



**AN BILLE UM MARGAÍ IN IONSTRAIMÍ AIRGEADAIS
AGUS FORÁLACHA ILGHNÉITHEACHA 2007
MARKETS IN FINANCIAL INSTRUMENTS AND
MISCELLANEOUS PROVISIONS BILL 2007**

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

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[No. 34a of 2007]

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ACTS REFERRED TO

Bankruptcy Act 1988	1988, No. 27
Central Bank Act 1942	1942, No. 22
Central Bank Act 1997	1997, No. 8
Companies Acts 1963 to 2006	
Consumer Credit Act 1995	1995, No. 24
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Finance Act 1993	1993, No. 13
Freedom of Information Act 1997	1997, No. 13
Health Act 2004	2004, No. 42
Insurance Act 1936	1936, No. 45
Insurance (Miscellaneous Provisions) Act 1985	1985, No. 8
Investment Funds, Companies and Miscellaneous Provisions Act 2005	2005, No. 12
Investment Intermediaries Act 1995	1995, No. 11
Investor Compensation Act 1998	1998, No. 37
Ministerial and Parliamentary Offices Act 1938	1938, No. 38
Ministerial, Parliamentary and Judicial Offices and Oireachtas Members (Miscellaneous Provisions) Act 2001	2001, No. 33
National Pensions Reserve Fund Act 2000	2000, No. 33
National Treasury Management Agency (Amendment) Act 2000	2000, No. 39
Netting of Financial Contracts Act 1995	1995, No. 25
Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act 1992	1992, No. 3
Ordnance Survey Ireland Act 2001	2001, No. 43
Pawnbrokers Act 1964	1964, No. 31
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Taxes Consolidation Act 1997	1997, No. 39
Universities Act 1997	1997, No. 24



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BILL

entitled

5 AN ACT TO MAKE PROVISION IN RELATION TO
MARKETS IN FINANCIAL INSTRUMENTS AND TO
MAKE MISCELLANEOUS AMENDMENTS TO FINAN-
10 CIAL SERVICES LEGISLATION AND TO THE MINIS-
TERIAL AND PARLIAMENTARY OFFICES ACT 1938,
THE NATIONAL PENSIONS RESERVE FUND ACT 2000,
THE ORDNANCE SURVEY IRELAND ACT 2001, AND
TO THE FREEDOM OF INFORMATION ACT 1997.

15 BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

MARKETS IN FINANCIAL INSTRUMENTS

1.—This Act may be cited as the Markets in Financial Instruments and Miscellaneous Provisions Act 2007. Short title and collective citation.

20 2.—(1) This Act comes into operation on such day or days as the Minister may appoint by order. Commencement.

(2) Different days may be appointed under this section for different purposes or provisions of this Act.

3.—(1) In this Act: Interpretation.

25 “Bank” means the Central Bank and Financial Services Authority of Ireland;

“Irish investment services law” means—

30 (a) the measures adopted for the time being by the State to implement the Markets in Financial Instruments Directive and the Supplemental Directive, including but not limited to such measures enacted by—

- (i) an Act,
- (ii) the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007), or
- (iii) any other enactment, 5

- (b) any measures directly applicable in the State in consequence of the Markets in Financial Instruments Directive, including but not limited to the MiFID Regulation, and
- (c) any supplementary or consequential measures or both 10 adopted for the time being by the State in respect of the MiFID Regulation;

“Markets in Financial Instruments Directive” means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments as amended or 15 replaced from time to time by either a directive or regulation—

- (a) made by a competent organ of the European Union, and
- (b) implemented under the laws of the State;

“MiFID Regulation” means Commission Regulation (EC) No. 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC 20 of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive;

“Minister” means the Minister for Finance; 25

“Supplemental Directive” means Commission Directive No. 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC 30 of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;

(2) A word or expression that is used in this Act and is also used in the Markets in Financial Instruments Directive or the Supplemental Directive has the same meaning in this Act as it has in the Markets in Financial Instruments Directive or the Supplemental 35 Directive, unless—

- (a) the contrary intention appears, or
- (b) Irish investment services law provides otherwise.

Expenses. **4.**—The expenses incurred by the Minister in the administration of this Act shall be paid out of money provided by the Oireachtas.

Penalties for conviction on indictment of Irish investment services law. **5.**—(1) In this section, “the Regulations” means the European 40 Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007).

(2) A person is guilty of an offence if the person—

(a) fails to discharge a duty to which the person is subject under Regulation 40(1), 109(6) or 112(1) of the Regulations, or

5 (b) contravenes Regulation 7(1), 19, 52, 152(1), 159, 165(15), 165(16), 165(17), or 185(2) of the Regulations.

(3) A person guilty of an offence under *subsection (2)* is liable on conviction on indictment to a fine not exceeding €10,000,000 or imprisonment for a term not exceeding 10 years or both.

(4) This section is without prejudice to—

10 (a) any penalty provided by Irish investment services law in respect of a summary conviction for an offence, and

(b) the ability to bring and prosecute summary proceedings for any offence under Irish investment services law.

(5) This section comes into operation on 1 November 2007.

15 **6.**—Fees shall be payable pursuant to section 33K of the Central Bank Act 1942 in respect of the performance by the Bank of its functions under— Fees payable under section 33K of Central Bank Act 1942.

(a) Irish investment services law, and

20 (b) Irish market abuse law as defined in the Investment Funds, Companies and Miscellaneous Provisions Act 2005.

7.—The Central Bank Act 1942 is amended—

Amendments to Central Bank Act 1942.

