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**An Bille fán Oifig um Ionchúiseamh Fioscach, 2015**  
**Office of Fiscal Prosecution Bill 2015**

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*Mar a tionscnaíodh*

*As initiated*

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**AN BILLE FÁN OIFIG UM IONCHÚISEAMH FIOSCACH, 2015**  
**OFFICE OF FISCAL PROSECUTION BILL 2015**

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*Mar a tionscnaíodh*

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An Act to provide for the establishment of the Office of Fiscal Prosecution, to provide 5  
for the investigation and prosecution by the Office of Fiscal Prosecution of cases of  
certain offences and, for that purpose, to enable proceedings relating to such cases to be  
taken expeditiously, to provide for criminal and civil enforcement and to provide for  
matters incidental upon the establishment of the Office of Fiscal Prosecution and the  
establishment of a European Public Prosecutor and a European Delegated Prosecutor 10  
with other related matters.

**Be it enacted by the Oireachtas as follows:**

**Interpretation**

1. (1) In this Act, unless the context requires otherwise—
- “Act of 1939” means the Offences Against the State Act 1939; 15  
“Act of 1974” means the Prosecution of Offences Act 1974;  
“Act of 2001” means the Company Law Enforcement Act 2001;  
“court”—
- (a) without prejudice to *paragraphs (b) and (c)*, where used in any provision of this  
Act in relation to a company, means— 20
- (i) the High Court, or
- (ii) where another court is specified for the purposes of that provision — that  
court,
- (b) where used in relation to proceedings for an offence, means—
- (i) in the case of an offence that is being prosecuted summarily — the District 25  
Court, or
- (ii) in any other case — the court with jurisdiction in the matter concerned,
- (c) where used in connection with proceedings for a debt or the recovery of a sum  
otherwise provided by this Act to be recoverable and a particular court or a court  
of competent jurisdiction is not specified for the purpose, means any court of 30  
competent jurisdiction;

“Director” means the Director of the Office of Fiscal Prosecution save where the context otherwise requires it;

“Director of Public Prosecutions” has the meaning assigned to “Director” under section 1 of the Act of 1974;

“Director of Corporate Enforcement” has the meaning assigned to “Director” by section 2 of the Act of 2001; 5

“document” means a document in any form whether signed or initialed or otherwise authenticated by its maker or not, in written, mechanical or electronic form and includes—

- (a) any writing on any material, 10
- (b) any information recorded or stored by means of any tape recorder, computer, or other device, and any material subsequently derived from information so recorded or stored,
- (c) any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means, 15
- (d) any book, map, plan, graph, or drawing,
- (e) any photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;

“fiscal prosecution officer” means an officer appointed under *section 18* for the purposes of carrying out the functions of the Director under this Act; 20

“prescribed” means prescribed by regulations made under this Act;

“relevant offence” shall be construed in accordance with *section 2*;

“tax” means any tax, duty, levy or charge under the care and management of the Revenue Commissioners; 25

“the Commissioner” means the Commissioner of the Garda Síochána;

“the establishment day” means the day appointed by the Minister under *section 2*;

“the European Public Prosecutor’s establishment day” means the day of the Establishment of a European Prosecutor’s office based on Article 86 of the TFEU;

“the Office” means the Office of Fiscal Prosecution established by *section 3*; 30

“the Minister” means the Minister for Justice.

(2) In this Act—

- (a) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended, and 35



- (c) a reference to an enactment shall be construed as a reference to that enactment as amended or extended by any other enactment.

### Relevant Offence

2. In this Act a relevant offence means—

- (a) an arrestable offence under a provision of an enactment, or at common law, specified in *Schedule 1*, 5
- (b) an offence consisting of aiding, abetting, counselling or procuring the commission of an offence specified in *Schedule 1*, or
- (c) an offence consisting of conspiring to commit, or inciting the commission of, an offence specified in *Schedule 1*. 10

### Sentencing

3. (1) Where a person (except a person under the age of 18 years) is convicted of a relevant offence, the court shall, in imposing sentence, specify a term of imprisonment of such length of time to be served by the person and a fine of such amount as it considers appropriate. 15
- (2) *Subsection (1)* of this section does not apply where the court is satisfied that there are exceptional and specific circumstances relating to the offence, or the person convicted of it, which would make a sentence of imprisonment in all the circumstances, and for this purpose the court may have regard to any matters it considers appropriate, including— 20
- (a) whether the person pleaded guilty to the offence and, if so—
- (i) the stage at which the intention to plead guilty was indicated,
- (ii) the circumstances in which the indication was given,
- and
- (b) whether the person materially assisted in the investigation of the offence. 25
- (3) The court, in considering for the purposes of *subsection (2)* of this section whether a sentence of imprisonment is unjust in all the circumstances, may have regard, in particular, to—
- (a) whether the person convicted of the offence has a previous conviction for a relevant offence, and 30
- (b) whether the public interest in preventing relevant offences would be served by the imposition of a lesser sentence.
- (4) In determining the fine appropriate for an offence, the court shall have regard to the circumstances of the offence, including—
- (a) its duration, 35
- (b) the effect on persons who have been directly affected by the offence,
- (c) the submissions of the Director on the appropriate amount,

- (d) the level of enrichment by reason of the offence,
- (e) any excuse or explanation for the offence, and
- (f) whether that person materially assisted in the investigation of the offence.

