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Iúil, 2023

Joint Committee on Enterprise, Trade and Employment

Report on the Pre-Legislative Scrutiny of the General Scheme of the Plan of Action on Collective Redundancies following Insolvency Bill, 2023

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Chair's Foreword

Minister of State for Business, Employment and Retail Neale Richmond T.D., and Minister of State for Trade Promotion, Digital and Company Regulation Dara Calleary T.D., jointly referred the General Scheme of the Plan of Action on Collective Redundancies following Insolvency Bill 2023 to the Joint Committee on Enterprise, Trade and Employment on 16 May with a request to commence pre-legislative scrutiny at the Committee's earliest convenience.

The Committee agreed to undertake pre-legislative scrutiny and has sought to scrutinise the proposed legislation, providing recommendations on areas where it believes changes or amendments are warranted. The Committee welcomes the introduction of the General Scheme, and the time and consideration the Department has provided with this Bill.

The General Scheme of the Plan of Action on Collective Redundancies following Insolvency Bill 2023 aims to deliver on the Government's action plan of 2021 and provides for several measures, including amendments to employment law and company law legislation and the setting up of an employment law review group. The General Scheme also provides for discrete but important amendments to the Companies Act 2014 that are material to the protection of workers as creditors.

These provisions, when enacted, will further improve access to information for workers as creditors and the anti-transactional avoidance mechanisms which could increase the assets available for the creditors, and further enhance the protection of employees in a collective redundancy following insolvency in a balanced manner that does not unduly impede enterprises in the conduct of their business.

The Committee met with officials from the Department of Enterprise, Trade and Employment in public session on 31 May 2023. It also sought and received several targeted submissions. The Committee would like to extend a sincere thank you to those involved for their participation.

The Committee made a number of recommendations aimed at improving this important piece of legislation. When this legislation proceeds, the Joint Committee requests that the recommendations and key issues raised in this report and identified during the pre-legislative scrutiny process are taken on board by the Government and implemented.

The Committee welcomes the establishment of a statutory Employment Law Review Group. The Employment Law Review Group will be a significantly valuable resource, allowing for an ongoing assessment of employment and redundancy law to ensure it is fit for purpose, comprising members with both expertise and interest in the area.

The Joint Committee look forward to further engagement on the Bill and I hope that when enacted, it will provide important and significant reform. I must also thank Members of the Committee for their collaborative work in agreeing this report.

Deputy Maurice Quinlivan, T.D.,
Cathaoirleach to the Joint Committee on Enterprise, Trade and Employment
July 2023

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Recommendations

Recommendation 1:

The Committee welcomes the inclusion of recommendations from the Duffy-Cahill report in this General Scheme.

The Committee welcomes the removal of the exemption outlined in section 14(2) of the Protection of Employment Act 1977, this exemption applies to collective redundancies arising from the winding up of a company or bankruptcy are exempt from this criminal liability.

The Committee considers this removal to be welcome, the Committee would further recommend that the proposed legislation provides that the directors or other persons in control of a company are also held responsible for any contravention.

Recommendation 2:

The Committee recommends the protection of apprentices, trainees and temporary workers for the purposes of this legislation.

Recommendation 3:

The Committee further recommends including a provision that provides where a consultation period has commenced, it must not be interrupted by the appointment of a liquidator or receiver.

Recommendation 4:

The Committee recommends that the provisions of Head 16 be expanded to include the compulsory notification to Trade Union members and all other employees.

Recommendation 5:

The Committee recommends that a comprehensive information campaign is undertaken to provide awareness to the public who may not be aware of their rights in redundancy situations.

Recommendation 6:

The Committee supports the lowering of the bar or test in the consideration of “related companies” as it will provide discretion to the court to have regard to additional factors when making a decision.

Recommendation 7:

The Committee recommends that employees subject to a collective bargaining agreement and other employees in redundancy situations be given preferential creditor status.

Recommendation 8:

The Committee welcomes the substantial fines under Section 14. The Committee would further recommend that the proposed legislation provides for further supports to employees unfairly dismissed where sections 9, 10 or 14 are contravened.

Recommendation 9:

The Committee welcomes the establishment of the Employment Law Review Group on a statutory footing.

Glossary	
CLRG	Company Law Review Group
Duffy-Cahill Report	Expert Examination and Review of Laws on the Protection of Employee Interests when assets are separated from the operating entity
ELRG	Employment Law Review Group
Ibec	Irish Business and Employers Confederation
ICTU	Irish Congress of Trade Unions
RII	Restructuring & Insolvency Ireland
The 1977 Act	The Protection of Employment Act 1977
The Department	The Department of Enterprise, Trade and Employment
The Minister	The Minister for Enterprise, Trade and Employment
WRC	Workplace Relations Commission

Introduction

Minister of State for Business, Employment and Retail Neale Richmond T.D., and Minister of State for Trade Promotion, Digital and Company Regulation Dara Calleary T.D., jointly referred the General Scheme of the Plan of Action on Collective Redundancies following Insolvency Bill 2023 to the Joint Committee on Enterprise, Trade and Employment on 16 May with a request to commence pre-legislative scrutiny at the Committee's earliest convenience.

The General Scheme of the Plan of Action on Collective Redundancies following Insolvency Bill 2023 is included as a legislative priority for drafting on the Government's legislative programme for the summer session.

Procedural basis for scrutiny

Pre-legislative consideration was conducted in accordance with *Standing Order 174A*[1], which provides that the General Scheme of all Bills shall be given to the Committee empowered to consider Bills published by the member of Government.

The Committee commenced pre-legislative scrutiny of the General Scheme on 31 May. The Committee held one public hearing on the General Scheme with officials from the Department of Enterprise, Trade and Employment. The Committee received three written submissions on the General Scheme from Ibec, ICTU and CLRG.

The primary focus of conducting pre-legislative scrutiny was to allow for an engagement between the Committee and stakeholders to discuss areas of the General Scheme which may need to be amended. This report summarises the engagements and the key points considered by the Committee when drafting the recommendations set out in this report.

[1] https://data.oireachtas.ie/ie/oireachtas/parliamentaryBusiness/standingOrders/dail/2022/2022-05-26_consolidated-dail-eireann-standing-orders-may-2022_en.pdf

Date	Witnesses

Meeting - 31 May 2023

Officials from the Department of Enterprise, Trade and Employment

Company Law Review Unit

- Fiona O'Dea, Principal Officer
- Sarah Flood, Assistant Principal

Redundancy and Insolvency Unit

- Dara Breathnach, Principal Officer
- Peter O'Brien Hogan, Assistant Principal

Employment Rights Policy Unit

- Áine Maher, Principal Officer
- Shane Smith, Higher Executive Officer

Transcript - Video

Summary of the General Scheme

The Plan of Action on Collective Redundancies following Insolvency Bill 2023 will further enhance the protection of employees in a collective redundancy in a way that does not unduly impede enterprises in the conduct of their business. The General Scheme represents the implementation of the remaining legislative commitments set out in the Government's Plan of Action – Collective Redundancies following Insolvency which was published in June 2021.

