a consumer in respect of a credit agreement or a consumer hire agreement shall give to the consumer a copy in legible form of any information held by that person concerning the financial standing of the consumer, within 14 days after receiving a request in writing to that effect from the consumer, together with a fee of £5, or such other amount (if any) as may stand specified in regulations.

(4) *Subsection (3)* does not apply to a request—

(a) received more than 28 days after the name and address referred to in *subsection (1)* has been given, or

(b) which relates to information to which the Data Protection Act, 1988, applies being data within the meaning of that Act.

Correction of
incorrect
information.

123.—(1) Where a consumer has been given information under *section 122* which he considers is incorrect the consumer may within 28 days of receipt give notice to the person requiring the removal or the amendment of the information.

(2) A person referred to in *subsection (1)* shall within 28 days after receiving a notice under that subsection inform the consumer that he has—

(a) removed the information, 25

(b) amended the information, or

(c) taken no action.

(3) Where the consumer concerned feels aggrieved by any action taken by a person under *subsection (1)* he may request in writing, together with a fee of £10 or such other amount (if any) as may stand specified in regulations, the Director to investigate the matter. 30

(4) Where the Director having considered a request under *subsection (3)* decides to investigate the matter he may make any such direction as he considers appropriate in relation to the information concerned and a person to whom such direction is given shall comply with the direction. 35

Nature of "finance
arranged" to be
explained to
consumer.

124.—Where a consumer negotiates with a seller in respect of the acquisition of goods and the seller, being a credit intermediary, offers, or is requested by the consumer, to arrange a financial accommodation for the consumer in respect of the acquisition of the goods, the seller shall, before any agreement, in relation to the goods under negotiation resulting from the offer or request, is entered into, disclose in writing to the consumer— 40

(a) the nature of the financial accommodation,

(b) the amount, number and frequency of payments and the total amount that the consumer would have to pay under an agreement, and, where applicable, the APR, 45

- (c) the name of any undertaking for which the seller acts as a credit intermediary, and
- (d) that the seller receives a commission, payment or consideration of any kind from an undertaking for arranging any such financial accommodation between the consumer and the undertaking.

PART XI

OBLIGATION ON CREDIT INSTITUTIONS TO NOTIFY DIRECTOR OF ALL CUSTOMER CHARGES

- 10 **125.**—(1) Each credit institution shall, within three months, notify the Director of— Customer charges, etc., by credit institutions.
- (a) all charges imposed by it in relation to the provision of any service to a customer or to a group of customers, and
 - 15 (b) any term or condition upon or subject to which such service is provided.
- (2) A credit institution shall notify the Director of every proposal—
- (a) to change any charge, term or condition which has been previously notified to the Director under *subsection (1)*, or
 - 20 (b) to impose any charge, term or condition, applying to the provision of a service to a customer or to a group of customers, which has not been previously notified to the Director under *subsection (1)*.
- 25 (3) Every notification under *subsection (2)* shall be accompanied by—
- (a) a fee of £25,000, or such other amount as may stand specified for the time being in regulations, in respect of any proposal to—
 - (i) impose or increase any charge, or
 - 30 (ii) change any term or condition which in the opinion of the Director is detrimental to a customer or a group of customers,
 - (b) a statement of the commercial justification for the proposal including a detailed statement of costs, and
 - 35 (c) details of the estimated amount of additional revenue accruing from the proposed charges.
- (4) The Director may direct a credit institution—
- (a) to refrain from imposing or changing a charge, term or condition, applying to the provision of a service to a customer or to a group of customers, without the prior approval of the Director, and
 - 40

- (b) to publish, in such manner as may be specified by the Director from time to time, information on any charge, term or condition applying to the provision of a service to a customer or to a group of customers.
- (5) A direction under this section may be expressed to apply— 5
 - (a) to every credit institution or to credit institutions carrying on a specified type of banking or financial business,
 - (b) to all services provided to a customer or to a group of customers by credit institutions or to specified services or to services of a specified kind, or 10
 - (c) to a specified time or times or during a specified period or periods,

and the direction shall—

 - (i) (I) be communicated to every credit institution concerned, and 15
 - (II) where not communicated in writing, be confirmed in writing to every such credit institution concerned as soon as possible thereafter, and
 - (ii) have effect in accordance with its terms.
- (6) The Director shall, in exercising his powers under this section, 20 have regard to—
 - (a) the promotion of fair competition between—
 - (i) credit institutions, and
 - (ii) credit institutions carrying on a particular type of banking or financial business, 25
 - (b) a credit institution passing any costs on to its customers or a group of its customers in proposing to impose or change any charge, term or condition applying to the provision of a service to a customer or a group of customers, and
 - (c) the effect on customers or a group of customers of any 30 proposal to impose or change any charge, term or condition applying to the provision of such service.
- (7) The Director may amend or revoke a subsisting direction under this section and may amend or revoke a subsisting direction which has been amended. 35
- (8) The Director may exempt a credit institution from the obligation to notify the Director under this section in respect of—
 - (a) any charge which has been individually negotiated *bona fide* with the credit institution by a customer, or by or on behalf of a group of customers, of the credit institution, 40 or
 - (b) a class of term or condition applying to a service provided by the credit institution, if the Director is of the opinion

that it is not necessary for it to be so notified in order to decide whether or not to issue a direction under *subsection (3)* in respect of the service.

- 5 (9) In this section, "charge" and "term or condition" do not include any rate of interest.

PART XII

MONEYLENDERS, CREDIT AND MORTGAGE INTERMEDIARIES REGISTERS

126.—(1) The Director shall cause to be established and kept the following registers—

Moneylenders' credit intermediaries and mortgage intermediaries registers.

- 10 (a) the moneylenders register of all licences granted under *section 81 (1)*,
- (b) the credit intermediaries register of all authorisations granted under *section 10 (1)*,
- 15 (c) the mortgage intermediaries register of all authorisations granted under *section 100 (1)*.

(2) Each of the registers shall be in such form as the Director may from time to time decide.

(3) The moneylenders register shall contain the following particulars—

- 20 (a) the information referred to in *section 81 (7)*,
- (b) any revocation, suspension or variation of the terms or conditions of a moneylenders licence, and
- (c) such other particulars as the Minister may from time to time prescribe.

25 (4) The credit intermediaries register shall contain the following particulars—

- (a) the information referred to in *section 10 (5)*,
- (b) the name of each undertaking for which the holder of an authorisation under *section 10 (1)* is a credit intermediary, and
- 30 (c) such other particulars as the Minister may from time to time prescribe.

(5) The mortgage intermediaries register shall contain the following particulars—

- 35 (a) the information referred to in *section 100 (6)*,
- (b) the name of each undertaking for which the holder of an authorisation under *section 100 (1)* is a mortgage intermediary, and
- 40 (c) such other particulars as the Minister, after consultation with the Minister for the Environment may from time to time prescribe.

(6) A person shall at all reasonable times be entitled to make enquiries regarding the contents of any of the registers.

