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Explanatory Memorandum](#)

**BILLE AN BHAINC CEANNAIS AGUS ÚDARÁS SEIRBHÍSÍ
AIRGEADAIS NA hÉIREANN (FÉICHIÚNAITHE A
CHOSAINT) 2009**

**CENTRAL BANK AND FINANCIAL SERVICES
AUTHORITY OF IRELAND (PROTECTION OF DEBTORS)
BILL 2009**

*Mar a tionscnaíodh
As initiated*

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ACTS REFERRED TO:

Central Bank Act 1942	1942, No. 22
Central Bank and Financial Services Authority of Ireland Act 2003	2003, No. 12
Companies Act 1963	1963, No. 33
Finance Act 2002	2002, No. 5
Registration of Business Names Act 1963	1963, No. 30
Taxes Consolidation Act 1997	1997, No. 39



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5 **CENTRAL BANK AND FINANCIAL SERVICES
AUTHORITY OF IRELAND (PROTECTION OF DEBTORS)
BILL 2009**

BILL

entitled

10 AN ACT TO AMEND THE CENTRAL BANK ACT 1942; TO
PROVIDE FOR THE ISSUING OF LICENSES TO CON-
DUCT DEBT COLLECTION ACTIVITIES; TO PROVIDE
THAT THE UNDUE HARASSMENT OF DEBTORS OR
THE MAKING OF FALSE REPRESENTATIONS TO
15 DEBTORS SHALL BE A CRIMINAL OFFENCE AND TO
PROVIDE FOR CONNECTED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

20 **1.—(1)** This Act may be cited as the Central Bank and Financial
Services Authority of Ireland (Protection of Debtors) Act 2009. Short title, citation
and
commencement.

(2) This Act comes into operation three months after its enact-
ment or on such earlier date as the Minister may prescribe by
Regulations.

2.—In this Act,

Interpretation.

25 “Act of 1997” means the Taxes Consolidation Act 1997;

“Act of 2003” means the Central Bank and Financial Services Auth-
ority of Ireland Act 2003;

30 “Critical Date” means, in relation to a person who is operating as a
debt collector, the date on which the person is required by this Act
to hold a licence;

“Collector-General” means the Collector-General appointed under
section 851 of the Act of 1997;

“consumer debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes;

“commercial debt” means any obligation or alleged obligation of a consumer to pay money arising out a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for the purposes of furthering future commercial activities; 5

“debtor” means an individual or body corporate who owes a debt; 10

“Minister” means the Minister for Finance;

“person” includes an individual who operates as a debt collector in the course of an employment and—

(a) in the case of a body corporate, the directors, and

(b) in the case of a partnership, the partners; 15

“Principal Act” means the Central Bank Act 1942;

“tax clearance certificate” means a certificate under section 1095 of the Act of 1997.

Regulations.

3.—(1) The Minister may by regulations make such incidental or consequential provision as he or she considers necessary or expedient for the purposes of giving this Act full effect. 20

(2) The Regulator, with the consent of the Minister, may by regulations provide for any matter referred to in this Act including—

(a) the categories of licences which may be issued by the Regulator, 25

(b) the procedures governing—

(i) the grant and renewal of licences,

(ii) the surrender of licences, and

(iii) the processing of complaints under *section 18*,

(c) the form of licences, 30

(d) the standards to be observed in operating as a debt collector by licensees or particular categories of licensees,

(e) the qualifications for licences,

(f) the records to be kept and the information and returns to be furnished by licensees, and 35

(g) different fees, or exemptions from the payment of fees, or waiving, remitting or refunding fees (in whole or in part), in different circumstances or classes of circumstances or in different cases or classes of cases.

(3) Every regulation made under this Act by the Minister or, as the case may be, the Regulator shall be approved by each House of 40

the Oireachtas within 21 days after it is made and shall not take effect until it has been so approved.

PART 2

DEBT COLLECTION REGULATOR

5 **4.**—Part 1 of Schedule 2 of the Principal Act is hereby amended by inserting the following into the Schedule after the last row:

Provision for
Additional Function
of Financial
Regulator.

“2009 — Central Bank and Financial Services Authority of Ireland (Protection of Debtors) Act — The Whole Act”.

