

DÁIL ÉIREANN

AN COMHCHOISTE UM FHIONTAR, TRÁDÁIL AGUS FOSTAÍOCHT

JOINT COMMITTEE ON ENTERPRISE, TRADE AND EMPLOYMENT

Dé hAoine, 29 Eanáir 2021

Friday, 29 January 2021

Tháinig an Comhchoiste le chéile ag 10 a.m.

The Joint Committee met at 10 a.m.

Comhaltaí a bhí i láthair / Members present:

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

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

General Scheme of Companies (Corporate Enforcement Authority) Bill 2018 (Resumed): Department of Enterprise, Trade and Employment

Chairman: I thank all members and witnesses for participating in today's committee meeting. In line with the exceptional circumstances which we must endure, I remind those participating that apart from members of the committee secretariat and myself, all members and witnesses are participating remotely. All members are within the Leinster House complex. Apologies have been received from Senator Róisín Garvey.

Today, I am pleased to continue our pre-legislative scrutiny of the general scheme of companies (corporate enforcement authority) Bill 2018. This matter is one of the priorities of the Minister for Enterprise, Trade and Employment, and I have a particular interest in it myself. Last week we heard from Mr. Ian Drennan, director of the Office of the Director of Corporate Enforcement. I am pleased to be joined remotely by the Tánaiste and Minister for Enterprise, Trade and Employment, Deputy Leo Varadkar, who is accompanied by the Minister of State at the Department of Enterprise, Trade and Employment, Deputy Robert Troy. In line with normal practice, members have been provided with documentation on this matter, including the opening statement of the Minister. A briefing from the committee secretariat regarding the general scheme has been circulated. This is in addition to the briefings provided to members at last week's meeting, which included a briefing from the Library and Research Service and written observations from a number of experts and stakeholders.

I wish to explain some limitations to parliamentary privilege and the practice of the Houses regarding references witnesses may make to other persons in their evidence.

The evidence of witnesses who are physically present or who give evidence from within the parliamentary precincts is protected pursuant to both the Constitution and statute by absolute privilege. However, today's witnesses may be giving their evidence remotely from a place outside the parliamentary precincts. As such, they may not benefit from the same level of immunity from legal proceedings as a witness physically present does.

Witnesses are again reminded of the long-standing parliamentary practice that 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, or otherwise engage in speech that may be regarded as damaging to the good name of that person or entity. Therefore, if their statements are potentially defamatory in relation to an identifiable person or entity, they will be directed to discontinue their remarks. It is imperative that they comply with any such direction.

Therefore, to commence with our consideration of this matter, I ask the Minister to make his opening statement. As his written statement has been circulated, it may be helpful to highlight the main issues that he wishes to speak on.

Tánaiste and Minister for Enterprise, Trade and Employment (Deputy Leo Varadkar): I thank the Chairman and committee members for the invitation to discuss the general scheme of the companies (corporate enforcement authority) Bill 2018. I am joined by my officials, Nina Brennan, principal officer, who is on the line and will help me out with any hard questions, and Orla O'Brien, assistant principal, from the office as well.

By way of background, this legislation was proposed in the previous Government's plan to enhance Ireland's corporate, economic and regulatory framework, which was published back in 2017. The general scheme was developed by my Department and published in 2018. Pre-

legislative scrutiny commenced in early 2019 but was not completed because of the dissolution of the Dáil. In the meantime, my Department worked with the Office of the Parliamentary Counsel on drafting the general scheme in consultation with the director. In parallel, planning for the ODCE's transition to a stand-alone independent agency has progressed nonetheless. This has included an increased budget and staffing levels, including additional gardaí.

First, the main purpose of the Bill is to establish the new corporate enforcement authority and to enhance the framework for the conduct of business in Ireland under the Companies Act 2014. By establishing the ODCE as an agency, it will be better equipped to investigate complicated breaches of company law, which are sometimes very large cases involving multiple offences and multiple parties. The authority will also have operational autonomy, particularly in terms of the ability to recruit specialist skills and expertise, becoming an agency in its own right rather than an office of my Department.

The structure is based on the commission model with up to three members. It is designed to give the authority the flexibility to structure itself in meeting the differing demands of its remit, which includes investigation, prosecution, supervision and advocacy. There is the possibility that different commissioners could be given a lead in one particular or another area. This will also allow the authority to adapt if its workload expands significantly and if it needs to organise work into discrete areas or functions. In combination, these organisational changes will enhance the capacity of the authority to carry out multiple and complex investigations in parallel if the situation arises.

The general scheme also provides that the authority's functional independence is fully compatible with statutory oversight by Government and accountability to the Houses of the Oireachtas. We need to give the new agency the tools it needs to meet the challenges it faces in its investigation and prosecution of alleged breaches of company law. The general scheme provides that all existing functions and powers of the ODCE-----

(Interruptions).

Deputy Leo Varadkar: I think that is Radio 1 or Newstalk joining us.

Chairman: I am not sure what is happening.

Deputy Leo Varadkar: As for the ODCE now, the authority will have the power to issue a range of warnings, directions or notices, the power to enter and search premises and take documents or other material, and also the power to bring summary criminal prosecutions.

