



Number 16 of 1989

CENTRAL BANK ACT, 1989

ARRANGEMENT OF SECTIONS

PART I

Preliminary and General

Section

1. Short title.
2. Commencement.
3. Interpretation generally.
4. Repeals.

PART II

The Central Bank

Chapter I

Preliminary, Alteration of Penalties and General Offence Provisions

5. Definitions (*Part II*).
6. Construction and collective citation (*Part II*).
7. Laying of regulations and orders before Houses of the Oireachtas.
8. Alteration of penalties under Principal Act.
9. Offences and penalties under Act of 1971.
10. Prosecution of offences by Bank.
11. Offences in relation to certain bodies.

Chapter II

General Provisions Relating to the Bank

12. Additional powers and functions of Bank.

13. Fees in respect of supervision by Bank.
14. Composition of Board of Directors.
15. Offices and staff of Bank.
16. Disclosure of information.
17. Prevention of corruption.
18. Keeping of documents.
19. Accounts and records of Bank.
20. Report and returns by Bank.
21. Exemption of Bank from taxes.
22. Winding up of legal tender note fund and transfer of assets to general fund.
23. General fund.
24. Monetary unit and exchange rate.
25. Currency in which contracts, etc., are made.

Chapter III

Licensing and Supervision of Licence Holders

26. Extension of application of licensing and supervisory provisions.
27. Investigation of complaints.
28. Charges, etc., by holders of licences.
29. Amendment of section 2 of Act of 1971.
30. Amendment of section 7 of Act of 1971.
31. Exemption of persons from section 7 of Act of 1971.
32. Grant of licences, etc.
33. Amendment of section 10 of Act of 1971.
34. Revocation of licences.
35. Amendment of section 12 of Act of 1971.
36. Provisions in relation to books and records of holders of licences.
37. Furnishing of information to Bank.
38. Directions by Bank to holders of licences.
39. Amendment of section 22 of Act of 1971.
40. Amendment of section 23 of Act of 1971.

- [41. Composition of assets and liabilities.](#)
- [42. Amendment of section 26 of Act of 1971.](#)
- [43. Amendment of section 27 of Act of 1971.](#)
- [44. Power of Court to prohibit certain contraventions of, or failure to comply with, Act of 1971.](#)
- [45. Amendment of section 31 of Act of 1971.](#)
- [46. Appointment of auditor.](#)
- [47. Duties of auditor.](#)

[Chapter IV](#)

General Provisions Relating to Winding Up

- [48. Grounds for winding up on application of Bank.](#)
- [49. Notices, documents to be sent to Bank relating to winding up.](#)
- [50. Right of Bank to be represented at meetings, etc.](#)
- [51. Construing of references to winding up, etc.](#)
- [52. Rules of Court.](#)

[Chapter V](#)

Deposit Protection

- [53. Interpretation \(*Chapter V*\).](#)
- [54. Deposit protection account.](#)
- [55. Deposits by holders of licences.](#)
- [56. Review of operation of deposit protection account.](#)
- [57. Deposit protection account and cesser of banking business where solvent.](#)
- [58. Vesting in liquidator of deposited amount.](#)
- [59. Statement of affairs and calculation of payments from deposit protection account, etc. on insolvency.](#)
- [60. Payment out of deposit protection account on winding up.](#)
- [61. Effect of payment by Bank under *section 60*.](#)
- [62. Eligible deposits.](#)
- [63. Certain additional persons to be excluded depositors.](#)
- [64. Provisions applicable to excluded depositors, etc.](#)
- [65. Calculation of certain payments relating to trustee deposits and joint accounts.](#)

- [66. Treatment of certain payments out of general fund.](#)
- [67. Reconstitution of deposit protection account.](#)
- [68. Exclusion from reconstitution.](#)
- [69. Crediting of moneys to deposit protection account, distributions, etc.](#)
- [70. Expenses and remuneration of liquidator under this Chapter.](#)
- [71. Limitation of time.](#)
- [72. Regulations \(Chapter V\).](#)
- [73. Extension of application of Chapter V.](#)

[Chapter VI](#)

Acquiring Transactions

- [74. Interpretation \(Chapter VI\).](#)
- [75. Application \(Chapter VI\).](#)
- [76. Limitation on validity of acquiring transactions.](#)
- [77. Consent of Minister to certain acquiring transactions required.](#)
- [78. Requirement on Bank before refusal to approve acquiring transaction.](#)
- [79. Alteration of prescribed percentage.](#)
- [80. Conditions on approval of proposed acquiring transaction.](#)
- [81. Right of purported vendor to damages.](#)
- [82. Notification of proposed acquiring transactions to Bank.](#)
- [83. Relevant period for purpose of sections 76, 86 and 88.](#)
- [84. Inquiries by Bank.](#)
- [85. Communication of Bank's approval or refusal to approve.](#)
- [86. Appeal to High Court against refusal, etc., of Bank.](#)
- [87. Contravention of approval, etc.](#)
- [88. Application of certain other enactments.](#)

[Chapter VII](#)

Supervision of Certain Financial Institutions for the purposes of an International Financial Services Centre

- [89. Definitions \(Chapter VII\).](#)
- [90. Application \(Chapter VII\).](#)

- [91. Orders \(*Chapter VII*\).](#)
- [92. Supervision, etc. of financial institutions by Bank.](#)
- [93. Application of sections 17 and 18 of Act of 1971.](#)
- [94. Establishment of self-regulatory bodies.](#)
- [95. Power of Court to prohibit failure to comply with requirement or condition under *Chapter VII*.](#)
- [96. Report of non-compliance to Minister.](#)

Chapter VIII

Supervision of Financial Futures and Options Exchanges

- [97. Definitions \(*Chapter VIII*\).](#)
- [98. Gaming and Lotteries Acts.](#)
- [99. Establishment of exchanges.](#)
- [100. Existing exchanges.](#)
- [101. Approval of rules by Bank, conditions, etc.](#)
- [102. Refusal of Bank to approve rules.](#)
- [103. Application of section 17 of Act of 1971.](#)
- [104. Restriction on advertising.](#)
- [105. Directions by Bank to suspend trading, dealing.](#)
- [106. Revocation of approval of rules.](#)
- [107. Offences and penalties \(*Chapter VIII*\).](#)

Chapter IX

Supervision of Moneybrokers

- [108. Interpretation \(*Chapter IX*\).](#)
- [109. Orders \(*Chapter IX*\).](#)
- [110. Authorisation to carry on moneybroking business.](#)
- [111. Supervision, etc. of moneybrokers by Bank.](#)
- [112. Application of section 17 of Act of 1971.](#)
- [113. Power of Court to prohibit failure to comply with requirement or condition under *Chapter IX*.](#)
- [114. Revocation of authorisations.](#)

- [115. Publication of names of moneybrokers and notices of revocation of authorisations.](#)
- [116. Offences and penalties \(*Chapter IX*\).](#)

Chapter X

Codes of Practice

- [117. Codes of practice.](#)

Chapter XI

Legal Tender Notes

- [118. Provision of legal tender notes.](#)
- [119. Application of certain enactments.](#)
- [120. Issue of legal tender notes by Bank.](#)
- [121. Redemption of legal tender notes.](#)
- [122. Calling in of legal tender notes.](#)
- [123. Defacement, etc., of legal tender notes and consolidated bank notes.](#)

PART III

Coinage

- [124. Definition \(*Part III*\).](#)
- [125. Amendment of section 3 of Act of 1969.](#)
- [126. Amendment of section 4 of Act of 1969.](#)
- [127. Legal tender \(coinage\).](#)
- [128. Alteration of penalties under Act of 1969.](#)
- [129. Amendment of section 17 of Act of 1969.](#)
- [130. Collective citation \(*Part III*\).](#)

PART IV

Miscellaneous Provisions Relating to Financial Transactions

- [131. Amendment of Bankers' Books Evidence Act, 1879.](#)
- [132. Amendment of Bills of Exchange Act, 1882.](#)
- [133. Supplementary provision to section 3 of Cheques Act, 1959.](#)
- [134. Power of Minister to direct suspension of certain business transactions, etc.](#)

- [135. Payments on public holidays not compellable.](#)
- [136. Amendment of Money-lenders Act, 1900.](#)
- [137. Deposit with Bank to be an authorised investment for trustees.](#)
- [138. Amendment of Trustee \(Authorised Investments\) Act, 1958.](#)
- [139. Electronic transfer of certain securities.](#)
- [140. Retention of certain information in non-legible form.](#)
- [141. Construction and collective citations.](#)

SCHEDULE

Acts Referred to

Assurance Companies Act, 1909	9 Edw. 7, c. 49
Bankers' Books Evidence Act, 1879	42 & 43 Vict., c. 11
Bankers' Books Evidence (Amendment) Act, 1959	1959, No. 21
Bills of Exchange Act, 1882	45 & 46 Vict., c. 61
Building Societies Act, 1976	1976, No. 38
Central Bank Act, 1942	1942, No. 22
Central Bank Act, 1961	1961, No. 8
Central Bank Act, 1964	1964, No. 3
Central Bank Act, 1971	1971, No. 24
Cheques Act, 1959	1959, No. 19
Companies Act, 1963	1963, No. 33
Companies Acts, 1963 to 1986	
Currency Act, 1927	1927, No. 32
Currency and Central Bank Acts, 1927 to 1971	
Decimal Currency Act, 1969	1969, No. 23
Decimal Currency Acts, 1969 and 1970	
Exchange Control Act, 1954	1954, No. 30
Finance Act, 1911	1 & 2 Geo. 5, c. 48
Finance Act, 1917	6 & 7 Geo. 5, c. 31
Finance Act, 1980	1980, No. 14
Finance Act, 1986	1986, No. 13
Finance Act, 1987	1987, No. 10
Forgery Act, 1913	3 & 4 Geo. 5, c. 27

Friendly Societies Act, 1896	59 & 60 Vict., c. 25
Gaming and Lotteries Acts, 1956 to 1986	
Holidays (Employees) Act, 1973	1973, No. 25
Industrial Credit Act, 1933	1933, No. 25
Larceny Act, 1916	6 & 7 Geo. 5, c. 50
Mergers, Take-overs and Monopolies (Control) Act, 1978	1978, No. 17
Money-lenders Act, 1900	63 & 64 Vict., c. 51
National Debt Act, 1870	33 & 34 Vict., c. 71
Partnership Act, 1890	53 & 54 Vict., c. 39
Petty Sessions (Ireland) Act, 1851	14 & 15 Vict., c. 93
Prevention of Corruption Act, 1906	6 Edw. 7, c. 34
Prevention of Corruption Act, 1916	6 & 7 Geo. 5, c. 64
Public Offices Fees Act, 1879	42 & 43 Vict., c. 58
Stock Transfer Act, 1963	1963, No. 34
Superannuation Act, 1892	55 & 56 Vict., c. 40
Trustee Act, 1893	56 & 57 Vict., c. 53
Trustee (Authorised Investments) Act, 1958	1958, No. 8
Trustee Savings Bank Acts, 1863 to 1979	



Number 16 of 1989

CENTRAL BANK ACT, 1989

AN ACT TO AMEND AND EXTEND THE LAW RELATING TO THE CENTRAL BANK OF IRELAND, THE DECIMAL CURRENCY ACTS, 1969 AND 1970, AND THE LAW RELATING TO CERTAIN FINANCIAL TRANSACTIONS AND TO PROVIDE FOR OTHER MATTERS CONNECTED WITH THE MATTERS AFORESAID. [12th July, 1989]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Preliminary and General

Short title.

1.—This Act may be cited as the Central Bank Act, 1989.

Commencement.

2.—This Part and [Chapter VII](#) of [Part II](#) shall come into operation upon the passing of this Act, and except where otherwise provided for, the other provisions of this Act shall come into operation on such day or days as may be fixed therefor by order or orders of the Minister, either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions of this Act.

Interpretation generally.

3.—(1) In this Act—

“*the Bank*” means the Central Bank of Ireland;

“*the Minister*” means the Minister for Finance.

(2) In this Act, a reference to a Part or Chapter, section or Schedule is to a Part or Chapter or section of or Schedule to this Act, unless it is indicated that a reference to some other enactment is intended.

(3) In this Act, a reference to a subsection or paragraph is to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended.

Repeals.

4.—The Acts specified in the Schedule are hereby repealed to the extent specified in the third column of that Schedule.

PART II

The Central Bank

Chapter I

Preliminary, Alteration of Penalties and General Offence Provisions

Definitions ([Part II](#)).

5.—In this Part—

“*the Act of 1971*” means the [Central Bank Act, 1971](#) ;

“*the Principal Act*” means the [Central Bank Act, 1942](#) .

Construction and collective citation ([Part II](#)).

6.—The Principal Act, the [Central Bank Act, 1961](#) , the [Central Bank Act, 1964](#) , the Act of 1971 and this Part shall be construed together as one Act and may be cited together as the Central Bank Acts, 1942 to 1989.

Laying of regulations and orders before Houses of the Oireachtas.

7.—Every regulation and order (other than regulations under [section 15](#) or to which [section 23 \(3\)](#) relates or an order under [section 79](#)) made under this Part shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order is passed by either such House within the next 21 days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Alteration of penalties under Principal Act.

8.—The Principal Act is hereby amended—

(a) in section 55, by the substitution of the following subsection for subsection (1):

“(1) If any person makes, or causes to be made, or uses for any purpose whatsoever, or utters any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, a bank note or part of a bank note, he shall be guilty of an offence under this subsection and shall be liable—

(a) on summary conviction to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both, or

(b) on conviction on indictment to a fine not exceeding £10,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years, or to both.”;

(b) in section 56, by the substitution of the following subsection for subsection (2):

“(2) Every person who makes, provides, issues, re-issues, or gives or receives in payment any document in contravention of subsection (1) of this section shall be guilty of an offence under this section and shall be liable—

(a) on summary conviction, to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment, to a fine not exceeding £10,000 or, at the discretion of the court, to imprisonment for a term not exceeding five years, or to both.”;

(c) in section 65, by the substitution of the following subsection for subsection (2):

“(2) (a) It shall be the duty of every person on whom a notice is served by the Bank under subsection (1) of this section to comply with such notice within the time or on the periodic occasions (as the case may be) specified in such notice, and if he fails so to do, he shall be guilty of an offence under this section and shall be liable, on summary conviction, to a fine not exceeding £1,000.

(b) Where a person has been convicted of an offence by virtue of paragraph (a) of this subsection and, after the conviction, the failure to comply continues, the person shall be guilty of contravening this section on every day on which the contravention

continues after that conviction and for each such offence he shall be liable on summary conviction to a fine not exceeding £100.”.

Offences and penalties under Act of 1971.

9.—The Act of 1971 is hereby amended by the substitution of the following section for section 58:

“58.—(1) Any person who contravenes [section 7](#) , [14](#) , [17](#) , [18](#) or [27](#) of this Act and a holder of a licence who—

(a) has obtained a licence through false statements or any other irregular means,

(b) contravenes [section 19](#) , [20](#) , [26](#) , [31](#) or [33](#) of this Act,

(c) commits by act or omission a breach of a condition duly imposed and which relates to a licence,

(d) fails to comply with a direction under section 11 (3) (c) (inserted by [section 34](#) of the *Central Bank Act, 1989*), [21](#) or [22](#) of this Act, or a requisition under [section 23](#) of this Act, or

(e) contravenes regulations under [section 24](#) or [25](#) of this Act,

shall be guilty of an offence and shall be liable—

(i) on summary conviction, to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both, or

(ii) on conviction on indictment, to a fine not exceeding £50,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years, or to both,

and, if the contravention, breach or failure in respect of which he was convicted is continued after conviction, he shall be guilty of an offence on every day on which the contravention, breach or failure continues after conviction in respect of the original contravention, breach or failure and for each such offence he shall be liable on summary conviction to a fine not exceeding £100 or on conviction on indictment to a fine not exceeding £5,000.

(2) Where there is a contravention in relation to a unit trust scheme of [section 14](#) (2) of this Act, the manager under the scheme shall be deemed to have contravened [section 14](#) of this Act.

(3) In any proceedings for an offence under this section which relates to [section 27](#) of this Act, it shall be a good defence for the accused to prove that he was, at the relevant time, a person whose business it was to publish or arrange for the publication on behalf of some other person of advertisements or other solicitations and that the relevant advertisement or other solicitation was received for publication in the ordinary course of

that business and that he did not know and had no reason to suspect that to use it to advertise or otherwise solicit could be an offence.”.

Prosecution of offences by Bank.

10.—An offence under the *Central Bank Acts, 1942 to 1989*, which is being tried summarily may be prosecuted by the Bank and a statement made by the person conducting such prosecution that the prosecution has been commenced with the authority of the Bank shall be sufficient evidence that the prosecution was so commenced.

Offences in relation to certain bodies.

11.—Where an offence under the *Central Bank Acts, 1942 to 1989*, is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body of persons and is proved to have been so committed with the consent or approval of, or to have been facilitated by any wilful neglect on the part of, another person (being a director, manager, secretary, member of any committee of management or other controlling authority of such body or official of such body) that other person shall, as well as the body corporate or the person so purporting to act, be guilty of an offence and shall be liable to be proceeded against and punished accordingly.

Chapter II

General Provisions Relating to the Bank

Additional powers and functions of Bank.

12.—(1) The repeal of the [Currency Act, 1927](#) , by [section 4](#) shall not affect any function, power or duty exercisable by the Bank by virtue of section 6 (1) of the Principal Act.

(2) For the avoidance of doubt it is hereby declared that the powers and functions exercisable by virtue of section 47 of the Act of 1971 include the powers—

- (a) to acquire, hold, sell, assign or otherwise deal in securities or any other property,
- (b) to extend loans and advances, and
- (c) to give guarantees and make payments on foot of such guarantees.

(3) The Bank shall, for the purpose of—

- (a) the protection of the interests of persons, or any class thereof, maintaining deposits with any other person in respect of which the business of that other person is supervised by the Bank, or
- (b) the orderly and proper regulation of the business of any person in respect of which he is so supervised,

have the following powers, where they are not already exercisable by the Bank, that is to say the powers—

- (i) to acquire, hold, sell, assign or otherwise deal in securities or any other property,

(ii) to extend loans and advances, and

(iii) to give guarantees and make payments on foot of such guarantees.

Fees in respect of supervision by Bank.

13.—(1) Subject to *subsection (3)*, the Minister may, after consulting the Bank, by regulation prescribe the fee to be paid to the Bank by any person supervised by it under any enactment and different fees may be prescribed for different classes of persons.

(2) Regulations under this section may provide for such incidental or related matters as are, in the opinion of the Minister, necessary to give effect to such fees.

(3) Where the Minister proposes to prescribe a fee under *subsection (1)*, he shall—

(a) notify the persons of the class to which the proposed fee relates of that proposed fee, and

(b) only prescribe the proposed fee or a lesser fee after he has considered any representations made to him within such period, being not less than two months after the date the notification was sent by him to each person concerned, as he shall specify in the notification.

(4) In this section “*person*” includes a financial futures and options exchange within the meaning assigned to it for the purposes of [Chapter VIII](#).

Composition of Board of Directors.

14.—(1) Subject to *subsection (3)*, the Principal Act is hereby amended—

(a) by the substitution of the following subsection for subsection (3) of section 5:

“(3) The Bank shall be conducted and managed in accordance with this Act by a Board of Directors consisting of—

(a) a Governor, and

(b) such number of other Directors (not exceeding nine and not including at any one time more than two service Directors) as the Minister shall from time to time determine.”;

(b) by the deletion of sections 14 (5), 23 (7) and 29;

(c) by the substitution of the following section for section 24:

“Tenure of office of the Directors.

24.—(1) Every Director (other than a service Director and a Director appointed to fill a casual vacancy) shall, unless he sooner dies, resigns or becomes disqualified, hold office for five years from the expiration by effluxion of time of the term of office of his predecessor.

(2) Every Director (other than a service Director) who is appointed for a purpose other than filling a vacancy amongst the Directors (other than as aforesaid) shall, unless he sooner dies, resigns or becomes disqualified, hold office for five years from the day as on and from which he is appointed.

(3) Every service Director shall hold office at the pleasure of the Minister and may be removed by the Minister at any time.

(4) A person appointed to fill a casual vacancy in the office of Director (other than the office of a service Director) shall hold office for the residue of the term for which the Director whose death, resignation, or disqualification created the vacancy would have held office if he had not died, resigned or become disqualified.”;

(d) in section 28 (which relates to notices of vacancies and appointments of certain Directors) by the substitution of the following subsection for subsection (1):

“(1) This section applies only to Directors who are not service Directors.”.

(2) Subject to *subsection (3)*, the Act of 1971 is hereby amended by the deletion of section 53.

(3) (a) Any person who, immediately before the coming into operation of this section, was a banking Director shall, unless his term of office expires on such coming into operation, continue to hold office for the period of 3 months thereafter unless he sooner dies, resigns or becomes disqualified.

(b) In respect of each Director to whom *paragraph (a)* applies, the provisions of sections 14 (5), 23 (7) and 29 of the Principal Act and section 53 (3) of the Act of 1971 shall continue to apply to him, until he ceases to be a banking Director in accordance with *paragraph (a)*, as if this section had not been enacted.