(7) The registers shall at all reasonable times be open to inspection by any person on payment of a fee of such amount (if any) as may from time to time be prescribed.

5

(8) (a) A person shall be entitled to obtain a copy of or an extract from (including in the case of information in non-legible form, a copy of or extract from such an entry in permanent legible form) an entry in any of the registers on payment to the Director of a fee of not more than £5, or such other amount (if any) as may from time to time be prescribed.

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(b) The fee referred to in *paragraph (a)* may be waived or reduced by the Director, at his discretion, in respect of such class or classes of persons as he may decide.

(9) Every document purporting to be a copy of or extract from an entry in any of the registers and purporting to be certified by an officer of the Director to be a true copy of or an extract from such entry shall, without proof of the signature of the officer purporting so to certify or that the person was such officer, be received in evidence in any legal proceedings and shall, until the contrary is shown, be deemed to be a true copy of or extract from such entry and be evidence of the terms of such entry.

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(10) In this section "the registers" means the registers established under this section.

PART XIII

25

AMENDMENT OF SALE OF GOODS AND SUPPLY OF SERVICES ACT, 1980

Amendment of Act
of 1980.

127.—The Act of 1980 is hereby amended—

(a) by the insertion after the definition of "business" in section 2 (1) of the following definition:

"'consumer hire agreement' has the meaning assigned to it by *section 2 (1) of the Consumer Credit Act, 1995*;"

30

(b) by the substitution for the definition of "hire-purchase agreement" in section 2 (1) of the following definition:

"'hire-purchase agreement' has the meaning assigned to it by *section 2 (1) of the Consumer Credit Act, 1995*;"
and

35

(c) by the insertion in section 54 after "hire-purchase agreement" of "or a consumer hire agreement".

PART XIV

AMENDMENT OF PAWNBROKERS ACT, 1964

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Amendment of
Pawnbrokers Act,
1964.

128.—(1) Each provision of the Pawnbrokers Act, 1964, mentioned in *column (1)* of *Part I* of the *Sixth Schedule* is hereby amended to the extent specified in *column (2)* of that Part opposite the mention of that provision in *column (1)*.

(2) The Pawnbrokers Act, 1964, is hereby amended—

(a) by the substitution for the Second Schedule thereto of the schedule contained in *Part II* of the *Sixth Schedule*, and

5 (b) by the substitution for the Third Schedule thereto of the schedule contained in *Part III* of the *Sixth Schedule*.

FIRST SCHEDULE

COUNCIL DIRECTIVE 87/102/EEC AND COUNCIL DIRECTIVE 90/88/EEC

PART I

COUNCIL DIRECTIVE

10 of 22 December 1986

for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit

(87/102/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

15 Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

20 Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas wide differences exist in the laws of the Member States in the field of consumer credit;

Whereas these differences of law can lead to distortions of competition between grantors of credit in the common market;

25 Whereas these differences limit the opportunities the consumer has to obtain credit in other Member States; whereas they affect the volume and the nature of the credit sought, and also the purchase of goods and services;

30 Whereas, as a result, these differences have an influence on the free movement of goods and services obtainable by consumers on credit and thus directly affect the functioning of the common market;

35 Whereas, given the increasing volume of credit granted in the Community to consumers, the establishment of a common market in consumer credit would benefit alike consumers, grantors of credit, manufacturers, wholesalers and retailers of goods and providers of services;

⁽¹⁾ OJ No C 80, 27.3.1979, p. 4 and

OJ No C 183, 10.7.1984, p. 4.

⁽²⁾ OJ No C 242, 12.9.1983, p. 10.

⁽³⁾ OJ No C 113, 7.5.1980, p. 22.

Whereas the programmes of the European Economic Community for a consumer protection and information policy⁽⁴⁾ provide, *inter alia*, that the consumer should be protected against unfair credit terms and that a harmonization of the general conditions governing consumer credit should be undertaken as a priority; 5

Whereas differences of law and practice result in unequal consumer protection in the field of consumer credit from one Member State to another;

Whereas there has been much change in recent years in the types of credit available to and used by consumers; whereas new forms of consumer credit have emerged and continue to develop; 10

Whereas the consumer should receive adequate information on the conditions and cost of credit and on his obligations; whereas this information should include, *inter alia*, the annual percentage rate of charge for credit, or, failing that, the total amount that the consumer must pay for credit; whereas, pending a decision on a Community method or methods of calculating the annual percentage rate of charge, Member States should be able to retain existing methods or practices for calculating this rate, or failing that, should establish provisions for indicating the total cost of the credit to the consumer; 15 20

Whereas the terms of credit may be disadvantageous to the consumer; whereas better protection of consumers can be achieved by adopting certain requirements which are to apply to all forms of credit;

Whereas, having regard to the character of certain credit agreements or types of transaction, these agreements or transactions should be partially or entirely excluded from the field of application of this Directive; 25

Whereas it should be possible for Member States, in consultation with the Commission, to exempt from the Directive certain forms of credit of a non-commercial character granted under particular conditions; 30

Whereas the practices existing in some Member States in respect of authentic acts drawn up before a notary or judge are such as to render the application of certain provisions of this Directive unnecessary in the case of such acts; whereas it should therefore be possible for Member States to exempt such acts from those provisions; 35

Whereas credit agreements for very large financial amounts tend to differ from the usual consumer credit agreements; whereas the application of the provisions of this Directive to agreements for very small amounts could create unnecessary administrative burdens both for consumers and grantors of credit; whereas therefore, agreements above or below specified financial limits should be excluded from the Directive; 40

Whereas the provision of information on the cost of credit in advertising and at the business premises of the creditor or credit broker can make it easier for the consumer to compare different offers; 45

Whereas consumer protection is further improved if credit agreements are made in writing and contain certain minimum particulars concerning the contractual terms; 50

⁽⁴⁾ OJ No C 92, 25.4.1975, p. 1 and
OJ No C 133, 3.6.1981, p. 1.

Whereas, in the case of credit granted for the acquisition of goods, Member States should lay down the conditions in which goods may be repossessed, particularly if the consumer has not given his consent; whereas the account between the parties should upon repossession
5 be made up in such manner as to ensure that the repossession does not entail any unjustified enrichment;

Whereas the consumer should be allowed to discharge his obligations before the due date; whereas the consumer should then be entitled to an equitable reduction in the total cost of the credit;

10 Whereas the assignment of the creditor's rights arising under a credit agreement should not be allowed to weaken the position of the consumer;

Whereas those Member States which permit consumers to use bills of exchange, promissory notes or cheques in connection with credit
15 agreements should ensure that the consumer is suitably protected when so using such instruments;

Whereas, as regards goods or services which the consumer has contracted to acquire on credit, the consumer should, at least in the circumstances defined below, have rights *vis-à-vis* the grantor of credit
20 which are in addition to his normal contractual rights against him and against the supplier of the goods or services; whereas the circumstances referred to above are those where the grantor of credit and the supplier of goods or services have a pre-existing agreement whereunder credit is made available exclusively by that grantor of
25 credit to customers of that supplier for the purpose of enabling the consumer to acquire goods or services from the latter;

