



AN BILLE UM SHEIRBHÍSÍ MAOINE (RIALÁIL) 2009
PROPERTY SERVICES (REGULATION) BILL 2009

Mar a leasaíodh i gCoiste
As amended in Committee

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AN BILLE UM SHEIRBHÍSÍ MAOINE (RIALÁIL) 2009
PROPERTY SERVICES (REGULATION) BILL 2009

BILL

entitled

5 AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A
BODY, TO BE KNOWN AS AN tÚDARAS RIALÁLA
SEIRBHÍSÍ MAOINE OR, IN THE ENGLISH LANGUAGE,
10 THE PROPERTY SERVICES REGULATORY AUTH-
ORITY, TO CONTROL AND SUPERVISE THE PRO-
VIDERS OF PROPERTY SERVICES, TO CAUSE ANY
COMPLAINTS AGAINST THOSE PROVIDERS TO BE
INVESTIGATED AND TO ADJUDICATE ON ANY SUCH
COMPLAINTS; TO PROVIDE FOR THE ESTABLISH-
15 MENT OF A BODY TO BE KNOWN AS AN BORD ACH-
OMHAIRC UM SHEIRBHÍSÍ MAOINE OR, IN THE
ENGLISH LANGUAGE, THE PROPERTY SERVICES
APPEAL BOARD, TO HEAR AND DETERMINE
APPEALS AGAINST CERTAIN DECISIONS OF THE
20 AUTHORITY; AND TO PROVIDE FOR TAKING
ACCOUNT OF DIRECTIVE 2006/123/EC IN SO FAR AS IT
RELATES TO PROPERTY SERVICES; TO PROVIDE FOR
THE CONSEQUENTIAL REPEAL OR AMENDMENT OF
CERTAIN ENACTMENTS AND THE REVOCATION OF
25 A STATUTORY INSTRUMENT; AND FOR RELATED
MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

30 **1.—(1)** This Act may be cited as the Property Services (Regulation) Act 2010. Short title and commencement.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes and different provisions.

35 (3) Without prejudice to the generality of *subsection (2)*, an order under that subsection may—

- (a) in respect of the repeal by *section 7(1)* of the Acts specified in *Part 1 of Schedule 1*, appoint different days for the repeal of different Acts or different provisions of them,
- (b) in respect of the revocation by *section 7(2)* of the statutory instrument specified in *Part 2 of Schedule 1*, appoint different days for the revocation of different provisions of it, 5
- (c) appoint, whether by reference to *paragraph (a), (b), (c) or (d)* of the definition of “property service” in *section 2(1)* or otherwise, different days for the coming into operation of this Act (or of different provisions of this Act) in respect of different services which fall within that definition, or 10
- (d) in respect of *section 29(1)* appoint, whether by reference to *paragraph (a), (b), (c) or (d)* of the definition of “property service” in *section 2(1)* or otherwise, different days for the coming into operation of *section 29(1)* in respect of different property services. 15

Interpretation.

2.—(1) In this Act, unless the context otherwise requires—

“act” includes an omission; 20

“accounting records”, in relation to a licensee, mean the books of account and all other documents required to be kept by the licensee in accordance with regulations made under *section 47*;

“advised letting value”, in relation to land valued for letting by a licensee, means the licensee’s reasonable estimate, at the time of such valuation— 25

- (a) of the amount that would be paid by a willing tenant on appropriate letting terms in an arm’s length transaction after proper marketing where both parties act knowledgeably, prudently and without compulsion, or 30

- (b) of the relevant price range within which would fall the amount that would be paid by a willing tenant on appropriate letting terms in an arm’s length transaction after proper marketing where both parties act knowledgeably, prudently and without compulsion; 35

“advised market value”, in relation to land valued for sale by a licensee, means the licensee’s reasonable estimate, at the time of such valuation—

- (a) of the amount that would be paid by a willing buyer in an arm’s length transaction after proper marketing where both parties act knowledgeably, prudently and without compulsion, or 40

- (b) of the relevant price range within which would fall the amount that would be paid by a willing buyer in an arm’s length transaction after proper marketing where both parties act knowledgeably, prudently and without compulsion; 45

“advisory committee” means an advisory committee appointed by the Authority under *section 14(1)(a)*;

“Appeal Board” means the Property Services Appeal Board established by *section 74*;

5 “appropriate contribution”, in relation to the Fund and an application for a licence or the renewal of a licence, means the amount of the contribution (if any) prescribed in regulations made under *section 92* in respect of such application;

“appropriate fee”, in relation to a provision of this Act, means—

(a) subject to *paragraph (b)*, the fee prescribed in regulations made under *section 26* in respect of that provision, and

10 (b) in the case of *paragraph 15(1)* of *Schedule 5*, the fee prescribed in regulations made under *section 74(4)* in respect of that paragraph;

15 “approved housing body” means a body which has been approved under *section 6(6)* of the Housing (Miscellaneous Provisions) Act 1992;

“assets” include moneys;

“auction” includes a Dutch auction;

“Authority” means the Property Services Regulatory Authority established by *section 9*;

20 “bank”, in relation to a client account of a licensee, means a credit institution authorised by a competent authority in an EEA Member State, within the meaning of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)¹;

25 “business”, in relation to a licensee, means the licensee’s business as a licensee;

“Chairperson” means the chairperson of the Authority designated under *section 10(2)*;

“Chief Executive” has the meaning given to it by *section 20(1)*;

30 “client” includes—

(a) a person for whom a property service is provided by a licensee,

35 (b) a person to whom a refund of a deposit is due in relation to a property service provided to that person or another person, and

(c) in the event of the death, insolvency or other incapacity of a person who falls within *paragraph (a)* or *(b)* (in this definition referred to as the “person concerned”)—

40 (i) any person having authority to administer the estate of the person concerned,

(ii) any beneficiary under a will, intestacy or trust of the person concerned, or

¹OJ No. L177, 30.06.2006, p.1.

(iii) any other personal representative of the person concerned;

“client account” means a current or deposit account in the name of a licensee in the title of which the word “client” appears and which is kept with a bank; 5

“client moneys” means moneys received by a licensee, in the course of the provision of a property service, from, for or on the account of a client other than moneys owed to the licensee by the client in respect of the provision of such property service;

“code of practice” means a code of practice published or approved of under *section 19* as it is in effect from time to time; 10

“company” means a company registered under the Companies Acts;

“complaint” means a complaint under *section 63*;

“complainant”, in relation to a complaint, means the person who made the complaint; 15

“connected relative”, in relation to a person, means—

(a) the person’s spouse or partner, or

(b) a parent, brother, sister or child of—

(i) the person, or

(ii) the person’s spouse or partner; 20

“Directive 2006/123/EC” means Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market²;

“director”, in relation to a body corporate, includes—

(a) any person occupying the position of director, by whatever name called, 25

(b) any person who effectively directs or has a material influence over the business of the body corporate,

(c) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act, unless the directors are accustomed so to act by reason only that they do so on advice given by the person in a professional capacity, and 30

(d) where the affairs of the body corporate are managed by its members, any of the members who exercises the functions of such management; 35

“duplicate”, in relation to a licence, means a copy of the licence issued by the Authority and with the word “duplicate” stamped on it;

“establishment day” means the day appointed under *section 8*;

“financial services”, in relation to a licensee, means any, or any combination of, the following: 40

²OJ No. L376, 27.12.2006, p. 36.

- (a) the provision by or on behalf of the licensee of advice to a purchaser in respect of his or her capacity to secure a loan in respect of the purchase of land and the amount of any such loan;
- 5 (b) the offering by or on behalf of the licensee to provide a service referred to in *paragraph (a)*;
- (c) the arranging by or on behalf of the licensee for a lender to provide a purchaser with a loan in respect of the purchase of land;
- 10 (d) the offering by or on behalf of the licensee to provide a service referred to in *paragraph (c)*;
- (e) the provision by the licensee of any service in the licensee's capacity (if any) as a mortgage intermediary within the meaning of section 2 (as amended by item 1 of Part 12 of Schedule 3 to the Central Bank and Financial Services Authority of Ireland Act 2004) of the Consumer Credit Act 1995;
- 15 (f) the offering by the licensee to provide a service referred to in *paragraph (e)*;
- 20 (g) the provision of any other service which would result in the licensee knowing the financial situation of the purchaser which could influence the price he or she might be willing to pay to purchase land;

“Fund” has the meaning given to it by *section 77*;

- 25 “grant” means a grant out of the Fund made pursuant to *section 78(1)* to a client in respect of a loss sustained by the client as a result of dishonesty on the part of a licensee, or as a result of dishonesty on the part of any partner, employee or agent or former partner, employee or agent of the licensee, arising from the provision of property services by or on behalf of the licensee to the client;
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“improper conduct”, in relation to a licensee, means—

- (a) the commission by the licensee of an act which renders the licensee no longer a fit and proper person to provide property services or a particular class of property service,
- 35 (b) the commission by the licensee of a contravention of—
- (i) *section 29(1), 30(9), 32(5), 38(1), (2), (4), (5), (6) or (7), 42(1), 44(1), (2) or (3), 45, 46(1) or (2), 56(1) or (2), 57(1), 58(1), 59(2), 60(1), 61, or 81(1) or (2)*, or
- (ii) a provision of regulations made under *section 47, 62 or 92*,
- 40
- or
- (c) the giving by the licensee of a statement of advised market value or advised letting value of land which is clearly unreasonable;

- 45 “independent contractor” means an individual who provides a property service where—

- (a) no employee of the individual provides such service on behalf of the individual, and
- (b) in the case of an individual who is a partner in a partnership, no other principal officer provides such service on behalf of the individual,

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and whether or not the individual engages in any other business;

“inspector” means a person appointed under *section 28(1)* to be an inspector;

“investigation” means an investigation under *section 65(1)*;

“investigation report”, in relation to an investigation, means a report in writing prepared, following the completion of the investigation, by the inspector appointed under *section 65(1)(b)* to carry out the investigation—

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- (a) stating that the inspector—
 - (i) is satisfied that improper conduct by the licensee to whom the investigation relates has occurred or is occurring, or
 - (ii) is not so satisfied, as appropriate,
- (b) if *paragraph (a)(i)* is applicable, stating the grounds on which the inspector is so satisfied, and
- (c) if *paragraph (a)(ii)* is applicable, stating—
 - (i) the basis on which the inspector is not so satisfied, and
 - (ii) the inspector’s opinion, in view of such basis, on whether or not a further investigation of the licensee is warranted and, if warranted, the inspector’s opinion on the principal matters to which the further investigation should relate;

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“landlord” means the person, including a sublandlord, entitled to the legal estate immediately superior to a tenancy;

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“lessor”, in relation to land, includes a prospective lessor of the land;

“licence” means a licence in the specified form issued under *section 32*;

“licensee”, in relation to a licence, means the holder of the licence;

“local authority” has the same meaning as it has in the Local Government Act 2001;

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“maintain”, in relation to a record, includes keep;

“major sanction”, in relation to a licensee, means—

- (a) the revocation of the licence of the licensee and a prohibition (which may be a permanent prohibition, a prohibition for a specified period or a prohibition subject to

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specified conditions) against the former licensee applying for a new licence or a particular class of licence,

- 5 (b) the suspension for a specified period of the licence of the licensee or, in any case where the period of such suspension (in this paragraph referred to as “the relevant period”) sought to be imposed is longer than the period of validity of the licence left to run, the suspension of the licence during that period and a prohibition for a specified period against the former licensee applying for a new licence or a particular class of new licence, which periods, added together, are equivalent to the relevant period,
- 10
- (c) a direction to the licensee that the licensee pay a sum, as specified in the direction but not exceeding €50,000, into the Fund,
- 15 (d) a direction to the licensee that the licensee pay a sum, as specified in the direction but not exceeding €50,000, to the Authority, being the whole or part of the cost to the Authority of an investigation of the licensee,
- 20 (e) a direction to the licensee that the licensee pay a sum, as specified in the direction but not exceeding €250,000, to the Authority by way of a financial penalty for an act of the licensee specified in the direction, or
- (f) any combination of any of the sanctions specified in *paragraphs (a) to (e)*;

25 “management body”, in relation to a multi-unit development, means—

- (a) that company or unincorporated body—
- 30 (i) which is formed with the intention that its members should be the owners of the properties in the development, and
- (ii) which manages all or some of the common areas of the development,
- and
- 35 (b) any person who manages the common areas referred to in *paragraph (a)* at any time before the company or unincorporated body referred to in that paragraph starts to manage such common areas;

“Minister” means the Minister for Justice, Equality and Law Reform;

“minor sanction”, in relation to a licensee, means—

- 40 (a) the issue of a reprimand, warning, caution or advice (including advice relating to participation in a professional competence scheme) to the licensee, or
- (b) any combination of any of the sanctions specified in *paragraph (a)*;

45 “multi-unit development” means an apartment complex, housing estate, or any other estate containing housing;

“Official Assignee” has the meaning assigned to it by section 3 of the Bankruptcy Act 1988;

“owner”, in relation to the definition of “management body”, includes a lessee but not a tenant;

“personal representative”, in relation to the estate of a deceased person, means that person’s personal representative within the meaning of section 3(1) of the Succession Act 1965, and includes any person having, in respect of the deceased, under the law of another state any functions corresponding to the functions for administration purposes under the law of the State of a personal representative within the meaning of that section, and references to personal representatives as such shall be construed as references to personal representatives in their capacity as having such functions; 5 10

“principal officer”—

(a) in relation to a body corporate, means any person who is— 15

(i) a director, manager, secretary or other similar officer of the body corporate, or

(ii) a person purporting to act in any such capacity,

(b) in relation to a partnership—

(i) means any person who is— 20

(I) a partner in, or a manager or other similar officer of, the partnership, or

(II) a person purporting to act in any such capacity, and

(ii) if any partner in the partnership is both a body corporate and a licensee or an applicant for a licence, includes any person who is— 25

(I) a director, manager, secretary or other similar officer of such partner, and

(II) a person purporting to act in any such capacity; 30

“professional competence scheme” means a scheme of education and training provided for in regulations made under *section 79*;

“professional indemnity insurance” means a policy of indemnity insurance against losses arising from claims in respect of any description of civil liability incurred— 35

(a) by a licensee arising from the provision of property services, or

(b) by a partner, employee or agent or former partner, employee or agent of the licensee arising from such provision; 40

“property management services” means services in respect of the management of a multi-unit development carried out on behalf of a management body, and such services include—

(a) administrative services, and

(b) the procurement of or any combination of the maintenance, servicing, repair, improvement or insurance of the development or any part of the development;

5 “property service” means the provision in the State, in respect of property located within or outside the State, of any of the following—

(a) the auction of property other than land,

(b) the purchase or sale, by whatever means, of land,

10 (c) the letting of land (including a letting in conacre or for the purposes of agistment), or

(d) property management services,

by—

(i) a property services employer,

(ii) an employee of a property services employer,

15 (iii) a principal officer of a property services employer, or

(iv) an independent contractor;

“property services agreement” means a letter of engagement referred to in *section 44(1)* which has not ceased to have any force and effect by virtue of the operation of *section 44(2)*;

20 “property services employer” means a person (referred to in this definition as “the employer”) who employs, or may employ, persons to provide property services, or whose principal officers (if any) provide, or may provide, such services, or any combination thereof, and whether or not the employer engages in any other business;

25 “purchaser”, in relation to land, includes a prospective purchaser of the land;

“Register” means the Property Services Register established under *section 30(1)*;

30 “relevant price range”, in relation to land valued for sale or letting by a licensee, means a price range where the difference between the upper limit of such valuation and the lower limit of such valuation is not more than 10 per cent of such lower limit;

“satisfied” means satisfied on reasonable grounds;

“specified”—

35 (a) in relation to a form of document, means specified under *section 94*,

(b) in relation to a period, means a period which is reasonable in the circumstances concerned,

40 (c) in relation to a time, date or place, means a time, date or place, as the case may be, which is reasonable in the circumstances concerned;

“tenancy” means the estate or interest which arises from the relationship of landlord and tenant however created;

“tenant” means the person, including subtenant, in whom a tenancy is vested;

“terms” include conditions; 5

“vendor”, in relation to land, includes a prospective vendor of the land.

(2) For the purposes of this Act, a property service shall be regarded as being provided in the State if the property service is provided by a person established in the State and whether or not— 10

(a) the client concerned is ordinarily resident in the State, or

(b) the property concerned is located in the State.

(3) For the purposes of *subsection (2)*, a client is ordinarily resident in the State if the client is—

(a) an individual who has had his or her principal residence in the State for the period of 12 months immediately preceding the provision of the property service concerned referred to in that subsection, 15

(b) a company, or

(c) any other body corporate established under a law of the State. 20

(4) References in this Act (excluding *subsection (5)* but including *sections 49* and *55* and regulations made under this Act) to a former licensee also include a person—

(a) who was lawfully providing a property service immediately before the commencement of *section 29* in so far as such commencement relates to such property service, and 25

(b) in respect of whom the Authority refuses to issue a licence in respect of such property service.

(5) References in *Part 7* (including *sections 69, 70* and *71*) to a licensee include a former licensee and the other provisions of this Act (including the definitions of “investigation report”, “major sanction” and “minor sanction” in *section 2(1)*, *section 11(2)(h), (i)* and *(j)*, *Part 8* and *Schedule 5*) shall, with all necessary modifications, be construed accordingly. 30
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(6) References in the definition of “financial services” in *section 2(1)* to “on behalf of the licensee” include references to the service concerned being provided through a subsidiary or associated body of the licensee.

(7) Where a provision of this Act confers a discretion on the Authority, the Appeal Board or a court to revoke or suspend the licence of a licensee and the licensee holds 2 or more licences, that discretion may be exercised so as to revoke or suspend, as the case may be, one, some or all of those licences as the Authority, the Appeal Board or the court, as the case may be, thinks fit in the circumstances of the case, and the other provisions of this Act shall, with all necessary modifications, be construed accordingly. 40
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3.—(1) This Act does not apply to—

Exemptions.

- (a) an auction conducted by an officer of the Revenue Commissioners while performing the functions of that office or employment,
- 5 (b) an auction conducted by, or by an officer of, a sheriff, under-sheriff, or county registrar,
- (c) an auction, under any statutory provision relating to distress in respect of rates, conducted by a rate collector,
- 10 (d) an auction conducted under a power of sale conferred by—
- (i) section 8 of the Pounds (Provisions and Maintenance) Act 1935, or
- (ii) section 5 of the Animals Act 1985,
- 15 (e) a sale of wreck conducted by a receiver of wreck appointed under section 41 of the Merchant Shipping (Salvage and Wreck) Act 1993,
- (f) an auction of fresh fish,
- (g) an auction of State property conducted by an officer of the State,
- 20 (h) an auction conducted by a person authorised by or under any statutory provision to do so without being licensed,
- (i) an auction of property, other than land, for charitable purposes,
- 25 (j) a person acting as agent for a Minister of the Government, the Commissioners for Public Works in Ireland or any person authorised by any statutory provision to acquire land compulsorily,
- 30 (k) the purchase or sale, by whatever means, of any land whether in or outside the State on behalf of another person in the course of and ancillary to the provision of legal services by a solicitor to that other person,
- (l) a property service consisting solely of a short-term letting to a person where such letting—
- 35 (i) does not exceed or is unlikely to exceed 8 consecutive weeks, and
- (ii) is for *bona fide* tourism or other leisure purposes,
- (m) an approved housing body when providing a property service in respect of its own properties,
- 40 (n) a property service provided by a local authority in the course of the performance of its functions under any statutory provision,

- (o) a property service provided by an employee of a licensee where—
 - (i) the licensee is a property services employer or an independent contractor licensed to provide that service in that capacity, 5
 - (ii) the principal function of the employee is the provision of secretarial, reception, human resource management, information technology or financial services, or any combination thereof, for the licensee, and
 - (iii) the employee does not, in relation to the provision of that property service to a client of the licensee, directly engage with the client except to the extent necessary for the purposes of the performance of such principal function, 10
- and 15
- (p) such other property service as may be prescribed in regulations made under *section 93* for the purposes of this paragraph.

(2) The Authority may from time to time issue guidelines with respect to the practical operation of *subsection (1)(o)*. 20

Application of this Act to principal officers and employees.

4.—(1) A licensee who is licensed to provide a property service as a principal officer of a property services employer in his or her capacity as such principal officer is only entitled to provide such service on behalf of any licensee—

- (a) who is licensed as a property services employer to provide the same property service, and 25
- (b) in respect of whom the first-mentioned licensee is a principal officer at the time of providing the property service in his or her capacity as such principal officer,

and the references in this Act to licensee and property service (howsoever expressed) shall, in their application to the first-mentioned licensee and the property service which he or she is licensed to provide in his or her capacity as such principal officer, be construed accordingly. 30

(2) A licensee who is licensed to provide a property service as an employee of a property services employer in his or her capacity as such employee is only entitled to provide such service on behalf of any licensee— 35

- (a) who is licensed as a property services employer to provide the same property service, and 40
- (b) in respect of whom the first-mentioned licensee is an employee at the time of providing the property service in his or her capacity as such employee,

and the references in this Act to licensee and property service (howsoever expressed) shall, in their application to the first-mentioned licensee and the property service which he or she is licensed to provide in his or her capacity as such employee, be construed accordingly. 45

(3) Without prejudice to the generality of *subsections (1) and (2)*—

5 (a) a licensee who is a principal officer of a property services employer but who is not licensed to provide a property service in his or her capacity as such principal officer is not entitled to provide a property service in such capacity until becoming so licensed,

10 (b) a licensee who is an employee of a property services employer but who is not licensed to provide a property service in his or her capacity as such employee is not entitled to provide a property service in such capacity until becoming so licensed,

and the references in this Act to licensee and property service (howsoever expressed) shall be construed accordingly.

15 5.—Every regulation made under this Act and every order made under *section 11(4)* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order is passed by either such House within the next 21 days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Laying of regulations and orders.

25 6.—The expenses incurred by the Minister, the Authority and the Appeal Board in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Expenses.

7.—(1) The Acts specified in *Part 1 of Schedule 1* are repealed.

Repeals and revocation.

(2) The statutory instrument specified in *Part 1 of Schedule 1* is revoked.

30

PART 2

PROPERTY SERVICES REGULATORY AUTHORITY

8.—The Minister shall by order appoint a day to be the establishment day for the purposes of this Act.

Establishment day.

35 9.—(1) On the establishment day there stands established a body, to be known as An tÚdarás Rialála Seirbhísí Maoine or, in the English language, the Property Services Regulatory Authority, to perform the functions conferred on it by this Act.

Establishment of Property Services Regulatory Authority.

(2) The Authority—

(a) is a body corporate with perpetual succession and a seal,

40 (b) may sue, and be sued, in its corporate name,

(c) may, with the approval of the Minister given with the consent of the Minister for Finance, acquire, hold and dispose of land, and

(d) may acquire, hold and dispose of any other property.

(3) Subject to this Act, the Authority shall be independent in the performance of its functions. 5

(4) The seal of the Authority may be authenticated by—

(a) the signature of the Chairperson or another member of the Authority authorised by the Authority to act in that behalf, and 10

(b) the signature of the Chief Executive or a member of the staff of the Authority so authorised.

(5) Judicial notice shall be taken of the seal of the Authority and, accordingly, every document—

(a) purporting to be a document made by the Authority, and 15

(b) purporting to be sealed with the seal of the Authority authenticated in accordance with *subsection (4)*,

shall be received in evidence and be deemed to be such document without further proof unless the contrary is proved.

(6) Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal may be entered into or executed on behalf of the Authority by any person generally or specially authorised by the Authority in that behalf. 20

Membership of Authority and terms of membership.

10.—(1) The Authority shall consist of not more than 11 members. 25

(2) The members of the Authority shall be appointed by the Minister, who shall designate one of them as its chairperson.

(3) In appointing persons to be members of the Authority, the Minister shall, subject to *subsection (4)*, have regard to the desirability of their having knowledge or experience in consumer affairs, business, finance, management or administration or any other subject which would, in his or her opinion, be of assistance to the Authority in performing its functions under this Act. 30

(4) Of the members of the Authority—

(a) 3 shall be persons who, in the opinion of the Minister, are representatives of persons who provide property services, and 35

(b) one shall be an officer of the Minister.

(5) The Minister shall, in so far as is practicable and having regard to the knowledge or experience of matters relevant to the functions of the Authority of the persons concerned, ensure an appropriate balance between men and women in the composition of the Authority. 40

(6) Subject to this Act, a member of the Authority shall hold office for a period of 4 years from the date of his or her appointment.

5 (7) (a) Of the members appointed to the Authority on the establishment day, 5 members (but excluding the Chairperson) shall, subject to this Act, hold office for a period of 3 years from the date of their respective appointments as such members.

10 (b) The 5 members of the Authority referred to in *paragraph (a)* shall be selected by the drawing of lots, conducted in such manner as the Chairperson of the Authority thinks proper, at the first meeting of the Authority referred to in *section 12(3)*.

15 (c) A member of the Authority may be selected as one of the 5 members of the Authority referred to in *paragraph (a)* notwithstanding the fact that he or she is not present at the first meeting of the Authority referred to in *section 12(3)*.

20 (d) Notwithstanding *section 12(2)*, the quorum for the first meeting of the Authority referred to in *section 12(3)* shall be 7 in so far as that meeting relates to selecting the 5 members of the Authority referred to in *paragraph (a)*.

(8) A person may not be appointed to be a member of the Authority for more than 2 consecutive terms but is otherwise eligible for reappointment.

25 (9) A member of the Authority may at any time resign from office by letter addressed to the Minister and the resignation shall take effect on the date specified in the letter or the date the letter is received by the Minister, whichever is the later.

30 (10) A member of the Authority shall, unless he or she sooner dies, becomes disqualified for, resigns, is removed from office or otherwise ceases to be a member, hold office as such member until the expiration of his or her term of office.

35 (11) The Chairperson shall hold office as Chairperson until his or her term of office as a member of the Authority expires, unless that person sooner dies, becomes disqualified from holding office, resigns, is removed from office or otherwise ceases to be a member, but, if reappointed as a member, shall be eligible to be designated as the Chairperson.

(12) Each member of the Authority—

40 (a) shall hold office on a part-time basis and on such other terms (other than the payment of remuneration and allowances for expenses) as the Minister may determine, and

45 (b) shall be paid by the Authority, out of the resources at its disposal, such remuneration (if any) and allowances for expenses (if any) as the Minister may, with the consent of the Minister for Finance, determine.