Offices and staff of Bank.

15.—(1) The Bank may purchase, take on lease, build or otherwise acquire and may equip and maintain such offices and other premises in such places as it considers necessary for the due performance of its functions under this Act and may sell or let any such premises which it considers to be no longer necessary for that purpose.

(2) The Bank shall appoint a secretary and such other officers and servants as the Bank shall from time to time consider necessary for the due performance of its functions under this Act and every secretary, officer, and servant so appointed shall hold office upon such terms and subject to such conditions as the Bank shall determine.

(3) (a) Subject to the provisions of *paragraph (b)*, every appointment under *subsection (2)* of an officer or servant of the Bank shall be made by competition (including a qualifying or competitive test in Irish) to be conducted according to regulations to be made by the Board and the Board may, in relation to any such competition, impose such conditions of entry, limitations, and safeguards as it thinks proper.

(b) *Paragraph (a)* shall not apply to appointment to a position in respect of which appointment by competition is, in the opinion of the Board, unsuitable.

(4) There shall be paid to the secretary and the other officers and servants of the Bank such salaries and remuneration as the Bank may determine.

(5) (a) The Bank may, with the approval of the Minister make such further scheme or schemes for granting pensions, allowances and gratuities on retirement or death to or in respect of such of its officers and servants as it thinks proper and may, out of funds available under the *Central Bank Acts, 1942 to 1989*, for defrayal of the expenses of the Bank, pay in respect of such persons on retirement or death the pensions, allowances or gratuities in accordance with the relevant scheme and the Minister may determine the said funds to be public funds for the purposes of the Superannuation Act, 1892.

(b) The Bank may from time to time, with the approval of the Minister, make a scheme amending a scheme under *paragraph (a)*.

(c) Without prejudice to the generality of the foregoing, a scheme under this subsection may provide for the granting of superannuation benefits (including pensions, allowances and gratuities) to widows and children of officers and servants of the Bank and for the payment of contributions in respect of such benefits by the officers and servants to whom the scheme applies.

(6) Every scheme made under subsection (4) of [section 31](#) of the [Currency Act, 1927](#), shall, to the extent that it is still in force immediately before the coming into operation of this section, continue in force as if that subsection had not been repealed by this Act.

(7) Subsection (2) of section 54 of the Act of 1971 is hereby amended by the insertion of “(as continued in force by virtue of [section 15](#) (6) of the *Central Bank Act, 1989*)” after “the Act of 1927” and the said subsection, as so amended, is set out in the Table to this section.

(8) Every scheme made by the Bank under *subsection (5)* shall be laid before each House of the Oireachtas as soon as may be after it is made and if either such House, within the next subsequent 21 days on which it has sat after such scheme is laid before it, passes a resolution annulling such scheme, such scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

TABLE

(2) The Bank may from time to time, with the approval of the Minister, make a scheme amending a scheme under section 31 (4) of the Act of 1927 (as continued in force by virtue of [section 15](#) (6) of the *Central Bank Act, 1989*) or section 33 (1) (c) of the Act of 1942 or a scheme under this subsection and a scheme under this subsection may, without prejudice to the generality of the foregoing, provide for the granting of superannuation benefits (including pensions, allowances and gratuities) to widows and children of persons to whom those schemes apply and for the payment of contributions in respect of such benefits by the persons to whom those schemes apply.

Disclosure of information.

16.—(1) A person, who at the commencement of this section is, or at any time thereafter is appointed, Governor or a Director, officer or servant of the Bank or who is employed by the Bank in any other capacity, shall not disclose, during his term of office or employment or at any time thereafter, any information concerning—

(a) the business of any person or body (whether corporate or unincorporate) which came to his knowledge by virtue of his office or employment, or

- (b) the Bank's activities in respect of the protection of the integrity of the currency or the control of credit,

unless such disclosure is to enable the Bank to carry out its functions under the *Central Bank Acts, 1942 to 1989*, or under any enactment amending those Acts.

(2) The provisions as to non-disclosure contained in *subsection (1)* shall not apply to any disclosure—

- (a) required by a court in connection with any criminal proceedings,
- (b) made with the consent of the person to whom the information relates and, where not the same person, of the person from whom that information was obtained,
- (c) where the Bank is acting or has acted in the capacity of an agent for a person, made to the person in respect of that capacity,
- (d) where the Bank considers it necessary for the common good, made to any person charged by law with the supervision of financial institutions (whether or not entitled to take money on deposit from the public) and who, in the opinion of the Bank, has obligations concerning that person duly imposed in respect of non-disclosure of information and corresponding to obligations under this section,
- (e) made to an authority in a foreign jurisdiction duly authorised to exercise functions in that jurisdiction which correspond to the functions of the Bank under this Part and Part II of the Act of 1971 and which, in the opinion of the Bank, has obligations concerning the authority duly imposed in respect of non-disclosure of information and corresponding to obligations under this section,
- (f) made to any institution of the European Communities for the purpose of the State's membership of any of those Communities,
- (g) made for the purpose of complying with any requirement, under the *Central Bank Acts, 1942 to 1989*, or any other enactment, that a report, statement or other document be laid before a House of the Oireachtas,

and the provisions as to non-disclosure contained in *paragraphs (a) and (b) of subsection (1)* shall not apply to any disclosure—

- (i) in the case of the said *paragraph (a)*, which, in the opinion of the Bank, is necessary for the protection of depositors of money with any person carrying on the business of banking or any business to which section 7 (4) (a) (ii) of the Act of 1971 (as amended by this Act) or regulations under [section 26](#) relate or to safeguard the interests of the Bank,
- (ii) in the case of the said *paragraph (b)*, made with the consent of the Bank or where the disclosure is not prejudicial to—

(I) the operations of the Bank in any financial market, or

(II) the issue by the Bank of legal tender, or

(III) the integrity of the currency.

(3) After the commencement of this section, every person who is appointed Governor or a Director, officer or servant of the Bank, or who is employed by the Bank in any other capacity, shall—

(a) before entering into the office or employment, be informed by the Bank of his obligations under this section, and

(b) acknowledge that he has been so informed and understands his obligations,

in such manner as the Bank shall determine.

(4) A person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable—

(a) on summary conviction to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both, or

(b) on conviction on indictment to a fine not exceeding £25,000 or, at the discretion of the court, to imprisonment for a term not exceeding five years, or to both.

(5) In any proceedings for an offence under this section, it shall not be necessary to prove that the provisions of *subsection (2)* do not apply and the onus of proving that any of those provisions do apply shall be on the person seeking to avail himself thereof.

Prevention of corruption.

17.—With effect from the commencement of this section, the provisions of the Prevention of Corruption Act, 1906, and the Prevention of Corruption Act, 1916, shall apply to every person to whom [section 16](#) relates and, accordingly—

(a) section 1 (3) of the said Act of 1906 (as adapted by the Prevention of Corruption Acts, 1889 to 1916, Adaptation Order, 1928 (S.R. & O. No. 37 of 1928)) and section 2 of the said Act of 1916 (as so adapted) shall be construed as if there were included, after the reference to a person holding an office remunerated out of the Central Fund or moneys provided by the Oireachtas, a reference to a person to whom [section 16](#) of the *Central Bank Act, 1989*, relates, and

(b) sections 1 and 2 of the said Act of 1916 (as so adapted) shall be construed as if there were included, after the reference to a statutory body required by law to exercise its functions subject to the direction and control of a Minister who is head of a Department of State, a reference to the Bank.

Keeping of documents.

18.—(1) No provision of the National Debt Act, 1870, or of the *Central Bank Acts, 1942 to 1989*, shall be construed as requiring the Bank to preserve any document or other record for a period of more than 6 years after the latest date of the period to which such document or other record relates and no regulation under section 17 of the Finance Act, 1911, or section 37 of the Finance Act, 1917, shall provide for the preservation of such document or other record for a period of more than the said 6 years.

(2) A document or other record to which *subsection (1)* refers may be kept in whole or in part by recording otherwise than in a legible form so long as the recording is capable of being reproduced in a legible form.

(3) In any legal proceedings, a copy or reproduction in legible form of any entry in a document or other record kept, or formerly kept, by the Bank shall be received as evidence of such entry or of the matters therein recorded where such document or other record has been destroyed or is kept by the Bank otherwise than in a legible form.

Accounts and records of Bank.

19.—(1) The Bank shall keep all proper books of account and other books and records, and shall within 6 months after the end of every year prepare and transmit to the Comptroller and Auditor General a statement of accounts in respect of such year in such form as shall be approved of, from time to time, by the Minister after consulting with the Bank.

(2) The Comptroller and Auditor General shall audit, certify, and report upon every statement of accounts transmitted to him by the Bank under this section and every such report of the Comptroller and Auditor General together with the statement of accounts to which it relates shall be transmitted by him to the Minister who shall cause copies of the documents so transmitted to be laid before each House of the Oireachtas.

Report and returns by Bank.

20.—(1) The Bank shall, within 6 months after the expiration of every year, prepare and send to the Minister a report of its proceedings during such year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas as soon as possible after its receipt by him.

(2) The Bank shall furnish to the Minister for publication in the *Iris Oifigiúil* such periodical returns in respect of the transactions of the Bank as the Minister may from time to time direct.

Exemption of Bank from taxes.

21.—Notwithstanding any provision of the Tax Acts or the Capital Gains Tax Acts, profits, income and chargeable gains of the Bank shall be exempt from corporation tax, income tax and capital gains tax.

Winding up of legal tender note fund and transfer of assets to general fund.

22.—(1) As soon as possible after the date on which this section comes into operation and in any event with effect from a date not later than one month thereafter, the legal tender note fund shall be wound up by the Bank and the assets of that fund shall be transferred to the general fund.

(2) The legal tender notes on issue at any time after the winding up of the legal tender note fund shall be a liability on the general fund.

(3) (a) References to the legal tender note fund in any statute (other than this Act) or instrument made under such statute and in force at the date of the winding up of the legal tender note fund shall, with effect from that date, be construed as references to the general fund unless the context otherwise requires.

- (b) The Minister may by regulations make, in respect of any statute or instrument to which *paragraph (a)* applies and relating to any matter dealt with by this section, any adaptations or modifications which appear to him to be necessary to enable such statute or instrument to have effect in conformity with this section.

(4) As soon as possible after the winding up of the legal tender note fund, the Bank shall cause a notice to that effect to be published in the *Iris Oifigiúil* which shall state therein the date of the winding up.

General fund.

23.—(1) Notwithstanding the repeal of [section 63](#) of the [Currency Act, 1927](#), the Bank shall continue to keep the fund called the general fund to which it shall carry all receipts and out of which it shall draw all payments.

(2) The Minister may, after consultation with the Bank, make regulations providing for the determination periodically of the surplus income of the Bank and may by such regulations enable provisions to be made for reserves, depreciation, and other like matters before determination of the surplus income.

(3) Any regulations made under [section 63](#) (5) of the [Currency Act, 1927](#), shall, to the extent that they are still in force immediately before the coming into operation of this section, be deemed to have been made under this section.

(4) The Bank shall pay its surplus income as and when determined under this section into the Exchequer in such manner as the Minister shall direct and may at any time pending such determination pay into the Exchequer such sums on account of surplus income as may be agreed upon by the Minister and the Bank.

Monetary unit and exchange rate.

24.—(1) The monetary unit of the State shall be the Irish pound which shall be issued in legal tender form.

(2) The Minister may, whenever he considers it necessary after consultation with the Bank, do either or both of the following, that is to say:

(a) vary the general exchange rate arrangements for the time being for the Irish pound in respect of any or all other monetary units,

(b) make specific exchange rate adjustments consistent with those arrangements.

(3) Whenever the Minister varies the general exchange rate arrangements or makes specific exchange rate adjustments under *subsection (2)*, a notice to that effect shall be published in the *Iris Oifigiúil*.

Currency in which contracts, etc., are made.

25.—Every contract, sale, payment, bill, note, instrument, and security for money, and every transaction, dealing, matter, and thing whatever relating to money or involving the payment or the liability to pay any money which is made, executed, entered into, done, or had on or after the coming into operation of this section shall be made, executed, entered into, done and had according

to coins or notes which are for the time being legal tender in the State and not otherwise, unless the same be made, executed, entered into, done or had according to a currency other than the currency of the State.

Chapter III

Licensing and Supervision of Licence Holders

Extension of application of licensing and supervisory provisions.

26.—Where, after consulting with the Bank and with such Ministers of the Government (if any) as he considers it appropriate to consult with in the circumstances, the Minister is of the opinion that, in respect of any class of financial business which is not supervised by the Bank under the *Central Bank Acts, 1942 to 1989*, it is necessary for—

- (a) the protection of the public or any class thereof from financial loss, or
- (b) the orderly and proper regulation of financial markets,

that such class of financial business ought to be either or both licensed and supervised by the Bank, he may by regulations apply to the said class all or any of the licensing and supervisory provisions (including those provisions which relate to auditors and liquidators) of Part II of the Act of 1971 or of this Chapter or [Chapters I](#) , [II](#) and [IV](#) with such modifications or adaptations as he considers appropriate.

Investigation of complaints.

27.—(1) The Minister may, by regulations made after consultation with the Bank, require the holder of a licence to establish or join in establishing a scheme or schemes for the investigation of complaints against that holder or an associated company in relation to a prescribed matter of complaint.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may make provision in relation to any one or more of the following—

- (a) the establishment and administration of a scheme,
- (b) the manner of appointment of an independent adjudicator to conduct investigations,
- (c) the matters to be subject to investigation under the scheme,
- (d) the grounds on which a complaint must be based,
- (e) the powers of, and procedure to be followed in the conduct of investigations by, the adjudicator,
- (f) the circumstances in and the extent to which determinations are binding,
- (g) the procedures for the making of complaints,
- (h) the publication of the adjudicator's findings,

(i) the approval of the scheme by the Bank.

(3) Subject to *subsection (4)*, the reference of a complaint under a scheme established under this section shall not affect the rights of any person to have a dispute determined in any other manner provided by law.

(4) Where on a complaint under a scheme established under this section the parties concerned agree that a determination in accordance with the scheme shall be binding on them and the scheme provides for such an agreement, then the determination shall be binding on the parties.

(5) In this section “*associated company*” means (where appropriate)—

(a) a holding company or a subsidiary company (within the meanings respectively given to them by [section 155](#) of the [Companies Act, 1963](#)),

(b) a company which is a subsidiary of a body corporate, where the holder of the licence concerned is also a subsidiary of the body corporate, but neither is a subsidiary of the other.

Charges, etc., by holders of licences.

28.—(1) Each holder of a licence shall, within two months of the coming into operation of this section (in the case of existing licence holders) or of the grant of a licence (in any other case), notify the Bank of—

(a) all charges imposed by such holder in relation to the provision of any service to the public or to any class of the public, and

(b) any term or condition upon or subject to which such service is provided.

(2) The holder of a licence shall notify the Bank of every proposal—

(a) to change any charge, term or condition which has been previously notified to the Bank for the purposes of this section, or

(b) to impose any charge, term or condition, applying to the provision of a service to the public or to any class of the public, which has not been previously notified to the Bank for the purposes of this section.

(3) The Bank may direct the holder of a licence—

(a) to refrain from imposing or changing a charge, term or condition, applying to the provision of a service to the public or to any class of the public, without the prior approval of the Bank, and

(b) to publish, in such manner as may be specified by the Bank from time to time, information on any charge, term or condition applying to the provision of a service to the public or to any class of the public.

(4) A direction under this section may be expressed to apply—

(a) to every holder of a licence or to the holders of licences carrying on a specified type of banking business,

(b) to all services provided to the public or to any class of the public by the holders of licences concerned or to specified services or to services of a specified kind,

(c) in relation to a specified time or times or during a specified period or periods,

and the direction shall—

(i) be communicated to every holder of a licence concerned,

(ii) where not communicated in writing, be confirmed in writing to every such holder concerned as soon as possible thereafter, and

(iii) have effect in accordance with its terms.

(5) The Bank shall, in exercising its powers under this section, have regard to the promotion of fair competition between—

(a) holders of licences,

(b) holders of licences carrying on a particular type of banking business, and

(c) holders of licences to which *paragraph (a) or (b)* relates and such other institutions taking money on deposit as the Bank considers appropriate to take into account.

(6) The Bank may amend or revoke a subsisting direction under this section and may amend or revoke a subsisting direction which has been amended.

(7) The Bank may exempt a holder of a licence from the obligation to notify the Bank under this section in respect of—

(a) any charge which has been individually negotiated *bona fide* with the holder by a customer, or by or on behalf of a group of customers, of the holder, or

(b) a class of term or condition applying to a service provided by the holder, if the Bank is of the opinion that it is not necessary for it to be so notified in order to decide whether or not to issue a direction under *subsection (3)* in respect of the service.

(8) Any person who contravenes *subsection (1), (2), (3) or (4)* shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both, or

(b) on conviction on indictment, to a fine not exceeding £50,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years, or to both,

and, if the contravention in respect of which he was convicted is continued after conviction, he shall be guilty of an offence on every day on which the contravention continues after conviction in

respect of the original contravention and for each such offence he shall be liable on summary conviction to a fine not exceeding £100 or on conviction on indictment to a fine not exceeding £5,000.

(9) In this section, “*charge*” and “*term or condition*” do not include any rate of interest.

Amendment of section 2 of Act of 1971.

29.—Section 2 of the Act of 1971 is hereby amended—

(a) by the substitution, respectively, of the following definitions for the definitions of “*banking business*” and “*the Court*”:

“‘*banking business*’ means business which consists of—

- (a) the business of accepting deposits payable on demand or on notice or at a fixed or determinable future date, or
- (b) the business of taking funds, other than deposits, from the public payable on demand or on notice or at a fixed or determinable future date (whether or not involving the issue of securities or other obligations, however described),

but excluding—

- (i) deposits with a trader from persons employed by him in his trading business or from his customers in the normal course of his trading business and deposits or instalments in respect of the letting or selling of goods under a hire-purchase agreement or a credit-sale agreement, or

- (ii) the taking of other funds by a person from the public where it can be shown that—

(I) no part of the business activities of the person so taking or of any other person is financed wholly or substantially out of those funds, and

(II) such funds are, in the normal course of business, taken on a casual or incidental basis only,

or

- (iii) moneys taken solely as a premium in respect of the issue or renewal of a life assurance policy issued by a holder of an authorisation under the European Communities (Life Assurance) Regulations, 1984 (S.I. No. 57 of 1984),

or either or both of the businesses aforesaid and any other business normally carried on by a bank and ‘*banking*’ and words cognate thereto shall be construed accordingly;

‘*the Court*’ means, except where the context otherwise requires, the High Court;”;

(b) by the substitution, respectively, of the following definitions for the definitions of “*general fund*”, “*gold bullion*”, “*issue*” and “*legal tender note*”:

“‘*general fund*’ means the fund to which [section 63](#) of the [Currency Act, 1927](#) , related and which continues to be kept by the Bank by virtue of [section 23](#) of the *Central Bank Act, 1989*;

‘*gold bullion*’ includes any gold coins other than gold coins which are for the time being legal tender in the State;

‘*issue*’, when used in relation to legal tender notes, includes the re-issue of any such note which has ceased to be outstanding;

‘*legal tender note*’ means a legal tender note provided and issued under and in accordance with the *Central Bank Acts, 1942 to 1989*, and any other enactment amending or extending those Acts or under any Act repealed by the *Central Bank Act, 1989*”.

Amendment of section 7 of Act of 1971.

30.—Section 7 of the Act of 1971 is hereby amended by the substitution of the following subsection for subsection (4):

“(4) (a) Subsection (1) of this section shall not apply in relation to—

- (i) the central banks in the other states that are members of the European Communities,
 - (ii) the Agricultural Credit Corporation public limited company, the company formed and registered by virtue of [section 2](#) of the [Industrial Credit Act, 1933](#) , the Post Office Savings Bank, a trustee savings bank certified under the Trustee Savings Banks Acts, 1863 to 1979, or
 - (iii) a building society, an industrial and provident society, a friendly society, a credit union or the manager or trustee under a unit trust or collective investment scheme in respect of the carrying on of the business of the scheme.
- (b) Where the Minister is of the opinion that it is in the interest of the orderly and proper regulation of banking or of any other financial market he may, after consultation with the Bank and with such Minister of the Government or other persons as he may consider appropriate to so consult in the circumstances, by order amend paragraph (a) (ii) so as to add thereto any body or category of persons or to delete therefrom any body or category of persons mentioned therein for the time being.”.

Exemption of persons from section 7 of Act of 1971.

31.—The Act of 1971 is hereby amended by the substitution of the following section for section 8:

“8. (1) (a) Where, by reason only of a person's use in a name or title of any of the words ‘*bank*’, ‘*banker*’ or ‘*banking*’ or any word which is a variant, derivative or translation of or is analogous to any of those words, the person would be deemed to

be holding himself out as a banker, the Bank may exempt the person from the provisions of [section 7](#) of this Act if, in the opinion of the Bank, the person does not in fact carry on or propose to carry on banking business and does not otherwise hold himself out or represent himself as a banker or as carrying on banking business.