(a) by substituting the following for the definition of “Supervisory Directives” in section 33AK(10):

“ ‘Supervisory Directives’ means—

25 (a) Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000,

(b) Council Directive 93/22/EEC of 10 May 1993,

(c) Council Directive 85/611/EEC of 20 December 1985,

30 (d) Council Directive 92/49/EEC of 18 June 1992,

(e) Council Directive 92/96/EEC of 10 November 1992,

35 (f) the 2003 Market Abuse Directive (within the meaning of Part 4 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005),

(g) the supplemental Directives (within the meaning of that Part 4),

- (h) the 2003 Prospectus Directive (within the meaning of Part 5 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005),
- (i) Directive 2005/68/EC of 16 November 2005, 5
- (j) the Transparency (Regulated Markets) Directive (within the meaning of Part 3 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006),
- (k) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions, 10
- (l) Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions, 15
- (m) Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, 20
- (n) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, and
- (o) the Supplemental Directive and the MiFID Regulation as defined in *section 3(1) of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007.*, 25

- (b) in Schedule 2, by inserting in Part 1 the following item after the item relating to the Investment Funds, Companies and Miscellaneous Provisions Act 2006: 30

“

2007	<i>Markets in Financial Instruments and Miscellaneous Provisions Act 2007</i>	<i>Part 1 and sections 9 to 11, 13 and 17</i>
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”

and

- (c) in Schedule 2, by inserting in Part 2 the following items after the item relating to the European Communities (Reinsurance) Regulations 2006: 35

“

S.I. No. 660 of 2006	European Communities (Capital Adequacy of Investment Firms) Regulations 2006	The whole instrument
S.I. No. 661 of 2006	European Communities (Capital Adequacy of Credit Institutions) Regulations 2006	The whole instrument

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”

PART 2

MISCELLANEOUS

5 **9.**—(1) An offence under Regulations 5(2), 6(2), 20(2), 22(4), 28(2), 29(2), 58(9), 59(8), 60(6), 62(4), 75(1), or 76(1) of the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006) is an offence which may be tried on indictment. Penalties for conviction on indictment of European Communities (Reinsurance) Regulations.

10 (2) A person who commits an offence under a Regulation referred to in *subsection (1)* is liable on conviction on indictment to a fine not exceeding €10,000,000 or imprisonment for a term not exceeding 10 years or both.

(3) This section is without prejudice to—

15 (a) any penalty provided by the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006) in respect of a summary conviction for an offence, and

(b) the ability to bring and prosecute summary proceedings for any offence under those Regulations.

20 **10.**—Section 1 of the Netting of Financial Contracts Act 1995 is amended— Amendment to section 1 of Netting of Financial Contracts Act 1995.

(a) by inserting the following after the definition of “the Companies Acts”:

“ ‘entity’ includes—

25 (a) a natural or legal person, including a state or any international organisation duly established,

(b) any subdivision or authenticating or other authority of a state or international organisation, and

(c) an unincorporated body of persons;”

30 (b) by substituting the following for the definition of “financial contracts”:

“ ‘financial contracts’ means one or more contracts consisting of one or more or a combination of the following:

35 (a) interest-rate contracts which are one or more of—

(i) single-currency interest rate swaps,

(ii) basis swaps,

(iii) forward-rate agreements,

(iv) interest-rate futures,

- (v) interest-rate options,
 - (vi) other contracts of a similar nature to those specified in any of subparagraphs (i) to (v), and
 - (vii) contracts which are combinations of contracts referred to in subparagraphs (i) to (vi); 5
- (b) foreign-exchange contracts which are one or more of—
- (i) cross-currency interest-rate swaps, 10
 - (ii) spot foreign-exchange contracts,
 - (iii) forward foreign-exchange contracts,
 - (iv) currency futures,
 - (v) currency options,
 - (vi) other contracts of a similar nature to those specified in any of subparagraphs (i) to (v), and 15
 - (vii) contracts which are combinations of contracts referred to in subparagraphs (i) to (vi); 20
- (c) contracts relating to, or which concern indices relating to, one or more of equities, bonds, gold, precious metals other than gold, and commodities other than precious metals, or a combination of them, which consist of one or more of— 25
- (i) swaps,
 - (ii) spot contracts,
 - (iii) forward contracts,
 - (iv) futures, 30
 - (v) options,
 - (vi) other contracts of a similar nature to those specified in any of subparagraphs (i) to (v), and
 - (vii) contracts which are combinations of contracts referred to in subparagraphs (i) to (vi); 35
- (d) securities lending and securities borrowing contracts;
- (e) sale and repurchase agreements, including reverse repurchase agreements, in relation to securities; 40

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- (f) buy and sell back agreements in relation to either or both securities and equities;
 - (g) in relation to equities,
 - (i) equities lending and equities borrowing contracts, and
 - (ii) sale and repurchase agreements, including reverse repurchase agreements;
 - (h) in relation to commodities,
 - (i) commodity lending and commodity borrowing contracts, and
 - (ii) sale and repurchase agreements, including reverse repurchase agreements;
 - (i) contracts for either or both the assumption of and laying off of credit risk—
 - (i) on loans, debt securities or other assets, or
 - (ii) in relation to an entity,
or other contracts of a similar nature;
 - (j) any derivatives not otherwise encompassed by paragraphs (a) to (i) or paragraphs (k) to (o) concerning a reference item or index, whether cash-settled or physically settled, including—
 - (i) swaps,
 - (ii) spot contracts,
 - (iii) forwards,
 - (iv) futures,
 - (v) options, and
 - (vi) contracts for difference;
 - (k) title transfer collateral arrangements;
 - (l) any net amount due under a netting agreement or a master netting agreement;
 - (m) agreements to buy or sell, clear or settle transactions in, or act as a depository for, any—
 - (i) financial asset, including, without limitation, any security (including any equity), currency, obligation evidencing debt (including a loan or deposit) and any negotiable or transferable instrument and any intangible asset, or
 - (ii) commodity (including precious metal), energy or energy source;

(n) contracts contained in points 4 to 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments; 5

(o) any contract included by virtue of section 2;

(p) contracts designated by regulations made under section 3.”,

and

(c) by substituting “agreement;” for “agreement.” in the 10 definition of “party” and inserting the following after that definition:

“ ‘reference item or index’ means a reference item, rate or index relating to one or more of the following:

(a) interest; 15

(b) currencies;

(c) securities (including equities);

(d) commodities (including precious metals);

(e) weather;

(f) carbon or other emissions allowances; 20

(g) bandwidth;

(h) freight;

(i) energy (including energy sources such as electricity, oil, oil-related products, coal and gas);

(j) credit risk on any entity or asset; 25

(k) statistical data on economic conditions or any measure of economic risk or value;

(l) market loss;

(m) natural catastrophes;

(n) real property; 30

(o) renewable energy credits;

(p) regulatory licences or quotas;

(q) any factor not otherwise encompassed by paragraphs (a) to (p) which may impact on the business of an entity, regardless of whether it 35 affects the business of a party to the relevant derivative.”.

