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

Mar a tionscnaíodh
As initiated

[No. 43 of 2011]

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ARRANGEMENT OF SECTIONS

[No. 43 of 2011]

PART 3

AUTHORISED OFFICERS

PART 4

PROTECTION FOR PERSONS REPORTING BREACHES

PART 5

BANK'S POWER TO GIVE DIRECTIONS

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

SCHEDULE 3

AMENDMENTS OF CERTAIN OTHER ACTS

PART 1

AMENDMENTS OF BUILDING SOCIETIES ACT 1989

PART 2

AMENDMENT OF TRUSTEE SAVINGS BANKS ACT 1989

PART 3

AMENDMENT OF INVESTMENT LIMITED PARTNERSHIPS ACT 1994

PART 4

AMENDMENTS OF CONSUMER CREDIT ACT 1995

PART 5

AMENDMENTS OF INVESTMENT INTERMEDIARIES ACT 1995

PART 6

AMENDMENTS OF CREDIT UNION ACT 1997

PART 7

AMENDMENTS OF INVESTOR COMPENSATION ACT 1998

PART 8

AMENDMENT OF ASSET COVERED SECURITIES ACT 2001

SCHEDULE 4

AMENDMENTS OF CERTAIN STATUTORY INSTRUMENTS

PART 1

AMENDMENTS OF EUROPEAN COMMUNITIES (DISTANCE MARKETING OF CONSUMER FINANCIAL SERVICES) REGULATIONS 2004

PART 2

AMENDMENT OF EUROPEAN COMMUNITIES (INSURANCE MEDIATION) REGULATIONS 2005

PART 3

AMENDMENT OF EUROPEAN COMMUNITIES (REINSURANCE) REGULATIONS 2006

PART 4

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

PART 5

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

PART 6

AMENDMENTS OF EUROPEAN COMMUNITIES (CREDIT INSTITUTIONS) (CONSOLIDATED SUPERVISION) REGULATIONS 2009

PART 7

AMENDMENT OF EUROPEAN COMMUNITIES (CROSS BORDER PAYMENTS) REGULATIONS 2010

SCHEDULE 5

REDRESS FOR CONTRAVENTION OF *section 35(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 1997	1997, No. 8
Central Bank Acts 1942 to 2010	
Central Bank Reform Act 2010	2010, No. 23
Companies Act 1963	1963, No. 33
Companies Act 1990	1990, No. 33
Consumer Credit Act 1995	1995, No. 24
Credit Institutions (Stabilisation) Act 2010	2010, No. 36
Credit Union Act 1997	1997, No. 15
Debtors (Ireland) Act 1840	3 & 4 Vict., c. 105
Financial Services (Deposit Guarantee Scheme) Act 2009	2009, No. 13
Insurance (No. 2) Act 1983	1983, No. 29
Insurance Act 1989	1989, No. 3
Investment Intermediaries Act 1995	1995, No. 11
Investment Limited Partnerships Act 1994	1994, No. 24
Investor Compensation Act 1998	1998, No. 37
Personal Injuries Assessment Board Act 2003	2003, No. 46
Protection of Employees (Fixed-Term Work) Act 2003	2003, No. 29
Trustee Savings Banks Act 1989	1989, No. 21
Unfair Dismissals Act 1977	1977, No. 10
Unfair Dismissals Acts 1977 to 2007	

BILLE AN BHAINC CEANNAIS (MAOIRSIÚ AGUS FORFHEIDHMIÚ), 2011

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) BILL 2011

BILL

entitled

AN ACT TO FURTHER PROVIDE FOR THE REGULATION AND SUPERVISION OF FINANCIAL SERVICE PROVIDERS AND FINANCIAL SERVICES; TO FURTHER PROVIDE FOR THE ENFORCEMENT OF FINANCIAL SERVICES LEGISLATION; TO PROVIDE FOR THE PROTECTION OF PERSONS REPORTING BREACHES; FOR THOSE AND OTHER PURPOSES TO PROVIDE FOR AMENDMENTS TO, AND TO FURTHER AMEND AND EXTEND, THE CENTRAL BANK ACTS 1942 TO 2010 AND CERTAIN OTHER ACTS AND STATUTORY INSTRUMENTS, AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY

Short title, collective citation and construction.

1.—(1) This Act may be cited as the Central Bank (Supervision and Enforcement) Act 2011.

(2) The Central Bank Acts 1942 to 2010 and this Act may be cited together as the Central Bank Acts 1942 to 2011 and shall be construed together as one.

Commencement.

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 different days may be so appointed for different purposes or different provisions or different classes of person.

(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 *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.

Interpretation.

3.—(1) In this Act—

"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;

"authorised officer" means a person appointed by the Bank under *section 22* to be an authorised officer;

"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

(*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—

(*a*) the designated enactments,

(*b*) the designated statutory instruments, and

(*c*) the *Central Bank Acts 1942 to 2011* and statutory instruments made under those Acts;

"Minister" means the Minister for Finance;

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

"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—

(*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,

(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,

(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

(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 1983[1], that other person.

(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.

(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.

Repeals and revocations.

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

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

Amendments.

5.—(1) The Central Bank Acts are amended to the extent specified in *column (3)* of *Part 1* to *Part 4* of *Schedule 2.*

(2) The Acts specified in *Part 1* to *Part 8* of *Schedule 3* are amended to the extent specified in *column (3)* of each such Part.

(3) The statutory instruments specified in *Part 1* to *Part 7* of *Schedule 4* are amended to the extent specified in *column (3)* of each such Part.

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.*

(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.*

[1]OJ L193, 18.7.1983, p.1

(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.

PART 2

Provision of Report to Bank

Definitions (*Part 2*).

7.—In this Part—

"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.

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.

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

(*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,

(*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,

(*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.

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,

(*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.

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

(*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.

(2) The reviewer shall be a person appearing to the Bank to have the skills necessary relating to the business of the reviewee 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 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,

(*b*) the ability to complete the report within the period specified by the Bank in the notice given under *section 9*,

(*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,

(*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, (*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.

(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.

(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*,

(*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—

(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

(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—

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

(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,

(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,

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.

(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.

Cost of report.

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

Assisting the reviewer.

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.

(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.

Duty of reviewee to ensure performance of reviewer's functions.

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.

Bank may use report.

16.—The Bank may use a report under this Part in the performance of its functions under financial services legislation.

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.

(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—

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

(*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, 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.

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, the Bank may apply to the High Court for an order enforcing the obligations of that person under this Part.

(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 37.*

PART 3

AUTHORISED OFFICERS

Definitions (*Part 3*).

20.—In this Part—

"agent", in relation to a person to whom this Part applies, includes a past as well as a present agent and includes the person's banker, accountant, solicitor, auditor and financial or other adviser, whether or not a person to whom this Part applies;

"person to whom this Part applies" shall be read in accordance with *section 21*;

"premises" includes vessel, aircraft, vehicle and any other means of transport, as well as land and a building and any other fixed or moveable structure.

Persons to whom this Part applies.