(13) The Minister may for stated reason remove a member of the Authority from office if, in the opinion of the Minister—

- (a) the member has become incapable through ill health of effectively performing the functions of the office,
 - (b) the member has committed stated misbehaviour,
 - (c) the member has a conflict of interest of such significance that, in the opinion of the Minister, the person should cease to hold the office, or
 - (d) the member's removal appears to be necessary for the effective performance of the functions of the Authority.
- (14) A person shall be disqualified from holding and shall cease to hold office as a member of the Authority if he or she—
- (a) is adjudicated bankrupt,
 - (b) makes a composition or arrangement with his or her creditors,
 - (c) is convicted on indictment of an indictable offence,
 - (d) is convicted of an offence involving dishonesty,
 - (e) has a declaration under section 150 of the Companies Act 1990 made against him or her or is subject or is deemed to be subject to a disqualification order by virtue of Part VII of that Act,
 - (f) ceases to be ordinarily resident in the State, or
 - (g) falls within any of *paragraphs (a) to (d) of section 13(1)*.
- (15) Where a member of the Authority dies, becomes disqualified from holding office, resigns, is removed from office or otherwise ceases to be a member, the Minister may appoint a person to be a member of the Authority to fill the resultant casual vacancy.
- (16) A person appointed to be a member of the Authority under *subsection (15)* shall hold office for the remainder of the term of office of the member who occasioned the casual vacancy.
- (17) (a) A member of the Authority who, pursuant to *subsection (7)*, holds office for a period of 3 years from the date of his or her appointment shall, for the purposes of *subsection (8)*, be considered to have served a term as a member of the Authority even though he or she did not hold office for the period of 4 years referred to in *subsection (6)*.
- (b) A person who occasions or fills a vacancy shall, for the purposes of *subsection (8)* be considered to have served a term as a member of the Authority even though he or she held office for part only of the term.
- (18) Subject to *section 12(2)*, the Authority may act notwithstanding one or more vacancies in its membership.

11.—(1) Subject to this Act, the Authority shall control and supervise licensees and maintain and improve standards in the provision by them of property services.

(2) Without prejudice to the generality of *subsection (1)*, the Authority may, and where required by this Act shall—

- (a) issue and renew licences,
- (b) establish and maintain the Register,
- 5 (c) specify and enforce—
 - (i) qualification requirements, including levels of education, training and experience, and
 - (ii) any other requirements, including the nature and minimum levels of professional indemnity insurance,
 - 10 for the issue and renewal of licences,
- (d) specify and enforce standards, including—
 - (i) technical standards, and
 - (ii) appropriate ethical standards,
 - 15 to be observed in the provision of property services by licensees,
- (e) disseminate information in respect of qualification requirements and other requirements referred to in *paragraph (c)*, and standards referred to in *paragraph (d)*, to such extent and in such manner as it thinks fit,
- 20 (f) establish, maintain and administer the Fund,
- (g) where appropriate, cause the provision of any property service by any licensee or other person to be investigated,
- (h) establish and administer a system of investigation of licensees, whether following complaints against licensees or otherwise,
- 25 (i) impose minor sanctions or major sanctions on licensees,
- (j) apply to the High Court for the confirmation of the imposition of major sanctions on licensees,
- (k) promote public awareness and disseminate information to the public in respect of property services, in particular the cost of such services, and the risks and benefits associated with the provision of those services,
- 30 (l) promote the development and adoption of codes of practice,
- 35 (m) keep the Minister informed of developments in respect of the provision of property services by licensees and assist the Minister in co-ordinating and developing policy in that regard,
- 40 (n) undertake or commission, or collaborate or assist in, research projects and other activities in respect of the provision of property services, in order to promote and improve standards for the provision of those services and public awareness of them, and

(o) perform any other functions conferred on it by any other provision of this Act or any other enactment or by regulations made under this Act or any other enactment.

(3) The Authority shall, in performing its functions under this Act, promote the best interests of clients and other users and potential users of property services in a manner that is consistent with the orderly and proper functioning of the property services markets and the orderly control and supervision of the providers of those services. 5

(4) The Minister may, with the consent of the Minister for Finance, by order— 10

(a) confer on the Authority such additional functions relating to property services and connected with the functions conferred on it by *subsections (1), (2) and (3)* or any order made under this subsection as the Minister thinks fit, and 15

(b) make such provision as the Minister considers necessary or expedient in respect of matters ancillary to or arising out of any of the functions referred to in *paragraph (a)*.

(5) Subject to this Act, the Authority may do anything which it considers necessary or expedient to enable it to perform its functions, including liaison and co-operation with other statutory bodies and with other relevant professional and consumer bodies. 20

(6) Any function of the Authority may, without prejudice to its general responsibilities under this Act, be performed through or by the Chief Executive or any member of its staff duly authorised in that behalf by the Authority. 25

(7) The Chief Executive or a member of staff of the Authority who performs any of its functions is presumed in any proceedings to have been authorised by it to do so on its behalf, unless the contrary is shown. 30

Meetings.

12.—(1) The Authority shall hold such and so many meetings as may be necessary for the performance of its functions but in each year shall hold not less than one meeting in each period of 3 months.

(2) The quorum for a meeting of the Authority shall be 4 or such other number, not being less than 4, as the Authority may determine. 35

(3) The Minister shall, in consultation with the Chairperson, fix the date, time and place of the first meeting of the Authority.

(4) At a meeting of the Authority—

(a) the Chairperson shall, if present, be the chairperson of the meeting, and 40

(b) if and so long as the Chairperson of the Authority is not present or if the office of Chairperson is vacant, the members of the Authority who are present shall choose one of their number to act as the chairperson of the meeting. 45

(5) Each member of the Authority (including the Chairperson) present at a meeting of the Authority shall have a vote.

5 (6) At a meeting of the Authority, a question on which a vote is required shall be determined by a majority of the votes of the members of the Authority present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a casting vote.

(7) Subject to this Act, the Authority may regulate its own procedure.

13.—(1) Where a member of the Authority, the Chief Executive or a member of the staff of the Authority is—

Membership of either House of the Oireachtas, European Parliament or local authority.

- 10 (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,
- 15 (c) regarded pursuant to section 19 of the European Parliament Elections Act 1997 as having been elected to that Parliament, or
- (d) elected or co-opted as a member of a local authority,

he or she shall thereupon—

- 20 (i) in the case of a member of the Authority or the Chief Executive, cease to be a member of the Authority or the Chief Executive, as the case may be, and
- 25 (ii) in the case of a member of the staff of the Authority, stand seconded from employment by the Authority and shall not be paid by, or be entitled to receive from, the Authority any remuneration or allowances for expenses in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected or on such election or co-option, as the case may be, and ending when he or she ceases to be a member of either such House, a member of such Parliament or a
- 30 member of the local authority.

(2) Without prejudice to the generality of *subsection (1)*, that subsection shall be construed as prohibiting the reckoning of a period mentioned in it as service with the Authority for the purposes of any superannuation benefits payable under *section 22* or otherwise.

35 (3) A person who is for the time being—

- (a) entitled under the Standing Orders of either House of the Oireachtas to sit therein,
- (b) a member of the European Parliament, or
- 40 (c) entitled under the standing orders of a local authority to sit as a member thereof,

shall, while he or she is so entitled under *paragraph (a)* or *(c)* or is such a member under *paragraph (b)*, be disqualified from being a member of the Authority, the Chief Executive or a member of the staff of the Authority.

Advisory committees, consultants and advisers.

14.—(1) (a) The Authority may, with the approval of the Minister, appoint such and so many advisory committees and such and so many consultants or advisers as it may consider necessary to assist it in the performance of its functions.

(b) The approval of the Minister under *paragraph (a)* is subject to the consent of the Minister for Finance in respect of fees or expenses to which *subsection (3)* relates. 5

(2) The appointment of a person to an advisory committee or as a consultant or adviser shall be for such period and subject to such terms and conditions as the Authority thinks fit. 10

(3) Any fees or expenses which have been approved by the Minister, with the prior consent of the Minister for Finance, and are due to a member of an advisory committee or to a consultant or an adviser shall be paid out of the resources at the disposal of the Authority. 15

(4) An advisory committee shall include persons who have knowledge or experience in matters relevant to the functions of the committee.

(5) An advisory committee shall consist of a chairperson and such number of other members as the Authority may determine and may include persons who are not members of the Authority or its staff. 20

(6) The Authority shall, in so far as is practicable and having regard to the knowledge and experience of matters relevant to the functions of the advisory committee of the persons concerned, ensure an appropriate balance between men and women in the composition of the committee. 25

(7) A member of an advisory committee may be removed at any time from membership of the committee by the Authority.

(8) The Authority may at any time dissolve an advisory committee. 30

(9) The Authority may regulate the procedure and business of an advisory committee but, subject to any such regulation, the committee may regulate its own procedure and business.

(10) An advisory committee may act notwithstanding one or more vacancies in its membership. 35

Disclosure of interests.

15.—(1) Where a member of the Authority or an advisory committee, the Chief Executive, a member of the staff of the Authority, a consultant or an adviser appointed by the Authority, or an inspector, has (otherwise than in that capacity) a beneficial interest in, or material to, any matter which falls to be considered by the Authority or an advisory committee, he or she shall— 40

(a) in advance of any consideration of the matter, disclose that interest and its nature to the Authority or advisory committee, as the case may be,

(b) neither influence nor seek to influence any decision to be made in respect of it, 45

(c) not take part in any consideration of it,

(d) withdraw from any meeting or any part of such a meeting, at which it is being considered or discussed,

(e) not be counted towards a quorum during any such consideration or discussion, and

5 (f) not vote on any decision in respect of the matter.

(2) For the purposes of this section, but without prejudice to the generality of *subsection (1)*, a person shall be regarded as having a beneficial interest in each of the following cases:

10 (a) the person, any connected relative of the person or a nominee of either of them is a member of a company or any other body which has a beneficial interest in, or material to, a matter referred to in that subsection;

15 (b) the person or any connected relative of the person is in partnership with or is in the employment of a person who has a beneficial interest in, or material to, any such matter;

(c) the person or any connected relative is a party to any arrangement or agreement (whether or not enforceable) concerning land to which any such matter relates;

20 (d) any connected relative has a beneficial interest in, or material to, any such matter.

(3) For the purposes of this section, a person shall not be regarded as having a beneficial interest in, or material to, any matter by reason only of an interest of the person, or of any company or other entity or person referred to in *subsection (2)*, which is so remote or insignificant that it could not reasonably be regarded as likely to influence a person in considering, discussing or voting on any question in respect of the matter or in performing any function in respect of it.

30 (4) Where a question arises as to whether or not a course of conduct, if pursued by a member, would be a failure by the member to comply with *subsection (1)*, it shall be determined by the Authority or advisory committee concerned, as the case may be, and particulars of the determination shall be recorded in the minutes of the meeting concerned.

35 (5) Where a disclosure under *subsection (1)* is made to the Authority or an advisory committee, particulars of the disclosure shall be recorded in the minutes of the meeting concerned.

40 (6) The Minister, if of the opinion that a member of the Authority has contravened *subsection (1)*, may, if the Minister thinks fit, remove the member from office or take such other action as the Minister thinks fit and, in the case of a member removed from office pursuant to this subsection, that person shall thereafter be disqualified from membership of the Authority.

45 (7) Where a person other than a member of the Authority to whom *subsection (6)* applies contravenes *subsection (1)*, the Authority shall take such action in respect of the person as the Authority thinks fit, including the termination of a contract of service or a contract for services with the person.

16.—(1) A person shall not, without the consent in writing of the Authority or as required by law, disclose confidential information obtained by that person in any capacity, or while performing functions, as any of the following:

- (a) a member of the Authority or an advisory committee; 5
- (b) the Chief Executive;
- (c) a member of the staff of the Authority;
- (d) a consultant or adviser appointed by the Authority or an employee of a consultant or adviser;
- (e) an inspector. 10

(2) A person who contravenes *subsection (1)* is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000.

(3) Nothing in *subsection (1)* shall prevent the disclosure of information to the Authority or by or on behalf of the Authority to the Minister. 15

(4) In this section, “confidential information” means information that is expressed by the Authority to be confidential either as regards particular information or as regards information of a particular class or description. 20

17.—(1) The Authority shall, as soon as is practicable after the establishment day and thereafter within 6 months before each third anniversary of the establishment day, prepare and submit to the Minister, for approval by the Minister with or without amendment, a strategic plan for the ensuing 3-year period. 25

(2) A strategic plan shall—

- (a) comply with any directions issued from time to time by the Minister in respect of the form and manner of the plan’s preparation,
- (b) set out the key objectives, outputs and related strategies of the Authority, including its use of its resources, and 30
- (c) have regard to the need to ensure the most beneficial and efficient use of the Authority’s resources.

(3) The Minister shall, as soon as is practicable after a strategic plan has been so approved, cause a copy of it to be laid before each House of the Oireachtas. 35

18.—(1) The Authority shall, not later than 30 June in each year, make a report (in this section referred to as “the annual report”) to the Minister on the performance of its functions during the preceding year. 40

(2) The Minister shall, as soon as is practicable, cause copies of the annual report to be laid before each House of the Oireachtas.

(3) The annual report shall be in such form and shall include information in respect of such matters as the Authority thinks fit or as the Minister may direct.

5 (4) The Authority may make such other reports to the Minister on the performance of its functions as it thinks fit.

(5) The Authority shall give to the Minister such other information as the Minister may require in respect of—

(a) the performance by the Authority of its functions and its policies in respect of such performance,

10 (b) any specific document or account prepared by it, or

(c) the annual report or any report referred to in *subsection (4)*.

15 (6) For the purposes of *subsection (1)*, the period between the date of the establishment day and the following 31 December shall be deemed to be a preceding year referred to in that subsection.

(7) The Authority shall publish its annual report in such form and manner as it thinks fit as soon as is practicable after *subsection (2)* has been complied with in respect of the report.

20 **19.—(1)** Subject to *subsection (2)*, the Authority may and, at the request of the Minister, shall— Codes of practice.

(a) prepare and publish a code of practice, or

(b) approve of a code of practice drawn up by any other body,

for the purpose of setting standards for the provision of property services (including a class of property services).

25 (2) Before publishing or approving of a code of practice under this section, the Authority—

30 (a) may publish in such manner as the Authority considers appropriate a draft of the code and shall allow persons 30 days from the date of publication of the draft code within which to make representations in writing to the Authority in relation to the draft code or such further period, not exceeding 30 days, as the Authority in its absolute discretion thinks fit, and

35 (b) following consultation and, where relevant, having considered the representations (if any) made, shall submit the draft code to the Minister for his or her consent to its publication or approval of under this section, with or without modifications.

40 (3) Where the Authority publishes or approves of a code of practice under this section, the Minister shall cause a notice to that effect to be published in *Iris Oifigiúil*—

(a) identifying or specifying the code,

(b) specifying the property service in respect of which the code is so published or approved, as the case may be, and

- (c) specifying the date from which the code shall have effect.
- (4) The Authority may, with the consent of the Minister but subject to *subsection (5)*—
- (a) amend or revoke a code of practice published under this section, or 5
 - (b) withdraw its approval of any code of practice approved of under this section.
- (5) *Subsection (2)* shall, with all necessary modifications, apply to a code of practice that the Authority proposes to amend or revoke, or withdraw its approval of, under *subsection (4)* as *subsection (2)* 10 applies to a code of practice that the Authority proposes to publish or approve of under this section.
- (6) Where the Authority amends or revokes, or withdraws its approval of, a code of practice published or approved of under this section, the Minister shall cause a notice to that effect to be published in *Iris Oifigiúil*— 15
- (a) identifying or specifying the code to which the amendment, revocation, or withdrawal, as the case may be, relates and, if applicable, particulars of the amendment,
 - (b) specifying the property service in respect of which the code is so amended, revoked or withdrawn, as the case may be, and 20
 - (c) specifying the date from which the amendment, revocation, or withdrawal, as the case may be, shall have effect. 25
- (7) The Authority shall encourage licensees, or classes of licensees, as applicable, to comply with codes of practice published or approved of under this section (including such a code as amended from time to time under this section).
- (8) The Authority shall make available for inspection free of charge to members of the public at its principal office during normal working hours a copy of each code of practice published or approved of under this section (including such a code as amended from time to time under this section). 30
- (9) A document bearing the seal of the Authority and purporting to be a code of practice published or approved of under this section or, where such a code has been amended under this section, the code as so amended shall be admissible in evidence in any proceedings under this Act. 35
- (10) A failure on the part of a licensee to observe any provision of a code of practice published or approved of under this section (including such a code as amended from time to time under this section) shall not of itself render the licensee liable to any civil or criminal proceedings but where, in any proceedings under this Act, improper conduct by a licensee is alleged to have occurred or to be occurring in the case of any matter in respect of which there was such a code of practice in effect at the time of the alleged occurrence, *subsection (11)* shall have effect in respect of such code for the purposes of those proceedings. 40 45

5 (11) The Authority, the Appeal Board or any court or tribunal may, in any proceedings under this Act to determine whether improper conduct by a licensee has occurred or is occurring, have regard to any provision of a code of practice published or approved of under this section (including such a code as amended from time to time under this section) which appears to it to be relevant to the improper conduct concerned.

(12) In this section (including *subsection (2)(a)*), “code of practice” includes part of a code of practice.

10 **20.**—(1) There shall be a chief executive officer of the Authority Chief Executive.
(in this Act referred to as “the Chief Executive”).

(2) The Chief Executive shall, subject to *subsection (3)*, be appointed by the Minister on the recommendation of the Chief Executive of the Public Appointments Service.

15 (3) The appointment shall either—

20 (a) be on such terms (including terms as to remuneration and allowances for expenses) as the Minister may, with the consent of the Minister for Finance, determine and be subject to the Public Service Management (Recruitment and Appointments) Act 2004, or

(b) be on such other terms (including terms as to remuneration and allowances for expenses) as may be determined by the Authority and approved by the Minister with the consent of the Minister for Finance.

25 (4) The Chief Executive shall—

(a) implement the policies and decisions of the Authority,

(b) manage and control generally the Authority’s staff, administration and business, and

30 (c) perform such other functions as may be required or as may be duly authorised by the Authority under this Act.

(5) The Chief Executive shall be responsible to the Authority for the performance of the Chief Executive’s functions.

35 (6) The Chief Executive shall not be a member of the Authority or an advisory committee, but may, in accordance with procedures established by the Authority or an advisory committee, as the case may be, attend meetings of the Authority or the committee, as the case may be, and shall be entitled to speak at and give advice at such meetings.

40 (7) The Chief Executive shall provide the Authority with such information, including financial information, in respect of the performance of the Chief Executive’s functions as the Authority may require.

45 (8) The Chief Executive shall not hold any office or occupy any other position in respect of which remuneration is payable, or carry on any business, without the consent of the Authority and the approval of the Minister.

(9) Such of the functions of the Chief Executive as the Chief Executive may specify may, with the consent of the Authority, be performed by such member or members of the staff of the Authority as the Chief Executive may authorise for that purpose.

(10) The functions of the Chief Executive may be performed during the Chief Executive's absence or when the post of Chief Executive is vacant by such member or members of the staff of the Authority as it may authorise for that purpose. 5

Staff of Authority. **21.**—(1) The Authority may, with the approval of the Minister given with the consent of the Minister for Finance— 10

(a) appoint such and so many persons to be members of the staff of the Authority as it may determine, and

(b) determine the grades of such staff of the Authority and the number of staff in each grade.

(2) *Section 20(3)(a)* shall apply to an appointment under this section. 15

Superannuation. **22.**—(1) The Authority may, with the approval of the Minister and the consent of the Minister for Finance, make a scheme or schemes for the granting of superannuation benefits to or in respect of the Chief Executive and the members of the staff of the Authority. 20

(2) A scheme under this section shall fix the time and conditions of retirement of all persons to or in respect of whom superannuation benefits are payable under the scheme or schemes and different times and conditions may be fixed in respect of different classes of persons. 25

(3) The Authority may, with the approval of the Minister and the consent of the Minister for Finance, make a scheme amending a scheme under this section including a scheme under this subsection.

(4) A scheme under this section shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Authority in accordance with its terms. 30

(5) A scheme under this section shall include a provision for appeals from a decision relating to a superannuation benefit under the scheme.

(6) No superannuation benefits shall be granted by the Authority to or in respect of a person on ceasing to be the Chief Executive or a member of the staff of the Authority otherwise than— 35

(a) in accordance with a scheme or schemes under this section, or

(b) with the approval of the Minister and the consent of the Minister for Finance. 40

(7) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 45

(8) *Subsection (7)* shall, with all necessary modifications, apply to an amendment to a scheme under this section as it applies to a scheme under this section.

(9) In this section—

5 “amending”, in relation to a scheme under this section, includes revoking the scheme;

“superannuation benefit” means any pension, gratuity or other allowance payable to or in respect of a person ceasing to be the Chief Executive or a member of the staff of the Authority.

10 **23.—(1)** The Chief Executive, with the agreement of the Authority, shall— Accounts and audits.

(a) submit estimates of income and expenditure to the Minister in such form, in respect of such periods and at such times as may be specified by the Minister, and

15 (b) provide to the Minister any information which the Minister may require regarding those estimates and also regarding the proposals and plans of the Authority in respect of a period specified by the Minister.

(2) The Chief Executive, under the direction of the Authority, shall keep, in such form and in respect of such accounting periods as may be approved of by the Minister with the consent of the Minister for Finance, all proper and usual accounts of moneys received and spent by the Authority, including an income and expenditure account and a balance sheet.

25 (3) (a) The Authority, the Chief Executive and any relevant member of the staff shall, whenever so required by the Minister, permit any person appointed by the Minister to examine the accounts of the Authority in respect of any financial year or other period and shall facilitate any such examination, and the Authority shall pay to the Minister such fee for the examination as may be fixed by the Minister.

30 (b) In this subsection, “relevant member of the staff” means a member of the staff of the Authority to whom duties relating to those accounts have been duly assigned.

(4) (a) The accounts of the Authority shall be approved by it as soon as is practicable (but not later than 3 months after the end of the accounting period to which they relate) and submitted by it to the Comptroller and Auditor General for audit.

40 (b) A copy of the accounts and the report of the Comptroller and Auditor General on them shall be presented to the members of the Authority and the Minister as soon as is practicable, and the Minister shall cause a copy of the accounts and report to be laid before each House of the Oireachtas.

Accountability of Chief Executive to Oireachtas Committee established to examine, etc., appropriation accounts, etc.

24.—(1) The Chief Executive shall, whenever required in writing by a Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on— 5

- (a) the regularity and propriety of the transactions recorded or required to be recorded in any account kept under *section 23(2)*,
- (b) the economy and efficiency of the Authority in the use of its resources, 10
- (c) the systems, procedures and practices employed by the Authority for the purpose of evaluating the effectiveness of its operations, and
- (d) any matter affecting the Authority referred to in a special report of the Comptroller and Auditor General under *section 11(2)* of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann. 15 20

(2) In giving evidence to the Committee under this section, the Chief Executive shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

Accountability of Chief Executive to other Oireachtas Committees.

25.—(1) Subject to *subsection (3)*, the Chief Executive shall, at the request in writing of a Committee, attend before it to give account for the general administration of the Authority as is required by the Committee. 25

(2) In giving evidence to a Committee under this section, the Chief Executive shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy. 30

(3) The Chief Executive shall not be required to give account before a Committee for any matter which is or has been or may at a future time be the subject of— 35

- (a) proceedings before a court or tribunal in the State, or
- (b) a decision or determination by the Authority or Appeal Board, as the case may be, in respect of a particular person.

(4) Where the Chief Executive is of the opinion that a matter, the subject of a request under *subsection (1)*, is a matter to which *subsection (3)* applies, he or she shall inform the Committee concerned of that opinion and the reasons for that opinion and unless the information is conveyed to the Committee at a time when the Chief Executive is before it, the information shall be so conveyed in writing. 40 45

(5) Where the Chief Executive has informed the Committee of his or her opinion in accordance with *subsection (4)* and the Committee does not withdraw the request referred to in *subsection (1)* in so far as it relates to a matter the subject of that opinion— 50

5 (a) the Chief Executive may, not later than 21 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which *subsection (3)* applies, or

(b) the chairperson of the Committee may, on behalf of the Committee, make such an application,

and the High Court shall determine the matter.

10 (6) Pending the determination of an application under *subsection (5)*, the Chief Executive shall not attend before the Committee to give account for the matter the subject of the application.

15 (7) If the High Court determines that the matter concerned is one to which *subsection (3)* applies, the Committee shall withdraw the request referred to in *subsection (1)*, but if the High Court determines that *subsection (3)* does not apply, the Chief Executive shall attend before the Committee to give account for the matter.

(8) In this section, “Committee” means a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas, other than—

20 (a) the Committee referred to in *section 24(1)* or a subcommittee of such committee,

(b) the Committee on Members’ Interests of Dáil Éireann or a subcommittee of such committee, or

25 (c) the Committee on Members’ Interests of Seanad Éireann or a subcommittee of such committee.

26.—(1) The Authority, with the consent of the Minister, may, and if directed by the Minister to do so and in accordance with the terms of the direction, shall, prescribe by regulations the fees to be paid to it and when they fall due in respect of—

Power to charge and recover fees.

30 (a) the performance of functions,

(b) the provision of services, and

(c) the carrying on of activities,

by the Authority under this Act.

35 (2) Without prejudice to the generality of *subsection (1)*, the Authority’s power under that subsection to prescribe fees includes the power to provide for exemptions from the payment of fees, or waiving, remitting or refunding fees (in whole or in part), in different circumstances or classes of circumstances or in different cases or classes of cases.

40 (3) The total amount of the fees charged annually under this Act shall, as nearly as may be, taking one year with another, be equal to the total expenditure incurred annually in the administration of this Act.

45 (4) Fees received under this Act shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance directs.

(5) The Authority may recover as a simple contract debt in any court of competent jurisdiction, from a person by whom the fee is payable, any amount due and owing to the Authority in respect of a fee charged under this section.

Advances by
Minister to
Authority.

27.—The Minister shall advance to the Authority out of moneys provided by the Oireachtas such amount or amounts as the Minister may, with the consent of the Minister for Finance, determine for the purposes of expenditure by the Authority in the performance of its functions. 5

Inspectors.

