

DÁIL ÉIREANN

AN ROGHCHOISTE UM POIST, FIONTAIR AGUS NUÁLAÍOCHT

SELECT COMMITTEE ON JOBS, ENTERPRISE AND INNOVATION

Dé Céadaoin, 6 Samhain 2013

Wednesday, 6 November 2013

The Select Committee met at 10 a.m.

MEMBERS PRESENT:

Deputy Dara Calleary,	Deputy Jonathan O'Brien,
Deputy Michael Conaghan,	Deputy Sean Sherlock (<i>Minister of State at the Department of Jobs, Enterprise and Innovation</i>),
Deputy Seán Kyne,	Deputy Mick Wallace.
Deputy Anthony Lawlor,	
Deputy John Lyons,	

DEPUTY DAMIEN ENGLISH IN THE CHAIR.

Companies Bill 2012: Committee Stage (Resumed)

Vice Chairman: This meeting has been convened to resume our consideration of Committee Stage of the Companies Bill 2012. I welcome Deputy Sean Sherlock, Minister of State at the Department of Jobs, Enterprise and Innovation, and all his officials. Before we resume our consideration of the Bill, the Minister of State wishes to respond to a number of points raised during the proceedings yesterday.

Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy Sean Sherlock): I thank the Vice Chairman and committee members for allowing us to flag amendments which will be dealt with on Report Stage. As requested by members, my officials have brought copies of the ODCE's guide to directors' duties and powers. This document is available free of charge in both hard copy and on the Office of the Director of Corporate Enforcement, ODCE, website. As I mentioned yesterday, the officials from my Department will arrange another briefing session for committee members prior to Report Stage to ensure that members are fully briefed on these proposed amendments.

In this context, I wish to remind members about the Companies (Miscellaneous Provisions) Bill 2013, which will be progressing through the Houses in the coming weeks. This Bill will contain provisions that are considered to be too urgent to wait for the completion of the "Big Bill". This Bill amends the Companies (Amendment) Act 1990 in relation to the jurisdiction of the courts in examinerships. It provides that companies that are deemed to be small companies by virtue of the Companies (Amendment) Act 1986 may make their application to the Circuit Court instead of the High Court. It also contains provisions concerning the making of annual returns for subsidiary undertakings. It facilitates the reporting of offences under the companies Acts to the Director of Corporate Enforcement and his or her officers. It authorises IAASA to collect a levy or levies from statutory auditors and audit firms auditing public interest entities. Finally the Bill makes provision for the Minister to provide regulations in relation to third country auditors and audit entities, who carry out audits of the annual or group accounts of a company falling within certain EU regulations. As the "small" Bill has not yet been enacted, it is not possible to give a more precise detail of its final version, although obviously the members of the committee will contribute to it when it comes before them in the next few weeks. As the goal of the Companies Bill 2012 is to consolidate all existing law, it is intended that the "small" Bill will be subsumed into it, ideally by way of Report Stage amendments.

I would also like to note that I am considering introducing amendments to Part 3 on Report Stage to harmonise advertising requirements for notifying creditors of a proposed reduction in capital and also to ensure that the requirement to advertise in one daily newspaper only is applied consistently throughout the Bill.

Vice Chairman: I thank the Minister for his statement. We will now resume on section 965 of the Bill.

Section 965 agreed to.

SECTION 966

Deputy Sean Sherlock: I move amendment No. 110:

In page 768, line 6, column 1, after "State" to insert "and prohibition of certain activities".

Amendment agreed to.

Question proposed: “That section 966, as amended, stand part of the Bill”

Deputy Sean Sherlock: I am also considering introducing an amendment to section 966 on Report Stage to clarify whether the direction of a DAC may vote in respect of a matter in which he or she is interested.

Question put and agreed to.

Sections 967 to 972, inclusive, agreed to.

SECTION 973

Deputy Sean Sherlock: I move amendment No. 111:

In page 774, to delete lines 7 to 37 and substitute the following:

“(8) *Subsections (9) to (12) have effect notwithstanding—*

(a) the repeal by the Act of 2001 of section 24, as originally enacted, of the Act of 1963 (the “original section 24”); or

(b) the repeal by this Act of section 24, inserted by section 88(1) of the Act of 2001, of the Act of 1963 (the “substituted section 24”) or of the Act of 2001.

(9) A licence that—

(a) had been granted by the Minister pursuant to subsection (1) or (2) of the original section 24 to a private company limited by shares (being a company that has re-registered as a DAC pursuant to *Chapter 6 of Part 2*); and

(b) is in force immediately before the commencement of this section,

shall continue to have effect but with the modification that it shall operate to exempt the company from the use of the words “designated activity company” or “cuideachta ghníomhaíochta ainmnithe” as part of its name and the publishing of its name.

(10) Subsections (4) to (7) of the original section 24 shall continue in force in relation to the foregoing licence as if that section 24 had never been repealed, except that references in those subsections to the Minister, wherever occurring, shall be read as references to the Registrar.

(11) An exemption that immediately before the repeal of the Act of 2001 operated, by virtue of the substituted section 24, in favour of a private company limited by shares (being a company that has re-registered as a DAC pursuant to *Chapter 6 of Part 2*) shall continue to have effect but—

(a) with the modification that it shall operate to exempt the company from the use of the words “designated activity company” or “cuideachta ghníomhaíochta ainmnithe” as part of its name and the publishing of its name; and

(b) subject to *subsection (12)*.

(12) *Subsections (4) to (7)* shall, with the necessary modifications, apply to a forego-

ing exemption as they apply to an exemption under *subsection (1)*.

(13) In relation to a DAC that avails itself of the exemption under *subsection (1)*, or continues to avail itself of a licence or exemption referred to in *subsection (9)* or *(11)*, *section 152* shall have effect as if, in addition to the particulars specified in *subsection (2)(a) to (c)* of that section to be included on all business letters and order forms of the DAC, there were specified in that subsection the fact of the DAC being a limited company.

(14) In this section “Act of 2001” means the Company Law Enforcement Act 2001.”.

Deputy Dara Calleary: This is a lengthy amendment. Will the Minister of State give the backdrop to it?

Deputy Sean Sherlock: The purpose of the section is to accommodate companies which have, on or after 1 March 2002, availed of the exemption from the requirement to include “limited” or “teoranta” in their name. As matters stand, under the Bill all companies which have, on or after March 2002, availed of the exemption, pursuant to section 24(1) of the Companies Act 1963 as substituted by section 88 of the Company Law Enforcement Act 2001, from including “limited” in the name will have to reapply to the Companies Registration Office to obtain an exemption from including “DAC”, designated activity company, in their name. This amendment is necessary as it will reduce the burden on such companies and they will not be required to claim the exemption a second time, a procedure which would result in filing fees and administrative overheads. The administrative burden to the Companies Registration Office will also be reduced as it will not have to reprocess these filings a second time.

Amendment agreed to.

Section 973, as amended, agreed to.

Sections 974 to 979, inclusive, agreed to.

Vice Chairman: At this point I will hand over to the Chairman. I was just beginning to get into the mechanics of it.

Deputy Dara Calleary: You were on a roll.

Deputy Anthony Lawlor: You were just beginning to warm up.

Deputy Sean Sherlock: It is almost like a meditation at this stage.

Chairman: I was saying this stuff in my sleep last night.

Sections 980 and 981 agreed to.

NEW SECTIONS

Chairman: Amendments Nos. 112 and 113 are related and may be discussed together.

Deputy Sean Sherlock: I move amendment No. 112:

In page 778, between lines 14 and 15, to insert the following:

“Status of existing guarantee company, having a share capital

982. (1) This section—

(a) makes provision as to the status of an existing guarantee company, having a share capital; and

(b) continues in force the memorandum and articles of such a company.

