



Number 25 of 2020

Finance (Miscellaneous Provisions) Act 2020



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FINANCE (MISCELLANEOUS PROVISIONS) ACT 2020

CONTENTS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title

PART 2

AMENDMENT OF CREDIT UNION ACT 1997

2. Definition (Part 2)
3. Amendment of section 2 of Act of 1997
4. Extension of interim period
5. Amendment of section 78 of Act of 1997
6. New sections 78A and 78B inserted into Act of 1997
7. Amendment of section 80 of Act of 1997
8. Notice of rescheduled general meeting
9. Amendment of section 81 of Act of 1997
10. Amendment of section 82 of Act of 1997
11. Proxies
12. Amendment of section 92 of Act of 1997
13. Amendment of section 182 of Act of 1997

PART 3

AMENDMENT OF FISCAL RESPONSIBILITY ACT 2012

14. Amendment of Schedule to Fiscal Responsibility Act 2012

PART 4

AMENDMENT OF CREDIT INSTITUTIONS (STABILISATION) ACT 2010

15. Amendment of section 67 of Credit Institutions (Stabilisation) Act 2010

ACTS REFERRED TO

Credit Institutions (Stabilisation) Act 2010 (No. 36)

Credit Union Act 1997 (No. 15)

Fiscal Responsibility Act 2012 (No. 39)

Health Act 1947 (No. 28)



Number 25 of 2020

FINANCE (MISCELLANEOUS PROVISIONS) ACT 2020

An Act to make provision for the holding of certain meetings of credit unions by remote means; having regard to the risk to human life and public health posed by the disease known as Covid-19, to make exceptional provision in relation to the operation of certain provisions of the Credit Union Act 1997 for a certain period and such further period (if any) as may be specified by order of the Government; to make provision for attendance and voting by proxy at certain meetings of credit unions; for those and other purposes to amend the Credit Union Act 1997; to make certain provision for the term of office of members of the Irish Fiscal Advisory Council and for that purpose to amend the Fiscal Responsibility Act 2012; to make provision in relation to certain loan agreements entered into by the State with the European Union and for that purpose to amend the Credit Institutions (Stabilisation) Act 2010; and to provide for related matters.

[16th December, 2020]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title

1. This Act may be cited as the Finance (Miscellaneous Provisions) Act 2020.

PART 2

AMENDMENT OF CREDIT UNION ACT 1997

Definition (*Part 2*)

2. In this Part “Act of 1997” means the Credit Union Act 1997.

Amendment of section 2 of Act of 1997

3. Section 2 of the Act of 1997 is amended—
 - (a) in subsection (1)—

- (i) in the definition of “special resolution”, by the insertion of “or, subject to the rules of the credit union, by proxy” after “in person”, and
- (ii) by the insertion of the following definitions:

“ ‘Covid-19’ means a disease caused by infection with the virus SARS-CoV-2 and specified as an infectious disease in accordance with Regulation 6 of, and the Schedule to, the Infectious Diseases Regulations 1981 (S.I. No. 390 of 1981) or any variant of the disease so specified as an infectious disease in those Regulations;

‘interim period’ means—

- (a) the period beginning on the date of the passing of the *Finance (Miscellaneous Provisions) Act 2020* and ending on 30 April 2021, and
- (b) such other period (if any) as may be specified by order under section 3A;”,

- (b) by the substitution of the following subsection for subsection (2):

“(2) Any reference in this Act to a member present at a meeting means—

- (a) in the case of a member who is not a natural person, being represented at the meeting by a representative, as mentioned in section 82(4), and
- (b) in the case of a member who has appointed a proxy under section 82A, being represented at the meeting by such proxy.”,

and

- (c) by the insertion of the following subsection after subsection (2) (as amended by paragraph (b)):

“(2A) Any reference in this Act to a member present and voting at a general meeting shall be construed as including a reference to a member in attendance and voting at a general meeting conducted wholly or partly by the use of electronic communications technology (within the meaning of section 78A).”.

Extension of interim period

4. The Act of 1997 is amended by the insertion of the following section after section 3:

“3A. The Government may, at the request of the Minister made after consultation with the Minister for Health, from time to time, by order extend the interim period, either generally or with reference to any particular purpose or provision, for such period as they consider appropriate if they are satisfied that, having regard to—

- (a) the threat to public health presented by Covid-19,

- (b) the highly contagious nature of that disease,
 - (c) the need to restrict the movement of persons in order to prevent the spread of the disease among the population and the effect that such restriction may have on travel and meetings, and
 - (d) the need to mitigate the economic effects arising from Covid-19,
- the making of such order is in the public interest.”.

