



Number 13 of 2009

**FINANCIAL SERVICES (DEPOSIT GUARANTEE SCHEME)
ACT 2009**

ARRANGEMENT OF SECTIONS

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SCHEDULE

AMENDMENTS TO CENTRAL BANK ACT 1942

[No. 13.] *Financial Services (Deposit Guarantee [2009.]
Scheme) Act 2009.*

ACTS REFERRED TO

Building Societies Act 1989	1989, No. 17
Central Bank Act 1942	1942, No. 22
Central Bank Act 1971	1971, No. 24
Central Bank and Financial Services Authority of Ireland Act 2003	2003, No. 12
Credit Union Act 1997	1997, No. 15
European Communities (Amendment) Act 1993	1993, No. 25
Markets in Financial Instruments and Miscellaneous Provisions Act 2007	2007, No. 37



Number 13 of 2009

**FINANCIAL SERVICES (DEPOSIT GUARANTEE SCHEME)
ACT 2009**

AN ACT TO PROVIDE FOR THE MAKING OF REGULATIONS REGARDING THE AMOUNT PAYABLE TO A PERSON MAINTAINING ELIGIBLE DEPOSITS WITH A CREDIT INSTITUTION; TO PROVIDE FOR THE MAINTENANCE OF THE DEPOSIT PROTECTION ACCOUNT BY THE CENTRAL BANK AND FINANCIAL SERVICES AUTHORITY OF IRELAND; TO PROVIDE FOR THE MAINTENANCE BY CREDIT INSTITUTIONS OF DEPOSITS IN THE DEPOSIT PROTECTION ACCOUNT; TO PROVIDE FOR THE AMOUNT OF THE DEPOSIT AND ITS VARIATION; TO GIVE FURTHER EFFECT TO DIRECTIVE 94/19/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 30 MAY 1994 ON DEPOSIT GUARANTEE SCHEMES; TO AMEND THE CENTRAL BANK ACT 1942 AND TO PROVIDE FOR RELATED MATTERS.

[18th June, 2009]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act—

Definitions.

“Bank” means the Central Bank and Financial Services Authority of Ireland;

“credit institution” means—

- (a) a credit union,
- (b) a building society incorporated under the Building Societies Act 1989 (No. 17 of 1989), or deemed by section 124(2) of that Act to be so incorporated, that is authorised to accept deposits under section 27 of that Act, or
- (c) a bank licensed under section 9 of the Central Bank Act 1971 (No. 24 of 1971);

“credit union” means a society registered as such under the Credit Union Act 1997 and includes a society deemed to be so registered by virtue of section 5(3) of that Act;

[No. 13.] *Financial Services (Deposit Guarantee [2009.] Scheme) Act 2009.*

“Deposit Guarantee Regulations” means the European Communities (Deposit Guarantee Schemes) Regulations 1995 (S.I. No. 168 of 1995) or any regulations replacing those regulations;

“Directive” means Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit guarantee schemes¹ or any directive amending or replacing that Directive;

“eligible deposit” has the same meaning as in the Deposit Guarantee Regulations;

“Minister” means the Minister for Finance.

Amount of coverage in respect of eligible deposits.

2.—Where the Minister—

- (a) makes regulations to give effect to the Directive, and
- (b) after consulting with the Bank, considers it necessary in the public interest and in the interest of the proper and orderly regulation of credit institutions to make those regulations in accordance with this section,

until 31 December 2010 the Minister may by those regulations prescribe, as the amount of coverage to be provided for the aggregate deposits of a person maintaining a deposit with a credit institution, an amount greater than the minimum amount necessary to be prescribed from time to time to give effect to the Directive as adjusted under Article 7(7) of the Directive.

Deposit protection account.

3.—The account established and maintained by the Bank immediately before the coming into operation of this section and known as the deposit protection account shall continue to be maintained by the Bank and to be known by that name.

Amount to be maintained in deposit protection account.

4.—(1) A credit institution shall not carry on the business of a credit institution unless it maintains on deposit with the Bank in the deposit protection account—

- (a) such amount as may be prescribed from time to time by the Minister by regulations made in accordance with *subsection (3)*, or
- (b) where a notification is received by a credit institution under *subsection (6)* of a variation under *subsection (2)*, the amount specified therein.

(2) (a) The Minister may, in accordance with *subsection (3)*, by written instrument vary the amount prescribed under *subsection (1)* in respect of a credit institution or credit institutions or a class or classes of credit institution.

- (b) The Minister may amend or revoke a variation made under this subsection.

(3) Where the Minister proposes to make regulations under *subsection (1)* or a variation under *subsection (2)*, he or she—

- (a) shall consult with the Bank,

¹ OJ No. L135, 31.5.1994, p.1

(b) shall have regard to such advice as the Bank may give in respect to the matters specified in *subsection (4)*, and

(c) may have regard to such other matters as he or she or the Bank considers appropriate.