Whereas the ECU is as defined in Council Regulation (EEC) No 3180/78⁽¹⁾, as last amended by Regulation (EEC) No 2626/84⁽²⁾; whereas Member States should to a limited extent be at liberty
30 to round off the amounts in national currency resulting from the conversion of amounts of this Directive expressed in ECU; whereas the amounts in this Directive should be periodically re-examined in the light of economic and monetary trends in the Community, and, if need be, revised;

35 Whereas suitable measures should be adopted by Member States for authorising persons offering credit or offering to arrange credit agreements or for inspecting or monitoring the activities of persons granting credit or arranging for credit to be granted or for enabling consumers to complain about credit agreements or credit conditions;

40 Whereas credit agreements should not derogate, to the detriment of the consumer, from the provisions adopted in implementation of this Directive or corresponding to its provisions; whereas those provisions should not be circumvented as a result of the way in which agreements are formulated;

45 Whereas, since this Directive provides for a certain degree of approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit and for a certain level of consumer protection, Member States should not be prevented from retaining or adopting more stringent measures to protect the
50 consumer, with due regard for their obligations under the Treaty;

⁽¹⁾ OJ No L 379, 30.12.1978, p.1.

⁽²⁾ OJ No L 247, 16.9.1984, p.1.

Whereas, not later than 1 January 1995, the Commission should present to the Council a report concerning the operation of this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

5

1. This Directive applies to credit agreements.
2. For the purpose of this Directive:
 - (a) 'consumer' means a natural person who, in transactions covered by this Directive, is acting for purposes which can be regarded as outside his trade or profession; 10
 - (b) 'creditor' means a natural or legal person who grants credit in the course of his trade, business or profession, or a group of such persons;
 - (c) 'credit agreement' means an agreement whereby a creditor grants or promises to grant to a consumer a credit in the form of a deferred payment, a loan or other similar financial accommodation. 15

Agreements for the provision on a continuing basis of a service or a utility, where the consumer has the right to pay for them, for the duration of their provision, by means of instalments, are not deemed to be credit agreements for the purpose of this Directive; 20
 - (d) 'total cost of the credit to the consumer' means all the costs of the credit including interest and other charges directly connected with the credit agreement, determined in accordance with the provisions or practices existing in, or to be established by, the Member States. 25
 - (e) 'annual percentage rate of charge' means the total cost of the credit to the consumer expressed as an annual percentage of the amount of the credit granted and calculated according to existing methods of the Member States. 30

Article 2

1. This Directive shall not apply to:
 - (a) credit agreements or agreements promising to grant credit:
 - intended primarily for the purpose of acquiring or retaining property rights in land or in an existing or projected building, 35
 - intended for the purpose of renovating or improving a building as such;
 - (b) hiring agreements except where these provide that the title will pass ultimately to the hirer; 40
 - (c) credit granted or made available without payment of interest or any other charge;

- (d) credit agreements under which no interest is charged provided the consumer agrees to repay the credit in a single payment;
- 5 (e) credit in the form of advances on a current account granted by a credit institution or financial institution other than on credit card accounts.

Nevertheless, the provisions of Article 6 shall apply to such credits;

- (f) credit agreements involving amounts less than 200 ECU or more than 20 000 ECU;
- 10 (g) credit agreements under which the consumer is required to repay the credit:
- either, within a period not exceeding three months,
 - or, by a maximum number of four payments within a period not exceeding 12 months.

- 15 2. A Member State may, in consultation with the Commission, exempt from the application of this Directive certain types of credit which fulfil the following conditions:

- they are granted at rates of charge below those prevailing in the market, and
- 20 — they are not offered to the public generally.

3. The provisions of Article 4 and of Articles 6 to 12 shall not apply to credit agreements or agreements promising to grant credit, secured by mortgage on immovable property, in so far as these are not already excluded from the Directive under paragraph 1 (a) of this Article.

- 25 4. Member States may exempt from the provisions of Articles 6 to 12 credit agreements in the form of an authentic act signed before a notary or judge.

Article 3

- Without prejudice to Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising⁽¹⁾, and to the rules and principles applicable to unfair advertising, any advertisement, or any offer which is displayed at business premises, in which a person offers credit or offers to arrange
- 30 a credit agreement and in which a rate of interest or any figures relating to the cost of the credit are indicated, shall also include a statement of the annual percentage rate of charge, by means of a representative example if no other means is practicable.
- 35

Article 4

- 40 1. Credit agreements shall be made in writing. The consumer shall receive a copy of the written agreement.

2. The written agreement shall include:

- (a) a statement of the annual percentage rate of charge;

⁽¹⁾ OJ No L 250, 19.9.1984, p. 17.

- (b) a statement of the conditions under which the annual percentage rate of charge may be amended.

In cases where it is not possible to state the annual percentage rate of charge, the consumer shall be provided with adequate information in the written agreement. This information shall at least include the information provided for in the second indent of Article 6 (1). 5

3. The written agreement shall further include the other essential terms of the contract.

By way of illustration, the Annex to this Directive contains a list of terms which Member States may require to be included in the written agreement as being essential. 10

Article 5

By way of derogation from Articles 3 and 4 (2), and pending a decision on the introduction of a Community method or methods of calculating the annual percentage rate of charge, those Member States which, at the time of notification of this Directive, do not require the annual percentage rate of charge to be shown or which do not have an established method for its calculation, shall at least require the total cost of the credit to the consumer to be indicated. 15

Article 6

20

1. Notwithstanding the exclusion provided for in Article 2 (1) (e), where there is an agreement between a credit institution or financial institution and a consumer for the granting of credit in the form of an advance on a current account, other than on credit card accounts, the consumer shall be informed at the time or before the agreement is concluded: 25

- of the credit limit, if any,
- of the annual rate of interest and the charges applicable from the time the agreement is concluded and the conditions under which these may be amended, 30
- of the procedure for terminating the agreement.

This information shall be confirmed in writing.

2. Furthermore, during the period of the agreement, the consumer shall be informed of any change in the annual rate of interest or in the relevant charges at the time it occurs. Such information may be given in a statement of account or in any other manner acceptable to Member States. 35

3. In Member States where tacitly accepted overdrafts are permissible, the Member States concerned shall ensure that the consumer is informed of the annual rate of interest and the charges applicable, and of any amendment thereof, where the overdraft extends beyond a period of three months. 40

Article 7

- In the case of credit granted for the acquisition of goods, Member States shall lay down the conditions under which goods may be repossessed, in particular if the consumer has not given his consent.
- 5 They shall further ensure that where the creditor recovers possession of the goods the account between the parties shall be made up so as to ensure that the repossession does not entail any unjustified enrichment.

Article 8

- 10 The consumer shall be entitled to discharge his obligations under a credit agreement before the time fixed by the agreement. In this event, in accordance with the rules laid down by the Member States, the consumer shall be entitled to an equitable reduction in the total cost of the credit.

