

Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Bill 2021

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Abstract

The purpose of the [Consumer Protection \(Regulation of Retail Credit and Credit Servicing Firms\) Bill 2021](#) is to:

- To extend the Central Bank's authorisation requirements to persons carrying on hire-purchase (including Personal Contract Plans or PCPs) or consumer-purchase business or providing credit indirectly, and persons carrying on business relating to hire-purchase or consumer-hire agreements or the indirect provision of credit;
- To provide for the collection and publication of information by the Central Bank on credit agreements, hire-purchase agreements, and consumer-hire agreements;
- To provide for a limit on the interest rate that consumer may be charged under hire-purchase and credit agreements; and
- To provide for a requirement to include the Annual Percentage Rate (APR) in the hire-purchase agreement.



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Glossary

Table 1: Glossary of terms included in the Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Bill 2021

Term	Explanation
APR	The Annual Percentage Rate is the annual rate charged for borrowing (expressed as a single percentage) or earned through investment. All credit (loan) agreements must show the APR to allow the borrower to compare products. However, a hire purchase (HP) agreement, for example, does <u>not</u> currently have to show this. This Bill proposes to change this.
CBI	The Central Bank of Ireland is the statutory body responsible for regulating financial services in Ireland. The CBI also authorises and imposes rules (prudential requirements) and supervises Retail Credit Firms (RCFs) in terms of conduct of business rules.
CCPC	The Competition and Consumer Protection Commission is an independent statutory body that enforces competition and consumer protection law in Ireland. It shares limited responsibility for the advertising of credit facilities with the Central Bank and responsibility for the authorisation of credit intermediaries and for maintaining the Register of Credit Intermediaries.
CPC	The Central Bank's Consumer Protection Code is a set of principles and rules that financial services firms must follow when they provide financial products and services to consumers, give consumers financial information and advice, advertise financial products or services and handle complaints.
CSF	A Credit Servicing Firms is any firm (person/entity) involved in managing or administering a credit agreement including notifying the relevant borrower of changes in interest rates/payments, taking steps to collect or recovery payments due under the agreement from the borrower and, more generally, managing or administering the credit agreement including repayments, charges, complaints, information, restructuring arrangements, etc. Over time, due to changes in the financial services landscape in Ireland (and the sale of credit / 'loanbook' portfolios), an increasing number of firms (persons/entities) have fallen within the expanding definition of CSF.
PCP	Personal Contract Plans are a key feature of the car finance market in Ireland, typically being used for new car purchasing. A PCP is considered a type of hire-purchase (HP) financing agreement. Like typical HP agreements, the consumer is not the owner of the car until the final payment is made. However, there are also significant differences (see here).
RCF	Retail Credit Firms (RCFs) are regulated 'non-bank' firms (persons/entities) which provide "credit" in the form of cash loans directly to consumers/borrowers. RCFs require authorisation from (and are therefore supervised/regulated by) the Central Bank. As such, the CBI applies its Consumer Protection Code and other consumer protection powers to such firms. This Bill proposes to expand the definitions of RCFs and "credit".

Summary

- The [Consumer Protection \(Regulation of Retail Credit and Credit Servicing Firms\) Bill 2021](#) was published on 23 June 2021;
- The primary objective of this legislation, which is one of the Central Bank's main consumer protection focuses in 2021, is to provide that any "non-bank" entity (i.e. a credit intermediary such as a car dealership, etc.) which offers, either directly or indirectly, credit (i.e. cash loans), hire-purchase (HP) agreements, including Personal Contract Plans (PCPs) or consumer-hire agreements will be required to be authorised as a "Retail Credit Firm" (RCF) by the Central Bank. As such, the entity will be required to comply with the Central Bank's Consumer Protection Code and, as a result, be also subject to Central Bank authorisation and its supervisory regime;
- The rationale for the legislation is that the sharp rise of PCPs (in number and value terms) among other forms of car-related (and other) finance has raised concerns over potential financial stability and consumer protection issues;
- In February 2020 (the most recent pre-pandemic data), there were **62,078** outstanding PCPs (car-financing only), compared to just **9,891** when first reported in December 2014 (an increase of **+527.6%**). As of February 2020, the total outstanding PCP credit was **€1.7bn** compared to just **€174m** in December 2014, an increase of **+573%**;
- Four major reports have informed the drafting of this legislation:
 1. Tutty, M. G. (2018) [Review of Regulation of Personal Contract Plans](#);
 2. Competition and Consumer Protection Commission (2018) [Personal Contract Plans: the Irish Market](#);
 3. ESRI (2018) [Do Consumers Understand PCP Car Finance? An Experimental Investigation](#), ESRI Research Bulletin, September 2018.
 4. Central Bank of Ireland (2018) [An Overview of the Irish PCP Market \(Revised Data\)](#).
- The first report was commissioned by the Minister for Finance, Paschal Donohoe. Among the Tutty Report recommendations, one requires legislative change [as described by the Minister](#). The Central Bank's Consumer Protection Code requires that persons/entities/firms check the financial capacity of the consumer taking on a credit agreement. However, this does not currently apply to persons/entities/firms providing PCP and, more broadly, HP agreements as some of these are not subject to Central Bank authorisation and therefore do not come under the regulatory remit of the Central Bank;
- To resolve this anomaly, the Bill proposes to expand key definitions (including "credit") and the range of agreements which fall within the regulated business of a RCF / a Credit Servicing Firm (CSF) to include provision of more than just direct cash loans (the current definition of "credit") and also capture hire-purchase agreements¹ (including PCPs) and consumer-hire agreements, and the indirect provision of credit. This has the effect of

¹ Currently, HP agreements (including those related to PCPs) are distinguished from credit agreements in that the customer is a "hirer" rather than a "borrower" meaning that the Central Bank cannot impose the standards of the Consumer Protection Code on HP providers as they are not regulated entities. As described by [FLAC](#), those the HP/PCP agreement itself is regulated, the provider is not.

increasing the number of persons/entities/firms that will require authorisation from (and supervision by) the Central Bank;

- Specifically, the Bill, if enacted, would provide for the following:
 1. To extend the Central Bank's authorisation requirements to persons (or firms/entities) carrying on, or relating to, HP or consumer-purchase business or the provision of credit indirectly;
 2. To provide for the collection and publication of information by the Central Bank on credit agreements, hire-purchase agreements and consumer-hire agreements;
 3. To provide for a limit on the interest rate that consumer may be charged under hire-purchase and credit agreements; and
 4. To provide for a requirement to include the Annual Percentage Rate (APR) in the hire-purchase agreement. A maximum APR of 23% will apply in respect of all credit agreements, other than a moneylending agreement;
- The [General Scheme of a Consumer Protection \(Regulation of Retail Credit Firms\) Bill 2019](#) (the General Scheme) [link accessible internally only] was referred to the then Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach by the then Minister for Finance and Public Expenditure and Reform (and current Minister for Finance) Paschal Donohoe for pre-legislative scrutiny (PLS) in October 2019. The General Scheme was subsequently referred to the new Joint Committee, formed following the General Election in February 2020, in March 2021;
- The L&RS supplied a [detailed briefing paper](#) [internal access only] to the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach to inform the PLS of the then General Scheme which included a synthesis of 14 written stakeholder submissions. The Joint Committee considered the L&RS paper and subsequently wrote to the Minister for Finance stating that further PLS was not required;
- No Regulatory Impact Assessment (RIA) was published in respect of this Bill.