10 **5.**—The Principal Act is amended by the insertion of the following Chapter 4 after section 33AF:

Regulator of Debt
Collectors.

“CHAPTER 4

Regulator of Debt Collectors

15 Appointment of Regulator. 33AFF.—(1) The Regulatory Authority shall appoint a person as the Regulator of Debt Collectors, in this chapter referred to as “the Regulator”.

20 (2) A person appointed as the Regulator holds office for a period not exceeding 5 years from the date of appointment, unless the person previously ceases to hold that office as provided by this section.

25 (3) The Regulatory Authority may appoint a person holding office as the Regulator for a further period, not exceeding 5 years, to take effect at the end of the person’s initial period of appointment.

 (4) A person is not eligible for appointment as the Regulator if the person—

30 (a) is a member of either House of the Oireachtas or is, with the person’s consent, nominated as a candidate for election as such a member or is nominated as a member of Seanad Éireann, or

35 (b) is a member of the European Parliament or is, with the person’s consent, nominated as a candidate for election as such a member or to fill a vacancy in the membership of that Parliament,

40 (c) is a member of a local authority or is, with the person’s consent, nominated as a candidate for election as such a member, or

45 (d) has served as the Regulator for two consecutive terms.

(5) A person appointed as the Regulator holds office on such conditions of employment as are specified in the person's document of appointment or are later agreed between the person and the Regulatory Authority. 5

(6) The Regulator may engage in other remunerative employment only with the consent of the members of the Regulatory Authority.

(7) A person ceases to hold office as the Regulator if the person— 10

(a) dies, or

(b) completes a term of office and is not re-appointed, or

(c) resigns the office by notice in writing addressed to the members of the Regulatory Authority, or 15

(d) is, with the person's consent, nominated as a candidate for election as a member of either House of the Oireachtas or is nominated as a member of Seanad Éireann, or 20

(e) is, with the person's consent, nominated as a candidate for election as a member of the European Parliament or to fill a vacancy in the membership of that Parliament, or 25

(f) is, with the person's consent, nominated as a candidate for election as a member of a local authority, or

(g) is adjudged bankrupt (either in the State or elsewhere) or enters into a composition with the person's creditors, or 30

(h) becomes physically or mentally incapable of performing the duties of Regulator, or 35

(i) is convicted of an offence (either in the State or elsewhere) and sentenced to serve a term of imprisonment for the offence.

(8) The Regulatory Authority may (but only after consulting the Minister) remove or suspend the Regulator from office, but only for reasons notified in writing to the Regulator. 40

Appointment
of acting
Regulator.

33AFG.—(1) The Regulatory Authority may, from time to time, appoint a qualified person to act in the office of Regulator— 45

(a) during the illness or absence of the holder of that office, or

(b) while the holder is suspended from office, or

(c) during a vacancy in that office.

5 A person so appointed has, while acting as the Regulator, all the responsibilities and powers of that office.

10 (2) If a person is to be appointed under this section for a period of more than 6 months, the appointment does not take effect until the Minister approves it.

(3) The Regulatory Authority may, at any time, remove from office a person who is appointed under this section as Regulator.

15 (4) A person appointed under this section is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Regulatory Authority determines from time to time.

20 (5) A person is a qualified person for the purposes of this section if the person is an employee of the Bank.

Signature of Regulator.

25 33AFH.—A signature purporting to be that of the Regulator is, in the absence of evidence to the contrary, to be presumed for all purposes to be that of the holder of that office.

Responsibilities and Powers of Regulator.

33AFI.—(1) The Regulator is responsible—

30 (a) for the issue of licences under Part 3 of the Central Bank and Financial Services Authority of Ireland (Protection of Debtors) (Amendment) Act 2009,

35 (b) as the delegate of the Regulatory Authority, for managing the performance and exercise of the functions and powers of the Bank under this Act, and

40 (c) if management of the performance and exercise of the functions and powers of the Bank under any other Act or law are delegated to the Regulator, for managing the performance and exercise of those functions and powers.

45 (2) The Regulator has power to do whatever is necessary for or in connection with, or reasonably incidental to, carrying out the Regulator's responsibilities.

50 (3) In carrying out or exercising the Regulator's responsibilities or powers, the Regulator shall, as far as reasonably practicable, ensure that the resources of the Regulatory Authority allocated for carrying out those responsibilities or exercising

powers are used effectively, efficiently and economically.

