DÁIL ÉIREANN

AN ROGHCHOISTE UM AIRGEADAS, CAITEACHAS POIBLÍ AGUS ATHCHÓIRIÚ, AGUS AN TAOISEACH

SELECT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM, AND TAOISEACH

Déardaoin, 12 Iúil 2018

Thursday, 12 July 2018

Tháinig an Roghchoiste le chéile ag 10.30 a.m.

The Select Committee met at 10.30 a.m.

Comhaltaí a bhí i láthair/Members present:

Teachtaí Dála / Deputies	
Michael D'Arcy (Minister of State at the Department of Finance),	
Pearse Doherty,	
Michael McGrath,	
Paul Murphy.	

I láthair/In attendance: Deputy Maurice Quinlivan.

Teachta/Deputy John McGuinness sa Chathaoir /in the Chair.

Consumer Protection (Regulation of Credit Servicing Firms) (Amendment) Bill 2018: Committee Stage

Chairman: I remind members to turn off their mobile phones and to remove them from their desks because they cause sound problems with the microphones. We will consider the Consumer Protection (Regulation of Credit Servicing Firms) (Amendment) Bill 2018 in the name of Deputy Michael McGrath. We will go straight to section 1. I presume that we will adjourn at 1 p.m.

SECTION 1

Question proposed: "That section 1 be deleted."

Deputy Michael McGrath: I thank the Chairman, colleagues, the Minister of State and officials for attending. This is Committee Stage of the Bill. I acknowledge the work of the Department and the Minister of State. We have worked closely together to develop these proposals since the Bill passed Second Stage, with a view to reaching broad agreement on the direction of the Bill. For me and my party, the core objective of this legislation is to ensure that loan ownership becomes a regulated activity, and to change the position which has been in law since 2015, whereby those purchasing loans, whether commercial loans or mortgages, are required to appoint an intermediary who acts as a credit servicing agent or credit servicing firm, and under the 2015 Act, that intermediary has to be a regulated entity. From my perspective, the loan owner should be directly regulated and accountable to the Central Bank, so that the full suite of powers available to the Central Bank relating to all other regulated entities would apply. That is the key objective that I have in seeking to advance this legislation. The litmus test is really whether all of the Central Bank codes apply, such as the consumer protection code, the code of conduct on mortgage arrears, and lending to small and medium-sized enterprises regulations, and whether the full suite of powers set out in the 2013 supervision and enforcement legislation applies and is available to the Central Bank so that, if necessary, the Central Bank has the power to inspect, investigate and, if necessary, take enforcement action. Those who own the loan and ultimately make all of the important decisions about its future, such as whether a person keeps a home, or about a business or farm, should be directly regulated and accountable to the Central Bank. The Bill is not a panacea for dealing with all non-performing loan, NPL, issues and arrears, but it is an important and necessary step.

Other changes which we have spoken about on many occasions are required. These include changes to the code of conduct on mortgage arrears. That code is being reviewed and my party has proposals in that regard as well.

In recent weeks, since the passage of the Bill on Second Stage, we have worked closely with the Department to essentially rewrite the Bill and put it in a format which can hopefully come through Committee and Remaining Stages and which achieves the core objective of the Bill.

Section 1 is proposed to be deleted. I have shared with other members our speaking notes on the legislation.

Having considered the matter in more detail and focusing on the objective of ensuring that loan owners are regulated by the Central Bank, I am bringing forward changes to the definitions. There are advantages to using an existing authorisation regime already in use by the Central Bank rather than creating a new type of regulated entity, the credit agreement owner, as originally proposed. Therefore, the current definition section is proposed to be deleted and a

new set of definitions will be introduced.

There are advantages to using an existing regime. It means that the Central Bank already has an authorisation process in place and has already set a fitness and probity regime. Using the credit serving regime that was put in place in 2015 should help Irish regulated firms when the proposed EU directive on credit serving is put in place.

I appreciate the Central Bank recommended that the retail credit firm regime be used and I may wish to return to this on Report Stage. Members will have read the submission made by the Central Bank to the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach during the scrutiny phase. The Central Bank came down on the side of opting for the retail credit firm model. I understand there has been much engagement between the Department and the Central Bank on that point. The view at present is that availing of the existing framework, in terms of credit serving firm, is the optimum way to go but it is something that we may need to revisit.

Deputy Pearse Doherty: I welcome the fact that we have reached Committee Stage on Deputy Michael McGrath's Bill. While I acknowledge that there has been a rewriting of the Bill, it appears to still meet the intended purpose of regulating the owners. Maybe we will deal with that in more detail as we proceed. I introduced a similar piece of legislation in the Dáil as well and I am happy to support the concept of this Bill.

I would like either the Department or Deputy Michael McGrath to give me their understanding of the difference between regulating the retail credit firm and regulating the credit agreement owner. What is the difference, particularly that the Central Bank has indicated to the Department?

