



An Bille um Chreidmheas d’Fheirmeacha Lagaithe, 2022
Impaired Farm Credit Bill 2022

Mar a tionscnaíodh

As initiated



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ACTS REFERRED TO

Asset Covered Securities Acts 2001 to 2007

Companies (Amendment) (No. 2) Act 1999 (No. 30)

Companies (Amendment) Act 1990 (No. 27)

Consumer Protection (Regulation of Credit Servicing Firms) Act 2018 (No. 38)

Family Home Protection Act 1976 (No. 27)

Land Act 1965 (No. 2)

Land and Conveyancing Law Reform Act 2009 (No. 27)

Partition Act 1868 (31 & 32 Vict. c. 40)

Personal Insolvency Acts 2012 to 2015



AN BILLE UM CHREIDMHEAS d'FHEIRMEACHA LAGAITHE, 2022
IMPAIRED FARM CREDIT BILL 2022

Bill

entitled

- An Act to provide for a *sui generis* debt management protocol for the farming sector and— 5
- A. to provide for the disaggregation of lands charged with repayment of farm debt into two parcels, the “Farmlands” and the “Farmhouse”,
 - B. that debt secured on the parcel designated as the farmhouse be governed by the legislation, general law, and regulatory codes of conduct pertaining to a debtor’s principal place of residence, and to take account of the special position of any co-owner thereof, 10
 - C. for the role and regulation of receivers as credit servicers and as agent of the debtor,
 - D. that possession and sale of the farmlands by the secured creditor be deferred until after a moratorium affording the debtor space and time to engage in preparation of a proposal of a “Farm Debt Settlement Arrangement”, 15
 - E. further provisions relevant to early discharge of farm debt, following the approach of Directive (EU) 2019/1023,
 - F. that the said measures be modelled on the company examinership provisions in the Companies (Amendment) Act 1990, as to a moratorium and otherwise, but also reflect the provisions in the Personal Insolvency Acts 2012 to 2015, regarding the Court's discretion to enforce on creditors a Farm Debt Settlement Arrangement proposal which modifies the terms of the secured loan but also satisfies section 71(1)(d)(i) and section 115A(9)(e) and (f) of the said Acts as to fairness for each class of creditors, and allows the farmer a fresh start for a farm with ongoing viability, 20 25
 - G. for measures to open access to cross border liquidity for second mortgages at sustainable cost, and
 - H. for the option of returning overindebted lands to State ownership in the interests of the patrimony, food security and the climate change agenda. 30

Be it enacted by the Oireachtas as follows:

Short title and commencement

- 1. (1) This Act may be cited as the Impaired Farm Credit Act 2022.
- (2) This Act shall come into operation on such day or days as may be appointed by order or orders made by the Minister, either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes and different provisions of this Act. 5

Definitions

- 2. In this Act—
 - “agricultural property” means agricultural land, pasture, woodland, and crops, trees and underwood growing on such land and also includes such farm buildings, farm houses and mansion houses (together with the lands occupied with such farm buildings, farm houses and mansion houses) as are of a character appropriate to the property, and farm machinery, livestock and blood-stock on such property; 10
 - “collateral” means whatever property is taken to secure a loan subject to a contractual obligation on the recipient to return the property once the underlying transaction has been performed; 15
 - “credit default swap” means a derivative contract to receive a contingent payment following a credit event with reference to a pre-agreed reference entity;
 - “Directive” means the Directive (EU) 2019/1023 of the European Parliament and of the Council of 20th of June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency, and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency); 20
 - “farmer” means the person on whose account the business of farming is carried out and whose name is on file as such in the records of the Department of Agriculture and Fisheries; 25
 - “moratorium” means a period of time during which the debtor’s position is as it would be had a Protective Certificate under section 95 of the Personal Insolvency Acts 2012 to 2015 issued to him or her;
 - “mortgage” means pledging property as collateral; 30
 - “receivables” means any right to receive property which can itself be traded and transferred in return for a market value;
 - “sustainable” means likely to be able to continue trading as a going concern such that the financial outcome for creditors is likely to be better than the estimated financial outcome for such creditors if the debtor were to be adjudicated bankrupt. 35

Impaired Farm Credit

- 3. (1) The provisions of this Act apply only to agricultural property which is charged as security for loan facilities whether such charge is in the form of a legal mortgage, an equitable mortgage, or a judgment mortgage.
- (2) It is hereby confirmed, for the avoidance of doubt, that a lien registered on a folio title 40

is not an enforceable mortgage security until same has been declared by Court order to be well charged.