**Establishment Day**

4. The Minister may, after consultation with the Minister for Public Expenditure and Reform, by order appoint a day to be the establishment day for the purposes of this Act. 5

**The Office of Fiscal Prosecution and the Director of Fiscal Prosecution**

5. (1) There is hereby established the Office of Director of Fiscal Prosecutions and the holder of the office shall be known as the Director of Fiscal Prosecutions and is referred to subsequently in this Act as the Director save where the context otherwise requires it. 10
- (2) Subject to *subsection (3)*, the Director shall be appointed by the Government.
- (3) After the European Public Prosecutor’s establishment day, the Director shall be appointed by the European Public Prosecutor from amongst the candidates nominated by the Government. 15
- (4) (a) A person shall not be appointed to be the Director unless at the date of his appointment he is a practising barrister or a practising solicitor and has practised as a barrister or as a solicitor for at least ten years.
- (b) For the purposes of this subsection, service for any period in a position in the Civil Service for appointment to which practice as a barrister or a solicitor was a necessary qualification shall be deemed to be practice as a barrister or a solicitor, as the case may be, for that period and a person, while holding such a position, shall be deemed to be a practising barrister or a practising solicitor, as the case may be. 20
- (5) The Director shall be a civil servant in the Civil Service of the State. 25
- (6) Subject to *subsection (7)*, the Director shall be independent in the performance of his functions.
- (7) When carrying out investigations and prosecutions assigned to him by the European Public Prosecutor, the Director shall act under the exclusive authority of the European Public Prosecutor and follow only his instructions, guidelines and decisions. 30
- (8) The Attorney General and the Director shall consult together from time to time in relation to matters pertaining to the functions of the Director.
- (9) (a) (i) There shall be a committee consisting of—
- (I) (A) the Chief Justice, who shall be the chairperson of the Board,
  - (B) the President of the High Court, 35
  - (C) the President of the Circuit Court,
  - (D) the President of the District Court,

- (E) the Attorney General,
- (II) (A) a practising barrister who shall be nominated by the Chairman for the time being of the Council of the Bar of Ireland,
- (B) a practising solicitor who shall be nominated by the President for the time being of the Law Society of Ireland, 5
- and
- (III) not more than three persons appointed by the Minister who shall be persons engaged in, or having knowledge or experience (being knowledge or experience that the Minister considers appropriate) of commerce, finance, administration or persons who have experience as consumers of the services provided by the courts that the Minister considers appropriate. 10
- (ii) In the event of any of the persons aforesaid signifying at any time his unwillingness or inability to act for any period as a member of the committee, the Taoiseach may, after consultation with the Attorney General, appoint another person to be a member of the committee in his or her place for that period. 15
- (b) The committee established by this subsection shall, whenever so requested by the Taoiseach, select candidates for appointment to the office of Director and shall inform the Taoiseach of the candidates selected and of their suitability for such appointment. 20
- (c) The Government shall not appoint or nominate, as the case may be, a person to be the Director unless the person was selected or amongst those selected by the committee aforesaid pursuant to a request under *paragraph (b)* of this subsection in relation to that appointment, but— 25
  - (i) if the committee is unable to select a suitable candidate pursuant to a particular request under that paragraph, or
  - (ii) if the Government decide not to appoint or nominate, as the case may be, to be the Director any of the candidates selected by the committee pursuant to a particular request under that paragraph, then either— 30
    - (I) the Government shall appoint or nominate, as the case may be, a person to be the Director who was selected or amongst those selected by the committee pursuant to a previous request (if any) under that paragraph in relation to that appointment, or
    - (II) the Taoiseach shall make a further request to the committee under that paragraph and the Government shall appoint or nominate, as the case may be, a person to be the Director who was selected or amongst those selected by the committee pursuant to that request or pursuant to another request under that paragraph in relation to that appointment. 35
- (d) The Taoiseach may, after consultation with the Attorney General, make regulations for the purposes of this subsection. 40
- (10) (a) The Director shall hold office upon such terms and conditions as may be

- determined by the Taoiseach after consultation with the Minister for Public Expenditure and Reform.
- (b) (i) The Taoiseach shall, after consultation with the Minister for Public Expenditure and Reform, make a scheme for the grant of superannuation benefits for the Director. 5
- (ii) The scheme shall fix the time and conditions of retirement of the Director.
- (iii) The Taoiseach may, after consultation with the Minister for Public Expenditure and Reform, make a scheme amending a scheme under this subsection.
- (iv) A scheme under this subsection shall be carried out in accordance with its terms. 10
- (v) Every scheme under this subsection shall be laid before each House of the Oireachtas as soon as may be after it is made and, if either House, within the next twenty-one days on which that House has sat after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 15
- (vi) Where necessary for the purpose of an investigation or prosecution assigned by the European Public Prosecutor, the Director may temporarily receive resources and staff from the European Public Prosecutor. 20
- (11) (a) Subject to *paragraph (b)* the Director may be removed from office by the Government after consideration by them of the report of a committee under *paragraph (c)* of this subsection.
- (b) The Director shall not be dismissed by the Government without the consent of the European Public Prosecutor during the exercise of his functions on behalf of the European Public Prosecutor's Office. 25
- (c) Whenever the Government so request, a committee appointed by them and consisting of the Chief Justice, a Judge of the High Court nominated by the Chief Justice, and the Attorney General shall—
- (i) investigate the condition of health, either physical or mental, of the Director, or 30
- (ii) inquire into the conduct (whether in the execution of his office or otherwise) of the Director, either generally or on a particular occasion,
- and, in either case, with particular reference to such matters as may be mentioned in the request and the committee may conduct the investigation or inquiry in such manner as it thinks proper, whether by examination of witnesses or otherwise, and in particular may conduct any proceedings in camera and for this purpose shall have all such powers, rights and privileges as are vested in a Judge of the High Court on the occasion of an action and, upon the conclusion of the investigation or inquiry, the committee shall report the result thereof to the Government. 35 40
- (12) There shall be employed in the office of the Director so many officers and servants as

