

General Scheme of the Companies
(Corporate Enforcement Authority) Bill
2018

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PART 1 - General Provisions

Head 1 - Citation and commencement

Provide that:

1. This Act may be cited as the Companies (Corporate Enforcement Authority) Act.
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.

Explanatory note

This Head is a standard provision.

Since the enactment of the Companies Act 2014, the policy has been to maintain that citation. Therefore, this General Scheme is prepared with the intention that the final Act will be integrated into the Companies Act 2014, without the need to change that citation.

The purpose of this Bill is to establish the Office of the Director of Corporate Enforcement as an agency, rather than its current form of an office within the Department of Business, Enterprise and Innovation. The new agency will take the form of a commission structure and will be named the “Corporate Enforcement Authority” (The Authority).

The new Authority will be responsible for its own recruitment, budget and corporate governance. Thus, certain provisions of Chapter 3 of Part 15 of the Principal Act will be repealed and others amended. The establishment of a new body will be set out in new sections to the Principal Act, subject to consultation with the Office of Parliamentary Counsel.

This legislative approach will also facilitate the use of technical amendments to the Companies Act 2014, meaning that there is no need to restate the law concerning investigations (Part 13 of the Companies Act); Compliance and Enforcement (Part 14 of the Companies Act) and various other duties that company officers have in relation to assisting the supervisory function that this body will have in relation to its role in corporate enforcement. These technical amendments are set out later in the General Scheme.

Head 2 – Interpretation

Provide that:

Section 2 of the Principal Act is amended to include:

“Authority” means the Corporate Enforcement Authority

“Chairperson” means a Member appointed by the Minister to be Chairperson under Head 9, Subhead 4

“Member” means a person(s) appointed under Head 9

Explanatory note

This is a standard provision.

As this Bill will repeal, amend or insert provisions into the Companies Act 2014, that Act is defined as the “Principal Act”.

Most of the definitions necessary for this Bill are already provided for in the Principal Act. Accordingly, this Head is short, adding only the definitions that are required for the transformation from an office structure to that of an Authority.

Further definitions may become necessary during the drafting process.

Provide that:

A regulation made under this Bill shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Explanatory note

This is a standard provision and will apply to any Regulations made by the Minister under this Act.

For example, under Head 6, the Minister shall set an establishment date for the new Authority by Order. Similarly, under Head 18, the Minister may prescribe other persons as being able to disclose certain information to the Corporate Enforcement Authority.

This provision will apply to those Regulations.

Provide that:

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

Explanatory note

This is a standard provision of legislation of this kind.

Section 14 of the Companies Act 2014 already makes this provision. The Department will consult with the Office of the Parliamentary Counsel (OPC) on the necessity or otherwise for it to be repeated here.

Head 5 – Repeals

The following provisions of Chapter 3 of Part 15 of the Companies Act 2014 are repealed –

- Section 945 (Director of Corporate Enforcement)
- Section 946 (Terms and conditions of appointment)
- Section 947 (Removal, cessation and disqualification of Director)
- Section 948 (Acting Director of Corporate Enforcement)
- Section 949 (Functions of Director)
- Section 950 (Superannuation)
- Section 951 (Secondment to Director’s office of member of Garda Síochána)
- Section 953 (Liability of Director for acts or omissions)
- Section 954 (Director’s annual report)
- Section 955 (Director shall report as required)
- Section 956 (Confidentiality of information)
- Section 957 (Disclosure of information to Director)

Explanatory note

This Head repeals the provisions of the Companies Act 2014 that established and provide for the functions and administration of the Director for Corporate Enforcement and his Office.

Those provisions are based on the current structure of the Director and his Office.

Therefore, they are not appropriate to the structure of the new Corporate Enforcement Authority.

These repealed sections will be replaced with new provisions that reflect the new structure.

Head 26 is intended to ensure that the continuity of the law of ongoing investigations or other functions of the Office of the Director for Corporate Enforcement is not affected by the establishment of the new Authority.

PART 2 - Corporate Enforcement Authority

Head 6 - Establishment Day

Provide that:

The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Part.

Explanatory note

The purpose of this Head is to provide for the day in which the Corporate Enforcement Authority comes into being. Following enactment, the Minister will appoint an establishment day by Statutory Instrument.

Section 8 of the Competition and Consumer Protection Act 2014 served as the precedent.

Provide that:

1. There shall stand established on the establishment day, a body which shall be known in the Irish language, An tÚdarás um Fhorfheidhmiú Corparáideach or, in the English language, as the Corporate Enforcement Authority (in this Bill referred to as the “Authority”), to perform the functions conferred on it by this Bill.

2. The Authority –

(a) shall be a body corporate with perpetual succession and an official seal;

(b) may sue, and be sued in its corporate name, and

(c) may, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, have power to acquire, hold and dispose of land or any interest in land, and shall have power to acquire, hold and dispose of any other property.

3. The seal of the Authority may be authenticated by the signature of –

(a) a member; or

(b) a member of the staff of the Authority so authorised by the Authority.

4. Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal may be entered into or executed on behalf of the Authority by a member of staff generally or specifically authorised for that purpose.

5. Judicial notice shall be taken of the seal of the Authority and any document purporting to be an instrument made by, and to be sealed with the seal of, the Authority shall, unless the contrary is shown, be received in evidence and be deemed to be such an instrument without further proof unless the contrary is shown.

Explanatory note

This Head establishes the new Corporate Enforcement Authority, which will be an agency known in Irish as: “An tÚdarás um Fhorfheidhmiú Corparáideach ”.

Section 9 of the Competition and Consumer Protection Act 2014 is the precedent.

As a legal person, the Authority shall have perpetual succession, property rights, and can sue in its name or be sued.

The seal of the Authority may be authenticated by a member or a member of staff so authorised.

Provide that:

1. The Authority shall be independent in the performance of its tasks and exercise of its powers under the Principal Act.

2. The functions of the Authority are -

(a) encourage compliance with the Principal Act,

(b) to investigate –

i. instances of suspected offences under the Principal Act, and

ii. instances otherwise of suspected non-compliance with the Principal Act or with the duties and obligations to which companies and their officers are subject,

(c) to enforce the Principal Act, including any prosecution of offences by way of summary proceedings,

(d) at its discretion, to refer cases to the Director of Public Prosecutions where the Authority has reasonable grounds for believing that an indictable offence under the Principal Act has been committed,

(e) to exercise, in so far as the Authority considers it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in discharge of their functions under the Principal Act,

(f) for the purpose of ensuring the effective application and enforcement of obligations, standards and procedures to which companies and their officers are subject, to perform such other functions in respect of any matters to which the Principal Act relates as the Minister considers appropriate and may by order confer on the Authority, and

(g) to perform such other functions for the purpose referred to in paragraph (f) as may be assigned to the Authority under the Principal Act or any other Act of the Oireachtas.

