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Bill Digest

Consumer Credit (Amendment) Bill 2022

Bill No. 27 of 2022

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Abstract

The *Consumer Credit (Amendment) Bill 2022* aims to restrict the total cost of credit on moneylending loans. It proposes to do this by introducing a cap on the interest rate a moneylender can charge on a loan, allowing for that rate to be adjusted in future by Ministerial Order, and prohibiting moneylenders from charging for home collection services. The Bill also contains a range of measures to modernise and streamline the sector.

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Glossary and abbreviations

Table 1: Glossary & Abbreviations

Glossary & Abbreviations	
APR	Annual Percentage Rate - calculation of the overall cost of a loan expressed as an annual rate that is used to compare loans of the same amount and term.
Cash loan firms	Firms that provide cash loans where repayments can be paid remotely or collected at the consumer's home.
Catalogue firms	Goods are sold on credit, usually on the basis of the consumer having a running account.
CBI	Central Bank of Ireland ('the Bank')
CUAC	Credit Union Advisory Committee
CUDA	Credit Union Development Association
CUMA	Credit Union Managers Association
ILCU	Irish League of Credit Unions
MABS	Money Advice and Budgeting Service
Payday loan	Usually a short-term, high cost loan, that is typically due on your next payday.
PMC scheme	Personal Micro-Credit scheme - Loans under the PMC scheme are provided by participating credit unions and are branded as 'It Makes Sense' (IMS) loans. Loans range between €100 and €2,000 with a maximum APR of 12.68%.
SFF	Social Finance Foundation
UCC	University College Cork

Summary

- The *Consumer Credit (Amendment) Bill 2022* was published on 7 March 2022;
- The Bill comprises of 15 sections and proposes to amend parts of the *Consumer Credit Act 1995*;
- The primary purpose of the legislation is to restrict the total cost of credit on moneylending loans[1]. It proposes to do this by introducing a cap on the interest rate a moneylender can charge on a loan, allowing for that rate to be adjusted in future by Ministerial Order, and prohibiting moneylenders from charging for home collection services;
- The Bill proposes two rate caps, one for cash loans, and one for running accounts.[2] For cash loans, an interest rate of 1% per week to a maximum of 48% per annum on the amount borrowed is proposed and for loans provided on a running account basis, nominal interest of 2.83% per month on the outstanding balance is to be allowed;
- Minister for Finance, Paschal Donohoe T.D. wrote to the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach on 20 July 2021, requesting it to give consideration to the General Scheme and to advise whether it requires pre-legislative scrutiny (PLS);
- The Committee considered the request and decided that it wished to undertake PLS of the General Scheme and sought written submissions from a range of different stakeholders. The L&RS prepared a briefing paper synthesising these stakeholder submissions and highlighting some key issues. The Committee, having considered the briefing paper, decided that it was satisfied it had undertaken sufficient scrutiny of the Bill and wrote to the Minister on that basis;
- This Government Bill has similarities to the Private Members' Bill (PMB) introduced by Sinn Féin Deputy Pearse Doherty, the *Consumer Credit (Amendment) Bill 2018*, which also proposes to place a cap on moneylenders' interest rates. This PMB is currently at Committee Stage having undergone detailed scrutiny by the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach. Written submissions from stakeholders on the Bill were received and three Committee scrutiny hearings were held on 6 May, 12 May and 17 June 2021;
- The Department of Finance undertook a public consultation between May and July 2019 seeking views on capping the cost of licensed moneylenders and other regulatory matters in relation to moneylending. In particular, the consultation sought views on whether the introduction of a cap would have a negative effect on the supply of credit and might lead to

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[1] The Bill deals with licenced moneylenders only rather than illegal lenders or 'loan sharks',

[2] A 'running account' is similar in operation to a credit card account in that borrowers have a credit limit and can charge goods up to that limit.

an increase in unlicensed moneylending or to financial exclusion for consumers of these regulated firms;

- The responses to this consultation helped inform the Moneylending Proposals Report which was published by the Department of Finance in July 2021. A number of recommendations are made in the report, which includes the introduction of an interest rate cap, abolishing home collection charges, introducing the option to avail of an online repayment book, increasing licensing terms, streamlining the licensing regime and changing the term 'licensed moneylender' to 'high cost credit provider';
- The Central Bank of Ireland register currently lists 32 licensed moneylenders in Ireland and estimates that there were 313,500 customers with moneylending loan balances outstanding in 2018. According to Central Bank data, the most frequent loan amounts range from €200 to €500, with the average loan being €622 and the most frequent loan term being for 9 months;
- The Regulatory Impact Assessment accompanying the Bill stated that it is not expected that the proposed legislative amendments will give rise to any significant additional costs, but there may be some administrative costs for moneylenders who will have to adapt to a new regime;
- The L&RS has also published a Bill Briefing page on this Bill [internal access only].

Introduction

The *Consumer Credit (Amendment) Bill 2022* was published on 7 March 2022. In addition to restricting the total cost of credit on moneylending loans, the Bill also contains a range of measures to modernise and streamline the sector, including:

- Allowing repayment books to be maintained online;
- Allowing licenses to be issued for periods of five years at a time rather than one;
- Removing the requirement for moneylenders to register for a particular District Court area, and register State-wide instead; and
- Changing the term 'licensed moneylender' to 'high cost credit provider' to differentiate between licensed and unlicensed moneylenders.

Announcing the Government publication of the Bill, the Minister for Finance, Paschal Donohoe, T.D., stated that:[3]

> "This Bill will reduce the cost of credit for the customers of moneylenders. The legislation also introduces a range of measures to reform and modernise the moneylending sector. These measures will provide better protection for consumers and will streamline the licensing process for providers."

