



STATUTORY INSTRUMENTS.

S.I. No. 201 of 2019



FINANCIAL SERVICES AND PENSIONS OMBUDSMAN ACT 2017
[FINANCIAL SERVICES AND PENSIONS OMBUDSMAN COUNCIL]
FINANCIAL SERVICES INDUSTRY LEVY REGULATIONS 2019

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The Financial Services and Pensions Ombudsman Council, in exercise of the powers conferred on the Council by section 43(4) of the Financial Services and Pensions Ombudsman Act 2017 and with the consent of the Minister for Finance, hereby makes the following Regulations:-

Citation

1. These Regulations may be cited as the Financial Services and Pensions Ombudsman Act 2017 [Financial Services and Pensions Ombudsman Council] Financial Services Industry Levy Regulations 2019.

Commencement

2. These Regulations come into operation on 10 May 2019.

Definitions

3. In these Regulations—

“Act” means the Financial Services and Pensions Ombudsman Act 2017;

“Bank” means the Central Bank of Ireland;

“Council” means the Financial Services and Pensions Ombudsman Council;

“Chairperson” means the Chairperson for the time being of the Council;

“Credit Institutions Register” means the Credit Institutions Register as published from time to time by the Central Bank;

“Due date” means the date specified as the due date in the levy notice;

“Financial Service Provider” means a financial service provider as defined in Section 2 of the Act;

“Levy” means the financial services industry levy;

“Levy notice” means notice sent by the Office in accordance with Regulation 5;

“Levy period” means the period prescribed in Regulation 4(b) and in the Schedule in respect of which financial service providers are obliged to pay the required levy contributions;

“Office” means the Office of the Financial Services and Pensions Ombudsman;

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 14th May, 2019.*

“Ombudsman” means the Financial Services and Pensions Ombudsman for the time being;

“Required levy contribution” means the levy contribution in Regulation 4;

“Schedule” means the Schedule to these Regulations.

Annual Charge

4. (a) Each financial service provider shall pay to the Office an annual charge, being the required levy contribution, in respect of the services provided by the Ombudsman to the financial services industry, the amount of which is specified in, or calculated in accordance with, that Part of the Schedule that relates to the applicable category or categories for that financial service provider.
- (b) The required levy contribution shall be paid to the Office in respect of the levy period as specified in the Schedule and shall be payable not later than the date set out in the levy notice.

Levy Notice

5. (a) The Office may transmit, or may arrange the transmission of, a levy notice in writing to a financial service provider indicating the required levy contribution assessed by the Office to be payable by that financial service provider for the levy period.
- (b) The Office may require a financial service provider in writing to make an assessment, on the basis of the information in the possession of the financial service provider, of the amount of the required levy contribution to be paid by that financial service provider for the levy period, and to make a return to the Office of such assessment. The Office may indicate what information in respect of what periods any required assessment may be based upon. Where a financial service provider is required to make an assessment and return under this paragraph, the assessment and return must be made within such period, not less than 7 working days, as the Office may require.

Payment of Required Levy Contribution

6. The required levy contribution shall be paid by direct bank transfer or equivalent instantaneous transfer of funds to the bank account specified by the Office, or in such other manner as the Office may direct.

Appeal of Levy Notice

7. (a) A financial service provider who receives a levy notice under paragraph (a) of Regulation 4, may appeal to the Ombudsman, no later than 21 days following the date of issue of a levy notice

by the Office, to change the amount of the levy assessed for that financial service provider where it considers that the amount assessed is incorrect. Any such appeals must be in writing to the Ombudsman, setting out the grounds of the appeal in detail and must be accompanied by the amount of required levy contribution that is not in dispute. Where relevant the appeal should include any supporting documentation or representations. Such a written appeal must be addressed to the Ombudsman.

- (b) The Ombudsman, after considering any such appeal, shall advise the appellant and the Office in writing of his decision and the reason therefor and, where appropriate, any amount of required levy contribution not already paid shall be payable by the financial service provider to the Office within 7 working days after the date of issue of the notification of the decision of the Ombudsman to the appellant.

