



SEANAD ÉIREANN

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

LEASUITHE COISTE COMMITTEE AMENDMENTS

SEANAD ÉIREANN

AN BILLE UM SHEIRBHÍSÍ MAOINE (RIALÁIL) 2009 —AN COISTE

PROPERTY SERVICES (REGULATION) BILL 2009 —COMMITTEE STAGE

*Leasuithe
Amendments*

* *Government amendments are distinguished by an asterisk.*

SECTION 1

* **1.** In page 10, subsection (3), lines 8 to 14, to delete paragraphs (c) and (d) and substitute the following:

“(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

(d) in respect of *section 28(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 28(1)* in respect of different property services.”.

SECTION 2

* **2.** In page 10, subsection (1), to delete lines 20 to 27 and substitute the following:

““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—

(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

(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;”.

* **3.** In page 10, subsection (1), to delete lines 28 to 35 and substitute the following:

““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

[SECTION 2]

(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;”.

* 4. In page 10, subsection (1), line 42, after “contribution” to insert “(if any)”.

* 5. In page 13, subsection (1), line 28, after “44,” to insert “45(1) or (2)#,”.

[# Note: This is a reference to the section proposed to be inserted by amendment No. 51.]

* 6. In page 13, subsection (1), between lines 35 and 36, to insert the following:

“ “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,

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

* 7. In page 16, subsection (1), to delete lines 29 to 39 and substitute the following:

“ “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,

(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,

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

(iv) an independent contractor;”.

8. In page 16, subsection (1), to delete lines 37 to 39.

—*Senators Dominic Hannigan, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Ivana Bacik.*

* 9. In page 17, subsection (1), to delete lines 1 to 4 and substitute the following:

[SECTION 2]

“ “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;”.

* **10.** In page 18, subsection (5), line 13, to delete “any” and substitute “all”.

* **11.** In page 18, between lines 18 and 19, to insert the following subsection:

“(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.”.

SECTION 3

* **12.** In page 18, paragraph (j), line 42, to delete “Minister of State” and substitute “Minister of the Government”.

* **13.** In page 19, paragraph (m), line 11, to delete “and” and substitute the following:

“(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,

(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,

and”.

* **14.** In page 19, between lines 14 and 15, to insert the following subsection:

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

[# Note: This is a reference to the paragraph proposed to be inserted by amendment No. 13.]

SECTION 4

* **15.** In page 19, before section 4, to insert the following new section:

[SECTION 4]

“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
- (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.

(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—

- (a) who is licensed as a property services employer to provide the same property service, and
- (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.

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

- (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,
- (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.”.

SECTION 9

* 16. In page 20, lines 27 to 29, to delete subsection (3) and substitute the following:

“(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.

(4) Of the members of the Authority—

[SECTION 9]

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

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

* 17. In page 20, between lines 36 and 37, to insert the following subsection:

“(6) (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.

(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 11(3)*.

(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 11(3)*.

(d) Notwithstanding *section 11(2)*, the quorum for the first meeting of the Authority referred to in *section 11(3)* shall be 7 in so far as that meeting relates to selecting the 5 members of the Authority referred to in *paragraph (a)*.”.

* 18. In page 22, lines 6 to 9, to delete subsection (15) and substitute the following:

“(15) (a) A member of the Authority who, pursuant to *subsection (6)#*, holds office for a period of 3 years from the date of his or her appointment shall, for the purposes of *subsection (6)*, 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 (5)*.

(b) A person who occasions or fills a vacancy shall, for the purposes of *subsection (6)*, 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.”.

[# Note: This is a reference to the subsection proposed to be inserted by amendment No. 17.]

SECTION 18

* 19. In page 29, subsection (3), line 15, to delete “the *Iris Oifigiúil* specifying” and substitute “*Iris Oifigiúil*”.

* 20. In page 29, subsection (3)(a), line 16, before “the” to insert “identifying or specifying”.

* 21. In page 29, subsection (3)(b), line 17, before “the” where it firstly occurs to insert “specifying”.

* 22. In page 29, subsection (3)(c), line 19, before “the” where it firstly occurs to insert “specifying”.

* 23. In page 29, subsection (6), line 34, to delete “the *Iris Oifigiúil* specifying” and substitute “*Iris Oifigiúil*”.