The Explanatory Memorandum for the Bill notes that the primary purpose of the Bill is:[4]

> "to introduce a cap on the interest rate which a moneylender can charge on a moneylending loan. This is achieved by providing the Minister for Finance with the power to make regulations setting the maximum interest rate at which a moneylending loan can be provided. The power is subject to certain principles and policies which are set down in the legislation, as well as ceilings, in respect of different types of moneylending loans, above which the Minister cannot set the cap. The Minister is also required to consult the Central Bank of Ireland before making such regulations.."

Cost implications

The Regulatory Impact Assessment states that it is not expected that the proposed legislative amendments will give rise to any significant additional costs, but there may be some administrative costs for moneylenders who will have to adapt to a new regime. The RIA further notes that:

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[3] See Department of Finance, Press Release, "Consumer Credit (Amendment) Bill 2022 will restrict rate charged by moneylenders, modernise the sector and better protect those in need of short-term money lending - Donohoe" (7 March 2022). Available at:
https://www.gov.ie/en/press-release/01d08-consumer-credit-amendment-bill-2022-will-restrict-rate-charged-by-moneylenders-modernise-the-sector-and-better-protect-those-in-need-of-short-term-money-lending-donohoe/

[4] Explanatory Memorandum for the Consumer Credit (Amendment) Bill 2022. Available at: b2722d-memo.pdf (oireachtas.ie).

> "if supply were reduced significantly, then customers would have to either do without credit or seek it elsewhere including from family and friends. A small proportion may turn to illegal moneylenders. This is why any changes in this area must be gradual and not lead to unintended consequences for those customers who depend on a legitimate, functioning moneylending market in their day-to-day lives."

Pre-legislative scrutiny (PLS)

The General Scheme of the Consumer Credit (Amendment) Bill 2021 was published by the Department of Finance on 19 July 2021 and the Minister for Finance, Paschal Donohoe T.D. wrote to the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach on 20 July 2021 requesting it to give consideration to the General Scheme and to advise whether it requires pre-legislative scrutiny (PLS).

The Committee considered the request and decided that it wished to undertake PLS of the General Scheme and sought written submissions from a range of different stakeholders. The L&RS prepared a briefing paper synthesising these stakeholder submissions and highlighting some key issues. No hearings were held on the General Scheme.

The Committee, having considered the briefing paper, decided that it was satisfied it had undertaken sufficient scrutiny of the Bill and wrote to the Minister on that basis.

Table of provisions

A summary of the Bills' provisions is included in Table 2 below.

Table 2: Summary of provisions contained in the Bill

Section	Title	Effect
1.	Definition	In this Act, "Act of 1995" means the *Consumer Credit Act 1995.*
2.	Amendment of section 2 of Act of 1995 (Interpretation)	Section 2 amends the Interpretation section of the Act of 1995. The terms "moneylender"; "moneylending"; "moneylender's licence" and "moneylending agreement" have been substituted by the terms "high cost credit provider"; "high cost credit"; "high cost credit provider's licence" and "high cost credit agreement" respectively.
3.	Amendment of section 12 of Act of 1995 (Offences)	Section 3 adds two new offences. These apply where a moneylender grants credit which breaches one of the new sections below: • Section 94A providing for a loan over 52 weeks • Section 98A providing a loan with an interest rate over the set caps.
4.	Amendment of section 92 of Act of 1995 (Application and interpretation of Part VIII provisions relating to moneylending)	Section 4 of the Bill adds a definition for "nominal rate" as this is the type of interest rate cap being placed on running accounts. A running account operates similarly to a tied credit card and is a product sometimes offered by catalogue companies. "Nominal rate" means the advertised or stated interest rate, without taking into account any fees, but including any compounding of interest applicable.
5.	Amendment of section 93 of Act of 1995 (Moneylender's licence)	Section 5 of the Bill provides for the following: • removes the requirement for providers to register in each District Court area in which they wish to operate • extends the licence period from 12 months to five years • updates the licensing process so that where a provider's proposed interest rates are above the rates set by the Minister at that time, the Central Bank can refuse to grant a licence.
6.	Term of loan under high cost credit agreement	Section 6 of the Bill amends the Act of 1995 by the insertion of a new section 94A which requires that

		cash loans not be granted for a period greater than 52 weeks.
7.	Amendment of section 95 of Act of 1995 (“Moneylending agreement” to be stated in agreement)	Section 7 of the Bill amends section 95 of the Act of 1995 to require providers to include the words "high cost credit agreement" prominently in the agreement.
8.	Maximum interest rates	Section 8 of the Bill amends the Act of 1995 to insert a new section 98A to provide for the setting of a maximum interest rate that a high cost credit provider can charge for both cash loans and running accounts. Under section 98A, the Minister for Finance may, following consultation with the Central Bank, make regulations providing for the maximum rate of interest at which a moneylender can provide credit. The Minister must have regard to the factors provided in subsection (5) when making such regulations. In making the regulations, the Minister must also adhere to the following parameters: • In relation to cash loans under a high cost credit agreement: - the maximum rate of simple interest chargeable per week can only be set at a rate less than or equal to one per cent, and - the maximum rate of simple interest chargeable per year can only be set at a rate less than or equal to 48 per cent, • In respect of a running account under a high cost credit agreement, the maximum rate of monthly nominal interest can only be set at a rate less than or equate to 2.83 per cent.
9.	Amendment of section 100 of Act of 1995 (Repayment book)	Section 9 of the Bill amends the requirement to maintain a repayment book so as to also include the option of maintaining an online version of a repayment book if the borrower requests same. The section also inserts a definition of "durable medium".
10.	Amendment of section 102 of Act of 1995 (Prohibition on charges for expenses	Section 10 of the Bill amends section 102 of the Act of 1995 to include collection charges on the list of charges which are not allowed.