3. The Authority may do all such acts or things as are necessary or expedient to enable it to perform its functions and exercise its powers.
4. References in any enactment to the Office of the Director of Corporate Enforcement are deleted and references to the Authority inserted.
5. The Authority may prescribe internal procedures following consultation with the Minister.

Explanatory note

The purpose of this Head is to confer functions on the Authority. It largely re-enacts section 949 of the Principal Act.

The Authority will be independent in the performance of its functions that are set out in subsection 2. The Authority's functions include encouraging compliance with the Companies Act 2014, investigation of suspected offences including through the appointment of inspectors, criminal investigation and prosecution, and civil enforcement of the obligations, standards and procedures to which companies and their officers are subject.

Subhead 2 re-enacts section 949 (2) of the Companies Act 2014. The only exception is section 949 (2)(g) which is not included here. That sub-section, which provided for the Director for Corporate Enforcement to be a member of the Irish Auditing and Accounting Supervisory Authority, is not carried over as it is a duplication of section 902(2) of the Companies Act 2014.

A new provision is contained in subhead 4. It provides for the deletion of references to the Director and for the insertion of Authority in any enactment. Subject to OPC's views, the Department will continue to explore whether the provisions of the Interpretation Act 2005

are sufficient or whether explicit savers are required. Note also Head 38, which may be unnecessary if this provision stands.

Subhead 5 provides an additional new power, relating to internal procedures such as policies on data protection and corporate governance.

Provide that:

1. The Authority shall consist of at least one member and not more than 3 Members.
2. Each member of the Authority shall be known as a Member of Corporate Enforcement Authority and is in this Bill referred to as a “Member”.
3. A Member shall be appointed by the Minister on the recommendation of the Public Appointments Service in accordance with the Public Service Management (Recruitment and Appointments) Act 2004.
4. In recommending a candidate for appointment as Member, the Public Appointments Service shall have regard to the need for him or her to possess sufficient expertise or qualifications in, or experience of, one or more of the following areas, namely law, public administration, investigation, or enforcement generally.
6. (a) The Minister shall, when a Member, with the consent of the Minister for Public Expenditure and Reform, fix the terms and conditions, including remuneration, of that Member.

(b) The Minister shall designate one Member as Chairperson.
7. A Member appointed in accordance with subhead 3 shall be appointed on a full-time basis for a period of not more than 5 years, and may be reappointed for a further period not exceeding 5 years.
8. Notwithstanding subhead 3, the person who is the Director immediately before the establishment day shall, unless he or she resigns, dies, is removed from, or otherwise vacates, office, be a Member of the Authority and shall hold that office subject to terms and conditions which are not less favourable than those of his or her appointment as Director.
9. A Member may resign by giving notice in writing to the Minister of his or her intention to resign and any such resignation shall take effect as of the date upon which the Minister shall have received notice of the resignation.

Explanatory note

The purpose of this Head is to provide for the membership of the new Authority.

The structure of the Authority is that of a commission, with between 1 and 3 full time members. As this structure is similar to that of the Competition and Consumer Protection Commission, section 12 of the Competition and Consumer Protection Act 2014 has served as a precedent here.

The flexibility regarding the number of Members is designed to enable the new body to bring in specific expertise commensurate with the workload of the Authority. Criminal investigations into corporate affairs are often complex and lengthy and require specialist oversight. Rigorous procedural safeguards and due process standards must be maintained to withstand likely court challenges. To facilitate this, the Authority may require separation of the investigative, compliance and administrative processes within the Authority and may impose a significant additional workload on a Member. Alternatively, the Authority may engage in a large-scale investigation that will require specialist leadership; skills and experience. Similarly, the Authority may find its case load expands significantly, requiring additional members to manage that.

The members will be full time, appointed for a period of up to 5 years and the possibility to be re-appointed for one further term, also up to 5 years. In line with the independence of the Authority, the members will be appointed by the Government, and the nominations to the Government will be of people recommended by the Public Appointments Commission. Subhead 4 sets out the criteria to be applied by the Public Appointments Commission in making those recommendations.

One of the members will be appointed as the Chairperson. If there is only 1 member, that person shall be the Chairperson.

Subhead 8 provides that the person who is Director immediately before the establishment day, shall be a Member of the Authority, unless he or she resigns, is removed from, dies, or otherwise vacates that office. The terms and conditions of that appointment shall not be less favourable than those of his or her appointment as a Director. This is intended to facilitate the transfer of functions from the ODCE to the new Authority.

Subhead 9 provides for the resignation of a Member and provides that the date upon which the Minister receives notice of the resignation shall be the effective date.

Provide that:

1. A Member shall cease to be a Member on –

- (a) being nominated as a member to Seanad Éireann.
- (b) being nominated as a candidate for election to either House of the Oireachtas or the European Parliament,
- (c) being regarded under Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to the European Parliament, or
- (d) becoming a member of a local authority.

2. A person who is for the time being –

- (a) entitled under the Standing Orders of either House of the Oireachtas to sit in that House,
- (b) a member of the European Parliament, or
- (c) a member of a local authority,

is, while so entitled or is such member, disqualified from being a Member of the Authority.

3. A person shall be disqualified from holding and shall cease to hold office as a Member of the Authority if he or she—

- (a) is adjudicated bankrupt,
- (b) makes a composition or arrangement with his or her creditors,
- (c) is convicted of an indictable offence in relation to a company,
- (d) is the subject of a disqualification order pursuant to section 842 or has agreed to a disqualification undertaking under section 850 of the Companies Act 2014 or is deemed to be subject to a disqualification order by virtue of section 839 of the Principal Act,

- (e) the health of the Member is such that he or she has become incapable through ill health or otherwise of effectively performing his or her duties,
- (f) has a conflict of interest of such significance that, in the opinion of the Government requires that he or she should not hold or should cease to hold such office, or
- (g) is sentenced to a term of imprisonment by a court of competent jurisdiction.

4. If a member is removed from office under subsection (3), the Minister shall ensure that a statement of the reasons for the Member's removal is laid before each House of the Oireachtas.

Explanatory note

This Head is a standard provision. Section 12 (22) and section 16 of the Competition and Consumer Protection Act 2014 are the precedents.

Subheads 1 and 2 re-enact sections 947(3) and (4) of the Companies Act 2014. Section 947(1) is to be repealed to safeguard the independence of the Authority. It is to be replaced with subhead 3.

Subhead 3 introduces the grounds for the disqualification of a Member while recognising and protecting the independence of the agency.

Subhead 4 re-enacts section 947(2) with the necessary modifications.