Introduction

The [Consumer Protection \(Regulation of Retail Credit and Credit Servicing Firms\) Bill 2021](#) was published on 23 June 2021. The Bill contains 17 sections.

Two primary objectives for this Bill as detailed in the [Explanatory Memorandum](#):

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

On 23 October 2019, the Minister for Finance and Public Expenditure and Reform, Paschal Donohue [announced](#) Government approval to draft legislation to:

“provide that all firms which offer personal contract plans (PCP), hire purchase and other similar credit type agreements to consumers **will be required to be authorised by the Central Bank of Ireland as retail credit firms.**”

Government approval follows the publication, in November 2018, of the [Tutty Report](#)² on the regulation of Personal Contract Plans (PCPs). This review, commissioned by the Minister in [June 2018](#), was undertaken primarily to “consider the adequacy of existing consumer protection in relation to PCPs”.

The Tutty Report follows two PCP market reports / studies, as follows:

- Competition and Consumer Protection Commission/CCPC (2018) [Personal Contract Plans: the Irish Market](#), March 2018;
- Central Bank of Ireland (2018) [An Overview of the Irish PCP Market \(Revised Data\)](#), March/September 2018³;

As noted in the Tutty Report (p.4), as part of the Competition and Consumer Protection Commission (CCPC) study, the CCPC commissioned the Economic and Social Research Institute (ESRI) to undertake a series of behavioural experiments with consumers on the PCP market through its Programme of Research Investigating Consumer Evaluations (PRICE) lab. These results were published in a separate ESRI Research Bulletin (see overleaf).

² Mr Michael G Tutty is a former Second Secretary General of the Department of Finance and former Chairman of the Commission for Energy Regulation. He was (at time of publication and up to January 2020) a member of the Irish Fiscal Advisory Council. See: Gov.ie (2018) [Minister D’Arcy announces Government’s intention in respect of Review of Personal Contract Plan Market and Regulatory Structure](#), 1 November 2018.

³ Originally published in March 2018, this publication was revised in September 2018.

- ESRI (2018) [Do Consumers Understand PCP Car Finance? An Experimental Investigation](#), ESRI Research Bulletin, September 2018.

In effect, the Tutty Report is a desk-based synthesis of these three other research studies/reports.

Financial implications

The Explanatory Memorandum does not refer to financial implications for the Exchequer arising from the Bill.⁴

Pre-legislative scrutiny (PLS)

The [General Scheme of the then Consumer Protection \(Regulation of Retail Credit Firms\) Bill 2019](#) [link accessible internally only] was referred to the Joint Committee on Finance, Public Expenditure and Reform and Taoiseach (of the 33rd Dáil/26th Seanad) in March 2021. The General Scheme had been referred to the previous Joint Committee in late October 2019 prior to the dissolution of the Dáil and Seanad ahead of the 2020 General Election, held on 8 February 2020.

The Joint Committee sought submissions from stakeholders and on 5 May 2021, the L&RS provided a [detailed briefing paper](#) to the Joint Committee as part of the PLS process which included a thematic summary and analysis of the 14 stakeholder submissions received to date. No hearings were held on the General Scheme.

The Committee considered the L&RS paper and subsequently wrote to the Minister for Finance on 4 June 2021 to confirm that it did not wish to engage in further PLS, as follows:

“Following scrutiny of the General Scheme by way of submissions and a detailed Library & Research Service paper, the Committee has decided that it does not wish to undertake further scrutiny of the legislation.”

The [Consumer Protection \(Regulation of Retail Credit and Credit Servicing Firms\) Bill 2021](#) as published on 23 June 2021.

⁴ Typically, such implications are detailed in the ‘Explanatory and Financial Memorandum’.

Principal provisions of the Bill

The Bill contains 17 sections, as summarised below:

Table 2: Summary table of provisions

Section(s)	Title/category	Effect
1	Definitions	<p>“Act of 1995” means the <i>Consumer Credit Act 1995</i>;</p> <p>“Act of 1997” means the <i>Central Bank Act 1997</i>.</p>
2	Amendment of section 28 of Act of 1997	<p>Amends section 28 of the Act of 1997 to insert/substitute several definitions, including:</p> <p>‘<i>Consumer-hire agreement</i>’ 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 (the definition of bailment).</p> <p>‘<i>Hire-purchase agreement</i>’ 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, if the terms of the agreement are complied with, 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, if the terms of the agreements are complied with, 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.</p> <p>‘<i>Regulated credit entity</i>’ means—</p> <ol style="list-style-type: none"> a person who is authorised, or taken to be authorised, to carry on the business of a credit servicing firm, or a regulated financial services provider authorised, by the Bank or an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank, to carry on a relevant activity in the State; <p>‘<i>Credit</i>’ means—</p> <ol style="list-style-type: none"> a deferred payment, a cash loan (whether or not provided on the security of a mortgage or charge over an estate or interest in land), or Other similar financial accommodation, <p>but does not include—</p> <ol style="list-style-type: none"> Credit of a class specified in section 3(2) of the Act of 1995 (i.e. provided by a Credit Union or a pawnbroker, or credit provided without payment of interest, or an employee/employer credit agreement with better than public terms); Credit granted or made available under an agreement of a class specified in section 3(2) of the Act of 1995, Credit arising under a transaction of a class specified in section 3(2) of the Act of 1995, A payment of a class specified in section 3(2) of the Act of 1995, or

