



**AN BILLE UM BEARTA AIRGEADAIS (FORÁLACHA
ILGHNÉITHEACHA) 2009**
**FINANCIAL MEASURES (MISCELLANEOUS PROVISIONS)
BILL 2009**

*Mar a tionscnaíodh
As initiated*

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Insurance Act 1989	1989, No. 3
Insurance Acts 1909 to 2000	
Investment Funds, Companies and Miscellaneous Provisions Act 2005	2005, No. 12
Investment Limited Partnerships Act 1994	1994, No. 24
Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009	2009, No. 7
Limited Partnerships Act 1907	7 Edw. 7, c.24
National Pensions Reserve Fund Act 2000	2000, No. 33
Netting of Financial Contracts Act 1995	1995, No. 25
Pensions Act 1990	1990, No. 25
Taxes Consolidation Act 1997	1997, No. 39
Universities Act 1997	1997, No. 24



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BILL

entitled

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AN ACT TO PROVIDE FOR THE CONTINUATION OF CERTAIN DIRECT DEBIT MANDATES AFTER THE COMING INTO OPERATION OF THE SINGLE EUROPEAN PAYMENTS AREA DIRECT DEBIT SCHEME, TO PROVIDE FOR THE TRANSFER OF THE ASSETS OF CERTAIN PENSION FUNDS TO THE NATIONAL PENSIONS RESERVE FUND, AND THE CONTINUED PAYMENT OF BENEFITS FORMERLY PAYABLE FROM THOSE FUNDS, TO MAKE PROVISION IN RELATION TO THE GIVING OF CERTAIN GUARANTEES BY THE MINISTER FOR FINANCE, TO AMEND THE CENTRAL BANK ACT 1989 SO AS TO CLARIFY ITS APPLICATION TO CERTAIN ACQUIRING TRANSACTIONS, TO AMEND THE CREDIT INSTITUTIONS (FINANCIAL SUPPORT) ACT 2008 SO AS TO ALLOW THE EXTENSION OF THE PERIOD IN WHICH FINANCIAL SUPPORT UNDER THAT ACT CAN BE PROVIDED, TO AMEND THE INSURANCE (NO. 2) ACT 1983 AND THE INSURANCE ACT 1989 IN RELATION TO LIFE INSURANCE AND REINSURANCE, TO AMEND THE NETTING OF FINANCIAL CONTRACTS ACT 1995 SO AS TO CLARIFY WHETHER CERTAIN PERSONS ARE PARTIES TO A NETTING AGREEMENT, TO AMEND THE TAXES CONSOLIDATION ACT 1997 IN RELATION TO THE TAXATION POSITION OF THE NATIONAL PENSIONS RESERVE COMMISSION IN RELATION TO CERTAIN ASSETS TRANSFERRED FROM PENSION FUNDS TO THE NATIONAL PENSIONS RESERVE FUND, AND TO PROVIDE FOR RELATED PURPOSES;

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—This Act may be cited as the Financial Measures Short title.
40 (Miscellaneous Provisions) Act 2009.

PART 2

DIRECT DEBIT INSTRUCTIONS AND MANDATES

Continuation of
certain direct debit
instructions.

2.—(1) The Minister for Finance may make regulations providing for direct debit instructions to continue to operate as direct debit mandates after the SEPA Scheme comes into operation. 5

(2) Subject to any regulations made by virtue of *subsection (1)*, a direct debit instruction continues to operate, after the SEPA Scheme comes into operation, as a direct debit mandate according to its terms.

(3) Regulations made by virtue of *subsection (1)*— 10

(a) may, for the purpose of continuing the operation of a direct debit instruction as a direct debit mandate, modify the operation, in relation to such an instruction or mandate, of any enactment or rule of law, and

(b) may make provision— 15

(i) requiring originators that intend to continue direct debit instructions in operation as direct debit mandates after the SEPA Scheme comes into operation to make available specified information about the Scheme, and about how the information is required to be made available, and 20

(ii) for the period of notice that such an originator is required to give of that intention, and the manner in which that notice is required to be given.

(4) Regulations made under *subsection (1)*— 25

(a) may declare any such regulation to be a penal regulation, and

(b) may make different provision for different classes of direct debit instructions.