(2) In this section—

“existing guarantee company, having a share capital” means a private company limited by guarantee, having a share capital, which—

(a) was incorporated under any former enactment relating to companies (within the meaning of *section 5*); and

(b) is in existence immediately before the commencement of this section;

“mandatory provision” means a provision of any of *Parts 1 to 14* (as applied by this Part) or of this Part that is not an optional provision; “optional provision” means a provision of any of *Parts 1 to 14* (as applied by this Part) or of this Part that—

(a) contains a statement to the effect, or is governed by provision elsewhere to the effect, that the provision applies save to the extent that the constitution provides otherwise or unless the constitution states otherwise; or

(b) is otherwise of such import.

(3) An existing guarantee company, having a share capital shall, on and from the commencement of this section, continue in existence and be deemed to be a DAC limited by guarantee to which this Part applies.

(4) *Section 983* contains provisions—

(a) for enabling such a company to continue to use, for a limited period, “limited” or “teoranta” in its name despite the foregoing status that it has assumed; and

(b) deeming the name of such a company, after a specified period and in default of its having changed its name in that fashion, to be altered by the replacement of—

(i) “designated activity company” for “limited” at the end thereof; or

(ii) “cuideachta ghníomhaíochta ainmnithe” for “teoranta” at the end thereof,

as the case may be.

(5) Reference, express or implied, in this Act to the date of registration of a company mentioned in a preceding subsection shall be read as a reference to the date on which the company was registered under the Joint Stock Companies Act 1862, the Companies (Consolidation) Act 1908 or the prior Companies Acts, as the case may be.

(6) The memorandum and articles of an existing guarantee company, having a share capital shall—

(a) save to the extent that they are inconsistent with a mandatory provision; and

(b) in the case of the memorandum, subject to *section 983(6)*,

continue in force but may be altered or added to under and in accordance with the conditions under which memorandums or articles, whenever registered, are permitted by this Act to be altered or added to.

(7) References in the provisions of a memorandum or articles so continued in force to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act.

(8) To the extent that an existing guarantee company, having a share capital was, immediately before the commencement of this section, governed by—

(a) the regulations of Table D in the First Schedule to the Act of 1963; or

(b) the regulations of any Table referred to in section 3(9)(b), (c) or (d) of the Act of 1963,

it shall, after that commencement, continue to be governed by those regulations but—

(i) this is save to the extent that those regulations are inconsistent with a mandatory provision;

(ii) those regulations may be altered or added to under and in accordance with the conditions under which articles, whenever registered, are permitted by this Act to be altered or added to; and

(iii) references in the regulations to any provision of the prior Companies Acts shall be read as references to the corresponding provision of this Act.”.

I am trying to get into my own stride here. Effectively we are proposing to introduce a new amendment to chapter 3 of Part 16. The amendment provides that existing private limited guaranteed companies having share capital will convert to DACs limited by guarantee following the commencement of the relevant provisions.

I am considering introducing an amendment to section 982 on Report Stage to clarify the position of DACs in respect of the prohibition on listing securities on regulated markets under volume 1.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 113:

In page 778, between lines 14 and 15, to insert the following:

“Transitional provision — use of “limited” or “teoranta” by existing guarantee company, having a share capital

983. (1) In this section—

“existing guarantee company, having a share capital” has the same meaning as it has in *section 982*;

“new provisions” means the provisions of this Part (and the relevant provisions of

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Part 2 as applied by this Part) relating to the use of either of the required sets of words (or their abbreviations) set out in *subsection (2)*;

“transition period” means the period of 18 months beginning after the commencement of this section.

(2) For the purposes of this section, each of the following is a required set of words—

- (a) “designated activity company”;
- (b) “cuideachta ghníomhaíochta ainmnithe”.

(3) The reference—

- (a) in the preceding definition of “new provisions”; and
- (b) in *subsection (4)*,

to provisions relating to the use of any words includes a reference to provisions conferring an exemption from the use of those words.

(4) During—

- (a) the transition period; or
- (b) if before the expiry of that period the company has changed its name to include either of the required sets of words, the period preceding the making of that change,

the provisions of the prior Companies Acts relating to the use of limited or teoranta (or their abbreviations) shall apply as respects the name of an existing guarantee company, having a share capital in place of the new provisions.

(5) On and from—

- (a) the expiry of the transition period; or
- (b) the company changing its name to include either of the required sets of words,

whichever happens first, the new provisions shall apply as respects the name of an existing guarantee company, having a share capital.

(6) Without prejudice to the generality of *subsection (5)*, on the expiry of the transition period (and the company has not changed its name before then to include either of the required sets of words), the name of an existing guarantee company, having a share capital, as set out in its memorandum, shall be deemed to be altered by the replacement of---

- (a) “designated activity company” for “limited” at the end thereof; or
- (b) “cuideachta ghníomhaíochta ainmnithe” for “teoranta” at the end thereof,

as the case may be.

(7) Where the name, as set out in its memorandum, of an existing guarantee company, having a share capital is altered by virtue of *subsection (6)*, the Registrar shall issue to the company a fresh certificate of incorporation in respect of it, being a certificate of incorpora-

tion that is altered to meet the circumstances of the case.”.

Amendment agreed to.

Sections 982 to 984, inclusive, agreed to.

SECTION 985

Question proposed: “That section 985 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 985 on Report Stage to provide more accurate cross-referencing.

Question put and agreed to.

Sections 986 to 995, inclusive, agreed to.

NEW SECTION

Chairman: Amendments Nos. 114 and 115 are related and may be discussed together.

Deputy Sean Sherlock: I move amendment No. 114:

In page 781, to delete 38 and 39, and insert the following:

“**996.** (1) *Sections 348 and 349* shall not apply to a DAC if it satisfies the following conditions:

(a) it has been formed for charitable purposes; and

(b) it stands exempted from those sections by an order made by the relevant authority (which order the relevant authority is, by virtue of this section, empowered to make),

and the exemption provided by that order may, as the relevant authority considers appropriate, be either for an indefinite or a limited period.”.

This amendment proposes to allow relief for DACs formed for charitable purpose or which are exempted by an order regarding the documents to be annexed to their annual return, such as financial statements and a director’s report. The current section 996(1) exempts DACs which do not “trade for the acquisition of gain by its members” from filing such documents. The amendment proposes to formalise and restrict the exemption to relate to DACs formed for charitable purpose or otherwise exempted DACs.

Amendment agreed to.

SECTION 996

Deputy Sean Sherlock: I move amendment No. 115:

In page 782, after line 45, to insert the following:

“(6) In this section “relevant authority” means—

(a) before the establishment day (within the meaning of the Charities Act 2009, the Commissioners of Charitable Donations and Bequests for Ireland; and

(b) on or after the foregoing day, the Charities Regulatory Authority.”.

Amendment agreed to.

Section 996, as amended, agreed to.

Sections 997 and 998 agreed to.

SECTION 999

Question proposed: “That section 999 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing amendments to Part 17 on Report Stage to provide for an unrestricted right to appoint a proxy in accordance with Directive 2007/36/EC and introducing a new section to this part. Section 230 of the 1990 Act has been omitted from the Bill but should be included. The section relates to the duty of the Stock Exchange in respect of unlawful purchases.

Question put and agreed to.

SECTION 1000

Chairman: Amendments Nos. 116 and 117 are related and may be discussed together.

Deputy Sean Sherlock: I move amendment No. 116:

In page 785, lines 19 and 20, to delete “Article 1(13) of Directive 93/22/EEC” and substitute the following:

“point 14 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments”.

Deputy Dara Calleary: Will the Minister of State explain the context of the amendment?

Deputy Sean Sherlock: The amendment updates the reference to the correct directive and brings the language of the Bill in line with Directive 2004/39/EC on markets in financial instruments.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 117:

In page 785, to delete lines 21 to 24 and substitute the following:

““securities” means transferable securities as defined in point 18 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, with the exception of money market instruments as defined in point 19 of Article 4(1) of that Directive, having a maturity of less than 12 months.”.

