DÁIL ÉIREANN

AN ROGHCHOISTE UM FHIONTAR, TRÁDÁIL AGUS FOSTAÍOCHT

SELECT COMMITTEE ON ENTERPRISE, TRADE AND EMPLOYMENT

Dé Máirt, 19 Deireadh Fómhair 2021

Tuesday, 19 October 2021

Tháinig an Romhchoiste le chéile ag 11 a.m.

The Select Committee met at 11 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	
Richard Bruton,	
Joe Flaherty,	
Paul Murphy,	
Louise O'Reilly,	
David Stanton,	
Robert Troy (Minister of State at the Department of Enteprise, Trade and Employment).	

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

Business of Select Committee

Chairman: I thank Members and witnesses for participating in today's committee meeting in line with the exceptional circumstances. I remind all Members that to participate in the meeting, they must do so only from either the meeting room or remotely from within the Leinster House complex. Should a division occur, any Member participating remotely is required to make his or her way to the meeting room within the normal division time to vote, before returning to his or her original location.

Members and all in attendance are asked to exercise personal responsibility in protecting themselves and others from the risk of contracting Covid-19. They are strongly advised to practise good hand hygiene and they will note every second seat in the committee room has been removed from use to facilitate social distancing. I urge those attending not to move any chair from its current position, and they should always maintain an appropriate level of social distancing during and after the meeting. Masks should be worn during the meeting, except when speaking. I ask for the full co-operation of Members on this matter. As normal, all documentation for the meeting has been circulated on Teams. To date, we have not received any apologies.

Companies (Corporate Enforcement Authority) Bill 2021: Committee Stage

Chairman: The meeting has been convened for the purpose of considering the Companies (Corporate Enforcement Authority) Bill 2021, which was referred to this select committee by an order of the Dáil of 22 September 2021. I welcome the Minister of State at the Department of Enterprise, Trade and Employment, Deputy Troy, who is accompanied by his officials. There are six amendments tabled. There are no groupings. Each amendment will be discussed individually.

SECTION 1

Question proposed: "That section 1 stand part of the Bill."

Chairman: Does the Minister of State wish to say anything?

Minister of State at the Department of Enterprise, Trade and Employment (Deputy Robert Troy): Thank you, Chairman, for making committee time available to further progress the Companies (Corporate Enforcement Authority) Bill 2021. We had a very good debate on Second Stage in the Dáil. My strong impression at the time was that, in general, Deputies are very supportive of the legislation and want to see it enacted as soon as possible.

This is a landmark first step to strengthen and transform the Office of the Director of Corporate Enforcement into a statutory and independent agency. The Bill puts a strong framework in place for the new corporate enforcement authority and places it on a firm footing so that it can hit the ground running.

There is also a serious Government commitment that the new authority will have all the necessary human resources required, both Civil Service and members of An Garda Síochána, to pursue breaches of company law. The views of the director were sought, and arising from his assessment, the necessary steps have been taken to ensure the new authority will have effectively a 50% increase in headcount. There will be more steps to take in future to continue

to enhance the powers of the authority such as through the actions arising from the Hamilton implementation plan. We will keep resourcing under constant review.

I hope we will have the continued support of Deputies and Senators as we proceed through the two Houses of the Oireachtas. I would very much like to get this legislation enacted as soon as possible as it is my objective to establish the new authority in January 2022.

Chairman: I propose we complete Committee Stage of the Bill today. Is that agreed? Agreed.

Deputy Louise O'Reilly: If I could, I wish to speak on my amendment that was ruled out of order. We have discussed this previously. The amendment I proposed has been ruled out of order, but I ask that the Minister of State would give some consideration to the evidence provided in a written submission by Professor Deirdre Ahern. She maintains it is not good practice for a one-person authority to exist and that we should be moving towards what she suggests, which is a minimum of two and an upper limit of five. My amendment was ruled out of order because there is a charge on the Exchequer, but it is open to the Minister to bring forward an amendment himself to address this. I am still a bit lost as to the reason for proceeding as outlined in the Bill. I do not think any of us would believe that one person alone is sufficient. A minimum of two and an upper limit of five is very reasonable.

I wish to make one point on audits in co-operatives and how they relate to the Bill. We know audits can be very expensive. They range in cost between €1,000 and €5,000. They take up huge resources and can take a considerable amount of time. They will cause a problem for co-operatives in particular. It is my intention to bring forward an amendment to the Bill on Report Stage to deal with that. I want to flag that to the committee.

I appreciate my amendment was ruled out of order, but I still think there is merit in it. I would welcome the views of the Minister of State on the idea that an authority with one person is enough. We should consider having a minimum of two persons with an upper limit of five, if possible.