11.—Section 52 of the Investment Intermediaries Act 1995 (as amended by the Investor Compensation Act 1998) is amended—

Amendments to
Investment
Intermediaries Act
1995.

(a) in subsection (2)(c) and (d), by deleting “, controlled” in each of the 2 places in which it appears,

(b) in subsection (7)(a), (b), and (c) by deleting “, controlled” in each of the 3 places in which it appears, and

(c) by inserting the following after subsection (9):

“(10) For the purposes of this section, an investment business firm is deemed to hold client money where—

(a) the money has been lodged on behalf of a client of the firm to an account with a credit institution or relevant party in the name of the firm or of any nominee of the firm, and

(b) the firm has the capacity to effect transactions on that account.

(11) For the purposes of this section, an investment business firm is deemed to hold client investment instruments where the firm—

(a) has been entrusted by or on account of a client with those instruments, and

(b) either—

(i) holds those instruments, including by way of holding documents of title to them, or

(ii) entrusts those instruments to any nominee,

and the firm has the capacity to effect transactions in respect of those instruments.

(12) In this section—

(a) ‘nominee’ means a person acting on behalf of an investment business firm as nominee, custodian, or otherwise, and includes an eligible custodian and a nominee company, and

(b) ‘relevant party’ means an exchange, clearing house, intermediate broker, OTC counterparty or investment business firm.”.

12.—The Insurance (Miscellaneous Provisions) Act 1985 is amended—

Amendments to
Insurance
(Miscellaneous
Provisions) Act
1985.

(a) by inserting the following before section 4 :

“Minister’s
discretion to
wind up
Company.

3A.—(1) If the Minister thinks fit, the Minister may arrange for and require—

(a) that the shares held by the Company in Icarom plc (under

administration) be transferred to the Minister, and

(b) the winding up in accordance with the Companies Acts 1963 to 2006 of the Company. 5

(2) Shares transferred to the Minister under subsection (1) vest in the Minister.

(3) Any assets of the Company remaining after the winding up of the Company shall be paid into or disposed of for the benefit of the Exchequer.”; 10

and

(b) by substituting the following for section 11:

“Obligation of shareholders to hold shares in trust for Minister. 11.—(1) Every member of the Company shall hold the member’s shares in the Company upon trust for the Minister and shall accordingly be bound to— 15

(a) pay every dividend and other money received by the member in respect of the shares to the Minister for the benefit of the Exchequer, and 20

(b) transfer the shares to the Minister as and when required by the Minister. 25

(2) If the Minister thinks fit, the Minister may arrange for and require a person who holds shares in a company controlled by the Company, and who holds the shares upon trust for the Minister, to transfer the shares to the Minister, as and when required by the Minister. 30

(3) Shares transferred to the Minister under subsection (1) or (2) vest in the Minister.”. 35

Amendments to Central Bank Act 1942.

13.—The Central Bank Act 1942 is amended—

(a) in section 33AK(5)(ak) by substituting “functions, or” for “functions.”,

(b) by inserting the following after subsection (5)(ak):

“(al) to the Agency, if the confidential information is required for the performance of the Agency’s functions.”, 40

(c) in section 33N(1), by substituting “2 months” for “3 months”,

(d) in section 57BO, by substituting the following for subsection (4): 45

5 “(4) For the purposes of this section, ‘bureau staff member’ includes the Financial Services Ombudsman, each of the Deputy Financial Services Ombudsmen and each of the members of the Financial Services Ombudsman Council.”,

- (e) in section 57BZ, by substituting the following for subsection (4):

10 “(4) As soon as practicable after deciding not to investigate a complaint, or to discontinue an investigation of a complaint, the Financial Services Ombudsman shall inform the complainant in writing of the decision and the reasons for the decision.”,

- (f) by substituting the following for paragraph 2 of Schedule 3:

15 “2. (1) In this paragraph—

(a) ‘first anniversary’ means 1 May 2008, and

(b) ‘subsequent anniversary’ means 1 May of each subsequent year.

20 (2) Appointed members hold office for an indefinite period up to a maximum of 15 years.

(3) However, the Regulatory Authority may make rules of procedure under paragraph 8(2) of this Schedule for the purpose of determining terms of office of the members and of securing that on, or in,

25 (a) the years prior to the first anniversary, or

(b) the year prior to each subsequent anniversary date,

30 not less than 2 of the appointed members shall have ceased to hold office by virtue either of this paragraph or paragraph 5(2)(a) to (k) of this Schedule.

(4) If, in the years prior to the first anniversary or the year prior to each subsequent anniversary,

35 (a) no appointed member ceases to hold office under paragraph 5(2)(a) to (k) of this Schedule, then the terms of office of 2 appointed members must be completed on that anniversary,

40 (b) one appointed member ceases to hold office under paragraph 5(2)(a) to (k) of this Schedule, then the term of office of one other appointed member must be completed on that anniversary, or

45 (c) 2 or more appointed members cease to hold office under paragraph 5(2)(a) to (k) of this Schedule, then the term of office of no other appointed member must be completed on that anniversary.