Amendment agreed to.

Section 1000, as amended, agreed to.

Section 1001 agreed to.

SECTION 1002

Deputy Sean Sherlock: I move amendment No. 118:

In page 786, line 34, column 1, after “State” to insert “and prohibition of certain activities”.

Deputy Jonathan O’Brien: I was late coming in and I missed the discussion on amendment No. 110, which is similar except this relates to public limited companies. Will the Minister of State offer some clarity? The amendment proposes to insert the words “and prohibition of certain activities” and this provision is being disapplied in respect of section 18. What type of companies is one talking about in this regard? While section 18 states a company must carry out activity within the State, this provision then applies an exemption for certain types of companies.

Chairman: I propose that the select committee go into private session for a couple of minutes.

The select committee went into private session at 10.20 a.m. and resumed in public session at 10.23 a.m.

Chairman: We are discussing amendment No. 118.

Amendment agreed to.

Chairman: Amendments Nos. 119 and 120 are related and may be discussed together by agreement.

Deputy Sean Sherlock: I move amendment No. 119:

In page 787, to delete lines 8 and 9.

I propose to further amend section 1002. It has been deemed preferable to deal with financial assistance in public limited companies, PLCs, in other provisions. As for amendment No. 120, I propose to further amend section 1002. This amendment applies to the summary approval procedure to instances other than a member’s voluntary winding up.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 120:

In page 787, to delete lines 25 to 28 and substitute the following:

“

Summary Approval Procedure	Chapter 7 of Part 4 (save as it applies to—(a) a members’ voluntary winding up under section 580;(b) an activity specified in section 119(prohibition on preacquisition profits or losses being treated in holding company’s financial statements as profits available for distribution); or (c) the making of a loan or quasi-loan or the doing of any other thing referred to in section 240).
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”.

Amendment agreed to.

Section 1002, as amended, agreed to.

Sections 1003 to 1018, inclusive, agreed to.

SECTION 1019

Deputy Sean Sherlock: I move amendment No. 121:

In page 796, to delete lines 29 to 39 and substitute the following:

“(8) Where a PLC allots shares, it shall, within 30 days after the date of allotment, deliver particulars of the allotment in the prescribed form to the Registrar.”.

Amendment agreed to.

Question proposed: “That section 1019, as amended, stand part of the Bill.”

Deputy Sean Sherlock: I am considering the introduction of amendments to section 1019 on Report Stage to correct minor errors in two subsections.

Question put and agreed to.

SECTION 1020

Question proposed: “That section 1020 stand part of the Bill.”

Deputy Sean Sherlock: Again, I am considering introducing an amendment to section 1020 on Report Stage to reduce the offer period for preemptory offers in the case of public limited companies.

Question put and agreed to.

Sections 1021 to 1025, inclusive, agreed to.

SECTION 1026

Question proposed: “That section 1026 stand part of the Bill.”

Deputy Sean Sherlock: I am giving consideration to introducing an amendment to section 1026 on Report Stage. The purpose of such an amendment would be to exclude any “connected persons”, that is, family members as per section 221 from being an “independent person”.

Question put and agreed to.

Sections 1027 to 1029, inclusive, agreed to.

SECTION 1030

Deputy Sean Sherlock: I move amendment No. 122:

In page 809, line 18, to delete “1 month” and substitute “30 days”.

Amendment agreed to.

Section 1030, as amended, agreed to.

Section 1031 agreed to.

SECTION 1032

Question proposed: "That section 1032 stand part of the Bill."

Deputy Sean Sherlock: I am giving consideration to introducing an amendment to section 1032 on Report Stage to permit a waiver of the requisite notice period in respect of written resolutions and to clarify any ambiguity regarding compliance with the requirements of subsection (3).

Deputy Dara Calleary: At the conclusion of these proceedings, preferably some time this week, I ask that members be provided with a list of all the proposals made by the Minister of State yesterday and today on what will be included. This is to ensure they know in advance what to anticipate as there have been quite a number of such proposals.

Chairman: We also have asked that members receive a full briefing session on those proposals.

Deputy Dara Calleary: In advance of that briefing session, it would be useful to have the list as the Minister of State has given it.

Chairman: Very well.

Question put and agreed to.

Sections 1033 to 1035, inclusive, agreed to.

SECTION 1036

Question proposed: "That section 1036 be deleted."

Deputy Sean Sherlock: Closer inspection of the Bill has revealed this section to be unnecessary. Section 1044 provides that "Section 96(2) shall not apply in respect of a transfer of shares in a PLC where those shares fall within a class of securities the evidencing and transfer of title to which is for the time being governed by regulations under section 1085." Thus, when this Bill becomes law, pending the introduction of any regulations by the Minister pursuant to section 1085, regulations under section 239 of the 1990 Act will remain in force. Consequently, I propose that this section be deleted.

Deputy Anthony Lawlor: If this section is removed, does that mean all the sections must be renumbered?

Chairman: All the sections after section 1036 will change number. When Committee Stage is concluded, the Bill will be rewritten and it is all updated then.

Deputy Anthony Lawlor: Members must get another new book.

Chairman: Yes, but it also is available online.

Deputy Sean Sherlock: New sections also are being introduced.

Deputy Anthony Lawlor: It would be great if it came back with the same section numbers.

Chairman: We had the sixth class.

Question put and agreed to.

Sections 1037 to 1041, inclusive, agreed to.

SECTION 1042

Chairman: Amendments Nos. 123 and 124 are related and will be discussed together.

Deputy Sean Sherlock: I move amendment No. 123:

In page 819, line 37, to delete “*subsection (2)*” and substitute “*subsections (2) to (2)*”.

Deputy Dara Calleary: Will the Minister of State outline the background to amendment No. 124?

Deputy Sean Sherlock: I propose to amend section 1042 to provide that the summary approval procedure can only be used to permit financial assistance by a plc, where that procedure was authorised or where the resolution passed under section 60 of the 1963 Act was passed by the plc before - and that is the key word - it re-registered as a plc.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 124:

In page 820, between lines 7 and 8, to insert the following:

“(2) Subject to *subsection (3)*, *section 83(6)(a)* shall not apply to a PLC.

(3) In either of the following 2 cases, namely—

(a) a case in which the giving of particular financial assistance by a company (not being a PLC) has been authorised by the company’s use of the Summary Approval Procedure; or

(b) a case in which, before the commencement of this section, the giving of particular financial assistance by an existing company (not being a PLC) has been authorised by the company’s use of the procedure contained in subsection (2) of section 60 of the Act of 1963 (and that subsection and subsections (3) to (11) of that section shall remain in force for the purposes of the particular transaction and for the purposes of, and incidental to, the court’s jurisdiction to cancel the special resolution concerned),

and—

(i) following such authorisation, the company has applied to re-register, and has re-registered (whether under the prior Companies Acts or *Part 20*), as a PLC; and

(ii) save where, by reason of the operation of *Chapter 7 of Part 4* or, as the case may be, the foregoing subsections (3) to (11), the particular transaction may not be proceeded with,

then the giving by the PLC of the financial assistance (pursuant to the foregoing authority) shall be lawful.”.

Amendment agreed to.

Section 1042, as amended, agreed to.

Section 1043 agreed to.

SECTION 1044

Question proposed: "That section 1044 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 1044 on Report Stage to provide for more accurate cross-referencing.

Question put and agreed to.

Section 1045 agreed to.

SECTION 1046

Question proposed: "That section 1046 stand part of the Bill."

Deputy Sean Sherlock: All of the sections from 1045 to 1067, inclusive, are largely unchanged from existing law.

Question put and agreed to.

Sections 1047 to 1076, inclusive, agreed to.

SECTION 1077

Question proposed: "That section 1077 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 1077 on Report Stage to ensure the resolution in relation to treasury shares has immediate effect.

