



# **TITHE AN OIREACHTAIS**

**An Comhchoiste um Airgeadas, Caiteachas Poiblí  
agus Athchóiriú**

**Tuarascáil maidir le héisteacht i ndáil leis an Dréacht-  
Scéim Ghinearálta an Bhille um Leabhair Iasachtaí a  
Dhíol le Tríú Páirtithe Neamhrialáilte, 2014**

**Nollaig 2014**

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**HOUSES OF THE OIREACHTAS**

**JOINT COMMITTEE ON FINANCE PUBLIC  
EXPENDITURE AND REFORM**

**Report on hearing in relation to The Draft General  
Scheme of The Sale of Loan Books to Unregulated  
Third Parties Bill 2014**

**December 2014**

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Note: The Draft Heads of General Scheme of The Sale of Loan Books to Unregulated Third Parties Bill is available on the Department of Finance website.

## CHAIRMAN'S PREFACE

On 21 July 2014, the General Scheme of the Sale of Loan Books to Unregulated Third Parties Bill 2014 was approved by Government. This outlined the Government's plans to ensure that entities to whom loan books of regulated institutions are sold also come under the remit of the Central Bank.

The Joint Committee held two sessions of hearings on 3 December 2014. At the first hearing, the Department of Finance officials briefed the Committee on the Bill and changes to the approach as a result of a public consultation process. At the second session, representatives of the Free Legal Advice Centres and the Banking and Payments Federation Ireland gave their consideration of the Bill. Interesting discussions with Committee members ensued.

The Joint Committee is fully supportive of measures to protect the interests of borrowers whose loans are managed by agencies, some of which may not be well-known names or have been long established in the financial market in Ireland. This report does not make recommendations but seeks to convey some observations and concerns of the Committee with regard to the sale of loan books to third parties.

I would like to express my appreciation to all the witnesses, and to the members of the Joint Committee and the Committee Secretariat. I hope this work will help to inform the legislative process and make a valuable contribution to the forthcoming legislation.



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Liam Twomey T.D.

Chairman

December 2014

## BACKGROUND

The Sale of Loan Books to Unregulated Third Parties Bill, which is priority legislation for the Government, seeks to address concerns surrounding the continued applicability of the Central Bank's codes and access for borrowers to the Financial Services Ombudsman, after loan books are sold to unregulated entities. Currently, where the purchaser of a loan book is not a regulated entity in Ireland, the purchaser may voluntarily apply the Central Bank codes when managing loan books. Of course, voluntary compliance is not enforceable and the Government made a commitment in March 2014 to ensure that the same protections are available for all consumers whose loans have been sold. The legislation will deal with mortgages, consumer loans and small and medium-sized enterprise loans.

The Government objective in bringing forward this legislation is set out as follows:

To ensure that borrowers whose loans are sold by a regulated entity to a currently unregulated entity maintain the same regulatory protections as they had prior to the sale, including under various Central Bank Codes (including the Code of Conduct on Mortgage Arrears (CCMA)).

It is not desirable or equitable that some of these protections can be avoided due to the regulatory position of the entity which owns the credit.

One of the key issues raised during the public consultation process conducted by the Department of Finance in relation to the Bill has led to a change in approach. The consultation highlighted an issue with a passive Special Purpose Vehicle (SPV) outsourcing servicing to a firm which would not be regulated. It is the Department's view following the consultation process, that credit servicing, as the customer-facing activity, is the appropriate activity to regulate. The legislation now focuses on this, rather than ownership.

Once it had taken that step to regulate credit servicing rather than ownership, the Department examined whether it was still correct to regulate ownership at all. The owner may make decisions in relation to a credit

agreement but it is the credit servicer who will communicate these to the borrower. The Department took the view that the best way of ensuring the borrower is protected and retains access to the Financial Services Ombudsman is to regulate credit servicing and ensure that borrowers can complain to the Financial Services Ombudsman about any actions affecting the borrower.

The Department's intention, subject to the advice of the Attorney General's office is that, if the regulated credit servicer claims that it is not responsible and passes the responsibility to the owner, the legislation will allow the Ombudsman to make the owner a party to the complaint, even if the owner is not regulated.

