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**Bille an Ombudsman Seirbhísí Airgeadais agus Pinsean,  
2017**  
**Financial Services and Pensions Ombudsman Bill 2017**

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*Meabhrán Mínitheach*  
*Explanatory Memorandum*

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**BILLE AN OMBUDSMAN SEIRBHÍSÍ AIRGEADAIS AGUS  
PINSEAN, 2017  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN BILL  
2017**

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**EXPLANATORY MEMORANDUM**

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**Purpose of the Bill**

The purpose of the Bill is to:

- a) provide for the establishment of the Office of the Financial Services and Pensions Ombudsman
- b) provide for the appointment of persons to be the Ombudsman and Deputy Ombudsman
- c) extend the time limits for consumer complaints in relation to long term financial services
- d) to provide for the dissolution of the Financial Services Ombudsman Council, the Financial Services Ombudsman's Bureau and the office of the Pensions Ombudsman
- e) provide for the repeal of certain provisions of the Central Bank Act 1942 and the Pensions Act 1990; and to provide for related matters.

**Main Provisions of the Bill**

*Part 1*

*Preliminary and General*

*Section 1 - Short title and commencement*

*Section 1* is a standard provision giving the title of the Bill and when it will come into effect.

*Section 2 - Interpretation*

*Section 2* contains a number of definitions of terms used throughout the Bill. In particular it defines the term 'consumer' as meaning in general terms individuals, small businesses, charities and so on.

*Section 3 - Expenses*

*Section 3* outlines a standard provision relating to expenses incurred by the Minister for Finance in the administration of the Act.

Expenses incurred by the Ombudsman in the performance of his or her functions will be part funded by a financial services industry levy.

*Section 4 - Regulations*

*Section 4* gives the Minister for Finance the power to make regulations under the Act in respect of certain specified matters, and contains the parameters within which such powers can be exercised. The Minister may also make regulations at the request of the Ombudsman.

This section also provides the Council and the Ombudsman with an advisory role on the making of regulations by the Minister for Finance.

*Section 5 - Repeals and revocations*

*Section 5* provides for the repeal of enactments and the revocation of statutory instruments as set out in Schedule 1.

*Part 2*

*Establishment of Office of Ombudsman and Deputy Ombudsman*

*Section 6 - Establishment day*

*Section 6* provides that the Minister will appoint a day as the establishment day for the Financial Services and Pensions Ombudsman for the purposes of this Act.

*Section 7- Establishment of Office of Financial Services and Pensions Ombudsman*

*Section 7* establishes the newly entitled Office of the Financial Services and Pensions Ombudsman. This Office will consist of the Financial Services and Pensions Ombudsman, the Deputy Financial Services and Pensions Ombudsman and the staff members, on a date to be appointed by the Minister.

*Section 8 - Appointment of Ombudsman and Deputy Ombudsman*

*Section 8* provides for the appointment of the Financial Services and Pensions Ombudsman and the Deputy Financial Services and Pensions Ombudsman by the Minister (having consulted with the Minister for Social Protection) following a public competition as set out in the section. The term of office will not exceed five years.

*Section 9 - Membership of either House of Oireachtas or European Parliament*

*Section 9* provides that the Ombudsman or Deputy Ombudsman will cease their duties if they become nominated to be a member of the Seanad, elected to the Houses of Oireachtas, or European Parliament. It also states that where a member of staff is nominated to be a member of the Seanad or elected to the Houses of Oireachtas, or European Parliament, they will be seconded from their employment with no salary.

*Section 10 - Acting Ombudsman*

*Section 10* provides for the Deputy Ombudsman to act as Ombudsman during certain absences of the Ombudsman, and sets out the terms of this acting up appointment.

*Section 11 - Removal or resignation of Ombudsman and Deputy Ombudsman*

*Section 11* provides the Minister with powers to remove the Ombudsman and Deputy Ombudsman from office in certain circumstances such as ill-health or misbehaviour.

*Section 12 - Functions of Ombudsman*

*Section 12* sets out the main functions of the Ombudsman (to deal with complaints under the Act). It further empowers the Office to make submissions to Government upon its own initiative or at the request of the Minister. The section also empowers the Office to make guidelines in relation to its complaints procedures.

*Section 13- Functions of Deputy Ombudsman*

*Section 13* empowers the Deputy Ombudsman to carry out functions of the Ombudsman where same has been delegated to him/her.