28.—(1) For the purposes of this Act— 10

(a) the Authority may appoint such members of its staff as it thinks fit to be inspectors for such period and subject to such terms as the Authority may determine,

(b) the Authority may appoint such other persons as it thinks fit to be inspectors for such period and subject to such terms (including terms as to remuneration and allowances for expenses) as the Authority, with the approval of the Minister and the consent of the Minister for Finance, may determine. 15

(2) Each inspector shall be given a warrant of appointment and, when performing any function imposed under this Act, shall, on request by any person affected, produce the warrant or a copy thereof, together with a form of personal identification. 20

PART 3

LICENCES TO PROVIDE PROPERTY SERVICES 25

Prohibition of
unlicensed property
service.

29.—(1) A person shall not—

(a) provide a property service,

(b) hold himself or herself out as available to provide a property service, or

(c) represent himself or herself by— 30

(i) advertisement, or

(ii) displaying any card or other object purporting to indicate that he or she is a licensee,

as available to provide a property service,

unless the person is the holder of a licence which is in force in respect of that property service. 35

(2) A person, other than a licensee, who contravenes *subsection (1)* is guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or 40

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

5 30.—(1) The Authority shall, as soon as is practicable after the commencement of this section, establish and maintain for the purposes of this Act a register of licensees to be known as the Property Services Register. Register of licensees.

(2) The Register shall be in such form as the Authority thinks fit and shall—

10 (a) contain the names of licensees and such other identifying particulars of licensees as the Authority considers appropriate, and

(b) contain such other entries in respect of licensees (including licensees whose licences are suspended) as the Authority considers appropriate.

15 (3) The Authority shall make the Register available for inspection free of charge by members of the public—

(a) at its principal office during normal working hours, and

20 (b) on its Internet website (if any) in such a manner that the section of that website which contains the Register is readily accessible by members of the public.

(4) A copy of an entry in the Register shall, on request, be issued by the Authority on payment of the appropriate fee.

(5) The Authority may divide the Register into different divisions for different classes of property services.

25 (6) In any legal proceedings, a certificate signed by the Chief Executive, or a member of the staff of the Authority authorised by the Chief Executive to give a certificate under this subsection, stating that a person—

30 (a) is registered in the Register or in a specified division of the Register,

(b) is not registered in the Register or in a specified division of the Register,

35 (c) was at a specified date or during a specified period registered in the Register or in a specified division of the Register,

(d) was not, at a specified date or during a specified period, registered in the Register or in a specified division of the Register or was suspended from the Register at that time in consequence of a suspension of the person's licence, or

40 (e) has never been registered in the Register,

shall, without proof of the signature of the person purporting to sign the certificate or that the person was the Chief Executive or a member of the staff of the Authority so authorised, as the case may be, be evidence, unless the contrary is proved, of the matters stated 45 in the certificate.

(7) The Authority shall ensure that the Register is accurate and, for that purpose, the Authority shall make any alteration requiring to be made in the information contained in an entry.

(8) The Authority shall, as soon as is practicable after doing anything under *subsection (7)*, give notice in writing of that fact to the licensee to whom the alteration relates. 5

(9) A licensee to whom an entry in the Register relates shall give notice in writing to the Authority of—

(a) any error that the person knows of in the entry, and

(b) any change in circumstances that is likely to have a bearing on the accuracy of the entry, 10

as soon as may be after the person becomes aware of that error or change in circumstances, as the case may be.

Application for
licence.

31.—(1) A person may make an application in the specified form to the Authority for a licence to provide the property service specified in the application (or, if more than one property service is specified in the application, a licence for each of the property services specified in the application) unless the person is prohibited from making such an application by virtue of the imposition on the person of a major sanction which falls within *paragraph (a)* or *(b)* of the definition of “major sanction” in *section 2(1)* or by virtue of an order under *section 39(3)*, *48(4)* or *(6)*, *66(18)* or *(20)* or *91(2)*. 15 20

(2) Without prejudice to the generality of *section 94*, an application under *subsection (1)* shall be accompanied by—

(a) references as to the applicant’s character and competence (including any required levels of education, training and experience) relevant to the licence or licences the subject of the application, 25

(b) in the case of an application for a licence to provide a property service as a property services employer or an independent contractor, a certificate in the specified form by a duly qualified accountant that proper financial systems and controls are or will be in place for the protection of client moneys if the applicant were to be so licensed, 30 35

(c) evidence in writing of the availability to the applicant of the required level of professional indemnity insurance if the licence or licences the subject of the application is or are, as the case may be, issued to the applicant, and

(d) the appropriate fee. 40

(3) Without prejudice to *sections 33*, *34* and *43*, the Authority may—

(a) require an applicant to provide in the specified form, or by affidavit, such additional information in respect of the applicant’s character, competence and financial position, and make such inquiries and conduct such examinations in that regard, as it considers necessary, 45

5 (b) require the applicant to provide a certificate in the specified form by a member of the Garda Síochána not below the rank of superintendent containing such particulars in respect of the applicant as are requisite for the due performance of the Authority's functions in relation to the applicant.

10 (4) Subject to *subsection (5)*, in this section, references to an applicant's character, competence and financial position include, in the case of an applicant which is a body corporate or a partner in a partnership, references to the character, competence and financial position of any of the principal officers of the body corporate or partnership, as the case may be.

15 (5) Where an applicant is seeking to be licensed as an independent contractor and is a partner in a partnership, *subsection (4)* shall only apply to the other principal officers of the partnership to the extent necessary for the purposes of ascertaining whether or not *section 32(3)(f)* or *(i)(iii)* is applicable in the case of that partnership.

20 **32.—(1)** Subject to *subsections (3) and (5)* and *sections 33 and 34*, the Authority may issue a licence to a person to provide the property service specified in the licence and such licence shall contain the registration number assigned to such person for the purposes of the Register in so far as it relates to that licence. Issue or refusal of licence.

25 (2) When deciding whether to issue a licence, the Authority shall take into account any information supplied to it under *sections 31 and 43*.

(3) Subject to *section 35*, the Authority shall refuse to issue a licence to a person if—

30 (a) *section 31* has not been complied with in respect of the person,

(b) the appropriate contribution to the Fund has not been paid in respect of the person,

(c) the person has not furnished sufficient proof to show that there is available to the person the required level of professional indemnity insurance in respect of the licence,

35 (d) in the case of an individual (not being a partner in a partnership), the person—

(i) is under 18 years of age, or

(ii) is an undischarged bankrupt,

40 (e) in the case of a body corporate (not being a partner in a partnership), any principal officer of the body corporate is an undischarged bankrupt,

(f) in the case of a partner in a partnership—

(i) any partner is under 18 years of age, or

45 (ii) any principal officer of the partnership is an undischarged bankrupt,

- (g) in the case of an individual (not being a partner in a partnership), the Authority is satisfied that the person—
 - (i) is not a fit and proper person to provide the property service concerned, or
 - (ii) does not comply with any requirement (not being a requirement referred to in any of *paragraphs (a) to (f)*) of this Act or of regulations made under this Act applicable to the person, 5
- (h) in the case of a body corporate (not being a partner in a partnership), the Authority is satisfied that— 10
 - (i) any principal officer of the body corporate is not a fit and proper person to hold the position concerned in a body corporate which is providing the property service concerned, or
 - (ii) the body corporate does not comply with any requirement (not being a requirement referred to in any of *paragraphs (a) to (f)*) of this Act or of regulations made under this Act applicable to a body corporate, 15

or

- (i) in the case of a partner in a partnership, the Authority is satisfied that— 20
 - (i) if the partner is an individual, the partner is not a fit and proper person to provide the property service concerned,
 - (ii) subject to *subsection (4)*, any other principal officer of the partnership is not a fit and proper person to hold the position concerned in a partnership which is providing the property service concerned, or 25
 - (iii) the partnership does not comply with any requirement (not being a requirement referred to in any of *paragraphs (a) to (f)*) of this Act or of regulations made under this Act applicable to the partnership. 30

(4) *Subsection (3)(i)(ii)* shall only apply in the case of a partner in a partnership who is seeking to be licensed as a property services employer. 35

(5) Where a person is licensed as a property services employer, it shall be a condition of the licence (including the licence as renewed from time to time) that the licensee shall take all reasonable steps to ensure that—

- (a) in the case of a licensee which is a body corporate (not being a partner in a partnership), the principal officers of the body corporate are fit and proper persons to hold the positions respectively held by them in the body corporate (whether or not any of the principal officers also holds a licence) having regard to— 40
 - (i) the functions respectively performed by the occupants of such positions, and 45

(ii) the nature of the property service which the body corporate is licensed to provide,

and

(b) in the case of a licensee who is a partner in a partnership—

5 (i) if the partner is an individual, the other principal officers of the partnership are fit and proper persons to hold the positions respectively held by them in or of the partnership (whether or not any of the principal officers also holds a licence) having regard to—

10 (I) the functions respectively performed by the occupants of such positions, and

(II) the nature of the property service which the partner is licensed to provide,

15 (ii) if the partner is a body corporate, the principal officers of the partnership are fit and proper persons to hold the positions respectively held by them in or of the partnership (whether or not any of the principal officers also holds a licence) having regard to—

20 (I) the functions respectively performed by the occupants of such positions, and

(II) the nature of the property service which the body corporate is licensed to provide.

25 (6) A licence, unless sooner surrendered or revoked or otherwise ceasing to be in force, shall remain in force for a period of one year from the date on which it is issued or for such longer period (if any) as may be prescribed by regulations made under *section 92* for the purposes of this subsection.

(7) A licence—

(a) does not confer any right of property, and

30 (b) may not be transferred or assigned or be mortgaged, charged or otherwise encumbered.

33.—(1) In this section—

Tax clearance.

“Act of 1997” means the Taxes Consolidation Act 1997;

35 “Collector-General” means the Collector-General appointed under section 851 of the Act of 1997;

“person” includes—

(a) in the case of a body corporate, the directors of the body corporate, and

(b) in the case of a partnership, the partners,

40 but does not include an individual who provides a property service in the course of an employment;

“tax clearance certificate” means a certificate under section 1095 (inserted by section 127(b) of the Finance Act 2002) of the Act of 1997.

(2) The Authority shall refuse to issue or renew a licence to or in respect of a person in respect of whom a tax clearance certificate is not in force. 5

(3) The Authority may nevertheless issue or renew a licence to or in respect of such a person if—

(a) the person has, at least 4 months before applying for the issue or renewal, applied for a tax clearance certificate and it has been refused and an appeal against the refusal has been made under section 1094(7) of the Act of 1997 but not determined, and 10

(b) the Authority would, but for *subsection (2)*, have issued or renewed the licence. 15

(4) A licence issued or renewed on foot of *subsection (3)* shall expire 7 days after the date on which the appeal concerned referred to in that subsection has been determined or finally determined and such appeal is unsuccessful.

(5) The Collector-General shall notify the Authority of any appeal against a refusal of an application to issue a tax clearance certificate and of the final determination of any such appeal. 20

(6) The reference in *subsection (3)(a)* to section 1094(7) is to that provision as applied by subsection (6) of section 1095 (inserted by section 127(b) of the Finance Act 2002) of the Act of 1997. 25

(7) The Act of 1997 is amended in section 1094(1) by the deletion in the definition of—

(a) “licence” of paragraphs (e), (f) and (g), and

(b) “beneficial holder of a licence” of “and, in relation to a licence issued under the Auctioneers and House Agents Act 1947, includes the authorised individual referred to in section 8(4), or the nominated individual referred to in section 9(1), of that Act”. 30

Documents to accompany certain applications.

34.—The Authority shall refuse an application for a licence or for the renewal of a licence— 35

(a) by or on behalf of a company, unless the application is accompanied by a certificate of the incorporation of the company, certified by the registrar of companies under section 370(1)(b) of the Companies Act 1963 and dated not earlier than 4 weeks before the date of the application, or 40

(b) by or on behalf of a person carrying on business under a name that is not that of the beneficial owner of the business, unless the application is accompanied by a copy of a certificate of registration of the person under the Registration of Business Names Act 1963, certified in accordance with section 16(1)(b) of that Act. 45

35.—(1) Where the Authority proposes to refuse to issue a licence to a person, it shall give notice in writing to the person—

Notification to applicant of refusal to issue licence, etc.

- (a) of the proposal and the reasons for the proposal, and
- (b) stating that the person may make representations in writing to the Authority on the proposal—
 - (i) subject to *subparagraph (ii)*, within 14 days from the receipt of that notice by the person,
 - (ii) within such longer period as the Authority thinks fit in the circumstances of the case.

(2) Where the Authority has given a notice under *subsection (1)* to a person, it shall, as soon as is practicable after the expiration of the period referred to in *subsection (1)(b)(i)* or *(ii)*, as the case requires, and the consideration of any representations referred to in *subsection (1)(b)* made to it—

- (a) issue to the person the licence that is the subject of the notice, or
- (b) refuse to issue the licence that is the subject of the notice and give the person—
 - (i) notice in writing of the refusal and the reasons for the refusal, and
 - (ii) a copy of *Part 2 of Schedule 5* if the ground, or one of the grounds, for the refusal falls within *section 32(3)(g), (h) or (i)*.

36.—(1) A licence, unless it has been revoked, may, subject to *subsection (4)* and *sections 33 and 34*, be renewed by the Authority.

Renewal of licence.

- (2)** An application for the renewal of a licence shall be—
- (a) in the specified form,
 - (b) made at least 6 weeks before the expiration of the licence, and
 - (c) accompanied by the appropriate fee.

(3) Subject to *subsection (4)*, where an application under *subsection (2)* for the renewal of a licence is not determined by the Authority before the licence expires, the licence shall continue in force until the application has been so determined.

(4) Subject to *subsection (6)* and *section 37*, the Authority shall refuse to renew a licence of a person if—

- (a) *subsection (2)* has not been complied with in respect of the person,
- (b) in the case of an application for the renewal of a licence to provide a property service as a property services employer or an independent contractor, the application is not accompanied by a certificate in the specified form by a duly qualified accountant that proper financial

systems and controls are still in place for the protection of client moneys received by the applicant,

- (c) the appropriate contribution to the Fund has not been paid in respect of the person,
- (d) there is not available to the person the required level of professional indemnity insurance in respect of the licence, 5
- (e) in the case of an individual (not being a partner in a partnership), the person is an undischarged bankrupt,
- (f) in the case of a body corporate (not being a partner in a partnership), any principal officer of the body corporate is an undischarged bankrupt, or 10
- (g) in the case of a partner in a partnership—
 - (i) any partner is under 18 years of age, or
 - (ii) any principal officer of the partnership is an undischarged bankrupt. 15

(5) Where an application under *subsection (2)* for the renewal of a licence does not comply with *paragraph (b)* of that subsection, the applicant shall, unless he or she satisfies the Authority that there were exceptional circumstances which justify why the application did not comply with that paragraph, be treated as never having held a licence, and *sections 31* and *32* shall apply to the applicant accordingly. 20

(6) Improper conduct (including any allegation thereof) by a licensee shall be dealt with or continue to be dealt with under *Part 7* or *8* and, accordingly, the renewal of the licensee's licence under this section does not prejudice or affect— 25

- (a) any investigation which relates to the licensee, or
- (b) any legal proceedings (whether civil or criminal) or other proceedings under *Part 7* or *8* or under any other provision of this Act in respect of the licence or the licensee. 30

(7) Where a licence is renewed under this Act, the period of validity of the licence as so renewed shall be deemed to start to run on the day that the licence would have expired if no application under *subsection (2)* for its renewal had been made, and irrespective of whether the licence is renewed before, on or after that day. 35

Notification to applicant of refusal to renew licence, etc.

37.—(1) Where the Authority proposes to refuse to renew a licence of a person, it shall give a notice in writing to the person—

- (a) of the proposal and the reasons for the proposal, and
- (b) stating that the person may make representations in writing to the Authority on the proposal— 40
 - (i) subject to *subparagraph (ii)*, within 14 days from the receipt of that notice by the person,
 - (ii) within such longer period as the Authority thinks fit in the circumstances of the case.

5 (2) Where the Authority has given a notice under *subsection (1)* to a person, it shall, as soon as is practicable after the expiration of the period referred to in *subsection (1)(b)(i)* or *(ii)*, as the case requires, and the consideration of any representations referred to in *subsection (1)(b)* made to it—

(a) issue to the person the renewal of the licence that is the subject of the notice, or

10 (b) refuse to renew the licence that is the subject of the notice and give the person notice in writing of the refusal and the reasons for the refusal.

38.—(1) Where a licensee is an individual (including an individual who is a partner in a partnership), he or she shall— Display and production of licences.

15 (a) have the licence or a duplicate of the licence in his or her possession when providing to any person the property service authorised by the licence, and

(b) upon the request of such person, immediately produce the licence or a duplicate of the licence and permit such person to inspect it.

20 (2) Where a licensee is a body corporate (including a body corporate which is a partner in a partnership), the licensee shall—

(a) cause the licence to be—

(i) kept, and conspicuously displayed, in the licensee's principal place of business as a licensee, and

25 (ii) upon the request of an inspector or any person for whom the licensee is providing the property service authorised by the licence, made available for inspection by the inspector or such person, as the case may be,

and

30 (b) cause a duplicate of the licence to be—

(i) kept, and conspicuously displayed, in every other place of business of the licensee as a licensee,

35 (ii) upon the request of an inspector or any person for whom the licensee is providing the property service authorised by the licence, made available for inspection by the inspector or such person, as the case may be.

40 (3) Where an inspector is of the opinion that an individual is providing a property service, the inspector may require the individual to immediately produce the licence (if any) issued to the individual which authorises the provision of the service.

(4) An individual the subject of a requirement under *subsection (3)* who has a licence shall—

(a) comply with the requirement, and

45 (b) permit the inspector to inspect the licence.

(5) A licensee who is a property services employer or an independent contractor shall, whilst the licence is in force and at no other time, conspicuously display the licensee's registration number—

(a) in any advertisement or sales brochure published by or on behalf of the licensee in respect of the provision of a property service authorised by the licence, 5

(b) in all business correspondence relating to the property service authorised by the licence, and

(c) on any sign erected by or on behalf of the licensee on or adjacent to land in respect of which the licensee is providing a property service authorised by the licence. 10

(6) A licensee shall, whilst the licence is in force and at no other time, when conducting a sale by auction authorised by the licence away from the licensee's place of business conspicuously display the licence or a duplicate of the licence at the premises where the auction is being conducted. 15

(7) Without prejudice to the generality of *subsection (6)*, where a licensee (in this subsection referred to as "the relevant licensee") is conducting an auction in his or her capacity as a principal officer or employee of a licensee who is a property services employer, the relevant licensee shall also conspicuously display the licence, or a duplicate of the licence, held by him or her which entitles him or her to conduct the auction in that capacity. 20

Offence to use licence issued to another person.

39.—(1) A person shall not with intent to deceive—

(a) produce for inspection a licence issued to another person, 25

(b) permit the inspection of a licence issued to another person, or

(c) make or use a document purporting to be a licence, alter a licence or use an altered licence.

(2) A person who contravenes *subsection (1)* is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both. 30

(3) Subject to *subsection (4)*, where a licensee is convicted of an offence under *subsection (2)*, the court may, after having regard to the nature of the offence and the circumstances in which it was committed, order that the licence held by the licensee be revoked and that the former licensee be prohibited (which may be a permanent prohibition, a prohibition for a specified period or a prohibition subject to specified conditions) from applying for any new licence or a particular class of new licence. 35 40

(4) An order under *subsection (3)* shall not take effect until—

(a) the ordinary time for bringing an appeal against the conviction concerned or the order has expired without any such appeal having been brought,

(b) any such appeal has been withdrawn or abandoned, or 45

(c) on any such appeal, the conviction or order, as the case may be, is upheld.

(5) In this section, “licence” includes a duplicate of a licence.

5 **40.**—The Authority, if satisfied that a licence or a duplicate of the licence has been lost or destroyed, may issue a replacement licence or duplicate, as the case may be, on payment of the appropriate fee.

Issue of replacement licence, etc.

10 **41.**—(1) Where a licensee is adjudicated bankrupt, the adjudication shall operate immediately to suspend the licence of the licensee or, if the licensee holds 2 or more licences, all those licences until—

Surrender and seizure of licence following suspension or revocation, etc.

(a) the licence expires or all those licences expire, as the case may be, or

(b) the adjudication is annulled and an office copy of the order annulling the adjudication is served on the Authority,

15 whichever first occurs.

(2) Where—

(a) a licence is suspended or revoked, or

(b) a licensee ceases to provide the property service authorised by the licence,

20 the licensee shall forthwith surrender the licence (and every duplicate of the licence) to the Authority and the Authority shall cause the Register to be updated accordingly.

(3) An inspector may seize and retain a licence (and every duplicate of the licence)—

25 (a) which has been suspended or revoked or has expired, or

(b) where the licensee has ceased to provide the property service authorised by the licence.

30 (4) A person who, without reasonable excuse, contravenes *subsection (2)* is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000.

35 **42.**—(1) A licensee shall give notice in writing to the Authority as soon as is practicable but, in any case, not later than 30 days after that matter comes to the knowledge of the licensee, of any material matter which would be likely to affect the validity of the licensee’s licence.

Notification of material matter to Authority.

40 (2) A contravention of *subsection (1)* is not improper conduct if, in the case of a licensee who has been convicted of an offence, or against whom proceedings for an offence are pending, in a place other than the State, the offence does not correspond with any offence under the law of the State.

(3) *Subsections (1)* and *(2)* shall apply to an applicant for a licence as if the applicant were a licensee in respect of the property service

or property services, as the case requires, for which the applicant is seeking a licence or licences.

(4) In this section—

“change in the principal officers”, in relation to a body corporate or a partnership, means a person becoming or ceasing to be, by whatever means, a principal officer of the body corporate or the partnership, as the case may be; 5

“material matter”, in relation to a licensee or an applicant for a licence, includes—

(a) the imposition of conditions on any registration or licence or other authorisation, the revocation, suspension, withdrawal or removal of any registration or licence or other authorisation, or the refusal to grant registration or a licence or other authorisation, by any regulatory body in or outside the State in respect of any capacity or former capacity of the applicant or licensee, as the case may be, as a provider of— 10 15

(i) property services in or outside the State,

(ii) services relevant to the provision of such property services, 20

(b) any conviction for an offence (whether imposed in or outside the State) other than an offence prescribed for the purposes of this paragraph by regulations made under *section 92*,

(c) any proceedings pending for an offence which falls within *paragraph (b)*, and 25

(d) in the case of a licensee or an applicant which or who is a body corporate or a partner in a partnership, any change in the principal officers of the body corporate or partnership, as the case may be. 30

Provision of information by Garda Síochána.

43.—(1) The Authority may request the Commissioner of the Garda Síochána to provide any information requisite for the due performance of its functions in relation to any applicant for a licence or any licensee.

(2) The Commissioner of the Garda Síochána shall comply with a request under *subsection (1)* notwithstanding anything contained in any statutory provision or rule of law. 35

PART 4

GENERAL OBLIGATIONS OF LICENSEES

Letter of engagement.

44.—(1) A licensee shall, not later than 7 working days after the day on which the licensee starts to provide a property service to a person, or has reached an agreement with the person to provide a property service to him or her, whichever is the earlier, provide to that person, in respect of such property service, a letter of engagement (including a copy thereof) in the specified form— 40 45

(a) containing such information as is required to be contained in it by virtue of *Schedule 2*, and

(b) signed by the licensee.

(2) Where—

5 (a) a licensee has provided a person with a letter of engagement and a copy thereof in compliance with *subsection (1)*, and

10 (b) the licensee is not provided with such copy, signed by the person, within the 7 working days immediately following the expiration of the 7 working days concerned referred to in *subsection (1)*,

15 the licensee shall cease to provide, or shall not start to provide, as the case may be, to that person the property service the subject of the letter and that letter shall thereupon cease to have any force and effect.

(3) Where a property services agreement has been entered into by a licensee but subsequently the licensee and the other party thereto have agreed to make an amendment to the agreement (including any agreement as previously amended under this subsection), the licensee shall, not later than 7 working days after the amendment has been so agreed, provide to that party such amendment (including a copy thereof) in the specified form—

25 (a) containing such information as is required to be contained in the amendment by virtue of *Schedule 2* in so far as that Schedule relates to the subject matter of the amendment, and

(b) signed by the licensee.

30 (4) *Subsection (2)* and the definition of “property services agreement” in *section 2(1)* shall, with all necessary modifications, apply to—

(a) an amendment to a property services agreement,

(b) the renewal of a property services agreement, or

35 (c) the re-engagement of the licensee concerned following the expiration or other termination of a property services agreement,

as they apply to a letter of engagement.

40 **45.**—Where a licensee who is a property services employer or an independent contractor provides a property service (including, in the case of a property services employer, the provision of such service by a principal officer or employee of the property services employer), the licensee shall retain a record in the specified form of the provision of such service for a period of not less than 6 years after the completion of the transactions, acts or operations to which the record relates. Retention of records.

46.—(1) A licensee who is—

- (a) an independent contractor, or
- (b) both a property services employer and an individual,

shall not provide a property service unless there is in force, at the time of the provision of such service, a policy of professional indemnity insurance which adequately covers the licensee in the provision of such service. 5

(2) Without prejudice to the generality of *section 4*, a licensee who is a property services employer shall not authorise or permit a licensee who is a principal officer or employee of the employer to provide a property service in his or her capacity as such principal officer or employee, as the case may be, unless there is in force, at the time of the provision of such service, a policy of professional indemnity insurance which adequately covers the principal officer or employee, as the case may be, in the provision of such service. 10 15

(3) The Authority may from time to time issue guidelines with respect to the practical operation of *subsection (1)* or *(2)*.