- (3) A creditor claiming security on a collateral of agricultural property on the basis of an equitable mortgage, whether registered as a lien or not, or on the basis of a judgment mortgage, shall notify the mortgagor of the nomination of a named person to act as receiver for the purposes of this Act, and his authority to so act, where disputed, shall be determined by the court, and confirmed by an order declaring such, or other, person to be accountable thereafter as an officer of the court. 5
- (4) The appointment of a receiver will, of itself, have legal effect as if Court interim orders had been made and the receivership thereafter will be subject to Court supervision. The entitlement of a secured creditor to require a receiver to sell collateral consisting of agricultural property shall be deferred for the duration of a time-limited moratorium 10
- (5) A mortgagee of farmlands shall not, either by himself or by a receiver validly appointed, take possession of the mortgaged property, and a power of sale shall not be exercisable, without court orders under section 97 and section 100(3) of the Land and Conveyancing Law Reform Act 2009, and the court will only grant such orders as part of a Farm Debt Settlement Arrangement as hereinafter described, and the reference in both those sections to the consent of the mortgagor shall be construed as his consent to such Arrangement and not otherwise. 15 20
- (6) No Execution Order for Possession of agricultural property may be carried out by a Sheriff in favour of anyone other than the plaintiff named on the Order for Possession.
- (7) Without prejudice to the application of this Act, the debtor is entitled to initiate insolvency procedures under the Personal Insolvency Acts 2012 to 2015 at any time.

Disaggregation of Collateral

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4. (1) Where the collateral for a loan consists of both farmlands and a farmhouse, the receivables accruing to the owner of a farm loan shall continue to be secured on both such parcels.
- (2) In so far as the security pertains to the farmhouse, the terms of the loan so secured shall be deemed to have been at all times terms applicable to a housing loan on standard housing loan terms repayable over a term of thirty years and any mortgage of the farmhouse shall be governed by the provisions of the Land and Conveyancing Law Reform Act 2009 regarding housing loan mortgages as therein defined. 30
- (3) In so far as payments have been made on the farm loan, same shall be credited firstly to the said home loan. 35
- (4) The mortgagee shall propose to the farmer the boundaries of such of the secured lands as may properly be included as a cover asset in a securitisable covered asset bond under the Asset Covered Securities Acts 2001 to 2007, and the farmer, if in disagreement with such proposal, shall counter-propose the boundaries of such of the secured lands as he may reasonably consider to be the farmhouse having regard to the principles set forth in the Charter of Fundamental Rights of the European Union governing his right to earn a living therefrom. 40
- (5) The resolution of any dispute as to the boundaries shall be postponed until a Farm

Debt Settlement Arrangement proposal is the subject of an application for court sanction, when the court may fix same and make consequential well charging and other orders including rectification of registered title.

- (6) The statutory discretion to order a sale of either part of the security lands, as provided for in the Partition Act 1868, is hereby confirmed but the “other circumstances” referred to in section 3 of that Act and the “good reason to the contrary” referred to in section 4 of that Act shall include the following factors: 5
- (a) whether the non-debtor co-owner might be rendered homeless as a result of the sale;
 - (b) whether the proceeds available to the non-debtor co-owner might be enough to accommodate that person or both owners following a sale; 10
 - (c) the fact that the sale would not provide sufficient funds to discharge the judgment creditor’s debt;
 - (d) whether the non-debtor co-owner got value for the loan or other debt;
 - (e) whether a sale might lead to hardship in the living arrangements of a non-debtor co-owner, or lead to hardship; 15
 - (f) the age and means of both the farmer and the non-debtor co-owner;
 - (g) an offer to make a payment in reduction of a liability;
 - (h) the likely financial consequences of the making of an order for sale.

