



DÁIL ÉIREANN

BILLE AN BHAINC CEANNAIS AGUS NA BHFORAS CREIDMHEASA (RÉITEACH) (UIMH. 2), 2011 CENTRAL BANK AND CREDIT INSTITUTIONS (RESOLUTION) (NO.2) BILL 2011

LEASUITHE COISTE COMMITTEE AMENDMENTS

DÁIL ÉIREANN

BILLE AN BHAINC CEANNAIS AGUS NA BHFORAS CREIDMHEASA (RÉITEACH) (UIMH. 2), 2011 —ROGHCHOISTE

CENTRAL BANK AND CREDIT INSTITUTIONS (RESOLUTION) (NO.2) BILL 2011 —SELECT COMMITTEE

*Leasuithe
Amendments*

SECTION 2

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

““Assessor” has the meaning given by *section 29**.”

—An tAire Airgeadais.

[*Note: This is a reference to the section proposed to be inserted by amendment No. 47.]

2. In page 11, between lines 5 and 6, to insert the following subsection:

“(6) A reference in this Act to the preservation of the financial position of an authorised credit institution shall be taken to include the need for that credit institution to comply with such one or more of the following as apply to it—

- (a) an order made in relation to it under this Act,
- (b) a requirement imposed on it under *section 21**,
- (c) the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006).”

—An tAire Airgeadais.

[*Note: This is a reference to the section proposed to be inserted by amendment No. 28.]

SECTION 4

3. In page 11, between lines 17 and 18, to insert the following:

“(a) to protect the State and the taxpayer from the social and economic impact of an authorised credit institution failing,”

—Pearse Doherty.

SECTION 5

4. In page 12, subsection (3), line 12, to delete “endeavour to”.

—Pearse Doherty.

SECTION 6

5. In page 12, before section 6, to insert the following new section:

[No. 20 of 2011]

[28 September, 2011]

[SECTION 6]

“6.—In performing a function or exercising a power under this Act, the Governor shall give precedence to his responsibilities to the State and his obligations under laws of the State.”.

—Pearse Doherty.

SECTION 8

6. In page 12, before section 8, to insert the following new section:

“Bank to cooperate with relevant authorities outside State.

8.—Before performing a function in relation to an authorised credit institution that carries on business in a jurisdiction other than that of the State, whether it carries on that business itself or through one or more subsidiaries, the Bank shall, to the extent that it can do so, having regard to the purposes of this Act, inform the authority duly authorised to perform functions similar to any one or more of the statutory functions of the Bank of its intention to exercise the power.”.

—An tAire Airgeadais.

7. In page 12, subsection (1)(c), line 30, after “Minister” to insert the following:

“and a special public sitting of the Joint Oireachtas Committee on Finance, Expenditure and Public Reform to which representatives of the authorised credit institutions are invited”.

—Pearse Doherty.

8. In page 12, subsection (1), between lines 30 and 31, to insert the following:

“(d) in relation to a credit union if the Bank has consulted with the Credit Union Advisory Committee and any other body appearing to the Minister to have expertise or knowledge of credit unions.”.

—Pearse Doherty.

9. In page 12, subsection (2)(a), line 34, to delete “has directed” and substitute “directs”.

—An tAire Airgeadais.

10. In page 12, subsection (2)(a)(i), line 38, after “direction” to insert “under this paragraph”.

—An tAire Airgeadais.

11. In page 12, subsection (2)(a)(ii), line 41, to delete “the direction” and substitute “that direction”.

—An tAire Airgeadais.

12. In page 13, subsection (6)(c), line 23, to delete “ensuring the depositors” and substitute “ensuring that the depositors”.

—An tAire Airgeadais.

SECTION 9

13. In page 13, before section 9, but in Part 2, to insert the following new section:

“9.—In performing a function or exercising a power under this Act, the Minister and the Bank shall have regard to the financial viability, stability and survival of the State and shall not act in any way that would undermine or weaken the financial viability, stability or survival of the State.”.

—Pearse Doherty.

[SECTION 9]

14. In page 13, before section 9, but in Part 3, to insert the following new section:

“9.—In order to effectively perform the functions or exercise the powers under this Act the Minister can, by way of a Ministerial Order, suspend the application of the Credit Institutions (Financial Support Scheme) 2008 and the Credit Institutions (Eligible Liabilities Guarantee Scheme) 2009 to a specified covered institution.”

—Pearse Doherty.

15. In page 13, subsection (2), lines 42 and 43, and in page 14, lines 1 to 6, to delete paragraphs (a) to (d).

—Pearse Doherty.

16. In page 14, subsection (2)(b), line 2, to delete “*section 31, 64 or 70(5)*” and substitute “*section 30(1)*, 31, 35(5)** or 80****”.

—An tAire Airgeadais.

[*Note: This is a reference to sections proposed to be inserted by amendment No. 48.]

**Note: This is a reference to sections proposed to be inserted by amendment No. 53.]

***Note: This is a reference to sections proposed to be inserted by amendment No. 89.]

17. In page 14, subsection (3), lines 10 to 12, to delete paragraphs (b) and (c) and substitute the following:

“(b) any sums paid into it by the Minister pursuant to *section 11*,

(c) any assets of a bridge-bank transferred to it pursuant to *section 16(6)*, and

(d) interest on those sums, contributions and assets.”

—An tAire Airgeadais.

18. In page 14, subsection (3), lines 10 to 12, to delete paragraphs (b) and (c).

—Pearse Doherty.

SECTION 11

Section opposed.

—Pearse Doherty.

SECTION 15

19. In page 16, between lines 8 and 9, to insert the following:

“(d) shall consult with the Credit Union Advisory Committee and any other body appearing to the Minister to have expertise or knowledge of credit unions.”

—Pearse Doherty.

SECTION 16

20. In page 16, subsection (1), line 14, to delete “shares” and substitute the following:

[SECTION 16]

“shares if, in the opinion of the Bank, having regard to such of the matters set out in *section 8(6)* as appear to the Bank to be relevant in the circumstances, to do so would be in the public interest”.

—An tAire Airgeadais.

21. In page 16, between lines 24 and 25, to insert the following subsection:

“(6) Any surplus assets, after all liabilities have been discharged, arising on the winding-up of a bridge-bank shall be transferred to the Fund.”.

—An tAire Airgeadais.

SECTION 18

22. In page 16, subsection (1), lines 30 and 31, to delete all words from and including “in” in line 30 down to and including “Bank,” in line 31.

—An tAire Airgeadais.

23. In page 16, between lines 34 and 35, to insert the following subsection:

“(2) Before making a regulation under *subsection (1)*, the Bank shall consult the Minister and for that purpose shall provide the Minister with a draft of the proposed regulation.”.

—An tAire Airgeadais.

24. In page 16, subsection (2), line 35, to delete “the Minister or the Bank” and substitute “the Bank”.

—An tAire Airgeadais.

25. In page 16, subsection (2), line 37, to delete “the Minister or the Bank” and substitute “the Bank”.

—An tAire Airgeadais.

SECTION 19

26. In page 17, subsection (1), to delete lines 5 and 6 and substitute the following:

“ “market value”, in relation to assets and liabilities, shall be construed in accordance with *section 22**.”.

—An tAire Airgeadais.

[*Note: This is a reference to the section proposed to be inserted by amendment No. 29.]

SECTION 20

27. In page 17, line 17, to delete paragraph (b) and substitute the following:

“(b) having regard to any adverse consequences that may arise as a result of the transfer order, in relation to the interests generally of the creditors of the transferor or, where the transferor is a subsidiary or holding company, in relation to the interests generally of the creditors of the transferor or the authorised credit institution concerned, a transfer order is necessary in all the circumstances to address one or more of the reasons for those intervention conditions being fulfilled.

[SECTION 20]

(2) Nothing in *subsection (1)(b)* requires the Bank to consider the possible adverse consequences of the transfer order concerned on the interests of a particular creditor or class of creditors of the transferor or authorised credit institution, as the case may be, or to consider any submission made by a creditor on behalf of that creditor, a class of creditors or creditors generally.”.

—An tAire Airgeadais.

SECTION 21

28. In page 17, before section 21, to insert the following new section:

“Bank’s power to impose requirements.

21.—(1) The Bank may, at any time, by written notice impose a requirement on an authorised credit institution, any of its subsidiaries or its holding company, if the Bank is of the opinion that it is necessary or desirable to do so for the effective or efficient making of a proposed transfer order or of a transfer order.

(2) The requirements that may be imposed under this section include the following:

- (a) to provide such information concerning the assets and liabilities of the authorised credit institution, or any of its subsidiaries or its holding company, as the Bank requires to permit the effective and efficient making of a proposed transfer order;
- (b) to disclose such information about the assets and liabilities of the authorised credit institution, or any of its subsidiaries or its holding company, as the Bank requires to one or more persons that the Bank identifies as being potential transferees under a transfer order;
- (c) to make a specified application to a specified authority, or give a specified notice to a specified person, on terms that the Bank specifies.

(3) If the Bank imposes a requirement on an authorised credit institution, subsidiary or holding company and the intention of it or part of it is the preservation or restoration of the financial position of a credit institution, the Bank shall declare in the requirement that the requirement or part is made with that intention, in accordance with the CIWUD Directive.

(4) The authorised credit institution, subsidiary or holding company the subject of the requirement under this section shall comply with the requirement in accordance with its terms (including any specification as to the time by which, or period within which, the requirement shall be complied with).

(5) In complying with a requirement under this section, the authorised credit institution, subsidiary or holding company shall disclose in utmost good faith all matters and circumstances in relation to that institution, the authorised credit institution or a subsidiary that might materially affect, or might reasonably be expected to materially affect, any decision of the Bank in the performance of its functions under this Act.

(6) The Bank may direct an authorised credit institution that any information provided by that institution or its holding company or subsidiary pursuant to a requirement under this section is to be certified as accurate and complete jointly by the chief executive officer and chief financial officer of that authorised institution, holding company or subsidiary, as the case may be, or by any 2 officers identified for that purpose by the Bank.

[SECTION 21]

(7) The officers and employees of the authorised credit institution, holding company or subsidiary shall comply with a requirement under this section and shall cause any subsidiary of that authorised institution, holding company or subsidiary to comply with the requirement (including any specification as to the time by which, or period within which, the requirement shall be complied with) to the extent that the requirement applies to the subsidiary.

(8) The obligation to comply with a requirement under this section—

(a) does not, notwithstanding any provision of any enactment or agreement or any rule of law, require the consent, approval or concurrence of any other person, and

(b) takes priority over any other duty or obligation to any person.

(9) If an authorised credit institution, an officer or employee of an authorised credit institution, a subsidiary, holding company, or subsidiary of a holding company, of an authorised credit institution or an officer or employee of such a subsidiary or holding company does not comply with a requirement, the Bank may apply to the Court by motion on notice on affidavit for an order compelling compliance with that requirement.

(10) The Court may, in addition to the order compelling the authorised credit institution, holding company or subsidiary to comply with a requirement under this section, make any other order or direction it considers necessary in order to ensure that the authorised credit institution, holding company or subsidiary complies with the requirement.

