



DÁIL ÉIREANN

AN BILLE UM CHEARTAS COIRIÚIL (SCIÚRADH AIRGID AGUS MAOINIÚ SCEIMHLITHEOIREACHTA) 2009 CRIMINAL JUSTICE (MONEY LAUNDERING AND TERRORIST FINANCING) BILL 2009

LEASUITHE COISTE COMMITTEE AMENDMENTS

DÁIL ÉIREANN

AN BILLE UM CHEARTAS COIRIÚIL (SCIÚRADH AIRGID AGUS MAOINIÚ SCEIMHLITHEOIREACHTA) 2009 —ROGHCHOISTE

CRIMINAL JUSTICE (MONEY LAUNDERING AND TERRORIST FINANCING) BILL 2009 —SELECT COMMITTEE

Leasuithe Amendments

SECTION 2

1. In page 10, subsection (1), to delete lines 21 to 24 and substitute the following:

“ “ Third Money Laundering Directive” means Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing¹, as amended by the following:

- (a) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC²;
- (b) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC³.”.

¹OJ L 309, 25.11.2005, p.15

²OJ L 319, 5.12.2007, p.1

³OJ L 267, 10.10.2009, p.7

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 7

2. In page 12, subsection (3)(b), line 2, to delete “14” and substitute “20”.

—Charles Flanagan.

SECTION 8

3. In page 12, lines 28 to 34, to delete subsection (1).

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

4. In page 12, lines 35 to 39, to delete subsection (2) and substitute the following:

“(1) A person who, in a place outside the State, engages in conduct that constitutes an offence under the law of that place and that would, if the conduct occurred in the State, constitute an offence under *section 7* commits an offence if any of the following circumstances apply:”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

[SECTION 8]

5. In page 13, subsection (3)(b), line 24, to delete “14” and substitute “20”.
—Charles Flanagan.

SECTION 9

6. In page 13, subsection (2)(b), line 41, to delete “14” and substitute “20”.
—Charles Flanagan.

SECTION 10

7. In page 14, subsection (2)(b), line 5, to delete “14” and substitute “20”.
—Charles Flanagan.

8. In page 14, subsection (3), line 6, to delete “section 7” and substitute “section 7(1)”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 11

9. In page 14, subsection (1), line 10, to delete “8(1)(a)” and substitute “8”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.
10. In page 14, subsection (2), line 18, to delete “8(1)(a)” and substitute “8”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.
11. In page 14, subsection (3), line 31, to delete “8(1)(a)” and substitute “8”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.
12. In page 15, subsection (7)(c), line 24, to delete “section 7” and substitute “section 7(1)”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 17

13. In page 17, subsection (2), line 26, to delete “21 days” and substitute “28 days”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.
14. In page 17, subsection (5)(b), line 44, to delete “5” and substitute “10”.
—Charles Flanagan.

SECTION 24

15. In page 20, subsection (1), between lines 27 and 28, to insert the following:

“ “Electronic Money Directive” means Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC⁴;”.

⁴OJ L 267, 10.10.2009, p.7

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

- 16.** In page 20, subsection (1), to delete lines 34 to 44 and substitute the following:

“(a) an undertaking that carries out one or more of the activities listed in points 2 to 12, 14 and 15 of Annex I to the Recast Banking Consolidation Directive (the text of which is set out for convenience of reference in *Schedule 2*) or foreign exchange services, but does not include an undertaking—

(i) that does not carry out any of the activities listed in those points other than one or more of the activities listed in point 7, and

(ii) whose only customers (if any) are members of the same group as the undertaking,”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

- 17.** In page 21, subsection (1), between lines 7 and 8, to insert the following:

“(d) an investment business firm within the meaning of the Investment Intermediaries Act 1995,”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

- 18.** In page 21, subsection (1), between lines 34 and 35, to insert the following:

“ “payment service” has the same meaning as in the Payment Services Directive;

“Payment Services Directive” means Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC⁵.”.

⁵OJ L 319, 5.12.2007, p.1

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

- 19.** In page 22, subsection (1), to delete lines 8 to 11 and substitute the following:

“ “Recast Banking Consolidation Directive” means 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)⁶, as amended by the following:

(a) the Payment Services Directive;

(b) the Electronic Money Directive;”.

⁶OJ L 177, 30.6.2006, p.1

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 33

- 20.** In page 31, subsection (9)(b), line 40, to delete “5” and substitute “10”.

—Charles Flanagan.