The General Scheme consists of 4 Parts and 22 Heads of Bill. It amends the Protection of Employment Act 1977 to further strengthen employer obligations around consultation and notification of collective redundancies which will benefit employees in these difficult situations. These amendments will enhance transparency for employees of employers who become insolvent and will expand the avenues of redress available to all employees in a collective redundancy scenario should their employer fail to comply with these rules.

The Bill also provides for the establishment of a statutory Employment Law Review Group (ELRG) which will advise the Minister of all aspects of employment and redundancy law. Finally, amendments to the Companies Act 2014 will improve the quality and circulation of information to workers as creditors and will ensure remedies for transactional avoidance are more accessible to creditors.

Part	Title	Heads
1	General	1&2
2	Amendments to the Protection of Employment Act 1977	3-10
3	Establishment of the Employment Law Review Group	11-15
4	Amendments to the Companies Act	16-22

Background and objective

In June 2021, the Government launched a plan of action on collective redundancies following insolvency which set out a broad range of commitments to enhance the protection afforded to employees who find themselves in a collective redundancy situation following insolvency.

The General Scheme of the Plan of Action on Collective Redundancies following Insolvency Bill 2023 aims to deliver on this action plan and provides for several measures, including amendments to employment law and company law legislation and the setting up of an employment law review group. The General Scheme also provides for discrete but important amendments to the Companies Act 2014 that are material to the protection of workers as creditors.

The plan of action on collective redundancies following insolvency was launched in June 2021 following extensive and constructive engagement with the social partners. The plan, which was welcomed by the social partners, was also informed by the work of the Company Law Review Group (the CLRG), a statutory advisory body made up of representatives from a wide range of stakeholders, including those from trade unions, business associations, Government bodies, auditing and banking bodies, as well as academics, legal practitioners and insolvency experts. Further consultations also took place during the development of the General Scheme with Restructuring & Insolvency Ireland (RII), the insolvency practitioners' representative group, and the Department of Social Protection.

The plan of action addresses matters relating to employment rights and company law, it addresses the issues arising across the generality of such situations and seeks to further supplement the already robust legislative protections and safeguards afforded to the employees involved.

The policy objective of the General Scheme is to further enhance the protection of employees in a collective redundancy in a way that does not unduly impede enterprises in the conduct of their business. It is primarily focused on improving awareness and increasing transparency for the employees of insolvent employers.

The General Scheme will amend the Protection of Employment Act 1977, which governs redundancy rules, to further protect employees as workers affected by collective redundancies. The General Scheme ensures that all collective redundancies are subject to a 30-day notification period before they take effect, including where the employer is insolvent. Where the employer makes them redundant before the 30-day notification period finishes, the employees can seek redress from the Workplace Relations Commission, (the WRC).

The General Scheme also provides that where a liquidator is managing the collective redundancy process in an insolvency situation, the liquidator has similar obligations and where it fails to comply with those duties, the WRC may prosecute it. Finally, in respect of proposed collective redundancies, the General Scheme allows for notification to the Minister by electronic means.

The General Scheme also provides for the establishment of the ELRG on a statutory basis. The ELRG will be a significantly valuable resource to the Department, allowing for an ongoing assessment of employment and redundancy law to ensure it is fit for purpose. It will comprise members with expertise and an interest in the development of employment and redundancy law. This will include members from the legal, accountancy and insolvency professions, worker and employer representatives and regulators, and ministerial nominees.

In respect of corporate law, the Companies Act 2014 sets down a framework within which directors and companies are expected to operate. It provides for separate corporate legal personality and limited liability which is designed to encourage and foster enterprise by permitting individuals to engage in entrepreneurial activity while limiting personal exposure to financial loss in the event of commercial failure. However, the Companies Act 2014 demands that, in return for the privilege of limited liability, directors act in good faith and abide by the requirements of governance, transparency and commercial probity.

In the event of non-compliance, remedies and accountability are important. The 2014 Act contains several provisions that can be utilised by creditors to set aside transactions which have been entered by companies and which have the effect of

transferring assets or giving an advantage to certain creditors. The General Scheme, which includes amendments sought by the Irish Congress of Trade Unions (ICTU), and recommended by the CLRG, intends to enhance access to these remedies. It raises the bar for the permissibility of transferring assets in the period prior to insolvency and lowers the threshold required by the court to order a related company to contribute to the debts of the company being wound up.

The General Scheme will amend the 2014 Act to allow workers as creditors to have greater access to information regarding liquidations. These amendments are reflective not just of the CLRG's March 2021 report on the provision of information to workers as creditors but also ICTU's minority report. Given the cumulative economic impacts of Covid-19, Brexit, and the invasion of Ukraine on the liquidity of companies, it is reasonable to anticipate an increase in winding-up petitions. The General Scheme seeks to mitigate this, with a view to enhancing the protection of employees that is already a feature of the existing legal landscape.

Summary of Evidence

During the public hearing and written submissions, a number of important points were raised. A summary of the principal areas discussed in evidence to the Committee follows.

Ibec welcomes the opportunity to submit on the General Scheme proposed and Ibec notes that the General Scheme proposes amendments to the Protection of Employment Acts 1977-2014 and the Companies Act 2014. Ibec's observations focus on the proposed amendments to the Protection of Employment Acts.

Ibec is acutely aware of the need to protect employees at times of an employer's financial difficulty. Ibec recognises the distress which can be caused to employees when their employer becomes insolvent, particularly where this means there is an absence of the usual level of notice to employees and consultation in advance of the termination of employment.

Ibec submits that effective legislative provisions and mechanisms already exist under both employment and company law. Legislation places onerous obligations on employers to inform and consult employees on proposed collective redundancies.

Ibec recognises the significant work that has gone into the development of the Plan of Action on Collective Redundancies following Insolvency and welcomes many of the recommendations that have followed. However, Ibec have concerns relating to a number of the proposals contained in the General Scheme.

Ibec is generally supportive of the commitments contained in the Plan of Action and General Scheme to enhance the quality and circulation of information to workers as creditors in an insolvency. In this regard, Ibec notes the progress already made with the provision for worker representation on the committee of inspection pursuant to the Companies (Rescue Process for Small and Micro Companies) Act 2021.

The General Scheme appears to adopt some of the recommendations contained in the Duffy-Cahill Report from 2016. ICTU has sought the full implementation of the Duffy-Cahill Report and in that respect many of the proposed provisions are

welcome. However, some of the key recommendations of the Duffy-Cahill Report have not been included in the General Scheme.

The CLRG welcomes this General Scheme which gives effect to the outstanding recommendations from its 2021 reports. These provisions, when enacted, will further improve access to information for workers as creditors and the anti-transactional avoidance mechanisms which could increase the assets available for the creditors, and further enhance the protection of employees in a collective redundancy following insolvency in a balanced manner that does not unduly impede enterprises in the conduct of their business.

