



STATUTORY INSTRUMENTS.

S.I. No. 576 of 2021



EUROPEAN UNION (COVERED BONDS) REGULATIONS 2021

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I, PASCHAL DONOHOE, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019¹, hereby make the following regulations:

Citation and Commencement

1. (1) These Regulations may be cited as the European Union (Covered Bonds) Regulations 2021.

(2) These Regulations come into operation on 8 July 2022.

Definition

2. In these Regulations, “Principal Act” means the Asset Covered Securities Act 2001 (No. 47 of 2001).

Amendment of section 3 of Principal Act

3. Section 3 of the Principal Act is amended—

(a) in subsection (1)—

(i) by the insertion of the following definitions:

“ ‘covered bond programme’ means a programme of issues of asset covered securities—

(a) authorised under section 14A, and

(b) in compliance with this Act;

‘Covered Bonds Directive’ means Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019²;

‘extendable maturity structure’ means a mechanism which provides for the possibility of extending the scheduled maturity of asset covered securities for a pre-determined period of time and in the event that a maturity extension trigger, within the meaning of section 29A (including that section as modified in accordance with section 41B) or section 44A, occurs;

‘EBA’ means the European Banking Authority;

¹ O.J. No. L. 328, 18.12.2019, p. 29.

² OJ No. L. 328, 18.12.2019, p. 29.

‘primary assets’ means—

- (a) in respect of the cover assets pool of a designated mortgage credit institution, mortgage credit assets,
- (b) in respect of the cover assets pool of a designated commercial mortgage credit institution, commercial mortgage credit assets, and
- (c) in respect of the cover assets pool of a designated public credit institution, public credit assets;

‘tier 1 creditor’, in relation to a designated or formerly designated credit institution, means all or any of the following persons:

- (a) the holder of an outstanding asset covered security issued by the institution;
- (b) a person (other than the holder) who has rights under or in respect of any such security by virtue of any legal relationship with the holder;
- (c) a person with whom the institution has entered into a cover assets hedge contract, but only if the person is in compliance with the financial obligations imposed under the contract;

‘tier 2 creditor’, in relation to a designated or formerly designated credit institution, means all or any of the following persons appointed in respect of the institution:

- (a) a cover-assets monitor;
- (b) a manager;”

- (ii) by the substitution of the following definition for the definition of “preferred creditor”:

“ ‘preferred creditor’ means all or any of the following persons:

- (a) a tier 1 creditor;
- (b) a tier 2 creditor;”

- (iii) in the definition of “credit institution”—

- (I) by the deletion of paragraph (c), and
- (II) by the substitution of the following paragraph for paragraph (e):

“(e) a credit institution within the meaning of point (1) of Article 4(1) of Regulation (EU) No 575/2013, that is authorised under Article 14 of Council Regulation (EU) No 1024/2013;”

and

- (iv) by the deletion of the definitions of “article 22(4) securities” and “super-preferred creditor”,
and
- (b) by the insertion of the following subsection after subsection (7):
 - “(8) A word or expression which is used in this Act and which is also used in the Covered Bonds Directive has, unless the context otherwise requires, the same meaning in this Act as it has in the Covered Bonds Directive.”.

Amendment of section 4 of Principal Act

- 4. Section 4 of the Principal Act is amended—
 - (a) by the deletion of subsection (4), and
 - (b) in subsection (8), by the deletion of the definition of “securitised”.

Amendment of section 5 of Principal Act

- 5. Section 5 of the Principal Act is amended by the deletion of subsection (2).

Amendment of section 6 of Principal Act

- 6. Section 6 of the Principal Act is amended by the substitution of the following subsection for subsection (1):
 - “(1) The following assets (other than such assets that comprise any pool hedge collateral) are substitution assets for the purposes of this Act:
 - (a) exposures to credit institutions that qualify for credit quality step 1 or credit quality step 2, where those exposures are in the form of short-term deposits referred to in point (c)(i) of Article 129(1) of Regulation (EU) No 575/2013;
 - (b) exposures to credit institutions that qualify for credit quality step 3, where those exposures are in the form of short-term deposits referred to in point (c)(i) of Article 129(1) of Regulation (EU) No 575/2013;
 - (c) any specified kind of property that is for the time being designated by an order made under subsection (3)(a) to be a substitution asset.”.

Amendment of section 9 of Principal Act

- 7. Section 9 of the Principal Act is amended by the insertion of the following subsection after subsection (3):

- “(4) The Authority is designated as the competent authority for the purposes of public supervision of asset covered securities referred to in Article 18(1) of the Covered Bonds Directive.”.

Cooperation an disclosure obligations

8. The Principal Act is amended by the insertion of the following sections after section 11:

“Cooperation obligations

- 11A.** (1) The Authority shall cooperate closely with—
- (a) the competent authorities in other Member States performing the general supervision of credit institutions in accordance with relevant European Union law applicable to those institutions, and
 - (b) the resolution authority concerned in the event of the resolution of a credit institution issuing covered bonds.
- (2) The Authority shall cooperate closely with competent authorities designated in other Member States for the purposes of Article 18(2) of the Covered Bonds Directive, including by providing such competent authorities with any information which is relevant for the exercise of those other authorities’ supervisory tasks under the provisions of national law of the Member State concerned transposing the Covered Bonds Directive.
- (3) Without limitation to the generality of subsection (2), the Authority shall communicate—
- (a) all relevant information at the request of a competent authority referred to in subsection (2), and
 - (b) on its own initiative, any essential information to such a competent authority.
- (4) The Authority shall, for the purposes of the Covered Bonds Directive, cooperate with the EBA or, where relevant, with the European Supervisory Authority (European Securities and Markets Authority), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council.
- (5) In this section ‘essential information’ means information which could materially influence the assessment of the issue of covered bonds in another Member State.