(5) A person who contravenes a regulation under this section that is declared to be a penal regulation commits an offence and is liable on summary conviction to a fine of €5,000 or imprisonment for 6 months or both. 30

(6) Regulations made under *subsection (1)* shall be laid before each House of the Oireachtas as soon as may be after they are made and, if a resolution annulling them is passed by either such House within the next 21 days on which that House has sat after the regulations are laid before it, the regulations shall be annulled accordingly but without prejudice to the validity of anything previously done under the regulations. 35 40

(7) In this section:

“direct debit instruction” means—

(a) a direct debit instruction, within the meaning given by the Scheme Rules of the Direct Debit Scheme published by Irish Retail Electronic Payments Clearing Company Ltd as updated to February 2008, being such an instruction 45

that is valid and operative within the terms of those Rules, or

5 (b) a direct debit plus instruction, within the meaning of those Rules, being such an instruction that is valid and operative within the terms of those Rules;

“direct debit mandate” means a mandate, within the meaning given by the Scheme Rulebook;

“originator” means the person in whose favour a direct debit instruction or direct debit mandate has been given;

10 “Scheme Rulebook” means the *SEPA Core Direct Debit Scheme Rulebook Version 3.3* approved by the European Payments Council on 31 March 2009, or any later version of that Rulebook approved by that Council;

15 “SEPA Scheme” means the SEPA Core Direct Debit Scheme set out in the Scheme Rulebook.

PART 3

TRANSFER OF ASSETS OF CERTAIN PENSION FUNDS TO NATIONAL PENSIONS RESERVE FUND

3.—(1) In this Part:

Interpretation (*Part 3*).

20 “Act of 1990” means the Pensions Act 1990;

“Act of 2000” means the National Pensions Reserve Fund Act 2000;

“additional voluntary contributions” has the same meaning as in the Act of 1990;

“assets” shall be construed in accordance with *subsection (2)*;

25 “benefits” includes pensions, gratuities and any other allowances payable under a relevant pension scheme;

“the Commission” means the National Pensions Reserve Fund Commission;

30 “covered other pension fund” means a pension fund referred to in *column A* of *Part 2* of *Schedule 1*;

“covered pension fund” means a covered other pension fund or a covered university pension fund;

“covered university pension fund” means a pension fund referred to in *column A* of *Part 1* of *Schedule 1*;

35 “relevant body”, in relation to a covered pension fund and the relevant pension scheme for the fund, means the body specified for the relevant covered pension fund in *column B* of the relevant item in *Schedule 1*;

“relevant Minister” means—

(a) in relation to a covered university pension fund and its relevant pension scheme, the Minister for Education and Science, or

(b) in relation to a covered other pension fund and its relevant pension scheme, the Minister specified for the fund in column C of the relevant item in Part 2 of Schedule 1; 5

“relevant pension scheme”, in relation to a covered pension fund, has the meaning given by section 4;

“Reserve Fund” means the National Pensions Reserve Fund established by the Act of 2000; 10

“transfer order” means an order made under section 5(1);

“university pension scheme” means the relevant pension scheme in relation to a covered university pension fund.

(2) A reference in this Part to the assets of a fund is a reference to— 15

(a) in the case of a fund that is established as a trust, the assets subject to the trust, and

(b) in the case of a covered pension fund that is not established as a trust, the assets held by the relevant body concerned for the purposes of the fund, 20

but does not include any assets identified by the fund as being held for the purposes of a defined contribution scheme (within the meaning of the Act of 1990) financed by additional voluntary contributions.

References to “relevant pension scheme”.

4.—(1) In this Part, a reference to the relevant pension scheme in relation to a covered pension fund is a reference— 25

(a) if no transfer order has been made in relation to the fund, to the pension scheme for the purposes of which the fund was established, or

(b) if a transfer order has been made in relation to the fund, to the pension scheme contained in the instruments or provisions specified for that purpose in the order. 30

(2) On and after the date of effect of a transfer order in relation to a covered pension fund, the provisions of that order that specify the instruments or provisions that contain the relevant pension scheme are conclusive as to those instruments or provisions. 35

Transfer orders.

5.—(1) The relevant Minister in relation to a covered pension fund, acting with the consent of the Minister for Finance, may make a transfer order in relation to the fund.

(2) Before making a transfer order in relation to a covered pension fund the relevant Minister shall consult— 40

(a) in the case of a fund that is constituted as a trust, the trustees of that trust, and

(b) the board of directors or other governing body of the relevant body for the fund,

to the extent that he or she considers necessary or reasonable in the circumstances.

5 (3) Consultation that took place before the passing of this Act with the persons concerned satisfies the obligation in *subsection (2)*.

(4) A transfer order—

(a) shall specify its date of effect,

10 (b) shall either set out a list of the instruments or provisions that contain the relevant pension scheme, or contain some other appropriate means of identifying those instruments or provisions, and

(c) may make any provision necessary to give effect to the transfer of assets under the order.

15 (5) In *subsection (4)* “instrument” includes a trust deed, a university statute and a college statute.

(6) Notice of the making of a transfer order shall be published as soon as practicable in *Iris Oifigiúil*.

20 (7) A transfer order shall be laid before each House of the Oireachtas as soon as may be after it is made.

6.—(1) On the date of effect of a transfer order in relation to a covered pension fund, the assets of the fund are by virtue of this section transferred to the Reserve Fund, and thereafter form part of the assets of that Fund. Effect of transfer order on assets of funds.