Deputy Robert Troy: I thank Deputy O'Reilly for tabling her amendment. My officials and I gave careful consideration to the report of the joint committee on this Bill, which arose from pre-legislative scrutiny, as well as the view that there should be more members on the new authority. Specifically, there should be a minimum of two, up to a maximum of five or six, as in Deputy O'Reilly's amendment. As it stands, the section provides for up to three full-time members. It is designed to give the scope to structure the authority to meet the different demands of its remit, which includes investigation, prosecution, supervision and advocacy along clear lines of responsibility. The idea is to give flexibility. If a number of big cases arise at the same time, the new authority would be able to have an additional one or two members to work with the chairperson. The number of members of the authority has been assessed and has been deemed proportionate and appropriate in the medium term. However, the scope is there to raise the number up to three. That is comparable in scale of operations with other agencies, such as the Competition and Consumer Protection Commission.

The Minister sought the views of director and his assessment, in summary, was that a maximum of three persons is proportionate to the scale of the organisation in terms of assignment of responsibility to members and ratio of members to staff. We are satisfied, therefore, that under the legislation there is the opportunity to increase the number of members. While it is being established now solely with one chairperson, it is our feeling that that number will increase over

time. However, according to the director's assessment, the number is proportionate. There is the option to raise the number up to three into the future, if the workload increases and it is deemed necessary. If that is the case, we would not have any hesitation in raising it at that stage.

Deputy Louise O'Reilly: My difficulty is not so much with the upper limit of three; it is with the floor, rather with the ceiling. One member is provided for but it would be better to start with a higher number there. I appreciate that this can be revisited, which is welcome. I just wonder about the circumstances that will cause it to be revisited. We will have an opportunity to increase the number at later date, post the enactment of the legislation. Is it the Minister of State's intention that there will be a formal monitoring to make sure that the numbers are accurate? How would that be triggered in the event that the increase would be needed?

Deputy Robert Troy: As I said, the flexibility is provided for to increase the number to three. We have sought the views of the director. He is, to be fair, best placed to know the current workload, as well as what is currently being processed by the authority at the moment. I imagine that if his assessment was to change, and that there was a requirement to increase it, the scope under the legislation is there to do so. At that stage we would be in a position to increase. However, that is why we have left the flexibility there to increase the number to up to three members in the future. It is there and it will be used if necessary. At the moment, the clear assessment and views of the director is that the maximum of three is proportionate. That is why we are going down the route we are.

Question put and agreed to.

Sections 2 to 9, inclusive, agreed to.

SECTION 10

Chairman: Amendment No. 1 in the name of Deputy O'Reilly has been ruled out of order.

Amendment No. 1 not moved.

Deputy Louise O'Reilly: I move amendment No. 2:

In page 12, line 34, to delete "6 months" and substitute "8 weeks".

I think Deputy Bruton had indicated earlier to come in on something else. The Chair might have missed him. The purpose of the amendment is to reduce the duration that a person can act up from six months to eight weeks. It is reasonable that somebody should act up. Acting up happens all the time. People find themselves indisposed, or whatever, and there is a need to have someone acting up. However, it is bad practice to have someone acting up for six months. Eight weeks is a much more reasonable timeframe. Acting up should, by any definition, not be long term. In my opinion, six months is fairly long term. Eight weeks is sufficient time to allow any period of acting up, given that it is supposed to be a temporary situation. It is not supposed to be long term. Acting up puts the staff member in an unenviable position. They are effectively in the position without all of the authority, when the person who is acting up is not the person in the role.

There is also confusion over how they are going to operate while they are acting up. Does all of the authority vest in them? Are they acting up for the purposes? Will they receive an acting up allowance for the full duration? Will there have to be an extension? Does it have to be an extended period in order for them to get it? I am concerned primarily with the idea that we would put on a legal footing the six-month period as an accepted definition of short-term acting

up. Short-term acting up is up to eight weeks. Anything beyond that is longer-term and falls out of the scope of acting up.

I am aware that within the civil and public service for all sorts of reasons, primarily the recruitment ban that was implemented a number of years ago, acting up went out of control. That is probably the best description. Everybody was acting up at one point. There were large numbers acting up, certainly within the public service, because of the ban on promotions. It was generally agreed at the time that it is not a good idea for acting up to go on for a long time. Acting up should be short term. It should be only for emergencies. Eight weeks is enough time for contingencies to be made.

Chairman: Did Deputy Bruton want to come in?

Deputy Richard Bruton: It was about the section, rather than the amendment, so will I wait to comment?

Chairman: Yes. Can the Minister of State respond to Deputy O'Reilly?