(4) (a) In carrying out the responsibilities and exercising the powers imposed or conferred by this section, the Regulator is, through the Chief Executive, subject to the control of the Regulatory Authority and is required to comply with directions duly given by that Authority with respect to the carrying out of those responsibilities or the exercise of those powers.

(b) Any directions given in accordance with paragraph (a) shall be given within the scope of either or both—

(i) this Act in respect of any functions and powers to which subsection (1)(a) relates, and

(ii) such other Act or law as may be relevant in respect of any functions or powers, the management of which stands delegated to the Regulator under subsection (1)(b).

(5) The Regulatory Authority shall, from time to time, issue to the Regulator guidelines, not inconsistent with any law, with respect to consultation and co-operation with prescribed bodies and persons on matters concerning the functions and powers of those bodies and persons. The Regulator is required to comply with any such guidelines.

(6) The following bodies and persons are prescribed for the purposes of subsection (5):

(a) the Board;

(b) the Governor;

(c) the Regulatory Authority and the members of that Authority;

(d) the employees of the Bank.

(7) The Regulator is required to provide the Consumer Director with such information and assistance as the Consumer Director requests in relation to any complaint made by a person to that Director with respect to the conduct of a person operating as a debt collector.

Regulatory Authority to provide adequate funds to Regulator.

33AFJ.—(1) The Regulatory Authority is required to provide the Regulator with such funds as the Authority considers necessary to enable the Regulator to carry out the responsibilities and exercise the powers of the Regulator.

(2) The provision of funds under this section is subject to such conditions as the Regulatory Authority thinks fit to impose.

5 Regulator to prepare annual report. 33AFK.—(1) The Regulator shall, not later than the end of September in each year—

(a) prepare an annual report specifying the activities of the Regulator during that year, and

10 (b) submit the report to the Regulatory Authority.

(2) The report must be in such form and deal with such matters as the Chief Executive has, after consulting the Regulatory Authority, notified to the Regulator.

15 Regulator to provide information reports and advice to Chief Executive. 33AFL.—The Regulator is required to provide the Chief Executive with such information relating to the performance and exercise of the Regulator’s responsibilities and powers as the Chief Executive requires from time to time. That information may include (but is not limited to) information relating to—

25 (a) the use by the Regulator of the resources of the Bank that have been allocated for the performance and exercise of those responsibilities and powers, and

(b) the value of outcomes and outputs derived from the use of those resources.

30 Regulator to prepare strategic plan. 33AFM.—(1) The Regulator shall, at least 3 months before the beginning of each financial year—

35 (a) prepare for the year a draft strategic plan that complies with this section, and

(b) submit the draft plan to the Regulatory Authority for approval.

(2) A draft strategic plan must specify—

40 (a) the objectives of the Regulator for the financial year concerned, and

(b) the nature and scope of the activities to be undertaken, and

45 (c) the strategies and policies for achieving those objectives and how the resources allocated to the Regulator are proposed to be used, and

(d) targets and criteria for assessing the performance of the Regulator.

(3) If the Regulatory Authority has notified the Regulator of any requirements with respect to the form in which a draft strategic plan is to be prepared, the Regulator shall take such steps as are necessary to ensure that the plan complies with those requirements. 5

(4) The Regulatory Authority may approve a strategic plan either with or without amendment.

(5) On being approved under subsection (4), a draft strategic plan prepared for a financial year becomes the strategic plan for the Regulator for that year. The Regulator is required to take all reasonably practical steps to implement that plan. 10

Regulator to keep proper accounts.

33AFN.—(1) The Regulator shall keep accounting records that properly record and explain the Regulator’s transactions. 15

(2) The Regulator shall, as soon as practicable after the end of each financial year, provide the Bank with sufficient information about the financial affairs of the Regulator as will enable the Bank to comply with section 6H(2) for that year. 20

(3) The Regulator shall ensure that the accounting records kept under this section comply with any accounting standards notified to the Regulator in writing by the Chief Executive. 25

(4) The Regulator is required to retain the accounting records for at least 6 years after the transactions to which they relate are completed.