25 (2) On the date of effect of a transfer order in relation to a covered pension fund—

(a) any trust in relation to the assets of the fund is terminated,

30 (b) the trustees under any such trust cease to be trustees, and cease to be liable as trustees for anything done in relation to that fund on or after the date of effect,

(c) the relevant body ceases to be liable in relation to the fund for anything done on or after the date of effect, and

35 (d) the provisions of any trust deed, university statute, college statute or other instrument or instruments (other than provisions specified in the transfer order as setting out part of the relevant pension scheme) constituting the fund cease to have effect.

40 (3) If a trust deed in relation to a covered pension fund contains any provision to the effect that the relevant pension scheme ceases to operate on the termination of the trust, then the provision is of no effect to the extent that it so provides.

Relevant pension scheme to continue after making of transfer order.

7.—(1) Where a transfer order has been made in relation to a covered pension fund, the relevant pension scheme continues to operate, subject to this Part, on and after the coming into effect of the order.

(2) If before the making of a transfer order in relation to a covered pension fund the board of directors or other governing body of the relevant body concerned were not the administrators of the relevant covered pension scheme, on the date of effect of the order that board of directors or other governing body becomes the administrators of the scheme.

(3) The persons who were members, immediately before the making of a transfer order in relation to a covered pension fund, of the relevant pension scheme continue, on and after the coming into effect of the order, to be members of the scheme. For all purposes each such member's membership of the scheme is to be taken to have been uninterrupted.

Transfer of assets under transfer order.

8.—(1) The transfer of an asset under a transfer order is not subject to any form of taxation.

(2) Any instrument necessary to give full effect to or record a transfer of an asset under a transfer order is not subject to stamp duty.

Application of certain other Acts.

9.—(1) A transfer order has effect for the purposes of this Part notwithstanding anything in the Act of 1990.

(2) The Act of 1990 continues to apply to a relevant pension scheme after the date of effect of a transfer order in relation to the covered pension fund concerned to the same extent as that Act applied to the scheme before that date.

(3) Notwithstanding section 6(1)(c) (as amended by section 3(b) of the Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009) of the Act of 2000, where assets transferred under a transfer order include securities issued under section 54(1) of the Finance Act 1970, the Commission may hold or dispose of those securities as it sees fit.

(4) Nothing in this Part affects the operation of section 25(8) of the Universities Act 1997 so far as it relates to superannuation.

Value of assets transferred to be offset against contributions to Reserve Fund.

10.—(1) Where a transfer order has been made in relation to a covered pension fund, the value of the assets transferred pursuant to the order shall be taken to be in satisfaction or part-satisfaction, as the case requires, of the obligation of the Minister for Finance under section 18(2) of the Act of 2000 to make contributions to the Reserve Fund in the current year.

(2) If the aggregate value of assets transferred to the Reserve Fund under transfer orders in a year, added to any contributions made to the Reserve Fund in the same year under subsections (2), (5A) and (5C) of section 18 (as amended by section 6(c) of the Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009) of the Act of 2000, is greater than the amount required to be paid into the Reserve Fund in that year under section 18(2) of the Act of 2000, the excess amount shall be taken to be in satisfaction or part-satisfaction, as the case requires, of the

amount required under that section to be paid into that Fund in any subsequent year or years.

(3) For the purposes of *subsections (1) and (2)*—

5 (a) as soon as practicable after a transfer order is made in relation to a covered pension fund, the trustees of the fund (or, where there is no trust deed, the board or governing body of the relevant body in relation to the fund) shall cause a valuation, on the same basis as a valuation of resources for the purpose of an actuarial valuation under Part IV of the Act of 1990, to be made of the assets of the fund as at the date of effect of the transfer order, and

15 (b) the Commission shall determine the value of the assets of the fund, as at the date of effect of the transfer order, in consultation with the Minister, having regard to that valuation.

20 **11.**—(1) If before the coming into effect of a transfer order in relation to a covered pension fund a provision of the relevant pension scheme conferred a discretion in relation to one or more members' rights or benefits, the provision continues in effect after the coming into effect of the order, but the discretion is to be exercised by the relevant Minister in relation to the scheme and the Minister for Finance acting jointly. Exercise of discretions under relevant pension scheme after making of transfer order.

25 (2) After the coming into effect of a transfer order in relation to a covered pension fund, the relevant Minister in relation to the relevant pension scheme and the Minister for Finance, acting jointly, may delegate, in writing, the exercise of a discretion referred to in *subsection (1)*—

30 (a) in the case of a university pension scheme, to the Higher Education Authority or the governing body of the relevant body concerned, and

(b) in the case of any other relevant pension scheme, to the board of directors or other governing body of the relevant body concerned.

