



Number 26 of 2012

CREDIT GUARANTEE ACT 2012

REVISED

Updated to 11 February 2016

This Revised Act is an administrative consolidation of *Credit Guarantee Act 2012*. It is prepared by the Law Reform Commission in accordance with its function under *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Credit Guarantee (Amendment) Act 2016 (1/2016)*, enacted 8 February 2016, and all statutory instruments up to and including *Córas Iompair Éireann Pension Scheme for Regular Wages Staff (Amendment) Scheme (Confirmation) Order 2016 (S.I. No. 63 of 2016)*, made 11 February 2016, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Credit Guarantee Acts 2012 and 2016: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Credit Guarantee (Amendment) Act 2016* (1/2016), s. 1(3)). The Acts in this group are:

- *Credit Guarantee (Amendment) Act 2016* (1/2016), parts 1 to 3
- *Credit Guarantee Act 2012* (26/2012)

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1999, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Credit Guarantee (Amendment) Act 2016* (1/2016)

All Acts up to and including *Credit Guarantee (Amendment) Act 2016 (1/2016)*, enacted 8 February 2016, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Credit Guarantee Scheme 2015* (S.I. No. 48 of 2015)
- *Credit Guarantee Act 2012 (Commencement) Order 2012* (S.I. No. 382 of 2012)
- *Credit Guarantee Scheme 2012* (S.I. No. 360 of 2012)

All statutory instruments up to and including *Córas Iompair Éireann Pension Scheme for Regular Wages Staff (Amendment) Scheme (Confirmation) Order 2016* (S.I. No. 63 of 2016), made 11 February 2016, were considered in the preparation of this revision.



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ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Participating lender.
3. Qualifying enterprise.
4. Power of Minister to give guarantees.
5. Credit guarantee scheme.
6. Laying of scheme before both Houses of Oireachtas.
7. Agreement for performance of functions under credit guarantee scheme.
8. Payment of charge to Minister by participating borrower.
9. Withdrawal of guarantee by Minister.
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ACTS REFERRED TO

Central Bank Act 1971

1971, No. 24

European Communities (Amendment) Act 1993

1993, No. 25



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AN ACT TO ENABLE THE MINISTER FOR JOBS, ENTERPRISE AND INNOVATION TO GIVE GUARANTEES TO LENDERS OF A CERTAIN CLASS IN RESPECT OF LOANS MADE BY SUCH LENDERS TO ENTERPRISES OF A CERTAIN CLASS; FOR THAT PURPOSE TO PROVIDE FOR THE MAKING OF A SCHEME OR SCHEMES BY THAT MINISTER OF THE GOVERNMENT IN RELATION TO THE GIVING OF SUCH GUARANTEES; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH.

[18th July, 2012]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation. 1.— In this Act—

“applicable conditions” has the meaning assigned to it by *subsection (3) of section 5*;

“contractor” has the meaning assigned to it by *section 7*;

“credit guarantee scheme” means a scheme under *section 5*;

“EEA Agreement” has the same meaning as it has in the European Communities (Amendment) Act 1993;

“EEA state” means—

- (a) a member state of the European Communities (other than the State), or
- (b) a state (other than a member state of the European Communities) that is a contracting party to the EEA Agreement;

“lender” means—

- (a) a person who is the holder of a licence under section 9 of the Central Bank Act 1971,
- (b) a person who, under the law of an EEA state, is entitled to carry on in that state the activities that a person referred to in *paragraph (a)* is entitled to carry on in the State by virtue of such a licence, or
- (c) a person who, under the law of the Swiss Confederation, is entitled to carry on in the Swiss Confederation the activities that a person referred to in *paragraph (a)* is entitled to carry on in the State by virtue of such a licence;

“loan agreement” means an agreement under which a participating lender agrees to give or advance to a qualifying enterprise a sum or sums of money upon—

- (a) such date or dates as may be specified in the agreement, or
- (b) the happening of such event as may be so specified,

in consideration of that qualifying enterprise agreeing to repay to the participating lender the principal of any sum or sums so given or advanced, and interest (if any) thereon, on such date or dates as may be so specified, but does not include an agreement to provide a facility (commonly known as an overdraft facility) to a qualifying enterprise; and “loan” shall be construed accordingly;

“Minister” means the Minister for Jobs, Enterprise and Innovation;