Disclosure obligations

- 11B.** (1) The Authority shall publish the following information on its official website:
- (a) the text of this Act and any other Act relating to the issue of asset covered securities;
 - (b) the text of statutory instruments, if any, relating to the issue of asset covered securities;
 - (c) the text of administrative rules and general guidance, if any, adopted in relation to the issue of asset covered securities;
 - (d) a list of designated credit institutions;
 - (e) a list of asset covered securities that are entitled to use the label ‘European Covered Bond’;
 - (f) a list of asset covered securities that are entitled to use the label ‘European Covered Bond (Premium)’.
- (2) A designated credit institution shall, when it issues asset covered securities entitled to use the label ‘European Covered Bond’ or the label ‘European Covered Bond (Premium)’ notify the Authority as soon as practicable after such issue that it has issued such asset covered securities.
- (3) The information published in accordance with subsection (1) shall be sufficient to enable a meaningful comparison of the approach adopted by the Authority and the approach adopted by competent authorities designated pursuant to Article 18(2) of the Covered Bonds Directive by Member States other than the State.
- (4) The information published in accordance with subsection (1) shall be updated to take account of any changes to that information.
- (5) The Authority shall notify the EBA on an annual basis of—
- (a) the list of designated credit institutions referred to in subsection (1)(d),
 - (b) the list of asset covered securities referred to in subsection (1)(e), and
 - (c) the list of asset covered securities referred to in subsection (1)(f).”.

Amendment of section 16 of Principal Act

9. Section 16 of the Principal Act is amended, in subsection (3), by the substitution of “is relevant to covered bonds” for “is relevant to article 22(4) securities which qualify as covered bonds for the purposes of the Codified Banking Directive”.

Covered bond programmes

10. The Principal Act is amended by the insertion of the following Part after Part 3:

“Part 3A

COVERED BOND PROGRAMMES

Application for permission for covered bond programme

- 26A.** (1) A designated credit institution shall apply to the Authority for permission for a covered bond programme.
- (2) An application under subsection (1) shall contain such information, and be accompanied by such documents, as may be requested by the Authority.
- (3) The Authority may, by written notice given to an applicant, request the applicant to provide such additional information and documents as is reasonably necessary to enable it to determine the application.
- (4) A notice under subsection (3) shall specify a period, not exceeding 60 days from the date of the notice, within which the request is to be complied with.
- (5) The Authority may reject an application where an applicant has not complied with a request under subsection (3) within the period specified in the notice.

Permission for covered bond programme

- 26B.** The Authority may grant permission to a designated credit institution for a covered bond programme only if it is satisfied that the institution has in place the following:
- (a) an adequate programme of operations setting out the issue of asset covered securities;
- (b) adequate policies, processes and methodologies aimed at investor protection for the approval, amendment, renewal and refinancing of loans included in the cover asset pool;

- (c) management and staff dedicated to the covered bond programme who have adequate qualifications and knowledge regarding the issue of asset covered securities and the administration of the covered bond programme;
- (d) an administrative set-up of the cover asset pool and the monitoring thereof that meets the applicable requirements under this Act.

Operation of Covered Bond Programme

- 26C.** (1) A designated credit institution shall not issue asset covered securities under a covered bond programme unless it has been granted permission for that programme under section 26B.
- (2) A designated credit institution shall maintain a separate cover assets pool in respect of each covered bond programme for which it has been granted permission under section 26B.

Review of covered bond programme

- 26D.** The Authority may review a covered bond programme on a regular basis to assess compliance with this Act.

Publication obligation – covered bond programmes

- 26E.** The Authority shall publish the following on its website:
- (a) a list of the covered bond programmes for which permission has been granted under section 26B;
 - (b) a list of the covered bond programmes in respect of which permission has been withdrawn under section 99A.”.

Extendable maturity structures – designated mortgage credit institution

11. The Principal Act is amended by the insertion of the following section after section 29:

- “**29A.** (1) A designated mortgage credit institution may issue mortgage covered securities with extendable maturity structures where it complies with the other provisions of this section.
- (2) The maturity of mortgage covered securities issued by a designated mortgage credit institution may only be extended by the institution where—

- (a) the institution fails to pay the principal due on the scheduled maturity date (as extended by any applicable grace period), or
 - (b) the Authority or manager directs the institution to extend the maturity of the securities.
- (3) A designated mortgage credit institution shall specify the maturity extension triggers in the contractual terms and conditions of mortgage covered securities issued by the institution.
- (4) A designated mortgage credit institution shall provide sufficient information to investors about the maturity structure of mortgage covered securities issued by the institution to enable the investors to determine the risk of the securities, including a detailed description of—
- (a) the maturity extension triggers,
 - (b) the consequences for a maturity extension of the insolvency or resolution of the institution, and
 - (c) the role of the Authority and, where relevant, of a manager with regard to the maturity extension.
- (5) A designated mortgage credit institution shall ensure that the final maturity date of mortgage covered securities issued by the institution is at all times determinable.
- (6) In the event of the insolvency or resolution of a designated mortgage credit institution, maturity extensions shall not affect the ranking of the investors in the mortgage covered securities issued by the institution or invert the sequencing of the original maturity schedule of a covered bond programme of the institution.
- (7) A maturity extension shall not change the structural features of mortgage covered securities regarding dual recourse and bankruptcy remoteness.
- (8) In this section ‘maturity extension trigger’ means the occurrence of the circumstances described in paragraph (a) or (b) of subsection (2).”.

Amendment of section 30 of Principal Act

12. Section 30 of the Principal Act is amended by the insertion of the following subsections after subsection (5):

- “(5A) Contracts of the kind referred to in subsection (3) may only be included in a cover assets pool where—
- (a) they are included exclusively for hedging purposes,

- (b) their volume is adjusted in the case of a reduction in the risk being hedged,
- (c) they are removed when the risk being hedged ceases to exist,
- (d) they cannot be terminated upon the designated mortgage credit institution becoming subject to an insolvency process or resolution, and
- (e) the counterparty is a credit institution referred to in point (c) of paragraph (1) or paragraph (1a) of Article 129 of Regulation (EU) No 575/2013.

(5B) A designated mortgage credit institution shall provide to the Authority all necessary documentation in relation to a contract of a kind referred to in subsection (3) which has been included in a cover assets pool, including the relevant ISDA Master Agreement or equivalent documentation.”

