

**DRAFT GENERAL SCHEME
OF
Criminal Justice (Counterfeiting) Bill 2019**

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Long Title

A Bill to amend the Criminal Justice (Theft and Fraud Offences) Act 2001 (No. 50 of 2001), in order to give effect to Directive 2014/62/EU on the protection of the euro and other currencies against counterfeiting by criminal law, to give full effect to Council Regulation No. 44/2009 of 18 December 2008 amending Regulation (EC) No. 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting; to give full effect to Council Regulation No. 1210/2010 of the European Parliament and of the Council of 15 December 2010 concerning authentication of euro coins and handling of euro coins unfit for circulation; and to give full effect to Decision of the European Central Bank of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes (ECB/2010/14); and to provide for consequential and other related matters.

Head 1 – Short Title and Commencement

- (1) This Bill may be cited as the Criminal Justice (Counterfeiting) Bill 2019.
- (2) This Bill shall come into effect on such days 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 provisions.

Head 2 – Interpretation

Provide that Section 32, Part 5 of the Criminal Justice (Theft and Fraud Offences) Act (No. 50 of 2001) is amended to include the following : -

“the 2001 Act” means the Criminal Justice (Theft and Fraud Offences) Act 2001;

“Minister” means Minister for Justice and Equality;

“Directive 2014/62/EU” means Directive 2014/62/EU on the protection of the euro and other currencies against counterfeiting by criminal law;

“Banknote Regulation” means Council Regulation No 44/2009 of 18 December 2008 amending Regulation (EC) No. 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting;

“Coin Regulation” means Council Regulation No. 1210/2010 of the European Parliament and of the Council of 15 December 2010 concerning authentication of euro coins and handling of euro coins unfit for circulation;

“Decision of the ECB” means the decision of the European Central Bank of 16 September 2010 on the authenticity and fitness checking and recirculation of euro banknotes (ECB/2010/14);

“Directive 2015/2366/EU” means Directive (EU) 2015/2366 of the European Parliament and the Council of 25 November 2015 on payment services in the internal market, amending Directive 2005/65/EU, 2009/110/EC and 2013/36/EU and Regulation (EU) No. 1093/2010, and repealing Directive 2007/64/EC;

“instrument/component” includes any instrument, article, computer programme, data or any other thing specially designed or adapted for making counterfeit or a currency note or coin;

“security features” includes holograms, watermarks or other components or currency which serve to protect against counterfeiting;

“competent authority” has the same meaning as those bodies listed in Section 32(1)(a) to (c) of the Act of 2001;

“legal facilities” refers to those facilities used by a competent authority.

Head 3 – Amendment to Section 36 of the 2001 Act

– materials and instruments/components for counterfeiting

Provide that Section 36(1) and (2) be amended by substituting the following:

- (1) A person who makes an instrument, component or security feature which he or she intends to use, or to permit any other person to use, for the purpose of making a counterfeit or a currency note or coin with the intention that it be passed or tendered as genuine is guilty of an offence.
- (2) A person is guilty of an offence of handling instruments, components or security features for making a counterfeit of a currency note or coin [with the intention that such counterfeits be passed or tendered as genuine], if he or she knows that such instruments, components or security features are for the purpose of making a counterfeit of a currency note or coin, or being reckless as to whether this is the case-
 - (a) Receives or arranges to receive such an instrument, component or security feature, or
 - (b) Undertakes, or assists in, the retention, removal, disposal or realisation by or for the benefit of another person of such an instrument, component or security feature, or arranges to do so.

Provide for the following new subsections:

- (3) A person who, without lawful authority or excuse, possesses an instrument, component or security features for making a counterfeit of a currency note or coin, knowing that such an instrument, component or security feature is for the purpose of making a counterfeit of a currency note or coin, being reckless in this respect is guilty of an offence.
- (4) For the purposes of subsection (2) and (3), a person is reckless as to whether an instrument, component or security feature is for the purposes of making a counterfeit of a currency note or coin, if the circumstances are such that it is reasonable to conclude that the person either knew that to be the case or was reckless as to whether this was the case. He or she shall be taken for the purposes of this Head to have so known or to have been so reckless, unless the

court or the jury, as the case may be, is satisfied having regard to all the evidence that there is a reasonable doubt as to whether he or she so knew or was so reckless.

