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FLAC Submission to Joint Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach, on the General Scheme of the Consumer Credit (Amendment) Bill 2021

SEPTEMBER 2021

SUBMISSION TO JOINT OIREACHTAS COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM, AND TAOISEACH, ON THE GENERAL SCHEME OF THE CONSUMER CREDIT (AMENDMENT) BILL 2021

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- **Introduction**

FLAC has to date provided two written contributions to the Committee on this issue. The first of these, of November 2020, concerned a submission on detailed scrutiny of a one section Consumer Credit (Amendment) Bill, 2018, a Private Members Bill (PMB) proposed by Pearse Doherty, TD, Sinn Fein spokesperson on Finance.

The second involved an opening statement to the Committee concerning pre-legislative scrutiny of that same Bill, for the purpose of an appearance by FLAC before the Committee on June 17th, 2021.

What is now being sought by the Committee is a further written submission, this time concerning pre-legislative scrutiny of the General Scheme (or 'Heads') of a government Bill – the Consumer Credit (Amendment) Bill, 2021 – which, it would appear, is intended to supersede Deputy Doherty's original Bill.

- **Summary of recommendations**

Head 2

1. **We suggest that the retention of the first three of the criteria - Conditions (a) to (c) – in the proposed amendment to the definition of moneylending in Section 2 of CCA 1995, now to become 'high cost credit agreement', requires further investigation and clarification.**
2. **We propose that the words 'high-cost, short-term credit agreement,' be substituted for 'high cost credit agreement' as the new term to replace 'Moneylending agreement' in Section 2 of the CCA 1995 and that other relevant references follow suit, i.e. high-cost, short-term credit provider etc**

Head 3

3. **We recommend that the wording of Section 93 (2) be far more transparent and specific in terms of articulating a right of objection to the renewal of a high-cost credit provider's licence.**
4. **We suggest that the new provisions in Section.93 (7) and (7A) concerning 1) the proposed length of a high-cost provider's licence at five years; 2) the provision for**

further extending the duration of the licence but no potential provision for a reduction of it; and 3) the criteria that will be considered and the process will be deployed by the CBI in the course of deciding whether an extension is granted, all require further clarification and examination.

5. We suggest that creating an additional legislative category of high-cost long-term credit agreement also be considered under the consumer credit legislation, to include longer term loans that carry a cost of credit above market norms.
6. We recommend that the overarching principle of legislative reform in this area should be to ensure that all high cost credit providers are regulated and their rates of interest subject to a legislative cap or caps.

Head 4

7. In terms of the high cost credit provider maximum interest rate for cash loans proposed in Section 93 (10) (B) (1), we recommend that clarification is provided whether the actual intention here is to define as 'excessive' an interest rate of 1% per week or 48% per annum, or is it any rate above those rates which will be excessive, thereby setting those rates as a potential maximum? Similar clarification is required in terms of the excessive (or maximum) rate chosen for running account agreements.
8. Whether these rates are excessive or maximum rates, no information is provided on the rationale for the rates chosen; all we have before us is the General Scheme of a Bill with no working examples and we recommend that this be remedied.
9. In terms of the Ministerial power to set maximum rates proposed in Section 93(10)(B)(2), we recommend that that clarification is provided whether it is intended that this power is discretionary only and may therefore not necessarily utilised.
10. We recommend that Section 93(10) which currently provides that *'The Bank may refuse to grant a moneylender's licence on one or more of the following grounds'* should be amended to include the appropriate reference to high cost credit provider.
11. In providing for a maximum annual simple interest rate only, rather than an annual percentage rate of charge (APRC), it would appear that the proposed Bill may breach the terms of EU's 2008 Credit for Consumers Directive (Council Directive 2008/48/EC) and the European Communities (Consumer Credit Agreements) Regulations 2010 (SI 281/2010) that transposes that Directive in Ireland. This is a matter that might be explored by the Committee as a matter of urgency, as it may go to the core of this proposed legislation.

Head 5

12. We suggest that, as a result of proposed amendments to Section 100 (2), the existing provision in s.100 (2) (a) (vii) to enter *'the rate of interest to be charged (including the APR expressed as £ per £100 borrowed) on foot of the credit advanced'* is now arguably superfluous and is also out of date, since APR is no longer to be used as the method of calculating the rate of interest.