The CLRG statutory functions are set out in section 959 of the Companies Act 2014. Ultimately, policy is decided by the Minister, not by the CLRG, but the CLRG are very happy to contribute to the development of that policy.

Key Issue 1: Duffy-Cahill Report

The Duffy-Cahill Report from March 2016 made a number of proposals to enhance the statutory protections and entitlements of employees made redundant in a situation where assets of a business are separated from the operating company. The report provided an expert examination of legal protections for workers with a particular focus on ways of ensuring limited liability and corporate restructuring are not used to avoid a company's obligations to its employees. The examination was to look specifically at situations where assets of significant value are separated from the operating entity, being the employer, and how the position of employees can be better protected in such situations.

ICTU observes that the General Scheme adopts some of the recommendations of the Duffy-Cahill Report. However, ICTU believes it additionally ignores other recommendations. ICTU strongly advocate that the proposed legislation should adopt all the relevant recommendations of the Duffy-Cahill Report.

Head 6

Head 6 proposes to make specific amendments to the Workplace Relation Act 2015 and the Protection of Employment Act 1977.

The Duffy-Cahill Report recommended that the quantum of compensation that can be awarded to an employee where sections 9 and 10 of the Protection of Employment Act 1977 are contravened be increased from an amount equivalent to 4 weeks' pay to an amount equivalent to 2 years pay. This proposal was intended to bring the redress provisions of the 1977 Act into line with those in the generality of employment enactments. Moreover, it is a general principle of European Law that sanctions available for a contravention of a right derived from Union law should be "effective, proportionate and dissuasive of future infractions." An award of 4 weeks' pay for a failure to consult in the case of proposed collective redundancies could not be regarded as effective, proportionate and dissuasive in every case, no matter how serious the actual or potential consequences for the employees concerned. ICTU recommends this would require an amendment to Head 6 of the proposed Bill.

Head 9

Head 9 proposes to make specific amendments to the Section 14 of the Protection of Employment Act 1977.

Currently Section 14 (2) of the Protection of Employment Act 1977 makes it a criminal offence to implement collective redundancies before the expiry of the 30-day consultation period. That subsection provides for a fine, on conviction on indictment, of up to €250,000. Currently, collective redundancies arising from the winding up of a company or bankruptcy are exempt from this criminal liability. ICTU notes that this exemption is to be removed and that is welcome.

While removing the exemption is welcomed by ICTU, it is vital that the proposed legislation provides that the directors or other persons in control a company are held to be responsible for any possible contravention. ICTU believes this would be consistent with the approach adopted in Head 8 of the General Scheme.

ICTU accepts that the fine that can be imposed for a contravention of Section 14 is substantial, ICTU regrets it does nothing for the employees who are unlawfully dismissed. The Duffy-Cahill Report recommended that any purported dismissal, where the provisions of Sections 9, 10, or 14 of the 1977 Act were contravened, should be regarded as a legal nullity. That, in effect, means that any dismissal in these circumstances would be of no effect and the employees concerned would continue as employees of their employer, and be entitled to continue being paid their wages, until the consultation provisions were complied with fully. ICTU recommends giving effect to this recommendation would require an amendment to Section 14 of the 1977, by inserting a new subsection providing that a purported dismissal in contravention of the section is void and of no effect.

ICTU states a third key proposal in the Duffy-Cahill Report was for the introduction of provision for the granting of a statutory injunction to prohibit the transfer of assets out of a company proposing to effect collective redundancies. ICTU believes this could be extended to allow for an injunction to restrain dismissals in contravention of Section 14 of the 1977 Act (see section 18.1 of the Duffy Cahill report). ICTU

recommends that this proposal could likewise be addressed in Head 9 of the proposed Bill.

Recommendation 1:

The Committee welcomes the inclusion of recommendations from the Duffy-Cahill report in this General Scheme.

The Committee welcomes the removal of the exemption outlined in section 14(2) of the Protection of Employment Act 1977, this exemption applies to collective redundancies arising from the winding up of a company or bankruptcy are exempt from this criminal liability.

The Committee considers this removal to be welcome, the Committee would further recommend that the proposed legislation provides that the directors or other persons in control of a company are also held responsible for any contravention.

Key issue 2: Head 9 – Amendment of section 14

The Committee commented on the number of high-profile cases that brought the issue of Collective Redundancies into the public realm and highlighted the evolving commentary. The Department explained their awareness of the impact on the workers who were made redundant. The General Scheme addresses the generality of insolvencies. It is an important step in implementing the outstanding legislative commitments in the plan of action, which is the Government's considered policy in this area. It followed extensive and intensive consultation, supported by ICTU, and took on board the Duffy-Cahill and CLRG reports in this space.

The proposed Bill will benefit the workers of insolvent employers in two ways. It will improve awareness and increase transparency and will improve access to the mechanisms which increase the assets available to the creditors. It will also provide for the statutory establishment of the employment law review group, which will ensure that employment and redundancy law is fit for purpose.

In referencing the high-profile cases, the Department clarified that had this General Scheme been in place it would have provided

- that all collective redundancies would be subject to a 30-day notification period before the redundancies could take effect, including in an insolvency situation and where a liquidator is appointed and
- that the employees could also seek redress from the Workplace Relations Commission, WRC, when they were made redundant ahead of that 30-day notification period.
- Under company law, it would have further enhanced the circulation of information to workers, as creditors by, for example, giving them free access to the statement of affairs lodged with the court.
- It would also ensure that the provisional liquidator appointed in an emergency situation to secure the assets would meet the workers as creditors at the earliest opportunity, because there is a recognition that this is a difficult situation and the workers as creditors should be engaged in the process as quickly as possible, allowing that the provisional liquidator is appointed to deal with an emergency situation.
- Also under company law, it would enhance access to asset-swelling provisions, which would have the potential to increase the pot available to creditors.

The Committee queried that the scope of the General Scheme will deal with all collective redundancies and not just those as provided for under insolvency laws.

The Department confirmed and provided that at least certain aspects will but there are a couple of matters which are specific to collective redundancies on insolvency. Those are specifically the ones where there have previously been exemptions in the law. The Department are removing those exemptions but the other matters, where officials are looking at saying that there will be penalties if somebody is let go before the 30-day period, for example, are for everybody.

Statistics

The Committee commented that during the pandemic many companies were supported. Reports are available in which people have speculated that many companies that would have closed down in the normal course of events were kept alive, now that these supports are being unwound and taken away, the Committee queried if the officials anticipate that many companies will become insolvent and close. The Committee queried whether there is a pent-up demand or potential for closures, which may be a delayed reaction, and could the officials comment on whether any research had been done on this issue.