I will now turn to the other elements of the general scheme. The Companies Act 2014 is kept under active review in the light of changing circumstances; for example, court judgments or problems that arise from time to time. The Company Law Review Group provides valuable expert advice and recommendations on the reform of company law in Ireland. The general scheme implements recommendations of the group on corporate governance and shares and share capital. The general scheme also incorporates some additional provisions, including a new ground for the restriction of company directors, measures with respect to the conduct of liquidations and the oversight of liquidators, and measures providing for greater transparency when it comes to the register of companies.

Finally, the general scheme makes some miscellaneous amendments to the Companies Act 2014. These include technical provisions replacing references to the director in light of the new authority being established.

I will consider any further powers identified as a requirement for the corporate enforcement authority in carrying out its functions in the ongoing development of legislation by the Department. I wrote to the Chairman in December regarding the report of the Hamilton review and its support for this legislation. Arising from that review, an action plan will be developed and led by the Minister for Justice. The Department will be engaged in this work where relevant to its remit.

The Government is keen to progress this legislation. It is an important milestone for corporate enforcement in Ireland. By establishing the corporate enforcement authority as a stand-alone agency in its own right, and by providing for its autonomy, resources and enforcement powers, we will strengthen Ireland's regulatory framework for the conduct of business now and into the future.

I look forward to hearing members' views and taking questions on the general scheme. I am joined by the Minister of State, Deputy Troy, who has responsibility for the Companies Acts and will be taking some of the legislation in the Dáil and the Seanad.

Chairman: I invite the Minister of State to address the committee.

Minister of State at the Department of Enterprise, Trade and Employment (Deputy Robert Troy): I thank the Chair and the members for the opportunity to contribute to their consideration of the Bill.

I have had an active interest in this Bill for some time stretching back to the previous Dáil. I recall when the Bill was first mooted. There was an expectation and a shared ambition across all parties to carry through all necessary reforms to ensure Ireland can have a robust economic regulatory framework. The legislation before us was first proposed in the Measures to Enhance Ireland's Corporate, Economic and Regulatory Framework plan, which was published in 2017. This legislation is an important part of that plan. The establishment of the corporate enforcement authority was reaffirmed late last year by the report of the Hamilton review group.

I am eager that in 2021 the new authority be established and the Government publish the Bill as soon as possible. Before doing so, it will be important for us to hear the views of this committee when it reports. I am very much looking forward to this. The Tánaiste has set out the main provisions of the Bill. I do not intend to repeat them. I emphasise that the establishment of an independent agency is a key milestone in our reforms.

The Government is making sure the authority will have the wherewithal to carry out its mission. The ODCE's funding has already been increased by €1 million or 20% from its base level to reflect the costs of its transition to a stand-alone agency. Last week, the Department approved the sanction of 14 additional civil servant posts, representing a 35% increase in civil servants. This will complement the restructuring already undertaken by the director to improve the expertise at his disposal. Consideration has also been given to the possible requirement for additional gardaí. Good progress has also been made on other organisational matters such as ICT and accommodation. We are at a point where the organisation is ready for its establishment as an independent body.

As Minister of State with responsibility for company regulation, I see the establishment of the corporate enforcement authority as a solid basis for future reform. Company law should always be responsive to new developments. Various suggestions have been made for additional powers, which will be examined by my officials. I note the director identified possible avenues

in this respect in a submission to this committee, but he also pointed out that the focus should be on finalising this legislation. The Government will be continuing to work on new measures to tackle economic crime and corruption. An action plan arising from the report of the Hamilton review group is being developed, and it is being led by the Minister for Justice. My Department will be engaged in that work. New powers and other enactments pertaining to the new authority are matters that will continue to be actively considered. I look forward to hearing the members' views and taking any questions that arise on the general scheme.

Chairman: We have heard from both the Tánaiste and the Minister of State so I will open the discussion to the members. First up is Deputy O'Reilly, who has 14 minutes. I believe she is sharing seven minutes with Senator Gavan.

Deputy Louise O'Reilly: I have two questions. We had representatives of the Office of the Director of Corporate Enforcement, ODCE, in with us last week. They painted a picture of what they face, particularly in respect of resources. It is clear from what they were saying that a certain amount of white-collar crime is going undetected because the resources are simply not available to deal with it. That is just a fact. I am aware that the staff do a very good job prioritising but they just do not have all the resources they need. Do the Minister and Minister of State have a view on the level of white-collar crime that is going undetected and on how it will be tackled when this legislation is passed?

The ODCE painted a picture of the people they are dealing with. They are well resourced and have deep pockets, and they are also litigious. It seems like it is quite a combative environment for the office. Resources will be key. The representatives before us were looking for staff. They outlined they would need new staff. HR staff and other such staff are a given but it is more a question of staff at the technical end and on the front line. I am interested in hearing whether the Minister and Minister of State accept that there is white-collar crime not being investigated? Have they a view on staffing?

I have another question but want to leave as much time as I can for answers. The question relates to the additional powers that the ODCE representatives referred to in their submission and in the course of our discussions. They referred to the need to legislate and to modernise and update the search powers, specifically regarding the cloud, for example. I will not get too technical because I am not technical, but it is clear that data that used to be in one place now move around. The view was that additional powers would be needed. Do the Minister and Minister of State have a view on the powers of the Criminal Assets Bureau and Competition and Consumer Protection Commission, CCPC? Are they in the frame of mind to believe that the new agency will need such powers? Would they be minded to grant those kinds of powers to the agency to ensure it can do the best job it can?