21.—(1) The following are persons to whom this Part applies (including persons outside the State):

(*a*) a regulated financial service provider;

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

(*c*) a person whom the Bank reasonably believes is or was a regulated financial service provider, or is or was acting as or claiming or holding himself or herself out to be a regulated financial service provider;

(*d*) a person who is or was, or whom the Bank reasonably believes, is or was, 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 *paragraph (a)*, *(b)*, *(c)* or *(d)*;

(*f*) any other person whom the Bank reasonably believes may possess information about a person referred to in *paragraph (a)*, *(b)*, *(c)*, *(d)* or *(e)*;

(*g*) any person whom the Bank reasonably believes may possess information about a financial product or investment admitted to trading or which is to be admitted to trading under the rules and systems of a regulated market.

(2) The duty imposed by this Part to produce or provide any information, extends to—

(*a*) a person who is in relation to a person to whom this Part applies—

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

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

(iii) 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,

(iv) a special manager appointed pursuant to the Credit Institutions (Stabilisation) Act 2010,

(v) an examiner, liquidator, receiver, official assignee, or

(vi) in respect of a person outside the State, a person corresponding to any of the persons who come within *subparagraphs (i)* to *(v)*,

and

(*b*) a person who—

(i) is or has been an officer or employee or agent of any person to whom this Part applies, or

(ii) appears to the Bank or the authorised officer to have the information in his or her possession or under his or her control.

Appointment of authorised officers.

22.—(1) For the purposes of obtaining any information necessary for 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 Part.

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

(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 earlier of—

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

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

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

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

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

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

(5) 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 Part.

Warrant of appointment.

23.—Every authorised officer appointed by the Bank shall be furnished with a warrant of his or her appointment, and when exercising a power conferred by this Part 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.

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

(*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.

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

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

(*b*) pursuant to a warrant under *section 26.*

Powers of authorised officer.

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

(*a*) search and inspect premises entered under *section 24* or pursuant to a warrant under *section 26*;

(*b*) require any person to whom this Part applies who apparently has control of, or access to, records, to produce the records;

(*c*) inspect records so produced or found in the course of searching and inspecting premises;

(*d*) take copies of or extracts from records so produced or found;

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

(*f*) secure, for later inspection, any records produced or found and any data equipment, including any computer, in which those records may be held;

(*g*) secure, for later inspection, premises entered under *section 24* or pursuant to a warrant under *section 26*, 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 Part, 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;

(*h*) require any person to whom this Part applies to answer questions and to make a declaration of the truth of the answers to those questions;

(*i*) require any 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;

(*j*) 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;

(*k*) require that any information given to an authorised officer under this Part 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.

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

(*a*) operate any data equipment, including any computer, at the premises which is being searched or cause any such data equipment or computer to be operated by a person accompanying the authorised officer, and

(*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—

(i) producing 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

(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 with the consent of the person hereafter mentioned, 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.

(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 Part including such facilities for inspecting and taking copies of any records as the authorised officer reasonably requires.

(5) Subject to any warrant issued *section 26*, an authorised officer may be accompanied, and assisted in the exercise of the officer's powers under this Part, by such other authorised officers, members of the Garda Síochána or other persons as the authorised officer reasonably considers appropriate.

Warrant required to enter premises.

26.—(1) Without prejudice to the powers conferred on an authorised officer by or under any other provision of this Part, 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—

(*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 Part or such of those powers as are specified in the warrant.

(2) The period of validity of a warrant shall be 28 days from its date of issue.

(3) An application for a warrant under this section shall be made to a judge of the District Court in the district court district in which the premises concerned are situate.

Authorised officer may attend meetings.

27.—(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.

(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.

Production of record subject to legal professional privilege not required.

28.—Nothing in this Part shall operate to confer any right to production of, or access to, any record subject to legal professional privilege.

Disclosure or production not to be treated as breach or to affect lien.

29.—(1) The disclosure or production of any record or other information 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 disclosure or production by the person or any other person on whose behalf the record or other information is disclosed or produced.

(2) Where a person from whom production of a record is required under this Part claims a lien on the record, the production of it shall be without prejudice to the lien.

Failure to comply with a requirement.

30.—(1) If any person to whom this Part applies fails or refuses to comply with a requirement under this Part the authorised officer may certify the failure or refusal under his or her hand to the High Court.

(2) When 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—

(*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 of obstruction or provision of false information.

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

(*a*) obstructs or impedes an authorised officer in the exercise of any of his or her powers under this Part, whether or not by virtue of a warrant issued under *section 26*.

(*b*) without reasonable excuse, does not comply with a requirement of an authorised officer in the exercise of any of those powers,

(*c*) in purported compliance with such a requirement, gives information to the authorised officer that the person knows to be false or misleading in a material respect, or

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

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

(*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.

(3) A person does not commit an offence of failing to comply with a requirement referred to in *subsection (1)(b)* unless, when the requirement was made, the person was warned that a failure to comply is an offence.

(4) 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.

PART 4

Protection for Persons Reporting Breaches

Definitions (*Part 4*).

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

"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;

"contravene" includes fail to comply, and also includes—

(*a*) attempting to contravene,

(*b*) aiding and abetting and counselling and procuring a person to commit a contravention,

(*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

(*e*) conspiring with others to commit a contravention;

"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;

"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*) demotion or loss of opportunity for promotion,

(*c*) transfer of duties, change of location of place of work, reduction in wages or change in working hours,

(*d*) the imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty),

(*e*) unfair treatment,

(*f*) coercion, intimidation or harassment,

(*g*) discrimination, disadvantage or adverse treatment,

(*h*) injury, damage or loss, and

(*i*) reprisal;

"protected disclosure" shall be read in accordance with *section 33*.

(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.

33.—(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 knows or believes might 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.

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

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

34.—(1) A person shall not be liable in damages in respect of the making of 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.

(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 33(1)*.

(5) The Bank may not divulge 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 in order to ensure proper investigation of the matters to which the disclosure relates.

Protection of employees from penalisation for making a protected disclosure.

35.—(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—

(*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,

(*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)*, *(b)*, *(c)*, *(d)* and *(e)* of the definition of "penalisation" in *section 32* shall not be construed in a manner which prevents an employer from—

(*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.

(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—

(*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.

(5) In proceedings under *Schedule 5* before a rights commissioner or the Labour Court in relation to a complaint that *subsection (1)* 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.

(6) 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.

(7) 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.

(8) 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

(*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,

shall, in a prosecution of the person under *subsection (6)* or *(7)*, be evidence of the matters so stated without further proof unless the contrary is shown.

Tortious liability of person for victimisation.

36.—(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—

(*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,

(*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)*,

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 5

Bank's Power to Give Directions

Bank's power to give directions.

37.—(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.

(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;

(*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;

(*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;

(*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

(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:

(*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;

(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;

(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;

(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;

(*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) The provisions of a direction have effect from the date specified in the direction in relation to them.

(5) A direction 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 securing that it is fully and effectively carried out.

(6) The Bank may publish a direction in any such manner as the Bank considers appropriate.

(7) A regulated financial service provider, or a related undertaking, to whom a direction is given under this section may apply to the High Court for an order setting aside the direction.

(8) An application under *subsection (7)* 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 the related undertaking, or such further period as the High Court considers just and equitable in the circumstances, and the High Court may make any such interim or interlocutory order as it considers appropriate.