Minister of State at the Department of Finance (Deputy Michael D'Arcy): I thank Deputy Michael McGrath for bringing forward the Bill, which will ensure that owners of loan books will have to be authorised and regulated by the Central Bank of Ireland. I am representing the Minister for Finance, Deputy Donohoe, who is at ECOFIN today.

This is an important piece of legislation and we need to be careful that it does not have unintended consequences. I acknowledge the interaction between the Department, the Central Bank and the members opposite.

The Government was committed to supporting the Bill on Second Stage and followed through on the commitment. I acknowledge the support of the Office of the Parliamentary Counsel in developing the amendments proposed. The 2015 legislation was complex and this legislation involved the same level of complexity. Trying to capture what was intended without leaving loopholes which could be exploited and without going beyond what was intended is a tricky operation.

It is helpful that the Bill, as amended on Committee Stage, will be published and available for consideration by stakeholders in the market over the summer recess. We will return to it on Report Stage in the autumn and this will give us the opportunity to revisit some of the technical details. Specifically, we may bring forward Report Stage amendments following engagement with the Central Bank on the appropriate regulatory regime. That said, the amendments achieve what we and Deputy Michael McGrath have set out to achieve and I look forward to the debate.

In response to Deputy Pearse Doherty's question, the main difference between authorisation as a retail credit firm and authorisation as a credit serving firm is that retail credit firms

are required to submit details of their credit risk strategy, their credit policy, their credit control policy, forbearance restructuring, etc., provisioning and bad debts policy to the Central Bank. The bank also imposes a requirement on retail credit firms to communicate with its management body in respect of any deviations from this strategy. A retail credit firm is also required to ensure that any significant deviations from the credit risk strategy, credit policy, credit control policy and provisioning policy should be communicated to its management body in accordance with the reporting arrangements set out in the credit policy. The credit servicing firm authorisation requirements require credit firms to have professional indemnity and insurance, to notify the Central Bank in advance of taking on a new loan portfolio, and provide for requirements around a credit firm's relationship with the loan owner.

The European Commission has launched a proposal for a European directive on the authorisation of credit servicers. The proposed directive provides that credit servicers authorised in a member state can provide their service across the EU provided they are in compliance with the directive. Member states would be required to have an authorisation regime in place for credit servicing firms under the proposed directive. The proposed directive would require that loan purchasers are not subject to additional requirements. This is not compatible with the Private Members' Bill.

The benefits to regulating firms as credit serving firms include the following: continuing the existing credit servicing regime is of benefit to existing credit servicing firms; it would allow existing credit servicing firms to passport to other EU countries; it is more stable from a legislative viewpoint; it is more likely to be consistent with the new EU regime; and authorising loan owners as retail credit firms would not improve the consumer protections that would be available to borrowers - there would be the same protections as available via authorisation as a credit servicing firm.

Deputy Pearse Doherty: Can I come in on that?

Deputy Michael D'Arcy: I accept there is a lot there.

Deputy Pearse Doherty: There is a lot there. I am just taking it in. I appreciate what the Minister of State said, particularly the final point that consumer protection would not be different from one or the other. However, it appears from the speaking note the Minister of State read out that the approach being taken, which is that the credit firm as opposed to the retail credit firm will be regulated, is far less regulation. It is more like light-touch regulation of the entity which will hold the ownership of this credit in that it will not be required to furnish to the Central Bank its credit risk strategy and all of the other matters that were indicated. Given the amount of loans that entities would hold in this jurisdiction, is that not an issue of concern?

Deputy Michael D'Arcy: The main reason for regulating as credit servicing firms is that the new EU rules on credit servicing are being developed and we do not want to deviate too far from this development where there is interaction between the Commission, the ECB and the Central Bank of Ireland. That is why it is a good opportunity for us to have Committee Stage now. We can see how potentially they will impact upon the new rules and have a look again on Report Stage.

It is not light touch, but we also want to ensure that we do not deviate too far. That is why we are doing it in this manner.

Deputy Michael McGrath: It would certainly be preferable if there was a meeting of

minds between the Department and the Central Bank on this question. It would appear at present there is not and there is a difference as to the preference. I myself have been trying to tease this out to gauge the actual difference. The Minister of State has put some detail on the record there.

I am focusing on the key objective from a consumer point of view. If, for example, we had opted for the tier of a licensed credit institution that would be underpinned by European legislation but credit servicing firms, debt management firms and retail credit firms are all subject to domestic regulatory regimes without the underpinning of EU law. I received this information in a reply in the Dáil some time ago. In all of the above instances, the harmonised powers of the Central Bank contained in the Central Bank (Supervision and Enforcement) Act 2013 will be available to the bank, depending on the circumstances, and the Central Bank codes apply in all cases. I went through the codes earlier.

I am somewhat agnostic on it, but it would be better if there was an agreed position between the Central Bank and the Department. That will not be finalised until the autumn. Their comments in response to what is put on the record today would be helpful before we table Report Stage amendments.

Deputy Michael D'Arcy: I will meet officials from the Central Bank during the summer on this matter. I am not sure we will be able to get agreement with them on this. That is where it is.

Chairman: On a point of clarification, the Minister of State read out a note on the differences between them. Can we have a copy of that note now?