*Section 14 - Salary and superannuation*

*Section 14* provides for the remuneration and superannuation of the Ombudsman and the Deputy Ombudsman.

*Section 15 - Staff of Ombudsman*

*Section 15* sets out provisions in relation to the staff of the Ombudsman.

*Section 16 - Consultants and advisers*

*Section 16* allows the Ombudsman to engage experts where required with the approval of the Minister for Finance and the consent of the Minister for Public Expenditure and Reform.

*Section 17 - Confidential information*

*Section 17* creates an offence where a person discloses information acquired whilst performing duties of the Office.

*Section 18 - Exchange of information*

*Section 18* allows for the transfer of information between the Ombudsman and the Pensions Authority and the Central Bank of Ireland as appropriate. The Ombudsman may make recommendations to the Central Bank, the Registrar of Credit Unions or the Pensions Authority in relation to measures that those bodies might take in order to effectively deal with persistent patterns of complaints and so on. *Section 18* also allows the Ombudsman and the Bank to enter into a memorandum of understanding.

*Section 19 - Annual estimates of income and expenditure*

*Section 19* provides that the Ombudsman is to prepare an annual estimate of income and expenditure to be approved by the Council no later than 3 months before the beginning of the financial year.

*Section 20 - Accounts and audit*

*Section 20* provides that the Ombudsman will be subject to audit by the Comptroller and Auditor General; that the audits are to be provided to the Minister for Finance, and to be laid before the Houses of the Oireachtas.

*Section 21 - Accounting records*

*Section 21* provides that the Ombudsman is to keep proper accounting records.

*Section 22 - Accountability of Ombudsman to Public Accounts Committee*

*Section 22* provides for the Ombudsman to appear before the Committee of Public Accounts as and when requested.

*Section 23 - Accountability of Ombudsman to other Oireachtas Committees*

*Section 23* provides for the Ombudsman to appear before Oireachtas Committees as and when requested.

*Section 24 - Annual report of the Ombudsman*

*Section 24* provides that the Ombudsman is to prepare an annual report on the performance of the functions of the Ombudsman during that year, submit the report to the Council and the Minister for Finance and the Minister for Social Protection and shall arrange for it to be laid before the Houses of the Oireachtas.

*Section 25 - Publication of certain other reports*

*Section 25* provides that within 3 months after the end of each financial year, the Ombudsman shall publish a report containing:

- (i) a summary of all complaints made to the Ombudsman during the preceding financial year

- (ii) a review of trends and patterns in the making of complaints to the Ombudsman
- (iii) the breakdown of the manner in which all complaints submitted were dealt with
- (iv) a summary of the outcome of all investigations concluded or terminated, including details on those complaints that were settled.

The section also provides that the Financial Services and Pensions Ombudsman can publish and prepare certain other reports in relation to their activities as the Ombudsman considers appropriate (including the naming and shaming of financial service providers in certain circumstances).

*Section 26 - Strategic plan*

*Section 26* provides that the Ombudsman is to prepare a strategic plan to be approved by the Council.

*Part 3*

*Dissolutions and Transfers of Functions to Financial Services and Pensions Ombudsman*

*Section 27 - Dissolution of bodies*

*Section 27* dissolves the Financial Services Ombudsman's Bureau, the Financial Services Ombudsman Council and the office of the Pensions Ombudsman on the establishment day.

*Section 28 - Transfer of functions*

*Section 28* transfers the functions that were vested in the Financial Services Ombudsman or the Pensions Ombudsman to the Financial Services and Pensions Ombudsman on the establishment day.

*Section 29 - References in enactments*

*Section 29* provides that any reference made to the dissolved bodies and previous appointments in existing legislation will now be read as referring to the new bodies such as the Office, to the Council or to the Ombudsman where appropriate.

*Section 30 - Transfer of land and other property*

*Section 30* provides for the transfer of all lands and all property from the dissolved bodies to the Financial Services and Pensions Ombudsman.

*Section 31 - Transfer of rights and liabilities, and continuation of leases, licences and permissions granted by the dissolved bodies*

*Section 31* provides for the transfer of rights and liabilities, continuation of leases, licences and permissions from the dissolved bodies to the Financial Services and Pensions Ombudsman Office.