- (b) The Bank may at any time revoke an exemption under this subsection where it is of the opinion that at any time after being exempted the person concerned has carried on banking business or otherwise has held himself out or represented himself as a banker or as carrying on a banking business and, upon the exemption being so revoked, that person shall forthwith take all necessary measures to cease using the name or title concerned containing the word to which the revoked exemption related.
- (2) (a) The Bank may exempt any class or classes of person from the requirement for each of them to hold a licence where—
 - (i) the requirement would arise solely out of the issuing of securities or other obligations to which the definition of ‘*banking business*’ relates, and
 - (ii) the Bank is of the opinion that the exemption would not conflict with the orderly and proper regulation of banking.
- (b) Where any class of persons have been exempted under this subsection from holding a licence and subsequently the Bank is of the opinion that the circumstances relevant to the exemption have changed and are such that that class would not now be so exempted, the Bank shall revoke the exemption.
- (c) The Bank shall cause notice of every exemption and revocation under this subsection to be published in the *Iris Oifigiúil*.”.

Grant of licences, etc.

32.—(1) Section 9 of the Act of 1971 is hereby amended:

(a) by the insertion of the following subsection after subsection (1):

“(1A) The Bank shall not grant a licence under this section to a person applying for it unless that person satisfies the Bank that it is—

(a) a company, or

(b) a credit institution within the meaning of Council Directive 77/780/EEC of 12 December, 1977⁽¹⁾, which has been duly authorised for the purposes of that Directive.”;

(b) by the substitution of the following subsection for subsection (3):

“(3) Whenever the Bank proposes to refuse to grant a licence to a person—

(a) it shall—

- (i) within the period of six months after the date of the receipt of the application for the licence, or
- (ii) where additional information in relation to the application has been sought by the Bank, within the period of six months after the date of the receipt by the Bank of the additional information or the period of twelve months after the date of the receipt of the application for the licence whichever period first expires,

notify the person in writing that it intends to seek the consent of the Minister to the proposed refusal and of its reasons for the refusal and that the person may, within the period of twenty-one days after the date of the giving of the notification, make representations in writing to the Minister in relation to the proposed refusal,

- (b) the person may make such representations in writing to the Minister within the time aforesaid, and
- (c) the Minister shall, before deciding to give or withhold his consent, consider any representations duly made to him under this subsection in relation to the proposed refusal.”.

(2) Section 10 (4) of the Act of 1971 shall stand repealed with effect from the coming into operation of *subsection (1) (a)*.

Amendment of section 10 of Act of 1971.

33.—Section 10 of the Act of 1971 is hereby amended by the substitution of the following paragraph for paragraph (c) of subsection (3):

“(c) the Bank shall, before deciding to impose the condition or amend or add to the conditions of the licence, as the case may be, consider any representations duly made to it under this subsection in relation to the imposition, amendment or addition, as the case may be, and where, after so considering, the Bank decides on an imposition, amendment or addition, as the case may be, that differs from that specified in the notification concerned, it shall not be necessary to give a new notification under this subsection if the difference results in the condition concerned being no more onerous than would be the case had the Bank decided to impose the condition or amend or add to the conditions of the licence, as the case may be, in accordance with the notification concerned.”.

Revocation of licences.

34.—The Act of 1971 is hereby amended by the substitution of the following section for section 11:

“11. (1) The Bank may—

- (a) revoke a licence if the holder of the licence so requests,
- (b) with the consent of the Minister, revoke a licence if the holder of the licence—

- (i) (I) has not commenced to carry on banking business within twelve months of the date on which the licence was granted, or
 - (II) has ceased to carry on banking business and has not carried it on during a period of more than six months immediately following the cesser,
 - (ii) being a company, is being wound up,
 - (iii) is a credit institution to which [section 9](#) (IA) (b) of this Act (as amended by the *Central Bank Act, 1989*) relates, which is being duly wound up or otherwise dissolved,
 - (iv) has obtained the licence through false statements or any other irregular means,
 - (v) becomes unable to meet his obligations to his creditors or suspends payments lawfully due by him or no longer possesses sufficient own funds (being own funds to which Council Directive 77/780/EEC of 12 December, 1977, relates) or can no longer be relied upon to fulfil his obligations towards his creditors, and in particular no longer provides security for the assets entrusted to him,
 - (vi) fails to maintain a deposit in the Bank of an amount determined in accordance with [section 55](#) of the *Central Bank Act, 1989*,
 - (vii) is convicted on indictment of an offence under any provision of this Act or an offence involving fraud, dishonesty or breach of trust,
 - (viii) has his head office in another state that is a member of the European Communities and the authority in that state that exercises in that state functions corresponding to those of the Bank under this Chapter has withdrawn authorisation from the institution of which the holder is a branch,
- (c) with the consent of the Minister, revoke the licence if, since the grant of the licence, the circumstances relevant to the grant have changed and are such that, if an application for a licence were made in the changed circumstances, it would be refused.

(2) Whenever the Bank proposes to revoke a licence (other than in circumstances to which paragraph (a) or (b) (viii) of subsection (1) of this section relate)—

- (a) it shall notify the holder in writing that it intends to seek the consent of the Minister to the revocation and of the reasons for the revocation and that the holder may, within twenty-one days after the date of the giving of the notification, make representations in writing to the Minister in relation to the proposed revocation,
- (b) the holder may make such representations in writing to the Minister within the time aforesaid, and

(c) the Minister shall, before deciding to give or withhold his consent, consider any representations duly made to him under this subsection in relation to the proposed revocation.

(3) Where a licence is revoked and the person who was the holder of the licence is not a company which is being wound up—

(a) that person shall continue to be subject to the duties and obligations imposed on him by or under the *Central Bank Acts, 1942 to 1989*, until all liabilities of that person in respect of deposits (including deposits on current accounts) or other repayable funds accepted by him from persons (in this subsection referred to as depositors) have been discharged to the satisfaction of the Bank,

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

(i) notify the Bank and

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

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

(c) in the case where—

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

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

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

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

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

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

(III) making payments,

without the prior authorisation of the Bank, and the Bank may require that person to prepare and submit to it for its approval within two

months of the direction, a scheme for the orderly discharge in full of his liabilities to the depositors concerned,

(d) where a direction to which this subsection relates is given the provisions of [section 21](#) of this Act shall apply with any necessary modifications.

(4) (a) Where a licence is revoked and the holder of the licence is a company which is being wound up, the liquidator of the company shall, in addition to his duties and obligations in respect of the winding up, be subject to the duties and obligations to which the company would be subject were it a company to which subsection (3) of this section relates and that subsection shall, for the purposes of this subsection, be construed accordingly.

(b) Notwithstanding paragraph (a) of this subsection, the Bank may, where it revokes a licence and considers it appropriate in the circumstances, remove in writing the duty and obligation imposed on the liquidator concerned to comply with paragraph (b) (as construed by this subsection) of subsection (3) of this section and may impose in writing on that liquidator such further or other duty and obligation which corresponds to that set out in the said paragraph (b).

(5) If the holder of a licence—

(a) has his head office in another state that is a member of the European Communities, or

(b) carries on banking business through a branch established in another such state,

the Bank shall, before deciding to revoke the licence, consult with the authority in that state that exercises in that state functions corresponding to those of the Bank under this Part:

Provided however that if immediate action by the Bank is called for it shall not be necessary for the Bank to consult as aforesaid but in such a case the Bank shall notify the authority concerned of the revocation of the licence.”.

Amendment of section 12 of Act of 1971.

35.—Section 12 of the Act of 1971 is hereby amended by the substitution of the following subsection for subsection (3):

“(3) The Bank shall keep each of the following informed of the names of the holders of licences, that is to say:

(a) the Commission of the European Communities;

(b) the Registrar of the Supreme Court;

(c) the officer for the time being managing the Central Office of the High Court;

(d) every County Registrar;

(e) every District Court Clerk.”.

Provisions in relation to books and records of holders of licences.

36.—The Act of 1971 is hereby amended by the substitution of the following section for section 17:

“17.—(1) A holder of a licence shall keep at an office or offices within the State such books and records (including accounts) as may be specified from time to time by the Bank in the due discharge by the Bank of its statutory functions and shall notify the Bank of the address of every office at which any such book or record is kept for the purposes of this subsection.

(2) Different books and records may be specified by the Bank for the purposes of this section in relation to different holders of licences.

(3) (a) An appropriate person duly authorised in writing in that behalf by the Governor of the Bank (in this subsection referred to as ‘*an authorised person*’) may, for the purpose of the performance by the Bank of its statutory functions and upon production of his authorisation, at all reasonable times, inspect and take copies of or extracts from, and make such enquiries as he may consider necessary in relation to—

(i) the books and records kept pursuant to this section by the holder of a licence, and

(ii) any books of account relating to the said holder and kept under the [Companies Act, 1963](#), or under any enactment which is to be construed together as one with that Act, and

(iii) any other documents relating to the business of the said holder,

and for those purposes enter any office to which subsection (1) of this section relates and any other place where he reasonably believes any books, records or other documents as aforesaid are kept.

(b) A person who has in his power, possession or procurement any books, records or other documents aforesaid shall—

(i) produce them at the request of an authorised person and permit him to inspect and take copies of or extracts from them,

(ii) at the request of an authorised person, give any information which may be reasonably required with regard to them, and

(iii) give such other assistance and information to an authorised person as is reasonable in the circumstances.

(c) The provisions of paragraphs (a) and (b) of this subsection shall apply to every holder of a licence and the provisions of those paragraphs, other than subparagraph (i) of paragraph (a), shall apply to—

(i) every associated enterprise of the holder, and

(ii) any other person,

where an inspection of the books, records or other documents is, in the opinion of the Bank, materially relevant to the proper appraisal of the business of a holder of a licence during any period in respect of which an inspection or proposed inspection of the holder relates.

(4) Books and records kept pursuant to this section shall—

(a) be in addition to any books or other records to be kept by or under any other enactment, and

(b) be retained for at least such period as the Bank may specify in respect of any such book or record.

(5) Where any person from whom production of a book, record or other document is required claims a lien thereon, the production of it shall be without prejudice to the lien.

(6) Nothing in this section shall compel the production by a barrister or solicitor of a book, record or other document containing a privileged communication made by him or to him in that capacity or the furnishing of information contained in a privileged communication so made.

(7) (a) In this section—

‘appropriate person’ means—

(i) an officer of the Bank, or

(ii) in relation to any particular inspection (including a proposed inspection), any other person who in the opinion of the Governor of the Bank possesses appropriate qualifications or experience to carry out the inspection, or any part thereof, to which this section relates;

‘associated enterprise’ means (where appropriate)—

(i) a holding company of the holder of a licence,

(ii) a subsidiary company of the holder of a licence,

(iii) a company which is a subsidiary of a body corporate, where the holder of the licence concerned is also a subsidiary of the body corporate, but neither company is a subsidiary of the other,

(iv) where a company is the holder of a licence, any other body corporate that is not a subsidiary of the company but in respect of which the company is beneficially entitled to more than 20 per cent. in nominal value of either the allotted share capital or of the shares carrying voting rights (other than voting rights which arise only in specified circumstances) in that other body corporate,

(v) a partnership in which the holder of a licence has an interest, and whose business is or, at the relevant time, was, in the opinion of the Bank, materially relevant to

any inspection of the holder being carried out or proposed to be carried out under this section;

‘*holding company*’ has the meaning given to it by [section 155](#) of the [Companies Act, 1963](#) ;

‘*statutory functions*’, in relation to the Bank, means its functions—

- (i) under the *Central Bank Acts, 1942 to 1989*, and any other enactment amending those Acts, or
- (ii) imposed by virtue of the European Communities (Consolidated Supervision of Banks) Regulations, 1985 (S.I. No. 302 of 1985), and Council Directive No. 85/354/EEC ⁽¹⁾ of 13 June, 1983;

‘*subsidiary company*’ has the meaning given to it by [section 155](#) of the [Companies Act, 1963](#) .

- (b) References in this section to books, records or other documents, or to any of them, shall be construed as including any document or information kept in a non-legible form (by the use of electronics or otherwise) which is capable of being reproduced in a legible form and all the electronic or other automatic means, if any, by which such document or information is so capable of being reproduced to which the person, whose books, records or other documents (as so construed) are inspected for the purposes of this section, has access.”.

Furnishing of information to Bank.

37.—The Act of 1971 is hereby amended by the substitution of the following section for section 18: (1)

“18. (1) A holder of a licence and any person carrying on a business—

- (a) of an associated enterprise to which subsection (3) of this section relates,
- (b) in respect of which that person is, by virtue of section 7 (4) (a) (ii) of this Act, exempted from the obligation to hold a licence,
- (c) as an investment trust company,
- (d) as a moneybroker,
- (e) as a financial intermediary, or
- (f) of issuing, holding or otherwise participating in any market in financial instruments including those to which [Chapter VIII](#) of the *Central Bank Act, 1989*, applies;

shall each furnish the Bank—

- (i) at such times as the Bank may specify from time to time, such information and returns concerning the business to which the licence relates or the carrying on of a business as aforesaid by such person, as the case may be, as the Bank may specify from time to time, being information and returns which the Bank considers it necessary to have for the due performance of its statutory functions;
- (ii) within such period as the Bank may specify, any information and returns (not being information or returns specified under paragraph (i) of this subsection) concerning the business to which the licence relates or the carrying on of a business as aforesaid by such person, as the case may be, that the Bank may request in writing, being information and returns which the Bank considers it necessary to have for the due performance of its statutory functions.

(2) A person shall not furnish information or returns under this section which he knows to be false.

(3) Subsections (1) and (2) of this section shall apply to the business of an associated enterprise to the extent only that the information and returns sought by the Bank are, in the opinion of the Bank, materially relevant to the proper appraisal of the business of the holder of the licence to which the associated enterprise relates.

(4) In this section:

‘*associated enterprise*’ has the same meaning as it has in [section 17](#) of this Act;

‘*information and returns*’ and ‘*information or returns*’ includes audited accounts, audited group accounts and any other documents which are equivalent or correspond to such audited accounts or audited group accounts;

‘*moneybroker*’ has the meaning assigned to it by [section 108](#) of the *Central Bank Act, 1989*, for the purposes of *Chapter IX* of that Act.”.

Directions by Bank to holders of licences.

38.—The Act of 1971 is hereby amended by the substitution of the following section for section 21:

“21.—(1) Where the Bank is of the opinion that it is in the public interest to do so, or that the holder of a licence—

- (a) has become or is likely to become unable to meet his obligations to his creditors,
or
- (b) is not maintaining or is unlikely to be in a position to maintain adequate capital resources having regard to the volume and nature of his business, or
- (c) has failed to comply with any condition imposed in relation to the licence in accordance with [section 10](#) of this Act and the circumstances are such that the Bank is of the opinion that the stability and soundness of the holder are affected by such failure, or

- (d) is conducting business in such a manner as to jeopardise and prejudice the security of deposits taken by him or the rights and interests of persons who made those deposits, or
- (e) is under common control with one or more than one other enterprise (whether or not any such other enterprise is the holder of a licence) and the Bank is of the opinion that the common control is not in the interest of persons maintaining deposits with the first mentioned holder of a licence,

the Bank may give a direction in writing to that holder to suspend, for such period, not exceeding six months, as shall be specified in the direction, all or any of the following, that is to say—

- (i) the carrying on of banking business,
- (ii) the making of payments to which paragraph (i) of this subsection does not relate,
- (iii) the acquisition or disposal of other assets or liabilities,

which have not been authorised by the Bank.

(2) The Bank may revoke a direction given under subsection (1) of this section unless an order under subsection (4) of this section has been made in respect of the direction.

(3) The holder of a licence to whom a direction is given under subsection (1) of this section may apply to the Court for, and the Court may grant, an order setting aside the direction.

(4) The Bank may apply to the Court for, and the Court may grant, an order confirming a direction given under subsection (1) of this section or confirming the direction and subject to subsection (5) of this section extending the period of its operation for such time, not exceeding the period of twelve months from the date the direction commenced to have effect, as the Court may, having regard to all the circumstances, consider appropriate.

(5) A direction to which subsection (4) of this section relates shall cease to have effect—

- (a) where the direction was confirmed, upon the expiration of the period to which the direction relates,
- (b) where the direction was confirmed and the period of its operation was extended, upon the expiration of that extended period,
- (c) from such date as the Court by order determines on a subsequent application to it by the Bank,
- (d) upon the making of a winding up order in respect of the holder of the licence concerned, or

- (e) where the Court is of the opinion that the circumstances which gave rise to the direction have ceased to exist and that it would be unjust and inequitable not to make an order to that effect, from such date as the Court by order determines,

whichever first occurs.

(6) The Court may, in addition to or in lieu of making an order under subsection (3) or (4) of this section, make such other order in relation to the matter as may appear to it to be necessary, including an order directing any person who holds money or other assets for or on behalf of the person to whom the direction relates not to dispose of any of those assets except on such conditions and in such circumstances as are specified in the order.

(7) Where a direction given under this section is a subsisting direction, then—

- (a) winding up or bankruptcy proceedings shall not be initiated in relation to the holder of the licence to whom the direction was given,
- (b) a receiver over the property of that holder shall not be appointed, and
- (c) the property of that holder shall not be attached, sequestered or otherwise distrained,

unless the prior approval of the Court has been obtained.

- (8) (a) Where the Bank is of the opinion that, notwithstanding the fact that the holder of the licence to whom the direction was given under this section appears to it to be able to meet his obligations to his creditors, the circumstances which gave rise to the direction are unlikely to be rectified, it shall forthwith apply to the Court for, and the Court may grant, an order directing the holder to prepare, in consultation with the Bank, a scheme for the orderly termination of his banking business and the discharge of his liabilities to persons who have deposits maintained with him under the supervision of the Bank and to submit the scheme to the Court within two months for the Court's approval.
 - (b) The Court shall not approve the terms of the scheme without hearing the Bank and, in the event of any dispute concerning the terms of the scheme, either or both the Bank and the holder of the licence to whom the direction was given may apply to the Court to adjudicate on the matter.
 - (c) If the holder of the licence to whom the direction was given fails to comply with the order of the Court or fails to adhere to the scheme approved by the Court, the Bank may apply to the Court for and the Court may make such further order as it considers appropriate, including an order of committal or a winding up order on the ground that it is just and equitable that the holder should be wound up.
- (9) Where, in proceedings brought under this section against the holder of a licence to whom a direction was given under this section, a winding up order is made, the law relating to companies (including this Act) shall apply in the same way as if the order had been made on a winding up petition under that law and as if for any reference in that law to the presentation of the winding up petition there were substituted a reference to the making of the winding up order under this section.

(10) Where the Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice, that it is desirable, the whole or any part of proceedings under this section may be heard otherwise than in public.

(11) The Court may by order revoke or amend an order made by it under this section.

(12) For the purpose of subsection (1) (e) of this section, the holder of a licence and one or more than one other enterprise shall be deemed to be under common control if the decision as to how or by whom each shall be managed can be made by the same person or is made by the same group of persons acting in concert.”.

Amendment of section 22 of Act of 1971.

39.—Section 22 of the Act of 1971 is hereby amended:

(a) by the substitution of the following subsections for subsection (2):

“(2) The Bank may give a direction to a holder of a licence to refrain from—

(a) publishing or continuing to publish, or

(b) causing to be published or to be continued to be published,

during such period as shall be specified in the direction an advertisement inviting deposits from the public.

(2A) The Bank may give a direction to a holder of a licence to refrain from—

(a) publishing or continuing to publish, or

(b) causing to be published or to be continued to be published,

an advertisement containing information in respect of any service provided or to be provided to the public or any charge, term or condition upon which a service is so provided (or to be so provided) which, in the opinion of the Bank is false, misleading or calculated to deceive.”;

(b) by the addition of the following subsection after subsection (3):

“(4) In this section:

‘*advertisement*’ includes every form of recommendation of any matter to which this section relates including, in particular, the display or publication of any such matter by way of notice, leaflet, circular, pamphlet, brochure, photograph, film, video, sound broadcasting, television, electronic communication or personal canvassing;

‘*deposits*’ includes any funds taken from the public and payable on demand or on notice or at a fixed or determinable future date.”.

Amendment of section 23 of Act of 1971.

40.—Section 23 of the Act of 1971 is hereby amended by the substitution of the following subsection for subsection (4):

“(4) In this section—

‘liabilities’ include such contingent liabilities as may be specified by the Bank from time to time for the purposes of this section;

‘*specified*’ means specified by the Bank in a requisition under this section.”.

Composition of assets and liabilities.

41.—The Act of 1971 is hereby amended by the insertion of the following section after section 23:

“23A. The Bank may, from time to time, specify as respects a holder of a licence requirements as to the composition of its assets and requirements as to the composition of its liabilities.”.

Amendment of section 26 of Act of 1971.

42.—Section 26 of the Act of 1971 is hereby amended by the addition of the following subsection—

“(7) The Minister may, after consultation with the Bank and where he is of the opinion that it would not be against the orderly and proper regulation of banking, by order—

(a) in the case of either or both subsections (2) and (3) of this section, apply those subsections or restrict their application to any person or class of persons, and

(b) in the case of subsection (6) of this section, amend that subsection by the addition thereto or deletion therefrom, of any instrument specified in that subsection,

and, in the case of each subsection, whether or not previously affected by virtue of this subsection.”.