35 **12.**—(1) After a transfer order has been made in relation to a covered pension fund, the relevant pension scheme has effect, in relation to the making of contributions by members and the employers concerned and in relation to benefits, in accordance with *subsections (2) to (5)*. Continuation of scheme regarding obligations and benefits.

40 (2) An obligation to make contributions referred to in *subsection (1)* has effect as an obligation—

45 (a) in the case of each member's obligation to make contributions, to make those contributions to the relevant body concerned, or to permit the relevant body to withhold those contributions from salary, wages or other payments due, in each case at the same rate as immediately before the date of effect of the relevant transfer order, and

50 (b) in the case of an employer's obligation to make contributions, to make those contributions at the same rate as immediately before the date of effect of the order,

to be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance or otherwise paid or disposed of as that Minister may direct.

(3) After a transfer order has been made in relation to a covered pension fund, any right of members of the relevant pension scheme to make voluntary contributions (including contributions for any purchase of notional service and buyback of years, repayment of a marriage gratuity and a transfer value paid in to the benefit of the member, but not including additional voluntary contributions treated under the Act of 1990 as paid to a defined contribution scheme (within the meaning given by that Act), or contributions to a PRSA (within the meaning given by that Act)) to the scheme continues to have effect according to the terms of the scheme. 5 10

(4) As soon as practicable after the coming into effect of a transfer order in relation to a covered pension fund, the relevant body in relation to the relevant pension scheme shall set up, subject to the approval of the relevant Minister in relation to the scheme and the Minister for Finance, an appropriate mechanism to account separately for contributions referred to in *subsections (2) and (3)*. 15

(5) On and after the coming into effect of a transfer order in relation to a covered pension fund, the obligation to pay benefits in accordance with the relevant pension scheme becomes an obligation of the relevant body in relation to the scheme. 20

(6) If the aggregate of members and employers' contributions paid to or withheld or retained by a relevant body under *subsections (2) and (3)* (being contributions that the Minister has directed the body to apply to the payment of benefits under the relevant pension scheme) are insufficient to meet the body's obligations to pay those benefits in accordance with the scheme, the Minister for Finance shall make good the deficiency by payments to the relevant body from funds provided by the Oireachtas for the purpose. 25 30

Changes in rules of covered pension schemes.

13.—(1) Section 25(7) of the Universities Act 1997 and the Fifth Schedule to that Act continue to apply in relation to a relevant pension scheme that is a university pension scheme after a transfer order is made in relation to the relevant covered pension fund, but that section and Schedule are not to be taken to authorise the amendment of the order. 35

(2) On and from the passing of this Act, a relevant pension scheme (other than a relevant pension scheme to which *subsection (1)* applies) may be amended only with the approval of the relevant Minister in relation to the scheme and the Minister for Finance. 40

Complaints and disputes.

14.—(1) Nothing in this Part or in any transfer order affects the jurisdiction of the Pensions Ombudsman established by section 127 of the Act of 1990 to investigate and determine a complaint or dispute in relation to the relevant pension scheme. 45

(2) If a relevant pension scheme confers on a Minister the function of settling disputes by arbitration or otherwise, after the coming into effect of a transfer order in relation to the covered pension fund concerned that Minister continues to have that function.

(3) If procedures of the kind referred to in section 132 of the Act of 1990 have been established in relation to a relevant pension scheme, after the coming into effect of a transfer order in relation to 50

the covered pension fund concerned those procedures continue to have effect.

PART 4

GUARANTEES BY MINISTER FOR FINANCE

5 **15.**—(1) A reference to a guarantor in paragraph 3(2)(e) of Schedule 1 to the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005) shall be taken not to include the Minister for Finance.

Construction of certain provisions when Minister for Finance guarantees non-equity securities, etc.

10 (2) Nothing in section 41 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 renders the Minister for Finance liable to pay compensation to any person who acquires any security the issue of which has been guaranteed by that Minister.

15 (3) No action or other proceeding whatsoever lies or is maintainable against the Minister for Finance in respect of any loss or damage alleged to have been caused or contributed to by any statement, misstatement or omission of information in any statement in a prospectus, offering circular or other offering document relating to any securities guaranteed by that Minister.

PART 5

20 AMENDMENTS OF OTHER ACTS

16.—The Central Bank Act 1989 is amended as set out in *Part 1* of *Schedule 2*.

Amendment of the Central Bank Act 1989.

17.—(1) The Credit Institutions (Financial Support) Act 2008 is amended as set out in *Part 2* of *Schedule 2*.

Amendment of the Credit Institutions (Financial Support) Act 2008.

25 (2) This section comes into operation on a day that the Minister for Finance may by order appoint.

18.—The Insurance (No. 2) Act 1983 is amended as set out in *Part 3* of *Schedule 2*.