It is to be noted the Bill is being renamed as the "Consumer Protection (Regulation of Credit Servicing Firms) Bill 2014." This follows consultation with the Office of Parliamentary Counsel and reflects the approach now being adopted to protect consumers.

#### PROCEDURAL BASIS FOR PRE-LEGISLATIVE SCRUTINY

Standing Order 123A [Dáil] provides that "prior to its presentation or introduction to the Dáil, the general scheme or draft heads of a Bill shall, save in exceptional circumstances....., be given by a member of the Government or a Minister of State to the Committee empowered under Standing Order 82A to consider Bills published by the member of the Government.".

Standing Order 82A [Dáil] and 70A [Seanad] provide that a Joint Committee "may consider.....in respect of the relevant Department or Departments.....", "the general scheme or draft heads of any Bill published by the Minister." The Joint Committee is required by these Standing Orders to report on its consideration to both Houses of the Oireachtas.

## OBSERVATIONS AND CONCERNS RAISED BY COMMITTEE

Below reflects the key observations and concerns raised by the Committee.

### CHANGES TO HOW CONTRACTS WILL BE MANAGED

There is a concern that there are insufficient protections within the proposed legislation for the borrower once his/her loan has been sold to a third party. While the purchasing entity may be regulated by the Central Bank, it may choose to operate the contract more aggressively or stringently than the selling institution.

If it is not selling new loans into the Irish market, the purchasing entity does not have to preoccupy itself with reputational damage if it chooses, for example, to charge an interest rate higher than the selling institution, or if it enforces conditions of the contract largely ignored by the selling institution.

Moreover, if the loan is sold on again and further changes are made in the operation of the contract, the borrower may find that the spirit in which the loan is managed is completely different to when originally taken out.

Finally, while consumer contracts legislation may state that any lender would not be allowed to change an interest rate, even if it is allowed in the contract, without valid reason, it is unclear as to what such a reason would be. For example, a situation could be imagined where an entity with a non-performing loan book could choose to raise interest rates completely out of sync with the national average on the basis that it needs to make a reasonable profit. The borrower may find him/herself with little protection.

As the Committee indicated in its *Report on Hearings on Matters Relating to Mortgage Arrears Resolution Processes*, the Financial Services Ombudsman should utilise the Office's existing powers enshrined in legislation, to the maximum extent, to ensure optimal outcomes for borrowers.

### ALTERNATIVE RESTRUCTURING OR REPAYMENT AGREEMENTS

Further consideration needs to be given to ensuring that any existing alternative repayment arrangement agreed by the original lender under the

CCMA/MARP will be respected by the company acquiring that mortgage agreement.

#### DEBT OWNER AND SERVICE PROVIDER OBLIGATIONS

There does not appear to be total clarity on the division of obligations between debt owner and the credit servicing entity. If a servicer seeks to disassociate himself or herself from a complaint, and chooses to blame the owner, the borrower could be involved in a long drawn-out process involving the Financial Services Ombudsman. Under this legislation the service provider will be regulated but maybe not the owner. Clarity must be brought to this area and consideration should be given to the fact that some of these owners may also actually be off-shore, complicating the situation further.

#### BALANCING THE NEEDS OF THE BANKS AND BORROWERS

There is a requirement or need for some banks to de-leverage and strengthen their balance sheets by selling off part of their loan books. However, the need to ensure that new legislation will not deter entities from buying these must be matched against protecting borrowers' rights.

#### CURRENT CCMA MAY BE INADEQUATE

While there may have been a stronger moral imperative on the pillar banks to engage with the CCMA fully, loan purchasing entities may not cooperate to the same extent. The CCMA should be reviewed and strengthened, in particular to deal with areas of appeals against decisions of lenders, especially where there is a declaration of non-cooperation.

#### LOANS OTHER THAN MORTGAGES

Investment mortgage credit or unsecured credit is not covered by the Mortgage Arrears Resolution Process (MARP) and arrears on these loans will fall to be dealt with under the arrears handling chapter 8 of the Consumer Protection Code (CPC) 2012. While it is acknowledged that considerable

work has gone into MARP, the CPC may not provide as developed an infrastructure for attempting to resolve arrears cases for unsecured credit. It may warrant review.