The Department noted that in looking at the statistics and an increase in the rate of insolvency, there is certainly an increase in the number of insolvencies year on year, but the figure is still below that of 2019. There are three types of liquidation. The vast majority of liquidations are members' voluntary liquidations, which account for 75% of liquidations. About 23% are creditors' voluntary liquidations and they are insolvent, but this is where the directors themselves decide to wind up the company.

Then there are the court liquidations, which are in the low double-digit figures, so they make up the minority. Certainly, there is an upward trend in insolvency figures. The Department put forward a predictive figure of 600 insolvencies anticipated for this year and further estimated that 800 would have been the figure pre-Covid.

Employees and the 30-day period

Scope

The Committee queried the scope of Part 2 in terms of the numbers being made redundant. The Department explained that the 30 days applies from when the ministerial notification is received in their offices. Currently, it is received by quite old-fashioned methods, generally by registered post or hand delivered. Under these new proposals the Department will also be accepting by electronic means. The Department will get it on the day and so, as a rule, the Department will know exactly when it comes in.

The Department explained that Section 6 of the Protection of Employment Act 1977 defines a collective redundancy as where, during any period of 30 consecutive days, the employees being made redundant from an establishment are at least:

- 5 employees where 21-49 are employed;
- 10 employees where 50-99 are employed;
- 10% of the employees where 100-299 are employed; and
- 30 employees where 300 or more are employed.

An establishment is defined in the Act as "an employer or a company or a subsidiary company or a company within a group of companies which can independently effect redundancies".

The Committee queried if companies could let people go over a period and avoid some of the penalties here and some of the implications of the legislation.

The Department explained that while they possibly could if they did it slowly enough, but they would have to do it in a very calculated way over quite a long period. Companies need to look at the cumulative number of redundancies within a 30-day period, so they would need to stagger it over an extended period to evade the legislation. The Department further explained that there would be consequences to that because people would notice something like that happening.

Ibec is concerned by the proposed removal of the already limited derogation from the requirement to engage in a 30-day consultation period prior to making collective redundancies in an insolvency situation.

Ibec submits that there is little value to employees of a consultation period in an insolvency situation given that the situation is irretrievable and there is, as such, no prospect of reducing the number of redundancies to be made. Indeed, a situation could result from this proposal, where employees, although not in receipt of wages, would be unable to claim job seekers benefit from the Department of Social Protection on the basis that they are not yet unemployed. Ibec submits that requiring consultation in an insolvency situation, is in fact detrimental to employees' interests.

Ibec noted the authors of the Duffy-Cahill Report suggest that a situation could result from this proposal, where employees, although not in receipt of wages, would be unable to claim job seekers benefit from the Department of Social Protection on the basis that they are not yet unemployed. Ibec respectfully questions whether such a measure is in the interests of staff.

Ibec believes that the result of implementation of Head 9 would be an increased continued cost to the Exchequer of such unpaid wages which would have to be paid from the Social Insurance Fund. Ibec submits that the implementation of Head 9 would not be in the interests of employees. In the first instance, any imposed implementation could give rise to employees having an expectation that agreement may be reached on those matters set out in Head 9(2), when that simply cannot be the case in an insolvency.

Head 7 – Amendment of section 12 (Obligation on employer to notify Minister of proposed redundancies)

Ibec questions the merit of this proposed amendment which will oblige liquidators and receivers to notify the Minister of all proposed collective redundancies, including those caused by the bankruptcy or winding up of a business.

Ibec also notes that the Directive explicitly permits Member States to provide that in the case of planned collective redundancies arising from termination of activities because of a judicial decision, the employer shall only be obliged to notify the competent public authority if the latter so requests.

Ibec does not, therefore, see a positive obligation on all those effecting collective redundancies precipitated by insolvency to notify the Minister as being warranted and believes that the provisions of the Directive as transposed in the 1977 Act are proportionate.

Without prejudice and notwithstanding this position, Ibec submits that if this proposal is implemented, it gives further weight to the position that Head 9 should be removed. Informing the Minister of proposed collective redundancies, even in an insolvency, enables the Minister to ensure that employees receive an appropriate level of information regarding the collective redundancy without requiring the

company to keep employees in employment for 30 days where there is no work to be done and no chance of reducing the number of redundancies which will result.

Apprentices, trainees, and temporary employees

The Committee queried the status of apprentices, trainees, and temporary employees for the purposes of this legislation. The Department confirmed they are certainly employees for the purposes of the legislation. If they are temporary staff or apprentices, there is a distinct possibility that they will not qualify for redundancy, particularly if they are temporary and have less than two years of service. If they are apprentices and are more than two years into their apprenticeship, like any other employee, they will be entitled to a redundancy payment.

The Committee queried the status of temporary employees in relation to the list of creditors. The Department confirmed any employee will be a preferred creditor as is the norm. Section 621 of the Companies Act 2014 specifies that the following payments to employees have preferential status in a company wind-up:

- wages and salaries up to a maximum of €10,000 per employee;
- holiday payment;
- compensation and damages for uninsured accidents;
- sickness and superannuation payments;
- claims for unfair dismissal;
- claims for minimum notice payments;
- statutory redundancy payments; and
- social welfare contribution.

Depending on the nature of their contract, employees may be permanent or fixed-term employees. A fixed-term employee may have a contract that expires on a specific date or on conclusion of a specified purpose. The Companies Act 2014 does not distinguish between permanent and fixed-term employees about their preferential status in a wind-up.

Recommendation 2:

The Committee recommends the protection of apprentices, trainees and temporary workers for the purposes of this legislation.

Directors

The Committee queried if directors can be deemed as employees. The Department explained that directors may be executive or non-executive directors. Executive directors are those who are involved in the day-to-day affairs of the company and will often be employees of the company with a contract of employment. Non-executive directors are more commonly found in larger scale companies where they play a supervisory role rather than managerial role. They are usually appointed because of some expertise in a particular area, as an independent voice on the board or as a nominee of a large shareholder or creditor. They may be paid directors' fees or emoluments. They are not usually employees of the company.

Limited liability

The Committee referenced the Department's written submission and the explanation of what limited liability does, namely, "permitting individuals to engage in entrepreneurial activity while limiting personal exposure". The Committee queried if the balance has been struck here between limited liability, and what comes out of that, and justice.

The Department explained the importance of limited liability for directors and how it prevents personal exposure where there is business failure. It is not an absolute right. In return for the privilege of limited liability, directors are required to act in good faith. They are required to comply with the various legal requirements. Existing legislation has a number of anti-transactional avoidance measures, and the Department are enhancing them with this Bill. Ireland would be very advanced in terms of those anti-transactional measures and the remedies that are available to deal with the misuse of limited liability.

If the Department requires creditors to go to court to enforce their rights, this raises the issue of costs. The Department noted that with regard to access to the courts,

this Bill is not going to address that, but it is something the Department of Justice has been considering and has looked at. A review group looked at access to the civil judicial system, including the issue of costs. It produced an implementation plan last year and one of the actions that has come out of it will hopefully provide that liquidators could be funded through third-party funding where they go to court to enforce those rights and have access to asset-swelling measures.