Amendment of section 32 of Principal Act

13. Section 32 of the Principal Act is amended—

(a) by the substitution of the following subsection for subsection (8):

“(8) A designated mortgage credit institution shall ensure—

- (a) that a cover assets pool maintained by the institution has a duration of not less than that of the mortgage covered securities that relate to the pool,
- (b) that the prudent market value of the pool is greater than the total of the principal amounts of those securities,
- (c) that the total amount of interest payable in a given period of 12 months in respect of the pool is, during that 12 month period, not less than the total amount of interest payable in respect of that period on those securities, and
- (d) that the currency in which each mortgage credit asset and substitution asset comprised in the pool is denominated is the same as the currency in which those securities are denominated,

after taking into account—

- (i) in the case of paragraphs (b), (c) and (d), the effect of any cover assets hedge contract that the institution has entered into in relation to the pool and those securities (but, for the purposes of this

subsection, disregarding the effect of any pool hedge collateral), and

- (ii) in the case of paragraph (b), the expected costs related to maintenance and administration for the winding-down of the covered bond programme.”,
- (b) by the insertion of the following subsections after subsection (8):
- “(8A) The expected costs referred to in subsection (8)(ii) may be calculated as a lump sum.
 - (8B) A designated mortgage credit institution shall not take into account, for the purposes of paragraphs (b) and (c) of subsection (8), uncollateralised claims where a default is considered to have occurred pursuant to Article 178 of Regulation (EU) No 575/2013.
 - (8C) A designated mortgage credit institution shall calculate—
 - (a) interest payable in respect of outstanding asset covered securities, and
 - (b) interest receivable in respect of cover assets,
 in a manner which reflects sound prudential principles in accordance with applicable accounting standards.”,
- and
- (c) by the insertion of the following subsection after subsection (17):
- “(18) Designated mortgage credit institutions shall have in place procedures to monitor that —
 - (a) a residential property used as collateral for a mortgage credit asset is adequately insured against the risk of damage, and
 - (b) the segregation of a mortgage credit asset encompasses any financial obligation to the institution consequent upon an insurance claim in respect of the residential property concerned.”.

Cover asset pool liquidity buffer – designated mortgage credit institution

14. The Principal Act is amended by the insertion of the following section after section 32:

- “**32A.** (1) A designated mortgage credit institution shall include in a cover asset pool, at all times, a liquidity buffer composed of liquid assets available to cover the net liquidity outflow of its covered bond programme.

- (2) A cover pool liquidity buffer shall, on each day, cover the maximum cumulative net liquidity outflow for the following 180 days.
- (3) The liquid assets referred to in subsection (1) shall comprise short-term deposits with credit institutions that qualify for credit quality step 1, 2 or 3, in accordance with point (c) of Article 129(1) of Regulation (EU) No 575/2013.
- (4) Uncollateralised claims from exposures considered in default pursuant to Article 178 of Regulation (EU) No 575/2013 shall not be used to contribute to a cover asset pool liquidity buffer.
- (5) A designated mortgage credit institution may calculate the principal for extendable maturity structures on the basis of the final maturity date in accordance with the contractual terms and conditions of the asset covered securities concerned.”.

Amendment of section 33 of Principal Act

15. Section 33 of the Principal Act is amended—

- (a) by the insertion of the following subsection after subsection (2):
 - “(2A) Where a designated mortgage credit institution includes in a cover assets pool a mortgage credit asset or substitution asset that is located within one or more category A countries, it shall—
 - (a) verify that the asset complies with this section and sections 32(18), 58A and 58C,
 - (b) ensure that the asset offers a level of security similar to that of collateral assets located in the European Union, and
 - (c) ensure that the realisation of the asset is legally enforceable in a way which is equivalent in effect to the realisation of collateral assets located in the European Union.”, and
- (b) by the insertion of the following subsections after subsection (7):
 - “(8) A designated mortgage credit institution shall not include in a cover assets pool maintained by the institution a mortgage credit asset unless the asset—
 - (a) is eligible pursuant to Article 129(1)(d) or (f) of Regulation (EU) No 575/2013, and
 - (b) meets the requirements specified in Article 129(1c) and (3) of Regulation (EU) No 575/2013.

- (9) A designated mortgage credit institution shall not include in a cover assets pool maintained by the institution a substitution asset, unless the asset—
 - (a) is eligible pursuant to Article 129(1)(c) of Regulation (EU) No 575/2013, and
 - (b) meets the requirements specified in Article 129(1a) of Regulation (EU) No 575/2013.
- (10) Subject to the other provisions of this Chapter and section 58, a designated mortgage credit institution may use, as cover assets, assets originated by another credit institution which have been purchased from that other credit institution for the purpose of using them as cover assets.”.

Amendment of section 35 of Principal Act

16. Section 35 of the Principal Act is amended, in subsection (12), by the substitution of “tier 1 creditor” for “preferred creditor (other than a super-preferred creditor)”.

Reporting requirements – designated mortgage credit institution

17. The Principal Act is amended by the insertion of the following section after section 38:

- “38A.** (1) A designated mortgage credit institution shall report the information specified in subsection (2) to the Authority—
- (a) on a quarterly basis, and
 - (b) when requested by the Authority.
- (2) The information referred to in subsection (1) is information on the following:
- (a) the conditions for extendable maturity structures, in accordance with section 29A;
 - (b) the eligibility of assets and cover pool requirements, in accordance with sections 30 to 37, 39A, 58A and 58C;
 - (c) the coverage requirements, in accordance with sections 32 and 33;
 - (d) the cover pool liquidity buffer, in accordance with section 32A;
 - (e) the segregation of cover assets, in accordance with sections 38 and 83;
 - (f) where applicable, the functioning of the cover pool monitor, in accordance with Part 5.

- (3) Subsection (1) shall also apply in the event of the insolvency or resolution of a designated mortgage credit institution.”.