I have taken only two and a half of my seven minutes. The remainder is for answers.

Deputy Leo Varadkar: The premise of the Deputy's question is correct. Although I cannot prove it, I suspect that breaches of company, competition and tax law are considerable and much greater in number than we realised. Obviously, there are various bodies that pursue the perpetrators. The Revenue Commissioners are very well resourced and do a really great job. There are also the CCPC and the ODCE, which is the weaker and least resourced of the three bodies pursuing the different types of white-collar crimes that are committed. This Bill has two objectives - setting up the agency in its own right like the CCPC and Revenue Commissioners and giving the agency the resources to pursue breaches of company law. I met the director only during the week, as did the Minister of State, Deputy Troy. The director is relatively happy

with the additional resources the agency is getting. Even though the Bill has not been passed, the budget has been increased and there are additional civil servants, forensic accountants and so on. The agency is also getting additional gardaí. It will have eight gardaí at the technical level. The director said a genuine issue arises over expertise because the really skilled people in areas such as forensic accounting and the really clever lawyers in this space can command the really big bucks. Potentially, they can command those really big bucks from people who may be breaching these company laws. Quite frankly, it is always a problem with the public service that we are competing with a private sector that can pay really well. When we start paying people in the public service really well, we get understandable criticism from people who are on more modest salaries. However, we think this will give us greater flexibility around that and a greater ability to hire people on a contract basis, for example, to do particular jobs. One thing Revenue has done very successfully is to get some people back from the private sector who are maybe more motivated by public service and lifestyle issues than the by the big bucks and I would like to see this body doing a bit of that too.

On the powers, we have had a talk about this between Departments and across Government so there is a plan for a new police powers Bill. That Bill will give additional powers around getting access to electronic information and the cloud and all of those things. The ODCE would like that but we think that rather than doing it on a piecemeal basis we should give that power across the board, to the Garda, the director and other enforcement bodies and do it through a different piece of legislation.

Deputy Louise O'Reilly: I have only a few minutes left. Does the Tánaiste see that power applying to civilians under the auspices of the ODCE, the new agency, as well? I ask because it is not just the experts CAB and the CCPC have, like gardaí, they also have trained experts who come in, such as forensic accountants, etc. Does the Tánaiste see that power extending beyond the gardaí to the civilians?

Deputy Leo Varadkar: That is a good question. We would probably leave it to Garda. Ms Brennan or Ms O'Brien may wish to address that as they were involved in the talks with other Departments.

Ms Nina Brennan: On that point, the Garda actually leads on the going in and searching so it is not necessary to focus on whether the civilians have the powers. As matters stand, I do not think that civilians go in by themselves and do the searches. The application for the search warrant must be made to the District Court and the Garda is responsible for making it. It is something where, again, if it is system-wide it will be picked up by the ODCE. We intend it to become part of company law but if it goes into the criminal justice law we are fine with that and that will cover the searches for the ODCE.

Senator Paul Gavan: I thank the Tánaiste for his presentation. He has been quoted as saying that this new agency will be an Irish FBI for white-collar crime. This certainly sounds very impressive, until one looks at the budgeting for the organisation over the past number of years. The budget was just €6 million. I compared that to the amount of money the previous Government spent on welfare cheats. I remember that famous campaign that I think he fronted: "Welfare cheats cheat us all". That was a campaign costing €163,000 that yielded just €300,000 in repayments. I did a bit of digging and I noticed there are 277 social welfare inspectors in the Department of Social Protection and a further 98 assigned to the Special Investigation Unit. In budgetary terms, that is a minimum of €15 million in salaries. My first question, therefore, is how the Tánaiste explains this dichotomy over the years he has been in Government and has been leading Government, whereby we spend a minimum of three times as much chasing wel-

fare spongers - one might call them poor criminals - as we do on the white-collar criminal class?

Deputy Leo Varadkar: The way I see it is all fraud is wrong, be it tax fraud, company fraud or welfare fraud. Some people make a distinction between them based on perceptions around the social class of the offender but my view is that anyone who is committing fraud is stealing from the public and stealing from society so in whatever brief I hold, I intend to take a hard line on these issues. I did so at the Department of Social Protection, I would be doing so were I in the Department of Finance and I am doing it now in the Department of Enterprise, Trade and Employment. That is one of the reasons I am pushing this forward as a piece of legislation I want to get done so we can crack down on corporate fraud, as we should. That is why I am putting forward the legislation now and why we are providing more staff and money for the body. I would envisage that continuing to scale up over the years because we need to crack down on all forms of fraud. I would never equivocate about the different types of fraud or seek to justify that one type of fraud is in some way different or another is somehow justifiable. I found that argument very hard to understand when it was made at the time when I was in the Department of Social Protection. The suggestion was that it was somehow justifiable because other people were committing fraud too and why did we not crack down on all forms of fraud. This Bill is a good step forward in that regard.

