

6. Irish Consumer Credit Act

Regulation under the Act

The Irish Consumer Credit Act covers a number of different types of credit which may be provided to consumers. It requires certain credit providers to be licensed. It prescribes requirements in relation to certain types of credit. Credit institutions and retail credit firms licensed by the Financial Regulator do not require a separate licence under the Act. However, they are bound by certain provisions of the Act, particularly those relating to Housing Loans and Non-Housing credit agreements.

Regulation under the Consumer Credit Act is now largely undertaken and enforced by the Financial Regulator. The Financial Services Ombudsman can determine complaints under the Act. The Financial Regulator now licenses moneylenders and mortgage intermediaries. The Director of Consumer Affairs licenses credit intermediaries and retains certain policing powers under the Act. This is a distinct body to the consumer director of the Financial Regulator.

Scope of Application

The Irish Consumer Credit Act will generally have minimal impact in relation to lending by Irish lenders, secured on English property. However, it may be that the borrower is classified as a consumer or that the particular loan may be classified as a "housing loan".

A "consumer" is defined as a natural person acting outside his business or such other persons as are declared to be consumers by ministerial order. No such ministerial order has been made. The Consumer Credit Act definition of "consumer" is narrower than applies under the Consumer Protection Code and in the context of the Financial Services Ombudsman's powers. It does not cover small businesses.

The definition of a housing loan was extended in 2004 and covers the following;

- ❖ a acquisition loan on the security of a house occupied by the borrower as his principal residence or the principal residence of his or her dependants;
- ❖ a refinancing of an acquisition loan
- ❖ a loan on the security of a house where the person to whom credit is provided is a consumer .

Part IX of the Consumer Credit Act applies to Housing loans. A loan to an Irish-based borrower in respect of a property in England and Wales which is to be occupied by the borrower or his relatives may be subject to the Housing loan provisions of the legislation. This is a matter of interpretation. It is arguable that the legislation does not apply because there is a presumption against legislation applying outside of the jurisdiction. Many aspects of what is regulated, takes place within the State and some other aspects relating to the mortgage security takes place outside the State.

Housing Loan Warnings

Certain information and warnings are required on information documents, application forms relating to a housing loan and in the loan agreement itself. The following is required for housing loans.

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

In the case of a variable rate loan, the following warning is required

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

There are certain other warnings and requirements for endowment policy backed mortgages.

**WARNING
THERE IS NO GUARANTEE THAT THE PROCEEDS OF THE INSURANCE POLICY WILL BE SUFFICIENT TO REPAY THE LOAN IN FULL WHEN IT BECOMES DUE FOR REPAYMENT**

Housing Loan Agreement Contents

The Housing loan agreement must have certain information on the front page in accordance with the following prescribed format. A variation of a Housing Loan should follow the same format, if there are changes to any of the key terms.

Important Information as at []

1. Amount of credit advanced :£ / €
2. Period of agreement :
3. Number of repayment instalments :
4. Amount of each instalment :£ / €
5. Total amount repayable :£ / €
6. Cost of this credit (5 minus 1) :£ / €
7. APR* :
8. Amount of endowment premium (if applicable) :£ / €
9. Amount of mortgage protection premium (if applicable) :£ / €

10. Effect on amount of instalment of
1% increase in
first year in interest rate** :£ / €

*Annual percentage rate of charge.

**This is the amount by which the instalment
repayment will increase in the event of a 1%
increase at the start of the first year in the
interest rate on which the
above calculations are based

The mortgage lender is required to issue a
copy of the mortgage at the time the loan is
made or as soon as practicable afterward. It
must issue statements setting out the total
amounts outstanding.

Fees, Arrears and Repayment

If fees are payable in respect of any of the
following, then a statement must appear with
reasonable prominence that the fee is
payable specifying the amount and it how it
is determined. This must be included on any
information document, application form and
in the loan approval/agreement itself.

- ❖ Making, accepting or administering the
loan or application;
- ❖ valuation of the security;
- ❖ legal services in connection with the
loan;
- ❖ services provided by a mortgage agent

in relation to the loan;

- ❖ non-acceptance of the offer or non-
approval.

Where it is the lender's policy to charge
interest on arrears of a housing loan, any
communication in relation to the payment of
arrears must state the amount of increase in
interest and other charges. The information
is required to be specified in any information
document application for and in the loan
offer / approval.

A communication which refers to the
possibility of taking possession under the
mortgage must contain an estimate of the
costs to the borrower.

A borrower is allowed to repay a mortgage
loan prior to the agreed date, without
incurring a fee for prepayment. This is
subject to an exception for fixed interest
rates, in which case, the manner of
calculation of the break fee must be stated.

Housing Loan Requirements

The borrower is entitled to a copy of the
valuation report on approval or rejection of
loan offer. The mortgagor must be allowed
to arrange his own insurance and no
additional charge can be made. The
mortgage lender cannot charge the

mortgagor for the costs of investigating title to the security.

The mortgage lender must ensure that a mortgage protection policy is procured in a Housing loan case, except where one of the following exceptions are available;

- ❖ the house is not intended for use as the principal residence of the borrower or of his dependants;
- ❖ the borrower is a member of a class of persons not acceptable to insurers or is acceptable at higher premium only;
- ❖ the borrower is over 50 years old; or
- ❖ the borrower has other life assurance providing for payment of some not less than the principal outstanding on death.

A Housing loan provider cannot offer a housing loan to a borrower on condition that he must avail of another service with the lender.

