

DÁIL ÉIREANN

AN COMHCHOISTE UM GHNÓTHAÍ FOSTAÍOCHTA AGUS COIMIRCE SHÓISI- ALACH

JOINT COMMITTEE ON EMPLOYMENT AFFAIRS AND SOCIAL PROTECTION

Dé Máirt, 9 Iúil 2019

Tuesday, 9 July 2019

The Joint Committee met at 12.30 p.m.

Comhaltaí a bhí i láthair / Members present:

John Brady,	Catherine Ardagh.
Joe Carey,	
Willie O’Dea.	

Teachta / Deputy John Curran sa Chathaoir / in the Chair.

Business of Joint Committee

Chairman: All are welcome to this meeting of the Joint Committee on Employment Affairs and Social Protection. Before we begin, I remind members to please turn off their mobile phones. I propose that we go into private session to deal with some housekeeping matters before returning to public session. Is that agreed? Agreed.

The joint committee went into private session at 12.35 p.m. and resumed in public session at 12.38 p.m.

Social Welfare Consolidation Act 2005 (Specified Bodies) Regulations 2019: Motion

Chairman: I welcome the Minister of State at the Department of Business, Enterprise and Innovation, Deputy John Halligan, and his assistant, Ms Maureen O’Sullivan. I will invite the Minister of State to make a presentation and when he concludes I will afford members an opportunity to ask any questions they may have.

By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the joint committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or entity, by name or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable. Once again, I remind those present that if they have a mobile phone they should turn it off. I invite the Minister of State to make his opening statement.

Minister of State at the Department of Education and Skills (Deputy John Halligan): I am here to discuss the Social Welfare Consolidation Act 2005 (Specified Bodies) Regulations 2019. I thank the Chairman for the opportunity to 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 to the Social Welfare Consolidation Act 2005. This will enable the registrar to collect personal public service numbers to verify the identity of persons who have ultimate control of a company, ensuring 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 from doing so. The PPSN will not be visible to the registrar, staff within the registry of beneficial ownership or any member of the public. The PPSN will never be shared with any State or non-State competent authorities or with any third party.

Members will be aware of company law and the concept of directors of a company. A beneficial owner is the natural person who ultimately owns or controls a legal entity through direct or indirect ownership or through control via other means. Thus, simply because someone is a director on paper does not mean in practice that the person ultimately controls the company. Recital 25 of the EU fourth anti-money laundering directive highlights the importance of beneficial ownership information. It states:

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.

To prevent this 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, known as the 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(4) of 4 AMLD means there is an EU law 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 a PPSN, the vast majority of beneficial owners already have a 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 this particular 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 at the time, along with use of a maiden name for some entries and a married name for others. I expect members will agree that this is not something we want to see recur. The online register, combined with PPSN verification, will ensure that such scenarios are prevented. To ensure personal information is protected the PPSNs are encrypted, not visible to RBO staff and are used only at a specific point in time, that is to say, the point of filing, to validate the PPSN and date of birth against the data that the Department of Employment Affairs and Social Protection holds for that personal public service number. 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 because 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 Commissioner, 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 the introduction of the European Communities (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations in 2016. The RBO and filing requirements are provided for in S.I. No. 110 of 2019 - the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019. Under this statutory instrument, the RBO has been established since 22 June last.

While the staff and ICT infrastructure of the CRO have been utilised in the technical de-

velopment 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.

This is a matter of urgency. Already we are facing fines from the European Commission, which has referred the matter to the European Court of Justice, so it is imperative that we get this through as quickly as we can. Almost all European states are working on this; some of them are delayed as we are. While all previous designations have been done by way of 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 allows for a “specified body” to be prescribed by statutory instrument and these regulations provide the most appropriate course of action to facilitate the opening of the central register in order to minimise the impact of wider infringement proceedings against Ireland for failure to transpose all aspects of the anti-money laundering directive, 4AMLD. I wish to advise the committee that this statutory instrument will be temporary and that 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. 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.

Chairman: I thank the Minister of State for his opening statement. A number of colleagues have questions. We will start with Deputy O’Dea.

Deputy Willie O’Dea: I welcome the Minister of State. We live in an era when our privacy is under constant threat but sometimes we have to make concessions in that regard for the greater good. The Minister of State made a couple of points that are fairly central to why we should not oppose this. On the second page of his submission, he states: “Article 30 paragraph 4 of 4AMLD means there is an EU legal obligation on Ireland to ensure that the Central Register is accurate”. The experts tell us that personal public service, PPS, numbers are necessary in order to ensure the accuracy of the central Register of Beneficial Ownership, which is an anti-money laundering device. The Minister of State also states: “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”. I am glad he has given that assurance and I hope it will be honoured.

The Minister of State went on to say at the end of his presentation that this is a temporary device to prevent the EU from fining us and will ultimately be confirmed in primary legislation. As such, the best time to have a detailed debate on this is in debates on the primary legislation.