Question put and agreed to.

Sections 1078 and 1079 agreed to.

SECTION 1080

Question proposed: "That section 1080 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 1080 on Report Stage to clarify to whom the notification requirement applies.

Question put and agreed to.

Section 1081 agreed to.

SECTION 1082

Question proposed: "That section 1082 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 1082 on Report Stage to refer to section 122 and-or the requirements therein.

Question put and agreed to.

Section 1083 to 1087, inclusive, agreed to.

NEW SECTION

Deputy Sean Sherlock: I move amendment No. 125:

In page 850, between lines 24 and 25, to insert the following:

“PLC may not dispense with holding of a.g.m.

1088. *Section 176(3) and (4)* (which relate to dispensing with the holding of an annual general meeting) shall not apply to a PLC.”.

I intend to introduce this new section to mirror the approach taken in Pillar 1, Volume 1 of the Bill. The purpose of this section is to set out clearly a disapplication applicable to a plc. Disapplications are also set out in the tables but I intend to provide a discrete section to ensure greater compatibility with the two volumes.

Amendment agreed to.

Sections 1088 to 1090, inclusive agreed to.

NEW SECTION

Deputy Sean Sherlock: I move amendment No. 126:

In page 851, between lines 36 and 37, to insert the following:

“Application of *section 194* in relation to PLC

1091. *Section 194* shall apply to a PLC as if, in *subsection (1)*, after “Notwithstanding any provision to the contrary in this Part or in *Parts 1 to 3* or *5 to 14*”, there were inserted “and unless the Constitution provides otherwise”.”.

The purpose of the new section is to clarify the application of the rules relating to unanimous written resolutions to plcs.

Amendment agreed to.

Section 1091 agreed to.

SECTION 1092

Question proposed: “That section 1092 stand part of the Bill.”

Deputy Sean Sherlock: Sections 1092 to 1104, inclusive, are unchanged from existing law.

Question put and agreed to.

Sections 1093 to 1104, inclusive, agreed to.

SECTION 1105

Question proposed: “That section 1105 stand part of the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to section 1105 on Report Stage to provide detail on voting rules relating to proxies.

Question put and agreed to.

SECTION 1106

Question proposed: "That section 1106 stand part of the Bill."

Deputy Sean Sherlock: Most sections from 1106 to 1112 are largely unchanged, with one exception. Section 1110 exempts plcs that are credit institutions or insurance undertakings from the requirements in Part 6 relating to financial statements unless there is a statutory requirement to do so.

Question put and agreed to.

Sections 1107 to 1165, inclusive, agreed to.

SECTION 1166

Question proposed: "That section 1166 stand part of the Bill."

Deputy Sean Sherlock: I am considering tabling an amendment to Part 18 on Report Stage to ensure the Multi-Unit Developments Act 2011 is not compromised by the coming into force of this Bill.

Question put and agreed to.

Section 1167 agreed to.

SECTION 1168

Deputy Sean Sherlock: I move amendment No. 127:

In page 908, line 5, column 1, after "State" to insert "and prohibition of certain activities".

Amendment agreed to.

Section 1168, as amended, agreed to.

SECTION 1169

Question proposed: "That section 1169 stand part of the Bill."

Deputy Sean Sherlock: I am considering tabling an amendment to the section on Report Stage to clarify that the European Communities Cross-Border Merger Regulations 2008 do not apply to companies limited by guarantee.

Question put and agreed to.

Sections 1170 to 1174, inclusive, agreed to.

SECTION 1175

Deputy Sean Sherlock: I move amendment No. 128:

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In page 913, to delete line 49, and in page 914, to delete lines 1 to 35 and substitute the following:

“(8) *Subsections (9) to (12)* have effect notwithstanding—

(a) the repeal by the Act of 2001 of section 24, as originally enacted, of the Act of 1963 (the “original section 24”); or

(b) the repeal by this Act of section 24, inserted by section 88(1) of the Act of 2001, of the Act of 1963 (the “substituted section 24”) or of the Act of 2001.

(9) A licence that—

(a) had been granted by the Minister pursuant to subsection (1) or (2) of the original section 24 to a company limited by guarantee; and

(b) is in force immediately before the commencement of this section,

shall, on and from whichever thing referred to in *section 1185(5)(a)* or *(b)* happens first, continue to have effect but with the modification that it shall operate to exempt the company from the use of the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta” as part of its name and the publishing of its name.

(10) Subsections (4) to (7) of the original section 24 shall continue in force in relation to the foregoing licence as if that section 24 had never been repealed, except that references in those subsections to the Minister, wherever occurring, shall be read as references to the Registrar.

(11) An exemption that immediately before the repeal of the Act of 2001 operated, by virtue of the substituted section 24, in favour of a company limited by guarantee shall, on and from whichever thing referred to in *section 1185(5)(a)* or *(b)* happens first, continue to have effect but—

(a) with the modification that it shall operate to exempt the company from the use of the words “company limited by guarantee” or “cuideachta faoi theorainn ráthaíochta” as part of its name and the publishing of its name; and

(b) subject to *subsection (12)*.

(12) *Subsections (4) to (7)* shall, with the necessary modifications, apply to a foregoing exemption as they apply to an exemption under *subsection (1)*.

(13) *Subsections (9) to (12)* are without prejudice to *section 1185(4)* (which saves for a limited period the effect of provisions of the prior Companies Acts (including section 88(2) of the Act of 2001) that impose a requirement, or confer an exemption from a requirement, with regard to the use of “limited” or “teoranta” or their abbreviations).

(14) In relation to—

(a) a CLG that avails itself of the exemption under subsection (1) or continues to avail itself of a licence or exemption referred to in *subsection (9)* or *(11)*; and

(b) an existing guarantee company (within the meaning of *section 1184*) that avails itself, during the period specified in *section 1185(4)*, of an exemption conferred by a

provision of the prior Companies Acts with regard to the use of “limited” or “teoranta” or their abbreviations,

section 152 shall have effect as if, in addition to the particulars specified in *subsection (2)(a) to (c)* of that section to be included on all business letters and order forms of the CLG, there were specified in that subsection the fact of the CLG being a limited company.

(15) In this section “Act of 2001” means the Company Law Enforcement Act 2001.”.

Amendment agreed to.

Section 1175, as amended, agreed to.

Sections 1176 to 1183, inclusive, agreed to.

SECTION 1184

Deputy Sean Sherlock: I move amendment No. 129:

In page 918, line 36, before “deeming” to insert “subject to certain exceptions,”.

Amendment agreed to.

Section 1184, as amended, agreed to.

SECTION 1185

Deputy Sean Sherlock: I move amendment No. 130:

In page 919, line 37, after “*subsection (5)*” to insert “and subject, where appropriate, to *section 1175(9) to (12)*”.

Amendment agreed to.

Section 1185, as amended, agreed to.

Sections 1186 and 1187 agreed to.

SECTION 1188

Question proposed: “That section 1188 stand part of the Bill.”

Deputy Sean Sherlock: I am considering tabling an amendment to the section on Report Stage to provide more accurate cross-referencing and cross-reference sections 1084 to 1086, inclusive.

Question put and agreed to.

Sections 1189 to 1193, inclusive, agreed to.

SECTION 1194

Question proposed: “That section 1194 stand part of the Bill.”

Deputy Sean Sherlock: I am considering tabling an amendment to the section on Report

Stage to allow the procedure for admission to membership to be determined by the constitution and expand the instances in which membership is automatically terminated.

Question put and agreed to.

Sections 1195 to 1198, inclusive, agreed to.

SECTION 1199

Question proposed: "That section 1199 stand part of the Bill."

Deputy Sean Sherlock: I am considering tabling an amendment to the section on Report Stage to the effect that personal representatives of deceased members do not have a right to receive notice of meetings.