PART 5

CLIENT ACCOUNTS AND RELATED MATTERS

47.—(1) Subject to *subsection (2)* and *section 49(4)*, the Authority shall make regulations providing for all or any of the following matters: 20

- (a) the class or classes of licensee to whom the regulations apply;
- (b) the kind or kinds of accounts at banks which may be opened and kept by a licensee for the keeping of client moneys in connection with the provision of property services; 25
- (c) the opening and keeping of such accounts by a licensee;
- (d) the rights, duties and responsibilities of a licensee in respect of moneys received, held, controlled or paid in connection with the provision of property services, including the lodgment to and withdrawal from a client account of client moneys; 30
- (e) the acknowledgements or statements to be issued by a licensee in respect of client moneys received, held, controlled or paid by the licensee in connection with the provision of property services; 35
- (f) the circumstances in which moneys other than client moneys may be paid into accounts containing client moneys and the circumstances in which, and the persons for whom, moneys held in such accounts may be paid out; 40
- (g) the accounting records to be maintained by a licensee arising from the provision of property services by the licensee, including the minimum period or periods for which accounting records shall be retained by a licensee 45

5 during the period of, and following the conclusion of, the provision of property services and the manner in which the lodgement into client accounts of any client moneys received by the licensee shall be recorded in the accounting records;

10 (h) the accounting records to be maintained by a licensee containing particulars of and information as to moneys received, held, controlled or paid by the licensee in connection with the provision of property services, for or on behalf of a client or any other person or himself or herself;

(i) client entitlements, including the treatment or retention of interest, income or profit arising from any client moneys in such cases as may be specified in the regulations;

15 (j) the circumstances in which a licensee may be required to make good moneys to a client account including the payment of interest or an equivalent sum;

20 (k) the circumstances and manner in which a licensee (or a duly qualified accountant on behalf of the licensee) verifies compliance with the regulations, including the frequency of doing so;

25 (l) the examination by an auditor, at intervals prescribed by the regulations, of accounting records maintained by a licensee under regulations made under *paragraphs (g) and (h)*;

(m) the enforcement by the Authority of compliance with the regulations;

30 (n) the imposition of fees on a licensee in cases of non-compliance where the Authority has to conduct further enquiries (being fees not exceeding the cost of conducting such enquiries);

35 (o) the examination, by or on behalf of the Authority, of the financial circumstances of a licensee in so far as such circumstances could affect the licensee's capacity to provide property services.

(2) The Authority shall, in making regulations under this section, have regard to the need to protect client moneys.

40 **48.—(1)** A licensee who knowingly lodges client moneys (or who knowingly causes client moneys to be lodged) to an account other than a client account is guilty of an offence. Offences relating to client accounts and accounting records.

(2) A licensee who knowingly makes (or causes so to be made) a false or misleading entry or record in accounting records is guilty of an offence.

45 (3) A person guilty of an offence under *subsection (1) or (2)* shall be liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

(4) Subject to *subsection (5)*, where a licensee is convicted summarily of an offence under *subsection (1)* or *(2)*, the court may, after having regard to the nature of the offence and the circumstances in which it was committed, order that the licence held by the licensee be revoked and that the former licensee be prohibited (which may be a permanent prohibition, a prohibition for a specified period or a prohibition subject to specified conditions) from applying for any new licence or a particular class of new licence.

(5) An order under *subsection (4)* shall not take effect until—

(a) the ordinary time for bringing an appeal against the conviction concerned or the order has expired without any such appeal having been brought,

(b) any such appeal has been withdrawn or abandoned, or

(c) on any such appeal, the conviction or order, as the case may be, is upheld.

(6) Subject to *subsection (7)*, where a licensee is convicted on indictment of an offence under *subsection (1)* or *(2)*, the court shall order that all the licences held by the licensee be revoked and that the former licensee be permanently prohibited from applying for any licence.

(7) An order under *subsection (6)* shall not take effect until—

(a) the ordinary time for bringing an appeal against the conviction concerned has expired without any such appeal having been brought,

(b) any such appeal has been withdrawn or abandoned, or

(c) on any such appeal, the conviction is upheld.

Control of banking accounts or assets of licensees.

49.—(1) Where—

(a) the Authority refuses to renew a licence,

(b) a licence is suspended or revoked under this Act, or

(c) the Authority is satisfied, for whatever reason, that a licensee has ceased to provide property services,

the Authority may, with a view to protecting client accounts, apply to the High Court, and the High Court may make an order directing one or more of the following:

(i) that no bank shall, without leave of the High Court, make any payment out of an account in the name of the licensee or former licensee concerned in his or her capacity or former capacity, as the case may be, as a licensee;

(ii) that a specified bank shall not, without leave of the High Court, make any payment out of an account kept at such bank by the licensee or former licensee in such capacity or former capacity, as the case may be;

(iii) that the licensee or former licensee shall not, without leave of the High Court, dispose of or direct or facilitate the disposal of any assets within his or her possession or control or within his or her procurement;

5 (iv) that the licensee or former licensee shall not, without leave of the High Court, reduce his or her assets below a specified amount or value.

(2) The High Court shall have power to hear an application for an order under *subsection (1)* otherwise than in public.

10 (3) Where the High Court makes in relation to a licensee or former licensee an order under *subsection (1)*, the Court may make one or more of the following further orders:

15 (a) directing a specified bank to furnish any information in its possession that the Authority requires relating to any aspect of the financial affairs of the licensee or former licensee in his or her capacity or former capacity, as the case may be, as a licensee;

20 (b) subject to *subsection (7)*, directing the licensee or former licensee to swear an affidavit disclosing all information relating to or contained in any account with any bank held in his or her own name, or in the name of his or her business or former business as a licensee, or jointly with third parties, within a specified duration of time to be fixed by the Court;

25 (c) subject to *subsection (7)*, directing the licensee or former licensee to swear an affidavit disclosing all information relating to his or her assets, either then in his or her possession or control or within his or her procurement or which had been but are no longer in his or her possession or control or within his or her procurement, within a specified duration of time to be fixed by the Court, and, if no longer in his or her possession or control or within his or her procurement, his or her belief as to the present whereabouts of those assets;

30 (d) subject to *subsection (7)*, directing the licensee or former licensee to make himself or herself available before the Court on a specified date and at a specified time for oral examination under oath in relation to the contents of any affidavit of assets sworn by him or her pursuant to *paragraph (c)*.
40

(4) Where the High Court makes in relation to a licensee or former licensee an order under *subsection (1)*, the licensee or former licensee shall forthwith lodge (or cause to be lodged) any moneys subsequently received by him or her to the appropriate client
45 account or client accounts, unless otherwise ordered by the Court.

(5) Where the High Court is satisfied, on an application being made to it by the Authority, that there is reason to believe that any person holds or has held assets on behalf of a licensee or former licensee or on behalf of his or her business or former business as a
50 licensee to whom *subsection (1)* applies, the Court may order that person to disclose to the Authority all information as to such assets, either then in his or her possession or control or within his or her procurement or which had been but are no longer in his or her possession or control or within his or her procurement, and, if no longer

within his or her possession or control or within his or her procurement, his or her belief as to the present whereabouts of those assets.

(6) A person who, without reasonable excuse, acts in such a manner as to render nugatory all or part of an order made under *subsection (1)*, or contravenes *subsection (4)*, is guilty of an offence and liable— 5

(a) on summary conviction, to a fine not exceeding €5,000, or

(b) on conviction on indictment, to a fine not exceeding €50,000.

(7) Where a licensee or former licensee is a body corporate, the affidavit referred to in *paragraph (b)* or *(c)* of *subsection (3)* may be sworn by a principal officer of the body corporate, on behalf of the body corporate, and the High Court's power to give a direction under that paragraph, or under *paragraph (d)* of that subsection, shall be construed accordingly. 10
15

Priority of claims to client moneys.

50.—(1) Where a licensee keeps a client account, no person (including a person specified in *subsection (2)* for the purposes of this subsection) shall have or obtain any recourse or right against moneys standing to the credit of that account in respect of a claim or right against the licensee until all proper claims of the licensee's clients against those moneys have been fully satisfied. 20

(2) Persons specified for the purposes of *subsection (1)* are—

(a) a creditor of the licensee,

(b) a liquidator, receiver, administrator, examiner or Official Assignee of the licensee, and 25

(c) the State.

Preservation of lien and other rights.

51.—Nothing in this Act shall operate to deprive a licensee of any recourse or right (whether by way of lien, set-off, counter-claim, charge or otherwise) that the licensee has against moneys standing to the credit of a client account kept by the licensee. 30

Provisions regarding banks.

52.—(1) A bank shall not, in connection with any transaction on an account of a licensee kept with the bank or with another bank—

(a) incur a liability,

(b) be under an obligation to make inquiry, or

(c) be deemed to have knowledge of a right to moneys paid into or credited to the account, 35

which the bank would not incur, be under, or be deemed to have, as the case may be, in the case of an account kept by a person entitled absolutely to the moneys paid into or credited to the account.

(2) Nothing in *subsection (1)* shall relieve a bank from any liability or obligation which it would be under apart from this Act. 40

(3) Notwithstanding *subsection (1)*, a bank which keeps an account of a licensee for moneys of clients shall not, in respect of a

liability of the licensee to the bank, not being a liability in connection with that account, have or obtain any recourse or right (whether by way of lien, set-off, counter-claim, charge or otherwise) against moneys standing to the credit of that account.

5 (4) Nothing in *subsection (3)* shall deprive a bank of a right existing at the commencement of this section in respect of moneys previously deposited with the bank.

10 **53.**—(1) Where a licensee is adjudicated bankrupt or where, being an arranging debtor, the licensee vests the licensee's estate in the Official Assignee for realisation and distribution amongst the licensee's creditors, then, notwithstanding anything contained in *section 50* or in any other enactment, there shall vest in the Official Assignee the sum to the credit of every client account kept by the licensee.

Vesting in Official Assignee of sums to credit of certain client accounts.

15 (2) Where a licensee files a petition for arrangement but does not vest the licensee's estate in the Official Assignee, the creditors who are clients of the licensee, or a portion of those creditors (being at least three-fifths in number) may apply to a judge of the High Court for the time being exercising jurisdiction in bankruptcy matters for an order vesting in the Official Assignee the sum to the credit of every client account kept by the licensee, and the Court may, if it thinks it proper to do so and the Official Assignee consents, make such an order, which shall have effect accordingly.

20 (3) Upon a vesting under *subsection (1)* or *(2)* of a client account in the Official Assignee, the Official Assignee shall proceed to administer the client account for the benefit of the clients and the law of bankruptcy (including this Act) shall apply to such administration.

25 (4) The administration under *subsection (3)* of a client account by the Official Assignee shall for all purposes be deemed to be business assigned to the Office of the Official Assignee in Bankruptcy and transacted therein.

30 (5) Upon a vesting under *subsection (1)* or *(2)* of a client account in the Official Assignee, and notwithstanding that an order under *section 49(1)* may have been made in respect of the account, a bank—

(a) shall be entitled to pay over to the Official Assignee the sum to the credit of the account, and

(b) shall pay over that sum to the Official Assignee upon demand by the Official Assignee.

40 **54.**—(1) Where—

(a) either—

45 (i) a licensee who is an individual is adjudicated bankrupt, files a petition for arrangement, executes a deed of arrangement (within the meaning of section 4 of the Deeds of Arrangement Act 1887) or dies insolvent, or

(ii) a licensee which is a company is insolvent and being wound up,

Provisions relating to client accounts in event of bankruptcy.

and

- (b) the sum to the credit of the client account kept by the licensee at a bank in accordance with regulations made under *section 47* or, where 2 or more such accounts are kept by the licensee, the total of the sums to the credit of the accounts, is less than the total of the sums received by the licensee in the course of the licensee's business on behalf of the licensee's clients and remaining due by the licensee to the clients,

then, notwithstanding any statutory provision or rule of law to the contrary, the sum to the credit of the client account or, where the licensee has kept 2 or more client accounts, the total of the sums to the credit of those accounts, shall be divisible proportionately amongst the clients of the licensee according to the respective sums received by the licensee in the course of the licensee's business on behalf of the licensee's clients and remaining due by the licensee to the clients.

(2) Subject to *subsection (3)*, for the purposes of this section, where a refund of a deposit is due from a licensee, the amount due shall be deemed to have been received by the licensee in the course of the licensee's business on behalf of the person who made the deposit.

(3) *Subsection (2)* shall not operate to deprive a person referred to in that subsection of any right to require a contract of sale or letting to be duly completed.

Power of Authority to deal with documents.

55.—(1) Where—

(a) either—

- (i) the Authority refuses to renew a licence, or
- (ii) a licence is revoked or suspended under this Act,

and

- (b) the Authority is of the opinion that adequate arrangements have not been made for the return to clients of the licensee or former licensee to whom such refusal, suspension or revocation, as the case may be, relates of any documents within the possession or in the control, or within the procurement, of the licensee or former licensee, as the case may be,

the Authority may, by notice in writing given to the licensee or former licensee, as the case may be, require the licensee or former licensee, as the case may be, or any other person in possession or control of such documents, to produce the documents, to a person appointed by the Authority for the purpose, at a time and place specified by the Authority in the notice.

(2) Where a person the subject of a requirement under *subsection (1)* does not comply or fully comply with that requirement, the Authority may apply to the Circuit Court, on notice to that person, for an order requiring the person to comply or comply fully, as the case may be, with the requirement within a period to be specified by the Court and the Court may make the order applied for or such other order as it thinks fit.

(3) Where the Authority takes possession of documents produced under this section—

5 (a) it shall serve on the person by whom the documents were produced, a notice giving particulars of the documents and the date of taking possession thereof, and

10 (b) it may make such enquiries as may be reasonably necessary to ascertain the person or persons entitled to the possession or custody of such documents, or any of them, and may thereafter deal with such documents, or any of them, in accordance with the directions of such person or persons so entitled.

(4) Within 14 days from the service of a notice under *subsection (3)* on a person, the person may apply to the Circuit Court for an order directing the Authority to return the documents taken by the
15 Authority to him or her or to such other person or persons as the applicant may require and the Court may make the order applied for or such other order as it thinks fit.

20 (5) An application under *subsection (2)* to the Circuit Court shall be made to a judge of that Court for the circuit in which the person the subject of the application resides or ordinarily carries on any profession, business or occupation.

PART 6

SALE OR LETTING OF LAND

25 **56.—**(1) A licensee shall, within 7 working days of being requested by the vendor of land to value the land for sale, or within such longer period as may be agreed between the licensee and the vendor, provide the vendor with a statement in the specified form of the advised market value of the land. Vendor to be given statement of advised market value, etc.

30 (2) A licensee shall, within 7 working days of being requested by the lessor of land to value the land for letting, or within such longer period as may be agreed between the licensee and the lessor, provide the lessor with a statement in the specified form of the advised letting value of the land.

35 **57.—**(1) Subject to *subsection (2)*, a licensee shall not state as the licensee's estimate of the selling price of land, whether orally or in writing— Estimate of selling price not to be less than advised market value, etc.

(a) in any advertisement in respect of the land,

(b) in the particulars or conditions of sale of the land,

(c) to a prospective purchaser of the land, or

40 (d) at the time of the auction of the land,

a price that is less than the advised market value of the land provided by the licensee to the vendor under *section 56* or, where such advised market value is expressed as a relevant price range, a price that is less than the lower limit of that range.

(2) The advised market value of land provided by a licensee to a vendor under *section 56* may be adjusted, with the consent in writing of the vendor, to take account of prevailing market conditions.

Evidence of reasonableness of advised market value.

58.—(1) The Authority may, in the course of an investigation, by notice in writing require a licensee to provide to it, on or before a date specified in the notice, evidence of the reasonableness and means of calculation of any advised market value of land stated by the licensee— 5

- (a) to the vendor of the land,
- (b) in any advertisement in respect of the land, 10
- (c) in the particulars or conditions of sale of the land,
- (d) to a prospective purchaser of the land, or
- (e) at the time of the auction of the land.

(2) A person, other than a licensee, who—

- (a) withholds, destroys, conceals or refuses to provide any information, record or other document required by the Authority under *subsection (1)*, or 15
- (b) otherwise obstructs or hinders the Authority in the performance of its functions under this section,

is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both. 20

Sale by auction.

59.—(1) Where land is offered for sale by auction, the vendor shall not—

- (a) bid at the auction, or 25
- (b) procure, authorise or permit any person to bid on the vendor's behalf.

(2) A licensee shall not knowingly accept a bid made in contravention of *subsection (1)*.

(3) Where there is a contravention of *subsection (1)* in respect of any land offered for sale by auction, the purchaser of the land may, notwithstanding any statutory provision or rule of law to the contrary, refuse to complete a contract of sale in respect of the land without thereby incurring any civil liability which may otherwise have been incurred in consequence of such a refusal. 30 35

(4) *Subsection (3)* shall not operate to deprive the purchaser referred to in that subsection of any legal remedy which, if that subsection had not been enacted, the purchaser would have had in relation to the contravention of *subsection (1)* concerned or, if applicable, any contravention of *subsection (2)* which relates to that first-mentioned contravention. 40

(5) A person who contravenes *subsection (1)* is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

60.—(1) A licensee shall not provide a financial service to a purchaser of land where the licensee provides a property service to the vendor of the land unless—

Prohibition on provision of financial services, etc.

5 (a) the licensee has, before the sale concerned, by notice in the specified form informed the vendor of the licensee's intention to provide a financial service to the purchaser and the vendor has, before that sale, stated in writing that he or she has no objection to the licensee so providing a financial service, and

10 (b) the licensee has, before that sale, by notice in the specified form informed the purchaser that the licensee is providing a property service to the vendor and the purchaser has, before that sale, stated in writing that he or she has no objection to the licensee so providing a property service at the same time that the licensee may provide a financial service to the purchaser.

(2) Nothing in this Act shall be construed to—

20 (a) affect the operation of any provision of the Consumer Credit Act 1995, any other statutory provision or any rule of law, in its application to a person who is a licensee, or

(b) relieve a person who is a licensee of any obligations the person may have under any such provision or any rule of law.

25 **61.**—Without prejudice to the generality of regulations made under *section 47*, where land is offered for sale, other than by auction, by a licensee who is a property services employer or an independent contractor (including, in the case of a property services employer, the provision of such offer by a principal officer or employee of the property services employer) the licensee shall retain

Retention of records where sale of land other than by auction.

30 a record in the specified form for a period of not less than 6 years, of all offers received by the licensee, including conditional acceptances, in respect of the sale.

35 **62.**—(1) Subject to *subsection (2)*, the Authority may, with the consent of the relevant Minister and following consultation with such other person or body as the Authority thinks fit or as the relevant Minister directs, make regulations in respect of any of the following:

Regulations under Part 6.

(a) the content of advertisements for the sale or letting of land;

40 (b) booking deposits for the purchase of land (not being deposits made pursuant to a contract to purchase the land), the form and content of receipts for booking deposits and conditions relating to refunds of booking deposits;

45 (c) the terms of building contracts, including stage payments under such contracts;

(d) the terms for the sale of land by auction or tender;

(e) the standards for the measurement of land offered for sale or letting; and

(f) the costs of, or other matters relating to, surveys of land for sale.

(2) The Authority shall, in making regulations under this section, have regard to protecting the interests of clients and other users and potential users of property services in respect of the matter referred to in *subsection (1)* which is the subject of the regulations. 5

(3) Regulations made under this section shall be expressed to apply to— 10

(a) licensees or classes of licensees, or

(b) persons other than licensees or classes of such persons.

(4) A person who contravenes a provision of regulations made under this section which are expressed to apply to persons other than licensees or classes of such persons is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both. 15

(5) In this section, “relevant Minister” means that Minister or those Ministers of the Government on whom functions stand conferred, or who has general responsibility, in respect of or connected to the matter in question. 20

PART 7

COMPLAINTS, INVESTIGATIONS AND SANCTIONS

Complaints against licensees.

63.—(1) A person may make a complaint in writing to the Authority alleging that improper conduct by a licensee has occurred or is occurring. 25

(2) Where the Authority receives a complaint, it shall cause an investigation of the matter, the subject of the complaint, to be carried out unless—

(a) it is satisfied that the complaint is not made in good faith, 30

(b) it is satisfied that the complaint is frivolous or vexatious or without substance or foundation, or

(c) subject to *subsection (6)*, following the making of such inquiries as the Authority thinks fit, it is satisfied that the complaint is likely to be resolved by mediation or other informal means between the parties concerned. 35

(3) Where the Authority decides that a complaint falls within *subsection (2)(a), (b) or (c)*, it shall give notice in writing to the complainant and the licensee to whom the complaint relates of the decision and the reasons for the decision. 40

(4) Where a complaint is withdrawn by a complainant before the investigation report which relates to the complaint has been submitted to the Authority pursuant to *section 68(2)*, the Authority may proceed as if the complaint had not been withdrawn if it is satisfied that there is good and sufficient reason for so doing. 45

5 (5) Where, pursuant to *subsection (4)*, the Authority proceeds as if a complaint had not been withdrawn, the investigation concerned shall thereupon be treated as an investigation initiated by the Authority, and the other provisions of this Act shall be construed accordingly.

(6) Where a complaint is not resolved by mediation or other informal means referred to in *subsection (2)(c)*, the complainant may, at his or her discretion, make a fresh complaint in respect of the matter the subject of the first-mentioned complaint.

10 **64.—**(1) Without prejudice to *subsection (4)*, where the Authority considers that the immediate suspension of the licence of a licensee (whether or not the licensee is the subject of a complaint) is necessary to protect the clients of the licensee, or the users or potential users of the property services provided by the licensee, until steps or
15 further steps are taken under this Part, the Authority may, on notice to the licensee, make an application to the High Court for an order to suspend the licence.

Circumstances in which application may be made to High Court for immediate suspension of licence, etc.

(2) The High Court may determine an application under *subsection (1)* by—

20 (a) making any order that it considers appropriate, including an order suspending the licence of the licensee the subject of the application for such period, or until the occurrence of such event, as is specified in the order, and

25 (b) giving to the Authority any other direction that the High Court considers appropriate.

(3) The Authority shall, on complying with a direction of the High Court under *subsection (2)(b)*, give notice in writing to the licensee concerned of the Authority's compliance with the direction.

30 (4) (a) Where the Authority considers that the immediate suspension of the licence of a licensee (and whether or not the licensee is the subject of a complaint) is necessary because of the immediate risk of financial harm to clients of the licensee, or the users or potential users of the property services provided by the licensee, the Authority may
35 make an application on an *ex parte* basis to the High Court for an interim order to suspend the licence.

(b) The application for such an order shall be grounded on an affidavit sworn on behalf of the Authority.

40 (5) (a) The High Court may make an interim order to suspend a licence on an application under *subsection (4)* where, having regard to the circumstances of the case, the Court considers it necessary to do so for the protection of—

(i) the clients of the licensee, or

45 (ii) the users or potential users of the property services provided by the licensee.

(b) If an interim order is made, a copy of the order and the affidavit referred to in *subsection (4)(b)* shall be served on the licensee as soon as is practicable.

(c) The interim order shall have effect for a period, not exceeding 8 working days, to be specified in the order, and shall cease to have effect on the determination by the High Court of an application under *subsection (1)* for an order to suspend the licence. 5

(6) (a) An interim order under *subsection (5)* shall take effect on notification of its making being given to the licensee.

(b) Oral communication to the licensee by or on behalf of the Authority of the fact that an interim order has been made, together with production of a copy of the order, shall, without prejudice to any other form of notification under this Act, be taken to be sufficient notification to the licensee of the making of the order. 10

(7) An application under *subsection (4)* shall be heard otherwise than in public unless the High Court considers it appropriate to hear the application in public. 15

(8) *Section 72(3), (4) and (5)* shall, with all necessary modifications, apply to a licence suspended under *subsection (2) or (5)* as it applies to a licence suspended pursuant to a decision confirmed or given under *section 70(3) or 71(2)*. 20

Investigations.

65.—(1) Subject to *section 63(2) and (4)*, the Authority—

(a) shall, following the receipt of a complaint, or may of its own volition, cause such investigation as it thinks fit to be carried out to identify any improper conduct, and

(b) for the purposes of the investigation, shall appoint an inspector, subject to such terms as it thinks fit— 25

(i) to carry out the investigation, and

(ii) to submit to it an investigation report following the completion of the investigation.

(2) The Authority may appoint more than one inspector to carry out an investigation but, in any such case, the investigation report concerned shall be prepared jointly by the inspectors so appointed and the other provisions of this Act (including the definition of “investigation report” in *section 2(1)* and *section 68*) shall, with all necessary modifications, be construed accordingly. 30 35

(3) The terms of appointment of an inspector may define the scope of the investigation to be carried out by the inspector, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular circumstances. 40

(4) Where the Authority has appointed an inspector to carry out an investigation, the inspector shall, as soon as is practicable after being so appointed—

(a) if the investigation arises in consequence of the receipt of a complaint by the Authority— 45

(i) give notice in writing to the licensee to whom the complaint relates of the receipt of the complaint and setting out particulars of the complaint,

(ii) give the licensee—

(I) copies of any documents relevant to the investigation, and

(II) copies of this Part and *Part 8*,

5 and

(iii) without prejudice to the generality of *section 66*, afford to the licensee an opportunity to respond within 30 days from the date on which the licensee received the notice referred to in *subparagraph (i)*, or such further period not exceeding 30 days as the inspector allows, to the complaint,

10

(b) if the investigation arises on the volition of the Authority—

15

(i) give notice in writing to the licensee concerned of the matters to which the investigation relates, and

(ii) give the licensee—

(I) copies of any documents relevant to the investigation, and

(II) copies of this Part and *Part 8*,

20 and

(iii) without prejudice to the generality of *section 66*, afford the licensee an opportunity to respond within 30 days from the date on which the licensee received the notice referred to in *subparagraph (i)*, or such further period not exceeding 30 days as the inspector allows, to the matter to which the investigation relates.

25

(5) Where an investigation arises in consequence of the receipt of a complaint by the Authority, the inspector appointed to carry out the investigation—

30

(a) shall, as soon as is practicable, give the complainant a copy of the notice referred to in *subsection (4)(a)(i)* given to the licensee to whom the complaint relates, and

35

(b) shall make reasonable efforts to ensure that the complainant is kept informed of progress on the investigation.

(6) Where the Authority receives a complaint in respect of a licensee in his or her capacity as a principal officer or an employee of a licensee who is a property services employer, then nothing in this Act shall be construed to preclude the Authority, where it thinks it proper to do so, from treating the complaint as also being made in respect of the property services employer and, in any such case, the investigation concerned may relate to more than one licensee and the provisions of this Act (including this section) shall, with all necessary modifications, be construed accordingly.

40

(7) Where the Authority receives a complaint in respect of a licensee who is a property services employer and is satisfied that the matter, the subject of the complaint, may relate to the provision of

45

a property service by another licensee in his or her capacity as a principal officer or an employee of that property services employer, then nothing in this Act shall be construed to preclude the Authority, where it thinks it proper to do so, from treating the complaint as also being made in respect of that principal officer or employee, as the case may be, and, in any such case, the investigation concerned may relate to more than one licensee and the provisions of this Act (including this section) shall, with all necessary modifications, be construed accordingly.