Deputy John Halligan: I wish to very briefly address the important points Deputy O’Dea made. The data-sharing agreement has been put in place with the Department of Employment Affairs and Social Protection. It includes an encryption process. The Office of the Data Protec-

tion Commissioner has been informed of this and has carried out an impact assessment. I must emphasise that all Register of Beneficial Ownership, RBO, staff are trained on the general data protection regulation, GDPR. Further information is available in the privacy statement.

On the primary legislation, we are trying to get this through as quickly as we can because we are under serious pressure from the EU. I know we allocated half an hour to this. The Commission itself has criticised us for not getting this through. We will bring primary legislation to the Dáil and the Seanad. All Members will be allowed to debate it in its entirety and move amendments if they wish. I, or probably some other Minister, will have detailed information on all aspects of this legislation.

Chairman: Does Deputy Carey wish to comment?

Deputy Joe Carey: I would like to commend the Minister of State and the Minister for Employment Affairs and Social Protection, Deputy Regina Doherty, on their work on this particular issue. I support it entirely. How advanced is the legislation? The Minister of State says the Government is working on it. At what stage is it? Is it with the draftsmen?

Deputy John Halligan: It is not ready to draft yet but we are doing everything in our power because it is crucial legislation, as the Deputy knows. We are working on it and our intention is to put it before the Dáil as quickly as possible. The basis of the legislation is a short agreement on the issues I have outlined. It must be more detailed and address personnel, what other countries are doing and the definition of beneficial ownership. It is likely to be part of a larger piece of legislation. We are working as feverishly as we can to get this to the Dáil.

Chairman: I wish to ask the Minister of State a general question. When did the fourth and fifth anti-money laundering directives come into being?

Deputy John Halligan: They were introduced in 2016 and 2017, with confirmation due in early 2020.

Chairman: I have one other question, which Deputy O’Dea touched on. The Minister of State is aware that there has been some concern around the public services card, the Data Protection Commissioner and the use of PPS numbers.

Deputy John Halligan: Absolutely.

Chairman: We understand that the Data Protection Commissioner has submitted a draft report on that to the Department of Employment Affairs and Social Protection. The Minister of State quite clearly indicated that this has been referred to the Data Protection Commissioner.

Deputy John Halligan: Yes.

Chairman: We have not seen the report the Data Protection Commissioner has submitted to the Department. What specifically did it say about the use of PPS numbers in this particular context? The Minister specifically said there was a mechanism in place for beneficial owners without PPS numbers.

Deputy John Halligan: The assessment is being carried out. To be honest, I have not seen it. It pertains to the larger piece of legislation. I will say that the only certain way of finding beneficial ownership is through a person’s liability to tax and their PPS number. This information gives a name and address and verification and that is why we are putting such emphasis on it. There are difficulties around the privacy of a person’s PPS number but we have done an

assessment on it. We collaborate with the Department to verify who a person is and where he or she lives.

Chairman: The briefing notes from the Minister stated that the Office of the Data Protection Commissioner had been consulted.

Deputy John Halligan: Yes.

Chairman: What did that office say?

Deputy John Halligan: We have not had feedback. It agrees with what we are doing with the PPS number and there is no problem with that. The office is assessing the larger element of the legislation, however.

Chairman: I am talking about this specific context.

Deputy John Halligan: Yes. There is no problem.

Deputy John Brady: The Minister went off script to say we were under pressure to impose this, adding that a number of European countries had already done so while others were at different stages of the process. Did the Minister say we were facing fines or penalties or that we were currently receiving fines or penalties?

Deputy John Halligan: We have been referred to the European Court of Justice by the Commissioner.

Deputy John Brady: Okay.

Deputy John Halligan: Infringement proceedings have been initiated against us because of our delay. It may also be the case in respect of other countries.

Deputy John Brady: When were the proceedings initiated?

Deputy John Halligan: Earlier this year. The Data Protection Commission agrees with the PPS number as long as we follow protocols and procedures in the case of this particular legislation.

Chairman: We are not being awkward with the Minister, but this committee spent quite some time on this and we are aware that the Data Protection Commissioner had an interest in it.

Deputy John Halligan: I respect that.

Chairman: It was in that context that we needed to question the Minister.

Deputy John Halligan: That is no problem at all.

Chairman: I thank the Minister for his answers. That concludes our consideration of the Social Welfare Consolidation Act 2005 (Specified Bodies) Regulations 2019.

Deputy John Halligan: I assure the committee that further legislation will be brought to the Dáil on this. It will be open to further scrutiny by Members, who may table amendments and ask further questions.

9 JULY 2019

Chairman: In accordance with Standing Order 90, the following message will be sent to the Dáil:

The Joint Committee on Employment Affairs and Social Protection has completed its consideration of the Social Welfare Consolidation Act 2005 (Specified Bodies) Regulations 2019,

a copy of which was laid before Dáil Éireann on 24 June 2019.

In accordance with Standing Order 75, the following message will be sent to the Seanad:

The Joint Committee on Employment Affairs and Social Protection has completed its consideration of the Social Welfare Consolidation Act 2005 (Specified Bodies) Regulations 2019,

a copy of which was laid before Seanad Éireann on 24 June 2019.

The joint committee adjourned at 12.58 p.m. *sine die*.