Deputy Michael D'Arcy: Sure.

Chairman: It is important that we have a copy of the note. What will be the difference between what the Minister of State read out and how that fits into the Title of this Bill, which is Consumer Protection (Regulation of Credit Servicing Firms) (Amendment) Bill 2018? He has commented on the difference between the Central Bank and the Department. If we are being asked to deal with the Bill this morning, and there are these differences, will he clarify it further for the committee?

Deputy Michael D'Arcy: May I suggest that we go into private session and allow the official to speak on the matter?

Chairman: Yes.

The select committee went into private session at 10.52 a.m. and resumed in public session at 11.17 a.m.

Deputy Pearse Doherty: Deputy McGrath flagged that he may wish to return on Report Stage to the issue of definitions. The Central Bank favours the regulation of the retail credit firm as opposed to what is being proposed, namely, the regulation of a credit servicing firm. I do not believe the committee will be able to deal with this issue at this point. Notwithstanding our interaction with the Minister's officials, there is an issue with this. The three types of regulation in place at this point are regulation of the banks, which is the gold standard; regulation of the retail credit firms, which is a lesser standard; and regulation of the credit servicing firm, which is the weakest standard. It would not be appropriate to regulate the vulture funds with the least stringent standard. They are not servicing firms as they hold the loans of Irish consumers. From my point of view, we should proceed in respect of section 1, but it would be helpful

to obtain a written submission from the Central Bank before we proceed to Report Stage. I am not suggesting that we take a step backwards but that the committee find a vehicle with which to engage with the Central Bank if anything appears in its submission.

Question put and agreed to.

NEW SECTION

Deputy Michael McGrath: I move amendment No. 1:

In page 4, between lines 3 and 4, to insert the following:

"Amendment of section 28 of Central Bank Act 1997

2. Section 28 of the Central Bank Act 1997 is amended—

(a) in subsection (1)—

(i) by substituting the following definition for the definition of "credit servicing":

" 'credit servicing', in relation to a credit agreement, means, subject to subsection (2)—

(a) holding the legal title to credit granted under the credit agreement,

(b) managing or administering the credit agreement, including—

(i) notifying the relevant borrower of changes in interest rates or in payments due under the credit agreement or other matters of which the credit agreement requires the relevant borrower to be notified,

(ii) taking any necessary steps for the purposes of collecting or recovering payments due under the credit agreement from the relevant borrower,

(iii) managing or administering any of the following:

(I) repayments under the credit agreement;

(II) any charges imposed on the relevant borrower under the credit agreement;

(III) any errors made in relation to the credit agreement;

(IV) any complaints made by the relevant borrower;

(V) information or records relating to the relevant borrower in respect of the credit agreement;

(VI) the process by which a relevant borrower's financial difficulties are addressed;

(VII) any alternative arrangements for repayment or other restructuring;

(VIII) assessment of the relevant borrower's financial circumstances and ability to repay under the credit A agreement;

(IX) determining the overall strategy for the management and administration of a portfolio of credit agreements;

(X) maintaining control over key decisions relating to such portfolio,

or

(c) communicating with the relevant borrower in respect of any of the matters referred to in paragraph (b);",

(ii) by substituting the following definition for the definition of "credit servicing firm":

" 'credit servicing firm' means, subject to subsection (2A)—

(a) a person (other than the National Asset Management Agency or a NAMA group entity (within the meaning of the National Asset Management Agency Act 2009)) who undertakes credit servicing other than on behalf of an owner of credit,

(b) a regulated financial service provider taken to be authorised to carry on the business of a credit servicing firm by virtue of subsection (3), or

(c) a credit servicing firm taken to be authorised to carry on the business of a credit servicing firm by virtue of subsection (4);",

and

(iii) by inserting the following definitions:

" 'owner of credit' means—

(a) a person who is authorised, or, by virtue of subsection (4), taken to be authorised, to carry on the business of a credit servicing firm, or

(b) a regulated financial services provider authorised, by the Bank or an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank, to provide credit in the State;

'retain on an ongoing basis a material net economic interest of not less than 5 per cent' shall be construed in accordance with Article 6 of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017[1];

'securitisation special purpose entity' means a corporation, trust or other entity (other than an originator or sponsor)—

(a) established for the purpose of carrying out one or more securitisations,

(b) the activities of which are limited to those appropriate to accomplishing that objective, and

(c) the structure of which is intended to isolate the obligations of the securitisation special purpose entity from those of the originator;

'securitisation', 'originator', and 'sponsor' have the meanings given to them

respectively by Article 2 of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017;",

(b) by substituting the following subsection for subsection (2):

"(2) For the purposes of this Part, a person who holds the legal title to credit granted under a credit agreement (in this subsection referred to as 'the holder') is taken to be credit servicing even if any action referred to in paragraph (b) or (c), as the case may be, of the definition of 'credit servicing' in subsection (1) is being undertaken by a person, acting on behalf of the holder, authorised to carry on the business of a credit servicing firm.",

