



**BILLE AN BHAINC CEANNAIS (MAOIRSIÚ AGUS
FORFHEIDHMIÚ), 2011
CENTRAL BANK (SUPERVISION AND ENFORCEMENT)
BILL 2011**

*Mar a ritheadh ag Dáil Éireann
As passed by Dáil Éireann*

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY

Section

1. Short title, collective citation and construction.
2. Commencement.
3. Interpretation.
4. Repeals and revocations.
5. Amendments.
6. Savings and transitional provisions.

PART 2

PROVISION OF REPORT TO BANK

7. Definitions (*Part 2*).
8. Persons to whom this Part applies.
9. Giving of notice to reviewee to provide a report.
10. Matters to which Bank shall have regard before giving notice under *section 9*.
11. The reviewer.
12. Contract with reviewer.
13. Cost of report.
14. Assisting the reviewer.

[No. 43*b* of 2011]

15. Duty of reviewee to ensure performance of reviewer's functions.
16. Reviewer to provide explanation to the Bank.
17. Bank not bound by report nor liable for it.
18. Offence of providing false information to a reviewer.
19. Bank may apply to High Court for an order.
20. Guidelines for reviewees and reviewers.

PART 3

INFORMATION, ETC.

CHAPTER 1

Introductory

21. Persons to whom this Part applies.

CHAPTER 2

Bank's power to gather information, etc.

22. Power of Bank to require information, records, plans, etc.
23. Form of information, etc.

CHAPTER 3

Authorised officers

24. Appointment of authorised officers.
25. Warrant of appointment.
26. Power of authorised officer to enter premises.
27. Powers of authorised officer.
28. Warrant required to enter premises.
29. Authorised officer may attend meetings.

CHAPTER 4

Supplementary

30. Provision of information, record or other document not to be treated as breach or to affect lien.
31. Failure to comply with a requirement.
32. Offence.
33. Privileged legal material.
34. Use of information.

PART 4

AUDITOR ASSURANCE

35. Amendment of Central Bank Act 1997.
36. Amendment of section 27G of Central Bank Act 1997.

PART 5

PROTECTION FOR PERSONS REPORTING BREACHES

37. Definitions (*Part 5*).
38. Protected disclosure.
39. Guidelines for persons referred to in *section 38(2)(a)*.
40. Protection from civil liability of persons who have made a protected disclosure.
41. Protection of employees from penalisation for making a protected disclosure.
42. Tortious liability of person for victimisation.

PART 6

CUSTOMER PROTECTION

43. Bank's power to direct redress for customers.
44. Actions for damages.

PART 7

BANK'S POWER TO GIVE DIRECTIONS

45. Bank's power to give directions.
46. Prior approval of High Court for certain proceedings.
47. Bank may apply to High Court for orders enforcing directions.

PART 8

BANK'S POWER TO MAKE REGULATIONS

48. Bank's power to make regulations.
49. Consultation before making regulations.
50. Matters to which Bank to have regard when making regulations.
51. Supplementary provisions relating to regulations.

PART 9

ENFORCEMENT

52. High Court enforcement orders on application by Bank.

53. Notices to the public.
54. Restitution orders.
55. Prosecution of offences.
56. Copies of documents for juries.
57. Convicted person liable for costs and expenses of investigation and proceedings.
58. Limitation of liability.

PART 10

EXTENSION OF PART V OF CENTRAL BANK ACT 1997 TO DEBT MANAGEMENT FIRMS, ETC.

59. Amendment of section 28 of Central Bank Act 1997.
60. Amendment of section 31 of Central Bank Act 1997.
61. Amendment of section 31A of Central Bank Act 1997.
62. Amendment of section 32A of Central Bank Act 1997.
63. Amendment of section 33A of Central Bank Act 1997.
64. Transitional provision for existing debt management firms.
65. Amendment of section 36 of Central Bank Act 1997.
66. Amendment of section 36A of Central Bank Act 1997.

PART 11

AMENDMENTS TO PART IIIC OF ACT OF 1942

67. Amendment of section 33AO of Act of 1942.
68. Amendment of section 33AQ of Act of 1942.
69. Amendment of section 33AV of Act of 1942.
70. Amendment of section 33BA of Act of 1942.
71. Amendment of section 33BC of Act of 1942.

PART 12

OTHER AMENDMENTS TO FINANCIAL SERVICES LEGISLATION

72. Ombudsman's report to include information about complaints.
73. Amendment of section 76 of Central Bank Act 1989.
74. Amendment of section 43 of Investment Intermediaries Act 1995.
75. Amendment of section 30 of Consumer Credit Act 1995.
76. Amendment of section 45 of Consumer Credit Act 1995.

77. Amendment of section 149 of Consumer Credit Act 1995.
78. Amendment of section 27 of Central Bank Act 1997.
79. Amendments of Investor Compensation Act 1998.
80. Amendment of Financial Services (Deposit Guarantee Scheme) Act 2009.
81. Amendment of Central Bank and Credit Institutions (Resolution) Act 2011.

PART 13

MISCELLANEOUS

82. Amendment of section 1 of Insurance Act 1964.
83. Amendment of section 6 of Insurance Act 1964.
84. Amendment of section 4 of Landlord and Tenant Act (Ground Rents) (No. 2) Act 1978.
85. Amendment of section 4 of Landlord and Tenant (Amendment) Act 1980.
86. Amendment of section 3 of Companies (Amendment) Act 1990.
87. Disclosure to Bank of tax information about qualifying companies and FVCs.
88. Amendment of section 11 of Electronic Commerce Act 2000.
89. Amendment of Planning and Development Act 2000.
90. Amendment of section 56 of Personal Injuries Assessment Board Act 2003.
91. Amendment of Credit Institutions (Financial Support) Act 2008.
92. Amendment of section 38 of Credit Institutions (Stabilisation) Act 2010.

SCHEDULE 1

REPEALS AND REVOCATIONS

PART 1

REPEALS

PART 2

REVOCATIONS

SCHEDULE 2

AMENDMENTS OF CENTRAL BANK ACTS

PART 1

AMENDMENTS OF CENTRAL BANK ACT 1942

PART 2

AMENDMENTS OF CENTRAL BANK ACT 1971

PART 3

AMENDMENTS OF CENTRAL BANK ACT 1997

PART 4

AMENDMENTS OF CENTRAL BANK REFORM ACT 2010

PART 5

AMENDMENTS OF CENTRAL BANK AND CREDIT INSTITUTIONS
(RESOLUTION) ACT 2011

SCHEDULE 3

AMENDMENTS OF CERTAIN OTHER ACTS

PART 1

AMENDMENTS OF INVESTMENT INTERMEDIARIES ACT 1995

PART 2

AMENDMENTS OF CREDIT UNION ACT 1997

PART 3

AMENDMENTS OF INVESTOR COMPENSATION ACT 1998

PART 4

AMENDMENT OF FINANCIAL SERVICES (DEPOSIT GUARANTEE SCHEME)
ACT 2009

SCHEDULE 4

AMENDMENTS OF CERTAIN STATUTORY INSTRUMENTS

PART 1

AMENDMENTS OF EUROPEAN COMMUNITIES (MARKETS IN FINANCIAL
INSTRUMENTS) REGULATIONS 2007

PART 2

AMENDMENTS OF EUROPEAN COMMUNITIES (INSURANCE AND
REINSURANCE GROUPS SUPPLEMENTARY SUPERVISION) REGULATIONS
2007

PART 3

AMENDMENTS OF EUROPEAN COMMUNITIES (INFORMATION ON THE
PAYER ACCOMPANYING TRANSFERS OF FUNDS) REGULATIONS 2007

PART 4

AMENDMENT OF EUROPEAN COMMUNITIES (REORGANISATION AND
WINDING-UP OF CREDIT INSTITUTIONS) REGULATIONS 2011

SCHEDULE 5

REDRESS FOR CONTRAVENTION OF *section 41(1)*

ACTS REFERRED TO

Asset Covered Securities Act 2001	2001, No. 47
Bankruptcy Act 1988	1988, No. 27
Building Societies Act 1989	1989, No. 17
Central Bank Act 1942	1942, No. 22
Central Bank Act 1971	1971, No. 24
Central Bank Act 1989	1989, No. 16
Central Bank Act 1997	1997, No. 8
Central Bank Acts 1942 to 2012	
Central Bank and Credit Institutions (Resolutions) Act 2011	2011, No. 27
Central Bank Reform Act 2010	2010, No. 23
Charities Act 2009	2009, No. 6
Companies Act 1963	1963, No. 33
Companies Act 1990	1990, No. 33
Companies (Amendment) Act 1990	1990, No. 27
Consumer Credit Act 1995	1995, No. 24
Consumer Protection Act 2007	2007, No. 19
Credit Institutions (Financial Support) Act 2008	2008, No. 18
Credit Institutions (Stabilisation) Act 2010	2010, No. 36
Credit Union Act 1997	1997, No. 15
Credit Union and Co-operation with Overseas Regulators Act 2012	2012, No. 40
Criminal Justice (Terrorist Offences) Act 2005	2005, No. 2
Debtors (Ireland) Act 1840	3 & 4 Vict., c. 105
Dormant Accounts Act 2001	2001, No. 32
Electronic Commerce Act 2000	2000, No. 27
Financial Services (Deposit Guarantee Scheme) Act 2009	2009, No. 13
Financial Transfers Act 1992	1992, No. 27
Insurance (No. 2) Act 1983	1983, No. 29
Insurance Act 1964	1964, No. 18
Insurance Act 1989	1989, No. 3
Investment Funds, Companies and Miscellaneous Provisions Act 2005	2005, No. 12
Investment Intermediaries Act 1995	1995, No. 11
Investment Limited Partnerships Act 1994	1994, No. 24
Investor Compensation Act 1998	1998, No. 37
Landlord and Tenant (Amendment) Act 1980	1980, No. 10
Landlord and Tenant (Ground Rents) Act 1967	1967, No. 3
Landlord and Tenant (Ground Rents) (No. 2) Act 1978	1978, No. 16
Personal Injuries Assessment Board Act 2003	2003, No. 46
Personal Insolvency Act 2012	2012, No. 44
Petty Sessions (Ireland) Act 1851	14 & 15. Vict., c. 93
Planning and Development Act 2000	2000, No. 30
Protection of Employees (Employers' Insolvency) Act 1984	1984, No. 21
Protection of Employees (Fixed-Term Work) Act 2003	2003, No. 29

Succession Act 1965	1965, No. 27
Taxes Consolidation Act 1997	1997, No. 39
Trustee Savings Banks Act 1989	1989, No. 21
Unclaimed Life Assurance Policies Act 2003	2003, No. 2
Unfair Dismissals Act 1977	1977, No. 10
Unfair Dismissals Acts 1977 to 2007	
Unit Trusts Act 1990	1990, No. 37



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BILL

entitled

5 AN ACT TO FURTHER PROVIDE FOR THE REGULATION
AND SUPERVISION OF FINANCIAL SERVICE PRO-
VIDERS AND FINANCIAL SERVICES; TO FURTHER
10 PROVIDE FOR THE ENFORCEMENT OF FINANCIAL
SERVICES LEGISLATION; TO PROVIDE FOR THE PRO-
TECTION OF PERSONS REPORTING BREACHES; FOR
THOSE AND OTHER PURPOSES TO PROVIDE FOR
AMENDMENTS TO, AND TO FURTHER AMEND AND
15 EXTEND, THE CENTRAL BANK ACTS 1942 TO 2012 AND
CERTAIN OTHER ACTS AND STATUTORY INSTRU-
MENTS, AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

20 PRELIMINARY

1.—(1) This Act may be cited as the Central Bank (Supervision
and Enforcement) Act 2013.

Short title,
collective citation
and construction.

(2) The Central Bank Acts 1942 to 2012 and this Act (other than
section 5, in so far as it relates to *Schedules 3* and *4*, and *sections 74*
25 *to 77*, *79 to 86* and *88 to 91*) may be cited together as the Central
Bank Acts 1942 to 2013 and shall be construed together.

2.—(1) This Act comes into operation on such day or days as the
Minister may appoint by order or orders either generally or with
reference to a particular purpose or provision or class of person and
30 different days may be so appointed for different purposes or differ-
ent provisions or different classes of person.

Commencement.

(2) An order under *subsection (1)* may, in respect of the repeal of
certain Acts to the extent specified in *Part 1* of *Schedule 1* and the
revocation of certain statutory instruments to the extent specified in
35 *Part 2* of that Schedule, effected by *section 4*, appoint different days

for the repeal of different provisions of the Acts so specified or the revocation of different provisions of the statutory instruments so specified and for such repeal or revocation, as the case may be, for different purposes of any such provision.

(3) An order under *subsection (1)* may, in respect of the amendment of Acts and statutory instruments set out in *Schedules 2, 3 and 4*, effected by *section 5*, appoint different days for the amendment of different Acts or statutory instruments or different provisions of them. 5

Interpretation.

3.—(1) In this Act— 10

“Act of 1942” means the Central Bank Act 1942;

“authorisation” means an authorisation, licence or any other permission required to carry on business as a regulated financial service provider granted by the Bank pursuant to any provision of financial services legislation, and includes registration; 15

“authorised officer” means a person appointed by the Bank under *section 24* to be an authorised officer;

“contravene” includes fail to comply, and also includes—

- (a) attempting to contravene,
- (b) aiding, abetting, counselling or procuring a person to commit a contravention, 20
- (c) inducing, or attempting to induce, a person (whether by threats or promises or otherwise) to commit a contravention,
- (d) being (directly or indirectly) knowingly concerned in, or a party to, a contravention, and 25
- (e) conspiring with others to commit a contravention;

“customer”, in relation to a regulated financial service provider, means—

- (a) any person to whom the regulated financial service provider provides or offers financial services, or 30
- (b) any person who requests the provision of financial services from the regulated financial service provider,

and includes a potential customer and a former customer;

“financial services legislation” means— 35

- (a) the designated enactments,
- (b) the designated statutory instruments, and
- (c) the *Central Bank Acts 1942 to 2013* and statutory instruments made under those Acts;

“Minister” means the Minister for Finance; 40

“prescribed contravention” has the same meaning as in section 33AN of the Act of 1942;

5 “regulated market” has the same meaning as in Regulation 3 of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007);

“related undertaking”, in relation to a person (“the first-mentioned person”), means—

10 (a) if the first-mentioned person is a company, another company that is related within the meaning of section 140(5) of the Companies Act 1990,

(b) a partnership of which the first-mentioned person is a member,

15 (c) if the businesses of the first-mentioned person and another person have been so carried on that the separate business of each of them, or a substantial part thereof, is not readily identifiable, that other person,

20 (d) if the decision as to how and by whom the businesses of the first-mentioned person and another person shall be managed can be made either by the same person or by the same group of persons acting in concert, that other person,

(e) a person who performs a specific and limited purpose by or in connection with the business of the first-mentioned person, or

25 (f) if provision is required to be made for the first-mentioned person and another person in any consolidated accounts compiled in accordance with the Seventh Council Directive 83/349/EEC of 13 June 1983¹, that other person.

30 (2) References in this Act to a regulated financial service provider, or a related undertaking, shall, unless the context otherwise requires, be read as including a person who was a regulated financial service provider, or a related undertaking, at the relevant time.

35 (3) A word or expression used in this Act and also in the Act of 1942, unless the contrary intention appears, has the same meaning in this Act as in the Act of 1942.

4.—(1) The Acts specified in *Part 1* of *Schedule 1* are repealed to the extent specified in *column (4)* of that Part. Repeals and revocations.

(2) The statutory instruments specified in *Part 2* of *Schedule 1* are revoked to the extent specified in *column (4)* of that Part.

40 5.—(1) The Central Bank Acts are amended to the extent specified in *column (3)* of *Parts 1* to *5* of *Schedule 2*. Amendments.

(2) The Acts specified in *Parts 1* to *3* of *Schedule 3* are amended to the extent specified in *column (3)* of each such Part.

¹OJ L193, 18.7.1983, p.1

(3) The statutory instruments specified in *Parts 1 to 3 of Schedule 4* are amended to the extent specified in *column (3)* of each such Part.

(4) The amendment of a statutory instrument by *subsection (3)* does not prevent or restrict the subsequent amendment or revocation of the instrument by another statutory instrument. 5

Savings and transitional provisions.

6.—(1) A person who was an authorised officer, by whatever name called, appointed under the provisions of any enactment repealed or revoked by this Act immediately before the coming into operation of the repeal or revocation concerned is taken to have been appointed under *Part 3*. 10

(2) Anything done by a person who was an authorised officer, by whatever name called, appointed under the provisions of any enactment repealed or revoked by this Act immediately before the coming into operation of the repeal or revocation concerned shall be treated after the coming into operation of the repeal or revocation as done under this Act by an authorised officer appointed under *Part 3*. 15

(3) Any information gathered, or any other thing done, under the provisions of any enactment repealed or revoked by this Act is to be treated after the coming into operation of the repeal or revocation as if done under any provision of this Act under which it could have been done had the provision been in force at the time in question. 20

PART 2

PROVISION OF REPORT TO BANK

Definitions (*Part 2*). 7.—In this Part— 25

“reviewee” shall be read in accordance with *section 8*;

“reviewer” shall be read in accordance with *section 11*.

Persons to whom this Part applies.

8.—The following are reviewees for the purposes of this Part:

(a) a regulated financial service provider;

(b) a related undertaking of a regulated financial service provider. 30

Giving of notice to reviewee to provide a report.

9.—(1) The Bank may for the purposes of the proper and effective regulation of financial service providers and having regard to the matters set out in *section 10*, by notice in writing given to a reviewee, require the reviewee to provide to the Bank, in accordance with such notice, a report on any matter specified in the notice about which the Bank has required or could require the provision of information, or the production of documents, under any provision of financial services legislation. 35

(2) A notice under *subsection (1)* shall be in writing and shall state— 40

(a) the date on which the notice was given,

- (b) the period within which the reviewee shall nominate a person to the Bank for approval under *section 11*,
- (c) the purpose of the report,
- (d) the scope of the report,
- 5 (e) the timetable for completion of the report,
- (f) the matters required to be reported on,
- (g) whether the report is to include recommendations,
- (h) the form of the report,
- 10 (i) where appropriate, the methodology to be used in the preparation of the report, and
- (j) such other matters relating to the report as the Bank considers appropriate.

15 **10.**—Before giving a notice under *section 9*, the Bank, taking account of the purposes for which the report is required, shall have regard to at least the following matters—

Matters to which Bank shall have regard before giving notice under *section 9*.

- (a) whether any other powers that may be available to the Bank under any provision of financial services legislation may be more appropriate in the circumstances concerned,
- 20 (b) the relevant knowledge and expertise available to the reviewee, and
- (c) the cost implications for the reviewee of providing the report, the resources available to the reviewee and the benefit to the reviewee of providing the report.