Interest

8. Where an amount of required levy contribution becomes payable under these Regulations and is not paid by the due date, the financial service provider shall become liable to a penalty of interest on the amount of the required levy contribution outstanding, to be calculated on a simple interest basis. Such interest shall be calculated from the date on which the outstanding amount became payable at the rate for the time being fixed by the Minister for Business, Enterprise and Innovation under Section 10 of the Prompt Payment of Accounts Act, 1997 for each day or part of a day during which the outstanding amount remains unpaid.

Records

- 9. (a) Each financial service provider shall, and shall in accordance with a direction (if any) as may be given by the Office, keep full and true records of all transactions which affect their liability under these Regulations and any related returns made.
- (b) A record kept by a person pursuant to paragraph (a) of this Regulation and, in the case of any such record that has been given by the person to another person, any copy thereof that is in the power or control of the first-mentioned person shall be retained by that person for a period of six years from the date of the last transaction to which the record relates:

Provided that this Regulation shall not apply to records of a company that have been disposed of in accordance with Section 707(1) of the Companies Act, 2014.
- (c) No person shall, in purported compliance with a provision of these Regulations, provide an answer or explanation, make a statement or produce or deliver any return, certificate, balance sheet or other document which is false in a material particular.

- (d) A financial service provider that —
- (i) fails to comply with any requirement under these Regulations to make an assessment;
 - (ii) fails to maintain records in accordance with these Regulations;
 - (iii) in breach of paragraph (c) of this Regulation provides any answer or explanation, or makes a statement or produces or delivers any return certificate, balance sheet or other document that is false; or
 - (iv) otherwise fails to comply with a provision of these Regulations thereby failing to pay, or preventing the collection of, any or all of the required levy contribution or thereby preventing a full and proper assessment of their liability under these Regulations,

shall be subject to a penalty of an amount assessed by the Office under Category L in the Schedule and the Office may send a levy notice to such a financial service provider indicating that basis of assessment.

- (e) In the event of a financial service provider being assessed under Regulation 8(d) of these Regulations and Category [L] of the Schedule —
- (i) any monies already paid by the financial service provider in purported compliance with any provision of these Regulations shall be credited to the financial service provider;
 - (ii) the due date in respect of the required levy contribution under Category [L] shall be determined in accordance with Regulation 4;
- and
- (iii) the financial service provider may appeal to the Ombudsman under Regulation 7.
 - (iv)

Service.

10. Any levy notice, requirement to make an assessment or appeal determination authorised by these Regulations shall be served on a financial service provider-

- (a) if the person is an individual —
- (i) by delivering it to that person, or
 - (ii) by sending it by ordinary pre-paid post addressed to that person at the person's usual or last known place of residence or business, or
 - (iii) by leaving it for that person at that place, or

- (iv) by electronic means to that person's last known e-mail address, evidenced by a valid sent receipt; and
- (b) if the person is a body corporate or an unincorporated body of persons-
 - (i) by sending it to the body by post to, or addressing it to and leaving it at, in the case of a company, its registered office (within the meaning of the Companies Act, 2014) and, in any other case, its principal place of business, or
 - (ii) by electronic means to the last known e-mail address of the Company Secretary, in the case of a company, evidenced by a valid sent receipt.



GIVEN under the Official Seal of the
Financial Services and Pensions
Ombudsman Council
9 May 2019

MAEVE DINEEN,
Chairperson.
Financial Services and Pensions
Ombudsman Council,
Lincoln House,
Lincoln Place,
Dublin 2.

*Schedule***Category A****Credit Institutions**

(i) Each credit institution as registered under Section 1 of the Credit Institutions Register — Authorisations issued to Credit Institutions to carry on banking business in the State under Irish Legislation or Section 2 (a) of the Credit Institutions Register European Credit Institutions authorised in another Member State of the European Economic Area (EEA) and operating in the State either on a branch or a cross-border basis, shall pay, in respect of its liability for the year ended 31 December 2019, a levy calculated at the rate of €0.494 cent per consumer as at 31 December 2018. A minimum levy of €375 is payable by each credit institution.

(ii) Each credit institution as registered under Section 2 (b) of the Credit Institutions Register—Credit Institutions from other Member States of the European Economic Area (EEA) which have notified the Bank of their intention to provide services in the state on a cross-border basis and where a complaint has been lodged against the institution in the previous financial year, shall pay, in respect of its liability for the year ended 31 December 2019, a levy of €375.

