



BILLE AN BHAINC CEANNAIS, 1968
CENTRAL BANK BILL, 1968

EXPLANATORY MEMORANDUM

Introduction

1. The purposes of the Bill are :—

- (1) to provide for the control, through the agency of the Central Bank of Ireland, of the setting up and operation of banking businesses and the soliciting of deposits from the public;
- (2) to facilitate the merging of banking businesses in the interest of more efficient banking;
- (3) to give additional powers to the Central Bank of Ireland to enable that Bank to engage in any normal banking activity and to issue certain types of securities to other banks;
- (4) to remove the anomaly between the existing statutory provisions requiring parity between Irish currency and sterling and this country's obligations as a member of the International Monetary Fund;
- (5) to provide for the transfer of the Exchequer Account from the Bank of Ireland to the Central Bank, and
- (6) to make certain other amendments of the Currency and Central Bank Acts, 1927 to 1964, and certain supplementary provisions which are considered desirable.

PART I

Preliminary and general

2. Sections 1 to 4 are formal sections which make provision on the usual lines as regards the title, citation, interpretation, commencement of the proposed legislation, definitions and the laying of orders and regulations made under the legislation before the Oireachtas.

Section 5 provides for necessary repeals consequent on the provisions of the Bill.

PART II

Licensing and supervision of banks

3. Section 6 provides that no person shall carry on a banking business or represent himself as a banker or as carrying on banking business unless he holds a licence and maintains an amount on deposit in the Central Bank, such amount to be calculated in accordance with section 12 of the Bill. The expression "banking business", which is defined in section 2, means a business which consists of the acceptance of deposits payable on demand or on notice and any other business normally carried on by a bank. Thus it includes the acceptance of deposits by finance houses as well as banks. Bodies whose banking activities are regulated by other legislation, for example, the Agricultural Credit Corporation, the Industrial Credit

Company, the Post Office Savings Bank, trustee savings banks and building societies are exempt from the section.

4. *Section 7* gives power to the Central Bank to exempt any person who uses the word "bank", "banker" or "banking" in his name or title from the provisions of section 6 if, in the Bank's opinion, the person in question does not in fact carry on or propose to carry on a banking business and does not represent himself as engaging in business of this kind.

5. *Section 8* enables the Central Bank, at its discretion, to grant or refuse a licence to a person to carry on a banking business. The refusal of a licence is subject to the consent of the Minister for Finance and the Central Bank must be satisfied that the grant of a licence would not be in the interest of the orderly and proper regulation of banking. Consent by the Minister for Finance to refusal is also subject to the latter proviso. If the Bank proposes to refuse a licence, it must notify the applicant in writing and it is open to the applicant to make representations to the Minister in the matter, which representations the Minister is obliged to consider before he decides to give or withhold his consent.

6. *Section 9* gives the Central Bank the right to attach to banking licences issued under section 8 conditions designed to promote the orderly and proper regulation of banking. The conditions may be changed from time to time.

7. *Section 10* permits the Central Bank, with the consent of the Minister for Finance, to revoke a licence:—

- (1) if the holder so requests or ceases to carry on business;
- (2) if he becomes unable to meet his obligations, is adjudicated bankrupt or, if being a company, is being wound up;
- (3) if he fails to maintain the required deposit with the Bank;
- (4) if he is convicted on indictment of an offence under any provision of the legislation or if he is convicted summarily of an offence involving fraud, dishonesty or breach of trust;
- (5) if, since the grant of the licence, the circumstances have changed to such an extent that if the licence holder currently applied for a licence he would not be granted one.

The Central Bank is required to notify a licence holder in writing of a proposal to revoke his licence and the licence holder may make representations to the Minister who is required to consider the representations. If a licence is revoked, the former licensee will continue to be subject to the obligations of the Currency and Central Bank Acts until the Central Bank is satisfied that all liabilities have been discharged.

8. *Section 11* requires the Central Bank to publish at least once a year the names of holders of banking licences, to publish notice of revocation of any licence and to keep the appropriate officers of Court informed of the names of licence holders so that the Court may be in a position to notify the Bank of judgments, orders or decrees against licence holders.

9. *Section 12* provides for the maintenance with the Central Bank by each banking business of a cash deposit equal to 5 per cent of the total of deposits by the public at its offices in the State, subject to a minimum deposit of £20,000 and a maximum of £500,000. The deposit, which will carry interest, may be wholly or partly in the form of securities in the case of certain small businesses. This arrangement replaces the existing arrangements for a deposit of £20,000 in the High Court which may be in the form of cash or securities irrespective of the size of the business.