25 **11.**—(1) A report required to be provided to the Bank under this Part shall be prepared by a person (in this Part referred to as the “reviewer”)—

The reviewer.

- (a) nominated by the reviewee, within such period as is specified in the notice given under *section 9*, and approved by the Bank, or
- 30 (b) nominated by the Bank, where no person is nominated by the reviewee within the period specified in the notice under *section 9* or the Bank is not satisfied with the person so nominated.

35 (2) The reviewer shall be a person appearing to the Bank to have the skills relating to the business of the reviewee necessary to prepare an objective report on the matters concerned and, without prejudice to the generality of the foregoing, may be an auditor, actuary, accountant, lawyer or any other person with relevant business, technical or technological skills employed or otherwise engaged by
40 the reviewee.

(3) When considering whether to approve a nomination under *subsection (1)(a)* or make a nomination under *subsection (1)(b)*, the Bank shall have regard to the circumstances giving rise to the

requirement for a report and whether the person it proposes to so approve or nominate appears to have—

- (a) the competence and capabilities necessary to prepare the report on the matter concerned, 5
- (b) the ability to complete the report within the period specified by the Bank in the notice given under *section 9*, 10
- (c) any relevant specialised knowledge, including specialised knowledge of the reviewee, the nature of the business carried on by the reviewee and the matters to be reported on, 15
- (d) any potential conflict of interest in reviewing the matters to be reported on, including any arising from the fact that the matters may raise questions relating to the quality or reliability of work previously carried out by the proposed reviewer, 20
- (e) sufficient detachment, having regard to any existing professional or commercial relationship, to give an objective opinion, and
- (f) previous experience in preparing reports under this Part or reports of a similar nature. 20

(4) Where the Bank approves a nomination under *subsection (1)(a)* or makes a nomination under *subsection (1)(b)* it shall notify the reviewee, in writing, accordingly.

Contract with
reviewer.

12.—(1) Where a reviewer is approved or nominated by the Bank under *section 11*, the reviewee shall enter into a contract with the reviewer. 25

(2) It shall be a term of the contract referred to in *subsection (1)*—

- (a) that the reviewer is required to prepare for the reviewee a report in accordance with the notice given under *section 9*, 30
- (b) that any duty owed by the reviewer to the reviewee which might limit the provision of information or opinion by the reviewee to the reviewer in preparing a report under this Part shall be waived,
- (c) that the reviewer is required and permitted to provide to the Bank the following where the Bank so requests— 35
 - (i) periodic updates on progress and issues arising,
 - (ii) interim reports,
 - (iii) documents and working papers,
 - (iv) copies of any draft reports given to the reviewee, and 40
 - (v) specific information about the planning and progress of the work to be undertaken (which may include project plans, progress reports including the amount of work completed, details of time spent, costs to

date and details of any significant findings and conclusions),

(d) that the contract is governed by the law of the State,

(e) that—

5 (i) the Bank has the right to enforce the provisions included in the contract under this subsection,

10 (ii) in proceedings brought by the Bank for the enforcement of the provisions referred to in *subparagraph (i)* the reviewer is not to have available by way of defence, set-off or counterclaim any matter that is not relevant to those provisions,

15 (iii) if the contract includes an arbitration agreement, the Bank is not, in exercising the right specified in *subparagraph (i)*, to be treated as a party to, or bound by, the arbitration agreement, and

(iv) the provisions included in the contract under this subsection are irrevocable and may not be varied or rescinded without the Bank's prior consent in writing,

20 and

(f) that the contract is not varied or rescinded in such a way as to extinguish or alter the provisions included in the contract under this subsection.

25 (3) If the Bank considers it appropriate, it may request the reviewee to give to the Bank a copy of the draft contract before it is made with the reviewer and the Bank may require such modifications to the draft contract as it considers appropriate.

13.—The costs of and incidental to the preparation of a report under this Part shall be borne by the reviewee. Cost of report.

30 **14.**—(1) A reviewee shall give all such assistance to a reviewer as he or she may reasonably require for the purposes of the preparation of a report under this Part. Assisting the reviewer.

35 (2) A person who is providing or who at any time has provided services to a reviewee in relation to any matter on which a report is required to be given under this Part shall give all such assistance to a reviewer as he or she may reasonably require for the purposes of the preparation of the report.

40 **15.**—A reviewee shall take such steps as are reasonably necessary to ensure that a reviewer performs his or her functions under this Part in accordance with the terms of his or her contract. Duty of reviewee to ensure performance of reviewer's functions.

45 **16.**—A reviewer shall, where requested by the Bank, in such form and within such period as the Bank may specify, provide an explanation of all or any part of a report under this Part or the recommendations, if any, made in the report, or of such other matters relating to the report as the Bank considers appropriate. Reviewer to provide explanation to the Bank.

Bank not bound by report nor liable for it.

17.—(1) The Bank shall not be bound by the content of a report under this Part and such a report shall not be taken to be a decision or opinion of the Bank for any purpose.

(2) The adoption by a reviewee or any other person of a course of action recommended or described in a report under this Part does not represent an endorsement or approval of that course of action by the Bank. 5

(3) The Bank shall not be liable for any acts or omissions of a reviewer or reviewee relating to a report under this Part.

Offence of providing false information to a reviewer.

18.—A person who— 10

(a) obstructs or impedes a reviewer in the preparation of a report under this Part,

(b) in relation to the preparation of a report under this Part, gives information to a reviewer that the person knows to be false or misleading in a material respect, or 15

(c) is a reviewer and in relation to the preparation of a report under this section gives information to the Bank which the reviewer knows to be false or misleading in a material respect,

commits an offence and is liable— 20

(i) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or

(ii) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 5 years, or both. 25

Bank may apply to High Court for an order.

19.—(1) Subject to *subsection (2)*, where the Bank is of the opinion that a person has failed or is failing to comply with any condition or requirement imposed by this Part or by the terms of a contract referred to in *section 12(1)*, the Bank may apply to the High Court for an order enforcing the obligations of that person under this Part or under the terms of such a contract. 30

(2) Where the Bank is of the opinion that a regulated financial service provider has failed or is failing to comply with a condition or requirement imposed by this Part the Bank may give a direction under *section 45*. 35

Guidelines for reviewees and reviewers.

20.—(1) The Bank may publish, in such form and manner as it considers appropriate, guidelines for the purpose of providing practical guidance for reviewees and reviewers relating to the application and operation of this Part.

(2) The guidelines may include different provisions in respect of different classes of reviewee or reviewer. 40

PART 3

INFORMATION, ETC.

CHAPTER 1

Introductory

5 **21.—(1)** The following are persons to whom this Part applies Persons to whom
(whether they are within or outside the State): this Part applies.

(a) a regulated financial service provider;

(b) a person who has applied for an authorisation but whose application has not been determined;

10 (c) a person whom the Bank or an authorised officer reasonably believes is or has been a regulated financial service provider or is or has been acting as, or claiming or holding itself out to be, a regulated financial service provider;

15 (d) a person who is or has been, or whom the Bank or an authorised officer reasonably believes is or has been, without an authorisation, providing a financial service in respect of which an authorisation is required;

(e) a related undertaking of any of the persons referred to in any of the preceding paragraphs;

20 (f) any person whom the Bank or an authorised officer reasonably believes may possess or have control of information about—

(i) a financial service, or

25 (ii) an investment, security or other financial instrument which is, or is to be, admitted to trading under the rules and systems of a regulated market or an equivalent system operating under the law of a territory other than the State;

30 (g) any other person whom the Bank or an authorised officer reasonably believes may possess information about a person referred to in any of the preceding paragraphs;

(h) a person who is, in relation to a person referred to in any of the preceding paragraphs, a person mentioned in *subsection (2)*;

35 (i) a person who is or has been an officer or employee or agent of a person referred to in any of the preceding paragraphs or is, in relation to a person who is or has been such an officer, employee or agent, a person mentioned in *subsection (2)*.

40 (2) The persons referred to in *subsection (1)(h)* and *(i)* are—

(a) an administrator within the meaning of section 1(1) of the Insurance (No. 2) Act 1983,

(b) an administrator within the meaning of section 2 of the Investor Compensation Act 1998,

- (c) a person appointed as an administrator of a credit union by virtue of section 137 of the Credit Union Act 1997 or appointed to act as a provisional administrator of a credit union by virtue of section 138 of that Act,
- (d) a special manager appointed pursuant to the Credit Institutions (Stabilisation) Act 2010, 5
- (e) a special manager appointed pursuant to the Central Bank and Credit Institutions (Resolution) Act 2011,
- (f) an examiner, liquidator, receiver or official assignee, and
- (g) a person with functions corresponding to those of any of the persons within the preceding paragraphs under the law of a territory other than the State. 10

(3) In *subsection (1)(i)* “agent”, in relation to a person referred to in *subsection (1)(a) to (h)*, includes a past (as well as a present) agent and includes the person’s banker, accountant, solicitor, auditor and financial or other adviser. 15

CHAPTER 2

Bank’s power to gather information, etc.

Power of Bank to require information, records, plans, etc.

22.—(1) Where it is necessary to do so for the purpose of the performance of the Bank’s functions under financial services legislation relating to the proper and effective regulation of financial service providers, the Bank may, by notice in writing given to a person to whom this Part applies, require the person— 20

- (a) to provide to the Bank the information specified in the notice, 25
- (b) to provide to the Bank the records so specified, or
- (c) to prepare and provide to the Bank the forecasts, plans, accounts or other documents so specified.

(2) A person on whom a requirement is imposed under *subsection (1)* shall comply with the requirement— 30

- (a) at such time or times, or within such period, as may be specified in the notice or in a further notice given by the Bank, and
- (b) at such place as may be so specified.

(3) The Bank may require that information, records or other documents provided in compliance with a requirement under *subsection (1)* be certified or attested as to their authenticity or correctness in such manner as the Bank may reasonably require, including by statutory declaration. 35

(4) The Bank may take copies of, or extracts from, any records or other documents provided in compliance with a requirement under *subsection (1)*. 40

(5) This section does not limit any other power of the Bank to require the provision of information or records or the preparation and provision of documents. 45

23.—(1) The Bank may require that information, records or other documents provided in response to a requirement under *section 22(1)* be provided in such form and manner as the Bank may reasonably require. Form of information, etc.

5 (2) A person who fails to provide any information, records or other documents in the form reasonably required by the Bank shall be treated as not having provided it or them in compliance with the requirement.

CHAPTER 3

10 *Authorised officers*

24.—(1) Where it is necessary to do so for the purpose of the performance by the Bank of its functions under financial services legislation relating to the proper and effective regulation of financial service providers, the Bank may appoint any of its officers or employees or other suitably qualified persons to be authorised officers and to exercise any of the powers conferred by this Chapter. Appointment of authorised officers.

(2) The Bank may revoke any appointment made by it under *subsection (1)*.

20 (3) An appointment or revocation under this section shall be in writing.

(4) A person's appointment by the Bank as an authorised officer ceases on the earliest of—

(a) the revocation by the Bank of the appointment,

25 (b) in a case where the appointment is for a specified period, the expiration of the period,

(c) the person's resignation from the appointment, and

(d) in the case where the person is an officer or employee of the Bank—

30 (i) the resignation of the person as an officer or employee of the Bank, or

(ii) the termination of the person's employment with the Bank, or when the person's term of office ceases, for any reason.

35 (5) Whenever requested to do so by the Bank, an authorised officer shall give to the Bank a report on the exercise by him or her of all or any of the powers conferred on an authorised officer by this Chapter.

40 (6) In this section "suitably qualified person" means any person (other than an officer or employee of the Bank) who, in the opinion of the Bank, has the qualifications and experience necessary to exercise the powers conferred on an authorised officer by this Chapter.

25.—Every authorised officer appointed by the Bank shall be furnished with a warrant of his or her appointment, and when exercising Warrant of appointment.

a power conferred by this Chapter shall produce such warrant or a copy of it, together with a form of personal identification, for inspection if requested to do so by a person affected by the exercise of the power.

Power of authorised officer to enter premises.

26.—(1) Subject to *subsection (2)*, an authorised officer may at all reasonable times enter any premises— 5

(a) which the authorised officer has reasonable grounds to believe are or have been used for, or in relation to, the business of a person to whom this Part applies, or

(b) at, on or in which the authorised officer has reasonable grounds to believe that records relating to the business of a person to whom this Part applies are kept. 10

(2) An authorised officer shall not enter a dwelling, otherwise than—

(a) with the consent of the occupier, or 15

(b) pursuant to a warrant under *section 28*.

(3) In this Chapter “premises” includes vessel, aircraft, vehicle and any other means of transport, as well as land and any other fixed or moveable structure.

Powers of authorised officer.

27.—(1) An authorised officer may do any one or more of the following: 20

(a) search and inspect premises entered under *section 26* or pursuant to a warrant under *section 28*;

(b) require a person to whom this Part applies who apparently has control of, or access to, records, to provide the records; 25

(c) summon, at any reasonable time, a person to whom this Part applies—

(i) to give to the authorised officer such information as the authorised officer may reasonably require, 30

(ii) to provide to the authorised officer any records which the person has control of, or access to, and which the authorised officer may reasonably require, or

(iii) to provide an explanation of a decision, course of action, system or practice or the nature or content of any records provided under this section; 35

(d) inspect records so provided or found in the course of searching and inspecting premises;

(e) take copies of or extracts from records so provided or found; 40

(f) subject to *subsection (3)*, take and retain records so provided or found for the period reasonably required for further examination;

- (g) secure, for later inspection, any records so provided or found and any data equipment, including any computer, in which those records may be held;
- 5 (h) secure, for later inspection, premises entered under *section 26* or pursuant to a warrant under *section 28*, or any part of such premises, for such period as may reasonably be necessary for the purposes of the exercise of his or her powers under this Chapter, but only if the authorised officer considers it necessary to do so in order to preserve for inspection records that he or she reasonably believes may be kept there;
- 10 (i) require a person to whom this Part applies to answer questions and to make a declaration of the truth of the answers to those questions;
- 15 (j) require a person to whom this Part applies to provide an explanation of a decision, course of action, system or practice or the nature or content of any records;
- (k) require a person to whom this Part applies to provide a report on any matter about which the authorised officer reasonably believes the person has relevant information;
- 20 (l) if a person to whom this Part applies who is required to provide a particular record is unable to provide it, require the person to state, to the best of that person's knowledge and belief, where the record is located or from whom it may be obtained;
- 25 (m) require that any information given to an authorised officer under this Chapter is to be certified as accurate and complete by such person or persons and in such manner as the Bank or the authorised officer may require.

30 (2) Where records are not in legible form, an authorised officer, in the exercise of any of his or her powers under this Chapter, may—

- 35 (a) operate any data equipment, including any computer, or cause any such data equipment or computer to be operated by a person accompanying the authorised officer, and
- 40 (b) require any person who appears to the authorised officer to be in a position to facilitate access to the records stored in any data equipment or computer or which can be accessed by the use of that data equipment or computer to give the authorised officer all reasonable assistance in relation to the operation of the data equipment or computer or access to the records stored in it, including—
- 45 (i) providing the records to the authorised officer in a form in which they can be taken and in which they are, or can be made, legible and comprehensible,
- (ii) giving to the authorised officer any password necessary to make the records concerned legible and comprehensible, or
- 50 (iii) otherwise enabling the authorised officer to examine the records in a form in which they are legible and comprehensible.

(3) Where the Bank or an authorised officer proposes to retain, pursuant to this section, any records taken by the authorised officer under *subsection (1)* for a period longer than 14 days after the date on which the records are taken, the Bank or the authorised officer shall, before the end of that period of 14 days, or such longer period as the person concerned may agree, furnish, on request, a copy of the records to the person who it appears to the Bank or the authorised officer, but for the exercise of the powers under this section, is entitled to possession of it. 5

(4) A person to whom this Part applies shall give to an authorised officer such assistance as the authorised officer may reasonably require and make available to the authorised officer such reasonable facilities as are necessary for the authorised officer to exercise his or her powers under this Chapter including such facilities for inspecting and taking copies of any records as the authorised officer reasonably requires. 10 15

(5) Subject to any warrant issued under *section 28*, an authorised officer may be accompanied, and assisted in the exercise of the officer's powers under this Chapter, by such other authorised officers, members of the Garda Síochána or other persons as the authorised officer reasonably considers appropriate. 20

(6) An authorised officer may require a person to provide him or her with his or her name and address where—

(a) the authorised officer has reasonable grounds for believing that the person— 25

(i) is committing or has committed an offence under financial services legislation,

(ii) is committing or has committed a prescribed contravention, or

(iii) has deliberately concealed or destroyed evidence, or is deliberately concealing or destroying evidence, or is likely to deliberately conceal or destroy evidence, of such an offence or a prescribed contravention, 30

or

(b) the authorised officer has reasonable grounds for requiring such information for the purpose of applying for a warrant under this Chapter. 35

Warrant required to enter premises.

28.—(1) Without prejudice to the powers conferred on an authorised officer by or under any other provision of this Chapter, if a judge of the District Court is satisfied on the sworn information of the authorised officer that there are reasonable grounds for believing that records are to be found on, at or in any premises, the judge may issue a warrant authorising an authorised officer accompanied by such other authorised officers or members of the Garda Síochána as may be necessary, at any time or times within the period of validity of the warrant, on production, if so requested, of the warrant— 40 45

(a) to enter the premises specified in the warrant, if need be by reasonable force, and

(b) to exercise the powers conferred on authorised officers by this Chapter or such of those powers as are specified in the warrant.

5 (2) The period of validity of a warrant shall be 1 month from its date of issue but that period of validity may be extended in accordance with *subsections* (3) and (4).

10 (3) The authorised officer may, during the period of validity of a warrant (including such period as previously extended under *subsection* (4)), apply to a judge of the District Court for an order extending the period of validity of the warrant and such an application shall be grounded upon information on oath laid by the authorised officer stating, by reference to the purpose or purposes for which the warrant was issued, the reasons why the authorised officer considers the extension to be necessary.

15 (4) If the judge of the District Court is satisfied that there are reasonable grounds for believing, having regard to that information so laid, that further time is needed so that the purpose or purposes for which the warrant was issued can be fulfilled, the judge may make an order extending the period of validity of the warrant by such period as, in the opinion of the judge, is appropriate and just; and where such an order is made, the judge shall cause the warrant to be suitably endorsed to indicate its extended period of validity.

20 (5) Nothing in the preceding subsections prevents a judge of the District Court from issuing, on foot of a fresh application made under *subsection* (1), a further search warrant under this section in relation to the same premises.

30 **29.—**(1) An authorised officer may attend any meeting relating to the business of a regulated financial service provider if the authorised officer considers that it is necessary to attend in order to assist the Bank in the performance of any of its functions under financial services legislation. Authorised officer may attend meetings.