Provide that:

1. The Authority may, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, appoint such number of persons to be members of its staff as it may from time to time determine.
2. The Authority shall, subject to the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform, determine the grades of members of its staff and the numbers in each grade.
3. Members of the staff of the Authority are civil servants.
4. Every person who immediately before the establishment day was a member of the staff of the Office of the Director of Corporate Enforcement shall become a member of the staff of the Authority on that day.
5. The functions of the Authority may be performed on its behalf by any Member or member of staff who is or are so authorised.
6. A member of staff of the Authority who performs any of its functions is presumed in any proceedings to have been authorised to do so on its behalf, unless the contrary is shown.

Explanatory note

This Head provides for staffing of the Authority.

Subheads 1 and 2 provide the Authority with autonomy to appoint its own staff, subject to the standard Ministerial approvals. This is in accordance with the Government's policy objective as set out in its package of "Measures to Enhance Ireland's Corporate, Economic and Regulatory Framework" (2017) to give the Authority the autonomy and flexibility to acquire the expertise it needs through the recruitment of more specialist staff. Section 21 of the Data Protection Act 2018 is the precedent.

Subhead 3 provides that the staff of the Authority will be civil servants. The objective is that current staff of the ODCE shall retain terms and conditions that are no less favourable than those that they have as staff of the Department of Business, Enterprise and Innovation. Section 21(3) of the Data Protection Act 2018 is the precedent.

Subhead 4 provides for the transitional arrangements. Staff of the ODCE will become staff of the Authority on the establishment day.

Subheads 5 and 6 provide for staff to perform the functions of the Authority.

Provide that:

1. Subject to subsection (2) the Minister may appoint a person to be an Acting Member of the Authority to perform the functions of a Member during –
 - (a) a period, or during all periods, when a Member is absent from duty or from the State or is, for any other reason, unable to perform the functions of the Member,
 - (b) any suspension from the office of the Member, or
 - (c) a vacancy in the office of Member.
2. A person shall not be appointed an Acting Member for a continuous period of more than 6 months. This period can be extended for an additional 6 months provided that justification for the extension is provided.
3. The Minister may, at any time, terminate an appointment under this section.

Explanatory note

The purpose of this Head is to ensure that a vacancy in the membership of the Authority can be temporarily fulfilled.

The Head largely re-enacts section 948 of the Companies Act 2014, with the necessary modifications to reflect the change from the ODCE to the Authority. It also adds the possibility for the Minister to extend the acting Member’s appointment for an additional 6-month period. This is to allow the Minister flexibility in situations where 6 months is not sufficient time.

Provide that:

1. The Minister shall, with the consent of the Minister for Public Expenditure and Reform, make and carry out such a scheme or schemes for the granting of superannuation benefits to or in respect of the members of the Authority as she or he may think fit.
2. Each superannuation scheme shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.
3. A superannuation scheme may be amended or revoked by a subsequent scheme made under this section with the consent of the Minister for Public Expenditure and Reform.
4. The Minister shall not grant, or enter into any arrangement for the provision of, any superannuation benefit to or in respect of a person referred to in subsection (1) except -
 - (a) in accordance with a superannuation scheme made under this section, or
 - (b) with the consent of the Minister for Public Expenditure and Reform.
5. If the case of a dispute as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme or schemes under this section –
 - (a) the dispute shall be submitted to the Minister,
 - (b) the Minister shall refer the dispute to the Minister for Public Expenditure and Reform for his or her determination of it, and
 - (c) the decision of the Minister for Public Expenditure and Reform shall be final.
6. Every superannuation scheme made by the Minister under this Head shall be laid 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 has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Explanatory Note

This Head provides that the Minister, with the consent of the Minister for Public Expenditure and Reform, shall prepare a superannuation scheme for the Members of the Authority. It largely re-enacts section 950 of the Companies Act 2014, with the necessary modifications.

Head 11 provides that members of the Authority's staff will be civil servants, which covers superannuation.

Provide that:

1. This section applies where a member of An Garda Síochána has been seconded to the Authority.
2. Notwithstanding the secondment, and without prejudice to Head 8, subhead (1) and (3), the person seconded shall continue to be under the general direction and control of the Commissioner of An Garda Síochána.
3. For the purposes of this Act and for the purposes outside this Act, the person seconded –
 - (a) shall continue to be vested with the powers and to be subject to the duties of a member of An Garda Síochána, and
 - (b) may continue to exercise those powers and perform those duties.

Explanatory note

The purpose of this Head is to provide for the secondment of members of an Garda Síochána to the Authority. Such persons, whilst reporting to the Authority, continue to be vested with the powers and duties of An Garda Síochána during the secondment.

This Head section re-enacts section 951 of the Principal Act.

Provide that:

1. The Chairperson of the Authority shall, whenever required in writing to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee in relation to—

(a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General that the Commission is required by this Act to prepare,

(b) the economy and efficiency of the Authority in the use of its resources,

(c) the systems, procedures and practices employed by the Commission for the purpose of evaluating the effectiveness of its operations, and

(d) any matter affecting the Authority referred to in a special report of the Comptroller and Auditor General under section 11 (2) of the Comptroller and Auditor General (Amendment) Act 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in paragraph (a), (b) or (c)) that is laid before Dáil Éireann.

2. In the performance of his or her duties under this section, the Chairperson of the Authority shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

Explanatory note

This Head is standard provision. Section 26 of the Competition and Consumer Protection Act 2014 is the precedent. It provides for accountability to the Public Accounts Committee of Dáil Éireann.

Provide that:

1. Subject to subsection (2), the Chairperson, shall, at the request in writing of a Committee, attend before it to give account for the general administration of the Authority.
2. The Chairperson shall not be required to give account before a Committee in relation to any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.
3. Where the Chairperson is of the opinion that a matter in respect of which he or she is requested to give an account before a Committee is a matter to which subsection (2) applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at a time when the Chairperson is before it, the information shall be so conveyed in writing.
4. Where the Chairperson of the Authority has informed a Committee of his or her opinion in accordance with subsection (3) and the Committee does not withdraw the request referred to in subsection (1) in so far as it relates to a matter the subject of that opinion—
 - (a) the Chairperson of the Authority may, not later than 21 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which subsection (2) applies, or
 - (b) the Chairperson of the Committee may, on behalf of the Committee, make such an application,and the High Court shall determine the matter.
5. Pending the determination of an application under subsection (4), the Chairperson shall not attend before the Committee to give account for the matter the subject of the application.

6. If the High Court determines that the matter concerned is one to which subsection (2) applies, the Committee shall withdraw the request referred to in subsection (1), but if the High Court determines that subsection (2) does not apply, the Chairperson of the Authority shall attend before the Committee to give account for the matter.

7. In the performance of his or her duties under this section, the Chairperson of the Authority shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

8. In this section “Committee” means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) or a sub-Committee of such a Committee.

Explanatory note

This Head provides for the accountability of the Chairperson to Oireachtas Committees.

It replaces section 955 of the Companies Act 2014. Section 27 of the Competition and Consumer Protection Act 2014 and section 19 of the Data Protection Act 2018 are the precedents.