(9) 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 (7)* may be heard otherwise than in public.

Prior approval of High Court for certain proceedings.

38.—(1) Where a direction given under *section 37* in respect of a regulated financial service provider or related undertaking so provides—

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

(*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.

(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,

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

(*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.

Bank may apply to High Court for orders enforcing directions.

39.—(1) If the Bank is of the opinion that a direction given under *section 37* 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.

(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 *section 37*, 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.

(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.

PART 6

Bank's Power to Make Regulations

Bank's power to make regulations.

40.—(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;

(*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 and agents;

(*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;

(*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;

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

(i) marketing, advertising or other promotional literature associated with financial services to be identified as such,

(ii) the inclusion in such literature of specified information about the regulated financial service provider and financial services to which it relates,

(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,

(v) the identification of any additional financial obligations or commitments which might arise for customers after receiving financial services,

(vi) the making of comparisons between financial services and other financial services and the application of specified alternative assumptions in relation to financial services,

(vii) the giving of information about costs and associated charges relating to financial services,

(viii) the making to customers of statements as to whether financial services are suitable,

(ix) that any recommendations about, or endorsements of, financial services be given only in accordance with specified conditions, and

(x) that all information provided be accurate (and not misleading) and clear and easily understood by the average customer;

(*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),

and provision about what shall or may be done by regulated financial service providers if information sought from customers is not provided;

(*i*) 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;

(*j*) 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—

(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,

(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,

(iv) 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,

(v) specifying the conditions subject to which loans may be made, credit may be made available or other financial services may be provided, and

(vi) 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;

(*k*) 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—

(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,

(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,

(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;

(*l*) 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—

(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;

(*m*) provision for requiring regulated financial service providers to facilitate the switching of business by customers to other financial service providers, including provision—

(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;

(*n*) provision about how regulated financial service providers are to deal with customers in financial difficulty, including provision—

(i) setting out the considerations to be taken into account in considering how to deal with customers in arrears,

(ii) specifying the information to be provided to customers in arrears about the management of the arrears and the consequences of default, and

(iii) specifying the resolution processes to be adopted in relation to arrears, (*o*) 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;

(*p*) provision about the ways in which errors made by regulated financial service providers in respect of their customers are to be corrected;

(*q*) 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—

(i) about the first point of contact for complainants,

(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,

(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;

(*r*) 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—

(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;

(*s*) 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

(ii) plans for the orderly winding-up or transfer of business in specified financial circumstances;

(*t*) provision for the keeping by regulated financial service providers of such records as may be required for effective management and regulation, including provision—

(i) about the form and manner in which, and period for which, they are to be kept,

(ii) enabling their verification, and

(iii) for permitting access by the Bank.

(*u*) any other provision relating to any of the matters set out in *paragraphs (a)* to *(t)* which the Bank considers appropriate.

(3) Regulations made under *subsection (2)(k)* may specify that a 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,

(*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)*.

Consultation before making regulations.

41.—Before making regulations under *section 40*, the Bank—

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

(*b*) may consult such other persons as the Bank considers appropriate.

Matters to which Bank to have regard when making regulations.

42.—When making regulations under *section 40* 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.

Supplementary provisions relating to regulations.

43.—(1) Regulations made under *section 40* 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,

(*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.

(2) Regulations made under *section 40* shall be laid before each House of the Oireachtas as soon as may be after they are made.

PART 7

Enforcement

44.—(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—

Notices to the public.

(*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

(*b*) claiming, or holding itself, himself or herself 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 provision claims or holds itself, himself or herself out to be providing.

(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.

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

45.—(1) This section applies to a regulated financial service provider—

Restitution orders.

(*a*) in respect of whom a finding has been made under section 33AQ of the Act of 1942 that a prescribed contravention has been or is being committed and on whom any sanction has been imposed under subsection (3) of that section,

(*b*) on whom any sanction has been imposed pursuant to section 33AR,

(*c*) on whom any sanction has been imposed pursuant to section 33AV, or

(*d*) 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 regulated financial service provider to whom this section applies where the High Court is satisfied that as a result of the prescribed contravention or offence concerned—

(*a*) the person has been unjustly enriched, or

(*b*) one or more than one other person has suffered loss or another adverse effect.

(3) The High Court may order the regulated financial service provider 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—

(*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,

(*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 regulated financial service provider 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 regulated financial service provider concerned to supply 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 regulated financial service provider has been unjustly enriched as mentioned in *paragraph (a)* of that subsection;

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

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

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

(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.

Limitation of liability.

47.—A person is not liable to any other person solely as a result of giving information to the Bank pursuant to a request 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*.

PART 8

AMENDMENTS TO PART IIIC OF ACT OF 1942

Amendment of section 33AO of Act of 1942.

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

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

(*b*) by inserting the following subsection:

"(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.".

Amendment of section 33AQ of Act of 1942.

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

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

"(*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—

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

(i) €10,000,000, and

(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*):

"(*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.".

Amendment of section 33AV of Act of 1942.

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

"(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).

(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.".

Amendment of section 33BA of Act of 1942.

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

"(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).

(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.

(9) A person who—

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

52.—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;

(*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.

(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

(*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

(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.".

PART 9

MISCELLANEOUS

Co-operation with overseas regulators.

53.—(1) In this section "overseas regulator" 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.

(2) At the request of an overseas regulator to do so in relation to any matter, the Bank may—

(*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

(*b*) authorise one or more than one authorised officer to exercise any of his or her powers for the purposes of investigating the matter.

(3) In deciding whether or not to exercise any of its powers under *subsection (2)*, the Bank may take into account in particular:

(*a*) whether in the country or territory of the overseas regulator, corresponding assistance would be given to an authority duly authorised in the State to perform functions corresponding to functions exercised by the overseas regulator;

(*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;

(*c*) the seriousness of the case and its importance to persons in the State;

(*d*) whether it is otherwise appropriate in the public interest to give the assistance sought.

(4) The Bank may decide that it will not exercise any of its powers under *subsection (2)* unless the overseas regulator undertakes to make such contribution towards the cost of such exercise as the Bank considers appropriate.

(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.

(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 overseas regulator to attend, and take part in, any interview conducted for the purposes of the investigation of the matter concerned.

(7) A direction under *subsection (6)* is not to be given unless the Bank is satisfied that any information obtained by an overseas regulator 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.

(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.

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

54.—Section 56 of the Personal Injuries Assessment Board Act 2003 is amended in subsection (6) by substituting "an employee of the Central Bank of Ireland nominated by the Governor of the Central Bank of Ireland and the chief executive of the National Consumer Agency" for "and the chief executive of the National Consumer Agency".

Section 4.

SCHEDULE 1

Repeals and Revocations

Section 4(1).

PART 1

Repeals

Item (1)	Number and year (2)	Short title (3)	Extent of repeal (4)
1	No. 24 of 1971	Central Bank Act 1971	Section 17A
2	No. 3 of 1989	Insurance Act 1989	Sections 59 and 60
3	No. 17 of 1989	Building Societies Act 1989	Section 41
4	No. 21 of 1989	Trustee Savings Banks Act 1989	Section 24A
5	No. 24 of 1994	Investment Limited Partnerships Act 1994	Section 25(2)
6	No. 11 of 1995	Investment Intermediaries Act 1995	Sections 9(3), 64 and 65
7	No. 8 of 1997	Central Bank Act 1997	Sections 36G, 36H, 36I, 75 and 76
8	No. 47 of 2001	Asset Covered Securities Act 2001	Section 70

Section 4(2).