	on loans by moneylenders).	
11.	Repeal of section 103 of Act of 1995 (Moneylending agreements which include a collection charge)	Section 11 of the Bill deletes the provisions regarding collection charges which are no longer allowed.
12	Provision of information by Bank to Minister	Section 12 of the Bill amends the Act of 1995 by inserting a new section 114A which allows the Minister to require the Central Bank to collect and publish (non-personal) data on the sector. The Central Bank shall comply with a request from the Minister under subsection (1).
13	Transitional provisions	Section 13 of the Bill provides for transitional arrangements for those who have been issued with moneylenders licences under section 93 of the Act of 1995 before the passage of the Bill. Due to the changes in terminology, from “moneylender” to “high cost credit provider” in the legislation, these transitional arrangements ensure that the appropriate provisions are applied to the holders of existing moneylending licences for the remainder of the term of validity of those licences.
14	Consequential amendments	Section 14 of the Bill provides for consequential amendments to the Act of 1995 and other enactments arising from the renaming of moneylenders as high cost credit providers and the renaming of moneylending as high cost credit.
15	Short title and commencement	Section 15 of the Bill is a standard provision that provides for the Minister to commence different provisions of the Bill on different dates.

Source: Library & Research Service, 2022

Existing legislative framework

Licensed moneylenders are specifically legislated for under the *Consumer Credit Act 1995* (the 1995 Act) which sets out a specific regulatory regime for licensed moneylending. An amendment to the 1995 Act in 2003 transferred responsibility for the licensing and supervision of moneylenders from the Office of the Director of Consumer Affairs to the Central Bank.

Those wishing to engage in the business of moneylending require a licence from the Central Bank in accordance with the 1995 Act and this licence must be renewed annually. A licensed moneylender is required to carry on the business of moneylending under the specific terms of the licence granted by the Central Bank.

Section 93(10)(g) of the 1995 Act provides that the Central Bank may refuse to grant (or renew) a licence to a moneylender if it is of the opinion that the cost of credit is excessive. Where such proposed costs of credit are deemed excessive, the Central Bank can challenge firms to amend their business models or to amend the terms and conditions of certain products proposed. As the 1995 Act does not define “excessive”, the Central Bank has continued to licence moneylenders at the maximum rate as per their last licence. In addition, the Central Bank has not licensed any moneylender to provide a "payday" loan service such as exists in other jurisdictions including the UK.[5]

Moneylenders are required to abide by the *Central Bank (Supervision and Enforcement) Act (Section 48) (Licenced Moneylenders) Regulations 2020* (the Moneylending Regulations) which was introduced under exercise of the powers conferred on the Central Bank of Ireland by section 48 of the *Central Bank (Supervision and Enforcement) Act 2013*. The Moneylending Regulations were published in June 2020 and replaces the *Consumer Protection Code for Licensed Moneylenders* (the Moneylending Code). These regulations seek to strengthen protections for consumers of licensed moneylending services and enhance professional standards in the sector.

The Moneylending Regulations include a requirement on moneylenders to include prominent, high cost warnings in all advertisements for moneylending loans with an Annual Percentage Rate (APR) over 23%. The warning must prompt consumers to consider alternatives. Moneylenders are also not permitted to make an unsolicited offer to apply for credit to consumers who have recently made, or are nearing, full repayment of a moneylending loan. The Moneylending Regulations are subject to the Central Bank enforcement proceedings including the administrative sanctions procedures.

As well as the 1995 Act and the Moneylending Regulations, the other main legislative requirements that moneylenders must comply with are the *European Communities (Consumer Credit Agreements) Regulations 2010* (S.I. No. 281 of 2010) (the 2010 Regulations) . The 2010 Regulations include requirements dealing with disclosure of information to the consumer, the right of withdrawal from a moneylending agreement, the right to repay a loan early, the right to a

[5] A ‘payday’ loan is usually a short-term, high cost loan, that is typically due on your next payday.

reduction in the total cost of credit in the event of early repayment and the moneylender's obligation to assess creditworthiness.

The European Commission is also currently in the process of revising the existing EU rules on consumer credit and published its proposal on 30 June 2021. This includes introducing an obligation at Member State level to set interest rate or APR caps with national discretion at what level to put such caps.

Annual Percentage Rate (APR)

APR is a calculation of the overall cost of a loan expressed as an annual rate. It includes all of the known costs involved, such as set-up and any other mandatory charges and the interest rate expressed as an annual percentage.

The APR does not capture the total cost of credit in monetary amounts to the consumer. Rather, it is the total cost of credit expressed as an annual percentage of the amount of credit granted, and the APR calculation reflects not just money (amount loaned, repayment amount and total costs to the borrower), but also time (loan term and frequency of repayments).

APR is useful when used to compare loans of the same amount and term. With loan terms below one year, APRs increase dramatically as the term gets shorter. For example, when we look in detail at a loan of €100 with a cost of credit of €25 applied to it, we get exceedingly varied APR rates depending on the term duration.

- Where the term is set to 4 weeks, the APR for this would be c. 11,455%.
- Where the terms is set to 13 weeks, the APR would be c. 455%.
- Where the terms is set to 26 weeks, the APR would be c. 144%.
- With a term of 52 weeks, the APR would be c. 58%.