(2) The attendance of an authorised officer pursuant to *subsection* (1) at a meeting referred to in that subsection does not in any circumstances limit the powers of the authorised officer or of the Bank.

35 CHAPTER 4

Supplementary

40 **30.—**(1) The provision to the Bank or an authorised officer of any information, record or other document by a person under this Part shall not be treated, for any purpose, as a breach of any restriction under any enactment or rule of law on provision by the person or any other person on whose behalf the information, record or other document is provided. Provision of information, record or other document not to be treated as breach or to affect lien.

45 (2) Where a person required under this Part to provide a record or other document claims a lien on it, the provision of it shall be without prejudice to the lien.

31.—(1) If any person to whom this Part applies fails or refuses to comply with a requirement imposed by the Bank or an authorised officer under this Part, the Bank or the authorised officer may certify the failure or refusal to the High Court. Failure to comply with a requirement.

(2) When the Bank or an authorised officer certifies a failure or refusal referred to in *subsection (1)* to the High Court, the High Court may inquire into the case and may make such order (including interim or interlocutory orders) or direction as the High Court thinks fit, after hearing—

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(a) any witnesses who may be produced against or on behalf of the person concerned, and

(b) any statement which may be offered in defence.

Offence.

32.—(1) A person commits an offence if he or she—

(a) obstructs or impedes the Bank or an authorised officer in the exercise of any powers under this Part, 10

(b) without reasonable excuse, does not comply with a requirement imposed under this Part,

(c) in purported compliance with such a requirement, provides information or records or other documents to the Bank or an authorised officer that the person knows to be false or misleading in a material respect, or 15

(d) falsely represents himself or herself to be an authorised officer.

(2) A person who commits an offence under this section is liable— 20

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 5 years, or both. 25

(3) If a person refuses to answer a question asked of him or her or to comply with any other requirement made, under this Part, on the grounds that the answer or compliance with the requirement might tend to incriminate the person and the person is informed of his or her obligation to answer the question or to comply with the requirement, the person shall not refuse to answer the question or to comply with the requirement but the answer given or information provided on that occasion shall not be admissible as evidence in criminal proceedings against the person other than proceedings against him or her under this section. 30 35

Privileged legal material.

33.—(1) In this section—

“the Court” means the High Court;

“privileged legal material” means information which, in the opinion of the High Court, a person is entitled to refuse to produce on the grounds of legal professional privilege. 40

(2) If a person refuses to produce information or give access to it, pursuant to a requirement under this Part, on the grounds that the information contains privileged legal material, the Bank may, at any time within 6 months (or such longer period as the Court may allow) of the date of such refusal, apply to the Court for a determination as 45

to whether the information, or any part of the information, is privileged legal material where—

(a) in relation to the information concerned—

5 (i) the Bank has reasonable grounds for believing that it is not privileged legal material, or

(ii) due to the manner or extent to which such information is presented together with any other information, it is impossible or impractical to extract only such information,

10 and

(b) the Bank has reasonable grounds to suspect that the information contains evidence relating to the commission of a prescribed contravention or an offence under financial services legislation.

15 (3) A person who refuses to produce information or give access to it, pursuant to a requirement under this Part, on the grounds that the information contains privileged legal material shall preserve the information and keep it in a safe and secure place and manner pending the determination of an application under *subsection (2)* and shall, if the information is so determined not to be privileged legal material, produce it in accordance with such order as the Court considers appropriate.

25 (4) A person shall be considered to have complied with the requirement under *subsection (3)* to preserve information, where the person has complied with such requirements as may be imposed by an authorised officer under *paragraph (g)* or *(h)* of *section 27(1)*.

30 (5) Where an application is made by the Bank under *subsection (2)*, the Court may give such interim or interlocutory directions as the Court considers appropriate including, without prejudice to the generality of the foregoing, directions as to the appointment of a person with suitable legal qualifications possessing the level of experience, and the independence from any interest falling to be determined between the parties concerned, that the Court considers to be appropriate for the purpose of—

35 (a) examining the information, and

(b) preparing a report for the Court with a view to assisting or facilitating the Court in the making by the Court of its determination as to whether the information is privileged legal material.

40 (6) An application under *subsection (2)* shall be by motion and may, if the Court so directs, be heard otherwise than in public.

45 **34.**—Information acquired by the Bank or an authorised officer in the performance of any functions conferred on the Bank or the authorised officer under financial services legislation may be used by the Bank for the purposes of the performance of any of its functions under financial services legislation. Use of information.

PART 4

AUDITOR ASSURANCE

Amendment of
Central Bank Act
1997.

35.—The Central Bank Act 1997 is amended by inserting the following new section after section 27B:

“Auditor
assurance.

27BA.—(1) Where the Bank considers it necessary owing to the nature, scale or complexity of the activities of a regulated financial service provider, it may, by notice in writing to the auditor of the regulated financial service provider, require the auditor to conduct an examination for the purpose of providing to the Bank a statement as to the extent to which the regulated financial service provider has complied with obligations imposed by or under such provisions of financial services legislation as are specified in the notice. 5
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(2) The notice—

(a) shall be given not less than 3 months before the date on which the auditor’s report on the regulated financial service provider’s accounts is due to be submitted to the Bank, and 20

(b) shall specify the standards in accordance with which the examination is to be conducted.

(3) The auditor shall conduct an examination in accordance with the notice and during the examination shall undertake such testing procedures and obtain such information as the auditor thinks appropriate. 25

(4) The auditor shall, not more than 2 months after the date on which the auditor’s report on the regulated financial service provider’s accounts is due to be submitted to the Bank, provide to the Bank a statement outlining the findings of the examination (including, in particular, the outcome of the testing procedures undertaken, and the information obtained, by the auditor during the examination). 30
35

(5) If the auditor is not satisfied that the regulated financial service provider has complied with an obligation imposed by or under the provisions of financial services legislation specified in the notice, the auditor shall include in the statement the reasons why the auditor is not so satisfied. 40

(6) The Bank may make regulations prescribing the obligations imposed by or under provisions of financial services legislation any or all of which may be specified in a notice under subsection (1). 45

(7) The Bank may prescribe an obligation imposed by or under a provision of financial 50

services legislation in regulations under subsection (6) if and only if the provision concerns—

5 (a) administrative or accounting procedures of regulated financial service providers,

(b) internal control mechanisms of, or risk management by, regulated financial service providers, or

10 (c) the organisational structure or governance of regulated financial service providers.

(8) Before making regulations under this section the Bank shall consult the Minister and the Minister for Jobs, Enterprise and Innovation.

15 (9) In specifying under subsection (2)(b) the standards in accordance with which an examination is to be conducted, the Bank shall have regard to internationally recognised standards for assurance and auditing.”.

20 **36.**—Section 27G of the Central Bank Act 1997 is amended—

Amendment of section 27G of Central Bank Act 1997.

(a) in subsection (1) by inserting “27BA(4) or (5),” after “section 27B(2),” and

(b) in subsection (3) by inserting “27BA,” after “section 27B,”.

25 PART 5

PROTECTION FOR PERSONS REPORTING BREACHES

37.—(1) In this Part and *Schedule 5*—

Definitions (*Part 5*).

30 “appropriate person”, in relation to the making of a protected disclosure, means the Bank, an officer or employee of the Bank or an authorised officer;

“contract of employment” means a contract of employment or of service or of apprenticeship, whether the contract is express or implied and, if express, whether it is oral or in writing;

35 “employee” means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer;

40 “employer”, in relation to an employee, means the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment, and includes—

(a) a person (other than an employee of that person) under whose control and direction an employee works, and

- (b) where appropriate, the successor of the employer or an associated employer of the employer;

“penalisation” means any act or omission by an employer, or by a person acting on behalf of an employer, that affects an employee to his or her detriment with respect to any term or condition of his or her employment and, without prejudice to the generality of the foregoing, includes—

- (a) suspension, lay-off, or dismissal,
- (b) the threat of suspension, lay-off or dismissal,
- (c) demotion or loss of opportunity for promotion,
- (d) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (e) the imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty),
- (f) unfair treatment,
- (g) coercion, intimidation or harassment,
- (h) discrimination, disadvantage or adverse treatment,
- (i) injury, damage or loss, and
- (j) threats of reprisal;

“protected disclosure” shall be read in accordance with *section 38*.

(2) For the purposes of this Part and *Schedule 5*, two employers shall be taken to be associated if one is a body corporate of which the other (whether directly or indirectly) has control or if both are bodies corporate of which a third person (whether directly or indirectly) has control and “associated employer” shall be read accordingly.

(3) For the purposes of this Part and *Schedule 5*, a reference to “dismissal” includes—

- (a) a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2007, and
- (b) a dismissal wholly or partly for or connected with the purpose of the avoidance of a fixed-term contract being deemed to be a contract of indefinite duration under section 9(3) of the Protection of Employees (Fixed-Term Work) Act 2003.

Protected disclosure.

38.—(1) Where a person makes, in good faith, whether in writing or otherwise, a disclosure to an appropriate person and the person making the disclosure has reasonable grounds for believing that the disclosure will show one or more of the following:

- (a) that an offence under any provision of financial services legislation may have been or may be being committed;
- (b) that a prescribed contravention may have been or may be being committed;

(c) that any other provision of financial services legislation may have been or may be being contravened;

(d) that evidence of any matter which comes within *paragraph (a), (b) or (c)* has been, is being or is likely to be deliberately concealed or destroyed,

the disclosure shall be a protected disclosure for the purposes of this Part.

(2) (a) A person appointed to perform a pre-approval controlled function (within the meaning of section 18 of the Central Bank Reform Act 2010) shall, as soon as it is practicable to do so, disclose to the Bank information relating to one or more of the matters specified in *subsection (1)(a) to (d)* which he or she believes will be of material assistance to the Bank.

(b) A disclosure under *paragraph (a)* shall be a protected disclosure for the purposes of this Part.

(c) *Paragraph (a)* does not apply if the person has a reasonable excuse.

(d) It is a reasonable excuse for the purposes of *paragraph (c)* for a person to fail to make a disclosure on the ground that the disclosure might tend to incriminate the person.

(e) It is a reasonable excuse for the purposes of *paragraph (c)* for a person to fail to make a disclosure on the ground that the information has already been disclosed by another person.

(f) *Paragraphs (d) and (e)* do not limit what is a reasonable excuse for the purposes of *paragraph (c)*.

(3) A disclosure made anonymously shall not be a protected disclosure for the purposes of this Part.

(4) (a) The Governor shall provide a report to the Central Bank Commission at least annually on any action taken or not taken in response to protected disclosures.

(b) The Central Bank Commission shall determine the form and content of the report to be provided under *paragraph (a)*.

39.—(1) The Bank may, in such form and manner as it considers appropriate, publish guidelines for the purpose of providing practical guidance for persons referred to in *subsection (2)(a)* of *section 38* relating to the application and operation of that section with respect to those persons, including guidelines as to the assessment by such persons as to whether a disclosure is required to be made.

Guidelines for persons referred to in *section 38(2)(a)*.

(2) The guidelines may include different provisions in respect of different classes of persons referred to in *section 38(2)(a)*.

40.—(1) A person shall not be liable in damages in respect of the making of a protected disclosure.

Protection from civil liability of persons who have made a protected disclosure.

(2) *Subsection (1)* does not apply in respect of a person who—

(a) makes a disclosure knowing it to be false or misleading, or

(b) in connection with a disclosure, furnishes information that the person knows to be false or misleading.

(3) The reference in *subsection (1)* to liability in damages shall be read as including a reference to liability to any other form of relief. 5

(4) *Subsection (1)* is in addition to, and not in substitution for, any privilege or defence available in legal proceedings, by virtue of any enactment or rule of law in force immediately before the commencement of this section, in respect of the making of a disclosure by a person to another (whether that other person is an appropriate person or not) of any one or more of the matters specified in *paragraphs (a) to (d) of section 38(1)*. 10

(5) Subject to any enactment or rule of law, the Bank may not disclose the identity of a person who has made a protected disclosure without first obtaining the person's consent except in so far as it may be necessary— 15

(a) for the effective investigation of any matter to which the disclosure relates, or

(b) for the purposes of—

(i) an inquiry by the Bank under section 33AO or 33AR of the Act of 1942, 20

(ii) subject to section 57W of the Act of 1942, an appeal to the Appeals Tribunal under Part VIIA of the Act of 1942,

(iii) an assessment under Part 5 of the Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. 342 of 2005), 25

(iv) an assessment under Part 15 of the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005), 30

(v) an assessment under Part 10 of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007), or

(vi) an investigation or hearing under Part 3 of the Central Bank Reform Act 2010, 35

in relation to any matter to which the disclosure relates.

(6) Before disclosing a person's identity in accordance with *subsection (5)*, the Bank shall make all reasonable efforts to notify the person.

Protection of employees from penalisation for making a protected disclosure.

41.—(1) An employer shall not penalise or threaten penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee— 40

(a) for having made a protected disclosure, unless the employee—

- (i) in making the disclosure did so knowing it to be false or misleading, or
- (ii) in connection with the disclosure, furnished information that he or she knew to be false or misleading,
- 5 (b) for giving evidence in any proceedings under financial services legislation, or
- (c) for giving notice of his or her intention to do any of the things referred to in *paragraph (a)* or *(b)*.
- (2) *Paragraphs (a), (c), (d), (e) and (f)* of the definition of “penalisation” in *section 37* shall not be construed in a manner which prevents an employer from—
- 10 (a) ensuring that the business concerned is carried on in an efficient manner, or
- (b) taking any action required for economic, technical or organisational reasons.
- 15 (3) *Schedule 5* has effect in relation to an alleged contravention of *subsection (1)* and matters consequential on such a contravention.
- (4) An employer who contravenes *subsection (1)* commits an offence and is liable—
- 20 (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 2 years, or both.
- 25 (5) (a) If penalisation of an employee, in contravention of *subsection (1)*, constitutes a dismissal of the employee, as referred to in *paragraph (a)* of the definition of “penalisation” in *section 37*, the employee (or, in the case of an employee who has not reached the age of 18 years, the employee’s parent or guardian, with the employee’s consent) may institute proceedings in respect of that dismissal under the Unfair Dismissals Acts 1977 to 2007 or to recover damages at common law for wrongful dismissal and, if the employee or his or her parent or guardian, as the case may be, does so, a complaint of such dismissal may not be presented to a rights commissioner under *paragraph 1(1)* of *Schedule 5*.
- 30 (b) If an employee (or, in the case of an employee who has not reached the age of 18 years, the employee’s parent or guardian, with the employee’s consent) presents a complaint to a rights commissioner under *paragraph 1(1)* of *Schedule 5* in respect of a dismissal referred to in *paragraph (a)*, the employee or his or her parent or guardian, as the case may be, may not institute proceedings in respect of that dismissal under the Unfair Dismissals Acts 1977 to 2007 or to recover damages at common law for wrongful dismissal.
- 35 (6) In proceedings under *Schedule 5* before a rights commissioner or the Labour Court in relation to a complaint that *subsection (1)*
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- 45

has been contravened, it shall be presumed, until the contrary is proved, that the employee concerned acted reasonably and in good faith in making a protected disclosure.

(7) Any person who, upon examination on oath or affirmation authorised under *paragraph 3(1) of Schedule 5*, wilfully makes any statement which is material for that purpose and which the person knows to be false or does not believe to be true commits an offence and is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months, or both. 5

(8) A person to whom a notice under *paragraph 3(2) of Schedule 5* has been given and who refuses or wilfully neglects to attend in accordance with the notice or who, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates commits an offence and is liable on summary conviction to a class A fine. 10 15

(9) A document purporting to be signed by the chairperson or a deputy chairperson of the Labour Court stating that—

(a) a person named in the document was, by a notice under *paragraph 3(2) of Schedule 5*, required to attend before the Labour Court on a day and at a time and place specified in the document, to give evidence or produce a document, or both, and 20

(b) a sitting of the Labour Court was held on that day and at that time and place, and the person did not attend before the Labour Court pursuant to the notice or, having so attended, refused to give evidence or refused or wilfully failed to produce the document, 25

shall, in a prosecution of the person under *subsection (8)*, be evidence of the matters so stated without further proof unless the contrary is shown. 30

(10) Summary proceedings for an offence under *subsection (7) or (8)* may be brought and prosecuted by the Minister for Jobs, Enterprise and Innovation.

Tortious liability of person for victimisation.

42.—(1) If a person causes detriment to another person (in this section referred to as the “second-mentioned person”) because the second-mentioned person or a third person— 35

(a) made a protected disclosure, unless he or she—

(i) in making the protected disclosure did so knowing it to be false or misleading, or

(ii) in connection with the disclosure, furnished information that he or she knew to be false or misleading, 40

(b) gave evidence in any proceedings under financial services legislation, or

(c) gave notice of his or her intention to do any of the things referred to in *paragraph (a) or (b)*, 45

the second-mentioned person has a right of action in tort against the person who causes the detriment.

(2) In this section, “detriment” includes—

- (a) intimidation or harassment,
- (b) discrimination, disadvantage or adverse treatment in relation to a person’s employment,
- (c) injury, damage or loss, or
- (d) a threat of reprisal.

(3) An employee may not pursue a right of action under this section and under any provision of any other enactment in respect of the same matter.

PART 6

CUSTOMER PROTECTION

43.—(1) Where the Bank is satisfied—

Bank’s power to direct redress for customers.

- (a) that there have been widespread or regular relevant defaults by a regulated financial service provider, and
- (b) that, in consequence of the relevant defaults, customers of the regulated financial service provider have suffered, are suffering or will suffer loss or damage,

the Bank may give the regulated financial service provider a direction requiring the making of appropriate redress to the customers.

(2) In subsection (1) “relevant default” means—

- (a) charging a customer an amount which the regulated financial service provider is not entitled to charge,
- (b) providing a customer with a financial service which the customer has not agreed to receive,
- (c) providing a customer with a financial service which was not suitable for the customer at the time when it was provided,
- (d) providing a customer with inaccurate information which influences the customer in making a decision about any financial service,
- (e) a failure of any system or controls of the regulated financial service provider, or
- (f) a prescribed contravention.

(3) In subsection (1) “appropriate redress” means such monetary or other redress as is specified in the direction and (in the case of redress for pecuniary loss) as does not exceed the amount of the loss suffered or anticipated to be suffered, together (where appropriate) with interest at such rate as is so specified.

(4) A direction given under subsection (1) may require the costs of the Bank in giving the direction to be met by the regulated financial service provider to whom the direction is given.

(5) The fact that a regulated financial service provider has made redress in compliance with a direction given under *subsection (1)* shall not, of itself, constitute for any purpose an admission of liability by the regulated financial service provider.

(6) A decision by the Bank to give a direction under *subsection (1)* is an appealable decision for the purposes of Part VIIA of the Act of 1942. 5

(7) The provisions of a direction given under *subsection (1)* have effect from the date specified in the direction in relation to them.