Amendment of the Insurance (No. 2) Act 1983.

30 **19.**—The Insurance Act 1989 is amended as set out in *Part 4* of *Schedule 2*.

Amendment of Insurance Act 1989.

20.—The Netting of Financial Contracts Act 1995 is amended as set out in *Part 5* of *Schedule 2*.

Amendment of Netting of Financial Contracts Act 1995.

21.—The Taxes Consolidation Act 1997 is amended as set out in *Part 6* of *Schedule 2*.

Amendment of Taxes Consolidation Act 1997.

SCHEDULE 1

COVERED PENSION FUNDS

PART 1

UNIVERSITY PENSION FUNDS

Column A Fund	Column B Body	
University of Dublin Trinity College Pension Fund	University of Dublin Trinity College	5
University College Dublin Pension Fund	University College Dublin	
University College Cork Pension Funds	University College Cork	10
The Joint Pension Fund, National University of Ireland, Galway	National University of Ireland, Galway	
National University of Ireland, Maynooth Pension Plan	National University of Ireland, Maynooth	
National University of Ireland General Pension Scheme Fund	National University of Ireland	15

PART 2

OTHER PENSION FUNDS

Column A Fund	Column B Body	Column C Relevant Minister	
Industrial Development Authority Superannuation Fund	Forfás	Minister for Enterprise, Trade and Employment	20
Shannon Free Airport Development Company Limited Superannuation Fund	SFADCo	Minister for Enterprise, Trade and Employment	25
An Foras Áiseanna Saothair (Closed) Superannuation Scheme Fund	FÁS	Minister for Enterprise, Trade and Employment	30
Irish Goods Council Pension Fund	Forfás	Minister for Enterprise, Trade and Employment	
An Bord Bia Superannuation Fund	An Bord Bia	Minister for Agriculture, Fisheries and Food	35
Arts Council Pension Fund	Arts Council	Minister for Arts, Sport and Tourism	
Regional Tourism Pension Scheme Fund	Fáilte Ireland	Minister for Arts, Sport and Tourism	40
Fáilte Ireland Contributory Pension and Death Benefits Scheme (formerly known as CERT)	Fáilte Ireland	Minister for Arts, Sport and Tourism	

AMENDMENTS OF OTHER ACTS

PART 1

AMENDMENT OF THE CENTRAL BANK ACT 1989

5	Item	Provision amended	Amendment
10 15 20 25 30 35	1	Section 75(1)	<p>Substitute:</p> <p>“(1) Subject to subsections (1A) and (1B), this Chapter applies to an acquisition by a person or more than one person acting in concert of shares or other interest in a holder of a licence.</p> <p>(1A) This Chapter does not apply to an acquisition if—</p> <p style="padding-left: 40px;">(a) after the acquisition the proportion of shares in the licence holder held by the acquiring person or persons would not exceed the prescribed percentage, and</p> <p style="padding-left: 40px;">(b) where the licence holder concerned is a body incorporated in the State, the acquisition, together with any other interest in the licence holder already held or controlled (directly or indirectly) by the acquiring person or persons, would not confer a right to appoint or remove some or all of the board of directors or committee of management of the licence holder.</p> <p>(1B) This Chapter does not apply to an acquisition that is subject to notification and prudential assessment under the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992).</p> <p>(1C) An acquisition to which this Chapter applies is referred to in this Chapter as an ‘acquiring transaction’.”</p>

PART 2

Section 17.

AMENDMENT OF THE CREDIT INSTITUTIONS (FINANCIAL SUPPORT) ACT 2008

40	Item	Provision amended	Amendment
45 50	1	Section 6(1)	After “the relevant date,” insert “and in accordance with this section,”.
	2	Section 6(3)	<p>Substitute:</p> <p>“(3) Financial support provided under this section shall not continue beyond—</p> <p style="padding-left: 40px;">(a) 29 September 2010, or</p> <p style="padding-left: 40px;">(b) a later date specified by the Minister by order.</p> <p>(3A) The Minister may specify a date under subsection (3)(b) if and only if—</p>

Item	Provision amended	Amendment	
		<p>(a) he or she is satisfied, after consulting the Governor and the Regulatory Authority, that the circumstances set out in section 2 exist and are likely to continue to exist until the date to be specified, and</p> <p>(b) he or she is satisfied that it is necessary in the public interest that assistance continue to be provided under this section until that date.</p> <p>(3B) The Minister may specify by order a period or periods during which credit institutions may incur borrowings, liabilities and obligations in respect of which financial support may be provided under this section.”</p>	5 10
3	Section 6	<p>After section 6(19), insert:</p> <p>“(20) In the event of there being any doubt or uncertainty over whether financial support provided or proposed to be provided in respect of a borrowing, liability or obligation of a credit institution or subsidiary may be provided under this section, the Minister may determine the matter. The Minister’s determination is conclusive.”</p>	15 20

Section 18.