Deputy Robert Troy: I largely agree with much of what the Deputy said. I am supportive of the principle underpinning the amendment, which is to minimise the periods in which members would act up. However, unforeseen circumstances can arise, which suddenly cause a vacancy. The vacancies must be temporarily filled. Ideally, we would all love a situation where adequate notice and a lead-in time are given to carry out a recruitment campaign. However, sicknesses, even sudden death, or other unforeseen circumstances can occur. The six-month maximum period is a standard provision for authorising an acting member and it is a realistic timeframe for the appointment process for such a senior post.

Deputies will be aware that section 944F sets out the rules for the appointment of members to the authority. Recruitment selection is by way of open competition run by the Public Appointment Service, PAS. Members are subsequently appointed by the Minister for Enterprise, Trade and Employment on foot of the recommendation made by the PAS. The six-month period takes into account the practical matters of advertising the vacant position, giving applicants time to submit their application, shortlisting and interviews, and any notice period that the successful candidate will have to serve. It is not unusual in such a senior position that a preferred candidate may have to give up to three months' notice to transfer from his or her current employer. Given that notice period, along with the period to run a successful competition through the PAS, which takes time, we felt at six months was a fair timeframe to put in place.

The Deputy can be assured that my objective is that any temporary authorisations are of the shortest timeframe, pending an open competition. However, we cannot accept the amendment to reduce the timeframe to eight weeks, purely on practical grounds. Running a successful competition through the PAS in itself would take probably more than eight weeks. The successful candidate, having been offered the position, may have to give up to three months' notice to his or her current employer. Perhaps the initial candidate might not even accept the position and it will be necessary to offer it to somebody else. We believe that six months is the outer limit. That is not what we want to achieve. We do not want somebody to be acting up for six months. We want to provide a realistic timeframe for how long it might take. Obviously, the intention would be to keep the acting up requirement as short as possible.

The Deputy asked a specific question about the powers that would be associated with an acting up position. He or she would retain the full powers. The person would be acting up and

would have the powers that would be there for somebody who is appointed on a permanent basis.

Deputy Louise O'Reilly: I accept that. The Minister of State's clarification is welcome. It is good to know that he will be keeping a close eye on this. With regard to the powers the person has, it is tough for someone who is acting up to have all the authority because he or she is only in the position on an acting basis, if the Minister of State knows what I mean. There is nothing specific in the legislation about this, but I would welcome the Minister of State's thoughts on backfilling positions. Very often, when a person acts up, he or she does not act up 100% in the role and still retains some of his or her previous duties. I am conscious that these are very important jobs for which a focus would be required and I wonder if there might be something the Minister of State could do about insisting on a backfill for a person who is acting up. I accept what he is saying about the length of time, but the fear would be that while the six months is put in as the upper limit, it could end up as a target rather than the outlier. That is my main concern about that. I welcome the fact that the Minister of State will keep an eye on it.

Can the Minister of State comment on backfilling a position so that the person involved can actually act up 100%? I know of many cases where a person has been asked to act up but where he or she was not fully able to give up his or her previous duties, so he or she ended up trying to do both jobs and did neither successfully. These are important roles at a very senior level. The Minister of State has almost made my point for me in saying that it could take up to three months because of the level of responsibility these people will have. The level they are at could require three months to fill the vacancy on the basis that they may have to give notice and so forth. I accept that, but, equally, there must be some support in respect of backfilling those posts for the persons concerned. I am not sure that it is appropriate for legislation, but I would welcome the Minister of State's views. Perhaps he would put on the record what the intention would be with regard to funding backfill and so forth.

Deputy Robert Troy: First, the acting up is to take account of unforeseen circumstances. The ideal situation is that the person would give the required notice and that the notice period would facilitate a seamless transition, but one can never guarantee that in life. We have to take account of unforeseen circumstances and that is why we are keeping it at six months. The six months is an outer limit. It is not a minimum period but very much the outer limit, and we hope it will never come to that.

The backfill is something that will have to be assessed at the time it arises; it is not something that we can legislate for today. However, I can make one point. Thankfully, due to the additional resources that have been allocated to the new corporate enforcement authority, with an increase of 50% in the head count, at least now we have a much better resourced and equipped body in terms of both financial resources and key personnel. It is going to be much stronger and it will have the ability to take account of unforeseen circumstances. As I said at the outset, our intention is that this would not be the way a recruitment process would be fulfilled; it is to accommodate unforeseen circumstances.

Amendment, by leave, withdrawn.

Deputy Louise O'Reilly: I move amendment No. 3:

In page 17, between lines 28 and 29, to insert the following:

"(fa) the Central Bank,".