Amendment of section 27 of Act of 1971.

43.—Section 27 of the Act of 1971 is hereby amended:

(a) by the insertion of the following subsection after subsection (2):

“(2A) If an advertisement or other solicitation for deposits is published and it does not include the name and address of the person who arranged with the publisher for the advertisement or solicitation, then the Bank may, at any time within the period of twelve months after any publication of the advertisement, request the publisher to supply the name and address of that person to the Bank and the publisher shall forthwith comply with that request.”;

(b) by the substitution of the following subsection for subsection (3):

“(3) (a) In this section ‘*deposits*’ does not include deposits with a trader by persons employed by him in his trading business or by his customers in the normal course of his trading business or deposits in respect of the letting or selling of goods under a hire-purchase agreement or a credit-sale agreement.

(b) Reference in this section or [section 58](#) (3) of this Act (as amended by [section 9](#) of the *Central Bank Act, 1989*) to the solicitation of deposits, however expressed, includes every form of solicitation for deposits including, in particular, the display or publication of any such matter by way of notice, leaflet, circular, pamphlet, brochure, photograph, film, video, sound broadcasting, television, electronic communication or personal canvassing.”.

Power of Court to prohibit certain contraventions of, or failure to comply with, Act of 1971.

44.—The Act of 1971 is hereby amended by the insertion of the following section after section 28:

“28A. (1) Where, on an application made in a summary manner by the Bank, the Court is of the opinion that there has occurred or is occurring—

(a) a contravention of [section 17](#) or [18](#) of this Act, or

(b) a failure to comply with a condition imposed in relation to a licence by virtue of section 10, or with a direction under [section 22](#), of this Act,

the Court may, by order, prohibit the continuance of the contravention or failure by the person or persons concerned.

(2) The Court when considering the matter may make such interim or interlocutory order as it considers appropriate.

(3) Where the Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice, that it is desirable, the whole or any part of proceedings under this section may be heard otherwise than in public.”.

Amendment of section 31 of Act of 1971.

45.—Section 31 of the Act of 1971 is hereby amended by the substitution of the following subsection for subsection (1):

“(1) Where a holder of a licence ceases to carry on banking business in circumstances to which [section 57](#) of the *Central Bank Act, 1989*, applies, he shall, as soon as may be, notify all persons having deposits (including deposits on current accounts) with him of such cesser and he shall, if any such person so demands, pay to that person forthwith the amount of his deposit together with the amount of any interest accrued thereon.”.

Appointment of auditor.

46.—(1) The Bank may, in writing require any holder of a licence—

(a) to notify the Bank at least 15 days—

(i) before notices are sent to the shareholders concerning the proposed appointment or reappointment of a person to the office of auditor of the holder for the purposes of the Companies Acts, 1963 to 1986, or

(ii) before the directors of the holder fill any casual vacancy in the office of auditor by virtue of [section 160](#) (7) of the [Companies Act, 1963](#) ,

of the name of the person to be so proposed, to be reappointed or to fill that vacancy,

(b) to supply, within such period of time as the Bank shall state, such information as it may request concerning the person named for the purpose of *paragraph (a)*.

(2) Where the Bank is of the opinion that it would not be in the interest of persons maintaining deposits with the holder of a licence or of the orderly and proper regulation of banking, it may direct, as the circumstances require, that holder not to appoint or not to reappoint to the office of auditor, or the directors not to fill a casual vacancy in that office with, a named person and the direction shall be complied with.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both, or

(b) on conviction on indictment, to a fine not exceeding £50,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years, or to both.

Duties of auditor.

47.—(1) If the auditor of a holder of a licence—

(a) has reason to believe that there exist circumstances which are likely to affect materially the holder's ability to fulfil his obligations to persons maintaining deposits with him or meet any of his financial obligations under the *Central Bank Acts, 1942 to 1989*, or

(b) has reason to believe that there are material defects in the financial systems and controls or accounting records of the holder, or

(c) has reason to believe that there are material inaccuracies in or omissions from any returns of a financial nature made by the holder to the Bank, or

(d) proposes to qualify any certificate which he is to provide in relation to financial statements or returns of the holder under the Companies Acts, 1963 to 1986, or the *Central Bank Acts, 1942 to 1989*, or

(e) decides to resign or not seek re-election as auditor,

he shall report the matter to the Bank in writing without delay.

(2) The auditor of the holder of a licence shall, if requested by the Bank, furnish to the Bank a report stating whether in his opinion and to the best of his knowledge the holder has or has not

complied with a specified obligation of a financial nature under the *Central Bank Acts, 1942 to 1989*.

(3) Where the auditor of a holder of a licence so requests, the Bank shall provide to the auditor in writing details of such returns of a financial nature to the Bank by the holder as the auditor requests for the purpose of enabling him to comply with *subsection (1) (c) or (2)*.

(4) The auditor of a holder of a licence shall send to the holder a copy of any report made by him to the Bank under *subsection (1) or (2)*.

(5) (a) Whenever the Bank is of the opinion that the exercise of its functions under the *Central Bank Acts, 1942 to 1989*, or the protection of the interests of depositors so requires, it may require the auditor of a holder of a licence to supply it with such information as it may specify in relation to the audit of the business of the holder and the auditor shall comply with the requirement.

(b) The Bank may require that, in supplying information for the purposes of this subsection, the auditor shall act independently of the holder of the licence.

(6) No duty to which the auditor of a holder of a licence may be subject shall be regarded as contravened, and no liability to the holder, or to its shareholders, creditors or other interested parties, shall attach to the auditor, by reason of his compliance with any obligation imposed on him by or under this section.

Chapter IV

General Provisions Relating to Winding Up

Grounds for winding up on application of Bank.

48.—(1) Notwithstanding [section 215](#) of the [Companies Act, 1963](#), the Bank may, by presenting a petition, apply to the Court to have the holder of a licence wound up on any of the following grounds:

(a) that the holder is or, in the opinion of the Bank, may be unable to meet its obligations to its creditors;

(b) that the holder has failed to comply with a direction of the Bank under section 21 of the Act of 1971 and the Court has not set aside the direction;

(c) that the licence has been revoked and the holder has ceased to carry on the business of banking;

(d) that the Bank considers that it is in the interest of persons having deposits (including deposits on current accounts) with the holder that the holder be wound up.

(2) Where a petition for the winding up of the holder of a licence is presented by a person other than the Bank, a copy of the petition shall be served on the Bank which shall be entitled to be heard on the petition.

(3) Where the holder of a licence is being wound up voluntarily and the Bank has reason to believe that any of the grounds set out in *subsection (1)* apply, then the Bank may apply to the Court to have the licence holder wound up by the Court.

Notices, documents to be sent to Bank relating to winding up.

49.—Where the holder of a licence or former holder of a licence is being wound up and the Bank is not a creditor, any notice or document, by whatever name called, which is required to be sent to a creditor of the holder or former holder shall be sent also to the Bank.

Right of Bank to be represented at meetings, etc.

50.—(1) An officer of the Bank, or any other person, duly authorised in writing in that behalf by the Governor of the Bank may attend any meeting of creditors of a holder or former holder of a licence.

(2) (a) The Governor of the Bank may appoint in writing an officer of the Bank or any other person to be a member of any committee of inspection appointed under [section 233](#) or [268](#) of the [Companies Act, 1963](#) , in respect of the holder or former holder of a licence.

(b) A person duly appointed under *paragraph (a)* shall neither be counted in computing the minimum or maximum numbers of members of such a committee prescribed under the Companies Acts, 1963 to 1986, nor be removed from membership of the committee without the consent of the Bank.

Construing of references to winding up, etc.

51.—Where the context so admits and the circumstances may so require, references in the *Central Bank Acts, 1942 to 1989*, to the winding up of a holder or former holder of a licence or to any provision of the Companies Acts, 1963 to 1986, which relates to winding up shall, where a holder or former holder of a licence is a company incorporated outside the State or is an institution to which section 9(1A) (as amended by this Part) of the Act of 1971 relates, be construed as references to the corresponding provisions in the law of the foreign jurisdiction concerned and, accordingly, the provisions of the *Central Bank Acts, 1942 to 1989*, shall apply to the winding up or dissolution concerned and, where necessary, with such modifications as the Court may order.

Rules of Court.

52.—The rules of court relating to the winding up of companies shall, pending the making of rules of court for the purposes of this Part, apply for such purposes with such adaptations as may be necessary.

Chapter V

Deposit Protection

Interpretation ([Chapter V](#)).

53.—In this Chapter—

“*child*” includes a person of full age;

“*connected person*” in relation to another person, means a person maintaining deposits (including deposits, if any, on current accounts) with the holder or former holder of a licence which has become insolvent and is being wound up and where the person is—

- (a) the spouse of that other person,
- (b) the child or grandchild of that other person or the child or grandchild of the spouse of that other person,
- (c) the parent or grandparent of that other person,
- (d) the brother, sister, stepbrother or stepsister of that other person,
- (e) a partner of that other person to whom, together, the Partnership Act, 1890, applies (whether or not with any other persons),
- (f) the spouse of a connected person to whom *paragraph (b), (d) or (e)* applies and in relation to the appropriate other person to whom the relevant paragraph relates,
- (g) a body corporate and that other person is a chief officer, secretary or member of any board or other committee of management, by whatever name called, of the body corporate,
- (h) a body corporate and that other person is a relevant beneficial owner of the body corporate, or
- (i) a body corporate and that person is, together with any person to whom *paragraph (a), (b), (c), (d), (e), (f) or (g)* applies, a relevant beneficial owner of the body corporate;

“*deposit protection account*” means the account established and maintained by virtue of [section 54](#) ;

“*eligible deposits*” has the meaning assigned to it by [section 62](#) ;

“*excluded depositor*” means a person maintaining deposits (including deposits, if any, on current accounts) with the holder or former holder of a licence which has become insolvent and is being wound up and, in relation to that holder or former holder of the licence where the person is—

- (a) a chief officer, secretary or member of any board or other committee of management, by whatever name called,
- (b) a relevant beneficial owner of that holder or former holder of the licence,
- (c) together with connected persons, a relevant beneficial owner of that holder or former holder of the licence,
- (d) subject to [section 64](#) , a connected person to a person specified in *paragraph (a), (b) or (c)*,
- (e) subject to [section 64](#) , a trustee of a trust for the benefit of a person specified in *paragraph (a), (b), (c) or (d)*,

(f) a holding company, a subsidiary company, another subsidiary company of the same holding company or a company (not being a subsidiary company) in respect of which the holder or former holder is a relevant beneficial owner, or

(g) a person excluded by virtue of [section 63](#) ;

“*interbank deposits*” means deposits with a holder of a licence by any of the following, that is to say—

(a) another holder of a licence;

(b) any person, not being the holder of a licence, established outside the State who, in the opinion of the Bank, is duly authorised outside the State to carry on the business of banking;

(c) the Bank;

(d) the Agricultural Credit Corporation public limited company;

(e) the company formed and registered by virtue of [section 2](#) of the [Industrial Credit Act, 1933](#) ;

(f) a trustee savings bank certified under the Trustee Savings Banks Acts, 1863 to 1979;

(g) a building society;

(h) such other persons as may be specified by regulations under [section 72](#) ;

and deposits with the holder of a licence by any of its offices outside the State shall be deemed to be interbank deposits;

“*relevant beneficial owner*”, in relation to a body corporate, means a person who is beneficially entitled (either directly or indirectly) to 20 per cent. or more in nominal value of either the allotted share capital or the shares carrying voting rights (other than voting rights which arise only in specified circumstances) in the body corporate.

Deposit protection account.

54.—The Bank shall establish and maintain in the general fund an account to be known as the deposit protection account.

Deposits by holders of licences.

55.—(1) Upon the establishment of the deposit protection account, the deposit standing maintained with the Bank immediately before the coming into operation of this section by each holder of a licence and calculated in accordance with section 13 of the Act of 1971 shall be transferred to that account in respect of that holder and, accordingly, that section shall cease to have effect upon such coming into operation.

(2) The amount of a deposit maintained by a holder of a licence in the Bank pursuant to section 7 of the Act of 1971 (in this section referred to as the deposit) shall, subject to *subsection (5)*, be 0.2

per cent., or such other proportion as may be specified by regulations under [section 72](#) (2), of the total—

- (a) Irish pound deposits (including deposits on current accounts but, subject to *paragraph (b)*, excluding interbank deposits and deposits represented by negotiable certificates of deposit), and
- (b) such other deposits as may be specified by regulations under [section 72](#) (2) in respect of all or any class or category of holders of licences,

at offices in the State of the holder, but shall not be less than £20,000 and, accordingly, the reference in the said section 7 to section 13 of the Act of 1971 shall be construed as a reference to this section.

(3) The amount of the deposit shall be calculated by the Bank as soon as is practicable after the coming into operation of this section (in this section referred to as “*the relevant date*”) or at the time of the issue of the licence as may be appropriate and shall be recalculated in respect of every holder of a licence every 12 months (or as close thereto as is reasonably practicable) after the relevant date by reference to returns made by each holder to the Bank under section 18 of the Act of 1971.

(4) The amount of the deposit shall, where necessary, be increased to the appropriate amount recalculated under *subsection (3)* by the holder of the licence concerned not later than 7 days, or such longer period as the Bank may agree to in writing, after the date of the receipt by him of notification from the Bank of the amount required to effect the increase.

(5) The Bank may settle the amount of the deposit at the nearest round figure in hundreds of pounds and by rounding up to such a figure where the amount calculated under *subsection (2)* is divisible in pounds by £50.

(6) The deposit shall carry interest at such a rate or rates and payable in such manner and at such times as may be determined by the Bank from time to time.

(7) Any charge purported to be created on the deposit other than by the Bank shall be void.

(8) The deposit shall not be subject to any form of execution in satisfaction of any claim of, or any judgement, order or decree of any court in the State in favour of, any creditor, otherwise than under and in accordance with the provisions of the *Central Bank Acts, 1942 to 1989*.

(9) (a) Except with the prior written consent of the Bank, a holder of a licence shall not advertise, cause to be advertised or otherwise represent or cause to be represented the fact (however expressed) that deposits or funds placed with the holder are protected by or through the deposit protection account.

(b) Any person who contravenes *paragraph (a)* shall be guilty of an offence and shall be liable—

(i) on summary conviction to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both, or

(ii) on conviction on indictment to a fine not exceeding £50,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years, or to both.

Review of operation of deposit protection account.

56.—The Bank shall keep the operation of the deposit protection account under review and may, if it considers it expedient to do so after having regard to such factors as it considers relevant, from time to time make recommendations to the Minister in relation to all or any of the following, that is to say:

- (a) the making of regulations under [section 72](#) (2) for the purposes of [section 55](#) (2);
- (b) the making of regulations under [section 72](#) (2) for the purposes of [section 62](#) (1) (b);
- (c) the making of an order under [section 59](#) (4) for the purposes set out therein.

Deposit protection account and cesser of banking business where solvent.

57.—(1) Where the holder of a licence or a former holder of a licence ceases to carry on banking business in circumstances other than those provided for by [section 58](#) (1), the Bank may retain the full amount, or such lesser amount as the Bank considers appropriate, of the holder's deposit in the deposit protection account until it is satisfied that all liability of that holder in respect of every person maintaining deposits with him have been or will be discharged in full.

(2) Every payment to which this section relates shall be charged on the deposit protection account in the general fund.

Vesting in liquidator of deposited amount.

58.—(1) Where a holder of a licence or a former holder of a licence is unable to pay his debts and is being wound up, either voluntarily or by the Court, the Court may, on the application of the liquidator concerned, order that the amount standing deposited by the holder or former holder in the deposit protection account shall, together with any interest accrued and interest that may accrue and subject to the other provisions of this Chapter, vest in the liquidator by his official name.

(2) Where, after payment of all eligible deposits, any balance of the amount vested in the liquidator by virtue of *subsection (1)* remains, it shall be treated for the purposes of the Companies Acts, 1963 to 1986, as an asset of the holder or former holder of the licence (as the case may be) vesting in the liquidator by his official name.

Statement of affairs and calculation of payments from deposit protection account, etc. on insolvency.

59.—(1) This section applies to the holder or former holder of a licence which is unable to pay its debts and is being wound up either voluntarily or by the Court.

(2) The liquidator shall deliver to the Bank within one month of the date of his appointment, or such extended period as the Court may order—

- (a) a copy of the statement of the affairs of the holder or former holder made out and filed in accordance with [section 224](#) of the [Companies Act, 1963](#), or, where the holder is being wound up voluntarily, a statement which would be so filed if the holder or former holder were being wound up by the Court,
- (b) an estimate of the amount (excluding any amount in the deposit protection account) likely to be available for the payment of amounts due to persons maintaining deposits, and

(c) a statement of when he expects to be in a position to make those payments.

- (3) (a) The amount payable out of the amount vesting in the liquidator in accordance with [section 58](#) to each person maintaining eligible deposits with the holder or former holder concerned shall, subject to *paragraph (b)*, be calculated in accordance with the formula—

where—

A is any amount of eligible deposits up to £5,000,

B is any excess of eligible deposits over £5,000 but not over £10,000,

C is any excess of eligible deposits over £10,000 but not over £15,000, and

D is the amount paid or to be paid to that person in respect of eligible deposits maintained by that person otherwise than out of funds so vesting.

- (b) Where the aggregate amount so payable would be greater than the amount vesting in the liquidator in accordance with [section 58](#) then the amount payable to each person concerned shall be calculated in accordance with the formula—

$$\begin{array}{ccccccc} X & 4 & 7 & 1 & X \\ \text{---} (& \text{---} & A + & \text{---} & B + & \text{---} & C) - & \text{---} & D \\ Y & 5 & 10 & 2 & Y \end{array}$$

where A, B, C and D have respectively the same meanings as they have in *paragraph (a)* and—

X is the amount so vesting, and

Y is the said aggregate amount.

- (c) Reference in this subsection or in [section 60](#) to the amount vesting in the liquidator in accordance with [section 58](#) shall be construed as the amount so vesting after the deduction for any remuneration or expenses permitted, by virtue of [section 70](#) (2), to be paid out of the amount so vesting in the liquidator.

(4) Where the Bank has made a recommendation to the Minister in accordance with [section 56](#) in respect of the monetary amounts represented by the letters A, B and C in *subsection (3)*, the Minister may, where he is of the opinion that it would be in the interest of the orderly and proper regulation of banking or the provision of financial services generally, by order amend that subsection by altering those monetary amounts, whether or not previously amended by virtue of this subsection:

Provided that no such amendment shall have any effect in relation to a holder or former holder of a licence which, at the time the relevant provision in the order under this subsection comes into operation, is unable to pay its debts and is being wound up.

Payment out of deposit protection account on winding up.

60.—(1) There shall be paid, out of the amount vesting in a liquidator under [section 58](#) (1), to each person maintaining an eligible deposit with the holder or former holder of the licence concerned—

(a) the amount calculated in accordance with [section 59](#) (3) (a), or

(b) if the amount so vesting is insufficient for such purpose, a proportion of that person's eligible deposits which is calculated in accordance with [section 59](#) (3) (b).

(2) Where the provisions of *subsection (1)* apply, every person with eligible deposits concerned may, subject to [section 61](#), claim as an ordinary creditor of the holder or former holder of the licence in respect of so much of those deposits as remains unpaid.

(3) Where it appears to the Bank that the amount available, or likely to become available, to the liquidator concerned (including the amount vesting in the liquidator in accordance with [section 58](#)) will be insufficient to enable each person maintaining eligible deposits with the holder or former holder to be paid in respect of such deposits—

(a) the amount calculated in accordance with [section 59](#) (3) (a), or

(b) within such period of time as the Bank considers reasonable in the circumstances, the amount so calculated,

then, there shall be provided by the Bank out of the deposit protection account a sum sufficient to pay in respect of each such person—

(i) where *paragraph (a)* of this subsection applies, the difference between the amounts calculated in accordance with *paragraphs (a) and (b)* of [section 59](#) (3),

(ii) where *paragraph (b)* of this subsection applies, the difference between the amount calculated in accordance with *paragraph (a)* of [section 59](#) (3) and the amount paid or payable by the liquidator within that period of time.

(4) The manner and mode of making payments for the purposes of *subsection (1)* from the moneys vesting in the liquidator concerned by virtue of [section 58](#) shall be as agreed to between the liquidator and the Bank or, in the event of a disagreement, as the Court shall order on an application by either or both the liquidator and the Bank.

(5) For the purposes of *subsections (3) and (4)*, the Bank shall take all reasonable steps to ensure that payments to which this section relates are paid as expeditiously and with the least expense to the Bank as is possible consistently with the orderly winding up.

(6) Where moneys have been provided by the Bank for the payment of persons maintaining eligible deposits, proof of those payments shall be given to the Bank by the person to whom the moneys were so provided.

(7) Every payment to which this section relates shall be charged on the deposit protection account in the general fund.

Effect of payment by Bank under [section 60](#) .

