



An Roinn Fiontar,
Trádála agus Fostaíochta
Department of Enterprise,
Trade and Employment

Company Law

Public consultation on proposals
to enhance the Companies Act
2014

8 May 2023

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Deadline and Format of Submission

The Department of Enterprise, Trade and Employment is seeking views on specific proposals to enhance the Companies Act 2014. Submissions from stakeholders and interested parties are requested no later than 5pm on **9th June 2023**.

Submissions in response to the questions posed should be made in written format, where possible using the template provided, marked “Proposals to Enhance the Companies Act 2014” and emailed to:

companylawconsultation@enterprise.gov.ie,

or sent in hardcopy addressed to: Company Law Enforcement and Personal Injuries Policy Unit, Department of Enterprise, Trade and Employment, Earlsfort Centre, Earlsfort Terrace, Lower Hatch Street, Dublin 2, D02 PW01.

In compliance with both the Department of Public Expenditure, NDP Delivery and Reform ‘*Consultation Principles and Guidance*’, and the National Disability Authority ‘*Guidelines on implementing the obligation to meaningfully engage with disabled people in public decision making*’, we will endeavour to accept submissions in alternate forms. For enquiries in this regard, please email companylawconsultation@enterprise.gov.ie or phone 01 631 2695/ 087 1834383.

When making your submission please include the name of the individual, firm or organisation and contact details, and briefly describe your interest in this subject matter.

Responses to the consultation will help inform the work to be undertaken by the Department in the development of company law.

Background

A fit for purpose company law framework is an essential part of doing business in Ireland. It provides business certainty, enables entrepreneurs to take appropriate risks, supports the growth of enterprises, and assists in job creation. The Companies Act 2014 facilitates entrepreneurial activity primarily through the provision of separate corporate legal personality and limited liability, thereby limiting personal exposure to financial risk. In return for these privileges, company law sets down a framework within which:

- companies and their directors are expected to operate;
- reporting and transparency requirements must be complied with;
- protections are afforded to shareholders, creditors and the wider public; and
- sanctions are provided for in respect of certain non-compliance.

Since 2020, the Companies Act 2014 has been amended three times to give effect to Government priorities and commitments in the Programme for Government.

Companies (Miscellaneous Provisions) (Covid 19) Act 2020

From the onset of the COVID-19 pandemic in 2020 the Department of Enterprise, Trade and Employment led on proposed amendments to the Companies Act 2014 intended to support companies mitigate the impact of the pandemic on business. The temporary measures contained in the 2020 Act amended the Companies Act 2014 to address both operational issues arising from the new legislation, and insolvency measures considered necessary to alleviate pressure on company liquidity with a view to protecting viable businesses and preserving employment. The interim period of the Act was extended to 31 December 2023.

The Companies (Rescue Process for Small and Micro Companies) Act 2021

The 2021 Act inserted a new Part 10A into the Companies Act 2014 to provide for a dedicated rescue process for small and micro companies, the “Small Companies Administrative Rescue Process” (SCARP). This new statutory rescue process was designed to make rescue and restructuring more accessible and affordable to fundamentally viable companies experiencing temporary difficulties. These companies now have access to an alternative framework which incorporates key elements of the existing examinership model in an administrative context.

The Companies (Corporate Enforcement Authority) Act 2021

This Act’s primary purpose was to establish the Corporate Enforcement Authority (CEA) as an independent agency to replace and perform the functions of the Director of Corporate Enforcement (ODCE). The new Authority is an agency of the Department of Enterprise, Trade and Employment, as opposed to an office within the Department. This transformation is intended to enhance independence, to build on existing expertise and experience, and to strengthen the State’s capability to meet the challenges faced in investigating and prosecuting alleged breaches of company law.

Scope of Public Consultation and Areas for Reform

The legislative framework provided for by the Companies Act 2014 is regularly reviewed to ensure that the original objectives remain valid and are being achieved, and to consider developments arising from stakeholder engagement, developments in case law and the work of the Company Law Review Group (CLRG). The Department is also committed to ensuring that the authorities established under the Act have the appropriate legislative tools to effectively undertake their statutory functions.

In consideration of the above, the Department has discerned that the scope for reform at this time broadly relates to four distinct areas of company law which are set out in this public consultation. It should be noted that the Department is also developing legislative proposals, separately, to amend employment law and company law to enhance further the protection afforded to employees who find themselves in a collective redundancy situation following insolvency. This legislation will implement key outstanding employment law and company law legislative commitments set out in the 'Plan of Action on Collective Redundancies following Insolvency' which was published in June 2021.