(8) A direction given under *subsection (1)* shall set out— 10

(a) all terms of the direction, including any specification of a date by which, or a period within which, any provision made by it is to be complied with, and

(b) any incidental, consequential or supplemental provisions for implementing the direction and securing that it is fully and effectively carried out. 15

(9) The Bank may publish a direction given under *subsection (1)* in any such manner as the Bank considers appropriate.

(10) Where the Bank is considering a complaint, or investigating any other matter, for the purpose of deciding whether to give a direction under *subsection (1)* it may publish notice that it is doing so in any such manner as the Bank considers appropriate. 20

(11) The duty imposed on the Bank by section 57BX(11) of the Act of 1942 to refer a complaint to the Financial Services Ombudsman does not apply in relation to a complaint if the Bank has dealt with the complaint by giving a direction under *subsection (1)* or during any period when the Bank is considering the complaint for the purpose of deciding whether to give such a direction. 25

(12) The duty imposed on the Financial Services Ombudsman to investigate a complaint does not apply if the Bank has dealt with the complaint by giving a direction under *subsection (1)* or during any period when the Bank is considering the complaint for the purpose of deciding whether to give such a direction. 30

Actions for damages.

44.—A failure by a regulated financial service provider to comply with any obligation under financial services legislation is actionable by any customer of the regulated financial service provider who suffers loss or damage as a result of such failure. 35

PART 7

BANK'S POWER TO GIVE DIRECTIONS

Bank's power to give directions.

45.—(1) Where the Bank is satisfied that one or more of the circumstances specified in *subsection (2)* exist in relation to a regulated financial service provider, or a related undertaking of a regulated financial service provider, the Bank may, in the interests of the proper and effective regulation of financial service providers, give a direction in writing to the regulated financial service provider or related undertaking to take such of the actions specified in *subsection (3)* as are mentioned in the direction. 40 45

- (2) The circumstances referred to in *subsection (1)* are as follows:
- (a) that the regulated financial service provider, or related undertaking, has become or is likely to become unable to meet its obligations to its creditors or its customers;
 - 5 (b) that the regulated financial service provider, or related undertaking, is not maintaining or is unlikely to be in a position to maintain adequate capital or other financial resources having regard to the volume and nature of its business;
 - 10 (c) that the regulated financial service provider, or related undertaking, has failed to comply with, is failing to comply with or is likely to fail to comply with any condition or requirement imposed by, or by virtue of, financial services legislation;
 - 15 (d) that the regulated financial service provider, or related undertaking, is conducting business in such a manner as to jeopardise or prejudice—
 - (i) monies, securities or other investment instruments or other property held by or controlled by it on behalf of customers, or
 - 20 (ii) the rights and interests of customers;
 - (e) that there may be grounds for revoking or not renewing the regulated financial service provider's authorisation.
- (3) The actions referred to in *subsection (1)* are as follows:
- 25 (a) to suspend, for such period not exceeding 12 months as is specified in the direction, any one or more of the following:
 - (i) the provision of any financial service, or description of financial service, specified in the direction;
 - 30 (ii) the making of payments to which *subparagraph (i)* does not relate or any such payments or description of such payments specified in the direction;
 - (iii) the acquisition or disposal of any assets or liabilities, or description of assets or liabilities, specified in the direction;
 - 35 (iv) entering into transactions or agreements, or description of transactions or agreements, specified in the direction, or entering into them except in specified circumstances or to a specified extent;
 - 40 (v) soliciting business from persons of a class specified in the direction;
 - (vi) carrying on business in a manner specified in the direction or otherwise than in a manner so specified;
 - 45 (b) to dispose of, on terms specified in the direction, assets or liabilities so specified, or a part or parts of its business so specified, within such period as may be so specified;

- (c) to raise and maintain such capital or other financial resources as may be specified in the direction;
- (d) to make such modifications to its systems and controls as may be specified in the direction;
- (e) to make such modifications to its business practices and dealings with third parties as may be specified in the direction;
- (f) to comply with the condition or requirement referred to in *subsection (2)(c)*;
- (g) to notify third parties of any such actions within *paragraphs (a) to (f)* as may be specified in the direction.

(4) Where the Bank gives a direction under *subsection (1)* to a regulated financial service provider or a related undertaking (in this subsection referred to as the “principal provider”), the Bank may, where it considers it necessary for the purpose of securing compliance with that direction, give a direction in writing to any regulated financial service provider at which the principal provider holds an account of any description to cease making payments from, or entering into or performing other transactions in respect of, such account without the prior authorisation of the Bank.

(5) The provisions of a direction under *subsection (1)* or (4) have effect from the date specified in the direction in relation to them.

(6) A direction under *subsection (1)* or (4) shall set out—

- (a) all terms of the direction, including any specification of a date by which, or a period within which, any provision made by it is to be complied with, and
- (b) any incidental, consequential or supplemental provisions for implementing the direction and ensuring that it is fully and effectively carried out.

(7) If the Bank gives a direction under *subsection (1)* or (4) the intention of which, or part of which, is the preservation or restoration of the financial position of a credit institution within the meaning of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001² and which is capable of affecting the rights of third parties existing before the direction comes into effect, the Bank shall declare in the direction that the direction or part of it is made with that intention, in accordance with that Directive.

(8) The Bank may publish a direction under *subsection (1)* or (4) in any such manner as the Bank considers appropriate.

(9) A regulated financial service provider, or a related undertaking, to whom a direction is given under *paragraph (a)* or (b) of *subsection (3)* may apply to the High Court for an order setting aside the direction.

(10) A regulated financial service provider to whom a direction is given under *subsection (4)* may apply to the High Court for an order setting aside the direction.

(11) An application under *subsection (9)* shall be made to the High Court within 14 days beginning on the date of receipt of the

²OJ No. L125, 5.5.2001, p.15

direction by the regulated financial service provider, or the related undertaking, or such further period as the High Court considers just and equitable in the circumstances, and the High Court may make such interim or interlocutory order as it considers appropriate.

5 (12) An application under *subsection (10)* shall be made to the High Court within 14 days beginning on the date of receipt of the direction by the regulated financial service provider or such further period as the High Court considers just and equitable in the circumstances, and the High Court may make such interim or interlocutory order as it considers appropriate.

10 (13) Where the High Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice, that it is desirable, the whole or any part of proceedings relating to an application under *subsection (9)* or *(10)* may be heard otherwise than in public.

(14) A decision by the Bank to issue a direction under any of *paragraphs (c) to (g)* of *subsection (3)* is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

20 **46.—(1)** Where a direction given under *subsection (1)* or *(4)* of *section 45* in respect of a regulated financial service provider or related undertaking so provides—

Prior approval of High Court for certain proceedings.

(a) no relevant proceedings may be commenced or continued, and

25 (b) no assets of the regulated financial service provider or related undertaking may be attached, sequestered or otherwise distrained,

except with the prior approval of the High Court while the direction remains to be complied with.

30 (2) For the purposes of *subsection (1)* “relevant proceedings”, in relation to a regulated financial service provider or related undertaking, means—

(a) proceedings relating to the winding-up or dissolution of the regulated financial service provider or related undertaking,

35 (b) receivership or bankruptcy proceedings of which the regulated financial service provider or related undertaking is the subject, or

40 (c) any other proceedings under which an assignee or other person becomes responsible for the affairs of the regulated financial service provider or related undertaking pending the regulated financial service provider or related undertaking ceasing to carry on business.

45 **47.—(1)** If the Bank is of the opinion that a direction given under *subsection (1)* or *(4)* of *section 45* has not been or is not being complied with, the Bank may apply to the High Court for an order requiring a person to comply with the direction.

Bank may apply to High Court for orders enforcing directions.

(2) If the High Court is satisfied that a person has refused or failed or is refusing or failing to take an action the person is required

to take by or under a direction given under *subsection (1)* or *(4)* of *section 45*, the High Court may make an order requiring the person to take that action.

(3) On an application to it under *subsection (1)*, the High Court may make any such interim or interlocutory order as it considers appropriate. 5

(4) An order under *subsection (2)* may include an order to take such ancillary or incidental steps as the High Court may consider appropriate to give full effect to the order.

(5) Where the High Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice, that it is desirable, the whole or any part of proceedings under this section may be heard otherwise than in public. 10

PART 8

BANK'S POWER TO MAKE REGULATIONS 15

Bank's power to make regulations.

48.—(1) The Bank may make regulations for the proper and effective regulation of regulated financial service providers.

(2) The provision that may be made by the regulations referred to in *subsection (1)* is as follows:

(a) provision as to the procedures that regulated financial service providers are to adopt for identifying, monitoring, reporting on the risks to which they are or may be exposed (including those posed by the state of the economy) and for managing those to which they are exposed so as to minimise them; 20 25

(b) provision regulating the administrative, accounting, auditing and reporting arrangements of regulated financial service providers;

(c) provision for the monitoring and recording by regulated financial service providers of the training and qualifications of their officers, employees, agents and intermediaries; 30

(d) provision about the resources to be maintained, and the procedures, systems and checks to be adopted, by regulated financial service providers for meeting their obligations under financial services legislation, and their obligations to customers, in a manner consistent with complying with their other obligations and for ensuring that their obligations to their customers are discharged by their agents and intermediaries; 35 40

(e) provision for securing that regulated financial service providers do not prevent access to financial services which in the opinion of the Bank are necessary to enable customers to make and receive payments or engage in other financial transactions which form a necessary part of the customers' participation in basic economic activity; 45

(f) provision specifying the information to be given to customers by regulated financial service providers, including provision requiring—

- 5 (i) marketing, advertising or other promotional material (in whatever media) associated with financial services to be identified as such,
- (ii) the giving of specified information about the regulated financial service provider and the financial services provided by it,
- 10 (iii) the identification of risks associated with financial services,
- (iv) the giving, in a specified manner, of warnings of any volatility of price or value in relation to any financial products provided, of any limitations on the available market for the financial products and of other specified matters,
- 15 (v) the giving to customers of information about incentives in relation to financial services, including as to the advantages and disadvantages of taking up the incentives, the duration of their availability, the assumptions on which they are based, their cost, any other material information which customers should have for deciding whether to take them up and the desirability of seeking of independent advice before taking them up,
- 20 (vi) the identification of any additional financial obligations or commitments which might arise for customers after receiving financial services,
- 30 (vii) the making of comparisons between financial services and other financial services and the application of specified alternative assumptions in relation to financial services,
- (viii) the giving of information about costs and associated charges relating to financial services,
- 35 (ix) the making to customers of statements as to whether financial services are suitable,
- (x) that any recommendations about, or endorsements of, financial services be given only in accordance with specified conditions, and
- 40 (xi) that all information provided be accurate (and not misleading) and clear and easily understood by the average customer;
- 45 (g) provision restricting the making by regulated financial service providers of unsolicited phone calls or visits to customers;
- (h) provision requiring regulated financial service providers to seek and (where provided) take account of information from customers for the purposes of assessing—

- (i) customers' knowledge and understanding of, and experience in relation to, financial services, and
 - (ii) the suitability of financial services for customers (having regard to their requirements, personal circumstances, financial position and other relevant circumstances), 5
- and provision about what shall or may be done by regulated financial service providers if information sought from customers is not provided;
- (i) provision specifying requirements which are to apply in relation to the provision of financial services to customers for the purpose of determining the suitability of the financial services for the customers; 10
 - (j) provision about the management of conflicts of interest that may arise as between customers and regulated financial service providers, their officers, employees, agents or intermediaries or related undertakings, in the provision of financial services; 15
 - (k) provision about the standards (for example as to speed, cost and accuracy) to be met by regulated financial service providers in relation to the execution of customer orders or requests for the provision of financial services; 20
 - (l) provision about the making of loans and making available of other credit facilities or the provision of other financial services to customers by regulated financial service providers, including provision— 25
 - (i) restricting the provision of unsolicited loans or credit facilities to customers,
 - (ii) specifying processes by which regulated financial service providers are to assess and process applications for loans or other credit or other financial services, 30
 - (iii) setting out circumstances in which, and conditions subject to which, security or guarantees may be required in relation to customers to whom loans are made or credit made available or other financial services provided, 35
 - (iv) requiring the giving of notification to persons giving security or guarantees in respect of loans, other credit facilities or other financial services of changes in the terms of the loans, other credit facilities or other financial services, 40
 - (v) specifying processes by which regulated financial service providers may decline to make loans or make available or withdraw credit or to provide other financial services, including the giving of explanations, 45
 - (vi) specifying the conditions subject to which loans may be made, credit may be made available or other financial services may be provided, and

- (vii) prohibiting the making of the provision of one financial service to a customer dependent on the provision to the customer of another, except where that is required by law;
- 5 (m) provision about the making of loans, the making available of other credit facilities and the provision of other financial services by a regulated financial service provider to a restricted person, including provision—
- 10 (i) imposing restrictions on the terms on which loans may be made, varied or managed, other credit facilities may be made available, varied or managed, or other financial services may be provided, to restricted persons,
- 15 (ii) about the systems to be adopted for the management of the making of loans, making available of other credit facilities, or provision of other financial services, to restricted persons,
- 20 (iii) specifying circumstances in which the Bank's approval is required for the making of loans, making available of other credit facilities, or provision of other financial services, to restricted persons, and
- (iv) requiring the reporting of loans made, other credit facilities made available, or other financial services provided, to restricted persons;
- 25 (n) provision requiring—
- (i) the giving of reasons for refusals to provide quotations for insurance cover applied for and for not accepting claims under policies or contracts of insurance,
- 30 (ii) the giving of notification in relation to decisions on claims under policies and contracts of insurance and in relation to the carrying out of work to repair property under such policies and contracts including the cost and scope of such work and its certification, and
- 35 (iii) the giving of information in relation to appeals procedures;
- (o) provision requiring the giving of statements of account by regulated financial service providers to customers in respect of financial services, including the information to be given in such statements, the form and frequency of such statements and the manner in which such statements are to be given;
- 40 (p) provision about the standards to be met, and the procedures, systems and checks to be adopted, by regulated financial service providers for dealing with and holding the assets and money of customers, including provision about—
- 45 (i) the safeguarding of customers' rights, in particular in the event of insolvency,

- (ii) the use to which customers' assets and money may be put, and
- (iii) the management of customer accounts;
- (q) provision for requiring regulated financial service providers to facilitate the switching of business by customers to other financial service providers, including provision— 5
 - (i) for the giving of information to customers about switching, and
 - (ii) specifying the procedures and other arrangements to be put in place to enable switching; 10
- (r) provision about how regulated financial service providers are to deal with customers who are or are likely to be in financial difficulty (including customers who are or are likely to be in arrears) including, in relation to such customers, provision— 15
 - (i) setting out the considerations to be taken into account in considering how to deal with such customers,
 - (ii) specifying the information to be provided to such customers about the management of the arrears and the consequences of default, and 20
 - (iii) specifying the resolution processes to be adopted in relation to arrears,
- (s) provision for the processes and procedures to be adopted by regulated financial service providers in respect of the processing of rebates and refunds owed to customers; 25
- (t) provision about the ways in which errors made by regulated financial service providers in respect of their customers are to be corrected;
- (u) provision requiring the making available of simple and inexpensive resolution procedures for disputes between regulated financial service providers and customers and for securing that complaints by customers about regulated financial service providers are dealt with speedily, efficiently and fairly, including provision— 30
 - (i) about the first point of contact for complainants, 35
 - (ii) regulating the recording of complaints,
 - (iii) specifying timescales for responding to complaints,
 - (iv) about the remedies and redress, including reimbursement or compensation (or both), to be available in cases of complaints, 40
 - (v) for determining where responsibility for dealing with complaints lies in cases where more than one financial service provider is involved, and
 - (vi) about the keeping and retention of records relating to complaints; 45

- (v) in relation to any proposed transfer or cessation of any relevant part of the business of any regulated financial service provider or the merger of that business with the business of another person—
- 5 (i) provision for the giving of information relating to such transfer, cessation or merger, and
- (ii) provision for ensuring that customers' interests are sufficiently protected in the event of such transfer, cessation or merger;
- 10 (w) provision enabling the Bank to require regulated financial service providers to establish and maintain—
- (i) plans for recovery from any deterioration in specified financial circumstances, in particular by setting out actions that could be taken to facilitate the continuation of the business or part of the business when experiencing financial instability, and
- 15 (ii) plans for the orderly winding-up or transfer of business in specified financial circumstances;
- (x) provision for the keeping by regulated financial service providers of such records as may be required for effective management and regulation, including provision—
- 20 (i) about the form and manner in which, and period for which, they are to be kept,
- (ii) enabling their verification, and
- 25 (iii) for permitting access by the Bank.
- (y) any other provision relating to any of the matters set out in *paragraphs (a) to (x)* which the Bank considers appropriate.

(3) Regulations made under *subsection (2)(m)* may specify that a
30 person is a restricted person—

- (a) if he or she holds an office or employment, with the regulated financial service provider, of a description specified in the regulations,
- 35 (b) if he or she performs a function for, or provides a service, of a description specified in the regulations, to the regulated financial service provider, or
- (c) in such circumstances as the regulations may specify, if he or she is related to, or a member of the same family as, a person within *paragraph (a) or (b)*.

40 **49.—(1)** Before making regulations under *section 48*, the Bank— Consultation before making regulations.

- (a) shall consult with the Minister and for that purpose shall provide to the Minister a draft of the proposed regulations,

- (b) in the case of regulations under *section 48(2)(b)*, shall also consult with the Minister for Enterprise, Jobs and Innovation and for that purpose shall provide to that Minister a draft of the proposed regulations, and
 - (c) may consult with such other persons as the Bank considers appropriate to consult in the circumstances. 5
- (2) (a) This subsection applies to credit unions acting under an authorisation from the Bank under Part II of the Credit Union Act 1997.
- (b) Before making regulations under *section 48* in respect of credit unions to which this subsection applies, the Bank shall also consult with— 10
 - (i) the Credit Union Advisory Committee (within the meaning of the Credit Union Act 1997), and
 - (ii) any other body that appears to the Bank to have expertise or knowledge of credit unions. 15

Matters to which Bank to have regard when making regulations.

50.—When making regulations under *section 48* the Bank shall have regard to the need to ensure that the requirements imposed by the regulations concerned are effective and proportionate having regard to the nature, scale and complexity of the activities of regulated financial service providers or the class or classes of regulated financial service provider to whom the regulations apply. 20

Supplementary provisions relating to regulations.

51.—(1) Regulations made under *section 48* may—

- (a) contain any incidental, supplementary and consequential provisions that appear to the Bank to be necessary or expedient for the purposes of the regulations, 25
- (b) apply either generally or to a specified class or classes of regulated financial service providers, customers or financial services,
- (c) include different provisions in relation to different classes of regulated financial service providers, customers or financial services. 30

(2) Regulations made under *section 48* shall be laid before each House of the Oireachtas as soon as may be after they are made.