“participating borrower” means a qualifying enterprise—

- (a) belonging to a class to which a credit guarantee scheme applies, and
- (b) who has entered into a qualifying loan agreement with a participating lender;

“participating lender” shall be construed in accordance with *section 2*;

“qualifying enterprise” shall be construed in accordance with *section 3*;

“qualifying loan agreement” means a loan agreement—

- (a) in respect of which there has been compliance with the conditions specified in a credit guarantee scheme under *subsection (4) of section 5*,
- (b) belonging to a class of loan agreement to which a credit guarantee scheme applies,
- (c) that is made for a purpose that does not contravene a provision of a credit guarantee scheme to which *paragraph (d)* of that subsection applies,
- (d) that does not permit a lender to exercise his or her powers under the loan agreement in such manner as would result in—
 - (i) the amount being loaned under the agreement exceeding the maximum amount specified under that subsection, or
 - (ii) the aggregate of amounts being loaned under all such agreements with the qualifying enterprise concerned exceeding the maximum amount so specified.

Annotations

Amendments:

- F1** Inserted by *Credit Guarantee (Amendment) Act 2016 (1/2016)*, s. 3(a), not commenced as of date of revision, subject to exclusions in s. 9.
- F2** Deleted by *Credit Guarantee (Amendment) Act 2016 (1/2016)*, s. 3(c), not commenced as of date of revision, subject to exclusions in s. 9.
- F3** Substituted by *Credit Guarantee (Amendment) Act 2016 (1/2016)*, s. 3(b)(i), not commenced as of date of revision, subject to exclusions in s. 9.
- F4** Inserted by *Credit Guarantee (Amendment) Act 2016 (1/2016)*, s. 3(b)(ii), not commenced as of date of revision, subject to exclusions in s. 9.

Modifications (not altering text):

- C1** Prospective affecting provision: section amended by *Credit Guarantee (Amendment) Act 2016 (1/2016)*, s. 3, not commenced as of date of revision.

1.— In this Act—

“applicable conditions” has the meaning assigned to it by *subsection (3) of section 5*;

F1[“asset credit facility agreement” means an agreement (other than a loan agreement or a credit facility agreement) under which a participating finance provider agrees to provide to a qualifying enterprise credit in the form of tangible movable property upon—

- (a) such date or dates as may be specified in the agreement, or
- (b) the happening of such event as may be so specified,

in consideration of that qualifying enterprise agreeing to make payments to the participating finance provider on such date or dates, or the happening of such event as may be so specified, and ‘asset credit facility’ shall be construed accordingly;]

F1[“cash price” means, in relation to property provided pursuant to a qualifying finance agreement that is an asset credit facility agreement, the price that the participating enterprise would have been required to pay for the property if, at the time of the making of the agreement, that enterprise had elected to—

- (a) purchase the property, and
- (b) pay for the property in cash;]

“contractor” has the meaning assigned to it by *section 7*;

F1[“credit amount” means—

- (a) in the case of a qualifying finance agreement that is a loan agreement, the principal of moneys borrowed from the participating finance provider by a participating enterprise pursuant to the agreement,
- (b) in the case of a qualifying finance agreement that is a credit facility agreement, the maximum amount (whether or not drawn down) of moneys agreed to be given or advanced by the participating finance provider to a participating enterprise, or to a third party nominated in that behalf by a participating enterprise, pursuant to the agreement,
- (c) in the case of a qualifying finance agreement that is an asset credit facility agreement, the cash price (specified in the agreement) of the property provided by the participating finance provider to a participating enterprise pursuant to the agreement, and
- (d) in the case of a qualifying finance agreement that is an invoice finance facility agreement, the maximum amount of moneys agreed to be given or advanced by the participating finance provider to a participating enterprise pursuant to the agreement, irrespective of whether that amount is given or advanced;]

F1[“credit facility agreement” means an agreement (other than a loan agreement) under which a participating finance provider agrees to give or advance to a qualifying enterprise, or to a third party nominated in that behalf by a qualifying enterprise, a sum or sums of money upon—

- (a) such date or dates as may be specified in the agreement, or
- (b) the happening of such event as may be so specified,

in consideration of that qualifying enterprise agreeing to repay to the participating finance provider the said sum or sums of money so given or advanced, and interest or charges (if any) thereon, on such date or dates as may be so specified, and ‘credit facility’ shall be construed accordingly;]

“credit guarantee scheme” means a scheme under *section 5*;

F2[...]