the Taoiseach shall, with the sanction of the Minister for Public Expenditure and Reform, from time to time determine and all such officers and servants shall hold office on such terms and conditions as the Minister for Public Expenditure and Reform shall prescribe.

- (13) The power of appointing a person to be an officer or servant of the Director shall be vested in the Taoiseach. 5

### **Functions of the Director**

6. (1) The Director shall discharge the functions assigned by or under this Act in respect of relevant offices.
- (2) After the European Public Prosecutor's establishment day, the Director shall discharge the functions assigned to European Delegated Prosecutors by or under the Regulation establishing a European Public Prosecutor. 10
- (3) Subject to the provisions of this Act, the Director may perform all the functions capable of being performed in relation to criminal matters in respect of relevant offences by the Director of Public Prosecutions immediately before the commencement of this section and references to the Director of Public Prosecutions in any statute or statutory instrument in force immediately before such commencement shall be construed accordingly. 15
- (4) The Director may prosecute any suspected offence which appears to the Director on reasonable grounds to involve relevant offences. 20
- (5) The Director may, if he thinks fit, conduct any such prosecution in conjunction either with an Garda Síochána or with any other person who is, in the opinion of the Director, a proper person to be concerned in it.
- (6) The Director may—
- (a) institute and have the conduct of any criminal proceedings which appear to him to relate to relevant offences, and 25
- (b) take over the conduct of any such proceedings at any stage.
- (7) The Director shall discharge such other functions in relation to relevant offences as may from time to time be assigned to him by the Minister.
- (8) Every servant, officer or member of the Office shall exercise their powers under the direction of the Director. 30

### **Notice of transfer to Director**

7. (1) The Minister may make regulations requiring the member of the Garda Síochána not below the rank of Superintendent to which the regulations are expressed to apply to give to the Director information with respect to relevant offences which are alleged to have been committed and in respect of which it appears that there is a *prima facie* case for enforcement proceedings in respect of a relevant offence. 35
- (2) The regulations may also require every such chief officer to give to the Director such information as the Director may require with respect to such cases or classes of case as he may from time to time specify. 40

- (3) If a person has or may be charged with a relevant offence such that it is in the opinion of the Director of Public Prosecutions or the Director of Corporate Enforcement that it be appropriate that the investigation or prosecution of the offence to be carried out by the Director, the first named or second named Director shall give notice (in this Act referred to as a “notice of transfer”) certifying that opinion and transferring the case to the Director. 5
- (4) A notice of transfer under *subsection (3)* shall not be subject to appeal or liable to be questioned in any court by way of review or otherwise.

### **Objectives of the office**

8. (1) The objectives of the Office of Fiscal Prosecutions shall include— 10
- (a) to ensure that a coherent approach is taken to the prosecution of relevant offences;
  - (b) to concentrate resources in respect of the detection and prosecution of relevant offences;
  - (c) to increase the speed of investigations and the institution of proceedings in appropriate cases; 15
  - (d) to develop expertise in specialist areas including but not limited to—
    - (i) banking, investment of funds and other financial activities,
    - (ii) company law,
    - (iii) money laundering and financing terrorism, 20
    - (iv) theft and fraud,
    - (v) bribery and corruption,
    - (vi) competition and consumer protection,
    - (vii) criminal acts involving the use of electronic communication networks and information systems or against such networks or systems or both, or 25
    - (viii) the raising and collection of taxes and duties,
 and
  - (e) to promote efficient and expeditious use of enforcement procedures in relation to relevant offences;
  - (f) to enforce the law in relation to relevant offences by way of enforcement proceedings in an effective manner; 30
  - (g) to deter to the commission of relevant offences by means of effective enforcement;
  - (h) to provide remedies in respect of relevant offences.

### **Assault of an officer**

9. (1) A person who assaults or attempts to assault the Director, a Fiscal Prosecution Officer 35

or a member of the staff of the Office of Fiscal Prosecution or any member of the family of the Director, a Fiscal Prosecution Officer or a member of the staff of the Office of Fiscal Prosecution shall be guilty of an offence.

- (2) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding €1,500, or to imprisonment for a term not exceeding 12 months, or to both, or 5
  - (b) on conviction on indictment, to a fine not exceeding €100,000, or to imprisonment for a term not exceeding 10 years, or to both.