It introduces an appeal to the High Court to determine whether a matter comes within subhead 2 or not.

Provide that:

1. No person shall disclose, except in accordance with law, information that—
 - (a) is obtained in performing the functions of the Authority, and
 - (b) has not otherwise come to the notice of members of the public.
2. Nothing in subsection (1) shall prevent the disclosure of information by or under the authority of the Authority if, and to the extent that, the Authority considers the information is required—
 - (a) for a purpose or reason specified in section 791 (a) to (m) of the Principal Act,
 - (b) for the performance by a competent authority (as defined in section 792 of the Principal Act) of a function or functions by that authority, or
 - (c) for the performance by the Authority of a function or functions of the Authority.
3. Nothing in subsection (1) shall prevent the disclosure of information to any member of the Garda Síochána if that information, in the opinion of the Authority, may relate to the commission of an offence other than an offence under this Act.
4. A person who contravenes this section shall be guilty of a category 2 offence.

Explanatory note

This Head re-enacts section 956 of the Companies Act 2014, with the necessary modifications.

It provides that information obtained or provided to the Authority in the performance of its functions is treated as confidential by anyone who obtains it.

A further exception is provided for in subheads (2) and (3) for the disclosure of information to the Garda Síochána or to other defined competent authorities. The purpose of this is to assist such competent bodies to perform their statutory functions.

Subhead (4) provides that a person who contravenes this section is guilty of a category 2 offence. This links the offences to the four categories of offences that are set out in section 871 of the Principal Act. A person guilty of a category 2 offence on indictment is liable to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

Provide that:

1. Notwithstanding any other law -

(a) the Competition Authority;

(b) a member of An Garda Síochána;

(c) an officer of the Revenue Commissioners;

(d) the Insolvency Service of Ireland;

(e) the Irish Takeover Panel; or

(f) such other authority or other person as may be prescribed by the Minister;

may disclose to the Authority information that, in the opinion of the authority or other person disclosing it—

(i) relates to the commission of an offence under the Principal Act or non-compliance otherwise with the Principal Act or with the duties and obligations to which companies and their officers are subject; or

(ii) is information that could materially assist the Authority in investigating—

(I) whether an offence under the Principal Act has been committed or whether there has been non-compliance otherwise with the Principal Act or with the duties and obligations to which companies and their officers are subject; or

(II) without prejudice to the generality of clause (I), in a case where the making of an application for a disqualification order in relation to a particular person in accordance with section 842 (h) of the Principal Act is contemplated, whether and to what extent the matters mentioned in section 843 (3) of the Principal Act apply in the circumstances concerned.

2. Without prejudice to the generality of subsection (1), an officer of the Revenue Commissioners shall, notwithstanding any other law, be permitted to give or produce evidence relating to taxpayer information (within the meaning of section 851A (inserted by the Finance Act 2011) of the Taxes Consolidation Act 1997 in connection with any proceedings initiated under the Principal Act.

3. For the avoidance of doubt, the fact that particular circumstances specified in subsection (1)(i) or (ii) of this Head have been invoked by an authority or other person as the basis for disclosure by it or him or her of information under that subsection shall not prevent the Authority from using the information in relation to other circumstances specified in subsection (1)(i) or (ii) of this Head.

Explanatory note

This Head re-enacts section 957 of the Companies Act 2014.

It facilitates the reporting to the Authority of information relating to offences under that Act. The section restates that notwithstanding any other law, the Competition Authority, members of An Garda Síochána and officers of the Revenue Commissioners, the Insolvency Service of Ireland, the Irish Takeover Panel and other persons that may be prescribed by the Minister may disclose information to the Authority or its staff in relation to the commission of an offence under the Companies Act 2014.

Provide that:

1. Articles 14 (Information to be provided where personal data have not been obtained from the data subject) and 15 (Right of access by the data subject) of the Data Protection Regulation are restricted, to the extent necessary and proportionate to safeguard the effective performance by the Authority of its functions referred to in paragraph 2 (b) and (e) of Head 8, where the performance of those functions give rise to the processing of personal data to which the Data Protection Regulation applies.
2. In this section, “Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

Explanatory note

Section 224 of the Data Protection Act 2018 inserted a new section 957A into the Companies Act 2014. That section is virtually identical to the text of this Head.

The only change is the cross references in subhead 1 to paragraphs 2(b) and (e) of Head 8. Accordingly, this Head may not be necessary in light of other provisions, such as Head 38. This will be considered on the advice of OPC.

Provide that:

1. (a) On the establishment day, property other than land that immediately before that day was being used in connection with a function of the Director stands vested in the Authority without any assignment.

(b) In subhead (a), “property” includes any chose in action arising in connection with a function of the Director corresponding to a function of the Authority.

2. A chose in action vested in the Director under subhead 1 may, on and after the establishment day, be sued on, recovered or enforced by or against the Authority in its own name, and the Authority or the Minister need not give notice of the vesting to any person bound by the chose in action.

3. On the establishment day, documents and records that were held by the Director immediately before that day stand vested in the Authority.

4. Any contract, agreement or arrangement made between the Director and any other person and in force immediately before the establishment day—

(a) continues in force on or after that day, and

(b) has effect as if the name of the Authority were substituted in the contract, agreement or arrangement for the Director.

5. If, immediately before the establishment day, any proceedings are pending in any court or tribunal to which the Director is a party, the name of the Authority is substituted in the proceedings, and the proceedings do not abate by reason of the substitution.

6. Nothing in this Bill affects the validity of any act done or in the course of being done before the establishment day by or on behalf of the Authority and any such act, if and in so far as it was operative immediately before that day, has effect on and after that day as if it had been done by or on behalf of the Authority.

Explanatory note

This Head is a standard provision. Section 42 of the Competition and Consumer Protection Act 2014, and sections 62 and 63 of the Data Protection Act 2018 are the precedents.

The Head is intended to facilitate the transition from the Office of the Director of the Corporate Enforcement to the Authority.

Provide that:

1. The Authority shall not later than 30 June in each year prepare and submit to the Minister a report on its activities in the immediately preceding year (in this section referred to as the “annual report”), and the Minister shall, as soon as may be after receiving the annual report, cause copies of the annual report to be laid before each House of the Oireachtas.
2. An annual report shall include information in such form and regarding such matters as the Minister may direct but nothing in this subsection shall be construed as requiring the Authority to include information the inclusion of which would, in the opinion of the Authority, be likely to prejudice the performance of its functions.
3. The Authority may from time to time furnish to the Minister such information about the performance of its functions as it considers appropriate and shall furnish the Minister with advice on any matter relating to those functions, as the Minister may from time to time request (other than information the provision of which would, in the opinion of the Authority, be likely to prejudice the performance of its functions).
4. The Authority shall arrange for an annual report that has been laid before each House of the Oireachtas in accordance with subsection (1) to be published on the internet as soon as practicable after copies of the report are so laid.

