



Number 21 of 2015

Consumer Protection (Regulation of Credit Servicing Firms) Act 2015



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**CONSUMER PROTECTION (REGULATION OF CREDIT SERVICING FIRMS) ACT
2015**

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[No. 21.]

*Consumer Protection (Regulation
of Credit Servicing Firms) Act 2015.*

[2015.]

ACTS REFERRED TO

Central Bank (Amendment) Act 2015 (No. 1)

Central Bank (Supervision and Enforcement) Act 2013 (No. 26)

Central Bank Act 1942 (No. 22)

Central Bank Act 1997 (No. 8)

Central Bank Acts 1942 to 2014

Consumer Credit Act 1995 (No. 24)

National Asset Management Agency Act 2009 (No. 34)



Number 21 of 2015

CONSUMER PROTECTION (REGULATION OF CREDIT SERVICING FIRMS) ACT 2015

An Act to provide for the protection of certain borrowers who are parties to credit agreements in respect of which credit servicing firms undertake certain services and for this purpose to amend the Central Bank Acts 1942 to 2014 and the Consumer Credit Act 1995 and to provide for related matters. [8th July, 2015]

Be it enacted by the Oireachtas as follows:

Amendment of section 28 of Central Bank Act 1997 (definitions (Part V))

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

- (a) in paragraph (c) of the definition of “money transmission service” by inserting the following after subparagraph (iii):

“(iiia) a person authorised to carry on the business of a credit servicing firm,”

- (b) in the definition of “regulated business” by substituting “, a debt management firm or a credit servicing firm” for “or a debt management firm”,

- (c) in the definition of “retail credit firm” by substituting the following for paragraph (a):

“(a) a person who is a regulated financial service provider authorised, by the Bank or an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank, to provide credit in the State otherwise than under this Part, or”,

- (d) by inserting the following definitions:

“ ‘credit agreement’ means an agreement whereby a creditor grants, or promises to grant, credit to a relevant borrower;

‘credit servicing’, in relation to a credit agreement, means managing or administering the credit agreement, including—

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

- (b) taking any necessary steps for the purposes of collecting or recovering payments due under the credit agreement from the relevant borrower,
- (c) managing or administering any of the following:
 - (i) repayments under the credit agreement;
 - (ii) any charges imposed on the relevant borrower under the credit agreement;
 - (iii) any errors made in relation to the credit agreement;
 - (iv) any complaints made by the relevant borrower;
 - (v) information or records relating to the relevant borrower in respect of the credit agreement;
 - (vi) the process by which a relevant borrower's financial difficulties are addressed;
 - (vii) any alternative arrangements for repayment or other restructuring;
 - (viii) assessment of the relevant borrower's financial circumstances and ability to repay under the credit agreement,
- or
- (d) communicating with the relevant borrower in respect of any of the matters referred to in paragraphs (a) to (c);

'credit servicing firm' means—

- (a) a person (other than the National Asset Management Agency or a NAMA group entity (within the meaning of the National Asset Management Agency Act 2009)) who—
 - (i) undertakes credit servicing other than on behalf of a regulated financial service provider authorised, by the Bank or an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank, to provide credit in the State, or
 - (ii) holds the legal title to credit granted under a credit agreement in respect of which credit servicing is not being undertaken by a person authorised to carry on the business of a credit servicing firm,
- and
- (b) a regulated financial service provider taken to be authorised to carry on the business of a credit servicing firm by virtue of subsection (3);

‘creditor’ means a person who grants credit under a credit agreement in the course of the person’s trade, business or profession, and includes a group of such persons;

‘prescribed contravention’ has the same meaning as in the Act of 1942;

‘relevant borrower’ means—

- (a) a relevant person, or
- (b) a micro, small or medium-sized enterprise within the meaning of Article 2 of the Annex to the Commission Recommendation 2003/361/EC of 6 May 2003¹ but only to the extent that the credit granted to it under the credit agreement concerned was provided by a financial service provider authorised, by the Bank or an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank, to provide credit in the State;”,
- (e) by designating that section (as amended by *paragraphs (a) to (d)*) as subsection (1), and
- (f) by adding the following subsections:

“(2) For the purposes of this Part ‘credit servicing’ does not include—

- (a) the determination of the overall strategy for the management and administration of a portfolio of credit agreements,
- (b) the maintenance of control over key decisions relating to such portfolio, or
- (c) taking such steps as may be necessary for the purposes of—
 - (i) enabling the undertaking of credit servicing by another person, or
 - (ii) enforcing a credit agreement,

whether any action referred to in paragraphs (a) to (c) is taken by a person who holds the legal title to credit in respect of a portfolio of credit agreements (in this section referred to as the ‘holder’) or a person acting on behalf of the holder, provided that such action, whether taken by the holder or such person, is not taken in a manner that if it were so taken by a regulated financial service provider it would be a prescribed contravention.

- (3) For the purposes of this Part, a regulated financial service provider authorised, whether before or after the coming into operation of the *Consumer Protection (Regulation of Credit Servicing Firms) Act 2015*, by the Bank or an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank, to provide

¹ OJ No. L124, 20.5.2003, p.36

credit in the State, is taken to be authorised to carry on the business of a credit servicing firm.”.