Investor information – designated mortgage credit institution

18. The Principal Act is amended by the insertion of the following section after section 40:

- “**40A.** (1) A designated mortgage credit institution shall provide information, on a website maintained by it, on its covered bond programme.
- (2) The information referred to in subsection (1) shall be sufficiently detailed to allow investors—
 - (a) to assess the profile and risks of the covered bond programme, and
 - (b) to carry out their due diligence.
 - (3) A designated mortgage credit institution shall provide the information referred to in subsection (1) on at least a quarterly basis to investors.
 - (4) The information referred to in subsection (1) shall include the following minimum portfolio information:
 - (a) the value of the cover pool and outstanding asset covered securities;
 - (b) a list of the ISINs for all asset covered securities issues under that programme, to which an ISIN has been attributed;
 - (c) the geographical distribution and type of cover assets, their loan size and valuation method;
 - (d) details in relation to market risk, including interest rate risk and currency risk, and credit and liquidity risks;
 - (e) the maturity structure of cover assets and asset covered securities, including an overview of the maturity extension triggers if applicable;
 - (f) the levels of required and available coverage, and the levels of statutory, contractual and voluntary overcollateralisation;
 - (g) the percentage of loans where a default is considered to have occurred pursuant to Article 178 of Regulation (EU) No 575/2013;
 - (h) the percentage of loans which are more than 90 days past due.”.

Repeal of section 41A of Principal Act

19. Section 41A of the Principal Act is repealed.

Amendment of section 41B of Principal Act

20. Section 41B of the Principal Act is amended, in subsection (1)—

- (a) by the deletion of paragraph (g),
- (b) by the insertion of the following paragraph after paragraph (l):
 - “(la) in section 32(18), the references to ‘residential property’ shall be construed as references to ‘commercial property’;”
- (c) in paragraph (m), by the substitution of “of this section;” for “of this section; and”, and
- (d) by the insertion of the following paragraphs after paragraph (m):
 - “(ma) in section 33(8)(a), the reference to ‘Article 129(1)(d) or (f) of Regulation (EU) No 575/2013’ shall be construed as a reference to ‘Article 129(1)(f) of Regulation (EU) No 575/2013’;
 - (mb) in section 33(8)(b), the reference to ‘Article 129(1c) and (3) of Regulation (EU) No 575/2013’ shall be construed as a reference to ‘Article 129(1d) and (3) of Regulation (EU) No 575/2013’;”.

Extendable maturity structures – designated public credit institution

21. The Principal Act is amended by the insertion of the following section after section 44:

- “44A. (1) A designated public credit institution may issue public credit covered securities with extendable maturity structures where it complies with the other provisions of this section.
- (2) The maturity of public credit covered securities issued by a designated public credit institution may only be extended by the institution where—
- (a) the institution fails to pay the principal due on the scheduled maturity date (as extended by any applicable grace period), or
 - (b) the Authority or manager directs the institution to extend the maturity of the securities.
- (3) A designated public credit institution shall specify the maturity extension triggers in the contractual terms and conditions of the public credit covered securities issued by the institution.

- (4) A designated public credit institution shall provide sufficient information to investors about the maturity structure of public credit covered securities issued by the institution to enable the investors to determine the risk of the securities, including a detailed description of—
 - (a) the maturity extension triggers,
 - (b) the consequences for a maturity extension of the insolvency or resolution of the institution, and
 - (c) the role of the Authority and, where relevant, of a manager with regard to the maturity extension.
- (5) A designated public credit institution shall ensure that the final maturity date of public credit covered securities issued by the institution is at all times determinable.
- (6) In the event of the insolvency or resolution of a designated public credit institution, maturity extensions shall not affect the ranking of the investors in the public credit covered securities issued by the institution or invert the sequencing of the original maturity schedule of a covered bond programme of the institution.
- (7) A maturity extension shall not change the structural features of public credit covered securities regarding dual recourse and bankruptcy remoteness.
- (8) In this section ‘maturity extension trigger’ means the occurrence of the circumstances described in paragraph (a) or (b) of subsection (2).”.

Amendment of section 45 of Principal Act

22. Section 45 of the Principal Act is amended by the insertion of the following subsections after subsection (5):

- “(5A) Contracts of the kind referred to in subsection (3) may only be included in a cover assets pool where—
- (a) they are included exclusively for hedging purposes,
 - (b) their volume is adjusted in the case of a reduction in the risk being hedged,
 - (c) they are removed when the risk being hedged ceases to exist,
 - (d) they cannot be terminated upon the designated public credit institution becoming subject to an insolvency process or resolution, and
 - (e) the counterparty is a credit institution referred to in point (c) of paragraph (1) or paragraph (1a) of Article 129 of Regulation (EU) No 575/2013.

- (5B) A designated public credit institution shall provide to the Authority all necessary documentation in relation to a contract of a kind referred to in subsection (3) which has been included in a cover assets pool, including the relevant ISDA Master Agreement or equivalent documentation.”.

Amendment of section 47 of Principal Act

23. Section 47 of the Principal Act is amended—

- (a) by the substitution of the following subsection for subsection (8):

“(8) A designated public credit institution shall ensure—

- (a) that a cover assets pool maintained by the institution has a duration of not less than that of the public credit covered securities that relate to the pool,
- (b) that the prudent market value of the pool is greater than the total of the principal amounts of those securities,
- (c) that the total amount of interest payable in a given period of 12 months in respect of the pool is, during that 12 month period, not less than the total amount of interest payable in respect of that period on those securities, and
- (d) that the currency in which each public credit asset and substitution asset comprised in the pool is denominated is the same as the currency in which those securities are denominated,

after taking into account—

- (i) in the case of paragraphs (b), (c) and (d), the effect of any cover assets hedge contract that the institution has entered into in relation to the pool and those securities (but, for the purposes of this subsection, disregarding the effect of any pool hedge collateral), and
- (ii) in the case of paragraph (b), the expected costs related to maintenance and administration for the winding-down of the covered bond programme.”,

and

- (b) by the insertion of the following subsections after subsection (8):

“(8A) The expected costs referred to in subsection (8)(ii) may be calculated as a lump sum.