- 21.** In page 31, subsection (10), lines 43 and 44, to delete “foreign exchange, or money transmission, services” and substitute the following:

[SECTION 33]

“either foreign exchange services or payment services, or both”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 34

- 22.** In page 33, subsection (6), lines 34 and 35, to delete “foreign exchange, or money transmission, services” and substitute the following:

“either foreign exchange services or payment services, or both”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

- 23.** In page 34, subsection (7), lines 3 to 20, to delete paragraph (d) and substitute the following:

“(d) electronic money, within the meaning of the Electronic Money Directive, where—

- (i) in a case where the electronic device concerned cannot be recharged, the monetary value that may be stored electronically on the device does not exceed €250 or, if the device cannot be used outside of the State, €500, or

- (ii) in a case where the electronic device concerned can be recharged—

- (I) the total monetary value of all amounts by which the device may be charged or recharged (or both), in any calendar year, including any initial stored value of the device on purchase if the device is purchased during the year, does not exceed €2,500, and

- (II) none, or less than €1,000, of the electronic money may be redeemed by the issuer (as referred to in Article 11 of that Directive) in that year.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 35

- 24.** In page 34, subsection (4)(b), line 46, to delete “5” and substitute “10”.

—Charles Flanagan.

SECTION 37

- 25.** In page 35, between lines 42 and 43, to insert the following subsection:

“(5) Notwithstanding *subsections (2)(a) and (4)(b)*, a credit institution may allow a bank account to be opened with it by a customer before taking the steps referred to in *subsection (1)* or seeking the approval referred to in *subsection (4)(b)*, so long as the institution ensures that transactions in connection with the account are not carried out by or on behalf of the customer or any beneficial owner concerned before taking the steps or seeking the approval, as the case may be.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

- 26.** In page 36, subsection (8)(b), line 25, to delete “5” and substitute “10”.

—Charles Flanagan.

- 27.** In page 36, subsection (9), to delete lines 42 and 43.

—Charles Flanagan.

[SECTION 37]

- 28.** In page 37, subsection (9), line 12, to delete “year” and substitute “12 months”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 38

- 29.** In page 38, subsection (2)(b), line 47, to delete “5” and substitute “10”.

—Charles Flanagan.

SECTION 40

- 30.** In page 39, subsection (1)(a)(ii), lines 15 and 16, to delete “foreign exchange, or money transmission, services” and substitute the following:

“either foreign exchange services or payment services, or both”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

- 31.** In page 39, subsection (1)(b)(ii), lines 34 and 35, to delete “foreign exchange, or money transmission, services” and substitute the following:

“either foreign exchange services or payment services, or both”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

- 32.** In page 40, subsection (1)(c)(ii), lines 5 and 6, to delete “foreign exchange, or money transmission, services” and substitute the following:

“either foreign exchange services or payment services, or both”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 41

- 33.** In page 41, before section 41, to insert the following new section:

“Interpretation
(Chapter 4).

41.—In this Chapter, a reference to a designated person includes a reference to any person acting, or purporting to act, on behalf of the designated person, including any agent, employee, partner, director or other officer of, or any person engaged under a contract for services with, the designated person.”

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

[*Acceptance of this amendment involves the deletion of section 41 of the Bill.*]

SECTION 42

- 34.** In page 42, subsection (9)(b), line 24, to delete “5” and substitute “10”.

—Charles Flanagan.

SECTION 43

- 35.** In page 42, subsection (1), line 30, after “Síochána” to insert “and Revenue Commissioners”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

- 36.** In page 42, subsection (2)(b), line 42, to delete “5” and substitute “10”.

—Charles Flanagan.

[SECTION 49]

SECTION 49

- 37.** In page 44, subsection (3)(b), line 7, to delete “5” and substitute “10”.
—Charles Flanagan.

SECTION 54

- 38.** In page 47, subsection (5), lines 21 to 23, to delete all words from and including “code” in line 21 down to and including “Section 108” in line 23 and substitute the following:

“guidelines applying in relation to the designated person that have been approved under *section 107*”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

- 39.** In page 47, subsection (8)(b), line 41, to delete “5” and substitute “10”.
—Charles Flanagan.

SECTION 55

- 40.** In page 49, subsection (10)(b), line 2, to delete “5” and substitute “10”.
—Charles Flanagan.

SECTION 56

- 41.** In page 49, subsection (2)(b), line 18, to delete “5” and substitute “10”.
—Charles Flanagan.

SECTION 57

- 42.** In page 50, subsection (4)(b), line 2, to delete “5” and substitute “10”.
—Charles Flanagan.

SECTION 58

- 43.** In page 50, subsection (3)(b), line 16, to delete “5” and substitute “10”.
—Charles Flanagan.

SECTION 59

- 44.** In page 50, subsection (5)(b), line 34, to delete “5” and substitute “10”.
—Charles Flanagan.