Farmhouse 20

5. (1) The loan owner shall not be entitled to proceed against the farmer solely on the strength of the lender’s determination of sustainability and affordability of the home loan either restructured as above provided or otherwise modified or restructured, or by virtue of any alleged non-engagement by the farmer with his opportunities to do so as specified in regulatory codes of conduct. 25
- (2) Whatever the involvement of any co-owner of the Farmhouse in the farm business, in the determination of the law affecting the secured lender’s claims as against the Farmhouse, the co-owner shall be deemed to have been a consumer at all material times.
- (3) Any co-owner of the farmhouse shall be presumed to have executed loan contractual documentation (including any spouse’s consent under the Family Home Protection Act 1976), when under the undue influence of the farmer, and the farmer to have so acted as agent for the lender and with its knowledge. 30
- (4) The co-owner shall be presumed to have been credulous in interactions with the lender and Article 5(3) of the Unfair Commercial Practices Directive 2005/29 EC shall apply. The lender shall be presumed to have been in breach of Directive 2008/48 on credit agreements for consumers, and the provisions of the Consumer Rights Directive 2011/83 shall be deemed applicable. 35
- (5) Where a co-owner is deemed to be a non-debtor in respect of the secured debt to the extent same is secured on the farm homestead, section 30 of the Land and Conveyancing Law Reform Act 2009 shall not operate to prevent the secured creditor, 40

or its assigns, as co-owner, from selling same as evidence.

Receiver

6. (1) The receiver shall notify the Minister for Agriculture, Food and the Marine of his or her appointment.
- (2) The receiver's duties as monitor of the moratorium are— 5
- (a) to form an evidence based opinion as to whether the farm business can be rescued from cash flow insolvency by the adoption of a Farm Debt Settlement Arrangement on terms as to loan modification, restructure and debt forgiveness which are fair and equitable in relation to each class of creditor and not unfairly prejudicial to the interests of any party, 10
 - (b) to that end, to seek such interlocutory orders and directions of the court as to the disclosure to him or her of the books and records of the farm business,
 - (c) to promptly notify known creditors of his appointment, and
 - (d) to apply to the court to bring about the end of the moratorium if either the books and records of the farm business are not produced in good time, or if he or she forms the opinion that cash flow solvency is not possible within any Farm Debt Settlement Arrangement constructed in accordance with the provisions of this Act. 15
- (3) The receiver will be an officer of the court and will be responsible for—
- (a) assessing the eligibility conditions at the commencement of the moratorium, 20
 - (b) assessing and monitoring the qualifying conditions at the commencement of and throughout the duration of the moratorium,
 - (c) where the qualifying conditions cease to be met during the moratorium, ending it,
 - (d) sanctioning asset disposals outside the normal course of business and the granting of any new security over farm assets, 25
 - (e) extending the duration of the moratorium when there remains a good prospect of achieving a better outcome for creditors than might otherwise be available, and
 - (f) providing creditors promptly with such information as they may reasonably require to facilitate an informed challenge to the progress of the moratorium and the discharge of responsibilities of the monitor. 30
- (4) The provisions of the Consumer Protection (Regulation of Credit Servicing Firms) Act 2018 shall apply to receivers holding office pursuant to the provisions of this Act exactly as if such receivers were themselves credit servicers.
- (5) The receiver will be deemed to have notice of his obligations in common law as agent of the debtor and, specifically in regard to the monitored moratorium, his obligation to be subject to the legitimate directions of the debtor as his or her principal. 35

Engagement during a Moratorium

7. (1) The dialogue between the lender and the debtor will be mediated by the receiver who