Policy background

Moneylending in Ireland

Under the *Consumer Credit Act 1995*, ‘moneylending’ is defined as the practice of providing credit to consumers on foot of a ‘moneylending agreement’. The business models operated by licensed moneylenders generally fall within the following categories:

Cash loan firms - These firms provide cash loans where repayments can be paid remotely or collected at the consumer’s home (home collection). The APRs charged in this category are up to 287% APR, though a more usual moneylending product, those with terms of 26 weeks, are offered at rates up to 187% APR.

Catalogue firms - Goods are sold on credit, usually on the basis of the consumer having a running account. A running account is similar in operation to a credit card account in that borrowers have a credit limit and can charge goods up to that limit. The APRs charged by the larger firms range from just under 40% APR to 52% APR.

Other - This category comprises of:

- premium finance firms where credit is provided to consumers to fund insurance premiums, gym membership *etc.* which are operated on the basis of a consumer having a running account;
- firms where repayments are made directly to the firm remotely; and
- retail firms involved in the provision of goods on credit with repayments being made by a variety of methods, (*e.g.* cash, direct debit).

The APRs in this category vary by the products above. A typical APR for premium finance is 60% APR for a 12 month term.

In terms of the size of the moneylending sector in Ireland, as of 2 March 2022 there were 32 licensed moneylenders listed on the Central Bank of Ireland’s register.[6] Figure 1 shows the total number of customers with balances outstanding for each year from 2014 to 2018. The Central Bank estimates that there were 313,500 customers with balances outstanding in 2018, with 152,500 (49%) in the Catalogue Firms sector, 123,000 (39%) in the Cash Loan sector, and 38,000 (12%) in the “Other” category.[7]

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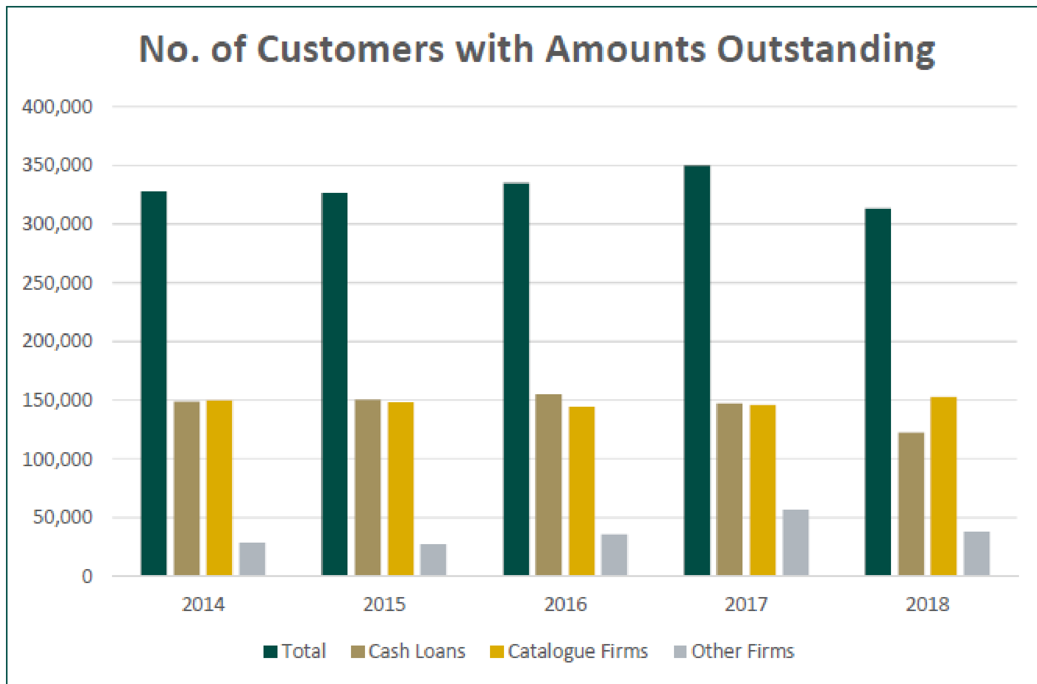
[6] See the Central Bank of Ireland Register of licensed moneylenders at: http://registers.centralbank.ie/DownloadsPage.aspx

[7] Figures have been obtained from the Central Bank directly and the *Moneylending: Review of the Consumer Protection Code for Licensed Moneylenders*. *Consultation Paper CP118 (2018).* Available here.

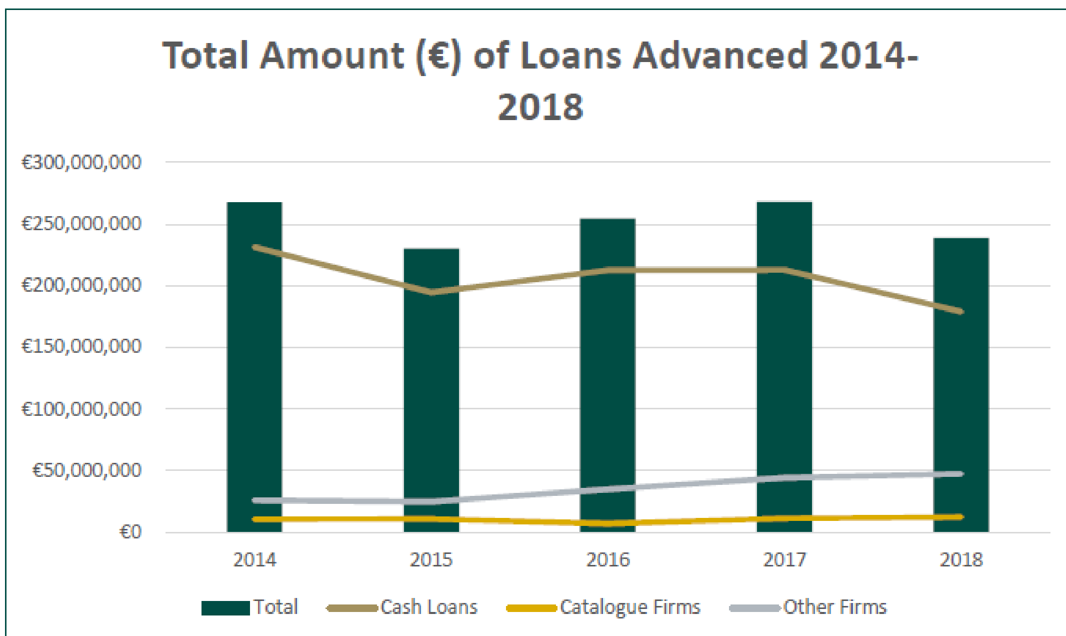
Figure 1: Number of moneylending customers with amounts outstanding 2014 - 2018