#### LEVEL OF MONITORING

Legislation without monitoring and enforcement will be ineffective. The Financial Services Ombudsman service needs to have adequate resources to monitor loan purchasing entities and their activities, and to deal with complaints in a pro-active and decisive fashion.



## APPENDIX I

### COMMITTEE MEMBERS

**Deputies:**

Tom Barry (FG)  
Richard Boyd Barrett (PBP)  
Ciaran Cannon (FG)  
Ciara Conway (LAB)  
Michael Creed (FG)  
Pearse Doherty (SF)  
Regina Doherty (FG)  
Stephen S. Donnelly (IND)  
Timmy Dooley (FF)  
Alan Farrell (FG)  
Seán Fleming (FF)  
Ciarán Lynch (LAB)  
Mary Lou McDonald (SF)  
Michael McGrath (FF)  
Paul Murphy (SP)  
Kieran O'Donnell (FG)  
Pat Rabbitte (LAB)  
Arthur Spring (LAB)  
Peadar Toibín (SF)  
Liam Twomey (FG) (Chairman)  
Brian Walsh (FG)

**Senators:**

Seán D. Barrett (IND)  
Thomas Byrne (FF)  
Paul Coughlan (FG)  
Michael D'Arcy (FG)  
Aideen Hayden (LAB) (Vice-Chair)  
Tom Sheahan (FG)

## APPENDIX 2

### TERMS OF REFERENCE

#### **a. Functions of the Committee – derived from Standing Orders [DSO 82A; SSO 70A]**

- (1) The Select Committee shall consider and report to the Dáil on—
  - (a) such aspects of the expenditure, administration and policy of the relevant Government Department or Departments and associated public bodies as the Committee may select, and
  - (b) European Union matters within the remit of the relevant Department or Departments.
- (2). The Select Committee may be joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee for the purposes of the functions set out below, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3). Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such-
  - (a) Bills,
  - (b) Proposals contained in any motion, including any motion within the meaning of Standing Order 164,
  - (c) Estimates for Public Services, and
  - (d) Other matters

as shall be referred to the Select Committee by the Dáil, and

- (e) Annual Output Statements, and
- (f) Such Value for Money and Policy Reviews as the Select Committee may select.

- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies, and report thereon to both Houses of the Oireachtas:
- (a) matters of policy for which the Minister is officially responsible,
  - (b) public affairs administered by the Department,
  - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
  - (d) Government policy in respect of bodies under the aegis of the Department,
  - (e) policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
  - (f) the general scheme or draft heads of any Bill published by the Minister,
  - (g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
  - (h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
  - (i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in paragraph (4)(d) and (e) and the overall operational results, statements of strategy and corporate plans of such bodies, and
  - (j) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,
  - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,

- (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
  - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees:
- (a) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and
  - (b) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.
- (7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any sub-Committee or Committees standing established in respect of the Select Committee.
- (8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
  - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
  - (c) at the invitation of the Committee, other Members of the European Parliament.

**b. Scope and Context of Activities of Committees (as derived from Standing Orders [DSO 82; SSO 70])**

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are

specifically authorised under its orders of reference and under Standing Orders.

- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 26. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.
- (4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Dáil Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
  - (a) a member of the Government or a Minister of State, or
  - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.

## APPENDIX 3

### WITNESS LIST

Pre-Legislative Scrutiny on the General Scheme of the Sale of Loan Books to Unregulated third Parties Bill 2014

#### **Session A**

<b>Name</b>	<b>Organisation</b>
Mr John Hogan, Assistant Secretary, Banking Division	Department of Finance
Mr Declan Reid, Specialist, Shareholding Management Unit	Department of Finance
Mr Antoine Mac Donncha, Legal Advisor	Department of Finance
Mr Brian Fee, Assistant Principal	Department of Finance

#### **Session B**

<b>Name</b>	<b>Organisation</b>
Ms Noeline Blackwell, Director	FLAC
Mr Paul Joyce, Senior Policy Researcher	FLAC
Ms. Niamh Murphy, Head of Consumer Banking	Banking and Payments Federation Ireland
Mr. Maurice Crowley, Retail Director	Banking and Payments Federation Ireland

## APPENDIX 4

### LINK TO TRANSCRIPT OF HEARING

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/FIJ2014120300001?opendocument>