(c) by inserting the following subsection after subsection (2):

"(2A) For the purposes of this Part, 'credit servicing firm', in relation to credit granted by, or the holding of legal title to credit by, the owner of credit, does not include a securitisation special purpose entity to which any part of the interest of the owner of credit in the credit concerned is directly or indirectly assigned or otherwise disposed of, as part of a securitisation, where—

(a) the securitisation special purpose entity was established by or on behalf of the owner of credit as part of the securitisation arranged by or on behalf of that owner of credit,

(b) the owner of credit retains the legal title to the credit so assigned or otherwise disposed of, and

(c) the owner of credit is required to retain on an ongoing basis a material net economic interest of not less than 5 per cent in the credit so assigned or otherwise disposed of;",

and

(d) by inserting the following subsection after subsection (3):

"(4) For the purposes of this Part, a person (other than a regulated financial service provider taken to be authorised to carry on the business of a credit servicing firm by virtue of subsection (3)) authorised to carry on the business of a credit servicing firm before the coming into operation of the *Consumer Protection (Regulation of Credit Servicing Firms) Act 2018* is taken to be authorised to carry on the business of a credit servicing firm after such coming into operation.".".

Amendments Nos. 1 and 2 are grouped for discussion. I have spoken on section 1. The amendments are aimed at the definitions which will be inserted in section 28 of the Central Bank Act 1997. This section is in the Part of the 1997 Act which deals with the regulated businesses. The amendments will expand the definition of "credit servicing" and "credit servicing firm" and also allow passive securitisation vehicles to continue to operate without regulation. These vehicles are completely passive and do not interact with consumers and, therefore, do not give rise to any consumer protection concerns. Their role in providing funding to the financial sector which can be used to provide credit to the real economy is widely recognised and it was never my intention that these vehicles would be regulated.

Credit servicing has been broken into three components. The first, holding legal title to

credit granted under the credit agreement, is the key element of the Bill.

The second component is the managing or administering of a number of different elements of the credit agreement. This includes all elements which were previously in the definition of credit servicing and also includes "determining the overall strategy for the strategy and administration of a portfolio of credit agreements" and "maintaining control over key decisions related to the portfolio". These are the key elements and these are changes to the definition of the credit servicing firm. It is essentially what pulls in the loan owner who is making those decisions. The third component is communicating with the borrower on these elements.

This will capture those activities whose exclusion from the definition of credit servicing meant that owners of credit agreements were not required to be authorised including the now specifically holding of legal title to credit making key decisions and determining strategy means that anyone doing these activities will need authorisation and will, therefore, be regulated by the Central Bank.

I refer to the amended definition of a credit servicing firm. This means anyone who undertakes credit servicing other than on behalf of a regulated owner and includes people who were taken to be authorised under transitional arrangements.

If a person is undertaking credit servicing on behalf of an owner of credit, the credit servicer does not have to be regulated because the owner of the credit is the regulated entity. This part of the definition is similar to the definition in the 2015 Act. The amendment will also insert a number of technical definitions to do with ownership and with securitisation.

There is a new subsection (2). This makes it clear that even if there is an owner, that is the holder of legal title, and has credit servicing undertaken by a regulated credit servicing firm, the owner still has to be regulated. New subsection (2A) specifically excludes securitisation entities from the need to be authorised. It draws from the definitions used in the most recent securities regulation, Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017.

There are a number of technical definitions inserted in the Bill on foot of this exclusion, "owner of credit", "retain on an ongoing basis", "securitisations special purpose entity" and also others which are given the same meaning as in the regulation.

It was always the intention that securitisation vehicles which were not actively involved in dealing with consumers would not require regulation by the Central Bank. We sought to provide for that in the original Bill. An amendment has now been brought forward, with the assistance of the Department of Finance. This technical amendment excludes securitisation from the definition of credit servicing.

New subsection (4) makes it clear that a person who is currently authorised to carry on the business of a credit servicing firm is taken to be authorised under the 2018 legislation without having to seek further authorisation. It is difficult to see why we would need to have additional authorisation requirements for existing firms which are already authorised and regulated.

If additional requirements are needed, it should be noted that section 33A of the Central Bank Act 1997 provides that the bank, in dealing with a regulated business, may among other things:

(a) make the firm's authorisation subject to such conditions or requirements, or both, as

it considers appropriate, relating to—

(i) the proper and orderly regulation and supervision of retail credit firms or authorised home reversion firms, and

(ii) the protection of their customers or potential customers;

Acceptance of this amendment will involve the deletion of section 2 currently in the Bill.

Deputy Pearse Doherty: The issues in sections 2 and 3 return to the core point of who should be regulated or not; should it be the credit servicing firm or the retail credit firm? My view is that it should be the retail credit firm, therefore, this would also need to change.