### **Special criminal courts**

10. (1) Whenever it is intended to charge a person with a relevant offence, the Director may, if he so thinks proper, direct that such person shall, in lieu of being charged with such offence before a justice of the District Court, be brought before a Special Criminal Court and there charged with such offence and, upon such direction being so given, such person shall be brought before a Special Criminal Court and shall be charged before that court with such offence and shall be tried by such court on such charge. 10 15
- (2) Whenever it is intended to charge a person with an offence which is not a scheduled offence under the Act of 1939 and the Director certifies that the ordinary courts are, in his opinion, inadequate to secure the effective administration of justice and the preservation of public peace and order in relation to the trial of such person on such charge, the foregoing subsection of this section shall apply and have effect as if the offence with which such person is so intended to be charged were a scheduled offence. 20
- (3) The certification of the Director that the ordinary courts are, in his opinion, inadequate to secure the effective administration of justice and the preservation of public peace and order in relation to the trial of such person on such charge may be appealed to the Special Criminal Court. The determination of the Special Criminal Court of a certification shall be final and no appeal shall lie from the decision of the Special Criminal Court, except with the leave of the Special Criminal Court, which leave shall only be granted where the Special Criminal Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court. 25 30
- (4) Whenever a person is required by this section to be brought before a Special Criminal Court and charged before that Court with such offence, it shall be lawful for such Special Criminal Court to issue a warrant for the arrest of such person and the bringing of him before such Court and, upon the issue of such warrant, it shall be lawful for such person to be arrested thereunder and brought in custody before such Court. 35

### **Reports and information to Minister**

11. (1) As soon as may be, but not later than 6 months, after the end of each year, the office shall through the Director present a report to the Minister of its activities during that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas. 40

- (2) Each report under *subsection (1)* shall include information in such form and regarding such matters as the Minister may direct.
- (3) The office shall, whenever so requested by the Minister through the Director, furnish to the Minister through the Director information as to the general operations of the office.

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### **Expenses**

12. The expenses incurred by the Director in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

### **Provision of information to juries**

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13. In a trial on indictment of a relevant offence, the trial judge may order that copies of any or all of the following documents shall be given to the jury in any form that the judge considers appropriate:

- (a) any document admitted in evidence at the trial;
- (b) the transcript of the opening speeches of counsel; 15
- (c) any charts, diagrams, graphics, schedules or agreed summaries of evidence produced at the trial;
- (d) the transcript of the whole or any part of the evidence given at the trial;
- (e) the transcript of the closing speeches of counsel;
- (f) the transcript of the trial judge's charge to the jury. 20

### **Admission of documents**

14. (1) The presumptions specified in this section shall apply in any civil proceedings under this Act.

- (2) Where a document purports to have been created by a person it shall be presumed, unless the contrary is shown, that the document was created by that person and that any statement contained therein, unless the document expressly attributes its making to some other person, was made by that person. 25

- (3) Where a document purports to have been created by a person and addressed and sent to a second person, it shall be presumed, unless the contrary is shown, that the document was created and sent by the first person and received by the second person, and that any statement contained therein— 30

- (a) unless the document expressly attributes its making to some other person, was made by the first person, and
- (b) came to the notice of the second person.

- (4) Where a document is retrieved from an electronic storage and retrieval system, it shall be presumed, unless the contrary is shown, that the author of the document is the person who ordinarily uses that electronic storage and retrieval system in the course of his or her business. 35



- (5) Where a person has lawfully removed one or more documents from any place, gives evidence in any proceedings under this Act that, to the best of the person's knowledge and belief, the material is the property of any person, then the material shall be presumed, unless the contrary is shown, to be the property of that person.

**Admissibility of statements contained in certain documents**

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15. (1) If a document contains a statement by a person referred to in *subsection (2)* asserting that an act has been done, or is or was proposed to be done, by another person, being an act that relates to a relevant offence then, subject to the conditions specified in *subsection (3)* being satisfied, that statement shall be admissible as evidence in civil proceedings referred to in *paragraph (a) or (b)* that the relevant act was done by that other person. 10
- (2) The person mentioned in *subsection (1)* is a person who has done an act of the kind referred to in that subsection in relation to a relevant (whether or not the same act which the other person referred to in that subsection is alleged to have done or proposed to do). 15
- (3) The conditions mentioned in *subsection (1)* are that the document referred to in that subsection—
- (a) has come into existence before the commencement of the proceedings under this Act in which it is sought to tender the document in evidence, and
- (b) has been prepared otherwise than in response to any enquiry made or question put by a member of the Garda Síochána, relative to any matter the subject of those proceedings. 20
- (4) In estimating the weight, if any, to be attached to a statement admitted in evidence by virtue of this section, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise. 25
- (5) Where a statement is admitted in evidence by virtue of this section—
- (a) any evidence which, if the person who made the statement had been called as a witness, would have been admissible as relevant to his or her credibility as a witness shall be admissible for that purpose,
- (b) evidence may, with the leave of the court, be given of any matter which, if that person had been called as a witness, could have been put to him or her in cross-examination as relevant to his or her credibility but of which evidence could not be adduced by the cross-examining party, and 30
- (c) evidence tending to prove that that person, whether before or after making the statement, made (whether orally or not) a statement which is inconsistent with it shall, if not already admissible by virtue of any rule of law or other enactment, be admissible for the purpose of showing that he or she has contradicted himself or herself. 35
- (6) Nothing in this section shall prejudice the admissibility in any proceedings under this Act of any document, as evidence of any matters stated in it that is so admissible by virtue of any rule of law or other enactment. 40