Source: [Central Bank of Ireland](#) (2021)

Based on information provided by moneylenders to the Central Bank as part of their annual licence applications, the value of loans advanced in 2018 was circa €240 million (€270 million in 2014). The most frequent loan amounts range from €200 to €500, with the average loan being €622 and the most frequent loan term being for 9 months.

Figure 2: Total amount of loans advanced 2014 - 2018



Source: [Central Bank of Ireland](#) (2021)

Public consultation

The Department of Finance undertook a public consultation between May and July 2019 seeking views on capping the cost of licensed moneylenders and other regulatory matters in relation to moneylending. In particular, the consultation sought views on whether the introduction of a cap would have a negative effect on the supply of credit and might lead to an increase in unlicensed moneylending or to financial exclusion for consumers of these regulated firms.

The Department took the opportunity to seek views on other matters related to the regulation of moneylenders including:

- home collection charges and practices;
- maximum repayment amounts;
- the registration and licensing of moneylenders;
- digitalisation; and
- advertising by moneylenders and terminology.

The consultation received a total of 25 replies, of which two were from individuals, ten were from licenced moneylenders including their representative body, seven were from credit unions and representative bodies in that sector and six were from other categories of respondents including NGOs. According to the Department, the majority of the submissions received were broadly in favour of introducing an interest rate cap. A report setting out these proposals was prepared which analysed the various policy options and helped inform the development of the General Scheme.

The Moneylending Policy Proposals report was published by the Department of Finance on 19 July 2021. A number of recommendations are made in the report, which includes the introduction of an interest rate cap, abolishing home collection charges, introducing the option to avail of an online repayment book, increasing licensing terms, streamlining the licensing regime and changing the term 'licensed moneylender' to 'high cost credit provider'. The *Consumer Credit Act 1995* would need to be amended to give effect to these proposals. Most of the recommendations from the report are reflected in the Bill which proposes:

- Introducing a cap on the interest rate which a moneylender can charge on a moneylending loan;
- Abolishing home collection charges;
- Providing for online repayment books;
- Streamlining the licensing regime so that licences are in place for five years rather than one year and providers not now having to apply in each District Court area in which they wish to practice; and
- Changing the term 'licensed moneylender' to 'high cost credit provider' to differentiate between licensed and unlicensed moneylenders.

UCC report

The Social Finance Foundation (SFF) requested the Centre for Co-operative Studies, University College Cork, to research and produce a report examining the extent and variety of interest rate restrictions on high-cost consumer credit used to achieve the joint policy goals of financial inclusion

and consumer protection. The research was jointly funded by the Central Bank and the SFF and was published in October 2018.[8]

The UCC Report included six key recommendations on interest rate restrictions:

1. Government should adopt a policy that prohibits usurious rates of interest in the interests of fairness to the most vulnerable in Irish society by the introduction of a restriction on interest rates and charges.
2. Such a policy should be conditional on the credit union movement in Ireland committing to and being enabled to serve the community currently serviced by the moneylending firms, subject always to adherence to prudent credit guidelines.
3. In consultation with the credit union sector, the Department of Finance should consider increasing the 1% monthly cap on interest rates for credit unions as per section 38 (1)(a) of the *Credit Union Act 1997*, for this type of lending to cater for the significantly greater costs associated with such small lending.
4. The Government should ensure the interest rate restriction is coupled with a limit on other fees and charges and a limit on the total cost of credit, with the rules carefully designed to avoid circumvention through the introduction of other 'innovative' fees and charges.
5. The Government should consider reducing the permissible interest, fees and charges on second and subsequent loans taken out by consumers.
6. The Government should ensure that resources are provided to enforce the interest rate restrictions and price caps as well as existing lending practices.

Two further recommendations to supplement the above recommendations were also made so as to optimise the outcomes of policy change:

7. The Government should ensure moneylenders engage in responsible lending practices.
8. The Government should introduce other policy measures, including actions to promote financial inclusion, which includes financial education initiatives, to complement the above measures.

Personal Micro Credit scheme

The Personal Micro Credit (PMC) scheme began as a pilot scheme supported by the Government in November 2015, to ensure that there is access to finance for low income customers. The PMC scheme was designed to provide a credible alternative to moneylenders. Credit unions participate in the scheme on a voluntary basis. The PMC scheme is currently offered in more than 106 credit unions, in 280 locations across the country.[9]

Loans under the PMC scheme are provided by participating credit unions and are branded as 'It Makes Sense' (IMS) loans. Loans range between €100 and €2,000 with a maximum APR of 12.68%. In order to qualify for a loan, the lender must: either be a member of a credit union or join a credit union; be in receipt of a social welfare payment; and agree to repay the loan through the

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[8] Faherty M., McCarthy O., Byrne N. (2017). *Interest Rate Restrictions on Credit for Low-Income Borrowers.* Available here.

