

DÁIL ÉIREANN

AN COMHCHOISTE UM FHIONTAR, TRÁDÁIL AGUS FOSTAÍOCHT
JOINT COMMITTEE ON ENTERPRISE, TRADE AND EMPLOYMENT

Dé Céadaoin, 7 Deireadh Fómhair 2020

Wednesday, 7 October 2020

Tháinig an Comhchoiste le chéile ag 9 a.m.

The Joint Committee met at 9 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Richard Bruton,	Garret Ahearn,
Louise O'Reilly,	Ollie Crowe,
Matt Shanahan,	Paul Gavan.
David Stanton.	

Teachta / Deputy Maurice Quinlivan sa Chathaoir / in the Chair.

Scrutiny of EU Legislative Proposals

Chairman: Members will remember we discussed a number of EU proposals. We are now required to make formal decisions on them.

The following proposals have been circulated under schedule B: COMS (2019) 614 and 623, COMS (2020) 24, 29 and 32, and early warning notices EWN (2019) L 321/139 and EWN (2020) C 18/3, C 46/8, C 67/11, C20-18, C24-17 and L 13/18. It is proposed that these proposals do not warrant further scrutiny. Is that agreed? Agreed.

Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2020: Discussion

Chairman: The next item on our agenda is a discussion on the draft Bill. We will hear a briefing on the relevant provisions from the Minister of State at the Department of Enterprise, Trade and Employment. I wish him well in his appointment and look forward to working with him in the period ahead. His statement has been circulated to members and I invite him to make his opening remarks.

Minister of State at the Department of Enterprise, Trade and Employment (Deputy Robert Troy): I thank the Chair and look forward to working with him and the committee members in the term ahead. I thank the Chairman for the invitation to speak here on Parts 4 and 5 of the omnibus Brexit Bill. I am joined by Ms Fiona O’Dea who is a principal officer in the Department’s unit that has responsibility for company law. As members will be aware, the briefing is a substitute for the pre-legislative scrutiny process for this Bill and I thank the committee for facilitating all of this.

I will speak to the two Parts of the Bill that relate to my Department. Part 4, while short and technical, nevertheless forms an important part of Ireland’s response to the UK’s decision to leave the EU. It amends the Companies Act 2014 to facilitate the migration of Irish securities from their current central security depository, Euroclear UK & Ireland, to the Euroclear Bank after Brexit. The central securities depositories are specialist financial institutions that hold securities and facilitate trading between market operators. They are a vital and systemic part of the financial market infrastructure.

Due to the close historic links between the Dublin and London Stock Exchanges the Irish market currently relies on central securities depositories based in the UK, which operate the CREST settlement system. Once the UK becomes a third country, the central securities depositories will no longer be able to passport its services from the UK into Ireland. As a result, Euronext Dublin, formerly the Irish Stock Exchange, announced in October 2018, its intention to transfer the settlement of trades in Irish equities and other exchange-traded instruments from CREST to Euroclear Bank, which is a central securities depository based in Belgium. Recognising the time and complexity involved in such a transition, the European Commission granted, in December 2018, equivalence to UK central securities depositories until the end of March 2021 in the event of a hard Brexit.

The Migration of Participating Securities Bill 2019, commenced earlier this year by my colleague, the Minister for Finance, allows for an orderly migration *en bloc* of all Irish securities held in the UK system to the new system ahead of the 31 March 2020 deadline. While the

2019 Act provides a once-off mechanism for companies to transfer their listed securities from CREST to the Euroclear Bank, Part 4 of this Bill provides for miscellaneous amendments to the Companies Act 2014 to ensure the successful functioning of the model post-migration.

A successful migration and functioning security system after Brexit, enabled by statutory provision, is imperative. In the absence of a successful migration it would not be possible to trade Irish shares once the European Commission's temporary equivalence decision expires in March 2021. While the 2019 Act takes care of the immediate risks, any ongoing issues with the functioning of the system would have a significant impact on Irish listed companies and damage Ireland's reputation as a world-class location for financial services. In addition, the ongoing collection of stamp duty on Irish trade, which totalled €380 million in 2019, could be impacted.

Part 5 provides for a small technical amendment to section 10(2) of the Employment Permits Act 2006 to avoid disruption for business when the Brexit transition period ends. Approximately 45,000 UK nationals are employed in Ireland. The employment permits regime is governed by the Employment Permits Act 2006, as amended. It contains a number of protections for domestic and European economic area labour markets. Among the safeguards is the 50:50 rule, which requires that employers seeking to hire non-EEA nationals on an employment permit have sourced at least 50% of their workforce from Ireland, the EEA or the Swiss Confederation. This policy underpins the Government's employment creation objectives by requiring employers in the State to hire, in a balanced manner, from the domestic labour market. As the legislation is currently drafted, UK citizens are included under the EEA figures.

When the Brexit transition period ends, under the terms of the common travel area, UK citizens will not be required to obtain an employment permit to work in Ireland. The same will apply to Irish citizens working in the UK. However, under the Employment Permits Act, as currently drafted, when the transition period ends UK citizens will fall outside the EEA category for the purposes of the 50:50 rule. This would give rise to a considerable disruption for companies which are applying for new employment permits and companies applying for employment permit renewals because they may not satisfy the 50:50 rule if they are unable to include UK citizens, who are employees, as they can at present.