PART 9 35

ENFORCEMENT

High Court enforcement orders on application by Bank.

52.—(1) If, in the opinion of the Bank, a person has engaged, is engaging or is about to engage in conduct that involved, involves or would involve contravening a provision of financial services legislation the Bank may apply to the Court for an order restraining the person from engaging in the conduct. 40

(2) If a person has refused or failed, is refusing or failing, or is about to refuse or fail, to do an act that the person is required to do

by or under a provision of financial services legislation, the Court may make an order requiring the person to do that act.

5 (3) The Bank may apply *ex parte* to the Court for an order under this section and the Court may grant an order in such a case where the Court considers it necessary to do so in order to achieve the purposes of this section, including (in particular) in order to preserve the availability of any property, information, record or other thing.

(4) An order under this section may be made on such terms as the Court thinks appropriate.

10 (5) The Court may grant an interim order pending the determination of an application under this section.

(6) The Court may discharge or vary an order made under this section.

15 (7) The power of the Court to make an order restraining a person from engaging in conduct referred to in *subsection (1)* may be exercised—

(a) whether or not it appears to the Court that the person intends to repeat, or to continue, the conduct,

20 (b) whether or not the person has previously engaged in that kind of conduct, and

(c) whether or not there is danger of damage to any other person if the person engages in that kind of conduct.

(8) The power of the Court to grant an order requiring a person to do an act may be exercised—

25 (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act,

(b) whether or not the person has previously refused or failed to do that act, and

30 (c) whether or not there is a danger of damage to any other person if the person refuses or fails to do that act.

(9) Where the Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice, that it is desirable, the whole or any part of proceedings before it under this section may be heard otherwise than in public.

(10) If the Bank applies to the Court to make an order under this section, the Court may not require the applicant or any other person to give an undertaking as to damages as a condition of granting an interim order.

40 (11) Whenever the Court has power under this section to make an order restraining a person from engaging in particular conduct, or requiring a person to do a particular act, it may, either in addition to or instead of making such an order, order the person to pay damages to another person.

45 (12) In this section “the Court” means the High Court.

53.—(1) The Bank may publish a notice in accordance with *subsection (3)* where the Bank reasonably believes that a company registered in the State, or any other person operating in the State, is—

- (a) providing any financial service, without such authorisation as is required under any provision of financial services legislation in respect of the provision of such financial service, or 5
- (b) claiming, or holding itself out, to be a regulated financial service provider, without such authorisation as is required under any provision of financial services legislation in respect of any financial service that the financial service provider claims or holds itself out to be providing. 10

(2) The Bank shall endeavour to provide the company or person referred to in *subsection (1)* with 7 days notice of the Bank's intention to publish a notice under this section. 15

(3) The Bank may publish a notice under this section in any such manner as the Bank considers appropriate.

54.—(1) This section applies to a person—

- (a) on whom any sanction has been imposed under section 33AQ, 33AR or 33AV of the Act of 1942, 20
 - (b) on whom any sanction has been imposed under:
 - (i) Regulation 99 of the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005),
 - (ii) Regulation 41 of the Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. 342 of 2005), 25
or
 - (iii) Regulation 67 of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007),
- or, 30
- (c) who has been convicted of an offence under financial services legislation.

(2) The High Court may, on the application of the Bank, make an order under *subsection (3)* in respect of a person to whom this section applies where the High Court is satisfied that as a result of the prescribed contravention or offence concerned— 35

- (a) the person has been unjustly enriched, or
- (b) one or more than one other person has suffered loss or other adverse effect.

(3) The High Court may order the person in respect of whom an application is made under *subsection (2)* to pay to the Bank such sum as appears to the High Court to be just having regard— 40

- (a) in a case within *subsection (2)(a)*, to the extent to which it appears to the High Court that the person concerned was unjustly enriched, 45

(b) in a case within *subsection (2)(b)*, to the extent of the loss or other adverse effect,

(c) in a case within *subsection (2)(a)* and (b), to the extent to which it appears to the High Court that the person was unjustly enriched and to the extent of the loss or other adverse effect.

(4) Any amount paid to the Bank pursuant to an order under *subsection (3)* shall be paid by it to such persons or distributed by it among such persons as the High Court may direct.

(5) On an application under *subsection (2)* the High Court may require the person concerned to provide it with such accounts or other information as it may require for any one or more of the following purposes:

(a) establishing whether and, if so, to what extent the person has been unjustly enriched as mentioned in *paragraph (a)* of that subsection;

(b) establishing whether any person or persons have suffered any loss or other adverse effect as mentioned in *paragraph (b)* of that subsection and, if so, the extent of that loss or other adverse effect;

(c) determining how any amounts are to be paid or distributed under *subsection (4)*.

(6) The High Court may require any accounts or other information provided under *subsection (5)* to be verified in such manner as it may direct.

(7) Nothing in this section affects the right of any person other than the Bank to bring proceedings in respect of the matters to which this section applies.

55.—(1) In this section “relevant offence under financial services legislation” means an offence under financial services legislation to which section 10(4) of the Petty Sessions (Ireland) Act 1851 applies. Prosecution of offences.

(2) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851 and any provision of financial services legislation, summary proceedings for a relevant offence under financial services legislation may be instituted—

(a) at any time within 3 years from the date on which the offence was committed, or

(b) if, at the expiry of that period, the person against whom the proceedings are to be brought is outside the State, within 6 months of the date on which he or she next enters the State, or

(c) at any time within 3 years from the date on which evidence that, in the opinion of the person by whom the proceedings are brought, is sufficient to justify the bringing of the proceedings, comes to that person’s knowledge,

whichever is the later, provided that no such proceedings shall be commenced later than 5 years from the date on which the offence concerned was committed.

(3) For the purpose of this section, a certificate signed by or on behalf of or jointly with the person bringing the proceedings as to the date on which evidence relating to the offence concerned came to his or her knowledge shall be *prima facie* evidence and in any legal proceedings a document purporting to be a certificate issued for the purpose of this subsection and to be so signed shall be deemed to be so signed and shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate. 5

Copies of documents for juries.

56.—(1) In a trial on indictment of an offence under financial services legislation, the trial judge may order copies of any of the following documents to be given to the jury in such form as the judge considers appropriate: 10

- (a) any document admitted in evidence at the trial;
- (b) the transcript of the opening speeches of counsel;
- (c) any charts, diagrams, graphics, schedules or agreed summaries of evidence produced at the trial; 15
- (d) the transcript of the whole or any part of the evidence given at the trial;
- (e) the transcript of the closing speeches of counsel;
- (f) the transcript of the trial judge's charge to the jury; 20
- (g) any other document that, in the opinion of the trial judge, would be of assistance to the jury in its deliberations including, where appropriate, an affidavit by an accountant or other suitably qualified person summarising, in a form which is likely to be comprehended by the jury, any transactions by the accused or other persons which are relevant to the offence. 25

(2) If the prosecutor proposes to apply to the trial judge for an order that a document mentioned in *subsection (1)(g)* shall be given to the jury, the prosecutor shall give a copy of the document to the accused in advance of the trial and, on the hearing of the application, the trial judge shall take into account any representations made by or on behalf of the accused in relation to it. 30

(3) Where the trial judge has made an order that an affidavit by an accountant or other person mentioned in *subsection (1)(g)* shall be given to the jury, the accountant or, as the case may be, the other person so mentioned— 35

- (a) shall be summoned by the prosecutor to attend at the trial as an expert witness, and
- (b) may be required by the trial judge, in an appropriate case, to give evidence in regard to any relevant procedures or principles within his or her area of expertise. 40

Convicted person liable for costs and expenses of investigation and proceedings.

57.—(1) Where a person is convicted of an offence under financial services legislation, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Bank the costs and expenses, measured by the court, incurred by the Bank in relation to the investigation, detection and prosecution of the offence, including the expenses of and incidental 45

to an examination of any information provided to the Bank or an authorised officer.

5 (2) An order for costs and expenses under *subsection (1)* is in addition to and not instead of any fine or other penalty the court may impose.

10 **58.**—(1) A person who gives information to the Bank pursuant to a requirement imposed by the Bank in the performance of its functions under financial services legislation or to an authorised officer in the exercise of his or her powers under *Part 3* shall be taken not to have contravened any duty of confidentiality owed to any person as a result of so giving information. Limitation of liability.

(2) A person who is or was an auditor of, or an actuary acting for, a regulated financial service provider and who gives to the Bank—

15 (a) information on a matter of which he or she has, or had, become aware in his or her capacity as auditor of, or actuary acting for, the regulated financial service provider, or

(b) his or her opinion of such a matter,

20 shall be taken not to have contravened any duty of confidentiality owed to any person as a result of so giving information if he or she is acting in good faith and has reasonable grounds for believing that the information or opinion is relevant to any functions of the Bank.

PART 10

EXTENSION OF PART V OF CENTRAL BANK ACT 1997 TO DEBT MANAGEMENT FIRMS, ETC.

25 **59.**—Section 28 of the Central Bank Act 1997 is amended— Amendment of section 28 of Central Bank Act 1997.

(a) by substituting the following for the definition of “authorisation”—

30 “ ‘authorisation’ means an authorisation of a person to carry on a regulated business and, if an authorisation is amended in accordance with section 34, means the authorisation as amended;”

(b) by inserting the following definitions—

“ ‘consumer’ means—

35 (a) an individual acting otherwise than in the course of business, or

(b) a micro enterprise within the meaning given by Commission Recommendation 2003/361/EC of 6 May 2003³ concerning the definition of micro, small and medium sized enterprises;

40 ‘debt management firm’ means a person who for remuneration provides debt management services to one or more consumers, other than an excepted person;

³OJ No. L124, 20.5.2003, p.36

‘debt management services’ means—

- (a) giving advice about the discharge of debts (in whole or in part), including advice about budgeting in connection with the discharge of debts, 5
- (b) negotiating with a person’s creditors for the discharge of the person’s debts (in whole or in part), or
- (c) any similar activity associated with the discharge of debts; 10

‘excepted person’ means—

- (a) any charitable organisation within the meaning of section 2(1) of the Charities Act 2009,
- (b) the Money Advice and Budgeting Service,
- (c) any licensed bank, building society, credit union or friendly society, 15
- (d) a barrister, solicitor or accountant who provides debt management services only in an incidental manner and is subject to regulation by a professional body, 20
- (e) a person who is a party to the Protocol for Independent Advice to Borrowers Availing of Long Term Mortgage Forbearance made on 2 August 2012 (as amended from time to time) and provides advice in accordance with that Protocol, 25
- (f) the Insolvency Service of Ireland, any approved intermediary authorised under section 47 of the Personal Insolvency Act 2012 acting as such or any personal insolvency practitioner authorised under Chapter 1 of Part 5 of that Act carrying on practice as such, 30
- (g) personal representatives (within the meaning of section 3 of the Succession Act 1965),
- (h) trustees of a trust, other than a trust which is established to provide debt management services, 35
- (i) the Bank,
- (j) An Post,
- (k) the National Asset Management Agency, 40
- (l) the National Treasury Management Agency,
- (m) the National Consumer Agency, and
- (n) any other person constituted, or holding office, under an enactment or funded (in whole or in part) by a Minister of the Government; 45

‘qualifying shareholder’, in relation to another person, means a person with a direct or indirect holding in the other person—

5 (a) that represents 10 per cent or more of the capital of, or the voting rights in, the other person, or

(b) that makes it possible to exercise a significant influence over the management of the other person;

10 ‘remuneration’, in relation to debt management services, means any commission or other payment, whether paid directly or indirectly, in respect of the debt management services and includes a payment made in respect of the provision of services other than debt management services as a result of which debt management services are provided otherwise than for payment;”,

15 (c) by substituting the following for the definition of “money transmission service”—

20 “ ‘money transmission service’ means a service that involves transmitting money by any means, other than a service—

(a) that is a payment service to which the European Communities (Payment Services) Regulations 2009 (S.I. No. 383 of 2009) apply,

25 (b) that is provided to customers on a basis that is ancillary to any other services apart from debt management services,

(c) that is provided by—

30 (i) any charitable organisation within the meaning of section 2(1) of the Charities Act 2009,

(ii) the Money Advice and Budgeting Service,

(iii) any licensed bank, building society, credit union or friendly society,

35 (iv) a barrister, solicitor or accountant who provides money transmission services only in an incidental manner and is subject to regulation by a professional body,

40 (v) the Insolvency Service of Ireland, any approved intermediary authorised under section 47 of the Personal Insolvency Act 2012 acting as such or any personal insolvency practitioner authorised under Chapter 1 of Part 5 of that Act carrying on practice as such,

45 (vi) personal representatives (within the meaning of section 3 of the Succession Act 1965),

(vii) trustees of a trust, other than a trust which is established to provide money transmission services,

(viii) the Bank,

(ix) An Post, 5

(x) the National Asset Management Agency,

(xi) the National Treasury Management Agency,

(xii) the National Consumer Agency, and

(xiii) any other person constituted, or holding office, under an enactment or funded (in whole or in part) by a Minister of the Government.”, 10

and

(d) in the definition of “regulated business” by substituting “, a retail credit firm or a debt management firm” for “or a retail credit firm”. 15

Amendment of section 31 of Central Bank Act 1997.

60.—Section 31 of the Central Bank Act 1997 is amended in subsection (2)(b) by inserting “or any other designated enactment and or any designated statutory instrument” after “this Part”. 20

Amendment of section 31A of Central Bank Act 1997.

61.—Section 31A of the Central Bank Act 1997 is amended—

(a) by substituting “person proposing to carry on, or carrying on, regulated business” for “retail credit firm or home reversion firm”,

(b) in paragraph (a) by substituting “its memorandum and articles of association” for “the memorandum and articles of association of the firm”, 25

(c) in paragraphs (b) and (c) by substituting “the person or (where it is a firm) of each of” for “each of”,

(d) in paragraphs (d) and (e) by substituting “person” for “firm”, 30

(e) in paragraph (f) by substituting “person’s” for “firm’s”, and

(f) in paragraph (g)—

(i) by substituting “person’s” for “firm’s”, and 35

(ii) by substituting “regulated business” for “authorised firms”.

Amendment of section 32A of Central Bank Act 1997.

62.—Section 32A of the Central Bank Act 1997 is amended—

(a) in subsection (1)—

- (i) by substituting “person” for “retail credit or home reversion firm”, and
- (ii) by substituting “the person” for “the firm”,
- (b) in subsection (3)—
- 5 (i) by deleting “retail credit services or other”, and
- (ii) by substituting “persons” for “firms”,
- (c) in subsection (4) by substituting “persons” for “firms”,
- (d) in subsection (5) by substituting “person” for “firm” in both places, and
- 10 (e) in subsection (6)—
- (i) by substituting “person” for “retail credit or home reversion firm”, and
- (ii) by substituting “the person” for “the firm” in both places.
- 15 **63.**—Section 33A of the Central Bank Act 1997 is amended—
- (a) in subsection (1) by substituting “, a person authorised to carry on a regulated business” for “an authorised retail credit firm or an authorised home reversion firm”,
- (b) in subsection (1)(a)—
- 20 (i) by substituting “the person’s” for “the firm’s”, and
- (ii) by substituting “persons authorised to carry on regulated business” for “retail credit firms or authorised home reversion firms”,
- (c) in subsection (1)(c)—
- 25 (i) by substituting “any relevant document” for “a credit agreement or home reversion agreement, or on any other relevant document,”, and
- (ii) by substituting “the document” for “the agreement”,
- (d) in paragraph (1)(d) by substituting “person” for “firm”,
- 30 (e) in subsections (2) and (3), by substituting “person” for “firm” and by substituting “persons” for “firms”, in each place, and
- (f) by inserting the following subsections after subsection (3)—
- 35 “(4) The Bank may also impose on persons authorised to carry on a money transmission business a condition or requirement to raise and maintain such capital or other financial resources as may be specified by the Bank.

Amendment of section 33A of Central Bank Act 1997.

(5) The Bank may also impose on a debt management firm a condition or requirement to effect a policy of professional indemnity insurance—

- (a) in such form,
- (b) providing indemnification up to such sum and in respect of such matters, and
- (c) valid for such minimum period,

as the Bank may specify from time to time.”.

Transitional provision for existing debt management firms.

64.—The Central Bank Act 1997 is amended by inserting the following section after section 34C—

“Transitional provision for existing debt management firms.

34D.—(1) Notwithstanding section 29, a person carrying on the business of a debt management firm immediately before the commencement of *Part 10* of the *Central Bank (Supervision and Enforcement) Act 2013* is taken to be authorised to carry on the business of a debt management firm until the Bank has granted or refused authorisation to the person, provided that the person applies to the Bank under section 30 for authorisation no later than 3 months after that commencement.

(2) If a person is taken to be authorised to carry on the business of a debt management firm under subsection (1), the Bank may do either or both of the following:

- (a) impose on that person such conditions or requirements or both as the Bank considers appropriate relating to the proper and orderly regulation and supervision of debt management firms;
- (b) direct that person not to carry on the business of a debt management firm for such period (not exceeding 3 months) as is specified in the direction.

(3) A condition or requirement imposed, or a direction given, under this section is an appealable decision for the purposes of Part VIIA of the Act of 1942.”.

Amendment of section 36 of Central Bank Act 1997.

65.—Section 36 of the Central Bank Act 1997 is amended by inserting “and such of the other designated enactments and designated statutory instruments as apply” after “this Part”.

Amendment of section 36A of Central Bank Act 1997.

66.—Section 36A(1) of the Central Bank Act 1997 is amended—

- (a) in paragraph (d) by inserting “or any other designated enactment or designated statutory instrument” after “this Part” in both places,

(b) in paragraph (l)(ii) by substituting “terrorism, or” for “terrorism.”, and

(c) by inserting the following after paragraph (l):

5 “(m) the holder of the authorisation is not, in the opinion of the Bank, a fit and proper person to hold the authorisation, or

10 (n) any officer or qualifying shareholder of the holder of the authorisation is not, in the opinion of the Bank, a fit and proper person to be such an officer or shareholder, or

(o) it is necessary in the interests of the proper and orderly regulation and supervision of the regulated business concerned.”.

PART 11

15 AMENDMENTS TO PART IIIC OF ACT OF 1942

67.—Section 33AO of the Act of 1942 is amended—

Amendment of section 33AO of Act of 1942.

(a) in subsection (2) by deleting the second sentence, and

(b) by inserting the following subsection:

20 “(3) Without prejudice to the exercise of the Bank’s powers under subsection (2), an inquiry referred to in that subsection may form part of an inquiry held under this section in relation to the suspected commission of a prescribed contravention by the financial service provider.”.

68.—Section 33AQ of the Act of 1942 is amended—

Amendment of section 33AQ of Act of 1942.