Where I do not agree with Senator Gavan is his suggestion that this is the only means by which the Government combats white-collar crime and economic crime of this nature. This is just one body and its entire remit is company law. The Revenue Commissioners have significant resources to deal with tax fraud. They have much greater resources than the Department of Social Protection. The budget of the Department of Social Protection is between €20 billion and €30 billion. Revenue takes in about €50 billion or €60 billion a year. Revenue is much better equipped than the Department of Social Protection. Even though Revenue is only dealing with double the amount of money, it probably has more than double the number of staff working as inspectors as the Department. There is the CCPC as well, which is responsible for competition law. Then there is the Irish Auditing and Accounting Supervisory Authority, IAASA. One would have to take them all together to give a read of it.

Senator Paul Gavan: According to a report in 2007 by RSM Robson Rhodes, we were losing at least €2.5 billion a year then. It does strike me as very stark that while the Tánaiste was prepared to make very high-profile campaigns against so-called welfare cheats, this organisation has been underfunded for years. I ask the Tánaiste why that is the case. I am conscious of time.

My second question relates to the FAI. While I do not expect him to comment on an individual case, we know that there are 280,000 files. The ODCE asked for an additional five staff yesterday. Are we going to be looking at yet another rerun of the FitzPatrick file in three or four years' time, where because of a lack of resources the trial ended up in tatters?

Deputy Leo Varadkar: I do not want to talk about individual cases because I do not get involved in them for obvious reasons. It is best that I do not. The Department of Social Protection estimates that it saves approximately €500 million a year in fraud and control measures. If it did not do what it is doing, that is the kind of money we would be losing every year. I am not privy to the report Senator Gavan mentioned, but I would say it is more on the tax side than the company law side.

In terms of the various prosecutions, the FitzPatrick case went very wrong and we are all aware of that, but it is important to bear in mind that when it came to the cases involving the

banks I think there were at least four successful prosecutions. I will get the figures. People tend to forget that. I will see if I can find it here. I had the figures.

Chairman: The Tánaiste can come back to us if he cannot find them.

Deputy Leo Varadkar: I normally have them. I think it is in the file that the ODCE took four cases and won four prosecutions. That is often forgotten.

Senator Paul Gavan: The Tánaiste has not given any explanation for the chronic underfunding of the organisation compared to other arms of Government involved in chasing people with much less money.

Deputy Leo Varadkar: I think Senator Gavan is leaving out how well resourced the Revenue Commissioners are. They pursue tax fraud and they are probably better resourced than the Department of Social Protection in pursuing social welfare fraud. This agency is only for one specific area relating to the Companies Act the Senator mentioned. The idea that came from the Law Reform Commission was to have an FBI-type of body, a single body to deal with white-collar crime, but since the Hamilton review it was decided to stick with different bodies, that is Revenue, the ODCE and the CCPC.

Chairman: Next is the Fine Gael slot. I remind members that if they want to speak, they should put their hand up on Teams. I call Deputy Bruton.

Deputy Richard Bruton: I will share my time with other Fine Gael speakers. Is the Government happy at this stage that we have clear offences across all the headings? I know some will not be in company law and there are others in regard to banking restrictions, financial regulations and so on. One of the features of the financial crisis was that the law was not sufficiently specific, the burdens of proof were often wrongly placed and it was difficult to get prosecutions. Having had a lot of review of the legislation, are we in a robust position at this point?

The second question is a follow-up to Deputy Louise O'Reilly's question. We heard last week that when a witness is being cross-examined, it can only be done by gardaí and the experts have to sit outside the room. People move to and fro and the cross-examining garda has to come out, listen to the comments and go back in. As all of that is against a time-limited cross-examination, it can create problems. Is that one of the things that will be changed?

The Office of the Director of Corporate Enforcement, ODCE, explained that after the financial crisis, the number of liquidations went up to 1,400 per year and then came back down to 400. There is obviously a concern now that we would see another increase in liquidations. I understand that will pose questions for the ODCE in terms of making sure that all of those liquidations are done in a robust way. However, on the wider front, what progress has been made in regard to efforts to have a quicker and easier form of examinership that might avoid a rush of liquidations in cases where, perhaps, adjustment of some of the creditors' commitments could keep that company viable?

Deputy Leo Varadkar: To answer the first question, yes, I believe the laws and offences are robust in this area. As the Deputy knows, the Company Law Review Group, CLRG, does a lot of work with us on updating the law all of the time, and we are going to keep doing that.

The issue around the experts in the room has come up a few times and came up in my discussions with the director as well, so we are going to examine that. To me, logically, it makes sense that, say, the forensic accountant can be in the room to make sure the garda does not forget

to ask the right questions or to pick up on the answers. We are going to examine that and see if we can make a provision for this Bill, although we will probably be adding that in a bit later because it is not really provided for in the Bill before us. That is something we are going to examine and we will do it if we can.

On the issue of liquidations, I will hand over to the Minister of State, Deputy Troy, who is leading on that issue and on the kind of examinership-lite work we are doing.

Deputy Robert Troy: I know Deputy Bruton has a strong interest in this and he raised it on Oral Questions before Christmas. I want to confirm that the CLRG has put forward its proposals, or perhaps not really proposals, but an overview of the examinership process. Unfortunately, it has not clearly identified what it advises needs to be done, so my officials are working through its submission at the moment. It is our firm intention that we would have new legislation in quarter 2 of this year to take account of and deal with examinership-lite or a rescue package for small businesses, so to speak.