F2[...]

F1[“finance agreement” means—

- (a) a loan agreement,
- (b) a credit facility agreement,
- (c) an asset credit facility agreement, or
- (d) an invoice finance facility agreement;]

F1[“finance provider” means a person who, in the ordinary course of business—

- (a) provides financial products to qualifying enterprises,
- (b) arranges for the provision by other persons of financial products to qualifying enterprises, or
- (c) provides facilities for the provision on credit of goods or services by the person to qualifying enterprises,

but does not include a person who is prohibited under the law of the State or any other state from engaging in any of the activities specified in the foregoing paragraphs, and references to the provision of a financial product shall be construed accordingly;]

F1[“financial product” means—

- (a) a loan,
- (b) a credit facility,
- (c) an asset credit facility, or
- (d) an invoice finance facility,

provided to a qualifying enterprise under a finance agreement;]

F1[“invoice finance facility agreement” means an agreement under which a participating finance provider agrees to give or advance to a qualifying enterprise a sum or sums of money in consideration of that qualifying enterprise assigning to the participating finance provider the right to recover debts owed to that qualifying enterprise, and ‘invoice finance facility’ shall be construed accordingly;]

F2[...]

“loan agreement” means an agreement under which a F3[participating finance provider] agrees to give or advance to a qualifying enterprise a sum or sums of money upon—

- (a) such date or dates as may be specified in the agreement, or
- (b) the happening of such event as may be so specified,

in consideration of that qualifying enterprise agreeing to repay to the F3[participating finance provider] the principal of any sum or sums so given or advanced, and interest (if any) thereon, on such date or dates as may be so specified, but does not include an agreement to provide a facility (commonly known as an overdraft facility F4[, credit card facility or credit line facility]) to a qualifying enterprise; and “loan” shall be construed accordingly;

“Minister” means the Minister for Jobs, Enterprise and Innovation;

F2[...]

F1[“participating enterprise” means a qualifying enterprise—

- (a) belonging to a class to which a credit guarantee scheme applies, and
- (b) who has entered into a qualifying finance agreement with a participating finance provider;]

F1[“participating finance provider” shall be construed in accordance with section 2;]

F2[...]

F1[“qualifying finance agreement” means a finance agreement—

- (a) in respect of which there has been compliance with the conditions specified in a credit guarantee scheme under subsection (4) of section 5,
- (b) belonging to a class of finance agreement to which a credit guarantee scheme applies,
- (c) that is made for a purpose that does not contravene a provision of a credit guarantee scheme to which paragraph (c) of that subsection applies, and
- (d) that does not permit a finance provider to exercise his or her powers under the finance agreement in such manner as would result in—
 - (i) the value of the financial product provided under the agreement exceeding the maximum value specified under that subsection,

(ii) the aggregate of the value of the financial products provided under a particular class of finance agreements with the qualifying enterprise concerned exceeding the maximum value so specified, or

(iii) the aggregate of the value of the financial products provided under all qualifying finance agreements with the qualifying enterprise concerned exceeding the maximum value specified under that subsection;]

“qualifying enterprise” shall be construed in accordance with *section 3*;

F2[...]

Participating lender.

2.— (1) For the purposes of this Act, a lender is a participating lender if—

(a) the lender is a person in respect of whom a certificate under *subsection (2)* has effect, and

(b) the lender stands approved for the time being by the Minister in accordance with this section.

(2) The Minister may, for the purposes of this section, certify in writing that he or she is satisfied that a lender provides loans in the ordinary course of business, or has expressed to the Minister an intention to provide loans in the ordinary course of business, to qualifying enterprises.

(3) The Minister may approve a lender under this section if—

(a) the lender declares, in writing, that he or she agrees to comply with and be bound by the terms of a credit guarantee scheme, and

(b) the Minister is satisfied that the lender has complied with the applicable conditions.

(4) The Minister may withdraw an approval under this section if a lender ceases to comply with the applicable conditions or contravenes any other provisions of a credit guarantee scheme.

Annotations

Amendments:

F5 Substituted by *Credit Guarantee (Amendment) Act 2016 (1/2016)*, s. 4, not commenced as of date of revision, subject to exclusions in s. 9.