Deputy Michael Conaghan: Most companies are established to manufacture or supply goods and services, operate in a legitimate way and the way they are regulated needs to be revised and changed from time to time, which is what the Bill is about. However, there are entities that cleverly masquerade as authentic companies with a facade of ordinariness about them but there is a great deal of public knowledge that they are involved in various nefarious schemes. Does the State need additional powers or does the State feel that is a matter for the Garda? Does a section in the Bill deal with this? I missed some of yesterday's meeting and the committee may have dealt with this evil in commercial life. Is there a recognition of it? Is it quantified? Are sufficient measures and instruments in place? Some of this activity damages and undermines legitimate business activity and adds to unemployment in legitimate trading areas.

Chairman: There probably is an issue with enforcement and justice.

Deputy Sean Sherlock: Part 14 deals with stipulations relating to reckless behaviour by directors of a company and penalties are included in the Bill. There are review clauses inherent in the legislation so that the company law review group can be involved. It is a statutory body and has a mandate to monitor, review and advise the Minister about existing company law and to make recommendations about its implementation and the introduction of new legislation. I do not think that necessarily answers the Deputy's question, but aside from the criminal activities, there are specific ways of punishing dishonest or irresponsible directors of insolvent companies and of protecting the public from further wrongdoing by such persons, namely by restricting or disqualifying directors. There are specific and robust proposals in regard to criminal sanctions, the jurisdiction of the courts, the role and responsibilities of the directors or persons involved in a company. Some of this is updating pre-existing law and consolidating it. I do not know if that answers Deputy Conaghan's query.

Chairman: That is fine. I am conscious that we have been here a long time and it was discussed in depth yesterday. There are proposed amendments on Report Stage, so the Deputy will be able to attend a briefing on it before it goes to the next stage. We can discuss this ourselves before Report Stage.

Deputy Michael Conaghan: In a preamble to this type of legislation there should be some way of quantifying and measuring the scale of this, which I understand is growing.

Chairman: We can discuss that among ourselves.

Question put and agreed to.

Sections 1200 to 1213, inclusive, agreed to.

SECTION 1214

Chairman: We have a number of ministerial amendments to this section. Amendment No. 131 is related to amendments Nos. 132, 133 and 135 and all may be discussed together by agreement.

Deputy Sean Sherlock: I move amendment No. 131:

In page 926, lines 19 and 20, to delete all words from and including “(1) *Sections*” in line 19 down to and including “members.” in line 20 and substitute the following:

“(1) Without prejudice to *subsections (4) to (6)* (which contain transitional provisions), *sections 348 and 349* shall not apply to a CLG if it satisfies the following conditions:

(a) it has been formed for charitable purposes; and

(b) it stands exempted from those sections by an order made by the relevant authority (which order the relevant authority is, by virtue of this section, empowered to make),

and the exemption provided by that order may, as the relevant authority considers appropriate, be either for an indefinite or a limited period.”.

Subsection (1) has been replaced to ensure the public guarantee companies may avail of the exemption in circumstances where such company is not trading for gain. This amendment effectively ensures continuity with current law.

Amendment No. 132 is a technical amendment.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 132:

In page 927, to delete lines 1 to 6 and substitute the following:

“(4) *Sections 348 and 349* shall not apply to an existing guarantee company that, immediately before the commencement of this section, stood exempted from the requirements of section 128 of the Act of 1963 by virtue of subsection (4)(c) or (5) of that section, but this is subject to *subsections (5) and (6)*.”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 133:

In page 927, lines 11 and 12, to delete “*subsection (4)* of this section shall cease to apply to that company” and substitute “, thereupon, *sections 348 and 349* shall apply to that company”.

Amendment agreed to.

Chairman: Amendments Nos. 134 and 136 are related and may be discussed together by agreement.

Deputy Sean Sherlock: I move amendment No. 134:

In page 927, lines 20 and 21, to delete “Commissioners of Charitable Donations and Bequests for Ireland” and substitute “relevant authority”.

The reference to the Commissioners of Charitable Donations and Bequests has been replaced by a reference to the relevant authority. Together with amendments Nos. 135 and 136 this allows for the transfer of the operations of the commissioners to the new charities regulatory authority.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 135:

In page 927, to delete lines 26 to 30 and substitute the following:

“then the relevant authority shall, by virtue of those circumstances, be empowered to declare in writing that *sections 348 and 349* shall, on and from a date specified in the declaration, apply to that company and, where the relevant authority so declares, *sections 348 and 349* shall apply to that company on and from the date so specified.”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 136:

In page 927, to delete lines 51 and 52 and substitute the following:

“(9) In this section—

“existing guarantee company” has the same meaning as it has in *section 1184*;

“relevant authority” means—

(a) before the establishment day (within the meaning of the Charities Act 2009), the Commissioners of Charitable Donations and Bequests for Ireland; and

(b) on or after the foregoing day, the Charities Regulatory Authority.”.

Amendment agreed to.

Section 1214, as amended, agreed to.

Sections 1215 to 1223, inclusive, agreed to.

SECTION 1224

Deputy Sean Sherlock: I move amendment No. 137:

In page 931, line 17, column 1, after “State” to insert “and prohibition of certain activities”.

This is a technical amendment to correspond with the amendment to section 18, which seeks to give further clarification to the existing law.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 138:

In page 931, between lines 32 and 33, to insert the following:

“

Certain particulars to be shown on all business letters	Section 152(2) to (4)
---	-----------------------

”.

Amendment agreed to.

Chairman: Amendments Nos. 139 and 142 and 145 are related and may be discussed together by agreement.

Deputy Sean Sherlock: I move amendment No. 139:

In page 931, between lines 32 and 33, to insert the following:

“

Majority written resolutions	Section 195
Supplemental provisions in relation to section 195	Section 196

”.

Amendment No. 139 proposes to supply the requirements of sections 195 and 196 of the Bill relating to majority written resolutions in the supplemental provisions for unlimited companies. A similar amendment applies to public unlimited companies, with the share capital and public unlimited companies without a share capital.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 140:

In page 931, line 44, column 1, after “State” to insert “and prohibition of certain activities”.

This is a technical amendment to correspond with the amendment to section 18, which seeks to give further clarification to the existing law.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 141:

In page 932, between lines 13 and 14, to insert the following:

“

Certain particulars to be shown on all business letters	Section 152(2) to (4)
---	-----------------------

”.

This is a technical amendment. I propose to further amend section 1224 to disapply the requirement to show the name and legal form of the company, its place of registration, registered number and the address of its registered office and letters, order forms and websites of public

unlimited companies with a share capital.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 142:

In page 932, between lines 13 and 14, to insert the following:

“

Majority written resolutions	Section 195
Supplemental provisions in relation to section 195	Section 196

”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 143:

In page 932, line 35, column 1 after “State” to insert “and prohibition of certain activities”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 144:

In page 933, between lines 15 and 16, to insert the following:

“

Certain particulars to be shown on all business letters	Section 152(2) to (4)
---	-----------------------

”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 145:

In page 933, between lines 16 and 17, to insert the following:

“

Majority written resolutions	Section 195
Supplemental provisions in relation to section 195	Section 196

”.

Amendment agreed to.

Questions proposed: “That section 1224, as amended, stand part of the Bill”.

Deputy Sean Sherlock: I am considering introducing an amendment to section 1224 on Report Stage to disapply the obligation to file a return of allotment to ULCs as well as PLCs and make similar provision for unlimited companies, other than that which has been provided for public limited companies and companies limited by guarantee. The amendment will mean that the majority of written resolutions do not apply to any form of UC.

Question put and agreed to.

SECTION 1225

Question proposed: "That section 1225 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 1225 on Report Stage to clarify that the European Communities cross-border merger regulations 2008 do not apply to unlimited companies.

Question put and agreed to.

Sections 1226 to 1232, inclusive, agreed to.