(8) *Subsections (6) and (7)* shall not be construed to limit the generality of the Authority's power under *subsection (1)* to cause an investigation to be carried out of its own volition and, accordingly, any such investigation may relate to more than one licensee and the provisions of this Act (including this section) shall, with all necessary modifications, be construed accordingly.

Powers of entry and inspection, etc., of inspectors for purposes of investigation.

66.—(1) For the purposes of an investigation in relation to a licensee, an inspector may—

- (a) subject to *subsections (13) and (14)*, at all reasonable times enter, inspect, examine and search any premises at, or vehicles in or by means of, which any activity in connection with the provision of a property service by the licensee, or in connection with the organisation or assistance of persons engaged in such provision, is carried on,
- (b) subject to *subsections (13) and (14)*, enter, inspect, examine and search any dwelling occupied by the licensee or a director, manager or any member of staff of an undertaking that carries on an activity referred to in *paragraph (a)*, being a dwelling as respects which there are reasonable grounds to believe records relating to the carrying on of that activity are being kept in it,
- (c) without prejudice to any other power conferred by this subsection, require any person found in or on any premises, vehicle or dwelling referred to in any of the preceding paragraphs or any person in charge of or in control of such premises, vehicle or dwelling or directing any activity therein or thereto referred to in *paragraph (a)* to produce any records, books or accounts (whether kept in manual form or otherwise) or other documents which it is necessary for the inspector to see for the purposes of the investigation (and the inspector may inspect, examine and copy any such records, books or accounts or other documents so produced or require a foregoing person to provide a copy of them or of any entries in them to the inspector),
- (d) require any person referred to in *paragraph (c)* to afford such facilities and assistance within the person's control or responsibilities as are reasonably necessary to enable the inspector to exercise any of the powers conferred on the inspector under *paragraph (a), (b) or (c)*,
- (e) require any person by or on whose behalf data equipment is or has been used in connection with an activity referred to in *paragraph (a)*, or any person having charge of, or otherwise concerned with the operation of, such data equipment or any associated apparatus or material, to

afford the inspector all reasonable assistance in respect of its use,

5 (f) require the licensee, the licensee's employee or the licensee's agent to give such authority in writing addressed to such bank or banks as the inspector requires for the purpose of enabling the inspection of any account or accounts opened, or caused to be opened, by the licensee at such bank or banks (or any documents relating thereto) and to obtain from such bank or banks copies of such documents relating to such account or accounts for 10 such period or periods as the inspector deems necessary to fulfil that purpose, and

15 (g) be accompanied by a member of the Garda Síochána if there is reasonable cause to apprehend any serious obstruction in the performance of any of the inspector's functions under this subsection.

(2) A requirement under *subsection (1)(c), (d), (e) or (f)* shall specify a period within which, or a date and time on which, the person the subject of the requirement is to comply with it.

20 (3) For the purposes of an investigation, an inspector—

(a) may require a person who, in the inspector's opinion—

(i) possesses information that is relevant to the investigation, or

25 (ii) has any records, books or accounts (whether kept in manual form or otherwise) or other documents within that person's possession or control or within that person's procurement that are relevant to the investigation,

30 to provide that information or those records, books, accounts or other documents, as the case may be, to the inspector, and

35 (b) where the inspector thinks fit, may require that person to attend before the inspector for the purpose of so providing that information or those records, books, accounts or other documents, as the case may be,

and the person shall comply with the requirement.

(4) A requirement under *subsection (3)* shall specify—

40 (a) a period within which, or a date and time on which, the person the subject of the requirement is to comply with the requirement, and

(b) as the inspector concerned thinks fit—

45 (i) the place at which the person shall attend to give the information concerned or to which the person shall deliver the records, books, accounts or other documents concerned, or

(ii) the place to which the person shall send the information or the records, books, accounts or other documents concerned.

(5) A person required to attend before an inspector under *subsection (3)*—

(a) is also required to answer fully and truthfully any question put to the person by the inspector, and

(b) if so required by the inspector, shall answer any such question under oath. 5

(6) Where it appears to an inspector that a person has failed to comply or fully comply with a requirement under *subsection (1), (3) or (5)*, the inspector may, on notice to that person and with the consent of the Authority, apply to the Circuit Court for an order under *subsection (7)*. 10

(7) Where satisfied after hearing the application about the person's failure to comply or fully comply with the requirement in question, the Circuit Court may, subject to *subsection (10)*, make an order requiring that person to comply or fully comply, as the case may be, with the requirement within a period specified by the Court. 15

(8) An application under *subsection (6)* to the Circuit Court shall be made to a judge of that Court for the circuit in which the person the subject of the application resides or ordinarily carries on any profession, business or occupation. 20

(9) The administration of an oath referred to in *subsection (5)(b)* by an inspector is hereby authorised.

(10) A person the subject of a requirement under *subsection (1), (3) or (5)* shall be entitled to the same immunities and privileges in respect of compliance with such requirement as if the person were a witness before the High Court. 25

(11) Any statement or admission made by a person pursuant to a requirement under *subsection (1), (3) or (5)* is not admissible against that person in criminal proceedings other than criminal proceedings for an offence under *subsection (17)*, and this shall be explained to the person in ordinary language by the inspector concerned. 30

(12) Nothing in this section shall be taken to compel the production by any person of any records, books or accounts (whether kept in manual form or otherwise) or other documents which he or she would be exempt from producing in proceedings in a court on the ground of legal professional privilege. 35

(13) An inspector shall not, other than with the consent of the occupier, enter a private dwelling without a warrant issued under *subsection (14)* authorising the entry.

(14) A judge of the District Court, if satisfied on the sworn information of an inspector that— 40

(a) (i) there are reasonable grounds for suspecting that any information is, or records, books or accounts (whether kept in manual form or otherwise) or other documents required by an inspector under this section are, held on any premises or any part of any premises, and 45

(ii) an inspector, in the performance of functions under *subsection (1)*, has been prevented from entering the premises or any part thereof, 50

or

(b) it is necessary that the inspector enter a private dwelling and exercise therein any of his or her powers under this section,

5 may issue a warrant authorising the inspector, accompanied if necessary by other persons, at any time or times within 30 days from the date of issue of the warrant and on production if so requested of the warrant, to enter, if need be by reasonable force, the premises or part of the premises concerned and perform all or any such functions.

10 (15) For the purposes of an investigation, an inspector may, if he or she thinks it proper to do so, of his or her own volition or at the request of the licensee to whom the investigation relates, conduct an oral hearing.

15 (16) *Part 1 of Schedule 3* shall have effect for the purposes of an oral hearing referred to in *subsection (15)*.

(17) Subject to *subsection (12)*, a person who—

20 (a) withholds, destroys, conceals or refuses to provide any information or records, books or accounts (whether kept in manual form or otherwise) or other documents required for the purposes of an investigation,

(b) fails or refuses to comply with any requirement of an inspector under this section, or

(c) otherwise obstructs or hinders an inspector in the performance of functions imposed under this Act,

25 is guilty of an offence and liable—

(i) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

30 (ii) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

35 (18) Subject to *subsection (19)*, where a licensee is convicted summarily of an offence under *subsection (17)*, the court may, after having regard to the nature of the offence and the circumstances in which it was committed, order that the licence held by the licensee be revoked and that the former licensee be prohibited (which may be a permanent prohibition, a prohibition for a specified period or a prohibition subject to specified conditions) from applying for any new licence or a particular class of new licence.

40 (19) An order under *subsection (18)* shall not take effect until—

(a) the ordinary time for bringing an appeal against the conviction concerned or the order has expired without any such appeal having been brought,

(b) such appeal has been withdrawn or abandoned, or

45 (c) on any such appeal, the conviction or order, as the case may be, is upheld.

(20) Subject to *subsection (21)*, where a licensee is convicted on indictment of an offence under *subsection (17)*, the court shall order that all the licences held by the licensee be revoked and that the former licensee be permanently prohibited from applying for any new licence.

5

(21) An order under *subsection (20)* shall not take effect until—

(a) the ordinary time for bringing an appeal against the conviction concerned has expired without any such appeal having been brought,

(b) any such appeal has been withdrawn or abandoned, or 10

(c) on any such appeal, the conviction is upheld.

(22) In this section, “records, books or accounts” include copies of records, books or accounts.

Protection for
persons reporting
improper conduct,
etc.

67.—(1) A person who, apart from this section, would be so liable shall not be liable in damages in respect of the communication, whether in writing or otherwise, by the person to the Authority of the person’s opinion that any improper conduct by a licensee has occurred or is occurring, or that a contravention of a provision of this Act or of regulations made under this Act by a person other than a licensee has been or is being committed, unless it is proved that the person has not acted reasonably and in good faith in forming that opinion and communicating it to the Authority. 15 20

(2) The reference in *subsection (1)* to liability in damages shall be construed as including a reference to liability to be the subject of an order providing for any other form of relief. 25

(3) A person who states to the Authority that any improper conduct by a licensee has occurred or is occurring, or that a contravention of this Act or of regulations made under this Act by a person other than a licensee has been or is being committed, knowing the statement to be false is guilty of an offence. 30

(4) *Subsection (1)* is in addition to, and not in substitution for, any privilege or defence available in legal proceedings, by virtue of any statutory provision or rule of law in force immediately before the commencement of this section, in respect of the communication by a person to another (whether that other person is the Authority or not) of an opinion of the kind referred to in *subsection (1)*. 35

(5) An employer, or any person acting on behalf of an employer, shall not penalise an employee for—

(a) having formed an opinion of the kind referred to in *subsection (1)* and communicated it, whether in writing or otherwise, to the Authority if the employee has acted reasonably and in good faith in forming that opinion and communicating it, or 40

(b) giving notice of his or her intention to do the thing referred to in *paragraph (a)*. 45

(6) *Schedule 4* shall have effect for the purposes of *subsection (5)*.

(7) An employer who contravenes *subsection (5)* is guilty of an offence.

(8) A person guilty of an offence under *subsection (3) or (7)* shall be liable—

5 (a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 3 years or both.

10 (9) Section 13 of the Criminal Procedure Act 1967 shall apply in relation to an offence referred to in *subsection (8)* as if, in lieu of the penalties specified in *subsection (3)(a)* of that section, there were specified therein the penalties provided for in *subsection (8)(a)* and the reference in *subsection (2)(a)* of that section to the penalties provided for by *subsection (3)* of that section shall be construed and
15 have effect accordingly.

(10) Any person who, upon examination on oath authorised under *paragraph 3(1)* of *Schedule 4*, wilfully makes any statement which is material for that purpose and which the person does not believe to be true is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term
20 not exceeding 12 months or both.

(11) A person to whom a notice under *paragraph 3(2)* of *Schedule 4* has been given and who refuses or wilfully neglects to attend in accordance with the notice or who, having so attended, refuses to
25 give evidence or refuses or wilfully fails to produce any document to which the notice relates is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000.

(12) For the purposes of this section, dismissal includes—

30 (a) a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2007, and

(b) a dismissal wholly or partly for or connected with the purpose of the avoidance of a fixed-term contract being deemed to be a contract of indefinite duration under section 9(3) of the Protection of Employees (Fixed-Term Work) Act 2003.
35

(13) *Paragraph (b)(iii)* of the definition of “penalisation” in *subsection (14)* shall not be construed in a manner which prevents an employer from ensuring that the business concerned is carried on in an efficient and effective manner.

40 (14) In this section—

“contract of employment” means a contract of employment or of service or of apprenticeship, whether the contract is express or implied and, if express, whether it is oral or in writing;

45 “employee” means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer;

50 “employer”, in relation to an employee, means the person with whom the employee has entered into or for whom the employee

works under (or, where the employment has ceased, entered into or worked under) a contract of employment, and includes—

- (a) a person (other than an employee of that person) under whose control and direction an employee works, and
- (b) where appropriate, the successor of the employer or an associated employer of the employer; 5

“penalisation” includes—

- (a) any act by an employer, or a person acting on behalf of an employer, that affects an employee to his or her detriment with respect to any term or condition of his or her employment, and 10
- (b) without prejudice to the generality of *paragraph (a)*—
 - (i) suspension, lay-off or dismissal, or the threat of suspension, lay-off or dismissal,
 - (ii) demotion or loss of opportunity for promotion, 15
 - (iii) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
 - (iv) imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty), 20
 - (v) unfair treatment, including selection for redundancy,
 - (vi) coercion, intimidation or harassment,
 - (vii) discrimination, disadvantage or adverse treatment,
 - (viii) injury, damage or loss, and
 - (ix) threats of reprisal. 25

Actions to be taken by inspector and Authority upon completion of investigation.

68.—(1) Subject to *subsection (3)*, where an inspector has completed an investigation, the inspector shall, as soon as is practicable after having considered, in so far as they are relevant to the investigation, any information or records, books or accounts (whether kept in manual form or otherwise) or other documents provided to the inspector pursuant to any requirement under *section 66*, any statement or admission made by any person pursuant to any requirement under that section, any submissions made and any evidence presented (whether at an oral hearing referred to in *section 66(15)* or otherwise)— 30 35

- (a) prepare a draft of the investigation report, and
- (b) give to the licensee to whom the investigation relates and, if the investigation arose in consequence of the receipt of a complaint, the complainant—
 - (i) a copy of the draft of the investigation report, 40
 - (ii) a copy of this section, and

5 (iii) a notice in writing stating that the licensee and the complainant (if any) may, not later than 30 days from the date on which the notice was respectively received by them, or such further period not exceeding 30 days as the inspector allows, each make submissions in writing to the inspector on the draft of the investigation report.

10 (2) Subject to *subsection (3)*, an inspector who has complied with *subsection (1)* following the completion of an investigation shall, as soon as is practicable after—

(a) the expiration of the period referred to in *subsection (1)(b)(iii)*, and

(b) having—

15 (i) considered the submissions (if any) referred to in *subsection (1)(b)(iii)* made before the expiration of that period on the draft of the investigation report concerned, and

20 (ii) made any revisions to the draft of the investigation report which, in the opinion of the inspector, are warranted following such consideration,

prepare the final form of the investigation report and submit it to the Authority with any such submissions annexed to the report.

25 (3) Where an inspector states, whether in a draft of the investigation report or in the final form of the investigation report, that he or she is satisfied that improper conduct by the licensee to whom the investigation relates has occurred or is occurring, the inspector shall not make any recommendation, or express any opinion, in the report as to the minor sanction or major sanction that he or she thinks ought to be imposed on the licensee in respect of such improper
30 conduct in the event that the Authority is also satisfied that improper conduct by the licensee has occurred or is occurring.

(4) Subject to *subsection (5)*, where the Authority has considered an investigation report (and any submissions annexed thereto) submitted to it pursuant to *subsection (2)*, the Authority—

35 (a) if it is satisfied that improper conduct by the licensee to whom the investigation relates has occurred or is occurring, shall, subject to *subsections (8) and (10) and section 69*—

(i) impose a minor sanction on the licensee, or

40 (ii) impose a major sanction on the licensee,

as it thinks fit in the circumstances of the case,

45 (b) if it is not satisfied that improper conduct by the licensee to whom the investigation relates has occurred or is occurring but is of the opinion that a further investigation of the licensee is warranted, shall cause the further investigation to be carried out pursuant to its powers under *section 65(1)*,

(c) if it is not satisfied that improper conduct by the licensee to whom the investigation relates has occurred or is

occurring and is not of the opinion that a further investigation of the licensee is warranted, and the investigation arose from a complaint, shall dismiss the complaint.

(5) Where the Authority has considered an investigation report (and any submissions annexed thereto) submitted to it pursuant to *subsection (2)*, the Authority may, if it considers it proper to do so for the purposes of assisting it to make a decision under *subsection (4)*, or for the purposes of observing fair procedures, for those purposes—

(a) conduct an oral hearing, or

(b) give to the licensee to whom the investigation concerned relates and, if the investigation arose in consequence of the receipt of a complaint, the complainant—

(i) a copy of the investigation report, and

(ii) a notice in writing stating that the licensee and the complainant (if any) may, not later than 30 days from the date on which the notice was respectively received by them, or such further period not exceeding 30 days as the Authority allows, each make submissions in writing to the Authority on the investigation report.

(6) *Part 2 of Schedule 3* shall have effect for the purposes of an oral hearing referred to in *subsection (5)(a)*.

(7) The Authority shall, as soon as is practicable after making a decision under *subsection (4)*, give notice in writing of the decision and the reasons for the decision to the licensee to whom the investigation concerned relates and, if *subsection (4)(a)* applies in the case of that licensee, set out in that notice—

(a) the minor sanction or major sanction imposed on the licensee for the improper conduct specified in the notice in respect of which the Authority is satisfied as referred to in that subsection, and

(b) the reasons for the imposition of such minor sanction or major sanction, as the case may be.

(8) Where *subsection (4)(a)* applies in the case of a licensee, the Authority shall, in deciding the minor sanction or major sanction to be imposed on the licensee, take into consideration the matters referred to in *section 73*.

(9) Where *subsection (4)* applies in the case of an investigation which arose from a complaint, the Authority shall give the complainant a copy of the notice under *subsection (7)* given or to be given to the licensee to whom the investigation relates at the same time as the notice is given to the licensee or as soon as is practicable thereafter.

(10) The Authority shall not under *subsection (4)(a)* impose a major sanction on a licensee if the only improper conduct by the licensee in respect of which the Authority is satisfied has occurred or is occurring is improper conduct which falls within *paragraph (c)* of the definition of “improper conduct” in *section 2(1)*.

69.—Subject to *section 64*, a decision under *section 68(4)(a)* to impose a major sanction on a licensee shall not take effect unless the decision is confirmed by the High Court under *section 70(3)* or *71(2)*.

Confirmation of High Court required before decision under *section 68(4)(a)* to impose major sanction takes effect.

5 70.—(1) A licensee the subject of a decision under *section 68(4)(a)* by the Authority to impose a major sanction on the licensee may, not later than 30 days from the date the licensee received the notice under *section 68(7)* of the decision, appeal to the High Court against the decision.

Appeal to High Court against decision to impose major sanction.

10 (2) The High Court may, on the hearing of an appeal under *subsection (1)* by a licensee, consider any evidence adduced or argument made, whether or not adduced or made to an inspector or the Authority.

(3) Subject to *subsection (4)*, the High Court may, on the hearing of an appeal under *subsection (1)* by a licensee—

15 (a) either—

- (i) confirm the decision the subject of the appeal, or
- (ii) cancel that decision and replace it with such other decision as the Court considers appropriate, which may be a decision—

20 (I) to do either or both of the following:

- (A) impose a different major sanction on the licensee;
- (B) impose a minor sanction on the licensee,

or

25 (II) to impose neither a major sanction nor a minor sanction on the licensee,

and

(b) whether *paragraph (a)(i)* or *(ii)* is applicable, make such order as to costs as it thinks fit in respect of the appeal.

30 (4) The High Court shall, for the purposes of *subsection (3)(a)(i)* or *(ii)(I)*, take into consideration the matters referred to in *section 73*.

71.—(1) Where a licensee does not, within the period allowed under *section 70(1)*, appeal to the High Court against a decision under *section 68(4)(a)* by the Authority to impose a major sanction on the licensee, the Authority shall, as soon as is practicable after the expiration of that period and on notice to the licensee, make an application to the High Court for confirmation of the decision.

Application to High Court to confirm decision to impose major sanction.

40 (2) The High Court shall, on the hearing of an application under *subsection (1)*, confirm the decision under *section 68(4)(a)* the subject of the application unless the Court considers that there is good reason not to do so.

72.—(1) The decision of the High Court on an appeal under *section 70(1)* or an application under *section 71(1)* is final except that the Authority or the licensee the subject of the decision may, by leave of the Court or the Supreme Court, appeal against the decision to the Supreme Court on a specified question of law. 5

(2) Where the High Court confirms or gives a decision under *section 70(3)* or *71(2)*, the Authority shall, as soon as is practicable after the decision is confirmed or given, as the case may be, give notice in writing of the decision to the licensee the subject of the decision and, if the decision provides for the imposition of a major sanction on the licensee which falls within *paragraph (b)* of the definition of “major sanction” in *section 2(1)*, the notice shall specify the day on which the relevant period referred to in that paragraph is to commence, being a day not earlier than 7 days from the date on which the decision is confirmed or given, as the case may be. 10 15

(3) A licence which is suspended pursuant to a decision confirmed or given under *section 70(3)* or *71(2)* by the High Court shall not be in force during the period of its suspension.

(4) A person whose licence has been revoked or suspended pursuant to a decision confirmed or given under *section 70(3)* or *71(2)* by the High Court shall comply with any directions of the Authority given to the person in respect of the surrender or temporary surrender of the licence and any duplicates thereof. 20

(5) A person who, without reasonable excuse, contravenes a direction referred to in *subsection (4)* is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both. 25

(6) The Authority may recover, as a simple contract debt in any court of competent jurisdiction, from the person by whom it is payable any amount due and owing to the Authority or the Fund pursuant to a decision confirmed or given under *section 70(3)* or *71(2)* by the High Court. 30

(7) All payments made to the Authority of any amount due to the Authority pursuant to a decision confirmed or given under *section 70(3)* or *71(2)* by the High Court shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct. 35

(8) Where an investigation arose from a complaint, the Authority shall give to the complainant a copy of a notice given or to be given under *subsection (2)* to a licensee at the same time as the notice is given to the licensee or as soon as is practicable thereafter. 40

73.—The Authority or the High Court, as appropriate, in considering—

(a) the minor sanction or major sanction to be imposed on a licensee pursuant to *section 68(4)(a)*, 45

(b) the minor sanction (if any) or major sanction (if any) to be imposed on a licensee pursuant to a decision confirmed or given under *section 70(3)* or *71(2)*,

shall take into account the circumstances of the improper conduct concerned (including the factors occasioning it) and, without prejudice to the generality of the foregoing, may have regard to— 50

- (i) the need to ensure that any sanction imposed—
- (I) is appropriate and proportionate to the improper conduct, and
 - (II) if applicable, will act as a sufficient incentive to ensure that any like improper conduct will not occur in the future,
- (ii) the seriousness of the improper conduct,
- (iii) the income of the licensee in the financial year ending in the year previous to the year in which the improper conduct last occurred and the ability of the licensee to pay an amount which falls within *paragraph (c), (d), (e) or (f)* of the definition of “major sanction” in *section 2(1)*,
- (iv) the extent of any failure by the licensee to co-operate with the investigation concerned of the licensee,
- (v) any excuse or explanation by the licensee for the improper conduct or failure to co-operate with the investigation concerned,
- (vi) any gain (financial or otherwise) made by the licensee or by any person in which the licensee has a financial interest as a consequence of the improper conduct,
- (vii) the amount of any loss suffered or costs incurred as a result of the improper conduct,
- (viii) the duration of the improper conduct,
- (ix) the repeated occurrence of improper conduct by the licensee,
- (x) if applicable, the continuation of the improper conduct after the licensee was notified of the investigation concerned,
- (xi) in the case of a property services employer, the extent to which the employer knew, or ought to have known, that the improper conduct had occurred or was occurring,
- (xii) if applicable, the absence, ineffectiveness or repeated failure of internal mechanisms or procedures of the licensee intended to prevent improper conduct from occurring,
- (xiii) if applicable, the extent and timeliness of any steps taken to end the improper conduct and any steps taken for remedying the consequences of the improper conduct,
- (xiv) whether a sanction in respect of like improper conduct has already been imposed on the licensee by a court, the Authority or another person, and

- (xv) any precedents set by a court, the Authority or another person in respect of previous improper conduct.

PART 8

APPEALS AGAINST CERTAIN DECISIONS OF AUTHORITY

Property Services
Appeal Board.

74.—(1) There stands established a body to be known as An Bord Achomhairc um Sheirbhísí Maoine or, in the English language, the Property Services Appeal Board, to hear and determine appeals against certain decisions of the Authority. 5

(2) The Appeal Board shall be independent in the performance of its functions. 10

(3) *Schedule 5* shall have effect in respect of the Appeal Board.

(4) The Minister may prescribe by regulations the fee referred to in *paragraph 15(1)* of *Schedule 5*.

(5) A person who contravenes *paragraph 9(1)* or *10(1)* of *Schedule 5* is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000. 15

(6) A person who refuses or fails, without reasonable excuse, to comply with a requirement under *paragraph 24(1)(a)* of *Schedule 5* is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000. 20

Appeal to High
Court on question
of law.

75.—(1) Within 3 months from the date on which an appeal is determined by the Appeal Board any party to the appeal may appeal to the High Court on any question of law arising from the determination.

(2) The High Court may— 25

(a) affirm the determination,

(b) set it aside,

(c) make any other determination which the Appeal Board could have made, or

(d) remit the matter to the Appeal Board for further consideration. 30

(3) An appeal may not be brought from a decision of the High Court under this section except by its leave.

Taking effect of
certain decisions of
Authority.

76.—A decision of the Authority to which *section 74* applies takes effect on the expiration of the period within which an appeal against it may be brought, unless an appeal is duly brought, in which case the decision stands suspended pending the outcome of the appeal proceedings (including proceedings under *section 75*). 35

PART 9

PROPERTY SERVICES COMPENSATION FUND

5 77.—(1) The Authority shall establish, administer and maintain a fund to be known as the Property Services Compensation Fund (in this Act referred to as “the Fund”).

Property Services
Compensation
Fund.

(2) *Schedule 6* shall apply to the administration of the Fund.

10 (3) The Authority shall, in performing the functions conferred on it under this section, have regard to the principle that the total amount standing to the credit of the Fund (including the value of all investments forming part of the Fund) should, on and after the fourth anniversary of the date of establishment of the Fund, be not less than the prescribed amount.

(4) In this section, “prescribed amount” means—

(a) subject to *paragraph (b)*, €2,000,000,

15 (b) such greater amount as may be prescribed by regulations made under *section 93* for the purposes of this paragraph (which maybe an amount greater than an amount previously prescribed by such regulations).

20 78.—(1) Where the Authority is satisfied that a client of a licensee has sustained a loss as a result of dishonesty on the part of that licensee, or as a result of dishonesty on the part of any partner, employee or agent or former partner, employee or agent of that licensee, arising from the provision of property services by or on behalf of the licensee, then, subject to the provisions of this section, the Authority shall make a grant to that client out of the Fund.