Modifications (not altering text):

C2 Prospective affecting provision: section substituted by *Credit Guarantee (Amendment) Act 2016 (1/2016)*, s. 4, not commenced as of date of revision.

F5[2. (1) For the purposes of this Act, a finance provider is a participating finance provider if—

(a) the finance provider is a person in respect of whom a certificate under *subsection (2)* has effect, and

(b) the finance provider stands approved for the time being by the Minister in accordance with this section.

(2) For the purposes of this section, the Minister may, on the provision by the person referred to in *paragraph (a) or (b)*, as may be appropriate, of such information or documentation as the Minister considers necessary, certify in writing that he or she is satisfied—

(a) that a person is a finance provider, or

(b) that a person intends to carry on the business of—

- (i) providing financial products to qualifying enterprises,
 - (ii) arranging for the provision by other persons of financial products to qualifying enterprises, or
 - (iii) providing facilities for the provision on credit of goods or services by the person first-mentioned in this paragraph to qualifying enterprises.
- (3) The Minister may approve a finance provider under this section if—
- (a) the finance provider declares, in writing, that he or she agrees to comply with and be bound by the terms of a credit guarantee scheme, and
 - (b) the Minister is satisfied that the finance provider has complied with the applicable conditions.
- (4) The Minister may withdraw an approval under this section if a finance provider ceases to comply with the applicable conditions or contravenes any other provisions of a credit guarantee scheme.]

Qualifying enterprise.

3.— (1) For the purposes of this Act, a person is a qualifying enterprise if—

- (a) the person is established in the State and employs fewer than 250 persons (calculated in accordance with the Commission Recommendation) whether or not in the State, and
- (b) the person's—
 - (i) annual turnover does not exceed €50 million (calculated in accordance with the Commission Recommendation) whether or not earned in, or derived from activities carried on in, the State,
 - (ii) estimated annual turnover (in circumstances where the person has been carrying on business for less than 12 months) in the year concerned does not exceed €50 million (calculated in accordance with the Commission Recommendation) whether or not estimated to be earned, or derived from activities carried on, in the State, or
 - (iii) annual balance sheet total does not exceed €43 million (calculated in accordance with the Commission Recommendation).

(2) In this section “Commission Recommendation” means Commission Recommendation (2003/361/EC) of 6 May 2003¹ concerning the definition of micro, small and medium-sized enterprises.

Power of Minister to give guarantees.

4.— (1) Subject to this section, the Minister may, in accordance with a credit guarantee scheme, enter into an agreement with a participating lender guaranteeing the due repayment to that participating lender of such part of the principal of moneys borrowed from that lender by participating borrowers pursuant to qualifying loan agreements as is specified in the first-mentioned agreement.

(2) Subject to *subsection (3)*, the Minister shall not, pursuant to a guarantee under this section, be liable, in relation to any particular qualifying loan agreement, to pay an amount exceeding 75 per cent of the principal of moneys borrowed pursuant to that agreement for the time being standing unpaid.

(3) The Minister shall not exercise the powers conferred on him or her by this section in such manner as would result in his or her being liable, in respect of moneys borrowed in any year from a participating lender pursuant to qualifying loan agreements, to pay to that participating lender amounts the aggregate of which would exceed 10 per cent of the aggregate of the principal of those moneys.

¹ O.J. No. L124 of 20.5.2003, p.36

(4) (a) The Minister shall not exercise the powers conferred on him or her by this section in such manner as would result in the aggregate of the principal of all loans made pursuant to qualifying loan agreements entered into in any year and to which guarantees under this section apply exceeding €150 million.

(b) For the purposes of this subsection, a loan is deemed to have been made on the date of the making of the qualifying loan agreement concerned whether or not, pursuant to that agreement, the loan is payable on a later date or the happening of a subsequent event.

(5) The Minister may notify a participating lender in writing that an agreement entered into by the Minister with the participating lender under this section shall not apply in relation to qualifying loan agreements (in this section referred to as “new loan agreements”) entered into by the participating lender after such date as may be specified in the notice.

(6) An agreement under this section shall not apply to new loan agreements.

Annotations

Amendments:

- F6** Substituted by *Credit Guarantee (Amendment) Act 2016 (1/2016)*, s. 5, not commenced as of date of revision, subject to exclusions in s. 9.