- (8B) A designated public credit institution shall not take into account, for the purposes of paragraphs (b) and (c) of subsection (8), uncollateralised claims where a default is considered to have occurred pursuant to Article 178 of Regulation (EU) No 575/2013.
- (8C) A designated public credit institution shall calculate—
 - (a) interest payable in respect of outstanding asset covered securities, and
 - (b) interest receivable in respect of cover assets, in a manner which reflects sound prudential principles in accordance with applicable accounting standards.”.

Cover asset pool liquidity buffer – designated public credit institution

24. The Principal Act is amended by the insertion of the following section after section 47:

- “47A. (1) A designated public credit institution shall include in a cover asset pool, at all times, a liquidity buffer composed of liquid assets available to cover the net liquidity outflow of its covered bond programme.
- (2) A cover pool liquidity buffer shall, on each day, cover the maximum cumulative net liquidity outflow for the following 180 days.
- (3) The liquid assets referred to in subsection (1) shall comprise short-term deposits with credit institutions that qualify for credit quality step 1, 2 or 3, in accordance with point (c) of Article 129(1) of Regulation (EU) No 575/2013.
- (4) Uncollateralised claims from exposures considered in default pursuant to Article 178 of Regulation (EU) No 575/2013 shall not be used to contribute to a cover asset pool liquidity buffer.
- (5) A designated public credit institution may calculate the principal for extendable maturity structures on the basis of the final maturity date in accordance with the contractual terms and conditions of the asset covered securities concerned.”.

Amendment of section 48 of Principal Act

25. Section 48 of the Principal Act is amended—

- (a) by the insertion of the following subsection after subsection (1):
 - “(1A) Where a designated public credit institution includes in a cover assets pool a public credit asset or substitution

asset that is located within one or more category A countries, it shall—

- (a) verify that the asset complies with this section and sections 58A and 58C,
 - (b) ensure that the asset offers a level of security similar to that of collateral assets located in the European Union, and
 - (c) ensure that the realisation of the asset is legally enforceable in a way which is equivalent in effect to the realisation of collateral assets located in the European Union.”,
- (b) by the insertion of the following subsections after subsection (3):
- “(3A) A designated public credit institution shall not include in a cover assets pool maintained by the institution a public credit asset unless the asset is eligible pursuant to Article 129(1)(a) or (b) of Regulation (EU) No 575/2013.
 - (3B) A designated public credit institution shall not include in a cover assets pool maintained by the institution a substitution asset, unless the asset—
 - (a) is eligible pursuant to Article 129(1)(c) of Regulation (EU) No 575/2013, and
 - (b) meets the requirements specified in Article 129(1a) of Regulation (EU) No 575/2013.
 - (3C) Subject to the other provisions of this Chapter and section 58, a designated public credit institution may use, as cover assets, assets originated by another credit institution which have been purchased from that other credit institution for the purpose of using them as cover assets.”, and
- (c) by the deletion of subsection (5).

Amendment of section 50 of Principal Act

26. Section 50 of the Principal Act is amended—

- (a) in subsection (9), by the deletion of paragraph (a), and
- (b) in subsection (12), by the substitution of “tier 1 creditor” for “preferred creditor (other than a super-preferred creditor)”.

Reporting requirements – designated public credit institution

27. The Principal Act is amended by the insertion of the following section after section 53:

- “53A. (1) A designated public credit institution shall report the information specified in subsection (2) to the Authority—
- (a) on a quarterly basis, and
 - (b) when requested by the Authority.
- (2) The information referred to in subsection (1) is information on the following:
- (a) the conditions for extendable maturity structures, in accordance with section 44A;
 - (b) the eligibility of assets and cover pool requirements, in accordance with sections 45 to 52, 54A, 58A and 58C;
 - (c) the coverage requirements, in accordance with sections 47 and 48;
 - (d) the cover pool liquidity buffer, in accordance with section 47A;
 - (e) the segregation of cover assets, in accordance with sections 53 and 83;
 - (f) where applicable, the functioning of the cover pool monitor, in accordance with Part 5.
- (3) Subsection (1) shall also apply in the event of the insolvency or resolution of a designated public credit institution.”.

Investor information – designated public credit institution

28. The Principal Act is amended by the insertion of the following section after section 55:

- “55A. (1) A designated mortgage credit institution shall provide information, on a website maintained by it, on its covered bond programme.
- (2) The information referred to in subsection (1) shall be sufficiently detailed to allow investors—
- (a) to assess the profile and risks of the covered bond programme, and
 - (b) to carry out their due diligence.
- (3) A designated mortgage credit institution shall provide the information referred to in subsection (1) on at least a quarterly basis.
- (4) The information referred to in subsection (1) shall include the following minimum portfolio information:

- (a) the value of the cover pool and outstanding asset covered securities;
- (b) a list of the ISINs for all asset covered securities issues under that programme, to which an ISIN has been attributed;
- (c) the geographical distribution and type of cover assets, their loan size and valuation method;
- (d) details in relation to market risk, including interest rate risk and currency risk, and credit and liquidity risks;
- (e) the maturity structure of cover assets and asset covered securities, including an overview of the maturity extension triggers, if applicable;
- (f) the levels of required and available coverage, and the levels of statutory, contractual and voluntary overcollateralisation;
- (g) the percentage of loans where a default is considered to have occurred pursuant to Article 178 of Regulation (EU) No 575/2013;
- (h) the percentage of loans which are more than 90 days past due.”.

Amendment of section 58 of Principal Act

29. Section 58 of the Principal Act is amended by the insertion of the following subsections after subsection (12A):

“(12B) A designated credit institution may transfer assets by way of a financial collateral arrangement in accordance with the European Communities (Financial Collateral Arrangements) Regulations 2010 (S.I. No. 626 of 2010).

(12C) Where a designated credit institution uses, as cover assets, assets originated by an undertaking that is not a credit institution, the designated credit institution shall—

- (a) assess the credit-granting standards of the undertaking which originated the cover assets, or
- (b) perform a thorough assessment of the creditworthiness of the borrower concerned.”.