		<p>(v) Bailment of goods to a hirer under an agreement of less than 3 months' duration under which the property in the goods remains with the owner;"</p> <p><i>'Retail credit firm'</i> means a means a person whose business consists wholly or partly of any relevant activity but does <u>not</u> include—</p> <p>(a) A person who is a regulated financial service provider authorised, otherwise than under this Part, by—</p> <p>(i) the Bank, or</p> <p>(ii) an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank, to carry out any relevant activity in the State,</p> <p>(b) A person who is a credit intermediary authorised under the Act of 1995,</p> <p>(c) in relation to—</p> <p>(i) Credit that was originally provided by another person, a person to whom all or any part of that other person's interest in the credit is directly or indirectly assigned or otherwise disposed of, or</p> <p>(ii) A consumer-hire agreement or a hire-purchase agreement that was entered into by another person, a person to whom that other person's interest in the agreement concerned is directly or indirectly assigned or otherwise disposed of,</p> <p>(d) A person who carries out relevant activities on a once only or occasional basis and, in so doing, does not represent or create an impression (whether in advertising, marketing or otherwise) that the person would enter into agreements with other persons on the same or substantially similar terms as the agreements under which those relevant activities are carried out,</p> <p>(e) A person who is exempted, or a person who belongs to a class of persons that is exempted, for the purposes of this paragraph, under section 29A,</p> <p>(f) A person whose business consists partly of a relevant activity, but only by virtue of the person providing credit in the form of trade credit, or</p> <p>(g) a local authority."</p>
3	Amendment of section 29 of Act of 1997	<p>Exempt entities (persons) and activities</p> <p>Amends section 29 of the Act of 1997 by inserting a new subsection (5) which makes clear that any entity which is excluded from the requirement to be authorised by the Central Bank as a certain class of regulated business/entity is not prohibited from carrying on such a regulated business.</p>
4	Amendment of section 29A of Act of 1997	<p>Exempt entities (persons) and activities</p> <p>Amends section 29A of the Act of 1997 to retain the limited discretion of the Central Bank to exempt certain entities/classes of entities from the requirement to become authorised as "retail credit firms" in relation to the provision of credit in the form of cash loans.</p> <p>This extension is intended to cover the additional types of financial agreements that will come within the regulated business class of "retail credit firms".</p>

5	Further transitional provision for existing retail credit firms	<p>Transitional arrangements</p> <p>Amends the Act of 1997 to insert a new section 34EA into the <i>Central Bank Act 1997</i> to ensure that existing entities/persons which, as a result of this legislation, will fall within the definition of “Retail Credit Firm” (RCF) will be taken to be authorised as RCFs <u>until</u> the Central Bank makes a decision to grant or refuse authorisation, provided that that authorisation is sought by the person/entity no later than 3 months after the commencement of section 2(a)(vii) of this Act.</p> <p>If authorised, the Bank can impose conditions and requirements on their activities as RCFs. The Bank can, alternatively, direct the entity/person not to carry out the business of a RCF for a period.</p>
6	Amendment of section 34FA of Act of 1997	<p>Credit Servicing Firms</p> <p>Amends section 34FA of the <i>Central Bank Act 1997</i> in respect of existing authorised ‘Credit Servicing Firms’ arising from the changes in the definition of “Credit Servicing Firm” as set out in section 2 of the Bill.</p>
7	Further transitional provision for existing Credit Servicing Firms	<p>Credit Servicing Firms</p> <p>Inserts a new section 34FB into the <i>Central Bank Act 1997</i> to provide for the appropriate standard transitional arrangements for firms which will (for the first time) come within the scope of Central Bank authorisation as a “Credit Servicing Firm”.</p> <p>This is a very similar provision to section 5 (above).</p>
8	Amendment of section 34G of Act of 1997	<p>Credit Servicing Firms</p> <p>Amends section 34G of the <i>Central Bank Act 1997</i> to take account of the wider range of financial agreements which will now fall within the scope of “Credit Servicing Firms”.</p>
9	Collection and publication of information on relevant agreements	<p>Collection and publication of data/information on credit, hire-purchase (including PCP) and consumer-hire agreements</p> <p>Inserts a new section 36EA into the <i>Central Bank Act 1997</i> to provide that the Minister for Finance may request the Central Bank, using powers it has under the Central Bank Acts, to collect and publish information on credit, hire-purchase (including PCP) and consumer-hire agreements. This will facilitate the publication of statistical data on the level of financial accommodation provided by “regulated businesses”.</p>
10	Amendment of section 2 of Act of 1995	<p>Amends section 2 of the <i>Consumer Credit Act 1995</i> by inserting additional definitions and substituted definitions. It provides that the authorisation category of “Retail Credit Firms” will replace the current provision under that Act which provides that the Central Bank may prescribe individual firms to be a “credit institution” for the purposes of that Act. A limited technical change is also being made to the definition of “APR” in the 1995 Act, as well as a cross reference to the <i>Central Bank Act 1997</i>.</p>

11	Amendment of section 9 of Act of 1995	Amends section 9 of the <i>Consumer Credit Act 1995</i> to make clear that the APR provisions shall apply to credit and hire purchase (including PCP) agreements and that the Central Bank may, by regulations, amend the method of calculating the APR in relation to these agreements.
12	Amendment of section 12 of Act of 1995	Offences Amends section 12 of the <i>Consumer Credit Act 1995</i> to provide that a contravention of Part IIA of the 1995 Act constitutes an offence (see next section).
13	Insertion of Part IIA in Act of 1995	23% APR Inserts a new Part IIA into the <i>Consumer Credit Act 1995</i> comprising sections 28A (which provides, among other things, that the APR on any credit agreement, other than a moneylending agreement, must not be greater than 23%) and section 28B (which provides that the requirements in 28A relate to both credit agreements and hire-purchase agreements).
14	Amendment of section 58 of Act of 1995	23% APR Inserts a new requirement in section 58 of the <i>Consumer Credit Act 1995</i> to provide that hire-purchase agreements must, along with other required information, state the APR.
15	Amendment of <i>Central Bank (Supervision and Enforcement) Act 2013</i>	“Hirer” = “Customer” Amends section 3 of the <i>Central Bank (Supervision and Enforcement) Act 2013</i> to provide that a “hirer” in relation to a hire-purchase / PCP agreement or a consumer-hire agreement will be a “customer” for the purposes of this legislation.
16	Amendment of <i>Financial Services and Pensions Ombudsman Act 2017</i>	Redefining the definition of “consumer” Amends section 2 of the <i>Financial Services and Pensions Ombudsman Act 2017</i> to provide that a “consumer” for the purposes of that Act includes a consumer who was in relation to a hire-purchase (including PCP) or a consumer-hire agreement, a customer of the financial services provider in a case where a Credit Servicing Firm undertakes credit servicing in respect of that agreement.
17	Short title and commencement	Sets out the short title and provides for commencement provisions. This Act may be cited as the <i>Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2021</i> .

Source: [Explanatory Memorandum](#) (with additional L&RS clarifications in parts).

Policy background

Personal Contract Plans (PCPs)

PCPs are summarised as follows (using descriptions contained in the Tutty, Competition and Consumer Protection Commission (CCPC), Central Bank and ESRI reports and websites – citation where required is below):

- Originating in the US and UK, PCPs have grown strongly in Ireland in the past 10 years;
- PCPs are a key feature of the car finance market in Ireland, typically being used for new car purchasing;
- A PCP is considered a type of hire-purchase (HP) financing agreement. Like typical HP agreements, the consumer is not the owner of the car until the final payment is made. However, there are significant differences. Unlike typical HP agreements, there is one final large ‘balloon’ payment (the Guaranteed Minimum Future Value/GMFV⁵) at the end of the contract, rather than equal monthly repayments. It also differs in that, at the end of the agreement (i.e. maturity of the PCP), a consumer can (a) return the car to the seller, (b) enter into a new PCP agreement, or (c) purchase the car with the final payment. Until the final ‘balloon’ payment is made, the consumer must abide by certain contractual restrictions on usage (maximum mileage limits), maintenance, damage, etc as imposed by the financial institution / dealership;

Table 3: Conditions of a PCP on a (new) car⁶

1	Deposit	10-30% (typically) of the purchase price.
2	Monthly instalments	Equal instalments for 24-48 months (typically 36).
3	GMFV	The outstanding balance, payable in one lump sum/balloon payment.

