



**ADVISORY**  
Industry Information

# Ireland Update: Regulation of Hire-Purchase, Consumer-Hire and PCP Finance – New Authorisation Regime Commenced

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## Focus Points

- » Providers and servicers of hire purchase products including personal contract plans (PCP), consumer hire and a broader range of credit now need to be authorised by the CBI.
- » A transitional period for existing in-scope entities ends on 16 August 2022.
- » The 'retail credit' regime now includes persons whose business involves directly or indirectly providing "credit" or entering into a "consumer-hire agreement" or "hire-purchase agreement" with a natural person in Ireland. These persons are now required to be authorised by the CBI.
- » The 'credit servicing' regime has also been expanded to require entities engaging in credit servicing in relation to a hire-purchase agreement or a consumer-hire agreement to be authorised by the CBI. Also a newly expanded definition of "credit" means that credit servicing in relation to a broader range of "credit agreements" will now require authorisation.

## Executive Summary

The Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2022 (the "2022 Act") was commenced on 16 May 2022.

The introduction of the 2022 Act ensures that providers and servicers of hire purchase products including personal contract plans (PCP), consumer hire, and a broader range of credit, will now need to be authorised by the Central Bank of Ireland (the "CBI").

Amongst other things, the 2022 Act amends the Central Bank Act, 1997 (the "1997 Act") which prohibits a person from carrying on a regulated business unless the person is the holder of an authorisation from the CBI. The types of regulated business that require authorisation under the 1997 Act include the business of a "retail credit firm" ("RCF") and the business of a credit servicing firm ("CSF").

The scope of the RCF and CSF regimes have been expanded under the 2022 Act to, amongst other things, capture a broader range of credit agreements and to capture consumer-hire agreements and hire-purchase agreements (including PCP), including agreements with sole traders and partnerships composed of natural persons. The provision of indirect credit is also within scope for the RCF regime for the first time. Indirect credit is not expressly defined in the 2022 Act but an example would be the provision of credit to a borrower by paying a retailer on behalf of a consumer for the purchase of a good or service as part of a 'buy now, pay later' offering.

## Expansion of Scope

Among the most significant changes introduced by the 2022 Act is the extension of the scope of the RCF and CSF regimes beyond the provision of cash loans:

- » RCFs – The updated regime requires authorisation for persons whose business consists wholly or partly of any "relevant activity", meaning:
  - » directly or indirectly providing "credit" to, or
  - » entering into a "consumer-hire agreement" or "hire-purchase agreement" with,
 a "relevant person", being a natural person subject to some limited exceptions (see below).

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Persons authorised as a regulated financial service provider by the CBI or a relevant competent authority in an EEA country, otherwise than as a RCF, to carry out any relevant activity in Ireland are not required to obtain separate authorisation as a RCF.

Previously, the RCF regime did not capture the entry into consumer-hire agreements or hire-purchase agreements. In addition, the RCF previously captured direct, rather than direct and indirect, credit.

The definition of credit itself has been expanded beyond a “cash loan”, to now include (subject to certain exclusions) (a) a deferred payment; (b) a cash loan (whether or not provided on the security of a mortgage or charge over an estate or interest in land); or (c) other similar financial accommodation which defined by reference to the CCA 1995 and includes the credit and letting of goods.

The types of products that are now captured include, for example, personal contract plans and buy now pay later arrangements as well as other products that fall within the definition of a consumer-hire agreement or hire-purchase agreement. These are broadly similar to those in the CCA 1995 but they apply to a broader range of natural persons and are not limited to consumers.

“credit” means-

- (a) a deferred payment,
- (b) a cash loan (whether or not provided on the security of a mortgage or charge over an estate or interest in land), or
- (c) other similar financial accommodation.

The 2022 Act specifies certain exclusions from the definition of credit including credit as described in Section 3(2) of the Consumer Credit Act 1995 for 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.