Modifications (not altering text):

- C3** Prospective affecting provision: section substituted by *Credit Guarantee (Amendment) Act 2016 (1/2016)*, s. 5, not commenced as of date of revision.

F6[4. (1) Subject to this section and section 12 of the *Credit Guarantee (Amendment) Act 2016*, the Minister may, in accordance with a credit guarantee scheme, enter into an agreement with a participating finance provider guaranteeing the due repayment or payment, as the case may be, to that participating finance provider of such part of the credit amount under a qualifying finance agreement as is specified in the first-mentioned agreement.

(2) Subject to *subsection (3)* and section 12 of the *Credit Guarantee (Amendment) Act 2016*, the Minister shall not, pursuant to a guarantee under this section, be liable, in relation to any particular qualifying finance agreement, to pay an amount exceeding 80 per cent of the credit amount that—

- (a) the participating enterprise concerned stands liable, for the time being, to pay to the participating finance provider concerned, and
- (b) stands unpaid.

(3) The Minister shall not exercise the powers conferred on him or her by this section in such manner as would result in his or her being liable, in respect of qualifying finance agreements entered into by the same participating finance provider, to pay to that participating finance provider amounts the aggregate of which would exceed 13 per cent of the aggregate of the credit amounts under those qualifying finance agreements.

(4) The Minister shall not exercise the powers conferred on him or her by this section in such manner as would result in the yearly credit amount to which guarantees under this section apply exceeding €150 million.

(5) The Minister shall, in relation to a credit guarantee scheme, after consultation with the participating finance provider concerned, and by notice in writing given to the provider, specify the maximum value of financial products that may be provided by that provider pursuant to qualifying finance agreements—

- (a) entered into in any year, and
- (b) to which guarantees under this section apply.

(6) The Minister may notify a participating finance provider in writing that an agreement entered into by the Minister with the participating finance provider under this section shall not apply in relation to one or more classes of qualifying finance agreements (in this section referred to as “new finance agreements”) entered into by the participating finance provider after such date as may be specified in the notice.

(7) An agreement under this section shall not apply to new finance agreements.

(8) In this section “yearly credit amount” means, in relation to any particular year, the aggregate of all credit amounts in respect of all qualifying finance agreements made in that year.]

C4 Prospective affecting provision: application of powers conferred on Minister by section restricted by *Credit Guarantee (Amendment) Act 2016 (1/2016)*, s. 12, not commenced as of date of revision.

Monetary limit on Minister’s liability

12. The Minister shall not exercise the powers conferred on him or her by section 4 of the Principal Act or *section 11* in such manner as would result in the aggregate of the Minister’s liability in respect of—

- (a) all qualifying finance agreements, to which guarantees under a credit guarantee scheme apply, entered into in any year, and
 - (b) all qualifying PFI guarantee agreements, to which counter guarantees under a counter guarantee scheme apply, entered into in that same year,
- exceeding €15.6 million.

Credit guarantee scheme.

5.— (1) The Minister may, with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform, make a scheme or schemes for the purposes of this Act.

(2) Without prejudice to the generality of *subsection (1)*, a scheme under this section may make provision in relation to all or any of the following matters:

- (a) the giving of information to the Minister for the purposes of the making of an agreement under *section 4*;
- (b) the extent of the Minister’s liability to a participating lender in accordance with an agreement under *section 4* in circumstances where the participating lender fails or refuses to comply with this Act or a scheme under this section;
- (c) variation of the terms of an agreement under *section 4* in circumstances where a participating lender fails or refuses to comply with this Act or a scheme under this section;
- (d) the payment of the initial premium or annual premium under *section 8* by instalments;
- (e) the preparation and maintenance of records, books of account and such other documentation as may be specified in a scheme under this section by participating lenders;
- (f) provision with regard to the giving of documents, information and reports by lenders to the Minister;
- (g) the audit and examination of accounts of qualifying enterprises;
- (h) requirements in relation to the transfer of any rights and liabilities under a loan agreement;
- (i) such other matters as the Minister, after consultation with the Minister for Finance and the Minister for Public Expenditure and Reform considers necessary or expedient.