This is a simple amendment. I do not understand why the Central Bank is not included on the list of organisations that should disclose relevant information to the authority, specifically with regard to breaches of company law codes. When I read the Bill first, I thought it was an oversight. We have discussed this previously. Why does the Minister of State not believe that the Central Bank can provide information that will materially assist the authority? Why has it been left off the list? Including it would make sense, and I do not see the sense in not including it. I would be grateful if the Minister of State could enlighten us on that.

Deputy Robert Troy: Section 944Q provides for the disclosure of information to the authority by the bodies listed where it relates to an offence or non-compliance under the Companies Act 2014 or could assist in an investigation by the authority. It re-enacts section 957 of the Companies Act 2014 with the addition of the registrar and the Registry of Friendly Societies. The Deputy proposes adding the Central Bank to the list of bodies.

I understand that the Office of the Director of Corporate Enforcement, ODCE, and the Central Bank have a memorandum of understanding already which allows each body to refer information to the other where they are satisfied that such information is relevant to their counterpart's remit. The grounding legislation in this case is the Central Bank's legislation. However, on foot of the amendment proposed by Deputy O'Reilly, I plan to consult with the Department of Finance and the Central Bank further on this proposal. If it is deemed that it could enhance the authority and the Central Bank's ability to exchange information, I would accept it. I ask the Deputy to withdraw the amendment, with a view to resubmitting it on Report Stage, in order to give me more time to consult with the Department of Finance and the Central Bank. If they tell me that it is necessary and would enhance the ability to exchange information, I would have no difficulty accepting it.

Deputy Louise O'Reilly: That is fair enough. I am happy to withdraw the amendment on that basis and we will get an update on Report Stage from the Minister of State in this regard. I appreciate that all the amendments are in my name, but it is not my intention to try to delay the legislation in any way. I am genuinely trying to be constructive, as is everybody in this Committee and in the Dáil. We want the legislation to be enacted. I thank the Minister of State for his reply and his consideration. I look forward to having that discussion on Report Stage.

Amendment, by leave, withdrawn.

Deputy Louise O'Reilly: I move amendment No. 4:

In page 26, to delete lines 23 to 37.

I refer to my earlier remark that I am not trying to delay the Bill. This is a matter I raised on Second Stage and in the pre-legislative scrutiny, and I feel very strongly about it. I do not know why we are going to anonymise the details of offenders. I do not know what the benefit is. I am sorry, that is not quite true as I can see that there might be a benefit to the person who is being anonymised, but I do not know what the broader benefit is. The idea is that a person cannot be named because it might jeopardise the stability of financial markets or where it would cause disproportionate damage to the relevant director. This is not afforded to people. We are talking about individuals who have committed offences, which could be very serious in some instances. For the life of me I cannot understand what benefit there will be to the State and to holding companies to account and so forth. If the Bill goes through without amendment, I do not think we will see many names in the public domain.

The Minister of State will say that it is a provision which, hopefully, will not be invoked much, but I believe it will be. It will be used to assist people to hide. Anonymity is obviously

very beneficial to the person who is availing of it. I do not understand why directors should be given a free pass on this. I do not want to take the route of saying that if somebody committed a petty crime by going into Dunnes Stores and taking a packet of biscuits the person's name would end up in the newspaper, because we all know that. I want to be proportionate and do like-for-like comparisons, but I cannot think of any scenario whereby a person would be allowed to have his or her details anonymised, much as the person might not wish to have his or her name in the public domain. There is a benefit. If the sanction involves publication of the person's name, it acts as a serious deterrent. I do not think we should be so deferential to something that may or may not jeopardise the stability of financial markets. That is a guessing game as to whether it would jeopardise financial markets or otherwise.

The important things are that we have the determinant, which is the publication of the name, and that it is done to the greatest extent possible. We should not stitch into legislation the opportunity for people to avoid having their name in the public domain. If these people transgressed to the point of sanction then their names should be made public. We have debated this mater. It is not something that I am inclined to let go because it is important. There is no mechanism for other people to say that publication would have a disproportionate impact on them and I do not know why we should give these directors the benefit of anonymity. I would be grateful to hear the Minister of State's thoughts on this matter.

Deputy Robert Troy: I know from the Deputy's contribution to the Second Stage debate in the Dáil that she is concerned that 944AE(3) will limit the publication and so the transparency of sanctions imposed on directors in certain circumstances. This is important and I agree that such limitations should be minimal.

There are a number of reasons for their inclusion in this Bill. First, from a technical perspective arising from the repeal of chapter 3 of Part 15, section 10 of this Bill will insert a new chapter 3A and chapter 3B into Part 15 of the Companies Act 2014. Chapter 3B, sections 944Z, and 944AA to AH, re-enact sections 957AA, 957B to 957I, when section 3 repeals all of chapter 3 of the Companies Act 2014. The sections and paragraphs proposed for deletion are not new law. They arise as a consequence of the repeal of chapter 3 and they are just being renumbered to the sections in the Companies Act 2014. It is nothing new but a renumbering and a technical requirement in terms of this legislation.