Chairman: If members agree, we will suspend the sitting to see if Deputy Wallace intends to make it to the meeting.

Sitting suspended at 11 a.m. and resumed at 11.10 a.m.

NEW SECTION

Deputy Mick Wallace: I move amendment No. 146:

In page 938, between lines 36 and 37, to insert the following:

"1233. (1) An unlimited company shall disclose by the filing of a notification with the Companies Registration Office a list of all members which are limited companies, and their respective number of allocated shares.

(2) *Subsection (1)* shall apply to all body corporate members, wheresoever registered.

(3) A transfer of shares to a new body corporate member which is a limited liability company shall not take effect until the notification referred to in *subsection (1)* has been filed with the Companies Registration Office.

(4) Failure to file the notification referred to in *subsection (1)* may result, on application to the Court by any interested party, to the imposition of limited liability status on the unlimited company in question."

I am sorry I delayed proceedings.

Most people assume that when dealing with an unlimited company there is no upper limit on the personal liability of the shareholders for the company's debts if the company was to become insolvent. Approximately 4,000 or 2.3% of current Irish companies are unlimited and, as a result, they escape the stricter filing and disclosure requirements that private limited companies are under. The filing and disclosure requirements allow a creditor to apprise himself of a company's solvency before trading with it. However, many large corporate sources are using unlimited liability companies but seeking to limit liability by ensuring that some or all of the shareholders of the unlimited company are themselves limited liability entities. It is always open to the courts to look through the corporate charter of unlimited companies and see for themselves unlimited company members - in other words, to lift the corporate veil - but this can only be done with the expense of an application to the courts. However, as the High Court recently remarked in the *Goode Concrete v. CRH* case, this approach is not possible when a

limited company is an offshore company.

This amendment requires all private unlimited companies to notify the Companies Registration Office, CRO, of any shareholder company that might limit its liability. In this way, a creditor may check the CRO records of an unlimited company at the outset of contractual negotiations and be aware of a fact that although a company may be registered as unlimited, the company's liability may be limited. The failure of an unlimited company to notify the CRO of any limited liability shareholder could result in the imposition of limited liability status on the companies immediately, as the courts see fit, within the limits of reasonableness and proportionality.

I do not know whether the Minister of State is aware of this, but at least four of the major construction companies that left in the region of €1 billion in debts behind were unlimited. People trading with them would not have been privy to their position because of their unlimited nature, and many companies are not quite as unlimited as they seem because of the loophole I have outlined. It would be a good idea for the Minister of State to take this on board.

Deputy Sean Sherlock: Under section 216(9)(c), every company is obliged to allow any person to inspect its members' register on the payment of a fee, which must be €10 or less. Section 216(12)(c) obliges companies to send a copy of their members' registers to any person who requests it, again for a fee of €10 or less. This register contains the names and addresses of members and the number of shares held by each member. This also applies to unlimited companies.

As there is currently no requirement to report this information to the Companies Registration Office, it would be costly to set up a register both for the Companies Registration Office and for the affected companies. The ongoing cost to the CRO and affected companies of making and processing thousands of notifications would also be significant. The costs involved in delays to transfer of ownership of shares would be unacceptably high and could interfere with constitutional rights to private property. The information is already publicly available on request and the cost of creating and maintaining such a public register would be considerable, so I am not in favour of this amendment.

Deputy Mick Wallace: The Minister of State has indicated that all this information is freely available to the public, but I know some people who would beg to differ, as they were on the receiving end. They got some very big surprises when trouble came around. Perhaps there are ways of accessing the information and these people were not *au fait* with those processes. The Minister of State has stated that this would be expensive, but just about everything is expensive today. In the interests of greater transparency, it would be a good idea.

Deputy Dara Calleary: I support Deputy Wallace, as there is no doubt that large companies have the resources and capacity to hide much information, no matter how much is made available. The Deputy has cited cases in the construction sphere and I am not sure about the cost argument, given the capacity for electronic filing of information. Do we have figures on the actual cost or burden of work? There is a difficulty as large corporate entities have the capacity to hide information, no matter what is contained in this Bill. In fairness to the transparency aspect, this amendment seems to be practical.

Deputy Jonathan O'Brien: We support Deputy Wallace's amendment, which seems to be a good, progressive and practical measure. I do not know why the Minister of State would be against something like this.

Deputy Anthony Lawlor: Perhaps the Minister could reconsider the amendment on Report Stage to see if it could be tweaked in order to make it much more practical and less expensive. Even currently there is a major company going through the liquidation process and there will be a knock-on effect. People might not know the full financial position of companies.

Deputy Sean Sherlock: There is no problem returning to this on Report Stage for further deliberations, but we must acknowledge that unlimited companies function within the Irish infrastructure, serving many legitimate business purposes. They are a feature of company law across the European Union. Issues have been raised with regard to transparency, and perhaps we can provide more clarity in that respect for the next Stage.

Just as guaranteed and public limited companies are important for certain kinds of business, unlimited companies also serve an important purpose. I am not suggesting that anybody is necessarily seeking to remove them, but to do so would be a disproportionate act which could affect Ireland's competitive advantage. I do not know if it is possible to quantify the burden of cost but we can try to do some work on it between now and the next Stage of the Bill.

Deputy Dara Calleary: In fairness, we are not talking about every unlimited company but rather the range of unlimited companies that have limited companies as members. They are seen as unlimited companies but underneath, there are limited companies.

Deputy Mick Wallace: Nobody is saying there should not be unlimited companies. There is a choice, which is fine. We are talking about unlimited companies that are not really unlimited but have the protection of limited companies. There is a cloak, and nobody knows where the company is in a financial sense. These companies may not be unlimited as they engage limited shareholdings offshore. They become limited companies, enjoying the best of both worlds.

Deputy Sean Sherlock: The issue mentioned by Deputy Wallace is due to be addressed in the coming months and I am sure the Deputy is aware that an accounting directive, 2013/34/EU, is to be introduced. It could be a more suitable way of addressing that issue. That is a potential resource for the committee. The matter could be addressed on Report Stage in order to provide greater clarity.

The primary aim of this Bill is the consolidation of existing law and the provision of a user-friendly framework for businesses operating in Ireland. We must take into account the fundamental principle of the Bill. The issue that has been raised by a number of members could be addressed again on Report Stage.

Deputy Mick Wallace: I would like to think the Bill is about more than just making things handier for everybody. Surely it should look to improve how we do business.

Deputy Sean Sherlock: That is a given.

Chairman: Is the amendment being pressed?

Deputy Mick Wallace: Yes.

Chairman: As the full membership of the committee is not present, under Standing Orders we are obliged to wait eight minutes or until full membership is present before proceeding to take the division. When eight minutes have elapsed or the full membership is present, we will take the vote.

Amendment put.

SELECT COMMITTEE ON JOBS, ENTERPRISE AND INNOVATION

The Committee divided: Tá; 3; Níl, 5.	
Tá	Níl
Calleary, Dara.	Conaghan, Michael.
O'Brien, Jonathan.	English, Damien.
Wallace, Mick.	Kyne, Seán.
	Lyons, John.
	Sherlock, Sean.

Amendment declared lost.

Sections 1233 to 1247, inclusive, agreed to.

SECTION 1248

Question proposed: "That section 1248 stand part of the Bill."

Deputy Sean Sherlock: I am considering the introduction of an amendment to section 1248 on Report Stage to provide more accurate cross-referencing and to include a cross-reference to sections 1084 to 1086.

Question put and agreed to.

Sections 1249 and 1250, inclusive, agreed to.

SECTION 1251

Question proposed: "That section 1251 stand part of the Bill."

Deputy Sean Sherlock: Again, I am considering introducing an amendment to section 1251 on Report Stage to clarify that admission of new members to a plc is subject to the approval of the directors or as otherwise provided by the company's constitution.