PART 2

Revocations

Item (1)	Number and year (2)	Citation (3)	Extent of revocation (4)
1	S.I. No. 13 of 2005	European Communities (Insurance Mediation) Regulations 2005	Regulations 28, 29, 30 and 31
2	S.I. No. 380 of 2006	European Communities (Reinsurance) Regulations 2006	Regulations 72, 73, 74 and 75
3	S.I. No. 60 of 2007	European Communities (Markets in Financial Instruments) Regulations 2007	Regulations 163, 164 and 165
4	S.I. No. 383 of 2009	European Communities (Payment Services) Regulations 2009	Regulations 99, 100, 101, 102 and 110
5	S.I. No. 183 of 2010	European Communities (Cross Border Payments) Regulations 2010	Regulations 6, 7, 8, 9, 10, 11 and 12
6	S.I. No. 183 of 2011	European Communities (Electronic Money) Regulations 2011	Regulations 62, 63, 64, 65 and 72

SCHEDULE 2

Section 5.

AMENDMENTS OF CENTRAL BANK ACTS

PART 1

Section 5(1).

AMENDMENTS OF CENTRAL BANK ACT 1942

Item (1)	Provision affected (2)	Amendment (3)
1	Section 2	(*a*) In subsection (1) substitute the following for the definition of "designated enactments": " '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;". (*b*) Insert the following subsection: "(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.".
2	Section 33AK	(*a*) Substitute "subsection (1A)" for "subsection (1)(*b*)" in each place. (*b*) In subsection (3) substitute the following for paragraph (*b*): "(*b*) Paragraph (*a*) does not apply— (i) where the Bank is satisfied that the supervised entity has already reported the information concerned to the relevant body, or (ii) where the information concerned has come into the possession of, or to the knowledge of the Bank, from an authority, in a jurisdiction other than that of the State, duly authorised to exercise functions similar to any one or more of the statutory functions of the Bank.".
3	Section 57BI	Insert the following after subsection (2): "(3) 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.".

<table>
<tr><th>Item

(1)</th><th>Provision affected
(2)</th><th>Amendment

(3)</th></tr>
<tr><td>4</td><td>Schedule 2, Part 1</td><td>Insert the following:

“
<table>
<tr><td>No. 13 of 2009</td><td>Financial Services (Deposit Guarantee Scheme) Act 2009</td><td>The whole Act</td></tr>
<tr><td>No. - of 2011</td><td>Central Bank (Supervision and Enforcement) Act 2011</td><td>The whole Act other than section 54</td></tr>
</table>
”.</td></tr>
</table>

Section 5(1).

PART 2

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” delete “section 17A” and substitute “*Part 3* of the *Central Bank (Supervision and Enforcement) Act 2011*”.
2	Section 58(1)	Delete “17A,”.

Section 5(1).

PART 3

Amendments of Central Bank Act 1997

Item (1)	Provision affected (2)	Amendment (3)
1	Section 28	(*a*) Substitute the following for the definition of “authorisation”: “ ‘authorisation’ means an authorisation under this Part authorising a person to carry on a regulated business;”. (*b*) Delete the definition of “inspector”. (*c*) In the definition of “retail credit firm”— (i) substitute “paragraph (*e*)” for “paragraph (*g*)”, and (ii) substitute “section 2(1)” for “section 3”.
2	Section 32A(5)(*b*)	After “officer” insert “appointed under *Part 3* of the *Central Bank (Supervision and Enforcement) Act 2011*”.

PART 4

Section 5(1).

AMENDMENTS OF CENTRAL BANK REFORM ACT 2010

Item (1)	Provision affected (2)	Amendment (3)
1	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 *section 33(2)* of the *Central Bank (Supervision and Enforcement) Act 2011* or has made such a disclosure knowing it to be false or misleading in a material respect,".
2	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 *section 33(2)* of the *Central Bank (Supervision and Enforcement) Act 2011* or has made such a disclosure knowing it to be false or misleading in a material respect,".

Section 5.

SCHEDULE 3

AMENDMENTS OF CERTAIN OTHER ACTS

Section 5(2).

PART 1

AMENDMENTS OF BUILDING SOCIETIES ACT 1989

Item (1)	Provision affected (2)	Amendment (3)
1	Section 119(1)(*a*)	(*a*) In subparagraph (v) substitute "section 41A" for "sections 41 or 41A". (*b*) Delete subparagraph (vii).

Section 5(2).

PART 2

AMENDMENT OF TRUSTEE SAVINGS BANKS ACT 1989

Item (1)	Provision affected (2)	Amendment (3)
1	Section 62(1)	Delete "24A,".

Section 5(2).

PART 3

AMENDMENT OF INVESTMENT LIMITED PARTNERSHIPS ACT 1994

Item (1)	Provision affected (2)	Amendment (3)
1	Section 25(4)	In paragraph (*a*) delete the definition of "appropriate person".

Section 5(2).

PART 4

AMENDMENTS OF CONSUMER CREDIT ACT 1995

Item (1)	Provision affected (2)	Amendment (3)
1	Section 8G(1)	(*a*) In the definition of "authorised officer" substitute "8M" for "8L". (*b*) Delete the definition of "responsible authority".

Item (1)	Provision affected (2)	Amendment (3)
2	Section 8M	(*a*) In subsection (1) substitute "The Minister" for "A responsible authority". (*b*) In subsection (3) substitute "The Minister" for "A responsible authority". (*c*) In subsection (5)— (i) in paragraph (*a*) substitute "the Minister" for "the responsible authority concerned", and (ii) in paragraph (*c*) substitute "the Minister" for "the responsible authority".

PART 5

Section 5(2).

AMENDMENTS OF INVESTMENT INTERMEDIARIES ACT 1995

Item (1)	Provision affected (2)	Amendment (3)
1	Section 2(1)	Substitute the following for the definition of "authorised officer": " 'authorised officer' means a person appointed to be an authorised officer under *Part 3* of the *Central Bank (Supervision and Enforcement) Act 2011;*".
2	Section 20(6)	Substitute "section 19 of this Act and *Part 3* of the *Central Bank (Supervision and Enforcement) Act 2011*" for "sections 19 and 65 of this Act".
3	Section 79(1)	Substitute "21(10)" for "21(9)".

PART 6

Section 5(2).

AMENDMENTS OF CREDIT UNION ACT 1997

Item (1)	Provision affected (2)	Amendment (3)
1	Section 90	Substitute the following for section 90: "90.—(1) In this section and section 91 'authorised officer' means an authorised officer appointed under *Part 3* of the *Central Bank (Supervision and Enforcement) Act 2011.* (2) The Bank may appoint an authorised officer to carry out an inspection and to provide a report of the inspection to the Bank. (3) An authorised officer may, for the purposes of carrying out an inspection, exercise any of the powers conferred on an authorised officer under *Part 3* of the *Central Bank (Supervision and Enforcement) Act 2011.*".