(11) Nothing in this section authorises the Bank to place an authorised credit institution under special management.

(12) Except with the prior written consent of the Bank, a person shall not publish the fact that the Bank has imposed a requirement pursuant to *subsection (1)* unless required to do so by an enactment.

(13) A person (including an authorised credit institution) who contravenes *subsection (4), (7), or (12)* commits an offence and is liable—

(a) on summary conviction to a Class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 3 years, or both.

(14) If an offence under this section is committed by a body corporate, and is proved to have been committed with the consent or connivance, or to be attributable to any wilful neglect, of a person who, when the offence is committed, is—

(a) a director, manager, secretary or other officer of the body corporate or a person purporting to act in that capacity, or

(b) a member of the committee of management or other controlling authority of the body corporate or a person purporting to act in that capacity,

that person is taken to have also committed an offence and may be proceeded against and punished in accordance with *subsection (15)*.

(15) A person referred to in *subsection (14)* is liable—

[SECTION 21]

(a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment, to a fine not exceeding €250,000 or to imprisonment for a term not exceeding 3 years, or both.

(16) It is not a contravention of *subsection (12)* for an authorised credit institution, or a subsidiary or holding company of an authorised credit institution, to disclose a fact referred to in that subsection for the purposes of obtaining professional advice.”.

—An tAire Airgeadais.

29. In page 17, before section 21, to insert the following new section:

“Bank may disclose information to potential transferee.

22.—Notwithstanding any provision of any enactment or agreement, or any rule of law, the Bank may disclose to a potential transferee information that it obtains on foot of a requirement or that is otherwise provided to it voluntarily by the transferor.”.

—An tAire Airgeadais.

30. In page 17, before section 21, to insert the following new section:

“Directors’ duties where Bank imposes requirements on authorised credit institutions.

23.—(1) In the performance of their functions, the directors of an authorised credit institution, holding company or subsidiary on which the Bank has imposed a requirement under *section 21(1)** shall have a duty to comply with the requirement and to cause the authorised credit institution, holding company or subsidiary to comply with the requirement.

(2) The duty imposed by *subsection (1)*—

(a) is owed by the directors to the Bank, and

(b) takes priority over any other duty of the directors to the extent of any inconsistency.

(3) The Bank may make and publish guidelines in relation to the duty imposed by *subsection (1)*. A director may rely on any such guidelines in demonstrating his or her compliance with that duty.”.

—An tAire Airgeadais.

[*Note: This is a reference to the section proposed to be inserted by amendment No. 28.]

31. In page 17, before section 21, to insert the following new section:

“Bank not to be director, etc.

24.—The Bank shall not, by reason of the imposition of a requirement under *section 21**, be taken to be a shadow director (within the meaning given by section 27(1) of the Companies Act 1990) nor what is known as a *de facto* director nor a person discharging managerial responsibilities of the authorised credit institution, subsidiary or holding company on which the requirement was imposed.”.

—An tAire Airgeadais.

[*Note: This is a reference to the section proposed to be inserted by amendment No. 28.]

[SECTION 21]

32. In page 17, subsection (1)(a), lines 25 and 26, to delete “such a transfer order is necessary” and substitute “the intervention conditions are fulfilled”.
—An tAire Airgeadais.
33. In page 17, subsection (4), line 37, to delete “*Subsection (1) does*” and substitute “*Subsections (1) to (3) do*”.
—An tAire Airgeadais.

SECTION 22

34. In page 18, before section 22, to insert the following new section:

“Transfers to be at market value.

22.—(1) The consideration for the assets and liabilities transferred under a transfer order shall be the aggregate of the market value of all of those assets, less the aggregate of the market value of all of those liabilities, as at the time of the transfer order.

(2) For the purposes of *subsection (1)*, and subject to *subsections (3) and (4)*, the market value of assets and liabilities shall be taken to be—

- (a) in the case of assets, the amount that the transferee is willing to pay for those assets, and
- (b) in the case of liabilities, the amount that the transferee is willing to accept in return for assuming those liabilities, or the book value of those liabilities, whichever is the lower.

(3) The Bank shall, before making a proposed transfer order and so far as practicable in all the circumstances (including, where relevant, the urgent need to resolve the financial instability of the transferor) carry out a competitive process that allows the determination of market value, unless the proposed transferee is a bridge-bank.

(4) The Bank shall, before applying for a variation of a transfer order under *section 26(1)* and so far as practicable in all the circumstances (including, where relevant, the urgent need to resolve financial instability of the transferor) carry out a competitive process that allows the determination of the market value.”

—An tAire Airgeadais.

35. In page 18, subsection (1), lines 25 to 27, to delete paragraph (a) and substitute the following:

“(a) the consideration for the proposed transfer, and any other terms and conditions of the proposed transfer, including any specification of a date by which or a period within which the transferor is required to comply with any such term or condition, and, where the transfer order or any term of it is to have immediate effect, the reasons why it should have that effect.”

—An tAire Airgeadais.

36. In page 19, lines 1 to 4, to delete subsection (4).

—An tAire Airgeadais.

37. In page 19, between lines 4 and 5, to insert the following subsection:

[SECTION 22]

“(4) Notwithstanding any provision of any enactment, agreement or rule of law, the Bank may, for the purposes of obtaining the agreement of a person under *subsection (3)*, disclose to the person concerned any information in its possession in relation to the transferor or a proposed transfer order.”.

—An tAire Airgeadais.

SECTION 23

38. In page 19, subsection (6), line 31, to delete “The Court” and substitute “Subject to *subsection (5)*, the Court”.

—An tAire Airgeadais.

SECTION 24

39. In page 19, before section 24, to insert the following new section:

“Publication of transfer orders.

24.—(1) The Bank shall, as soon as practicable after a transfer order is made—

(a) serve a copy of the transfer order on the authorised credit institution concerned, and

(b) publish the order in 2 newspapers circulating generally in the State.

(2) In a particular case, the Bank may, if the Bank thinks it necessary to do so, publish a transfer order by an additional means or in an additional place.

(3) Without delay after the service of the copy of the transfer order, the authorised credit institution shall take all reasonable measures to ensure that its members are made aware of the order, including, without limiting the generality of the foregoing

(a) where the shares of the authorised credit institution are traded from time to time on a financial market (whether a regulated market or not), making an announcement that relates to the existence of the transfer order and its effect, to a regulatory news service generally used by credit institutions in the State for the purposes of announcements to such markets, and

(b) providing a copy of the transfer order to the regulatory news service referred to in *paragraph (a)*.”.

—An tAire Airgeadais.

[*Acceptance of this amendment involves the deletion of section 24 of the Bill.*]

SECTION 26

40. In page 20, subsection (1), line 10, to delete “liabilities.” and substitute the following:

“liabilities, and to provide for the variation of other terms and conditions (including conditions relating to consideration) of the transfer order.”.

—An tAire Airgeadais.

41. In page 20, between lines 13 and 14, to insert the following subsection:

“(3) If the Court orders that the consideration is varied—

[SECTION 26]

- (a) the transferee shall repay, to the bridge-bank (or the person who paid that consideration on behalf of the bridge-bank), the consideration under the transfer order before its variation, and
- (b) the transferee shall pay, as the Court may direct, any excess over the amount repaid under *paragraph (a)*—
 - (i) to the transferor,
 - (ii) to the bridge-bank, or
 - (iii) to the transferor and the bridge-bank.”.

—An tAire Airgeadais.

SECTION 27

- 42.** In page 20, subsection (1), lines 23 to 25, to delete all words from and including “not” in line 23 down to and including “*section 24(2)*” in line 25 and substitute the following:

“not later than 14 days after the publication, in accordance with *subsection (1)(b)* of *section 24*”.

—An tAire Airgeadais.

- 43.** In page 20, lines 27 to 30, to delete subsection (2) and substitute the following:

“(2) The Court shall give such priority to an application under *subsection (1)* as is necessary in the circumstances, and may give such directions as it considers appropriate in the circumstances—

- (a) with regard to the hearing of the application, or
- (b) with regard to a matter that arises during the period beginning with the transfer order and ending with the order of the Court under this section.”.

—An tAire Airgeadais.

- 44.** In page 21, subsection (9), line 26, to delete “would but for this” and substitute “would, but for this”.

—An tAire Airgeadais.

- 45.** In page 21, between lines 28 and 29, to insert the following subsection:

“(10) The Court, in considering the order it wishes to make under this section, may, where the applicant is a member of the transferor, have regard to—

- (a) the date on which the applicant became a member of the transferor, or increased or decreased the number of shares that the applicant held in the transferor, and
- (b) the value of the shares acquired by or disposed of by the member as at the date or dates on which the shares were acquired or disposed of, as the case may be.”.

—An tAire Airgeadais.

SECTION 28

- 46.** In page 21, before section 28, to insert the following new section:

[SECTION 28]

“Application by creditor for permission to apply for compensation.

28.—(1) Subject to *subsection (2)*, a creditor of a transferor in relation to a transfer order may apply to the Court, by motion on notice grounded upon affidavit, for an order permitting the creditor to apply for compensation under this Act.

(2) An application under *subsection (1)* may be made only on a date that is—

(a) after the date on which the affairs of the transferor have been wound up, and

(b) before the date that is 6 months after the date referred to in *paragraph (a)*.

(3) On an application under *subsection (1)*, the Court shall order that the creditor be permitted to apply for compensation, if the Court is satisfied that—

(a) a resolution for the winding-up of the transferor was passed, or an order for its winding-up was made, within 12 months after the making of the transfer order,

(b) the affairs of the transferor have been wound up,

(c) any financial obligation of the transferor to the creditor in respect of which the creditor seeks to apply for compensation was undertaken before the making of the transfer order,

(d) financial support (within the meaning of Act of 2008) was not provided to the transferor by the State, in the 4 years immediately before the date on which the resolution referred to in *paragraph (a)* was passed, or the order referred to in that paragraph was made, whichever is the earlier, and

(e) the dividend that the creditor received on the winding-up of the transferor was less than the dividend that it is likely that the creditor would have received had the transfer order not been made when it was made, and the creditor’s burden in receiving that lesser dividend was, relative to the benefit to the financial stability of the transferor, or the stability of the financial system or the economy, disproportionate having regard to the circumstances of the creditor.”.

—An tAire Airgeadais.

47. In page 21, before section 28, to insert the following new section:

“Appointment of Assessor.

29.—(1) Where the Court makes one or more orders under *section 28** in relation to a creditor or creditors of a transferor, the Bank shall, not later than 6 months after the date of the last order in relation to the creditors of that transferor, appoint a person (referred to in this Act as the “Assessor”) to determine, in accordance with this Act, the fair and reasonable amount, if any, payable to each creditor concerned.

(2) The Bank may appoint the same person to be the Assessor in relation to more than one transferor.

(3) In appointing a person as the Assessor, the Bank shall ensure that the person has, in the Bank’s opinion, significant knowledge or experience of the financial services sector.