[9] See https://www.creditunion.ie/what-we-offer/loans/personal-micro-credit/

Household Budget Scheme or by standing order or direct debit from the account to which social welfare payment is paid electronically.

An interest rate cap of 1% per month (12.68% APR representative) for credit unions was introduced in Ireland under the *Credit Union Act 1997*. The Credit Union Advisory Committee ('CUAC') published a policy paper in 2017 which recommended that the cap on interest rates for credit unions be raised from 1% per month to 2% per month. CUAC considered that this change would provide credit unions with greater flexibility to risk price their loan products and in so doing may create an opportunity for new product offerings.[10]

Taskforce on high cost credit

A Task Force on High Cost Credit was established on a non-Governmental basis in 2018 and is chaired by the Citizens Information Board / MABS. It comprises senior officials from the Department of Finance, Central Bank of Ireland, the (then) Department of Employment Affairs and Social Protection, Irish League of Credit Unions (ILCU), Credit Union Development Association (CUDA), Credit Union Managers Association (CUMA), and the Social Finance Foundation (SFF).

It was set up to specifically address two challenges that currently exist with the PMC scheme, they are:

1. How to achieve nationwide availability of the PMC scheme so that relevant consumers have an alternative to licensed moneylenders, and
2. How to encourage consumers to switch from accessing credit via moneylenders to accessing credit via the PMC scheme which includes the niche loan offering of 'It Makes Sense' loans; local credit union specific initiatives and standard lending.

To inform the decision-making process on introducing a cap, two pieces of research have been commissioned by the taskforce:

1. research into illegal money lending in Ireland to assess the potential risk of licensed money lending borrowers migrating to illegal money lenders; and
2. research into the profile and attitudes of existing home collection money lending customers.

[10] This does not mean that credit unions are required to raise their loan interest rates. Rather they can apply their own interest rate(s) within the parameters that are allowed.

Principal provisions of the Bill

This section of the Digest examines the main provisions of the Bill and in particular the amendments being made to the "Act of 1995". The Bill comprises principally of 15 sections and two schedules. A short synopsis of each section is given in the Table of Provisions.

Section 1 – Definition

This section sets out that the Consumer Credit Act 1995 is the Act which is amended by the Bill.

Section 2 – Amendment of section 2 of Act of 1995 (Definitions)

Section 2 of the Act of 1995 is amended, in subsection (1) by the following:

(a) by the deletion of the definitions of "moneylender", "moneylender's licence", "moneylending" and "moneylending agreement", and

(b) by the insertion of the following definitions:

'high cost credit' means credit supplied by a high cost credit provider to a consumer on foot of a high cost credit agreement;

'high cost credit agreement' means a credit agreement into which a high cost credit provider enters, or offers to enter, with a consumer in which one or more of the following apply:

(a) the agreement was concluded away from the business premises of the high cost credit provider 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 high cost credit provider or the business premises of the supplier of goods or services under the agreement;

(c) repayments under the agreement will, or may, be paid by the consumer to the high cost credit provider or the representative of the high cost credit provider at any place other than the business premises of the high cost credit provider or the business premises of the supplier of goods or services under the agreement;

(d) the total cost of credit to the consumer under the agreement is in excess of an APR of 23 per cent, or such other rate as may be prescribed;

'high cost credit provider' means a person who engages in the provision of high cost credit, or who advertises or announces themselves or holds themselves out in any way as engaging in the provision of high cost credit, but does not include the following:

(a) any pawnbroker in respect of business carried on by the pawnbroker in accordance with the provisions of the Pawnbrokers Act 1964,

(b) a society which is registered as a credit union under the Credit Union Act 1997,

(c) a registered society within the meaning of the Friendly Societies Acts 1896 to 2021,

(d) a credit institution,

(e) a person who supplies money for the purchase, sale or hire of goods at an APR which is less than or equal to 23 per cent (or such other rate as may be prescribed), or

(f) a mortgage lender;

Section 3 – Amendment of section 12 of Act of 1995 (Offences)

This section adds two new offences. These apply where a moneylender grants credit which breaches one of the new sections below:

- Section 94A providing for a loan over 52 weeks
- Section 98A providing a loan with an interest rate over the set caps

A person who is guilty of an offence under the *Consumer Credit Act 1995* will be liable:

> (a) on summary conviction, to a fine not exceeding € 3,000 or imprisonment for a term not exceeding 12 months or both, or
>
> (b) on conviction on indictment, to a fine not exceeding € 100,000 or imprisonment for a term not exceeding 5 years or both.

Where a person is convicted of an offence under this Act but continues with the offence after his or her conviction, the person will be guilty of a **further offence on every day** on which the contravention continues and for each such offence will be liable:(a) on summary conviction, to a fine not exceeding € 1,000, or

(b) on conviction on indictment, to a fine not exceeding € 10,000.

Section 4 - Amendment of section 92 of Act of 1995 (Application and interpretation of Part VIII provisions relating to moneylending)

Section 92 of the Act of 1995 is amended, in subsection (2), by the insertion of the following definition:

> 'rate of nominal monthly interest' means the advertised or stated monthly interest rate, without taking into account any fees, but including any compounding of interest applicable.