Item (1)	Provision affected (2)	Amendment (3)
2	Section 91	(*a*) Substitute the following for subsections (1) and (2): "(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 his possession or power 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. (2) If required to do so by a notice in writing served on it by the Bank, a credit union shall furnish to the Bank a financial statement or periodic financial statements in such form and containing such information as may be specified in the notice and as may be reasonably required by the Bank in the exercise of the powers of the Bank under this Act.". (*b*) Substitute the following for subsection (4): "(4) The Bank may take copies of or extracts from any item produced in compliance with a notice under subsection (1) or (2) and, if so required by the Bank, the person on whom a notice under subsection (1) was served or, in the case of a statement produced in compliance with a notice under subsection (2), a person who is or has been an officer, member, voluntary assistant, agent or liquidator of the credit union shall provide any explanation which may reasonably be required of an item so produced.".

PART 7

Section 5(2).

AMENDMENTS OF INVESTOR COMPENSATION ACT 1998

Item (1)	Provision affected (2)	Amendment (3)
1	Section 9	Substitute the following for section 9: "(1) In this section "Act of 2011" means the *Central Bank (Supervision and Enforcement) Act 2011.* (2) Where the supervisory authority forms the view that an insurance intermediary may be unable to repay money belonging to a client of the insurance intermediary, the supervisory authority may appoint an authorised officer under *Part 3* of the Act of 2011 to investigate whether the insurance intermediary is unable to repay money or otherwise discharge its obligations towards clients of the insurance intermediary and to make a report to the supervisory authority in respect of the insurance intermediary. (3) In relation to investment firms, an inspector appointed under the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) shall, for the purposes of this section, have the powers conferred on an authorised officer appointed under *Part 3* of the Act of 2011. (4) In relation to investment firms which are credit institutions, an inspector appointed under section 45 of the Building Societies Act 1989 shall, for the purposes of this section, have the powers conferred on an authorised officer appointed under *Part 3* of the Act of 2011. (5) In relation to investment firms which are investment business firms, an inspector appointed under section 66 or 73 of the Investment Intermediaries Act 1995 shall, for the purposes of this section, have the powers conferred on an authorised officer appointed under *Part 3* of the Act of 2011.".
2	Section 33(2)	(*a*) Substitute "*Part 3* of the *Central Bank (Supervision and Enforcement) Act 2011*" for "the Act of 1995 and the European Communities (Markets in Financial Instruments) Regulations 2007". (*b*) Substitute "Part of that Act" for "Act and those Regulations".

Section 5(2).

PART 8

Amendment of Asset Covered Securities Act 2001

Item (1)	Provision affected (2)	Amendment (3)
1	Section 98	In paragraph (*a*) delete "or any person authorised by it to perform the relevant function on its behalf,".

SCHEDULE 4

Section 5.

AMENDMENTS OF CERTAIN STATUTORY INSTRUMENTS

PART 1

Section 5(3).

AMENDMENTS OF EUROPEAN COMMUNITIES (DISTANCE MARKETING OF CONSUMER FINANCIAL SERVICES) REGULATIONS 2004

(S.I. No. 853 of 2004)

Item (1)	Provision affected (2)	Amendment (3)
1	Regulation 25	In paragraph (1) substitute "competent authority (other than the Bank)" for "competent authority".
2	Regulation 26	In paragraph (1) substitute "competent authority (other than the Bank)" for "competent authority".

PART 2

Section 5(3).

AMENDMENT OF EUROPEAN COMMUNITIES (INSURANCE MEDIATION) REGULATIONS 2005

(S.I. No. 13 of 2005)

Item (1)	Provision affected (2)	Amendment (3)
1	Regulation 3(1)	Delete the definition of "authorised officer".

PART 3

Section 5(3).

AMENDMENT OF EUROPEAN COMMUNITIES (REINSURANCE) REGULATIONS 2006

(S.I. No. 380 of 2006)

Item (1)	Provision affected (2)	Amendment (3)
1	Regulation 3(1)	Delete the definition of "authorised officer".

Section 5(3).

PART 4

Amendments of European Communities (Markets in Financial Instruments) Regulations 2007

(S.I. No. 60 of 2007)

Item (1)	Provision affected (2)	Amendment (3)
1	Regulation 3(1)	Substitute the following for the definition of "authorised officer": " 'authorised officer' means an authorised officer appointed under *Part 3* of the *Central Bank (Supervision and Enforcement) Act 2011*;".
2	Regulation 6(7)	Substitute "*Part 3* of the *Central Bank (Supervision and Enforcement) Act 2011*" for "Regulation 164".
3	Regulation 14(1)	In subparagraph (b) insert "appointed under *Part 3* of the *Central Bank (Supervision and Enforcement) Act 2011*" after "authorised officer".
4	Regulation 147(1)(g)(ii)	Substitute "*Part 3* of the *Central Bank (Supervision and Enforcement) Act 2011*" for "Regulation 164".
5	Regulation 174(1)	Delete "an authorised officer or".

Section 5(3).

PART 5

Amendments of European Communities (Insurance and Reinsurance Groups Supplementary Supervision) Regulations 2007

(S.I. No. 366 of 2007)

Item (1)	Provision affected (2)	Amendment (3)
1	Regulation 3(1)	Substitute the following for the definition of "authorised officer": " 'authorised officer' means an authorised officer appointed under *Part 3* of the *Central Bank (Supervision and Enforcement) Act 2011*;".
2	Regulation 9	(*a*) Substitute the following for paragraph (5): "(5) If, in a particular case, the Bank wishes to verify information concerning an insurer or reinsurer located in another Member State and the insurer or reinsurer is an associate of an insurer or reinsurer that both holds an authorisation issued by the Bank and is subject to supplementary supervision, the Bank shall request the competent authority of that other Member State to have that verification carried out by that authority or an officer appointed by it.". (*b*) In paragraph (7) insert "under *Part 3* of the *Central Bank (Supervision and Enforcement) Act 2011*" after "authorised officer".

PART 6

Section 5(3).

AMENDMENTS OF EUROPEAN COMMUNITIES (CREDIT INSTITUTIONS)(CONSOLIDATED SUPERVISION) REGULATIONS 2009

(S.I. No. 475 of 2009)

Item (1)	Provision affected (2)	Amendment (3)
1	Regulation 20	Substitute the following for Regulation 20: "20.—(1) Section 18 of the Central Bank Act 1971 (No. 24 of 1971) applies to and in relation to a credit institution that is subject to consolidated supervision by the Bank as if— (*a*) references in that section to a holder of a licence under that Act were references to the credit institution, and (*b*) references in that section to a related body of a holder of such a licence were references to an associated enterprise of the credit institution.". (2) Section 41A of the Building Societies Act 1989 (No. 17 of 1989) applies to and in relation to a building society that is subject to consolidated supervision by the Bank as if references in that section to a related body of a building society were references to an associated body of the building society. (3) Section 25 of the Trustee Savings Banks Act 1989 (No. 21 of 1989) applies to and in relation to a credit institution that is subject to consolidated supervision by the Bank as if references in that section to a trustee savings bank were references to the credit institution.".

PART 7

Section 5(3).