Compensation for
loss due to
dishonesty.

30 (2) The amount of a grant shall be such as represents, in the opinion of the Authority, the reimbursement of the amount or value of the loss sustained by the client concerned and the reasonable costs incurred by the client in seeking to recover it with, where the Authority thinks fit, interest (at the rate per annum standing specified for the time being in *section 26* of the Debtors (Ireland) Act 1840, as varied from time to time pursuant to *section 20* of the Courts Act 1981) on the whole or any part of the amount or value of such loss in respect of the whole or any part of the period between the date when the loss was sustained and the date of the making of the grant, but excluding damages or any other form of loss consequent on the client being deprived of the amount or value of the loss sustained.

40 (3) The Authority shall have a discretion to make or refuse to make a grant to a client in respect of a loss in any case in which it considers that—

(a) the licensee concerned did not, at the time when the loss was sustained, have a licence in force in respect of the property service to which the loss relates,

45 (b) there has been dishonesty or negligence on the part of the client or of any person for whom that client is responsible which has contributed to the loss, or

(c) the client has contributed (including by omission) to improper conduct by the licensee which falls within *paragraph (a)* or *(b)* of the definition of “improper conduct” in *section 2(1)*,

and, where the Authority decides to make a grant in any such case, it shall have a discretion to make it only to a limited extent. 5

(4) A grant may be made notwithstanding that the licensee concerned has, after the act of dishonesty, died or ceased to be a licensee.

(5) No grant may be made in respect of a loss made good otherwise. 10

(6) (a) On the making of any grant to any client of a licensee in respect of any loss—

(i) the Authority shall, to the amount of the grant, be subrogated— 15

(I) to any rights or remedies to which that client was entitled on account of the loss against the licensee or any other person or against the estate of such licensee or other person,

(II) to any rights or remedies to which the licensee or any partner, employee or agent or former partner, employee or agent of the licensee was entitled on account of the loss against any other person or against the estate of such other person, and 20
25

(III) to all other rights and remedies (if any) of that client or such licensee or any partner, employee or agent or former partner, employee or agent of the licensee in respect of the loss,

and 30

(ii) the client shall have no right under bankruptcy or other legal proceedings or otherwise to receive any sum out of the assets of the licensee or of any partner, employee or agent or former partner, employee or agent of the licensee in respect of the loss until the full amount of the grant has been reimbursed to the Authority. 35

(b) In *paragraph (a)*, references to the licensee or any partner, employee or agent or former partner, employee or agent of the licensee include, in the event of the death, insolvency or other disability of such licensee, partner, employee or agent or former partner, employee or agent, references to the personal representative of such licensee, partner, employee or agent or former partner, employee or agent or any other person having authority to administer the estate of such licensee, partner, employee or agent or former partner, employee or agent. 40
45

(7) No grant shall be made unless a notice in writing of the loss is received by the Authority—

(a) in the specified form, and 50

(b) within 12 months after the loss comes to the knowledge of the client concerned.

5 (8) The Authority, for the purposes of inquiring into any matters which may affect the making or refusal of a grant, may take evidence on oath, and the administration of such an oath by any member of the Authority or the Chief Executive is hereby authorised.

(9) (a) A grant may, at the discretion of the Authority, be paid either in one sum or in such instalments as the Authority may determine.

10 (b) The Authority, if satisfied that the financial stability of the Fund so requires, may postpone payment of any grant or any instalment of any grant.

15 (10) For the purposes of this section, a licensee, a partnership in which the licensee is a partner, or a body corporate beneficially owned or controlled by that licensee, shall not be a client of—

(a) the licensee,

(b) a partnership in which the licensee is a partner,

(c) a body corporate beneficially owned or controlled by that licensee.

20

PART 10

MAINTENANCE OF PROFESSIONAL COMPETENCE OF LICENSEES

25 79.—(1) The Authority, with the consent of the Minister, may and, if directed by the Minister to do so and in accordance with the terms of the direction, shall, following consultation with any other person or body as the Authority thinks fit or as the Minister directs, by regulations provide for one or more than one scheme of education and training for the purposes of ensuring the ongoing maintenance of the professional competence of licensees in the provision of the property service or the class of property service which they are authorised to provide by their respective licences.

Regulations may provide for professional competence schemes.

30

(2) Regulations made under this section in respect of a professional competence scheme may—

(a) be expressed to apply to—

35 (i) licensees who are individuals or a class of such licensees (including any such licensees who are partners in partnerships),

40 (ii) the principal officers of licensees which are bodies corporate or a class of such principal officers (including any such licensees which are partners in partnerships), or

(iii) any combination thereof,

and

(b) provide for the development, establishment and operation of the scheme by—

- (i) the Authority only,
- (ii) the Authority in conjunction with a body specified in the regulations, or
- (iii) a body specified in the regulations under an arrangement with the Authority.

5

Review of professional competence scheme.

80.—The Authority, in respect of a professional competence scheme—

- (a) shall review the operation of the scheme periodically, and
- (b) may, following such a review, make recommendations to the Minister as to the steps that, in the opinion of the Authority, may need to be taken to improve the operation of the scheme.

10

Duty of licensees to maintain professional competence.

81.—(1) A licensee who is an individual (including such a licensee who is a partner in a partnership) shall maintain his or her professional competence on an ongoing basis pursuant to a professional competence scheme (if any) applicable to that licensee.

15

(2) A licensee which is a body corporate (including such a licensee which is a partner in a partnership) shall take all appropriate steps to ensure that its principal officers maintain their professional competence on an ongoing basis pursuant to a professional competence scheme (if any) applicable to those principal officers.

20

PART 11

PROPERTY SERVICES PROVIDED BY CERTAIN PERSONS FROM EU MEMBER STATES

Interpretation of Part 11 and Schedule 7.

82.—In this Part and *Schedule 7*, unless the context otherwise requires—

25

“competent authority” means any competent authority within the meaning of Article 4 of Directive 2006/123/EC that has functions in relation to persons who provide a service that substantially corresponds to a service which falls within any of *paragraphs (a) to (d)* of the definition of “property service” in *section 2(1)*;

30

“corresponding property service”, in relation to a relevant person, has the meaning assigned to it by the definition of “relevant person”;

“relevant authorisation”, in relation to a relevant person, means the licence or other form of authorisation, referred to in *paragraph (a)* of the definition of “relevant person”, held by the relevant person;

35

“relevant person” means a person who—

- (a) holds from a competent authority a licence or other form of authorisation that is in force and that authorises the person to provide a service (in this definition referred to as “the relevant property service”) that substantially corresponds to a service which falls within any of *paragraphs (a) to (d)* of the definition of “property service” in *section 2(1)* (in this definition referred to as “the corresponding property service”),

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45

(b) is, in the provision of the relevant property service to clients (whether within or outside the State), subject to a scheme of protection for such clients which substantially corresponds to the provisions of *Part 5*,

5 (c) proposes to provide, or is providing, in the State the corresponding property service, and

(d) is not prohibited under this Act from providing the corresponding property service.

10 **83.—**(1) This Act does not apply to a relevant person in his or her capacity as a relevant person except as specified in *subsection (2)* and the other provisions of this Part. Application of this Act to relevant persons.

(2) This Act shall have effect in relation to relevant persons with the modifications specified in *Schedule 7* and with any other necessary modifications.

15 (3) Nothing in this Act shall be construed to authorise a relevant person in his or her capacity as a relevant person to provide in the State a property service to which this Act applies other than the corresponding property service.

20 **84.—**(1) The Authority shall notify the competent authority concerned of— Relations with competent authorities.

(a) any action taken by the Authority or the High Court under *section 63, 64, 65(1) or 68* in relation to a relevant person,

(b) any action taken by the Authority or the High Court under *section 71 or 72* in relation to a relevant person,

25 (c) the making of any appeal under this Act by a relevant person and the result of any such appeal or any subsequent proceedings, and

(d) any improper conduct by the relevant person which has occurred or is occurring.

30 (2) The Authority shall collaborate with and assist competent authorities with a view to promoting the effective performance by the Authority and those authorities of their respective functions in relation to relevant persons.

35 **85.—**(1) Where a relevant authorisation issued by a competent authority to a relevant person is revoked or suspended by it— Effect of revocation or suspension of relevant person's relevant authorisation.

(a) subject to *subsection (2)*, this Part and *Schedule 7* shall cease to have effect in relation to that person, and

(b) the relevant person shall be treated as a person who is not the holder of a licence,

40 with effect from the date of revocation or during the period of suspension, as the case may be.

(2) *Schedule 7* shall still have effect in relation to a person to whom *subsection (1)* applies in so far as that Schedule specifies that

any reference in this Act to a former licensee is a reference to a former relevant person.

PART 12

MISCELLANEOUS

Investigation of persons other than licensees.

86.—(1) The Authority shall, at the request of the Minister, or may, of its own volition or upon a complaint made by a member of the public, cause such investigation as it thinks fit to be carried out in relation to any person who, not being a licensee, is suspected of having contravened or contravening *section 29(1)*. 5

(2) For the purposes of an investigation (non-licensee), the Authority shall appoint an inspector, subject to such terms as it thinks fit— 10

(a) to carry out the investigation (non-licensee), and

(b) to submit to it an investigation report (non-licensee) following the completion of the investigation (non-licensee). 15

(3) The Authority may appoint more than one inspector to carry out an investigation (non-licensee) but, in any such case, the investigation report (non-licensee) concerned shall be prepared jointly by the inspectors so appointed and the definition of “investigation report (non-licensee)” in *subsection (8)* and the other provisions of this section shall, with all necessary modifications, be construed accordingly. 20

(4) The provisions of *section 66* shall apply to an investigation (non-licensee) as they apply to an investigation as if—

(a) any reference in that section to an investigation were a reference to an investigation (non-licensee), and 25

(b) any reference to a licensee (howsoever expressed) in that section were a reference to the person to whom the investigation (non-licensee) relates,

and with all other necessary modifications. 30

(5) Where an inspector has completed an investigation (non-licensee), the inspector shall, as soon as is practicable after having considered, in so far as they are relevant to the investigation (non-licensee), any information or records, books or accounts (whether kept in manual form or otherwise) or other documents provided to the inspector pursuant to any requirement under *section 66* as read with *subsection (4)*, any statement or admission made by any person pursuant to any requirement under that section as so read, any submissions made and any evidence presented (whether at an oral hearing referred to in *section 66(15)* or otherwise), prepare an investigation report (non-licensee) and submit it to the Authority. 35 40

(6) Where the Authority has considered an investigation report (non-licensee) submitted to it pursuant to *subsection (5)*, the Authority—

(a) if it is satisfied that a contravention of *section 29(1)* by the person to whom the investigation (non-licensee) relates has occurred or is occurring, shall, without prejudice to 45

the generality of *section 91*, forthwith give a copy of the investigation report (non-licensee) to the Garda Síochána and the Minister together with a notice in writing of its decision under this paragraph and the reasons for the decision,

5

(b) if it is not satisfied that a contravention of *section 29(1)* by the person to whom the investigation (non-licensee) relates has occurred or is occurring but is of the opinion that a further investigation (non-licensee) of that person is warranted, shall cause the further investigation (non-licensee) to be carried out pursuant to its powers under this section,

10

(c) if it is not satisfied that a contravention of *section 29(1)* by the person to whom the investigation (non-licensee) relates has occurred or is occurring and is not of the opinion that a further investigation (non-licensee) of the person is warranted, shall, as soon as is practicable, give notice in writing to that person to the effect that—

15

(i) it is not satisfied that a contravention of *section 29(1)* by the person has occurred or is occurring,

20

(ii) it is not of the opinion that a further investigation (non-licensee) of the person is warranted, and

(iii) *subparagraphs (i) and (ii)* do not preclude any future investigation (non-licensee) being carried out in relation to the person should it once again be suspected that a contravention of *section 29(1)* by the person has occurred or is occurring.

25

(7) Where the Authority is satisfied as mentioned in *subsection (6)(a)*, it may, on notice to the person to whom the investigation report (non-licensee) concerned relates, seek an injunction in the High Court requiring the person to cease the activities which such report and the notice concerned referred to in that subsection have identified as having contravened or contravening *section 29(1)*.

30

(8) In this section—

“investigation (non-licensee)” means an investigation under *subsection (1)*;

35

“investigation report (non-licensee)”, in relation to an investigation (non-licensee), means a report in writing prepared, following the completion of the investigation (non-licensee), by the inspector appointed to carry out the investigation (non-licensee)—

40

(a) stating that the inspector—

(i) is satisfied that the person to whom the report relates has contravened or is contravening *section 29(1)*, or

(ii) is not so satisfied,

45

as appropriate,

(b) if *paragraph (a)(i)* is applicable, stating the grounds on which the inspector is so satisfied,

(c) if *paragraph (a)(ii)* is applicable, stating—

- (i) the basis on which the inspector is not so satisfied, and
- (ii) the inspector's opinion, in view of such basis, on whether or not a further investigation (non-licensee) of the person is warranted and, if warranted, the inspector's opinion on the principal matters to which the further investigation (non-licensee) should relate.

Certain provisions to be void.

87.—(1) Subject to *subsection (2)*, any provision (whether express or implied) in an agreement in respect of the sale or letting of land whereby the purchaser or tenant, as the case may be, is required to pay or otherwise bear the cost of the licensee's fees or expenses in respect of the sale or letting, as the case may be, shall be void, and any moneys paid pursuant to such a provision shall be recoverable as a simple contract debt in a court of competent jurisdiction.

(2) Nothing in *subsection (1)* shall affect the liability of a person to pay fees or expenses to a licensee in respect of the acquisition of any land where the licensee has been retained by the person to acquire such land and does not also act, in respect of such acquisition, on behalf of the person from whom the land is acquired.

Publication of sanctions, etc.

88.—(1) The Authority shall publish particulars, in such form and manner and for such period as it thinks fit, of any—

- (a) conviction of a person for a contravention of *section 29(1)*,
- (b) decision of the Authority refusing to renew a licence,
- (c) suspension under *section 64(2)* of a licence, and
- (d) imposition of a major sanction on a licensee pursuant to a decision confirmed or given under *section 70(3)* or *71(2)*.

(2) The Authority may publish particulars, in such form and manner and for such period as it thinks fit, of any—

- (a) imposition of a minor sanction on a licensee pursuant to a decision under *section 68(4)(a)*, and
- (b) imposition of a minor sanction on a licensee pursuant to a decision given under *section 70(3)*.

Receipt of notice.

89.—(1) A notice to be given to a person by the Authority or the Appeal Board under this Act shall be given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or carries on business;
- (c) by sending it by prepaid registered post or by any other form of recorded delivery service in an envelope addressed to the person at that address;
- (d) where the person has given an address for service of notices, by leaving it at the address for such service or sending it by prepaid registered post or by any other form

of recorded delivery service in an envelope addressed to the person at that address; or

5 (e) where the Authority or the Appeal Board considers that notice should be given immediately, by sending it by means of electronic mail or facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the person ordinarily reside or carries on business or, if an address for the service of notices has been provided by the person, that
10 address.

(2) A notice to be given by a person to the Authority or the Appeal Board under this Act shall be given to the Authority or the Appeal Board, as the case may be, in one of the following ways:

15 (a) by delivering it during normal office hours to the office of the Authority or the Appeal Board, as the case may be, and leaving it with a person who is apparently its employee;

20 (b) by sending it by prepaid registered post or by any form of recorded delivery service in an envelope addressed to the Authority or the Appeal Board, as the case may be, at its office; or

(c) by such other means as may be prescribed by regulations made under *section 92* for the purposes of this paragraph.

25 (3) A notice given under *subsection (1)* is deemed to have been received by the person—

(a) in the case of prepaid registered post, or other recorded delivery, on the third working day after the day on which it was so sent,

30 (b) in the case of electronic mail, when the sender's facility for the reception of electronic mail generates a message confirming the receipt of the electronic mail,

35 (c) in the case of a facsimile machine, when the sender's facsimile machine generates a message confirming the successful transmission of the total number of pages of the notice.

40 (4) Documents or information which are required by or under this Act to be made or submitted to the Authority or the Appeal Board within a specified period shall, if the office of the Authority or Appeal Board, as the case may be, is closed on the last day of the period, be regarded as having been received before the expiration of the period if received on the next following day on which the office is open.

45 (5) For the purposes of this section, a company is deemed to be ordinarily resident at its registered office and every other body corporate or unincorporated body to be so resident at its principal place of business.

90.—Section 4 (as amended by section 5 of the Data Protection (Amendment) Act 2003) of the Data Protection Act 1988 shall not apply to data processed by the Authority in the performance of its
Restriction of Data Protection Act 1988.

functions under this Act in so far as those functions relate to carrying out an investigation.

Offences —
general.

91.—(1) Any person who makes any false or misleading statement in any application or notice of appeal under this Act or in any document required thereunder or otherwise gives false or misleading information to the Authority or the Appeal Board is guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both. 5

(2) Subject to *subsection (3)*, where a licensee is convicted of an offence under *subsection (1)*, the court may, after having regard to the nature of the offence and the circumstances in which it was committed, order that the licence held by the licensee be revoked and that the former licensee be prohibited (which may be a permanent prohibition, a prohibition for a specified period or a prohibition subject to specified conditions) from applying for any new licence or a particular class of new licence. 15

(3) An order under *subsection (2)* shall not take effect until—

- (a) the ordinary time for bringing an appeal against the conviction concerned or the order has expired without any such appeal having been brought, 20
- (b) any such appeal has been withdrawn or abandoned, or
- (c) on any such appeal, the conviction or order, as the case may be, is upheld.

(4) Where—

- (a) a contravention of a provision of this Act or of regulations made under this Act is committed by a body corporate, and 25
- (b) the contravention is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any neglect on the part of, a person who was either— 30
 - (i) a director, manager, secretary or other similar officer of the body corporate, or
 - (ii) a person purporting to act in any such capacity,

that person is also guilty of an offence and liable to be proceeded against and punished as if the person were guilty of the contravention referred to in *paragraph (a)*. 35

(5) Where the affairs of a body corporate are managed by its members, *subsection (4)* shall apply in respect of the acts or defaults of a member in connection with the member's functions of management as if the member were a director or manager of the body corporate. 40

(6) *Subsections (4)* and *(6)* shall, with all necessary modifications, apply in respect of offences under this Act committed by an unincorporated body. 45

(7) The Authority may bring and prosecute summary proceedings for an offence under this Act (including an offence under *section 29*).

(8) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act to which that provision applies may be instituted—

5 (a) within 12 months from the date on which the offence was committed, or

(b) within 6 months from the date on which evidence sufficient, in the opinion of the person instituting the proceedings, to justify proceedings comes to that person's knowledge,

10 whichever is the later, provided that no such proceedings shall be commenced later than 2 years from the date on which the offence concerned was committed.

(9) For the purposes of *subsection (8)(b)*, a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence referred to in that subsection came to his or her knowledge shall be evidence of that date and, in any legal proceedings, a document purporting to be a certificate under this subsection and to be so signed shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.

25 **92.—(1)** The Authority, with the consent of the Minister, may and, if directed by the Minister to do so and in accordance with the terms of the direction, shall, following consultation with any other person or body as the Authority thinks fit or as the Minister directs, by regulations provide for any matter referred to in this Act as prescribed under this section and for all or any of the following:

Regulations that may be made by Authority — general.

(a) the classes of licences which may be issued by the Authority and the conditions (if any) attaching to such classes of licences;

30 (b) the procedures governing—

(i) the issue and renewal of licences; and

(ii) the surrender of licences;

(c) the standards to be observed in the provision of property services by licensees or particular classes of licensees with particular reference to—

35 (i) the public interest;

(ii) the duty owed to clients and users and potential users of property services;

(iii) the professional and ethical conduct of licensees;

40 (iv) the confidentiality of client information; and

(v) conflicts of interest;

(d) the qualifications (including levels of training, education and experience) or any other requirements (including required minimum levels of professional indemnity insurance) for the issue and renewal of licences, or particular classes of licences;

45

- (e) the terms on which indemnity against losses is to be available to licensees under any policy of indemnity insurance (including, in the case of licensees who are property services employers, the extent to which such indemnity covers principal officers and employees of property service employers who provide property services in their capacity as such principal officers or employees, as the case may be) and the circumstances in which the right to such indemnity is to be excluded or modified; 5
- (f) the records to be maintained and the information and returns to be provided to the Authority by licensees or particular classes of licensees; 10
- (g) the amount of the contributions to be made to the Fund in respect of applications for a licence or for the renewal of a licence, or exemptions from the payment of such amounts, or waiving, remitting or refunding such amounts (in whole or in part), in different circumstances or classes of circumstances or in different cases or classes of cases; and 15
- (h) the procedures for applications for grants. 20

(2) The Authority shall not prescribe a longer period for the purposes of *subsection (6) of section 32* unless it is satisfied that—

- (a) the longer period will not prejudice the financial stability of the Fund by virtue of depriving the Fund of contributions payable into it upon the renewal of licences, and 25
- (b) the longer period will reduce the expenses incurred by the Authority in the administration of this Act in so far as it relates to the renewal of licences but without thereby prejudicing the Authority’s responsibility to control and supervise licensees. 30

(3) The Authority shall not prescribe an offence for the purposes of *paragraph (b) of the definition of “material matter” in section 42(4)* unless it is satisfied that the offence is of a kind that is so remote or insignificant in relation to the matters that would normally be taken into account to determine whether a person is a fit and proper person to provide a property service that the offence could not reasonably be regarded as being a matter of which the Authority ought to be aware. 35

Regulations that may be made by Minister — general.

93.—(1) The Minister may by regulations provide for any matter referred to in this Act as prescribed under this section. 40

(2) The Minister shall not prescribe a property service for the purposes of *paragraph (p) of section 3* unless he or she is satisfied that the property service is of a kind that is so insignificant, or that the property service is the subject of such level of control and supervision outwith the provisions of this Act, that disapplying this Act to such property service will not prejudice clients and other users and potential users of such property service. 45

(3) The Minister shall not prescribe an amount for the purposes of *paragraph (b) of the definition of “prescribed amount” in section 77(4)* unless the Minister is satisfied, after consultation with the Minister for Finance, that it is necessary to do so in order to— 50

(a) prevent, or prevent the likelihood of, grants or instalments of grants being unduly postponed, or

(b) ensure the financial stability of the Fund in view of the pattern of the grants (if any) which have been made.

5 (4) The Minister may by regulations make such incidental or consequential provision as the Minister considers necessary or expedient for the purposes of giving this Act full effect.

94.—(1) The Authority may specify the form of documents required for the purposes of this Act as the Authority thinks fit. Power to specify form of documents.

10 (2) The Authority’s power under *subsection (1)* may be exercised in such a way as to—

(a) include in the specified form of any document referred to in that subsection a statutory declaration—

(i) to be made by the person completing the form, and

15 (ii) as to whether the particulars contained in the form are true and correct to the best of that person’s knowledge and belief, and

20 (b) specify 2 or more forms of any document referred to in that subsection, whether as alternatives, or to provide for particular circumstances or particular cases, as the Authority thinks fit.

(3) The form of a document specified under this section shall be—

(a) completed in accordance with such directions and instructions as are specified in the document,

25 (b) accompanied by such other documents as are specified in the document, and

(c) if the completed document is required to be provided to—

(i) the Authority,

(ii) another person on behalf of the Authority, or

30 (iii) any other person,

so provided in the manner (if any) specified in the document.

95.—In the transitional provisions—

“Act of 1947” means the Auctioneers and House Agents Act 1947; Interpretation of transitional provisions.

35 “final determination”, in relation to an application under *section 31* referred to in *section 96(1)(b)* made by a person concerned for a licence to provide a property service concerned, means—

(a) the issue under *section 32(1)* by the Authority of a licence to the person concerned to provide the property service concerned,

- (b) the refusal under *section 32(3)(a), (b), (c), (d), (e) or (f)* by the Authority to issue a licence to the person concerned to provide the property service concerned,
 - (c) subject to *paragraph (d)*, the refusal under *section 32(3)(g), (h) or (i)* by the Authority to issue a licence to the person concerned to provide the property service concerned and the taking effect of that decision in accordance with *section 76*, or 5
 - (d) if there is an appeal to the Appeal Board against a refusal referred to in *paragraph (c)*— 10
 - (i) the withdrawal of the appeal as specified in *paragraph 20 of Schedule 5*,
 - (ii) the confirmation of the decision of the Authority by the Appeal Board as specified in *paragraph 25(1)(a) of Schedule 5*, 15
 - (iii) the taking effect in accordance with *section 76* of a new decision by the Authority as specified in *paragraph 25(1)(b) of Schedule 5*,
 - (iv) the taking effect of the Appeal Board’s determination in substitution for the decision of the Authority as specified in *paragraph 25(1)(c) of Schedule 5*, 20
 - (v) the dismissal of the appeal as specified in *paragraph 26 of Schedule 5*, or
 - (vi) the withdrawal of the appeal as specified in *paragraph 32(2)(a) and (3) of Schedule 5*, 25
- as applicable;

“person concerned” has the meaning given to it by *section 96(1)*;

“property service concerned” has the meaning given to it by *section 96(1)*;

“transitional provisions” means this section and *sections 96 and 97*. 30

Application of this Act to persons who were lawfully providing property service before commencement of relevant provisions of this Act in respect of that service.

96.—(1) Subject to *subsection (3)* and *section 97*, *sections 29(1) and 86* and the provisions of this Act applicable to a licensee and a property service shall not apply to a person (in the transitional provisions referred to as a “person concerned”) and a property service (in the transitional provisions referred to as a “property service concerned”) provided by the person concerned if, and only if— 35

- (a) the person concerned was lawfully providing the property service concerned before the commencement of *section 29(1)* in respect of that property service, and
- (b) the person concerned has, before that commencement, made an application under *section 31* for a licence to provide the property service concerned and there has not been a final determination of the application before that commencement. 40

(2) Where *subsection (1)* has not ceased to apply to a person concerned and a property service concerned, the statutory provisions 45

repealed, revoked or amended by this Act (including Part IV of the Act of 1947) shall, in so far as they applied to the person concerned and the property service concerned before the commencement of *section 29(1)* in respect of that property service, continue to apply to the person concerned and the property service concerned as if those statutory provisions have not been so repealed, revoked or amended, as the case may be.