- (5) Any person is guilty of an offence if they carry out any act referred to in subsections (1) to (3) and in sections 33, 34, 35, 36, or 37 of the 2001 Act in respect of currency notes or coins being manufactured by use of legal facilities or materials in violation of the rights or the conditions under which a competent authority may issue currency notes or coins.
- (6) Any person is guilty of an offence if they carry out any act referred to in subsections (1) to (3) and in sections 33, 34, 35, 36, or 37 of the 2001 Act in respect of currency notes and coins which are not yet issued, but are designated for circulation as legal tender.
- (7) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding—
- (a) in the case of an offence under *subsection (1)*, 10 years, or
 - (b) in the case of an offence under *subsection (2)*, 5 years, or
 - (c) In the case of an offence under subsection (1), 5 years.

Head 4 – Import and Export of counterfeits

Provide that-

Section 37(1) of the Act of 2001 is amended by substituting the following: -

- (1) A person who without lawful authority or excuse imports or exports a counterfeit of a currency note with a view to uttering the same and with knowledge that it is counterfeit is guilty of an offence.

Head 5 – Extra-territorial jurisdiction – inchoate offences

Provide that –

Section 38(1) of the Act of 2001 is amended by substituting the following: -

- (1) A person who outside the State commits any act referred to –
 - (a) in Sections 33,34, 35, 36 or 37, or
 - (b) aids, abets, counsels or procures the commission of an offence under paragraph (a) is guilty of an offence and liable on conviction on indictment to the penalty specified for such an act in the section concerned.

Head 6 – Amendment of Section 39(1) of the 2001 Act

Provide that –

Section 39(1) is amended by substituting the following for the definition of “designated body”:

- (a) a credit institution within the meaning of Article 3 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms;
- (b) within the limits of its payment activity, a payment service provider within the meaning of Directive 2015/2366/EU;
- (c) An Post;
- (d) a person or body authorised under the Central Bank Act, 1997, to provide bureau de change business;
- (e) any other person or body -
 - (i) whose business consists of or includes the provision of services involving the acceptances, exchange, transfer or holding of money for or on behalf of other persons or bodies, and
 - (ii) who is designated for the purposes of Section 39 by regulations made by the Minister for Finance after consultation with the Minister;
- (f) a person who in the course of business provides a service of sorting and redistributing currency notes or coins.

Section 39(1) is amended to include the following definition : -

“Central Bank” means Central Bank of Ireland.

Head 7 – Authenticity and fitness checking of euro notes and coins

Provide for a new section 39A

And for the purposes of Sections 39A to 39E, a “designated body” means

–

- (a) a credit institution within the meaning of Article 3 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms;
- (b) within the limits of its payment activity, a payment service provider within the meaning of Directive 2015/2366/EU;
- (c) An Post;
- (d) any other person engaged in the processing and distribution of euro notes and/or euro coins including–
 - (i) a person or body authorised under the Central Bank Act 1997, to provide bureau de change business;
 - (ii) a person who in the course of business provides a service of processing, sorting, distributing and redistributing euro notes and/or euro coins, including to the public;
 - (iii) a person who or which is engaged on a secondary basis in the processing and distribution to the public of euro notes via automated teller machines (ATMs), within the limit of that secondary basis;
 - (iv) any other person or body -
 - (I) whose business consists of or includes the provision of services involving the acceptance, exchange, transfer or holding of money for or on behalf of other persons or bodies, and
 - (II) who is designated for the purposes of Sections 39A to E by regulations made by the Minister for Finance after consultation with the Minister.

- (1) A designated body shall –
 - (a) ensure that euro notes and euro coins which it has received from a person or body other than the Central Bank, and which it intends to put back into circulation are checked for authenticity and that counterfeits are detected;
 - (b) withdraw from circulation any euro notes or euro coins received by it or tendered to it which it knows or has sufficient reason to believe to be counterfeit, and
 - (c) transmit known or suspected counterfeit euro notes immediately but in any event, not later than 20 days from the date of their detection to the Central Bank of Ireland with sufficient information as to the time, location and circumstances of their receipt as may be available.
 - (d) carry out authentication and fitness checks of euro notes in accordance with the Banknote Regulation and the Decision of the ECB;
 - (e) carry out authentication and fitness checks of euro coins in accordance with the procedures set out in the Coin Regulation.
- (2) If two or more designated bodies are involved in the recirculation of the same euro notes, the designated body responsible for the authenticity and fitness checking of euro notes shall be designated in contractual arrangements between relevant designated bodies.
- (3) The Currency Centre of the Central Bank of Ireland is designated as the National Analysis Centre for euro notes as required by Article 4(1) of the Banknote Regulation and as the Coin National Analysis Centre for euro coins as required by Article 5(1) of the Banknote Regulation.

