

Social Welfare Consolidation Act 2005 (Specified Bodies) Regulations 2019
Joint Committee on Employment Affairs and Social Protection
9 July 2019

Opening statement

I thank the Chairman for the opportunity to come and discuss with the Committee the Social Welfare Consolidation Act 2005 (Specified Bodies) Regulations 2019. My officials have provided Committee Members with briefing material for use at this meeting.

These Regulations will support an important anti-money laundering measure, the Central Register of Beneficial Ownership, which will identify who is behind a corporate entity.

The Regulations prescribe the new position of Registrar of Beneficial Ownership of Companies and Industrial and Provident Societies as a Specified Body for the purposes of Schedule 5 of the Social Welfare Consolidation Act 2005. This will enable the Registrar to collect PPSNs to verify the identity of persons who have ultimate control of a company, making sure that the Central Register is accurate and to prevent individuals who would think of trying to conceal their identity for the purpose of money laundering or financing terrorism.

The PPSN will not be visible to the Registrar, or to staff within the Registry of Beneficial Ownership, or to members of the public. The PPSN will never be shared with any State or non-State competent authorities or with any third party.

While Members of the Committee will be aware of company law and the concept of directors of a company, a ‘beneficial owner’ is the natural person or persons who ultimately owns or controls a legal entity through direct or indirect ownership... or through control via other means. That is to say, just because someone is a director on paper does not mean in practice that they ultimately control the company.

Recital 25 of the EU Fourth Anti-Money Laundering Directive highlights the importance of beneficial ownership information and states that:

“The need for accurate and up-to-date information on the beneficial owner is a key factor in tracing criminals who might otherwise be able to hide their identity behind a corporate structure. The globally interconnected financial system makes it possible to hide and move funds around the world, and money launderers and terrorist financiers as well as other criminals have increasingly made use of that possibility.”

In order to prevent this type of criminality, the EU Fourth and Fifth Anti-Money Laundering Directives, also known as 4 and 5 AMLD, legally oblige Ireland to establish and maintain a Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies. This Central Register, or ‘RBO’, is the first in a series: others are currently being finalised for Trusts and for Irish Collective Asset-management Vehicles or ICAVs.

Crucially, Article 30 paragraph 4 of 4AMLD means there is an EU legal obligation on Ireland to ensure that the Central Register is accurate. PPSN use is seen as critical to the success of the RBO as it will prevent multiple variations of the same person’s details from being entered in the Register. While a mechanism will be in place for beneficial owners who do not have PPSN, the vast majority of beneficial owners already have PPSN, particularly for tax purposes.

A practical example of why such verification is needed is the charity Console. In 2016, when concerns were raised over the governance and financial management of the charity, it was identified that the former chief executive and his wife were connected to 12 companies. However, in official documentation submitted to the Companies Registration Office, different dates of birth and signatures were provided, along with use of a maiden name for some entries, and a married name for others. I am sure Members will agree with me that this is not something that we want to ever see happening again.

The online Register, combined with PPSN verification, will ensure that such scenarios are prevented. To ensure personal information is protected, the PPSN is encrypted, not visible to RBO staff and is used only at a specific point in time (i.e. at the point of filing) to validate the PPSN and date of birth against the data that the Department of Employment Affairs and Social Protection hold for that PPSN. Where there is not a match, whether by accident or intent, that beneficial owner information cannot be filed.

The PPSN will not be visible to staff within the RBO or the CRO as it will be stored in encrypted form.

RBO staff and officials from the Department of Business, Enterprise and Innovation have worked closely with the Department of Employment Affairs and Social Protection, in consultation with the Office of the Data Protection Commission, to ensure that appropriate safeguards are in place to protect personal information and that there is a lawful reason for processing the PPSN data.

While the obligation to file with the RBO is new, relevant entities have been required to hold such beneficial ownership information since 2016, under the European Communities (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016.

