



SEANAD ÉIREANN

**BILLE AN BHAINC CEANNAIS (MAOIRSIÚ AGUS
FORFHEIDHMIÚ), 2011
CENTRAL BANK (SUPERVISION AND ENFORCEMENT)
BILL 2011**

**LEASUITHE TUARASCÁLA
REPORT AMENDMENTS**

SEANAD ÉIREANN

**BILLE AN BHAINC CEANNAIS (MAOIRSIÚ AGUS FORFHEIDHMIÚ),
2011
—AN TUARASCÁIL**

**CENTRAL BANK (SUPERVISION AND ENFORCEMENT) BILL 2011
—REPORT**

*Leasuithe
Amendments*

[*Government amendments are denoted by an asterisk.]

1. In page 33, between lines 9 and 10, to insert the following:

“(4) The Bank shall publish in its Annual Report a statement of the reforms undertaken by bodies in respect of which reports of breaches were made.”.

—*Senators Sean D. Barrett, Feargal Quinn.*

2. In page 44, line 5, after “with” to insert the following:

“The Competition Authority, the National Competitiveness Council and”.

—*Senators Sean D. Barrett, Feargal Quinn.*

3. In page 58, to delete lines 42 to 45 and in page 59, to delete lines 1 and 2 and substitute the following:

“(5) A regulated financial service provider falls within this subsection if, in the preceding financial year, a complaint relating to the regulated financial service provider which has been made to the Financial Services Ombudsman has been found by that Ombudsman to be substantiated or partly substantiated.”.

—*Senators Kathryn Reilly, Trevor Ó Clochartaigh, David Cullinane.*

4. In page 59, between lines 12 and 13, to insert the following:

“(d) the measures undertaken by the financial service provider in response to complaints made under this section.”.

—*Senators Sean D. Barrett, Feargal Quinn.*

- *5. In page 59, after line 47, to insert the following:

“Third country
branches.

73.—The Central Bank Act 1971 is amended—

(a) in section 7—

(i) in subsection (1) by inserting “or authorisation under section 9A” after “licence”, and

(ii) in subsection (6)(b) by inserting “or authorisation under section 9A” after “licence”,

and

(b) by inserting the following sections after section 9:

[No. 43b of 2011]

[02 July, 2013]

“Authorisation
of third country
branches.

9A.—(1) In this section and sections 9B and 9C—

‘branch’ means a branch of a relevant credit institution;

‘EEA Agreement’ has the same meaning as it has in the European Communities (Amendment) Act 1993;

‘EEA state’ means—

- (a) a member state of the European Communities, or
- (b) a state (other than a member state of the European Communities) that is a contracting party to the EEA Agreement;

‘relevant credit institution’ means a credit institution whose head office is located in a state or territory other than an EEA state and which holds an authorisation to carry on banking business in that state or territory from the authority that exercises in that state or territory functions corresponding to those of the Bank under this Part (‘relevant third country authority’).

(2) Subject to the provisions of this section, the Bank may grant an authorisation to a relevant credit institution to operate a branch in the State for the purpose of carrying on banking business in the State.

(3) The Bank shall not grant an authorisation under subsection (2) unless it is satisfied that—

- (a) the relevant credit institution is subject, in the state or territory where its head office is located, to regulatory or administrative provisions relating to authorisation to carry on banking business in that state or territory and supervision corresponding to those in the State, and
- (b) protection of deposits with the branch, corresponding to the protection provided by the European Communities (Deposit Guarantee Schemes) Regulations 1995 (S.I. No. 168 of 1995), is available to depositors.

(4) An application for authorisation under subsection (2) shall be in such form and contain such information as the Bank may from time to time determine.

(5) The Bank shall notify the European Commission, the European Banking Authority and the European Banking Committee of any authorisation granted under subsection (2).