Second, this is law as a consequence of Ireland's obligations as an EU member state to take account of EU law from 2014 on statutory audit, first in 2016 by way of a statutory instrument and, subsequently, in the Companies (Statutory Audits) Act 2018.

The sections themselves transpose the requirements of the EU Audit Directive of 2014 to introduce administrative sanctions, including financial sanctions on directors of public-interest entities who are found, following investigation, to have contributed to a breach of statutory audit rules by a statutory auditor. Public-interest entities are banks, insurance undertakings and listed entities. The sanctions include directions to directors to cease conduct or prohibit them from carrying out certain functions as well as financial sanctions.

The audit directive sets out in detail the rules and requirements for the imposition of sanctions on directors in keeping with the principle of proportionality inherent in EU law. As a rule, details of sanctions on directors should be published as soon as practicable. However, the audit directive, which we have transposed word for word, requires that member states shall ensure that sanctions on directors are published anonymously, in certain circumstances. The circumstances are limited to where the authority is of the opinion that it would be dispropor-

tionate or would cause disproportionate damage to the director or would jeopardise the stability of financial markets or an ongoing criminal investigation. I wish to point out that it would be the director of the new corporate enforcement authority to determine that, and not the person in question, to seek anonymity. These circumstances, that were originally in section 957F(3), are re-enacted in sections 944AE(3) in the Bill, which the Deputy's amendment would delete. Failure to re-enact these provisions would mean that Ireland would be in breach of its EU obligations. It is for this reason that I oppose the amendment and I hope that I have clarified the purpose of the sections.

Deputy Louise O'Reilly: The Minister of State has said that the director would determine anonymity, which is fair enough. In addition, I am aware that the legislation simply renumbers and transposes EU legislation. Is he saying that the director cannot seek anonymity or, should they seek it, that is to be disregarded? Can a director seek anonymity but ultimately the decision to grant it or otherwise is only given by the director? Obviously the director can decide to grant anonymity where deemed appropriate. Is he saying that the director is precluded from asking? What I heard is that only the director of the authority can decide anonymity and there is no capacity for the company directors to seek anonymity. Perhaps I have misunderstood him.

Deputy Robert Troy: What it states, in terms of the EU directive, is that the competent authority, which in this instance is the corporate enforcement authority, shall publish the sanctions imposed on an anonymous basis in the manner which is in conformity with national law and in any of the following circumstances. I cannot say with certainty today but will undertake to review the matter and get back to the Deputy on whether somebody has the option to seek anonymity. That is not my understanding but I will clarify the matter for the Deputy and get back to her.

Deputy Louise O'Reilly: I thank the Minister of State. I do not think it is a good idea that anonymity could be sought because people will fight for it. Is it the sole responsibility of the director of the authority? I have expressed my views on the capacity for directors to keep their names out of the papers and the disparity between some poor young fella walking around who has been done for the possession of a joint or something, and people will say that those things are there. Notwithstanding all of that, if there was a capacity in legislation to request anonymity, or seek it in some way, then one is in the territory whereby the argument before we start will be a fight for the anonymity clause to be invoked. I welcome the fact that the Minister of State is going to come back to me on that. The legislation will be stronger for an understanding that that is how this is going to happen.

Deputy Robert Troy: I will get clarity for the Deputy and wholeheartedly share her concerns.

Chairman: Is the Deputy pressing her amendment?

Deputy Louise O'Reilly: I withdraw my amendment on the basis that the Minister of State will seek clarity and get back to me.

Amendment, by leave, withdrawn.

Deputy Louise O'Reilly: I move amendment No. 5:

In page 27, to delete lines 5 to 12.

My amendment concerns limitations on imposing monetary sanctions on relevant directors.

It states that the authority may not impose on a director a monetary sanction that would make him or her bankrupt. It provides that only one monetary sanction may be imposed where more than two breaches of the same conduct have occurred.

Companies are already protected by limited guarantee. This provision offers directors protections above and beyond what would normally be expected where a person commits a transgression. As was said in the Dáil, if someone breaks any one of the State's bylaws on parking or road tolls then he or she must pay a fine for each instance. I am being facetious in saying I would love to be able to say I had a parking ticket ten years ago and have paid it. It seems a little incongruous that this provision is in the same section on the how the anonymity of a person's reputation would be damaged. The threat of bankruptcy could be abused as a mechanism for refusing financial penalties for serious breaches and I hope that the Minister of State will be in a position to give me some comfort on this. I really do not believe it is fair that directors can benefit from a protection that is not available to the ordinary Joe Soap and that would confer an advantage on them if they have committed a transgression.