- Through a PCP, a consumer is buying equity in the new car (or “essentially hiring” it for an agreed period, as outlined by the [CCPC](#)). All consumer payments are intended to be above the rate of depreciation (assuming the condition remains the same). In this way, the deposit + monthly instalments **cover/exceed the rate of depreciation** and so the GMFV (the remaining outstanding sum) is below the depreciated value of the car. This equity can be used to achieve option (b) above to fund a deposit on another new car. The GMFV may be prohibitively expensive (as monthly payments are lower than typical HP agreements), but as described by Tutty (p.7), most often the GMFV is not paid:

“In practice, the tendency in a PCP is that it is **rolled over into a new contract at or before the end of the monthly payments**. In these cases, the consumer will not

⁵ As described by Tutty (p.5), the GMFV is calculated at the start by the financing institution / dealer and is designed to be **somewhat lower than the estimated depreciated value of the car**. Effectively, the deposit and the monthly instalments are designed to more than cover the depreciation on the car, so that the consumer builds up some equity in the car.

⁶ This is succinctly summarised by the CCPC on a dedicated webpage - <https://www.ccpc.ie/consumers/money/loans/paying-for-your-car/pcp/>

own the car and the PCP is more a contract for services (the hire of the car) than a contract for the sale of goods.”

Figure 1: How PCPs work – an illustration



Source: CCPC [website](#).

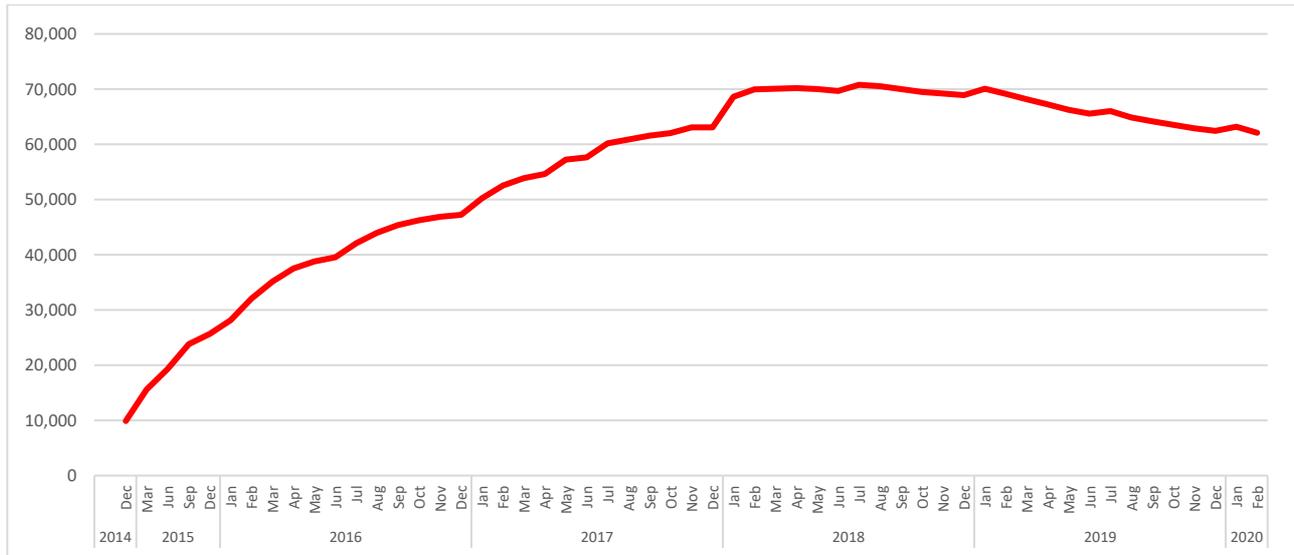
- As illustrated above, in contrast with a personal loan, only when the final ‘balloon’ payment / GMFV is paid does the consumer own the car. As noted by the CCPC, a consumer in financial difficulty cannot sell the car without permission from the financial institution/dealership.
- There are other risks including for those acting as guarantor who may be liable for repayments.
- In terms of repossession:

Table 4: Repossession under a PCP

Paid < 1/3 of the PCP price	Finance company / dealership can repossess the car <i>without a court order</i> .
Paid >1/3 of the PCP price	Finance company / dealership can only repossess the car <i>with a court order</i> .

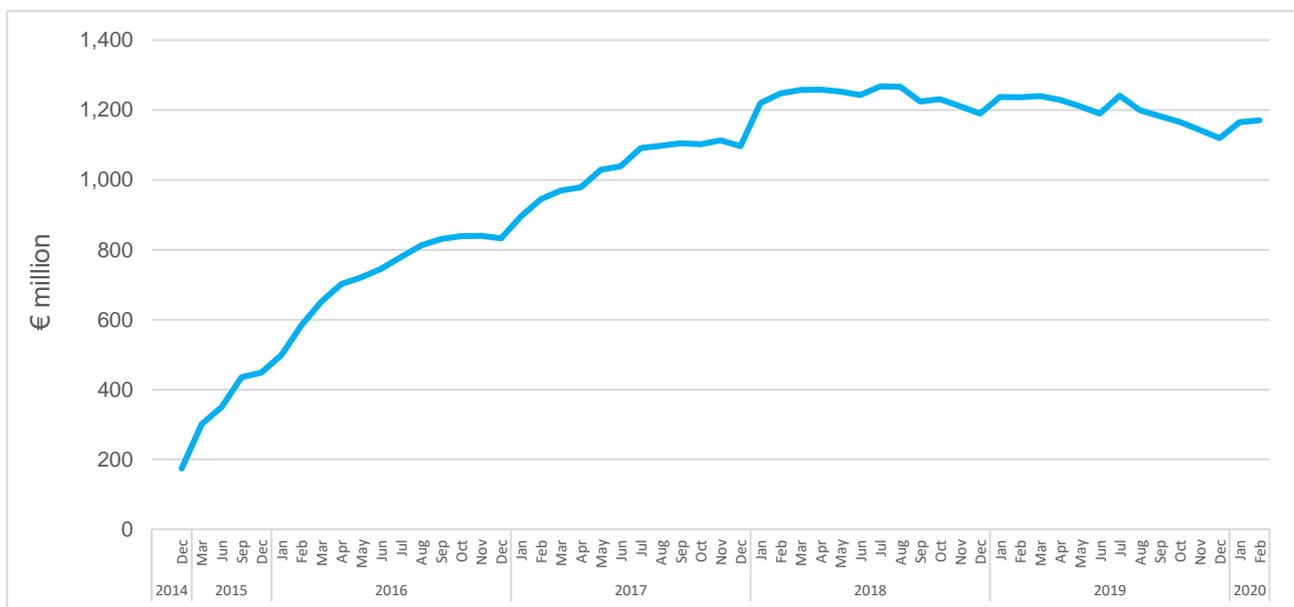
Source: CCPC [website](#)

