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Written Submission to the Joint Committee on Finance, Public Expenditure and Reform and Taoiseach's detailed scrutiny of the

Consumer Credit (Amendment) Bill 2018

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Introduction

The *Consumer Credit (Amendment) Bill* was introduced in the Dáil on 6th December 2018 in response to the unacceptable and usurious rates of interest charged by licensed moneylenders in the Irish market.

The legislation, having won support in the Dáil was referred to the Select Committee on Finance, Public Expenditure and Reform, and Taoiseach on 13th December 2018. The purpose of the legislation was to introduce a restriction on interest rates and charges for moneylending loans, thereby providing much needed protections to vulnerable borrowers.

Above all else, the permission of ultra-high interest rates is immoral and unethical. Many European countries have introduced interest rate restrictions (IRR) on the grounds that ultra-high rates and charges are "excessive" (Spain), "unconscionable (Finland) and "lack moral legitimacy" (Germany). We should not allow an immoral financial regime that damages the economic interests of vulnerable borrowers to persist.

That is the ethical imperative which animates *the Consumer Credit (Amendment) Bill*.

At present, moneylenders licensed by the Central Bank are permitted to charge APR on loans of up to 187 percent, increasing to 288 percent once collection charges are included. When compared to more affordable sources of credit such as credit unions, with APR of no more than 12.67 percent charged, there are no grounds on which such high rates can be justified.

In 2013, the Central Bank published a report which found that typical moneylending customers are predominantly female and from lower income backgrounds[1]. The usurious rates charged by moneylenders risk driving vulnerable borrowers such as these into an unsustainable and vicious cycle of debt.

[1] Central Bank of Ireland, 'Report on Licensed Moneylending Industry', November 2013, gns4-2-1-1-rep-on-licensed-moneyldg-ind-112013.pdf (centralbank.ie)

In 2018, a report published by University College Cork and authored by Mary Faherty, Olive McCarthy and Noreen Byrne found that 21 of 28 European Union member states had some form of IRR in place[2].

Ironically, the reported identified that while such a restriction was in place in this jurisdiction, it existed as a monthly interest rate cap of 1 percent for credit unions, with no restriction in place for high cost moneylenders.

The purpose of the research, funded by the Central Bank and Social Finance Foundation, was "*to examine the extent and variety of interest rate restrictions within the EU and further afield and to assess the appropriateness of introducing such a restriction in the Irish market, given its specific circumstances and financial environment*".

This report reinvigorated the discussion regarding the cost of credit for low-income borrowers, particularly credit provided by licensed moneylenders.

The authors of the report made a number of recommendations, including the adoption by Government of a policy that prohibits usurious rates of interest in the interests of fairness to the most vulnerable in Irish society by introducing a restriction on the cost of credit.

The *Consumer Credit (Amendment) Bill 2018* sought to give effect to and operationalise that recommendation.

In the course of its pre-legislative scrutiny of the Bill, the Committee has read and heard submissions from a range of stakeholders; each offering valuable insights into the impact of usurious rates of interest charged by moneylenders on vulnerable borrowers, the changing environment of the moneylending market, and responses that could and should be made through legislative change and policy interventions.

Accordingly, and as is the purpose of the pre-legislative scrutiny process, Sinn Féin have responded back to the insights provided and recommendations made by stakeholders by proposing an amendment to the Bill, which is attached as an Appendix to this submission.

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[2] Mary Faherty, Olive McCarthy, Noreen Byrne, '*Interest Rate Restrictions on Credit for Low-Income Borrowers*', University College Cork, December 2017, Interest Rate Restrictions – Social Finance Foundation (sff.ie)

Proposed Amendment to *Consumer Credit (Amendment) Bill 2018*

This amendment would achieve the objective of introducing a restriction on the cost of credit permissible through a moneylending agreement, implementing a key recommendation made in the 2018 report, and in so doing protecting the interests of vulnerable borrowers who have been hitherto underserved by regulations and legislation.

