DRAFT CONSUMER CREDIT DIRECTIVE

SUBMISSION TO DEPARTMENT OF FINANCE ON ARTICLE TWO AND ARTICLES 13 -15

FREE LEGAL ADVICE CENTRES, OCTOBER 2006

Free Legal Advice Centres is an independent human rights organisation dedicated to the realisation of equal access to justice for all, and it campaigns through advocacy, strategic litigation and authoritative analysis for the eradication of social and economic exclusion.

Article Two

Equitable Mortgages

We are concerned that equitable mortgages will not be regulated by the new directive, just as they are not regulated by the current one. In a climate in Ireland of remortgaging, equity release products and personal lending secured by deposit of title deeds, we feel it is critical that consumers receive the maximum amount of information at the pre-contractual stage and a transparent and fully detailed credit agreement.

As the new directive will not regulate such agreements, we would ask the department what plans they have for regulating them. For example, the CCA 1995 in Part IX regulates housing loans (including equitable mortgages) to a limited extent but it is certainly arguable from our perspective that a far higher standard of protection is required. In essence, Part IX is almost a stand alone part of the legislation with very little of the rest of the Act applying, for example Part V, matters arising on termination or default does not apply at all to housing loans.

Hire Purchase

It now seems clear from the definition in 2 (2) (c) that hire purchase agreements as practised in Ireland will not be covered by the directive, as there is no obligation either in the agreement itself or by virtue of a separate agreement to purchase. Indeed s.63 of the CCA 1995 specifically allows the Hirer to terminate the agreement at any time by giving notice in writing to the owner. As with housing loans, the same question therefore arises, how will domestic legislation regulate hire purchase in the future?

Part VI of the CCA 1995 currently governs this form of agreement, repealing as it did all existing HP legislation at that date, namely the Hire Purchase Act, 1946, the Hire Purchase (Amendment) Act, 1964 and Part Three of the Sale of Goods and Supply of Services Act 1980. Curiously, as we understand it, these Acts applied to all forms of HP whether commercial or consumer. When consolidated by the CCA they only applied to consumers. In passing, it might be suggested that this is an anomaly that might be redressed. Is it fair that commercial hirers should have no protection in law at all?

In any case, the advent of car finance in the area of Hire Purchase has changed this market considerably and it is suggested that the whole area is in need of revision and updating given some of the misconceptions of consumers and some of the poor creditor practices that abound. Equally, it is a notable anomaly that credit intermediaries continue to be regulated by the Office of the Director of Consumer Affairs (ODCA) when the entities for which they drum up business are in the main credit institutions and the consumer credit legislation under which they operate is dealt with by the Financial Regulator.

In conclusion, should we revert to a single piece of legislation to regulate Hire Purchase?

Three month agreements

We would still be concerned about the looseness of the definition in 2 (2) (e) of '*credit agreements under the terms of which the credit has to be repaid within three months and only insignificant charges are required for'*. Conceivably, an agreement offered by a licensed moneylender could come under this heading, if it provided for repayment of principle plus interest within 12 or 13 weeks of the loan being offered. The question would then arise as to what are insignificant charges. Although it is unlikely that the charges of a moneylender would ever be regarded as insignificant, surely it is unnecessary to have any room for doubt here?

Article 12

It may be an oversight on our part but we do not see a definition of the term 'open-end credit agreement' in the definitions section of the directive. Assuming that it refers to agreements such as running accounts, credit cards and overdrafts, for example, we wonder whether there might be a prohibition on imposing any kind of charge or penalty included in the directive where the consumer decides to terminate the agreement. In relation to the creditor's right to terminate the agreement by giving three months notice in writing, we wonder whether a non exhaustive list of examples of what might constitute 'objectively justified reasons' might be drawn up in an appendix for guidance purposes. Such reasons should be clearly justifiable, especially where the consumer is relying upon the availability of a line of credit and it is removed from him/her.

Article 13

In our view, the cooling off period as set out in the CCA 1995 has been ineffective due to the right of the creditor to present a waiver in the agreement which the consumer can sign to forego their right to withdraw.

This revised article now provides that the borrower may withdraw within 14 calendar days of receiving terms. The creditor may then within 7 calendar days of receiving the notification of withdrawal in turn notify the borrower that s/he must repay the capital and pay any interest on such capital within 30 calendar days after receiving the counter notification.

The directive is again completely silent on the question of a waiver and most certainly does not provide for one. Can we take it from this that there will definitively be no right

to waive the cooling off period in the future as some have suspected has been the case since the original directive was introduced? Has Ireland incorrectly applied the directive in this respect these past ten years?

Article 14

In our view this article is an improvement on the existing Article 11 in the original directive which is more restrictive in terms of the circumstances in which a creditor may be sued where the supplier of goods or services has been pursued to no avail. It is also notable that it is without prejudice to national rules relating to the joint and several liability of the creditor where the purchase of goods or services is financed by credit, as in, for example, s.14 of the Sale of Goods and Supply of Services Act 1980.

Article 15

The key phrase in this article in our view is *'compensation for possible losses linked to early repayment of credit'*. Whatever formulae or rules are adopted in this article or to implement this article, they should not involve making a profit from the borrower's decision to exercise their right to terminate the agreement. It goes without saying that credit institutions are highly profitable entities and should not be allowed to make a further profit where it is not due. Any compensation must be for **actual** losses insofar as they can be quantified or estimated rather than **possible** losses.

In the Irish context, the ongoing failure of the Central Bank to introduce formulae or even a formula to comply with the current directive and Part V of the CCA 1995 over the past decade is completely unacceptable. This has led to the informal use of the so called rule of 78's by creditors to calculate rebates, in some cases in relation to credit agreements of long duration where the Office of Fair Trade in the UK, for example, has declared it to be inappropriate.