Heads 6 and 7 (which are inter-related)

13. **In relation to the proposals to amend Section 102 and 103 to ban collection charges, we suggest that it would be important to clarify whether or not it is intended here that home collected high cost credit repayments might continue, albeit as long as separate collection charges are not charged for the collection of those repayments.**

Head 8

14. **A proposed new section 114A provides that the Minister may request the CBI to obtain and publish aggregate information and statistics in relation to the high cost credit sector, but may not request the publication of non-personal data. We suggest that the wording here might be checked; it seems more likely to us that it would be the publication of personal data that would be prohibited.**

Additional recommendations concerning the consumer credit legislative landscape

15. **We request that the Committee enquire from the Minister and the Department of Finance why the 2014 Mortgage Credit Directive, the first EU measure to regulate the provision of consumer mortgages, was transposed in 2016 by statutory instrument, rather than by primary legislation.**
16. **We request that the Committee call upon the Central Bank of Ireland to provide an update to the Committee of its recent activities as the 'competent authority' in terms of powers of inspection, the investigation of lenders and the prosecution of offences summarily under the legislation which transposes the Consumer Credit Directives in Ireland.**
17. **We request that the Committee ask the Minister and the Department of Finance to clarify whether there are any plans to undertake a badly needed consolidation of consumer credit legislation in Ireland.**

- **Detailed consideration of the Heads (Please note that this part of our submission only considers draft provisions that we consider raise issues of concern that merit comment and further discussion).**

Head 2 – Amendments to definition of moneylending in Section 2 of CCA 1995

This head proposes to delete all previous terms concerning 'moneylending' and replaces them variously with the terms 'high cost credit', 'high cost credit agreement' and 'high cost credit provider'.

The previous four conditions, any one or more of which qualified an agreement as a moneylending agreement, are retained for application to 'high cost credit agreements'.

Thus a '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* (our emphasis) *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 his representative 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, or

(d) where 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.

It is suggested that the retention of the first three of these criteria - Conditions (a) to (c) – requires further clarification. Broadly speaking, these were largely intended to catch agreements that were 'doorstep negotiated' and/or 'home collected'. With the proposed abolition of collection charges and the introduction of 'durable medium' i.e., electronic, repayment books, set out later in the heads of this Bill, it is likely that many if not most such agreements are/will be negotiated, agreed and repaid online or by mobile phone. It seems to us that the retention of these criteria only makes sense if home collected credit is allowed to continue, albeit without the lender not having a right to charge separate collection charges for it. The implications of this are discussed in greater detail below when considering Head Five.

However, it is the key (fourth) proviso of a high cost credit agreement - *'where 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'-* that gives rise to more pressing concerns.

The term 'high cost credit' is broadly more effective and accurate in terms of description than 'moneylending'. However, the application of this fourth criterion does lead to what might perhaps be described as an unintended consequence with worrying implications. By providing that a 'high cost credit agreement' is one that carries an APR of over 23%, it seems by definition to suggest that <u>any credit agreement with an APR of under 23%</u> is not a 'high cost credit agreement' and this is not the reality in our view.

Further, it is also notable that this head retains a further provision previously applying to moneylending and now similarly to applying to high cost credit, which provides that a high cost credit provider <u>does not include</u>:

(a) any pawnbroker in respect of business carried on by him in accordance with the provisions of the Pawnbrokers Act, 1964 (as amended by Part XV),
(b) a society which is registered as a credit union under the Industrial and Provident Societies Acts, 1893 to 1978, by virtue of the Credit Union Act, 1966,
(c) a registered society within the meaning of the Friendly Societies Acts, 1896 to 1977,
(d) a credit institution,
(e) a person who supplies money for the purchase, sale or hire of goods at an APR which is 23 per cent. or less (or such other rate as may be prescribed),
(f) a mortgage lender.
This exempts a credit institution (as defined and as regulated by the CBI or another EU Member State regulator) from being involved in the provision of a high cost credit agreement, even if it strays above the 23% APR figure.

In our submission to the Committee of November 2020, we included details of a 'Celtic Tiger' 'top-up' personal loan that illustrated that credit institutions with a banking licence (in this case, a UK bank passporting on its UK bank licence) are more than capable of exploiting vulnerable consumers. We reproduce the core details of that loan as follows:

- Total amount of Loan **€22,777.74**
- Payment Protection Premium Advanced **€5,495.45**
- Amount of credit advanced **€17,282.29**
- Amount deducted to clear previous loan **€14,865.29**
- Net amount advanced to customer **€2,417.00**
- Number of instalments **72 (months)**
- Amount of each instalment **€561.22**
- Total amount payable **€40,407.84**
- Cost of this credit **€17,630.10**
- Annual Percentage Rate **23.4%**

The terms of this loan were truly staggering in their exploitation of a migrant worker with no experience of financial matters. It is notable that the APR on this loan exceeded the 23% APR threshold (note the longer the loan, the lower the APR) and for a loan of six years duration to be allowed to do so without sanction is frankly disgraceful. Still, it was not even considered a moneylending agreement from a legal perspective because it was provided by a 'credit institution' as defined.