(5) The Regulator is required to make the accounting records available at all reasonable times for inspection by any member of the Regulatory Authority.”. 30

PART 3

LICENCES TO OPERATE AS A DEBT COLLECTOR

Application for licence.

6.—(1) An application to the Regulator for a licence to operate as a debt collector shall be in the prescribed form and be accompanied by the prescribed fee, and such other information as may be required by the Regulator. 35

(2) The Regulator may require that the applicant’s signature be witnessed by a person from within a prescribed category of persons. 40

(3) Without prejudice to *sections 8 and 9* of this Act, the Regulator may—

(a) require an applicant to furnish such additional information in respect of the applicant’s character, financial position and competence, and make such investigations and conduct such examinations in that regard, as it considers necessary, 45

(b) require verification by affidavit or otherwise of any information provided by the applicant, and

5 (c) require the applicant to supply a certificate by a member of the Garda Síochána not below the rank of superintendent in such form and containing such particulars in relation to the applicant as the Regulator may prescribe.

(4) In this section references to the applicant's character, financial position and competence include references to the character, financial position and competence of—

10 (a) in the case of a body corporate, the directors,

(b) in the case of a partnership, the partners,

(c) in the case of a sole trader, the individual,

and, in any such case, any manager, secretary or other officer of the entity concerned.

15 7.—(1) Subject to *sections 9 and 10*, the Regulator may grant a licence to a person to operate as a debt collector. Grant or refusal of licence.

(2) When deciding whether to grant a licence the Regulator shall take into account any information supplied to it under *sections 9, 10, 11 and 12*.

20 (3) The Regulator shall refuse to grant a licence if satisfied—

(a) if the applicant is an individual, that he or she:

(i) is not a fit and proper person to operate a debt collection service,

(ii) is under 18,

25 (iii) does not comply with any requirement of this Act or regulations thereunder,

(iv) has not paid the prescribed fee,

(b) if the applicant is a body corporate:

30 (i) that any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in that capacity is not a fit and proper person to hold such a position in a body corporate which is operating as a debt collector,

35 (ii) that *subparagraph (iii) or (iv) of paragraph (a)* applies in respect of the body corporate, and

(c) if the applicant is a partnership, that one or more than one of *subparagraphs (i) to (iv) of paragraph (a)* applies or apply in respect of any of the partners.

40 (4) A licence, unless sooner surrendered or revoked or otherwise ceasing to be in force, shall remain in force for a period of 2 years from the date on which it is issued.

(5) A licence does not confer any right of property, and may not be transferred or assigned or be mortgaged, charged or otherwise encumbered.

(6) This Act does not apply in relation to a person—

(a) who, immediately before the critical date, was operating as a debt collector, 5

(b) who intends to continue to provide the service after that date,

(c) who has applied by that date to the Regulator for a licence, and 10

(d) whose application has not been determined.

(7) For the purposes of *subsection (6)* an application for a licence is to be taken as not to have been determined—

(a) if the applicant has not been notified that the Regulator has decided to refuse to grant the licence, or 15

(b) where the applicant has been so notified, until—

(i) one month has elapsed after the notification and the decision has not been appealed, or

(ii) any appeal against the decision has been finally determined. 20

(8) Where the Regulator has refused the application, it may, if in its opinion the safety or welfare of any person or persons is or may be at risk from the continued operation as a debt collector by the applicant, declare that *subsection (6)* shall no longer apply in relation to the applicant and give notice to the applicant of its decision to make the declaration, stating the grounds on which the decision was made. 25

(9) *Subsection (8)* shall cease to apply in relation to the applicant when the applicant receives or is deemed to receive the notice.

Renewal of licence. **8.—(1)** Every licence, unless it has been terminated in accordance with this Act, may, subject to *sections 8 and 9*, be renewed from time to time by the Regulator in the prescribed manner. 30

(2) An application for renewal of a licence shall be made within the prescribed time.

(3) If the application is not determined by the Regulator before the licence expires, the licence shall continue in force until the application has been so determined. 35

(4) *Sections 5 and 6* shall apply, with the necessary modifications, in relation to an application under this section.