Deputy David Stanton: I welcome the Minister, the Minister of State and the officials to the meeting. To follow up on the issue with respect to specialist staff interviewing alongside gardaí and being in the same room, is the thinking that these staff would also have the power to question or interrogate witnesses in the room, rather than being there to pass notes to gardaí? I am aware of the complexity from some other work in which I have been involved. The Tánaiste is right. The complexity of this area and the expertise available to the private sector, in particular, is enormous. The State must be able to match that. It is expensive to match it. Some of these people are extraordinarily gifted and very experienced and knowledgeable on a complex area. That is one question. Will these people be given the power to ask questions and interrogate on an equal basis alongside gardaí?

The next question concerns the fact that many documents are kept off-site, such as electronic evidence, electronic devices and so forth. Are we happy this is future-proofed? I mention the idea of someone raiding a particular facility and finding the material is actually kept on a server somewhere else. Will the authority have the power to interrogate that evidence and so on?

The third question has to do with the number of members on the authority. I note the Competition and Consumer Protection Commission, CCPC, legislation says not fewer than two and not more than six members. Again, it was put to us that the possibility of having one member is an awful lot of responsibility for one person. I note the CCPC has four members, including the chairperson, and each of the members has a different area of expertise on which to focus. It seems to work quite well. Perhaps that will be looked at.

Finally, is the issue of directors not putting insolvent companies into liquidation sufficiently covered here? That came up last week and it has come up repeatedly in a few areas. Those are my issues.

Deputy Leo Varadkar: I thank Deputy Stanton for his questions. When it comes to having access to that new electronic information - although it is not that new anymore - which may be on servers, in the cloud or held electronically elsewhere, we will try to deal with it in the police powers Bill. Therefore, that will be done across the board, not just for company law offences but for the Revenue Commissioners, Garda, CCPC and so on.

I have an open mind about the number of commissioners. The legislation provides for three. There may be a case for allowing a larger number or at least give me in my capacity as Minister,

or future Ministers, the flexibility to expand the number of commissioners. I have an open mind on that, quite frankly. I will give it some more thought.

My understanding on the specialist staff issue is that our thinking is we would have them in the room. The gardaí, however, would still carry out the interrogation because that is what they are qualified and trained to do. I am not sure the forensic accountant or company lawyer is trained to do so. I will ask Ms Brennan to come in on that if she wishes to add to what I have said.

Ms Nina Brennan: I thank the Tánaiste. It is an area we must give some consideration to with our colleagues in the Department of Justice. It would be an amendment to the criminal justice legislation because it is about when somebody is arrested and detained by gardaí for up to 24 hours in a Garda station. Therefore, it is to do with the custody regulations and who can be in the room and ask questions. It is something we will have to give thought to and discuss with our colleagues in the Department of Justice.

Chairman: Does Deputy Stanton wish to come in?

Deputy David Stanton: I welcome that commitment. Some of this area is so specialised and technical that somebody is needed there who can match the person on the other side and ask the technical questions. It might get lost in translation otherwise.

My question was on the issue of directors not putting insolvent companies into liquidation. Is that sufficiently covered here? It is an issue that came up at previous hearings.

Deputy Leo Varadkar: Can Ms Brennan take that question?

Ms Nina Brennan: I thank the Tánaiste. Yes, we believe so. We have taken on board the recommendations from the Company Law Review Group so we will be amending section 819. I believe the Office of the Director of Corporate Enforcement last week referred to zombie-type liquidations where all the steps are not carried out. That is in our general scheme, however, and it will be in the Bill as we have drafted it.

Chairman: Is Deputy Stanton finished? Senator Ahearn has six minutes for the Fine Gael slot.

Senator Garret Ahearn: I thank the Chairman. I welcome the Tánaiste and the Minister of State, Deputy Troy. I thank them for their presentations. Both the Tánaiste and the Minister of State referred to the recent Hamilton review. As we know, this was a wide-ranging review on tackling white-collar crime. It was published by the Minister for Justice, Deputy Helen McEntee, in December. The review references this Bill and welcomes it. How will this Bill ensure that the new agency is able to hire more people and hire them more quickly?

My second question relates to the timing. When does the Tánaiste expect the Bill to be enacted? Will there be a gap between the enactment and the agency being established? Will it require a commencement order six months after enactment?

Deputy Leo Varadkar: At the moment the ODCE is an office of my Department. It is very much part of the Civil Service and the Civil Service structure. We believe that becoming an independent agency in its own right will make it easier for the office to hire staff more quickly and hire and retain particular expertise.

Generally, this has been the model. A specialist agency is more equipped to do this, whether

it is ComReg, the Competition and Consumer Protection Commission, Tourism Ireland, Fáilte Ireland or whatever agency we wish to mention. When they have a little more freedom to recruit, they find it easier to recruit. That is particularly the case when it comes to specialist staff who might not fit in the traditional model, involving a principal officer, administrative officer and assistant secretary, that we have in the Civil Service.

The new entity would initially do its recruitment through the Public Appointments Service but that could change. Then there would be more flexibility around contractors as well. For example, it would be possible to bring in someone for a year on a particular case or file, perhaps someone with particular expertise. That can be difficult with the normal Civil Service constraints.

The Senator asked about timing. We would hope to have the Bill through the Houses by the summer recess and then establish the agency, probably, from the first day next year. Notwithstanding that, the work is under way anyway. We are not waiting for the Bill. Additional staff and resources are going in. Those responsible are getting ready and geared up with new information technology systems. We are not waiting for the Bill to be passed to begin that transition. That is well under way.