The key overarching point, in addition, is that had the cost of credit been slightly lower and the APR therefore under 23% with this loan, it would not have been classified as 'high cost' credit under the proposed definitions in this Bill.

We suggest therefore that the term 'high cost credit', though more accurate than 'moneylending', needs to be revisited here. It fails to take into account that the length of the loan is a crucial factor in determining the real cost of credit. Thus, for example, a 25 year mortgage at 5% per annum (of the type offered by sub-prime mortgage lenders during the boom years) is a massively more costly mortgage than one at 2.5% and it would be very difficult to argue that the former is not 'high cost credit' in practice.

We note below when reviewing Head Three, that it is proposed that the maximum duration of a high cost credit agreement may only be 12 months (with the exception of running account agreements – see further below). **With this in mind, we propose that the words 'high-cost, short-term credit,' be substituted for 'high cost credit' here.** This is the equivalent wording the UK where, in December 2013, the UK Parliament introduced legislation to oblige the Financial Conduct Authority (FCA) to introduce a price cap to protect consumers from excessive charges from high-cost short-term credit (abbreviated as HCSTC).

Head 3 - Amendments to Section 93 of the CCA 1995

- **Objections to a grant of licence**

S.93 (1) of the Act is to be amended to provide that the CBI *'may grant to an applicant a high cost credit provider's* (formerly moneylender's) *licence authorising the applicant to engage in the business of providing high cost credit* (formerly moneylending) *on such terms and conditions as it thinks fit, but only after considering all objections made in respect of the application under subsection (2)'.*

Sub-section (2) is to provide that *'A person who intends to apply for a high cost credit provider's licence shall before making such application cause to be published, in any national newspaper published in the State that the applicant intends to engage or engages in the business of providing high cost credit, notice of his intention."*

It would appear from the wording of s.93 that it is envisaged that any objection would be triggered by a person reading in a newspaper of the licence holder's intention to seek a renewal. Why should this necessarily be the case? **An ongoing weakness in this provision is**

that neither the existing s.93 nor its proposed replacement seem to actually set out a process for acknowledging and hearing such objections. We would suggest that the wording of this section needs to be far more transparent and specific in terms of articulating this right of objection.

- **Proposed duration of high cost credit provider's licence**

To our knowledge, moneylender's licences up to now had to be applied for on an annual basis, and it is likely that some licence holders justifiably viewed this as an unnecessary administrative burden. A revised s.93, sub-section (7), together with a new sub-section (7A), now proposes to allow for a licence to last for five years with a residual power for the CBI to extend this period, *'provided that it is satisfied that there will be no consumer detriment'.*
A few questions arise here:

- What is the rationale for what is a fairly dramatic extension of the licence period?
- Why is there potential provision for further extending the duration of it but no potential provision for a reduction of it?
- What criteria will be considered and what process will be employed by the CBI in the course of deciding whether an extension will or will not result in 'consumer detriment'?

- **Proposed maximum duration of a high cost credit agreement**

To this point, moneylender's loans have generally not exceeded twelve months in duration and many have been of six months duration or less. A further additional sub-section (7B) is therefore now proposed which states that *'the term of the* (high cost credit) *loan shall not exceed twelve calendar months, unless the loan is advanced through a running account facility'.*

In principle, since this reflects current practice, it appears to make sense. However, it would be useful to have the rationale for this provision teased out in practice, and, as proposed in detail above, if the term of the loan is to be capped at 12 months, then the loan should be renamed a **high cost short term** credit agreement, to distinguish it from a loan of longer duration upon which high rates of interest are paid. **Indeed, there is perhaps a case for looking at creating an additional legislative category of <u>high-cost long-term credit agreement</u> to include those longer term loans that carry a cost of credit above market norms.**

In this regard, it is notable that a further Bill – the **Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Bill 2021** – is currently adjourned at second stage before the Dail. This Bill, at long last, proposes to ensure that all providers of car finance credit and providers of what the Bill refers to as 'indirect' credit (often associated with retail store purchases with the store acting as a credit intermediary for a high cost lender) are both regulated by the CBI and must apply relevant Codes, including in particular the Consumer Protection Code 2012 (as amended and consolidated).