- In terms of financing options, the [CCPC describes](#) PCPs as “among the least flexible forms of car finance”;
- Significant growth in PCPs has attracted the attention of regulators due to potential customer exposure;

Figure 2: Loans to Irish households, types of car finance – number of outstanding PCPs

Source: L&RS based on Central Bank – *Money and Banking data* [Table A.19](#)

- According to Central Bank data, in December 2014 (the first data point), there were 9,891 PCPs in Ireland. In February 2020 (the most recent pre-pandemic data), there were 62,078, an increase of **+527.6%**. This is, however, down from the peak of 70,785 in July 2017. As illustrated by Figure 1, growth has stagnated since January 2018;

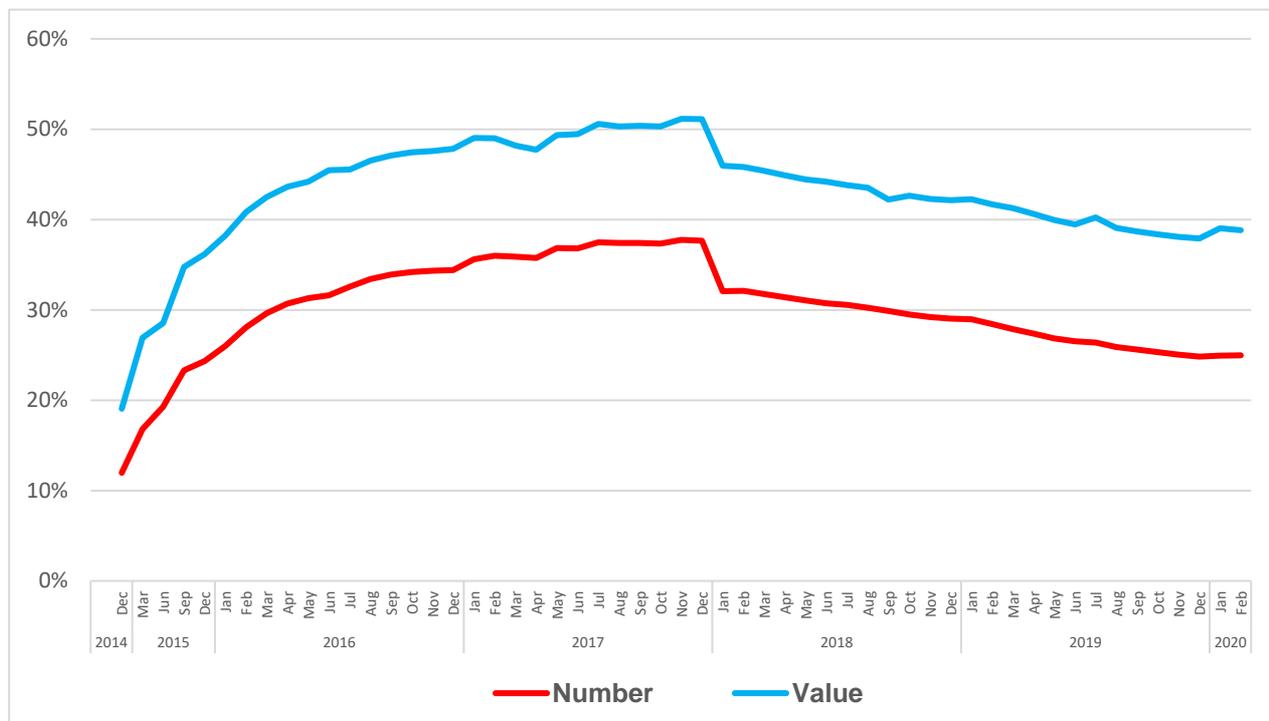
Figure 3: Loans to Irish households, types of car finance – € value of outstanding PCPs

Source: L&RS based on Central Bank – *Money and Banking data* [Table A.19](#)

- As of February 2020, the total outstanding PCP credit was **€1.7bn** compared to just **€174m** in December 2014, an increase of **+573%**. As illustrated by Figure 2 above (as with Figure 1), growth has stagnated since January 2018;

- However, excluding credit union loans, PCPs are an increasing proportion of car financing credit / loans in Ireland, as shown by Figure 3 below.

Figure 4: PCPs by outstanding number and value – as a % of all car financing options



Source: L&RS based on Central Bank – *Money and Banking data* [Table A.19](#)

As of February 2020, PCPs represent **25%** of all car financing loans by (outstanding) number and **39%** by (outstanding) value. However, this represents a decline from their respective peaks of **38%** (November/December 2017) and **51%** (July and November/December 2017).

Retail Credit Firms and credit intermediaries

Retail Credit Firms (RCFs) are regulated ‘non-bank’ entities⁷ which, typically to date, provide credit in the form of cash loans directly to individuals. RCFs require authorisation from (and are therefore supervised/regulated by) the Central Bank⁸.

RCFs are defined in Part V of the [Central Bank Act 1997](#) (as amended by the [Consumer Protection \(Regulation of Credit Servicing Firms\) Act 2015](#)) originally inserted in section 28 of the 1997 Act by the [Markets in Financial Instruments and Miscellaneous Provisions Act 2007](#).

The definition includes specified exemptions, as detailed in the 1997 Act:

“Retail Credit Firm’ means a **person** prescribed for the purpose of paragraph (e) of the definition of ‘credit institution’ in section 2(1) of the Consumer Credit Act 1995, or any other person who holds itself out as carrying on a business of, and whose business consists wholly or partly of, **providing credit**⁹ **directly to relevant persons**, but does **not** include:

- (a) a person who is a regulated financial service provider authorised, by the Central Bank or an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank, to provide credit in the State otherwise than under this Part, or,
- (b) a person who is an authorised credit intermediary under Part XI of the [Consumer Credit Act 1995](#), or
- (c) in relation to credit that was originally provided by another person, a person to whom all or any part of that other person’s interest in the credit is directly or indirectly assigned or otherwise disposed of, or
- (d) a person who provides credit on a once only or occasional basis, but only if the provision of the credit does not involve a representation, or create an impression (whether in advertising, marketing or otherwise), that the credit would be offered to other persons on the same or substantially similar terms, or;
- (e) a person who is exempted, or who belongs to a class of persons that is exempted, under section 29A from being required to hold an authorisation as a retail credit firm.”