- shall propose terms of a substitute restructure of the loan as a fixed income fixed term facility.
- (2) At all times following the appointment of a receiver under this Act the following provisions shall have effect:
- (a) the debtor shall remain in possession of the security lands, and free to manage the farm without hindrance; 5
 - (b) no attachment, sequestration, distress, or execution shall be put into force against the property or effects of the farmer, except with the consent of the receiver;
 - (c) where any claim against the farmer is secured by a mortgage, charge, lien or other encumbrance or a pledge of, on or affecting the whole or any part of the property, effects or income of the farmer, no action may be taken to realize the whole or any part of that security, except with the consent of the receiver; 10
 - (d) no steps may be taken to repossess goods in the farmer's possession under any hire-purchase agreement except with the consent of the receiver.
- (3) For the duration of the moratorium, the secured creditor, the receiver and the debtor will deal collaboratively and adhere to the examinership provisions of the Companies (Amendment) Act 1990 as amended by the Companies (Amendment) (No. 2) Act 1999 as if the debtor was a body corporate, and the said provisions apply *mutatis mutandis*. 15
- (4) In order to inform any proposal by the debtor to resolve the debt, the receiver will be entitled to know from the creditor the minimum terms which it will accept either to fully satisfy the debt or to accept a third party offer to purchase the loan outright. 20
- (5) The secured creditor shall supply the receiver with such evidence as he may require of its beneficial title to both the security and the receivables so secured and the cost of same as entered in the creditor's books, together with statements of the debtor's account, and shall not object to their production in court. Where the receivables have previously been securitised, the book value of same to the mortgage-backed bond or credit swap counterparty shall be made known to the court if the creditor asserts unfairness or prejudice in any Farm Debt Settlement Arrangement proposed. 25

Repricing Claims

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8. (1) No inference shall be drawn from a farmer's silence or non-response to documentation addressed to him or her by or on behalf of a secured creditor, and his dealings with the lender shall be deemed to have been outside the ordinary course of business.
- (2) A plaintiff with no genuine interest in the outcome of the action which pre-existed the commencement of the proceedings shall not be permitted either to prove a debt in a liquidation or other insolvency or recover possession of any collateral securing the loan the subject of the proceedings. 35
- (3) In respect of a charge over farm assets and save for the creditor in whose favour the charge was originally created, a secured creditor which calls in and demands repayment of the principal sum secured shall be deemed to have agreed to the treatment of unsecured creditors as preferential creditors for all purposes. 40

- (4) If the creditor enforcing the security is not the originating lender, and if the debtor was not offered, at the time of sale to the creditor, a first option to acquire same at the price matching the creditor’s offer, the security shall have effect only for the sum paid and as non-recourse for any balance written off by the vendor creditor, which balance will thereafter rank as unsecured. 5
- (5) It shall be presumed that the secured creditor hedged his risk by transacting a credit default swap, by insurance, or otherwise laid off his nominal exposure, and the equity of any haircut imposed on such creditor in the Farm Debt Settlement Arrangement shall take full account of his net-position, and of the transparent avoidance of unjust enrichment. 10

Farm Debt Settlement Arrangement

9. (1) In particular, it shall be the duty of the receiver, as monitor of the moratorium, to prepare a proposal for a Farm Debt Settlement Arrangement within two calendar months and, on notice to both the creditor and the debtor, to apply for final court orders approving same. 15
- (2) The applicable test for court approval of a Farm Debt Settlement Arrangement shall be undertaken whether its implementation will mean that rescue of the farm, in the medium or long term specified, is more likely than not. Cross-class cram-down will only be approved where it is necessary to achieve the stated aims of the restructure proposed, and where it is just and equitable in the circumstances. 20
- (3) Where a Farm Debt Settlement Agreement involves cross-class cram-down in the form envisaged in Article 11 of Directive (EU) 2019/1023 or in any case where the claims of affected parties are not to be treated in separate classes as provided for in paragraph 4 of Article 9 of that Directive but are to be compromised *pari passu*, application to the court for sanction of the proposed agreement shall be made, and the court will sanction same only where— 25
- (a) the restructuring plan satisfies the best-interest-of-creditors test,
 - (b) any new financing does not unfairly prejudice the interests of creditors, and
 - (c) the plan has a reasonable prospect of ensuring the viability of the farm business and of preventing the insolvency of the debtor. 30
- (4) (a) If a number representing 75 per cent in value of the creditors or class of creditors or members or class of members (as the case may be) agree a compromise or arrangement, the court may, on an application under this section, sanction the compromise or arrangement.
- (b) An application under this subsection may be made by the farmer or any creditor. 35
 - (c) A compromise or arrangement sanctioned by the court is binding on all creditors or the class of creditors or on the members or class of members (as the case may be).
- (5) (a) This subsection applies if the compromise or arrangement is not agreed by a number representing at least 75 per cent in value of a class of creditors (“the dissenting class”). 40
- (b) If conditions A and B are met, the fact that the dissenting class has not agreed the

compromise or arrangement does not prevent the court from sanctioning it under *subsection (4)*.