Explanatory note

This is a standard provision. Section 32 of the Competition and Consumer Protection Act 2014 is the precedent.

Provide that:

1. The Authority shall, as soon as practicable after the commencement of this section, and thereafter not earlier than 6 months before and not later than the expiration of each subsequent period of 3 years following that commencement, prepare and submit to the Minister a strategy statement in respect of the period of 3 years immediately following the year in which the strategy statement is so submitted.
2. The Minister shall, as soon as practicable after a strategy statement has been submitted to him or her under subsection (1), cause a copy of it to be laid before each House of the Oireachtas.
3. The Authority shall ensure that, as soon as practicable after copies of a strategy statement are laid before both Houses of the Oireachtas in accordance with subsection (2), the strategy statement is published on the internet.
4. When preparing a strategy statement, the Authority may consult such persons as it considers appropriate.
5. The Minister shall not give directions to the Authority concerning the discharge of its strategy statement, including an amended or supplementary statement.
6. In this section “strategy statement” means a statement that—
 - (a) specifies the key objectives, outputs and related strategies, including use of resources, of the Commission,
 - (b) except for the first strategy statement, includes a review of the outcomes and effectiveness of the preceding strategy statement,
 - (c) includes any other matters (with the exception of any on-going investigation and or prosecution) that the Minister may direct, and
 - (d) is prepared in a form and manner that is in accordance with any directions issued from time to time by the Minister.

Explanatory note

This Head obliges the Authority to prepare a strategy statement every 3 years.

Subheads 1 to 4 inclusive and 6 are modelled on section 30 of the Competition and Consumer Protection Act 2014.

Subhead 5 is modelled on section 910(5) of the Companies Act 2014.

Head 23 - Grants to the Authority

Provide that:

In each financial year, the Minister may advance to the Authority out of moneys provided by the Oireachtas such sums as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine.

Explanatory note

This is a standard provision in legislation of this kind. Section 21 of the Competition and Consumer Protection Act 2014.

Provide that:

1. Neither -

(a) A Member or former Member of the Authority, nor

(b) A present or former staff member of the Authority,

is liable for damages for anything done, anything purported to be done or anything omitted to be done by him or her in performing a function under this Act, unless the act or omission is shown to be in bad faith.

Explanatory note

This section exempts the Authority and its staff from liability in damages for anything done by them, anything purported to be done or anything omitted to be done by him or her in performing a function under this Act, unless the act or omission is shown to have been in bad faith.

It re-enacts section 953 of the Companies Act 2014 with the necessary modifications.

Provide that:

1. The Authority shall—

(a) submit estimates of income and expenditure to the Minister in such form, in respect of such periods and at such times as may be required by the Minister, and

(b) furnish to the Minister any information which the Minister may require in relation to such estimates, including proposals and future plans relating to the performance by the Authority of its functions.

2. The Authority shall keep in such form as may be approved by the Minister with the consent of the Minister for Public Expenditure and Reform all proper and usual accounts of all money received or expended by it and, in particular, shall keep in such form as aforesaid all such special accounts as the Minister may, with the consent of the Minister for Public Expenditure and Reform, from time to time direct.

3. The Authority shall, whenever so requested by the Minister, permit any person appointed by the Minister to examine the books or other records of account of the Authority in respect of any financial year or other period and shall facilitate any such examination, and the Authority shall pay such fee for the examination as may be fixed by the Minister.

4. Accounts kept in accordance with this section shall be submitted, not later than 1 April in the year immediately following the financial year to which they relate or on such earlier date as the Minister may, from time to time specify, to the Comptroller and Auditor General for audit and, immediately after the audit, a copy of the accounts, and of such other (if any) accounts as the Minister, after consultation with the Minister for Public Expenditure and Reform, may direct and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister who shall, as soon as may be after they are so presented, cause copies thereof to be laid before each House of the Oireachtas.

Explanatory note

This is a standard provision.

Section 31 of the Competition and Consumer Protection Act 2014 is the precedent.

Provide that:

1. Nothing in this Act affects the validity of any act done before the establishment day by or under the authority of the Director for Corporate Enforcement and every such act shall, if and in so far as it was operative immediately before that day, have effect on or after that day as if it had been done by or on behalf of the Authority.

2. Saving for legal privilege

Explanatory note

This Head is intended to ensure that ongoing investigations and other work started by the Director of Corporate Enforcement can be continued by the Corporate Enforcement Authority.

Subhead 1 follows the precedent of section 45 of the Competition and Consumer Protection Act 2014.

Subhead 2 is inspired by section 33 (saving for legal privilege) of the same Act and may be necessary here too. Advice of OPC will be sought on this point.

PART 3 - Amendments to the Principal Act with respect to Shares and Share Capital

Head 27 – Amendment to section 71(5) of the Principal Act

Provide that:

A new subsection (5A) be inserted immediately following section 71(5) of the Principal Act:

“(5A) The share premium account may, notwithstanding anything in subsection (5), be applied by the company:

(a) in writing off

- (i) the preliminary expenses of the company, or
- (ii) the expenses of, or the commission paid on, any issue of shares or debentures of the company; or

(b) in providing for the premium payable on redemption of any redeemable preference shares issued by a company before 1 July 1991 or of any debentures of the company issued by a company before 1 June 2015.”

Explanatory note

The purpose of this Head is to give effect to a recommendation of the Company Law Review Group included in its 2017 Report Relating to Shares and Share Capital in the Companies Act 2014.

It restores a provision enabling a company with a share premium account to use the account for various purposes, for example, the writing off of the company’s preliminary expenses or the expenses of or commission paid or discount allowed on any issue of shares or debentures.

Head 28 - Amendment of section 1043(1)(c) of the Principal Act

Provide that:

Section 82(6)(n) be amended to delete “to intermediaries”

Section 1043(1)(c) be amended to delete “to intermediaries”

Explanatory note

The purpose of this Head is to give effect to a recommendation of the Company Law Review Group included in its 2017 Report Relating to Shares and Share Capital in the Companies Act 2014.

It is intended to enable the payment of commission of underwriting or sub-underwriting commission to investors on a share issue of a PLC.

Provide that:

Section 91 of the Principal Act is amended:

by the deletion in subsection (1) of “(with the result that its company capital is thereby re-organised)”;

and by the substitution of subsection (4) with the following:

“(4) A transaction to which subsection (1) applies shall not be undertaken unless:

(a) the relevant company has distributable reserves at least equivalent to the value (as stated in, or ascertainable from, the accounting records of the relevant company immediately before the transfer or disposal) of the transferred or disposed assets and deducts an amount from those reserves; or

(b) it is approved by the relevant company by employing the Summary Approval Procedure; or

(c) it is approved by special resolution passed by the relevant company that is confirmed by the court under section 85 as if that resolution were providing for a reduction of the company’s company capital (and the provisions of sections 84 to 87 shall apply accordingly with the necessary modifications).”