Article 9

- 15 Where the creditor's rights under a credit agreement are assigned to a third person, the consumer shall be entitled to plead against that third person any defence which was available to him against the original creditor, including set-off where the latter is permitted in the
- 20 Member State concerned.

Article 10

The Member States which, in connection with credit agreements, permit the consumer:

- 25 (a) to make payment by means of bills of exchange including promissory notes;
- (b) to give security by means of bills of exchange including promissory notes and cheques,

shall ensure that the consumer is suitably protected when using these instruments in those ways.

Article 11

- 30 1. Member States shall ensure that the existence of a credit agreement shall not in any way affect the rights of the consumer against the supplier of goods or services purchased by means of such an agreement in cases where the goods or services are not supplied or
- 35 are otherwise not in conformity with the contract for their supply.

2. Where:

- (a) in order to buy goods or obtain services the consumer enters into a credit agreement with a person other than the supplier of them;
- 40 and
- (b) the grantor of the credit and the supplier of the goods or services have a pre-existing agreement whereunder credit

is made available exclusively by that grantor of credit to customers of that supplier for the acquisition of goods or services from that supplier; and

- (c) the consumer referred to in subparagraph (a) obtains his credit pursuant to that pre-existing agreement; and 5
- (d) the goods or services covered by the credit agreement are not supplied, or are supplied only in part, or are not in conformity with the contract for supply of them; and
- (e) the consumer has pursued his remedies against the supplier but has failed to obtain the satisfaction to which he is 10 entitled,

the consumer shall have the right to pursue remedies against the grantor of credit. Member States shall determine to what extent and under what conditions these remedies shall be exercisable.

- 3. Paragraph 2 shall not apply where the individual transaction in 15 question is for an amount less than the equivalent of 200 ECU.

Article 12

1. Member States shall:

- (a) ensure that persons offering credit or offering to arrange credit agreements shall obtain official authorization to do 20 so, either specifically or as suppliers of goods and services; or
- (b) ensure that persons granting credit or arranging for credit to be granted shall be subject to inspection or monitoring of their activities by an institution or official body; or 25
- (c) promote the establishment of appropriate bodies to receive complaints concerning credit agreements or credit conditions and to provide relevant information or advice to consumers regarding them.

- 2. Member States may provide that the authorization referred to 30 in paragraph 1 (a) shall not be required where persons offering to conclude or arrange credit agreements satisfy the definition in Article 1 of the first Council Directive of 12 December 1977 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions⁽¹⁾ 35 and are authorized in accordance with the provisions of that Directive.

Where persons granting credit or arranging for credit to be granted have been authorized both specifically, under the provisions of paragraph 1 (a) and also under the provisions of the aforementioned Directive, but the latter authorization is subsequently withdrawn, the 40 competent authority responsible for issuing the specific authorization to grant credit under paragraph 1 (a) shall be informed and shall decide whether the person concerned may continue to grant credit, or arrange for credit to be granted, or whether the specific authorization granted under paragraph 1 (a) should be withdrawn. 45

⁽¹⁾ OJ No L 322, 17.12.1977, p. 30.

Article 13

1. For the purposes of this Directive, the ECU shall be that defined by Regulation (EEC) No 3180/78, as amended by Regulation (EEC) No 2626/84. The equivalent in national currency shall initially be
5 calculated at the rate obtaining on the date of adoption of this Directive.

Member States may round off the amounts in national currency resulting from the conversion of the amounts in ECU provided such rounding off does not exceed 10 ECU.

- 10 2. Every five years, and for the first time in 1995, the Council, acting on a proposal from the Commission, shall examine and, if need be, revise the amounts in this Directive in the light of economic and monetary trends in the Community.

Article 14

- 15 1. Member States shall ensure that credit agreements shall not derogate, to the detriment of the consumer, from the provisions of national law implementing or corresponding to this Directive.

2. Member States shall further ensure that the provisions which they adopt in implementation of this directive are not circumvented
20 as a result of the way in which agreements are formulated, in particular by the device of distributing the amount of credit over several agreements.

Article 15

- This Directive shall not preclude Member States from retaining or
25 adopting more stringent provisions to protect consumers consistent with their obligations under the Treaty.

Article 16

1. Member States shall bring into force the measures necessary to comply with this Directive not later than 1 January 1990 and shall
30 forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 17

- 35 Not later than 1 January 1995 the Commission shall present a report to the Council concerning the operation of this Directive.

Article 18

This Directive is addressed to the Member States.

Done at Brussels, 22 December, 1986.

- 40 *For the Council*
The President
G. SHAW.

ANNEX

LIST OF TERMS REFERRED TO IN ARTICLE 4 (3)

1. Credit agreements for financing the supply of particular goods or services:

- (i) a description of the goods or services covered by the agreement; 5
- (ii) the cash price and the price payable under the credit agreement;
- (iii) the amount of the deposit, if any, the number and amount of instalments and the dates on which they fall due, or the method of ascertaining any of the same if unknown at the time the agreement is concluded; 10
- (iv) an indication that the consumer will be entitled, as provided in Article 8, to a reduction if he repays early;
- (v) who owns the goods (if ownership does not pass immediately to the consumer) and the terms on which the consumer becomes the owner of them; 15
- (vi) a description of the security required, if any;
- (vii) the cooling-off period, if any;
- (viii) an indication of the insurance(s) required, if any, and, when the choice of insurer is not left to the consumer, an indication of the cost thereof. 20

2. Credit agreements operated by credit cards:

- (i) the amount of the credit limit, if any;
- (ii) the terms of repayment or the means of determining them; 25
- (iii) the cooling-off period, if any.

3. Credit agreements operated by running account which are not otherwise covered by the Directive:

- (i) the amount of the credit limit, if any, or the method of determining it; 30
- (ii) the terms of use and repayment;
- (iii) the cooling-off period, if any.

4. Other credit agreements covered by the Directive:

- (i) the amount of the credit limit, if any;
- (ii) an indication of the security required, if any; 35
- (iii) the terms of repayment;
- (iv) the cooling-off period, if any;

- (v) an indication that the consumer will be entitled, as provided in Article 8, to a reduction if he repays early.

PART II

COUNCIL DIRECTIVE

5 of 22 February 1990

amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit

(90/88/EEC)

10 THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission⁽¹⁾,

In cooperation with the European Parliament⁽²⁾,

- 15 Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas Article 5 of Council Directive 87/102/EEC⁽⁴⁾ provides for the introduction of a Community method or methods of calculating the annual percentage rate of charge for consumer credit;

- 20 Whereas it is desirable, in order to promote the establishment and functioning of the internal market and to ensure that consumers benefit from a high level of protection, that one method of calculating the said annual percentage rate of charge should be used throughout the Community;

- 25 Whereas it is desirable, with a view to introducing such a method and in accordance with the definition of the total cost of credit to the consumer, to draw up a single mathematical formula for calculating the annual percentage rate of charge and for determining credit cost items to be used in the calculation by indicating those costs which
30 must not be taken into account;

Whereas, during a transitional period, Member States which prior to the date of notification of this Directive, apply laws which permit the use of another mathematical formula for calculating the annual percentage rate of charge may continue to apply such laws;

- 35 Whereas, before expiry of the transitional period and in the light of experience, the Council will, on the basis of a proposal from the Commission, take a decision which will make it possible to apply a single Community mathematical formula;

- 40 Whereas it is desirable, whenever necessary, to adopt certain hypotheses for calculating the annual percentage rate of charge;

⁽¹⁾ OJ No C 155, 14.6.1988, p. 10.