AMENDMENT OF EUROPEAN COMMUNITIES (CROSS BORDER PAYMENTS) REGULATIONS 2010

(S.I. No. 183 of 2010)

Item (1)	Provision affected (2)	Amendment (3)
1	Regulation 2(1)	Delete the definitions of "relevant records" and "search warrant".

Section 35.

SCHEDULE 5

REDRESS FOR CONTRAVENTION OF *SECTION 35(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 his or her consent) 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 35(1)* in relation to the employee.

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

(*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

(*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 32(3)*, re-instatement or re-engagement;

(*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.

(4) The references in *clauses (b)* and *(c)* of *paragraph (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.

(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.

(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.

(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.

(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.

(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.

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

(*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.

(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:

(*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;

(*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 foregoing matters.

(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.

(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.

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.

(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—

(*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, or both.

(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

(*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,

the employee concerned 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.

(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.

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

(7) (*a*) If penalisation of an employee, in contravention of *section 35(1)*, constitutes a dismissal of the employee, as referred to in *paragraph (a)* of the definition of "penalisation" in *section 32*, 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 his or her 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, such dismissal may not be presented to a rights commissioner under *paragraph 1(1)*.

(*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 his or her consent) presents a complaint to a rights commissioner under *paragraph 1(1)* in respect of a dismissal referred to in *clause (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.

Enforcement of determinations of Labour Court.

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 his or her consent), or

(*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.

(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.

(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 the order is made.

(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.

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)* 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.

(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)* 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.

BILLE AN BHAINC CEANNAIS (MAOIRSIÚ AGUS FORFHEIDHMIÚ), 2011

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do dhéanamh socrú breise maidir le soláthraithe seirbhísí airgeadais agus seirbhísí airgeadais a rialáil agus a mhaoirsiú; do dhéanamh socrú breise maidir le reachtaíocht a bhaineann le seirbhísí airgeadais a fhorfheidhmiú; do dhéanamh socrú maidir le daoine a thuairiscíonn sáruithe a chosaint; chun na gcríoch sin agus chun críoch eile do dhéanamh socrú maidir le leasuithe ar Achtanna an Bhaine Ceannais, 1942 go 2010 agus ar achtanna agus ar ionstraimí reachtúla áirithe eile agus do dhéanamh leasú breise agus leathnú ar na hachtanna agus ar na hionstraimí reachtúla sin, agus do dhéanamh socrú i dtaobh nithe gaolmhara.

An tAire Airgeadais a thíolaic,
26 *Iúil*, 2011

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) BILL 2011

BILL

(as initiated)

entitled

An Act to further provide for the regulation and supervision of financial service providers and financial services; to further provide for the enforcement of financial services legislation; to provide for the protection of persons reporting breaches; for those and other purposes to provide for amendments to, and to further amend and extend, the Central Bank Acts 1942 to 2010 and certain other acts and statutory instruments, and to provide for related matters.

Presented by the Minister for Finance,
26*th July*, 2011

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS, CONTAE MHAIGH EO,
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BILLE AN BHAINC CEANNAIS (MAOIRSIÚ AGUS FORFHEIDHMIÚ), 2011
CENTRAL BANK (SUPERVISION AND ENFORCEMENT) BILL 2011

Meabhrán Mínitheach
Explanatory Memorandum

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

EXPLANATORY MEMORANDUM

The Explanatory Memorandum does not form part of the Bill and does not purport to be a legal interpretation.

Purposes of the Bill
The purposes of the Bill are:

(a) to provide enhanced powers to the Central Bank of Ireland for the supervision of regulated financial service providers;

(b) to provide enhanced powers to the Central Bank of Ireland for the enforcement of financial services legislation; and

(c) to provide for related amendments to the Central Bank Acts 1942 to 2010 and certain other acts and statutory instruments.

Provisions of the Bill

PART 1

PRELIMINARY

Section 1 — Short title, collective citation and construction provides for the short title and the collective citation of the Act.

Section 2 — Commencement provides for the commencement of the Act on such day or days as the Minister by order appoints.

Section 3 — Interpretation provides for the defining of terms used within the bill. This includes identifying the extent of Irish financial services law for the purposes of the Central Bank's enforcement and supervisory powers under this Act.

Section 4 — Repeals and revocations provides that various enactments and statutory instruments are repealed or revoked as set out in schedule 1.

Section 5 — Amendments provides that various enactments and statutory instruments are amended as set out in schedules 2, 3 and 4.

Section 6 — Savings and transitional provisions provides that certain actions undertaken by authorised officers under an enactment repealed or revoked by the bill before the commencement of the relevant repeals and revocations in this bill will continue to be valid following the repeal or revocation.

PART 2

PROVISION OF REPORT TO BANK

Section 7 — Definitions (Part 2) provides definitions for the purposes of the part.

Section 8 — Persons to whom this part applies provides that the persons who may be required to provide a report to the Central Bank under this part include a regulated financial service provider and a related undertaking of a regulated financial service provider.

Section 9 — Giving of notice to reviewee to provide a report provides that the Central Bank may issue a notice to a person to whom this part applies requiring that person to provide the Central Bank with a report. The notice is to be in writing and is to specify: the date on which the notice was given; the period within which the reviewee shall nominate a person to the Central Bank for approval to prepare the report; the purpose of the report; the scope of the report; the timetable for completion of the report; the matters required to be reported on; whether the report is to include recommendations; the form of the report; the methodology to be used in the preparation of the report; and other matters the Central Bank considers appropriate.

Section 10 — Matters to which Bank shall have regard before giving notice under section 9 provides that the Central Bank shall have regard to whether the Central Bank might use other powers available to it if more appropriate; the relevant knowledge and expertise available to the person who is required to provide the Central Bank with the report ("the reviewee") and 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.

Section 11 — The reviewer provides for the appointment of a person, nominated by the reviewee, appearing to the Central Bank to have the skills necessary relating to the business of the reviewee to prepare a report. In making a determination as to whether a person appears to have the skills necessary, the Central Bank will consider whether the person has the necessary competence and capabilities; the ability to complete the report within the period specified by the Central Bank; any relevant specialised knowledge; any potential conflict of interest in reviewing the matters to be reported on; sufficient detachment; and suitable experience.

Section 12 — Contract with reviewer provides that the reviewee will enter into a contract, governed by Irish law, with the reviewer to provide the report. The contract will be deemed to have the following irrevocable provisions: the report will be prepared within the specified time; the reviewer will not be limited by any duty of confidentiality to the reviewee in preparing the report; the reviewer will provide the Central Bank with periodic updates on progress and issues arising, interim reports, documents and working papers; copies of any draft reports given to the reviewee and specific information about the planning and progress of the work to be undertaken.

The Bank may enforce any of the terms of the contract and will not be bound by or be party to any arbitration clause in the contract. The Bank may require a copy of the draft and make any modifications it considers appropriate.

Section 13 — Cost of report provides that the reviewee will be responsible for the cost of preparing the report.

Section 14 — Assisting the reviewer provides that the reviewee, and any person who at any time has provided services to a reviewee in relation to any matter on which a report is required, is to give all reasonable assistance to the reviewer.