I wish to raise two points on the new section 2. I am concerned about the issue of not regulating the credit servicing firm, if the owner of the loans is regulated, because that will become the norm. Under this legislation, we would regulate the owners with the lightest type of regulation which is the credit servicing firm regulation. Therefore, the servicing firms that the people deal with and interact with will not be regulated. The argument for that approach is that the owner is regulated so that they can be pursued. I am unsure if that is the best approach. It goes back to the original point of whether we should leave the credit services unregulated under the existing legislation and the owner should be regulated as a retail credit firm, which would resolve this issue and ensure that those who are interacting with individuals, sending out letters in some cases, not responding and so on, cannot take a gloves-off approach because they themselves are not under the scope of the Central Bank as an entity while the fund which contracted their services would be and could be held accountable for their role. In this scenario, it would be better that both would be regulated. The new subsection (2) makes it clear that can happen where there is a credit servicing firm that is regulated, and the owner is regulated, that both can coexist but it also allows for them not to coexist, and for one not to be regulated. I am concerned about that and would like to revisit it on Report Stage. I say Report Stage because the whole issue of whether it should be a retail credit firm goes to the core of how we approach this legislation. I would like to hear the Central Bank's view on that.

My second point relates to securitisation. I am sure that this is not the case, however, where the holder of credit, that is, the vulture fund, secures a part of that debt through the process of securitisation, the vehicle that would be established would not come under the regulation of this Bill. Is it the case that the owner of the debt would still be regulated? If a vulture fund secured 15% of the debt through securitisation that would not exempt it from regulation under this legislation. I refer to section 3 of the Bill.

Deputy Michael D'Arcy: On the Deputy's last question, the holder is the regulated entity. Subsection (2) means that there is no confusion as to where the buck stops. Under this legislation, the buck will stop with the owner of the debt or fund, not the administrators or the agents on behalf of the fund.

In the debate we are having on whether it is a retail credit firm level of regulation or the credit servicing firm level, it is important to remember if we implement the retail credit firm level we are implementing a level of regulation for a firm in relation to the provision of credit, the credit risk strategy, the credit policy, the credit control policy and, provisionally, for a firm that does not provide credit. That is the essential point on why we are going with a credit servicing firm rather than the retail credit firms policy.

Chairman: I have a question for Deputy McGrath on his amendment. Is he suggesting not

to regulate the credit servicing firms? I am confused. They are regulated, is that correct?

Deputy Michael McGrath: Currently, yes.

Chairman: Is Deputy Michael McGrath saying that regulation would move from them to the loan owners?

Deputy Michael McGrath: The imperative in the Bill is that the owner would need to be regulated, that is the person in charge calling the shots. Deputy Doherty's key point is that if there is a credit servicing firm in the traditional sense and there is a separate loan owner that both should be regulated, because the interaction is between the consumer and the credit servicing firm, or middle man. I will reflect on that and review it. We do not want to allow any gap but the overall objective is that the owner would become regulated.

Chairman: The argument put forward by the Minister suggests that the credit servicing firms should be regulated, when one considers what Deputy Michael McGrath said. The implication is a different form of regulation should be applied to the loan owners, excluding the credit element of the regulation for the credit servicing firms.

Deputy Michael D'Arcy: The point I was making to Deputy Pearse Doherty was that I am sure there would be a challenge if we applied the retail credit firm level of regulation to a firm that does not provide credit.

Chairman: The point I would make to Deputy McGrath is that the credit servicing firms should remain regulated. We are talking about protecting the consumer further along the line down to loan owners.

Deputy Michael D'Arcy: Yes.

Chairman: There should be a pretty stiff regulation pertaining to those loan owners, excluding anything that might be said about credit and the context of retail credit firm regulations.

Deputy Michael McGrath: In the event that there is a loan owner and a middle man for servicing it, what is the Department's view on requiring the middle man to also be regulated?

Deputy Michael D'Arcy: If we go into private session we can get an answer from the departmental officials, who have been in contact with the Central Bank directly.

The select committee went into private session at 11.31 a.m. and resumed in public session at 11.36 a.m.

Deputy Michael McGrath: We keep coming back to the core issue of the retail credit firm versus credit servicing firm. We need to hear further from the Central Bank as to why it favours the retail credit firm tier of regulation. I would like us to proceed with concluding Committee Stage and have that engagement. We should write to the Central Bank and ask its views on that and any other matter on which we want a response. This may be revisited on Report Stage. We should proceed and, I hope, conclude Committee Stage.

Amendment agreed to.

Section 2 deleted.

NEW SECTION

Deputy Michael McGrath: I move amendment No. 2:

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

"Transitional provision for existing credit servicing firms: supplementary

3. The Central Bank Act 1997 is amended by inserting the following section after section 34F:

"34FA. (1) Notwithstanding section 29, a person (other than a regulated financial service provider taken to be authorised to carry on the business of a credit servicing firm by virtue of section 28(3) or a person taken to be carrying on the business of a credit servicing firm by virtue of section 28(4)) carrying on the business of a credit servicing firm immediately before the coming into operation of the Consumer Protection (Regulation of Credit Servicing Firms) Act 2018 is taken to be authorised to carry on the business of a credit servicing firm after such coming into operation until the Bank has granted or refused authorisation to the person, provided that the person applies to the Bank under section 30 for authorisation no later than 3 months after that coming into operation.