“consumer-hire agreement” 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;

“hire-purchase agreement” 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

The types of borrowers within scope for the RCF regime to apply are “relevant persons”. The definition of relevant persons captures natural persons within Ireland, which in practice could include sole traders and partnerships composed of natural persons.

“relevant person” means a natural person within the State, other than –

- (a) a natural person who is, or satisfies the criteria to elect to be treated as, a professional client for the purposes of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007), or
- (b) a person who is a regulated financial service provider.

» CSFs – The updated regime will capture a person who undertakes “credit servicing” other than on behalf of a “regulated credit entity” (and certain other persons).

The definition of credit servicing has been amended to capture credit servicing in relation to a hire-purchase agreement or a consumer-hire agreement. However, the scope of credit servicing in relation to “credit agreements” is also expanded due to expanded definition of “credit” (see above).

The types of borrowers within scope for the CSF regime to apply are:

» Credit agreements - a “relevant borrower”, being:

- (a) a relevant person (i.e. in summary will capture most natural persons within Ireland, see above, including sole traders or partnerships



composed of individuals); and

(b) a micro, small or medium-sized enterprise within the meaning of Article 2 of the Annex to the Commission Recommendation 2003/361/EC of 6 May 2003 ("SME") but only to the extent that the credit granted to it under the credit agreement concerned was provided by a financial service provider authorised, by the CBI or an authority that performs functions in an EEA country that are comparable to the functions performed by the CBI, to provide credit in Ireland.

- » Hire-purchase agreements and consumer-hire agreements – a "hirer", being a "relevant person" (see above) who takes, intends to take or has taken goods from an owner under a hire-purchase agreement or a consumer-hire agreement in return for periodical payments.

In brief summary, "credit servicing" includes any of the following activities in relation to an in-scope agreement:

- » holding the legal title to the agreement;
- » managing or administering the agreement (e.g. collecting payments, handling complaints, determining the overall strategy for the management and administration of a portfolio of agreements, or maintaining control over key decisions relating to such portfolio); or
- » communicating with the customer in relation to the management or administration.

Any entity that is carrying out the activities listed above may be required to apply to the CBI for authorisation as a RCF or CSF, to allow them to maintain existing business lines and to write new business. Importantly, an entity authorised as a RCF will not have to separately seek authorisation as a CSF.

As noted above, the acquisition of loans to SMEs will only be in scope where the loans were originally advanced by a financial service provider authorised, by the CBI or an authority that performs functions in an EEA country that are comparable to the functions performed by the CBI. While the application of the credit servicing regime to SMEs has not changed following the introduction of the 2022 Act, the extension of the definition of in-scope credit and the introduction of hire-purchase and consumer hire, will result in a broader pool of agreements with SMEs falling within scope of the credit servicing regime.

## Exemptions Under the 2022 Act

- » The CBI may exempt certain persons from the requirement to seek authorisation as an RCF. These include if in the opinion of the CBI, the total amount or value of the relevant activities that are to be carried out by the person (or class of persons) is such that it is reasonable to assume that the borrower or hirer, as the case may be, will be in a position to negotiate on equal terms or to obtain appropriate legal and financial advice. The CBI must also be of the opinion that the exemption would not be inconsistent with the proper and orderly regulation of relevant activities and the protection of customers of RCFs.

The power to exempt a person, or the persons belonging to a specified class, for the purposes of the RCF regime may be exercised by the CBI either on its own initiative or on an application made by or on behalf of the person seeking the exemption, or any of the persons belonging to the class.

- » The 1997 Act excludes certain persons from the definition of an RCF (including Irish or EEA regulated entities authorised to carry out the regulated RCF activities in Ireland) in the first instance.
- » It also excludes certain types of credit from its scope (these exclusions have been updated by the 2022 Act, including a potential exclusion for persons whose business consists partly of a relevant activity, but only by virtue of the person providing credit in the form of "trade credit").

## Transitional Period

The 2022 Act includes provisions allowing entities carrying out the business of a RCF or CSF prior to the introduction of the 2022 Act that now come within scope of the requirement to obtain an authorisation from the CBI in relation to their activities to apply for a transitional authorisation.