(iii) Any other credit institution not registered under the above headings where applicable shall pay, in respect of its liability for the year ended 31 December 2019, a levy calculated at the rate of €0.494 cent per consumer as at 31 December 2018. A minimum levy of €375 is payable by each credit institution.

Category B**Insurance Undertakings**

(i) B1: Each life assurance undertaking shall pay, in respect of its liability for the year ended 31 December 2019, a levy calculated on the basis of a sum no greater than 0.0126% of its total net premiums earned for the year ending 31 December 2017, but excluding Class VII premium income, written on Irish risk business. A minimum levy of €375 is payable by each life assurance undertaking.

(ii) B4: Each non-life insurance undertaking with the exception of captive insurance undertakings shall pay, in respect of its liability for the year ended 31 December 2019, a levy calculated on the basis of a sum no greater than 0.0614% of its total net premiums earned written on Irish risk business for the year ending 31 December 2017 save that, in respect of that portion of the undertaking's net premium income which is derived from accident and health insurance business, the levy in relation to that portion shall be calculated in accordance with paragraph (iii) below. A minimum levy of €375 is payable by each non-life insurance undertaking.

(iii) B8: Each accident and health insurance undertaking (including non-life insurance undertakings providing accident and health insurance) shall

pay, in respect of its liability for the year ended 31 December 2019, a levy calculated on the basis of a sum no greater than 0.022% of its total net premiums earned derived from accident and health risk insurance business for the year ending 31 December 2017. A minimum levy of €375 is payable by each health insurance provider.

Category C

Intermediaries and Debt Management Firms

Intermediaries (including Investment Product Intermediaries and Mortgage Intermediaries who hold authorisations under the Consumer Credit Act 1995 and Mortgage Credit Intermediaries who hold authorisations under the European Union (Consumer Mortgage Credit Agreements) Regulations 2016); Insurance/Reinsurance Intermediaries registered under the EC (Insurance Mediation) Regulations 2005; Debt Management Firms authorised under the Central Bank Act, 1997.

Each intermediary, Debt Management Firm, shall pay, in respect of its liability for the year ended 31 December 2019, a levy calculated on the basis of a sum no greater than 15% of the levy payable to the Bank in 2018. A minimum levy of €125 is payable by each intermediary and debt management firm. Intermediaries who are members of the Society of the Irish Motor Industry (“SIMI”) will not be required to pay the levies stated above in this Category C. The SIMI shall pay a flat rate levy of €12,000 for and on behalf of its members who are intermediaries as described in this Category C, and such a payment will discharge those intermediaries’ obligation to pay a levy pursuant to these Regulations.

Category D

Investment Firms (other than Investment Product Intermediaries)

(Firms regulated under the provisions of either the Investment Intermediaries Act, 1995 or European Union (Markets in Financial Instruments) Regulations 2017 [S.I. No. 375 of 2017] or any amending or replacing legislation).

- D5 Member Firms of the Irish Stock Exchange which have been authorised as an Investment Firm under Regulation 11(1) or deemed authorised under Regulation 6(2) of the European Union (Markets in Financial Instruments) Regulations 2007 or any amending or replacing legislation.

Each of the financial service providers in Category D5 shall pay, in respect of its liability for the year ended 31 December 2019, a levy calculated on the basis of a sum no greater than 18.172% of the annual industry funding levy payable to the Bank by the financial service provider in 2018. A minimum levy of €375 is payable by each provider.

Category F

Credit Unions

Each credit union shall pay, in respect of its liability for the year ended 31 December 2019, a levy calculated on the basis of a sum no greater than

0.00064% of its total assets listed in the last audited accounts as at 30 September 2018 provided to the Ombudsman by the Bank. A minimum levy of €375 is payable by each credit union.

Category G

Moneylenders Approved by the Bank (“Approved Moneylenders”)

Each approved moneylender shall pay, in respect of its liability for the year ended 31 December 2019, a levy calculated on the basis of a sum no greater than 3.4% of the annual industry funding levy payable to the Bank by the approved moneylender in 2018. A minimum levy of €375 is payable by each moneylender.