⁽²⁾ OJ No C 96, 17.4.1989, p. 87 and

OJ No C 291, 20.11.1989, p. 50.

⁽³⁾ OJ No C 337, 31.12.1988, p. 1.

⁽⁴⁾ OJ No L 42, 12.2.1987, p. 48.

Whereas by virtue of the special nature of loans guaranteed by a mortgage secured on immoveable property it is desirable that such credit should continue to be partially excluded from this Directive;

Whereas the information which must be communicated to the consumer in the written contract should be amplified, 5

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 87/102/EEC is hereby amended as follows:

1. In Article 1 (2), points (d) and (e) shall be replaced by the following: 10

'(d) "total cost of the credit to the consumer" means all the costs, including interest and other charges, which the consumer has to pay for the credit.';

'(e) "annual percentage rate of charge" means the total cost of the credit to the consumer, expressed as an annual percentage of the amount of the credit granted and calculated in accordance with Article 1a'. 15

2. The following Article shall be inserted:

'Article 1a

1. (a) The annual percentage rate of charge, which shall be that equivalent, on an annual basis, to the present value of all commitments (loans, repayments and charges), future or existing, agreed by the creditor and the borrower, shall be calculated in accordance with the mathematical formula set out in Annex II. 20 25

(b) Four examples of the method of calculation are given in Annex III, by way of illustration.

2. For the purpose of calculating the annual percentage rate of charge, the "total cost of the credit to the consumer" as defined in Article 1 (2) (d) shall be determined, with the exception of the following charges: 30

(i) charges payable by the borrower for non-compliance with any of his commitments laid down in the credit agreement;

(ii) charges other than the purchase price which, in purchases of goods or services, the consumer is obliged to pay whether the transactions is paid in cash or by credit; 35

(iii) charges for the transfer of funds and charges for keeping an account intended to receive payments towards the reimbursement of the credit the payment of interest and other charges except where the consumer doesn't have reasonable freedom of choice in the matter and where such charges are abnormally high; this provision shall not, however, apply to charges for collection of such reimbursements or payments, whether made in cash or otherwise; 40 45

- (iv) membership subscriptions to associations or groups and arising from agreements separate from the credit agreement, even though such subscriptions have an effect on the credit terms;
- 5 (v) charges for insurance or guarantees; included are, however, those designed to ensure payment to the creditor, in the event of the death, invalidity, illness or unemployment of the consumer, of a sum equal to or less than the total amount of the credit together with relevant interest and other charges which have to be imposed by the creditor as a condition for credit being granted.
- 10
3. (a) Where credit transactions referred to in this Directive are subject to the provisions of national laws in force on 1 March 1990 which impose maximum limits on the annual percentage rate of charge for such transactions and, where such provisions permit standard costs other than those described in paragraph 2 (i) to (v) not to be included in those maximum limits, Member States may, solely in respect of such transactions, not include the aforementioned costs when calculating the annual percentage rate of charge, as stipulated in this Directive, provided that there is a requirement in the cases mentioned in Article 3 and in the credit agreement, that the consumer be informed of the amount and inclusion thereof in the payments to be made.
- 15
- 20
- 25
- (b) Member States may no longer apply point (a) from the date of entry into force of the single mathematical formula for calculating the annual percentage rate of charge in the Community, pursuant to the provisions of paragraph 5 (c).
- 30
4. (a) The annual percentage rate of charge shall be calculated at the time the credit contract is concluded, without prejudice to the provisions of Article 3 concerning advertisements and special offers.
- 35
- (b) The calculation shall be made on the assumption that the credit contract is valid for the period agreed and that the creditor and the consumer fulfil their obligations under the terms and by the dates agreed.
- 40
5. (a) As a transitional measure, notwithstanding the provisions of paragraph 1 (a), Member States which, prior to 1 March 1990, applied legal provisions whereby a mathematical formula different from that given in Annex II could be used for calculating the annual percentage rate of charge, may continue applying that formula within their territory for a period of three years starting from 1 January 1993.
- 45
- Member States shall take the appropriate measures to ensure that only one mathematical formula for calculating the annual percentage rate of charge is used within their territory.
- 50
- (b) Six months before the expiry of the time limit laid down in point (a) the Commission shall submit to the Council a report, accompanied by a proposal, which will make it possible in the light of experience, to apply a single Community mathematical formula for calculating the annual percentage rate of charge.
- 55

(c) The Council shall, acting by a qualified majority on the basis of the proposal from the Commission, take a decision before 1 January 1996.

6. In the case of credit contracts containing clauses allowing variations in the rate of interest and the amount or level of other charges contained in the annual percentage rate of charge but unquantifiable at the time when it is calculated, the annual percentage rate of charge shall be calculated on the assumption that interest and other charges remain fixed and will apply until the end of the credit contract. 5

7. Where necessary, the following assumptions may be made in calculating the annual percentage rate of charge: 10

—if the contract does not specify a credit limit, the amount of credit granted shall be equal to the amount fixed by the relevant Member State, without exceeding a figure equivalent to ECU 2 000; 15

—if there is no fixed timetable for repayment, and one cannot be deduced from the terms of the agreement and the means for repaying the credit granted, the duration of the credit shall be deemed to be one year;

—unless otherwise specified, where the contract provides for more than one repayment date, the credit will be made available and the repayments made at the earliest time provided for in the agreement'. 20

3. Article 2 (3) shall be replaced by the following:

'3. The provisions of Article 1a and of Articles 4 to 12 shall not apply to credit agreements or agreements promising to grant credit, secured by mortgage on immovable property, insofar as these are not already excluded from the Directive under paragraph 1 (a).' 25

4. The following subparagraph shall be added to Article 4 (2): 30

'(c) a statement of the amount, number and frequency or dates of the payments which the consumer must make to repay the credit, as well as of the payments for interest and other charges; the total amount of these payments should also be indicated where possible; 35

(d) a statement of the cost items referred to in Article 1a (2) with the exception of expenditure related to the breach of contractual obligations which were not included in the calculation of the annual percentage rate of charge but which have to be paid by the consumer in given circumstances, together with a statement indentifying such circumstances. Where the exact amount of those items is known, that sum is to be indicated; if that is not the case, either a method of calculation or as accurate an estimate as possible is to be provided where possible'. 40 45

5. Article 5 shall be deleted.

6. The Annex shall become Annex I and the following point shall be added to paragraph 1:

'(ix) the obligation on the consumer to save a certain amount of money which must be placed in a special account'. 50

7. Annexes II and III attached hereto shall be added.

Article 2

1. Member States shall take the measures necessary to comply with this Directive not later than 31 December 1992 and shall forthwith inform the Commission thereof.