## Provisions as respects expert evidence

16. (1) In civil proceedings under this Act, the opinion of any witness who appears to the court to possess the appropriate qualifications or experience as respects the matter to which his or her evidence relates shall, subject to *subsection (2)*, be admissible in evidence as regards any matter calling for expertise or special knowledge that is relevant to the proceedings in respect of a relevant offence. 5
- (2) Notwithstanding anything contained in *subsection (1)*, a court may, where in its opinion the interests of justice require it to so direct in the proceedings concerned, direct that evidence of a general or specific kind referred to in the said subsection shall not be admissible in proceedings or shall be admissible in such proceedings for specified purposes only. 10

## Civil enforcement

17. (1) Where the Director has formed the opinion that a person is not complying or has not complied with an obligation contained in an enactment specified in *Schedule 2*, resulting in loss or damage to one or more persons or a class of persons, the Director may notify the person who in his opinion is non-compliant of that opinion and, if the non-compliance can be remedied in whole or in part, specifying how the non-compliance can be remedied within a reasonable time limit, and shall give that person an opportunity to state that person's views on the opinion or the specified remedy. 15
- (2) The Director may publish, in such manner as it thinks fit, any notification given subject to the protection of the confidentiality of any information which the Director considers confidential. 20
- (3) The Director may amend or revoke any notification under this Act.
- (4) Where, at the end of the period specified by the Director under *subsection (1)*, the Director may, whether or not he is of the opinion that the non-compliance, or the effect thereof, is continuing, apply to the court for such order as the Director considers appropriate including— 25
- (a) an order directing or requiring compliance with a relevant obligation under an enactment,
- (b) an order directing steps to remedy any non-compliance, 30
- (c) an order as provided for in *subsection (10)*, or
- (d) such other order as the court deems appropriate.
- (5) Subject to *subsection (6)*, an action under *subsection (4)* may be brought in the Circuit Court or in the High Court.
- (6) Where an action under *subsection (1)* is brought in the Circuit Court any order shall not, except by consent of the parties to the application in such form as may be provided for by rules of court, be in excess of the limit of the jurisdiction of the Circuit Court in an action founded on tort. 35
- (7) Subject to *subsection (4)*, the court may, on the hearing of the application referred to in this Act, make such order as it thinks fit to remedy the non-compliance and may specify a reasonable time limit where appropriate, or may refuse the application or the 40

- granting of relief in whole or in part.
- (8) The court when dealing with an application under this Act may make such interim or interlocutory order as it considers appropriate.
- (9) The court shall not deny interim or interlocutory relief, referred to in this Act, solely on the basis that the Director may not suffer any damage if such relief were not granted pending conclusion of the action. 5
- (10) The Director may seek an order to pay to a person who has suffered loss or damage as a result of non-compliance with a provision of an enactment specified in *Schedule 2*, by way of restitution, such amount as the Director or such person may propose as appropriate. 10
- (11) In deciding on such an application, the Court shall decide the amount, if any, of an order under this section order which should be payable and shall not be bound by the amount proposed by the Director.
- (12) In deciding what amount by way of an order, if any, should be payable, the Court shall consider the circumstances of the non-compliance, including— 15
- (a) the effect on a person, or persons or a class of persons who have suffered loss or damage as a result of the non-compliance,
  - (b) the submissions of the Director on the appropriate amount,
  - (c) the level of enrichment by reason of the non-compliance,
  - (d) any excuse or explanation for the non-compliance, 20
  - (e) the degree of cooperation provided by the respondent to the application, and
  - (f) all other matters relevant to the facts of the application.
- (13) Where the Director has brought criminal proceedings for an offence pursuant to the Director's functions under this Act, the Director shall not make an application for an order under this section to the Court, until after the conclusion of those proceedings and then only when appropriate to do so. 25
- (14) Where a court imposes an order in respect of a sum of money such payment may be enforced as if the payment were due to the on foot of a decree or order made by the court by way of civil proceedings for a liquidated sum.
- Personal liability for company debts in certain cases** 30
- 18.** (1) The Director may apply to a court for a declaration that a person be made personally liable for the debts of a company where he has formed the opinion that such a person—
- (a) is or was knowingly a party to the carrying on of the business of a company and, having regard to the general knowledge, skill and experience that may reasonably be expected of a person in his or her position, the person ought to have known that his or her actions or those of the company would cause loss to the creditors of the company, or 35
  - (b) is or was knowingly a party to the contracting of a debt by the company and did not honestly believe on reasonable grounds that the company would be able to 40

pay the debt when it fell due for payment as well as all its other debts (taking into account the contingent and prospective liabilities).

- (2) In deciding the extent of any personal liability under this section, the court shall have particular regard to the extent to which the person's actions contributed materially to the company's inability to pay its debts. 5

### ***Res judicata***

19. (1) Where, in criminal proceedings under this Act, a court finds, as part of a final decision in relation to the matters to which those proceedings relate, that a person has committed a relevant offence, then, for the purposes of any subsequent civil proceedings under this Act, the finding shall be *res judicata*. 10
- (2) In this section "finding" includes a conviction for an offence, whether or not that conviction is consequent upon a plea of guilty by an accused person.