1. Corporate Governance

The Companies (Miscellaneous Provisions) (Covid-19) Act 2020 facilitated the holding of virtual general meetings during the period of the pandemic to enable companies and industrial and provident societies to fulfil their obligations in relation to meetings. These provisions were temporary in nature and time bound, with the Act due to lapse in December 2023. Informed by feedback from stakeholders, the Department considers there may be merit in providing more flexibility for companies by providing, on a permanent basis, for an option, in addition to the option to hold physical and hybrid meetings, to hold fully virtual AGMs and general meetings, and for industrial and provident societies to hold hybrid and fully virtual general meetings.

In addition, some procedural and legislative changes to the 2014 Act that arise primarily from practical problems and anomalies that legal practitioners have encountered in transactional matters such as mergers are proposed.

2. Company Law Enforcement and Supervision

The Department is proposing amendments aimed to enhance the powers of the Corporate Enforcement Authority (CEA), the Irish Auditing and Accounting Supervisory Authority (IAASA) and the Companies Registration Office (CRO), to streamline procedures, deliver administrative efficiencies and strengthen reporting requirements.

3. Company Law Administration

It is proposed to enhance certain administrative processes carried out by the Registrar of Companies to ensure the register is suitably equipped, as well as modernising certain administrative requirements for companies.

4. Corporate Insolvency including the Regulation of Receivers

Amendments are proposed to various insolvency related processes across the Companies Act. The Department intends to deliver on Programme for Government commitments in relation to enhanced regulation of receivers. It also provides for the inclusion of amendments to the “Small Companies Administrative Rescue Process” (SCARP) including technical refinements to improve the operation of the process.

1. Corporate Governance

The Companies (Miscellaneous Provisions) (Covid-19) Act 2020 made temporary amendment to the Companies Act 2014 and the Industrial and Provident Societies Act 1893 to provide for general meetings and creditors' meetings to be held wholly virtually to assist companies and industrial and provident societies to comply with their legal obligations during the COVID-19 pandemic. The temporary provisions of the Act will expire on 31 December 2023 and will cease to have legal effect after this point unless provided for in legislation.

The Department considers there is merit in making permanent the option for companies, in addition to holding physical or hybrid meetings, to hold fully virtual AGMs and general meetings, and the option for industrial and provident societies to hold hybrid and fully virtual meetings.


Such approach is consistent with ensuring Ireland's regulatory framework provides flexibility and is fit for modern business operating in an increasingly digital and virtual environment. Ensuring accountability, transparency and affording adequate opportunity for full engagement is essential at all meetings, whether in virtual, physical or hybrid form. The Department is therefore seeking views on a range of issues in relation to virtual meetings.

This public consultation also creates an opportunity for stakeholders to input into proposals made in response to issues that arise primarily from practical problems and anomalies that legal practitioners have encountered in transactional matters relating in large part to mergers.

Submissions or comments are invited in respect of the proposals listed below:

CORPORATE GOVERNANCE			
Virtual Meetings			
No.	The Department welcomes feedback from stakeholders on the operation of the temporary provisions, not limited to the following questions:	Y/N	Feedback
1	Is the virtual meeting format a fair and effective method for conducting general meetings?		
2	Are the legal entitlements of shareholders, creditors and members adequately protected by the virtual meeting format?		
3	Should the holding of virtual meetings be subject to advance approval from shareholders?		
4	Have any issues of concern arisen with respect to the operation of voting mechanisms in virtual meetings?		

5. Additional comments on the above points.



CORPORATE GOVERNANCE			
Transactional matters			
No.	Section	Proposal	Feedback
6	471	In the case of mergers by absorption, to provide an exemption from the 30-day display and inspection period required by section 471, provided all member(s), (voting and non-voting) of the successor company so consent in writing.	
7	471	To allow a merging company, which does not have audited financial statements for the last year of the preceding three years, to permit unaudited financial statements for that year to be made available for inspection where the resolution to approve the merger is passed in the first six months of the year.	
8	461-494	To provide that Designated Activity Companies (DACs) are no longer required to re-register as a limited private company prior to a domestic merger.	
9	463, 1129	To provide that a group of subsidiary companies, wholly owned by the same parent company taking part in a merger by absorption, be facilitated in one transaction rather than several	

		transactions for private and public companies.	
10	88	<p>It has been recommended that class rights be varied with the consent of 75% of the class – even if those rights were originally entrenched in a Memorandum or Articles of a pre-2014 Act company.</p> <p>Are there any potential issues regarding the property rights of shareholders who may be dissenting from the proposed variation and rely on the supposed non-alterability of the rights?</p>	
11	82	<p>It has been recommended that</p> <ul style="list-style-type: none"> - financial assistance by an Irish subsidiary company of a “parent public company” incorporated in another Member State be prohibited, save to the extent that that laws of that public company’s state of registration permits it; - to the extent possible, that financial assistance of the acquisition of shares in an Irish PLC by a non-Irish subsidiary, is unlawful. 	
12. Additional comments on the above points.			