Amendment of section 78 of Act of 1997**5.** Section 78 of the Act of 1997 is amended—

- (a) in subsection (1), by the substitution of “at a time, at a place in the State (where applicable) and in the manner (where applicable)” for “in the State at a time and place”,
- (b) in subsection (2), by the insertion of “and section 78A(2)” after “subsections (3) and (4)”, and
- (c) in subsection (3), by the insertion of “or as provided for by section 78A(2), as the case may be,” after “subsections (1) and (2)”.

New sections 78A and 78B inserted into Act of 1997**6.** The Act of 1997 is amended by the insertion of the following sections after section 78:**“General meetings during interim period**

78A. (1) This section (including any regulations made under section 182(1)(la)) shall apply to the general meetings of a credit union during the interim period only and shall so apply notwithstanding any other provision of this Act or of the rules of the credit union.

- (2) The annual general meeting of a credit union for the financial year ended September 2020 may be held at any time during the interim period.
- (3) A credit union need not hold a general meeting at a physical venue but may conduct the meeting wholly or partly by the use of electronic communications technology as long as all attendees have a reasonable opportunity to participate in the meeting in accordance with this section.
- (4) (a) A credit union may provide for participation in a general meeting by providing or facilitating, for that purpose, the use of electronic communications technology, including a mechanism for casting votes by a member, whether before or during the meeting.
- (b) The mechanism referred to in paragraph (a) shall not require the member to be physically present at the general meeting or require

the member to appoint a proxy who is to be physically present at the meeting.

- (5) The use of electronic communications technology pursuant to subsection (4) may be made subject only to such requirements or restrictions put in place by the credit union as are necessary to ensure the identification of attendees and the security of the electronic communications technology, to the extent that such requirements or restrictions are proportionate to the achievement of those objectives.
- (6) A credit union shall inform attendees, before the general meeting concerned, of any requirements or restrictions which it has put in place pursuant to subsection (5).
- (7) A credit union that provides for the use of electronic communications technology for participation in a general meeting by an attendee shall endeavour to ensure, as far as practicable, that—
 - (a) such technology—
 - (i) provides for the security of any electronic communications by the attendee,
 - (ii) minimises the risk of data corruption and unauthorised access, and
 - (iii) provides certainty as to the source of the electronic communications,
 - (b) in the case of any failure or disruption of such technology, that failure or disruption is remedied as soon as practicable, and
 - (c) such technology enables the attendee to—
 - (i) hear what is said by the chair of the meeting and any person introduced by the chair, and
 - (ii) speak and submit questions and comments during the meeting to the chair to the extent that the attendee is entitled to do so under the rules of the credit union.
- (8) Any temporary failure or disruption of electronic communications technology shall not invalidate the general meeting or any proceedings relating to the meeting.
- (9) Unless such failure or disruption is attributable to any wilful act of the credit union, a credit union shall not be liable in respect of any failure or disruption relating to the equipment used by an attendee to access a general meeting by electronic communications technology that occurs and which failure or disruption prevents or interferes with the attendee's participation, by the use of such technology, in the meeting.

(10) Where, in the opinion of the board of directors, it is deemed necessary—

(a) in order to comply with the public health guidance of the Government or regulations made under sections 5 and 31A of the Health Act 1947 in respect of the movement or gathering of persons for the purposes of preventing, limiting, minimising or slowing the spread of Covid-19, the board of directors may, by resolution, at any time up to the end of the day prior to the day on which a general meeting is to be held and in accordance with section 80A—

(i) cancel the meeting,

(ii) change the venue of the meeting, or

(iii) change the means of holding the meeting (including providing for facilitating attendees to participate in such meeting by the use of electronic communications technology),

or

(b) due to exceptional and unexpected circumstances, the board of directors may, by resolution, cancel a general meeting at any time prior to the holding of the meeting.

(11) In this section and sections 78B, 80, 80A and 82—

‘attendee’, in relation to a general meeting of a credit union, means—

(a) a member of the credit union,

(b) a proxy of a member of the credit union appointed under section 82A,

(c) a representative authorised by a member of the credit union in accordance with section 82(4),

(d) the auditor of the credit union,

(e) the Bank by virtue of section 82(1), or

(f) any other person entitled to attend the meeting by virtue of the provisions of this Act or the rules of the credit union;

‘electronic communications technology’, in relation to a general meeting of a credit union, means technology that enables real time transmission and real time two-way audio-visual or audio communication enabling attendees as a whole with a reasonable opportunity to participate in the meeting using such technology from a remote location;

‘electronic platform’, in relation to a general meeting of a credit union, means an electronic system for the delivery of audio-visual or audio communication, including websites, access software and access

telephone details or any other electronic technology that delivers such communication;

‘general meeting’, in relation to a credit union, includes a meeting that has been rescheduled.