It seems to us that this Bill presents an opportunity to cap the cost of car finance agreements (HP, PCP, Consumer Hire) as some providers, who are not currently regulated, charge well above the norm. The same applies to 'indirect' store type credit. Indeed, it is hard to argue with a contribution made by Roisin Shortall, TD (Social Democrats) during the recent second stage debate on this Bill when she remarked, in relation to indirect credit, that '*The prospect of being able to purchase something, and it can be anything from a pair of trousers to a fridge freezer, with what seems like a painless way of repaying the cost is very enticing for people, yet it ends up not been painless in terms of the type of interest rates charged'* or in connection with car finance, that *'PCPs* (Personal Contract Plans) *seem very attractive but we know from surveys that a significant number of consumers do not understand the manner in which the PCP system operates. Very often, after making substantial repayments over the period of the agreement and taking care of the vehicle, they are shocked to discover the price they must pay to take ownership of the vehicle'.*

We are in favour of the tighter controls on moneylending/high cost credit rates and related issues in this Bill, but already licensed and regulated moneylenders might justifiably feel entitled to ask the question at this point – **why are we the only high cost lenders to be regulated to this degree?** Indeed, in our view, the proposed Consumer Credit (Amendment) Bill, 2021 and the Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Bill 2021 are regulating overlapping spaces and might conceivably form part of the same, rather than separate, pieces of legislation. **The overarching principle of legislative reform in this area should be that all high cost credit providers should be regulated and their rates of interest should be subject to a legislative cap or caps.**

A final and related point here which we have made in our previous submissions is that the legislative framework concerning the provision of consumer credit is now hopelessly fragmented and extremely difficult for borrowers (and their advisors) to navigate and there appears to be no proposals to redress or consolidate this. New categories of regulated entity are belatedly created and the choice of legislative vehicle can be mystifying. An example here is that the Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Bill 2021 proposes for the first time to regulate all providers of car finance – primarily Hire Purchase and Personal Contract Plans – but the agreement themselves are regulated by the Consumer Credit Act. In the final section of this submission, we return to this theme in more detail.

Head 4 – Proposed high cost credit provider excessive (or maximum) interest rates

- **Proposed high cost credit provider maximum interest rate – cash loans**

1. Comments on the proposed provisions

On the specific question of a maximum interest rate for moneylenders/high cost credit providers, a new subsection (10) (B) is proposed to be added after section 93(10) (A), and the draft as set out in the General Scheme is then initially worded as follows:

"High cost credit provider maximum interest rate

93(10) (B).

(1) For the purposes of section 93(10) (g), "excessive" shall be defined as –

(a) a simple interest rate of one per cent per week up to a maximum of forty-eight per cent per annum on credit advanced for <u>a cash loan</u>, or

(b) A nominal interest rate of 2.83% per month which is to be applied to the outstanding balance for <u>loans provided on a running account</u>.

(2) The Minister may, after consultation with the Bank, by order specify a rate of interest for the purpose of subsection (1) (a), and (b).

(3) The Minister shall have regard to the following when making an order under subsection (2):

(a) the impact on sustainability of the high cost credit sector, (b) the potential impact a change in the rate of interest would have on the supply of credit, (c) the evolution of weighted average interest rates by categories of high cost credit providers, and (d) the impact a reduction in the supply of credit would have on financial inclusion.

The existing Section 93(10) already provided that *'The Bank may refuse to grant a moneylender's licence on one or more of the following grounds'* including (g) '*in the Bank's opinion, the cost of credit to be charged is <u>excessive</u> or any of the terms or conditions attaching thereto are unfair'.* The usefulness of that provision was however completely undermined by the absence of any definition of the term 'excessive'.

It is notable then that in these new provisions, excessive is defined in very specific terms, in the case of high cost credit <u>cash loans</u> as *'a simple interest rate of one per cent per week up to a maximum of forty-eight per cent per annum'.* However, if this rate is considered excessive, than a high cost credit provider would have to provide a lower rate – say for example 0.99% per week - in order to escape being classified as charging excessive rates and thereby failing to obtain a licence. Might it be that there is some ambiguity here - **Is the actual intention here to define as 'excessive', an interest rate of 1% per week or 48% per annum, or is it any rate above those rates which will be excessive, thereby setting those rates as a potential maximum?**

In passing it might be suggested that a further technical amendment seems to be missing here. Section 93(10) above which currently provides that ***'The Bank may refuse to grant a moneylender's licence on one or more of the following grounds'*** **would have to replace '*a***