SECTION 63

- 45.** In page 52, subsection (2), line 35, to delete “Such measures may include” and substitute the following:

“The measures that are reasonably necessary include”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

[SECTION 63]

46. In page 52, after line 43, to insert the following subsection:

“(4) A competent authority that, in the course of monitoring a designated person under this section, acquires any knowledge or forms any suspicion that another person has been or is engaged in money laundering or terrorist financing shall report that knowledge or suspicion to the Garda Síochána and Revenue Commissioners.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 76

47. In page 56, line 13, to delete “only”.

—Joanna Tuffy.

SECTION 78

48. In page 57, subsection (1)(a), line 21, to delete “only”.

—Joanna Tuffy.

49. In page 57, subsection (1)(b), line 27, to delete “only”.

—Joanna Tuffy.

50. In page 57, subsection (3), line 43, after “oath” to insert “or affirmation”.

—Joanna Tuffy.

SECTION 87

51. In page 60, subsection (2)(b), line 35, to delete “5” and substitute “10”.

—Charles Flanagan.

SECTION 98

52. In page 70, subsection (6)(b), line 2, to delete “Part” and substitute “Chapter”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

53. In page 70, subsection (8)(b), line 11, to delete “5” and substitute “10”.

—Charles Flanagan.

SECTION 106

54. In page 74, subsection (8)(b), line 40, to delete “5” and substitute “10”.

—Charles Flanagan.

SECTION 107

55. In page 74, lines 43 to 44 and in page 75, lines 1 and 2, to delete subsection (1) and substitute the following:

“(1) The Minister may, after consulting with the Minister for Finance, approve guidelines for the purpose of guiding designated persons on the application of this Part to those designated persons.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

56. In page 75, subsection (3), lines 8 to 10, to delete all words from and including “code” in line 8 down to and including “force” in line 10 and substitute the following:

[SECTION 107]

“guidelines applying in relation to the person that have been approved by the Minister under this section and are in force”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 109

57. In page 75, subsection (2)(b), line 45, to delete “5” and substitute “10”.

—Charles Flanagan.

SECTION 112

58. In page 77, subsection (2), line 40, after “purpose,” to insert “as giving rise to civil or criminal liability or”.

—Joanna Tuffy.

SECTION 113

59. In page 77, before section 113, to insert the following new section:

“Bail Act 1997.

113.—The Schedule to the Bail Act 1997 is amended by inserting the following paragraph after paragraph 34 (inserted by section 48 of the Criminal Justice (Miscellaneous Provisions) Act 2009):

“Money
Laundering.

35.—Any offence under *Part 2 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2009*.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

60. In page 77, before section 113, to insert the following new section:

“Amendment of
Proceeds of Crime
Act 1996.

113.—The Proceeds of Crime Act 1996 is amended in section 4(1) by the substitution of “2 years” for “7 years”.

—Joanna Tuffy.

SECTION 116

61. In page 80, between lines 33 and 34, to insert the following subsection:

“(4) Section 3(1) of the Act of 1994 is amended by the insertion of the following definition—

“ ‘gift’ includes a transfer in consideration of natural love and affection or otherwise than for full commercial value, and includes the transfer by one spouse of property to another spouse, or an arrangement between spouses for the joint ownership of any property;”.

—Joanna Tuffy.

62. In page 80, between lines 33 and 34, to insert the following subsection:

“(5) Section 24 of the Act of 1994 is amended by the insertion after subsection (10) of the following subsection—

[SECTION 116]

“(11) A court may on or at any time after an application under this section direct the respondent to the application to deliver a statement of his or her income and assets, but such a statement shall not be admissible in evidence against the person for any offence other than an offence of contempt of court arising from a breach of an order under this subsection.””.

—Joanna Tuffy.

SECTION 119

63. In page 81, to delete lines 8 to 14 and substitute the following:

“(iv) money or investment instruments arising out of transactions in respect of which an offence has been committed under a provision of Part IV of the Criminal Justice Act 1994 prior to the repeal of that provision by the *Act of 2009*,

(v) money or investment instruments arising out of transactions in respect of which an offence has been committed under a provision of section 57 or 58 of the Criminal Justice Act 1994 prior to the repeal of that provision by the *Act of 2009*, or

(vi) money or investment instruments arising out of”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SCHEDULE 2

64. In page 85, to delete line 11 and substitute the following:

“4. Payment services as defined in Article 4(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market⁷.”.

⁷OJ L 319, 5.12.2007, p.1

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

65. In page 85, to delete lines 12 and 13 and substitute the following:

“5. Issuing and administering other means of payment (e.g. travellers’ cheques and bankers’ drafts) insofar as this activity is not covered by point 4.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

66. In page 85, between lines 31 and 32, to insert the following:

“15. Issuing electronic money.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.