Category H

Approved Professional Bodies

Each approved professional body shall pay, in respect of its liability for the year ended 31 December 2019, a levy calculated on the basis of a sum no greater than 15% of the annual industry funding levy payable to the Bank by the approved professional body in 2018. A minimum levy of €375 is payable by each body.

Category J

Bureaux de Change

Each provider shall pay, in respect of its liability for the year ended 31 December 2019, a levy of €375.

Category L

Default Assessments

Each financial service provider falling within Regulation 9(d) of these Regulations shall pay a flat rate levy contribution of €3,600.

Category M

Retail Credit Firms, Home Reversion Firms and Credit Servicing Firms

Each firm shall pay, in respect of its liability for the year ended 31 December 2019, a levy of €375.

Category N

Payment Institutions and E-Money Institutions

Each institution shall pay, in respect of its liability for the year ended 31 December 2019, a levy of €375.

Category O

Pawnbrokers

Pawnbrokers that are required to be authorised by the Competition and Consumer Protection Commission under section 8 of the Pawnbrokers Act 1964.

Each pawnbroker shall pay, in respect of its liability for the year ended 31 December 2019, a levy of €375.

Category P

Business Transfers

In the case of a financial service provider that is liable to pay a levy under these Regulations, whose financial services business is transferred to another financial service provider, the transferee financial service provider shall be liable to pay that portion of the levy payable by the transferor regulated entity, which has not been paid, and which is notified to the transferee financial service provider by way of a levy notice.

Category Q

Creditors

Creditors with respect to the performance of his or her obligations under the Consumer Credit Act of 1995 and under—

- (i) a contract for the provision of credit to a consumer, and*
- (ii) any contract of guarantee relating to the provision of that credit.*

Each creditor shall pay, in respect of its liability for the year ended 31 December 2019, a levy of €375.

Category R

Owners of Goods Subject to Hire Purchase

An owner of goods that are subject to hire-purchase under a hire-purchase agreement with respect to the performance of his or her obligations under the Consumer Credit Act of 1995 and under—

- (i) a contract for the hire-purchase, and*
- (ii) any contract of guarantee relating to the hire-purchase agreement or any right to recover the goods from the hirer under the hire-purchase agreement.*

Each owner shall pay, in respect of its liability for the year ended 31 December 2019, a levy of €375.

Category S

Owners of Goods Subject to Consumer Hire

An owner of goods that are subject to a consumer-hire agreement with respect to the performance of his or her obligations under the Consumer Credit Act of 1995 and under—

- (i) a consumer-hire agreement, and*
- (ii) under any contract of guarantee relating to the consumer-hire agreement or any right to recover the goods from the hirer under the consumer-hire agreement.*

Each owner shall pay, in respect of its liability for the year ended 31 December 2019, a levy of €375.

Category T

Mortgage Lender

A mortgage lender within the meaning of section 2 of the Consumer Credit Act of 1995.

Each mortgage lender shall pay, in respect of its liability for the year ended 31 December 2019, a levy of €375.

Category U

Credit Intermediaries

Credit Intermediaries that are required to be authorised by the Competition and Consumer Protection Commission under Part XI of the Consumer Credit Act of 1995.

Each credit intermediary shall pay, in respect of its liability for the year ended 31 December 2019, a levy of €125. Intermediaries already included under Category C and mortgage lender and hire purchase concerns that also operate as credit institutions are not covered by this category.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation).

These Regulations made by the Financial Services and Pensions Ombudsman Council in accordance with Section 43 of the Financial Services and Pensions Ombudsman Act 2017 provide for each financial service provider to be liable to pay an annual levy in respect of the services provided by the Ombudsman to the financial services industry. These Regulations provide for the collection and recovery of the levy and provide for certain obligations in respect of self-assessment and record keeping by financial services providers. These Regulations also provide for the calculation of the required levy contribution payable by each category of financial services provider for the year ended 31 December 2019.

These Regulations may be cited as the Financial Services and Pensions Ombudsman Act 2017 [Financial Services and Pensions Ombudsman Council] Financial Services Industry Levy Regulations 2019.

These Regulations come into operation on 10 May 2019.

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