(6) The grant of an authorisation under subsection (2) shall not constitute a warranty as to the solvency of the relevant credit institution to which it is granted and the Bank shall not be liable in respect of any losses incurred through the insolvency or default of a relevant credit institution to which such authorisation is granted.

Refusal to grant an authorisation under section 9A.

9B.—(1) The Bank shall not refuse to grant an authorisation under section 9A(2) unless it is satisfied that the grant of the authorisation would not be in the interest of the orderly and proper regulation of banking.

(2) Whenever the Bank proposes to refuse to grant an authorisation under section 9A(2) it shall—

- (a) within the period of 6 months after the date of the receipt of the application for the authorisation, or
- (b) where additional information in relation to the application has been sought by the Bank, within the period of 6 months after the date of the receipt by the Bank of the additional information or the period of 12 months after the date of the receipt of the application for the authorisation whichever period first expires,

notify the applicant for the authorisation in writing of its reasons for the refusal and the applicant may, within the period of 21 days after the date of the giving of the notification, make representations in writing to the Bank in relation to the proposed refusal.

(3) The Bank shall, before deciding to refuse the authorisation, consider any representations duly made to it under subsection (2) in relation to the proposed refusal.

Revocation of authorisations granted under section 9A.

9C.—(1) The Bank may revoke an authorisation granted under section 9A(2)—

- (a) if the holder of the authorisation so requests,
- (b) if the holder of the authorisation—
 - (i) has not commenced to carry on banking business pursuant to the authorisation within 12 months of the date on which the authorisation was granted,
 - (ii) has ceased to carry on banking business pursuant to the authorisation and has not carried it on during a period of more than 6 months immediately following the cesser,
 - (iii) has obtained the authorisation through false statements or any other irregular means,
 - (iv) becomes unable to meet its obligations to its creditors or suspends payments lawfully due by it or can no longer be relied upon to fulfil its obligations towards its creditors, and in particular no longer provides security for the assets entrusted to it,

- (v) is convicted on indictment of an offence under any provision of this Act or an offence involving fraud, dishonesty or breach of trust, or
- (vi) being a company, is being wound up,
- (c) where the holder of the authorisation no longer holds an authorisation from the relevant third country authority to carry on banking business in the state or territory where its head office is located,
- (d) if the business of, or the corporate structure of, the holder of the authorisation has been so organised or the holder of the authorisation has come under the control of any other undertaking not supervised by the Bank such that the holder is no longer capable of being supervised to the satisfaction of the Bank, or
- (e) if, since the grant of the authorisation, the circumstances relevant to the grant have changed and are such that, if an application for an authorisation were made in the changed circumstances, it would be refused.

(2) Whenever the Bank proposes to revoke an authorisation under subsection (1) (otherwise than in circumstances to which paragraph (a) of subsection (1) relates)—

- (a) it shall notify the holder of the authorisation in writing of the reasons for the revocation and that the holder may, within 21 days after the date of the giving of the notification, make representations in writing to the Bank in relation to the proposed revocation,
- (b) the holder of the authorisation may make such representations in writing to the Bank within the period referred to in paragraph (a), and
- (c) the Bank shall, before deciding whether or not to revoke the authorisation, consider any representations duly made to it under this subsection in relation to the proposed revocation.

(3) Where an authorisation is revoked under subsection (1) and the holder of the authorisation is not a company which is being wound up—

- (a) that person shall continue to be subject to the duties and obligations imposed on it by or under the *Central Bank Acts 1942 to 2013* until all liabilities of that person in respect of deposits (including deposits on current accounts) or other repayable funds accepted by it from persons (in this subsection referred to as 'depositors') pursuant to the authorisation have been discharged to the satisfaction of the Bank,

(b) that person shall, as soon as possible after the authorisation is revoked—

(i) notify the Bank, and

(ii) as far as is reasonably practicable, notify every depositor concerned,

of the measures it is taking or proposes to take to discharge in full and without undue delay its liabilities in respect of those deposits,