*Section 32 - Liability for loss occurring before establishment day*

*Section 32* provides that any claims, legal proceedings or settlements that relate to the dissolved bodies before establishment day, will continue after establishment day and lie against the newly established structures and not the dissolved body concerned.

*Section 33 - Provisions consequent upon the conferral of functions on, or transfer of assets and liabilities*

*Section 33* provides for certain provisions consequent upon the conferral of functions on, or transfer of assets and liabilities to, the Financial Services and Pensions Ombudsman. For instance, instruments made by the dissolved bodies shall have effect as if made by the Financial Services and Pensions Ombudsman.

*Section 34 - Records of dissolved bodies*

*Section 34* allows for the transfer of records held by the relevant former bodies to the new bodies on establishment day.

*Section 35 - Transfer of staff to office of Ombudsman*

*Section 35* provides for the transfer of staff to the Ombudsman.

*Section 36 - Final accounts and final annual report of dissolved bodies*

*Section 36* provides that the Ombudsman shall prepare final accounts of each of the dissolved bodies and submit the accounts to the Comptroller and Auditor General for audit and to the Minister for Finance and Minister for Social Protection.

*Part 4*

*Financial Services and Pensions Ombudsman Council*

*Section 37 - Establishment of Council*

*Section 37* provides for the set up and structure of the Financial Services and Pensions Ombudsman Council (Council). Members of the Council are to be appointed by the Minister for Finance following a public competition process. The appointment of a member with pensions experience is made by the Minister for Finance, following a nomination from the Minister for Social Protection. The Council will have seven members, six ordinary and a chair (appointed by the Minister for Finance). The tenure of members will be five years, reappointment is a matter for the Minister for Finance.

*Section 38 - Chairman and members of Financial Services Ombudsman Council*

*Section 38* provides that the Chairman (and members) of the Financial Services Ombudsman Council will become the chairman (and members) of the new Council upon establishment day.

*Section 39 - Financial Services Ombudsman Council*

*Section 39* provides for the functions that were carried out by the Financial Services Ombudsman Council will be deemed to have been carried out by the Financial Services and Pensions Ombudsman Council once the legislation is enacted.

*Section 40 - Functions of Council*

*Section 40* sets out in detail the functions and powers of the Council, including the power to set the financial services industry levy.

*Section 41 - Accountability of chairperson of Council to Oireachtas Committees*

*Section 41* provides that the Chair of the Financial Services and Pensions Ombudsman Council is to appear before Oireachtas Committees as and when requested.

*Section 42 - Annual report of the Council*

*Section 42* outlines that the chairperson of the Council must prepare a report on the work of the Council in respect of each financial year.

*Section 43 - Financial services industry levy*

*Section 43* provides for the funding of the Ombudsman by way of a levy from the financial services industry (in respect of complaints related to financial services). This section gives the Council the power to prescribe the levies from the financial services industry, once agreed by the Minister for Finance, collect the levies, determine who pays the levies, and how much, keep records of payment, and penalise in cases of non-payment.

## Part 5

### Complaints to the Ombudsman

#### *Section 44 - Making of complaints*

*Section 44* provides for the various types of complaints that may be made to the Ombudsman. A complainant can complain about the conduct relating to:- provision of financial services; offer of financial services; failure to provide financial services; financial loss or dispute in relation to certain pensions or any complaint received by the Ombudsman before establishment day that was outside the applicable time limits at that time and now falls within the time limits specified in section 51.

#### *Section 45 - Death or disability of complainant*

*Section 45* sets out the procedures for dealing with a complaint where an eligible consumer, or an actual or potential beneficiary dies, or is a minor or is otherwise unable to act for himself or herself (claim may be brought by other appropriate persons).

#### *Section 46 - Continuation of investigation on death of complainant*

*Section 46* allows the Ombudsman to continue an investigation on the death of a complainant if it was received by the Ombudsman before or after establishment day.

#### *Section 47 - Powers of Ombudsman in relation to investigation of complaint*

*Section 47* provides for the conduct of investigations into a complaint and the powers of the Ombudsman. The Ombudsman retains the powers of a High Court Judge in carrying out investigations.

#### *Section 48 - Investigation by Ombudsman of complaints made before establishment day*

*Section 48* allows the Ombudsman to conduct investigations in relation to complaints that are in the system before establishment day including those refused as being outside the previous time limits.