(3) A scheme under this section shall specify conditions (in this Act referred to as “applicable conditions”), with which a lender shall, for the purposes of the granting of approval under *section 2*, comply, relating to—

- (a) the policies and practices of the lender as respects—
 - (i) the lending of money generally,
 - (ii) the giving of loans to qualifying enterprises,
 - (iii) the recovery of moneys borrowed from the lender,
 - (iv) the provision by borrowers of security for moneys borrowed from the lender,
- (b) the administration and management of the lender,
- (c) the procedures in relation to the supervision of transactions entered into on the lender’s behalf by members of staff of the lender, and
- (d) the proportion that moneys standing borrowed for the time being from the lender bears to the capital reserves of the lender,

declared in a credit guarantee scheme to be conditions with which a lender shall comply before an approval in respect of that lender may be given under this section.

(4) A scheme under this section shall specify—

- (a) the class or classes of qualifying enterprise to which the scheme shall apply,
- (b) the conditions that shall be complied with in relation to the entering into of a loan agreement by a participating lender with a qualifying enterprise,
- (c) the class or classes of loan agreement to which the scheme shall apply,
- (d) the purposes for which moneys borrowed pursuant to any such agreement may be applied, and
- (e) the maximum amount or amounts that a participating lender may lend to a qualifying enterprise.

Annotations

Amendments:

- F7** Substituted by *Credit Guarantee (Amendment) Act 2016 (1/2016)*, s. 6(a), not commenced as of date of revision, subject to exclusions in s. 9.
- F8** Substituted by *Credit Guarantee (Amendment) Act 2016 (1/2016)*, s. 6(b), not commenced as of date of revision, subject to exclusions in s. 9.
- F9** Substituted by *Credit Guarantee (Amendment) Act 2016 (1/2016)*, s. 6(c), not commenced as of date of revision, subject to exclusions in s. 9.
- F10** Inserted by *Credit Guarantee (Amendment) Act 2016 (1/2016)*, s. 6(d), not commenced as of date of revision, subject to exclusions in s. 9.

Modifications (not altering text):

- C5** Prospective affecting provision: section amended by *Credit Guarantee (Amendment) Act 2016 (1/2016)*, s. 6, not commenced as of date of revision.

5.—...

(2) Without prejudice to the generality of *subsection (1)*, a scheme under this section may make provision in relation to all or any of the following matters:

- F7[(a) the giving of such information to the Minister, as he or she may reasonably require for the purposes of the granting of approval under *section 2* or the making of an agreement under *section 4*;
- (b) the extent of the Minister's liability to a F7[participating finance provider] in accordance with an agreement under *section 4* in circumstances where the F7[participating finance provider] fails or refuses to comply with this Act or a scheme under this section;
- (c) variation of the terms of an agreement under *section 4* in circumstances where a F7[participating finance provider] fails or refuses to comply with this Act or a scheme under this section;
- F7[(d) without prejudice to the generality of *section 8(4)*, the method of payment of the premium under *section 8* and the time or times at which the premium shall be paid;]
- (e) the preparation and maintenance of records, books of account and such other documentation as may be specified in a scheme under this section by F7[participating finance providers];
- (f) provision with regard to the giving of documents, information and reports by F7[finance providers] to the Minister;
- (g) the audit and examination of accounts of qualifying enterprises;
- (h) requirements in relation to the transfer of any rights and liabilities under a F7[finance agreement];
- (i) such other matters as the Minister, after consultation with the Minister for Finance and the Minister for Public Expenditure and Reform considers necessary or expedient.

F8[(3) A scheme under this section shall specify conditions (in this Act referred to as 'applicable conditions'), with which a finance provider shall, for the purposes of the granting of approval under *section 2*, comply, relating to—

- (a) the policies and practices of the finance provider as respects—
 - (i) the provision of financial products generally,
 - (ii) the provision of financial products to qualifying enterprises,
 - (iii) the assessment of the credit risk or financial stability of qualifying enterprises,
 - (iv) the recovery of sums owing to the finance provider by a qualifying enterprise or property provided to a qualifying enterprise by the finance provider under a qualifying finance agreement, and
 - (v) the provision by qualifying enterprises of security for financial products provided to qualifying enterprises under qualifying finance agreements,
- (b) the sources from which the finance provider obtains his or her finance or funding,
- (c) the credit history of the finance provider and, in the case of certain classes of finance provider as may be specified in the scheme, a person who has, subject to *subsection (6)*, a controlling interest in the finance provider,
- (d) the accounts and financial performance of the finance provider,
- (e) in the case of a finance provider referred to in *paragraph (b)* of the definition of 'finance provider', the payment by the finance provider of any moneys that may be received by that provider from the Minister pursuant to a guarantee under *section 4* in respect of a qualifying finance agreement, to the person who provided the financial product to which that agreement relates,
- (f) the administration and management of the finance provider,
- (g) the financial product or financial products to which the scheme applies, including—
 - (i) the information and documentation to be provided by the finance provider to the Minister in relation to the provision of such financial products,