- (c) Condition A is that the court is satisfied that, if the compromise or arrangement were to be sanctioned under *subsection (4)*, none of the members of the dissenting class would be any worse off than they would be in the event of the relevant alternative, as defined in *paragraph (e)*. 5
- (d) Condition B is that the compromise or arrangement has been agreed by a number representing 75 per cent in value of a class of creditors or (as the case may be) of members, present and voting either in person or by proxy at the meeting summoned, who would receive a payment, or have a genuine economic interest in the farm undertaking as a going concern and collateral, in the event of the relevant alternative. 10
- (e) For the purposes of this subsection, “the relevant alternative” is whatever the court considers would be most likely to occur in relation to the farm undertaking if the compromise or arrangement were not sanctioned under *subsection (4)*. 15

Patrimony

- 10. (1) Given that land is the capital of agriculture and given the systemic risk of alienation of Irish land resulting from secured loan defaults, the Central Bank shall have a micro-prudential oversight of the activities of lenders to the sector, and shall report annually to the Minister for Agriculture, Food and the Marine on the trends noted in the quantum and beneficial ownership of lands charged with repayment of such loans. 20
- (2) Any transaction which might have the effect of vesting beneficial ownership of farmland in collateral recovery businesses, or in securitisation vehicles (whether subsidiaries or close companies of regulated banks) or Undertakings for Collective Investment in Transferable Securities under Directive 2009/65/EC, or in other covered asset bonds (under the 2001/2007 Acts aforesaid), or as part of a Qualified Investors Alternative Investment Fund notified to the Central Bank, shall require the consent of the Minister for Agriculture, Food and the Marine, and section 45 of the Land Act 1965 shall stand re-enacted to the extent necessary to so provide. 25
- (3) The Minister for Agriculture, Food and the Marine shall not consent unless he is satisfied that the transaction was in market overt with no distortion as between parties tendering competitively on the basis of shadow banking funding or special tax treatment unavailable to some. 30
- (4) The exercise of the Minister for Agriculture, Food and the Marine’s discretion shall have regard to observance of the Base Erosion Profit Shifting Tax guideline principles and the obligation to follow rules laid down by the Anti-Tax Avoidance Directive (EU) 2016/1164. 35
- (5) As envisaged in the Capital Markets Union proposals of the EU, the Central Bank shall establish and manage a brokerage supporting farmers seeking finance and refinance from elsewhere in the EU. 40
- (6) The National Treasury Management Agency shall make available for sale such credit default swaps in the European bond and AIF markets, including for Environmental Social and Governance investment, as will support access for farmers to shadow

banking intermediated liquidity on a second mortgage basis.

Tax Avoidance

11. After the occurrence of an event of default, no sale or assignment of a loan secured on an agricultural property shall be completed save on terms binding the purchaser or assignee to honour any offer of loan restructure, modification or other compromise previously offered to the farmer. 5