General meetings (other than during interim period)

78B. (1) This section shall not apply to the holding of general meetings during the interim period to which section 78A applies.

(2) A credit union need not hold a general meeting at a physical venue but may conduct the meeting wholly or partly by the use of electronic communications technology as long as all attendees have a reasonable opportunity to participate in the meeting in accordance with this section.

(3) (a) A credit union may provide for participation in a general meeting by providing or facilitating, for that purpose, the use of electronic communications technology, including a mechanism for casting votes by a member, whether before or during the meeting.

(b) The mechanism referred to in paragraph (a) shall not require the member to be physically present at the general meeting or require the member to appoint a proxy who is to be physically present at the meeting.

(4) The use of electronic communications technology pursuant to subsection (3) may be made subject only to such requirements or restrictions put in place by the credit union as are necessary to ensure the identification of attendees and the security of the electronic communications technology, to the extent that such requirements or restrictions are proportionate to the achievement of those objectives.

(5) A credit union shall inform attendees, before the general meeting concerned, of any requirements or restrictions which it has put in place pursuant to subsection (4).

(6) A credit union that provides for the use of electronic communications technology for participation in a general meeting by an attendee shall endeavour to ensure, as far as practicable, that—

(a) such technology—

(i) provides for the security of any electronic communications by the attendee,

(ii) minimises the risk of data corruption and unauthorised access, and

(iii) provides certainty as to the source of the electronic communications,

- (b) in the case of any failure or disruption of such technology, that failure or disruption is remedied as soon as practicable, and
- (c) such technology enables the attendee to—
 - (i) hear what is said by the chair of the meeting and any person introduced by the chair, and
 - (ii) speak and submit questions and comments during the meeting to the chair to the extent that the attendee is entitled to do so under the rules of the credit union.
- (7) Any temporary failure or disruption of electronic communications technology shall not invalidate the general meeting or any proceedings relating to the meeting.
- (8) Unless such failure or disruption is attributable to any wilful act of the credit union, a credit union shall not be liable in respect of any failure or disruption relating to the equipment used by an attendee to access a general meeting by electronic communications technology that occurs and which failure or disruption prevents or interferes with the attendee’s participation, by the use of such technology, in the meeting.
- (9) Where, in the opinion of the board of directors, it is deemed necessary, due to exceptional and unexpected circumstances, the board of directors may, by resolution, cancel a general meeting at any time prior to the holding of the meeting.”.

Amendment of section 80 of Act of 1997

7. Section 80 of the Act of 1997 is amended—

- (a) in subsection (2)—
 - (i) by the substitution of the following paragraph for paragraph (a):

“(a) shall state the date, time, place (where applicable) and manner of holding (where applicable) of the general meeting;”
 - (ii) in paragraph (c), by the substitution of “;” for “; and”
 - (iii) in paragraph (d), by the substitution of “union, and” for “union.”, and
 - (iv) by the insertion of the following paragraph after paragraph (d):

“(e) shall, in the case of a general meeting proposed to be held wholly or partly by the use of electronic communications technology, state—

 - (i) the electronic platform to be used for the meeting,
 - (ii) details for access to the electronic platform,

- (iii) where required by a credit union, the time and manner by which an attendee must confirm his or her intention to attend the meeting,
- (iv) any requirements or restrictions which the credit union has put in place in order to identify attendees who intend to attend the meeting,
- (v) the procedure for attendees to communicate questions and comments during the meeting, and
- (vi) the procedure to be adopted for voting on resolutions proposed to be passed at the meeting.”,

and

- (b) in subsection (4), by the insertion of “and containing such information” after “in such form”.

Notice of rescheduled general meeting

8. The Act of 1997 is amended by the insertion of the following section after section 80:

“**80A.**(1) Notwithstanding section 80 but subject to subsection (2), notice for the purposes of section 78A(10) or 78B(9), as the case may be, shall be given in the same manner as the notice for the general meeting referred to in section 80 but where, in the opinion of the board of directors, giving such notice in that manner is not reasonably practicable, notice shall be given—

- (a) where the credit union has a website, on that website,
- (b) by email to every member for whom the credit union has an email address, and
- (c) in at least one national newspaper published in the State and circulating in the area in which the registered office of the credit union is situated.

- (2) Subsection (1) shall not apply where all members agree in writing to the cancellation, change of venue or change of means of holding the general meeting concerned, or to dispensing with notice for the general meeting.”.