Senator Ollie Crowe: I welcome the Tánaiste and the Minister of State at the Department of Enterprise, Trade and Employment, Deputy Robert Troy, and their officials. I thank them for their presentation.

As public representatives we are all aware that there has been a fair bit of criticism in recent years to the effect that the ODCE lacked the necessary resources to most effectively carry out its role. I very much support this legislation and recognise the need for the corporate enforcement authority.

Will the Tánaiste speak to what sort of budget is envisaged to be made available to the authority to enable it to acquire the necessary resources to commence and hit the ground running? This has been mentioned by one or two other members. Is it anticipated that there will be a transition period during which more staff can be added? Is it possible to get more detail, if it is available?

My next question is about the review of the examinership process. Currently, small companies cannot avail of it. It is certainly true for businesses in Galway. My concern is that there is extraordinary pressure on businesses currently. The Tánaiste and the Minister of State will be well aware of this but what happens when Covid-19 supports end? It is imperative that we give certainty in respect of the Covid-19 supports. They have been helpful for the survival of many businesses, especially the businesspeople I speak to in Galway city and county. My concern is that when the Covid supports stop or end, there will be major financial pressure on those businesses. Is a restructure available to them? Will the Tánaiste or the Minister of State comment on that?

Deputy Leo Varadkar: Just to give an idea of budgets, the budget for this year is just over €6 million and that will increase to €6.3 million next year.

In terms of what we have planned for staffing levels, the current complement for the ODCE is just under 47 staff. We would plan to increase that and scale it up to 69 so quite a big increase. On the civilian side, that is going from 39.8 staff to 52.8 staff and, on the Garda side, it is going from eight staff to 16 staff. One cannot just double or treble these things overnight. If one

wants to do it properly one must scale up an organisation but that is the plan for scaling up. So it is a significant scaling up in resources - a doubling of the number of gardaí and increasing the number of civilian staff from fewer than 40 to 52 staff - and we will take it from there. I see this body as growing, developing and becoming more resourced as time goes on.

On financial support for business, as the Senator will know, we have the wage subsidy scheme that helps the payroll and the Covid restrictions support scheme, CRSS, which helps with mixed costs. The plan was to start phasing that out at the end of March because we had thought that whatever third wave might arise in January would be much less than what we have experienced. I think the picture is now very different and we need to be frank about that. I chair the committee on the economy. We are going to convene that next week because I think we need to take an early decision, as a Government, to extend the wage subsidy scheme and the CRSS really well into the second quarter if not until the end of the second quarter. Even if businesses do re-open in the second quarter they will not all re-open and they are still going to need that additional financial support. All of this is very expensive but, I think, the cost of allowing these companies to fail would be greater than the cost of trying to keep them alive. We will have a Cabinet committee meeting on that next week. I want to be in a position to give businesses an early indication of a decision on this so they know in February what is going to happen at the end of March, not in March what is going to happen at the end of March.

On the examinership question, the Minister of State, Deputy Troy, is leading on that so I might hand over to him.

Deputy Robert Troy: Senator Crowe has raised the issue with me before. I have looked back on my notes so I can say that the Company Law Review Group published a report in October 2020. Our Department officials recognised the priority of this issue for myself and the Tánaiste published a report, just before Christmas, on potential proposals and recommendations. That is receiving further consideration and wider consultation with the various State bodies with a view, and a hope, that the Tánaiste will be in a position to bring a memo to Cabinet at the end of quarter 1 or early quarter 2, so a general scheme for Bills. We recognise that it is an ambitious timeframe but we also recognise the importance of the issue. It is very much a strong commitment of this Government to bring forward a proposal, probably, in quarter 2 of this year.

Deputy Cathal Crowe: That is fine.

Chairman: The next speaker is Deputy Matt Shanahan and he has seven minutes.

Deputy Matt Shanahan: I do not propose to use the entire time as I do not wish to rehash a lot of what has been discussed already. I thank the Tánaiste and the Minister of State for coming here.

I wish to make a few observations and then I will ask a couple of questions. I welcome, as I think most people would, the formation of the authority. One of things that I would hark back to is the Anglo-Irish debacle regarding David Drumm and Michael Lynn around property and the whole vista that that presented in terms of the perpetrators of white-collar crime almost being seen to get away with it. For quite a long period that did a lot of damage to the State, in terms of showing that white-collar crime was a crime that was not being prosecuted and there was little fallout from such crime. I hope that when this authority gets into being it is far more adroit at dealing with such situations.

I would reflect what some of the other Members have already said in terms of their concerns

around staffing and the Tánaiste has already addressed some of those issues. I wish to discuss the overall structure, skills set and technology training. I hope a great deal of focus will be put on this area because modern business largely comprises high-level technology platforms, particularly for international business, and the forensic accounting that is required is of a really high level. The Tánaiste has highlighted that many people are seconded into the private sector. We, along with the Garda, will have to consider high-level forensic accounting and ICT skill sets in the future. Otherwise, we will not be at the races in this regard.