61.—(1) Where the Bank has made or becomes liable to make a payment under [section 60](#) to persons maintaining eligible deposits, then as regards the amount of the payment in respect of each such person that amount shall be admitted by the Court (or, in the case of a voluntary winding up, by the liquidator) as a proved debt due to the Bank and the Bank shall have the same priority as would be enjoyed by the person were no such amount paid or payable.

(2) In distributing any relevant assets, the liquidator concerned shall pay to the Bank any dividend which would have been payable to a person to whom *subsection (1)* relates and, accordingly, the person concerned shall not be entitled to such a dividend or any part thereof until the Bank has been paid by the liquidator the full amount paid to that person by the Bank and to which *subsection (1)* relates.

Eligible deposits.

62.—(1) In this Chapter “*eligible deposits*”, in relation to every person maintaining deposits (including deposits on current accounts) with the holder or former holder of a licence which is being wound up, means the amount of the total liability of the holder or former holder remaining due to every such person in respect of—

(a) deposits denominated in Irish pounds, and

(b) any deposits denominated otherwise than in Irish pounds as may be specified (either generally or in particular) by regulations under [section 72](#) (2),

at offices in the State of the holder or former holder, together with any interest or other premium accrued thereon up to and including the day of the commencement of the winding up but does not include—

(i) any amount to which *subsection (2)* relates,

(ii) any deposit maintained by an excluded depositor,

(iii) any deposit which relates to moneys due to the Bank,

(iv) interbank deposits,

(v) deposits represented by negotiable certificates of deposit,

(vi) any deposit which relates to moneys due to any body or category of persons to whom section 7(4) (as amended by this Part) of the Act of 1971 applies, other than a credit union or a friendly society, and

(vii) any deposit to which *paragraph (b)* relates where the relevant provisions of the regulations concerned came into operation after the commencement of the winding up.

(2) In calculating the amount of an eligible deposit—

(a) there shall be deducted from the total liability of the holder or former holder to the person maintaining a deposit to which *subsection (1)* relates, the amount of any liability

of that person to that holder or former holder in respect of which a right of set-off against the said deposit existed immediately before the commencement of winding up or in respect of which such a right would have existed had—

(i) the said deposit been repayable on demand, and

(ii) such liability fallen due,

immediately before such winding up, and

(b) no account shall be taken of any debt—

(i) of the holder or former holder of the licence concerned unless it has been proved in accordance with [sections 283](#) and [284](#) of the [Companies Act, 1963](#) , and

(ii) where the holder's licence has been revoked, for any sum deposited by a person with that former holder after such revocation where the Bank is satisfied that, at the time the deposit was made, the person knew or could reasonably be expected to have known that the licence had been revoked.

(3) In this section “*commencement of winding up*” shall, where appropriate in the circumstances, be construed in accordance with section 220 or 253 of the [Companies Act, 1963](#) .

Certain additional persons to be excluded depositors.

63.—Where the Bank is satisfied that a person maintaining deposits (including deposits, if any, on current accounts) with the holder or former holder of a licence which has become insolvent and is being wound up has directly or indirectly any responsibility for the circumstances giving rise to, or has profited or attempted to profit from, the insolvency, the person shall, unless an excluded depositor by virtue of any other provision of this Chapter, be an excluded depositor by virtue of this section.

Provisions applicable to excluded depositors, etc.

64.—(1) Where the Bank is of the opinion that a person is an excluded depositor by virtue of—

(a) being a connected person to whom *paragraph (c) or (d)* of the definition of “*excluded depositor*” in [section 53](#) applies, or

(b) being a trustee of a trust for the benefit of a connected person to whom *paragraph (e)* of the definition of “*excluded depositor*” in [section 53](#) applies, or

(c) [section 63](#) ,

or that a person is a person to whom [section 62](#) (2) relates, then the Bank shall, except where *subsection (2) (b)* of this section applies, give notice in writing to the person of that opinion, the reasons therefor and the steps that may be taken by that person under *subsection (2)*.

(2) (a) A person to whom a notice under *subsection (1)* has been given in accordance with this section may, within 21 days of being so given, apply to the Court to have the relevant exclusion or deduction to which the notice relates set aside.

(b) Where the Bank is of the opinion that a person is an excluded depositor by virtue of *paragraph (a) or (b) of subsection (1)* but is satisfied that, in the circumstances, it would be just and equitable to have his exclusion as an eligible depositor set aside, the Bank may apply to the Court to have the exclusion set aside.

(c) Where, on an application under *paragraph (a) or (b)*, the Court is satisfied that, in the circumstances, it would be just and equitable to do so, it shall set aside the exclusion or deduction, as the case may be, but only for the purposes of any relevant deposit maintained by that person.

(3) Notice of any application to the Court under *subsection (2) (a)* shall be given to the Bank and to the liquidator concerned by the person making the application and notice of any application to the Court under *subsection (2) (b)* shall be given by the Bank to both the liquidator and the person concerned.

(4) For the purposes of this section, notice shall be duly given by the Bank if the notice is—

(a) sent by prepaid post to the last known address of the person concerned as ascertained by the Bank directly from that person or from the liquidator, or

(b) otherwise given in accordance with any direction of the Court upon application being made to it by the Bank for the purposes of this subsection.

Calculation of certain payments relating to trustee deposits and joint accounts.

65.—(1) Where—

(a) a person maintaining deposits (including, if any, deposits on current accounts) with the holder or former holder of a licence which has become insolvent and is being wound up does so as trustee, and

(b) any beneficiary of the trust concerned is beneficially entitled against the trustees to any identifiable part of that amount, either absolutely or jointly with a fixed number of other beneficiaries,

then, the amount the beneficiary is so entitled to shall be treated, but only for the purpose of ascertaining an appropriate calculation—

(i) where the beneficiary is entitled absolutely, as if it were deposited in a separate account maintained by the beneficiary and legal ownership had passed to the beneficiary,

(ii) where the beneficiary is entitled jointly with a fixed number of other beneficiaries, as if it were deposited in a separate account in the nature of a joint account maintained by the beneficiaries and legal and joint ownership had passed to the beneficiaries concerned.

(2) Where persons (being persons other than trustees or persons to whom *subsection (3)* applies) maintaining, or treated by virtue of *subsection (1)* as maintaining, deposits in a joint account (whether a joint deposit account or otherwise with the holder or former holder of a licence which has become insolvent and is being wound up) are entitled to the deposit by virtue of their joint ownership of the moneys on deposit, then they shall each be treated, but only for the purpose of ascertaining an appropriate calculation, as having a separate deposit equal to the amount that would

be produced by dividing the moneys concerned by the number of persons to whom the joint account relates.

(3) A deposit to which two or more persons are entitled as members of a partnership (whether or not in equal shares) shall be treated as a single deposit.

(4) The Bank and, where necessary for the purposes of ascertaining an appropriate calculation, the liquidator concerned may require any person maintaining a deposit to which this section may relate to supply sufficient information to enable a determination to be made as to whether the provisions of this section apply to such a deposit.

(5) Where, in a case to which *subsection (1)* or *(2)* applies, there are other eligible deposits in relation to the person concerned, those other deposits shall, for the purpose of ascertaining the appropriate calculation, be aggregated with any amount treated as deposits maintained by that person for the purpose of either or both *subsection (1)* and *(2)* and the amount so ascertained shall be divided and duly paid to the person concerned and either or both (as the circumstances may require) the trustees concerned and the said person jointly with others, in the same proportion or proportions as the amounts so aggregated bear to each other.

(6) In this section “*appropriate calculation*” means a calculation for the purposes of *subsection (1)* or *(3)* of [section 60](#).

Treatment of certain payments out of general fund.

66.—(1) Subject to *subsection (2)* and whether or not payments have been made to which [section 60](#) relates, the Bank may, at its discretion and to such extent as it may deem proper from time to time charge on the deposit protection account any other payment out of the general fund which, in the opinion of the Bank, was applied—

(a) to protect the interests of persons or any class of persons maintaining deposits with one or more holders or former holders of licences, or

(b) to promote the orderly and proper regulation of banking.

(2) The Bank shall, from time to time, keep the Minister and every holder of a licence informed of the general principles which guide the Bank in respect of the exercise of its discretion and shall consider any representations which may be made on those principles by any holder of a licence.

Reconstitution of deposit protection account.

67.—(1) Subject to [section 68](#), the Bank shall from time to time apportion among the holders of licences, in proportion to the amounts of their respective deposits required to be maintained at the time of such apportionment in the deposit protection account, any payments charged on that account (other than any repayment or any part thereof for the purposes of this Chapter) in accordance with [section 60](#) or [section 66](#) together with any moneys due but not paid to the holders in accordance with [section 69](#) and the amount so ascertained in respect of each holder shall, subject to *subsection (2)* be debited against, or credited to, as the case may be, that holder's deposit in the said account.

(2) (a) The aggregate of the amounts debited by virtue of *subsection (1)* in any period (being a period between a calculation or recalculation under [section 55](#) and the first or subsequent recalculation, respectively, thereunder) in respect of a holder of a licence shall not

exceed the amount of the holder's deposit maintained in accordance with this Chapter in the deposit protection account during that period.

- (b) Where amounts which, but for *paragraph (a)*, would have been debited against the holders of licences in the deposit protection account are not so debited because of that paragraph, then the total of the amounts not so debited shall be aggregated and apportioned in the next following year or, where necessary, the succeeding years in accordance with *subsection (1)* in proportion to the amounts of the relevant deposits at the time it is so apportioned.

(3) Each holder of a licence shall lodge with the Bank for the purpose of maintaining his calculated deposit, or where recalculated as last recalculated, in the deposit protection account, an amount to maintain that deposit and that holder shall comply with such requirement within 7 days or such longer period as the Bank may agree to in writing.

Exclusion from reconstitution.

68.—Where the Bank is satisfied that a reconstitution of the deposit protection account by apportionment solely in accordance with [section 67](#) would have a material and detrimental effect on the financial position or viability of a holder of a licence, the Bank may, in its discretion but only to such extent or for such period and subject to such conditions as it considers appropriate, exclude the holder from such a reconstitution in which case the amount involved may be apportioned among the other holders of licences.

Crediting of moneys to deposit protection account, distributions, etc.

69.—(1) In addition to amounts representing deposits maintained under [section 55](#) (including amounts duly lodged for the purpose of [section 67](#) (3)) there shall be credited to the deposit protection account any sum paid to the Bank,

(a) by a liquidator for the purposes of [section 61](#) , or

(b) in respect of the repayment of the principal of any moneys provided by virtue of [section 66](#) or of any interest thereon,

or

(c) which, in its opinion, ought to be lodged to that account.

(2) Where any sum has been credited to the deposit protection account in accordance with *subsection (1)* it shall—

(a) in the first instance be applied towards repayment of any liability to the Bank charged or chargeable to that account, and

(b) subject to *subsection (3)*, thereafter be distributed (whether by way of payment or by reducing the amount to be lodged on a reconstitution of that account under [section 67](#)) among the holders of licences in proportion to the amounts by which each of their deposits were affected by the liability to which the said sum so relates.

(3) Where any sum distributable under *subsection (2)* relates to a deposit (at any time) in the deposit protection account by a former holder of a licence which has been wound up, then such sum shall—

- (a) accrue to the Bank unless, upon ceasing to carry on that business, that former holder's banking business was amalgamated with or transferred to another holder of a licence, in which case it shall accrue to that other holder, or
- (b) where the provisions of this subsection also primarily apply to that other holder (being also a former holder at the time of the relevant distribution), be traced through that other former holder and any other former holders until it accrues to either the Bank or a holder of a licence at that said time.

(4) Whenever any sum accrues to the Bank by virtue of *subsection (3)*, the Bank may, if it thinks proper so to do, waive, in whole or in part and in favour of such person and upon such terms as it thinks proper having regard to all the circumstances of the case, the right of the Bank to such sum or such part thereof.

Expenses and remuneration of liquidator under this Chapter.

70.—(1) Subject to *subsection (2)*, no deduction shall be made from assets vesting in the liquidator by virtue of [section 58](#) for expenses incurred or remuneration claimed by the liquidator in respect of matters to which this Chapter relates and, accordingly, such expenses and remuneration shall be dealt with as if they related to the winding up of the holder or former holder of the licence under the Companies Acts, 1963 to 1986.

(2) Where, on the application of a liquidator to whom this Chapter relates, the Bank is satisfied that there are insufficient assets out of which expenses and remuneration can be paid in accordance with *subsection (1)*, then the Bank may permit all reasonable expenses properly incurred and such remuneration to the liquidator as the Bank considers appropriate to be paid out of the amount vesting in the liquidator under [section 58](#), or otherwise out of the deposit protection account, but only to the extent of that insufficiency.

Limitation of time.

71.—Where any amounts payable by the Bank and to which [section 60](#) relates have not been paid and such non-payment is not due to any wilful neglect or default of the Bank to make those payments then, upon the completion of the winding up of the holder or former holder of the licence concerned, the Bank shall be under no obligation to make any payments in respect of those amounts.

Regulations ([Chapter V](#)).

72.—(1) The Minister may, after consultation with the Bank, make regulations for the purpose of specifying persons for the purpose of *paragraph (h)* of the definition of “*interbank deposits*” in [section 53](#) .

(2) The Minister may, to such extent as he sees fit, make regulations for the purpose of giving effect to any recommendations made to him by the Bank in accordance with [section 56](#) for the purposes of [section 55](#) (2) or [62](#) (1) (b).

(3) Regulations under *subsection (2)* may contain such incidental, transitional, consequential and supplementary provisions as are considered necessary by the Minister after consultation with the Bank.

Extension of application of [Chapter V](#).

73.—(1) Where, after consulting with the Bank and with such Ministers of the Government (if any) as he considers it appropriate to consult with in the circumstances, the Minister is of the opinion that—

- (a) a class of business which involves or includes the maintaining of deposits or savings by persons with a member of the class who is not required to be the holder of a licence granted under section 9 of the Act of 1971, but whose business (in so far as it relates to deposits or savings maintained by persons with him) is similar to the business of such a holder or a building society duly incorporated in the State, and
- (b) a system of deposit or savings protection, similar to the deposit protection provided by this Chapter in respect of persons maintaining deposits with the holders of licences so granted, would be in the public interest to be provided in respect of the class,

then the Minister may by regulation require the Bank to establish and maintain in the general fund an account for that purpose and, accordingly, the provisions of [section 53](#), *subsections (2) to (7)* of [section 55](#) and [sections 56 to 72](#) shall apply with such modifications as the Minister by regulation considers necessary to give effect to each such account so established.

(2) Notwithstanding section 7 (4) of the Act of 1971 (as amended by this Act) and without prejudice to *subsection (1)* where, after consulting with the Bank and with such Ministers of the Government (if any) as he considers it appropriate to consult with in the circumstances, the Minister is of the opinion that it is in the public interest so to do, he may by regulation require any institution to which section 7 (4) (a) (ii) of the Act of 1971 relates to maintain a deposit in the deposit protection account established under [section 54](#) and for that purpose the provisions of [section 53](#), *subsections (2) to (7)* of [section 55](#) and [sections 56 to 72](#) shall apply with such modifications as are necessary to give effect to the regulation.

Chapter VI

Acquiring Transactions

Interpretation ([Chapter VI](#)).

74.—In this Chapter,

“*acquiring transactions*” shall be construed in accordance with [section 75](#) ;

“*prescribed percentage*” means 10 per cent. of the total shares or of the total voting rights attaching to shares.

Application ([Chapter VI](#)).

75.—(1) This Chapter applies to the following transactions (in this Part referred to as “*acquiring transactions*”):

- (a) any acquisition by a person or more than one person acting in concert of shares or other interest in a holder of a licence but does not apply to an acquisition where—
 - (i) if after the proposed acquisition the proportion of shares would not exceed the prescribed percentage, and
 - (ii) if the holder of the licence concerned is a body incorporated in the State, the acquisition, together with any other interest already held or controlled (either directly or indirectly) by the acquiring person or persons, would not confer a right to appoint or remove some or all of the board of directors or committee of management of the holder of that licence;
 - (b) any acquisition by the holder of a licence of shares or other interest in any other undertaking or business (whether or not the undertaking or business is controlled by another holder of a licence) but does not apply to an acquisition where either—
 - (i) the acquisition relates to an undertaking or business outside the State and is made by a holder of a licence which is incorporated outside the State, or
 - (ii) after such acquisition, the proportion of shares in the undertaking or business concerned would not exceed the prescribed percentage and the acquisition, together with any other interest already held or controlled (either directly or indirectly) by the holder of the licence so acquiring, would not confer a right to appoint or remove some or all of the board of directors or committee of management of that undertaking or business.
- (2) The Bank may, subject to such conditions as it sees fit, exempt an acquiring transaction, or any class of acquiring transaction, from the requirements of this Chapter where it is satisfied that—
- (a) the acquiring transaction is being, or has been entered into, by a holder of a licence as part of the *bona fide* underwriting of a share issue, or
 - (b) the interest in shares is not being beneficially acquired by a holder of a licence or is being acquired only in the course of its normal business to secure the issue of a loan to be made by the holder to the undertaking or business concerned.

Limitation on validity of acquiring transactions.

76.—An acquiring transaction shall only be valid where it is entered into within 12 months after—

- (a) the Bank has given its approval in writing to the transaction, or
- (b) the relevant period within the meaning of [section 83](#) has elapsed without the Bank refusing its approval to the transaction,

and, accordingly, any purported acquiring transaction which does not comply with either *paragraph (a)* or *(b)* shall be invalid and—

- (i) title to any shares or other interest concerned shall not pass, and

(ii) any consequential purported exercise of powers shall be void.

Consent of Minister to certain acquiring transactions required.

77.—(1) Where—

- (a) the holder of a licence proposes to participate in an acquiring transaction and that holder controls, or would control as a consequence of the proposed transaction, whether alone or with any subsidiary or associated company, not less than 20 per cent. of the total assets in the State of all holders of licences, or
- (b) a person proposes to participate in an acquiring transaction which involves the acquisition of shares or other interest in a holder of a licence which controls, whether alone or with any subsidiary or associated company, not less than 20 per cent. of the total assets in the State of all holders of licences,

then the Bank shall neither give nor refuse to give its approval without the prior consent of the Minister.

(2) The Minister shall not give his consent under *subsection (1)* unless—

- (a) he is satisfied that the Bank's proposal to give or refuse to give its approval, as the case may be, would be in the interests of the orderly and proper regulation of banking, and
- (b) where the proposed acquiring transaction is of such a nature that the provisions of the [Mergers, Take-overs and Monopolies \(Control\) Act, 1978](#) , apply, he has consulted with—
 - (i) the Minister for Industry and Commerce, and
 - (ii) such other Minister of the Government appearing to the Minister to be concerned,

and he shall refuse to give his consent where he considers that the exigencies of the common good so warrant.

(3) A consent by the Minister to a proposal of the Bank to approve a proposed acquiring transaction shall be subject to the imposition by the Bank of conditions (being such conditions, if any, which in the opinion of the Minister are necessary for the orderly and proper regulation of banking) as the Minister may specify in the consent.

Requirement on Bank before refusal to approve acquiring transaction.

78.—(1) Subject to *subsection (2)*, the Bank shall not refuse its approval to a proposed acquiring transaction unless it is satisfied that the transaction would not be in the interests of the orderly and proper regulation of banking.

(2) In the case of a proposed acquiring transaction to which [section 77](#) relates, the Bank shall refuse its approval—

- (a) where the proposal of the Bank is to refuse to give its approval and the Minister consents to that proposal, or

- (b) where the proposal of the Bank is to give its approval and the Minister refuses to consent to that proposal.

Alteration of prescribed percentage.

79.—(1) The Minister may, where he is satisfied after consultation with the Bank that it would be in the interest of the orderly and proper regulation of banking, by order amend the definition of “*prescribed percentage*” in [section 74](#) by altering the percentage amount therein specified including an amount for the time being so specified by virtue of this section.

(2) Whenever an order is proposed to be made under *subsection (1)* a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

Conditions on approval of proposed acquiring transaction.

80.—(1) An approval given by the Bank to a proposed acquiring transaction shall be subject to such conditions, if any, as the Bank—

(a) may impose (being conditions which in the opinion of the Bank are necessary for the orderly and proper regulation of banking), and

(b) shall impose (being conditions specified by the Minister under [section 77](#)).

(2) The Bank may, at any time, amend or revoke a condition with, in the case of a condition to which *subsection (1) (b)* relates, the consent of the Minister.

Right of purported vendor to damages.

81.—Where a purported acquiring transaction is rendered invalid under [section 76](#) , the purported vendor of shares shall be entitled, in any court of competent jurisdiction, to recover from the purported purchaser any damages the purported vendor suffers by reason only of the invalidity, unless the purported purchaser satisfies such court that before the purported transaction he had notified the purported vendor of circumstances relating to the purported transaction which gave rise to the possibility of such an invalidity.

Notification of proposed acquiring transactions to Bank.

82.—(1) Where an acquiring transaction is proposed, each of the undertakings involved and having knowledge of the existence of the proposal shall notify the Bank in writing of the proposal as soon as may be.