(c) in the case where—

(i) that person has notified the Bank in accordance with paragraph (b) and the Bank is of the opinion that the measures being taken or proposed to be taken for the purposes of that paragraph are not satisfactory, or

(ii) that person has not so notified the Bank and the Bank is of the opinion that it has failed to so notify as soon as possible after the authorisation is revoked, or

(iii) the Bank is of the opinion that that person has not taken all reasonable steps to so notify every depositor concerned,

then the Bank may give a direction in writing to that person for such period, not exceeding 6 months, as may be specified therein, prohibiting it from—

(I) dealing with or disposing of any of its assets or specified assets in any manner, or

(II) engaging in any transaction or class of transaction or specified transaction, or

(III) making payments,

without the prior authorisation of the Bank, and the Bank may require that person to prepare and submit to it for its approval within 2 months of the direction, a scheme for the orderly discharge in full of its liabilities to the depositors concerned.

(4) Where a direction to which subsection (3)(c) relates is given the provisions of section 21 shall apply with any necessary modifications.

(5) The Bank shall, before deciding to revoke an authorisation under subsection (1), consult with the relevant third country authority provided however that if immediate action by the Bank is called for it shall not be necessary for the Bank to consult as aforesaid but in such a case the Bank shall notify the authority concerned of the revocation of the authorisation.

(6) In this section ‘control’ includes any power, whether arising from a contract or agreement or otherwise, whereby one party can direct the affairs of another and a parent undertaking shall be deemed to control its subsidiaries and ‘parent undertaking’ has the meaning assigned to it by the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992).”.”.

*6. In page 76, to delete lines 34 to 38 and substitute the following:

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1	Section 2(1)	(a) In paragraph (d) of the definition of “related body” substitute “Part 3 of the <i>Central Bank (Supervision and Enforcement) Act 2013</i> ” for “Part 5 of the Central Bank Reform Act 2010”. (b) Insert the following definition: “ ‘European Banking Committee’ means the committee established pursuant to Commission Decision 2004/10/EC;”.
2	Section 7	In subsection (1) delete “on behalf of any other person”.
3	Section 10	Insert “or authorisation under section 9A(2)” after “licence” in each place.
4	Section 12	(a) In subsection (1) insert “and of the holders of authorisations under section 9A” after “licences”. (b) In subsection (2)— (i) insert “or authorisation under section 9A” after “licence”, and (ii) insert “European Banking Committee” after “European Commission”. (c) In subsection (3)— (i) insert “and of the holders of authorisations under section 9A” after “licences”, and (ii) insert the following after paragraph (d): “(dd) the European Banking Committee;”.
5	Section 17	(a) Insert “or authorisation under section 9A” after “licence” in each place. (b) In subsection (1) insert “or holders of authorisations under section 9A” after “licence holders”.
6	Section 18	Insert “or authorisation under section 9A” after “licence” in each place.
7	Section 19	(a) In subsection (1)— (i) insert “or authorisation under section 9A” after “a licence”, and (ii) insert “or authorisation” after “the licence”. (b) In subsection (2) insert “or authorisations under section 9A” after “licences”.

8	Section 20	Insert “or authorisation under section 9A” after “licence” in each place.
9	Section 21	Insert “or authorisation under section 9A” after “licence” in each place.
10	Section 22	Insert “or authorisation under section 9A” after “licence” in each place.
11	Section 25	Insert “or authorisation under section 9A” after “licence” in each place.
12	Section 26	(a) In subsections (1), (2), (3) and (6) insert “or authorisation under section 9A” after “licence” in each place. (b) In subsection (4) insert “or authorisations under section 9A” after “licences”.
13	Section 27(2)	In paragraph (a) insert “or authorisation under section 9A” after “licence”.
14	Section 28(1)	Insert “or authorisation under section 9A” after “licence”.
15	Section 31	Insert “or authorisation under section 9A” after “licence” in each place.

¹ OJ No. L3, 7.1.2004, p.36