Valuation of assets, automatic acceleration, documentation and labels

30. The Principal Act is amended by the insertion of the following sections after section 58:

“Valuation of assets

58A. A designated credit institution shall ensure that—

- (a) at the moment of inclusion of a mortgage credit asset or a commercial mortgage credit asset in a cover pool, a current valuation at or at less than market value or mortgage lending value exists for each residential property or commercial property, as the case may be, which secures the mortgage credit asset or commercial mortgage credit asset, as the case may be,
- (b) a valuation of the residential property or commercial property, as the case may be, has been carried out by a valuer who possesses the necessary qualifications, ability and experience, and
- (c) the valuer referred to in paragraph (b)—
 - (i) is independent from the credit decision process,
 - (ii) does not take into account speculative elements in the assessment of the value of the residential property or commercial property, as the case may be, and
 - (iii) documents the value of the residential property or commercial property, as the case may be, in a transparent and clear manner.

Automatic acceleration

58B. A designated credit institution shall not issue an asset covered security which is subject to automatic acceleration upon the insolvency or resolution of the institution.

Documentation, systems and processes

- 58C.** (1) A designated credit institution shall document—
- (a) the cover assets included in the cover assets pool maintained by the institution, and
 - (b) the compliance of the institution's lending policies with—
 - (i) in the case of a designated mortgage credit institution, this section and sections 32(18), 33 and 58A,
 - (ii) in the case of a designated commercial mortgage credit institution, this section and sections 32(18) and 33 (as modified in accordance with section 41B) and section 58A, and
 - (iii) in the case of a designated public credit institution, this section and sections 48 and 58A.

- (2) A designated credit institution shall have in place adequate and appropriate documentation, systems and processes relating to its covered bond programme.

Labelling

- 58D.** (1) Subject to section 108(2), a designated credit institution shall not use the label ‘European Covered Bond’ or an official translation of that phrase in any of the official languages of the European Union for asset covered securities unless those securities are issued in compliance with this Act.
- (2) A designated credit institution shall not use the label ‘European Covered Bond (Premium)’ or an official translation of that phrase in any of the official languages of the European Union for asset covered securities unless those securities are issued in compliance with—
- (a) this Act, and
 - (b) Article 129 of Regulation (EU) No 575/2013.”.

Amendment of section 59 of Principal Act

31. Section 59 of the Principal Act is amended by the substitution of the following subsection for subsection (6):

- “(6) In this section—
- ‘affiliate’—
- (a) in relation to a body corporate (in this definition referred to as the ‘first-mentioned body corporate’), means another body corporate that is a subsidiary company or a holding company (within the meaning of the Companies Act 2014) of the first-mentioned body corporate, and
 - (b) in relation to a partnership (in this definition referred to as the ‘first-mentioned partnership’), means another partnership, one or more of the partners in which is a partner in the first-mentioned partnership;
- ‘qualified person’ means a body corporate or partnership that—
- (a) has demonstrated to the satisfaction of—
 - (i) the Authority—
 - (I) that it has experience and competence in the following:
 - (A) financial risk management techniques;
 - (B) regulatory compliance reporting,

- (II) that it has skills and experience relevant to trading on capital markets and the use of derivatives,
- (III) that it has sufficient human, information technology and financial resources available to it to carry out the responsibilities of a cover-assets monitor in respect of the designated credit institution concerned, and
- (IV) that its employees have sufficient—
 - (A) academic or professional qualifications, and
 - (B) experience,
 - in financial services,
 and
- (ii) the designated credit institution concerned—
 - (I) that its employees have sufficient—
 - (A) academic or professional qualifications, and
 - (B) experience,
 - in financial services,
 and
 - (II) that it has adequate professional indemnity insurance in place,
- (b) is separate to and independent of the designated credit institution concerned and any undertaking which is part of the same group as that designated credit institution,
- (c) is not itself, nor are any of its affiliates, engaged as auditor or legal advisor to the designated credit institution concerned or any undertaking which is part of the same group as that designated credit institution,
- (d) does not itself, nor does any of its affiliates, provide any services (other than legal or auditing services), other than where it has been established to the satisfaction of the Authority that no conflict of interest will arise as a result of the provision of those services and the performance of the functions of a cover-assets monitor under this Act,
- (e) does not hold any shares or similar interests in the designated credit institution concerned or in any undertaking which is part of the same group as that designated credit institution, and

- (f) other than as permitted under this Act or the regulations, regulatory notices or orders made under this Act, is not involved in any decision-making function or directional activity of the designated credit institution concerned, or any undertaking which is part of the same group as that designated credit institution, which could unduly influence the judgment of the management of the designated credit institution concerned or any undertaking which is part of the same group as that designated credit institution .”.

Amendment of section 72 of Principal Act

32. Section 72 of the Principal Act is amended, in subsection (1), by the insertion of the following paragraphs after paragraph (b):

- “(ba) the institution has been determined to be failing or likely to fail pursuant to Article 32(1) of Directive 2014/59/EU;
- (bb) in exceptional circumstances, if the Authority determines that the proper functioning of the institution is seriously at risk;”.

Amendment of section 78 of Principal Act

33. Section 78 of the Principal Act is amended—

- (a) in paragraph (a), by the substitution of “section 72(6),” for “section 72(6), and”,
- (b) in paragraph (b), by the substitution of “relate to those activities,” for “relate to those activities.”, and
- (c) by the insertion of the following paragraphs after paragraph (b):
 - “(c) for the initiation of proceedings in order to bring assets back into the cover pool of the institution, and
 - (d) for the transferral of the remaining assets to the insolvency estate of the institution which issued the asset covered securities after all liabilities in relation to those securities have been discharged.”.

Amendment of section 79 of Principal Act

34. Section 79 of the Principal Act is amended—

- (a) in paragraph (a), by the substitution of “notice of appointment,” for “notice of appointment, and”,
- (b) in paragraph (b), by the substitution of “cover assets hedge contracts, and” for “cover assets hedge contracts.”, and
- (c) by the insertion of the following paragraph after paragraph (b):

- “(c) shall verify the continuous and sound management of the institutions covered bond programme during the period of the manager’s appointment.”.