25 (a) in subsection (3) by inserting the following after paragraph (c):

30 “(ca) suspension of its authorisation, in respect of any one or more of its activities, for such period, not exceeding 12 months, as the Bank considers appropriate;

(cb) revocation of its authorisation;”,

(b) by substituting the following for subsection (4):

“(4) For the purpose of subsection (3)(c), the prescribed amount is—

35 (a) if the financial service provider is a body corporate or an unincorporated body, the greater of—

(i) €10,000,000, and

40 (ii) an amount equal to 10 per cent of the turnover of the body for its last complete financial year before the finding is made,

(b) if the financial service provider is a natural person, €1,000,000, or

(c) if the regulations prescribe some other amount for paragraph (a) or (b), that other amount.”,

(c) in subsection (6), by substituting the following for paragraph (a): 5

“(a) €1,000,000, or”,

and

(d) by inserting the following subsection:

“(9) In this section ‘authorisation’ means an authorisation, licence or any other permission required to carry on business as a regulated financial service provider granted by the Bank pursuant to any provision of financial services legislation, and includes registration.”. 10

Amendment of section 33AV of Act of 1942.

69.—Section 33AV of the Act of 1942 is amended by inserting the following after subsection (3): 15

“(3A) Subject to subsection (4), where the regulated financial service provider or person concerned in the management of the financial service provider with whom the Bank has entered into an agreement under this section fails to comply with any of the terms of the agreement, the Bank may apply to the High Court for an order under subsection (3B). 20

(3B) If satisfied on application to it under subsection (3A) that the regulated financial service provider or person concerned has failed to comply with any of the terms of the agreement under this section, the High Court may make an order requiring that regulated financial service provider or person to comply with those terms or that term, as the case may be.”. 25

Amendment of section 33BA of Act of 1942.

70.—Section 33BA of the Act of 1942 is amended by inserting the following after subsection (5): 30

“(6) Without limiting subsections (1) to (4), the Bank has the same powers that a judge of the High Court has when hearing civil proceedings that are before that Court with respect to the examination of witnesses (including witnesses who are outside the State). 35

(7) A person who is summoned to appear before the Bank under this section is entitled to the same rights and privileges as a witness appearing in civil proceedings before the High Court.

(8) An answer to a question put to a person in response to a requirement under subsection (4)(a) or information provided by a person in response to a requirement under subsection (4)(b) is not admissible as evidence against the person in criminal proceedings, other than proceedings for perjury, if the information was provided on oath. 40

(9) A person who— 45

- (a) obstructs the Bank in the exercise of a power conferred by this Part,
- (b) without reasonable excuse, fails to comply with a requirement or request made by the Bank under this Part,
- (c) in purported compliance with such a requirement or request, gives information that the person knows to be false or misleading, or
- (d) refuses to comply with a summons to attend before, or to be examined on oath by, the Bank,

commits an offence and is liable—

- (i) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
- (ii) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 5 years, or both.”.

71.—The following is substituted for section 33BC of the Act of 1942: Amendment of section 33BC of Act of 1942.

“Publication by Bank of certain information relating to imposition of administrative sanctions.

33BC.—(1) If on the holding of an inquiry under section 33AO the Bank has found that—

- (a) a regulated financial service provider is committing or has committed a prescribed contravention, or
- (b) a person concerned in the management of the financial service provider is participating or has participated in such a contravention,

it shall publish, subject to subsection (4), in such form and manner as it thinks appropriate, the finding and such (if any) of the particulars specified in subsection (3) as it thinks appropriate.

(2) If the Bank has, in accordance with section 33AR, imposed—

- (a) a sanction on a regulated financial service provider in respect of the commission of a prescribed contravention, or
- (b) a sanction on a person concerned in the management of a financial service provider in respect of the person’s participation in the commission by the financial service provider of such a contravention,

it shall publish, subject to subsection (4), in such form and manner as it thinks appropriate, such (if any) of the particulars specified in subsection (3) as it thinks appropriate.

(3) The particulars referred to in subsections (1) and (2) are as follows:

(a) the name of the regulated financial service provider or person concerned on whom a sanction has been imposed; 5

(b) details of the prescribed contravention in respect of which the sanction has been imposed;

(c) details of the sanction imposed;

(d) the grounds on which the finding is based. 10

(4) Subsections (1) and (2) do not apply to the finding or particulars specified in subsection (3)—

(a) if publication of the finding or particulars involves the disclosure of confidential information the disclosure of which is prohibited by the Rome Treaty, the ESCB Statute or the Supervisory Directives (within the meaning of section 33AK(10)), or 15 20

(b) if the Bank determines—

(i) that the finding or particulars are of a confidential nature or relate to the commission of an offence against a law of the State, or 25

(ii) that publication of the finding or particulars would unfairly prejudice a person's reputation.

(5) The Bank shall publish annually, in a summary form, information on its actions under this Part.”. 30

PART 12

OTHER AMENDMENTS TO FINANCIAL SERVICES LEGISLATION

Ombudsman's report to include information about complaints.

72.—(1) Section 57BS of the Central Bank Act 1942 is amended by inserting the following after subsection (3): 35

“(4) If the Financial Services Ombudsman thinks that it would be in the public interest to do so, a report under subsection (1) may, in accordance with regulations made under section 57BF, include in respect of every regulated financial service provider falling within subsection (5) the information specified in subsection (6). 40

(5) A regulated financial service provider falls within this subsection if, in the preceding financial year, at least 3 complaints relating to the regulated financial service provider which have been made to the Financial Services Ombudsman have 45

been found by that Ombudsman to be substantiated or partly substantiated.

(6) The information referred to in subsection (4) is—

5 (a) the name of the regulated financial service provider, including any trading name (if different),

(b) where applicable, the identity of any group of which the regulated financial service provider is a member, and

10 (c) the number of complaints found to be substantiated or partly substantiated in respect of the regulated financial service provider in the preceding financial year.

15 (7) For the purposes of the law of defamation the publication of the information referred to in subsection (4) in a report under subsection (1) shall be absolutely privileged.

(8) A report under subsection (1) shall not divulge the identity of any complainant nor shall anything be published in the report which may lead to the identification of any complainant unless the complainant consents in writing.

20 (9) For the purposes of this section if the regulated financial service provider has appealed against the Financial Services Ombudsman's finding that a complaint has been found to be substantiated or partly substantiated the complaint is to be taken to have been so found only when—

25 (a) the finding is affirmed (with or without modification) on appeal, or

(b) the appeal is withdrawn, struck out by the High Court or abandoned.

30 (10) For the purposes of subsection (6)(b) a person is a member of a group if it is an undertaking dealt with in group accounts (within the meaning of section 150(1) of the Companies Act 1963).”.

(2) Section 57BF of the Central Bank Act 1942 is amended in subsection (2) by inserting the following after paragraph (c):

35 “(ca) for the purposes of a report under section 57BS(1) make provision for—

40 (i) the form and manner in which the information specified in the report is given, including provision for the categorisation of the different classes of regulated financial service providers identified in the report, the different classes of financial services to which the complaints by reason of which they are so identified relate and the different descriptions of those complaints, and

45 (ii) the form and manner in which the report may be published and the information made available;”.

Amendment of section 76 of Central Bank Act 1989.

73.—Section 76 of the Central Bank Act 1989 is amended by inserting the following after subsection (2):

“(3) An application under subsection (2) shall be on notice to the Bank and the Bank shall be entitled to appear, be heard and adduce evidence at the hearing of the application.” 5

(4) Notice of the application shall be served upon the Bank at least 14 days before the date of hearing of the application.

(5) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the notice of application, grounding affidavit and exhibits (if any) shall be filed by the applicant at least 4 days before the application is heard. If any person who ought under this section to have been served has not been so served, the affidavit shall state that fact and the reason for it. 10

(6) In this section ‘the Court’ means the High Court.”. 15

Amendment of section 43 of Investment Intermediaries Act 1995.

74.—Section 43 of the Investment Intermediaries Act 1995 is amended by renumbering the existing provision as subsection (1) and by inserting the following after that subsection:

“(2) A person may apply to the Court for an order, on such conditions as the Court may decide, declaring that, notwithstanding the failure of that person to notify the Bank as required by this Part, the acquiring transaction is, and always has been, a valid transaction and that title to any shares or other interest concerned did pass and that all purported exercise of powers is and always had been valid; and if the Court finds that the failure to notify the Bank of the proposed acquiring transaction was due to inadvertence on the part of the person, or if the Court considers that it is otherwise in the interest of justice to do so, it shall grant the order sought. 20 25

(3) An application under subsection (2) shall be on notice to the Bank and the Bank shall be entitled to appear, be heard and adduce evidence at the hearing of the application. 30

(4) Notice of the application shall be served on the Bank at least 14 days before the date of hearing of the application.

(5) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the notice of application, grounding affidavit and exhibits (if any) shall be filed by the applicant at least 4 days before the application is heard. If any person who ought under this section to have been served has not been so served, the affidavit shall state that fact and the reason for it.”. 35 40

Amendment of section 30 of Consumer Credit Act 1995.

75.—Section 30 of the Consumer Credit Act 1995 is amended in subsection (1) by substituting the following for paragraphs (a) and (b):

“(a) a copy of the agreement shall be sent to the consumer by the creditor within 10 days of the making of the agreement, and 45

(b) in the case of any contract of guarantee relating to the agreement, a copy of the guarantee and the agreement shall be sent to the guarantor by the creditor within 10 days of the making of the contract.”.

5 **76.**—Section 45 of the Consumer Credit Act 1995 is amended in subsection (1) by substituting “communication on paper” for “written communication”.

Amendment of section 45 of Consumer Credit Act 1995.

77.—Section 149 of the Consumer Credit Act 1995 is amended—

Amendment of section 149 of Consumer Credit Act 1995.

10 (a) in subsection (5) by substituting “3 months” for “4 months”,

(b) in subsection (6) by substituting “3 months” for “3 weeks”,

(c) by inserting the following after subsection (6):

15 “(6A) In calculating the periods of 3 months specified in subsections (5) and (6) no account shall be taken of any day on which any information required by the Bank to be provided by the credit institution for the performance of the Bank’s functions under this section has not yet been so provided.”,

and

20 (d) by inserting the following after subsection (14):

25 “(15) A direction given under section 28 of the Central Bank Act 1989 and in force immediately before the coming into operation of *section 77(d) of the Central Bank (Supervision and Enforcement) Act 2013* is to be treated as continuing in effect as if given under this section and accordingly is a subsisting direction under this section for the purposes of subsection (10).

30 (16) The duty imposed by subsection (1) shall not apply to a relevant new credit institution until the end of the period of 3 years after it commences business in the State; but at the end of that period, the credit institution shall notify the Bank of all decisions to impose charges in relation to the provision of any service to a customer or to a group of customers during that period and of any proposal to do so which is not implemented during that period.

40 (17) A notification under subsection (16) shall be treated as a notification under subsection (1) for the purposes of this section; and references in this section to a proposal include a decision to impose charges notified under subsection (16).

45 (18) In subsection (16) ‘relevant new credit institution’ means a credit institution which commences business as a credit institution in the State after the coming into operation of *section 77(d) of the Central Bank (Supervision and Enforcement) Act 2013* and is not when it does so a related undertaking (within the meaning of that Act) of another credit institution carrying on business as a credit institution in the State.”.

78.—Section 27 of the Central Bank Act 1997 is amended by inserting the following after subsection (5):

- “(6) (a) Subsection (1) does not apply if the regulated financial service provider concerned has a reasonable excuse. 5
- (b) It is a reasonable excuse for the purposes of paragraph (a) for a regulated financial service provider to fail to comply with a requirement under section 25 or 26 that such compliance might tend to incriminate the regulated financial service provider. 10
- (c) Paragraph (b) does not limit what is a reasonable excuse for the purposes of paragraph (a).”.

79.—The Investor Compensation Act 1998 is amended—

- (a) in section 33 by substituting the following for subsection (4): 15

“(4) Following consultation with the Company, an administrator may apply to the Court to determine any question arising in relation to his or her functions under this Act.

- (5) Notice of an application under subsection (4) shall be given to the Company.”. 20

- (b) by inserting the following section after section 33A:

“Power to make regulations for return of investors’ funds or investment instruments. 33B.—(1) The Minister may, following consultation with the Bank and the Company, make regulations providing for the return of investors’ funds or investment instruments, as the case may be, following the appointment of an administrator, where the Minister considers it necessary to do so in order to provide for their efficient, equitable and prompt return. 25 30

- (2) Regulations under subsection (1) may include provision for—

- (a) the procedures and steps to be taken for the purpose of identifying, recording and, to the extent necessary, reconciling, the books, records or other documents of the investment firm to establish— 35 40

- (i) the monies, investment instruments or documents of title relating to such investment instruments which are held or which ought to be held on behalf of clients by the investment firm or by its nominee, and 45

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(ii) the claims of the clients of the investment firm against those monies, investment instruments or documents of title (whether or not those monies, investment instruments or documents of title continue to exist),

(b) the satisfying and the ranking of claims against investment instruments or classes of investment instruments,

(c) the number, value and nature of claims against monies held or which ought to be held by an investment firm on behalf of clients,

(d) the treatment and abatement of claims by clients,

(e) the return of dividends, monies and investment instruments to clients,

(f) the allocation and provision of reasonable expenses of a liquidator, receiver, administrator, examiner or official assignee subject to Regulations 157 and 158 of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007), and

(g) the making of reports by an administrator to the Company containing such information relating to the administration of claims and at such time or times and in such manner as may be specified in the regulations,”

and

(c) in section 35 by inserting the following after subsection (7):

“(7A) Notice of an appeal under subsection (7) shall be given to the Company and it shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.”.

80.—The Financial Services (Deposit Guarantee Scheme) Act 2009 is amended—

Amendment of Financial Services (Deposit Guarantee Scheme) Act 2009.

(a) in section 1 by inserting the following definition:

“ ‘relevant Member State institution’ means an institution authorised in another Member State which has established in the State a branch which maintains a deposit in the

deposit protection account pursuant to Regulation 26 of the Deposit Guarantee Regulations;”,

and

(b) by inserting the following sections after section 8:

“Power of Bank to make regulations for information to be kept relating to eligible deposits. 8A.—(1) Where the Bank considers it necessary to do so in the public interest the Bank may make regulations for securing that accurate information in relation to persons who maintain eligible deposits with credit institutions or relevant Member State institutions (in this section referred to as ‘depositors’) is available to them and to the Bank (in particular to enable the Bank to meet its obligations to make guarantee payments out of the deposit protection account to depositors in accordance with the Deposit Guarantee Regulations). 5 10 15

(2) The regulations may include provision—

(a) requiring credit institutions and relevant Member State institutions to keep such information as the Bank may prescribe in relation to depositors, 20

(b) about the form and manner in which, and the period for which, the prescribed information is to be kept, and 25

(c) for enabling the verification of the prescribed information. 30

Requirement to provide information to Bank. 8B.—The Bank may require a credit institution or relevant Member State institution to provide to the Bank at such time or times and in such manner as the Bank may require— 35

(a) any information kept by it in compliance with regulations under section 8A, and

(b) any information which the Bank may reasonably require to satisfy itself that requirements imposed by regulations under that section have been, and are being, complied with by the credit institution or relevant Member State institution. 40 45

Direction to credit institution. 8C.—(1) If the Bank considers that a credit institution or relevant Member State institution has failed, or is failing, to comply with any requirement imposed by regulations made under section 8A, the Bank 50

may direct it to take specified steps to comply with the requirement.

(2) If the Bank considers that a credit institution or relevant Member State institution has failed, or is failing, to comply with a direction under subsection (1) the Bank may make an application to the High Court, and the High Court may, on such an application, make an order requiring it to comply with the direction.

Directions under section 8C: supplementary.

8D.—(1) The provisions of a direction under section 8C have effect from the date specified in the direction in relation to them.

(2) A direction under section 8C shall set out—

(a) all terms of the direction, including any date specified as the date by which, or period specified as the period within which, any provision of the direction is to be complied with, and

(b) any incidental, supplementary or consequential provision for securing that the direction is fully complied with.

(3) On an application under section 8C(2), the High Court may make any such interim or interlocutory order as it considers appropriate.

(4) An order under subsection (3) may include an order to take such ancillary or incidental steps as the High Court may consider appropriate to give full effect to the order.”,

and

(c) in section 9(1) by substituting the following for “A person who contravenes section 4(1) commits an offence and is liable—”:

“A person who contravenes section 4(1), fails to comply with a requirement under section 8B or a direction under section 8C or provides information under section 8B knowing it to be false or misleading commits an offence and is liable—”.

81.—(1) In this section “Act of 2011” means the Central Bank and Credit Institutions (Resolution) Act 2011.

Amendment of Central Bank and Credit Institutions (Resolution) Act 2011.

(2) Section 10 of the Act of 2011 is amended—

(a) in subsection (2)—

- (i) by deleting paragraph (a), and
 - (ii) in paragraph (b) by inserting “46,” after “42(5),”,
- and

(b) in subsection (4) by substituting “Subject to section 11(3),
the Bank” for “The Bank”. 5

(3) Section 11 of the Act of 2011 is amended by inserting the following subsection after subsection (2):

“(3) Notwithstanding section 10(4), the Bank shall from time to time pay interest at the rate determined under subsection (2) on monies standing to the credit of the Fund.”. 10

(4) The Act of 2011 is amended by inserting the following section after section 11:

“Accounts and audit. 11A.—(1) The Bank shall cause—

(a) to be kept for the Fund, in such form as the Minister approves, all proper and usual accounts of income and expenditure, and 15

(b) the transmission of those accounts not later than 3 months following the end of the financial year to which they relate to the Comptroller and Auditor General for audit. 20

(2) The Comptroller and Auditor General shall audit the accounts of the Fund transmitted to him or her under subsection (1) and shall prepare a written report in relation to those accounts. 25

(3) Within one month of the completion of the audit referred to in subsection (2), the Bank shall present a copy of the accounts and the report of the Comptroller and Auditor General on the accounts to the Minister who shall, as soon as may be, cause copies thereof to be laid before each House of the Oireachtas.”. 30

(5) The Act of 2011 is amended by substituting the following for section 12: 35

“12.—(1) The Minister, following consultation with the Bank, may contribute to the Fund such sums as the Minister considers appropriate, from the Central Fund or the growing produce of the Central Fund.

(2) The Minister is entitled to be reimbursed from the Fund for all contributions under subsection (1) together with any interest, at the rate determined under section 11(2), that may have accrued on those contributions at the rate determined. 40

(3) All sums paid out of the Fund in repayment of a contribution under subsection (2) shall be paid into the Central Fund.”. 45

(6) The Act of 2011 is amended by substituting the following for section 46:

5 “46.—(1) The Minister may, at the request of the Bank, agree to the provision, directly or indirectly, of a financial incentive, on terms and conditions that the Minister considers appropriate, to a person to become a transferee under—

(a) a transfer order, or

(b) where a transfer order has been varied under section 33, the transfer order as so varied.

