



## Changes to Financial Services Regulation

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Two new pieces of legislation, which have recently been signed into law by the President, change the landscape of consumer complaints and make important changes to the offices of the Financial Services Ombudsman (“**FSO**”) and the Pensions Ombudsman.

### Central Bank and Financial Services Authority of Ireland (Amendment) Act 2017

The *Central Bank and Financial Services Authority of Ireland (Amendment) Act 2017* (the “**Amendment Act**”) was a private members bill which was signed by the President on 25 July 2017.

The Amendment Act has retrospectively amended the 6 year limitation period for certain types of complaints. Individuals who have previously had complaints to the FSO declined because of the date of the conduct complained of may now be able to re-submit complaints relating to “*long-term financial services*” (considered in more detail below).

### Financial Services and Pensions Ombudsman Act 2017

The *Financial Services and Pensions Ombudsman Act 2017* (the “**FSPO Act**”) was a government bill which was signed into law by the President on 26 July 2017. The FSPO Act has not yet been commenced by the Minister, but when it comes into force, it will, in effect, replace and supersede the Amendment Act.

The FSPO Act is of greater significance than the Amendment Act as it amends, updates and consolidates legislation underpinning the Financial Services Ombudsman and the Pensions Ombudsman,

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amalgamating both offices to establish the Office of the Financial Services and Pensions Ombudsman.

Of particular note is the extension of time limits for making certain complaints i.e. those relating to a “*long-term financial service*” and broadening the categories of individuals who may be subject to the Ombudsman’s compulsory information gathering powers, when investigating complaints about a financial service provider.

### Long Term Financial Services

The Amendment Act and the FSPO Act have introduced the concept of “*long-term financial service*”.

A “*long-term financial service*” means a financial service the duration of which is a fixed term of 5 years and one month or more and also life assurance policies. The definition does not extend to a series of consecutive terms in respect of a financial service’s duration (provided no individual one of them is 5 years and one month, or more, in length).

### Time Limits for Complaints under the FSPO Act

Under section 51 of the FSPO Act, complaints in respect of long-term financial services can now be made. Previously a consumer was not entitled to bring a complaint about a financial service if the conduct complained of occurred more than six years before the complaint was made. However under the FSPO Act and the Amendment Act, consumers can now bring complaints outside of this period if their complaint relates to a long-term financial service.

In order to benefit from the new time limits, the conduct complained of must have occurred during or after 2002, and the financial service concerned must not have terminated more than 6 years before the date of the complaint.

### The Six Year Rule

A core element of both pieces of legislation is the “six-year rule”. Complaints can be made either six years from the date of the conduct giving rise to the complaint, or three years from the earlier of the following two dates. The first is the date on which the person making the complaint first becomes aware of the conduct and the second is the date on which that person ought reasonably to have become aware of the conduct. The Ombudsman may extend the time frame for making complaints beyond these periods where there are reasonable grounds and it would be just and equitable in all the circumstances to do so.

### Powers of the Ombudsman

Under the FSPO Act the Ombudsman may require “*any person*” whom he/she believes has information or documentation that is relevant to an investigation to provide it to the Ombudsman, or to summon “*any person*” to attend before the Ombudsman to give evidence. The FSO’s

compulsory powers currently only permit information or documents to be compelled from a regulated entity or an associated entity of the regulated entity and to compel officers, members, agents or employees of the regulated entity to attend before the FSO to give evidence. Therefore under the FSPO Act the categories of individuals in respect of whom compulsory information gathering powers may be used has been significantly broadened.

### Time Limits for Appeals

Under both the Amendment Act and the FSPO Act the time limit for appealing the Ombudsman's findings have been extended. An individual now has thirty five days after being notified of the finding to appeal it. Discretion is given to the High Court to extend the appeal time frame if it would be just and equitable to do so.

The previous time frame for lodging an appeal to the High Court was twenty one days.

### Comment

The extension of the types of complaints available to consumers is something to which financial service providers need to take note. Of particular importance are the provisions which extend the time limits for making complaints.

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