Crucially, this amendment implements a key recommendation made by a number of stakeholders by gradually introducing a cap on the cost of credit over a reasonable timeframe of three years, with regulations governing that cap and its phased implementation introduced by the Central Bank.

The cap would be set at three times the market average for the total cost of credit, as a percentage of the credit issued, charged by credit institutions and credit unions for similar credit agreements. Accordingly, a moneylender would not be permitted to charge more than three times this market average, which would be calculated and periodically recalibrated as appropriate by the Central Bank through information gathered by credit institutions and credit unions.

This restriction, a cap on the total cost of credit, is provided under subsection (2) of the proposed amendment, with the Central Bank to make regulations governing the restriction under subsection (3).

Crucially, under subsections (4) and (5), the Central Bank would be permitted to make any transitional, supplementary or incidental provisions under those regulations to ensure this initial cap was introduced and implemented appropriately.

For example, it would allow the Central Bank to implement the restriction proposed under subsection (2) on a tiered basis as appropriate – calculating the market rate for loans of particular duration and regulating the cap for loans of that duration issued by moneylenders accordingly.

Additionally, it would allow the Central Bank to make transitional arrangements, such as a tapered introduction of the cap proposed under subsection (2) over a three-year period, with those transitional arrangements then being disapplied to give way to the cap as outlined under subsection (2).

This would allow for the gradual phasing out of high interest rates for credit over the three year timeframe, providing a transition period for consumers, moneylenders and alternative credit providers in which to prepare for the new restriction.

This transition period could also be used to implement other policy interventions, such as enhancing the ability of credit unions to supply credit, and the publication and implementation of a financial inclusion strategy by Government.

The proposed amendment would require the Central Bank, under subsection (6) to produce a report at least one every three years on the cost of credit made available in the moneylending industry, the appropriateness of the restrictions in place on the cost of credit, and advice or recommendations necessary for the purposes of subsection (1) of the proposed amendment and to secure the appropriate protection for borrowers.

The proposed amendment would also empower the Minister for Finance to make regulations to adjust restrictions to the cost of credit to the consumer under moneylending agreements; either by altering the cap introduced under subsection (2), or by introducing restrictions with reference to APR, or monthly or daily interest; as has been done in other jurisdictions.

Prior to making these regulations, the Minister would be required to have due regard to recommendations made by the Central Bank and to consult with relevant and appropriate stakeholders.

In summary, the proposed amendment would achieve the following:

1. Introduce a restriction on the total cost of credit permissible under a moneylending agreement, whereby the total cost of credit as a percentage of the credit issued may not exceed three times the market average – with the cap introduced on a phased basis over a three year period and regulated by the Central Bank;
2. Require the Central Bank to publish a report at least once every three years, assessing the cost of credit for borrowers under moneylending agreements, the appropriateness of interest rate restrictions in place, and recommendations where appropriate to adjust existing restrictions;

3. Enable the Minister for Finance to make regulations adjusting the restrictions on the cost of credit as necessary, informed by recommendations made by the Central Bank and in consultation with relevant stakeholders.

In short, this amendment will introduce a cap on the cost of credit that can be charged by moneylenders; one that will be gradually introduced in a reasonable timeframe. It will require the Central Bank to review the moneylending industry and the costs it imposes on borrowers periodically and allow the Minister to adjust restrictions so as to ensure that borrowers are protected.

Conclusion

The *Consumer Credit (Amendment) Bill 2018* was introduced to protect vulnerable and low-income borrowers from the ultra-high interest rates charged by moneylenders, recognising that the current regime was not fit for purpose, and implemented a key recommendation made by the authors of the 2018 UCC Report.

The primary objective of the legislation is a moral one – to ensure that Irish borrowers are provided with no less protection than borrowers in other jurisdictions.