(2) If a person is taken to be authorised to carry on the business of a credit servicing firm under subsection (1), the Bank may do either or both of the following:

(a) impose on that person such conditions or requirements or both as the Bank considers appropriate relating to the proper and orderly regulation and supervision of credit servicing firms;

(b) direct that person not to carry on the business of a credit servicing firm for such period (not exceeding 3 months) as is specified in the direction.

(3) A condition or requirement imposed, or a direction given, under this section is an appealable decision for the purposes of Part VIIA of the Act of 1942.".".

This is a new section 34FA that allows an existing owner to continue to hold legal title, provided there is an application to the Central Bank for authorisation within three months of the coming into operation of this legislation. It also makes it clear that the Central Bank may impose conditions on such an owner. This is similar to the transitional provisions of the 2015 Act. The intention here is to give owners a route to continuing the ownership while going through the authorisation process. Acceptance of this amendment involves deletion of section 3 of the Bill. It is a transitional provision providing a route for those who currently own loans and are not regulated to become regulated and continue to own those loans.

Deputy Michael D'Arcy: I agree with the amendment, which achieves what we set out to do, that is, to ensure that loan owners are regulated and authorised by the Central Bank. Securitisation can continue to operate and consumers will continue to be protected. The changes also provide for transitional authorisation for existing owners and are similar to the versions in the 2015 legislation.

Amendment agreed to.

Section 3 deleted.

SECTION 4

Question proposed: "That section 4 be deleted."

Deputy Michael McGrath: This section is no longer needed because of the change to the definitions already considered in the earlier sections.

Question put and agreed to.

SECTION 5

Question proposed: "That section 5 be deleted."

Deputy Michael McGrath: This section is no longer needed because of the change to transitional arrangements already considered. We had attempted to provide for transitional measures and those have been refined with the amendment we already discussed. Section 33A of the Central Bank Act 1997 provides that the bank, in dealing with a regulated business, may, among other things, make the persons' authorisation subject to such conditions or requirements, or both, as it considers appropriate relating to the proper and orderly regulation and supervision of the persons authorised to carry on regulated business and the protection of their customers or potential customers.

In the context of jeopardising the interests of customers to benefit competing interests, the general principles of the consumer protection code apply to the dealings of regulated entities. Two principles are particularly relevant, namely 2.1, that an entity acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market, and 2.7, that an entity seeks to avoid conflicts of interest.

Question put and agreed to.

SECTION 6

Question proposed: "That section 6 be deleted."

Deputy Michael McGrath: This section is no longer required because of the changed definitions we have already considered.

Question put and agreed to.

SECTION 7

Question proposed: "That section 7 be deleted."

Deputy Michael McGrath: Again, this section is no longer required because of the changed definitions we have already agreed.

Question put and agreed to.

SECTION 8

Question proposed: "That section 8 be deleted."

Deputy Michael McGrath: This section is no longer required. Section 3.11 of the consumer protection code provides that where a regulated entity intends to cease operating, merge with another entity or transfer all or part of its regulated activities to another regulated entity, it must: notify the Central Bank immediately; provide at least two months notice to affected

customers to enable them to make alternative arrangements; ensure all outstanding business is properly completed prior to the transfer, merger or cessation of operations or, alternatively in the case of a transfer or merger, inform the consumer of how continuity of service will be provided following the transfer or merger; and in the case of a merger or transfer of regulated activities, inform the consumer that their details are being transferred to the other regulated entity, if that is the case.

Regulated entities, including loan owners, are obliged to follow the provisions of all Central Bank codes and regulations. The Department has conveyed its concerns to me that the proposed section would have unintended consequences. The Central Bank has copied letters to the committee which state that it expects that all affected customers are informed of both the term in their loan agreement which allows the loan to be sold and the identity and address of the proposed new owner at least two months in advance of the transfer and to inform the consumer of how continuity of service will be provided to him or her.

Question put and agreed to.

SECTION 9

Question proposed: "That section 9 be deleted."

Deputy Michael McGrath: This section is no longer required because of the changed definitions relating to securitisation, which we have already considered and agreed.

Question put and agreed to.

SECTION 10

Question proposed: "That section 10 be deleted."

Deputy Michael McGrath: I do not believe it would be appropriate to leave this section in the Bill. The Central Bank deals with systemic issues rather than individual cases, which are more appropriately dealt with by the Financial Services and Pensions Ombudsman. I do not wish to proceed with section 10.

Deputy Pearse Doherty: On section 10-----

Deputy Michael D'Arcy: This deals with the systemic nature of-----

Deputy Michael McGrath: It is intended to allow for a situation where a loan owner, such as a fund, would seek to engineer a default, for example.

Deputy Pearse Doherty: I am wondering about access to the ombudsman. Is that section 11?

Deputy Michael D'Arcy: That is dealt with in section 11.

Question put and agreed to.

SECTION 11

Question proposed: "That section 11 be deleted."