Explanatory note

The purpose of this Head is to give effect to a recommendation of the Company Law Review Group included in its 2017 Report Relating to Shares and Share Capital in the Companies Act 2014.

It is intended to clarify that

- a. a transaction can proceed even if there is no reorganisation on company’s company capital; and
- b. a transaction can proceed without regard to this section where the company has adequate distributable reserves.

Head 30 – Amendment to section 1230 of the Principal Act

Provide that:

‘Table Part 1 – Provision Disapplied to ULCs’ is amended by including section 105 (Acquisition of own shares)

And

‘Table 2 – Provisions disapplied to PUCs’ is amended by including section 105 (Acquisition of own shares)

Explanatory note

The purpose of this Head is to give effect to a recommendation of the Company Law Review Group included in its 2017 Report Relating to Shares and Share Capital in the Companies Act 2014.

It disapplies the requirement for distributable reserves to redeem own shares for private unlimited companies (ULCs) and public unlimited companies (PUCs).

Provide that:

Section 1045 of the 2014 Act be amended by the insertion of the following new subsection:

“(2) Save where the constitution of the company provides otherwise, the directors may decline to register pursuant:

- (a) the transfer of a share (not being a fully paid share) to a person of whom they do not approve; or
- (b) the transfer of a share on which the company has a lien; or
- (c) any transfer of a share which, in their opinion, may imperil or prejudicially affect the status of the company in the State or which may imperil any tax concession or rebate to which the members of the company are entitled or which may involve the company in the payment of any additional stamp or other duties on any conveyance of any property made or to be made to the company.”

Explanatory note

The purpose of this Head is to give effect to a recommendation of the Company Law Review Group included in its 2017 Report Relating to Shares and Share Capital in the Companies Act 2014.

It modifies the application of section 95(1)(a) with respect to PLCs. It is intended to clarify the law as it applies to PLCs concerning the restrictions on transfers of shares.

Provide that:

Section 106 be amended to include reference to subparagraph (g) of section 102(1) as follows:

“106 (1) Shares acquired by a company under section 105, or otherwise acquired by it under section 102 (1)(a) or (g), shall be cancelled or held by it (as “treasury shares”).”

Section 480 be amended by the insertion of a new subparagraph, subsection 3(b) as follows:

“480(3) The order of the court confirming the merger shall, from the effective date, have the following effects:

(a) all the assets and liabilities of the transferor company or companies are transferred to the successor company ...

(b) any fully paid shares previously issued by a successor company and held by a transferor company, and which are acquired by a successor company in itself pursuant to a merger under this Chapter shall be deemed to be treasury shares held by the successor company, to which the provisions of section 109 shall apply.”

Section 503(4) be amended by the insertion of a new subparagraph, subsection 4(j) as follows:

“(j) any fully paid shares previously issued by a successor company and held by a transferor company, and which are acquired by a successor company in itself pursuant to a division under this Chapter shall be deemed to be treasury shares held by the relevant successor company, to which the provisions of section 109 shall apply.”

Section 109(2) be amended by the addition of a paragraph (c):

“(c) shares previously issued by a successor company and held by a transferor company, and which are acquired by a successor company as provided by section 480 or 503.”

Explanatory note

The purpose of this Head is to give effect to a recommendation of the Company Law Review Group included in its 2017 Report Relating to Shares and Share Capital in the Companies Act 2014.

It is intended to clarify the status of own shares acquired by a company pursuant to either a merger or division under Chapter 3 or 4 of Part 9 respectively, as permitted by section 102(1)(g) of the Principal Act. The amendments are intended to align the law applicable to shares acquired in a merger with those acquired by other procedures.

Provide that:

Section 123 of the 2014 Act be amended by the insertion of a new paragraph (f) as follows -

“(f) the reduction of share capital-

(i) by paying off paid up share capital, or

(ii) by extinguishing or reducing all or part of a member’s liability on shares not fully paid up

provided in the case of a company limited by shares that such provision is affected in accordance with section 84.”

Explanatory note

The purpose of this Head is to give effect to a recommendation of the Company Law Review Group included in its 2017 Report Relating to Shares and Share Capital in the Companies Act 2014.

It is intended to set out capital reduction as an exclusion or exception from the definition of ‘distribution’ in section 123 of the Principal Act. This is in line with Article 17 of the Second Company Law Directive (2012/30/EU).

PART 4 – Amendments to the Principal Act with respect to Corporate Governance

Head 34 – Amendment to section 131(2) of the Principal Act

Provide that:

Insert the words “or secretary” after “director” in section 131(2).

Explanatory note

The purpose of this Head is to give effect to recommendations in the Company Law Review Group’s 2017 Report Relating to Corporate Governance in the Companies Acts 2014.

The purpose of this specific Head is to provide greater clarity. It is technical in nature and provides for the policy objective that a secretary of a company must also be 18 years of age or over and that any purported appointment of a secretary under that age shall be void.

Provide that:

Amend section 184 to insert “demand or join in demanding a poll” so that it reads as –
[name and address of alternate proxy] as the proxy of the Member to attend, speak, vote and to demand or join in demanding a poll, for the Member on behalf of the Member at the (annual or extraordinary, as the case may be) general meeting of the Company to be held on the [date of meeting] and at any adjournment of the meeting.

Explanatory note

The purpose of this Head is to give effect to recommendations in the Company Law Review Group’s 2017 Report Relating to Corporate Governance in the Companies Acts 2014.

It is intended to align the provisions relating to the instrument appointing a proxy in section 184 with the proxy’s right to demand or join in demanding a poll as provided for in section 189(7).

Provide that:

In section 205(2) to delete “the declarants shall be required to consider the likelihood” and substitute “the declarants shall not be required to assume”.

Explanatory note

The purpose of this Head is to give effect to recommendations in the Company Law Review Group’s 2017 Report Relating to Corporate Governance in the Companies Acts 2014.

It is intended to align the statutory solvency test which applies for the purposes of the Summary Approval Procedure declaration with the test applicable under section 203(2).

Provide that:

Insert new section after section 1204

“Section 181(5)(d) shall not apply to a company limited by guarantee where its constitution does not permit its members to appoint proxies.”

Explanatory note

The purpose of this Head is to give effect to recommendations in the Company Law Review Group’s 2017 Report Relating to Corporate Governance in the Companies Acts 2014.

It provides for a new section in Part 18 governing the specific application of the Act concerning companies limited by guarantee (CLGs). The purpose of this amendment is to modify the application of section 181(5)(d), which sets out the requirements for a notice of a general meeting. It is intended to provide greater clarity regarding the entitlement of members of a CLG to appoint proxies to attend and vote at meetings at a member’s behest.