To avoid disruption for business, Part 5 provides for an amendment to section 10(2) of the Employment Permits Act 2006 to facilitate the continued inclusion of UK citizens in the employee count, and this needs to be in place when the Brexit transition period ends. The proposed amendments to the Companies Act and the Employment Permits Act are just one technical part of the Government's wider work to ensure business is Brexit-ready regardless of the EU-UK future partnership negotiations.

I am happy to answer any questions that members may have.

Chairman: I thank the Minister of State. Deputies O'Reilly and Bruton have indicated a wish to comment and others may do so. As Deputy O'Reilly was the first to indicate, she will commence.

Deputy Louise O'Reilly: I thank the Minister of State and his officials for being with us. I wish to apologise because I must leave soon to go to the Convention Centre but I will do my best to listen to the recording of the debate.

I want to ask about the amendments concerning the issuance of certificates. The sections allow for the disapplying sections of the Companies Act and then the insertion of a new section of

the Companies Act. Regarding the issuance of certificates, will there be an external and public record of securities transferred under this legislation beyond the record held by Euroclear UK & Ireland, where the securities are migrating from, and Euroclear Bank in Belgium, where the securities are migrating, to be deposited? If so, where will the records be held? Will they be publicly available?

On page 20, Part 4, relating to section 1087(e), (f) and (g), I want to clarify a few points. I understand these sections allow the securities to be transferred to the Euroclear Bank in Belgium and the sections, in question, are to ensure that the transfer of securities operates as quickly and as smoothly as possible. Sections 1087(e) and (f) make substantial changes to the primary legislation mentioned. As referenced in the explanatory note of the general scheme for these sections, similar changes were made to British law in 2001 and 1996. Perhaps there is already existing evidence that there would be no unintended consequences with these changes. Has the Department considered monitoring the operation of these sections, on a short-term basis, to ensure that the changes will have the desired and proposed effect?

My final broad questions are on workers and work permits and concern Part 5, page 20, head 51, the restriction on granting of employment permits. Given the volatile nature of the British withdrawal from the European Union, and I do not think anyone will dispute my description, has the Department concerns that previously agreed aspects of the withdrawal, namely, the equitable arrangement whereby Irish workers in Britain will not have to obtain a work permit, could be reneged on by the British Government? If so, what is the view of the Minister of State and the Department if that event occurs given the somewhat chaotic nature of the withdrawal thus far?

Deputy Robert Troy: The first two questions are very technical. If it is okay with Deputy O'Reilly, I will revert to her on them because the purpose of this meeting is to provide a broad overview.

Deputy Louise O'Reilly: That is perfect. That is understood. I appreciate that they are technical.

Deputy Robert Troy: In response to the third question, everybody has concerns about how the UK has performed in terms of an agreement it signed in the past 12 months. However, we must remember that the common travel area long predates membership of the EU and there has always been an understanding between Ireland and the UK on reciprocal rights. I have no reason to think that would not continue in the future.

Deputy Louise O'Reilly: I am not being argumentative, but is it the case that the Minister of State has not thought about a response because he does not think Britain will decide to walk away from the agreement, or does he have a response but it is not relevant at this time?

Deputy Robert Troy: Obviously, if the British did decide to renege on the agreement, we would have to look at it. Given the historical arrangements between the UK and Ireland *vis-à-vis* the common travel area, however, I do not envisage that being an issue. I will undertake to look into the matter further and perhaps to consult with the Minister for Foreign Affairs, Deputy Coveney, who is the chief negotiator from the Irish perspective, on where we would go to from there if that were to happen but my personal view is that I do not envisage it being an issue.

Deputy Louise O'Reilly: We cannot rule out the possibility, and given the volatility of the situation, belts, braces and baler twine might be the order of the day. I urge the Minister of State

to measure twice, cut once and check, check and check again.

Deputy Richard Bruton: It is fair to say that the common travel area precedes the European Union and, as such, hopefully it is not threatened by Britain's decision to withdraw from the Union. That gives it a separate status and that has been recognised by all sides.

On the question of financial institutions and the permit arrangement that now has to be switched from the UK to Europe, which I welcome, are there different grades of financial alignment between the UK and the EU that might emerge and could create additional need for provisions? One of the issues that is not finally nailed down is how our financial services in the UK passport, or whatever the term is, into Europe. To some degree, that remains an issue on the table in terms of nothing being agreed until everything is agreed. I speak in terms of contingency planning. Obviously, a high level of integration would presumably be best for us, but do we have to consider different contingencies in this area and do we know how that might impact on Irish security markets and the capacity of Irish companies to raise money?

Deputy Robert Troy: I understand that primary responsibility in that regard lies with the Minister for Finance. If more changes are needed to the Companies Act to facilitate this, they will be made.

Chairman: Does anyone else wish to come in on this section? As nobody has indicated, I thank the Minister of State, Deputy Troy, and his official for attending. I also thank members for their comments on the common trade area, which is crucially important to people in this country and to people in England. I have family members in England, many whom consider themselves to be Irish and others who consider themselves to be English. Some of them have Irish passports and some of them have English passports. My wife is English. It is crucial that we emphasise how important the issue is. I think that view is shared by people in England as well.

That concludes our consideration of the matter before us. If there is no other business members wish to raise, we will adjourn proceedings and resume in private session at 12 noon on Tuesday, 13 October. I thank everybody for their attendance and co-operation.

The joint committee adjourned at 9.25 a.m. until 12 p.m. on Tuesday, 13 October 2020.