Deputy Michael McGrath: The Financial Services and Pensions Ombudsman can deal with any unresolved complaints against regulated financial service providers. Loan owners will

be regulated, so this provision is not required.

Deputy Pearse Doherty: While I accept that any regulated entity would be subject to the Financial Services and Pensions Ombudsman, and I do not have any reason to doubt that, the problem is that this legislation is now allowing for credit servicing firms, which interact with consumers, to be unregulated. While heretofore one could take a case to the Financial Services and Pensions Ombudsman against a credit card servicing firm, that option will no longer be available under this legislation. The only recourse would be to the loan owner. There is an issue here in terms of access to the ombudsman. There will be no right to take a case against the individual or the company that is sending the letters or making the telephone calls; a case will have to be taken against the owner in the future. That builds on the point I made earlier. A consumer would no longer be dealing with a company which provides the normal services a credit firm would provide, but rather a company which engages with people who are in financial distress and who have restructured their mortgages. I am concerned that the legislation would mean that those companies are not regulated, although I accept that it regulates the owner. I am also concerned that it takes away the right to take a case to the ombudsman against that firm and provides the right to the owner. Just as I had a concern about the owner not being regulated and the firm being regulated-----

Deputy Michael D'Arcy: It is the same question.

Deputy Pearse Doherty: I would like to look at this before Report Stage and for others to consider whether the credit servicing firms should be regulated and, if so, whether they would automatically come under the remit of the ombudsman.

Deputy Michael D'Arcy: I accept the Deputy's point. However, if someone makes a claim or takes a case against the agent, he or she has to go through the process for an agent. Subsequent to the outcome of that process, the person might have to take two cases if both entities are regulated.

Deputy Michael McGrath: This goes back to the correspondence with the Central Bank. The question is whether the intermediary, if there is one, continues to be in place, and whether that intermediary should also be regulated as a credit servicing firm. We should ask the Central Bank for its views on that matter, because they will feed into this issue.

Deputy Pearse Doherty: Under this legislation, the scenario the Minister of State outlined could actually happen. The legislation still allows for both the credit servicing firm and the owner to be regulated. A customer might be able to do exactly as suggested by the Minister of State. It also allows for the credit servicing firm not to be regulated in the traditional fashion. We know the owner will become a credit servicing firm. I am happy that the section be deleted but this is an issue I want to revisit.

Question put and agreed to.

SECTION 12

Question proposed: "That section 12 be deleted."

Deputy Michael McGrath: The view of the Department and the Central Bank is that primary legislation is not the place to provide for detailed statistics. I am happy to propose the deletion of section 12 as a result.

Question put and agreed to.

NEW SECTION

Deputy Michael McGrath: I move amendment No. 3:

In page 8, after line 41, to insert the following:

"Short title, collective citation and commencement

13. (1) This Act may be cited as the Consumer Protection (Regulation of Credit Servicing Firms) Act 2018.

(2) The Central Bank Acts 1942 to 2015 and this Act may be cited together as the Central Bank Acts 1942 to 2018.

(3) This Act shall come into operation on such day or days as the Minister for Finance may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.".

This amendment deals with the Short Title, citation and commencement. The Short Title has been changed to the Consumer Protection (Regulation of Credit Servicing Firms) Act 2018. Standard collective citation and commencement provisions are applied. The Long Title has also been changed. These changes reflect the amendments made to the Bill.

I want to raise one issue with the Minister regarding the commencement of this legislation, which, as provided for in the amendment, would be a matter for the Minister for Finance. I assume that the intention is that, once it is enacted, the legislation will come into effect. Is the Minister of State of the view that a commencement order is required?

Deputy Michael D'Arcy: That is a matter for the Minister for Finance. I do not wish to speak for him but I assume that a commencement order would be required.

Deputy Michael McGrath: There is no intention to delay its commencement.

Deputy Michael D'Arcy: That is my assumption.

Deputy Michael McGrath: It is a standard provision.

Deputy Michael D'Arcy: That is my assumption but I cannot answer for the Minister.

Deputy Michael McGrath: The Minister of State is not a Minister today.

Amendment agreed to.

Section 13 deleted.

TITLE

Deputy Michael McGrath: I move amendment No. 4:

In page 3, to delete lines 7 to 9 and substitute the following:

"An Act to provide for the regulation of credit servicing firms and for that purpose to amend the Central Bank Act 1997.".

The Long Title is being amended to reflect the amendments made to the Bill. The Bill will take effect through amending the Central Bank Act 1997.

Amendment agreed to.

Title, as amended, agreed to.

Bill reported with amendments.

Message to Dáil

Chairman: In accordance with Standing Order 90, the following message will be sent to the Dáil:

The Select Committee on Finance, Public Expenditure and Reform, and Taoiseach has completed its consideration of the Consumer Protection (Regulation of Credit Servicing Firms) (Amendment) Bill 2018 and has made amendments thereto.

Business of Select Committee

Chairman: The banks appear before the committee but agents and consumers do not. Under what legislation must the banks appear before the committee? What is the role of the Central Bank in that regard?

Deputy Michael D'Arcy: The Central Bank is obliged to appear before the committee.