PART 3

AMENDMENT OF THE INSURANCE (No. 2) ACT 1983

Item	Provision amended	Amendment	
1	Section 1(1), definition of “ ‘authorisation’ and ‘non-life insurance’ ”	Delete.	25 30
2	Section 1(1), definition of “the business”	<p>Substitute:</p> <p>“ ‘the business’ in relation to an insurer or reinsurer includes the business of managing investments and assets held by the insurer or reinsurer;”</p>	35
3	Section 1(1), definition of “ ‘insurer’ and ‘policy’ ”	<p>Substitute:</p> <p>“ ‘insurance business’ means non-life business or life business;</p> <p>‘insurer’ means the holder of an authorisation issued by the Bank under—</p> <p>(a) the Non-Life Insurance Regulations,</p> <p>(b) the Life Assurance Regulations,</p> <p>(c) the Non-Life Insurance Framework Regulations, or</p> <p>(d) the Life Assurance Framework Regulations,</p> <p>to carry on a class or description of insurance business;</p> <p>‘Life Assurance Framework Regulations’ means the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994);</p>	40 45 50 55

Item	Provision amended	Amendment
		'Life Assurance Regulations' means the European Communities (Life Assurance) Regulations 1984 (S.I. No. 57 of 1984);".
5 10 15 20 25	4 Section 1(1), definition of "policyholder"	Substitute: " 'Non-Life Insurance Framework Regulations' means the European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. No. 359 of 1994); 'Non-Life Insurance Regulations' means the European Communities (Non-Life Insurance) Regulations 1976 (S.I. No. 115 of 1976); 'policy' means a document or other writing by which a contract— (a) of non-life insurance (within the meaning of the Non-Life Insurance Regulations or the Non-Life Insurance Framework Regulations) or life insurance (within the meaning of the Life Assurance Regulations or the Life Assurance Framework Regulations), or (b) of reinsurance (within the meaning of the Reinsurance Regulations), is made or agreed to be made or that is evidence of such a contract; 'policyholder', in relation to an insurer or a reinsurer, means a person (other than the issuing insurer or reinsurer) who is a party to a policy issued by the insurer or reinsurer;".
30 35 40 45 50	5 Section 1(1), definition of "the Regulations"	Substitute: " 'the Reinsurance Regulations' means the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006); 'reinsurer' means the holder of an authorisation under the Reinsurance Regulations; 'the supervisory Regulations' means— (a) the Life Assurance Regulations, (b) the Non-Life Insurance Regulations, (c) the Reinsurance Regulations, (d) the Non-Life Insurance Framework Regulations, (e) the Life Assurance Framework Regulations, and (f) the European Communities (Insurance and Reinsurance Groups Supplementary Supervision) Regulations 2007 (S.I. No. 366 of 2007).".
55	6 Section 1	Insert after subsection (2): “(3) Unless the contrary intention appears, a reference in sections 2 to 6 of this Act to an insurer includes a reinsurer.”.
	7 Section 2(2)(a)(iii)	Substitute "the supervisory Regulations" for "the Regulations".
	8 Section 2(2)(b)	Substitute "insurance business or reinsurance business" for "non-life insurance business".

AMENDMENT OF THE NETTING OF FINANCIAL CONTRACTS ACT 1995

Item	Provision amended	Amendment
5	1	Section 1, definition of "party" Substitute: " 'party' has the meaning given in section 1A;".
10	2	After section 1, insert: <i>"Meaning of 'party'.</i> 1A.—(1) In this Act, 'party' means, subject to subsections (2) and (3), a person constituting one of the parties to an agreement. (2) In this Act 'party' includes, and shall be deemed always to have included— (a) any number of persons who share a single, identical interest in the agreement referred to subsequently in this definition if there is no differentiation in the rights and obligations of each of them in that agreement, (b) the partners in a partnership or limited partnership, including any limited partnership established under the Investment Limited Partnerships Act 1994 or the Limited Partnerships Act 1907, and (c) the participants in— (i) a common contractual fund authorised pursuant to the Investment Funds, Companies and Miscellaneous Provisions Act 2005, the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 (S.I. No. 211 of 2003) or the laws of a Member State (other than the State) adopted to implement Council Directive No. 85/611/EEC of 20 December 1985 ¹ as amended, or (ii) a sub-fund of a common contractual fund referred to in subparagraph (i), (whether or not the fund is acting through a manager or a delegate of a manager), in circumstances where any of such persons or such partners (acting in their capacity as such) or such fund or sub-fund enters into an agreement. (3) In this Act 'party' does not include, and shall be deemed never to have included, any person in whose favour a party to an agreement has created any interest by way of security in any of the party's rights, title and interest in and to that agreement.".
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¹OJ L375, 31/12/1985, p.3.