Employment Rights

The Committee queried what rights for employees exist apart from the obligation to be paid and for consultation to occur. The Department explained there is an entitlement to a level of consultation. The purpose of that consultation is broadly to mitigate or investigate ways of potentially reducing the number of redundancies and so on. Workers will, of course, enjoy all the normal protections they do under the broad suite of employment rights. There is a right to participate in the consultation and to seek to mitigate any potential redundancies.

The Committee further queried if issues related to a collective redundancy goes to the WRC, how does this impact the 30-day consultation timeframe. The Department noted that you cannot avoid the 30 days by bringing a disputed issue elsewhere as it is a stipulated 30-day period. Employees have a right to bring a complaint if they have a difficulty with the outcome. It does not extend the minimum period. The Department explained many cases where the consultation period is extended by mutual agreement. Essentially people participate in a longer process, but the Department do not think it is necessary to stipulate anything on that in the legislation.

Ibec welcomes the proposed amendment of section 20 of the 1977 Act to permit notices or other documents given to the Minister to be served by electronic means.

Head 4 – Amendment of section 9 (Obligation on employer to consult employees' representatives)

Ibec notes that this proposed amendment provides that a liquidator or receiver may continue a consultation which was started but not concluded by an employer prior to the appointment of the liquidator or receiver.

While Ibec have concerns about the removal of the exemption from consultation requirements in respect of collective redundancies caused by an insolvency (set out above), Ibec agree that any consultation which has commenced must not be interrupted by the appointment of a liquidator or receiver such that it would necessitate a new 30-day consultation period.

Recommendation 3:

The Committee further recommends including a provision that provides where a consultation period has commenced, it must not be interrupted by the appointment of a liquidator or receiver.

Head 6 – Amendment of section 11A (Decision of adjudication officer under section 41 of Workplace Relations Act 2015)

Ibec notes the proposed new ground for complaint which would allow an employee to bring a complaint to the WRC should their employee make them redundant prior to the expiry of the 30-day period following notification to the Minister under section 12.

Ibec notes that the 1977 Act already provides for a sanction of a fine of up to €250,000 for effecting a redundancy prior to the expiry of the 30-day notification period. This is one of the largest fines provided for in Irish employment law and is, by any measure, a severe punishment for breaching section 14 of the 1977 Act. Employees who feel that their redundancy was not genuine may also bring complaints under the Unfair Dismissals Acts which provides for redress of up to 2 years' remuneration. This is in addition to complaints which relate to breaches of sections 9 and 10 of the 1977 Act.

Ibec submits that any additional measure such as that proposed in the General Scheme is disproportionate considering the already stringent provisions in place. Although Ibec notes that the 1977 Act does not provide an individual right of redress for an employee where they are dismissed before the expiry of the 30-day notice period, this cannot be looked at in isolation of the severe punitive measures that

already exist for employers that do dismiss within that period, and the other avenues of redress available to employees including those pursuant to the 1977 Act. Ibec submits that it would be disproportionate to impose further sanctions on those employers, particularly where those employers are already facing financial difficulty.

Winding up

Head 16 of the proposed Bill provides that when a petition for the winding up of a company is being made to the High Court, employees should be notified. ICTU recommends that this should be extended, for the avoidance of doubt, to include a trade union of which the employees are members.

In that regard, the explanatory note to Head 16 refers to imposing an obligation on the directors of a company to inform employees or their representative of the intention to seek the winding up of a company. The proposed new subsection (1A) to be inserted in s 571 of the Companies Act 2014 simply refers to an obligation to inform employees. ICTU recommend it should also expressly provide that a trade union would be entitled to be heard by the High Court in the application for the winding up of a company.

Recommendation 4:

The Committee recommends that the provisions of Head 16 be expanded to include the compulsory notification to Trade Union members and all other employees.

Assets

The Committee queried the threshold and (should this be “in section 608”) section 608 in relation to companies hiding assets from potential creditors.

The Department explained that this section provides that assets that are transferred before liquidation with fraudulent effect can be recovered. It does not hinge on intent but the effect. There is a significant difference between the intent and the effect, and effect obviously has a lower evidentiary burden of proof. The CLRG looked at

various judgments around the issue of thresholds in respect of that section. In its report, it states that it really is about the effect of depriving the creditors of something to which they were entitled.

The result of that judgment was a requirement for an additional ingredient of impropriety. In their reports when the CLRG looked at section 608, it was happy with the usefulness of the provision but was concerned about the way case law was moving and that there might be a concern with the issue of payments. It wanted to clarify that payments related to payments made in the ordinary course of business, including payments made to employees. The Department submits that is why this amendment is being made.

Key issue 3: Awareness Campaign

The Committee expressed concern that the success of this General Scheme would require a comprehensive information campaign to provide awareness to the public who may not be aware of their rights in redundancy situations.

Under the Plan of Action of 2021, the Department made a general information note explaining, in very simple terms and in plain English, the rights and remedies that workers have under employment law and company law. On collective agreements, it is important to remember that these collective agreements, are creatures of restructuring. They arise when a company is in the process of restructuring its debts as opposed to in a redundancy situation.

The Committee reference the need for the information to be made available in plain English. Simple and accessible language is important, but it also needs to be available in plain Polish, plain Arabic, plain French and plain Spanish. That is important when circulating the information campaign. If English is not someone's first language, it might be even more important that they have access to relevant information about their employment rights at work.

Recommendation 5:

The Committee recommends that a comprehensive information campaign is undertaken to provide awareness to the public who may not be aware of their rights in redundancy situations.

Key issue 4: Head 19

The Committee raised concern at Head 19, which would amend section 599 of the 2014 Act, it is indicated that the courts will be given a fair amount of discretion to bring forward a result which is fair. It gives creditors the opportunity to prove why a related company should contribute to the debts of the company being wound up. The principle of equality of creditors of equal standing still holds. In the standing of creditors, workers' wages are secured but their collective redundancy agreements are unsecured. The Committee raised a concern that this would not provide help to employees if they do not have preferential creditor status in these situations.

The Department explained that in terms of company law, workers are already preferential creditors in their statutory entitlements. In an insolvency, the situation is that the company has run out of money. There is a limited pool of money. If you broaden the pool of creditors or the amounts that will be drawn from that pool, it will have a knock-on effect on other creditors. Other creditors would be pushed down, and those creditors are likely to be suppliers, who are also employers, and there are the further risks in that instance.

The Department further expanded that from an employment rights perspective, there is a risk in going down the route of creating a special class of redundant worker when they are insolvent in order that they would have legal rights that go beyond those of workers made redundant. It is about ensuring equality and uniform treatment of workers when they are made redundant.