5 2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 3

This Directive is addressed to the Member States.

10 Done at Brussels, 22 February 1990.

For the Council
The President
D.J. O'Malley

ANNEX

15 *'Annex II'*

THE BASIC EQUATION EXPRESSING THE EQUIVALENCE
OF LOANS ON THE ONE HAND, AND REPAYMENTS AND
CHARGES ON THE OTHER:

$$20 \quad \frac{\sum_{K=1}^{K=m} \frac{\Lambda_K}{(1+i)^K}}{\sum_{K=1}^{K=m} \frac{\Lambda_K}{(1+i)^K}} = \frac{\sum_{K'=1}^{K'=m'} \frac{\Lambda_{K'}}{(1+i)^{K'}}}{\sum_{K'=1}^{K'=m'} \frac{\Lambda_{K'}}{(1+i)^{K'}}}$$

Meaning of letters and symbols:

K is the number of a loan

K' is the number of a repayment or a payment of charges

 A_K is the amount of loan number K

25 $\Delta K'$ is the amount of repayment number K'

Σ represents a sum

 m is the number of the last loan

m' is the number of the last repayment or payment of charges

³⁰ 'K is the interval, expressed in years and fractions of a year, between the date of loan No. 1 and those of subsequent loans Nos. 2 to m

'K' is the interval expressed in years and fractions of a year between the date of loan No. 1 and those of repayments or payments of charges Nos. 1 to m'

- i is the percentage rate that can be calculated (either by algebra, by successive approximations, or by a computer programme) where the other terms in the equation are known from the contract or otherwise.

Remarks

5

- (a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.
- (b) The starting date shall be that of the first loan.
- (c) Intervals between dates used in the calculations shall be expressed in years or in fractions of a year.

10

ANNEX III

EXAMPLES OF CALCULATIONS

First example

Sum loaned $S = \text{ECU } 1\,000$.

15

It is repaid in a single payment of ECU 1 200 made 18 months, i.e. 1,5 years, after the date of the loan.

$$\begin{aligned} \text{The equation becomes } 1\,000 &= \frac{1\,200}{(1+i)^{1.5}} \\ &\text{or } (1+i)^{1.5} = 1,2 \\ &\quad 1+i = 1,129243 \dots \\ &\quad i = 0,129243 \dots \end{aligned}$$

20

This amount will be rounded down to 12,9% or 12,92% depending on whether the State or habitual practice allows the percentage to be rounded off to the first or second decimal.

25

Second example

The sum agreed is $S = \text{ECU } 1\,000$ but the creditor retains ECU 50 for enquiry and administrative expenses, so that the loan is in fact ECU 950; the repayment of ECU 1 200, as in the first example, is made 18 months after the date of the loan.

30

$$\begin{aligned} \text{The equation becomes } 950 &= \frac{1\,200}{(1+i)^{1.5}} \\ &\text{or } (1+i)^{1.5} = \frac{1\,200}{950} = 1,263157 \dots \\ &\quad 1+i = 1,16851 \dots \\ &\quad i = 0,16851 \dots \text{ rounded off to } 16,9\% \text{ or } 16,85\%. \end{aligned}$$

35

Third example

The sum lent is ECU 1 000, repayable in two amounts each of ECU 600, paid after one and two years respectively.

40

The equation becomes $1\,000 = \frac{600}{1+i} + \frac{600}{(1+i)^2}$;

- 5 it is solved by algebra and produces $i = 0,1306623$, rounded off to 13,1% or 13,07%.

Fourth example

The sum lent is ECU 1 000 and the amounts to be paid by the borrower are:

| | | |
|----|---------------------------------|-----------|
| | After three months (0,25 years) | ECU 272 |
| 10 | After six months (0,50 years) | ECU 272 |
| | After twelve months (1 year) | ECU 544 |
| | Total | ECU 1 088 |

15 The equation becomes:

$$1\,000 = \frac{272}{(1+i)^{0,25}} + \frac{272}{(1+i)^{0,50}} + \frac{544}{1+i}$$

This equation allows i to be calculated by successive approximations, which can be programmed on a pocket computer.

- 20 The result is:
 $i = 0,1321$ rounded off 13,2 or 13,21%.

SECOND SCHEDULE

Section 22.

ENACTMENTS REPEALED

| 25 | Session and Chapter or Year and Number (1) | Short Title (2) | Extent of Repeal (3) |
|----|---|---|--|
| | 63 & 64 Vict. c. 51 | Moneylenders Act, 1900 | The whole Act |
| | 1933, No. 36 | Moneylenders Act, 1933 | The whole Act |
| 30 | 1946, No. 16 | Hire-Purchase Act, 1946 | The whole Act |
| | 1960, No. 15 | Hire-Purchase (Amendment) Act, 1960 | The whole Act |
| | 1980, No. 16 | Sale of Goods and Supply of Services Act, 1980 | Part III (sections 25 to 38) and section 50 |
| 35 | 1989, No. 16 | Central Bank Act, 1989 | Sections 28 and 136 |

THIRD SCHEDULE

FORMS OF NOTICE TO BE INCLUDED IN AGREEMENTS

PART I

Form of Notice to be included on front page of a credit agreement.

| IMPORTANT INFORMATION | | 5 |
|---|---------|----|
| 1. Amount of credit advanced | : _____ | |
| 2. Period of Agreement | : _____ | |
| 3. Number of Repayment Instalments | : _____ | |
| 4. Amount of Each Instalment | : _____ | |
| 5. Total Amount Repayable | : _____ | 10 |
| 6. Cost of this credit (5 minus 1) | : _____ | |
| 7. Annual Percentage Rate of Charge | : _____ | |
| N.B. YOU MAY WITHDRAW FROM THIS AGREEMENT AT ANY TIME WITHIN 10 DAYS OF RECEIVING THIS AGREEMENT OR A COPY OF IT. | | 15 |

PART II

Form of Notice to be included on front page of a housing loan.

| IMPORTANT INFORMATION | | |
|---|-----------|----|
| 1. Amount of credit advanced | : _____ | |
| 2. Period of Agreement | : _____ | 20 |
| 3. Number of Repayment Instalments | : _____ | |
| 4. Amount of Each Instalment* | : _____ | |
| 5. Total Amount Repayable* | : £ _____ | |
| 6. Cost of this credit* (5 minus 1) | : _____ | |
| 7. APR** | : _____% | 25 |
| 8. Amount of endowment premium* (if applicable) | : £ _____ | |
| 9. Amount of mortgage protection premium* (if applicable) | : £ _____ | |
| 10. Effect on amount of instalment of 1% change in first year in interest rate*** | : _____ | 30 |
| *as calculated at the time of making agreement. | | |
| **annual percentage rate of charge. | | |
| ***this is the amount by which the instalment repayment will change in the event of a 1% increase or decrease in the interest rate on which the above calculations are based. | | 35 |

FOURTH SCHEDULE

Section 11.