10. *Section 13* prohibits building societies, industrial and provident societies, friendly societies, credit unions, investment trust companies

and unit trusts from using in their names or descriptions the words "bank," "banker" or "banking" or any variant of these words.

11. *Section 14* requires the Registrar of Companies to notify the Central Bank of applications for the incorporation of companies which, in his opinion, would be holding themselves out as bankers or have as an object the carrying on of banking business. Such a company may not be incorporated in the State unless the Central Bank is willing to issue a banking licence. There is also provision for notification by the Registrar to the Central Bank where a company proposes to alter its memorandum of association in a way that would result in its holding itself out as a banker or having as an object the carrying on of banking business. In the case of any company incorporated outside the State which proposes to carry on the business of banker in the State, the Registrar of Companies is required to notify the Central Bank when he receives the statutory documents specified in the Companies Act, 1963, so that the Bank may consider whether a banking licence should be granted.

12. *Section 15* places similar obligations as regards the registration of business names on the Registrar of Business Names as placed on the Registrar of Companies by section 14. Section 15 also provides that the Minister for Industry and Commerce shall consult the Central Bank as regards any proposal by a company to change its name if that Minister is of opinion that the change would result in the company holding itself out as a banker or appearing to be engaging in banking.

13. *Section 16* requires the holders of banking licences to keep such books and records as the Central Bank may specify from time to time and to inform the Bank of the address at which they are kept. Authorised officers of the Bank and accountants authorised by the Bank may inspect the books and records and also books and records required to be kept under the Companies Act, 1963, and take extracts from them.

14. *Section 17* requires holders of banking licences and also building societies, industrial and provident societies, credit unions, investment trust companies and unit trusts to furnish to the Central Bank, periodically or whenever requested to do so, information and returns regarding their businesses specified by the Bank.

15. *Section 18* requires holders of banking licences to publish statements giving information regarding their businesses in the form laid down by the Central Bank from time to time.

16. *Section 19* imposes an obligation on licence holders to display in every office or other place in which they carry on business a statement in the form of their latest balance sheet or in a form prescribed by the Central Bank. Creditors of the business may obtain a copy of the statement on demand as may also members of the company if the business is carried on as a limited company.

17. Under *Section 20* the Central Bank, if it is of the opinion that a licence holder has become, or is likely to become, unable to meet his obligations to creditors, may direct him to suspend the taking of deposits from the public for a period of up to two months. The Bank may also direct him to suspend the making of payments for a like period, except with its permission. The licence holder may apply to the High Court for an order setting aside the direction. On the other hand, the Central Bank may apply to the High Court for an order confirming a direction and extending the period of its operation. Where the Court makes an order confirming and extending a direction, the licence holder concerned shall be deemed to have gone bankrupt, or, if a company, to be unable to pay its debts.

18. *Section 21* empowers the Central Bank to give a direction to licence holders as to the type of information to be included in advertisements which they publish or are published on their behalf. The section also empowers the Bank to direct licence holders to refrain during a specified period from advertising for deposits.

19. *Section 22* enables the Central Bank, subject to the consent of the Minister for Finance, to make regulations requiring licence holders to make special deposits with the Bank if their assets in the State fall below a specified proportion of their liabilities in the State and to maintain the deposits as long as their assets remain below this specified proportion. Different requirements may be applied to different licence holders. Interest will not be payable on the deposits. Similar power is at present available under section 50 of the Central Bank Act, 1942, as regards bankers holding licences issued under that Act.

20. *Section 23* gives power to the Central Bank, subject to the consent of the Minister for Finance, to make regulations requiring licence holders to settle all or particular kinds of their cheque and other clearances by means of cheques drawn on the Central Bank or on an agent of the Central Bank appointed for the purpose. The licence holders would be required to maintain necessary balances with the Bank for the purpose. The section also provides that the Central Bank may, with the consent of the Minister for Finance, make regulations requiring licence holders to lodge with the Bank for clearance cheques, bills, notes or other negotiable instruments payable outside the State and presented for clearance at an office of a licence holder within the State. This section replaces section 51 of the Central Bank Act, 1942, which gave like powers in the case of bankers licensed under that Act.

21. *Section 24* prohibits persons and businesses, if not licence holders or exempted under section 6 (5) of the Bill, from advertising for or otherwise soliciting deposits from the public.