The Committee commented on in terms of lowering the bar or test about the consideration of related companies. The Committee queried how will that work in practice, and specifically relating to unlimited companies or companies located abroad and the extent to which they will be recognised as a related company in the context of this process.

The Department explained this section is modelled on a New Zealand provision. When it was introduced under the Companies Act 2014, it was a less liberal provision than the New Zealand model it is based on. These amendments will make it a less restrictive provision. It will align more with the New Zealand provision. This is

something ICTU sought. It will no longer be mandatory for the court to be satisfied that circumstances of the winding up were attributable to the company's action. It can have regard to the extent of the circumstances that gave rise to the liquidation and how it was attributable to the actions of the related company. In addition, it can have greater discretion to have regard to any other factor. An important feature of this provision is the extent to which the court can have regard to factors.

The extent of a related company under Head 19 amending section 599

The Department provided in writing that the term "related company" is employed in the Companies Act 2014 in the context of, *inter alia*, contribution orders under section 599. This section is a novel and far-reaching provision which strikes at the root of group trading and is designed to prevent companies creating a number of subsidiaries, using them to make profit, and then casting them and their creditors aside when they become insolvent.

A company is related to another company for the purposes of section 599 where it meets the test in section 2(10), which provides:

"For the purposes of this Act, a company is related to another company if—

- that other company is its holding company or subsidiary; or
- more than half in nominal value of its equity share capital (within the meaning of section 7(11)) is held by the other company and companies related to that other company (whether directly or indirectly, but other than in a fiduciary capacity); or
- more than half in nominal value of the equity share capital (within the meaning of section 7(11)) of each of them is held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or
- that other company or a company or companies related to that other company, or that other company together with a company or companies related to it, are entitled to exercise, or control the exercise of more than one half of the voting power at any general meeting of the company: or

- the businesses of the companies have been so carried on that the separate business of each company, or a substantial part thereof, is not readily identifiable; or
- there is another body corporate to which both companies are related,"

Section 2(11) goes on to provide that the word "company" in section 2(10) has a wider definition than normal: "For the purposes of subsection (10) "company" includes anybody that is capable of being wound up under this Act."

In addition, a subsidiary company and holding company referred to in section 2(10)(a) are defined in section 7 and section 8, respectively. For the purposes of these sections, "company" includes any "body corporate." The term "body corporate" is more generic than "company" and refers to any entity that has a separate legal existence from its members including foreign companies.

A company is deemed related where, within the meaning of section 8, the company is part of a group of companies. In addition, section 2(10)(e) means that companies that are members of a de facto group of companies may also be related companies; for example, two or more companies owned and controlled by the same person/s.

Recommendation 6:

The Committee supports the lowering of the bar or test in the consideration of "related companies" as it will provide discretion to the court to have regard to additional factors when making a decision.

Recommendation 7:

The Committee recommends that employees subject to a collective bargaining agreement and other employees in redundancy situations be given preferential creditor status.

Key issue 5: Head 20 – scope of connected persons

Head 20 relates to situations where a transaction is an unfair preference within the timeframe of the winding up of a company and is deemed to be invalid. This covers a period of six months before the winding up of a company.

The Committee queried if the purpose of this Head were to align the Companies Act and asked the Department to further expand on whether consideration was given to expanding the definition of a connected person or creating additional definitions to cover situations where preferential transactions are made to persons who are not a creditor or a connected person.

The Department explained the terms of the six-month period in Head 20, that reflects the period in place under the Companies Act. That period is not being changed. It is six months in the case of a connected person but two years in the case of an unconnected person. The Department put forward this proposal to provide that the court be given greater discretion to extend those periods where it is justifiable and equitable to do so. This was in response to a request from ICTU that those periods be extended out.

Section 604 deals with unfair preference. It restricts the powers of the controllers of the company to dispose of its assets on the verge of it being wound up. The provision provides that for an act to be an unfair preference it must be done by an insolvent company. If a transaction is an unfair preference and is made within six months of the winding up of the company, it is invalid. Subsection (4) provides that if the preferential transaction is made in favour of a connected person, it is invalid where it is made within two years of the commencement of the winding up.

The scope of section 604 is wide ranging and targets persons who are perceived to be in a special position of trust to the company. The definition of connected person for the purposes of section 604 is set out in section 559(1) as a person who at the time the transaction in relation to the company concerned was conducted, was—

- a director of the company.
- a shadow director of the company.

- a person connected, within the meaning of section 220, with a director of the company.
- a related company as defined by section 2(10).
- any trustee of, or surety or guarantor for the debt due, to any person referred to in paragraphs (a) - (d).

Regarding a “person connected” in (c) above, section 220(1) defines such a person as:

- that director’s spouse, civil partner, parent, brother, sister, or child (child is also deemed to include a child of the director’s civil partner who is ordinarily resident with the director and civil partner).
- a person acting in his or her capacity as the trustee of any trust, the principal beneficiaries of which are that director, the spouse (or civil partner) or any children of that director or anybody corporate which that director controls; or
- in partnership with that director. Companies cannot be used by directors to distance themselves from any arrangements. Section 220(3) provides that “a body corporate shall also be, for the purposes of this Part, connected with a director of a company if it is controlled by that director or by another body corporate that is controlled by that director”. Control in this context means the director holds one-half or more of the equity share capital or voting power. The term “body corporate” is more generic than “company” and refers to any entity that has a separate legal existence from its members including foreign companies.

Key issue 6: Fines

The Committee raised a question relating to the fines and suggested that some of the fines in the General Scheme are small and would not be dissuasive. The Committee referred to a fine of €5,000 for a failure to consult or for a failure to notify the Minister but a fine of €250,000 where redundancies take place before the end of the 30-day consultation period.

The Department provided clarity of the thinking for the fine amount listed, when they examined the fines and detailed them in the General Scheme. The fines are listed and are fines that would apply to a liquidator and equivalent receivers. The fines are of a smaller amount to ensure that the fines are not displacing the assets of the business and thereby depriving the various creditors of those assets, including the employees themselves.

The Department further explained €250,000 fine mentioned relates to very specific types of situations where people were made redundant and were essentially displaced by cheaper labour from elsewhere. That is not appropriate for a liquidator simply because he or she is not going to be displacing the existing workers in favour of others. That is intended as a punitive measure and is not appropriate in the circumstances of a liquidation.

ICTU states Head 8 proposes that the fines proposed for offences is generally set at a maximum of €5,000. ICTU suggests this amount is inadequate. ICTU advocates for the provision for the prosecution of offences on indictment and for the imposition of a fine of the magnitude currently provided for a contravention of Section 14 i.e., a fine of up to €250,000.

Head 5 – Amendment of section 11 (Penalty for contravention of section 9 or 10)

Ibec notes that Head 5 proposes to amend the 1977 Act to allow a prosecution to be brought against a liquidator or receiver in case of a breach of section 9 or 10.