Deputy Robert Troy: I will try to reassure the Deputy but I am not sure I will be able to in this instance. Anyway, here goes. The amendment is similar to the Deputy's previous one. Section 944AF, which is proposed for deletion, is not new law. It is in keeping with the principle of proportionality. The EU audit directive requires the level of administrative sanctions imposed to take into account circumstances such as the financial strength of the director, the gravity and duration of the breach by the director and the degree of responsibility. These circumstances were originally in section 957D(2) and re-enacted in section 944AC(2).

In addition, legal advice at the time of drafting the original provisions in 2016 was that other proportionality considerations should be introduced in respect of financial sanctions, and specifically that the sanction should not cause a director to become bankrupt. This is set out in section 944AF(1) re-enacting section 957G(1). The concern was that, in the absence of this safeguard, financial sanctions imposed under these sections could be vulnerable to challenge in the courts.

Ireland is required to maintain section 944AC(2) to comply with its EU obligations. If section 944AF is proposed to be amended, the views of the Attorney General would have to be sought on the impact on the principle of proportionality. We all want to ensure that directors who break the law are brought to account but we need to ensure that the law is robust and not at risk of challenge. The section gets the balance right, and for this reason I do not propose to accept this amendment.

Deputy Louise O'Reilly: The Minister of State referred to the principle of proportionality, but the protection afforded to company directors in this instance is entirely disproportionate. There is concern. I appreciate that the Minister of State set out to address my concerns but he did not manage to do so. I do not mean that disrespectfully. I am concerned that the measure could act as a deterrent. A company director could say that if there were sanctions, he or she would end up bankrupt, and that they should not be imposed as a consequence. That is serious.

I understand that the legislation involves the transposition of pre-existing legislation to a large extent but I would be grateful to hear from the Minister of State about how many times the clause in question has been used to ensure financial sanctions would not be imposed. How many company directors have benefited from it? Does the Minister of State believe the enactment of this legislation will ensure a continuation in the same vein? Will there be more seeking to use the clause to ensure they will not have financial sanctions imposed on them because there might be an issue over potential bankruptcy? It is quite hard to prove. Maybe that is a question

for another day.

I hope the Minister of State shares my concern over how the measure is going to work and how it could confer a disproportionate advantage on company directors, thereby going against the principle of proportionality, to which he referred. I am interested in hearing how the arrangement works at present. How many have used it? If it is the case that it is not used, it might give me some comfort. I suspect it is used. I would be interested in hearing from the Minister of State the number of times the clause was invoked and how it works.

Deputy Robert Troy: These are administrative sanctions, not court sanctions. There is a difference. No sanctions have been imposed under the provision to date, I am informed.

Deputy Louise O'Reilly: Nobody has sought to have no sanctions imposed on the basis that they might make him or her bankrupt.

Deputy Robert Troy: There have been no sanctions.

Chairman: No one has been sanctioned.

Deputy Louise O'Reilly: No one has been sanctioned. Does that mean people have used the threat that sanctioning might make them bankrupt? I am sorry if I am not being clear. I am trying to ascertain the number of company directors who invoked the clause and were in a position not to have financial sanctions imposed on them under the current arrangements.

Deputy Robert Troy: I understand that no financial sanctions have been sought. By virtue of the fact that none have been sought, nobody would have been able to have benefited from leniency owing to the risk of bankruptcy. No sanctions have been sought to date. This provision would not have been exercised.

Deputy Louise O'Reilly: Then one would have to question why we need the provision at all. I welcome the clarification that it has not been used to date. However, I still have a serious issue with it because, where there is a transgression, it could be used to assist in ensuring a company director would not have financial sanctions imposed on him or her. To me, that is a grave concern.

Deputy Robert Troy: It is not that somebody who has committed an offence would not be subject to a financial sanction; it is a matter of the size of the financial sanction imposed, based on the ability to pay. To use a simple and old saying, you cannot take blood from a turnip. There is no point in sanctioning somebody who is unable to pay but, at the same time, the legislation gives the capacity to take on board the severity of the offence, the duration for which it was being committed and the impact it has had. Taking these into consideration, a sanction would be imposed that the individual could afford, but without necessitating his or her being put into bankruptcy. It boils down to the principle of proportionality.

Deputy Louise O'Reilly: I have made my position on this one clear. I am concerned and remain so. The favourable treatment of company directors over others, or the perception thereof, is the matter in question. I appreciate that there are administrative sanctions. I realise we are not talking about the courts but about administrative sanctions. Regardless of who imposes them, there is the possibility of someone saying they would push him or her into bankruptcy. It would be quite hard to determine that in the first instance, but maybe not. The facility is not available to those who are not company directors. Maybe we are proposing to overly protect company directors.