(5) Which (if any) of the appointed members is or are to retire under this paragraph is to be determined as provided by the rules of procedure made by the Regulatory Authority pursuant to paragraph 8(2) of this Schedule.

(6) Appointed members who— 5

(a) are required to retire under the rules of procedure made under paragraph 8(2) of this Schedule, or

(b) cease to hold office under paragraph 5(2)(c), (e), (f) or (g) of this Schedule, 10

are eligible for re-appointment.

(7) However, a person who retires after having served as an appointed member for 15 years is not eligible for reappointment.”.

Amendments to
National Treasury
Management
Agency
(Amendment) Act
2000.

14.—The National Treasury Management Agency (Amendment) Act 2000 is amended— 15

(a) in section 18, in the definition of ‘designated body’, by substituting the following for paragraph (c):

“(c) the Health Service Executive established by section 6(1) of the Health Act 2004,” 20

(b) in section 18, in the definition of ‘designated body’, by substituting the following for paragraph (e):

“(e) a body specified in Schedule 4 of the Taxes Consolidation Act 1997,” 25

(c) in section 18, in the definition of ‘designated body’, by inserting the following after paragraph (e):

“(ea) the Courts Service, 30

(eb) a university within the meaning of the Universities Act 1997, other than Trinity College and the University of Dublin,

(ec) the Dublin Institute of Technology,

(ed) a college within the meaning of section 2 of the Regional Technical Colleges Act 1992, 35

(ee) the Railway Procurement Agency, and

(ef) the Housing Finance Agency plc.”,

(d) in section 22, by inserting the following after subsection (1): 40

“(1A) The Minister—

(a) may engage in transactions of a normal banking nature in connection with the exercise of the powers in subsection (1), and

(b) for the purposes of those transactions, may issue such funds from the Exchequer as he or she considers appropriate.

(1B) All expenses and other costs incurred by the Minister or the Agency, as appropriate, in connection with or arising out of those transactions shall be charged on the Central Fund.”,

(e) in section 22, by substituting “subsections (1) and (1A)” for “subsection (1)” in subsection (2), and

(f) in Part 3, by inserting the following after section 25:

“Agency may procure foreign currency for Government Minister or designated body.

25A.—(1) Subject to first receiving the consent of the Minister for Finance, a Minister of the Government or a designated body may request the Agency to procure for that Minister of the Government or designated body, as the case may be, foreign currency on terms and conditions agreed between—

(a) the Agency, and

(b) that Minister of Government or designated body.

(2) The Agency has all the powers necessary for it to comply with a request made under subsection (1).

(3) The Agency, in connection with the performance of its functions under subsection (1), may—

(a) pay into any foreign currency clearing account created by the Minister for Finance under section 139 of the Finance Act 1993 the proceeds of any transaction denominated in a currency other than the currency of the State, and

(b) apply any amounts standing to the credit of any foreign currency clearing account towards the discharging of payment obligations arising under any transaction in connection with the performance of its functions under subsection (1).”.

15.—Section 138(1) of the Finance Act 1993 is amended—

Amendments to Finance Act 1993.

(a) in section 138(1), by inserting the following after paragraph (c):

“(ca) The Minister—

(i) may engage in transactions of a normal banking nature in connection with the exercise of the powers in subsection (1)(a), (b) and (c), and 5

(ii) for the purposes of those transactions, may issue such funds from the Exchequer as he or she considers appropriate.

(cb) All the expenses and other costs incurred by the Minister in connection with or arising out of those transactions shall be charged on the Central Fund.”, 10

and

(b) in section 139 by inserting the following after subsection (11): 15

“(12) The National Treasury Management Agency, in connection with the discharge of any of its functions, may—

(a) pay into any foreign currency clearing account the proceeds of any transaction denominated in a currency other than the currency of the State, and 20

(b) apply any amounts standing to the credit of any foreign currency clearing account towards the discharging of payment obligations arising in connection with the discharge of any of its functions.”. 25

Amendments to Ministerial and Parliamentary Offices Act 1938.

16.—The Ministerial and Parliamentary Offices Act 1938 (as amended by the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act 1992 and by the Ministerial, Parliamentary and Judicial Offices and Oireachtas Members (Miscellaneous Provisions) Act 2001) is amended— 30

(a) in section 13A(7)(a)(i), by inserting “subject to subsection (9),” before “in case”,

(b) in section 13A by inserting the following after subsection (8): 35

“(9) On application for a pension under this section to the Minister for Finance, by a person whose entitlement to the pension arose on or after the date of commencement of this section, the pension is payable as of and from a date that the Minister for Finance may determine in writing that is— 40

(a) not earlier than the date of entitlement, and

(b) not later than the date of the application.”,

(c) in section 13AA(1), by substituting the following for paragraphs (a) and (b): 45

“(a) the person has completed not less than 2 years of ministerial service but is not entitled to a ministerial pension under section 13A, or

5 (b) the person has completed not less than 2 years of secretarial service but is not entitled to a secretarial pension under section 13A.”,

and

(d) in section 13AA(4), by substituting “(but less than 8)” for “(but less than 3)”,

10 (e) in section 13B, by re-numbering subsection (5)(a)(iii) as subsection (5)(a)(iv) and by inserting the following after subsection (5)(a)(ii):

“(iii) in the case of a person—

15 (I) whose original pension is a secretarial pension, and

(II) who, on ceasing to hold a qualifying office after the operative date, has served in a ministerial office for at least 2 but less than 3 years,

20 an amount equal to the difference between—

25 (A) the amount of the ministerial pension which would then be payable to the person if such person was a minister, calculated in accordance with section 13AA of the 1938 Act, and

(B) the amount of the person’s original pension.”,

30 (f) in section 13B(5)(a)(iv), by inserting “or (iii)” after “subparagraph (ii)”, and

(g) in section 13B(5)(b)(ii), by substituting “subparagraph (iv)” for “subparagraph (iii)”.