As the current exemption relating to insolvencies does not release employers from the obligation to consult with employees about proposed collective redundancies, Ibec understand that this proposal gives fuller effect to the obligation set out in sections 9 and 10 of the 1977 Act.

Ibec believes that the level of the fine is proportionate and notes that any increase would risk depriving creditors, including the employees themselves, of the benefit of assets of the company.

Ibec notes that in proceedings for an offence under section 11(2), it is proposed that it will be a defence for a liquidator or receiver, having done their full due diligence, to have a reasonable belief that the employer already complied with their obligations prior to their appointment. Ibec notes that these grounds for defence are adapted from section 286(6) and section 484(13) of the Companies Act 2014. Ibec welcomes a reasonable grounds defence as a measure to further ensure that creditors, in particular employees, are not deprived of the benefit of the assets of the company.

Head 8 – Amendment of section 13 (Penalty for contravention of section 12)

Ibec notes that Head 8 proposes to permit prosecution to be brought against a liquidator or receiver for a failure to comply with section 12. Ibec believes that it would be sufficient for prosecution to be permitted where a liquidator or receiver fails to comply with the existing provisions of section 12, i.e., a failure to comply with a request by the Minister to notify him of proposed redundancies in an insolvency situation.

Ibec notes that in proceedings for an offence under section 13(2), it is proposed that it will be a defence for a liquidator or receiver, having done their full due diligence, to have a reasonable belief that the employer already complied with their obligations prior to their appointment. Ibec notes that these grounds for defence are adapted from section 286(6) and section 484(13) of the Companies Act 2014. Ibec welcomes a reasonable grounds defence as a measure to ensure that creditors, in particular employees, are not deprived of the benefit of the assets of the company.

Recommendation 8:

The Committee welcomes the substantial fines under Section 14. The Committee would further recommend that the proposed legislation provides for further

supports to employees unfairly dismissed where sections 9, 10 or 14 are contravened.

Key issue 7: Employment Law Review Group

Head 13 proposes the establishment of an Employment Law Review Group. The Committee welcomed the establishment of the ELRG on a statutory footing and the intention of the group as a significant and valuable resource for ongoing assessment. The Committee queried how people would be appointed to the ELRG.

The Department explained that with the establishment of the ELRG in statute, it is intended that there will be a piece around a decision required by the Minister in terms of the operational establishment later on. The Department noted that it is intended to seek nominations from representative organisations. The intention is that the membership of the ELRG will comprise people with professional, technical, and legal expertise and skills to contribute to the development of employment, redundancy and insolvency law. It is intended that there will be worker and employer representation, along with representation from academia, the Law Society and practitioners from entities such as the Labour Court. Its role would include to review the legislation on employment law and redundancy and insolvency law, and review its adequacy and response to external issues, including any potential forthcoming European law.

The Department further provided that the intention is that the process around deciding the bodies that the Department seek nominations from is intended to be a consultative process. The Department would very much welcome the views of this Committee, take those on board and factor them in to how this group will ultimately be set up and move forward.

ICTU welcomes the establishment of the ELRG under Head 13. However, it is proposed that the Minister is to have unfettered power to appoint members of this proposed body. ICTU believes for the group to be able to discharge its proposed mandate effectively it is essential that the membership of this group include representatives nominated by Congress.

Ibec welcomes the proposed establishment of an ELRG. Ibec notes the contribution the CLRG has made to the development of company law in Ireland and believes that an ELRG can play an important role in ensuring that employment and redundancy law in Ireland continues to be fair, reasonable and workable for employers and employees alike. Ibec look forward to playing a role in the ELRG.

Ibec notes the contribution the CLRG has made to the development of company law in Ireland and believes that an ELRG can play an important role in ensuring that employment and redundancy law in Ireland continues to be fair, reasonable and workable for employers and employees alike.

Ibec further notes that the ELRG will have within its remit, similar to the CLRG, the power to review EU Directives or Regulations in terms of potential impacts around employment or redundancy law. Ibec welcomes this as timely and proper transposition of EU Directives is fundamental to Ireland's reputation as a place to do business as well as the need for businesses and employers to properly plan for upcoming regulation.

Work programme

The Committee queried what the work programme is likely to be. The Committee further queried if there were any challenges the Department will be bringing to the group to look at or, indeed, upcoming changes anticipated from Europe.

The Department commented regarding the work programme for the employment law review group, they are following a model has been laid out for the company law review group and the work it has done. The intention is that the work programme of the ELRG will likewise be set by the Minister in consultation with members of the group at least once every two years. That does not preclude events taking place that would enable the Minister to ask the ELRG to look into matters on a more ad hoc basis.

Recommendation 9:

The Committee welcomes the establishment of the Employment Law Review Group on a statutory footing.

Key issue 8: The EU

Comparison to other EU countries

The Committee queried how Ireland compares to the EU with respect to this legislation. The Department explained they do compare notices for collective redundancy notifications at a lower level than many other EU countries, so the Department have perhaps a little more of a picture of what is going on. Ireland's protections, because they are Directive-derived, are broadly comparable with most jurisdictions. Ireland's redundancy payments, for example, are a little more generous than they are in many other EU jurisdictions.

Potential interface between European Works Councils and the General Scheme

The Committee referenced a number of previous hearings on works councils. The Committee queried how officials see this developing in conjunction with this legislation.

The Department responded in writing on this question and provided that obligations under the Protection of Employment Act 1977, governing how collective redundancies must be managed within an establishment, are separate and distinct from how European Works Councils (EWCs) are used to facilitate information and consultation with European employees on transnational issues under the Transnational Information and Consultation of Employees Act 1996. Both Acts must be complied with, where applicable.

Legislation governing collective redundancies

The obligation to consult with and provide information to employees' representatives applies where an employer is considering collective redundancies, as outlined in the Protection of Employment Act 1977 and Directive 98/59/EC. The Act defines "Employees' representatives" as a trade union, staff association or a group of employees chosen to act as employees' representative for the purpose of the Act.

The Act specifies that these obligations apply where collective redundancies are proposed during any 30-day consecutive period in an establishment. An establishment is defined in the Act as “an employer or a company or a subsidiary company or a company within a group of companies which can independently effect redundancies”.

Company Law Review Group

The CLRG is the statutory expert advisory group that advises the Minister for Enterprise, Trade and Employment on the review and development of company law in Ireland. The added value that the CLRG brings to the Department of Enterprise, Trade and Employment is the broad range of expertise across all company law. Of the members, one third are Ministerial nominees with expertise or experience aligned with the CLRG work programme and two thirds are nominated by bodies with a close interest in company law. Within the group there is representation from: practitioners from the legal profession, accountants and chartered secretaries; users such as business groups and trade unions; regulators including both implementation and enforcement bodies; and representatives from Government Departments and agencies. It is unique, and not replicated in neighbouring jurisdictions.