[SECTION 18]

- * 24. In page 29, subsection (6)(a), line 35, before “the” where it firstly occurs to insert “identifying or specifying”.
- * 25. In page 29, subsection (6)(b), line 38, before “the” where it firstly occurs to insert “specifying”.
- * 26. In page 29, subsection (6)(c), line 40, before “the” where it firstly occurs to insert “specifying”.
- 27. In page 30, lines 8 to 17, to delete subsection (10) and substitute the following:

“(10) A licensee who fails to comply with a code of practice is guilty of an offence.”.

—*Senators Dominic Hannigan, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Ivana Bacik.*

SECTION 29

- * 28. In page 37, subsection (9)(b), line 25, to delete “of” and substitute “in”.

SECTION 30

- * 29. In page 37, subsection (2), lines 44 to 48, to delete paragraph (b) and substitute the following:

“(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. In page 38, subsection (4), line 19, to delete “In this section” and substitute “Subject to *subsection (5)#*, in this section”.

[# *Note: This is a reference to the subsection proposed to be inserted by amendment No. 31.*]

- * 31. In page 38, between lines 24 and 25, to insert the following subsection:

“(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 31(3)(f)* or *(i)(iii)* is applicable in the case of that partnership.”.

SECTION 31

- * 32. In page 39, subsection (3)(i)(ii), line 32, before “any” to insert “subject to *subsection (4)#*,”.

[# *Note: This is a reference to the subsection proposed to be inserted by amendment No. 33.*]

- * 33. In page 39, between lines 39 and 40, to insert the following subsection:

“(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.”.

[SECTION 31]

- * 34. In page 39, subsection (4), line 40, to delete “licence is issued” and substitute the following:

“person is licensed as a property services employer”.

- * 35. In page 39, subsection (4)(a), line 46, after “corporate” to insert the following:

“(whether or not any of the principal officers also holds a licence)”.

- * 36. In page 40, subsection (4)(b)(i), line 10, after “partnership” to insert the following:

“(whether or not any of the principal officers also holds a licence)”.

- * 37. In page 40, subsection (4)(b)(ii), line 18, after “partnership” to insert the following:

“(whether or not any of the principal officers also holds a licence)”.

SECTION 35

- * 38. In page 42, subsection (4), lines 39 to 43, to delete paragraph (b) and substitute the following:

“(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.”.

- * 39. In page 43, between lines 28 and 29, to insert the following subsection:

“(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.”.

SECTION 37

- * 40. In page 45, lines 11 to 15, to delete subsection (7) and substitute the following:

“(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.”.

SECTION 38

- * 41. In page 45, subsection (3), line 28, to delete “, or all the licences.”.

[SECTION 40]

SECTION 40

- * 42. In page 46, subsection (1), line 2, to delete “the licensee’s licence” and substitute the following:

“the licence of the licensee or, if the licensee holds 2 or more licences, all those licences”.

- * 43. In page 46, subsection (1)(a), line 4, after “expires” to insert “or all those licences expire, as the case may be”.

SECTION 41

- * 44. In page 47, subsection 4(b), line 13, after “State)” to insert the following:

“other than an offence prescribed for the purposes of this paragraph by regulations made under *section 90*”.

SECTION 43

- * 45. In page 47, subsection (1), line 29, to delete “3 working days” and substitute “7 working days”.

- * 46. In page 47, subsection (1), line 30, to delete “first”.

- * 47. In page 47, subsection (2)(b), line 44, to delete “3 working days” and substitute “7 working days”.

- * 48. In page 48, subsection (3), line 9, to delete “3 working days” and substitute “7 working days”.

- * 49. In page 48, lines 17 to 20, to delete subsection (4) and substitute the following:

“(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
- (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.”.

SECTION 44

- * 50. In page 48, line 21, to delete “Where a licensee provides a property service” and substitute the following:

“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)”.

[SECTION 45]

SECTION 45

* 51. In page 48, before section 45, but in Part 4, to insert the following new section:

“Professional indemnity insurance.

45.—(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.

(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.

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

[# *Note: This is a reference to the section proposed to be inserted by amendment No. 15.*]

SECTION 46

* 52. In page 50, subsection (4), line 15, to delete “, or all the licences,”.

SECTION 47

* 53. In page 52, subsection (7), line 27, to delete “or under *paragraph (d)* of that subsection,”.