***moneylender's licence* with '*a high cost credit provider's licence*' in order to now make sense.**

The proposed 93(10)(B) then goes on to provide at (2) that *'The Minister may, after consultation with the Bank, by order specify a rate of interest for the purpose of subsection (1)(a)* (applying to cash loans)*, and (b)* (applying to running accounts)*'.* A similar lack of clarity seems to occur here. **This seems to involve a Ministerial power to set maximum rates below the rates already defined as excessive.** However, is notable that this seems to be a discretionary power which the Minister is not obliged to exercise. S/he could set no such rates, leaving applicants for licences having to set out in their applications what rates they propose to charge below what has been already defined as excessive. **In summary, it appears to us that these provisions are unnecessarily ambiguous and require clarification.**

A final comment here relates to the factors that the Minister must take into account when setting maximum rates of interest. The final (fourth) of these is '*the impact a reduction in the supply of credit would have on financial inclusion'.* We think it is unlikely that it is the government's view that financial inclusion might somehow be improved by allowing persons on low incomes having access to a supply of high-cost, short-term credit. According to World Bank data of 2017, almost one in twenty adults In Ireland over the age of 15 do not hold a bank account and thereby suffer a lack of access to increasingly technological financial services and increased transaction costs.[1] Focusing on increasing access to basic bank accounts and the creation of low cost credit options for persons on low incomes should be prioritised.

2. Comments on proposed excessive (or maximum) rates for cash loans

The question as to why this particular (simple interest) excessive rate or maximum rate, as the case may be, was chosen for cash loans in the first place is not explained. The General Scheme provides no rationale for such rates and no working mathematical example(s) are provided of different lengths of loan – for example of six months or 12 months - to indicate how this rate would apply in practice. However, a loan of €500 over 12 months at a maximum rate of 48% would, by our calculations, see the borrower pay back €740, equivalent to €14.23 per week over 52 weeks. As we understand it, because the duration of this loan example is 12 months, the Annual Percentage Rate of Charge (APRC) and the simple rate of interest are the same. However, that would not be the case with a shorter loan of six months, for example, where the APR would be higher than the simple interest rate.

By way of comparison, prior to the passing of the CCA 1995 which contained no provision for a maximum rate of interest, the Moneylenders Acts 1900-1933 had provided for a maximum annual rate of 39% simple interest.[2] Although it was never formally tested in court to our

[1] See for example, 'Meet the unbanked: Who is Ireland's financially excluded?' Tara Kelly, April 2019 – UCD Data Journalism Studio.
[2] See Section 17 amending the Moneylenders Act 1900

knowledge, this 39% maximum rate of interest was believed not to include collection charges, for which the consumer was charged separately. However, given that collection charges are now to be banned (see Head 6 below), the rate that will be considered excessive (or the proposed maximum annual rate or as the case may be), amounts to 9% more than the maximum annual rate that applied to moneylending loans between 1939 and 1995. It is notable too that Deputy Doherty's Bill (which this outline Bill presumably now overtakes) provided for a maximum rate of 36% APR, a lower rate again for loans of 12 months duration, but likely to be a much more restrictive rate for loans of shorter duration such as six months.

In our initial submission of November 2020, we suggested that were 36% APR to be the maximum that a moneylender could charge by law, it might consider that the potential profit (especially after costs) that it might make would not be commercially viable for it and might cause some, if not many, of existing lenders to exit the space. We further suggested in our statement to the Committee in June 2021 that engagement with the Consumer Credit Association, the trade body for the 'home credit' industry in the Republic of Ireland, and with the now departed Provident Credit, could provide useful context for arriving at an appropriate rate or rates. Did any such discussions take place? **There is no information on this point; all we have before us is the General Scheme of a Bill with no detail of what informed the choice of many of the relevant provisions.**

3. Comments on proposal's compliance with the 'Credit for Consumers' Directive 2008

The apparent decision to abandon the Annual Percentage Rate of Charge (APRC) method of calculating the cost of credit for high cost credit loans may have EU law implications. Under the EU's 2008 Credit for Consumers Directive (Council Directive 2008/48/EC), transposed into Irish law by the European Communities (Consumer Credit Agreements) Regulations 2010 (SI 281/2010), the use of the APRC (Annual Percentage Rate of Charge) is mandatory for credit agreements involving loan amounts of between €200 and €75,000 (see Article 2 (2) (c) of the Directive, Regulation 3 (6) (c) of the regulations).