Tax clearance. **9.—(1)** The Regulator shall refuse to grant or renew a licence to or in respect of a person in relation to whom a tax clearance certificate is not in force. 40

(2) The Regulator may nevertheless grant or renew a licence to or in respect of such a person if—

5 (a) the person has, at least four months before applying for the grant or renewal, applied for a tax clearance certificate and either—

(i) that application has not been determined, or

(ii) it has been refused and an appeal against the refusal has been made under section 1094(7) of the Act of 1997 but not determined, and

10 (b) the Regulator would, but for *subsection (1)*, have granted or renewed the licence.

(3) The Regulator shall notify the Collector-General of the issue of a licence granted or renewed under *subsection (2)*.

(4) Such a licence shall expire—

15 (a) if the application for a tax clearance certificate is granted or is granted on appeal, on the day on which it would expire if the certificate had been in force when the licence was granted or renewed,

(b) if the application is refused and—

20 (i) an appeal against the refusal under the said section 1094(7) is not made within the period of 30 days after the refusal, on the expiration of that period, or

25 (ii) such an appeal is so made but is not successful, 7 days after the appeal has been determined or finally determined.

(5) The Collector-General shall notify the Regulator of the determination of any such application for a tax clearance certificate, of any appeal against a refusal of such an application and of the final determination of any such appeal.

30 (6) The reference in *subsection (2)(a)(ii)* to section 1094(7) is to that provision as applied by subsection (6) of section 1095 (as substituted by section 127(b) of the Finance Act 2002) of the Act of 1997.

10.—The Regulator shall refuse to grant an application for a licence or for renewal of a licence—

Documents to accompany certain applications.

35 (a) by or on behalf of a company, unless the application is accompanied by a certificate of the incorporation of the company, certified by the Regulator of companies under section 370(1)(b) of the Companies Act 1963 and dated not earlier than 4 weeks before the date of the application, or

40 (b) by or on behalf of a person carrying on business under a name that is not that of the beneficial owner of the business, unless the application is accompanied by a copy of a certificate of registration of the person under the Registration of Business Names Act 1963, certified in accordance with section 16(1)(b) of that Act.

Notification of conviction of an offence.

11.—An applicant for a licence, or a licensee, who has been convicted of an offence (other than offences prescribed the Minister or Regulator under this Act), or against whom proceedings for such an offence are pending, under the law of the State or another state shall notify the Regulator of the conviction or proceedings in the prescribed manner within the prescribed period and supply the Regulator with the prescribed particulars thereof. 5

Provision of information by Garda Síochána.

12.—(1) The Regulator may request the Commissioner of the Garda Síochána to provide any information requisite for the due performance of its functions in relation to any applicant for a licence or any licensee. 10

(2) Notwithstanding anything contained in any enactment, the Commissioner shall comply with any such request.

Revocation or suspension of licence.

13.—(1) Subject to *section 11* the Regulator may—

(a) refuse to renew a licence, or 15

(b) at any time suspend a licence for a specified period or revoke it, if it is satisfied on reasonable grounds that the licensee—

(i) has supplied information in or in connection with the application for the licence or its renewal that was false or misleading in a material particular, 20

(ii) has contravened any provision of this Act or regulations thereunder (whether or not the licensee has been convicted of an offence in relation to the contravention), or 25

(iii) is no longer a fit and proper person to operate a debt collection business, or

(iv) if the Regulator would not have granted the licence or renewed it if information obtained subsequent to the date of its grant or renewal had been available at that date. 30

(2) The Regulator shall—

(a) refuse to renew a licence, or at any time suspend a licence for a specified period or revoke it, if it is satisfied on reasonable grounds that the safety or welfare of any person or persons is or may be at risk from the continuance in force of the licence, and 35

(b) notify the licensee of its decision.

(3) Without prejudice to *subsection (1)*, if the Regulator is satisfied on reasonable grounds that the licensee— 40

(a) has been guilty of misconduct in the course of operating a debt collection business, or

(b) has contravened any provision of this Act or regulations thereunder (whether or not the licensee has been convicted of an offence in relation to the contravention), 45

it may take whichever of the following actions in relation to the licence or licensee is in its opinion appropriate in the circumstances of the case:

- (i) revocation of the licence,
- 5 (ii) suspension of the licence for a specified period,
- (iii) reprimand,
- (iv) warning,
- (v) caution,
- (vi) advice.

10 (4) A licence which is suspended shall not be in force during the period of its suspension.