(4) The matters in respect of which the Bank may advise the Minister for the purposes of *subsection (3)* relating to a credit institution or credit institutions or a class or classes of credit institution include the following:

(a) the nature, scale and complexity of the business and the associated level of risk;

(b) the level of capital and liquidity;

(c) the adequacy of internal controls, including procedures relating to risk management and mitigation and arrangements for financial stabilisation;

(d) the capacity to fund the proposed deposit.

(5) A variation under *subsection (2)* shall be notified in writing by the Minister to the Bank.

(6) The Bank shall notify in writing the credit institution or credit institutions concerned of a variation under *subsection (2)* as soon as practicable after receiving a notification under *subsection (5)*.

(7) A variation under *subsection (2)* shall take effect from the date specified in the relevant instrument.

(8) The Bank may settle the amount of a deposit by a credit institution in the deposit protection account at the nearest round figure in hundreds of euro.

(9) The Bank shall determine from time to time—

(a) the rate at which deposits by credit institutions in the deposit protection account shall carry interest, and

(b) the manner in which, and the time or times at which, that interest is payable.

5.—(1) The amount of the deposit by a credit institution in the deposit protection account under *section 4* shall, after the initial calculation, be recalculated annually by the Bank for each credit institution or class of credit institutions by reference to the returns made by credit institutions at the direction of the Bank.

Annual
recalculation of
amount of deposit.

(2) The amount of the deposit shall, where necessary, be amended to the appropriate amount recalculated under *subsection (1)*, by the credit institution concerned, not later than 7 days, or such longer period as the Bank may agree in writing, after the date of receipt by it of notification in writing from the Bank of the amount required to effect the amendment.

6.—(1) Any charge purported to be created, other than by the Bank, on a deposit by a credit institution in the deposit protection account is void.

Charges, etc., on
deposit protection
account.

(2) A deposit by a credit institution in the deposit protection account shall not be subject to any form of execution in satisfaction of any claim, or any judgment, 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 Deposit Guarantee Regulations.

Aggregate payment to deposit protection account by credit unions.

7.—A group or groups of credit unions may, subject to the prior approval of the Minister, make an aggregate payment or payments on behalf of each credit union which is a member of such a group in satisfaction of the amount of a deposit in the deposit protection account.

Reimbursement from Central Fund of certain payments by Bank.

8.—(1) If the Bank charges on the deposit protection account any payment out of the Bank's own funds in accordance with the Deposit Guarantee Regulations, the amount of the payment shall, with the approval of the Minister, be repaid to the Bank out of the Central Fund or the growing produce of that Fund within 3 months.

(2) Any amount paid out of the Central Fund to the Bank under *subsection (1)* shall be repaid to the Central Fund from the deposit protection account (with interest at the rate or rates that the Minister determines, or without interest).

(3) The Minister shall determine the period over which the payment required by *subsection (2)* is to be made, taking account of the amount owing and the ability of the deposit protection account to make that repayment.

Offence and penalty.

9.—(1) A person who contravenes *section 4(1)* commits an offence and is liable—

- (a) on summary conviction, to a fine not exceeding €5,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €250,000 or, at the discretion of the court, to imprisonment for a term not exceeding 3 years, or both.

(2) Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person, being a director, manager, secretary or other officer of the body corporate, or a person who is purporting to act in such capacity, that person, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(3) Proceedings for a summary offence under this Act may be brought and prosecuted by the Bank.

Regulations.

10.—(1) Every regulation under 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 regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done under the regulation.

(2) Regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

(3) The Deposit Guarantee Regulations may be amended as if made under this Act.

11.—The Central Bank Act 1942 is amended as set out in the Schedule. Amendments to Central Bank Act 1942.

12.—(1) This Act may be cited as the Financial Services (Deposit Guarantee Scheme) Act 2009. Short title and commencement.

(2) *Section 4*, in so far as it applies to credit unions, shall come into operation on such day as the Minister may appoint by order.

SCHEDULE

Section 11.

AMENDMENTS TO CENTRAL BANK ACT 1942

Item (1)	Provision affected (2)	Amendment (3)			
1	Section 33AK(5) (as amended by section 13 of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007)	<p>(a) In paragraph (a), substitute “functions, or” for “functions.”.</p> <p>(b) Insert the following after paragraph (a):</p> <p>“(am) to a deposit guarantee scheme in another Member State of the European Communities (including a state that is a contracting party to the EEA Agreement (within the meaning given by the European Communities (Amendment) Act 1993)) established in accordance with Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit guarantee schemes.”.</p>			
2	Schedule 2 (inserted by section 31 of the Central Bank and Financial Services Authority of Ireland Act 2003)	<p>In Part 2, by deleting the following:</p> <p>“</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="text-align: center;">S.I. No. 168 of 1995</td> <td style="text-align: center;">European Communities (Deposit Guarantee Schemes) Regulations 1995</td> <td style="text-align: center;">The whole instrument</td> </tr> </table> <p>”.</p>	S.I. No. 168 of 1995	European Communities (Deposit Guarantee Schemes) Regulations 1995	The whole instrument
S.I. No. 168 of 1995	European Communities (Deposit Guarantee Schemes) Regulations 1995	The whole instrument			