17.—Section 35 of the Credit Union Act 1997 is amended by substituting the following for subsection (2):

Amendment to section 35 of Credit Union Act 1997.

35 “(2) A credit union shall not make a loan to a member—

40 (a) for a period exceeding 5 years if, were the loan to be made, the total gross amount outstanding in respect of all loans with greater than 5 years to the final repayment date would then exceed 20 per cent of the total gross loan book balance outstanding at that time in respect of all loans made by the credit union, or 40 per cent of the total gross loan book balance outstanding at that time in respect of all loans made by the credit union where written approval is received from the Bank,

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(b) for a period exceeding 10 years if, were the loan to be made, the total gross amount outstanding in respect of all loans with greater than 10 years to the final repayment date would then exceed 10 per cent of the total gross loan book balance outstanding at that time in respect of all loans made by the credit union, or 15 per cent of the total gross loan book balance outstanding at that time in respect of all loans made by the credit union where written approval is received from the Bank, or

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(c) in the circumstances specified in subsection (3),

and, for the purposes of this subsection, the ‘final repayment date’ for a loan shall be—

- (i) the date on which the loan is due to expire, as indicated on the relevant credit agreement in accordance with section 37C(1)(j), or
- (ii) any subsequent date agreed between the credit union and the member to whom the loan has been made.”.

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Amendment of Insurance Act 1936 and certain statutory regulations.

18.—(1) The Insurance Act 1936 is amended by repealing sections 9 and 10.

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(2) The European Communities (Non-Life Insurance) Regulations 1976 (S.I. 115 of 1976) are consequentially amended by revoking paragraph (5) of Regulation 4.

(3) The European Communities (Life Assurance) Regulations 1984 (S.I. 57 of 1984) are consequentially amended by revoking paragraph (4) of Regulation 4.

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Amendment of Central Bank Act 1997.

19.—The Central Bank Act 1997 is amended—

(a) in section 28, by adding the following definitions:

“ ‘credit’ includes any deferred payment, cash loan or other form of financial accommodation, such as—

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(a) consumer credit, hire purchase or mortgage credit,

(b) factoring, with or without recourse,

(c) financial leasing, or

(d) financing of commercial transactions;

35

‘home reversion agreement’ means an agreement between a vendor and a home reversion firm that provides—

(a) for the conveyance by the vendor to the home reversion firm of an estate or interest in land (which includes the principal residence of the vendor or of the vendor’s dependants) for a discounted sum or an income (or both), and

40

- (b) for the vendor to retain the right to live in the residence until the occurrence of one or more events specified in the agreement;

5 'home reversion firm' means a person carrying on a business of entering into home reversion agreements;

10 'leasing agreement' means an agreement of more than 3 months duration for the bailment of goods to a hirer under which the property in the goods remains with the owner, and includes a consumer-hire agreement within the meaning of the Consumer Credit Act 1995;

'hire-purchase' means a bailment of goods—

(a) under which—

(i) the hirer may buy the goods, or

15 (ii) if the agreement is complied with, the property in the goods will pass to the hirer,

in return for periodical payments, or

20 (b) in which, by virtue of 2 or more agreements, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and either—

(i) the hirer may buy the goods, or

(ii) if the agreements are complied with, the property in the goods will pass to the hirer;

25 'mortgage credit' means an agreement for the provision of credit to a person on the security of a mortgage of a freehold or leasehold estate or interest in land;

'retail credit firm' means a person whose business consists wholly or partly of the provision of credit to—

30 (a) a consumer within the meaning of the Consumer Credit Act 1995,

35 (b) a person (whether or not that person is an incorporated body) but excluding any incorporated body that has an annual turnover in excess of €3,000,000,

(c) any unincorporated group of persons, or

(d) an incorporated body that—

40 (i) has an annual turnover of €3,000,000 or less in the financial year preceding that in which the credit is granted, and

(ii) is not a member of a group of companies that has a combined turnover greater than €3,000,000,

but does not include—

(e) a person who, in respect of such a business—

(i) is a regulated financial service provider within the meaning of the Central Bank Act 1942, or

(ii) is the holder of a licence under section 8 of the Pawnbrokers Act 1964;

or

(f) a company that, being a member of a group of companies, provides credit only to one or more other companies that are members of the group;”;

(b) in section 28, by substituting the following definition for the definition of “regulated business”:

“ ‘regulated business’ means a bureau de change business, a money transmission business, a home reversion firm or a retail credit firm;”;

(c) immediately before section 29, by substituting for the Chapter heading the following:

“CHAPTER 2

Carrying on regulated business without authorisation prohibited;

(d) by inserting the following section after section 31:

“Provisions supplementary to section 31 applicable to retail credit and home reversion firms.

31A.—For the purposes of section 31(2)(b), in order to obtain and retain authorisation, a retail credit firm or home reversion firm shall satisfy the Bank—

(a) that, where applicable, the memorandum and articles of association of the firm will enable it to operate in accordance with this Act, and any condition or requirement that the Bank may impose,

(b) as to the probity and competence of each of the firm’s directors and managers,

(c) as to the suitability of each of the firm’s qualifying shareholders or partners,

(d) as to the organisational structure and management skills of the firm and that adequate levels of staff and expertise will be employed to carry out its activities,

(e) that the firm has and will follow procedures that will enable the

Bank to be supplied with all information necessary for the performance of the Bank's supervisory functions and to enable the public to be supplied with information that the Bank specifies,

(f) that the organisation of the firm's business structure is such that it, and any of its associated or related undertakings, (so far as appropriate and practicable) are capable of being supervised adequately by the Bank, and

(g) as to the conduct of the firm's business, financial resources and any other matters that the Bank considers necessary in the interests of the proper and orderly regulation and supervision of authorised firms or in the interests of the protection of customers or potential customers.”;

(e) by inserting the following section after section 32:

“Additional provisions applicable to retail credit and home reversion firms.