Amendment of section 81 of Act of 1997

9. Section 81 of the Act of 1997 is amended in subsection (2)(a) by the substitution of “paragraphs (a), (b), (d) and (e) of subsection (2)” for “paragraphs (a), (b) and (d) of subsection (2)”.

Amendment of section 82 of Act of 1997

10. Section 82 of the Act of 1997 is amended—

- (a) by the deletion of subsection (3), and
- (b) by the insertion of the following subsection after subsection (5):

“(6) The Minister may, if he or she considers it appropriate, by regulations under section 182, make further provision for all or any of the following in relation to general meetings to be held wholly or partly by the use of electronic communications technology:

- (a) the convening and conduct of the meetings;
- (b) attendance at the meetings;
- (c) access to and participation in the meetings;
- (d) such other matters relating to the meetings as he or she considers appropriate for the purposes of section 78A or 78B, as the case may be.”.

Proxies

11. The Act of 1997 is amended by the insertion of the following section after section 82:

“**82A.**(1) Subject to subsection (3), a credit union may allow in its rules for any member of the credit union entitled to attend and vote at a general meeting of the credit union to be entitled to appoint another person (whether a member or not) as his or her proxy to attend and vote instead of him or her.

- (2) A proxy so appointed shall have the same right as the member to speak at the meeting and to vote on a show of hands and on a poll.
- (3) Unless the rules of the credit union otherwise provide, a member of a credit union shall not be entitled to appoint more than one proxy to attend on the same occasion.
- (4) The instrument appointing a proxy (the ‘instrument of proxy’) shall be in the form provided for in the rules of a credit union and shall be in writing—
 - (a) under the hand of the appointer or of his or her attorney duly authorised in writing, or
 - (b) if the appointer is a body corporate, either under seal of the body corporate or under the hand of an officer or attorney of it duly authorised in writing.
- (5) The instrument of proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority, shall be deposited at the registered office of the

credit union concerned or at such other place within the State as is specified for that purpose in the notice convening the meeting, and shall be so deposited not later than the time specified in subsection (6).

- (6) The time referred to in subsection (5) is—
- (a) 48 hours (or such lesser period as the rules of the credit union may provide) before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or
 - (b) in the case of a poll, 48 hours (or such lesser period as the rules of the credit union may provide) before the time appointed for the taking of the poll.
- (7) The depositing of the instrument of proxy referred to in subsection (5) may, rather than its being effected by sending or delivering the instrument, be effected by communicating the instrument to the credit union by electronic means, and this subsection likewise applies to the depositing of anything else referred to in subsection (5).
- (8) If subsection (5) or (6) is not complied with, the instrument of proxy shall not be treated as valid.
- (9) Subject to subsection (10), a vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the appointer or revocation of the proxy or of the authority under which the proxy was executed.
- (10) Subsection (9) does not apply if notice in writing of such death or revocation as is mentioned in that subsection is received by the credit union concerned at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.
- (11) Subject to subsection (12), if, for the purpose of any meeting of a credit union, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the credit union's expense to some only of the members entitled to be sent a notice of the meeting and to vote at it by proxy, any officer of the credit union who knowingly and intentionally authorises or permits their issue in that manner shall be guilty of an offence.
- (12) An officer shall not be guilty of an offence under subsection (11) by reason only of the issue to a member, at his or her request in writing, of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.”.

Amendment of section 92 of Act of 1997

12. Section 92 of the Act of 1997 is amended, in subsection (6)(b), by the substitution of

“time, place (where applicable) and manner of holding (where applicable)” for “time and place”.

Amendment of section 182 of Act of 1997

13. Section 182 of the Act of 1997 is amended in subsection (1) by the insertion of the following paragraph after paragraph (l):

“(la) making provision with respect to all or any of the matters provided for in section 82(6);”.

PART 3

AMENDMENT OF FISCAL RESPONSIBILITY ACT 2012

Amendment of Schedule to Fiscal Responsibility Act 2012

14. The Schedule to the Fiscal Responsibility Act 2012 is amended in paragraph 2(2) by the substitution of “3 consecutive terms” for “2 consecutive terms”.

PART 4

AMENDMENT OF CREDIT INSTITUTIONS (STABILISATION) ACT 2010

Amendment of section 67 of Credit Institutions (Stabilisation) Act 2010

15. Section 67 of the Credit Institutions (Stabilisation) Act 2010 is amended in subsection (7)—

(a) in paragraph (c), by the deletion of “and”, and

(b) by the insertion of the following paragraph after paragraph (c):

“(ca) the European Union as lender to the State under any loan agreement with the European Union, and”.