* 54. In page 52, subsection (7), line 28, after “paragraph” to insert “, or under *paragraph (d)* of that subsection,”.

SECTION 53

* 55. In page 54, lines 35 to 48, to delete subsection (1) and substitute the following:

“Power of Authority to deal with documents.

53.—(1) Where—

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

[SECTION 53]

- (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.”.

SECTION 59

- * 56. In page 57, line 31, to delete “other than by auction,” and substitute the following:

“, 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)”.

SECTION 60

57. In page 58, subsection (4), lines 15 and 16, to delete all words from and including “which” in line 15 down to and including “persons” in line 16.

—*Senators Dominic Hannigan, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Ivana Bacik.*

58. In page 58, subsection (4), line 18, after “both” to insert the following:

“and on conviction on indictment to a fine not exceeding €100,000 or imprisonment for a term not exceeding 3 years or both”.

—*Senators Dominic Hannigan, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Ivana Bacik.*

SECTION 63

- * 59. In page 61, between lines 39 and 40, to insert the following subsections:

“(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.

[SECTION 63]

(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 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."

SECTION 64

* **60.** In page 65, subsection (18), line 19, to delete “, or all the licences,”.

SECTION 75

* **61.** In page 74, subsection (4)(a), line 39, to delete “€5,000,000” and substitute “€2,000,000”.

SECTION 76

* **62.** In page 75, subsection (3), lines 25 and 26, to delete paragraph (a) and substitute the following:

“(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,”.

SECTION 84

* **63.** In page 81, subsection (7), line 14, to delete “has” and substitute “have”.

SECTION 89

* **64.** In page 83, subsection (2), line 44, to delete “, or all the licences,”.

SECTION 90

* **65.** In page 85, subsection (1)(a), line 13, after “Authority” to insert the following:

“and the conditions (if any) attaching to such classes of licences”.

* **66.** In page 85, subsection (1)(e), line 32, after “insurance” to insert the following:

“(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)”.

[SECTION 90]

* 67. In page 86, between lines 10 and 11, to insert the following subsection:

“(3) The Authority shall not prescribe an offence for the purposes of *paragraph (b)* of the definition of “material matter” in *section 41(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.”.

SECTION 93

“Interpretation of transitional provisions.

* 68. In page 87, before section 93, to insert the following new section:

93.—In the transitional provisions—

“Act of 1947” means the Auctioneers and House Agents Act 1947;

“final determination”, in relation to an application under *section 30* referred to in *section 94(1)(b)#* made by a person concerned for a licence to provide a property service concerned, means—

- (a) the issue under *section 31(1)* by the Authority of a licence to the person concerned to provide the property service concerned,
- (b) the refusal under *section 31(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 31(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 74*, or
- (d) if there is an appeal to the Appeal Board against a refusal referred to in *paragraph (c)*—
 - (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*,
 - (iii) the taking effect in accordance with *section 74* 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*,
 - (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*,

as applicable;

“person concerned” has the meaning given to it by *section 94(1)#*;

[SECTION 93]

“property service concerned” has the meaning given to it by *section 94(1)#*;

“transitional provisions” means this section and *sections 94# and 95##*.”.

[# *Note: This is a reference to the section proposed to be inserted by amendment No. 69.*]

[## *Note: This is a reference to the section proposed to be inserted by amendment No. 70.*]

* **69.** In page 87, before section 93, to insert the following new section:

“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.

94.—(1) Subject to *subsection (3)* and *section 95#*, *sections 28(1)* and *84* 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—

- (a) the person concerned was lawfully providing the property service concerned before the commencement of *section 28(1)* in respect of that property service, and
- (b) the person concerned has, before that commencement, made an application under *section 30* for a licence to provide the property service concerned and there has not been a final determination of the application before that commencement.

(2) Where *subsection (1)* has not ceased to apply to a person concerned and a property service concerned, the statutory provisions 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 28(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 95#*, *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 30* 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 6(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 30* 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 28(1)* in respect of the property service concerned, and irrespective of whether the licence is issued before, on or after that commencement.”.

[SECTION 93]

[# Note: This is a reference to the section proposed to be inserted by amendment No. 70.]

* 70. In page 87, before section 93, to insert the following new section:

“Modification of operation of *section 94(1)*# in specified circumstances.