There is also an issue at times with the appropriateness of the direction of the authority, and I am thinking specifically of the SME sector, which I worked in for quite a while. There is much regulation of private business. Company directors must be fully registered and use the correct names and PPS numbers associated with the directorships. That is all fine and well but it puts a great burden on small businesses which may not have a legal office to which they can direct issues. As somebody who was in that space, I know that when a business owner gets messages from the Department and Revenue and potentially from the Office of the Director of Corporate Enforcement regarding the director's requirements, it puts a great burden on people who are struggling to get ahead. I hope there will be some balance in regard to the SME sector in the Bill. Perhaps in future we need to think about a different structure of corporate policy for small businesses, understanding they do not have access to all those resources that businesses do.

The Minister of State highlighted the status of examinership lite. This will be a fundamental issue for business in the coming months. I listened intently to the Tánaiste's comments to the effect that he wants to give certainty to business. That should be a prerequisite, and the sooner it is done, the better. Many people have used up their savings and their businesses are closed, some of them because they do not have access to the CRSS. People will be falling over and it is not fair to nail them to the floor because their business models have failed in these times. Something in this legislation has to accommodate that, whether it is examinership lite or something else.

In the main, I do not think the Tánaiste or the Minister of State needs to add much to what I have said. We welcome the Bill. The authority needs to be properly funded and resourced, and the necessary skill set and technology must be pre-eminent in it. Otherwise, we will not keep pace with where modern business fraud is going.

Deputy Leo Varadkar: I agree with the Deputy's observations in the round. It is worth putting on record that when it comes to the ODCE's role in investigations relating to the Anglo Irish Bank debacle or saga, five separate investigations resulted in four trials, all of which resulted in persons being convicted on indictment of criminal offences. While there is a strong focus on the Seán FitzPatrick case, which ended on 23 May 2017, and what went wrong there, and while for very good reasons there is great public concern and annoyance about that, it is often forgotten that of the five investigations, there were trials and convictions in four. One would not necessarily have that impression from the way it is sometimes reported in public, but it was not a categorical failure by the ODCE by any means. It secured prosecutions and convictions in four of five of the cases.

Regulation is something I want to have a closer look at in my time in this brief. I know there is a great deal of regulation on business, which is very tough on small businesses in particular because they do not have HR and legal departments and so on. It can be very frustrating and it has made it difficult to do business. At the same time, I am conscious that one person's regulation is another person's rights, and what businesses will often complain about in terms of regulation is often what other people consider to be their employment rights, environmental

rights, health and safety and so on. I would at some point like to carry out a wider regulatory review, perhaps using the standard cost model, and take a look at all the regulation imposed on business as a whole to see if we could streamline it in some way, even if that just meant reducing the numbers of forms that have to be filled in or of licences that have to be obtained. These things would not undermine the polity of regulation but might make it easier for people to manage and administer.

Deputy Matt Shanahan: I thank the Tánaiste. I accept what he is saying about corporate enforcement. With respect to Anglo-Irish Bank, it was a long, tedious, drawn-out affair, which was probably what annoyed many people but I accept that people were secured at the end. I welcome the Minister's comments about looking at the regulatory burden on small businesses, which is critical. The Minister mentioned giving visibility to small businesses in the future, which was brought up in the House recently. It is a matter of expanding the Covid restrictions support scheme to many businesses that are excluded from it because they are not operating from a premises. I received communication yesterday from somebody in the catering business, who has extensive lease purchases for catering equipment, and there is no more forbearance coming from financial institutions. That is a significant burden. I hope that something can be done shortly. Is there any opportunity to talk to the banks again to try to begin another period of forbearance if we are going to continue in level 5 or even level 4, which it looks like we will, for any length of time?

Chairman: The Deputy has gone off-topic but if the Tánaiste wants to respond, he can.

Deputy Leo Varadkar: The Ministers of State, Deputies English and Troy, and I are developing a proposal for a scheme similar to the Covid restrictions support scheme, with a monthly payment that would go to businesses that are in the predicament that the Deputy refers to, with a premises and fixed costs that have to be met, but do not currently qualify for the Covid restrictions support scheme because they do not have a public-facing business that has been closed by order. We are aware that it is a problem and we hope to bring the scheme to Government next month. It has always been complicated. We spend much time trying to solve every problem and have come to the conclusion that we cannot solve every problem, but if we can help many businesses with the new scheme, it is better than helping no business. We will have that next month.

There was another part of the Deputy's question which escapes me.

Deputy Matt Shanahan: It was about looking again at the burden of regulation on small businesses and a possible alternative pathway for some of that.

Deputy Leo Varadkar: We will do a project on that.

Chairman: That concludes the first round. I have a brief question myself. There is a perception that white collar crime, financial crime or whatever one wants to call it has not been treated properly over the last years. I welcome the Minister's comments on a number of questions. I had similar questions but they have been asked already. Did I hear correctly that the budget for next year is being increased to €6.3 million, which is an increase of only €300,000 on this year? The Minister talked about increasing the staff from 44 to 69. I would have expected a more significant increase in staff if we are going to be serious about tackling this. Does he anticipate that the additional staff will be specialist IT staff or will they be a combination of HR staff and IT staff? I know these are necessary too but will the additional staff be specialists in IT and detective work? Judge Aylmer famously said when the Anglo-Irish Bank case that the fail-

ure of the ODCE was stark. There was a failure to properly investigate shredding of documents and it was not seen to be impartial. Is the Tánaiste convinced that 69 staff will be adequate?