Question put and agreed to.

Sections 1252 to 1281, inclusive, agreed to.

SECTION 1282

Question proposed: "That section 1282 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to section 1282 on Report Stage to correct an incorrect cross-reference.

Deputy Dara Calleary: A company might be re-registered as a plc if the company delivers certain documents to the registrar including copies of the balance sheet of the company. All the information that is required is based specifically on the balance sheet. Would it not be more beneficial to base it on all the financial statements so that things could not be hidden and that the registrar could make a full assessment of the financial position of the company rather than just on the balance sheet?

Deputy Sean Sherlock: I remind the committee that the section is substantially unchanged from existing law. It is drawn from section 9 of the Companies (Amendment) Act 1983.

Deputy Dara Calleary: The Companies (Amendment) Act would tend to go with financial statements but things are different from how they were in 1983 in general.

Deputy Sean Sherlock: The matter to which Deputy Calleary refers has been referred to the Company Law Review Group. It will be taken in that context.

Deputy Dara Calleary: It will probably be dealt with in the baby Bill.

Question put and agreed to.

Sections 1283 to 1292, inclusive, agreed to.

SECTION 1293

Question proposed: "That section 1293 stand part of the Bill."

Deputy Sean Sherlock: Again, we are considering introducing an amendment to section 1293 on Report Stage. The purpose of the amendment is to make provision for the transposition of Article 1 of directive 2012/17/EU subsections (1) and (2) which concern the interconnectedness of registers between EEA states.

Question put and agreed to.

Sections 1294 and 1295 agreed to.

SECTION 1296

Deputy Sean Sherlock: I move amendment No. 147:

In page 975, line 30, to delete "*subsection (9)*" and substitute "*subsection (10)*".

This is a technical amendment to resolve an inaccuracy in the Bill. It is proposed that this section shall not apply to a company that is a credit or financial institution.

Deputy Dara Calleary: Is the intention that section 1296 would not apply or does the point relate to a subsection?

Deputy Sean Sherlock: It is proposed that this section shall not apply to a company that is a credit or financial institution.

Deputy Dara Calleary: Why?

Chairman: We will go into private session for a moment to discuss it.

The select committee went into private session at 11.37 a.m. and resumed in public session at 11.38 a.m.

Amendment agreed to.

Section 1296, as amended, agreed to.

Sections 1297 to 1300, inclusive, agreed to.

SECTION 1301

Question proposed: "That section 1301 stand part of the Bill."

Deputy Sean Sherlock: We are considering introducing an amendment to Part 22 on Report Stage to clarify the position regarding contracts of employment of directors.

Question put and agreed to.

Sections 1302 to 1317, inclusive, agreed to.

SECTION 1318

Question proposed: “That section 1318 stand part of the Bill.”

Deputy Sean Sherlock: On section 1318, the position is unchanged from existing law. Section 1327 is substantially unchanged from existing law. However, the definition of “joint stock company” is taken from existing law. Some of the wording in the existing definition has been modified slightly. With regard to section 1328, the position is substantially unchanged from existing law. Modification has taken place to account for the new company types under the Bill. As such, a joint company may at any time register as a CLS, DAC, CLG or unlimited company. With regard to sections 1329 to 1332, the position is substantially unchanged from the existing law.

Question put and agreed to.

Sections 1319 to 1344, inclusive, agreed to.

SECTION 1345

Deputy Sean Sherlock: I move amendment No. 148:

In page 1007, line 8, after “to” to insert “in”.

This section is new. It provides a saver for existing regulations made under section 46 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005. It expands upon paragraph 5 of Schedule 6 to the Bill, which provides that the Prospectus (Directive 2003/71/EC) Regulations, SI 324 of 2005, and any regulations amending those regulations will continue in force and may be amended or revoked accordingly.

Amendment agreed to.

Section 1345, as amended, agreed to.

Sections 1346 to 1350, inclusive, agreed to.

SECTION 1351

Question proposed: “That section 1351 be deleted.”

Deputy Sean Sherlock: This section is an artefact of the law of prospectuses as it stood before the prospectus directive and the markets in financial instruments directive, known as MiFID. An appropriate level of protection is achieved by these directives and various other aspects of EU law, and as a result this provision is redundant. We are proposing the deletion of the section.

Deputy Dara Calleary: Surely specific protections that are in place under section 1351 are in place under the other provisions.

Deputy Sean Sherlock: By virtue of the directives under EU law.

Deputy Dara Calleary: Could we not just rephrase the section to reference the protections available in other legislation rather than just deleting the protections entirely?

Deputy Sean Sherlock: If they are already incorporated into EU law, they are inherent. I have an open mind. They are already in the regulations.

Sections 1338 to 1355, concerning public offers of securities, provide the statutory basis for regulations transposing the prospectus directive, 2003/71/EC. These provisions are taken from Part 5 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005. In essence, Part 23 speaks to the EU regulations governing the very section on which the Deputy has posed the question.

Question put and declared carried.

Sections 1352 to 1358, inclusive, agreed to.

SECTION 1359

Question proposed: "That section 1359 stand part of the Bill."

Deputy Dara Calleary: I have a general query on market abuse. Does existing or new law apply, bearing in mind how this area has evolved in recent years in particular?

Chairman: We will discuss it in private session.

The select committee went into private session at 11.46 a.m. and resumed in public session at 11.48 a.m.

Question put and agreed to.

Sections 1360 to 1384, inclusive, agreed to.

SECTION 1385

Question proposed: "That section 1385 stand part of the Bill."

Deputy Sean Sherlock: I am considering an amendment to section 1385 on Report Stage to correct the cross-reference in subsection 9.

Question put and agreed to.

SECTION 1386

Question proposed: "That section 1386 stand part of the Bill."

Deputy Dara Calleary: Does the Central Bank have any new powers over investment companies? Has there been any reflection on the powers of the Central Bank *vis-à-vis* investment companies?

The select committee went into private session at 11.50 a.m. and resumed in public session at 11.52 a.m.

Question put and agreed to.

SELECT COMMITTEE ON JOBS, ENTERPRISE AND INNOVATION

Sections 1387 to 1389, inclusive, agreed to.

SECTION 1390

Question proposed: "That section 1390 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to this section to correct the unintended exemption for investment companies from the filing of financial statements. The new wording will provide for the filing of financial statements without the filing of an annual return.

Question put and agreed to.

Sections 1391 to 1400, inclusive, agreed to.

SECTION 1401

Deputy Sean Sherlock: I move amendment No. 149:

In page 1044, line 22, to delete "1 month" and substitute "30 days".

This amendment was discussed when dealing with section 404. The function is to improve clarity and precision. A simple reference to "one month" has the potential to cause confusion and inconsistency.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 150:

In page 1044, line 27, to delete "1 month" and substitute "30 days".

Amendment agreed to.

Section 1401, as amended, agreed to.

Sections 1402 to 1405, inclusive, agreed to.

SECTION 1406

Question proposed: "That section 1406 stand part of the Bill."

Deputy Sean Sherlock: I am considering an amendment to Part 25 on Report Stage to remove, where applicable, cross-references to the insolvency regulations in the context of reorganisations and, where applicable, to remove cross-references to Parts 8 and 9.

Question put and agreed to.

Section 1407 agreed to.

SECTION 1408

Question proposed: "That section 1408 stand part of the Bill."

Deputy Sean Sherlock: I am considering introducing an amendment to this section on Report Stage to reference SI No. 333/2002 - European Communities (Corporate Insolvency) Regulations 2002.

Question put and agreed to.

Sections 1409 to 1427, inclusive, agreed to.

SECTION 1428

Chairman: Amendments Nos. 151 to 153, inclusive, are related and may be discussed together.

Deputy Sean Sherlock: I move amendment No. 151:

In page 1056, line 1, after “takeover” to insert “or other relevant transaction”.