APR—METHOD OF CALCULATION

THE BASIC EQUATION EXPRESSING THE EQUIVALENCE OF LOANS ON THE ONE HAND, AND REPAYMENTS AND CHARGES ON THE OTHER:

5

$$\sum_{K=1}^{K=m} \frac{{}^AK}{(1+i){{}^tK}} = \sum_{K'=1}^{K'=m'} \frac{{}^AK'}{(1+i){{}^tK'}}$$

Meaning of letters and symbols:

- K is the number of a loan
- 10 K' is the number of a repayment or a payment of charges
- ^AK is the amount of loan number K
- ^AK' is the amount of repayment number K'
- \sum represents a sum
- m is the number of the last loan
- m' is the number of the last repayment or payment of charges
- 15 ^tK is the interval, expressed in years and fractions of a year, between the date of loan No. 1 and those of subsequent loans Nos. 2 to m
- ^tK' is the interval expressed in years and fractions of a year between the date of loan No. 1 and those of repayments or payments of charges Nos. 1 to m'
- 20 i is the percentage rate that can be calculated (either by algebra, by successive approximations, or by a computer programme) where the other terms in the equation are known from the contract or otherwise.

25 Remarks

- (a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.
- (b) The starting date shall be that of the first loan.
- 30 (c) Intervals between dates used in the calculations shall be expressed in years or in fractions of a year.

FIFTH SCHEDULE

RECORD OF REPAYMENTS

Form to be included in a repayment book in respect of a moneylending agreement.

SCHEDULE

5

£

Total Amount Repayable _____

| Date | Amount of Repayment | Balance Now Due | Signature |
|------|---------------------|-----------------|-----------|
| | | | |
| | | | |
| | | | |
| | | | |

SIXTH SCHEDULE

AMENDMENT OF PAWNBROKERS ACT, 1964

10

PART I

| Provision of Pawnbrokers Act, 1964 amended (1) | Extent of Amendment (2) | |
|---|---|----|
| Section 1 | The substitution of "£500" for "fifty pounds" in paragraphs (a) and (b) of the definition of "pawnbroker". | 15 |
| Section 3 | The substitution of "£500" for "fifty pounds". | |
| Section 14 (2) | The substitution of the following subsection: "(2) A pawn ticket shall contain the particulars set out in the Third Schedule and it shall be signed by both the pawnbroker and the pawner." | 20 |
| Section 16 (1) (b) | The substitution of the following paragraph: "(b) use, as occasion requires, the document set out in the Third Schedule in the form therein prescribed." | 25 |
| Section 20 | The deletion of subsections (1) and (2). | |
| Section 20 (3) | The substitution of "Part III" for "Part IV". | |
| Section 20 (4) | The substitution of the following subsection: "(4) Where a pawnbroker fails or refuses to give a receipt in accordance with subsection (3) of this section, he shall be guilty of an offence." | 30 |
| Section 21 (4) | The substitution of the following subsection: "(4) A pledge shall further continue redeemable until it is disposed of as provided in this Act although the redemption period has expired." | 35 |

| Provision of Pawnbrokers Act, 1964 amended (1) | Extent of Amendment (2) |
|---|--|
| 5 Section 27 | The substitution of the following section: "27. If, with respect to a pledge a pawnbroker— (a) does not <i>bona fide</i> in accordance with the Act sell the pledge, or 10 (b) enters in his sale book a pledge as sold for a lesser sum than that for which it is sold, he shall be guilty of an offence." |
| Section 28 (1) | The substitution of "a fee of 25 pence" for "the fee prescribed in Part V of the Fifth Schedule". |
| Section 29 | The substitution of the following section: 15 "29. A pledge may, if not redeemed within the redemption period, be disposed of by the pawnbroker by sale by public auction held in accordance with this Act, but not otherwise." |
| Section 32 | The substitution of the following subsection: 20 "(1) The person who holds a pawn ticket in respect of a pledge may, at any time before the expiration of 12 months from the date on which the goods are sold, request the pawnbroker with whom the goods were pawned to produce the sale book and catalogue containing the entries of the sale and may, on payment of a fee of 25 pence, inspect such entries." |
| Section 33 (1) | The substitution of the following subsection: 25 "(1) Where the amount obtained on the sale of a pledge exceeds the amount of the loan given on the pledge with the addition of the interest and lawful charges thereon and the fees paid by the pawnbroker in respect of the sale, the holder of the pawn ticket in respect of the pledge, may, subject to the provisions of this Act, demand and obtain the amount of the issues from the pawnbroker at any time before the expiration of 12 months from the date of the sale." |
| Section 45 | The substitution of "£100" for "ten pounds". |
| Section 47 (1) | The substitution of "£1,000" for "one hundred pounds". |
| Section 47 (2) | The substitution of "£1,000" for "one hundred pounds". |
| 40 Section 47 (3) (a) | The substitution of "£1,000" for "fifty pounds" and of "£100" for "two pounds". The insertion after section 47 of the following section: 45 "48. The annual percentage rate of charge ('APR') shall be calculated in accordance with the <i>Fourth Schedule</i> to the <i>Consumer Credit Act, 1995</i> , or such other method of calculation as the Minister for Enterprise and Employment may specify in regulations made under that Act." |
| Sixth Schedule, Part I | The substitution of "£1,000" for "fifty pounds". |
| Sixth Schedule, Part II | The substitution of "£1,000" for "£50". |

50

PART II

"SECOND SCHEDULE

NOTICE TO BE EXHIBITED IN EVERY PAWNBROKERS PREMISES
PAWNBROKERS ACT, 1964*Interest on Loans*

- 55 1. Interest shall be charged on any loan made under the Pawnbrokers Act, 1964, at the rate of pence in respect of every £1.00 lent for each month during which the pledge remains in pawn.

These charges are equivalent to an annual percentage rate of per cent.

Notes:

(1) If the term of the loan is less than one month it will be charged for as one month. 5

(2) After the first month, a part of a month exceeding 7 days will be charged for as a month and a part of a month not exceeding 7 days will not be charged for.