RCFs, like traditional banks, are subject to all provisions of Irish financial services law that apply to regulated financial service providers. All applicable RCF legislation is compiled on the Central Bank [website](#).

⁷ RCFs fund credit/loans without using consumer deposits. Occasionally, ‘moneylenders’ is a term used to describe a subset of RCFs.

⁸ A dedicated webpage on Retail Credit Firms is available at <https://www.centralbank.ie/regulation/industry-market-sectors/retail-credit-home-reversion-firms/authorisation-process>

⁹ The 1997 Act defines “credit” as meaning a cash loan (whether or not provided on the security of a mortgage or charge over an estate or interest in land), but does **not** include credit of a class specified in section 3(2) of the *Consumer Credit Act 1995*.

Authorisation requirements and standards for RCFs were [published](#) by the Central Bank in 2007. RCFs are also required to comply with the Competition and Consumer Protection Commission (CCPC).

RCFs differ from credit intermediaries. These are defined under the *Consumer Credit Act 1995* as:

“Credit intermediary means a person, other than a credit institution or a mortgage lender, who in the course of his business arranges or offers to arrange for a consumer the provision of credit or the letting of goods in return for a commission, payment or consideration of any kind from the provider of the credit or the owner, as the case may be”.

Credit intermediaries (such as motor dealerships and high street retailers i.e. electrical and furniture retailers) are generally engaged in leasing or hiring out goods, selling on credit, or arranging credit finance provided in turn by credit institutions (i.e. banks). As such, they also can arrange, or offer to arrange, a PCP agreement. They also require annual authorisation by the Competition and Consumer Protection Commission (CCPC).

Key provisions of the Bill

This section of the Digest briefly explores each section of the Bill.

Section 1: Definitions

Lists the existing legislation to be affected by this Bill, namely:

- *Consumer Credit Act 1995* (“Act of 1995”);
- *Central Bank Act 1997* (“Act of 1997”)

Section 2: Amendment of section 28 of Act of 1997 (*Central Bank Act 1997*)

Section 2 of this Bill amends section 28 of the Act of 1997 by:

(a) inserting several new definitions including:

- Consumer-hire agreement
- Hirer
- Hire-purchase agreement
- Regulated credit entity
- Relevant activity

(b) by amending/substituting existing definitions including:

- Credit
- Credit servicing
- Credit Servicing Firm (CSF)
- Retail Credit Firm (RCF)

Several additions and substitutions (and omissions) are notable here:

- A new definition of “**relevant activity**” is introduced which, as proposed, means either (a) directly or indirectly providing credit to, or (b) entering into a consumer-hire agreement or hire-purchase agreement with a relevant person. This will substitute for the existing provision to just “provide credit” with this more specific provision;
- Despite the objective of the Bill, a Personal Contract Plan (PCP) is not distinctly defined in this Bill and, in fact, PCPs are not explicitly referred to at all in the Bill but are (most likely) considered a form of hire-purchase agreement. Defining (PCPs) as hire-purchase agreements was identified by a number of stakeholders during the pre-legislative scrutiny (PLS) process as summarised by the L&RS. PCPs are, however, referred to in section 2 of the Bill in the Explanatory Memo as follows:

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

In summary, the major substitutions were as follows:

- **“Credit”**: The Bill revises the definition of ‘credit’ beyond ‘cash loans’ to include deferred payments and other similar products;
- **“Retail Credit Firm (RCF)”**: The Bill widens the activities a RCF may be involved for (for definitional and thus authorisation purposes) to include consumer-hire and hire-purchase agreements and indeed ‘relevant activities’ (beyond simply the ‘provision of credit’ as is currently, narrowly, the case);
- **“Credit servicing”**: The Bill introduces, for the first time, explicit reference to hire-purchase (HP) and consumer-hire credit agreements (where the customer is “hirer”) into the definition of ‘credit servicing’ in addition to the existing reference to credit agreements (where the customer is a “borrower”).

These specific changes are further elaborated on in Table 3, below.

Table 5: Comparing existing and proposed provisions under this Bill (proposed substitutions in subsection (1) of the *Central Bank Act 1997*)

	Existing	Proposed
Credit	<p>means –</p> <p>a cash loan (whether or not provided on the security of a mortgage or charge over an estate or interest in land),</p> <p>but does <u>not</u> include –</p> <p>credit of a class specified in section 3(2) of the <i>Consumer Credit Act 1995</i>;</p>	<p>means—</p> <p>(a) a deferred payment,</p> <p>(b) a cash loan (whether or not provided on the security of a mortgage or charge over an estate or interest in land), or</p> <p>(c) other similar financial accommodation,</p> <p>but does not include—</p> <p>(i) credit of a class specified in section 3(2) of the Act of 1995</p> <p>(ii) credit granted or made available under an agreement of a class specified in section 3(2) of the Act of 1995</p> <p>(iii) (credit arising under a transaction of a class specified in section 3(2) of the Act of 1995</p> <p>(iv) a payment of a class specified in section 3(2) of the Act of 1995, or</p> <p>(v) bailment of goods to a hirer under an agreement of less than 3 months’ duration under which the property in the goods remains with the owner;”</p>
Retail Credit Firm	<p>means –</p> <p>a person prescribed for the purpose of F48 [paragraph (e)] of the definition of ‘credit institution’ in F48 [section 2(1)] of the <i>Consumer Credit Act 1995</i>, or any other person who holds itself out as carrying on a business of, and whose business consists wholly or partly of, providing credit directly to</p>	<p>means –</p> <p>a person whose business consists wholly or partly of any relevant activity but does not include—</p> <p>(a) a person who is a regulated financial service provider authorised, otherwise than under this Part, by -</p> <p>(i) the Bank, or</p> <p>(ii) an authority that performs functions in an EEA country that are comparable to the functions</p>