Section 15 — Duty of reviewee to ensure performance of reviewer's functions provides that the reviewee will endeavour to ensure that the reviewer performs his duties in accordance with the terms of the contract.

Section 16 — Bank may use report provides that the Central Bank may use the report for any of its functions.

Section 17 — Bank not bound by report nor liable for it provides that the Central Bank is not responsible for or required to observe the contents of the report, nor should the implementation of any recommendation in the report be assumed to have the Central Bank's endorsement.

Section 18 — Offence of providing false information to a reviewer provides that any person who instructs or impedes a reviewer or provides him with false or misleading information in the course of his duties under this part is guilty of an offence.

An offence under this section may result on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or on conviction on indictment, a fine not exceeding €250,000 or imprisonment for a term not exceeding 5 years or both.

Section 19 — Bank may apply to High Court for an order provides that the Central Bank may, where it believes that a person is failing to comply with a duty under this part, apply to the High Court for an order to enforce the obligations, or it may make a direction to a regulated financial service provider under *section 37.*

PART 3

AUTHORISED OFFICERS

Section 20 — Definitions (Part 3) provides for the defining of terms used within this part.

Section 21 — Persons to whom this part applies provides that the powers of an authorised officer under this part may be exercised in relation to the following: a regulated financial service provider or a former regulated financial service provider; a person who has applied for an authorisation to be a regulated financial service provider; a person who provides a regulated financial service without authorisation; a related undertaking or person who has relevant information about any of the foregoing or information about a financial or investment product; an officer or employee of the foregoing; or any person whom the Central Bank or an authorised officer believes has relevant information.

The powers under this part may also be exercised in relation to a range of persons concerned in a termination process, where relevant, including liquidators, examiners, administrators, special managers, receivers or official assignees or their counterparts in other states.

Section 22 — Appointment of authorised officers provides for the appointment and termination of appointment of authorised officers. The Bank may appoint any of its officers or employees or any other person whom it believes has the qualifications and experience necessary to exercise the powers of an authorised officer.

Section 23 — Warrant of appointment provides that the Central Bank will provide authorised officers with warrants of appointment and that any person in respect of whom the officer exercises his powers is entitled to see that warrant and a form of personal identification.

Section 24 — Power of authorised officer to enter premises provides that an authorised officer has the right to enter any premises he believes has been used for the business of a person to whom this part applies or where relevant records may be kept. However, an authorised officer may not enter a private dwelling without a warrant or consent.

Section 25 — Powers of authorised officer provides that an authorised officer may search, inspect and secure premises; require persons to produce relevant records; inspect records; take copies of or extracts from records or the records themselves; require persons to answer questions or to provide explanations of actions or records or to provide a report.

An authorised officer may require that any information gathered in the course of his duties be certified as accurate and complete by an appropriate person and may require all necessary assistance and co-operation when accessing computer and other information systems, including passwords.

Where an authorised officer removes records from a premises he must provide a copy of or return those records to their owner within 14 days of their removal unless he has the consent of their owner to do otherwise.

Persons in respect of whom an authorised officer exercises his powers under this section must afford the authorised officer all reasonable assistance and co-operation.

An authorised officer may, when exercising any power under this section, be accompanied by other authorised officers, members of the Garda Síochána or other persons.

Section 26 — Warrant required to enter premises provides that an authorised officer may apply to the District Court in which the premises is located for a warrant to enter any premises where the authorised officer reasonably believes relevant information to be held.

Section 27 — Authorised officer may attend meetings of regulated financial service providers provides that an authorised officer may, without limitation to his powers, attend any meeting relevant to the business of a regulated financial service provider.

Section 28 — Production of record or other information subject to legal professional privilege not required provides that an authorised officer may not require any information under this part which is the subject of legal professional privilege.

Section 29 — Disclosure or production not to be treated as breach or to affect lien provides that production of any information shall not prejudice any lien in place over that information.

Section 30 — Failure to comply with a requirement provides that where a person fails to comply with a requirement under this part, an authorised officer may apply to the High Court for an order and the Court may make any order it sees fit having heard any representations from that person.

Section 31 — Offence of obstruction or provision of false information provides that it is an offence to obstruct or provide false or misleading information to an authorised officer carrying out his functions under this part. It is a defence that the person concerned would otherwise incriminate himself if he provided the information, or that he had not been informed by the authorised officer that to fail to provide information would constitute an offence.

PART 4

PROTECTION FOR PERSONS REPORTING BREACHES

Section 32 — Definitions (Part 4) provides for the defining of terms used within this part.

Section 33 — Protected disclosure provides that where a person, in good faith, discloses to the Central Bank or an authorised officer information that they reasonably believe will show an offence under financial services legislation, a prescribed or other contravention, or that evidence relating to one of those is likely to be deliberately concealed or destroyed then that disclosure is a protected disclosure.

A person who carries out a pre-approval controlled function (within the meaning of section 18 of the Central Bank Reform Act 2010) is under a duty to make a protected disclosure where he or she has information which they know or ought to know would be of material assistance to the Central Bank unless that person has a reasonable excuse or to do so would tend to incriminate the person.

Section 34 — Protection from civil liability of persons who have made a protected disclosure provides that a person who makes a protected disclosure will not be liable in damages or any other form of relief to another person solely because of the disclosure. The Bank may not disclose the identity of a person who makes a protected disclosure without their agreement unless it is necessary to do so in order to ensure the proper investigation of the matter concerned.

Section 35 — Protection of employees from penalisation for making a protected disclosure provides that an employer may not penalise an employee for making a protected disclosure. An employee who believes they have been penalised may make a complaint to a rights commissioner in accordance with the procedures set out in schedule 5.

Penalisation includes: suspension; lay-off or dismissal; demotion or loss of opportunity for promotion; transfer of duties; change of location of place of work; reduction in wages or change in working hours; the imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty); unfair treatment; coercion; intimidation or harassment; discrimination; disadvantage or adverse treatment; injury, damage or loss; and reprisal.

Section 36 — Tortious liability of person for victimisation provides that where a person causes detriment to a person because the second person has made a protected disclosure then a right of action in tort will arise.

Detriment for the purposes of this section includes: intimidation or harassment; discrimination, disadvantage or adverse treatment in relation to a person's employment; injury, damage or loss; or a threat of reprisal.

PART 5

BANK'S POWER TO GIVE DIRECTIONS

Section 37 — Bank's power to give directions provides that where the Central Bank is satisfied that a regulated financial service provider or a related undertaking is, or is likely to be, unable to meet its obligations to its creditors or its customers; can not or will not maintain adequate capital or other financial resources; is failing or likely to fail to comply with financial services law; or is jeopardising or may jeopardise the rights and interests of customers, then it may give a direction in writing to that person to refrain, for up to 12 months, from providing a financial service; making payments of a specified kind; acquiring or disposing of assets; entering into specified kinds of agreement; or soliciting specified business. A direction may also require a regulated financial service provider or a related undertaking to raise and maintain capital or other financial resources; make modifications to its systems and controls; comply with a requirement or condition imposed on it by financial services legislation; make modifications to its business practices and dealings with third parties; or do certain other things.