PART 6

AMENDMENT OF THE TAXES CONSOLIDATION ACT 1997

Item	Provision amended	Amendment	
1	Section 230A	Insert “the National Pensions Reserve Fund,” before “the National Pensions Reserve Fund Commission or”.	5
2	Section 730D(2)(b)	Substitute “section 730E(3),” for “section 730E(3), or”.	
3	Section 730D(2)(c)	Substitute “section 730E(3A),” for “section 730E(3A).”.	10
4	Section 730D(2)	After section 730D(2)(c), insert: “(d) where the life policy is an asset held by the National Pensions Reserve Fund Commission or the State acting through that Commission, and that Commission has made a declaration to that effect to the assurance company, or (e) where the life policy is an asset held by a Commission investment vehicle (within the meaning given by section 2 of the National Pensions Reserve Fund Act 2000 (as amended by section 2 of the Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009)) or the State acting through a Commission investment vehicle and the Commission investment vehicle has made a declaration to that effect to the assurance company.”.	15 20 25
5	Schedule 15, Part 1	Insert after paragraph 34A: “34B. The National Pensions Reserve Fund.”.	30



**AN BILLE UM BEARTA AIRGEADAIS (FORÁLACHA
ILGHNÉITHEACHA) 2009
FINANCIAL MEASURES (MISCELLANEOUS PROVISIONS)
BILL 2009**

EXPLANATORY MEMORANDUM

Purpose of the Bill

This Bill contains a number of miscellaneous financial services provisions:

- to provide that existing direct debit mandates will continue to have legal effect in the Single Euro Payments Area (SEPA) direct debit scheme;
- to provide for the transfer of assets of pension funds of certain third level institutions and non-commercial State bodies to the National Pensions Reserve Fund, and to facilitate the payment on a pay-as-you-go basis by the State of the pension liabilities covered by those funds;
- to make amendments to the Prospectus Directive Regulations 2005 and the Investment Funds, Companies and Miscellaneous Provisions Act 2005 in respect of the responsibility and liability of the Minister for Finance in relation to certain prospectus content;
- to provide that Chapter VI, Part II, of the Central Bank Act 1989 does not apply to acquisitions to which the Directive 2007/44/EC on the prudential assessment of acquisitions and increase of holdings in the financial sector applies;
- to extend certain provisions of the Credit Institutions (Financial Support) Act 2008;
- to amend certain provisions of the Insurance (No. 2) Act 1983 and Insurance Act 1989; and
- to clarify the application of the Netting of Financial Contracts Act 1995.

Provisions of the Bill

PART 1

PRELIMINARY AND GENERAL

Section 1 — Short Title is a standard section providing for a short title to the Bill.

PART 2

DIRECT DEBIT INSTRUCTIONS AND MANDATES

Section 2 — Continuation of certain direct debit instructions provides for the Minister for Finance to make regulations providing for direct debit instructions to continue to operate as direct debit mandates after the Single European Payments Area scheme comes into operation. This power will be limited to enabling SEPA migration and will enable the Minister to set necessary conditions, such as ensuring that consumers are fully informed of the facts of migration.

PART 3

TRANSFER OF ASSETS OF CERTAIN PENSION FUNDS TO NATIONAL PENSIONS RESERVE FUND

Section 3 — Interpretation (Part 3) defines terms in Part 3 of the Bill.

Section 4 — References to “relevant pension scheme” provides an interpretation of the phrase “relevant pension scheme” in relation to a covered pension fund.

Section 5 — Transfer orders provides that the relevant Minister may, with the consent of the Minister for Finance, make an order transferring the assets of a covered pension fund to the National Pensions Reserve Fund. The transfer order in respect of a particular fund will determine the date of effect of the transfer of the fund.

Section 6 — Effect of transfer order on assets of funds provides that the effect of a transfer order made under Section 6 is to transfer the assets of the fund subject to the transfer order to the National Pensions Reserve Fund. It also provides that the Trustees and the Bodies cease to be liable for anything done in relation to the fund on or after the date of effect of the transfer.

Section 7 — Relevant pension scheme to continue after making of transfer order provides for the continued operation of any pension scheme for which a transfer order has been made, subject to the provisions of the Bill.

Section 8 — Transfer of assets under transfer order provides an exemption from any form of taxation for any assets transferred under a transfer order.

Section 9 — Application of certain other Acts provides that a transfer order has effect notwithstanding any provision in the Pensions Act 1990. It also provides that, following the date of a transfer, the Pensions Act will continue to apply to a relevant scheme to the same extent as it did prior to that date. It also provides that where assets transferred include Irish Government securities, the NPRF may hold or dispose of them. It further provides that the Bill does not affect the operation of section 25(8) of the Universities Act 1997 in so far as it refers to superannuation.