	<p>relevant persons, but does not include—</p> <ul style="list-style-type: none"> (a) a person who is a regulated financial service provider authorised, by the Bank or an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank, to provide credit in the State otherwise than under this Part, or (b) a person who is an authorised credit intermediary under Part XI of the <i>Consumer Credit Act 1995</i>, or (c) in relation - to credit that was originally provided by another person, a person to whom all or any part of that other person’s interest in the credit is directly or indirectly assigned or otherwise disposed of, or (d) a person who provides credit on a once only or occasional basis, but only if the provision of the credit does not involve a representation, or create an impression (whether in advertising, marketing or otherwise), that the credit would be offered to other persons on the same or substantially similar terms, or (e) a person who is exempted, or who belongs to a class of persons that is exempted, under section 29A from being required to hold an authorisation as a retail credit firm; 	<p>performed by the Bank, to carry out any relevant activity in the State,</p> <ul style="list-style-type: none"> (b) a person who is a credit intermediary authorised under the Act of 1995 (c) In relation to— <ul style="list-style-type: none"> (i) credit that was originally provided by another person, a person to whom all or any part of that other person’s interest in the credit is directly or indirectly assigned or otherwise disposed of, or (ii) a consumer-hire agreement or a hire-purchase agreement that was entered into by another person, a person to whom that other person’s interest in the agreement concerned is directly or indirectly assigned or otherwise disposed of, (d) A person who carries out relevant activities on a once only or occasional basis and, in so doing, does not represent or create an impression (whether in advertising, marketing or otherwise) that the person would enter into agreements with other persons on the same or substantially similar terms as the agreements under which those relevant activities are carried out, (e) a person who is exempted, or a person who belongs to a class of persons that is exempted, for the purposes of this paragraph, under section 29A, (f) a person whose business consists partly of a relevant activity, but only by virtue of the person providing credit in the form of trade credit, or (g) a local authority.
<p>Credit servicing</p>	<p>Means –</p> <p>In relation to a credit agreement, means, subject to subsection (2) —</p> <ul style="list-style-type: none"> (a) holding the legal title to credit granted under the credit agreement, (b) managing or administering the credit agreement, including— <ul style="list-style-type: none"> (i) notifying the relevant borrower of changes in interest rates or in payments due under the credit agreement or other 	<p>Means-</p> <ul style="list-style-type: none"> (a) in relation to a credit agreement, subject to subsection (2)(a)— <ul style="list-style-type: none"> (i) holding the legal title to the rights of the creditor under the agreement, (ii) managing or administering the agreement, including— <ul style="list-style-type: none"> (I) notifying the relevant borrower of changes in interest rates or in payments due under the agreement or other matters of which the agreement requires the relevant borrower to be notified, (II) taking any necessary steps for the purposes of collecting or

	<p>matters of which the credit agreement requires the relevant borrower to be notified,</p> <ul style="list-style-type: none"> (ii) taking any necessary steps for the purposes of collecting or recovering payments due under the credit agreement from the relevant borrower, (iii) managing or administering any of the following: <ul style="list-style-type: none"> (I) repayments under the credit agreement; (II) any charges imposed on the relevant borrower under the credit agreement; (III) any errors made in relation to the credit agreement; (IV) any complaints made by the relevant borrower; information or records relating to the relevant borrower in respect of the credit agreement; (V) the process by which a relevant borrower's financial difficulties are addressed; (VI) any alternative arrangements for repayment or other restructuring; assessment of the relevant borrower's financial circumstances and ability to repay under the credit agreement; (VII) determination of the overall strategy for the management and administration of a portfolio of credit agreements; (VIII) maintenance of control over key decisions relating to such portfolio, or (c) communicating with the relevant borrower in respect of any of the matters referred to in paragraph (b). 	<p>recovering payments due under the agreement from the relevant borrower, or</p> <ul style="list-style-type: none"> (III) managing or administering any of the following: <ul style="list-style-type: none"> (A) repayments under the agreement; (B) any charges imposed on the relevant borrower under the agreement (C) any errors made in relation to the agreement; (D) any complaints made by the relevant borrower; (E) information or records relating to the relevant borrower in respect of the agreement; (F) the process by which a relevant borrower's financial difficulties are addressed; (G) any alternative arrangements for repayment or other restructuring; (H) assessment of the relevant borrower's financial circumstances and ability to repay under the agreement; (I) determination of the overall strategy for the management and administration of a portfolio of such agreements; (J) maintenance of control over key decisions relating to such a portfolio, (iii) communicating with the relevant borrower in respect of any of the matters referred to in subparagraph (ii), <p>and</p> <ul style="list-style-type: none"> (b) in relation to a hire-purchase or a consumer-hire, subject to subsection (2)(a)— <ul style="list-style-type: none"> (i) holding the legal title to the rights of the owner under the agreement, (ii) managing or administering the agreement, including— <ul style="list-style-type: none"> (I) notifying the relevant hirer of changes in interest rates or in payments due under the agreement or other matters of which the agreement requires the relevant hirer to be notified, (II) taking any necessary steps for the purposes of collecting or recovering payments due under the agreement from the relevant hirer, or
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		<p>(III) managing or administering any of the following:</p> <ul style="list-style-type: none"> (A) repayments under the agreement; (B) any charges imposed on the relevant hirer under the agreement (C) any errors made in relation to the agreement; (D) any complaints made by the relevant hirer; (E) information or records relating to the relevant hirer in respect of the agreement; (F) the process by which a relevant hirer's financial difficulties are addressed; (G) any alternative arrangements for repayment or other restructuring; (H) assessment of the relevant hirer's financial circumstances and ability to repay under the agreement; (I) determination of the overall strategy for the management and administration of a portfolio of such agreements; (J) maintenance of control over key decisions relating to such a portfolio, <p>or</p> <p>(iii) communicating with the relevant hirer in respect of any of the matters referred to in subparagraph (ii),</p>
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Source: *Central Bank Act 1997* (as [consolidated by the Law Reform Commission](#), updated to 1 June 2021)

New / proposed addition

There are several further insertions and substitutions, amending section 28 of the *Central Bank Act 1997* which are summarised as follows:

- (b) **Adds a new section 1A into the Act of 1997 after subsection (1).** This relates to the definition of ‘trade credit’ and the criteria which apply;
- (c) **Substitutes subsection (2) with a new subsection (2):** This relates to the person who holds the legal title to the rights of the creditor under a credit agreement, or a person who holds the legal title to the rights of the owner under a consumer-hire/hire-purchase agreement as they relate to the act of credit servicing;
- (d) **Substitutes subsection (2) with a new subsection (2A):** This clarifies that a ‘credit servicing firm’ in relation to *credit granted by, or the holding of legal title of the rights of a creditor under a credit agreement by, a regulated credit entity*, does not include a securitisation special purpose entity in the circumstances where (a) such an entity was established by or on behalf a regulated credit entity (b) the regulated entity retains the legal title in respect of the interest so assigned or otherwise disposed of and (c) the originator, sponsor or original lender of the securitisation is required to retain on an ongoing basis a “material net economic interest in the securitisation of not less than 5%”;
- (e) **Inserts a new subsection (2B) after subsection (2):** This similarly clarified that a ‘credit servicing firm’, *in relation to the rights of an owner under a consumer-hire agreement or hire-purchase agreement held by, or the holding of legal title to such rights by, a regulated credit entity*, does not include a securitisation special purpose entity under the same criteria identified above;
- (f) **In subsection (3), substitutes “the business of a credit servicing firm” with “the business of a credit servicing firm in so far as that business comprises the activities referred to in paragraph (a) of the definition of ‘credit servicing’ in subsection (1)”.**
- (g) **Inserting a new subsection (3A) after subsection (3):** States that a person authorised by the Central Bank as a RCF can also carry out the business of a CSF where that business is defined as “credit servicing”;
- (h) **Inserting a new subsection (5) after subsection (4):** A person, other than a regulated financial service provider, authorised as a CSF is taken to be authorised as a CSF insofar as the business constitutes “credit servicing” under this Bill;

Section 3: Amendment of section 29 of Act of 1997 (*Central Bank Act 1997*)

Section 29 of the *Central Bank Act 1997* refers to persons (i.e. entities) prohibited from carrying on regulated businesses without authorisation (by the Central Bank).