This low threshold of €200 would mean that most high cost credit agreements as proposed would come under these rules, and, to our knowledge, there is no exemption from the terms of the Directive for moneylending agreements. Regulation 13 (3) (g) provides that '*a credit agreement shall set out in a clear and concise manner - the annual percentage rate of charge and the total amount payable by the consumer, calculated at the time the credit agreement is concluded (mentioning all the assumptions used to calculate that rate)',* and Part 5, Regulation 22 sets out the rules for calculating the APRC.

Additionally, the retention of a provision in the existing legislation providing that a credit agreement will be a high cost credit agreement '*where the total cost of credit to the consumer under the agreement <u>is in excess of an APR of 23 per cent</u>., or such other rate as may be prescribed'* only serves to accentuate the confusion here.

Has compliance with these legislative rules been factored into the General Scheme of the Bill? In providing for a maximum annual simple interest rate only, it would appear that it

has not. This is a matter that might be explored by the Committee as a matter of urgency, as it may go to the core of this proposed legislation.

- **Proposed high cost credit provider maximum interest rate – running account credit**

A separate definition of what may be deemed an 'excessive' rate is provided in Head Four for 'running account' credit agreements: *'a nominal interest rate of 2.83% per month which is to be applied to the outstanding balance'.* A 'running account' in the CCA 1995 *'means a facility under a credit agreement whereby the consumer is enabled to receive, from time to time, from the creditor or a third party, cash, goods or services to an amount or value such that, taking into account payments made by or to the credit of the consumer, the credit limit (if any) is not at any time exceeded'.* Notably, 'running account' is not defined in either the subsequent 2008 Credit for Consumers Directive or the 2010 Irish regulations that transpose that Directive, referred to above.

In a written response of December 2020 by then CBI Director of Consumer Protection to a written enquiry by Ged Nash, TD (Labour), it was noted that two licensed moneylenders operated a catalogue business model, where goods are sold on credit to consumers having a running account, comprising a very high total of 160,847 consumers. These data are said to be based on figures derived from the 2019 annual licensing process. If this is correct, it shows that catalogue credit sales are a very significant part of the moneylending/high cost credit business.

Broadly speaking, the same general reservations apply here, as apply in relation to the rates proposed for cash loans set out above, including:

- **What is the basis for the rate of 2.83% per month?**
- **Is that the rate that will be deemed excessive or the maximum rate that will be allowed?**
- **Where are worked examples of how this rate will operate in practice?**
- **What is the explanation for the decision to depart from the use of APRC as the method of calculating the cost of credit?**

Head 5 – Amendment of section 100 of the Act of 1995

The proposal here is largely straightforward. The existing Section 100 (1) which obliges a moneylender to provide a repayment book, separate from the agreement itself, in which to record and acknowledge the borrower's repayments is to be amended to allow for this key document to be provided by a high cost credit provider *'on paper or another durable medium, as specified by the borrower'*, enabling an electronic version to be created as an alternative, as the borrower sees fit.

The provision in s.100 (2) (a) (viii) that obliges the amount of each collection charge (if any) to be entered in writing is deleted, as separate collection charges are now to be prohibited. It is proposed that this be replaced by a requirement to enter *'the total cost of credit in numerical terms and as a percentage of the amount borrowed'.*

Despite this new proposed requirement, the existing provision in s.100 (2) (a) (vii) to enter *'the rate of interest to be charged (including the APR expressed as £ per £100 borrowed) on foot of the credit advanced'* is retained. **This piece of information is now out of date, since APR is no longer to be used as the method of calculating the rate of interest. It is also now arguably superfluous.**

Head 6 - Amendment of section 102 of the Act of 1995 and Head 7 – Deletion of section 103 of the Act of 1995

The proposed amendments here will make 'collection charges' by a high cost credit provider in connection with a high cost credit agreement unlawful. **It should be noted here that this may not necessarily mean, as far as we can see, that 'home collected' repayments in themselves – the traditional model of many licensed moneylenders and a source of convenience for some borrowers - will come to an end, and it would be helpful if this was clarified.**

In this regard, it is notable that figures from the CBI suggest that there were 27 'Home Collection' moneylending firms with 96,657 consumers in 2019, where loans were issued and repayments are collected at the consumer's home. It is conceivable, therefore, that high cost credit providers might still seek to apply to offer two different rates, within the permitted maximum (whatever that may turn out to be) for home collected and electronically collected repayments, with the cost of collection reflected in a higher rate for the former. Indeed, if such an option were not to be available, it might be mean that borrowers without access to bank accounts and online or digital facilities to facilitate repayments might be deprived of a line of credit and this might, in turn, have unforeseen and adverse consequences. **Overall then, it would seem to us that a full discussion on this important issue is required.**

Head 8 – Addition of a new section 114A to the Act of 1995

(1) The Minister may request the Bank, in writing, to obtain and publish aggregate information and statistics in relation to the high cost credit sector.
(2) The Minister shall not request the publication of non-personal data under subsection (1).