10 (2) For the purposes of subsection (1)(a), the person to which the financial incentive is given may be a bridge-bank.

15 (3) A financial incentive may take the form of a payment, a loan, a guarantee, an exchange of assets or any other kind of financial accommodation or assistance, and may be or may include financial support within the meaning of the Act of 2008.

(4) Where the Minister agrees to the provision of a financial incentive under this Act and it is in the form of a payment or gives rise to a payment, the payment shall be made by the Bank from the Fund to such person as the Minister may direct.

20 (5) Where the Minister agrees to the provision of a financial incentive under this Act, a term of its provision may be in respect of the repayment in case of setting-aside of the transfer order, whether or not there is re-transfer of any assets or liabilities to the transferor.

25 (6) The amount of any financial incentive provided under this Act is a debt due and owing to the Bank for the account of the Fund by the transferor and may be recovered by the Bank for the account of the Fund as a simple contract debt in any court of competent jurisdiction.

30 (7) Any sum recovered by the Bank under subsection (6) shall be paid into the Fund.”.

(7) Section 47 of the Act of 2011 is amended in subsection (1) by deleting “or the Minister”.

35 (8) *Subsections (1), (2)(b) and (3)* shall be deemed to have come into operation on the coming into operation of the Act of 2011.

PART 13

MISCELLANEOUS

40 **82.**—Section 1 of the Insurance Act 1964 is amended by substituting the following for paragraph (a) of the definition of “excluded risk”:

Amendment of section 1 of Insurance Act 1964.

“(a) a risk relating to insurance that falls within the following classes of the Annex to First Council Directive 73/239/EEC of 24 July 1973⁴—

(i) 4, 5, 6, 7, 11 and 12,

⁴OJ No. L228, 16.8.1973, p.3

(ii) 1 and 10 in so far as they relate to the insurance of passengers in marine and aviation vehicles and carriers liability insurance, respectively,

(iii) 14 in so far as it relates to export credit;”.

Amendment of section 6 of Insurance Act 1964.

83.—Section 6 of the Insurance Act 1964 is amended by substituting the following for the definition of “premium” in subsection (14): 5

“ ‘premium’, in relation to a policy issued both in respect of risks in the State and risks not in the State, means that proportion of the premium paid in respect of risks in the State;”.

Amendment of section 4 of Landlord and Tenant Act (Ground Rents) (No. 2) Act 1978.

84.—(1) Section 4(1) of the Landlord and Tenant (Ground Rents) (No. 2) Act 1978 (referred to in this section as “the 1978 Act”) is amended by inserting the following after paragraph (b): 10

“(bb) the Central Bank of Ireland;”.

(2) The amendment made by *subsection (1)* shall not apply to—

- (a) an application to the Registrar of Titles under Part III of the 1978 Act made before the commencement of this section, 15
- (b) a notice of intention to acquire a fee simple under section 4 of the Landlord and Tenant (Ground Rents) Act 1967 (referred to in this section as “the 1967 Act”) served before the commencement of this section, 20
- (c) an application to a county registrar under section 17 of the 1967 Act, or an arbitration under that Act, relating to a notice to which *paragraph (b)* applies,
- (d) an arbitration under Part III of the 1978 Act relating to an application to which *paragraph (a)* applies, 25
- (e) an appeal to the Circuit Court from a decision of a county registrar under the 1967 Act relating to a notice to which *paragraph (b)* applies, or
- (f) an appeal to the Circuit Court from a decision of the Registrar of Titles under Part III of the 1978 Act relating to an application to which *paragraph (a)* applies. 30

Amendment of section 4 of Landlord and Tenant (Amendment) Act 1980.

85.—(1) Section 4 of the Landlord and Tenant (Amendment) Act 1980 is amended—

- (a) in subsection (1) by inserting “or the Central Bank of Ireland, as the case may be,” after “State authority”, and 35
- (b) by inserting the following after subsection (1)—

“(1A) Subject to subsections (1B) and (1C), this Act shall not bind the Central Bank of Ireland (in this subsection and subsections (1B) and (1C) referred to as ‘the Bank’) in its capacity as lessor or immediate lessor of any premises. 40

5 (1B) Where the Bank acquires the interest of the lessor or immediate lessor of any premises after the coming into operation of *section 85 of the Central Bank (Supervision and Enforcement) Act 2013* and the Bank did not have any previous interest in the premises as lessor or immediate lessor, section 13 shall apply as if the expressions ‘at any time’ and ‘at that time’ in subsection (1) thereof were references to the relevant date and Part II shall have effect accordingly, save that a tenant of the Bank whose tenancy of the premises is renewed under that Part as applied by this section shall not be entitled to a further renewal of that tenancy.

10
15 (1C) In a case to which subsection (1B) applies, subsection (1A) shall not apply so as to disqualify any person for payment of compensation for improvements in respect of such improvements as may have been carried out before the relevant date.”.

(2) The amendments made by *subsection (1)* shall not apply to leases granted before the coming into operation of this section.

20 **86.**—Section 3 of the Companies (Amendment) Act 1990 is amended—

Amendment of
section 3 of
Companies
(Amendment) Act
1990.

(a) in subsection (2)—

25 (i) in paragraph (a) by substituting “only by the Central Bank or by the company acting with the prior consent of the Central Bank,” for “only by the Minister”,

(ii) in paragraph (b) by inserting “or by the company with the prior consent in writing of the Central Bank” after “the Central Bank”, and

30 (iii) by deleting paragraph (c)(ii),

and

(b) by inserting the following after subsection (2):

“(2A) Where a petition is presented under subsection (2) otherwise than by the Central Bank—

35 (a) the petitioner—

(i) subject to subsection (2B), shall, before he or she presents the petition at the office of the court, cause to be received by the Central Bank a notice in writing of his or her intention to present the petition, and

40 (ii) shall serve a copy of the petition on the Central Bank as soon as may be after the presentation of it at the office of the court,

and

45 (b) the Central Bank shall be entitled to appear and be heard at any hearing relating to the petition.

(2B) A notice under subsection (2A)(a)(i) shall not be required if the petitioner is the company.”.

Disclosure to Bank of tax information about qualifying companies and FVCs.

87.—(1) Nothing in the Taxes Consolidation Act 1997 prevents the disclosure to the Bank of information held by the Revenue Commissioners in relation to—

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(a) qualifying companies, within the meaning of section 110 of the Taxes Consolidation Act 1997, or

(b) FVCs, within the meaning of Article 1 of Regulation (EC) No 24/2009 of the European Central Bank of 19 December 2008⁵ concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions.

10

(2) Information disclosed to the Bank by virtue of *subsection (1)* may be used by the Bank only in the exercise of the Bank’s functions and shall not be disclosed by the Bank to any other person.

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Amendment of section 11 of Electronic Commerce Act 2000.

88.—Section 11 of the Electronic Commerce Act 2000 is amended in paragraph (d) by deleting “the Consumer Credit Act, 1995, or any regulations made thereunder and”.

Amendment of Planning and Development Act 2000.

89.—The Planning and Development Act 2000 is amended—

(a) in section 33 by inserting the following after subsection (4):

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“(5) Regulations under this section may make different provision with respect to applications for permission for development made by the Central Bank of Ireland in cases where the disclosure of information in relation to the application concerned might prejudice the security, externally or internally, of the development or the land concerned or facilitate any unauthorised access to or from the land by any person, and such regulations may make provision modifying the operation of section 38 in relation to applications in those cases.”.

25

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and

(b) in section 142 by inserting the following after subsection (5):

“(6) Regulations under this section may make different provision with respect to appeals in relation to applications for permission for development made by the Central Bank of Ireland in the cases referred to in section 33(5), and such regulations may make provision modifying the operation of sections 132 and 146 in relation to such appeals.”.

35

Amendment of section 56 of Personal Injuries Assessment Board Act 2003.

90.—Section 56 of the Personal Injuries Assessment Board Act 2003 is amended in subsection (5) by substituting the following for paragraph (c):

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“(c) one shall be a person nominated for such appointment by the Irish Insurance Federation (or any successor of it), and

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⁵OJ No. L15, 20.1.2009, p.1

(d) one shall be an employee of the Central Bank of Ireland nominated for such appointment by the Governor of the Central Bank of Ireland.”.

5 **91.**—The Credit Institutions (Financial Support) Act 2008 is amended by repealing section 7. Amendment of Credit Institutions (Financial Support) Act 2008.

10 **92.**—Section 38 of the Credit Institutions (Stabilisation) Act 2010 is amended by inserting the following subsection after subsection (3): Amendment of section 38 of Credit Institutions (Stabilisation) Act 2010.

“**(3A)** Where the Minister provides a financial incentive under subsection (1) which is in the form of a payment or gives rise to a payment, the payment shall be made from the Central Fund or the growing produce thereof.”.

SCHEDULE 1

REPEALS AND REVOCATIONS

PART 1

REPEALS

Item (1)	Number and year (2)	Short title (3)	Extent of repeal (4)	
1	No. 3 of 1989	Insurance Act 1989	Section 3(2C)	5
2	No. 16 of 1989	Central Bank Act 1989	Section 87(3)	
3	No. 17 of 1989	Building Societies Act 1989	Section 119(5)	10
4	No. 21 of 1989	Trustee Savings Banks Act 1989	Section 66(2)	
5	No. 37 of 1990	Unit Trusts Act 1990	Section 18(3)	
6	No. 24 of 1994	Investment Limited Partnerships Act 1994	Section 41(3)	15
7	No. 11 of 1995	Investment Intermediaries Act 1995	Section 79(3)	
8	No. 24 of 1995	Consumer Credit Act 1995	Section 14(3)	20
9	No. 8 of 1997	Central Bank Act 1997	Section 27K	
10	No. 15 of 1997	Credit Union Act 1997	Section 171(5)	
11	No. 37 of 1998	Investor Compensation Act 1998	Section 43(3)	
12	No. 32 of 2001	Dormant Accounts Act 2001	Section 6(4)	25
13	No. 47 of 2001	Asset Covered Securities Act 2001	Section 97	
14	No. 2 of 2003	Unclaimed Life Assurance Policies Act 2003	Section 5(3)	30
15	No. 12 of 2005	Investment Funds, Companies and Miscellaneous Provisions Act 2005	Section 21(4)	35
16	No. 19 of 2007	Consumer Protection Act 2007	Section 76	
17	No. 23 of 2010	Central Bank Reform Act 2010	Part 5	

PART 2

Section 4(2).

REVOCATIONS

Item	Number and year	Citation	Extent of revocation	
(1)	(2)	(3)	(4)	
5	1	S.I. No. 727 of 2004	European Communities (Financial Conglomerates) Regulations 2004	Regulation 28(3)
10	2	S.I. No. 13 of 2005	European Communities (Insurance Mediation) Regulations 2005	Regulation 38(3)
15	3	S.I. No. 380 of 2006	European Communities (Reinsurance) Regulations 2006	Regulation 79(3)
20	4	S.I. No. 60 of 2007	European Communities (Markets in Financial Instruments) Regulations 2007	Regulations 164 and 190(2)
25	5	S.I. No. 383 of 2009	European Communities (Payment Services) Regulations 2009	Regulation 113(2) and (3)
30	6	S.I. No. 183 of 2011	European Communities (Electronic Money) Regulations 2011	Regulation 75(2) and (3)
35	7	S.I. No. 352 of 2011	European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011	Regulation 132(10) and (11)

SCHEDULE 2

AMENDMENTS OF CENTRAL BANK ACTS

PART 1

AMENDMENTS OF CENTRAL BANK ACT 1942

Item (1)	Provision affected (2)	Amendment (3)	
1	Section 2	<p>(a) In subsection (1) substitute the following for the definition of “designated enactments”:</p> <p>“ ‘designated enactments’ means, subject to subsection (2A), the enactments specified in Part 1 of Schedule 2 and the statutory instruments made under any of those enactments;”.</p> <p>(b) Insert the following subsection:</p> <p>“(6) References in this Act to a regulated financial service provider shall, unless the context otherwise requires, be read as including a person who was a regulated financial service provider at the relevant time.”.</p>	5 10 15
2	Section 18D(2)	In paragraph (a) after “Bank” insert “or with one or more persons with relevant knowledge of any of the matters specified in section 24(1) (or with both)”.	20
3	Section 24(2)	<p>(a) In paragraph (c) substitute “Parliament,” for “Parliament, or”.</p> <p>(b) In paragraph (d) substitute “member,” for “member.” and insert the following after that paragraph:</p> <p>“(e) performs a pre-approval controlled function (within the meaning given by section 22 of the Central Bank Reform Act 2010) or has what in the opinion of the Minister constitutes a significant shareholding in a regulated financial service provider,</p> <p>(f) has been adjudged bankrupt (either in the State or elsewhere) or has entered into a composition with his or her creditors, or</p> <p>(g) has been convicted of an offence (either in the State or elsewhere) and sentenced to serve a term of imprisonment for the offence.”.</p>	25 30 35

Item (1)	Provision affected (2)	Amendment (3)			
4	Section 32B(2)	In paragraph (a) substitute “2016” for “2011”.			
5	Part IIIA	Before section 32L substitute the following for the Chapter heading: “Chapter 3A <i>Accountability</i> ”.			
10	Section 32L(3)	Delete “and” at the end of paragraph (a) and insert the following paragraph: “(aa) the Bank in relation to the exercise of its powers under Part 2 of the <i>Central Bank (Supervision and Enforcement) Act 2013</i> , and”.			
15	Section 33AN	In the definition of “contravene” substitute the following for paragraph (b): “(b) aiding, abetting, counselling or procuring a person to commit a contravention, and”.			
20	Section 57BC	Insert the following after subsection (7): “(8) The Minister may from time to time advance to the Council, out of moneys provided by the Oireachtas, such sums as the Minister may determine for the purposes of the performance of the functions relating to superannuation conferred on the Council by this Act.”.			
25	Schedule 2, Part 1	(a) Substitute the following for item 38: “			
30		38	No. 23 of 2010	Central Bank Reform Act 2010	Parts 3 and 4
35		”.			
		(b) Insert the following: “			
		No. 27 of 1992	Financial Transfers Act 1992	Section 4	
		No. 2 of 2005	Criminal Justice (Terrorist Offences) Act 2005	Section 42(6)	
		No. 13 of 2009	Financial Services (Deposit Guarantee Scheme) Act 2009	The whole Act	
		No. - of 2013	<i>Central Bank (Supervision and Enforcement) Act 2013</i>	The whole Act other than sections 82 to 86 and 88 to 91	
	”.				

Item (1)	Provision affected (2)	Amendment (3)				
10	Schedule 2, Part 2	(a) Substitute the following for item 36:			5	
		“				
		36	S.I. No. 48 of 2011	European Communi- ties (Reorgan- isation and Winding- up of Credit Institutions) Regulations 2011	The whole instrument	10 15
		”.				
		(b) Insert the following:				
		“				
		S.I. No. 799 of 2007	European Communities (Information on the payer accompanying transfers of funds) Regulations 2007	The whole instrument	20	
		S.I. No. 247 of 2010	European Communities (Credit Rating Agencies) Regulations 2010	The whole instrument		
S.I. No. 352 of 2011	European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011	The whole instrument	25			
S.I. No. 340 of 2012	European Union (Short Selling) Regulations 2012	The whole instrument				
”.						

Section 5(1).

PART 2

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AMENDMENTS OF CENTRAL BANK ACT 1971

Item (1)	Provision affected (2)	Amendment (3)	
1	Section 2(1)	In paragraph (d) of the definition of “related body” substitute “Part 3 of the <i>Central Bank (Supervision and Enforcement) Act 2013</i> ” for “Part 5 of the <i>Central Bank Reform Act 2010</i> ”.	35
2	Section 7(1)	Delete “on behalf of any other person”.	

PART 3

Section 5(1).

AMENDMENTS OF CENTRAL BANK ACT 1997

Item (1)	Provision affected (2)	Amendment (3)
5 1	Section 32A(5)(b)	Substitute “ <i>Part 3 of the Central Bank (Supervision and Enforcement) Act 2013</i> ” for “ <i>Part 5 of the Central Bank Reform Act 2010</i> ”.

PART 4

Section 5(1).

AMENDMENTS OF CENTRAL BANK REFORM ACT 2010

Item (1)	Provision affected (2)	Amendment (3)
10 15 1	Section 3	Substitute the following for the definition of “authorised officer”: “ ‘authorised officer’ means an authorised officer appointed under <i>Part 3</i> of the <i>Central Bank (Supervision and Enforcement) Act 2013</i> ;”.
20 25 2	Section 23	(a) Substitute the following for subsection (1): “(1) A regulated financial service provider shall not appoint a person to perform a pre-approval controlled function unless the Bank has approved in writing the appointment of the person to perform the function.”. (b) In subsection (6)(b) substitute “(a) to (h)” for “(a) to (g)”.
30 35 3	Section 25(3)	Insert the following after paragraph (c): “(ca) the person, being a person who has been appointed to perform a pre-approval controlled function, has failed to make a disclosure to the Bank under <i>section 38(2)</i> of the <i>Central Bank (Supervision and Enforcement) Act 2013</i> or has made such a disclosure knowing it to be false or misleading in a material respect,”.
40 4	Section 43(2)	Insert the following after paragraph (c): “(ca) the person, being a person who has been appointed to perform a pre-approval controlled function, has failed to make a disclosure to the Bank under <i>section 38(2)</i> of the <i>Central Bank (Supervision and Enforcement) Act 2013</i> or has made such a disclosure knowing it to be false or misleading in a material respect,”.