22. *Section 25* provides that where a creditor obtains a Court judgment, order or decree against the holder of a licence in his capacity as a banker for payment of a sum of money due to him, the registrar or clerk of the Court shall notify the Central Bank. If after 21 days the licence holder has not paid the full sum due, then the licence holder, if a company, shall be deemed to be unable to pay its debts or, if an individual or a partnership, shall be deemed to have gone bankrupt. There is provision for a stay to be allowed by the Court in the event of an appeal.

23. Under *Section 26*, if a depositor institutes proceedings for recovery of a sum deposited with a licence holder or obtains a judgment, order or decree in any Court for payment of his deposit to him, he, or any other depositor, may apply to the High Court for an order directing that the deposit maintained by the licence holder with the Central Bank (in accordance with section 6) shall not be released during whatever period the Court specifies. Where the person applying for the order has obtained a judgment, order or decree against the licence holder and it appears to the Court, after making enquiry, to be unlikely that further claims will be made against the deposit with the Central Bank or that, if such claims are made, the deposit will be sufficient to meet them in full, the Court may direct that the sum specified in the judgment, order or decree shall be paid to the depositor concerned out of the deposit held by the Central Bank.

24. The High Court may also make an order directing any other banking business not to make payments to the licence holder out of any account he has with the business except under specific conditions.

25. Subject to an appropriate order being made by the High Court, a licence holder not paying money due to a depositor or depositors shall be deemed to have committed an act of bankruptcy or, if a company, shall be deemed to be unable to pay its debts. Power is given to the Court to adjudicate a licence holder bankrupt, or where a company is concerned, to make an order for its winding up and the appointment of the Official Assignee in Bankruptcy as liquidator. The law relating to bankruptcy or the law relating to companies, respectively, will then apply.

26. *Section 27* makes provision, further to section 26, for the vesting in the Official Assignee in Bankruptcy of the deposit with the Central Bank under section 6 of the Bill of a licence holder who has been adjudicated bankrupt and for its vesting in the liquidator in the case of a licence holder who is a company and whose business is being wound up. The section also provides for the distribution of the deposit among the creditors, priority being given to the claims of persons who have deposited money with the licence holder.

27. *Section 28* requires licence holders who are going out of business to notify depositors to this effect and, if the depositors so demand, they must be repaid the amount of their deposits together with any accrued interest. The section also requires the licence holders to notify the Central Bank three months in advance of the date on which they propose to cease business.

PART III

Merging of Banks

28. *Section 29* defines various terms for the purposes of Part III of the Bill.

29. *Section 30* provides that where the holder of a banking licence agrees to transfer, in whole or in part, the business to which the licence relates, to another licence holder, the two parties may submit a transfer scheme to the Minister for Finance for his approval. The scheme must be submitted not less than four months before the proposed transfer date and both parties must publish notice of the proposed transfer in at least one daily newspaper at least a month before the date on which the transfer is to take effect. The Minister, after consulting the Central Bank, may approve of the scheme by order. On request by the two parties, he may include in the order supplemental provisions to facilitate the putting of the scheme into effect. Alternatively, the Minister may decline to approve the scheme in which case it will be open to the parties to submit a revised scheme.

30. *Section 31* makes arrangements for the transfer of customers' accounts to the transferee bank where the scheme for transfer of a banking business has been approved by order made by the Minister under section 30.

31. *Section 32* provides, in the case of an approved scheme of transfer of a banking business, for the transfer to the transferee bank of securities held as collateral.

32. *Section 33* lays down that under an approved scheme of transfer of a banking business the transferee bank shall be entitled to the same rights and priorities as regards securities transferred in accordance with section 32 as enjoyed by the transferor bank and shall also be subject to the same obligations. The section also dispenses with the need for fresh registration of transfers of securities under section 32.

33. *Section 34* provides that under an approved transfer scheme the custody of any documents, goods or other property held for safe keeping by the transferor bank shall pass to the transferee bank.

34. *Section 35* contains provisions governing the transfer of staff where a banking business or part of it is being transferred to another bank under an approved scheme. The section provides that transferred staff will continue to have the same rights as regards employment, including similar pension rights. It also lays down that, on request by the bank transferring the business and by the bank to which the business is being transferred, the Minister may include in the order which he makes approving of the transfer of the business specific pro-

visions for the transfer of the assets of any pension or superannuation scheme to a corresponding scheme of the transferee bank and for winding up or modifying any such scheme.

35. *Section 36* makes arrangements to cover the transfer to the transferee bank of trusts, appointments as executors and administrators and other such obligations of the transferor bank.

36. *Section 37* provides that the Bankers' Books Evidence Act, 1879, shall continue to apply to any books of the transferor bank transferred to the transferee bank. This will enable the usual procedure relating to evidence in Court to be applied to banking books transferred under the approved transfer scheme.

