



An Roinn Airgeadais
Department of Finance

Post Enactment Report

Consumer Protection (Regulation of Credit Servicing Firms) Act 2018

December 2019

Prepared by the Banking Division,
Department of Finance
www.gov.ie/finance

Title: Consumer Protection (Regulation of Credit Servicing Firms) Act 2018

Date of enactment: 24 December 2018¹

Responsibility: Minister for Finance

1. Background

The Consumer Protection (Regulation of Credit Servicing Firms) Act 2018 (the Act) originates from concerns that have arisen in recent years in relation to protections for borrowers being lost when loans were sold by regulated financial service providers to unregulated new owners.

Prior to 2015, the various statutory Codes of Conduct issued by the Central Bank, such as the Consumer Protection Code 2012 and the Code of Conduct on Mortgage Arrears 2013 only applied to **regulated** financial service providers and did not apply to unregulated firms. In 2015, the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 was enacted to address these concerns. The 2015 Act restored protections to borrowers whose loans were sold by making credit servicing a regulated activity and any firms who undertake credit servicing are now required to be authorised by the Central Bank.

The 2018 Act expands the definition of a ‘credit servicing firm’ to include entities that hold the legal title to credit. The Act was introduced as a Private Members’ Bill by Deputy Michael McGrath in 2018. The Government agreed to support the Bill and provided assistance to Deputy McGrath in developing appropriate amendments to the Bill.

2. Policy Objectives of the Act

This Act expanded the definition of a ‘credit servicing firm’ to include entities that hold the legal title to credit granted under a credit agreement and associated ownership activities (i.e. ‘determination of overall strategy for the management and administration of a portfolio of credit agreements’ and the ‘maintenance and control over key decisions relating to the portfolio’). Therefore, if a loan is transferred, the holder of the legal title to the credit must now also be authorised by the Central Bank as a credit servicing firm.

3. Main provisions of the Act

The Act contains 3 sections; these sections amend the definition of credit servicing, set out the transitional arrangements for firms seeking authorisation and provide for Short Title, citation and commencement.

Section 1 - Amendment of section 28 of Central Bank Act 1997

Section 1 amended section 28 of the Central Bank Act 1997 by expanding the existing definition of “credit servicing” to include:

¹ The Act was commenced in its entirety on 21 January 2019, by S.I. No. 3/2019 (Consumer Protection (Regulation of Credit Servicing Firms) Act 2018 (Commencement) Order 2019).

- ownership of legal title to credit and associated ownership activities;
- determination of overall strategy for the management and administration of a portfolio of credit agreements; and
- the maintenance of control over key decisions relating to the portfolio.

If a firm is servicing the portfolio of loans on behalf of a regulated entity, then that credit servicing firm does not need to be separately authorised by the Central Bank of Ireland as a credit servicing firm, as this arrangement is covered under existing rules governing outsourcing arrangements that apply to all regulated financial services firms.

This section also sets out that certain securitisation special purpose entities (SPEs) are excluded from the credit servicing framework irrespective of whether the SPE falls within the definition of a credit servicing firm.

Section 2 - Transitional Arrangements

Section 2 of the Act provided for transitional arrangements for newly in-scope firms by inserting a new section, section 34FA, into the Central Bank Act 1997. Section 34FA sets out that entities seeking authorisation as a credit servicing firm were required to submit an application for authorisation to the Central Bank, within 3 months of the Act coming into operation, in order to continue to engage in the newly regulated activities now falling within the scope of the Act, pending a decision on their application by the Central Bank.

This section also sets out that a loan owner, whilst transitionally regulated, must use an authorised credit servicing firm to carry out any authorised functions other than the functions included in the expanded definition, listed above.

In addition, during the transitional period, the Central Bank may:

- impose conditions or requirements as it considers appropriate that relate to the proper and orderly regulation of credit servicing firms; or
- direct the firm to refrain from carrying on the business of credit servicing for a period of less than 3 months

Section 3 – Short Title, Collective Citation and Commencement

Section 3 is a standard provision, which sets out the Short Title, the collective citation and the commencement provisions. Section 3(3) provides that the Act shall come into operation on such day(s) as the Minister for Finance may appoint by order(s).

4. Update of the Legislative Context

The Act was commenced by Order on 21 January 2019; this meant that loan owners had until 21 April 2019 to submit an application for authorisation to the Central Bank to avail of the transitional arrangements.

The Department of Finance has been advised by the Central Bank that 37 firms have been granted transitional authorisation status under the 2018 Act. Three firms subsequently withdrew their transitional applications.

The Central Bank maintains a Register of Credit Servicing Firms, which is available on its website at:

<http://registers.centralbank.ie/DownloadsPage.aspx>

5. Focus on Implementation and any Unintended Consequences

Authorisation Process

The Department of Finance has been further advised by the Central Bank that it is currently in the process of assessing each of the 34 remaining applications for authorisation. In the interim, these firms are now subject to both the Central Bank's regulatory framework and supervisory oversight and the loan owner is subject to the full suite of consumer protection legislation.

In order to move from transitional to full authorisation status, these 34 firms must pass the Central Bank's robust Authorisation Regime and persons in senior positions within these firms must comply with the Fitness and Probity Regime. Each application will be rigorously assessed on a case-by-case basis to ensure that the applicant has demonstrated that they meet the relevant standards. One of the factors to be considered in this regard includes where the "mind and management" of the firm is located – the firm must demonstrate that key decisions are made within the State, and key functions are located within the State. If any of the firms fail to meet the required standards, they will be obliged to exit the market and would no longer be permitted to carry out any credit servicing activities including loan ownership.

Once the assessment phase of the authorisation process is completed, an applicant will either be granted or refused authorisation and the public register of Credit Servicing Firms will be updated to reflect those firms who have been granted an authorisation.

Credit Servicers and Credit Purchasers (NPL) Directive

In March 2018, the European Commission published a proposed Directive on credit servicers, credit purchasers and the recovery of collateral ("NPL Directive"). The proposed Directive is not consistent with the Consumer Protection (Regulation of Credit Servicing Firms) Act 2018. The difference arises because while the Directive requires the purchasers of performing credit to be regulated which is consistent with our legislation, it does not require the regulation of purchasers of non-performing credit which is not consistent as our legislation requires all holders of credit to be regulated. Negotiations on the NPL Directive are ongoing and trilogues are due to commence next year. When the final version of the Directive is agreed, and based on the current text, Member States will be obliged to adopt and publish, the laws, regulations and administrative provisions necessary to comply with this Directive and apply those provisions from 1 January 2021.

6. Conclusion

The Department for Finance will continue to liaise with the Central Bank as the implementation of the Consumer Protection (Regulation of Credit Servicing Firms) Act 2018 progresses. The Department will assess and consider any implementation or operational issues that may arise.

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