(3) Subject to *section 97, subsection (1)* shall cease to apply to a person concerned and a property service concerned immediately upon the final determination of the application under *section 31* referred to in *subsection (1)(b)* made by the person concerned for a licence to provide the property service concerned.

(4) Notwithstanding the repeal of the Act of 1947 effected by the commencement of *section 7(1)*, Part IV of that Act shall continue to apply to a deposit (within the meaning of section 2 of that Act) which has not been released before that commencement and, for the purposes of such application, a licence (if any) under this Act held by the depositor shall not be treated as a licence referred to in that Part.

(5) Where a licence is issued to a person concerned in respect of a property service concerned pursuant to the final determination of the application under *section 31* referred to in *subsection (1)(b)* made by the person for that licence, the period of validity of the licence as so issued shall be deemed to start to run on the day of commencement of *section 29(1)* in respect of the property service concerned, and irrespective of whether the licence is issued before, on or after that commencement.

97.—(1) Where—

Modification of operation of *section 96(1)* in specified circumstances.

(a) a person concerned (in this subsection referred to as “the first-mentioned person concerned”)—

(i) would, but for *section 96(1)*, be required to be licensed as a property services employer in order to continue to provide a property service concerned on and after the commencement of *section 29(1)* in respect of that property service, and

(ii) has, before that commencement, made an application under *section 31* for a licence to provide that service as a property service employer,

and

(b) another person concerned (in this subsection referred to as “the second-mentioned person concerned”)—

(i) is a principal officer or an employee of the first-mentioned person concerned, and, in that capacity, provides the property service concerned referred to in *paragraph (a)(i)* on behalf of the first-mentioned person concerned,

(ii) would, but for *section 96(1)*, be required to be licensed as a principal officer or an employee, as the case may be, in order to continue to so provide that service on and after the commencement of *section 29(1)* in respect of that property service, and

(iii) has, before that commencement, made an application under *section 31* to be licensed as referred to in *sub-paragraph (ii)*,

then, if the final determination of the application referred to in *paragraph (a)(ii)* is that the first-mentioned person concerned is not issued a licence to provide the property service concerned referred to in *paragraph (a)(i)* as a property services employer— 5

(i) *section 96(1)* shall cease to apply to the second-mentioned person concerned in so far as the second-mentioned person concerned provides that property service on behalf of the first-mentioned person concerned, in his or her capacity as a principal officer or employee, as the case may be, of the first-mentioned person concerned, and 10

(ii) the application referred to in *paragraph (b)(iii)* shall be deemed to have been withdrawn by the second-mentioned person concerned. 15

(2) Without prejudice to the generality of *subsection (1)*, the Authority shall not determine the application referred to in *subsection (1)(b)(iii)* until there has been a final determination of the application referred to in *subsection (1)(a)(ii)*. 20

(3) Where—

(a) a person concerned (in this subsection referred to as “the first-mentioned person concerned”)—

(i) would, but for *section 96(1)*, be required to be licensed as a property services employer in order to continue to provide a property service concerned on and after the commencement of *section 29(1)* in respect of that property service, and 25

(ii) has not, before that commencement, made an application under *section 31* for a licence to provide that service as a property services employer, 30

and

(b) another person concerned (in this subsection referred to as “the second-mentioned person concerned”)— 35

(i) is a principal officer or an employee of the first-mentioned person concerned and, in that capacity, provides the property service concerned referred to in *paragraph (a)(i)* on behalf of the first-mentioned person concerned, 40

(ii) would, but for *section 96(1)*, be required to be licensed as a principal officer or an employee, as the case may be, in order to continue to so provide that property service on and after the commencement of *section 29(1)* in respect of that property service, and 45

(iii) has, before that commencement, made an application under *section 31* to be licensed as referred to in *sub-paragraph (ii)*,

then—

5 (i) *section 96(1)* shall not apply to the second-mentioned person concerned or the property service concerned referred to in *paragraph (a)(i)* in so far as that second-mentioned person concerned was providing that property service, on behalf of the first-mentioned person concerned, in his or her capacity as a principal officer or employee, as the case may be, of the first-mentioned person concerned, and

10 (ii) the application referred to in *paragraph (b)(iii)* shall be deemed to have been withdrawn by the second-mentioned person concerned.

98.—The enactments specified in *Schedule 8* are amended in the manner specified in that Schedule. Consequential amendments to other enactments.

SCHEDULE 1

REPEALS AND REVOCATIONS

PART 1

ACTS REPEALED

Year, session and chapter or number and year (1)	Short title (2)	5
1867 (30 & 31 Vict.) c. 48	Sale of Land by Auction Act 1867	
No. 10 of 1947	Auctioneers and House Agents Act 1947	
No. 9 of 1967	Auctioneers and House Agents Act 1967	10
No. 23 of 1973	Auctioneers and House Agents Act 1973	

PART 2

STATUTORY INSTRUMENT REVOKED

S.I. Number and year (1)	Short title (2)	15
S.I. No. 10 of 1968	Auctioneers and House Agents Act 1947 (Accountant's Examination and Certificate) Regulations 1968	

INFORMATION TO BE CONTAINED IN PROPERTY SERVICES AGREEMENTS

PART 1

PROPERTY SERVICES AGREEMENTS — GENERAL

- 5 1. A property services agreement in respect of the provision of a property service shall include—
- (a) the name, registration number, business address and other business contact details of the licensee,
 - (b) any business name of the licensee,
 - 10 (c) details of the property services to be provided by the licensee,
 - (d) particulars of the subject matter of the agreement (including the folio number of the land, if appropriate),
 - 15 (e) the amount or the rate, as the case may be, of any commission or other fee payable by the client under the agreement and the circumstances under which the commission or fee, as the case may be, becomes payable,
 - (f) particulars of the rate of value added tax payable,
 - 20 (g) the period during which the rights or obligations of the client or licensee are to have effect under the agreement,
 - (h) the length of notice to be given in the event of the termination of the agreement by the client or licensee, and the consequences,
 - 25 (i) a statement of the obligation (if any) on the licensee, pursuant to section 57 of the Criminal Justice Act 1994, to report in relation to money laundering,
 - (j) affirmation that no conflict of interest exists which would prevent the licensee providing the property service,
 - 30 (k) details of the professional indemnity insurance of the licensee,
 - (l) details of the records to be kept by the licensee in respect of the provision of the property service,
 - (m) the name and address of the bank in which the licensee's client accounts are kept,
 - 35 (n) details on the deposit of moneys paid to the licensee by the client and the application of any interest earned thereon, and
 - (o) complaints and redress procedures put in place by the licensee.

PART 2

PROPERTY SERVICES AGREEMENTS FOR SALE OF LAND

2. Without prejudice to the generality of *Part 1*, a property services agreement for the sale of land shall also include—

- (a) the advised market value of the land, 5
- (b) a description of the agency model (sole agency, joint agency or multiple agency),
- (c) in the case of a fee or commission expressed as a percentage of the advised market value of the land—
 - (i) if *paragraph (a)* of the definition of “advised market value” in *section 2(1)* is applicable, the estimated total amount payable, 10
 - (ii) if *paragraph (b)* of the definition of “advised market value” in *section 2(1)* is applicable, the estimated range within which the total amount payable would fall, 15
- (d) the terms on or subject to which the client agrees to advertising the land and the amount of advertising outlay,
- (e) the obligations (if any) which will apply to the client should he or she dispose of any part of the land otherwise than through the licensee concerned, and 20
- (f) if applicable, a statement of intent by the licensee to offer to provide financial services to purchasers (including any case where there is any intent to offer to provide financial services to purchasers through a subsidiary or associated body of the licensee). 25

PART 3

PROPERTY SERVICES AGREEMENTS FOR LETTING OF LAND

3. Without prejudice to the generality of *Part 1*, a property services agreement for the letting of land shall also include— 30

- (a) the proposed duration of the letting and the advised letting value of the land,
- (b) a description of the agency model (sole agency, joint agency or multiple agency),
- (c) in the case of a fee or commission expressed as a percentage of the advised letting value of the land— 35
 - (i) if *paragraph (a)* of the definition of “advised letting value” in *section 2(1)* is applicable, the estimated total amount payable,
 - (ii) if *paragraph (b)* of the definition of “advised letting value” in *section 2(1)* is applicable, the estimated range within which the total amount payable would fall, 40

- (d) the terms on or subject to which the client agrees to advertising the land and the amount of advertising outlay,
- (e) the obligations (if any) which will apply to the client should he or she let any part of the land otherwise than through the licensee concerned, and
- (f) a schedule of contents and fixtures and fittings to be included in the letting, if applicable.

PART 4

PROPERTY SERVICES AGREEMENTS FOR PROVISION OF PROPERTY MANAGEMENT SERVICES

4. Without prejudice to the generality of *Part 1*, a property services agreement for the provision of property management services shall also include—

- (a) a timetable for delivery of the services,
- (b) the notice required to be given by the client to the licensee for the delivery of individual services by the licensee,
- (c) particulars of any out-of-office hours services for emergencies, and
- (d) the reporting obligations of the licensee to the client.

SCHEDULE 3

PROVISIONS APPLICABLE TO ORAL HEARINGS CONDUCTED PURSUANT TO
section 66 OR *68*.

PART 1

ORAL HEARING CONDUCTED BY INSPECTOR PURSUANT TO *section 66(15)* 5

1. The inspector conducting the oral hearing for the purposes of an investigation may take evidence on oath, and the administration of such an oath by the inspector is hereby authorised.

2. The inspector may by notice in writing require any person to attend the oral hearing at such time and place as is specified in the notice to give evidence in respect of any matter in issue in the investigation or to produce any relevant documents within his or her possession or control or within his or her procurement. 10

3. Subject to *paragraph 4*, a person referred to in *paragraph 2* may be examined and cross-examined at the oral hearing. 15

4. A person referred to in *paragraph 2* shall be entitled to the same immunities and privileges in respect of compliance with any requirement referred to in that paragraph as if the person were a witness before the High Court.

5. Where a person referred to in *paragraph 2* does not comply or fully comply with a requirement referred to in that paragraph, the inspector may apply to the Circuit Court, on notice to that person, for an order requiring the person to comply or fully comply, as the case may be, with the requirement within a period to be specified by the Court, and the Court may make the order sought or such other order as it thinks fit or refuse to make any order. 20 25

6. The jurisdiction conferred on the Circuit Court by *paragraph 5* may be exercised by the judge of that Court for the circuit in which the person concerned ordinarily resides or carries on any profession, business or occupation. 30

7. The oral hearing shall be held otherwise than in public.

8. The reasonable travelling and subsistence expenses of any person attending before the inspector in accordance with *paragraph 2* shall be paid out of moneys provided by the Oireachtas.

PART 2 35

ORAL HEARING CONDUCTED BY AUTHORITY PURSUANT TO *section 68(5)*

1. The Authority, in conducting the oral hearing for the purposes of assisting it to make a decision under *section 68(4)* or for the purposes of observing fair procedures, may take evidence on oath, and the administration of such an oath by any member of the Authority is hereby authorised. 40

2. The Authority may by notice in writing require any person to attend the oral hearing at such time and place as is specified in the notice to give evidence in respect of any matter in issue in the making of the decision under *section 68(4)* or to produce any relevant documents within his or her possession or control or within his or her procurement.

3. Subject to *paragraph 4*, a person referred to in *paragraph 2* may be examined and cross-examined at the oral hearing.

4. A person referred to in *paragraph 2* shall be entitled to the same immunities and privileges in respect of compliance with any requirement referred to in that paragraph as if the person were a witness before the High Court.

5. Where a person referred to in *paragraph 2* does not comply or fully comply with a requirement referred to in that paragraph, the Authority may apply to the Circuit Court, on notice to that person, for an order requiring the person to comply or fully comply, as the case may be, with the requirement within a period to be specified by the Court, and the Court may make the order sought or such other order as it thinks fit or refuse to make any order.

6. The jurisdiction conferred on the Circuit Court by *paragraph 5* may be exercised by the judge of that Court for the circuit in which the person concerned ordinarily resides or carries on any profession, business or occupation.

7. The oral hearing shall be held otherwise than in public unless—

(a) the licensee to whom the investigation concerned relates or, if the investigation arose in consequence of the receipt of a complaint, the complainant makes a request in writing to the Authority that the hearing (or a part thereof) be held in public and states in the request the reasons for the request, and

(b) the Authority, after considering the request (in particular, the reasons for the request), is satisfied that it would be appropriate to comply with the request.

8. The reasonable travelling and subsistence expenses of any person attending before the Authority in accordance with *paragraph 2* shall be paid out of moneys provided by the Oireachtas.

SCHEDULE 4

REDRESS FOR CONTRAVENTION OF *section 67(5)**Complaints to rights commissioner*

1. (1) An employee (or, in the case of an employee who has not reached the age of 18 years, his or her parent or guardian) may present a complaint to a rights commissioner that his or her employer has contravened *section 67(5)* in relation to the employee and it shall not be necessary for the employee to have at least one year's continuous service with the employer concerned in order to present such complaint.

(2) Where a complaint under *subparagraph (1)* is made, the rights commissioner shall—

(a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint,

(b) give a decision in writing in relation to it, and

(c) notify the parties of that decision.

(3) A decision of a rights commissioner under *subparagraph (2)* shall do one or more of the following:

(a) declare that the complaint was or, as the case may be, was not well founded;

(b) require the employer to take a specified course of action;

(c) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 104 weeks' remuneration in respect of the employee's employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act 1977,

and the references in *clauses (b)* and *(c)* to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to such ownership.

(4) A rights commissioner shall not entertain a complaint under this paragraph if it is presented to him or her after the expiration of the period of 6 months beginning on the date of the contravention to which the complaint relates.

(5) Notwithstanding *subparagraph (4)*, a rights commissioner may entertain a complaint under this paragraph presented to him or her after the expiration of the period referred to in *subparagraph (4)* (but not later than 6 months after such expiration) if he or she is satisfied that the failure to present the complaint within that period was due to a reasonable cause.

(6) A complaint shall be presented by giving notice of it in writing to a rights commissioner and the notice shall contain such particulars

and be in such form as may be specified from time to time by the Minister for Enterprise, Trade and Employment.

(7) A copy of a notice under *subparagraph (6)* shall be given to the other party concerned by the rights commissioner.

5 (8) Proceedings under this paragraph before a rights commissioner shall be conducted otherwise than in public.

(9) A rights commissioner shall furnish the Labour Court with a copy of each decision given by the commissioner under *subparagraph (2)*.

10 *Appeals from decisions of rights commissioner*

2. (1) A party concerned may appeal to the Labour Court from a decision of a rights commissioner under *paragraph 1* and, if the party does so, the Labour Court shall give the parties an opportunity to be heard by it and to present to it any evidence relevant to the
15 appeal, shall make a determination in writing in relation to the appeal affirming, varying or setting aside the decision and shall communicate the determination to the parties.

(2) An appeal under this paragraph shall be initiated by the party concerned giving, within 42 days (or such greater period as the Court
20 may determine in the particular circumstances) from the date on which the decision to which it relates was communicated to the party, a notice in writing to the Labour Court containing such particulars as are determined by the Labour Court under *clauses (e)* and *(f)* of *subparagraph (4)* and stating the intention of the party concerned to
25 appeal against the decision.

(3) A copy of a notice under *subparagraph (2)* shall be given by the Labour Court to any other party concerned as soon as practicable after the receipt of the notice by the Labour Court.

(4) The following matters, or the procedures to be followed in
30 relation to them, shall be determined by the Labour Court, namely:

(a) the procedure in relation to all matters concerning the initiation and the hearing by the Labour Court of appeals under this paragraph;

(b) the times and places of hearings of such appeals;

35 (c) the representation of the parties to such appeals;

(d) the publication and notification of determinations of the Labour Court;

(e) the particulars to be contained in a notice under *subparagraph (2)*; and

40 (f) any matters consequential on, or incidental to, the foregoing matters.

(5) The Labour Court may refer a question of law arising in proceedings before it under this paragraph to the High Court for its determination and the determination of the High Court shall be final
45 and conclusive.

(6) A party to proceedings before the Labour Court under this paragraph may appeal to the High Court from a determination of

the Labour Court on a point of law and the determination of the High Court shall be final and conclusive.

Paragraphs 1 and 2: supplemental provisions

3. (1) The Labour Court shall, on the hearing of any appeal referred to it under *paragraph 2*, have power to take evidence on oath and for that purpose may cause persons attending as witnesses at that hearing to swear an oath. 5

(2) The Labour Court may, by giving notice in that behalf in writing to any person, require such person to attend at such time and place as is specified in the notice and— 10

(a) to give evidence in relation to any matter appealed to the Labour Court under *paragraph 2*, or

(b) to produce any document specified in the notice relating to the matter in the person's possession or power,

or both. 15

(3) A witness at a hearing of an appeal before the Labour Court has the same privileges and immunities as a witness before the High Court.

(4) Where a decision of a rights commissioner in relation to a complaint under this Schedule has not been carried out by the employer concerned in accordance with its terms, the time for bringing an appeal against the decision has expired and no such appeal has been brought, the employee concerned may bring the complaint before the Labour Court and the Labour Court shall, without hearing the employer concerned or any evidence (other than in relation to the matters aforesaid), make a determination to the like effect as the decision. 20 25

(5) The bringing of a complaint before the Labour Court under *subparagraph (4)* shall be effected by giving to the Labour Court a written notice containing such particulars (if any) as may be determined by the Labour Court. 30

(6) The Labour Court shall publish, in a manner it considers appropriate, particulars of any determination made by it under any of *clauses (a), (b), (c), (d), (e) or (f) of subparagraph (4) of paragraph 2* (not being a determination as respects a particular appeal under that paragraph) and *subparagraph (5)*. 35

(7) In proceedings under this Schedule before a rights commissioner or the Labour Court in relation to a complaint that *section 67(5)* has been contravened, it shall be presumed, until the contrary is proved, that the employee concerned acted reasonably and in good faith in forming the opinion and making the communication concerned. 40

(8) If a penalisation of an employee, in contravention of *section 67(5)*, constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2007, relief may not be granted to the employee in respect of that penalisation both under this Schedule and under those Acts. 45

Enforcement of determinations of Labour Court

4. (1) If an employer fails to carry out in accordance with its terms a determination of the Labour Court in relation to a complaint under *paragraph 1* within 28 days from the date on which the determination is communicated to the parties, the Circuit Court shall, on application to it in that behalf by—

(a) the employee concerned, or

(b) with the consent of the employee, any trade union of which the employee is a member,

10 without hearing the employer or any evidence (other than in relation to the matters aforesaid), make an order directing the employer to carry out the determination in accordance with its terms.

(2) The reference in *subparagraph (1)* to a determination of the Labour Court is a reference to a determination in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought or, if such an appeal has been brought, it has been abandoned and the references to the date on which the determination is communicated to the parties shall, in a case where such an appeal is abandoned, be read as references to the date of such abandonment.

(3) In an order under this paragraph providing for the payment of compensation, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct the employer concerned to pay to the employee concerned interest on the compensation at the rate for the time being fixed by the Minister for Enterprise, Trade and Employment for the purposes of section 4(2) of the Prompt Payment of Accounts Act 1997 under section 10 of that Act for each day or part of a day beginning 28 days after the day on which the determination of the Labour Court is communicated to the parties and ending on the day immediately before the day on which the order of the Circuit Court is complied with.

(4) An application under this paragraph to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer concerned ordinarily resides or carries on any trade, business or occupation.

(5) *Section 67(14)* shall apply to the interpretation of this Schedule as it applies to the interpretation of *section 67*.

SCHEDULE 5

PROVISIONS IN RESPECT OF PROPERTY SERVICES APPEAL BOARD

PART 1

GENERAL

Membership 5

1. The Appeal Board shall consist of a chairperson and such and so many other members as the Minister, with the consent of the Minister for Finance, considers necessary from time to time for the effective discharge of its functions.

Appointment 10

2. The chairperson and other members of the Appeal Board shall be appointed by the Government and, subject to this Schedule, shall hold office on such terms as the Government may determine.

Chairperson

3. (1) (a) The chairperson shall be a practising barrister, or a practising solicitor, of not less than 7 years' standing. 15

(b) A chairperson who ceases to be such a barrister or solicitor during his or her term of office as chairperson shall thereupon cease to be chairperson and a member of the Appeal Board. 20

(2) The chairperson shall be responsible for ensuring the effective performance by the Appeal Board of its functions.

(3) The chairperson, if of the opinion that the conduct of a member of the Appeal Board has been such as to bring the Board into disrepute or has been otherwise prejudicial to the effective performance of the Appeal Board's functions, may— 25

(a) require the member to attend for interview and, on the member so attending, inform the member privately of that opinion, or

(b) otherwise investigate the matter, 30

and report to the Minister the outcome of the interview or investigation if the chairperson thinks fit to do so.

Term of office

4. (1) Subject to this paragraph—

(a) the chairperson shall hold office for a period of 4 years from the date of his or her appointment, and 35

(b) any other member of the Board shall hold office for such period, not exceeding 4 years from the date of his or her

appointment, as shall be specified by the Government when appointing the member,

and may in each case be reappointed by the Government for a second or subsequent term of office.

5 (2) A member of the Appeal Board may at any time resign from office by letter addressed to the Secretary General to the Government and the resignation shall take effect on the date specified in the letter or the date the letter is received by the Secretary General to the Government, whichever is the later.

10 (3) A member of the Appeal Board shall, unless he or she sooner dies, becomes disqualified for, resigns, is removed from office or otherwise ceases to be a member, hold office as such member until the expiration of his or her term of office.

(4) Where a member is—

- 15 (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,
- (c) regarded pursuant to section 19 of the European Parliament Elections Act 1997 as having been elected to that Parliament, or
- 20 (d) elected or co-opted as a member of a local authority,

he or she shall thereupon cease to be a member of the Appeal Board.

(5) The Government may for stated reasons at any time remove a member from office—

- 25 (a) for misbehaviour, or
- (b) if it considers that—
- (i) the member has become incapable through ill health of effectively performing the functions of the office,
- (ii) the member has a conflict of interest of such significance that it requires that the person should cease to hold office, or
- 30 (iii) the member's removal appears to be necessary for the effective performance of the functions of the Appeal Board.

35 (6) A person shall be disqualified from being and shall cease to be a member if he or she—

- (a) is adjudicated bankrupt,
- (b) makes a composition or arrangement with his or her creditors,
- 40 (c) is convicted on indictment of an indictable offence,
- (d) is convicted of an offence involving dishonesty,

(e) has a declaration under section 150 of the Companies Act 1990 made against him or her or is subject or is deemed to be subject to a disqualification order by virtue of Part VII of that Act, or

(f) ceases to be ordinarily resident in the State. 5

Remuneration, etc., of members

5. Members of the Appeal Board shall be paid such remuneration (if any) and allowances for expenses as the Minister, with the consent of the Minister for Finance, may determine.

Procedure of Board 10

6. (1) The Appeal Board shall hold such and so many meetings as may be necessary for the effective performance of its functions.

(2) At a meeting of the Appeal Board—

(a) the quorum shall be 3 or such other number, not being less than 3, as the Appeal Board may determine, 15

(b) the chairperson shall, if present, be the chairperson of the meeting,

(c) if and so long as the chairperson is not present or the office of chairperson is vacant, the members of the Appeal Board who are present shall choose one of their number 20 to act as the chairperson of the meeting,

(d) each member of the Appeal Board (including the chairperson) present at a meeting of the Appeal Board shall have a vote, and

(e) at a meeting of the Appeal Board a question on which a 25 vote is required shall be determined by a majority of the votes of the members of the Appeal Board present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a casting vote. 30

(3) Subject to this Act, the Appeal Board may regulate its own procedure.

(4) Subject to *subparagraphs* (5) and (6), the Appeal Board may perform any of its functions through or by the chairperson or any other member or other person who has been duly authorised by the 35 Appeal Board in that behalf.

(5) A member of the Appeal Board may finally determine a particular case only if it has been considered at a meeting of the Board before the relevant authorisation is given.

(6) The Appeal Board may not authorise a person who is not a 40 member to determine finally a particular case.

(7) A decision of the Appeal Board on an appeal may be by a majority of its members.

Vacancies in membership

7. (1) Where a member of the Appeal Board dies, becomes disqualified from holding office, resigns, is removed from office or otherwise ceases to be a member, the Government may appoint a person to be a member of the Appeal Board to fill the resultant vacancy.

(2) A person appointed to be a member of the Appeal Board under *subparagraph (1)* shall hold office for the remainder of the term of office of the member who occasioned the casual vacancy.

(3) For the purposes of *subparagraph (2)*, a person who occasions or fills a casual vacancy shall be considered to have served a term as a member of the Appeal Board even though he or she held office for part only of the term.

(4) Subject to *paragraph 6(2)(a)*, the Appeal Board may act notwithstanding one or more vacancies in its membership.

Secretary of Board

8. A person who is an officer of the Minister who is an established civil servant for the purposes of the Civil Service Regulation Acts 1956 to 2005 and who is seconded to the Appeal Board on a whole-time or part-time basis shall act as its secretary.

Non-disclosure of information

9. (1) Save as otherwise provided by law, a person shall not, without the consent of the Appeal Board, disclose information obtained by the person in his or her capacity as a member or the secretary of the Appeal Board.

(2) Nothing in *subparagraph (1)* shall prevent the disclosure of information in a report made to the Appeal Board or by or on behalf of the Appeal Board to the Minister.

Prohibition of improper influence

10. (1) A person shall not communicate with a member or the secretary of the Appeal Board for the purpose of influencing improperly either consideration by it of an appeal or any decision of the Appeal Board in respect of an appeal.

(2) If the member or secretary is of opinion that any communication is in contravention of *subparagraph (1)*, he or she shall not entertain it further and shall immediately inform the Appeal Board in writing of its substance, and the Appeal Board shall acknowledge in writing the receipt of such information.

Disclosure of interests

11. *Section 15* shall, with all necessary modifications, apply in respect of a member and the secretary of the Appeal Board as it applies in respect of a member of the Authority.

Reports to Minister

12. *Section 18* shall, with all necessary modifications, apply in respect of the Appeal Board as it applies to the Authority.