#### *Section 49 - Staying of court proceedings*

*Section 49* sets out the arrangements where a complaint has been made or a dispute referred to the Ombudsman and any party to the complaint subsequently commences proceedings in a court against any other party to the complaint then any party may apply to the court to stay the proceedings.

## Part 6

### Complaints Procedure

#### *Section 50 - Jurisdiction of Ombudsman*

*Section 50* sets out matters in relation to the jurisdiction of the Ombudsman. Where there is a dispute, the Ombudsman has responsibility for deciding.

#### *Section 51 - Time limits for complaints to Ombudsman*

*Section 51* provides for the various types of complaints that may be made to the Ombudsman and the time limits for each complaint. The proposed new time limit has two parts:

- *for short term financial services*, no change to the time limits are proposed. That is, the current six year time limit will apply to complaints and complaints must be made six years from the date of the act or the conduct giving rise to the complaint.



- *for all pension products, and for longer term financial services* (where the duration of the service is 5 years and one month, or more, and not subject to annual renewal or cancellable unilaterally) complaints can be made:
  - i) six years from the date of the act or conduct giving rise to the complaint or
  - ii) three years from the earlier of the following two dates:
    - a. the date on which the person making the complaint first became aware of the said act or conduct, and
    - b. the date on which that person ought to have become aware of that act or conduct.
  - iii) within such longer period as the Ombudsman may allow where it appears to him or her that there are reasonable grounds for requiring a longer period and that it would be just and equitable, in all the circumstances, to so extend the period

The new time limits for long term financial services will apply to complaints made to the Ombudsman about conduct that occurred during or after 2002 and the service in which complaint is about must not have expired or otherwise been terminated more than six years before the date of complaint.

*Section 52 - Declining to investigate*

*Section 52* sets out the circumstances in which the Ombudsman can decline to investigate a complaint or can discontinue an investigation of a complaint.

*Section 53 - Complaints declined by Ombudsman*

*Section 53* is a transitional provision that provides the Ombudsman with the power to decline to investigate complaints in accordance with section 52 received on or after establishment day, or complaints that were received by either of the dissolved bodies before establishment day where a decision by the Ombudsman has not already been made.

*Section 54 - Use of internal dispute resolution procedures*

*Section 54* provides that the Ombudsman shall not investigate a complaint where the complainant has not given the financial services or pension provider an opportunity to deal with the complaint through the internal dispute resolution procedures. Where a complaint or dispute is being dealt with by a provider's internal dispute resolution procedure, the applicable limitation period is suspended for the period during which the complaint is being considered under the internal dispute resolution process.

*Section 55 - Requirement for internal dispute resolution procedures*

*Section 55* provides the Minister with the power to make financial service providers and pension providers establish internal dispute resolution procedures, by means of regulations. Examples of the type of regulations that the Minister may make are set out under this section.

*Section 56 - Conduct of investigation*

*Section 56* sets out the rules of procedure with respect to the conduct of investigations.

*Section 57 - Complaints for investigation by Ombudsman*

*Section 57* is a transitional provision that provides the Ombudsman with the power to investigate complaints as per the procedures set out in section 55, for complaints received on or after establishment day, or complaints that were received by either of the dissolved bodies before establishment day where a decision by the Ombudsman has not already been made.

*Section 58 - Mediation*

*Section 58* sets out how the mediation process will work.

*Section 59 - Obstruction of work of Ombudsman*

*Section 59* sets out the provisions in respect of obstruction of the business of the Ombudsman, including failure to comply with a requirement to appear in an examination or refuse to be examined.

*Section 60 - Adjudication of complaints and redress: financial service providers*

*Section 60* sets out the procedure where, on completion an investigation of a complaint that has not been settled or withdrawn, the Ombudsman shall make a finding in writing. The Ombudsman will also now be required to set out the rationale for his or her determination and the basis for compensation.

*Section 61 - Adjudication of complaints and redress: pensions providers*

*Section 61* sets out the procedure where, on completion an investigation of a complaint that has not been settled or withdrawn, the Ombudsman shall make a finding in writing. The Ombudsman will also now be required to set out the rationale for his determination and the basis for compensation.