Deputy Leo Varadkar: The increase of €360,000 probably is on the small side so I imagine when it comes to negotiating a budget for next year, should we get this legislation passed, I will look for more than that, since 22 extra staff will cost more than that. I will be looking for a larger increase than that next year, assuming we get the legislation through. I will provide an outline of the proposed increase in staff. On the Civil Service side, it will be two principal officers, three assistant principal officer equivalents - digital forensics, an enforcement lawyer and an ICT manager - one higher executive officer, two executive officers and five clerical officers. There will be an additional eight gardaí, which is an increase to 16. I believe those gardaí get paid through the Garda Vote. As such, this budget does not fully reflect how much will be spent.

If we can double the number of gardaí and increase the number of civilian staff by 22 over the next two or three years, we will see how it goes. Since public bodies tend to expand over the years, I imagine that this will be a much larger body in five or ten years' time than it is now. We will be doing well if we can get this legislation through and scale up the agency into something much stronger than what it is now.

Chairman: I thank the Tánaiste. This committee will not be lax in getting this legislation through as fast as we can.

I have a quick technical question for the Tánaiste. The ODCE is located on Parnell Square. Is it intended for the new organisation to be located there as well or will there be a new site?

Deputy Leo Varadkar: There are no plans to move of which I am aware. I might ask Ms Brennan to address that question. In the world of home working, new agencies' need for big, new offices is less than it used to be.

Chairman: We will move to the second round. If members wish to speak, I ask that they indicate. The only member who has indicated so far is Senator Gavan.

Senator Paul Gavan: I meant to thank the Minister of State, Deputy Troy, earlier for his presentation.

I will ask the Tánaiste a couple of questions on staffing. I appreciate the information he has given us so far. My first question is a specific one. The Tánaiste is the line manager for his Department. Yesterday, the ODCE requested five additional staff to work on the FAI investigation. Will he commit that it will get those staff?

Deputy Leo Varadkar: I have not seen or received the ODCE's request. Will Ms Brennan speak on this?

Ms Nina Brennan: While I am not an expert in this area, my understanding is that the request relates to external staff, most likely barristers to look at the files. The person currently involved is a barrister. As such, the request would not be for staff, but an external resource to help with this task for the court.

Deputy Leo Varadkar: I am not sure exactly how that works,-----

Senator Paul Gavan: Maybe I should clarify the level of funding.

Deputy Leo Varadkar: -----but I do not believe that requires my approval.

Senator Paul Gavan: I imagine there would be a funding implication. I am asking this question because I am concerned about the staffing plan as set out. In fairness, the Tánaiste has gone through it. That the ODCE is now moving to agency status means that some of the new staff will have to perform HR and administration roles, for example, that would not have been required previously. How many of the new staff will actually be available to work on cases?

Deputy Leo Varadkar: The eight gardaí will be working on cases, as will the digital forensics assistant principal officer, the enforcement lawyer and the ICT manager. These numbers comprise five clerical officers, two executive officers, one higher executive officer, three assistant principal officers and two principal officers. I do not believe there is a straightforward division between people who are working on cases and people who are not. In the case of the Senator's work and mine, we are public representatives but we have personal assistants or secretaries. Are they not working on cases? There is not a straightforward dichotomy in this situation.

Senator Paul Gavan: No, and I take the Tánaiste's point, but he can understand my concern. He has been honest enough to acknowledge it. An increase in funding of €300,000 is a drop in the ocean. According to figures from 2007, €2.5 billion was being lost each year to corporate crime, white-collar crime or whatever one calls it. It is extraordinary that the Government is proposing this Bill, which we all support, on the one hand but, on the other hand there seems to be little in the way of the required funding. I remind the Tánaiste that, in her submission to the committee two weeks ago, Professor Deirdre Ahern made the point that this organisation has been consistently underfunded.

Professor Ahern stated:

We need to ensure that medium and large corporate players are subject to the same level of scrutiny and, where appropriate, enforcement activity, as small closely held companies and their officers. This is particularly so given that Ireland is a destination of choice for incorporation of many large financial services and multinational companies.

Her point is very well made and, in all seriousness, I do not think this organisation is resourced to do that right now, even including the plans the Minister mentioned.

Deputy Leo Varadkar: It is not well enough resourced at the moment, which is why we have this plan to increase the staff considerably. The budget figures may be a little misleading because there is a €1.5 million underspend. The new agency had probably not got up and running. I am not familiar with the report from which the Senator quoted but I highly doubt the €2.5 billion relates to company law offences. I am sure that if I pulled out the report and looked into it, I would find that the figure relates to a mixture of different offences, probably more on the tax side, the competition side or other sides. I will take a look at the report but I doubt the €2.5 billion relates to company law offences. It may only be a proportion of that, perhaps even a small proportion of it.

Chairman: If nobody else wishes to indicate, that concludes our consideration of the matter for today. I thank the Tánaiste, the Minister of State, Deputy Troy, and their officials, Nina Brennan and Orla O'Brien, for assisting the committee in this very important matter. The next meeting of the committee is scheduled to take place in public session from 1 p.m. to 3 p.m. on Tuesday, 2 February. I thank the members for their participation in today's meeting under exceptional circumstances. The next meeting will be conducted on the same basis.

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The joint committee adjourned at 11.12 a.m. until 1 p.m. on Tuesday, 2 February 2021.