Item (1)	Provision affected (2)	Amendment (3)	
5	Section 52	<p>(a) Insert the following after subsection (2):</p> <p>“(2A) The Bank may at its discretion appoint a suitably qualified person (including a person who is not an officer or employee of the Bank) to perform a function (or any part of a function) of the Bank under this Part, other than any function of making regulations or issuing codes, if the Bank considers it necessary or appropriate to do so to ensure that the functions of the Bank under this Part are performed efficiently and effectively.”.</p> <p>(b) In subsection (3)—</p> <p>(i) substitute “, (2) and (2A)” for “and (2)”,</p> <p>(ii) substitute “any” for “either”, and</p> <p>(iii) substitute “, the Head of Financial Regulation or the Bank” for “or the Head of Financial Regulation”.</p>	<p>5</p> <p>10</p> <p>15</p>
6	Section 54 (inserted by the Credit Union and Co-operation with Overseas Regulators Act 2012)	<p>Substitute the following section:</p> <p>“Co-operation with Member State authorities or third country authorities.</p> <p>54.— (1) In this section ‘Member State authority or third country authority’ means an authority in a jurisdiction other than that of the State duly authorised to perform functions similar to any one or more of the statutory functions of the Bank.</p> <p>(2) At the request of a Member State authority or a third country authority to do so in relation to any matter, the Bank may—</p> <p>(a) require information on the matter about which the Bank has required or could require the provision of information or the production of documents under any provision of financial services legislation, or</p> <p>(b) authorise one or more than one authorised officer to exercise any of his or her powers for the purposes of investigating the matter.</p> <p>(3) In deciding whether or not to exercise any of its powers under subsection (2), the Bank may take into account in particular:</p> <p>(a) whether in the country or territory of the Member State authority or third country authority, corresponding assistance would be given to an authority duly authorised in the State to perform functions corresponding to functions exercised by the Member State authority or third country authority;</p>	<p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p>

Item (1)	Provision affected (2)	Amendment (3)
5		<p>(b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the State or involves the assertion of a jurisdiction not recognised by the State;</p> <p>(c) the seriousness of the case and its importance to persons in the State;</p> <p>(d) whether it is otherwise appropriate in the public interest to give the assistance sought.</p>
10		<p>(4) The Bank may decide that it will not exercise any of its powers under subsection (2) unless the Member State authority or third country authority undertakes to make such contribution towards the cost of such exercise as the Bank considers appropriate.</p>
15		<p>(5) Subsections (3) and (4) do not apply if the Bank considers that the exercise of its power is necessary to comply with any obligation created or arising by or under the Treaties governing the European Union.</p>
20		<p>(6) If the Bank authorises an authorised officer for the purposes of subsection (2)(b), the Bank may direct the authorised officer to permit a representative of the Member State authority or third country authority to attend, and take part in, any interview conducted for the purposes of the investigation of the matter concerned.</p>
25		<p>(7) A direction under subsection (6) is not to be given unless the Bank is satisfied that any information obtained by a Member State authority or third country authority as a result of the interview will be subject to obligations of non-disclosure of information similar to those imposed on the Bank in section 33AK of the Act of 1942.</p>
30		<p>(8) A person shall not be required for the purposes of the exercise of any power under this section to answer any question tending to incriminate the person.”.</p>
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40		

PART 5

Section 5(1).

AMENDMENTS OF CENTRAL BANK AND CREDIT INSTITUTIONS
(RESOLUTION) ACT 2011

Item (1)	Provision affected (2)	Amendment (3)
45	Section 14	<p>Substitute the following for subsection (4):</p> <p>“(4) Summary proceedings for an offence under this section may be brought and prosecuted by the Bank.”.</p>
50	Section 18(2)	<p>Substitute “supervisory directives” for “supervisory enactments”.</p>

SCHEDULE 3

AMENDMENTS OF CERTAIN OTHER ACTS

Section 5(2).

PART 1

AMENDMENTS OF INVESTMENT INTERMEDIARIES ACT 1995

Item (1)	Provision affected (2)	Amendment (3)	
1	Section 2(1)	In the definition of “authorised officer” substitute “ <i>Part 3 of the Central Bank (Supervision and Enforcement Act 2013)</i> ” for “Part 5 of the Central Bank Reform Act 2010”.	5 10
2	Section 20(6)	Substitute “ <i>Part 3 of the Central Bank (Supervision and Enforcement) Act 2013</i> ” for “Part 5 of the Central Bank Reform Act 2010”.	

Section 5(2).

PART 2

AMENDMENTS OF CREDIT UNION ACT 1997

Item (1)	Provision affected (2)	Amendment (3)	
1	Section 90	In subsections (1) and (3) substitute “ <i>Part 3 of the Central Bank (Supervision and Enforcement) Bill 2013</i> ” for “Part 5 of the Central Bank Reform Act 2010”.	15 20
2	Section 91	Substitute the following for subsection (1): “(1) If required to do so by notice in writing served by the Bank at any time— (a) a credit union, (b) any person who is or has been an officer, member, voluntary assistant, agent or liquidator of a credit union, and (c) any other person who has in his or her possession or power any books or documents relating to a credit union, shall furnish to the Bank such books or documents which relate to the credit union and are in the possession or power of the credit union or such person and such information relating to the business of the credit union as may be specified in the notice and as may be reasonably required by the Bank in the exercise of its powers under this Act.”.	25 30 35
3	Section 93(1)	Substitute the following for paragraph (b): “(b) ‘agent’ has the same meaning as in section 21 of the <i>Central Bank (Supervision and Enforcement) Act 2013</i> .”.	40

Item (1)	Provision affected (2)	Amendment (3)
4	Section 95	In subsection (1) substitute “, after the exercise by an authorised officer of any of his or her powers under <i>Part 3</i> of the <i>Central Bank (Supervision and Enforcement) Act 2013</i> ,” for “, after an inspection under section 90.”.
5	Section 95A (inserted by the Credit Union and Co-operation with Overseas Regulators Act 2012)	In subsection (1) substitute “after the exercise by an authorised officer of any of his or her powers under <i>Part 3</i> of the <i>Central Bank (Supervision and Enforcement) Act 2013</i> ” for “after an inspection under section 90”.
6	Section 96(1)	Substitute “after the exercise by an authorised officer of any of his or her powers under <i>Part 3</i> of the <i>Central Bank (Supervision and Enforcement) Act 2013</i> ” for “after an inspection under section 90”.
7	Section 186(3)	Insert “or <i>Part 3</i> of the <i>Central Bank (Supervision and Enforcement) Act 2013</i> ” after “this Act”.

PART 3

Section 5(2).

AMENDMENTS OF INVESTOR COMPENSATION ACT 1998

Item (1)	Provision affected (2)	Amendment (3)
1	Section 9	(a) Substitute the following for subsection (1): “(1) In this section “Act of 2013” means the <i>Central Bank (Supervision and Enforcement) Act 2013</i> .”. (b) Substitute “ <i>Part 3</i> of the <i>Act of 2013</i> ” for “ <i>Part 5</i> of the <i>Act of 2010</i> ” in each place.
2	Section 33(2)	Substitute “ <i>Part 3</i> of the <i>Central Bank (Supervision and Enforcement) Act 2013</i> ” for “ <i>Part 5</i> of the <i>Central Bank Reform Act 2010</i> ”.

PART 4

Section 5(2).

AMENDMENT OF FINANCIAL SERVICES (DEPOSIT GUARANTEE SCHEME) ACT 2009

Item (1)	Provision affected (2)	Amendment (3)
1	Section 9	Substitute the following for subsection (3): “(3) Summary proceedings for an offence under this Act may be brought and prosecuted by the Bank.”.

SCHEDULE 4

AMENDMENTS OF CERTAIN STATUTORY INSTRUMENTS

PART 1

AMENDMENTS OF EUROPEAN COMMUNITIES (MARKETS IN FINANCIAL
INSTRUMENTS) REGULATIONS 2007

5

(S.I. No. 60 of 2007)

Item (1)	Provision affected (2)	Amendment (3)	
1	Regulation 3(1)	In the definition of "authorised officer" substitute " <i>Part 3 of the Central Bank (Supervision and Enforcement) Act 2013</i> " for "Part 5 of the Central Bank Reform Act 2010".	10
2	Regulation 6(7)	Substitute " <i>Part 3 of the Central Bank (Supervision and Enforcement) Act 2013</i> " for "Part 5 of the Central Bank Reform Act 2010".	15
3	Regulation 14(1)(b)	Substitute " <i>Part 3 of the Central Bank (Supervision and Enforcement) Act 2013</i> " for "Part 5 of the Central Bank Reform Act 2010".	
4	Regulation 147(1)(g)(ii)	Substitute " <i>Part 3 of the Central Bank (Supervision and Enforcement) Act 2013</i> " for "Part 5 of the Central Bank Reform Act 2010".	20

PART 2

AMENDMENTS OF EUROPEAN COMMUNITIES (INSURANCE AND
REINSURANCE GROUPS SUPPLEMENTARY SUPERVISION) REGULATIONS
2007

25

(S.I. No. 366 of 2007)

Item (1)	Provision affected (2)	Amendment (3)	
1	Regulation 3(1)	In the definition of "authorised officer" substitute " <i>Part 3 of the Central Bank (Supervision and Enforcement) Bill 2013</i> " for "Part 5 of the Central Bank Reform Act 2010".	30
2	Regulation 9(7)	Substitute "under <i>Part 3 of the Central Bank (Supervision and Enforcement) Act 2013</i> " for "under Part 5 of the Central Bank Reform Act 2010".	35

PART 3

Section 5(3).

AMENDMENTS OF EUROPEAN COMMUNITIES (INFORMATION ON THE PAYER ACCOMPANYING TRANSFERS OF FUNDS) REGULATIONS 2007

Item (1)	Provision affected (2)	Amendment (3)
1	Regulation 1	Insert the following definition: “ ‘authorised officer’ means an authorised officer appointed under <i>Part 3</i> of the <i>Central Bank (Supervision and Enforcement) Act 2013</i> .”.
2	Regulation 4	Substitute the following for Regulation 4: “4. For the purpose of ensuring compliance with the Parliament and Council Regulation, an authorised officer may exercise any of the powers conferred on him or her under <i>Part 3</i> of the <i>Central Bank (Supervision and Enforcement) Act 2013</i> .”.

PART 4

Section 5(3)

AMENDMENT OF EUROPEAN COMMUNITIES (REORGANISATION AND WINDING-UP OF CREDIT INSTITUTIONS) REGULATIONS 2011

(S.I. No. 48 of 2011)

Item (1)	Provision affected (2)	Amendment (3)
1	Regulation 2(2)	Insert the following subparagraph after subparagraph (x): “(xi) a direction given by the Bank under <i>Part 7</i> of the <i>Central Bank (Supervision and Enforcement) Act 2013</i> that contains a declaration that it or part of it is made with the intention of preserving or restoring the financial position of a credit institution, where the direction is capable of affecting the rights of third parties existing before the direction comes into effect.”.

SCHEDULE 5

REDRESS FOR CONTRAVENTION OF *section 41(1)**Complaints to rights commissioner.*

1. (1) An employee (or, in the case of an employee who has not reached the age of 18 years, the employee's parent or guardian, with the consent of the employee) or, with the consent of the employee, any trade union of which the employee is a member may present a complaint to a rights commissioner that the employee's employer has contravened *section 41(1)* in relation to the employee. 5

(2) Where a complaint under *subparagraph (1)* is made, the rights commissioner shall— 10

(a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint,

(b) give a decision in writing in relation to it, and 15

(c) communicate the decision to the parties.

(3) A decision of a rights commissioner under *subparagraph (2)* shall do one or more of the following:

(a) declare that the complaint was or was not well founded;

(b) require the employer to take a specified course of action, which may include, in a case where the penalisation constitutes a dismissal within the meaning of *section 37(3)*, re-instatement or re-engagement; 20

(c) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 2 years' remuneration in respect of the employee's employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act 1977. 25

(4) The references in *clauses (b) and (c) of subparagraph (3)* to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to such ownership. 30

(5) Subject to *subparagraph (7)*, a rights commissioner shall not entertain a complaint under this paragraph if it is presented to him or her after the expiration of the period of 6 months beginning on the date of the contravention to which the complaint relates. 35

(6) Notwithstanding *subparagraph (5)*, a rights commissioner may entertain a complaint under this paragraph presented to him or her after the expiration of the period referred to in *subparagraph (5)* (but not later than 6 months after such expiration) if he or she is satisfied that the failure to present the complaint within that period was due to exceptional circumstances. 40

5 (7) Where a delay by an employee in presenting a complaint under this paragraph is due to any misrepresentation by the employer, *subparagraph (5)* shall be construed as if the reference to the date of the contravention were a reference to the date on which the misrepresentation came to the employee's notice.

(8) A complaint shall be presented by giving notice of it in writing to a rights commissioner and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister for Jobs, Enterprise and Innovation.

10 (9) A copy of a notice under *subparagraph (8)* shall be given to the other party concerned by the rights commissioner concerned.

(10) Proceedings under this paragraph before a rights commissioner shall be conducted otherwise than in public.

15 (11) A rights commissioner shall furnish the Labour Court with a copy of each decision given by the commissioner under *subparagraph (2)*.

Appeals from decisions of rights commissioner.

20 2. (1) A party concerned may appeal to the Labour Court from a decision of a rights commissioner under *paragraph 1(2)* and, if the party does so, the Labour Court shall—

(a) give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal,

(b) make a determination in writing in relation to the appeal affirming, varying or setting aside the decision, and

25 (c) communicate the determination to the parties.

(2) An appeal under this paragraph shall be initiated by the party concerned giving, within 6 weeks (or such greater period as the Labour Court may determine in the particular circumstances) from the date on which the decision to which it relates was communicated to the party, a notice in writing to the Labour Court containing such particulars as are determined by the Labour Court under *clauses (e)* and *(f)* (in so far as it relates to the said *clause (e)*) of *subparagraph (4)* and stating the intention of the party concerned to appeal against the decision.

30 35 (3) A copy of a notice under *subparagraph (2)* shall be given by the Labour Court to any other party concerned as soon as practicable after the receipt of the notice by the Labour Court.

(4) The Labour Court shall determine the following matters and the procedures to be followed in relation to them:

40 (a) the procedure in relation to all matters concerning the initiation and the hearing by the Labour Court of appeals under this paragraph;

(b) the times and places of hearings of such appeals;

(c) the representation of the parties to such appeals;

45 (d) the publication and notification of determinations of the Labour Court;

(e) the particulars to be contained in a notice under *subparagraph (2)*;

(f) any matters consequential on, or incidental to, the matters referred to in *clauses (a) to (e)*.

(5) The Labour Court may refer a question of law arising in proceedings before it under this paragraph to the High Court for its determination and the determination of the High Court shall be final and conclusive. 5

(6) A party to proceedings before the Labour Court under this paragraph may appeal to the High Court from a determination of the Labour Court on a point of law and the determination of the High Court shall be final and conclusive. 10

Paragraphs 1 and 2: supplemental provisions.

3. (1) The Labour Court shall, on the hearing of any appeal referred to it under *paragraph 2*, have power to take evidence on oath or on affirmation and for that purpose may cause persons attending as witnesses at that hearing to swear an oath or make an affirmation. 15

(2) The Labour Court may, by giving notice in that behalf in writing to any person, require such person to attend at such time and place as is specified in the notice and— 20

(a) to give evidence in relation to any matter appealed to the Labour Court under *paragraph 2*, or

(b) to produce any document specified in the notice relating to the matter in the person's possession or power. 25

(3) A witness at a hearing of an appeal before the Labour Court has the same privileges and immunities as a witness before the High Court.

(4) Where—

(a) a decision of a rights commissioner in relation to a complaint under this Schedule has not been carried out by the employer concerned in accordance with its terms, and 30

(b) the time for bringing an appeal against the decision has expired and no such appeal has been brought or, if such an appeal has been brought, it has been abandoned, 35

the employee concerned (or, in the case of an employee who has not reached the age of 18 years, the employee's parent or guardian, with the consent of the employee) or, with the consent of the employee, any trade union of which the employee is a member, may bring the complaint before the Labour Court and the Labour Court shall, without hearing the employer concerned or any evidence (other than in relation to the matters aforesaid), make a determination to the like effect as the decision. 40

(5) The bringing of a complaint before the Labour Court under *subparagraph (4)* shall be effected by giving to the Labour Court a written notice containing such particulars (if any) as may be determined by the Labour Court. 45

5 (6) The Labour Court shall publish, in a manner it considers appropriate, particulars of any determination made by it under any of *clauses (a) to (f) of subparagraph (4) of paragraph 2* (not being a determination as respects a particular appeal under that paragraph) and *subparagraph (5)*.

Enforcement of determinations of Labour Court.

10 4. (1) If an employer fails to carry out in accordance with its terms a determination of the Labour Court in relation to a complaint under *paragraph 1* within 28 days from the date on which the determination is communicated to the parties, the Circuit Court shall, on application made to it in that behalf by—

(a) the employee concerned (or, in the case of an employee who has not reached the age of 18 years, the employee's parent or guardian, with the employee's consent), or

15 (b) with the consent of the employee, any trade union of which the employee is a member,

without hearing the employer or any evidence (other than in relation to the matters aforesaid), make an order directing the employer to carry out the determination in accordance with its terms.

20 (2) The reference in *subparagraph (1)* to a determination of the Labour Court is a reference to a determination in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought or, if such an appeal has been brought, it has been abandoned, and the reference in that subparagraph to the date on which the determination is communicated to the parties shall, in a case where such an appeal is abandoned, be read as a reference to the date of such abandonment.

30 (3) In an order under this paragraph providing for the payment of compensation, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct the employer concerned to pay to the employee concerned interest on the compensation (at the rate per annum standing specified for the time being in section 26 of the Debtors (Ireland) Act 1840) for each day or part of a day beginning 28 days after the day on which the determination of the Labour Court is communicated to the parties and ending on the day immediately before the day on which the order of the Circuit Court is made.

40 (4) An application under this paragraph to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer concerned ordinarily resides or carries on any profession, trade, business or occupation.

Provisions relating to winding-up and bankruptcy.

45 5. (1) There shall be included among the debts which, under section 285 of the Companies Act 1963 are, in the distribution of the assets of a company being wound-up, to be paid in priority to all other debts, all compensation payable by virtue of a decision under *paragraph 1(2)(b)* or a determination under *paragraph 2(1)(b)* by the company to an employee, and that Act shall have effect accordingly. Formal proof of the debts to which priority is given under this subparagraph shall not be required except in cases where it may otherwise be provided by rules made under that Act.

81 (2) There shall be included among the debts which, under section 81 of the Bankruptcy Act 1988 are, in the distribution of the property

of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable by virtue of a decision under *paragraph 1(2)(b)* or a determination under *paragraph 2(1)(b)* by the bankrupt or arranging debtor, to an employee, and that Act shall have effect accordingly. Formal proof of the debts to which priority is given under this subparagraph shall not be required except in cases where it may otherwise be provided under that Act. 5

Amendment of Protection of Employees (Employers' Insolvency) Act 1984.

6. Section 6 of the Protection of Employees (Employers' Insolvency) Act 1984 is amended— 10

(a) in subsection (2)(a)—

(i) in subparagraph (xxviii) by deleting “and” after “that Schedule,”

(ii) in subparagraph (xxix) by substituting “that Act, and” for “that Act.”, and 15

(iii) by inserting the following subparagraph after subparagraph (xxix):

“(xxx) any amount which an employer is required to pay by virtue of a decision of a rights commissioner under *paragraph 1(2)(b)* of *Schedule 5 to the Central Bank (Supervision and Enforcement) Act 2013* or a determination by the Labour Court under *paragraph 2(1)(b)* of that Schedule.”, 20 25

(b) in subsection (2)(b), by substituting “, (xxix) or (xxx)” for “or (xxix)”,

(c) in subsection (2)(c), by substituting “, (xxix) or (xxx)” for “or (xxix)”, and 30

(d) in subsection (9), in the definition of “relevant date”, by substituting “, (xxix) or (xxx)” for “or (xxix)”.