2. Company Law Enforcement and Supervision

Enhancing our business regulatory environment and Ireland's attractiveness as a place to do business is one of five strategic goals of the Department of Enterprise, Trade and Employment. This is done by ensuring that corporate and regulatory policy and legislation is responsive and reflects international best practice to facilitate entrepreneurship, while also protecting employees, members, creditors and consumers with appropriate safeguards.

Under the Companies Act 2014 a range of independent bodies have important roles in respect of company oversight, supervision, regulation, protection and enforcement. The Department is committed to ensuring that the statutory authorities established under the Act have appropriate legislative tools to effectively undertake their statutory functions.

Such bodies include the Corporate Enforcement Authority (CEA), the Irish Auditing and Accounting Supervisory Authority (IAASA) and the Companies Registration Office (CRO). These bodies provide the framework on which businesses operate and can rely upon to ensure a level playing field for all, and the registration and governance requirements which provide transparency for stakeholders including investors and employees. A well-stocked enforcement toolbox is vital to ensuring the Corporate Enforcement Authority can meet the challenges it faces in its investigation and prosecution of alleged breaches of company law.

On foot of recommendations in the Report of the Hamilton Review Group which was published in December 2020¹, the Advisory Council on Economic Crime and Corruption,

¹ [gov.ie](http://www.gov.ie) - Hamilton Review Group Implementation Plan (www.gov.ie)

and the Economic Crime and Corruption Forum have been established. These initiatives will, in addition to facilitating closer co-operation amongst specialist enforcement and regulatory bodies charged with tackling white-collar crime, result in a national multi-annual strategy for combating economic crime and corruption. An accompanying action plan will be developed for consideration and approval by Government.

Several proposals aimed at enhancing the power of the bodies, streamlining procedures, delivering efficiencies, and strengthening oversight are being considered.

Submissions or comments are invited in respect of the proposals listed below:

COMPANY LAW ENFORCEMENT AND SUPERVISION				
Obligation on Examiners and Interim Examiners				
No.	Section	Proposal	Y/N	Feedback
13	393	Should an obligation be placed on examiners and interim examiners to report to the CEA should they come into possession of information leading them to form the opinion that there are reasonable grounds for believing that the company or an officer or agent of the company has committed a category 1 or 2 offence?		
14	534	Should section 534 be amended to confer a power on the CEA to seek further information from an examiner		

		following receipt of the examiner's report and following completion of an examinership, similar to the obligation on liquidators under section 682?		
15	723	Should the obligation in section 723 on liquidators to report to the CEA where it appears that any past or present officer, or any member of the company has been guilty of an offence in relation to the company, be extended to examiners, interim examiners and process advisers?		
16. Additional comments on the above points.				

COMPANY LAW ENFORCEMENT AND SUPERVISION				
Corporate Enforcement Authority				
17	795	Saving for privileged information		
		<p>Under Part 13 of the Companies Act 2014, an automatic mechanism of court-supervision is engaged in circumstances in which the CEA apprehends that it has come into possession of legal professional privileged material.</p> <p>Section 795 is an important protection for legally professionally privileged material seized during the currency of searches under section 787 of the Companies Act.</p> <p>Consideration is being given to streamlining the processes and timelines within section 795 to ensure that such processes, while vindicating the protection of this right, do not delay the efficient and timely progress of investigation.</p>		
No	Section	Proposal	Y/N	Feedback
17a	795	Should the section 795 procedure relating to legal professional privilege be streamlined?		
17b	795 (7)	To prevent the possible loss/destruction of evidence due to “tipping off”, should applications to the court be on an <i>ex parte</i> basis rather than on notice?		
17c	795 (6)	Should the Court have the power to appoint more than one suitably qualified and independent person to examine the information and prepare a report?		