(ii) the information and documentation to be provided by the finance provider to qualifying enterprises in relation to the provision of such financial products, and

(iii) the interest, charges and other costs (if any) that may be applied in relation to the provision of such financial products to qualifying enterprises,

(h) the procedures in relation to the supervision of finance agreements entered into on the finance provider's behalf by members of staff of the finance provider, and

(i) where applicable, the capital reserves of the finance provider,

declared in a credit guarantee scheme to be conditions with which a finance provider shall comply before an approval in respect of that finance provider may be given under *section 2*.]

F9[(4) A scheme under this section shall specify—

(a) the class or classes of—

- (i) qualifying enterprise,
- (ii) finance provider,
- (iii) financial product, and
- (iv) finance agreement,

to which the scheme shall apply,

(b) the conditions that shall be complied with in relation to the entering into of a finance agreement by a participating finance provider with a qualifying enterprise,

(c) the purposes for which moneys or other property received by qualifying enterprises pursuant to a finance agreement may be applied,

(d) the maximum value or values of one or more financial products that may be provided to a qualifying enterprise under one or more finance agreements to which the scheme applies, and

(e) the methodology referred to in *section 8(1)*.]

F10[(5) (a) The Minister may require that any information referred to in *subsection (2)(a)* given to him or her by a person in compliance with a scheme under this section be attested as to the truth of the information by a statutory declaration made by that person.

(b) The Minister may require that any document, information or report referred to in *subsection (2)(f)* given to him or her by a finance provider in compliance with a scheme under this section be attested as to the truth of the contents of the document or report or, as the case may be, as to the truth of the information, by a statutory declaration made by that finance provider.

(6) For the purposes of this section, controlling interest shall be construed in accordance with *subsection (14) of section 494 of the Taxes Consolidation Act 1997* and, accordingly, that *subsection* shall apply in relation to a finance provider subject to any necessary modifications.]

Editorial Notes:

E1 Power pursuant to section exercised (10.02.2015) by *Credit Guarantee Scheme 2015* (S.I. No. 48 of 2015), in effect as per art. 2.

E2 Power pursuant to section exercised (4.09.2012) by *Credit Guarantee Scheme 2012* (S.I. No. 360 of 2012), in effect as per art. 2.

Laying of scheme before both Houses of Oireachtas.

6.— A credit guarantee scheme shall be laid by the Minister before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House sits after the credit guarantee scheme is laid before it, the credit guarantee scheme shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Agreement for performance of functions under credit guarantee scheme.

7.— (1) The Minister may enter into an agreement with another person (in this Act referred to as the “contractor”) for the performance by that person of such functions under a credit guarantee scheme as may be specified in the agreement.

(2) An agreement under this section shall contain such terms and conditions as the Minister, after consultation with the Minister for Public Expenditure and Reform, determines.

(3) The Minister may terminate an agreement under this section where the contractor fails to comply with any of the terms or conditions contained in the agreement.

Payment of charge to Minister by participating borrower.

8.— (1) Subject to *subsection (3)*, a participating borrower shall, not later than 6 months after the entry by him or her into the qualifying loan agreement concerned, pay to the Minister an amount (in this section referred to as the “initial amount”) equal to 2 per cent of the principal of the money lent under that agreement.

(2) Subject to *subsection (3)*, a participating borrower shall, not later than 4 weeks after each anniversary after the entry by him or her into the qualifying loan agreement concerned, pay to the Minister an amount (in this section referred to as the “annual amount”) equal to 2 per cent of the principal of the money lent under that agreement.

(3) Where provision is made in a credit guarantee scheme for payment of the initial premium or the annual premium by instalment, a participating borrower may pay the initial premium or the annual premium by instalment at such intervals as are specified in the scheme.