Co-operation between Authority and manager

35. The Principal Act is amended by the insertion of the following section after section 79:

“79A. Where—

- (a) a manager has been appointed in respect of a designated or formerly designated credit institution, and
- (b) the institution is subject to an insolvency or resolution process,

the Authority and the manager shall co-ordinate their activities and exchange information for the purposes of the insolvency or resolution process, as the case may be.”.

Amendment of section 83 of Principal Act

36. Section 83 of the Principal Act is amended—

- (a) in subsection (1), by the substitution of “an insolvency or resolution process” for “an insolvency process”,
- (b) in subsection (3), by the substitution of “tier 1 creditors” for “super-preferred creditors”, and
- (c) in subsection (5), by the substitution of “any insolvency or resolution process” for “any insolvency process”.

Amendment of section 85 of Principal Act

37. Section 85 of the Principal Act is amended—

- (a) in subsection (1), by the substitution of “an insolvency or resolution process” for “an insolvency process”, and
- (b) in subsection (2), by the substitution of “any insolvency or resolution process” for “any insolvency process”.

Amendment of section 88 of Principal Act

38. Section 88 of the Principal Act is amended, in subsection (3A), by the substitution of “tier 2 creditors” for “super-preferred creditors”.

Resolution

39. The Principal Act is amended by the insertion of the following section after section 90:

“**90A.** Where a credit institution which has issued asset covered securities is subject to resolution, the Authority shall ensure that the rights and interests of investors in those securities are preserved, including by verifying the continuous and sound management of the covered bond programme during the period of the resolution process.”.

Amendment of section 91 of Principal Act

40. Section 91 of the Principal Act is amended by the deletion of subsection (2A).

Guidelines

41. The Principal Act is amended by the insertion of the following section after section 91:

- “**91A.** (1) The Authority may adopt and implement supervisory guidelines relating to the issue of asset covered securities.
- (2) The Authority shall publish the guidelines referred to in subsection (1) on its website.”.

Amendment of section 95A of Principal Act

42. Section 95A of the Principal Act is amended by the substitution of the following paragraph for paragraph (e):

- “(e) regulations and directives made by competent organs of the European Union which have been implemented under the law of the State and which are relevant to asset covered securities.”.

Repeal of section 96 of Principal Act

43. Section 96 of the Principal Act is repealed.

Administrative sanctions and publication

44. The Principal Act is amended by the insertion of the following sections after section 99:

“**Administrative sanctions**

- 99A.** (1) Where the provisions of the Act of 1942 are invoked in relation to a contravention specified in subsection (3), including where those provisions are invoked in respect of a member of the management body of the designated credit institution concerned or some other natural person responsible for the contravention, any or all of the

sanctions referred to in subsection (4) may be imposed by the Authority—

- (a) following an inquiry under section 33AO of the Act of 1942, or
 - (b) in accordance with section 33AR or section 33AV of the Act of 1942.
- (2) The power of the Authority to impose any of the sanctions referred to in subsection (4) is in addition to and not in substitution for its power to impose any of the sanctions specified in section 33AQ of the Act of 1942.
- (3) The contraventions referred to in subsection (1) are the following:
- (a) a designated credit institution has acquired a permission for a covered bond programme under section 26B by means of false statements or other irregular means;
 - (b) a designated credit institution no longer fulfils the conditions under which permission for a covered bond programme was given under section 26B;
 - (c) a designated credit institution issues asset covered securities without obtaining permission in accordance with section 26B;
 - (d) a designated credit institution issues asset covered securities in contravention of section 58B;
 - (e) a designated credit institution issuing asset covered securities contravenes Chapter 1, that Chapter as modified in accordance with section 41B, Chapter 3 or section 58 in using, as cover assets, assets originated by another credit institution which have been purchased from that other credit institution for the purpose of using them as cover assets,;
 - (f) a designated credit institution issuing asset covered securities contravenes section 33, that section as modified in accordance with section 41B, or section 48;
 - (g) a designated credit institution issuing asset covered securities contravenes section 30, that section as modified in accordance with section 41B, or section 45;
 - (h) a designated credit institution issuing asset covered securities contravenes section 38, that

- section as modified in accordance with section 41B, or section 53;
- (i) a designated credit institution issuing asset covered securities fails to report information or provides incomplete or inaccurate information in contravention of section 40A, that section as modified in accordance with section 41B, or section 55A;
 - (j) a designated credit institution issuing asset covered securities repeatedly or persistently fails to maintain a cover pool liquidity buffer in contravention of section 32A, that section as modified in accordance with section 41B, or section 47A;
 - (k) a designated credit institution that issues asset covered securities with extendable maturity structures contravenes section 29A, that section as modified in accordance with section 41B, or section 44A;
 - (l) a designated credit institution issuing asset covered securities fails to report information or provides incomplete or inaccurate information on its obligations in contravention of section 38A, that section as modified in accordance with section 41B, or section 53A.
- (4) The sanctions referred to in subsection (1) are the following:
- (a) withdrawal of a permission for a covered bond programme;
 - (b) a public statement which indicates the identity of the natural or legal person and the nature of the contravention concerned in accordance with section 99B;
 - (c) an order requiring a natural or legal person responsible for the contravention to cease, and desist from a repetition of, the conduct concerned.
- (5) For the purposes of a contravention specified in subsection (3), any reference in the Act of 1942 to the sanctions set out in section 33AQ of that Act is to be read as including a reference to the sanctions specified in subsection (4).
- (6) The Authority shall, when determining the type of sanction and, where a pecuniary penalty is to be imposed, the level of that penalty, take into account all of the following circumstances, where relevant:

- (a) the gravity and the duration of the breach;
 - (b) the degree of responsibility of the natural or legal person responsible for the breach;
 - (c) the financial strength of the natural or legal person responsible for the breach, including by reference to the total turnover of the legal person or the annual income of the natural person;
 - (d) the importance of profits gained or losses avoided because of the breach by the natural or legal person responsible for the breach, insofar as those profits or losses can be determined;
 - (e) the losses caused to third parties by the breach, insofar as those losses can be determined;
 - (f) the level of cooperation with the Authority by the natural or legal person responsible for the breach;
 - (g) any previous breaches by the natural or legal person responsible for the breach;
 - (h) any actual or potential systemic consequences of the breach.
- (7) Where the Authority imposes a sanction referred to in subsection (4), it shall set out in its decision under section 33AQ(7) or 33AR(4), as the case may be, of the Act of 1942 the grounds on which it has imposed the sanction.