(3) Where the loan is less than £1.00, it will be charged for as £1.00. Where it exceeds £1.00 or any even multiple of £1.00 any odd fraction of £1.00 will not be charged for. 10

2. For valuation fee on each £5 or part of £5 value put by pawnbroker on the pledge pence.

Charge on Inspection of Sale Book and Auctioneer's Catalogue

3. For the inspection of the entry of a sale pence. 15

Charge on Form of Declaration

4. For a form of declaration pence.

Redemption and Disposal of Pledges

5. (1) Pledges, other than those made up wholly or partly of gold, silver or other precious metal or of any precious or semi-precious stone must be redeemed within 6 months and 7 days from the date of pawning but, if the interest is paid at any time within the above period, the redemption period will be extended for a further period of 6 months and 7 days from the date up to which the interest is paid. Pledges made up wholly or partly of gold, silver or other precious metal or of any precious or semi-precious stone must be redeemed within one year and 7 days from the date of pledging. 20 25

(2) At the end of the redemption period pledges may be sold by the pawnbroker by sale by public auction in the manner provided by law and not otherwise. A pledge may, however, be redeemed at any time before the day of sale. 30

Surplus on Sale of Pledge

6. Within 12 months after the sale by public auction of a pledge, the pawner may inspect the account of the sale in the pawnbroker's book and in the auctioneer's catalogue, on payment of a fee of 25 pence and receive any surplus produced by the sale. But a deficit on the sale of one pledge may, in certain circumstances, be set off against a surplus on another. 35

Damage to Pledge

7. (1) If a pledge is destroyed or damaged by fire, the pawnbroker, if the pawn-ticket is tendered to him before the expiry of the period 40

within which the pledge would have been redeemable, will be bound to pay an amount equal to one-half of the amount of the loan.

- (2) If a pledge, through default, neglect or wilful misbehaviour on the part of the pawnbroker, is lost, destroyed or is of less value at the time of redemption than it was at the time of pawning, the owner may apply to the District Court for compensation and the Court may, if it thinks fit, award compensation in respect of the damage, and the amount so awarded shall be deducted from the sum payable to the pawnbroker, or as the case may require, shall be paid by the pawnbroker in such manner as the Court may direct.

Pawnbrokers Act, 1964
Loss of Pawn Ticket

8. If a pawn ticket is lost, mislaid or stolen, the pawner should at once apply to the pawnbroker for a form of declaration to be made before a Notary Public, a Commissioner for Oaths or a Peace Commissioner; otherwise the pawnbroker will be bound to deliver the pledge to any person who produces the pawn ticket to him and claims to redeem the pledge.

PART III

THIRD SCHEDULE

PAWN TICKETS, ETC.

PART I

Pawn Ticket

- (The appropriate particulars are required to be entered by the pawnbroker in the respective blank spaces before signature.)

Pledge No.

- Pawned with (name of pawnbroker)
of (address of pawnbroker)
this day of, [month], [year],
by (name of pawner, as entered in the Pledge Book)
of (address of pawner, as entered in the Pledge Book)

(Description of pledge)

(Amount of the loan)

- Terms of the special contract* *To be printed on the front of the ticket or partly on the front and partly on the back.

1. The pawnbroker charges—

(a) For this ticket.

- (b) Interest at the rate per month of . . (APR). (If the term of the loan is less than one month, it will be charged for as one month. After the first calendar month, a part of the month exceeding 7 days will be charged for as a month and a part of a month not exceeding 7 days will not be charged for). 5
- (c) The charge for storage of this pledge will be per month or any part of a month.
2. This pledge is pawned for the period of . . . months.
3. After the expiration of that time the pledge may be sold by auction by the pawnbroker. But it may be redeemed by the pawner at any time before the day of sale. 10
4. Within 12 months after sale the pawner may, on payment of a fee of 25 pence, inspect the account of the sale in the pawnbroker's book and in the auctioneer's catalogue and receive any surplus produced by the sale. If, however, within 6 months before or after that sale, the sale of another pledge or pledges of the same person has resulted in a deficit the pawnbroker is entitled to set off the deficit against the surplus. 15
5. If a pledge, through default, neglect or wilful misbehaviour on the part of the pawnbroker, is lost, destroyed or is of less value at the time of redemption than it was at the time of pawning, the pawner may apply to the District Court for an order for compensation. The amount of compensation, if any, awarded shall be deducted from the sum payable to the pawnbroker or, as the case may require, shall be paid by the pawnbroker in such manner as the Court may direct. 20 25
6. If the pledge is destroyed or damaged by fire the pawnbroker, if the pawn ticket is tendered to him before the expiry of the period within which the pledge would have been redeemable, will be bound to pay an amount equal to one-half of the amount of the loan, unless otherwise agreed upon by the pawner and pawnbroker. 30
7. If this ticket is lost or mislaid the pawner should at once apply to the pawnbroker for a form of declaration; otherwise the pawnbroker will be bound to deliver the pledge to any person who produces this ticket to him and claims to redeem the pledge. 35

SignedPawnbroker

SignedPawner

PART II

Receipt

Date

Received on redemption of Pledge No.

5

Amount of Loan
Interest
Other Charges
(to be specified)

10

Total:

Pawnbroker".

AN BILLE UM CHREIDMHEAS DO
THOMHALTÓIRÍ, 1994

BILLE

(mar a leasaíodh sa Roghchoiste um Fhiontraíocht
agus Straitéis Eacnamaíochta)

dá ngairtear

Acht d'athbhreithniú agus do leathnú an dlí a bhaineann le creidmheas do thomhaltóirí, le fruileannach, le fruiliú agus le hiasachtú airgid agus dá chumasú éifeacht a thabhairt do Threoir Uimh. 87/102/CEE an 22 Nollaig, 1986, ón gComhairle, arna leasú le Treoir Uimh. 90/88/CEE an 22 Feabhra, 1990, ón gComhairle, agus chun na gcríoch sin d'aisghairm na nAchtanna Fruilcheannaigh, 1946 go 1980, agus Achtanna na nIasachtaithe Airgid, 1900 go 1989, agus d'aisghairm agus do leasú forálacha áirithe den Acht um Dhíol Earraí agus Soláthar Seirbhísí, 1980, do dhéanamh socrú chun an Stiúrthóir Gnóthaí Thomhaltóirí do dhéanamh faireacháin ar gach muirear custaiméara ag forais chreidmheasa agus chun na críche sin d'aisghairm alt 28 d'Acht an Bhainc Ceannais, 1989, do dhéanamh socrú chun an tAcht Geallbhróicéirí, 1964, a leasú agus a leathnú agus do dhéanamh socrú i dtaobh nithe a bhaineann leis sin.

An tAire Fiontar agus Fostaíochta a thíolaic

Ordaíodh ag an Roghchoiste a chlóbhualadh,
28 Márta, 1995

CONSUMER CREDIT BILL, 1994

BILL

(as amended in the Select Committee on
Enterprise and Economic Strategy)

entitled

An Act to revise and extend the law relating to consumer credit, hire-purchase, hiring and moneylending and to enable effect to be given to Council Directive No. 87/102/EEC of 22 December, 1986, as amended by Council Directive No. 90/88/EEC of 22 February, 1990, and for those purposes to repeal the Hire-Purchase Acts, 1946 to 1980, and the Moneylenders Acts, 1900 to 1989, and to repeal and amend certain provisions of the Sale of Goods and Supply of Services Act, 1980, to provide that the Director of Consumer Affairs shall monitor all customer charges by credit institutions and for that purpose to repeal section 28 of the Central Bank Act, 1989, to provide for the amendment and extension of the Pawnbrokers Act, 1964, and to provide for connected matters.

Presented by the Minister for Enterprise and
Employment

Ordered by the Select Committee to be printed,
28th March, 1995

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

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