First, it might be useful to set out in sub-section (1) some objective or objectives for the Minister, in terms of the use that might be put to the information that might be obtained and published under this section. Second, we wonder why no 'non-personal data' may be requested by the Minister here. Is this a mistake? It seems to us that it would be more logical, in data protection terms, not to request the publication of personal data under this heading.

- **Additional comments on the legislative landscape regulating consumer credit legislation in Ireland**

Consumer borrowing fuels economic activity in this economy and society and right across the Member States of the European Union (EU). Availing of credit clearly carries risks for the borrower (as well as the lender) in that ability to repay may be adversely affected by an array of factors that trigger indebtedness, such as illness, unemployment, business failure, separation and unforeseen events such as Covid 19. In some cases, personal insolvency and even loss of the family home may follow, and the consequences for the households affected and for society as a whole are potentially devastating.[3] In our view, the contribution made by the borrower to the growth of a market economy should be reflected in clear and transparent laws that properly regulate and properly protect consumers of financial services, at all levels of borrowing and other services. Exploitative practices by lenders including excessive charges and a lack of transparency in terms of information standards must be tackled. Borrowers must have access to an appropriate complaints mechanism with meaningful sanctions in the event of breaches of standards. In addition, the body that regulates financial institutions must pro-actively police compliance with legislative requirements, investigate breaches and impose sanctions where standards are not met.

To underpin this, a first and vital requirement is that of an accessible and comprehensible legislative framework and, in the case of consumer credit, we simply don't have this in Ireland in our view. We have made this core point and elaborated upon it in submissions before. For example in our submission of 26th March 2021, concerning Pre-Legislative Scrutiny of the then 'General Scheme of the Consumer Protection (Regulation of Retail Credit Firms) Bill, we noted again the *'recent history of a failure by successive governments to properly codify legislation relating to consumer credit, compounded by a questionable practice of transposing important EU Directives relating to matters of consumer credit by statutory instrument, thereby bypassing the vital input of the Houses of the Oireachtas and its Committees'.*

We went on to outline that, in 2008, a revised 'credit agreements for consumers' Directive was agreed by the European Union to replace the existing consumer credit Directives, which had given rise to the introduction of the Consumer Credit Act 1995. The State chose to transpose the new Directive by way of a statutory instrument - the European Communities (Consumer Credit Agreements) Regulations, SI 281/2010 - with responsibility for the

[3] For this reason, FLAC's research and campaigning work in the area of consumer credit is complemented by detailed policy work in the area of consumer debt. At the time of writing, FLAC is in the course of producing and publishing a series of detailed papers on legacy consumer debt and further debt issues arising out of the Covid pandemic. Two of four papers in this series entitled 'Pillar to Post' have already been published. Paper One, which provides a broad context and overview for the series, was published on 30th June 2021. The second paper which focuses on mortgage arrears was published on August 18th 2021. Paper Three which examines recent data on the payment breaks availed of during the course of the pandemic is in the course of completion. A final Paper Four will examine existing services and mechanisms for redress in debt cases and will make a series of overarching recommendations to complete the series, and will be published before the end of the year.

transposition undertaken by the Department of Finance.[4] This Statutory Instrument stood separately from the Consumer Credit Act and in a series of quite inaccessible provisions described (and continues to describe) the relationship between both.[5]

The 2008 Directive had to be transposed by 11 June 2010 and it essentially repealed the 1987 equivalent (itself amended in 1990) and updated the information requirements and other entitlements that must be provided by lenders to consumer borrowers in relation to unsecured lending. This Directive did not regulate mortgages. Another significant form of credit not covered by the revised Directive was Hire Purchase lending which continued to be regulated by the Consumer Credit Act 1995 (as amended). This was because the 2008 Directive itself did not apply to Hire Purchase loans where there was no obligation on the Hirer to purchase the goods the subject of the agreement, and the existing law in Ireland provided that there was no such obligation.