Amendment of section 31 of Central Bank Act 1997 (grant and refusal of applications for authorisation)

2. Section 31 of the Central Bank Act 1997 is amended in subsection (7) by substituting the following for paragraph (a):

“(a) record the appropriate particulars of the applicant in the register of persons authorised to carry on any regulated business, and”.

Amendment of section 33A of Central Bank Act 1997 (imposition of conditions or requirements on authorised retail credit firms and home reversion firms)

3. Section 33A of the Central Bank Act 1997 is amended in subsection (5) by inserting “or credit servicing firm” after “debt management firm”.

Transitional provision for existing retail credit firms and credit servicing firms

4. The Central Bank Act 1997 is amended by inserting the following sections after section 34D:

“Transitional provision for existing retail credit firms

34E. (1) Notwithstanding section 29, a person carrying on the business of a retail credit firm who did not require authorisation immediately before the coming into operation of the *Consumer Protection (Regulation of Credit Servicing Firms) Act 2015* is taken to be authorised to carry on the business of a retail credit firm until the Bank has granted or refused authorisation to the person, provided that the person applies to the Bank under section 30 for authorisation no later than 3 months after that coming into operation.

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

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

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

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

Transitional provision for existing credit servicing firms

- 34F.** (1) Notwithstanding section 29, a person (other than a regulated financial service provider taken to be authorised to carry on the business of a credit servicing firm by virtue of section 28(3)) carrying on the business of a credit servicing firm immediately before the coming into operation of the *Consumer Protection (Regulation of Credit Servicing Firms) Act 2015* is taken to be authorised to carry on the business of a credit servicing firm until the Bank has granted or refused authorisation to the person, provided that the person applies to the Bank under section 30 for authorisation no later than 3 months after that coming into operation.
- (2) If a person is taken to be authorised to carry on the business of a credit servicing firm under subsection (1), the Bank may do either or both of the following:
- (a) impose on that person such conditions or requirements or both as the Bank considers appropriate relating to the proper and orderly regulation and supervision of credit servicing firms;
 - (b) direct that person not to carry on the business of a credit servicing firm for such period (not exceeding 3 months) as is specified in the direction.
- (3) A condition or requirement imposed, or a direction given, under this section is an appealable decision for the purposes of Part VIIA of the Act of 1942.”.

Obligation on credit servicing firm and holder of legal title to credit

- 5.** The Central Bank Act 1997 is amended by inserting the following section after section 34F (inserted by *section 4*):

- “34G.** (1) A credit servicing firm shall not, on its own behalf or on behalf of, or on the instructions of, a person who holds the legal title to credit granted under a credit agreement, take or fail to take an action, if the taking of or the failure to take the action would otherwise be a prescribed contravention if a retail credit firm took or failed to take that action.
- (2) A person who holds the legal title to credit granted under a credit agreement shall not instruct a credit servicing firm to take or fail to take an action, if the taking of or the failure to take the action would otherwise be a prescribed contravention if a retail credit firm took or failed to take that action.
- (3) A person who contravenes subsection (2) commits an offence and is liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 5 years, or both.”.

Amendment of section 3 of Central Bank (Supervision and Enforcement) Act 2013 (interpretation)

6. Section 3 of the Central Bank (Supervision and Enforcement) Act 2013 is amended—

(a) in subsection (1) by substituting the following for the definition of “customer”:

“ ‘customer’, in relation to a regulated financial service provider, means—

- (a) any person to whom the regulated financial service provider provides or offers financial services,
- (b) any person who requests the provision of financial services from the regulated financial service provider, or
- (c) a relevant borrower in a case where the regulated financial service provider undertakes credit servicing in respect of the credit agreement concerned,

and includes a potential customer and a former customer;”,

and

(b) by inserting the following after subsection (1):

“(1A) For the purposes of paragraph (c) of the definition of ‘customer’ in subsection (1) ‘relevant borrower’, ‘credit servicing’ and ‘credit agreement’ have the same meaning as in section 28 of the Central Bank Act 1997.”.

Amendment of section 57BA of Central Bank Act 1942 (definitions)

7. Section 57BA of the Central Bank Act 1942 is amended in the definition of “eligible consumer”—

(a) in paragraph (c) by inserting “, or” after “provider”, and

(b) by inserting the following after paragraph (c):

“(d) who was, in relation to a credit agreement, a customer of the financial service provider in a case where a credit servicing firm undertakes credit servicing in respect of the credit agreement concerned,

and for the purposes of paragraph (d) ‘credit agreement’, ‘credit servicing firm’ and ‘credit servicing’ have the same meaning as in section 28 of the Central Bank Act 1997”.

Amendment of section 3 of Consumer Credit Act 1995 (application)

8. Section 3 of the Consumer Credit Act 1995 is amended in subsection (2)(a) by inserting the following after subparagraph (ii):

“except where the interest of the credit union or registered society in all or any part of the credit concerned has been directly or indirectly assigned or otherwise disposed of to any person that is not a credit union or registered society,”.

Short title and collective citation

9. (1) This Act may be cited as the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015.
- (2) The Central Bank Acts 1942 to 2014, the Central Bank (Amendment) Act 2015 and this Act (other than *section 8*) may be cited together as the Central Bank Acts 1942 to 2015.