17d	795(4)	Should the time period within which the CEA can make an application to the court for a determination as to whether the information is privileged legal material be extended from 7 days to 14 days or more?		
No	Section	Proposal	Y/N	Feedback
18	132	Should the CEA be a notice party where a person, being an undischarged bankrupt, makes an application to the court to act as director of a company?		
19	883	Related to the above, should section 883 be amended to provide that a certificate signed by a court registrar stating that no application was made for leave to act as a director while bankrupt is proof, in the absence of evidence to the contrary, that no such application was brought?		
20	216	Should the CEA have access to inspect the directors' and secretaries' registers of disclosable interest and members' registers which are required to be held under section 216 of the Act, without payment of a fee to the company?		
21	393(2)	Under section 393 reporting auditors are required to provide additional		

		<p>information to the CEA. They may grant access or give access to facilities for the taking of copies.</p> <p>To assist in the formulation and compliance with statutory demands under section 393 should the furnishing of attested or stamped copies of extracts from these books and documents as the CEA may require be permitted?</p>		
22	683	<p>To amend section 683 to clarify that the obligation on liquidators under this section endures until the conclusion of proceedings, which includes appeals, unless the Authority has relieved the liquidator of this obligation.</p>		
23	723	<p>To streamline the procedures whereby liquidators report offences committed by officers and members of the company; to provide for simultaneous reporting to the DPP and the CEA.</p> <p>[Feedback on proposals to extend this obligation to process advisers and examiners is also requested]</p>		
24	944Q	<p>To expand the list of competent authorities to which information relating to a company that has been obtained under certain listed sections may be published or</p>		

		disclosed without the consent of the company, if in the opinion of the CEA publication or disclosure is required under specific circumstances. It is proposed to include the Charities Regulator, the Department of Social Protection, the Pensions Authority, the Financial Services and Pensions Ombudsman, the Data Protection Commissioner and the Protected Disclosures Commissioner.		
25	823	To provide that the CEA will receive restriction and disqualification orders directly from an officer of the court at the same time as they are issued to the Registrar.		
26	863	To avoid any undue delays and to ensure the efficient investigation and prosecution of directors that breach relevant orders, to provide that a prescribed officer of the court would send prescribed particulars of any disqualification order, any grant or variation of relief under section 848 or any conviction under section 855(1) or 856 (1) to the CEA, at the same time as they are being sent to the Registrar.		
27		To provide for the introduction of a system of late filing penalties to		

		discourage late filing of certain reports (E3 and E4) by liquidators in relation to meetings to be held at the end of each year and information about the progress of the liquidation.		
28		To provide that an authorised CEA Officer may be permitted to attend interviews alongside members of An Garda Síochána.		
29		To provide for the offences of obstruction and intimidation of CEA officials similar to those provided in Criminal Justice legislation for members of An Garda Síochána and the Criminal Assets Bureau, to prevent attempts to influence or obstruct the course of an investigation.		
30		To extend the Criminal Justice (Surveillance) Act 2009 to the CEA to give the Authority the power to apply to court for permission to conduct covert surveillance where certain offences are being investigated.		
31		To include a provision in the Act that would amend the Communications (Retention of Data) Act 2011 bringing the CEA and company law offences within its scope. This would allow officers of the CEA to apply to an		

		authorising judge for authorisation to require disclosure of data where it relates to a person who it is suspected, on reasonable grounds, has committed certain company law offences.		
32	Powers of Search and Entry			
	<p>Section 787 of the Companies Act governs CEA search warrants and permits entry and search of premises and the seizure of material, including an extended power of seizure.</p> <p>Section 788 makes supplemental provisions on the extended powers of seizure.</p> <p>Proposals are being considered to facilitate the gathering of evidence in a more efficient and targeted manner befitting of digital technologies-</p>			
No	Section	Proposal	Y/N	Feedback
32a	787	To allow an officer to bring onto the premises the subject of the warrant, electronic and other equipment reasonably necessary for the examination of a computer found at the premises, and to allow for the operation of such equipment, (or equipment already on the premises) to examine a computer found at the premises to determine whether it is or contains material information that may be seized under the warrant.		
32b		To allow for the search of remote items such as email addresses and cloud storage		

		<p>devices from locations other than a physical search site.</p> <p>Where devices such as computers or mobile phones have been removed from the site (perhaps by a liquidator or during a previous search operation) and are found to contain links to remote locations such as cloud storage or email accounts, to include a provision whereby investigators could apply to the Court for a separate/distinct warrant to allow the information found in the devices to be used to access data located at remote locations.</p>		
32c		<p>To facilitate an extended power of search, similar to provisions already contained in section 788 for paper/physical documents, but for electronic/remote data.</p> <p>This would allow for a warrant holder to designate another location to be used for the offsite sifting of data and for the data to be secured and sifted using whatever equipment necessary at the new location.</p>		
32d		<p>To provide for a longer period for the conducting of a separation exercise between in and out of scope material from the current</p>		

		period of three months to a longer period of 12 months to reflect large, complex investigations concerning large amounts of material.		
32e		To extend the definition of computer to include mobile devices.		
33. Additional comments on the above points.				