(2) Where, having received a notification under this section from any of the undertakings involved, the Bank is of opinion that in order to consider for the purposes of this Chapter a proposed acquiring transaction it requires further information it may, within one month of the date of receipt by it of a notification, request such further information in writing from any one or more of the undertakings concerned.

(3) (a) Where there is a contravention of *subsection (1)* the person in control of an undertaking failing to notify the Bank shall be guilty of an offence and shall be liable—

- (i) on summary conviction, to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both, or
 - (ii) on conviction on indictment, to a fine not exceeding £50,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years, or to both.
- (b) For the purposes of this subsection the person in control of the undertaking shall, in the case of an incorporated body or an unincorporated body, be any officer of the body concerned who knowingly and willingly authorises or permits the contravention.

Relevant period for purpose of [sections 76](#) , [86](#) and [88](#) .

83.—For the purpose of [sections 76](#) , [86](#) and [88](#) , the relevant period in relation to a particular acquiring transaction shall, subject to [section 86](#) (2), be—

- (a) where the Minister's consent is required by virtue of [section 77](#) to a proposal of the Bank to approve or not to approve the transaction, the period of 6 months, and
- (b) in every other case, the period of 3 months,

such period beginning on the date on which the Bank first receives a notification under [section 82](#) or, where the Bank requests further information from an undertaking concerned under [section 82](#) , the date of receipt by the Bank of such information.

Inquiries by Bank.

84.—(1) The Bank may carry out such inquiries and obtain such information as it considers necessary to enable it to consider the proposed acquiring transaction.

(2) Where the provisions of [section 77](#) apply, the Minister may require the Bank to carry out such inquiries and provide him with such information as he considers necessary to enable him to decide to give or not to give his consent for the purposes of that section.

(3) Any person who wilfully and knowingly impedes the Bank's inquiries under this section or provides false or misleading information shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both, or
- (b) on conviction on indictment, to a fine not exceeding £50,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years, or to both.

Communication of Bank's approval or refusal to approve.

85.—(1) Where the Bank approves or approves subject to conditions or refuses to approve a proposed acquiring transaction, it shall communicate the approval and conditions (if any) or the refusal, as the case may be, to the undertakings concerned which had notified the Bank of the proposal under [section 82](#) and, where such a communication is not in writing, the Bank shall confirm in writing the approval or refusal to approve, as the case may be, as soon as possible thereafter.

(2) Where the Bank refuses to approve the proposed acquiring transaction, it shall state its reasons in writing and, subject to [section 16](#), shall send them to the persons concerned as soon as possible thereafter.

Appeal to High Court against refusal, etc., of Bank.

86.—(1) Where the Bank communicates with an undertaking concerned in accordance with [section 85](#) that it—

- (a) refuses to give its approval, or
- (b) gives its approval subject to conditions,

an appeal on a point of law may be made by the undertaking to the Court against the refusal or approval, as the case may be, within one month of that refusal or approval being so communicated.

(2) Where the Court allows the appeal it shall direct the Bank to make a new decision in accordance with the Court's determination and the Bank shall make its decision within the relevant period beginning on the date of the Court's determination and, in a case to which [section 77](#) relates, consult with the Minister before making its decision.

(3) Where on an appeal under this section the Minister requests to be made a party to the proceedings, the Court shall order that he shall be added as a party.

(4) Where any costs are incurred by the Minister in connection with an appeal under this section, the Court may make such order as it considers just as to the payment of those costs by other parties to the proceedings.

(5) Where the Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice, that it is desirable, the whole or any part of proceedings under this section may be heard otherwise than in public.

(6) An appeal against a decision of the Court under this section shall not lie to the Supreme Court.

(7) In this section “*the Court*” means the High Court.

Contravention of approval, etc.

87.—(1) Where an acquiring transaction is entered into subsequent to approval being given by the Bank, any person who contravenes (whether by act or omission) the approval or any condition of the approval shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both, or
- (b) on conviction on indictment, to a fine not exceeding £50,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years, or to both.

(2) Where a person is convicted of an offence under this section by reason of his failure, neglect or refusal to comply with a condition of the approval requiring him to perform a specified act within

a specified period or before a specified date, and the act remains, after the date of the conviction, unperformed by him, the person shall be guilty of contravening this section on every day on which the contravention continues after that conviction and for each such offence he shall be liable on summary conviction to a fine not exceeding £100 or on conviction on indictment to a fine not exceeding £5,000.

(3) Notwithstanding the paragraph numbered 4 of section 10 of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this section may be instituted within 12 months from—

(a) in the case of an offence to which *subsection (1) (a)* relates, the latest day on which the offence was committed, and

(b) in the case of an offence to which *subsection (2)* relates, the day on which the offence was committed.

Application of certain other enactments.

88.—(1) Nothing in any other enactment shall be construed as relieving a holder of a licence or other person of any obligation of his to comply with [section 82](#) .

(2) An order under [section 201](#) or [203](#) of the [Companies Act, 1963](#) , in respect of a proposed amalgamation or under section 33 of the Act of 1971 in respect of a proposed transfer of business of a holder of a licence (being in each case an acquiring transaction) shall not be made until the Bank has given its approval to the acquiring transaction or the relevant period referred to in [section 83](#) has elapsed without the Bank having given or refused to give such approval.

Chapter VII

Supervision of Certain Financial Institutions for the purposes of an International Financial Services Centre

Definitions ([Chapter VII](#)).

89.—In this Chapter—

“*the Area*” means the Customs House Docks Area, as defined in [section 41](#) of the [Finance Act, 1986](#) ;

“*enactment*” includes any act of the European Communities which has the force of law in the State;

“*financial institution*” has the meaning assigned to it by [section 90](#) ;

“*self-regulatory body*” has the meaning assigned to it in [section 94](#) (1).

Application ([Chapter VII](#)).

90.—This Chapter shall apply to every company to which a certificate has been given by the Minister under [section 39B](#) (inserted by the [Finance Act, 1987](#)) of the [Finance Act, 1980](#) (in this Chapter referred to as a “*financial institution*”) other than every financial institution which is the holder of a licence under section 9 of the Act of 1971 or a moneybroker for the purposes of *Chapter IX* or is subject to supervision or is capable of being inspected by virtue of—

- (a) the [Building Societies Act, 1976](#) , and every other Act which is to be construed together with that Act as one Act,
- (b) the Friendly Societies Act, 1896, and every other Act which is to be construed together with that Act as one Act,
- (c) the Assurance Companies Act, 1909, and every other Act which is to be construed together with that Act as one Act, or
- (d) any other enactment which for the time being stands specified by order under [section 91](#) .

Orders ([Chapter VII](#)).

91.—(1) Where the Minister is of the opinion, after consulting the Bank and such other Ministers (if any) as he considers it appropriate to consult with, that there are adequate supervisory and inspection provisions contained in any enactment relating to a financial institution or a class or type of institution to which, but for an order under this section for the purposes of [section 90](#) (d), the provisions of this Chapter would apply, then the Minister may by order specify the enactment concerned and, where necessary in the context of that enactment, the institution or class or type of institution to which the order relates and, accordingly, those provisions shall not apply to an institution to which the order relates.

(2) The Minister may, after consulting the Bank and such other Ministers (if any) as he considers it appropriate to consult with, by order revoke an order under *subsection (1)*.

Supervision, etc. of financial institutions by Bank.

92.—(1) Every financial institution to which this Chapter applies shall comply with such supervisory and reporting requirements or conditions relating to its business which the Bank considers prudent to impose on it from time to time for the purposes and in the interest of the proper and orderly regulation of the institution or a group of institutions (including the institution) or for the purpose of the development of the Area as an International Financial Services Centre.

(2) The imposition of prudential, supervisory and reporting requirements and conditions by the Central Bank shall not constitute a warranty as to the solvency of entities covered by this section or entities forming part of groups covered by this section and the Bank shall not be liable in respect of any loss incurred through the insolvency or default of any of those parties.

Application of sections 17 and 18 of Act of 1971.

93.—Without prejudice to the provisions of [section 92](#) , the provisions of section 17 (which relates to books and records of holders of licences) and section 18 (which relates to furnishing of information to the Bank) of the Act of 1971 (as amended by this Part) shall apply to every financial institution to which this Chapter relates and to every associated enterprise (within the meaning of those sections) of such an institution as if each such institution were the holder of a licence for the purposes of the *Central Bank Acts, 1942 to 1989*.

Establishment of self-regulatory bodies.

94.—(1) The Bank may, in writing and after consulting the Minister, direct any group of financial institutions to which this Chapter applies and which are specified in the direction to establish a body (in this Chapter referred to as “a *self-regulatory body*”) of such legal character as the Bank may

specify to regulate the business conduct, or any aspect of the business conduct as may be specified, of the financial institutions to which the direction relates.

(2) The rules (including management and future membership) of a self-regulatory body shall be submitted jointly by the financial institutions concerned to the Bank for its approval.

(3) The approval of the rules of a self-regulatory body under this section is without prejudice to the power of the Bank to impose requirements or conditions by virtue of [section 92](#), or further direction under *subsection (1)*, on any of the financial institutions concerned.

(4) Where a self-regulatory body has been established for the purposes of this section, the provisions of [sections 92](#), [93](#), [95](#), and [96](#) shall apply to the body as if it were, and in the same manner as they apply to, a financial institution to which this Chapter applies.

(5) Nothing in this section shall be construed as preventing any financial institution from being a member of any organisation which supervises or controls business conduct otherwise than by virtue of this section.

Power of Court to prohibit failure to comply with requirement or condition under [Chapter VII](#).

95.—(1) Where, on an application made in a summary manner by the Bank, the Court is of the opinion that there has occurred or is occurring a failure by a financial institution or institutions to comply with a requirement or condition imposed by virtue of [section 92](#) or with a direction under [section 94](#), the Court may, by order, prohibit the continuance of the failure by the institution or institutions concerned.

(2) The Court when considering the matter may make such interim or interlocutory order as it considers appropriate.

(3) Where the Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice, that it is desirable, the whole or any part of proceedings under this section may be heard otherwise than in public.

(4) In this section “*the Court*” means the High Court.

Report of non-compliance to Minister.

96.—Where the Bank—

(a) is satisfied that a financial institution to which this Chapter applies is not complying with any obligation imposed on it by or under this Chapter (including any rule of a self-regulatory body of which the institution is a member), and

(b) is of the opinion that the nature of the non-compliance is such that it requires notification to the Minister,

then the Bank shall notify the Minister of that non-compliance.

Chapter VIII

Supervision of Financial Futures and Options Exchanges

Definitions ([Chapter VIII](#)).

97.—In this Chapter—

“*an exchange*” means a financial futures and options exchange and, where the context so permits or requires, includes an existing exchange or a proposed exchange;

“*an existing exchange*” has the meaning assigned to it by [section 100](#) ;

“*financial futures and options exchange*” means a market of a financial nature where, in an organised manner and under agreed rules, members of that market trade, by way of electronic, written, oral or any other form of communication—

(a) in rights under contract for the sale or purchase of a financial product, commodity or property of any other description under which delivery is to be made, or measures equivalent to delivery are to be implemented, at a future date at a price agreed or determinable when the contract is made, or

(b) by way of option on a contract to which *paragraph (a)* relates or on a financial product, commodity or property of any other description, including an option to buy, sell or vary the price or quantity concerned;

“*a proposed exchange*” has the meaning assigned to it by [section 99](#) ;

“*rules*” in relation to an existing exchange or a proposed exchange, means, respectively, the rules governing or proposed to govern the membership and operation of the exchange.

Gaming and Lotteries Acts.

98.—For the avoidance of doubt it is hereby declared that no contract or option to which this Chapter relates shall be void or unenforceable by reason of the Gaming and Lotteries Acts, 1956 to 1986.

Establishment of exchanges.

99.—After the passing of this Act, no financial futures and options exchange shall be established unless the persons who propose to establish the exchange (in this Chapter referred to as “*a proposed exchange*”) have submitted the rules for such a proposed exchange to the Bank for approval and the Bank has approved those rules.

Existing exchanges.

100.—(1) Within 3 months of the passing of this Act every exchange which was established before such passing (in this Chapter referred to as “*an existing exchange*”) shall—

(a) submit its rules to the Bank for approval, or

(b) disestablish itself.

(2) Pending a decision by the Bank to approve or not to approve of the rules of an existing exchange submitted to it under *subsection (1) (a)*, the Bank may—

(a) subject, where appropriate, to the other provisions of this section, impose on the exchange such conditions or requirements as it considers appropriate to impose, or

(b) issue a direction under [section 105](#) as if the existing exchange were an exchange whose rules had been approved by the Bank.

(3) Where dealings concerning securities created by the Minister could be carried on on an existing exchange to which *subsection (2)* relates, the Minister may direct the Bank to impose under *paragraph (a)* of that subsection, and the Bank shall so impose, conditions or requirements specified in his direction (being conditions or requirements which relate to such dealings and which the Minister is satisfied, after consultation with the Bank, do not constrain the prudent regulation of the exchange).

(4) The Bank shall not impose on an existing exchange by virtue of this section a condition or requirement which relates to dealings concerning securities created by the Minister unless either—

(a) *subsection (3)* applies to the condition or requirement, or

(b) the Bank has notified the Minister of its intention to impose the condition or requirement on the exchange.

Approval of rules by Bank, conditions, etc.

101.—(1) (a) Where the Bank approves the rules of an existing exchange or for a proposed exchange, it may—

(i) make its approval subject to conditions or requirements, and

(ii) at any time after approval, impose conditions or requirements on the exchange or amend or revoke any condition or requirement to which this subsection relates, whether or not previously amended by virtue of this subparagraph.

(b) Every condition or requirement imposed to which this subsection relates and every amendment thereto or revocation thereof shall be as the Bank sees fit to impose, amend or revoke in the interest of the prudent regulation of the exchange concerned and every such condition or requirement may be imposed on either or both—

(i) that exchange, and

(ii) the members of that exchange (either collectively or individually).

(c) In respect of any condition or requirement to which *paragraph (a) (ii)* relates, a condition or requirement shall not be imposed, amended or revoked until—

(i) the Bank has notified the exchange concerned of its intention to so impose, amend or revoke, and

(ii) the Bank has heard any representations made by that exchange or any member thereof within such time limit as the Bank may specify when notifying the exchange.

- (d) Where dealings concerning securities created by the Minister could be carried on on an exchange, any condition or requirement which relates to such dealings shall not be imposed by virtue of this subsection unless the Bank has notified the Minister of its intention to so impose.

(2) (a) Where—

- (i) the Bank intends to approve the rules of an existing exchange or for a proposed exchange, and

- (ii) dealings concerning securities created by the Minister could be carried on on the exchange,

the Minister may direct the Bank to make its approval subject to the imposition by it of conditions or requirements specified in his direction (being conditions or requirements which relate to such dealings and which the Minister is satisfied, after consultation with the Bank, do not constrain the prudent regulation of the exchange) and, accordingly, the Bank shall make its approval subject to every condition or requirement so specified.

- (b) At any time after the approval of the rules of an existing exchange or for a proposed exchange, the Minister may, in respect of dealings concerning securities created by him, direct the Bank to impose conditions or requirements on the exchange (being conditions or requirements which relate to such dealings and which the Minister is satisfied, after consultation with the Bank, do not constrain the prudent regulation of the exchange) or amend or revoke any condition or requirement to which this subsection relates, whether or not previously amended by virtue of this paragraph and, accordingly, the Bank shall so impose, amend or revoke the condition or requirement.

(3) The approval by the Bank of the rules of or for an exchange shall not constitute a warranty as to the solvency of the exchange or of any member of the exchange and the Bank shall not be liable in respect of any losses incurred through the insolvency or default of the exchange or any of its members.

(4) An application for approval of the rules of an existing exchange or for a proposed exchange shall be in such form and contain such particulars as the Bank may from time to time determine.

Refusal of Bank to approve rules.

102.—(1) The Bank shall not refuse to approve the rules of an existing exchange or for a proposed exchange without the consent of the Minister and unless it is satisfied that the approval would not be in the interest of the orderly and proper regulation of such an exchange, and the Minister shall not consent to the refusal unless he is satisfied that the approval would not be in the interest of the orderly and proper regulation of such an exchange.

(2) Whenever the Bank proposes to refuse to approve the rules of an existing exchange or for a proposed exchange—

- (a) it shall notify the exchange or (in the case of a proposed exchange) the promoter of the exchange in writing that it intends to seek the consent of the Minister to the refusal and of its reasons for the refusal and that the person may, within 21 days after the date of the

giving of the notification, make representations in writing to the Minister in relation to the proposed refusal,

(b) the exchange or the promoter may make such representations in writing to the Minister within the time aforesaid, and

(c) the Minister shall, before deciding to give or withhold his consent, consider any representations duly made to him under this subsection in relation to the proposed refusal.

Application of section 17 of Act of 1971.

103.—Without prejudice to the provisions of [section 101](#) the provisions of section 17 (which relate to books and records of holders of licences) of the Act of 1971 (as amended by this Part) shall apply as if every exchange to which this Chapter applies and every member of that exchange were the holder of a licence for the purpose of the *Central Bank Acts, 1942 to 1989*.

Restriction on advertising.

104.—(1) Subject to *subsection (2)*, a person shall not advertise or cause to be advertised the services of an exchange or make any other solicitation in respect of those services unless the Bank has approved the rules of the exchange.

(2) *Subsection (1)* shall not apply—

(a) subject to any condition or requirement to the contrary imposed by the Bank under [section 100](#) (2), to an existing exchange, or to any person acting on behalf of the exchange, during the period commencing with the submission of its rules to the Bank for approval and ending with approval or refusal to approve, or

(b) to any prospectus or other document published by or on behalf of persons who propose to establish such an exchange, where such prospectus or other document is published solely for the purpose of such a proposal.

(3) If an advertisement or other solicitation to which this section relates is published and it does not include the name and address of the person who arranged with the publisher for the advertisement or solicitation, then the Bank may, at any time within the period of 12 months after any publication of the advertisement or solicitation, request the publisher to supply the name and address of that person to the Bank and the publisher shall forthwith comply with that request.

Directions by Bank to suspend trading, dealing.

105.—(1) Where the Bank is satisfied that an exchange or any member thereof has failed or is failing to comply with a condition or requirement under [section 100](#) (2) (a) or [101](#) the Bank may give a direction to either or both—

(a) the exchange to suspend trading, and

(b) any or all of the members of the exchange to suspend trading or dealing thereon,

for a specified period or until further notice by the Bank.

(2) (a) The exchange or member or members thereof to whom the direction was given under *subsection (1)* may apply in a summary manner to the Court for, and the Court may grant, an order setting aside the direction.

(b) The Bank may apply in a summary manner to the Court to have a direction by it under this section confirmed by the Court.

(3) The Court when considering the matter may make such interim or interlocutory order as it considers appropriate.

(4) Where the Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice, that it is desirable, the whole or any part of proceedings under this section may be heard otherwise than in public.

(5) In this section “*the Court*” means the High Court.

Revocation of approval of rules.

106.—(1) The Bank may—

(a) revoke an approval of the rules of an exchange if the exchange to whom it was granted so requests,

(b) with the consent of the Minister, revoke an approval of the rules of an exchange if—

(i) the exchange—

(I) has not commenced to operate within 12 months of the date on which the approval was granted, or

(II) has ceased operating and no trading or dealing has been carried on on the exchange during a period of more than 6 months immediately following the cesser,

(ii) being a company, the exchange is being wound up,

(iii) the exchange (being an existing exchange) or the promoter of a proposed exchange has obtained the approval of the Bank through false statements or any other irregular means,

(iv) the exchange becomes unable to meet its obligations to creditors or suspends payment lawfully due by the exchange or by any member thereof,

(c) with the consent of the Minister revoke the approval if, since the grant of the approval, the circumstances relevant to the grant have changed and are such that, if an application for an approval were made in the changed circumstances, it would be refused.

(2) Whenever the Bank proposes to revoke an approval (other than in pursuance of a request by the exchange to whom it was granted to do so)—

- (a) it shall notify the exchange concerned that it intends to seek the consent of the Minister to the revocation and of the reasons for the revocation and that the exchange may, within 21 days after the date of the giving of the notification, make representations in writing to the Minister in relation to the proposed revocation,
- (b) the exchange may make such representations in writing to the Minister within the time aforesaid, and
- (c) the Minister shall, before deciding to give or withhold his consent, consider any representations duly made to him under this subsection in relation to the proposed revocation.