Chairman: What about other banks?

Deputy Michael D'Arcy: They are not obliged to appear.

Chairman: They do not have to appear.

Deputy Michael D'Arcy: That is my understanding.

Chairman: It follows that agents and loan owners are not obliged to appear.

Deputy Michael D'Arcy: Correct.

Chairman: Is there a way to insist upon their appearance before the committee? May a party who deliberately avoids coming before the committee be obliged to appear under legislation, regulation or another method?

Deputy Michael D'Arcy: The Chair is referring to the compellability for witnesses to appear before Oireachtas committees. The referendum on this issue was lost. That is the only way in which this matter can be addressed.

Chairman: Is there another way to compel a witness to appear?

Deputy Michael D'Arcy: I am not aware of such but it is not my area of expertise.

Chairman: I ask that the Minister of State arrange for a note on the matter to be prepared for the committee. I do not understand how these companies and funds do not honour their ob-

ligation and responsibility in terms of transparency and accountability by appearing before the committee but still have access to the Department of Finance on a regular basis. I am trying to find out how that can be achieved other than by compelling witnesses to appear.

Deputy Michael D'Arcy: I do not know of another route but I encourage all such companies to accede to any request to appear before the committee. They are trading in this jurisdiction. The Houses of the Oireachtas are our Legislature and such companies should appear before the appropriate committees.

Chairman: The refusal of such companies to appear is an insult to the committee and the Oireachtas. Is there a way for the Minister of State and the Minister for Finance, Deputy Donohoe, to make clear that that is not acceptable?

Deputy Michael D'Arcy: It is not acceptable but I------

Chairman: If such companies refuse to appear before the committee for the purposes of transparency and accountability, the only option is to use a Bill such as that put forward by Deputy Michael McGrath to ensure that the highest possible level of scrutiny is applied in terms of regulation.

Deputy Michael D'Arcy: By the Central Bank.

Chairman: The companies have a choice.

Deputy Michael D'Arcy: That is their choice, yes.

Chairman: The committee also has a choice.

Deputy Michael D'Arcy: That is the purpose of this meeting of the committee. That is the intention of the Bill.

Chairman: I hope that we will reflect on that, perhaps with the assistance of Deputy Michael McGrath, on Report Stage. I am deeply unhappy that these entities have total disregard for the Oireachtas in spite of the changes that might arise from the Bill. We make the laws. If the companies refuse to be accountable to the committee, I firmly believe regulation should make them far more formally accountable. I ask the Minister of State to consider that. I also ask Deputy Michael McGrath to consider it in the context of the Bill. I do not see why the companies should get away with it. The agents and vulture funds inflict terrible pain and suffering on families all over the country but do what they like. The purpose of the Bill and similar Bills is to provide an appropriate level of consumer protection, which is necessary because these companies will not submit to accountability and transparency before the committee. I understand the point made by Deputy McGrath that this is getting into the nitty-gritty of regulation but it is necessary in order to protect the consumer. I ask the Minister of State to consider what has happened in this country in recent years and the disregard shown by those companies for the Oireachtas. If they continue to fail to appear before the committee, the Minister must ensure a level of regulation sufficient to ensure they have respect for this country and the citizens we represent.

Deputy Michael D'Arcy: I agree with the Chairman. The funds show disrespect to the Oireachtas by their failure to appear. I was a member of this committee 13 or 14 months ago when it invited the funds to appear before it. Each fund politely wrote back to say it would not appear. I am pleased that Department of Finance officials have worked hand in glove with

Deputy McGrath on the legislation, which has cross-party support, and to ensure the best and strongest regulation is put in place as quickly as possible to protect the consumers to whom the Chairman refers.

Chairman: I hope it will put manners on the vulture funds. The Minister of State was a member of the committee but now holds a very important position in the Department of Finance. I strongly encourage him to remember the people he represents and the damage done to many of them by vulture funds which completely disregard any form of consumer protection we put in place. It should be made clear that the high level of regulation to be put in place is necessary because of the disrespect shown by such companies to the Oireachtas and the people of this country.

Deputy Michael McGrath: I thank the Chairman, colleagues, the Minister of State and the officials for their assistance on Committee Stage. Engagement on this matter must continue, including that between the Central Bank and the Department. The objective should be to reach an agreed position. I am anxious that we quickly move to Report Stage in the autumn in order to remove any uncertainty and get this done as quickly as possible. I am sure the Minister of State also wishes for the Bill to be quickly progressed.

Deputy Michael D'Arcy: Absolutely.

Deputy Michael McGrath: I fully concur with the Chairman's comments on the funds and credit servicing agents. They should make themselves accountable by appearing before the committee. We should examine the available options to ensure such attendance.

Chairman: Deputy McGrath raised a very important point. Does the Minister of State think we will be here in the autumn?

Deputy Michael D'Arcy: I do. Does the Chair? His party also has a big influence on our being here in the autumn.

The select committee adjourned at 11.59 a.m. until 10.20 a.m. on Thursday, 20 September 2018.