### **Right of action**

20. Nothing in this Act shall affect any right of action of a person aggrieved by a relevant offence. 15

### **Officers**

21. (1) (a) The Minister may appoint, with the consent of the Minister for Public Expenditure and Reform such and so many—
- (i) members of the Garda Síochána nominated for the purposes of this Act by the Commissioner, 20
  - (ii) officers of the Revenue Commissioners nominated for the purposes of this Act by the Revenue Commissioners, and
  - (iii) officers under enactments regulating banking and financial services, insurance services and stock exchanges, to be officers for the purposes of carrying out the functions of the Director under this Act, hereinafter referred to as fiscal prosecution officers. 25
- (b) An appointment under this subsection shall be confirmed in writing, at the time of the appointment or as soon as may be thereafter, specifying the date of the appointment.
- (2) The powers and duties vested in a fiscal prosecution officer for the purposes of this Act, shall, subject to *subsections (5), (6) and (7)*, be the powers and duties vested in the fiscal prosecution officer, as the case may be, by virtue of— 30
- (a) being a member of the Garda Síochána,
  - (b) the Revenue Acts or, any provision of any other enactment, whether passed before or after the passing of this Act, which relates to revenue, including any authorisation or nomination made thereunder, or 35
  - (c) enactments regulating banking and financial services, insurance services and stock exchanges, including any appointment made thereunder,

and such exercise or performance of any power or duty for the purposes of this Act shall be exercised or performed in the name of the office.

- (3) A fiscal prosecution officer, when exercising or performing any powers or duties for the purposes of this Act, shall be under the direction and control of the Director.
- (4) Where in any case a fiscal prosecution officer who, prior to being appointed a fiscal prosecution officer, was required to exercise or perform any power or duty on the direction of any other person, it shall be lawful for the fiscal prosecution officer to exercise or perform such power or duty for the purposes of this Act on the direction of the Director. 5
- (5) A fiscal prosecution officer may exercise or perform his or her powers or duties on foot of any information received by him or her from another fiscal prosecution officer or on foot of any action taken by that other fiscal prosecution officer in the exercise or performance of that other fiscal prosecution officer's powers or duties for the purposes of this Act, and any information, documents or other material obtained by fiscal prosecution officers under this subsection shall be admitted in evidence in any subsequent proceedings. 10 15
- (6) (a) A fiscal prosecution officer may be accompanied or assisted in the exercise or performance of that fiscal prosecution officer's powers or duties by such other persons (including fiscal prosecution officers) as the first-mentioned fiscal prosecution officer considers necessary. 20
- (b) A fiscal prosecution officer may take with him or her, to assist him or her in the exercise or performance of his or her powers or duties, any equipment or materials as that fiscal prosecution officer considers necessary.
- (c) A fiscal prosecution officer who assists another fiscal prosecution officer under *paragraph (a)* shall have and be conferred with the powers and duties of the first-mentioned fiscal prosecution officer for the purposes of that assistance only. 25
- (d) Information, documents or other material obtained by any fiscal prosecution officer under *paragraph (a)* or *(c)* may be admitted in evidence in any subsequent enforcement proceedings.
- (7) Any information or material obtained by a fiscal prosecution officer for the purposes of this Act may only be disclosed by the fiscal prosecution officer to— 30
- (a) another fiscal prosecution officer or a member of the staff of the office,
- (b) any member of the Garda Síochána for the purposes of Garda functions,
- (c) any officer of the Revenue Commissioners for the purposes of the Revenue Acts or any provision of any other enactment, whether passed before or after the passing of this Act, which relates to revenue, 35
- (d) any officer of the Minister for Social Protection for the purposes of the Social Welfare Acts, or
- (e) with the consent of the Director, any other officer of another Minister of the Government or of a local authority (within the meaning of the Local Government Act 1941) for the purposes of that other officer exercising or performing his or her powers or duties, and information, documents or other material obtained by a 40

fiscal prosecution officer or any other person under the provisions of this subsection shall be admitted in evidence in any subsequent proceedings.

- (8) A fiscal prosecution officer, notwithstanding his or her appointment as such, shall continue to be vested with and may exercise or perform the powers or duties of a member of the Garda Síochána, an officer of the Revenue Commissioners or as another officer under an enactment regulating banking and financial services, insurance services and stock exchanges, as the case may be, for purposes other than the purposes of this Act, as well as for the purposes of this Act. 5
- (9) The Director may, at his or her absolute discretion, at any time, with the consent of the Commissioner, remove any fiscal prosecution officer from the Office whereupon his or her appointment as a fiscal prosecution officer shall cease. 10
- (10) Nothing in this section shall affect the powers and duties of a member of the Garda Síochána, an officer of the Revenue Commissioners or any other officer under an enactment who is not a fiscal prosecution officer.

### **Staff of the office**

15

22. (1) (a) The Minister may, with the consent of the Attorney General and of the Minister for Public Expenditure and Reform appoint a person to be the Chief Legal Officer, who shall be a member of the staff of the office and who shall report directly to the Director, to assist the office in the pursuit of its objectives and functions. 20
- (b) The Minister may, with the consent of the Minister for Public Expenditure and Reform and after such consultation as may be appropriate with the Commissioner, appoint such, and such number of persons to be professional or technical members of the staff of the office, other than the Chief Legal Officer, and any such member will assist the fraud officers in the exercise and performance of their powers and duties. 25
- (2) A professional or technical member of the staff of the office, including the Chief Legal Officer, shall perform his or her functions at the direction of the Director.
- (3) The Minister may, with the consent of the Attorney General and of the Minister for Finance, at any time remove the Chief Legal Officer from being a member of the staff of the office whereupon his or her appointment as Chief Legal Officer shall cease. 30
- (4) The Commissioner may, with the consent of the Minister, at any time remove any professional or technical member of the staff of the office, other than the Chief Legal Officer, from being a member of the staff of the office whereupon his or her appointment as a member of the staff shall cease. 35
- (5) A professional or technical member of the staff of the office, including the Chief Legal Officer, shall hold his or her office or employment on such terms and conditions (including terms and conditions relating to remuneration and superannuation) as the Minister may, with the consent of the Minister for Public Expenditure and Reform, and in the case of the Chief Legal Officer with the consent also of the Attorney General, determine. 40