COMPANY LAW ENFORCEMENT AND SUPERVISION				
Irish Auditing and Accounting Supervisory Authority				
No	Section	Proposal	Y/N	Feedback
34		<p>IAASA has responsibility for approving the constitutional documents and byelaws of Prescribed Accountancy Bodies, including but not limited to their investigation and disciplinary procedures and standards. Many of these documents fall outside IAASA's general remit. Additionally, several Prescribed Accountancy Bodies are global bodies, with rules relating to members in many jurisdictions. IAASA's approval therefore can only relate to a very limited set of criteria, as the Authority has neither the expertise nor the capacity to carry out a full legal proofing of such documents.</p> <p>The Authority has and is continuing to issue guidelines related to its areas of regulation which are mandatory for</p>		

		<p>Prescribed Accountancy Bodies and Recognised Accountancy Bodies. This appears to be a more effective method of regulation and it is therefore considered that the requirement for IAASA to approve all constitutional documents could be amended.</p>		
35	934B	<p>To include the possibility of imposing restrictions, other than absolute prohibition, to protect the public where it may be appropriate to issue such lesser sanctions. Situations where it may be appropriate include repeated deficiencies in audit work, serious allegations of fraud or other criminal activity or loss of client money.</p>		
<p>36. Additional comments on the above points.</p>				

COMPANY LAW ENFORCEMENT AND SUPERVISION				
Companies Registration Office				
No	Section	Proposal	Y/N	Feedback
37	363	<p>Should the audit exemption regime for small and micro companies be amended to provide for a two-step graduated regime to deal with late filing, rather than automatic loss of audit exemption for two years?</p> <p>The two-step regime would operate as follows:</p> <p>-On the occasion of the first instance of late filing, filing fees would be incurred and there would be no loss of audit exemption;</p> <p>-If there was a further instance of late filing within the following five- year period, late filing fees would be incurred and the entitlement to audit exemption would be lost for the following two financial years,</p>		