*Section 62 - Decisions of Ombudsman*

*Section 62* states that decisions are binding on all parties to the complaint. The Ombudsman will now also be required to publish anonymised determinations in order to improve the understanding by the public and industry of determinations. The Ombudsman may also publish a report in relation to any investigation.

*Part 7*

*Appeals and Applications to Court*

*Section 63 - Definitions (Part 7)*

*Section 63* defines what a ‘decision’ and ‘direction’ means, for the purpose of this Part.

*Section 64 - Appeals*

*Section 64* provides for an appeals process for the complainant or the service provider, and such an appeal is to the High Court.

*Section 65 - Enforcement of Ombudsman decision*

*Section 65* sets out rules in relation to the enforcement of the Ombudsman’s decisions.

*Section 66 - Questions of law to High Court*

*Section 66* provides that the Ombudsman may, on that Ombudsman’s own initiative or at the request of the complainant or the regulated financial service provider or pensions provider concerned, refer for the opinion of the High Court a question of law arising in relation to the investigation or adjudication of the complaint.

If a question of law has been referred to the High Court under this section, the Ombudsman may not –

- (a) make a finding to which the question is relevant while the reference is pending, or
- (b) proceed in a manner, or make a decision, that is inconsistent with the opinion of the High Court on the question.

*Section 67 - Appeal of Ombudsman decision*

*Section 67* includes a transitional provision to allow appeals to the High Court of decisions by the Ombudsman before establishment day that name the dissolved bodies to now be named as the Financial Services and Pensions Ombudsman.

*Section 68 - Application to Circuit Court*

*Section 68* includes a transitional provision to allow applications to the Circuit Court before establishment day that name the Financial Services Ombudsman, the Pensions Ombudsman or any of the dissolved bodies will be read as applications by the Office, on and after establishment day.

*Section 69 - Application to District Court*

*Section 69* includes a transitional provision to allow applications to the District Court before establishment day that named the Financial Services Ombudsman, the Pensions Ombudsman or any of the dissolved bodies to now be read as an application by the Office.

*Section 70 - Conviction*

*Section 70* includes a transitional provision to allow appeals against convictions before establishment day that name the Financial Services Ombudsman, the Pensions Ombudsman or any of the dissolved bodies to now be read as application by the Office.

*Section 71 - Enforcement proceedings*

*Section 71* includes a transitional provision to allow applications for enforcement order that was made before establishment day that name the office of the Pensions Ombudsman to now be read as application by the Office.

*Section 72 - Power of court to grant injunctions in certain cases*

*Section 72* allows the Ombudsman to seek an injunction in the High Court to restrain conduct in which a financial service provider or pension provider is engaging or appears likely to engage, where that conduct is being investigated or is proposed to be investigated.

*Part 8*

*Other Transitional Provisions*

*Section 73 - Saving of regulations made by former Council*

*Section 73* provides for regulations made by the dissolved Financial Services Ombudsman Council to have the same force and effect on establishment day.

*Section 74 - Financial Services Ombudsman's Bureau*

*Section 74* provides that the functions of the dissolved Financial Services Ombudsman's Bureau will be transferred to the Office upon establishment day.

*Part 9*

*Consequential Amendments*

*Section 75 - Amendment of Central Bank Act 1942*

*Section 75* makes consequential amendments to the *Central Bank Act 1942*.

*Section 76 - Amendment of Freedom of Information Act 2014*

*Section 76* makes consequential amendments to the Freedom of Information Act 2014.

*Part 10*

*Miscellaneous*

*Section 77 - Ombudsman and Council to co-operate with regulatory authorities and others*

*Section 77* provides for co-operation, as well as the exchange of information, between the Ombudsman and the regulatory bodies of the Central Bank of Ireland, the Registrar of Credit Unions and the Pensions Authority. It also empowers the Ombudsman to enter in to Memorandums of Understanding with these bodies.

*Section 78 - Reciprocal arrangements with EEA countries*

*Section 78* empowers the Financial Services and Pensions Ombudsman to partake in the Memorandum of Understanding on a Cross-border Out-of-court Complaints Network for Financial Services in the European Economic Area.

*Schedule 1*

Schedule 1 sets out a list of legislation (Acts and Statutory Instruments) to be repealed and revoked.

*Schedule 2*

Schedule 2 sets out provisions in relation to the Financial Services and Pensions Ombudsman Council.

*An Roinn Airgeadais,*

*Bealtaine, 2017.*