14.—(1) If the Regulator proposes to—

- (a) refuse to grant or renew a licence,
- (b) suspend it for a specified period, or
- 15 (c) revoke it,

Notification to applicant of refusal, suspension or revocation.

it shall notify the applicant or licensee of its proposal and consider any representations that are made to it in writing by the applicant or licensee within 14 days after the notification.

20 (2) If the Regulator, having considered any such representations, decides to refuse to grant or renew a licence or to suspend or revoke it, it shall notify the applicant or licensee of the decision and the grounds for it and of the procedure for appealing against it.

25 (3) A notification or notice to be given to a person by the Regulator or Appeal Board under this Act shall be given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or carries on business;
- 30 (c) by sending it by prepaid registered post in an envelope addressed to the person at that address;
- (d) where the person has given an address for service of notices, by leaving it at the address for such service or sending it by prepaid registered post in an envelope addressed to the person at that address;
- 35 (e) where—
 - (i) the Regulator or Appeal Board considers that notice should be given immediately, and
 - 40 (ii) a fax machine is located at an address mentioned in *paragraph (b) or (d)*, by sending it by fax to that machine.

- (4) (a) When a notification or notice is sent by prepaid registered post, it is deemed to be received by the person on the third working day after the day on which it was so sent.
- (b) When sent by fax, it is deemed to be received by the person when the sender's fax machine generates a message confirming successful transmission of the notice. 5
- (5) For the purposes of this section a company registered under the Companies Acts 1963 to 2003 is deemed to be ordinarily resident at its registered office and every other body corporate or unincorporated body to be so resident at its principal office or place of business. 10

Provision for appeal.

15.—An appeal may be lodged to the Irish Financial Services Appeals Tribunal in accordance with the terms of Part VIIA of the Central Bank Act 1942 as amended.

PART 4

OBLIGATIONS OF LICENCEES 15

Prohibition on Sale, Transfer or Assignment of Consumer Debt.

16.—A consumer or commercial debt, or portion thereof, shall not be sold, transferred or assigned for value without the prior written consent of the debtor, which consent shall not be unreasonably withheld.

Obligation to notify Regulator of sale, transfer or assignment of debt asset.

17.—A licensee shall be required to notify the Regulator where he or she has: 20

- (a) sold a debt asset to any debt collector or financial institution or other credit provider,
- (b) purchased a debt asset from any debt collector or financial institution or other credit provider, 25
- (c) caused a debt asset to be assigned for value to a debt collector or financial institution or other credit provider, or
- (d) received by assignment or transfer a debt asset for value from a debt collector or financial institution or other credit provider. 30

PART 5

OFFENCES AND COMPLAINTS AGAINST LICENCEES

Investigation of Complaints.

18.—(1) Any person may make a complaint in writing to the Regulator against a licensee in relation to the conduct of the licensee in the course of operating as a debt collector, including an alleged contravention by the licensee of any provision of this Act or regulations made thereunder. 35

(2) On receipt of such a complaint, the Regulator, if satisfied that the complaint is made in good faith and is not frivolous or vexatious, shall investigate it, giving the licensee and the complainant an opportunity to be heard during the investigation. 40

(3) On completion of the investigation—

- (a) the Regulator may decide not to uphold the complaint;
- (b) if the Regulator is satisfied on reasonable grounds that the licensee—

5 (i) has been guilty of misconduct in the course of providing a security service, or

10 (ii) has contravened any provision of this Act or regulations thereunder (whether or not the licensee has been convicted of an offence in relation to the contravention), it may take whichever of the following actions in relation to the licence or licensee is in its opinion appropriate in the circumstances of the case:

- 15 (I) revocation of the licence,
- (II) suspension of the licence for a specified period,
- (III) reprimand,
- (IV) warning,
- (V) caution,
- (VI) advice,

20 and shall notify the complainant and licensee of its decision;

25 (c) if the Regulator is satisfied on reasonable grounds that the safety or welfare of any person or persons is or may be at risk from the continuance in force of the licence, it shall revoke the licence or suspend it for a specified period and notify the complainant and licensee of its decision, and in such a case *section 14* does not apply.

(4) For the purposes of investigating a complaint, an inspector may enter the premises of a person operating as a debt collector and inspect the books, documents and records of the person.

19.—(1) Any person who—

Offences.