## Public consultation on merger with the Office of the Director of Corporate Enforcement

23. (1) The Minister shall engage in a public consultation process on—
- (a) the extent, if any, to which the Office of Fiscal Prosecution and the Office of the Director of Corporate Enforcement shall be merged, and
  - (b) the extent, if any, to which the functions of the Director and the functions of the Director of Corporate Enforcement shall be combined. 5
- (2) The public consultation process referred to in *subsection (1)* shall be carried out in the following manner:
- (a) the Minister shall invite members of the public to make submissions, within a specified time limit, on the matters referred to in *subsection (1)*, where such invitation is made by means of a notice to that effect published in a newspaper circulating within the State and on the internet; 10
  - (b) the Minister may, where he considers it appropriate to do so, consult with such bodies, including professional bodies and persons, in relation to the matters referred to in *subsection (1)*; 15
  - (c) the Minister shall, immediately following the expiry of the time limit referred to in *paragraph (a)*, and having regard to the submissions duly received under that paragraph and any consultation held under *paragraph (b)*, prepare a report to the Oireachtas setting out the recommendations in relation to the matters specified in *subsection (1)*; 20
  - (d) the report referred to in *paragraph (c)* shall be completed and submitted to the Oireachtas within 24 months of the establishment day.
- (3) (a) At any time before the completion of the report referred to in *subsection (2)(c)*, the Minister may, on his own initiative, prepare an interim report.
- (b) An interim report referred to in *paragraph (a)* may refer to the general progress of the public consultation process and shall refer to such matters as the Minister considers appropriate, and the interim report may contain recommendations in respect of such matters. 25
- (4) The Minister shall cause copies of the report referred to in *subsection (2)(c)* or, as the case may be, *subsection (3)*, to be laid before each House of the Oireachtas within 30 days of its preparation by him. 30

## Short title and commencement

24. (1) This Act may be cited as the Office of Fiscal Prosecution Act 2015.
- (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions. 35

## SCHEDULE 1

### *Offences relating to banking, investment of funds and other financial activities*

1. An offence under section 58 of the Central Bank Act 1971 insofar as it relates to a contravention of section 17, 18, 23, 24 or 25 of that Act.
2. An offence under section 37(6) or 41(1) of the Insurance Act 1989. 5
3. An offence under section 20(4) or 24(5) of the Trustee Savings Banks Act 1989.
4. An offence under section 11(3) or 13(5) of the Unit Trusts Act 1990.
5. An offence under section 25(5) or 27(4), or subsection (7) or (8) of section 35, of the Investment Limited Partnerships Act 1994.
6. An offence under section 10(16), 19(1)(b), 30, 34, 35(4), 46(2), 54(6), 56(9), subsection (3), (5), (6) or (9) of section 52 or subsection (7) or (8) of section 79, of the Investment Intermediaries Act 1995. 10
7. An offence under section 12(2) of the Consumer Credit Act 1995 insofar as it relates to a contravention of subsection (1) or (3) of section 97, or section 101, 102 or 127, of that Act. 15
8. An offence under section 29(3), or subsection (7) or (8) of section 43, of the Investor Compensation Act 1998.
9. An offence under section 14(3) or 15(2) of the Investment Funds, Companies and Miscellaneous Provisions Act 2005.
10. An offence under section 5(2) of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007 insofar as it relates to— 20
  - (a) a failure to discharge a duty to which a person is subject under Regulation 40(1) or 112(1) of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007), or
  - (b) a contravention of Regulation 19, 52, 159 or 187B of those Regulations. 25
11. An offence under Regulation 20(2), 22(4), 58(9), 59(8), 60(6), 62(4) or 76(1) of the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006).
12. An offence under section 7 of the National Asset Management Agency Act 2009 insofar as it relates to a person other than a credit institution (within the meaning of that Act). 30
13. An offence under section 48 of the Central Bank Reform Act 2010.

### *Company law offences*

14. An offence under section 60(15), 295 or 297, or under paragraph (a), (d), (e), (f), (g), (i), (j), (k), (l), (m), (n), (o) or (p) of section 293(1), of the Companies Act 1963.
15. An offence under any of the following provisions of the Companies (Amendment) Act 1986: 35
  - (a) section 22(1)(a) (insofar as it relates to a failure to comply with section 5 or 16 of that Act),