32A.—(1) An authorisation granted by the Bank under section 31 to a retail credit or home reversion firm may specify classes of services, and additional services, that the firm may provide.

(2) An authorisation granted by the Bank under section 31 of this Act to a retail credit firm may include an authorisation to act as a home reversion firm.

(3) The Bank may amend—

(a) the classes of retail credit services or other services that may be provided in accordance with subsections (1) or (2), or

(b) the designation or classification of firms or services.

(4) For the purposes of subsections (1) to (3), the Bank may use such designation or classification of firms or services as the Bank considers appropriate to describe the services provided.

(5) At any time before granting or refusing an authorisation to a firm, the Bank may—

(a) request such further information from the firm, or

- (b) instruct an authorised officer to make such inquiries, or carry out such investigations,

as it considers necessary for the purpose of properly evaluating an application. Any such inquiries or investigations shall be carried out in accordance with this Act. 5

(6) In the case of a retail credit or home reversion firm authorised in another EEA Country, the Bank— 10

- (a) shall have regard to any requirements imposed on the firm by an authority of that country that appears to the Bank to exercise a regulatory or supervisory role similar to that of the Bank in relation to the firm, and 15

- (b) may exchange with that authority information relevant to the carrying out of the Bank’s functions under this Act or the functions of that authority under the laws of that country.”; 20

(f) by inserting the following section after section 33:

“Imposition of conditions or requirements on authorised retail credit firms and home reversion firms.

33A.—(1) Without limiting section 33, the Bank may do all or any of the following in respect of an authorised retail credit firm or an authorised home reversion firm: 25

- (a) make the firm’s authorisation subject to such conditions or requirements, or both, as it considers appropriate, relating to— 30

- (i) the proper and orderly regulation and supervision of retail credit firms or authorised home reversion firms, and 35

- (ii) the protection of their customers or potential customers; 40

- (b) impose conditions or requirements, or both, relating to the affairs or activities in an associated undertaking or a related undertaking; 45

- (c) require the display on a credit agreement or home reversion agreement, or on any other relevant document, of a notice in a form provided or prescribed by the Bank of any information relevant to the agreement; 50

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(d) at any time, impose conditions or requirements, or both, on an authorised firm and either amend or revoke any condition or requirement imposed under this paragraph or under paragraph (a), (b) or (c).

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(2) A condition or requirement referred to in subsection (1) may be imposed in relation to any or all of the following:

(a) an authorised firm;

(b) all authorised firms;

(c) a class or classes of authorised firms;

15

(d) a specified period of time or times;

(e) an associated undertaking or related undertaking;

20

(f) such matters relating to the proper and orderly regulation and supervision of authorised firms, and the protection of their customers or potential customers, as the Bank considers appropriate.

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(3) Without limiting subsections (1) and (2), the Bank may impose conditions or requirements on an authorised firm, or a class of authorised firms concerning—

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(a) the level of training, qualifications or professional competence of managers, officers or employees,

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(b) the provision of information to the Bank or to a person specified by the Bank, and

(c) the application of a prescribed code of practice relating to—

40

(i) regulated financial service providers within the meaning of the Central Bank Act 1942, or

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(ii) a class of regulated financial service providers whose business appears to be comparable to that of an authorised firm or a class of authorised firms.”;

(g) by inserting the following section after section 34B:

“Transitional provisions.

34C.—(1) Despite section 29, a person carrying on the business of a retail credit firm, or a home reversion firm, immediately before the commencement of *Part 2* of the *Markets in Financial Instruments and Miscellaneous Provisions Act 2007* is taken to be authorised as a regulated business until the Bank has granted or refused authorisation to the person, provided the person applies to the Bank under section 30 for authorisation no later than 3 months after that commencement.

(2) If a person is taken to be authorised as a regulated business under subsection (1), the Bank may do either or both of the following:

(a) impose on that person such conditions or requirements or both as the Bank considers appropriate relating to the proper and orderly regulation and supervision of a regulated business;

(b) direct that person not to carry on the business of a retail credit firm, or the business of a home reversion firm, for such period (not exceeding 3 months) as is specified in the direction.

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

Amendment of Freedom of Information Act 1997.

20.—The Freedom of Information Act 1997 is amended by inserting in Part 1 of the Third Schedule—

(a) in column (2), “Ordnance Survey Ireland Act 2001”,

(b) in column (1), opposite the reference to the Ordnance Survey Ireland Act 2001, “No. 43 of 2001”, and

(c) in column (3), opposite the reference to the Ordnance Survey Ireland Act 2001, “Section 23”.

Revocation of Credit Union Act 1997 (Alteration of Financial Limits) Regulations 2007.

21.—The Credit Union Act 1997 (Alteration of Financial Limits) Regulations 2007 (S.I. No. 193 of 2007) are revoked.

22.—The Investor Compensation Act 1998 is amended—

Amendment of
Investor
Compensation Act
1998.

- (a) in the definition of “authorised investment firm” in section 2(1), by substituting the following for paragraph (b):

5 “(b) an authorised investment firm as defined in the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007), or”;

- (b) in section 2(1), by deleting the definition of “authorised member firm”;

- 10 (c) in section 2(1), by substituting the following for the definition of “client”:

“ ‘client’ means a person—

(a) to whom an investment firm provides investment business services, or

15 (b) who has entrusted money or investment instruments to an investment firm in connection with the provision of investment business services by the firm;”;

- 20 (d) in section 2(1), by substituting the following for the definition of “insurance intermediary”:

“ ‘insurance intermediary’ means a registered insurance intermediary within the meaning of the European Communities (Insurance Mediation) Regulations 2005, but does not include a solicitor who—

25 (a) has a valid practising certificate issued under the Solicitor’s Acts 1954 to 1994, and

(b) carries on the relevant activities only incidentally to the legal services he or she provides;”;