Publication

- 99B.** (1) The Authority shall publish on its official website information on each sanction which is imposed by it for breach of this Act, including information on—
- (a) the type and nature of the breach, and
 - (b) the identity of the natural or legal person on whom the sanction is imposed,
- without undue delay after the person is informed of the sanction and that the information will be published on the official website of the Authority.
- (2) Where the Authority publishes information on a sanction against which there is an appeal, the Authority shall, without undue delay, also publish on its official website information on the appeal status and outcome thereof.
- (3) Where a decision of a court from which there is no appeal annuls a decision imposing a sanction, the Authority shall publish the decision of the court on its official website.

- (4) The Authority shall publish the sanctions, referred to in subsection (1), on an anonymous basis where one or more of the following conditions is satisfied:
 - (a) the penalty is imposed on a natural person and the publication of personal data is found to be disproportionate;
 - (b) publication on an onymous basis would jeopardise the stability of financial markets or an ongoing criminal investigation;
 - (c) publication on an onymous basis would cause, insofar as it can be determined, disproportionate damage to the designated credit institutions or natural persons involved.
- (5) Where the Authority publishes information on an anonymous basis in accordance with subsection (4), the Authority may subsequently publish the information on an onymous basis where the relevant condition, specified in paragraph (a), (b) or (c) of that subsection, is no longer satisfied.
- (6) Subject to subsection (7), the Authority shall ensure that information published by it under this section remains on its official website for not less than 5 years.
- (7) Where information published by the Authority under this section is personal data, the Authority shall not retain the personal data on its website for longer than is permitted under data protection law and in any case shall not retain the personal data on its website for more than 10 years.
- (8) The Authority shall inform the EBA of any sanctions imposed, including, where relevant, any appeal in relation thereto and the outcome thereof.
- (9) In this section ‘data protection law’ means the Data Protection Act 2018 and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016³.”.

Transitional provisions for asset covered securities issued before 8 July 2022

45. The Principal Act is amended by the insertion of the following section after section 107:

- “108.** (1) The amendments to this Act effected by the following provisions of the European Union (Covered Bonds) Regulations 2021 (S.I. No. 576 of 2021) shall not apply in respect of asset covered securities which are issued

³ O.J. No. L. 119, 4.5.2016, p. 1.

before 8 July 2022 and which meet the criteria for bonds under Regulation 70(3)(a) of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) as it applied on the date of their issue:

- (a) Regulation 4;
 - (b) Regulation 5;
 - (c) Regulation 10;
 - (d) Regulation 11;
 - (e) Regulation 12;
 - (f) Regulation 13;
 - (g) Regulation 14;
 - (h) Regulation 15;
 - (i) Regulation 16;
 - (j) Regulation 19;
 - (k) Regulation 20;
 - (l) Regulation 21;
 - (m) Regulation 22;
 - (n) Regulation 23;
 - (o) Regulation 24;
 - (p) Regulation 25(a) and (b);
 - (q) Regulation 26(b);
 - (r) Regulation 29;
 - (s) Regulation 30 (other than in so far as it provides for the insertion of sections 58C(2) and 58D);
 - (t) Regulation 36;
 - (u) Regulation 38.
- (2) A designated credit institution may use the label ‘European Covered Bond’ or an official translation of that phrase in any of the official languages of the European Union for asset covered securities which are issued before 8 July 2022 and which meet the criteria for bonds under Regulation 70(3)(a) of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 as it applied on the date of their issue.
- (3) The Authority shall monitor whether asset covered securities which are issued before 8 July 2022—
- (a) meet the criteria for bonds under Regulation 70(3)(a) of the European Communities

(Undertakings for Collective Investment in Transferable Securities) Regulations 2011 as it applied on the date of their issue, and

- (b) comply with this Act as it applies in respect of such asset covered securities.”.

Amendment of Central Bank Act 1942

46. Section 33BC of the Central Bank Act 1942 (No. 22 of 1942) is amended by the insertion of the following subsection after subsection (15):

- “(16) This section does not apply where section 99B of the Asset Covered Securities Act 2001 applies.”.

Amendment of European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011

47. The European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 are amended, in Regulation 70(3)—

- (a) by the substitution of the following subparagraph for subparagraph (a):

“(a) Notwithstanding paragraphs (1)(a) and (2), a UCITS may invest up to 25 per cent of its assets in bonds—

- (i) that were issued before 8 July 2022 and met the requirements set out in this subparagraph as it applied on the date of their issue, or
- (ii) which come within the definition of ‘covered bond’ in point (1) of Article 3 of Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019⁴.”, and

- (b) by the deletion of subparagraph (c).

Amendment of European Union (Bank Recovery and Resolution) Regulations 2015

48. The European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No. 289 of 2015) are amended, in Regulation 3(1), by the substitution of the following definition for the definition of “covered bond”:

“ ‘covered bond’ means a covered bond as defined in point (1) of Article 3 of Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019⁵ or, with regard to an instrument that was issued before 8 July 2022, a bond as referred to in Article 52(4) of Directive 2009/65/EC, as applicable on the date of its issue;”.

⁴ O.J. No. L. 328, 18.12.2019, p. 29.

⁵ O.J. No. L. 328, 18.12.2019, p. 29.



GIVEN under my Official Seal,
3 November, 2021.

PASCHAL DONOHOE,
Minister for Finance.

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