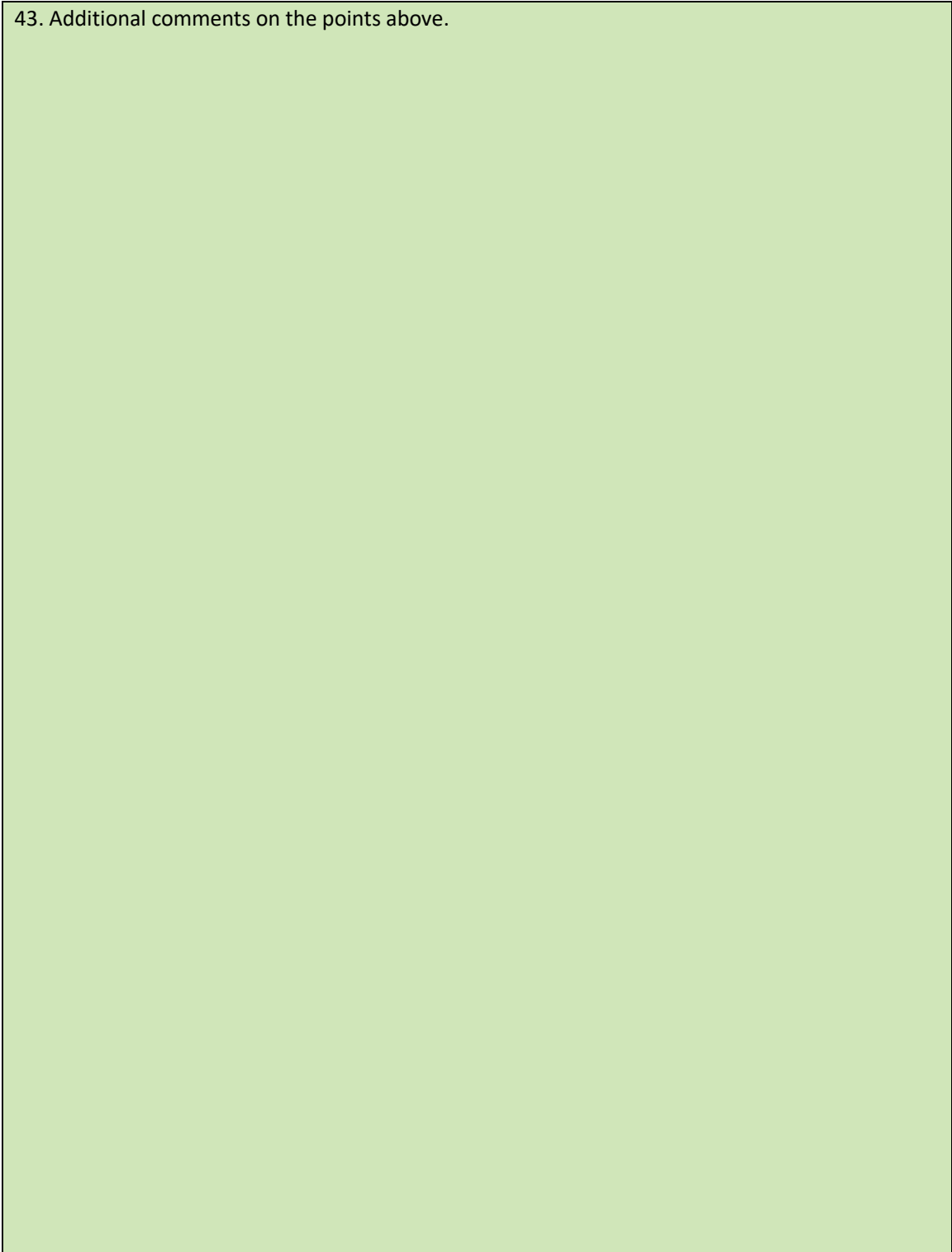
		with the company required to file audited financial statements for these years.		
38	343	To enhance the deterrent effect where failure to deliver an annual return in the prescribed form and containing the prescribed information is an offence, it is proposed to disapply section 1(1) of the Probation of Offenders Act 1907 in prosecutions for non-filing. This amendment would remove the possibility where, in lieu of being convicted of an offence, the Court can instead request that a contribution to a charity be made.		
39	726	To include a provision allowing for the strike-off of a company for failure to file details of a Company Secretary with the Registrar.		
40		To provide additional grounds for involuntary strike-off of companies by permitting the Registrar of Beneficial Ownership to request		

		that the Registrar of Companies strike-off a company for its failure to comply with the obligation to provide a statement detailing the beneficial owners.		
41. Additional comments on the above points.				

COMPANY LAW ENFORCEMENT AND SUPERVISION				
Section 747 – Investigation of company’s affairs by court appointed inspector on application of company etc.				
<p>42. Section 747 of the 2014 Act deals with applications for investigations of a company’s affairs by court appointed inspectors on the application of</p> <ul style="list-style-type: none"> • any of the company, • not less than 10 members of the company, • a member or members holding not less than 10% of the paid-up share capital, • a director of the company or a creditor of the company. <p>Unlike Section 748 which deals with applications by the Corporate Enforcement Authority for the appointment of inspectors to investigate the affairs of a company, section 747 does not set out criteria or scenarios that must be established or satisfied in order for the court to exercise its discretion to appoint an inspector.</p> <p>The court may make an order as it deems fit in relation to matters arising from the report including the winding up of a company.</p> <p>The Department would welcome observations on the below questions.</p>				
No	Section	Proposal	Y/N	Feedback
42a	747	The introduction of threshold criteria, similar to those provided under section 748. For example, in considering whether to appoint inspectors under section 747, the court would have to be satisfied that there are circumstances		

		suggesting suspected fraudulent or unlawful activities or purposes.		
42b		The insertion of a list of mandatory considerations that a court must consider before exercising its discretion to appoint an inspector. For example, this may include public interest and proportionality of the investigation sought, and/or the prospects of recovery of the inspector's expenses.		
42c		Should the power of appointment of inspectors continue to be available where the company is insolvent or is close to insolvency?		
42d	762	Who is the appropriate party to bear the costs of the inspector in the first instance?		