(4) The Bank shall not appoint a person as the Assessor unless the Bank is satisfied that the person would, if appointed, have no conflict of a material nature between any personal or business interests and the performance of the Assessor’s functions.

[SECTION 28]

(5) A person is not eligible to be appointed as the Assessor if the person—

- (a) is a member of either House of the Oireachtas or is, with the person's consent, nominated as a candidate for election as such a member,
- (b) is a member of the European Parliament or is, with the person's consent, nominated as a candidate for election as such a member or to fill a vacancy in the membership of that Parliament, or
- (c) is a member of a local authority (within the meaning of the Local Government Act 2001) or is, with the person's consent, nominated as a candidate for election as such a member.

(6) For the purpose of facilitating the performance of his or her functions under this Act, the Assessor has the powers set out in *Schedule 1*** and may exercise, for any particular purpose, such of those powers as he or she, in his or her sole discretion, determines are appropriate for that purpose.

(7) A person who commits an offence under *Schedule 1*** is liable—

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 3 years or both.

(8) If an offence under this section is committed by an authorised credit institution, and is proved to have been committed with the consent or connivance, or to be attributable to any wilful neglect, of a person who, when the offence is committed, is—

- (a) a director, manager, secretary or other officer of the authorised credit institution or a person purporting to act in that capacity, or
- (b) a member of the committee of management or other controlling authority of the authorised credit institution or a person purporting to act in that capacity,

that person is taken to have also committed an offence and may be proceeded against and punished in accordance with *subsection (9)*.

(9) A person referred to in *subsection (8)* is liable—

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 3 years, or both.

(10) In the performance of his or her functions under this Act, the Assessor—

- (a) is independent,
- (b) shall act as an expert only, and
- (c) shall act as expeditiously as possible consistent with fairness.

(11) The Assessor shall complete the performance of his or her functions within such period as the Bank specifies from time to time.”

[SECTION 28]

—An tAire Airgeadais.

[*Note: This is a reference to the section proposed to be inserted by amendment No. 46.]

[**Note: This is a reference to the schedule proposed to be inserted by amendment No. 97.]

48. In page 21, before section 28, to insert the following new section:

“Expenses, etc., of Assessor and engagement of staff.

30.—(1) The Bank shall, from the Fund, pay or reimburse such expenses of a person appointed as Assessor (including remuneration) as the Bank determines.

(2) The Assessor may, with the consent of the Bank, engage such staff or other persons as the Assessor considers necessary to assist him or her in the performance of his or her functions, and shall take reasonable measures to satisfy himself or herself that no person so engaged is affected by a material conflict of interest.”

—An tAire Airgeadais.

49. In page 21, before section 28, to insert the following new section:

“Applications to Assessor.

31.—(1) A person shall not apply to the Assessor for compensation unless the Court has ordered under *section 28** that the person is permitted to do so.

(2) An application to the Assessor shall be made in accordance with procedures determined by the Assessor under *section 32(3)***.”

—An tAire Airgeadais.

[*Note: This is a reference to the section proposed to be inserted by amendment No. 46.]

[**Note: This is a reference to the section proposed to be inserted by amendment No. 50.]

50. In page 21, before section 28, to insert the following new section:

“Submissions to Assessor.

32.—(1) The following persons and no others may make submissions to the Assessor in respect of compensation in relation to a transferor:

- (a) the Bank;
- (b) the creditor concerned;
- (c) the liquidator of the transferor;
- (d) the Minister;
- (e) the National Treasury Management Agency.

(2) A submission to the Assessor under *subsection (1)* shall be made in accordance with procedures determined by the Assessor under *subsection (3)*.

(3) Subject to any regulations made by the Minister under *section 90*, the Assessor shall determine, in his or her sole discretion, procedures for—

- (a) the form and type of applications for compensation under *section 31**,

[SECTION 28]

- (b) the form and type of submissions to be made to the Assessor,
- (c) the means by which confidential information should be protected from public disclosure, and
- (d) the performance of any of the Assessor's functions.”.

—An tAire Airgeadais.

[*Note: This is a reference to the section proposed to be inserted by amendment No. 49.]

51. In page 21, before section 28, to insert the following new section:

“Determination of fair and reasonable compensation.

33.—(1) The Assessor shall determine the fair and reasonable amount of compensation, if any, payable to each creditor who applies for compensation.

(2) The Assessor shall, in determining the amount of compensation referred to in *subsection (1)*, have regard to—

- (a) the financial obligation of the transferor to the creditor,
- (b) the dividend that the creditor received on the winding-up of the transferor,
- (c) the dividend that it is likely that the creditor would have received had a winding-up order been made instead of the transfer order,
- (d) whether a financial incentive was provided under *section 29*,
- (e) whether financial support (within the meaning of the Act of 2008) or any other financial assistance, investment or guarantee was provided to the transferor by the State at any time,
- (f) whether it was reasonable in all the circumstances for the creditor to have undertaken the financial obligation with the transferor, having regard to the financial position of the transferor at that time,
- (g) whether the financial obligation of the creditor was undertaken before or after the passing of this Act,
- (h) whether the creditor took steps to secure the satisfaction of the financial obligation before the transfer order was made,
- (i) any relevant evidence that the Assessor obtains in the performance of his or her functions,
- (j) any submissions made to the Assessor, and
- (k) any other relevant matter.

(3) The Assessor shall make the determination required by *subsection (1)* on the basis of the information and evidence available to him or her at the time he or she makes it.

(4) A conclusion drawn or finding made by the Assessor in making the determination required by *subsection (1)* does not amount to a finding of fact for any purpose other than the purposes of this Act.

[SECTION 28]

(5) The fair and reasonable amount of compensation, if any, payable to a creditor

(a) shall not exceed the actual loss incurred by the creditor that has been proved, to the satisfaction of the Assessor, to have arisen directly from the making of the transfer order, and

(b) may be determined to be—

(i) less than the actual loss so incurred, or

(ii) nil.

(6) Whenever the Bank so requests, the Assessor shall report to the Bank as to his or her progress in making the determination required by this section.

(7) The liquidator of a transferor shall cooperate with the Assessor and shall deliver to the Assessor the books and records of the transferor and of the liquidator which, notwithstanding section 305(1) of the Companies Act 1963, shall not be disposed of.”.

—An tAire Airgeadais.

52. In page 21, before section 28, to insert the following new section:

“Circulation of draft report for comment. 34.—(1) Before making a report to the Bank under *section 35**, the Assessor shall, subject to *subsection (2)*, send a draft of the report to—

(a) each person who made a submission to the Assessor, and

(b) any other person, or each person in any class of persons, that the Bank specifies in writing,

inviting the person to make written submissions concerning the draft report and specifying a reasonable period in which to do so.

(2) The Assessor may, instead of sending the entire draft of the report—

(a) in respect of each person mentioned in *paragraph (a)* or *(b)* of *subsection (1)*, send to the person the part of the draft report that is relevant to that person, or

(b) omit from the draft report any evidence or material if including that evidence or material would, in the Assessor’s opinion, disclose commercially sensitive information or would otherwise be contrary to the public interest.

(3) Before making the report to the Bank under *section 35**, the Assessor shall consider any submissions made in accordance with the Assessor’s invitation under *subsection (1)* and shall revise the report as appropriate.

(4) A person to whom the Assessor sends a copy of a draft report, or of a part of a draft report, under *subsection (1)* commits an offence if he or she discloses the report or its contents or any part of the report or its contents to any person other than for the purpose of obtaining professional advice.

[SECTION 28]

(5) A person to whom a draft report of the Assessor or a part of it is disclosed (whether under *subsection (4)* for the purposes of obtaining professional advice or otherwise) commits an offence if he or she discloses the report or its contents, or any part of the report or its contents, to any other person other than for the purpose of obtaining professional advice.

(6) A person who contravenes *subsection (4)* or *(5)* commits an offence and is liable—

(a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or

(b) on conviction on indictment to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 3 years, or both.

(7) If an offence under this section is committed by a body corporate and is proved to have been committed with the consent or connivance, or to be attributable to any wilful neglect, of a person who, when the offence is committed, is—

(a) a director, manager, secretary or other officer of the body corporate or a person purporting to act in that capacity, or

(b) a member of the committee of management or other controlling authority of the body corporate or a person purporting to act in that capacity,

that person is taken to have also committed an offence and may be proceeded against and punished in accordance with *subsection (8)*.

(8) A person referred to in *subsection (7)* is liable—

(a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or

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

—An tAire Airgeadais.

[*Note: This is a reference to the section proposed to be inserted by amendment No. 53.]

53. In page 21, before section 28, to insert the following new section:

“Report by Assessor.

35.—(1) When the Assessor has determined, in accordance with *section 33**, the fair and reasonable amount of compensation, if any, payable to each creditor who has applied for it, the Assessor shall report to the Bank—

(a) the name of each such creditor,

(b) whether compensation is payable to each such creditor, and

(c) the amount of compensation, if any, payable to each such creditor.

(2) In the report under *subsection (1)* the Assessor shall set out—

(a) a summary of the evidence on which the Assessor relied in making his or her determination, and

(b) the Assessor’s reasons for making the determination.

[SECTION 28]

(3) The Bank shall make such arrangements as are necessary for sufficient funds to be made available out of the Fund to enable payments of compensation to be made in accordance with the Assessor's report under *subsection (1)*.

(4) The Bank shall cause the Assessor's report under *subsection (1)* to be published as soon as is practicable.

(5) As soon as practicable after the publication of the Assessor's report, the Bank shall—

(a) notify each creditor whether or not compensation has been determined to be payable to him or her, and

(b) pay compensation in accordance with the report to each creditor to whom compensation has been so determined to be payable.”

—An tAire Airgeadais.

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

54. In page 21, before section 28, to insert the following new section:

“Review of
determination of
compensation, etc.

36.—(1) An appeal lies to the Irish Financial Services Appeals Tribunal (in this section called “the Tribunal”) against the determination of the Assessor under *section 33**.

(2) This section applies to the Bank in the same manner as it applies to a creditor who has or claims a right to compensation.

(3) The Assessor is to be the respondent to an appeal under *subsection (1)*.

(4) On hearing an appeal under *subsection (1)*, the Tribunal may substitute its own determination or confirm, annul or vary the determination appealed from and may make any other consequential order.

(5) The Tribunal shall determine an appeal under *subsection (1)* as expeditiously as possible consistent with fairness and on the basis of the material that was before the Assessor unless the Tribunal is of the opinion that a further submission or submissions should be sought.

(6) In deciding, for the purposes of an appeal under *subsection (1)*, whether the Assessor's determination should be confirmed, annulled or varied, the test to be applied by the Tribunal is whether the appellant has established, as a matter of probability, taking into account the degree of expertise and specialist knowledge possessed by the Assessor and taking the process as a whole, that the determination was vitiated by a serious and significant error or a series of such errors.

(7) *Section 33** applies to the Tribunal in making its decision in an appeal under *subsection (1)* to the same extent as it did to the Assessor in making his or her determination under that section.