PART 5 –Amendments to the Principal Act with respect to restriction of Directors

Head 38 – Insertion of a new section to Part 14

Provide that:

A new ground for a restriction order to be made by the High Court relying on the process provided for by section 819 of the Principal Act. A director who has:

- (a) Failed to convene a general meeting of shareholders for the purpose of nominating a named liquidator; or
- (b) At such a meeting fails to table a motion to nominate a named liquidator;
- (c) Has failed to provide the required notice to employees in a winding up.

Explanatory note

This Head addresses an issue raised in the Company Law Review Group’s 2017 Report on the Protection of Employees and Unsecured Creditors.

Section 819 of the Companies Act 2014 enables the Director of Corporate Enforcement, a liquidator or a receiver to apply to the High Court for a Restriction Order in respect of a director. It also sets out the grounds on which such an application can be made.

This Head adds to those grounds in order to permit the Court to restrict a director that has failed to meet certain requirements in the course of a company becoming insolvent.

PART 6 –Miscellaneous Amendments to the Principal Act

Head 39– Substituting “Director” for “Authority”

Provide for:

Replace the word ‘Director’ with ‘Authority’ in the below sections of the Principal Act

Part	Chapter	Section
Part 1	Chapter 1	2(1)
Part 4	Chapter 2	133(1),(2),(3) and(4)
	Chapter 4	166(5)
	Chapter 6	175(5(1)),(7)and (10)
		199(5)
	Chapter 7	210(1)
Part 5	Chapter 2	231(8)
	Chapter 4	253(6)
Part 6	Chapter 3	288(10)
	Chapter 6	312(9)
	Chapter 10	335(5)
	Chapter 18	381(1)
		385(1),(2),(3) and(4)
	Chapter 19	392 (1), (4) and (5)
		393 (1),(2) and (3)

Part 8	Chapter 2	430(4) and (9)	
	Chapter 4	446(1), (2) and (3)	
		447(1),(2),(3),(4),(5) and (8)	
		448(1)	
Part 10	Chapter 3	533(8)	
		534(6)	
	Chapter 5	553(3)	
		558(1)	
Part 11	Chapter 1	567(2),(3),(5), (6)and (7)	
	Chapter 2	569(1)	
		571(4)	
	Chapter 5	592(3)	
	Chapter 6	612(2)	
		631(1)	
		634(6)	
		635(5)	
		Chapter 8	638(1)
		641(2)	
		643(6) and (9)	
		644(2)	
	652(3)		

		653(2),(3),(5),(6),(8)
		670
	Chapter 11	671(1)
		672(1),(2) and (4)
		675(2)
		679(1) and (2)
		682(1),(2) and (4)
	Chapter 12	683(3) and (4)
		686
		688 (1)
	Chapter 16	723 (1), (2),(3),(4),(5),(6),(7),(8) and (9)
	Chapter 14	724 (1) and (4)
Part 12	Chapter 1	735 (1),(2),(3) and(4)
		747 (5)
		748 (1) and (3)
	Chapter 2	751 (1) (2)
Part 13		759 (1)
		761
		762 (7)
	Chapter 3	763 (1),(4),(5),(6),(7) and (8)

	764 (1) and (2)
	765 (4)
	766 (1)
	767 (1),(2),(4) and (5)
	768 (1)
	769 (1) and (2)
	770
	771 (1) and (2)
	772 (2) and (4)
	775 (3)
	778
	779
	780 (1) and (2)
	781 (2)
Chapter 4	782 (1), (2), (3) and (4)
	783 (1) and (2)
	784
	786 (1) and (2)
	787 (5) and (13)
	788 (7) and (8)
	789 (2)

	790 (1)	
	791	
	793 (1) and (2)	
	794 (3)	
	795 (8)	
	796 (1)	
Part 14	Chapter 1	797 (3)
		798 (3)
	Chapter 2	800(1), (3) and (5)
		809 (3)
	Chapter 3	820 (1)
		842 (e)
	Chapter 4	844 (1)
		846
		847 (2), (3) and (5)
		850 (2), (3) and (5)
	Chapter 5	851 (1), (2), (3), (4) and (6)
		852 (2), (3) and (5)
		853 (1), (2), (3), (4) and (6)
		854 (1) and (2)
	Chapter 7	865 (1)

		873 (1), (2) and (3)
	Chapter 8	875 (1)
	Chapter 9	883 (3)
		884 (3)
Part 17	Chapter 4	1066 (6)
Part 18	Chapter 5	1221
		1222
Part 19	Chapter 5	1275
		1276
Part 21	Chapter 1	1301
Schedule 6		7 (5)

Explanatory note

This Head is technical. It updates the references in the Companies Act 2014 from references to the Director of Corporate Enforcement to references to the new Corporate Enforcement Authority.

Head 40 – Amendment to section 198(4) (f) of the Principal Act

Provide that:

Insert 'or 586(2)' in section 198(4)(f) after 'under section 580'

Explanatory note

Section 198 of the Companies Act 2014 concerns registration of, and obligation of company to supply copies of, certain resolutions and agreements to the Registrar of Companies.

The purpose of this Head is to restore the obligation to register resolutions in a creditors' winding-up with the Registrar. It rectifies an unintentional omission in relation to the restatement of the law from 1963 to the Principal Act.

Provide that:

Insert new subsections (4) and (5)

“(4) The Authority is entitled to request that a person standing to be qualified for appointment, or is so qualified, as liquidator to present such evidence as the Authority may determine to prove that s/he comply with the requirements in the Table to this section.

(5) Failure to comply with this request, without just cause, within 28 days of the making of the request is a category 4 offence.”

Explanatory note

Section 633 of the Companies Act 2014 provides the categories of person that may be qualified to act as liquidators. These include members of prescribed accountancy bodies, practising solicitors and people qualified under the laws of another EEA state.

The purpose of this Head is to give the new Corporate Enforcement Authority the power to request evidence from a person that they are qualified in accordance with section 633.

Provide that:

Amend section 681(3)(b) to delete “intervals of 6 months, or such greater period as may be prescribed, following on from that first anniversary”

And substitute “intervals of 6 months, or such other period as may be prescribed, following on from that first anniversary”

Explanatory note

Section 681(2) provides that a liquidator shall provide regular statements to the Registrar of Companies throughout the conduct of a liquidation. Section 681(3) goes on to provide that these statements shall be provided at the first anniversary of the winding up and at six monthly periods thereafter. The Act provides that intervals of 6 months or greater may be prescribed but shorter periods.

The purpose of this Head is to enable periods that are shorter, as well as longer, than 6 months, to be prescribed as appropriate. This is to address the situation where a liquidation is concluded less than 6 months after the previous statement and a gap in information may arise. The obligation under section 681(2) does not apply in relation to a particular winding up if and to the extent that a court specifies otherwise.