PART 2

APPEALS

General

13. The Appeal Board shall, as far as is practicable, ensure that appeals are dealt with and determined expeditiously. 5

Decisions of Authority subject to appeal

14. A person aggrieved by a decision of the Authority—
- (a) refusing under *section 32(3)(g), (h) or (i)* to issue a licence,
 - (b) declining under *section 63(2)* to cause to be carried out an investigation of the matter the subject of a complaint, 10
 - (c) imposing under *section 68(4)(a)* a minor sanction,
 - (d) dismissing under *section 68(4)(c)* a complaint, or
 - (e) refusing to make a grant or relating to the amount of the grant made,

may, within 30 days from the date of receipt of notice of the decision, 15
appeal to the Appeal Board against the decision by serving on the Appeal Board a notice of appeal which complies with *paragraph 15(1)*.

Notice of appeal requirements

15. (1) The notice of appeal shall be in writing and shall state— 20
- (a) the name and address of the appellant,
 - (b) the subject matter of the appeal,
 - (c) the appellant's interest in its outcome, and
 - (d) the grounds of the appeal and the reasons, considerations and arguments on which they are based, 25

and shall be accompanied by the appropriate fee (if any) and by such documents relating to the appeal as the appellant considers necessary or appropriate.

(2) The appellant shall not, unless requested to do so by the Appeal Board, elaborate in writing on or make further submissions 30
in writing in respect of the grounds of appeal stated in the notice of appeal or submit further grounds of appeal, and any such elaboration or further submission received by the Appeal Board shall not be considered by it.

(3) Without prejudice to *paragraph 24*, the Appeal Board shall 35
not consider any documents submitted by an appellant at the appeal other than those which accompanied the notice of appeal.

Appeal Board not to consider appeal out of time, etc.

16. The Appeal Board shall not consider an appeal if the notice of appeal is not received by it before the expiration of the period of 40
30 days referred to in *paragraph 14* or if the notice does not comply

with the requirements of *paragraph 15(1)* (including *clause (d)* of that paragraph).

Authority to be party to appeal

17. The Authority shall be a party to every appeal.

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Other parties to appeal

18. Where an appeal is brought against a decision of the Authority referred to in *paragraph 14(b)* or *(d)*, or a decision referred to in *paragraph 14(c)* which relates to an investigation which arose from a complaint, the other party to the complaint shall also be a notice party to the appeal.

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Notification of appeal

19. The Appeal Board shall, as soon as practicable after receipt of a notice of appeal, send a copy of the notice by prepaid registered post to—

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(a) the Authority, and

(b) if *paragraph 18* is applicable, the other party to the complaint.

Withdrawal of appeal

20. An appellant may withdraw an appeal by a notice in writing to the Appeal Board at any time before the appeal is determined.

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Documents to be supplied to Appeal Board by Authority

21. The Authority shall, within 14 days of receipt of the copy of the notice of appeal, submit to the Appeal Board by prepaid registered post a copy of—

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(a) the application for the licence or the licence or the complaint concerned and any other information received in that regard from the applicant, licensee or complainant, as the case may be,

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(b) any investigation report (or investigation reports if *section 68(4)(b)* is applicable) or other report prepared for the Authority or other relevant documents or information in its possession in respect of its decision which is the subject of the appeal (including any submissions referred to in *section 68(2)* and *(5)(b)*),

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(c) the record of the decision of the Authority which is the subject of the appeal, and

(d) the notice of the decision to the persons concerned.

Submissions by Authority on appeal

22. (1) The Authority may make submissions in writing to the Appeal Board in respect of the appeal within 30 days from the receipt of the copy of the notice of appeal from the Appeal Board, and submissions received by the Appeal Board from the Authority after the expiration of that period shall not be considered by it.

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(2) Where no submissions have been received from the Authority within the period referred to in *subparagraph (1)*, the Appeal Board may, without further notice to the Authority, determine the appeal.

(3) The Authority shall not, unless requested to do so by the Appeal Board, elaborate in writing on any submissions made under *subparagraph (1)* or make any further submissions in writing in respect of the appeal, and any such elaboration or further submissions, as the case may be, shall not be considered by the Appeal Board. 5

(4) Where a party to a complaint appeals against a decision to which *paragraph 18* applies, this paragraph shall apply in respect of the other party to the complaint as if references in this paragraph to the Authority were references to that other party. 10

Submissions by person not party to appeal

23. (1) A person who is not a party to an appeal may make submissions in writing to the Appeal Board in respect of the appeal within 30 days from the receipt of the notice of appeal by the Appeal Board, and submissions received by the Appeal Board from the person after the expiration of that period shall not be considered by it. 15

(2) The person shall not, unless requested to do so by the Appeal Board, elaborate in writing on any submissions made under *subparagraph (1)* or make any further submissions in writing in respect of the appeal, and any such elaboration or further submissions, as the case may be, shall not be considered by the Appeal Board. 20

Further information required by Appeal Board 25

24. (1) Where the Appeal Board is of the opinion that any information or document is necessary to enable it to determine an appeal, it may serve, on any party to the appeal or on any person who has made submissions under *paragraph 23*, a notice in writing—

(a) requiring the party or person, as the case may be, to submit to it such information or documents as are specified in the notice, within the period specified in the notice (referred to in this paragraph as “the specified period”), being not less than 14 days beginning on the date of service of the notice, and 30
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(b) stating that, if *clause (a)* is not complied with, it may determine the appeal after the expiration of the specified period without further notice to the party or person, as the case may be.

(2) Where a notice has been served on a person under this paragraph, the Appeal Board, at any time after the expiration of the specified period, may, whether or not the notice has been complied with, determine the appeal without further notice to the person. 40

Determination of appeal

25. (1) The appeal, if not withdrawn, shall, subject to *subparagraphs (2)* and *(3)*, be determined by the Appeal Board— 45

(a) by confirming the decision of the Authority to which the appeal relates,

5 (b) by remitting, for stated reasons and with or without directions, the matter to the Authority for reconsideration and the making of a new decision (which new decision may, in the case of a decision of the Authority which falls within *paragraph 14(c)*, be a decision under *section 68(4)(a)* to impose a major sanction),

10 (c) by substituting its determination for that decision (which determination may, in the case of a decision of the Authority which falls within *paragraph 14(c)*, be a decision under *section 68(4)(a)* to impose a major sanction) which shall thereupon stand annulled.

(2) *Sections 68(10) and 73* shall, with all necessary modifications, apply to the Appeal Board as it applies to the Authority.

15 (3) Where a determination of the Appeal Board referred to in *subparagraph (1)(c)* is a decision under *section 68(4)(a)* to impose a major sanction, *sections 69 to 72* shall, with all necessary modifications, apply to the determination as if it were a decision of the Authority to impose a major sanction on the licensee concerned.

Dismissal of frivolous, etc., appeal

20 26. The Appeal Board shall dismiss any appeal which in its opinion is frivolous or vexatious or without substance or foundation.

Matters on which appeal is grounded

27. An appeal shall be grounded on—

25 (a) the record of the decision of the Authority which is the subject of the appeal,

(b) the information contained in the notice of appeal,

(c) any submissions (including any elaborations thereon) made in accordance with this Part to the Appeal Board on any matter arising on the decision or that information,

30 (d) any other document or information received in accordance with this Part by the Appeal Board on the hearing of the appeal.

Sittings of Appeal Board

35 28. Sittings of the Appeal Board shall be held otherwise than in public unless—

40 (a) the Authority, the appellant or, if *paragraph 18* is applicable, the other party to the complaint makes a request in writing to the Appeal Board that the sittings (or a part thereof) in respect of the appeal concerned be held in public and states in the request the reasons for the request, and

(b) the Appeal Board, after considering the request (in particular, the reasons for the request), is satisfied that it would be appropriate to comply with the request.

Oral hearings

29. (1) Subject to *subparagraphs* (2) to (5), the Appeal Board, of its own motion or at the request of a party, may in its absolute discretion conduct an oral hearing of an appeal.

(2) A request by a party for an oral hearing— 5

(a) shall be made in writing to the Appeal Board,

(b) subject to *clause* (c), shall be made within the period of 30 days referred to in *paragraph 14*,

(c) (i) where the request is made by the Authority, shall be made within the period of 30 days referred to in *paragraph 22(1)*, or 10

(ii) if the request is made by the person referred to in *paragraph 18* as the “other party”, shall be made within 30 days of the notice of appeal being received by that person. 15

(3) The Appeal Board shall not consider a request for an oral hearing made later than the expiration of the relevant period referred to in *subparagraph* (2).

(4) Where the Appeal Board refuses a request to conduct an oral hearing, it shall serve notice of its decision and the reasons for its decision on each party to the appeal and on any person who has made a submission under *paragraph 23* in respect of the appeal. 20

(5) The Appeal Board in conducting an oral hearing may take evidence on oath, and the administration of such an oath by any member of the Appeal Board is hereby authorised. 25

(6) The Appeal Board may by notice in writing require any person to attend at such time and place as is specified in the notice to give evidence in respect of any matter in issue in the appeal or to produce any relevant documents within his or her possession or control or within his or her procurement. 30

(7) A person referred to in *subparagraph* (6) shall be entitled to the same immunities and privileges in respect of compliance with any requirement referred to in that subparagraph as if the person were a witness before the High Court.

(8) Where a person referred to in *subparagraph* (6) does not comply or fully comply with a requirement referred to in that subparagraph, the Appeal Board may apply to the Circuit Court, on notice to that person, for an order requiring the person to comply or fully comply, as the case may be, with the requirement within a period to be specified by the Court, and the Court may make the order sought or such other order as it thinks fit or refuse to make any order. 35 40

(9) The jurisdiction conferred on the Circuit Court by this section may be exercised by the judge of that Court for the circuit in which the person concerned ordinarily resides or carries on any profession, business or occupation. 45

Expenses of persons attending before Appeal Board

30. The reasonable travelling and subsistence expenses of any person attending before the Appeal Board in accordance with *paragraph 29(6)* shall be paid out of moneys provided by the Oireachtas.

5 *Notice of determination*

31. The Appeal Board shall serve a notice in writing of its determination and the reasons for its determination on each party to the appeal and on any person who has made a submission under *paragraph 23* in respect of the appeal.

10 *Delayed or abandoned appeals*

32. (1) Where the Appeal Board is of the opinion—

(a) that proceedings on an appeal have been unnecessarily delayed by the conduct of the appellant, or

15 (b) that an application for a licence to which the appeal relates has been abandoned,

it may serve on the appellant a notice in writing stating that it is of that opinion and requiring the appellant, within a period specified in the notice (being not less than 14 or more than 28 days from the date of service of the notice) to make a submission in writing to it as to why the appeal should not be treated as having been withdrawn.

20 (2) At any time after the expiration of the period specified in a notice under *subparagraph (1)*, the Appeal Board may, after considering any submissions made to it pursuant to that subparagraph—

25 (a) declare that the appeal is and, where appropriate, the application under *section 31* for a licence also is to be treated as having been withdrawn, or

(b) determine the appeal.

30 (3) Where under *subparagraph (2)(a)* the Appeal Board declares that an appeal or application referred to in that subparagraph is to be treated as having been withdrawn, then—

(a) the appeal is deemed to have been withdrawn and, accordingly, shall not be determined by the Appeal Board, or

(b) notwithstanding any previous decision relating to the application, a licence shall not be issued as a result of it,

35 as the case may be.

SCHEDULE 6

PROVISIONS APPLICABLE TO ADMINISTRATION OF PROPERTY SERVICES
COMPENSATION FUND

1. The Authority is deemed to hold on trust all moneys paid to the Fund and shall open and maintain a separate account for such moneys. 5
2. The Authority may invest moneys of the Fund in securities in which trustees are authorised by law to invest trust funds.
3. The Authority may borrow for the Fund and, for the purpose of giving security in respect of such borrowing, may charge investments of the Fund. 10
4. The Authority may insure against any risk relating to the Fund.
5. The following shall be paid into the Fund—
 - (a) all appropriate contributions,
 - (b) all interest, dividends and other income and accretions of capital arising from the investment of the Fund or any part of it, 15
 - (c) the proceeds of any realisation of any investments of the Fund,
 - (d) all moneys borrowed for the purposes of the Fund, 20
 - (e) all moneys received by the Authority under any insurance effected by the Authority under *paragraph 4* and
 - (f) any other moneys which may belong to or accrue to the Fund or be received by the Authority in respect of it (including any moneys payable by virtue of the imposition of a major sanction on a licensee which falls within *paragraph (c)* of the definition of “major sanction” in *section 2(1)*). 25
6. The following shall be paid out of the Fund—
 - (a) costs, charges and expenses incurred in maintaining, protecting, administering and applying the Fund, 30
 - (b) premiums on any insurance effected by the Authority under *paragraph 4*,
 - (c) repayments of moneys borrowed by the Authority for the Fund and payments of interest on such moneys, 35
 - (d) payments of any grants,
 - (e) costs, charges and expenses incurred by the Authority under *Part 9* or under this Schedule,
 - (f) costs, charges and expenses incurred by the Authority in enforcing compliance with the regulations made under *section 92* prescribing contributions to the Fund and 40

ascertaining whether those regulations have been complied with, and

(g) other sums properly payable out of the Fund.

SCHEDULE 7

MODIFICATIONS OF THIS ACT IN RELATION TO RELEVANT PERSONS

1. Except as provided otherwise in this Schedule, *sections 30 to 37, 40 and 41, paragraph (d) of the definition of “material matter” in section 42(4), sections 46, 53, 54, 77 to 81, 86 and 95 to 97 and paragraph 14 (except clauses (b), (c) and (d)) of Schedule 5* shall not have effect in relation to relevant persons. 5

2. In *section 2(1)*—

(a) in the definitions of “accounting records”, “advised letting value”, “advised market value”, “bank”, “business”, “client”, “client account”, “client moneys”, “financial services”, “improper conduct”, “investigation report”, “minor sanction”, “professional indemnity insurance” and “relevant price range”, any reference to a licensee is a reference to a relevant person, and 10
15

(b) in the definition of “major sanction”—

(i) any reference to a licensee is a reference to a relevant person,

(ii) the reference in *paragraph (a)* of that definition to the revocation of a licence is a reference to the prohibition of the relevant person from providing a property service in the State, 20

(iii) the reference in *paragraph (b)* of that definition to the suspension for a specified period of a licence is a reference to a prohibition of the relevant person from providing a property service in the State for a specified period, and 25

(iv) *paragraph (c)* is deleted.

3. *Section 2* is amended by substituting the following for *subsection (2)*: 30

“(2) For the purposes of this Act, a property service shall be regarded as being provided in the State if the property service is provided by—

(a) a relevant person established in the State and whether or not— 35

(i) the client concerned is ordinarily resident in the State, or

(ii) the property concerned is located in the State,

(b) a relevant person who is an individual physically in the State— 40

(i) where the client concerned is ordinarily resident in the State, and

(ii) whether or not the property concerned is located in the State,

or

5 (c) in the case of a relevant person which is not an individual, any principal officer, employee or agent of the relevant person who is both an individual and physically in the State—

(i) where the client concerned is ordinarily resident in the State, and

10 (ii) whether or not the property concerned is located in the State.”.

4. In *section 2(5)* and *(6)*, any reference to a licensee or former licensee is a reference to a relevant person or former relevant person respectively.

15 5. In *section 11(1)* and *(2)(d), (g), (h), (i), (j)* and *(m)*, any reference to a licensee is a reference to a relevant person.

6. In *section 19(7), (10)* and *(11)*, any reference to a licensee is a reference to a relevant person.

20 7. *Section 29(1)* is amended by deleting “unless the person is the holder of a licence which is in force in respect of that property service” and substituting “unless the person is a relevant person and that property service is the corresponding property service within the meaning of *section 82*.”.

8. In *section 38*—

25 (a) any reference to a licensee is a reference to a relevant person,

(b) any reference to a licence is a reference to a relevant authorisation, and

30 (c) any reference to a licensee’s registration number is a reference to the number (if any) assigned to the relevant person or the relevant person’s relevant authorisation which distinguishes that relevant person from any other relevant person holding a relevant authorisation from the same competent authority as the first-mentioned relevant
35 authorisation is held.

9. *Section 39* is amended—

(a) by substituting the following for *subsection (3)*:

40 “(3) Subject to *subsection (4)*, where a relevant person is convicted of an offence under *subsection (2)*, the court may, after having regard to the nature of the offence and the circumstances in which it was committed, order that the relevant person be prohibited (which may be a permanent prohibition, a prohibition for a specified period or a prohibition subject to specified conditions) from providing
45 any property service or a particular class of property service.”,

and

- (b) in *subsection (5)*, by inserting “, a relevant authorisation within the meaning of *section 82* and a duplicate of such a relevant authorisation” after “a licence”.
10. In *section 42*—
- (a) any reference to a licensee is a reference to a relevant person, and 5
- (b) any reference to a licence is a reference to a relevant authorisation.
11. In *section 43(1)*, any reference to a licensee is a reference to a relevant person. 10
12. In *sections 44* and *45*, any reference to a licensee is a reference to a relevant person.
13. In *section 47*, any reference to a licensee is a reference to a relevant person.
14. (1) In *section 48(1)* and (2), any reference to a licensee is a reference to a relevant person. 15
- (2) *Section 48* is amended—
- (a) by substituting the following for *subsection (4)*:
- “(4) Subject to *subsection (5)*, where a relevant person is convicted summarily of an offence under *subsection (1)* or (2), the court may, after having regard to the nature of the offence and the circumstances in which it was committed, order that the relevant person be prohibited (which may be a permanent prohibition, a prohibition for a specified period or a prohibition subject to specified conditions) from providing any property service or a particular class of property service.”. 20 25
- and
- (b) by substituting the following for *subsection (6)*:
- “(6) Subject to *subsection (7)*, where a relevant person is convicted on indictment of an offence under *subsection (1)* or (2), the court shall order that the relevant person be permanently prohibited from providing any property service.”. 30
15. In *section 49*— 35
- (a) any reference to a licensee is a reference to a relevant person, and
- (b) any reference to a former licensee is a reference to a former relevant person.
16. In *sections 50* to *52*, any reference to a licensee is a reference to a relevant person. 40
17. In *section 55*—
- (a) any reference to a licensee is a reference to a relevant person,

(b) any reference to a former licensee is a reference to a former relevant person, and

(c) the reference in *paragraph (b) of subsection (1)* to the revocation or suspension of a licence is a reference to the prohibition of the relevant person from providing a property service or from providing a property service for a specified period respectively.

18. In *Part 6*, any reference to a licensee is a reference to a relevant person.

19. In *Part 7*—

(a) any reference to a licensee is a reference to a relevant person, and

(b) any reference in *section 64* to the suspension of a licence is a reference to a prohibition of the relevant person from providing a property service in the State, whether for a period, or until the occurrence of an event, referred to in that section.

20. *Section 66* is amended—

(a) by substituting the following for *subsection (18)*:

“(18) Subject to *subsection (19)*, where a relevant person is convicted summarily of an offence under *subsection (17)*, the court may, after having regard to the nature of the offence and the circumstances in which it was committed, order that the relevant person be prohibited (which may be a permanent prohibition, a prohibition for a specified period or a prohibition subject to specified conditions) from providing any property service or a particular class of property service.”,

and

(b) by substituting the following for *subsection (20)*:

“(20) Subject to *subsection (21)*, where a relevant person is convicted on indictment of an offence under *subsection (17)*, the court shall order that the relevant person be permanently prohibited from providing any property service.”.

21. In *section 87*, any reference to a licensee is a reference to a relevant person.

22. *Section 91* is amended by substituting the following for *subsection (2)*:

“(2) Subject to *subsection (3)*, where a relevant person is convicted of an offence under *subsection (1)*, the court may, after having regard to the nature of the offence and the circumstances in which it was committed, order that the relevant person be prohibited (which may be a permanent prohibition, a prohibition for a specified period or a prohibition subject to specified conditions) from providing any property service or a particular class of property service.”.

23. In *section 92(1)(c)* and *(f)*, any reference to a licensee is a reference to a relevant person.

24. In *Schedule 2*—

- (a) any reference to a licensee (except in *paragraph 1(k)*) is a reference to a relevant person, and 5
- (b) the reference in *paragraph 1(a)* to the registration number of a licensee is a reference to the number (if any) assigned to the relevant person or the relevant person's relevant authorisation which distinguishes that relevant person from any other relevant person holding a relevant authorisation from the same competent authority as the first-mentioned relevant authorisation is held. 10

25. *Schedule 2* is amended, in *paragraph 1*—

- (a) in *clause (n)*, by substituting “thereon,” for “thereon, and”,
- (b) in *clause (o)*, by substituting “licensee,” for “licensee.”, 15 and
- (c) by inserting the following new clauses after *clause (o)*:
 - “(p) whether or not the relevant person is, in the provision of the property service, subject to a scheme of protection for clients similar to that afforded by the Fund to clients of a licensee in the provision of a property service, 20
 - (q) details of the professional indemnity insurance cover available to the relevant person in the provision of the property service, 25
 - (r) particulars of the competent authority which issued the relevant authorisation held by the relevant person, and
 - (s) particulars of where the conditions (if any) subject to which the relevant person may provide the corresponding property service are available for inspection by a client or potential client of the relevant person.”. 30

26. *Schedule 5* is amended, in *paragraph 21*, by substituting the following for *clause (a)*: 35

- “(a) the complaint concerned (if any) and any other information received in that regard from the complainant.”.

CONSEQUENTIAL AMENDMENTS TO OTHER ENACTMENTS

Amendment of section 35 of Sea Fisheries Act 1952.

5 1. Section 35 of the Sea Fisheries Act 1952 is amended by substituting the following for subsection (2):

10 “(2) This section shall not apply to any person holding a licence within the meaning of *section 2(1)* of the *Property Services (Regulation) Act 2010*, or a relevant authorisation within the meaning of *section 82* of that Act, in respect of a service which falls, or substantially falls, as the case requires, within *paragraph (a)* of the definition of ‘property service’ in that first-mentioned section.”.

Amendment of section 8 of Pawnbrokers Act 1964.

15 2. Section 8 (inserted by section 153 of the Consumer Credit Act 1995) of the Pawnbrokers Act 1964 is amended, in subsection (3), in paragraph (e), by substituting the following for subparagraph (v):

20 “(v) a licence within the meaning of *section 2(1)* of the *Property Services (Regulation) Act 2010*, or a relevant authorisation within the meaning of *section 82* of that Act, in respect of a service which falls, or substantially falls, as the case requires, within *paragraph (a)* of the definition of ‘property service’ in that first-mentioned section.”.

25 Amendment of section 30 of Pawnbrokers Act 1964.

30 3. Section 30(1) of the Pawnbrokers Act 1964 is amended by inserting “and who is the holder of a licence within the meaning of *section 2(1)* of the *Property Services (Regulation) Act 2010*, or a relevant authorisation within the meaning of *section 82* of that Act, in respect of a service which falls, or substantially falls, as the case requires, within *paragraph (a)* of the definition of ‘property service’ in that first-mentioned section” after “Minister”.

Amendment of section 13 of Firearms Act 1964.

35 4. Section 13(2) of the Firearms Act 1964 is amended by inserting “(being the holder of a licence within the meaning of *section 2(1)* of the *Property Services (Regulation) Act 2010*, or a relevant authorisation within the meaning of *section 82* of that Act, in respect of a service which falls, or substantially falls, as the case requires, within *paragraph (a)* of the definition of ‘property service’ in that first-mentioned section)” after “auctioneer”.

Amendment of section 44 of Bankruptcy Act 1988.

45 5. Section 44(4)(b) of the Bankruptcy Act 1988 is amended by substituting “*section 53(1)* of the *Property Services (Regulation) Act 2010*” for “*section 7(1)(a)* of the Auctioneers and House Agents Act, 1967”.

Substitution of section 32 of Building Societies Act 1989.

6. The Building Societies Act 1989 is amended by substituting the following for section 32:

- “Services relating to land.
- 32.—(1) Subject to section 36, a building society may provide services relating to land. 5
- (2) (a) Regulations may be made by the Minister, after consultation with the Central Bank and Financial Services Authority of Ireland, in respect of the provision by societies or their subsidiaries of services relating to land. 10
- (b) Without prejudice to the generality of paragraph (a), regulations under this subsection may include provisions for— 15
- (i) the protection of persons for whom the services relating to land are provided by societies from conflicts of interest that might otherwise arise in connection with the provision of such services; 20
- (ii) securing that adequate compensation is available to such persons in respect of negligence, fraud or other dishonesty on the part of officers or employees of societies in connection with the provision of such services; 25
- (iii) the extent to which and the manner in which such services would require the involvement of persons with relevant qualifications and experience; 30
- (iv) the class or classes of persons to whom such services may be provided; 35
- (v) the restriction of the power to provide such services to societies of a prescribed class or classes; or
- (vi) amending, restricting or extending the definition of such services that may be provided under this section. 40
- (3) No employee of a society, a subsidiary or other associated body of which provides services relating to land under this section, shall act as agent for the subsidiary or body. 45
- (4) (a) A society or a subsidiary of a society providing services relating to land shall maintain separate accounting records 50

and prepare accounts in respect of each year showing—

- (i) the costs of providing each service, and
- (ii) the income accruing from the charges made for the services,

and shall so provide and charge for each service that the income from the provision of the service is not less than sufficient to meet all costs properly attributable to the provision of the service taking one year with another.

- (b) A statement attesting the correctness of the accounts prepared in accordance with paragraph (a) and confirming that such accounts have not been distorted as a result of any arrangement which would affect the apportionment of costs and income associated with the provision of each service and that such apportionments as have been made have been properly made shall be signed by the chief executive and 2 directors and attached to the annual accounts.

(5) In this section, ‘services relating to land’ means any service relating to the acquisition, disposition, management or development of land (including valuation, surveying, the collection of rent and the removal and storage of moveable property) or other services of a similar nature (including advisory services) that appear to the Central Bank and Financial Services Authority of Ireland to be services relating to such matters, but, and without prejudice to the generality of *section 3* of the *Property Services (Regulation) Act 2010*, does not include the provision of a property service within the meaning of *section 2(1)* of that Act.”.

40 **Amendment of section 2 of Casual Trading Act 1995.**

7. Section 2 of the Casual Trading Act 1995 is amended, in subsection (2), by substituting the following for paragraph (a):

- “(a) selling by auction (other than by Dutch auction) by the holder of a licence within the meaning of *section 2(1)* of the *Property Services (Regulation) Act 2010*, or a relevant authorisation within the meaning of *section 82* of that Act, in respect of a service which falls, or substantially falls, as the case requires, within *paragraph (a)* of the definition of ‘property service’ in that first-mentioned section.”.