43. Additional comments on the points above.



3. Company Law Administration

The Department proposes amending the Companies Act 2014 to enhance the administrative processes carried out by the Registrar of Companies to ensure that the Register provides transparency and is accurate, up to date, and fit for purpose. Amendments are proposed aimed at modernising certain administrative requirements for companies as recommended by the CLRG in its Report on Company Law Issues Arising Under Directive (EU) 2017/828 of 17 May 2017 (*SRD II*), Central Securities Depositories Regulation (EU) 909/2014 (CSDR) and the Companies Act 2014 .²

Submissions or comments are invited in respect of the proposals listed below:

COMPANY LAW ADMINISTRATION				
Companies Registration Office				
No	Section	Proposal	Y/N	Feedback
44	50	To give the Registrar power to request evidence in support of a company's application to change its registered office address, thereby providing greater assurance as to the accuracy of the Register		

² [2021-12-21-clrg-report-on-public-company-issues.pdf](#)

45	21/22	To give the Registrar power to request additional information in support of a company's application to incorporate in order to satisfy the Registrar that all of the information supplied can be verified as to its accuracy.		
46	50	To allow a Registered Office Agent (ROA) to notify the Registrar that the registered office of a company is no longer in the care of that ROA and to provide documentary proof of the fact. On foot of this a notice shall be sent to the officers of the company requiring notification of the new registered office within 14 days. Failure to comply may result in strike-off proceedings.		
47		To require companies to confirm annually the gender balance of its directors. This is in order to provide more granular data concerning gender at director level to assist in analysis and policy development.		
48. Additional comments on the above points.				



COMPANY LAW ADMINISTRATION				
No	Section	Proposal	Y/N	Feedback
49	1551	Should section 1551(13) of the Companies Act 2014 be amended to permit captive insurers, where applicable, to disclose <i>either</i> on its website <i>or another suitable website</i> which body carries out the functions of the audit committee.		
50. Additional comments on the above point.				

COMPANY LAW ADMINISTRATION				
Recommendations of the Company Law Review Group				
No	Section	Proposal	Y/N	Feedback
51	183	To clarify that for the purpose of voting at general meetings of publicly traded companies, weekends and bank holidays should be excluded from the calculation of days passed. This will afford companies greater flexibility when scheduling AGMs.		
52	1087G	To amend section 1087G with respect to the record date of adjourned general meetings to facilitate the smooth operation of the central securities depository for shareholding and settlement which is associated with the Irish Stock Exchange.		
53	459	To align the treatment and process for listed companies in line with unlisted companies with respect to the unclaimed consideration of dissenting shareholders in a compulsory takeover.		

54	1062	To require that information sought by a PLC or its agent, related to the identity of the final owner of their issued shares should, as a matter of law, be made available within a defined timeframe.		
55	1087D	To amend section 1087D with respect to the special majority and quorum requirements to approve schemes of arrangement for PLCs in the Central Securities Depository settlement system and which better accommodates its intermediated model.		
56. Additional comments on the above points.				

4. Corporate Insolvency including the Regulation of Receivers

The governance and regulation of receivers was considered by the Joint Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach on 18 October 2018. The Joint Committee raised concerns in relation to the regulation and activities of receivers which are broadly summarised below:

- Receivers are not required to have any qualifications,
- There is no supervision of receivers and nobody to complain to about their actions,
- Receivers are not accountable in terms of fees (fees charged must be met by the borrower's assets),
- Receivers are not required to provide information to the company or borrower.

The Joint Committee's concerns were primarily directed to receivers appointed to residential properties and which fall within the remit of the Department of Justice. However, the Department of Enterprise, Trade and Employment undertook to review company law provisions to ensure that corporate receivers are subject to appropriate regulation.

To address the concerns raised by the Joint Committee and deliver on Programme for Government commitments in this area, the Department is considering amending the 2014 Act to align provisions for receivers with the equivalent provisions in the Act in

respect of liquidators and as recommended by the CLRG in its report *“The Regulation of Receivers”*.³

The Department considers there is merit in amending the Act to provide that receivers are subject to minimum qualifications along the lines of the qualification requirements for liquidators as set out in sections 633 and 634 of the 2014 Act.

The Department is also considering introducing provisions to provide that receivers deliver periodical updates to the company to which he or she is appointed and to its preferential creditors in relation to the progress of the receivership.

In terms of section 444 of the 2014 Act and the power of court to fix remuneration of receiver, the Department is also considering setting criteria to which the court shall have regard when fixing a receiver’s remuneration along the lines of the criteria for liquidators.

Such an approach would provide that a receiver has an entitlement to remuneration upon the terms set out in the instrument under which he or she is appointed or otherwise agreed or fixed and such an entitlement may be expressed to be-

- By way of a relevant percentage,
- By reference to time expended in the conduct of the receivership, or
- Otherwise by reference to any method or thing.