Section 5 - Amendment of section 93 of Act of 1995 (Moneylender's licence)

This section:

- removes the requirement for providers to register in each District Court area in which they wish to operate
- extends the licence period from 12 months to five years
- updates the licensing process so that where a provider's proposed interest rates are above the rates set by the Minister at that time, the Central Bank can refuse to grant a licence.

Section 6 - Term of loan under high cost credit agreement

The Act of 1995 is amended by the insertion of the following section after section 94:

"94A. (1) Subject to subsection (2), a high cost credit provider shall not grant a loan whose term exceeds 52 weeks.

> (2) Subsection (1) shall not apply to:
>
> > (a) a loan granted under a high cost credit agreement that is entered into before the date on which the *Consumer Credit (Amendment) Act 2022* comes into operation, or

(b) a running account under a high cost credit agreement.”.

Section 7 - Amendment of section 95 of Act of 1995 (“Moneylending agreement” to be stated in agreement)

The Act of 1995 is amended by the substitution of the following section for section 95:

“95. A high cost credit provider shall ensure that a high cost credit agreement—

(a) entered into after the date on which the *Consumer Credit (Amendment) Act 2022* comes into operation, and

(b) to which the high cost credit provider is a party, shall contain in a prominent position the words **‘High cost credit agreement’**.”.

Section 8 - Maximum interest rates

This is one of the key provisions of the Bill and proposes inserting a new section in the Act of 1995 to provide for the setting of a maximum interest rate that a high cost credit provider can charge for both cash loans and running accounts.

The Act of 1995 is amended by the insertion of the following section after section 98:

“98A. (1) A high cost credit provider shall not charge interest, under a high cost credit agreement, at a rate which exceeds a maximum rate of interest—

(a) prescribed under this section, and
(b) applicable to the agreement.

(2) The Minister shall prescribe the following:

(a) in respect of a loan (other than a running account) under a high cost credit agreement—
(i) the maximum rate of simple interest chargeable per week (being a rate less than or equal to one per cent), and
(ii) the maximum rate of simple interest chargeable per year (being a rate less than or equal to 48 per cent);
(b) in respect of a running account under a high cost credit agreement, the maximum rate of nominal monthly interest chargeable on an outstanding balance (being a rate less than or equal to 2.83 per cent).

(3) A maximum rate of interest prescribed under this section shall apply to a high cost credit agreement entered into—

(a) after the date on which the regulations, by which the rate is prescribed, come into operation, and
(b) on or before the date, if any, on which the regulations next made under this section come into operation.

(4) The Minister shall consult with the Bank before making regulations under this section.

(5) The Minister shall have regard to the following when making regulations under this section:

(a) the impact of the regulations on competition in the high cost credit sector;

(b) the impact of the regulations on the supply of credit in the high cost credit sector;
(c) the average rates of interest offered to customers in the high cost credit sector and any trends in such interest rates;
(d) where setting the proposed rate would reduce the supply of credit in the high cost credit sector, the impact of such a reduction on financial inclusion.

(6) In subsection (5)(d), 'financial inclusion' means affordable, timely and adequate access to a range of regulated financial products and services by all segments of society.

(7) The Bank shall, when consulted in accordance with subsection (4), prepare a report assessing the possible effects, on the matters referred to in subsection (5), of the rates proposed to be prescribed by the Minister.

(8) The Bank shall, within 3 years of the coming into operation of the *Consumer Credit (Amendment) Act 2022*, prepare a report assessing the impact of the rates of interest prescribed under this section on the matters referred to in subsection (5).".

Section 9 - Amendment of section 100 of Act of 1995 (Repayment book)

The requirement to maintain a repayment book has been amended to include the option of maintaining an online version of a repayment book if the borrower requests same.

The term 'durable medium' is defined under this section as any medium that enables a person to store information in a way that renders it accessible to the borrower for future reference for a period of time adequate for the purposes of the information and allows the unchanged reproduction of the information.

Section 10 - Amendment of section 102 of Act of 1995 (Prohibition on charges for expenses)

Section 102 of the Act of 1995 is amended, by the substitution of the following subsection for subsection (1):

"(1) A high cost credit provider shall not make or attempt to make an agreement with a borrower who has borrowed or intends to borrow credit from that high cost credit provider for any—

(a) sum,

(b) account of costs,

(c) charges,

(d) collection charges, or

(e) expenses,

incidental to or relating to the negotiations for, or the granting of, the loan.".

Section 11 - Repeal of section 103 of Act of 1995 (Moneylending agreements which include a collection charge)

Section 103 of the Act of 1995 is repealed.

Section 12 - Provision of information by Bank to Minister

The Act of 1995 is amended by the insertion of the following section after section 114:

“114A. (1) Subject to subsection (3), the Minister may, in writing, request the Bank to obtain and publish aggregate information and statistics in relation to the high cost credit sector.

(2) The Bank shall comply with a request from the Minister under subsection (1).

(3) The Minister shall not request the Bank to publish personal data (within the meaning of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 20161) under subsection (1).”.

Section 13 - Transitional provisions

This section provides for transitional arrangements for those who have been issued with moneylenders licences under section 93 of the Act of 1995 before the passage of the Bill.

Due to the changes in terminology, from “moneylender” to “high cost credit provider” in the legislation, these transitional arrangements ensure that the appropriate provisions are applied to the holders of existing moneylending licences for the remainder of the term of validity of those licences.

Section 14 - Consequential amendments

This section provides for consequential amendments to the Act of 1995 and other enactments arising from the renaming of moneylenders as high cost credit providers and the renaming of moneylending as high cost credit.

Section 15 - Short title and commencement

This Act may be cited as the *Consumer Credit (Amendment) Act 2022*.

This section also sets out the (typical) commencement provisions.