Section 3 amends section 29 of the *Central Bank Act 1997* by inserting a new subsection (5) which makes clear that any entity which is *excluded* from the requirement to be authorised by the Central Bank as a certain class of regulated business/entity is not prohibited from carrying on such a regulated business. The new subsection explicitly refers to NAMA and a NAMA group entity.

Section 4: Amendment of section 29A of Act of 1997 (*Central Bank Act 1997*)

Section 29A of the *Central Bank Act 1997* refers to the power of the (Central) Bank to exempt certain persons from requiring authorisation as a Retail Credit Firm/RCF.

Section 4 amends subsections 1, 2, 3 and 9 of section 29A of the *Central Bank Act 1997* and inserts a new subsection 10. The amendments broadly relate to substituting “relevant activities” for “provision of credit”, an expanded definition, and the definition of a Retail Credit Firm and exemptions. Subsection 10 introduces an explicit definition of “total amount of value of relevant activities that are carried out”.

Section 5: Further transitional provision for existing Retail Credit Firms

Section 5 amends the *Central Bank Act 1997* by inserting a new section 34E.

Section 34E of the *Central Bank Act 1997* refers to a [transitional provision for existing Retail Credit Firms](#). It states that a person carrying on the business of a RCF who did not require authorisation prior to the coming into force of the *Consumer Protection (Regulation of Credit Servicing Firms) Act 2015* is taken to be authorised to carry on the business of a retail credit firm until the Bank has granted or refused authorisation to the person, provided that the person applies to the Bank under section 30 for authorisation no later than 3 months after that coming into operation. Separately, if a person is authorised, the Bank may (a) impose the necessary regulations/conditions upon the person in its role as regulator/supervisor and/or (b) direct the person not to carry on the business of a RCF for a period not exceeding 3 months.

The new section 34EA refers to “further transitional provisions” but is identical to the existing section 34E save for the additional reference to “section 2(a)(vii) of the *Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2021*” replacing the reference to the *Consumer Protection (Regulation of Credit Servicing Firms) Act 2015*.

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

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

Section 7 – Further transitional provision for existing credit servicing firms

Section 7 inserts a new section 34FB into the *Central Bank Act 1997* to provide for appropriate standard transitional arrangements for firms which will for the first time come within the scope of Central Bank of Ireland authorisation as a “Credit Servicing Firm”. This section provides that, subject to applying for authorisation from the Central Bank within a period of three months from the commencement of the relevant provisions, existing Credit Servicing Firms will be deemed to be authorised by the Central Bank and that authorisation will continue until the Central Bank has granted or refused authorisation.

Section 34F of the *Central Bank Act 1997* refers to the (existing) transitional provision for Credit Servicing Firms. The proposed section 34FB is similar to the existing supplementary provision [34FA](#). However, as with section 5 of this Bill (which refers to Retail Credit Firms), the reference to *Consumer Protection (Regulation of Credit Servicing Firms) Act 2015* is replaced by a reference to this Bill (if enacted) - the *Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2021*.

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

Section 34G of the *Central Bank Act 1997* refers to the obligation on a Credit Servicing Firm and hold of legal title to credit.

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

Section 9 – Collection and publication of information on relevant agreements

The collection and publication of information on relevant agreements (i.e. types of loan contracts, numbers, interest charged, etc.) was a prominent topic raised by stakeholders during the pre-legislative scrutiny (PLS) process.

As noted in the [L&RS briefing paper](#) [internal access only] supplied to the Joint Committee, the collection and publication of information / data on hire-purchase agreements including Personal Contract Plans (PCPs) is supported by stakeholders with many requesting more specificity.

Section 9 of the Bill amends the *Central Bank Act 1997* to introduce a new section 36EA after section 36E. Section 36E refers to the publication, by the Central Bank, of a list of persons authorised to carry on regulated businesses.

Section 36EA allows for the Minister to request of the Central Bank to collect and publish information relating to credit agreements, consumer-hire agreements and hire-purchase agreements. The Minister may also specify such particulars as:

- The information which it requires the Central Bank to collect and publish,
- The manner in which the information is to be published.
- The frequency of collection (once-off or ongoing);

Section 10 – Amendment of section 2 of the Act of 1995

Amends section 2 of the *Consumer Credit Act 1995* by inserting additional definitions and substituting other existing definitions.

This section provides that the authorisation category of “Retail Credit Firms” will replace the current provision under that Act which provides that the Central Bank may prescribe individual firms to be a “credit institution” for the purposes of that Act. A limited technical change is also being made to the definition of “APR” in the 1995 Act, as well as a cross reference to the *Central Bank Act 1997*.

Section 11 – Amendment of section 9 of the Act of 1995

Amends section 9 of the *Consumer Credit Act 1995* to make clear that the APR provisions shall apply to credit and hire-purchase (including PCP) agreements and that the Central Bank may, by regulations, amend the method of calculating the APR in relation to these agreements.

Section 12 – Amendment of section 12 of the Act of 1995

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

Section 13 – Insertion of Part IIA in Act of 1995

Sections 13 and 14 of the Bill refer to a maximum 23% Annual Percentage Rate (APR) to be imposed on all credit and hire-purchase agreements, including PCPs (though not moneylending

agreements)¹⁰. In effect, this means that hire-purchase and credit-agreements are considered comparable with a maximum chargeable APR of 23%. It also provides that a creditor shall not be entitled to enforce a credit agreement where this requirement is not met (save for one exception).

Section 13 proposes to insert a new Part IIA into the *Consumer Credit Act 1995*.

Section 14 – Amendment of section 58 of Act of 1995

Section 14 inserts a new requirement in section 58 of the *Consumer Credit Act 1995* to provide that that hire-purchase agreements (including PCPs) shall, along with other information specified in that section, explicitly state the APR. This is a key change.

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

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

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

Section 16 amends section 2 of the *Financial Services and Pensions Ombudsman Act 2017* to provide that a “consumer” (for the purposes of that Bill/Act) includes a consumer who was, in relation to a hire-purchase (including PCP) or a consumer-hire agreement, a customer of the financial services provider in a case where a Credit Servicing Firm undertakes credit servicing in respect of that agreement.

Section 17: Short title and commencement

This Act may be cited as the *Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2021*.

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

¹⁰ 23% APR is the cut-off point before a credit agreement becomes a moneylending agreement, as confirmed by the [Free Legal Advice Centre \(FLAC\)](#).

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