Communicating with the Borrower

A visit or telephone call to a consumer without consent is prohibited

- ❖ at his place of employment or business unless the borrower resides at that place and all reasonable efforts to make contact with him have failed;
- ❖ between the hours of 9 pm and 9 am.

Monday to Saturday;

- ❖ on Sundays and Bank Holidays;
- ❖ to a consumer's employer or family member without separate written consent.

There are restrictions on sending written communication relating to credit agreement other than in a sealed envelope with nothing other the borrower's name and address, a return address PO box number and if desired, the words "personal" or "private".

Written communications to members of the consumer's family and employer are prohibited unless that person is a party to the loan agreement, or in the case of a housing loan, there is separate specific written consents or it relates to Family Home Protection Act matters.

Non-Housing Loan Form and Procedure

The following Consumer Credit Act provisions apply to credit agreements other than Housing Loans. See the definition of a Housing Loan above. A credit agreement with a consumer, other than a housing loan may become subject to the following potentially onerous Consumer Credit Act rules.

The Consumer Credit Act lays down requirements in relation to the form and

content of non-housing loan consumer credit agreements. All non-housing loan consumer credit agreements and guarantees relating to them must be in writing and signed by the borrower. A copy must be handed personally to the borrower or sent within 10 days. A copy of the guarantee and the copy of the credit agreement must be given to the guarantor on signing or within 10 days.

The consumer is entitled to withdraw from the agreement within a 10 day “cooling off” period. This right can be waived in writing, but a specific warning is required start. These provisions do not apply to housing loans.

If the above requirements are not followed, the credit agreement and guarantee may be unenforceable. The court may allow the agreement to be enforced in the case of a breach, other than a breach in relation to furnishing of the copy of the signed agreement and the cooling off period. Subject to the above, the court may permit enforcement of the agreement if the breach was not deliberate, did not prejudice the consumer and it would be just and equitable to enforce. The court may attach conditions to enforcement.

Early Repayment of Consumer Loans

A consumer is entitled to terminate a non-housing loan agreement early, by giving notice of termination in writing. The lender must allow a reduction in the total cost of credit under the agreement, to be calculated in accordance with a method or formula approved for that purpose by the Financial Regulator.

A consumer is entitled to a reduction in the total cost of credit under a non-housing loan agreement, if the amount becomes payable before the time fixed. Where the amount owed by the consumer is, for any reason, accelerated, the creditor is entitled to a reduction calculated in accordance with a formula set by the Financial Regulator.

Demanding Repayment and Enforcing

A lender who wishes enforce a non-housing loan agreement with a consumer by demanding early repayment or treating the consumer’s rights as restricted or deferred, must first serve a notice at least 10 days before taking action, specifying the following;

- ❖ sufficient details of the agreement so that it is identified;
- ❖ name and address of lender and consumer;
- ❖ the term of agreement that is to be enforced;

- ❖ a statement of the action which the lender intends to take;
- ❖ the manner and circumstances in which it intends to take such action and the date on which it intends to take such actions.

If there has been a breach of agreement by the consumer, the lender cannot terminate the agreement, demand early repayment, treat the consumer's rights as terminated, restricted or deferred or enforce the security unless it has served on the consumer, not less than 10 days before it proposes taking action, a notice specifying the above matters and also the following

- ❖ the alleged breach;
- ❖ if the breach is capable of remedy what action is required to remedy it and the date by that action must be taken (to be not less than 21 days after service of notice) or,
- ❖ if the breach is not capable of remedy, the amount required to be paid in compensation for the breach and the time by which it must be paid (to be not less than 21 days after service of notice)and
- ❖ information about the consequences of failure to comply with a notice.

Because of the risk that a customer who has been given notice, may frustrate

enforcement, the lender may apply to court to have the above restrictions dispensed with.

Reopening Certain Credit Agreement

In the case of loans by bodies other than licensed credit institutions and mortgage lenders, a consumer or someone on his behalf may apply to the Circuit Court for a declaration that the total cost of credit is excessive. The court may "reopen" the credit agreement and change its terms.

An Agreement may be reopened if the court finds that the total cost of credit is excessive having regard to current interest rates and interest rates at the time of the agreement, the age, business competence, the level of literacy and numeracy of the consumer, the degree of risk involved for the creditor, the security provided, the creditor's costs including the cost of collecting repayments and the extent of competition for the type of credit concerned. The court may revise the agreement or set it aside.

Charges

The Consumer Credit Act provides that new charges may not be made and existing charges may not be increased unless they have been previously notified to Financial

Regulator. The Financial Regulator may, within four months of receipt of the notification, take certain action including imposing conditions and restrictions and requiring certain information to be published in relation to the charge.

A regulated entity must provide the consumer with details of all charges including third-party charges passed on to customers prior to providing services. Where they cannot be ascertained, the fact of the charges must be notified. Increases must be notified with at least 30 days' notice. Statements must contain details of charges.

Proper Court to Enforce

In consumer cases, legal action to enforce the loan agreement must usually be taken in the borrower's home country. This is the case provided the loan agreement was preceded by an invitation addressed to the borrower or by advertising in the country concerned and the consumer took the steps necessary to enter the agreement there.

This does not apply to legal proceedings to enforce a security, which must always be taken in the country where the property is situated. However the loan agreement may have to be enforced in the borrower's home country.

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This is an extract from our "Legal Guide to the Management and Enforcement of Security in England and Wales for Irish Lenders (2009). The Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances. It should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances. While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in it. The reader should rely only on specific legal or taxation advice. This extract is based on the law as of 1st August 2009.

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