³ [report-of-the-company-law-review-group-on-the-regulation-of-receivers.pdf \(clrg.org\)](#)

The Department is also considering setting out provisions in respect of information on receivers' fees.

With regard to the Small Companies Administrative Rescue Process (SCARP), which is a dedicated, expeditious and cost-effective restructuring process for viable small and micro companies the Department is examining proposals to provide that:

- where the process adviser does not make use of the company's existing staff and facilities to assist him/her carry out his/her functions, that the process adviser explains to the court in writing why this was the case in the event the court considers any matter relating to the costs, expenses and remuneration of a process adviser;
- the existing restriction and disqualification regime for directors in respect of insolvent liquidations apply to SCARP.

The Department also considers there is merit in providing for various amendments concerning technical matters to improve the operation of SCARP.

Submissions or comments are invited in respect of the proposals listed below:

CORPORATE INSOLVENCY INCLUDING THE REGULATION OF RECEIVERS				
Recommendations of the Company Law Review Group				
No	Section	Proposal	Y/N	Feedback
57		To provide that receivers deliver periodical updates to the company to which he or she is appointed and to its creditors		

		in relation to progress of the receivership.		
58	430	To provide that receivers must file their final “receivers abstract” form E9 within a 7-day period. As there is now a change proposed to the timeframe in which the E11 must be filed there is a need to ensure that the filing of the final E9 form coincides with the filing of the Form E11, as in practice both forms are filed together.		
59	430 & 441	To provide that receivers shall provide information on fees sufficient so that the overall structure and amount of fees are substantiated and that their apportionment between assets realised is explained.		
60	444	To set out the criteria to which the court shall have regard when fixing a receiver’s remuneration, along the lines of the criteria for liquidators.		
61	436	To provide that certain information be included in the notice to the Registrar of the receiver’s appointment, the assets over which they are appointed and information on future trading by the company.		
62		To provide that within a 7-day period, the receiver must file a notice advising the Registrar that they have ceased to act		

		and file the final Receiver’s Abstract to the Register.		
63	216	Under section 216 creditors of a company can access without charge the copies of instruments creating charges. What is the effectiveness of the operation of this process during a receivership?		
64. Additional comments on the above points.				

CORPORATE INSOLVENCY INCLUDING THE REGULATION OF RECEIVERS				
Small Companies Administrative Rescue Process (SCARP)				
No	Section	Proposal	Y/N	Feedback
65		The focus of SCARP is on company survival. Should the process adviser be subject to the same reporting requirements to the CEA as a liquidator? See 66 below.		
66		The focus of SCARP is on company survival. Should the existing restriction and disqualification regime for directors in respect of insolvent liquidations be extended to apply to SCARP? What impact might such an amendment have on the take up or operation of SCARP? See 65 above		
67	558ZY	To provide that where the process adviser does not make use of the company's existing staff and facilities to assist him/her carry out his/her functions, that the process adviser explains to the court in writing why this was the case in the event the court considers any matter		

		relating to the costs, expenses and remuneration of a process adviser.		
68	Various	Technical matters to improve the operation of SCARP.		
69. Additional comments on the above points.				

Freedom of Information and GDPR

Freedom of Information Act 2014 and Publication of Submissions

The Department may publish on its website all submissions received under this consultation. Your attention is also drawn to the fact that information provided by you in submissions is subject to release by the Department under the Freedom of Information Act 2014. In responding to this public consultation, all individuals and organisations should clearly indicate where their submission contains **personal information, commercially sensitive information and/or confidential information** which they would not wish to be made **publicly available** by being published on the Department's website or released by the Department pursuant to the receipt of an FOI Request under the Freedom of Information Act 2014. **It is also important to note that your name and address and other details such as your representative organisation or any other information that you provide in your submission may be published on the Department's website unless you specifically request that such details are redacted or removed.**

General Data Protection Regulation (GDPR) and Data Protection Acts 1988 - 2018

The Department of Enterprise, Trade and Employment is subject to the provisions of the GDPR and Data Protection Acts 1988 to 2018. In this context, the Department will treat all personal information which you provide in submissions as part of this public consultation process with the highest standards of security in line with our data protection compliance requirements.

For further information you can read the Department's [Data Protection Privacy Notice](#) which is also available on our website and explains how and when we collect

personal data, why we do so and how we treat this information. It also explains your rights in relation to the collection of your personal information and how you can exercise your rights under data protection laws.