- 30 (e) in section 2(1), by substituting the following for the definition of “investment business services”:

“ ‘investment business services’ has the meaning given by the Act of 1995, and includes—

35 (a) investment services as defined in the European Communities (Markets in Financial Instruments) Regulations 2007, and

(b) the activities of an insurance intermediary;”;

- (f) in the definition of “investment firm” in section 2(1), by substituting the following paragraphs for paragraph (b):

40 “(b) an authorised investment firm as defined in the European Communities (Markets in Financial Instruments) Regulations 2007,

- (ba) a person who was formerly an authorised investment firm and whose authorisation has been revoked,”;
- (g) in section 2(1), by substituting the following definition for the definition of “investment instruments”: 5
- “ ‘investment instruments’ has the meaning given by the Act of 1995, and includes instruments of the kind listed in Part 3 of Schedule 1 of the European Communities (Markets in Financial Instruments) Regulations 2007;”;
- (h) by adding the following definition after the definition of “joint investment business”: 10
- “ ‘liquidation proceeding’ includes—
- (a) a compulsory or court liquidation under the Companies Acts,
- (b) a creditor’s voluntary liquidation under the 15 Companies Acts,
- (c) any receivership or analogous process,
- (d) bankruptcy proceedings under the Bankruptcy Act 1988, and
- (e) any scheme of arrangement in consequence of 20 the appointment of an examiner;”;
- (i) in section 2(1), by deleting the definition of “member firm”;
- (j) by inserting the following definition after the definition of “local authority”: 25
- “ ‘Markets in Financial Instruments Directive’ means Directive 2004/39/EC of 21 April 2004;”;
- (k) in section 2(1), by substituting the following for the definition of “professional investor”:
- “ ‘professional client’ has the meaning given by the Euro- 30 pean Communities (Markets in Financial Instruments) Regulations 2007;”;
- (l) in section 2(1), by substituting the following for the definition of “ruling”:
- “ ‘ruling’ means a Court decision that— 35
- (a) is made in relation to an investment firm for reasons directly related to the financial circumstances of the firm, and
- (b) precludes clients of the firm from pursuing 40 claims against the firm for—
- (i) the return of money owed, or belonging to, the client, and held on behalf of the client by the firm in connection with the provision of investment business services, and

(ii) the return of investment instruments belonging to the client and held, administered or managed by the firm on behalf of the client in connection with the firm's provision to the client of those services,

but does not include a Court decision made under the Companies Acts appointing an examiner or provisional liquidator;"

(m) in section 2, by adding the following subsection after subsection (1):

"(1A) For the purpose of paragraph (b) of the definition of 'ruling' in subsection (1), an investment firm is taken, in the circumstances described in section 52(10) of the Act of 1995, to hold client money and investment instruments.";

(n) in section 2(5)(b), by substituting "the administration of" for "administering";

(o) in section 9(4), by substituting the following paragraph for paragraph (b):

"(b) in relation to investment firms, an authorised officer, or an inspector, appointed under the European Communities (Markets in Financial Instruments) Regulations 2007;"

(p) in section 20, by substituting the following for subsection (4):

"(4) The Company is not responsible for expenses that an administrator of an investment firm incurs in respect of functions that the administrator performs contemporaneously with functions that the administrator performs as liquidator, receiver or trustee in bankruptcy of the firm, even though those functions may also relate to the performance of functions as administrator of the firm.";

(q) in section 21(3), by substituting the following for paragraph (b):

"(b) despite paragraph (a), the Company may, when specifying rates, or amounts of contributions, or bases, for the calculation of contributions for investment firms, take account of any money, or investment instruments, entrusted to those firms (whether before or after the commencement of this Act) in connection with the provision by those firms of investment business services to the client.";

(r) in section 24, by substituting "and by clients" for "and by investors";

(s) in section 25(6)(d), by substituting "compensation for eligible investors" for "compensation for investors";

(t) in section 28 by substituting the following for subsection (7):

“(7) The supervisory authority, in accordance with the European Communities (Markets in Financial Instruments) Regulations 2007, may revoke the authorisation of an investment firm that under those Regulations is an authorised investment firm, if the firm does not comply with a direction given under section 27.”; 5

(u) in section 28(8), by substituting “the provision of investment business services and shall” for “the provision of investment services listed in the Annex to the Investment Services Directive and shall”; 10

(v) In section 28, by adding the following after subsection (9):

“(9A) The supervisory authority, in accordance with the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003, may revoke the authorisation of an investment firm that, under those Regulations, is a management company authorised to undertake the services referred to in Regulation 16(3) of those Regulations, if the firm does not comply with a direction given to it under section 27.”; 15

(w) in section 28(10), by substituting “shall not give less than” for “shall not give less than”; 20

(x) in section 29(5), by substituting “to which section 28(9) applies” for “to which section 28(6)(d) applies”;

(y) in section 30(1) by substituting the following for the definition of “compensatable loss”: 25

“ ‘compensatable loss’ means 90 per cent of the amount of an eligible investor’s net loss or €20,000, whichever is the lesser;”;

(z) in section 30(1) by substituting the following for paragraph (b) of the definition of “net loss”: 30

“(b) investment instruments belonging to a client of the investment firm, and held, administered or managed by that firm for the client, in connection with the provision of investment business services by that firm to the client, the value of those instruments being determined, so far as possible, by reference to their market value.”. 35

Further amendment
of Investor
Compensation Act
1998.