(b) section 22(2) (insofar as it relates to a failure to take all reasonable steps to secure compliance with the requirements of section 3 of that Act or a failure to comply with section 13 of that Act), or	
(c) section 22(3).	
16. An offence under section 197, 202(10), 242 or 243(1) of the Companies Act 1990.	5
17. An offence under section 37(1) of the Companies (Amendment) (No. 2) Act 1999.	
18. An offence under section 48 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005.	
19. An offence under Regulation 5 or 6 of the Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. 342 of 2005).	10
20. An offence under Regulation 76(4) of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007).	
21. An offence under section 286(1)(b), 722 or 876(3) of the Companies Act 2014 or an offence under regulations made pursuant to section 1366 of the Companies Act 2014.	
<i>Money laundering and terrorist offences</i>	15
22. An offence under section 7, 8, 9, 10, 35, 37, 38, 42 or 49 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.	
23. An offence under section 13 of the Criminal Justice (Terrorist Offences) Act 2005.	
<i>Theft and fraud offences, etc.</i>	
24. An offence under section 6, 7, 9, 10, 11, 15, 17, 18, 25, 26, 27, 28, 29, 33, 34, 35, 36, 37, 38, 42, 43, 44, 45 or 51 of the Criminal Justice (Theft and Fraud Offences) Act 2001.	20
25. Conspiracy to defraud at common law.	
26. An offence under section 119 of the Registration of Title Act 1964.	
27. An offence under section 17 of the Criminal Justice Act 2011.	25
<i>Bribery and corruption offences</i>	
28. An offence under section 1 of the Prevention of Corruption Act 1906.	
29. An offence under section 7 or 8 of the Prevention of Corruption (Amendment) Act 2001.	
<i>Consumer protection offence</i>	30
30. An offence under section 65 of the Consumer Protection Act 2007.	

## SCHEDULE 2

### *Enactments relating to banking, investment of funds and other financial activities*

1. Section 17, 18, 23, 24 or 25 of the Central Bank Act 1971.
2. Section 37(1), 37(5) or 38 of the Insurance Act 1989.
3. Section 20 or 24(1) of the Trustee Savings Banks Act 1989. 5
4. Section 11(1) or 13 of the Unit Trusts Act 1990.
5. Section 16(1), 25(1), 27(1) or 27(2) of the Investment Limited Partnerships Act 1994.
6. Section 19(1)(a), 30, 52(3), 52(5) or 52(6) of the Investment Intermediaries Act 1995.
7. Section 97(1) or (3), or section 101, 102 or 127, of the Consumer Credit Act 1995.
8. Section 29(2) of the Investor Compensation Act 1998. 10
9. Section 14(1) or 15(1) of the Investment Funds, Companies and Miscellaneous Provisions Act 2005.
10. Regulation 19, 40(1), 52, 112(1), 159 or 187B of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007).
11. Regulation 20(1), 22(2) or 62(1) of the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006). 15
12. Section 202(2) of the National Asset Management Agency Act 2009 insofar as it relates to a person other than a credit institution (within the meaning of that Act).
13. Section 48(1), (2) or (3) of the Central Bank Reform Act 2010.

### *Enactments relating to company law*

14. Section 60(1) of the Companies Act 1963.
15. Section 3, 5, 13 or 16 of the Companies (Amendment) Act 1986.
16. Section 202 of the Companies Act 1990.
17. Regulation 5 or 6 of the Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. No. 342 of 2005). 25
18. Regulation 76(4) of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007).
19. Section 281, 282, 283, 284 or 285 of the Companies Act 2014.

### *Enactments relating to money laundering*

20. Section 35, 37, 38, 42 or 49 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. 30

### *Consumer protection offence*

21. Section 65(1) of the Consumer Protection Act 2007.



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# BILLE

*(mar a tionscnaíodh)*

*dá ngairtear*

Acht do dhéanamh socrú maidir leis an Oifig um Ionchúiseamh Fioscach a bhunú, do dhéanamh socrú maidir leis an Oifig um Ionchúiseamh Fioscach d'imscrúdú agus d'ionchúiseamh cásanna de chiontaí áirithe agus, chun na críche sin, do chumasú imeachtaí a bhaineann le cásanna den sórt sin a thionscnamh go dlúsúil, do dhéanamh socrú maidir le forfheidhmiú coiriúil agus sibhialta agus do dhéanamh socrú maidir le nithe atá teagmhasach i ndáil leis an Oifig um Ionchúiseamh Fioscach a bhunú agus Ionchúisitheoir Poiblí Eorpach agus Ionchúisitheoir Tarmhligthe Eorpach a bhunú mar aon le nithe gaolmhara eile.

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*An Teachta Micheál Mac Conmara a thug isteach,  
2 Aibreán, 2015*

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# BILL

*(as initiated)*

*entitled*

An Act to provide for the establishment of the Office of Fiscal Prosecution, to provide for the investigation and prosecution by the Office of Fiscal Prosecution of cases of certain offences and, for that purpose, to enable proceedings relating to such cases to be taken expeditiously, to provide for criminal and civil enforcement and to provide for matters incidental upon the establishment of the Office of Fiscal Prosecution and the establishment of a European Public Prosecutor and a European Delegated Prosecutor with other related matters.

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*Introduced by Deputy Michael McNamara,  
2nd April, 2015*

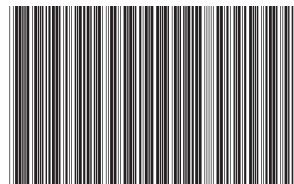
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BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó  
FOILSEACHÁIN RIALTAIS,  
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2.  
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)  
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DUBLIN  
PUBLISHED BY THE STATIONERY OFFICE  
To be purchased from  
GOVERNMENT PUBLICATIONS,  
52 ST. STEPHEN'S GREEN, DUBLIN 2.  
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)  
or through any bookseller.

€3.81



978-1-4468-3016-1