An Bille um Chreidmheas d’Fheirmeacha
Lagaithe, 2022

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do dhéanamh socrú maidir le prótacal *sui generis* bainistithe fiachais le haghaidh na hearnála feirmeoireachta agus do dhéanamh socrú—
A. maidir le tailte atá faoi mhúirear fiachas feirme a aisíoc a dhí-chomhshuíú ina dhá ndáileacht, na “Tailte Feirme” agus an “Teach Feirme”,
B. go ndéanfar fiachas a bheidh urraithe ar an dáileacht a bheidh sainainmnithe mar an teach feirme a rialú leis an reachtaíocht, leis an dlí ginearálta agus leis na cóid iompair rialála a bhaineann le príomhát chónaithe féichiúnaí, agus chun staid speisialta aon chomhúinéara de chuid an tí feirme sin a chur i gceantas,
C. maidir le ról agus rialáil glacadóirí mar sheirbhíseoirí creidmheasa agus mar ghníomhairí de chuid an fhéichiúnaí,
D. go ndéanfar sealbhú agus díol na dtailte feirme ag an gcreidiúnaí urraithe a iarchur go dtí tar éis moratóra chun deis a thabhairt don fhéichiúnaí agus chun go mbeidh an t-am aige nó aici chun gabháil do thogra a ullmhú le haghaidh “Comhshocraíocht Socraíochta Fiachais Feirme”,
E. maidir le tuilleadh forálacha is iomchuí i ndáil le fiachas feirme a urscaoileadh go luath, de réir chur chuige Threoir (AE) 2019/1023,
F. go ndéanfar na bearta sin a mhúnlú de réir na bhforálacha maidir le scrúdaitheoireachtaí cuideachtaí in Acht na gCuideachtaí (Leasú), 1990, maidir le moratóir agus le nithe eile, ach go léireofar freisin sna bearta sin na forálacha sna hAchtanna um Dhómhainneacht Phearsanta, 2012 go 2015, maidir le rogha na Cúirte togra le haghaidh Comhshocraíocht Socraíochta Fiachais Feirme a fhorfheidhmiú i gcoinne creidiúnaithe, is togra lena modhnaitear téarmaí na hiasachta urraithe, ach a chomhlíonann alt 71(1)(d)(i) agus alt 115A(9)(e) agus (f) de na hAchtanna sin i dtaobh cothroime do gach aicme creidiúnaithe, agus a thugann deis don fheirmeoir tosú as an nua i gcomhair feirm ag a bhfuil inmharthanacht leanúnach,
G. maidir le bearta chun rochtain a thabhairt ar leachtaíocht trasteorann le haghaidh dara morgaistí ar chostas inchothaithe, agus
H. maidir leis an rogha tailte a bhfuil rófhéichiúnas orthu a chur faoi úinéireacht an Stáit athuair ar mhaithe leis an bhfineachas, leis an tslándáil bia agus leis an gelár um an athrú aeráide.

*Na Teachtaí Maitiú Mac Craith, Micheál Ó
hÉallaigh, Caral Uí Nualláin, Risteárd Ó
Donnchadha, Dónall Ó hÉallaigh agus Micheál Ó
Coileáin a thug isteach,*

26 Aibreán, 2022

Impaired Farm Credit Bill 2022

BILL

(as initiated)

entitled

An Act to provide for a *sui generis* Debt Management Protocol for the farming sector and—
A. to provide for the disaggregation of lands charged with repayment of farm debt into two parcels, the “Farmlands” and the “Farmhouse”,
B. that debt secured on the parcel designated as the farmhouse be governed by the legislation, general law, and regulatory codes of conduct pertaining to a debtor’s principal place of residence, and to take account of the special position of any co-owner thereof,
C. for the role and regulation of receivers as credit servicers and as agent of the debtor,
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E. further provisions relevant to early discharge of farm debt, following the approach of Directive (EU) 2019/1023,
F. that the said measures be modelled on the company examinership provisions in the Companies (Amendment) Act 1990, as to a moratorium and otherwise, but also reflect the provisions in the Personal Insolvency Acts 2012 to 2015, regarding the Court’s discretion to enforce on creditors a Farm Debt Settlement Arrangement proposal which modifies the terms of the secured loan but also satisfies section 71(1)(d)(i) and section 115A(9)(e) and (f) of the said Acts as to fairness for each class of creditors, and allows the farmer a fresh start for a farm with ongoing viability,
G. for measures to open access to cross border liquidity for second mortgages at sustainable cost, and
H. for the option of returning overindebted lands to State ownership in the interests of the patrimony, food security and the climate change agenda.

*Introduced by Deputies Mattie McGrath, Michael
Healy-Rae, Carol Nolan, Richard O’Donoghue,
Danny Healy-Rae and Michael Collins,*

26th April, 2022

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó

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