23.—The Investor Compensation Act 1998 is further amended—

(a) in each of subparagraphs (i) and (ii) of section 30(2)(c), by substituting “the provision of investment business services” for “the provision of investment services”; 40

(b) in section 30, by adding the following subsection:

“(5) An investment firm is, in the circumstances described in section 52(10) of the Act of 1995, taken to hold client money and investment instruments.”; 45

(c) in section 32(2), by substituting “a client” for “an investor”;

(d) in section 32, by inserting the following subsection after subsection (2):

5 “(2A) A client may appeal to the Irish Financial Services Appeals Tribunal against a decision of the supervisory authority under subsection (2) not to treat the application as if it were made within the stipulated period.”;

(e) in section 32(4), by substituting “a client” for “an individual”;

10 (f) in section 33, by substituting the following for subsection (2):

“(2) On being appointed as administrator to an investment firm under subsection (1)—

15 (a) the administrator has, in relation to the firm, all the powers of an authorised officer under the Act of 1995 and the European Communities (Markets in Financial Instruments) Regulations 2007, and

20 (b) the powers available to an authorised officer under that Act and those Regulations apply in relation to the firm accordingly.”;

(g) in section 33(3), by substituting “those eligible investors” for “those investors”;

(h) in section 33(3A), by substituting “those eligible investors” for “those investors”;

25 (i) by substituting the following section for section 33A:

30 “Court to appoint liquidator, etc. of investment firm as firm’s administrator in certain circumstances. 33A.—The Court shall, on appointing a liquidator, receiver, the official assignee or a trustee in Bankruptcy in respect of an investment firm, also appoint the liquidator, receiver, official assignee or trustee as administrator of the firm, unless the supervisory authority, with the agreement of the Company, otherwise requests.”;

35 (j) in section 34(3) by substituting “the eligible investor” for “the investor”;

(k) in section 34(6) by substituting “the Company shall endeavour insofar as possible” for “the Company shall endeavour”;

(l) in section 35, by deleting subsection (4);

40 (m) in section 35(5A), by substituting “the claim of the eligible investor” for “the claim of the investor”;

45 (n) in section 35(6), by substituting “the Act of 1995, section 47 of the Act of 1989 or the European Communities (Markets in Financial Instruments) Regulations 2007” for “the Act of 1995 or section 47 of the Act of 1989”;

(o) in section 35(6A), by substituting “the claim of the eligible investor” for “the claim of the investor”;

- (p) in section 35(8), by substituting “money belonging to a client and held by an investment firm (being a credit institution) in connection with the provision of investment business services” for “monies belonging to an investor and held by an investment firm which is a credit institution in connection with investment business”; 5
- (q) in the definition of ‘RAV’ in section 36(1), by substituting “client” for “investor”, where secondly appearing;
- (r) in section 38(1), by substituting “clients” for “investors”;
- (s) in section 38(2), by substituting “Markets in Financial Instruments Directive” for “Investment Services Directive”; 10
- (t) in section 38(3), by substituting “entrusted to” for “placed with”;
- (u) in section 39(1), by substituting “the Markets in Financial Instruments Directive” for “Article 17 of the Investment Services Directive”; 15
- (v) in the definition of “client” in section 40(1), by substituting “the Markets in Financial Instruments Directive” for “Article 17 of the Investment Services Directive”; 20
- (w) in section 40(1), by substituting the following definition for the definition of “investment firm”:
- “ ‘investment firm’ means an investment firm authorised in another Member State for the purposes of the Markets in Financial Instruments Directive;” 25
- (x) in section 40, by substituting the following subsections for subsection (2):
- “(2) As soon as practicable after—
- (a) becoming authorised in another Member State for the purposes of the Markets in Financial Instruments Directive, and 30
- (b) establishing a branch in the State in accordance with that Directive,
- an investment firm may, by giving notice in writing to the Company, exercise the option of participating in investor compensation arrangements in the State in accordance with Article 7.1 of the Investor Compensation Directive. On giving such a notice, the firm becomes an investment firm for the purposes of this Act, subject only to the exceptions specified by this section.”; 35 40
- (y) in section 42(3), by substituting “investor compensation scheme approved under section 25” for “investor compensation scheme under this Act”.

5 “ ‘Gross National Product’ means, for the year in which payments are made to the Fund under section 18, the estimate (as corresponding in its composition to the definition of gross national product at market prices in use by the Central Statistics Office) of gross national product at market prices for that year published by the Minister with the Budget;”.

25.—The Ordnance Survey Ireland Act 2001 is amended as follows—

Amendment of
Ordnance Survey
Ireland Act 2001.

- 10 (a) in section 1(1), by substituting the following for the definition of “Minister”:
- “ ‘Minister’ means the Minister for Communications, Energy and Natural Resources;”;
- 15 (b) in each of subsections (1) and (2) of section 6, by adding “with the consent of the Minister for Finance” after “The Minister may”;
- (c) in each of sections 7(1), 8 and 9(1), by adding “and the Minister for Finance” after “the consent of the Minister”;
- (d) in section 9(2), by adding “and the Minister for Finance” after “the Minister”;
- 20 (e) in each of paragraphs (a) and (b) of section 11(8), by adding “with the consent of the Minister for Finance” after “the Minister”;
- (f) in section 14(8), by adding “and the Minister for Finance” after “the Minister” in the first place in which it occurs;
- 25 (g) in section 14(11), by adding “with the consent of the Minister for Finance” after “the Minister”;
- (h) in section 15(1), by adding “for Finance” after “the Minister”;
- 30 (i) in each of the following: section 15(3); paragraphs (a) and (b) of section 15(4); the second reference to Minister in section 17(4); and section 17(6), by adding “and the Minister for Finance” after “the Minister”;
- (j) in section 17(5), by substituting “who shall refer the dispute to the Minister for Finance” for “whose decision shall be final”;
- 35 (k) in section 24, by adding “and to such extent as may be sanctioned by the Minister for Finance” after “moneys provided by the Oireachtas”;
- (l) in section 25(5), by substituting “by the Minister with the consent of the Minister for Finance.” for “by him or her.”;
- 40 (m) in section 28(2), by adding “and the Minister for Finance” after “the Minister”;
- 45 (n) in section 37, by adding “, to such extent as may be sanctioned by the Minister for Finance,” after “shall”.