(8) The provisions (except subsections (1) and (4) of section 57L and the definition of “appealable decision” in section 57A) of Chapter 3 of Part VIIA (inserted by section 28 of the Central Bank and Financial Services Authority of Ireland Act 2003 and amended by section 13 of the Central Bank and Financial Services Authority of Ireland Act 2004) of the Central Bank Act 1942 apply to an appeal under this section, except that—

[SECTION 28]

(a) references in that Chapter to the Bank are to be read as references to the Assessor, and

(b) references in that Chapter to a decision or an appealable decision of the Bank are to be read as references to a determination of the Assessor.

(9) For the purposes of determining an appeal under this section, the Tribunal may refer a question of law to the Court in accordance with section 57AJ (inserted by the Central Bank and Financial Services Authority of Ireland Act 2003) of the Central Bank Act 1942.

(10) If the Tribunal is satisfied, on examining the documents in relation to an appeal under *subsection (1)*, that the appeal raises no issue that the Tribunal has not already determined in connection with another such appeal, it may—

(a) strike out the first-mentioned appeal, or

(b) determine it without a hearing.

(11) In addition, if the Tribunal is satisfied that a number of appeals before it raise substantially the same issues—

(a) it may select one of those appeals as representative of all, and

(b) it may treat its decision on that appeal as determining those issues, or some of them, in each of the other appeals.

(12) The Tribunal may dismiss an appeal at any stage if the Tribunal is of the opinion that it has been made in bad faith or is frivolous, vexatious or misconceived or relates to a trivial matter.

(13) The decision of the Tribunal on an appeal under this section (including a decision made under *subsection (10)* without a hearing, and a decision that a decision on a particular appeal is to be taken, under *subsection (11)*, to determine an issue or issues in a number of appeals) is final.”

—An tAire Airgeadais.

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

55. In page 21, before section 28, to insert the following new section:

“Limitation of judicial review of the Assessor’s determination.

37.—(1) Leave shall not be granted for judicial review of the Assessor’s determination under *section 33** or any other decision in relation to compensation unless—

(a) either—

(i) the application for leave to seek judicial review is made to the Court within 14 days after the Assessor’s report to the Bank, or, in the case of an application brought by an applicant other than the Bank, 14 days after the publication of that report under *section 35(4)***, or

(ii) the Court is satisfied that—

(I) there are substantial reasons why the application was not made within that period, and

[SECTION 28]

(II) it is just in all the circumstances to grant leave, having regard to the interests of other affected persons and the public interest,

and

(b) the Court is satisfied that the application raises a substantial issue for the Court's determination.

(2) The Court may make such order on the hearing of the judicial review as it thinks fit, including an order remitting the matter back to the Assessor with such directions as the Court thinks appropriate or necessary.

(3) This section applies to the Bank in the same manner as it applies to a creditor who has or claims a right to compensation.”.

—An tAire Airgeadais.

[*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. 53.]

56. In page 22, subsection (4), line 13, to delete “*paragraph (3)(b)*” and substitute “*subsection (3)(b)*”.

—An tAire Airgeadais.

57. In page 22, subsection (5), line 22, to delete “Regulations 2004 (S.I. No. 1 of 2004)” and substitute “Regulations 2010 (S.I. No. 626 of 2010)”.

—An tAire Airgeadais.

SECTION 29

Section opposed.

—Pearse Doherty.

SECTION 30

58. In page 23, line 11, to delete “or the Minister”.

—Pearse Doherty.

SECTION 31

59. In page 23, before section 31, to insert the following new section:

“Procedure if transferor disputes consideration for assets and liabilities.

31.—(1) A transferor in relation to a transfer order (other than a transfer order where the transferee is a bridge-bank), or, where the transferor is a subsidiary or a holding company of an authorised credit institution, that credit institution, may dispute the amount of the consideration specified in the transfer order for the assets and liabilities the subject of that order, if the transferor or credit institution, as the case may be, believes that—

(a) the consideration was not determined following a competitive process,

(b) it would have been practicable in all the circumstances for a competitive process to have been carried out, and

[SECTION 31]

(c) the market value would have been materially greater than the consideration specified in the transfer order had a competitive process been carried out.

(2) In order to dispute the amount of consideration, the authorised credit institution shall serve a written notice to that effect on the Bank, not later than 14 days after the transfer order takes effect.

(3) As soon as practicable after receiving a notice under *subsection (2)*, the Bank shall appoint an independent valuer to determine, in accordance with this section—

(a) whether a competitive process was carried out, and

(b) if a competitive process was not carried out, whether it would have been practicable in all the circumstances for the Bank to have carried out a competitive process to determine the market value of the assets and liabilities to be specified in the proposed transfer order concerned, and if so, what the likely market value would have been if the competitive process had been carried out.

(4) In determining whether, for the purposes of *subsection (3)(b)*, it would have been practicable in all the circumstances for the Bank to have carried out a competitive process, the independent valuer shall consult with the Bank as to the reason why the Bank considered that it would not have been practicable to have carried out a competitive process.

(5) If the independent valuer determines that a competitive process was not carried out and that it would have been practicable in all the circumstances for the Bank to have carried out such a process, he or she shall determine what the market value would have been had the competitive process been carried out—

(a) on the basis that the intervention conditions were fulfilled in relation to the authorised credit institution concerned,

(b) on the basis of an urgent transfer in a distressed sale,

(c) on the basis that the transferor is being wound up,

(d) on the basis that the winding-up will be on the basis of an asset break-up, and

(e) on the basis of any other matter that the Minister prescribes by regulations.

(6) If the independent valuer determines, under *subsection (5)*, that the market value of the assets and liabilities the subject of the transfer order would have been materially different had the competitive process been carried out, he or she shall certify that fact to the Bank, the market value determined by the independent valuer shall be taken to be the consideration specified in the transfer order, and—

(a) if that market value would have been materially less than that consideration, the transferor shall, subject to *subsection (7)*, pay the difference to the transferee, or

(b) if that market value would have been materially greater than that consideration, the Bank shall draw on the Fund to pay the difference to the transferor and the transferee shall have no further liability in respect of those assets and liabilities.

[SECTION 31]

(7) If a liability to pay the transferee arises under *subsection (6)(a)* in relation to a transfer order that transfers assets or liabilities of a subsidiary or holding company of an authorised credit institution, that credit institution and the subsidiary or holding company are jointly and severally liable to make the payment.

(8) The independent valuer shall—

- (a) where he or she determines that a competitive process was carried out, certify to the Bank that it was carried out,
- (b) where he or she determines that a competitive process was not carried out but that it would not have been practicable in all the circumstances to have carried it out, certify those determinations to the Bank, and
- (c) where he or she determines that a competitive process was not carried out but that the market value of the assets and liabilities concerned would not have been materially different from the consideration for those assets specified in the transfer order, certify those determinations to the Bank.

(9) Where the independent valuer certifies to the Bank any of the matters referred to in *subsection (8)*, the market value shall remain the market value and the transferor shall have no further recourse in respect of the consideration.

(10) The transferor shall be liable to reimburse the Bank the costs of the independent valuer if the independent valuer determines that it was manifestly unreasonable for the transferor concerned to have disputed the amount of the consideration on the basis that—

- (a) a competitive process was not carried out,
- (b) a competitive process was not carried out and it would have been practicable in all the circumstances for the Bank to have carried out such a process, or
- (c) a competitive process was not carried out and the market value of the assets and liabilities concerned would have been materially greater than the consideration for those assets specified in the transfer order.

(11) As soon as may be after the independent valuer certifies to the Bank a matter under this section, the Bank shall send a written notice to the transferor of the determination of the independent valuer.

(12) Leave shall not be granted for judicial review of a determination of the independent valuer unless—

- (a) either—
 - (i) the application for leave to seek judicial review is made to the Court within 14 days after the Bank sends the written notice under *subsection (11)*, or
 - (ii) the Court is satisfied that—
 - (I) there are substantial reasons why the application was not made within that period, and
 - (II) it is just in all the circumstances to grant leave, having regard to the interests of other affected persons and the public interest,

[SECTION 31]

and

(b) the Court is satisfied that the application raises a substantial issue for the Court's determination.

(13) The Court may make such order on the hearing of the judicial review as it thinks fit, including an order remitting the matter back to the independent valuer with such directions as the Court thinks appropriate or necessary.

(14) Only a person to whom *subsection (1)* applies may dispute the valuation placed on the assets and liabilities transferred under a transfer order.”.

—An tAire Airgeadais.

[*Acceptance of this amendment involves the deletion of section 31 of the Bill.*]

SECTION 32

60. In page 24, lines 16 to 24, to delete subsection (1) and substitute the following:

“32.—(1) A transfer order has effect—

(a) if there is an application made under *section 25, 26 or 27*—

(i) if the Court makes an order under *section 25, 26 or 27* and makes an order as to the date of effect, at that date,

(ii) if the Court makes an order under *section 25, 26 or 27* and does not make an order as to the date of effect, the date of the order made under *section 25, 26 or 27*, as the case may be,

(iii) if the Court does not make an order under *section 25, 26 or 27*, 14 days after the publication of the order under *section 24*,

or

(b) if there is no application made under *section 25, 26 or 27*—

(i) immediately, to the extent that the Court so orders, or

(ii) if the Court does not make an order as to the date of effect, 14 days after the publication of the order under *section 24*.”.

—An tAire Airgeadais.

61. In page 25, subsection (4)(h), line 43, to delete “entitled and subject to if” and substitute “entitled and subject if”.

—An tAire Airgeadais.

62. In page 26, lines 14 to 17, to delete subsection (5) and substitute the following:

“(5) If the transferor is an authorised credit institution that is either a credit union or a building society and a share account is included in the transfer of assets and liabilities—

(a) where the transferee is a credit institution that is either a credit union or a building society—”.

—An tAire Airgeadais.

[SECTION 32]

63. In page 26, lines 29 to 44 and in page 27, lines 1 to 4, to delete subsection (6) and substitute the following:

“(6) If—

- (a) a transferor is a credit union or a building society,
- (b) a share account is included in the transfer of assets and liabilities, and
- (c) the share account becomes a deposit account in the transferee pursuant to *subsection (5)(b)*,

the holder of that account continues to have the membership rights in the transferor that he or she had before the transfer, including (without limitation) voting rights and rights to participate in any surplus on a winding up.

(7) Subsection (6) has effect notwithstanding anything in—

- (a) the Building Societies Act 1989 or the Credit Union Act 1997, or
- (b) the memorandum of association or rules of the transferor.

(8) The transfer of assets and liabilities under a transfer order takes effect notwithstanding—

- (a) any duty or obligation to any person that would otherwise prevent or restrict the transfer,
- (b) any provision of any enactment, rule of law, code of practice or agreement providing for or requiring—
 - (i) notice to any person,
 - (ii) the consent, approval or concurrence of any person, or
 - (iii) any formality such as registration,
- (c) any other rule of law or equity,
- (d) any code of practice made under an enactment,
- (e) the listing rules of a regulated market or the rules of any other market on which the shares of the transferor are traded,
- (f) the memorandum of association or articles of association of the transferor, or
- (g) any agreement to which the transferor is a party, is bound by, or has an interest in,

except to any extent to which the transfer order expressly provides otherwise.”