These amendments are proposed in the interests of completeness to avoid legal uncertainty in the Irish Takeover Panel’s jurisdiction to regulate schemes, the purpose of which is to consolidate control.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 152:

In page 1056, line 4, after “takeover” to insert “or other relevant transaction”.

Amendment agreed to.

Deputy Sean Sherlock: I move amendment No. 153:

In page 1056, line 6, after “takeover” to insert “or other relevant transaction”.

Amendment agreed to.

Section 1428, as amended, agreed to.

Section 1429 agreed to.

NEW SECTION

Deputy Sean Sherlock: I move amendment No. 154:

In page 1056, after line 29, to insert the following:

“Disapplication of section 7 of Official Languages Act 2003

1430. (1) Section 7 of the Official Languages Act 2003 shall not apply in relation to this Act.

(2) The text of this Act shall be made available electronically in each of the official languages as soon as practicable after its enactment.”.

This new section will disapply section 7 of the Official Languages Act 2003 to avoid an undesirable delay in the publishing of the new Companies Bill once enacted in paper form until it is translated into Irish and available in both official languages. Given the size of the Bill, there is likely to be a substantial delay if section 7 of the Official Languages Act is not disapplied.

Deputy Dara Calleary: Tá mé go mór i gcoinne an section seo. Caithfidh bheith dáiríre

faoin teanga. Some people use Irish as their primary language. This issue used to arise with legislation at the justice committee. The Department knows that when it is drafting a Bill, there is a legislative requirement that it be published in tandem in Irish. One assumes one has drafted the Companies Bill freisin. To table this amendment at the end of Committee Stage is wrong. Whatever changes need to be made to the Bill in English can be made in tandem as Gaeilge freisin.

Chairman: Does Deputy Mick Wallace want to have it translated into Italian?

Deputy Mick Wallace: No, I just want to know what Deputy Dara Calleary said before he started to speak in English.

(Interruptions).

Deputy Sean Sherlock: The point was well made by Deputy Dara Calleary. This Bill will be translated into Irish as per the Official Languages Act 2003. However, we have to be practical and pragmatic. We know there are not enough translators within the system to deal with both Irish and European Union parliamentary business. The Bill will be published in Irish at some stage. We uphold the rights of those whose first language is Irish to have equal access to this legislation. They will have equal access to this Bill in their native tongue. However, we must be practical and apply a common-sense approach to how we deal with this issue. I ask the Deputy to give us some leeway.

Deputy Seán Kyne: Presumably once the Bill is enacted it will be sent for translation immediately so it is a question of how long that will take. Presumably they will be working as hard as they can. While I agree with Deputy Calleary on the need to ensure all Bills are provided in Irish, this is a substantial and very technical Bill. It is in order that we allow the amendment as long as it is enacted as soon as possible after the final Bill in English.

Deputy Dara Calleary: I agree with the Minister of State. I am sure it will be done in time. It is a policy to lob this amendment into all Bills at the last minute. This Bill should have been written as Gaeilge as it was going along so that translation is not a major administrative burden. I am willing to accept the Minister of State's good faith, but every time such an amendment comes in I will object to it.

Deputy Anthony Lawlor: Maybe the Bill should have been drafted in Irish and then translated into English afterwards.

Chairman: I take it that Deputy Calleary will be available to help with the translation over Christmas.

Amendment agreed to.

Schedule 1 agreed to.

SCHEDULE 2

Deputy Sean Sherlock: I move amendment No. 155:

In page 1059, between lines 7 and 8, to insert the following:

“

S.I. No. 137 of 1987 European Communities	(Mergers and Divisions of Companies) Regulations 1987	The whole Statutory Instrument
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”.

The purpose of the amendment is to repeal the 1987 mergers regulations. Its omission from the table of revocations was an error.

Amendment agreed to.

Schedule 2, as amended, agreed to.

SCHEDULE 3

Question proposed: “That Schedule 3 be Schedule 3 to the Bill.”

Deputy Sean Sherlock: We are considering introducing an amendment to Schedule 3 on Report Stage to separate the headings “Prepayments” and “Accrued income” in format 2 and to provide consistency between formats 1 and 2 and more consistency with the amendments proposed in section 321.

Question put and agreed to.

Schedule 4 agreed to.

SCHEDULE 5

Deputy Sean Sherlock: I move amendment No. 156:

In page 1104, line 16, to delete “and” and substitute “or”.

The purpose of the amendment is to remedy a minor error.

Amendment agreed to.

Schedule 5, as amended, agreed to.

SCHEDULE 6

Question proposed: “That Schedule 6 be Schedule 6 to the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to Schedule 6 on Report Stage to take account of SI 382 2005, Companies Act 1990 (Prescribed Alternative Accounting Standards Bodies) Regulations 2005.

Question put and agreed to.

Schedules 7 to 9, inclusive, agreed to.

SCHEDULE 10

Question proposed: “That Schedule 10 be Schedule 10 to the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to Schedule 10 on Report Stage to refer to the number of members with which the company is to be registered.

Question put and agreed to.

Schedule 11 agreed to.

SCHEDULE 12

Question proposed: “That Schedule 12 be Schedule 12 to the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to Schedule 12 on Report Stage to refer to the number of members with which the company is to be registered.

Question put and agreed to.

SCHEDULE 13

Question proposed: “That Schedule 13 be Schedule 13 to the Bill.”

Deputy Sean Sherlock: I am considering introducing an amendment to Schedule 13 on Report Stage to refer to the number of members with which the company proposed is to be registered. I am also considering introducing an amendment to Schedule 14 on Report Stage to add section 213 to the list of provisions to be applied to unregistered companies in Schedule 14.

Question put and agreed to.

Schedules 14 to 17, inclusive, agreed to.

Title agreed to.

Deputy Dara Calleary: Before we put down the gavel I want to be certain we have the ability to table amendments on Report Stage around the term “accountant”. The Minister will lead us but I want to be certain there will be no procedural issue. We flagged it yesterday and I want to flag it again. We need further consultation with the Minister on this and my party will bring forward amendments on Report Stage.

Chairman: Members have raised that issue enough times at the right stages and this has been recorded.

Deputy Dara Calleary: Good.

Chairman: On foot of that we will have discussions with the Ministers.

Deputy Sean Sherlock: I want to be clear on the issues raised by individual members so there is no ambiguity about dealing with the questions that arose between yesterday and today on specific matters. I acknowledge the forbearance of the committee about the introduction of new amendments on Report Stage and thank them for that. The Minister, Deputy Bruton, is scheduled to meet a group from the committee next week on the issue of the accountancy matter. I acknowledge the collegiality of the committee regarding the speed with which we have moved through this Stage of the process.

Chairman: I thank the Minister, Deputy Sherlock and his officials, Elaine, Tara and Philip, for attending and all our colleagues for their co-operation in the consideration of this Bill. Their business-like approach has been a very effective way to deal with the Bill. I appreciate everybody’s efforts in doing that. I acknowledge the significant contribution of advance briefings provided by the Department officials. It meant much to the members that many issues were

MESSAGE TO DÁIL

addressed at an early stage so we could tease them out. It resulted in the efficient passing of the Bill through Committee Stage. It was a common-sense approach and is great to have it finished today as opposed to over the next couple of weeks. I am very conscious that further briefings will be held before Report Stage and I thank the Department for that. They are very important to facilitate members who are trying to do their work properly. The briefings are key to that. Members get answers to all their questions. I thank the team here at the top table. Much effort went into organising this over the last couple of months.

Bill reported with amendments.

Message to Dáil

Chairman: In accordance with Standing Order 87, the following message will be sent to the Dáil:

The Select Committee on Jobs, Enterprise and Innovation has completed its consideration of the Companies Bill 2012 and has made amendments thereto.

The select committee adjourned at 12.10 p.m. until 10.30 a.m. on Thursday, 5 December 2013.