I am going to do some more research on this. I propose to withdraw my amendment and take a longer look at it. I may resubmit it on Report Stage.

Chairman: I thank the Minister of State for his clarification on the matter.

Deputy Robert Troy: I thank Deputy O'Reilly. I undertake to explore the matter further also. It is certainly not my intention to give company directors additional protections. We want to ensure the law is robust and not open to challenge. That is why the principle of proportionality, as requested under the EU directive, is being inserted. That is our only rationale for including it. The courts take account of personal circumstances when issuing fines for other offences so it is not fair to say this is not the case in the judicial system. Circumstances are accounted for when fines are issued.

Amendment, by leave, withdrawn.

Question proposed: "That section 10 stand part of the Bill."

Deputy Richard Bruton: Regarding this section, why has the proposed authority not been asked to advise the Minister or the Government on policy developments in this area? It would be a normal sort of thing to put into the functions, although there is a possibility for the Minister to ask for such advice.

Returning to the comment made by Deputy O'Reilly earlier, there are different types of authority. The Director of Public Prosecutions, DPP, is a one-person authority for enforcement, while the Competition and Consumer Protection Commission, CPCC, is a three-person authority to undertake enforcement. I understand that the CPCC ensures that expertise in different areas is brought to bear. There is merit therefore in having a group consisting of three people with different areas of expertise but nonetheless undertaking collective decision-making. Is the model envisaged here a one-person authority, like the DPP, or is the Minister of State considering, in the more medium term, the use of the flexibility which exists to have three members on this authority and to go for an arrangement like that which exists in the CPCC? Like Deputy O'Reilly, I see some merit in multiple members rather than just one and it would be interesting to hear from the Minister of State on the thinking behind the sort of model envisaged in this regard. There are different models and I do not know when some are more satisfactory or operate better than others.

This proposed legislation is welcome. We have missed a beat in not having an authority which is strong enough and appropriately resourced. This Bill will be an important element in addressing that issue. I am glad to see that the Bill recognises that the proposed authority will be accountable to this committee. It will be important that we keep tabs on what is happening in this area because it represents oversight of the ethics by which business is conducted.

Deputy Robert Troy: I thank Deputy Bruton for giving me the opportunity to clarify the membership of the new body. The new authority structure is similar to a commission, with a chairperson assisted by other members who have delegated responsibilities for other specific functions. Section 944F stipulating the membership of the authority provides for up to three full-time members and it is designed to give scope to structure the authority to meet the differing demands of its remit. These include: investigation; prosecution; supervision; and advocacy along specific lines of responsibility. The idea is to give flexibility.

If several big cases arise at the same time, then the new authority would be able to have an additional one or two members to work with the chairperson. The members will be full-time

and appointed for a period of up to five years, with the possibility of being reappointed for a further term of up to five years. Recruitment will be run by the Public Appointments Service, PAS. One of the members shall be appointed as the chairperson to ensure continuity between the ODCE and the new authority. Section 944F provides that the person who is the director of that body immediately before the establishment day shall be a member of the authority unless he or she resigns, is removed, dies or otherwise vacates that office.

Regarding the appointment of additional members, my primary concern is to establish the new authority. I also want to ensure that the Office of the Director of Corporate Enforcement has sufficient resources, financial and in respect of office space, in place to fulfil its statutory mandate. We are satisfied that it has the requisite people in place. As I said to Deputy O'Reilly earlier, however, we have an open mind regarding the appointment of additional members when the authority is established. A reasonable expectation therefore is that the membership will grow over time. The primary objective now, though, is to get the new authority up and running by 1 January 2022, or certainly in January of next year, and to ensure the additional staff approved have been recruited and that the authority will be fit for purpose in future. To answer Deputy Bruton's query, then, scope exists to increase the membership of the new authority to three, similar to the composition of the CPCC, as the Deputy referred to in his contribution.

Deputy Richard Bruton: I thank the Minister of State for that response. I am happy with it. Turning to the matter of a function to advise Ministers, that would seem to be a fairly normal thing. It could be useful because this is a technical area and we might miss an opportunity if Ministers are not getting up-to-date appraisals of how legislation is moving in other countries.

Deputy Robert Troy: Right through the establishment of this body, we have been engaged with the existing entity. We have sought the views of the director and his office in respect of policy and on this legislation, including on its implementation and operation. That will certainly continue. Based on Deputy Bruton's own experience of serving as a Minister, has this aspect previously been enshrined in legislation to make it a more formalised arrangement?