37. *Section 38* provides for the substitution of the name of the transferee bank in any legal proceedings relating to the business being transferred.

38. *Section 39* exempts from stamp duty agreements and other instruments transferring a banking business to another bank under a scheme approved by the Minister.

PART IV

Currency

39. *Section 40* declares the standard unit of value to be the Irish pound and expresses its value in terms of gold, this gold parity value being that declared to the International Monetary Fund following devaluation of the pound in line with the devaluation of the pound sterling in November, 1967. The section also gives power to the Government to change the gold parity value by order after consultation with the Central Bank. Under existing legislation, the Irish pound must be maintained at the same parity as the pound sterling which involves changing in step with sterling. On the other hand, our membership of the International Monetary Fund obliges us to consult the Fund before making any change in the par value and the Fund's consent is required to any change. The section removes this anomaly.

40. *Section 41* gives power to the Central Bank to issue legal tender notes against payment in gold bullion or in any security or currency, including sterling, which may be held by the Bank as part of the capital of its legal tender note fund. The gold bullion, security or currency must be delivered in such manner and subject to such conditions as the Bank may prescribe.

41. *Section 42* amends section 49 of the Currency Act, 1927, by providing up-to-date arrangements for :—

- (1) the replacement by the Central Bank of existing currency notes by a new note or notes to the same value;
- (2) the exchange at the London Agency of the Central Bank (i.e. the Bank of England) of Irish legal tender notes for British legal tender notes;
- (3) the exchange at the Central Bank in Dublin of Irish legal tender notes for British legal tender notes or a sterling draft cashable in London;
- (4) the exchange of Irish legal tender notes for foreign currencies other than British legal tender notes, subject to the provisions of the Exchange Control Acts.

The section also makes minor amendments to section 49 (3) and section 49 (4) of the Currency Act, 1927, to bring them into line with the amendments mentioned above.

42. Section 43 amends section 50 of the Currency Act, 1927, also to bring it into line with the amendments mentioned in the previous paragraph.

PART V

Miscellaneous

43. Section 44 empowers the Central Bank, for the purposes of or through its general fund, to carry out functions which, in accordance with normal banking practice, may be exercised by banks generally. This revives a power which was possessed by the former Currency Commission whose powers in general passed to the Central Bank when it was established by the Central Bank Act, 1942.

44. Section 45 authorises the Central Bank to issue to other banks securities to be known as Central Bank Reserve Bonds in exchange for sterling or any other foreign currency the Bank may specify. The Central Bank will be entitled to fix terms and conditions for the issue and sale of the bonds and may also purchase the bonds for cancellation.

45. Section 46 provides for the transfer of the Exchequer Account in the Bank of Ireland to the Central Bank. The section will come into operation on a day appointed by the Minister by order.

46. Section 47 provides that the Moneylenders Acts shall not apply to any person or business having a licence issued under section 8 of the Bill. It also deletes the reference to banking in section 6 (d) of the Moneylenders Act, 1900. There is doubt as to whether the Moneylenders Acts apply to some forms of banking and the purpose of section 42 is to ensure that all banking business as defined in the Bill is exempted from these Acts, leaving the control and regulation of banking to be dealt with under the provisions of the Currency and Central Bank Acts.

47. Section 48 makes provision whereby a Governor of the Central Bank may on completion of one term of office receive a pension from the Bank even if he is not sixty years of age. The section also gives power to the Bank to make a scheme similar to the Civil Service scheme providing for pensions and gratuities for widows and children of persons employed by the Bank.

48. Section 49 makes arrangements for the return by the Accountant of the Courts of Justice of deposits made by bankers in the High Court as required by section 42 of the Central Bank Act, 1942. All holders of banking licences will in future be required to maintain a deposit with the Central Bank in accordance with the terms of sections 6 and 12 of the Bill.

49. Section 50 provides that a certificate given by an officer of the Central Bank as to the issue of a banking licence under section 8 shall be *prima facie* evidence of such licence for the purposes of the Bankers' Books Evidence Act, 1879.

50. Section 51 specifies penalties for contraventions of the provisions of the Bill. The penalties are a maximum fine of £100 on summary conviction, a maximum fine of £5,000 on conviction on indictment and a maximum fine of £250 for each day on which an offence is continued on conviction on indictment.

51. Section 52 empowers the Central Bank to institute proceedings for offences which are being tried summarily.

52. Section 53 provides that where an offence is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body and the offence is proved to have been committed with the approval of, or to have been facilitated by any neglect on the part of, any director, manager, secretary,