The RBO and filing requirements are provided for by S.I. No. 110 of 2019 entitled the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019. Under S.I. No. 110 of 2019, the RBO has been established from 22 June 2019.

While the staff and ICT infrastructure of the Companies Registration Office (CRO) have been utilised in the technical development of the RBO, S.I. No. 110 of 2019 provides for a new statutory office of Registrar of Beneficial Ownership of Companies and Industrial and Provident Societies. Therefore, while the CRO is a specified body under Schedule 5 of the Social Welfare Consolidation Act 2005, following legal advice and to ensure legal certainty, the current Regulations designate the Registrar of Beneficial Ownership of Companies and Industrial and Provident Societies explicitly and separately as a specified body for the purposes of PPSN.

As such, the opening of the RBO has been postponed to allow for the necessary consultation to be undertaken with both Houses of the Oireachtas and, following referral, this Committee.

While all previous designations have been done by primary legislation, given the need to resolve this issue as a matter of urgency, to allow the Central Register to open, the most appropriate course of action is for the RBO to be designated by means of a statutory instrument. The 2005 Act does allow for a “specified body” to be prescribed by S.I. and

these Regulations provide the most appropriate course of action to facilitate the opening of the Central Register, to minimise the impact of wider infringement proceedings against Ireland for failure to transpose all aspects of 4AMLD.

I would like to advise the Committee that this S.I. will be temporary and the Regulations will be confirmed in primary legislation at the earliest possible opportunity.

The collection and maintenance of beneficial ownership information is an EU requirement and part of larger efforts by Ireland internationally to combat money laundering, organised crime and terrorism. And beyond this, the RBO is a mark of Ireland as a global, modern and open country promoting best international standards in transparency, business and the globally interconnected financial system.

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Briefing for Members

Q. Why is beneficial ownership information needed?

A. The EU *Fourth Anti-Money Laundering Directive* (4 AMLD) requires beneficial owners of corporate entities - i.e. persons who ultimately own or control a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity - to provide certain information to a Central Register. This is an important transparency measure to identify who is behind a corporate entity.

Q. What beneficial ownership information is needed?

A. Beneficial ownership information comprises of: name; date of birth; nationality; residential address; nature and extent of their interest/control; and the name/number of the relevant corporate entity.

Q. What if there are no readily identifiable beneficial owners?

A. A relevant company, corporate or other legal entity has to exhaust all possible means in trying to determine its beneficial owners. If none can be found or there is any doubt regarding an identified natural person being a beneficial owner, then an entity has to enter its senior managing officials, including director and chief executive officer, as beneficial owners.

Q. Why is PPSN needed?

A. PPSN is critical to the success of the RBO as it will prevent multiple variations of the same person's details from being entered in the Register.

Q. What safeguards have been put in place?

A. A Data Sharing Agreement has been put in place with DEASP, including the encryption process. The Office of the Data Protection Commission has been consulted, and a Data Protection Impact Assessment has been carried out. All RBO staff are GDPR trained.

Further information is available in the *Privacy Statement* and *Privacy Notice* on the Register of Beneficial Ownership website at: www.rbo.gov.ie.

Q. Will RBO staff have access to PPSN?

A. No. The PPSN will not be visible to the Registrar or to the staff within the RBO, or to the public. In addition, the encrypted format of the PPSN is irreversible and as such no PPSN or persons will be identifiable from this encrypted format.

Q. What about where a person doesn't have a PPSN?

A. It is the intention that such persons may submit a duly authenticated declaration validating their identity, according to their legal system of notarisation.

Q. What are other countries doing?

A. Almost all EU Member States have, or are planning to, mandate the provision of a unique identifier such as their National ID number to verify the identity of beneficial owners.

Q. Is further information available on this?

A. Further information on the RBO is available online at <https://rbo.gov.ie/>.

Further information on Ireland's wider efforts and legislation in tackling money laundering can be found at <http://www.antimoneylaundering.gov.ie/>.