(3) Where an approval of the rules of an exchange is revoked and the exchange is not a company which is being wound up—

- (a) the exchange and the members thereof shall continue to be subject to the duties and obligations imposed by or under this Chapter or section 18 of the Act of 1971 until all liabilities of the exchange and its members have been discharged to the satisfaction of the Bank,
- (b) the exchange shall, as soon as possible after the approval is revoked, notify the Bank and such other persons (if any) as the Bank indicates are to be notified of the measures being taken or proposed to be taken to discharge in full and without undue delay the liabilities of the exchange and the members thereof,
- (c) in the case where—
 - (i) that exchange has notified the Bank in accordance with *paragraph (b)* and the Bank is of the opinion that the measures being taken or proposed to be taken for the purposes of that paragraph are not satisfactory, or
 - (ii) that exchange has not so notified the Bank and the Bank is of the opinion that the exchange has failed to so notify as soon as possible after the approval is revoked, or
 - (iii) the Bank is of the opinion that that exchange has failed to take all reasonable steps to notify persons which the Bank has indicated, under *paragraph (b)*, are to be notified,

then the Bank may give a direction in writing to that exchange or to any of its members thereof for such period, not exceeding 6 months, as may be specified therein, prohibiting the exchange or the members thereof so directed from—

- (I) dealing with or disposing of any assets or specified assets of the exchange or of its members in any manner, or
- (II) engaging in any transaction or class of transaction or specified transaction, or
- (III) making payments,

without the prior authorisation of the Bank, and the Bank may require that exchange or any of its members to prepare and submit to it for its approval within two months of the direction, a scheme for the orderly discharge in full of the liabilities concerned.

- (4) (a) Where the approval of the rules of an exchange is revoked and the exchange is a company which is being wound up, the liquidator of the company shall, in addition to his duties and obligations in respect of the winding up, be subject to the duties and obligations to which the exchange would be subject were it an exchange to which *subsection (3)* relates and that subsection shall, for the purpose of this subsection, be construed accordingly.
- (b) Notwithstanding *paragraph (a)*, the Bank may, where it revokes an approval and considers it appropriate in the circumstances, remove in writing the duty and obligation imposed on the liquidator concerned to comply with *paragraph (b)* (as construed by this subsection) of *subsection (3)* and may impose in writing on that liquidator such further or other duty and obligation which corresponds to that set out in the said *paragraph (b)*.
- (c) Nothing in this subsection shall be construed as affecting any duty or obligation under this Chapter of the members of the exchange concerned.

(5) The Bank shall as soon as may be after the revocation of an approval of the rules of an exchange publish a notice of the revocation in such manner as it thinks fit.

Offences and penalties ([Chapter VIII](#)).

107.—(1) Any person who contravenes [section 99](#) , [100](#) or [104](#) and an exchange or a member thereof who—

- (a) commits by act or omission a breach of a condition or requirement duly imposed and which relates to the approval given by the Bank to the rules of the exchange, or
- (b) fails to comply with a direction under [section 105](#) or [106](#) ,

shall be guilty of an offence and shall be liable—

- (i) on summary conviction, to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both, or
- (ii) on conviction on indictment, to a fine not exceeding £50,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years, or to both,

and, if the contravention, breach or failure in respect of which he was convicted is continued after conviction, he shall be guilty of an offence on every day on which the contravention, breach or failure continues after conviction in respect of the original contravention, breach or failure and for each such offence he shall be liable on summary conviction to a fine not exceeding £100 or on conviction on indictment to a fine not exceeding £5,000.

(2) In any proceedings for an offence under this section which relates to [section 104](#) , it shall be a good defence for the accused to prove that he was, at the relevant time, a person whose business it was to publish or arrange for the publication on behalf of some other person of advertisements or other solicitations and that the relevant advertisement or other solicitation was received for publication in the ordinary course of that business and that he did not know and had no reason to suspect that to use it to advertise, or otherwise solicit could be an offence.

Supervision of Moneybrokers

Interpretation (*Chapter IX*).

108.—In this Chapter—

“*authorisation*” means an authorisation granted to a person by the Bank under this Chapter to carry on the business of moneybroking;

“*financial institution*” has the same meaning that it has in [Chapter VII](#) ;

“*moneybroker*” means a person carrying on a moneybroking business;

“*moneybroking business*” means any business which consists of the business of arranging all or any of the following, that is to say:

(a) loans or borrowings of money,

(b) purchases or sales of foreign exchange,

(c) transactions of a type which for the time being stand prescribed by order under [section 109](#), and

(d) other transactions which are similar in effect to any of those to which *paragraph (a), (b) or (c)* relate,

between any two or more persons being a holder of a licence under section 9 of the Act of 1971, a building society, or a financial institution, and “*moneybroking*” shall be construed accordingly.

Orders (*Chapter IX*).

109.—(1) Where both the Minister and the Bank are of the opinion that it is necessary in the context of developments in the financial markets or the orderly and proper regulation of moneybroking business that certain types of transactions be prescribed for the purpose of the definition of “*moneybroking business*”, then the Minister may, at the request of the Bank, by order so prescribe.

(2) The Minister may, at the request of the Bank, by order revoke an order under *subsection (1)*.

Authorisation to carry on moneybroking business.

110.—(1) A person shall not carry on moneybroking business at any time after this section has been in operation for 3 months unless the person has been granted an authorisation for the purposes of this section and the authorisation has not been revoked.

(2) Subject to the provisions of this section, the Bank may grant or refuse to grant to any person applying to it an authorisation to carry on moneybroking business.

(3) Notwithstanding *subsection (2)*, a person shall not, at the same time, be the holder of a licence under section 9 of the Act of 1971 and a person to whom a subsisting authorisation under this section relates.

(4) The Bank shall not refuse an authorisation without the consent of the Minister and unless it is satisfied that the authorisation would not be in the interest of the orderly and proper regulation of moneybroking or banking, and the Minister shall not grant his consent to the refusal unless he is satisfied that the authorisation would not be in the interest of the orderly and proper regulation of moneybroking or banking.

(5) Whenever the Bank proposes to refuse an authorisation to a person—

(a) it shall notify the person in writing that it intends to seek the consent of the Minister to the refusal and of its reasons for the refusal and that the person may, within 21 days after the date of the giving of the notification, make representations in writing to the Minister in relation to the proposed refusal,

(b) the person may make such representations in writing to the Minister within the time aforesaid, and

(c) the Minister shall, before deciding to give or withhold his consent, consider any representations duly made to him under this subsection in relation to the proposed refusal.

(6) An application for an authorisation shall be in such form and contain such particulars as the Bank may from time to time determine.

(7) The authorisation of a person under this section shall not constitute a warranty as to the solvency of the person to carry on a moneybroking business and the Bank shall not be liable in respect of any losses incurred through the insolvency or default of the person.

Supervision, etc. of moneybrokers by Bank.

111.—Every person carrying on moneybroking business shall each comply with such supervisory and reporting requirements or conditions relating to his business which the Bank considers prudent to impose on him from time to time for the purposes and in the interest of the proper and orderly regulation of moneybroking.

Application of section 17 of Act of 1971.

112.—Without prejudice to the provisions of [section 111](#), the provisions of section 17 (which relates to books and records of holders of licences) of the Act of 1971 (as amended by this Part) shall apply as if every person authorised by the Bank to carry on moneybroking business were the holder of a licence for the purposes of the *Central Bank Acts, 1942 to 1989*.

Power of Court to prohibit failure to comply with requirement or condition under *Chapter IX*.

113.—(1) Where, on an application made in a summary manner by the Bank, the Court is of the opinion that there has occurred or is occurring a failure by a moneybroker to comply with a requirement or condition imposed by virtue of [section 111](#), the Court may, by order, prohibit the continuance of the failure by the moneybroker concerned.

(2) The Court when considering the matter may make such interim or interlocutory order as it considers appropriate.

(3) Where the Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice, that it is desirable, the whole or any part of proceedings under this section may be heard otherwise than in public.

(4) In this section “*the Court*” means the High Court.

Revocation of authorisations.

114.—(1) The Bank may—

(a) revoke an authorisation if the person to whom it was granted so requests,

(b) with the consent of the Minister, revoke an authorisation if the person to whom it was granted—

(i) (I) has not commenced to carry on moneybroking business within 12 months of the date on which the authorisation was granted, or

(II) has ceased to carry on moneybroking business and has not carried it on during a period of more than 6 months immediately following the cesser,

(ii) is adjudicated bankrupt,

(iii) being a partnership, the partnership is dissolved by death or bankruptcy of any partner, or otherwise under the law of partnership,

(iv) being a company, is being wound up,

(v) has obtained the authorisation through false statements or any other irregular means,

(vi) becomes unable to meet his obligations to his creditors or suspends payments lawfully due by him or can no longer be relied upon to fulfil his obligations towards his creditors and in particular no longer provides security for the assets entrusted to him,

(vii) is convicted on indictment of an offence under any provision of the *Central Bank Acts, 1942 to 1989*, or an offence involving fraud, dishonesty or breach of trust,

(viii) has his head office in another state that is a member of the European Communities and the authority in that state that exercises in that state functions corresponding to those of the Bank under this Chapter has withdrawn authorisation from the institution of which the holder is a branch,

(c) with the consent of the Minister, revoke the authorisation if, since the grant of the authorisation, the circumstances relevant to the grant have changed and are such that, if an application for an authorisation were made in the changed circumstances, it would be refused.

(2) Whenever the Bank proposes to revoke an authorisation (other than in circumstances to which paragraph (a) or (b) (viii) of subsection (1) relate)—

- (a) the person to whom it was granted shall be notified in writing that the Bank intends to seek the consent of the Minister to the revocation and of the reasons for the revocation and that the person may, within 21 days after the date of the giving of the notification, make representations in writing to the Minister in relation to the proposed revocation,
- (b) the said person may make such representations in writing to the Minister within the time aforesaid, and
- (c) the Minister shall, before deciding to give or withhold his consent, consider any representations duly made to him under this subsection in relation to the proposed revocation.

Publication of names of moneybrokers and notices of revocation of authorisations.

115.—(1) The Bank shall publish from time to time, but not less frequently than once a year, in such manner as it thinks fit the names of persons authorised to carry on moneybroking business.

(2) The Bank shall as soon as may be after the revocation of an authorisation publish a notice of the revocation in such manner as it thinks fit.

Offences and penalties (*Chapter IX*).

116.—A person who contravenes *subsection (1) or (2) of [section 110](#)* or a moneybroker who fails by act or omission to comply with a requirement or condition imposed on him under [section 111](#) shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both, or
- (b) on conviction on indictment, to a fine not exceeding £50,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years, or to both,

and, if the contravention or breach in respect of which he was convicted is continued after conviction, he shall be guilty of an offence on every day on which the contravention or breach continues after conviction in respect of the original contravention or breach and for each such offence he shall be liable on summary conviction to a fine not exceeding £100 or on conviction on indictment to a fine not exceeding £5,000.

Chapter X

Codes of Practice

Codes of practice.

117.—(1) The Bank may, after consultation with the Minister, from time to time draw up, amend or revoke, in relation to any class or classes of licence holders or other persons supervised by the Bank under this or any other enactment, one or more than one code of practice concerning dealings with any class or classes of persons and every such code shall be observed by the licence holders, or other persons so supervised, to whom they relate.

(2) In drawing up codes of practice the Bank shall have regard to—

- (a) the interest of customers and the general public, and
 - (b) the promotion of fair competition in financial markets in the State.
- (3) The Bank may—
- (a) require any licence holder or other person supervised by it to provide all relevant information to the Bank to enable the Bank to satisfy itself as to compliance with the code by such licence holder or other person,
 - (b) issue a direction in writing to such licence holder or other person to comply with practices specified in the direction where this is necessary, in the opinion of the Bank, to secure observance of the code.
- (4) (a) Any licence holder or other person supervised by the Bank who fails to provide information in accordance with *subsection (3) (a)* or to comply with a direction under *subsection (3) (b)* shall be guilty of an offence and shall be liable—
- (i) on summary conviction to a fine not exceeding £1,000, or
 - (ii) on conviction on indictment to a fine not exceeding £25,000.
- (b) Where a person has been convicted of an offence by virtue of *paragraph (a)* of this subsection and, after the conviction, the failure to provide information or to comply with the direction, as the case may be, continues, the person shall be guilty of contravening this section on every day on which the contravention continues after that conviction and for each such offence he shall be liable—
- (i) on summary conviction to a fine not exceeding £100, or
 - (ii) on conviction on indictment to a fine not exceeding £2,500.
- (5) In this section “*practices*” includes procedures.

Chapter XI

Legal Tender Notes

Provision of legal tender notes.

118.—(1) It shall be lawful for the Bank to provide and issue in accordance with this Part notes to be known and in this Part referred to as legal tender notes for the following denominations, namely, £1, £5, £10, £20, £50, £100 and any other monetary denominations in respect of which the Minister has made an order under *subsection (4)* and such notes shall be current in the State and shall be legal tender in the State for the payment of any amount.

(2) Every legal tender note shall be of such form, size and design and printed in such a manner and on such paper and numbered and authenticated in such manner as stood prescribed before the commencement of this section or as may be prescribed thereafter from time to time for the purpose of this section.

(3) Any legal tender note of any denomination provided and issued at any time under the [Currency Act, 1927](#) , or any subsequent Act shall continue to be current in the State and shall continue to be legal tender in the State for the payment of any amount.

(4) The Minister may, from time to time, by order specify for the purposes of *subsection (1)* any monetary denomination which is not already specified either in that subsection or by virtue of this subsection.

(5) In this section—

“*paper*” includes any material capable of being printed upon;

“*prescribed*” means prescribed by the Bank with the sanction of the Minister.

Application of certain enactments.

119.—Legal tender notes issued under this Act or under the Currency and Central Bank Acts, 1927 to 1971, or any of those Acts shall be deemed to be bank notes within the meaning of the Forgery Act, 1913, and any other enactment relating to offences in respect of bank notes which is for the time being in force in the State and to be valuable securities within the meaning of the Larceny Act, 1916, and any other law relating to stealing which is for the time being in force in the State and to be current coin of the State for the purpose of the Acts relating to payment of wages in cash and any other like enactment.

Issue of legal tender notes by Bank.

120.—(1) The Act of 1971 is hereby amended by the substitution of the following section for section 44:

“44. It shall be lawful for the Bank to issue legal tender notes—

(a) to itself or any other person against—

(i) gold bullion, or

(ii) any currency, security or other form of asset which may be held by the Bank, which, in the case of such other person, is delivered to the Bank in such manner and subject to such conditions as it may prescribe, or

(b) to such other person against an authorisation to charge that person's account with the Bank.”.

(2) This section shall come into operation with effect from the date the legal tender note fund is wound up under [section 22](#) .

Redemption of legal tender notes.

121.—(1) The holder of a legal tender note of any denomination shall be entitled, on demand made by him during office hours at the principal office of the Bank in Dublin, to receive in exchange for the note—

(a) either or both one or more legal tender notes and coins which would be legal tender, or

(b) where the Bank has determined that payment by any other means is appropriate and the holder of the legal tender note so requests or consents, payment by that means, or

(c) (i) either or both one or more legal tender notes and coins which would be legal tender, and

(ii) part-payment in accordance with *paragraph (b)*,

to the same total value.

(2) The Bank may refuse to exchange in accordance with *subsection (1)* any legal tender note which is so worn or damaged that it is in the opinion of the Bank not identifiable as a particular legal tender note or that the portion of such note forthcoming is not sufficient in the opinion of the Bank to exclude the possibility of the residue of such note being so exchanged on another occasion.

(3) The Bank may make such arrangements as it thinks proper for the cancellation and destruction by it or on its behalf of such legal tender notes exchanged in accordance with *subsection (1)* as it does not think proper to preserve for re-issue.

Calling in of legal tender notes.

122.—The Bank may, subject to such conditions as to time, place, manner and order of presentation as it thinks fit, call in any legal tender notes issued under this Act, or under the Currency and Central Bank Acts, 1927 to 1971, or any of those Acts, on the terms of paying for such notes on presentation in the same manner as if they were being redeemed under [section 121](#).

Defacement, etc., of legal tender notes and consolidated bank notes.

123.—(1) It shall not be lawful for any person to do any of the following things, that is to say—

(a) to cut, tear, or otherwise mutilate, or to interfere with any security device on or contained in, a legal tender note or a consolidated bank note, or

(b) to write, print, draw, stamp, emboss, or in any other way impress on a legal tender note or a consolidated bank note any letter, figure, design, or other mark, or

(c) to perforate a legal tender note or a consolidated bank note, whether the perforations do or do not form or represent any letter, figure, or other design, or

(d) to attach or affix to a legal tender note or a consolidated bank note any memorandum, advertisement or other writing.

(2) Every person who commits any act in relation to a legal tender note or a consolidated bank note which is a contravention of this section shall be guilty of an offence under this section and shall be liable on summary conviction, to a fine not exceeding £1,000.

(3) The fact that a legal tender note has been the subject of an act which is a contravention of this section shall not prejudice or affect any obligation imposed or power conferred on the Bank by [sections 121](#) and [122](#) of this Act to pay or exchange such note nor prejudice or affect any power so conferred on the Bank to refuse to exchange such note.

(4) The fact that a consolidated bank note has been the subject of an act which is a contravention of this section shall not prejudice or affect the obligation imposed on the Bank by section 36 (3) of the Principal Act in respect of payment on presentation of the note at its principal office in Dublin.

(5) This section shall not apply to anything done by or on behalf of the Bank for the purpose of the cancellation of a legal tender note or the retirement or cancellation of a consolidated bank note.

PART III

Coinage

Definition ([Part III](#)).

124.—In this Part “*the Act of 1969*” means the [Decimal Currency Act, 1969](#) .

Amendment of section 3 of Act of 1969.

125.—(1) Section 3 of the Act of 1969 is hereby amended—

(a) by the insertion of the following subsection after subsection (3):

“(3A) The Minister may, in respect of any cupronickel or bronze coins of a particular denomination provided under this section, by order amend the said First Schedule by substituting, for the standard weight and remedy allowance relating to that weight which are specified therein in respect of those coins, such other standard weight and remedy allowance relating to that weight as he thinks fit and specifies in the order and the said First Schedule shall have effect accordingly.”;

(b) in subsection (5), by the substitution of the following paragraph for paragraph (c):

“(c) Whenever an order is proposed to be made under this subsection, other than only for the purpose of amending—

(i) the standard weight and standard composition of any coins and the remedy (or variation from the standard weight and standard composition) to be allowed in respect thereof, or

(ii) any such weight or composition or remedy (or variation from either such weight or composition),

a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving the draft has been passed by each such House.”.

(2) Any order made in whole or in part under section 3 (5) of the Act of 1969 and in force immediately before the commencement of this section shall continue in force as if it had been made to the like extent under and in accordance with the said section 3(5) as amended by *subsection (1) (b)*.

Amendment of section 4 of Act of 1969.

126.—(1) Section 4 of the Act of 1969 is hereby amended—

(a) by the deletion of subsection (1), and

(b) in subsection (2)—

(i) by the substitution of the following paragraph for paragraph (a):

“(a) The Minister may, whenever and so often as he thinks fit, by order (in this section referred to as a new coinage order) declare that it is expedient to provide coins of a specified metal or a specified mixture of metals, other than as provided for by or under [section 3](#) of this Act, of any specified denomination of coin which the Minister is authorised by or under the said section 3 to provide.”,

and

(ii) by the substitution of the following paragraph for paragraph (d):

“(d) Whenever an order is proposed to be made under this subsection, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving the draft has been passed by each such House.”.

(2) Any order made in whole or in part under section 4(2) of the Act of 1969 and in force immediately before the commencement of this section shall continue in force as if it had been made to the like extent under and in accordance with the said section 4 (2) as amended by *subsection (1)*.

Legal tender (coinage).

127.—The Act of 1969 is hereby amended by the substitution of the following section for section 8:

“8. (1) A tender of money if made in coins which are issued or deemed to be issued under any provision of the *Decimal Currency Acts, 1969 to 1989*, shall, in respect of each denomination tendered, be legal tender for the payment of an amount not exceeding twenty times their face value but for no greater amount.

(2) Subsection (1) of this section shall not apply to coins called in under [section 12](#) of this Act from the relevant operative date for the purposes of subsection (2) of that section.”.

Alteration of penalties under Act of 1969.

128.—The Act of 1969 is hereby amended—

(a) in section 14, by the substitution of the following subsection for subsection (3):

“(3) Every person who makes or issues any piece of metal or mixed metal in contravention of subsection (1) of this section shall be guilty of an offence and shall be liable—

- (i) on summary conviction to a fine not exceeding £1,000 or at the discretion of the court to imprisonment for a term not exceeding one year or to both such fine and such imprisonment, or
 - (ii) on conviction on indictment to a fine not exceeding £5,000 or at the discretion of the court to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.”,
- (b) in section 15, by the substitution of the following subsection for subsection (2):

“(2) If any person—

(a) acts in contravention of this section, or

(b) fails to comply with any condition attached to a licence under this section,

he shall be guilty of an offence and shall be liable—

- (i) on summary conviction to a fine not exceeding £1,000 or at the discretion of the court to imprisonment for a term not exceeding one year or to both such fine and such imprisonment, or
- (ii) on conviction on indictment to a fine not exceeding £5,000 or at the discretion of the court to imprisonment for a term not exceeding two years or to both such fine and such imprisonment and, in addition, the court may order the articles in respect of which the offence was committed to be forfeited.”.

Amendment of section 17 of Act of 1969.

129.—Section 17 of the Act of 1969 is hereby amended by the substitution of “(other than an order under [section 3](#) (5) or [4](#) of this Act which is required to be confirmed by resolution of each House of the Oireachtas before coming into force, or an order under [section 12](#) of this Act)” for “(other than an order under [section 3](#) (5), [4](#) or [12](#) of this Act)”, and the said section 17, as so amended, is set out in the Table to this section.