Section 10 — Value of assets transferred to be offset against contributions to Reserve Fund provides that assets transferred to the National Pensions Reserve Fund pursuant to a transfer order shall be taken to be in satisfaction or part-satisfaction of the obligation of

the Minister for Finance under the National Pensions Reserve Fund Act 2000 to make contributions to that Fund.

Section 11 — Exercise of discretions under relevant pension scheme after making of transfer order provides that any discretion contained within a covered pension scheme in relation to rights and benefits of members, either individually or collectively, shall, after the making of the transfer order, be exercised by the relevant Minister and the Minister for Finance who in turn may delegate the exercise of the discretion.

Section 12 — Continuation of scheme regarding obligations and benefits provides, subject to the provisions of this section, for the continuation of obligations to make contributions to the scheme and pay benefits relating to the scheme, respectively, in relation to any covered scheme after a transfer order has been made.

Section 13 — Changes in rules of covered pension schemes provides that section 25(7) of the Universities Act 1997 and the Fifth Schedule to that Act, which provide for the approval of the terms and conditions of any university superannuation scheme, continue to apply in relation to a covered pension scheme after a transfer order has been made.

Section 14 — Complaints and disputes provides that nothing in Part 3 of the Bill or in any transfer order affects the jurisdiction of the Pensions Ombudsman, the procedures established by section 132 of the Pensions Act 1990 or, if a relevant pension scheme confers on a Minister the function of settling disputes, the relevant Minister continues to have that function after the making of a transfer order.

PART 4

GUARANTEES BY MINISTER FOR FINANCE

Section 15 — Construction of certain provisions when Minister for Finance guarantees non-equity securities, etc makes technical amendments to the Prospectus Directive Regulations 2005 and the Investment Funds, Companies and Miscellaneous Provisions Act 2005 to remove the requirement to take responsibility for, and liability on the Minister for Finance as guarantor of certain debt securities in relation to the accuracy of, information contained in prospectuses relating to such securities.

PART 5

AMENDMENTS OF OTHER ACTS

Section 16 — Amendment of the Central Bank Act 1989 provides for an amendment to the Central Bank Act 1989 as set out in Part 1 of Schedule 2.

Section 17 — Amendment of the Credit Institutions (Financial Support) Act 2008 provides for amendments to the Credit Institutions (Financial Support) Act 2008 as set out in Part 2 of Schedule 2.

Section 18 — Amendment of the Insurance (No. 2) Act 1983 provides for amendments to the Insurance (No. 2) Act 1983 as set out in Part 3 of Schedule 2.

Section 19 — Amendment of Insurance Act 1989 provides for an amendment to the Insurance Act 1989 as set out in Part 4 of Schedule 2.

Section 20 — Amendment to Netting of Financial Contracts Act 1995 provides for amendments to the Netting of Financial Contracts Act 1995 as set out in Part 5 of Schedule 2.

Section 21 — Amendment of Taxes Consolidation Act 1997 provides for amendments to the Taxes Consolidation Act 1997 as set out in Part 6 of Schedule 2.

Schedule 1 — Covered Pension Funds lists the Funds to be transferred under Part 3 of the Bill and the relevant State Bodies.

Schedule 2 — Part 1 amends Chapter VI, Part II, of the Central Bank Act 1989 so that it does not apply to any proposed acquisition that is within the scope of Directive 2007/44/EC on the Prudential Assessment of Acquisitions and Increase of Holdings in the Financial Sector.

Schedule 2 — Part 2 amends the Credit Institutions (Financial Support) Act 2008 to allow for the extension of the period of financial support beyond 29 September 2010 by Ministerial Order. The Minister may also specify by order the period within which institutions may incur liabilities etc in respect of which financial support may be provided.

Schedule 2 — Part 3 amends the Insurance (No. 2) Act to enable the Financial Regulator to present a petition to the High Court for the administration of a life insurance or reinsurance undertaking and the appointment of an administrator where it considers that the business of the insurer/reinsurer is being or has been conducted in such a way that inadequate provision has been made for its debts including contingent and prospective liabilities. Non-life insurers are already covered by this legislation.

Schedule 2 — Part 4 provides for an amendment to the Insurance Act 1989 consequential to Section 19 and Schedule 2 Part 3.

Schedule 2 — Part 5 amends the Netting of Financial Contracts Act 1995 to clarify the application of the Netting of Financial Contracts Act 1995 for netting agreements where one party to the agreement has created a security interest in favour of a third party.

Schedule 2 — Part 6 provides for amendments to the Taxes Consolidation Act 1997, consequential to Part 3 of the Bill, to facilitate the holding of the assets of a transferred pension scheme by the National Pensions Reserve Fund.

*An Roinn Airgeadais,
Meitheamh 2009.*