Section 564 (1) of the Principal Act provides that the court shall have jurisdiction to wind up a company. Section 564 (1-6) provides that rules made in respect of the winding up of companies (whether by the court or voluntarily) are made by the rule making authority referred to under section 36 of the Courts of Justice Act 1924 and section 68 of the Courts of Justice Act 1936, and all the other powers of that Committee in that behalf, of the Superior Courts Rules Committee to makes rules regulating the practice and procedure of the court.

This Head will be completed with the drafter in consultation with the Courts Service.

Head 43 – Requirement of directors to supply Personal Public Service Number to the Registrar for verification purposes

Provide that:

Insert a new section to Chapter 1 of Part 15 (possibly new section 888A in the Principal Act)

(1) After the commencement of this section, a director in possession of, or entitled to, an Irish Public Service Number, shall include it, in data format only, in –

- a) A1 – Application to incorporate a company
- b) B1 – Annual return
- c) B10 – Change of directors/secretaries or their particulars

(2) A director who is not entitled to a Personal Public Service Number or an EEA equivalent shall instead submit to the Registrar a copy of the photo page of a valid passport. The Registrar may, in a prescribed manner, seek additional information, for verification purposes only.

Explanatory note

The Registrar of Companies is a body scheduled in Schedule 5 of the Social Welfare Act 2005 as a body that may use Personal Public Service Numbers. This Head is intended to oblige directors of companies to supply their PPSN to the Registrar when –

1. Incorporating a company for the first time
2. Submitting the Annual Return
3. Notifying the Registrar of a change in director or secretary

This is proposed to support the accuracy of the Register and to address the possibility of duplication.

With respect to the accuracy, this will enable the Registrar to verify that a director is in fact a real person.

Duplication can occur where an individual uses variations of their names and addresses, for example using different initials or English transliterations of Irish language given names. This practice may be used to undermine the provisions of section 142 of the Companies Act 2014 (limit on number of directorships) and of section 129 (6), which prohibit a person from being both director and secretary of a company with just one director.

It is a public policy objective that the Registrar be in a position to verify information supplied to her in cases where there is a risk of non-compliance.

For people who are not entitled to a PPSN number, the Head provides that they shall supply a copy of the photo page of their passport.

Head 44 – Amendment to Section 930 of the Principal Act

Provide that:

To amend section 930 with the deletion of section 930 (2)(f)

Explanatory note

Section 930 of the Companies Act 2014 lists the “recognised accountancy bodies” that are recognised by the Irish Auditing and Accounting Supervisory Authority for the purposes of statutory audit.

The purpose of this Head is to update the provision by removing one body, which is no longer a “recognised accountancy body” for statutory audit.

Provide that:

Insert a new section to Chapter 4 of Part 13 of the Principal Act

1. If a document contains a statement by a person referred to in subsection (2) asserting that an act has been done, or is or was proposed to be done, by another person, being an act that relates to instances of suspected offences under the Principal Act by the Authority then, subject to the conditions specified in subsection (2) being satisfied, that statement shall be admissible as evidence in the proceedings that the relevant act was done by that other person or was proposed (at the time the statement was made or, as the case may be, at a previous time) to be done by him or her.
2. The person mentioned in subsection (1) is a person who has done an act of the kind referred to in that subsection in relation to the instance of suspected offences under the Principal Act.
3. The conditions mentioned in subsection (1) are that the document referred to in that subsection—
 - (a) has come into existence before the commencement of the proceedings under the Principal Act in which it is sought to tender the document in evidence, and
 - (b) has been prepared otherwise than in response to any enquiry made or question put by a member or officer of the Authority, a member of the Garda Síochána, an officer of the Authority or an authorised officer relative to any matter the subject of those proceedings.
4. In estimating the weight, if any, to be attached to a statement admitted in evidence by virtue of this section, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.
5. Where a statement is admitted in evidence by virtue of this section—

(a) any evidence which, if the person who made the statement had been called as a witness, would have been admissible as relevant to his or her credibility as a witness shall be admissible for that purpose,

(b) evidence may, with the leave of the court, be given of any matter which, if that person had been called as a witness, could have been put to him or her in cross-examination as relevant to his or her credibility but of which evidence could not be adduced by the cross-examining party, and

(c) evidence tending to prove that that person, whether before or after making the statement, made (whether orally or not) a statement which is inconsistent with it shall, if not already admissible by virtue of any rule of law or other enactment, be admissible for the purpose of showing that he or she has contradicted himself or herself.

6. Nothing in this section shall prejudice the admissibility in any proceedings under this Act of any document, as evidence of any matters stated in it, that is so admissible by virtue of any rule of law or other enactment.

Explanatory note

This Head is to provide a new investigative tool for the Authority.

It provides a statutory exemption to the hearsay rule and allows a court to consider admitting written statements into evidence in certain circumstances and subject to certain conditions.

It is modelled on section 13 of the Competition Act 2002.

Provide that:

The search powers in section 787 be amended to permit the Authority to –

- Use its own devices while onsite to connect to corporate networks, to access offsite lawfully accessible machines or cloud storage
- Use its own machines while onsite to use log in credentials obtained from mobile devices to access the cloud storage that is accessible from these devices
- Download data from another specified location authorised by the warrant holder

Explanatory note

The purpose of this Head is to amend the entry and search of premises powers to better collect evidence that is in digital format. Traditionally, evidence has been in one or two forms – a physical item, like a document, or testimony from a person who witnessed an event. Technological advancements today mean that a great deal of evidence is now in digital format. The amendment purports to authorise the Authority to access data under the control of an entity or individual, regardless of where they have that data stored and to access it using any means necessary (by which it is meant using any electronic device deemed necessary and at any location deemed necessary) to ensure best compliance with evidence rules and digital forensics principles.

This Head will be completed with the drafter in consultation with the Office of the Attorney General to ensure that it provides appropriate protections for the person under investigation.

As the proposed Head will have policy implications on the wider criminal justice system, the Department of Business, Enterprise and Innovation will continue to consult with the Department of Justice and Equality.

Provide that:

Section 151(5) is deleted and that existing exemptions granted by the Minister under section 151(5) continue in operation until their stated end date.

Explanatory note

Section 151(1) of the Companies Act 2014 obliges a company to include particulars of its directors on its business letters. This is a transparency measure to ensure that people doing business with a company have easy access to this information.

Section 151(5) enables the Minister for Business, Enterprise and Innovation to grant an exemption from the requirement in section 151(1). This exemption was introduced to facilitate companies that had frequent changes of director that gave rise to a corresponding need to print new company stationery.

In light of developments in technology, that allow stationery to be updated as needed without large print runs, this exemption from a transparency requirement is no longer considered justified.

The Minister has granted a number of exemptions that are currently in effect. The policy is to let these run their course. So, the repeal of section 151(5) should not affect them.