International approaches

According to the OECD, several countries have introduced some form of a cap on the cost of consumer credit that also applies to short-term high-cost credit (see Table 3).

Table 3: The use of caps on consumer credit in selected jurisdictions (also applying to short-term high-cost credit unless otherwise specified)

Country	Features of the applicable cap
Armenia	The nominal interest rate cannot exceed twice the central bank reference rate (currently 24%). There is not a cap on APR.
Canada	Federal cap at 60% APR - excludes payday loans that are regulated at the Provincial level.
Chile	As of 2013, a law introduced a cap on nominal interest rate, which gradually reduced the rate from above 50% to around 35%.
Estonia	APR cannot exceed three times the average of APR of consumer loans granted to private individuals by credit institutions, which is disclosed on the central bank website. If the figure is higher, the contract is void.
Georgia	The APR cannot exceed 100%, in addition to a cap on all sanctions set at 150% of the outstanding.
Germany	In general, consumer credit contracts can be declared usurious by the courts (and therefore, void) if the interest rate is greater than double the average interest rate of comparable consumer loans plus a handling fee of currently 2.5%. The same is true if there is a difference in interest rates of 12 percentage points.
Hong Kong, China	The Money Lenders Ordinance stipulates a cap of 60% per annum. Banks are exempt from the Money Lenders Ordinance; however, according to the Code of Banking Practice they should not charge customers 'extortionate' interest rates. If the APR exceeds the level which is presumed to be extortionate under the Money Lenders Ordinance (currently 48%), they should be able to justify why such high interest is not unreasonable or unfair.
Italy	Usury caps apply to all credit facilities: the rate cannot exceed by 25% the average APR applied over the previous quarter, with an additional 4% margin. The difference between the cap and the average APR cannot exceed 8 percentage points. Currently, the cap on personal loans stands at 16.4%.
Japan	The cap on nominal interest rate is set at 20%.
Latvia	Interest "price ladder" applicable to the term-credits up to 30 days: 0.55% for the first 7 days, 0.25% for next 7 days and 0.2% from the 15th to 30th day inclusive. In contracts, according to which the credit must be repaid upon request or in which the time period for the use of credit maturity exceeds 30 days, total credit costs to a consumer shall be considered as not conforming to the requirements referred to as the costs of a consumer credit contract, which exceed 0.25% per day, from the credit sum.

Lithuania	A cap of 75% on an annual interest rate, and a cap of 0.04% of the total cost of the credit on other costs.
The Netherlands	The total cost cap is set at 14% APR (this includes all fees, charges and interest).
Portugal	Caps are based on the market APRs and are revised every quarter. Caps on APRs are defined relative to all consumer credit agreements of a value between €200 and €75,000 (excluding mortgages). Under the APRs cap regime, credit institutions are prohibited from granting credit where the APR is more than 25% of the average APR of the credit agreements concluded in the previous calendar quarter, for each type of credit. Institutions are also prohibited from charging an APR 50% above the average APR established in all credit agreements concluded in the previous calendar quarter. The Bank of Portugal oversees the implementation of these rules using information reported by credit institutions, on-site and off-site inspections and complaints handling. When a credit agreement is concluded with an APR exceeding the cap, the APR is automatically reduced to half of the cap value. The Bank of Portugal imposes sanctions when credit institutions fail to comply with the APR cap framework.
Singapore	Unsecured credit facilities extended by licensed moneylenders are subject to interest rate cap of 4% per month. Late fees for such facilities are capped at SG $60 per month, administration fees are capped at 10% of the principal of the loan, and the overall interest and fees charged over the life of the loan is capped at 100% of the principal.
Slovak Republic	A cap on APR for consumer credit (which involves credits with a duration of up to 3 months) is set at 30% p.a..

Source: OECD (2019)

As mentioned earlier, the European Commission is currently in the process of revising the existing EU rules on consumer credit. Rather than have a centralised approach, its proposal provides for introducing an obligation at Member State level to set interest rate or APR caps with national discretion at what level to put such caps.

In further instances, the relevant financial regulator has devised a regulatory response that specifically covers short-term high-cost consumer credit as is the case in Australia, Slovakia, South Africa and the United Kingdom (see Table 4, overleaf).

Table 4: The use of caps on short-term high-cost consumer credit in selected jurisdictions

Country	Features of the applicable cap
Australia	Small Amounts Credit Contracts (SACCs) and larger loans are capped differently. For SACCs, no interest may be charged, but regulations impose a cap on fees. These cannot exceed an establishment fee of 20% of the loan amount, with a monthly fee of 4% of the loan amount for the duration of the loan. In total the amount the consumer is required to repay under a loan, including default fees, cannot exceed twice the loan amount. For Medium Amount Credit Contracts (MACCs), fees are set at a maximum of a one-off fee of AU$400 and a maximum annual interest rate of 48% including all other fees and charges. This does not include default fees.
Slovak Republic	Credit for up to three months is subject to a cap of 30 % p.a. on total costs, which includes interest, fees and any other associated cost.
South Africa	Staggered reduced caps on short-term loans: the cap is 5% per month on the first loan in a calendar year and 3% for all subsequent loans in the same calendar year.
United Kingdom	A price cap exists for HCSTC (payday) loans. The cap consists of three elements: (a) interest rate and fees charged must not exceed 0.8% per day of the amount borrowed (e.g., £100 borrowed for 30 days cannot cost more than £24) (b) £15 cap on default fees (c) total cost cap for all fees, charges and interest of 100% of the amount borrowed. (e.g., if you borrow £100 you will never repay more than £200).

Source: OECD (2019)

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