Deputy Richard Bruton: I think so. It is the case in respect of several bodies. I imagine it is there in the case of the CPCC, and it might also be useful in this context. The Minister can obviously ask for such advice of his or her own accord, but having a statutory basis for advising the Minister does seem to be sensible.

Deputy Robert Troy: We will explore that aspect further.

Deputy Richard Bruton: Okay. I thank the Minister of State.

Chairman: I call Deputy Joe Flaherty, who has indicated.

Deputy Joe Flaherty: I commend my constituency colleague, the Minister of State, Deputy Troy, on the manner and speed with which he has brought forward this Bill. It is important legislation. White-collar crime is a menace to society and has major consequences for the economy, nationally and internationally. This Bill is a defining moment in Ireland's approach to addressing economic and white-collar crime. I am delighted to hear the Minister of State's commitment that we will have this legislation on the Statute Book in January 2022. I thank my colleagues on the committee, and particularly Deputy O'Reilly, for submitting their amendments to the legislation. We can possibly look again at some of them on Report Stage. I congratulate the Minister of State.

Chairman: Would the Minister of State like to come back in?

Deputy Robert Troy: I do not think there was a specific question, but I thank the Deputy for his contribution.

Question put and agreed to.

Sections 11 to 33, inclusive, agreed to.

SECTION 34

Deputy Louise O'Reilly: I move amendment No. 6:

In page 33, to delete line 22 and substitute the following:"(a) an insolvent company, or".

This is a technical amendment. There are supposed to be independent grounds, so I think that "or" should be included in this line.

Deputy Robert Troy: I totally get where the Deputy is coming from, but I asked the officials and drafting experts to consider the effect of this change and I am told that it is a universal approach in drafting legislation to put "and" or "or" only before the last item in a list. Therefore, repetition throughout the section is unnecessary on the basis that the effect of the "or" is already present in the section. I have been told that to include it would be contrary to the drafting rules. For that reason and based on the expert advice of the drafters, I do not feel it is necessary, so I do not accept the amendment. I see what the Deputy is getting at, but I have been told by the drafting experts that it is not necessary.

Deputy Louise O'Reilly: That is fair enough. It seemed a bit odd to me when I was going through it, but on the basis of the clarification provided by the Minister of State, I withdraw the amendment.

Amendment, by leave, withdrawn.

Section 34 agreed to.

Sections 35 and 36 agreed to.

Schedules 1 and 2 agreed to.

Title agreed to.

Bill reported without amendment.

Message to Dáil

Chairman: In accordance with Standing Order 101, the following message will be sent to the Dáil:

The Select Committee on Enterprise, Trade and Employment has completed its consideration of the Companies (Corporate Enforcement Authority) Bill 2021 and has made no amendments thereto.

I thank the Minister of State and his officials for attending today's meeting, and look forward to the Bill being enacted and implemented as soon as possible. Do any of the members wish to make further contributions?

Deputy Robert Troy: May I say a few words?

Chairman: Go ahead.

Deputy Robert Troy: I would like to take the opportunity to thank the Chair and all members of the committee who have contributed to the debate today. I am glad to see that the committee continues to support the need to get this legislation enacted so that the new Corporate Enforcement Authority can be established.

As I said on the floor of the Dáil last month, the delivery of this new authority is a key priority for me. I strongly believe in this project and want to get the necessary legislative underpinning in place to allow for the necessary transformation. As well as the legislation, I have been very clear that I see resources as key. This includes relevant experts and gardaí. Since coming to office I am pleased that the Department has sanctioned the necessary Civil Service posts and that the recruitment process is under way. Separately, I am pleased that the Garda Commissioner has agreed to a significant increase in Garda resources for the new authority. This will support the delivery of the Government's vision for the new authority. I will continue to prioritise this work and plan to see the new agency established. With the help of Members of both Houses of the Oireachtas, I hope to have the necessary legislation in place over the coming weeks. This will allow for the establishment of the authority in January 2022. I give an undertaking that I will come back to Deputies O'Reilly and Bruton on the issues they raised.

As I have already said, this is a landmark step to strengthen and transform the Office of the Director of Corporate Enforcement into a statutory and independent Corporate Enforcement Agency. I will ensure that it is equipped not just to hit the ground running, but to continue to deliver on its important objective in the enforcement of, and compliance with, the Companies Act 2014. I thank the Chair for facilitating the debate today.

Chairman: I thank the Minister of State and the members of the committee. We want to progress this Bill. I also thank the members of the committee of the previous Dáil, because we spent a lot of time then discussing a version of this Bill. I thank all members for their contributions. Do any members wish to raise any other business? No.

The select committee adjourned at 12.05 p.m. *sine die*.