Ireland’s solvency and insolvency legislation framework

Ireland’s legislative framework provides for modern and flexible corporate recovery and insolvency processes. The Companies Act 2014 balances the need for certainty for creditors in terms of their enforcement rights with the need for vulnerable debtor companies to be protected. Ireland has a long-standing and internationally recognised examinership framework which enables viable companies negotiate a restructuring solution with creditors. The State’s restructuring framework was expanded in 2021 with the Small Company Administrative Rescue Process following the CLRG’s recommendations on the matter in 2020. In addition, a well-established liquidation process on both a voluntary and compulsory basis provides for an orderly and predictable framework for company closure.

Company law is dynamic, and the State’s law in this area is already of a high standard compared with OECD international standards. The CLRG contributes to

this by providing recommendations and advice to keep pace with developments both in industry and legislatively. Particularly during the pandemic, many of the CLRG's proposals designed in the early weeks of the lockdown in 2020 became transposed into law within a brief period, with some now being considered for enactment on a permanent basis.

CLRG Work Programme

The CLRG operates a two-year work programme, which is determined by the Minister. In 2020, arising from commitments contained in the Programme for Government *'Our Shared Future'*, the CLRG was instructed to review the legal provisions surrounding collective redundancies and the liquidation of companies to determine whether they effectively protect the rights of workers as creditors. Specifically, the CLRG was asked to review:

1. whether the current legal provisions surrounding collective redundancies and the liquidation of companies protect the rights of workers effectively.
2. the Companies Act 2014 to address the practice of trading entities splitting their operations between trading and property with the result being the trading business, including the jobs, go into insolvency and the assets are taken out of the original business; and
3. the legal provision that pertains to any sale to a connected party following the insolvency of a company including who can object and the allowable grounds of an objection.

The CLRG issued two reports in 2021 in response to this request.

In March 2021, the CLRG submitted its 'Report in relation to the review of existing legislative provisions regarding the provision of information to creditors generally and in particular to employees' - **link here**. This Report examined whether the provisions of the Companies Act surrounding collective redundancies and the liquidation of companies effectively protect the rights of workers. The CLRG identified and proposed a number of practical improvements to the Companies Act liquidation

process with a view to improving the quality and circulation of information to employees and other creditors, and which would go to a material extent in protecting their rights.

In December 2021, the CLRG submitted its 'Report on the consequences of certain liquidations and restructuring practices, including splitting of corporate operations from asset-holding entities in group structures' - **link here**.

This Report contains a number of recommendations dealing with transactional avoidance provisions which may be of relevance to employees as corporate stakeholders. The CLRG concluded that the incidence of abusive practices, while attracting significant attention, is in fact low. This conclusion was supported by the then ODCE which noted that its reviews of liquidations indicated that in over 90% of all liquidations, company directors had acted honestly and responsibly. The Report sought to address in detail transactional avoidance provisions, often described as 'asset swelling measures' and why in practice, they are rarely used.

CLRG Recommendations

In relation to the recommendations contained within both reports, the CLRG are satisfied that many of the recommendations were accepted by the Department with a number already implemented, such as obliging the liquidator/director to ensure creditors are made aware they have the right to form and participate in a Committee of Inspection; and imposing a statutory obligation on directors to consider interests of creditors in the period leading up to insolvency.

APPENDIX 1 Membership of the Joint Committee

Deputies	
Maurice Quinlivan (SF)	Cathaoirleach
Richard Bruton (FG)	
Francis Noel Duffy (GP)	
Joe Flaherty (FF)	
Mick Barry (S-PBP)	
James O'Connor (FF)	
Louise O'Reilly (SF)	
Matt Shanahan (Ind)	
David Stanton (FG)	

Senators	
Garret Ahearn (FG)	Leas-chathaoirleach
Ollie Crowe (FF)	
Róisín Garvey (GP)	
Paul Gavan (SF)	
Marie Sherlock (Lab)	

Notes:

1. Deputies appointed to the Committee by order of the Dáil on 8 September 2020.
2. Deputy Maurice Quinlivan was appointed as Chair on 8 September 2020.
3. Senators appointed to the Committee by order of the Seanad on 25 September 2020.
4. Deputy James O'Connor replaced Deputy Niamh Smyth on 26 November 2020.
5. Deputy Mick Barry replaced Deputy Paul Murphy on 28 March 2023.

APPENDIX 2 Terms of Reference of The Joint Committee

a) Scope and Context of Activities of Committees (*derived from Standing Orders – DSO 84, SSO 70)*

1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers, and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

2) Such matters, activities, powers, and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil/and or Seanad;

3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993;

4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 111A; and

The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(i) a member of the Government or a Minister of State, or

(ii) the principal officeholder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

b) Functions of Departmental Committees (derived from Standing Orders – DSO 84A and SSO 70A)

(1) The Select Committee shall consider and report to the Dáil on-

(a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and

(b) European Union matters within the remit of the relevant Department or Departments.

(2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.

(3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—

(a) Bills,

(b) proposals contained in any motion, including any motion within the meaning of Standing Order 187

(c) Estimates for Public Services, and

(d) other matters as shall be referred to the Select Committee by the Dáil, and

(e) Annual Output Statements including performance, efficiency, and effectiveness in the use of public moneys, and

(f) such Value for Money and Policy Reviews as the Select Committee may select.

(4) Without prejudice to the generality of paragraph (1), the Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:

(a) matters of policy and governance for which the Minister is officially responsible,

(b) public affairs administered by The Department,

(c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,

(d) Government policy and governance in respect of bodies under the aegis of the Department,

(e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,

(f) the general scheme or draft heads of any Bill

(g) any post-enactment report laid before either House or both Houses by a member of the Government or
Minister of State on any Bill enacted by the Houses of the Oireachtas,

(h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,

(i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,

(j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (*d*) and (*e*) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and

(k) such other matters as may be referred to it by the Dáil from time to time.

(5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—

(a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,

(b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,

(c) non-legislative documents published by any EU institution in relation to EU policy matters, and

(d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.

(6) Where the Select Committee has been joined with a Select Committee appointed by Seanad Éireann, the Chairman of the Dáil Select Committee shall also be the Chairman of the Joint Committee.

(7) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:

(a) members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,

(b) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and

(c) at the invitation of the Committee, other members of the European Parliament.

(8) The Joint Committee may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department or Departments, consider—

(a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and

(b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 111F apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

Appendix 3 References

- The General Scheme
- Regulatory Impact Analysis
- Plan of Action – Collective Redundancies following Insolvency
- Joint Committee on Enterprise, Trade and Employment

  Pre-Legislative Scrutiny in public session

  Transcript – Video

  Opening Statement
- CLRG 2021 Reports

  March - Report in relation to the review of existing legislative provisions regarding the provision of information to creditors generally and in particular to employees' - **link here**.

  December - 'Report on the consequences of certain liquidations and restructuring practices, including splitting of corporate operations from asset-holding entities in group structures' - **link here**.

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