—An tAire Airgeadais.

SECTION 39

64. In page 30, subsection (1)(a), line 7, to delete “such a special management order is necessary,” and substitute “the intervention conditions are fulfilled,”

—An tAire Airgeadais.

[SECTION 39]

65. In page 30, subsection (3), line 17, to delete “*Subsection (1) does*” and substitute “*Subsections (1) and (2) do*”.

—An tAire Airgeadais.

SECTION 40

66. In page 31, paragraph (b), line 6, to delete “and” and substitute the following:

“(c) if it is proposed that any power of the special manager is to be exercisable immediately, shall specify the reasons why the special management order should have that effect,”.

—An tAire Airgeadais.

67. In page 31, paragraph (c), line 10, to delete “company.” and substitute the following:

“company, and

(d) shall set out such other provisions as the Bank may consider appropriate.”.

—An tAire Airgeadais.

SECTION 42

68. In page 32, before section 42, to insert the following new section:

“Publication of special management orders.

42.—(1) The Bank shall, as soon as practicable after a special management order is made—

(a) serve a copy of the special management order on the authorised credit institution, and, if the subject of the special management order is a subsidiary, or holding company of the authorised credit institution, on the subsidiary or holding company, and

(b) publish the order in 2 newspapers circulating generally in the State.

(2) In a particular case, the Bank may, if the Bank thinks it necessary to do so, publish a special management order by an additional means or in an additional place.

(3) Without delay after the service of the copy of the special management order, the authorised credit institution shall take all reasonable measures to ensure that its members, and, if the subject of the special management order is a subsidiary or holding company of the authorised credit institution, the members of the subsidiary or holding company, are made aware of the order, including, without limiting the generality of the foregoing—

(a) where the shares of the authorised credit institution are traded from time to time on a financial market (whether a regulated market or not), making an announcement that relates to the existence of the special management order and its effect, to a regulatory news service generally used by credit institutions in the State for the purposes of announcements to such markets, and

(b) providing a copy of the special management order to the regulatory news service referred to in *paragraph (a)*.”.

—An tAire Airgeadais.

[SECTION 42]

[Acceptance of this amendment involves the deletion of section 42 of the Bill.]

SECTION 44

69. In page 32, subsection (1), lines 15 to 17, to delete all words from and including “not” in line 15 down to and including “*section 42(2)*” in lines 16 and 17 and substitute the following:

“not later than 14 days after the publication, in accordance with *subsection (1)(b)* of *section 42*”.

—An tAire Airgeadais.

70. In page 32, lines 19 to 22, to delete subsection (2) and substitute the following:

“(2) The Court shall give such priority to an application under *subsection (1)* as is necessary in the circumstances, and may give such directions as it considers appropriate in the circumstances—

- (a) with regard to the hearing of the application, or
- (b) with regard to a matter that arises during the period beginning with the special management order and ending with the order of the Court under this section.”.

—An tAire Airgeadais.

71. In page 32, subsection (4)(b), line 35, to delete “*subsection 41(2)*” and substitute “*section 41(2)*”.

—An tAire Airgeadais.

72. In page 33, lines 6 and 7, to delete subsection (7) and substitute the following:

“(7) Where, instead of making an order under *subsection (3)* setting aside a special management order, or an order under *subsection (4)* varying or amending a special management order, the Court, on application under *subsection (1)* makes an order refusing to set aside a special management order, the special management order shall be taken to have been effective as if the application under this section had not been made.

(8) The Court, in considering the order it wishes to make under this section, may, where the applicant is a member of the credit institution, subsidiary or holding company the subject of the special management order, have regard to—

- (a) the date on which the applicant became a member of that credit institution, subsidiary or holding company, or increased or decreased the number of shares that the applicant held in that credit institution, subsidiary or holding company, and
- (b) the value of the shares acquired by or disposed of by the member as at the date or dates on which the shares were acquired or disposed of, as the case may be.”.

—An tAire Airgeadais.

SECTION 45

73. In page 33, subsection (3)(c), line 26, to delete “period during which” and substitute “period not exceeding 6 months during which”.

—An tAire Airgeadais.

[SECTION 56]

SECTION 56

74. In page 39, before section 56, to insert the following new section:

“Extension of special management.

56.—The Court may, on application by the Bank under *section 43*, extend the special management of an authorised credit institution, subsidiary or holding company.”.

—An tAire Airgeadais.

[*Acceptance of this amendment involves the deletion of section 56 of the Bill.*]

SECTION 58

75. In page 40, between lines 25 and 26, to insert the following subsection:

“(3) Notwithstanding *section 3(2)*, a reference in this Part to an authorised credit institution includes a reference to a relevant institution within the meaning of the Act of 2010.”.

—An tAire Airgeadais.

SECTION 63

76. In page 42, subsection (1)(a), lines 8 to 11, to delete subparagraph (i), and substitute the following:

“(i) to outline a plan for the repayment of depositors that includes the imposition of losses on senior and junior bondholders in order to protect the financial viability of the State, the financial system and the citizens of the State, and to do so without prejudice to the application of Regulation 4 of the Regulations of 1995, or”.

—Pearse Doherty.

77. In page 42, subsection (1), lines 17 to 19, to delete paragraph (b) and substitute the following:

“(b) Objective 2, to wind up the affairs of the authorised credit institution so as to achieve the best results for the State, the taxpayer and the ordinary depositors of that credit institution before any consideration is given to creditors such as junior and senior bondholders.”.

—Pearse Doherty.

78. In page 42, subsection (4), line 26, to delete “duty of a liquidator pursuant to *subsection (3)* is” and substitute “duties of a liquidator under this Part are”.

—An tAire Airgeadais.

SECTION 64

79. In page 42, before section 64, to insert the following new section:

“Bank may make money available.

64.—(1) The Bank may, for the purpose of cooperating in the pursuit of Objective 1, and to facilitate the transfer of accounts of eligible depositors of the authorised credit institution concerned—

(a) make money available from the deposit protection account, or

(b) make payments and charge the payments on the deposit protection account.

[SECTION 64]

(2) Section 8 of the Financial Services (Deposit Guarantee Scheme) Act 2009 shall apply in respect of payments charged on the deposit protection account under *subsection (1)(b)* as if the reference in that section 8 to a payment in accordance with the Regulations of 1995 were a reference to a payment in accordance with this section.”.

—An tAire Airgeadais.

[*Acceptance of this amendment involves the deletion of section 64 of the Bill.*]

SECTION 66

80. In page 43, subsection (5), lines 20 and 21, to delete “*section 67(4)(e)*” and substitute “*section 67(4)*”.

—An tAire Airgeadais.

SECTION 67

81. In page 43, lines 37 to 42 and in page 44, lines 1 to 9, to delete subsection (4) and substitute the following:

“(4) If a liquidation committee passes a full payment resolution, the liquidation committee ceases to exist at the end of the meeting at which that resolution was passed.”.

—An tAire Airgeadais.

SECTION 68

82. In page 44, lines 12 to 14, to delete subsection (2) and substitute the following:

“(2) A meeting of the liquidation committee is quorate only if all the members are present.”.

—An tAire Airgeadais.

83. In page 44, lines 26 to 34, to delete subsection (6).

—An tAire Airgeadais.

SECTION 69

84. In page 44, before section 69, to insert the following new section:

“Functions of Bank after liquidation committee ceases to exist.

69.—If a liquidation committee ceases to exist by virtue of *section 67(4)**—

(a) the Bank shall be a notice party to legal proceedings relating to the winding-up of the authorised credit institution concerned, and

(b) if a committee of inspection is appointed, the Bank—

(i) may attend meetings of the committee of inspection,

(ii) is entitled to receive copies of all documents relating to the business of the committee of inspection, and

(iii) may make representations to the committee of inspection.”.

—An tAire Airgeadais.

[**Note: This is a reference to the subsection proposed to be inserted by amendment*]

[SECTION 69]

No. 81.]

SECTION 70

85. In page 45, lines 18 to 24, to delete subsection (5).

—An tAire Airgeadais.

SECTION 71

86. In page 46, subsection (1), to delete lines 2 to 16 and substitute the following:

“

Section 243(1)	Substitute: “ 243. —(1) The Court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company, by creditors and contributories or the Bank, as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories or the Bank accordingly, but not further or otherwise.”
Section 243	Before subsection (2), insert: “(1B) In considering an application under subsection (1), the Court shall have regard to the liquidator’s duty to secure the achievement of Objective 1 described in <i>section 63(1)(a)</i> of the <i>Act of 2011</i> . (1C) In considering an application under this section, the Court shall have regard to the liquidator’s duty to secure the achievement of Objective 1 described in <i>section 63(1)(a)</i> of the <i>Act of 2011</i> .”

”.

—An tAire Airgeadais.

[*Note: A Printer error has resulted in incorrect line references in page 46 of the Bill. The line references in this amendment refer to the actual number of lines of text in page 46 of the Bill.*]

SECTION 72

87. In page 46, lines 48 to 53 and in page 47, lines 1 to 9, to delete subsection (1) and substitute the following:

“72.—(1) In the case of the winding-up of an authorised credit institution, or a body that was formerly an authorised credit institution, that is a company incorporated outside the State, references in the *Central Bank Acts 1942 to 2011* to

- (a) the winding-up of an authorised credit institution or a body that was formerly an authorised credit institution, or
- (b) any provision of the Companies Acts which relates to winding-up,

[SECTION 72]

shall be construed as references to the corresponding provisions in the law of the foreign jurisdiction concerned if the context so admits and the circumstances so require.”.

—An tAire Airgeadais.

SECTION 77

88. In page 48, line 36, after “Act” to insert “or requirement imposed under *section 21**”.

—An tAire Airgeadais.

[*Note: This is a reference to the section proposed to be inserted by amendment No. 28.]

SECTION 80

89. In page 49, before section 80, to insert the following new section:

“Costs incurred in relation to making orders, etc.

80.—(1) Where the Courts Service, or another body funded, wholly or partly, out of moneys provided by the Oireachtas, or from the Central Fund or the growing produce of the Central Fund, has incurred costs in relation to the translation or publication of an order under this Act (including where the translation or publication is required by the Regulations of 2011), the costs are a debt due and owing by the authorised credit institution concerned, and may be recovered as a simple contract debt in any court of competent jurisdiction.

(2) If the authorised credit institution is unable to pay the costs referred to in *subsection (1)*, they shall be recoverable from the Fund by the body concerned.”.

—An tAire Airgeadais.