35 (a) makes any false or misleading statement in any application or notice of appeal under this Act or in any document required thereunder or otherwise gives false or misleading information to the Regulator or Appeal Board,

(b) operates or purports to operate as a debt collector without having made an application to the Regulator for a licence,

40 (c) operates or purports to operate as a debt collector in circumstances where an application to the Regulator under this Act has been refused,

(d) being a licensee who has been notified of the suspension or revocation of the licence, produces the licence to any

other person with a view to operating or purporting to operate as a debt collector,

- (e) being a licensee, fails or refuses to keep any prescribed records or to furnish to the Regulator any prescribed information, or 5
- (f) being a licensee fails to notify the Regulator of the sale, transfer or assignment of a debt asset,

is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both. 10

- (2) (a) A person who contravenes section 11 of this Act is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.
- (b) A person shall not be convicted of an offence under section 11 if the court is satisfied that, in the case of an applicant or a licensee who has been convicted of an offence, or against whom proceedings for an offence are pending, in a place other than the State, the offence does not correspond with any offence under the law of the State. 15 20

(3) Any person who—

- (a) falsely represents, in relation to the money claimed, that criminal proceedings lie for failure to pay it,
- (b) falsely represents himself to be authorized in some official capacity to claim or enforce payment, or 25
- (c) utters a document falsely represented to him, to have some official character or purporting to have some character which he knows it has not,

is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or on indictment to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both. 30

(4) Any person who harasses the other with demands of payment which, in respect of their frequency of the manner or occasion of making any such demand, or of any threat or publicity by which any demand is accompanied, are likely to subject a person or members of their family to distress, is guilty of an offence and liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or on indictment to a fine not exceeding €100,000 or imprisonment for a term not exceeding 7 years or both. 35 40

(5) Where—

- (a) an offence under this Act is committed by a body corporate, and 45
- (b) the offence is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any neglect on the part of, a person who was either—

(i) a director, manager, secretary or other similar officer of the body corporate, or

5 (ii) a person purporting to act in any such capacity, that person is also guilty of an offence and liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

10 (6) Where the affairs of a body corporate are managed by its members, *subsection (2)* shall apply in relation to the acts or defaults of a member in connection with the member's functions of management as if he or she were a director or manager of the body corporate.

(7) *Subsections (4) and (5)* shall apply, with the necessary modifications, in relation to offences under this Act committed by an unincorporated body.

15 (8) The Regulator may bring and prosecute summary proceedings for an offence under this Act.

20 (9) The Regulator may, at his or her discretion, refer cases to the Director of Public Prosecutions where he or she has reasonable grounds for believing that an indictable offence under this Act has been committed.



**BILLE AN BHAINC CEANNAIS AGUS ÚDARÁS SEIRBHÍSÍ
AIRGEADAIS NA hÉIREANN (FÉICHIÚNAITHE A
CHOSAINT) 2009**

**CENTRAL BANK AND FINANCIAL SERVICES
AUTHORITY OF IRELAND (PROTECTION OF DEBTORS)
BILL 2009**

EXPLANATORY MEMORANDUM

Purpose of the Bill

The purpose of this Bill is to regulate debt collectors so that they must register with the Financial Regulator and be vetted by An Garda Síochána before they can operate in Ireland as a licensee retrieving both consumer and commercial debt.

Ireland has no system of regulation of debt collectors, unlike many EU countries. As a result, anyone can set up a debt collection agency and there are no rules as to how they should operate. Debts can also be sold on without the creditor's knowledge. With more people owing more money, debt collection will become a more profitable business for some.

Individuals should honour their debt obligations; however, debtors and members of the public should be protected by law from debt collection methods that overstep the bounds of acceptable pressure.

This Bill therefore establishes a regulatory framework in which a Debt Collection Regulator under the remit of the Financial Regulator will reconcile any ambiguities within this developing industry and will ensure the transparent and efficient operation of debt collection agencies.

The main function of the Debt Collection Regulator is to issue licences to suitable applicants once they have supplied all relevant documentation, including certificate of clearance from An Garda Síochána and a tax clearance certificate by the Revenue Commissioners. A licence will issue on a two yearly basis. It is the right of the Regulator to refuse, revoke or suspend a licence at any time.