Head 8 Functions and Powers of the Central Bank

Provide for a new Section 39B as follows : -

- (1) The Central Bank shall monitor compliance with Section 39A and take all necessary measures to ensure compliance.
- (2) The Central Bank may verify the following : -
 - (a) procedures governing the operation and control of banknote ~~eurø~~ ~~note~~ handling machines (as defined in the Decision of the ECB) and coin processing machines (as referred to in the Coin Regulation); and
 - (b) the treatment of, and any manual authenticity and fitness checking of euro notes and euro coins.
- (3) The Central Bank may in accordance with Section 39C, appoint persons as authorised officers for the purposes of monitoring compliance with Section 39A.
- (4) The Central Bank or an authorised officer appointed under section 39B may require a designated body or person to provide any information it deems necessary to monitor compliance with Section 39A and, in particular, copies of such contractual documentation referred to in Section 39A(2).

Head 9 Appointment of authorised officers

Provide for a new Section 39C as follows : -

- (1) The appointment of an authorised officer under section 39B shall be in writing. The Central Bank may appoint any of its officers or employees or other suitably qualified persons to be authorised officers.
- (2) An appointment under this section ceases if –
 - (a) the Central Bank revokes the appointment in writing at the time of revocation;
 - (b) the person appointed dies, at the time of death;
 - (c) the appointment is for a specified period, at the end of that period;
 - (d) the appointment is for a specified purpose, on the completion of that purpose, or
 - (e) the person appointed is, when appointed, an officer or employee of the Central Bank, when the person ceases to be such an officer or employee of the Central Bank.
- (3) Whenever requested to do so by the Central Bank, an authorised officer shall give to the Central Bank a report on the exercise by him or her of all or any of the powers conferred on an authorised officer.
- (4) Every authorised officer appointed by the Central Bank shall be furnished with a warrant of his or her appointment, and when exercising a power conferred by section 39D of this Act, shall produce such warrant or a copy of it, together with a form of personal identification, for inspection if requested to do so by a person affected by the exercise of the power.
- (5) In this section "suitably qualified person" means any person (other than an officer or employee of the Central Bank) who, in the opinion of the Central Bank, has the qualifications and experience necessary to exercise the powers conferred on an authorised officer by section 39D of this Act.

Head 10 Powers of authorised officers

Provide for a new Section 39D as follows : -

- (1) An authorised officer may do one or more of the following for the purpose of monitoring compliance with section 39A : -
- (a) at all reasonable times enter, without prior notice, any premises at which a designated body or its agents is carrying on, or has carried on, business where the Central Bank reasonably believes that such entrance is necessary for the purpose of –
 - (i) monitoring the banknote handling machines and coin processing machines to ensure compliance with the Decision of the ECB, the Banknote Regulation and the Coin Regulation, in particular the capacity of machines to check for authenticity and fitness, or
 - (ii) tracing to the account holder and suspect counterfeit euro notes and euro coin that are not clearly authenticated; or
 - (iii) taking such action as the authorised officer reasonably believes is necessary to ensure compliance with the : -
 - (I) Banknote Regulation;
 - (II) Decision of the ECB;
 - (III) Coin Regulation.
 - (b) monitor and inspect banknote handling machines and coin processing machines at the premises referred to in paragraph (a);
 - (c) remove samples of processed euro notes and euro coin from the premises referred to in paragraph (a) for further checking;
 - (d) search and inspect the premises referred to in paragraph (a) and any relevant records at that place;

- (e) secure for later inspection the premises referred to in paragraph (a), or any part of that premises, for such a period as may reasonably be necessary for the purposes of the exercise of his or her powers under this section;
- (f) require a person at the premises referred to in paragraph (a) or any person employed in connection with a business carried out at that premises, to produce to the authorised officer relevant records, and where any of those relevant records are in a non-legible form to -
 - (i) reproduce them in a legible form, or
 - (ii) to give the authorised officer such information as that officer reasonably requires regarding entries in them;
- (g) inspect and take copies of relevant records inspected or produced under this section (including, in the case of information in a non-legible form, a copy of all or part of the information in a permanent legible form);
- (h) secure for later inspection any relevant records so provided or found and any data equipment, including any computer, on which the authorised officer reasonably believes relevant records may be held;
- (i) remove and retain some or all of the relevant records inspected or produced under this section for such period as may be reasonable to facilitate their further examination;
- (j) require a person to give to the authorised officer information (including information by way of a written report) that that officer reasonably requires in relation to activities covered by section 39A and to produce all relevant records that the person has in their possession or to which they have access;
- (k) require a person by whom, or on whose behalf, data equipment is or has been used, or a person who has charge of, or is otherwise concerned with the operation of, that equipment or any associated apparatus or material, to give the authorised officer access and all reasonable assistance in relation to its operation;
- (l) require a person to explain entries in relevant records to the authorised officer;