SECTION 81

90. In page 50, lines 13 to 34, to delete subsection (3) and substitute the following:

“(3) Where an order has been made, or requirement imposed, under this Act in relation to an authorised credit institution, any of its subsidiaries, or its holding company, (whether or not the order or requirement is subsequently set aside, or varied or amended in a relevant manner) and a relevant agreement would (apart from this subsection) cause a consequence specified or referred to in *subsection (4)* to follow by virtue of—

- (a) the making of the order, or the imposition of the requirement, or any step taken (including the making of a proposed order) in preparation for the making of the order or imposition of the requirement,
- (b) an act taken or omitted to be taken by any person in compliance with the order or requirement,
- (c) any consequences of any such act or omission,
- (d) any consequence of the order or requirement, or
- (e) any other thing done or authorised to be done under, or resulting from any provision of this Act,

then, notwithstanding that relevant agreement and subject to *section 82*—

[SECTION 81]

- (i) no interest or right of any third party arises or becomes exercisable, and
- (ii) no liability or obligation arises or is incurred by any third party,

by virtue of any of the matters mentioned in any of *paragraphs (a) to (e)*.”.

—An tAire Airgeadais.

SECTION 82

- 91.** In page 52, subsection (1), line 8, to delete “he or she may by order” and substitute the following:

“he or she may, after consultation with the Bank, by order”.

—An tAire Airgeadais.

SECTION 85

- 92.** In page 54, subsection (1)(b), lines 29 and 30, to delete all words from and including “the” in line 29 down to and including “provision” in line 30 and substitute “the operation of any provision”.

—An tAire Airgeadais.

SECTION 86

- 93.** In page 55, line 2, after “order” to insert “or requirement”.

—An tAire Airgeadais.

SECTION 91

- 94.** In page 56, line 14, to delete subsection (3) and substitute the following:

“(3) The Credit Union Act 1997 is amended as set out in *Part 3 of Schedule 1*.

(4) The Land and Conveyancing Law Reform Act 2009 is amended as set out in *Part 4 of Schedule 1*.

(5) The Act of 2010 is amended as set out in *Part 5 of Schedule 1*.”.

—An tAire Airgeadais.

SECTION 92

- 95.** In page 56, subsection (1), line 16, to delete “2004 (S.I. No. 1 of 2004)” and substitute “2010 (S.I. No. 626 of 2010)”.

—An tAire Airgeadais.

- 96.** In page 56, lines 18 to 22, to delete subsections (2) and (3) and substitute the following:

“(2) The Regulations of 2011 are amended as set out in *Part 2 of Schedule 2*.”.

—An tAire Airgeadais.

SCHEDULE 1

- 97.** In page 57, before Schedule 1, to insert the following new Schedule:

SCHEDULE 1

POWERS TO REQUIRE PERSONS TO GIVE EVIDENCE OR PRODUCE DOCUMENTS

Assessor may require persons to give evidence or produce documents.

1. (1) If the Assessor believes on reasonable grounds that a person may be able to give evidence, or to produce a document, that relates to a matter concerning the performance or fulfillment of any of the Assessor’s functions or objectives, he or she may serve on the person a notice requiring the person—

- (a) to appear before the Assessor to give evidence about the matter, or
- (b) to produce the document for examination.

(2) The notice shall—

- (a) specify the matter to which the evidence relates, or specify or describe the document to be produced, as the case requires, and
- (b) in the case of a notice to appear before the Assessor to give evidence—
 - (i) specify the date, time and place at which the person is required to appear before the Assessor, and
 - (ii) state whether and to what extent the evidence is to be given orally or on affidavit.

(3) The notice may require the person concerned to appear before a specified member of the Assessor’s staff and, if it does so, a reference in this Schedule to the Assessor is to be read as including the staff member.

Offence of failing to appear before Assessor.

2. (1) A person commits an offence if, having been required to appear before the Assessor in compliance with a requirement made under *paragraph 1*, the person fails to comply with the requirement, and has not been excused, or released from further attendance, by the Assessor.

(2) *Subparagraph (1)* does not apply if the person has a reasonable excuse.

Offence of failing to produce document.

3. (1) A person commits an offence if, having been required to produce a document to the Assessor in compliance with a requirement under *paragraph 1*, he or she fails to comply with the requirement and has not been excused by the Assessor.

(2) *Subparagraph (1)* does not apply if—

- (a) the person does not have the document and cannot by any reasonable effort obtain it, or
- (b) the person could not be compelled to produce it in a court of law.

Conduct of proceedings under this Schedule.

4. (1) The Assessor may require a person who appears before the Assessor in compliance with a requirement made under *paragraph 1* to swear an oath.

[SCHEDULE 1]

(2) The Assessor may administer an oath for the purposes of this paragraph.

(3) The Assessor may permit a person giving oral evidence to be cross-examined by a person nominated by the Assessor under such procedures as the Assessor may determine.

Proceedings normally to be in private.

5. (1) Except as provided by this paragraph, evidence to be given, or a document to be produced, to the Assessor by a person who appears before him or her in compliance with a requirement made under *paragraph 1* is to be given or produced in private.

(2) If a person who appears before the Assessor in compliance with a requirement made under *paragraph 1* requests that the matter be dealt with in public, the Assessor shall comply with the request unless the matter raises issues that in the Assessor's opinion should be dealt with in private.

(3) If the Assessor is satisfied that it is desirable in the public interest that the evidence to be given should be given, or the document to be produced should be produced, in public, the Assessor may direct accordingly.

(4) If the evidence is to be given, or the document is to be produced, in private, the Assessor may do either or both of the following:

(a) give directions as to the persons (other than the Assessor or the Assessor's staff) who may be present during the proceeding;

(b) give directions preventing or restricting the publication of the whole or any part of the evidence or of matters contained in the document.

(5) If the evidence is to be given, or the document is to be produced, in private, a person (other than the person required to appear before the Assessor, the Assessor or a member of the Assessor's staff) may be present only if entitled to be present because of a direction given under *subparagraph (4)(a)*.

(6) A person who contravenes a direction of the Assessor under *subparagraph (4)(b)* commits an offence.

Offence of refusing to be sworn or answer question.

6. (1) A person appearing before the Assessor in compliance with a requirement made under *paragraph 1* commits an offence if the person—

(a) refuses or fails to swear an oath on being required to do so by the Assessor, or

(b) refuses or fails to give evidence in compliance with a requirement made under *paragraph 1*, or

(c) refuses or fails to answer a question put to the person by the Assessor or in cross-examination with the Assessor's permission.

(2) *Subparagraph (1)* does not apply if the person has a reasonable excuse.

(3) It is a reasonable excuse for the purposes of *subparagraph (2)* for a person to refuse or fail to answer a question that the answer might tend to incriminate the person.

[SCHEDULE 1]

(4) *Subparagraph (3)* does not limit what is a reasonable excuse for the purposes of *subparagraph (2)*.

Protection, etc., of persons appearing before Assessor.

7. Subject to this Schedule, a person who appears before the Assessor in compliance with a requirement made under *paragraph 1* has the same protection and privileges and is, in addition to the offences under this Schedule, subject to the same liabilities as a witness in proceedings in the Court.

Payment of allowances and expenses to persons who appear before Assessor.

8. (1) A person who appears before the Assessor in compliance with a requirement under *paragraph 1* is entitled to be paid such allowances and travelling or other expenses as are payable to or in respect of a witness attending in civil proceedings before the Court.

(2) All allowances and expenses payable under *subparagraph (1)* are payable by the Assessor.

Assessor's certificate to Court of failure to produce document, etc.

9. (1) If a person refuses or fails—

(a) to produce to the Assessor a document in accordance with a requirement by the Assessor,

(b) to attend before the Assessor when required so to do, or

(c) to answer a question put to him or her by the Assessor,

the Assessor may certify the refusal or failure to the Court.

(2) The Court may, after hearing any witnesses who may be produced against or on behalf of the person alleged to have so refused or failed and any statement which may be offered in defence, make any order or give any direction it thinks fit.

(3) Without prejudice to the generality of *subparagraph (2)*, the Court may—

(a) order the person concerned to attend or re-attend before the Assessor, or to produce a particular document or answer a particular question put to him or her by the Assessor, or

(b) order that the person concerned need not produce a particular document, or answer a particular question put to him or her by the Assessor.”

—An tAire Airgeadais.

[*Note: This is a reference to the section proposed to be inserted by amendment No. 47.]

98. In page 57, between lines 14 and 15 to insert the following:

[SCHEDULE 1]

“

3	Section 33AK(5) (ao)	Substitute: “(ao) for any purpose connected with the functions of the Bank, the Minister, the Governor or the Head of Financial Regulation or a special manager under the Credit Institutions (Stabilisation) Act 2010, or (ap) for any purpose connected with the functions of the Bank, the Minister, the Governor or the Head of Financial Regulation or a special manager under the <i>Central Bank and Credit Institutions (Resolution) Act 2011</i> .”.
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—An tAire Airgeadais.

99. In page 57, line 20, to delete “Part 8”, and substitute “Part 8 and sections 21 and 87”.

—An tAire Airgeadais.

[*Note: A printer error has led to incorrect line references in page 57 of the Bill. The line references in this amendment refer to the actual number of lines of text in page 57 of the Bill.*]

100. In page 57, between lines 29 and 30, to insert the following new Parts:

“PART 3

Section 91(3).*

AMENDMENTS OF CREDIT UNION ACT 1997

[SCHEDULE 1]

<i>Item</i>	<i>Provision amended</i>	<i>Amendment</i>
1	Section 87(3)	<p>After paragraph (d), insert:</p> <p>“(e) require the credit union to raise within such period as may be specified, and maintain such capital, reserves or other financial resources or to maintain such non-financial resources, as may be specified;</p> <p>(f) require the credit union to take such steps as may be specified to strengthen its systems or controls;</p> <p>(g) require the credit union to apply a specified policy for making provision for such debts or treatment of assets, as may be specified, for the purposes of capital and reserve requirements;</p> <p>(h) require the credit union to restrict or limit its business, operations or activities;</p> <p>(i) require the credit union to reduce risks inherent in its activities, products and systems;</p> <p>(j) require the credit union to provide a statement in writing to the Bank of the steps it will take to comply with any regulatory direction imposed under this section or with any other requirement imposed on a credit union under this Act;</p> <p>(k) require the credit union to take certain steps or to refrain from adopting or pursuing a particular course of action;</p> <p>(l) impose limitations on the acceptance of members’ savings or the employment of assets;</p> <p>(m) impose any other requirements on the credit union relating to its activities or the conduct of its business;”.</p>
2	Section 97(1)(d)	<p>After “common bond” insert “(including a common bond arising by virtue of the operation of law)”.</p>

[SCHEDULE 1]

3	Section 129	<p>Insert the following subsection:</p> <p>“(7) (a) Where the engagements of a credit union (in this subsection referred to as the ‘transferor credit union’) are transferred to another credit union (in this subsection referred to as the ‘transferee credit union’), the common bond of the transferee credit union is taken to include the common bond of the transferor credit union and the rules of the transferee credit union are amended accordingly, on and from the date on which the transfer takes effect in accordance with this section.</p> <p>(b) Section 14 shall not apply to the amendment of the rules of the transferee credit union effected by paragraph (a).”.</p>
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PART 4

Section 91(4).*

AMENDMENTS OF LAND AND CONVEYANCING LAW
REFORM ACT 2009

<i>Item</i>	<i>Provision amended</i>	<i>Amendment</i>
1	Section 74(1)	Delete “subject to subsection (2)” and insert “subject to subsections (2) and (5)”
2	Section 74(3)	Delete “subject to subsection (4)” and insert “subject to subsections (4) and (5)”
3	Section 74	<p>After subsection (4), insert:</p> <p>“(5) The disposal of any property of an authorised credit institution within the meaning of the <i>Central Bank and Credit Institutions (Resolution) Act 2011</i> by the Central Bank pursuant to an order under that Act does not amount to a voluntary disposition or a conveyance of property.”</p>

”.
—An tAire Airgeadais.