Annotations

Amendments:

F11 Substituted by *Credit Guarantee (Amendment) Act 2016 (1/2016)*, s. 7, not commenced as of date of revision, subject to exclusions in s. 9.

Modifications (not altering text):

C6 Prospective affecting provision: section substituted by *Credit Guarantee (Amendment) Act 2016 (1/2016)*, s. 7, not commenced as of date of revision.

F11[8. (1) Subject to this section, a participating enterprise shall, in accordance with a credit guarantee scheme that applies to the enterprise and a qualifying finance agreement entered into by the enterprise with a participating finance provider, pay to the Minister an amount (in this section referred to as the ‘premium’) determined by the Minister in accordance with the methodology specified in the scheme for the purposes of making that determination.

(2) The Minister shall, in specifying, in a credit guarantee scheme, the methodology referred to in *subsection (1)*, have regard to—

- (a) the expenses referred to in *section 11* incurred or likely to be incurred, or both, in relation to the scheme, and
- (b) the objectives of the scheme.

(3) The Minister shall, in specifying, in a credit guarantee scheme, the methodology referred to in *subsection (1)* in so far as the expenses referred to in *section 11* are concerned, have regard to—

- (a) the size and quality of the participating enterprises to which the scheme applies,
- (b) the risks associated with those participating enterprises,
- (c) the typical risks associated with the business sector or sectors to which those participating enterprises belong,

- (d) the duration of guarantees given under the scheme,
- (e) the Minister's liability under *section 4(2)* in relation to a qualifying finance agreement to which the scheme applies, and
- (f) the nature of qualifying finance agreements to which the scheme applies.
- (4) The premium may be charged annually, may be paid by one payment or by instalments, and may be paid at such time or times, as may be specified in the credit guarantee scheme.
- (5) The Minister shall apply the premium received by him or her from a participating enterprise for the purpose only of defraying the costs of the credit guarantee scheme which applies to the enterprise.]

Withdrawal of guarantee by Minister.

9.— (1) Where a participating lender fails or refuses to comply with the terms of a credit guarantee scheme, the Minister may withdraw any guarantee given by him or her in respect of any qualifying loan agreement to which that participating lender is a party.

(2) Any term of a loan agreement that permits a participating lender to—

- (a) alter a term or condition of such agreement upon the withdrawal of a guarantee in accordance with *subsection (1)*, or
- (b) impose less favourable terms and conditions on the participating borrower upon the withdrawal of a guarantee in accordance with *subsection (1)*,

shall be null and void.

Annotations

Amendments:

F12 Substituted by *Credit Guarantee (Amendment) Act 2016 (1/2016)*, s. 8, not commenced as of date of revision, subject to exclusions in s. 9.

Modifications (not altering text):

C7 Prospective affecting provision: section substituted by *Credit Guarantee (Amendment) Act 2016 (1/2016)*, s. 8, not commenced as of date of revision.

F12[**9.** (1) Where a participating finance provider fails or refuses to comply with the terms of a credit guarantee scheme, the Minister may withdraw any guarantee given by him or her in respect of any qualifying finance agreement to which that participating finance provider is a party.

(2) Any term of a finance agreement that permits a participating finance provider to—

- (a) alter a term or condition of such agreement upon the withdrawal of a guarantee in accordance with *subsection (1)*, or
- (b) impose less favourable terms and conditions on the participating enterprise upon the withdrawal of a guarantee in accordance with *subsection (1)*,

shall be null and void.]

Review of credit guarantee scheme.

10.— The Minister may, at any time, conduct a review of the operation of a credit guarantee scheme and, not later than 2 months after completing such review make a report in writing to each House of the Oireachtas of his or her findings and conclusions resulting from that review.

Expenses. 11.— The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, with the consent of the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

Short title and commencement. 12.— (1) This Act may be cited as the Credit Guarantee Act 2012.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Annotations

Editorial Notes:

E3 Power pursuant to section exercised (30.08.2012) by *Credit Guarantee Act 2012 (Commencement) Order 2012* (S.I. No. 382 of 2012), art. 2.

2. The 30th day of August 2012 is appointed as the day upon which the Credit Guarantee Act 2012 (No. 26 of 2012), shall come into operation.