This Bill also obliges licensees by law to notify a debtor and the Regulator, in writing, if a debt is to be sold, transferred or assigned for value.

Debt collection can involve the exertion of pressure on the debtor. There have been media reports on collection tactics employed by some debt collectors to retrieve funds owing. There is also evidence that persons with criminal backgrounds are operating in this industry. As a result, some debtors feel intimidated, harassed, and threatened.

This Bill provides for complaints by debtors, made in good faith, to be investigated by the Regulator against a licensee. If the complaint is upheld the licensee may have his/her licence suspended or revoked. A licensee must notify the Regulator if they are convicted of an offence or there are proceedings for an offence pending.

Provisions of the Bill

Section 1 provides the Act shall be known as the Central Bank and Financial Services Authority of Ireland (Protection of Debtors) Act 2009.

Section 2 is the interpretation section.

Section 3 provides for the approval of the Houses of the Oireachtas for any regulations made by the Minister under this Bill.

Section 4 is a technical amendment which provides that the Irish Financial Services Regulatory Authority shall encompass the office created by this Bill.

Section 5 amends the Central Bank Act to provide for the establishment of the Regulator of Debt Collectors under the auspices of the Irish Financial Services Regulatory Authority. This section employs a similar structure to the Registrar of Credit Unions under the same office and provides that the Regulator has the power to issue licences to persons, partnerships or companies who are planning to operate as debt collectors.

Section 6 provides for the system for application to the Regulator for a licence to operate as a debt collector. This section provides that the Regulator may request certain background information, including Garda Síochána vetting, to establish that the applicant is a person who will not be a fit and proper person to operate as a debt collector.

Section 7 provides for the grant, refusal or revocation of a licence to an applicant by the Regulator. A licence remains in force for a period of two years before it needs to be renewed. The Regulator may refuse to grant a licence in circumstances where he or she believes that to grant the licence, or allow an existing licence to continue to be in force, would be contrary to the safety and welfare of a person.

Section 8 provides for the renewal of licences.

Section 9 provides that an applicant for a licence under this Bill must produce a current tax clearance certificate before a licence can be issued and the tax clearance certificate must remain valid, or be replaced by a new certificate, for the term of the licence.

Section 10 provides that certain documents must accompany the application for a licence.

Section 11 provides that an applicant for a licence, or a holder of a licence, must notify the Regulator of any prior conviction or any conviction they accrue while in possession of the licence.

Section 12 provides that the Regulator may seek information from the Garda Síochána in respect of any applicant or holder of a licence.

Section 13 provides for the revocation or temporary suspension of a licence in circumstances where the licensee is found to have supplied misleading information to the Regulator or is, in the opinion of the Regulator, no longer a fit person to hold a licence.

Section 14 provides that the Regulator must notify the applicant or holder of a licence of any refusal, suspension or revocation of a licence and prescribes the form for such notification.

Section 15 provides for appeals of a decision of the Regulator.

Section 16 prohibits the sale, transfer or assignment of a debt without the prior written consent of the debtor. This is designed to enhance transparency and to ensure that debtors have full knowledge of who owns their debt, and who they are ultimately indebted to. A debtor may not unreasonably withhold their consent.

Section 17 provides that where a debt is sold, transferred or assigned that the Regulator must be notified. Failure to do so is an offence under section 19.

Section 18 provides that a person may make a complaint to the Regulator about the conduct of a debt collector. This provides an additional layer of protection for a debtor who may not wish to go to the Gardaí or who feels otherwise intimidated. The Regulator can then conduct an investigation into the complaint, including power of entry and inspection of the debt collector's premises, and can impose certain sanctions on the debt collector.

Section 19 deals with offences committed under the Act. There is a scale with three levels of offences that can be committed under the Bill. The first is administrative offences; the Bill makes it an offence to operate as a debt collector without a licence, to fail to provide the Regulator with the requisite documents or notifications under the Act.

The second level of offences deals with misrepresentations made by a debt collector to a debtor. This is very important because many debtors may have limited information about court processes and legal systems and this should not be exploited by debt collectors. As such, it is an offence to that a document is a legal document or has some official capacity which it does not, in order to coerce the debtor to discharge the debt more quickly.

*An Teachta Charles Flanagan,
Aibreán, 2009.*