[*Note: This is a reference to the subsection proposed to be inserted by amendment No. 94.]

[Note: A printer error has led to incorrect line references in page 57 of the Bill. The line references in this amendment refer to the actual number of lines of text in page 57 of the Bill.]

[SCHEDULE 1]

101. In page 58, between lines 16 and 17, to insert the following:

4	Section 2	<p>After subsection (4), insert:</p> <p>“(5) A reference in this Act to the preservation of the financial position of a relevant institution shall be taken to include the need for the relevant institution to comply with such one or more of the following as apply to it:</p> <p>(a) an order made in relation to it under this Act;</p> <p>(b) a requirement imposed on it under section 50;</p> <p>(c) the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006).”.</p>
5	Section 4(g)	<p>For “preserve and restore”, substitute “preserve or restore”.</p>
6	New section	<p>After section 5, insert:</p> <p>“Minister and Bank to have regard to European Union law.</p> <p>5A.—In performing a function under this Act, the Minister and the Bank shall have regard to the laws of the European Union (including those governing state aid) and any relevant guidance issued by the Commission of the European Union.”.</p>
7	Section 7(1)	<p>For “any action,” substitute “any action, or any series of actions that are together designed to achieve a specified objective,”.</p>
8	Section 9(6)	<p>Delete.</p>

9	Section 9(7)	<p>Substitute:</p> <p>“(7) A direction order has effect—</p> <p>(a) if there is an application made under section 11—</p> <p>(i) if the Court makes an order under section 11 and makes an order as to the date of effect, at that date,</p> <p>(ii) if the Court makes an order under section 11 and does not make an order as to the date of effect, the date of that order made under section 11, or</p> <p>(iii) if the Court does not make an order under section 11, 14 days after the publication of the order under section 9A(1)(b),</p> <p>or</p> <p>(b) if there is no application made under section 11—</p> <p>(i) immediately, to the extent that the Court so orders, or</p> <p>(ii) if the Court does not make an order as to the date of effect, 14 days after the publication of the order under section 9A(1)(b).”.</p>
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[SCHEDULE 1]

10	New section	<p>After section 9, insert:</p> <p>“Publication of direction orders.</p> <p>9A.—(1) The Minister shall, as soon as practicable after a direction order is made—</p> <p>(a) serve a copy of the direction order on the relevant institution concerned, and</p> <p>(b) publish the order in 2 newspapers circulating generally in the State.</p> <p>(2) In a particular case, the Minister may, if he or she thinks it necessary to do so, publish a direction order by an additional means or in an additional place.</p> <p>(3) Without delay after the service of the copy of the direction order, the relevant institution shall take all reasonable measures to ensure that its members are made aware of the order, including, without limiting the generality of the foregoing—</p> <p>(a) where the shares of the relevant institution are traded from time to time on a financial market (whether a regulated market or not), making an announcement that relates to the existence of the direction order and its effect, to a regulatory news service generally used by relevant institutions in the State for the purposes of announcements to such markets, and</p> <p>(b) providing a copy of the direction order to the regulatory news service referred to in paragraph (a).”.</p>
11	Section 11(1)	<p>Delete “not later than 5 working days after the making of a direction order,” and substitute “not later than 14 days after the publication, in accordance with subsection (1)(b) of section 9A, of a direction order.”.</p>

[SCHEDULE 1]

12	Section 11(2)	<p>Substitute:</p> <p>“(2) The Court shall give such priority to an application under subsection (1) as is necessary in the circumstances, and may give such directions as it considers appropriate in the circumstances—</p> <p>(a) with regard to the hearing of the application, or</p> <p>(b) with regard to a matter that arises during the period beginning with the direction order and ending with the order of the Court under this section.”.</p>
13	Section 11(5)	<p>Substitute:</p> <p>“(5) On an application under subsection (1)—</p> <p>(a) if an order is made setting aside the direction order, the order under this section is effective from the date of its making without prejudice to the validity of anything previously done or taken to have been done under the direction order, or</p> <p>(b) if an order is made refusing to set aside the direction order and the Court does not make an order under subsection (4), the order under this section has the effect that the direction order shall be taken to have been effective as if that application had not been made.”.</p>

[SCHEDULE 1]

14	Section 11	<p>After subsection (6), insert:</p> <p>“(7) The Court, in considering the order it wishes to make under this section, may, where the applicant is a member of a relevant institution, have regard to—</p> <p>(a) the date on which the applicant became a member of that institution, or increased or decreased the number of shares that the applicant held in that institution, and</p> <p>(b) the value of the shares acquired by or disposed of by the member as at the date or dates on which the shares were acquired or disposed of, as the case may be.”.</p>
15	Section 13(2)	<p>For “proposed direction order”, substitute “proposed special management order”.</p>
16	Section 14(6)	<p>Delete.</p>

[SCHEDULE 1]

17	New section	<p>After section 14, insert:</p> <p><i>“Publication of special management orders.</i></p> <p>14A.—(1) The Minister shall, as soon as practicable after a special management order is made—</p> <p>(a) serve a copy of the special management order on the relevant institution concerned, and</p> <p>(b) publish the order in 2 newspapers circulating generally in the State.</p> <p>(2) In a particular case, the Minister may, if he or she thinks it necessary to do so, publish a special management order by an additional means or in an additional place.</p> <p>(3) Without delay after the service of the copy of the special management order, the relevant institution shall take all reasonable measures to ensure that its members are made aware of the order, including, without limiting the generality of the foregoing—</p> <p>(a) where the shares of the relevant institution are traded from time to time on a financial market (whether a regulated market or not), making an announcement that relates to the existence of the special management order and its effect, to a regulatory news service generally used by relevant institutions in the State for the purposes of announcements to such markets, and</p> <p>(b) providing a copy of the special management order to the regulatory news service referred to in paragraph (a).”.</p>
18	Section 16(1)	<p>Delete “not later than 5 working days after the making of a special management order,” substitute “not later than 14 days after the publication, in accordance with subsection (1)(b) of section 14A, of the making of a special management order,”.</p>

[SCHEDULE 1]

19	Section 16(2)	<p>Substitute:</p> <p>“(2) The Court shall give such priority to an application under subsection (1) as is necessary in the circumstances, and may give such directions as it considers appropriate in the circumstances—</p> <p>(a) with regard to the hearing of the application, or</p> <p>(b) with regard to a matter that arises during the period beginning with the making of the special management order and ending with the making of the order of the Court under this section.”.</p>
20	Section 16	<p>After subsection (6), insert:</p> <p>“(7) Where, instead of making an order under subsection (3) setting aside a special management order, or an order under subsection (4) varying or amending a special management order, the Court, on application under subsection (1) makes an order refusing to set aside a special management order, the special management order shall be taken to have been effective as if the application under this section had not been made.</p> <p>(8) The Court, in considering the order it wishes to make under this section may where the applicant is a member of a relevant institution, have regard to—</p> <p>(a) the date on which the applicant became a member of that institution, or increased or decreased the number of shares that the applicant held in that institution, and</p> <p>(b) the value of the shares acquired by or disposed of by the member as at the date or dates on which the shares were acquired or disposed of, as the case may be.”.</p>

[SCHEDULE 1]

21	Section 28(1)(b)	<p>Substitute:</p> <p>“(b) after so consulting, the Minister is of the opinion that the making of a subordinated liabilities order in the terms of the proposed subordinated liabilities order—</p> <p>(i) is necessary to secure the achievement of a purpose of this Act specified in the proposed subordinated liabilities order, or</p> <p>(ii) is necessary for the preservation or restoration of the financial position of the relevant institution,</p> <p>even though the making of that order would have the consequence of affecting (including reducing) the rights enjoyed by subordinated creditors before the order.”.</p>
22	Section 28	<p>After subsection (1), insert:</p> <p>“(1A) If the Minister makes a proposed subordinated liabilities order in relation to a relevant institution and the intention of it or part of it is the preservation or restoration of the financial position of a credit institution, the Minister shall declare in the proposed subordinated liabilities order that the proposed subordinated liabilities order or part is made with that intention, in accordance with the CIWUD Directive.”.</p>
23	Section 28(2)(h)	<p>Substitute:</p> <p>“(h) the market value of the subordinated liabilities concerned;</p> <p>(i) the effectiveness or likely effectiveness of liability management exercises of that institution in respect of its subordinated liabilities;</p> <p>(j) the extent to which subordinated creditors would, if the subordinated liabilities order were made, be more likely to voluntarily agree to any of the matters referred to in subsection (4).”.</p>

[SCHEDULE 1]

24	Section 29	<p>After subsection (2), insert:</p> <p>“(2A) If in a proposed subordinated liabilities order the Minister has declared the intention of preserving or restoring the financial position of a credit institution, and the Court is satisfied that the Minister made the proposed subordinated liabilities order or part of it with that intention, the Court shall declare in the relevant subordinated liabilities order that the subordinated liabilities order or the relevant part of it is a reorganisation measure for the purposes of the CIWUD Directive.”.</p>
25	Section 29(5)	Delete.
26	Section 29(6)	<p>Substitute:</p> <p>“(6) A subordinated liabilities order is effective from the date on which the requirements of section 29A(2)(a) and (b) are met.</p> <p>(7) If one of the consequences of a subordinated liabilities order is that it terminates or reduces the liability of a relevant institution to its subordinated creditors, that termination or reduction shall be taken, for all purposes, as having occurred immediately on the subordinated liabilities order’s becoming effective under subsection (6).”.</p>

27	New section	<p>After section 29, insert:</p> <p><i>“Publication of subordinated liabilities orders.</i></p> <p>29A.—(1) The Minister shall, as soon as practicable after a subordinated liabilities order is made—</p> <p>(a) serve a copy of the subordinated liabilities order on the relevant institution concerned, and</p> <p>(b) publish the order in 2 newspapers circulating generally in the State.</p> <p>(2) Without delay after the service of the copy of the subordinated liabilities order, the relevant institution concerned shall take all reasonable measures to ensure that the subordinated creditors concerned are made aware of the order, including, without limiting the generality of the foregoing—</p> <p>(a) making an announcement that relates to the existence of the subordinated liabilities order and its effect to a regulatory news service generally used by relevant institutions in the State whose securities are traded from time to time on a financial market (whether a regulated market or not), to make announcements to such markets,</p> <p>(b) providing a copy of the subordinated liabilities order to the regulatory news service referred to in paragraph (a), and</p> <p>(c) providing a copy of the announcement, and of the subordinated liabilities order, to each clearing house through which the subordinated creditors concerned would, in the ordinary course, acquire or settle subordinated liabilities held by them.”.</p>
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[SCHEDULE 1]

28	Section 31(1)	Delete “not later than 5 working days after the making of a subordinated liabilities order, for the setting aside of the subordinated liabilities order” and substitute “not later than 14 days after the requirements of section 29A(2)(a) and (b) have been met, for the setting aside of the subordinated liabilities order or, in the case of a subordinated creditor, of the part or parts of that order that affect the subordinated creditor concerned.”.
29	Section 31(2)	Substitute: “(2) The Court shall give such priority to an application under subsection (1) as is necessary in the circumstances, and may give such directions as it considers appropriate in the circumstances— (a) with regard to the hearing of the application, or (b) with regard to a matter that arises during the period beginning with the subordinated liabilities order and ending with the order of the Court under this section.”.
30	Section 31(4)	After “considers appropriate”, insert “(including varying the amounts owing to subordinated creditors or one or more classes of subordinated creditors)”.
31	Section 31(5)	Substitute: “(5) On application under subsection (1)— (a) if an order is made setting aside the subordinated liabilities order, the effect of the order under this section shall be to set aside the subordinated liabilities order concerned to the extent and on the terms that the Court directs, and (b) if an order is made refusing to set aside the subordinated liabilities order and the Court does not make an order under subsection (4), then the subordinated liabilities order shall continue to be effective.”.