95.—(1) Where—

(a) a person concerned (in this subsection referred to as “the first-mentioned person concerned”)—

(i) would, but for *section 94(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 28(1)* in respect of that property service, and

(ii) has, before that commencement, made an application under *section 30* 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 94(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 28(1)* in respect of that property service, and

(iii) has, before that commencement, made an application under *section 30* to be licensed as referred to in *subparagraph (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—

(i) *section 94(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

(ii) the application referred to in *paragraph (b)(iii)* shall be deemed to have been withdrawn by the second-mentioned person concerned.

(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)*.

(3) Where—

(a) a person concerned (in this subsection referred to as “the first-mentioned person concerned”)—

[SECTION 93]

- (i) would, but for *section 94(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 28(1)* in respect of that property service, and
 - (ii) has not, before that commencement, made an application under *section 30* for a licence to provide that service as a property services 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 94(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 28(1)* in respect of that property service, and
 - (iii) has, before that commencement, made an application under *section 30* to be licensed as referred to in *subparagraph (ii)*,
- then—
- (i) *section 94(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
 - (ii) the application referred to in *paragraph (b)(iii)* shall be deemed to have been withdrawn by the second-mentioned person concerned.”.

[*Note: Acceptance of this amendment involves the deletion of section 93 of the Bill.*]

[*# Note: This is a reference to the section proposed to be inserted by amendment No. 69.*]

SCHEDULE 3

* 71. In *paragraph 94*, to delete line 21, and substitute the following:

- “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

[SCHEDULE 3]

- (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.”.

SCHEDULE 5

- * 72. In page 106, to delete lines 28 and 29, and substitute the following:

“28. Sittings of the Appeal Board shall be held otherwise than in public unless

—

- (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.”.

SCHEDULE 7

- * 73. In page 110, line 5, to delete “*sections 51, 52, 75 to 79, 84 and 93*” and substitute the following:

“*sections 45#, 51, 52, 75 to 79, 84 and 93## to 95####*”.

[# Note: This is a reference to the section proposed to be inserted by amendment No. 51.]

[## Note: This is a reference to the section proposed to be inserted by amendment No. 68.]

[### Note: This is a reference to the section proposed to be inserted by amendment No. 70.]

- * 74. In page 110, line 34, to delete “a person” and substitute “a relevant person”.

- * 75. In page 111, to delete lines 16 to 33, and substitute the following:

“7. *Section 28(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 80*.”.

- * 76. In page 112, to delete lines 8 to 10, and substitute the following:

“9. *Section 38* is amended—

- (a) by substituting the following for *subsection (3)*:

[SCHEDULE 7]

“(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 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 80* and a duplicate of such a relevant authorisation” after “a licence”.

* 77. In page 112, line 18, to delete “*Part 4*” and substitute “*sections 43 and 44*”.

* 78. In page 112, to delete lines 20 and 21, and substitute the following:

“13. In *section 45*, any reference to a licensee is a reference to a relevant person.

14. (1) In *section 46(1)* and (2), any reference to a licensee is a reference to a relevant person.

(2) *Section 46* 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.”,

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.”.

* 79. In page 112, to delete lines 39 and 40, and substitute the following:

“17. In *Part 6*, any reference to a licensee is a reference to a relevant person.

18. In *Part 7*—

(a) any reference to a licensee is a reference to a relevant person, and

(b) any reference in *section 62* 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.”.

[SCHEDULE 7]

* **80.** In page 112, between lines 40 and 41, to insert the following:

“18. *Section 64* 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.”.”.

* **81.** In page 112, between lines 42 and 43, to insert the following:

“19. *Section 89* 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.”.”.

* **82.** In page 113, to delete lines 16 to 23 and substitute the following:

“ “(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,

(q) details of the professional indemnity insurance cover available to the relevant person in the provision of the property service,

(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.”.”.

SCHEDULE 8

* **83.** In page 114, line 12, after “that” to insert “first-mentioned”.

* **84.** In page 114, line 23, after “that” to insert “first-mentioned”.

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* **85.** In page 114, line 31, after “that” to insert “first-mentioned”.

* **86.** In page 114, line 38, after “that” to insert “first-mentioned”.

* **87.** In page 116, line 50, after “that” to insert “first-mentioned”.