TABLE

17. Every order and regulation under this Act (other than an order under [section 3](#) (5) or [4](#) of this Act which is required to be laid in draft before each House of the Oireachtas, or an order under [section 12](#) of this Act) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either House within the next twenty-one days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Collective citation ([Part III](#)).

130.—The Decimal Currency Acts, 1969 and 1970, and this Part may be cited together as the Decimal Currency Acts, 1969 to 1989.

PART IV

Miscellaneous Provisions Relating to Financial Transactions

131.—The Bankers' Books Evidence Act, 1879, is hereby amended—

(a) by the substitution of the following section for section 5:

“5. (1) A copy of an entry in a banker's book shall not be received in evidence under this Act unless it is further proved that—

(a) in the case where the copy sought to be received in evidence has been reproduced in a legible form directly by either or both mechanical and electronic means from a banker's book maintained in a non-legible form, it has been so reproduced;

(b) in the case where the copy sought to be received in evidence has been made (either directly or indirectly) from a copy to which paragraph (a) of this section would apply:

(i) the copy sought to be so received has been examined with a copy so reproduced and is a correct copy, and

(ii) the copy so reproduced is a copy to which the said paragraph (a) would apply if it were sought to have it received in evidence;

(c) in any other case, the copy has been examined with the original entry and is correct.

(2) Proof to which subsection (1) of this section relates shall be given—

(a) in respect of paragraph (a) or (b) (ii) of that subsection, by some person who has been in charge of the reproduction concerned,

(b) in respect of paragraph (b) (i) of that subsection, by some person who has examined the copy with the reproduction concerned,

(c) in respect of paragraph (c) of that subsection, by some person who has examined the copy with the original entry concerned,

and may be given either orally or by an affidavit sworn before any commissioner or person authorised to take affidavits.”,

(b) by the deletion in section 6 after “legal proceeding” of the words “*to which the bank is not a party*”,

(c) by the insertion of the following section after section 7:

“Extension of section 7.

7A. If, on an application made by a member of the Garda Síochána not below the rank of Superintendent, a court or a judge is satisfied that there are reasonable grounds for believing—

(a) that an indictable offence has been committed; and

- (b) that there is material in the possession of a bank specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence;

a court or judge may make an order that the applicant or another member of the Garda Síochána designated by him be at liberty to inspect and take copies of any entries in a banker's book for the purposes of investigation of the offence.”,

- (d) by the substitution of the following paragraph for paragraph (a) of subsection (2) of [section 9](#) (as amended by the Bankers' [Books Evidence \(Amendment\) Act, 1959](#)):

“(a) include any records used in the ordinary business of a bank, or used in the transfer department of a bank acting as registrar of securities, whether—

- (i) comprised in bound volume, loose-leaf binders or other loose-leaf filing systems, loose-leaf ledger sheets, pages, folios or cards, or
- (ii) kept on microfilm, magnetic tape or in any non-legible form (by the use of electronics or otherwise) which is capable of being reproduced in a permanent legible form, and”

and

- (e) by the substitution of the following section for section 11:

“11. Days which are non-business days for the purposes of, and to the extent provided by the Bills of Exchange Act, 1882, shall be excluded from the computation of time under this Act.”.

Amendment of Bills of Exchange Act, 1882.

132.—(1) The Bills of Exchange Act, 1882, is hereby amended:

- (a) in section 2:

- (i) by the insertion of the following definition after the definition of “*Bill*”:

““*Business days*’ means those days which are not non-business days.”,

- (ii) by the insertion of the following definition after the definition of “*Issue*”:

““*Non-business days*’ means—

- (a) Saturday, except in a case and to the extent to which the proviso to the paragraph numbered (1) of [section 14](#) of this Act applies,

- (b) Sunday,

- (c) such days as are public holidays, and

(d) where and to the extent that any direction under [section 134](#) of the *Central Bank Act, 1989*, provides, such other day or days as so provided.”,

and

(iii) by the insertion of the following definition after the definition of “*Person*”:

“‘*Public holiday*’ has the same meaning as it has for the purposes of the [Holidays \(Employees\) Act, 1973](#).”,

(b) in section 14, by the substitution of the following paragraph for the paragraph numbered (1):

“(1) The bill is due and payable in all cases on the last day of the time of payment as fixed by the bill or, if that is a non-business day, on the succeeding business day:

Provided that nothing in this paragraph shall operate to prevent a bill being paid by the drawee on a Saturday (other than a Saturday that is a public holiday or to which paragraph (d) of the definition of ‘*non-business days*’ in [section 2](#) of this Act relates) or cause him to incur any liability thereby, where—

(a) the drawee is a banker, and

(b) the Saturday concerned is the last day fixed by the bill as the time of payment, and

(c) the drawee is normally open for business on a Saturday at his address given in or ascertainable from the bill,

and, accordingly, presentation and payment of such a bill on the Saturday shall be valid and shall discharge it as fully as if it had been presented and paid on the next succeeding business day: but this provision shall not be construed as compelling the person entitled to payment on the bill to accept such payment on the Saturday.”,

(c) by the insertion of the following section after section 45:

“Additional rules as to presentment of cheques and other documents.

45A. (1) Subject to the provisions of this section, presentment for payment of a cheque may be made by a banker (in this section referred to as the ‘*collecting banker*’) on his own behalf or on behalf of a customer or any other person to the banker on whom it is drawn (in this section referred to as the ‘*drawee banker*’) by notification to the drawee banker of the essential features of the cheque other than by its physical presentment, whether by the transmission of an electronic message or by any other means.

(2) A drawee banker to whom a cheque is presented by notification in the manner provided for in subsection (1) of this section may, before the close of business on the next business day following receipt of such notification, request the collecting banker that the cheque be physically presented to him.

(3) A request by the drawee banker for physical presentment of a cheque in accordance with subsection (2) of this section shall not constitute dishonour of the cheque by non-payment.

(4) A cheque paid upon presentment in the manner provided for in subsection (1) of this section shall be deemed to have been paid in the ordinary course of business.

(5) Where a cheque is presented for payment by notification in the manner provided for in subsection (1) of this section, nothing in this section shall be taken to relieve the collecting banker or the drawee banker from any liability in relation to the collection or payment of the cheque to which the collecting banker or the drawee banker would have been subject if the cheque had been physically presented for payment.

(6) This section shall apply to—

- (a) any document issued by a customer of a banker which, though not a bill of exchange, is intended to enable a person to obtain payment from that banker of the sum mentioned in the document,
- (b) any document issued by a public officer which is intended to enable a person to obtain payment from the Paymaster General of the sum mentioned in the document but is not a bill of exchange, and
- (c) any draft payable on demand drawn by a banker upon himself, whether payable at the head office or some other office of his bank,

as it applies to cheques.

(7) In this section, unless the context otherwise requires—

‘the essential features of the cheque’ includes—

- (a) the serial number of the cheque,
- (b) the identification code number of the drawee banker,
- (c) the account number of the drawer of the cheque,
- (d) the amount of the cheque as entered by the drawer of the cheque,

and any such particulars as may be given in the form of letters or figures or any other code which as between bankers represent those particulars;

‘physical presentment’ means presentment of a cheque for payment in accordance with banking practice other than as provided for in subsection (1).”.

(2) Nothing in the other provisions of this section shall apply to any bill drawn or, by virtue of section 89 of the Bills of Exchange Act, 1882, to any note made before the coming into operation of this section.

(3) This section shall come into operation one month after the passing of this Act.

Supplementary provision to section 3 of Cheques Act, 1959.

133.—The [Cheques Act, 1959](#) , is hereby amended by the insertion of the following section after section 3:

“3A. Where a cheque is paid upon presentment in the manner provided for in subsection (1) of section 45A (inserted by [section 132](#) of the *Central Bank Act, 1989*) of the Bills of Exchange Act, 1882, the collecting banker (within the meaning of the said section 45A) shall, for the purpose of [section 3](#) of this Act, be deemed to be the banker on whom the cheque is drawn.”.

Power of Minister to direct suspension of certain business transactions, etc.

134.—(1) Whenever the Minister considers it necessary in the national interest or for the purpose of safeguarding the currency of the State, he may, after consulting the Bank, give a direction that in respect of a specified day or days a person to whom the direction relates shall not effect in the course of business any transaction, or any transaction of such a kind, as may be specified in the direction.

(2) The Minister may after consulting the Bank grant an exemption from all or part of a direction under this section to any person to whom it relates where he is satisfied that such an exemption would not adversely affect the national interest or the integrity of the currency of the State.

(3) In respect of every direction or exemption under this section, it shall be—

(a) in writing or put in writing as soon as possible after the direction has been given or the exemption has been granted, as the case may be, and

(b) either—

(i) sent in writing or, where notified orally, confirmed in writing to the person or persons concerned, or

(ii) published in the *Iris Oifigiúil*,

as soon as possible after having been so given or so granted, as the case may be:

Provided that failure to comply with this subsection shall not invalidate a direction duly given, or an exemption duly granted, under this section.

(4) Every direction under this section shall be in such form and manner as the Minister considers necessary and appropriate and may be given to all or any of the following persons, that is to say:

(a) the holder of a licence under the [Central Bank Act, 1971](#) , or a person exempted from holding such a licence by virtue of section 7 (4) of that Act;

(b) a person dealing in foreign currencies;

(c) a person dealing in gold coin or bullion;

- (d) a person dealing in silver coin or bullion;
- (e) a person dealing in financial futures;
- (f) a person dealing in futures in any commodity;
- (g) a member of the Stock Exchange Irish in respect of any transaction on that exchange;
- (h) such other person or persons as appears to the Minister to be necessary to give a direction to under *subsection (1)*.

(5) An obligation on a person to do or carry out something on a day on which he is prevented, by virtue of a direction under this section, from so doing or carrying out, shall be deemed to be complied with if he does it or carries it out as soon as practicable thereafter.

(6) (a) A person who contravenes a direction under this section or who knowingly or recklessly gives either directly or indirectly misleading information to the Minister or the Bank for the purpose of assisting any person to obtain an exemption from such a direction shall be guilty of an offence and shall be liable—

(i) on summary conviction, to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both, or

(ii) on conviction on indictment, to a fine not exceeding £50,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years, or to both.

(b) Where a person has been convicted under *paragraph (a)* of a contravention of a direction and the contravention is continued after conviction, he shall be guilty of an offence on every day on which the contravention continues after conviction in respect of the original contravention and for each such offence he shall be liable on summary conviction to a fine not exceeding £100 or on conviction on indictment to a fine not exceeding £5,000.

(7) In this section “*foreign currency*” has the same meaning as it has in the [Exchange Control Act, 1954](#) .

Payments on public holidays not compellable.

135.—(1) No person shall be compellable to make any payment or do any act on a public holiday which he would not be compellable to make or do on Christmas Day or Good Friday by virtue of any rule of law.

(2) Where a person would, apart from this section, be compellable to make any payment or to do any act on a public holiday, his obligation to make such payment or to do such act shall be deemed to be complied with if he makes or does it on the next following day on which he is compellable to make or do it.

(3) In this section “*public holiday*” has the same meaning as it has for the purposes of the [Holidays \(Employees\) Act, 1973](#) .

Amendment of Money-lenders Act, 1900.

136.—The Money-lenders Act, 1900, is hereby amended:

(a) in section 6—

(i) by the substitution in paragraph (d) of “the holder of a licence for the time being in force granted under [section 9](#) of the [Central Bank Act, 1971](#) , or any person bonâ fide and otherwise carrying on the business of banking, or” for “any person”, and

(ii) by the insertion of the following paragraph after paragraph (d):

“(dd) a company to which a certificate has been given by the Minister for Finance under [Section 39B](#) of the [Finance Act, 1980](#) (inserted by the [Finance Act, 1987](#)), and which has not been revoked; or”,

(iii) by the substitution of the following paragraph for paragraph (e):

“(e) any class or classes of body corporate in respect of which the Minister for Industry and Commerce, by order made from time to time declares that, from such date as he may specify in such order, this Act does not apply; or”,

(b) by the insertion of the following section after section 6:

“6A. The date specified for the purposes of an order under [section 6](#) (e) of this Act may be a date earlier than the date upon which the order is made if, but only if—

(a) the Minister for Finance consents to the date being specified, and

(b) such date is not a date earlier than the 1st day of September, 1971.”,

and the said section 6 (other than paragraphs (a) to (c) and paragraphs (dd) to (f)) as so amended, is set out in the Table to this section.

TABLE

6. The expression “*money-lender*” in this Act shall include every person whose business is that of money-lending, or who advertises or announces himself or holds himself out in any way as carrying on that business; but shall not include—

(d) the holder of a licence for the time being in force granted under [section 9](#) of the [Central Bank Act, 1971](#) , or any person bonâ fide and otherwise carrying on the business of banking, or bonâ fide carrying on the business of insurance or bonâ fide carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money; or

Deposit with Bank to be an authorised investment for trustees.

137.—(1) Section 1 (which specifies the investments which trustees may invest in) of the Trustee Act, 1893 (as amended by the [Trustee \(Authorised Investments\) Act, 1958](#)) is hereby amended by the insertion of the following paragraph after paragraph (i):

“(ii) subject to [section 137](#) (2) of the *Central Bank Act, 1989*, in an interest bearing deposit account with the Central Bank of Ireland;”.

(2) The provision in section 1 of the Trustee Act, 1893, which authorises a trustee to invest in an interest bearing deposit account with the Bank shall not be construed as imposing an obligation on the Bank to accept trust funds for deposit with it.

Amendment of Trustee (Authorised Investments) Act, 1958.

138.—(1) Where—

- (a) the Minister proposes to make an order under [section 2](#) of the [Trustee \(Authorised Investments\) Act, 1958](#) , for the purpose of varying the investments specified in section 1 of the Trustee Act, 1893 (as amended by or under the said Act of 1958) by the deletion therefrom of an interest bearing deposit account with any body (whether incorporated or not) specified therein (hereinafter in this section referred to as “*the relevant body*”), and
- (b) the Minister has, if relevant, consulted and received the consent to the making of an order of any supervisory authority concerned, and
- (c) at least one of the events specified in *subsection (2)* has occurred in respect of the relevant body,

then the provisions of subsections (2) and (3) of section 2 of the said Act of 1958 shall not apply.

(2) The events to which *subsection (1) (c)* relates are that in respect of a relevant body—

- (a) where the carrying on of any business involving interest bearing deposit accounts requires the relevant body to be licensed by, registered with or the holder of some other form of authorisation from a supervisory authority, and the licence, registration or other authorisation has been revoked, withdrawn or otherwise ceases to subsist,
- (b) it has become insolvent or suspends any payments lawfully due,
- (c) it is being wound up,
- (d) it has become subject to an order of a court concerning—
 - (i) the taking of deposits,
 - (ii) the making of payments,
 - (iii) its management, or
 - (iv) the control of its management,
- (e) it has been convicted on indictment of an offence under the Acts regulating it or of an offence involving fraud, dishonesty or breach of trust,
- (f) where the relevant body is not a body corporate, any of its officers have—
 - (i) become subject to an order of a court concerning the taking of deposits or the making of payments in respect of, or relating to the management or control of the management of, the relevant body, or

(ii) been convicted on indictment of an offence under the Acts regulating the relevant body or of an offence concerning it involving fraud, dishonesty or breach of trust,

(g) where the relevant body is incorporated outside the State, then in respect of that body any of the events specified in *paragraphs (a) to (e)* or any event in the place of incorporation which, in the opinion of the Minister, corresponds to an event so specified.

(3) Every order made, by virtue of this section, under subsection (1) of [section 2](#) of the [Trustee \(Authorised Investments\) Act, 1958](#), shall be laid before each House of the Oireachtas as soon as may be after it is made and if either such House, within the next subsequent 21 days on which it has sat after such order is laid before it, passes a resolution annulling such order, such order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(4) In this section “*supervisory authority*” means, in respect of a relevant body—

(a) where the carrying on of any business, involving (either in whole or in part) interest bearing deposit accounts, requires the relevant body to be licensed by, registered with or the holder of some other form of authorisation from—

(i) the Government,

(ii) a Minister of the Government or his Department, or

(iii) any other person,

by virtue of any enactment, the Government or such Minister of the Government or his Department or other person, as the case may be, or

(b) where the carrying on of any business by or in respect of the relevant body includes business relating to interest bearing deposit accounts which is subject to supervision by—

(i) the Government,

(ii) a Minister of the Government or his Department, or

(iii) any other person,

by virtue of any enactment, the Government or such Minister of the Government or his Department or other person, as the case may be.

Electronic transfer of certain securities.

139.—(1) Notwithstanding anything to the contrary contained in any enactment, or in any prospectus or other document, relating to the terms of issue, holding or transfer of designated securities, a transfer of such securities may be made and shall be effective if made through a computerised system established by the Bank.

(2) (a) In *subsection (1)* “*designated securities*” means securities which have been designated by the Minister for the purposes of that subsection either—

(i) by particular reference to a security of a named type, or

(ii) generally by reference to a class or classes of securities (including, where so designated, future issues of a class or classes of securities).

(b) A designation for the purposes of *subsection (1)* shall not be effective until communicated in writing to the Bank.

(3) [Section 1](#) of the [Stock Transfer Act, 1963](#) , is hereby amended by the addition of the following subsection:

“(2) References in this Act to ‘*a stock transfer*’ shall, in addition to applying to an instrument under hand in a form set out in the First Schedule to this Act, be construed, where the context so allows, as including a transfer to which [section 139](#) of the *Central Bank Act, 1989*, applies as if it were a transfer in a form so set out and in respect of which no brokers transfer is necessary.”.

Retention of certain information in non-legible form.

140.—(1) A requirement imposed on any person by any enactment to retain for a specified period any voucher (by whatever name called) relating to an entry in the books of account of a holder of a licence under [section 9](#) of the [Central Bank Act, 1971](#) (as amended by this Act), in respect of any matter, transaction or account between such person and the holder of the licence shall be satisfied if such person or the holder of the licence retains a complete record of the information on such voucher by recording it on microfilm, magnetic tape or in any non-legible form (by use of electronics or otherwise) which is capable of being reproduced in a permanent legible form.

(2) Where information on a voucher to which *subsection (1)* relates is retained by the person concerned or by the holder of the licence under [section 9](#) of the [Central Bank Act, 1971](#) (as amended by this Act), by recording it in accordance with that subsection, then any duty imposed on that person or that holder by any enactment to allow inspection of, or furnish the original or a copy of, the voucher shall be treated as a like duty in the alternative to allow inspection of, or furnish a reproduction of, the information so retained, or of the relevant part of it, in a legible form.

Construction and collective citations.

141.—(1) The Bankers' Books Evidence Acts, 1879 and 1959, [section 131](#) and this subsection may be cited together as the Bankers' Books Evidence Acts, 1879 to 1989.

(2) The Bills of Exchange Act, 1882, the [Cheques Act, 1959](#) , [section 132](#) and this subsection shall be construed together as one and be cited together as the Bills of Exchange Acts, 1882 to 1989.

(3) The Moneylenders Acts, 1900 and 1933, [section 136](#) and this subsection may be cited together as the Moneylenders Acts, 1900 to 1989.

(4) The Trustee Acts, 1888 to 1958, [sections 137](#) and [138](#) and this subsection may be cited together as the Trustee Acts, 1888 to 1989.

SCHEDULE

Enactments Repealed

[Section 4](#) .

Session and Chapter or Number and Year	Short Title	Extent of Repeal
34 & 35 Vict., c. 17.	Bank Holidays Act, 1871.	The whole Act.
38 & 39 Vict., c. 13.	Holidays Extension Act, 1875.	The whole Act.
3 Edw. 7, c. 1.	Bank Holiday (Ireland) Act, 1903.	The whole Act.
No. 56 of 1924.	<u>Public Holidays Act, 1924</u> .	The whole Act.
No. 32 of 1927.	<u>Currency Act, 1927</u> .	The whole Act.
No. 4 (Private) of 1929.	<u>Bank of Ireland Act, 1929</u> .	Paragraphs (i) and (j) of section 2 (1).
No. 30 of 1930.	<u>Currency (Amendment) Act, 1930</u> .	The whole Act.
No. 1 (Private) of 1935.	<u>Bank of Ireland Act, 1935</u> .	<u>Section 3</u> .
No. 22 of 1942.	<u>Central Bank Act, 1942</u> .	<u>Sections 16</u> , <u>31</u> , <u>55 (3)</u> and (4), 62 (4), 63 and 64.
No. 33 of 1963.	<u>Companies Act, 1963</u> .	<u>Section 374</u> .
No. 23 of 1969.	<u>Decimal Currency Act, 1969</u> .	<u>Section 4 (1)</u> .
No. 24 of 1971.	<u>Central Bank Act, 1971</u> .	<u>Sections 29</u> , <u>30</u> , <u>43</u> , and <u>52</u> (2).
No. 25 of 1973.	<u>Holidays (Employees) Act, 1973</u>	<u>Section 17</u> .

⁽¹⁾OJ No. L322, 17.12.1977, p. 30.

OJ No. L193 18.7.1983, p.18.