



SEANAD ÉIREANN

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

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

SEANAD ÉIREANN

AN BILLE UM MARGAÍ IN IONSTRAIMÍ AIRGEADAIS AGUS FORÁLACHA ILGHNÉITHEACHA 2007 —AN CHOISTE

MARKETS IN FINANCIAL INSTRUMENTS AND MISCELLANEOUS PROVISIONS BILL 2007 —COMMITTEE STAGE

*Leasuithe
Amendments*

**Government Amendments are distinguished by an asterisk.*

SECTION 19

*1. In page 20, to delete lines 29 to 35 and substitute the following:

“ ‘credit’ means a cash loan (whether or not provided on the security of a mortgage or charge over an estate or interest in land), but does not include credit of a class specified in section 3(2) of the Consumer Credit Act 1995;”.

*2. In page 21, to delete lines 6 to 44 and in page 22, to delete lines 1 to 11.

*3. In page 22, between lines 16 and 17, to insert the following:

“(c) in section 28, by inserting the following definitions after the definition of “regulated business” (as substituted by paragraph (b)):

“ ‘regulated financial service provider’ has the same meaning as in section 2 of the Central Bank Act 1942;

‘relevant person’ means a natural person within the State, other than—

(a) a natural person who is, or satisfies the criteria to elect to be treated as, a professional client for the purposes of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007), or

(b) a person who is a regulated financial service provider;

‘retail credit firm’ means a person prescribed for the purpose of paragraph (g) of the definition of ‘credit institution’ in section 3 of the Consumer Credit Act 1995, or any other person who holds itself out as carrying on a business of, and whose business consists wholly or partly of, providing credit directly to relevant persons, but does not include—

(a) a person who is a regulated financial service provider, or

[SECTION 19]

- (b) a person who is an authorised credit intermediary under Part XI of the Consumer Credit Act 1995, or
- (c) in relation to credit that was originally provided by another person, a person to whom all or any part of that other person's interest in the credit is directly or indirectly assigned or otherwise disposed of, or
- (d) a person who provides credit on a once only or occasional basis, but only if the provision of the credit does not involve a representation, or create an impression (whether in advertising, marketing or otherwise), that the credit would be offered to other persons on the same or substantially similar terms, or
- (e) a person who is exempted, or who belongs to a class of persons that is exempted, under section 29A from being required to hold an authorisation as a retail credit firm;”;

*4. In page 22, between lines 21 and 22, to insert the following:

“(d) in Chapter 2, by inserting the following section after section 29:

“Power of Bank to exempt certain persons from being required to hold authorisation as a retail credit firm.

29A.—(1) The Bank may exempt a person from being required to hold an authorisation as a retail credit firm in relation to the provision of credit if, in the opinion of the Bank

- (a) the total amount or value of the credit that is to be provided by the person is such that it is reasonable to assume that the borrower will be in a position to negotiate on equal terms or to obtain appropriate legal and financial advice, or
- (b) the person is one who, under section 8(2) of the Central Bank Act 1971, is exempted, or is a member of a class of persons that is exempted, from being required to hold a banking licence, or
- (c) the person is one who provides credit solely for charitable or public purposes and at a rate of interest or on other terms more favourable than those that are currently available commercially,

and the exemption would not be inconsistent with the proper and orderly regulation of the provision of credit and the protection of customers of retail credit firms.

(2) The Bank may also exempt the persons belonging to a specified class of persons from being required to hold an authorisation as a retail credit firm in relation to the provision of credit if, in the opinion of the Bank—

[SECTION 19]

- (a) the total amount or value of the credit that is to be provided by those persons is such that it is reasonable to assume that borrowers from those persons will be in a position to negotiate on equal terms or to obtain appropriate legal and financial advice, or
- (b) the persons are ones who, under section 8(2) of the Central Bank Act 1971, are exempted, or belong to a class of persons that is exempted, from being required to hold a banking licence, or
- (c) the persons are ones who provide credit solely for charitable or public purposes and at a rate of interest or on other terms more favourable than those that are currently available commercially,

and the exemption would not be inconsistent with the proper and orderly regulation of the provision of credit and the protection of customers of retail credit firms.

(3) The power to exempt a person, or the persons belonging to a specified class, from being required to hold an authorisation as a retail credit firm may be exercised by the Bank either on its own initiative or on an application made by or on behalf of the person, or the persons or any of the persons belonging to that class.

(4) An exemption granted under this section is subject to such conditions as the Bank thinks fit to impose.

(5) The Bank may at any time by notice in writing—

- (a) impose additional conditions on a person to whom, or on the persons belonging to a class in respect of which, an exemption has been granted under this section, or
- (b) vary or revoke a condition imposed under subsection (4) or this subsection.

(6) The Bank shall revoke an exemption granted under this section if it is satisfied—

- (a) that the circumstances relevant to the exemption have changed and are now such that the exemption would no longer be granted, or
- (b) that a condition of the exemption is not being, or has not been, substantially complied with.

(7) The Bank shall publish in *Iris Oifigiúil* a notice of every exemption granted, and every revocation made, under this section.

(8) Failure to comply with subsection (7) does not affect the validity of an exemption granted, or a revocation made, under this section.

[*SECTION 19*]

(9) Section 29(1) does not apply to a person who, or a person belonging to a class of persons that, is exempted under this section so long as the person—

(a) does not carry on any kind of regulated business other than that to which the exemption relates, and

(b) complies with all conditions subject to which the exemption is granted.”.”.