[SCHEDULE 1]

32	Section 31(6)	<p>Substitute:</p> <p>“(6) If any order is made under subsection (4) to vary or amend a subordinated liabilities order, the subordinated liabilities order as varied or amended shall be taken as being effective as if the terms and conditions as varied were the terms and conditions of the original subordinated liabilities order but otherwise as if the application under this section had not been made.”.</p>
33	Section 31	<p>After subsection (6), insert:</p> <p>“(7) The Court, in considering the order it wishes to make under this section may, where the applicant is a subordinated creditor of a relevant institution, have regard to—</p> <p>(a) the date or dates on which the applicant acquired or disposed of the subordinated liabilities of the relevant institution, and</p> <p>(b) the market value of those subordinated liabilities.</p> <p>(8) Where an application under subsection (1) is made by a subordinated creditor for the setting aside of the part or parts of the subordinated liabilities order that affect him or her, or where the Court makes an order setting aside, or amending or varying, a part or parts only of the subordinated liabilities order, a reference in this section to a subordinated liabilities order shall be read as a reference to that part or those parts only of that subordinated liabilities order.”.</p>

[SCHEDULE 1]

34	Section 33(2)	<p>Substitute:</p> <p>“(2) The Minister may make a proposed transfer order only if the Minister, having consulted with the Governor, is of the opinion that, having regard to any adverse consequences that may arise as a result of the transfer order, in relation to the interests generally of the creditors of the transferor or, where the transferor is a subsidiary or holding company, in relation to the interests generally of the creditors of the transferor or the relevant institution concerned, making a transfer order in the terms of the proposed transfer order is necessary to secure the achievement of a purpose of this Act specified in the proposed transfer order.</p> <p>(2A) Nothing in subsection (2) requires the Minister to consider the possible adverse consequences of the transfer order concerned on the interests of a particular creditor or class of creditors of the transferor or relevant institution, as the case may be, or to consider any submission made by a creditor on behalf of that creditor, a class of creditors or creditors generally.”.</p>
35	Section 33	<p>After subsection (4), insert:</p> <p>“(4A) If the Minister proposes that the transfer order or any term of it have immediate effect, the Minister shall state, in the written notice given under subsection (4)(a), that fact and the reasons why the order or term should have that effect.”.</p>
36	Section 34(6)	Delete.

37	Section 34(7)	<p>Substitute:</p> <p>“(7) A transfer order has effect—</p> <p>(a) if there is an application made under section 36—</p> <p>(i) if the Court makes an order under section 36 and makes an order as to the date of effect, at that date,</p> <p>(ii) if the Court makes an order under section 36 and does not make an order as to the date of effect, the date of that order made under section 36, or</p> <p>(iii) if the Court does not make an order under section 36, 14 days after the publication of the order under section 34A(1)(b),</p> <p>or</p> <p>(b) if there is no application made under section 36—</p> <p>(i) immediately, to the extent that the Court so orders, or</p> <p>(ii) if the Court does not make an order as to the date of effect, 14 days after the publication of the order under section 34A(1)(b).”.</p>
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[SCHEDULE 1]

38	New section	<p>After section 34, insert:</p> <p><i>“Publication of transfer orders.</i></p> <p>34A.— (1) The Minister shall, as soon as practicable after a transfer order is made—</p> <p>(a) serve a copy of the transfer order on the relevant institution concerned, and</p> <p>(b) publish the order in 2 newspapers circulating generally in the State.</p> <p>(2) In a particular case, the Minister may, if he or she thinks it necessary to do so, publish a transfer order by an additional means or in an additional place.</p> <p>(3) Without delay after the service of the copy of the transfer order, the relevant institution shall take all reasonable measures to ensure that its members are made aware of the order, including, without limiting the generality of the foregoing—</p> <p>(a) where the shares of the relevant institution are traded from time to time on a financial market (whether a regulated market or not), making an announcement that relates to the existence of the transfer order and its effect, to a regulatory news service generally used by relevant institutions in the State for the purposes of announcements to such markets, and</p> <p>(b) providing a copy of the transfer order to the regulatory news service referred to in paragraph (a).”.</p>
39	Section 36(1)	<p>Delete “not later than 5 working days after the making of a transfer order,”, and substitute “not later than 14 days after the publication, in accordance with subsection (1)(b) of section 34A, of a transfer order.”.</p>

[SCHEDULE 1]

40	Section 36(2)	<p>Substitute:</p> <p>“(2) The Court shall give such priority to an application under subsection (1) as is necessary in the circumstances, and may give such directions as it considers appropriate in the circumstances—</p> <p>(a) with regard to the hearing of the application, or</p> <p>(b) with regard to a matter that arises during the period beginning with the transfer order and ending with the order of the Court under this section.”.</p>
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41	Section 36(5) and (6)	<p>Substitute:</p> <p>“(5) If the Court sets aside a transfer order, no further assets or liabilities shall be transferred as a consequence of the transfer order.</p> <p>(6) The setting aside of a transfer order does not affect the rights of a transferee or the transferee’s title to any asset or liability so transferred before that setting-aside.</p> <p>(7) If a transfer order is set aside and assets or liabilities have been transferred pursuant to it, the transferor is not entitled to any payment other than the consideration paid pursuant to the transfer order.</p> <p>(8) If a variation or amendment of a transfer order made under this section would, but for this subsection, have the effect of setting aside a disposition of an asset or liability, subsections (5) to (7) apply with any necessary modifications.</p> <p>(9) The Court, in considering the order it wishes to make under this section, may, where the applicant is a member of a relevant institution, have regard to—</p> <p>(a) the date on which the applicant became a member of that institution, or increased or decreased the number of shares that the applicant held in that institution, and</p> <p>(b) the value of the shares acquired by or disposed of by the member as at the date or dates on which the shares were acquired or disposed of, as the case may be.”</p>
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[SCHEDULE 1]

42	Section 37(7)	For “financial collateral arrangement (within the meaning of the European Communities (Financial Collateral Arrangements) Regulations 2004 (S.I. No. 1 of 2004))”, substitute “financial collateral arrangement (within the meaning of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 ¹ on financial collateral arrangements, as amended by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 ² , and of the European Communities (Financial Collateral Arrangements) Regulations 2010 (S.I. No 626 of 2010))”.
43	Section 39(4)(h)	Delete “entitled and subject to if” and substitute “entitled and subject if”.
44	Section 39	<p>After subsection (5), insert:</p> <p>“(5A) If—</p> <p>(a) the transferor is a credit union or a building society,</p> <p>(b) a share account is included in the transfer of assets and liabilities, and</p> <p>(c) the share account becomes a deposit account in the transferee pursuant to subsection (5),</p> <p>the holder of that account continues to have the membership rights in the transferor that he or she had before the transfer, including (without limitation) voting rights and rights to participate in any surplus on a winding-up.</p> <p>(5B) Subsection (5A) has effect notwithstanding anything in—</p> <p>(a) the Building Societies Act 1989 or the Credit Union Act 1997, or</p> <p>(b) the memorandum of association or rules of the transferor.”.</p>

<p>45</p>	<p>Section 39(6)</p>	<p>Substitute:</p> <p>“(6) The transfer of assets and liabilities under a transfer order takes effect notwithstanding—</p> <p>(a) any duty or obligation to any person that would otherwise prevent or restrict the transfer,</p> <p>(b) any provision of any enactment, rule of law, code of practice or agreement providing for or requiring—</p> <p>(i) notice to any person,</p> <p>(ii) the consent, approval or concurrence of any person, or</p> <p>(iii) any formality such as registration,</p> <p>(c) any other rule of law or equity,</p> <p>(d) any code of practice made under an enactment,</p> <p>(e) the listing rules of a regulated market or the rules of any other market on which the shares of the transferor are traded,</p> <p>(f) the memorandum of association or articles of association of the transferor, or</p> <p>(g) any agreement which the transferor is a party to, is bound by, or has an interest in,</p> <p>except to any extent to which the transfer order expressly provides otherwise.”.</p>
<p>46</p>	<p>Section 50</p>	<p>After subsection (2), insert:</p> <p>“(2A) If the Minister imposes a requirement on a relevant institution and the intention of it or part of it is the preservation or restoration of the financial position of a credit institution, the Minister shall declare in the requirement that the requirement or part is made with that intention, in accordance with the CIWUD Directive.”.</p>

[SCHEDULE 1]

47	Section 52	Insert “or requirement imposed under section 50” after “Act”.
48	New section	<p>After section 52, insert the following:</p> <p><i>“Costs incurred in relation to making orders, etc.</i></p> <p>52A.— Where the Courts Service, or another body funded, wholly or partly, out of moneys provided by the Oireachtas, or from the Central Fund or the growing produce of the Central Fund, has incurred costs in relation to the translation or publication of an order under this Act (including where the translation or publication is required by the European Communities (Reorganisation and Winding-Up of Credit Institutions) Regulations 2011 (S.I. No. 48 of 2011)), the costs are a debt due and owing by the credit institution concerned, and may be recovered as a simple contract debt in any court of competent jurisdiction.”.</p>
49	Section 59(1)	Insert “(other than the Minister)” after “person shall not”.
50	Section 61(3)	Insert “(whether or not the order or requirement is subsequently set aside, or varied or amended in a relevant manner)” after “subsidiary of its holding company”.

¹OJ No. L168, 27.6.2002, p.43.

²OJ No. L146, 10.6.2009, p.37.

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—An tAire Airgeadais.

SCHEDULE 2

102. In page 59, lines 3 to 42, to delete Part 1.

—An tAire Airgeadais.