A person who is subject to a direction under this section may apply to the High Court within 14 days for the direction to be set aside and the Court may, having heard the matter in private if necessary, do so if it considers it just and equitable in the circumstances.

Section 38 — Prior approval of High Court for certain proceedings provides that where a direction has been made by the Central Bank in respect of a regulated financial service provider or a related undertaking under *section 37* then the consent of the High Court is required before any person may commence or continue proceedings for the winding-up, dissolution, receivership, bankruptcy of the regulated financial service provider (or related undertaking) or related proceedings.

Section 39 — Bank may apply to High Court for orders enforcing directions provides that the Central Bank may apply to the High Court for an order to ensure compliance with a direction made under *section 37.*

PART 6

BANK'S POWER TO MAKE REGULATIONS

Section 40 — Bank's power to make regulations provides that the Central Bank may make regulations to ensure the proper and effective regulation of financial services. The Bank may make regulations in relation to the following matters:

- the procedures that regulated financial service providers are to adopt for identifying, monitoring, and reporting on risks;

- the administrative, accounting, auditing and reporting arrangements of regulated financial service providers;

- the monitoring and recording by regulated financial service providers of the training and qualifications of their officers, employees and agents;

- 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;
- provision for securing that regulated financial service providers do not prevent access to financial services which form a necessary part of the customers' participation in basic economic activity;
- specifying the information to be given to customers by regulated financial service providers;
- restricting the making by regulated financial service providers of unsolicited phone calls or visits to customers;
- requiring regulated financial service providers to take account of customers' understanding of financial services and the suitability of those financial services;
- the standards to be met by regulated financial service providers in relation to the execution of customer orders;
- the making of loans and making available of other credit facilities or the provision of other financial services to customers;
- the making of loans and other credit facilities and the provision of other financial services by a regulated financial service provider to a restricted person (someone working for the firm or who is related to someone working for the firm);
- 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;
- requiring regulated financial service providers to facilitate the switching of business by customers to other financial service providers;
- how regulated financial service providers are to deal with customers in financial difficulty;
- the processes and procedures to be adopted by regulated financial service providers in respect of the processing of rebates and refunds owed to customers;
- the ways in which errors made by regulated financial service providers in respect of their customers are to be corrected;
- requiring the making available of simple and inexpensive resolution procedures for disputes between regulated financial service providers and customers;
- 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;
- the giving of information relating to such transfer, cessation or merger;

- ensuring that customers' interests are sufficiently protected in the event of such transfer, cessation or merger;

- the keeping by regulated financial service providers of such records as may be required for effective management and regulation; and

- the keeping by regulated financial service providers of recovery plans or plans for the orderly winding-up or transfer of business in specified financial circumstances.

Section 41 — Consultation before making regulations provides that the Central Bank will consult the Minister for Finance and may consult other persons before making regulations under this part.

Section 42 — Matters to which Bank to have regard when making regulations provides that the Central Bank will have regard to the need for proportionality and effectiveness in the making of regulations under this part.

Section 43 — Supplementary provisions relating to regulations provides that where making regulations under this part the Central Bank will consider whether the proposed regulations are effective and proportionate having regard to the financial service providers affected by them.

Section 42 — Supplementary provisions relating to regulations provides that regulations made under this part may contain such additional matters as are necessary for the purposes of the regulations and that the regulations will be laid before the Houses of the Oireachtas.

PART 7

ENFORCEMENT

Section 44 — Notices to the public provides that the Central Bank may issue notices warning the public where a person is providing a regulated financial service without proper authorisation.

Section 45 — Restitution orders provides that where a regulated financial service provider has been convicted of an offence under Irish financial services legislation or found to have committed a prescribed contravention in accordance with part IIIC of the Central Bank Act 1942 (administrative sanctions) then the Central Bank may apply to the High Court for an order requiring that the financial services provider concerned provide to the Central Bank an amount up to the amount of any unjust enrichment or an amount up to the loss suffered by any person as a result of the offence or prescribed contravention. The Central Bank will distribute any such amount amongst those persons who have suffered a loss, in accordance with directions of the Court.

Section 46 — Convicted person liable for costs and expenses of investigation and proceedings provides that where a person is convicted of an offence under Irish financial services legislation the Court may direct that that person pay to the Central Bank the costs of the investigation and prosecution of the offence in addition to any other penalty imposed.

Section 47 — Limitation of liability provides that no civil liability arises solely because a person provides information, in good faith, to the Central Bank or its authorised officers.

PART 8

AMENDMENTS TO PART IIIC OF ACT OF 1942

Section 48 — Amendment of section 33AO of Act of 1942 provides for a technical amendment to section *33AO — (Bank may hold inquiry into conduct of regulated financial service provider or person concerned in its management)* of the Central Bank Act 1942 to clarify that the Central Bank may hold an inquiry under part IIIC of the Central Bank Act 1942 into the conduct of a person concerned in the management of a regulated financial service provider.

Section 49 — Amendment of section 33AQ of Act of 1942 provides that the maximum penalties under the administrative sanctions regime are increased from €5 million to €10 million or 10% of turnover for firms, and from €0.5 million to €1 million for natural persons and that a regulated financial service provider may have its authorisation suspended or revoked as a sanction under this section.

Section 50 — Amendment of section 33AV of Act of 1942 provides for an amendment to section *33AV (Power of Bank to resolve suspected contraventions etc.)* of the Central Bank Act 1942 so that where the Central Bank enters into an agreement with a regulated financial service provider to resolve a suspected contravention, the Central Bank may apply to the Court for an order requiring the performance of any terms of that agreement, including non-monetary terms.

Section 51 — Amendment of section 33BA of Act of 1942 provides for an amendment to section *33BA (Power to summon witnesses and take evidence)* of the Central Bank Act 1942 so that an inquiry under Part IIIC of the Central Bank Act 1942 has the same powers as the High Court has when hearing with respect to the examination of witnesses in civil proceedings, and that person who is summoned to appear before the Central Bank under this section is entitled to the same rights and privileges as a witness appearing in civil proceedings before the High Court. A person who obstructs an inquiry or who provides false or misleading information is guilty of an offence.

Section 52 — Amendment of section 33BC of Act of 1942 provides for a substitution of section *33BC (Publication by Bank of certain information relating to imposition of administrative sanctions)* of the Central Bank Act 1942. The substituted section provides that the Central Bank shall publish the name of the regulated financial service provider or other person against whom a finding under part IIIC has been made; details of the prescribed contravention; details of the administrative sanction imposed; and the grounds on which the finding was made, unless such publication would result in the disclosure of confidential information that is prohibited by the Rome Treaty and ESCB statute, or if the Bank determines that findings are of a confidential nature, relate to the commission of an offence or publication would unfairly prejudice a person's reputation.

The Bank is to publish a report of its actions under this section annually.

PART 9

MISCELLANEOUS

Section 53 — Co-operation with overseas regulators provides that the Central Bank may use its information-gathering and authorised officer powers to collect information in co-operation with overseas regulators.

Section 54 — Amendment of section 56 of the Personal Injuries Assessment Board Act 2003 provides that the Governor of the Central Bank may nominate an employee of the Central Bank for appointment as a member of the Personal Injuries Assessment Board.

An Roinn Airgeadais,
Iúil, 2011.

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