In 2010, there may have been some justification for secondary rather than primary legislation. The Department of Finance was dealing with a very difficult situation in terms of the public finances and this necessitated a heavy legislative agenda. However, we would suggest that the pressure of that situation had somewhat eased by the time the EU's Mortgage Directive, agreed in 2014, came to be transposed in 2016. Nonetheless, the Department of Finance once again took the statutory instrument route and the Directive was transposed by the **European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (S.I. No. 142/2016), despite the fact that Member States were allowed a significant amount of discretion in terms of how that Directive was transposed.** The Housing loans part of the CCA 1995 section – Part IX – continues (and continues) to be law, though it is amended partially by the 2016 regulations.

Apart from making the already complex even less transparent, transposition of EU directives by secondary legislation has other undesirable consequences. Although there is an obligation to lay regulations before the Houses of the Oireachtas for 21 days so that members may inspect their content before being signed into law by the relevant Minister or the relevant statutory authority, this seldom (if ever) leads to any debate on their content. Thus, elected members of the Dail and the Seanad do not get to speak on the legislation, or to submit ideas or to propose, debate and ultimately vote on amendments. Without this opportunity for scrutiny, the legislature is effectively bypassed. In addition, in the wake of the Global Financial Crash (GFC) and the mortgage arrears crisis that followed (and still endures), the transposition of the mortgage credit directive also presented an important opportunity to debate important questions of housing policy, banking regulation, access to affordable credit, levels of lending and consumer protection standards

[4] The Department of Enterprise, Trade and Employment was the government department originally responsible for the Consumer Credit Act 1995. Note that these regulations were in turn amended in 2012 by European Union (Consumer Credit Agreements) (Amendment) Regulations, S.I. No. 579/2012.

[5] See in particular Regulation 4 entitled 'Relationship of Parts 2 to 7 of these Regulations with Consumer Credit Act 1995'.

What was the justification for corralling a European Union legal obligation that sets the standards for how mortgages are drawn down for years to come in Ireland into a further large and unwieldy statutory instrument? We believe that this is an important question and one that should be put to the Minister and to the Department of Finance by the Committee. It might also be noted that under these three main pieces of consumer credit legislation, each of which transpose important EU Directives, the Central Bank of Ireland is the competent authority with powers of review, inspection, and the investigation of lenders and the prosecution of offences summarily. **We would also request that the Committee call upon the CBI to provide an update to the Committee of its recent activities in this regard.**

There was and still is an alternative approach that could be taken here. Although this would remain a relatively complex area, simply because there is a mix of EU directives and domestic rules that applies, not to mention the Central Bank's tendency to over layer the legislation with its own quasi-legal Codes, the obligation presented by the transposition of mortgage credit directive could have been be used as an opportunity to enact one restated single piece of legislation and that option is still available. Such an Act could consolidate all existing primary and secondary legislation governing consumer credit and clarify the rules, practices and regulatory standards to apply to the different types of credit agreement in different chapters but under one statute.[6]

At the time of writing, yet further complexity is in the course of being added to the consumer credit legislative mix. Remarkably, we still have a situation where a number of providers of Hire Purchase (and Personal Contract Plan) car finance agreements are not regulated under any legislation, but the agreements that they offer to consumers are regulated by the Consumer Credit Act 1995 (as amended). To attempt to belatedly remedy this situation, it is now proposed that such providers will be regulated under a new Bill - the Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Bill 2021) - when there are already two Consumer Protection (Regulation of Credit Servicing Firms) Acts of 2015 and 2018, which are primarily intended to regulate purchasers of loans and the companies that collect payments on their behalf.[7]

As already outlined on pages 5-6 of this submission, we are somewhat at a loss in principle to understand why that Bill is not also a Consumer Credit Act 1995 amendment Bill, rather than being attached to another legislative tributary. This would ensure that both the agreements themselves and the providers of those agreements are regulated under the same legislation, just like moneylenders, soon to become high cost credit providers.

It is our understanding that this 2021 Bill to regulate car finance providers (and providers of indirect credit) is adjourned at second stage in the Dail and will likely be referred back to this Committee for discussion at Committee Stage. **We request that the Committee ask the**

[6] This could incorporate the Consumer Credit Act 1995 (as amended); the European Communities (Consumer Credit Agreements) Regulations, SI 281/2010; the European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (S.I. No. 142/2016).
[7] No 21/2015 and No 36/2018

Minister and the Department of Finance to clarify the rationale for the choice of legislative route in this instance and whether there are any plans to undertake a consolidation of consumer credit legislation in Ireland, before that landscape becomes hopelessly inaccessible for consumers themselves.