- (m) require a person at the premises referred to in paragraph (a) to answer questions.
- (2) Where a person from whom production of a relevant record is required claims a lien over it, its production does not affect the lien.
- (3) An obligation to produce a relevant record or report, or to provide information or assistance, under this section applies to –
 - (a) an examiner, liquidator or receiver of, or any person who is or has been an officer or employee or agent of, a designated body, or
 - (b) any other person who appears to the Central Bank or the authorised officer concerned to have the relevant record or report in his or her possession or under his or her control or the ability to provide information or assistance, as the case may be.
- (4) When exercising a power under this section, an authorised officer may, where the authorised officer considers it necessary, be accompanied by one or more -
 - (a) members of the Garda Síochána,
 - (b) authorised officers.
- (5) For the purposes of this section, the following definitions apply:
 - “record” means any book, document or any other written or printed material in any form including any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form;
 - “data equipment” means equipment for processing data;
 - “relevant records” means any records relating to a designated body’s compliance with section 39A.
- (6) A person commits an offence if he or she –
 - (a) obstructs or impedes the Central Bank or an authorised officer in the exercise of any powers under this section or section 39A;
 - (b) without reasonable excuse, does not comply with a requirement imposed under this section or section 39A;

- (c) in purported compliance with such a requirement, provides information or records or other documents to the Central Bank or an authorised officer that the person knows to be false or misleading in a material respect, or
- (d) falsely represents himself or herself to be an authorised officer.

(7) A person who commits an offence under this section is liable -

- (a) on summary conviction, to a fine or imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years, or both.

(8) If a person refuses to answer a question asked of him or her or to comply with any other requirement made, under this section or section 39A, on the grounds that the answer or compliance with the requirement might tend to incriminate the person and the person is informed of his or her obligation to answer the question or to comply with the requirement, the person shall not refuse to answer the question or to comply with the requirement but the answer given or information provided on that occasion shall not be admissible as evidence in criminal proceedings against the person other than proceedings against him or her under this section.

Head 11 Central Bank's power to give directions

Provide for a new section 39E as follows : -

- (1) Where a designated body fails –
- (a) to comply with section 39A, the Decision of the ECB, the Banknote Regulation or the Coin Regulation, or
 - (b) to co-operate with an authorised officer in the exercise of his or her powers under section 39D;

the Central Bank may issue a direction in writing to the designated body concerned for the purpose of ensuring effective compliance with any of the following–

- (i) section 39A or 39D of this Act;
 - (ii) the Decision of the ECB;
 - (iii) the Banknote Regulation or
 - (iv) the Coin Regulation.
- (2) A direction under subsection (1) shall –
- (a) take effect on the date, or on the occurrence of the event, specified in the direction, and
 - (b) cease to have effect–
 - (i) on such date, or the occurrence of such event, as is specified in the direction for the purpose, or
 - (ii) on the expiration of the period of 12 months immediately following the day on which the direction took effect.
- (3) A designated body to whom a direction is issued [under subsection (1)] shall comply with the direction within such period as may be specified in the direction.
- (4) [In addition to issuing a direction], the Central Bank may issue a notice prohibiting the designated body from recirculating euro note denominations of the series concerned until such time as the direction is complied with.

- (5) If a direction under this section is not [or has not been] complied with, the Central Bank may apply to the High Court for such an order as the Central Bank considers appropriate.
- (6) The powers of the Central Bank under this section are in addition to those conferred on it by any other enactment to give directions or impose conditions or requirements.
- (7) Without prejudice to section 58, a designated body which fails to comply with a direction issued under this section, is guilty of an offence under this section and liable-
- (a) On summary conviction to a fine or imprisonment of for a term not exceeding 12 months or both, or
 - (b) On conviction on indictment, to a fine or imprisonment for a maximum term not less than 5 years or both.

Head 12 – Amendment of Central Bank Act 1942
Provide for a new section 39F

Section 2(2A) of the Central Bank Act 1942 is amended by inserting the following:-

Council Regulation (EC) No 1338/2001 of 28 June 2001, as amended by Council Regulation (EC) No 44/2009 of 18 December 2008

Regulation (EU) No 1210/2010 of 15 December 2010

Decision of the European Central Bank of 16 September 2010

The Central Bank Act 1942 is amended in Part 1 of Schedule 2 by inserting the following:-

No of 2018 Criminal Justice (Counterfeiting) Bill, 2018. –
Section 39A