The high cost of credit charged by moneylenders has in the past been primarily driven by the high labour costs associated with home collection. The pandemic, and public health restrictions it necessitated, challenged this business model and has forced moneylenders to adapt and change what was an anachronistic and out-of-date model.

It is finally time that we recognise that the regulations and legislation in place is also outdated, providing insufficient protection to low-income and vulnerable borrowers.

We can no longer accept an environment in which APR on loans of up to 187 percent, and 288 percent when charges are included, is tolerated. An environment that traps borrowers into unsustainable cycles of debt is intolerable.

In this submission, Sinn Féin have proposed amending the *Consumer Credit (Amendment) Bill 2018* so as to take account of the views and recommendations of stakeholders, introducing a phased cap on the total cost of credit within a reasonable timeframe, while

enabling the Minister for Finance to make further regulations as appropriate to ensure sufficient protection for borrowers.

I hope that the Finance Committee will consider the proposals within this submission, working on a collaborative basis to further the interests of consumers as the *Consumer Credit (Amendment) Bill* proceeds to Committee Stage.

Appendix 1

Proposed Amendment to the *Consumer Credit (Amendment) Bill 2018*

Amendment of the Consumer Credit Act 1995

1. The Consumer Credit Act 1995 is amended by the insertion of the following Section immediately following Section 103:

"Restriction on Interest Rates and Total Cost of Credit on Credit made available by means of Moneylending Agreements"

104. (1) The cost of credit to the consumer under a moneylending agreement shall not be usurious or excessively high.

(2) The total cost of credit as a percentage of the value of the credit made available to the borrower by means of a moneylending agreement shall not exceed three times the average total cost of credit as a percentage of the value of the credit made available to a borrower by means of similar credit agreements offered by credit institutions and credit unions.

(3) The Central Bank shall make regulations –

(a) for the proper and effective regulation of the obligations set out in subsection (2),

(b) for the provision and collection of information, including the form in which it is required, from credit institutions and credit unions as necessary for the proper and effective regulation of the obligations set out in subsection (2).

(4) Notwithstanding the obligations set out in subsection (2), regulations made under subsection (3) may contain any transitional and other supplementary and incidental provisions that appear to the Central Bank to be appropriate.

(5) Any transitional provisions referred to in subsection (4) and contained in regulations referred to in subsection (3) shall cease to have effect no later than three years after the passing of this Act.

(6) The Central Bank shall, from time to time and at least once every three years following the date in which this section is commenced, publish a report -

(a) on the cost of credit made available to borrowers by means of moneylending agreements,

(b) assessing the appropriateness of restrictions on the cost of credit made available to borrowers by means of moneylending agreements for the purposes of subsection (1),

(c) containing advice or recommendations, as the Central Bank considers necessary or appropriate, to adjust restrictions on the cost of credit made available to borrowers by means of moneylending agreements for the purposes

of subsection (1) and with a view to securing an appropriate degree of protection for borrowers.

(7) The Minister may make regulations to adjust restrictions to the cost of credit to the consumer under a moneylending agreement, including that specified in subsection (2).

(8) Before preparing draft regulations under subsection (7), the Minister shall consider recommendations that the Central Bank may make under subsection (6)(c).

(9) Subject to subsection (8), before making regulations under subsection (7), the Minister may consult with any persons that the Minister considers should be consulted.

(10) If the Minister does not accept any recommendation of the Central Bank in the report published under subsection (6), or fails to make regulations giving effect to such a recommendation within one month of that recommendation being made, the Minister shall within two months of that recommendation being made prepare and lay before each House of the Oireachtas a statement of the Minister's reasons for not accepting it.

Short title and commencement

2. (1) This Act may be cited as the Consumer Credit (Amendment) Bill 2018.

(2) This Act comes into operation three years after the date of its passing or on such earlier date or dates than the said three years as the Minister may by order appoint and different dates may be so appointed for different purposes and different provisions.