The transitional authorisation provisions require the entity to apply to the CBI no later than 3 months after the coming into operation of the 2022 Act (i.e. 16 August 2022). Obtaining a transitional authorisation will allow an entity to carry on certain of the regulated business until the point at which a final decision is made by the CBI in relation to the application.



However, the CBI may, in relation to a person taken to be authorised under the transitional provision, impose certain conditions or direct the person not to carry on the business of a RCF or CSF for such period (not exceeding 3 months) as it sets out in its direction.

It is open to entities that have obtained transitional authorisation to withdraw their application prior to receiving authorisation, if they no longer intend to carry on the activities regulated under the RCF or CSF regimes.

## Regulatory Protections

A range of financial services regulatory requirements and conduct of business rules apply to authorised RCFs and CSFs. These include the Consumer Protection Code 2012 (the “CPC”), the Minimum Competency Code 2017 and the Minimum Competency Regulations 2017 (together, the “MCC”). Persons holding pre-approval controlled functions within an authorised RCF or CSF will need to comply with the CBI’s fitness and probity standards and have their appointment pre-approved by the CBI.

The CBI has extended the scope of the CPC and MCC in line with the expansion of the scope of RCF and CSF regimes under the 2022 Act. Firms are to comply with the CPC and MCC by the end of the transitional period as provided for by the 2022 Act (i.e. 16 August 2022). The CBI states in a **Notice of Intention** published in March 2022 that firms brought within scope of the RCF or CSF regimes by the 2022 Act are expected to comply with the MCC requirements at the earliest possible opportunity. Firms that avail of the transitional provisions referenced above must comply with all other legal and regulatory requirements that are applicable to the relevant activity for the duration of the transitional period.

Authorised RCFs and CSFs are also subject to the CBI’s power to oversee their regulated activities and to administer sanctions in respect of the commission of prescribed contravention(s) by the RCF or CSF and by persons presently or formerly concerned in the management of the RCF or CSF who have participated in the prescribed contravention(s) committed by the RCF or CSF.

It should also be noted that on foot of the 2022 Act, disputes and complaints in relation to hire-purchase agreements, consumer-hire agreements and the other types of credit now captured by the expanded definition of that term will now be referable of the Financial Services and Pensions Ombudsman.

## Amendment of Consumer Credit Act 1995 (“CCA”)

The 2022 Act also introduces amendments to the CCA. These changes include the introduction of a cap of 23% APR on credit agreements, other than a moneylending agreements, and hire-purchase agreements<sup>1</sup> with consumers. The 2022 Act also introduces a requirement that a hire-purchase agreement must contain a statement of the applicable rate of APR.

Another noteworthy change to the CCA made by the 2022 Act is that RCFs are now subject to the requirement under the CCA that the CBI be notified of a proposal to change or impose charges (including penalty or surcharge interest) pursuant to a credit agreement with a consumer.

## Next Steps

Firms should review existing business lines and monitor all future activities to confirm whether they trigger the requirement to seek authorisation as an RCF or CSF.

Those firms that identify that existing activities are now within scope of the RCF or CSF regimes should consider whether to submit an application for authorisation as an RCF or CSF with the CBI as soon as possible, bearing in mind the deadline of 16 August 2022, or whether restructuring or migration of the in-scope business would be appropriate.

<sup>1</sup> Note: This reference to “moneylending agreement” in the CCA will be amended to “high cost credit agreement” following the commencement of the Consumer Credit (Amendment) Act 2022.



## How Can Walkers Help?

The Walkers Regulatory Team are ready to assist clients by assessing whether the changes introduced by the 2022 Act triggers an authorisation requirement with the CBI.

If you have any concerns or queries regarding the impact that the introduction of the 2022 Act may have on you and your business, please speak to your usual contact in Walkers or contact a member of the Regulatory or Finance department:

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