



Údarás um Fhorfheidhmiú Corparáideach
Corporate Enforcement Authority

PRESS STATEMENT

FOR IMMEDIATE RELEASE

CEA WELCOMES PROPOSALS TO GRANT NEW POWERS AND CREATE NEW OFFENCES OF OBSTRUCTION AND INTIMIDATION

The Corporate Enforcement Authority (CEA) has welcomed the publication of proposals for the introduction of new powers and offences under the Companies Act 2014.

Commenting on the publication of the General Scheme of the Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024, Chief Executive Officer, Ian Drennan, said:

'The General Scheme sets out Government's proposals for significant amendments to the Companies Act 2014. Amongst the measures being proposed are the conferral of new powers of investigation on the CEA in the area of information and evidence gathering, including new surveillance powers. The General Scheme also proposes to enhance information sharing across investigative and regulatory agencies.

These measures will, if enacted as proposed, further enhance the CEA's capacity to investigate suspected breaches of company law. The proposals also seek to streamline the court process for dealing with the availability to investigators of evidential material over which claims of legal professional privilege are being asserted.

The proposals clarify that liquidators' obligations extend to defending any appeals against restriction Orders imposed by the High Court as a consequence of company directors' behaviour in managing the affairs of insolvent companies. This is an important public protection measure in ensuring directors' accountability for their stewardship of companies.

Particularly welcome are the proposals to create two new criminal offences relating to interaction with CEA officers. The first proposal is to make it an offence to obstruct or impede an officer of the CEA, while the second would result in anyone who threatens, intimidates, or menaces a CEA officer, or members of their families, being guilty of a criminal offence punishable by up to 10 years imprisonment if convicted on indictment. These proposals send out the very clear signal that obstructing or threatening a CEA officer will not be tolerated and that anyone who does so risks facing a lengthy term of imprisonment.

The CEA looks forward to engaging with Minister Calleary and his officials, and with parliamentarians, as the Bill makes its way through the Oireachtas.'

ENDS/

**CORPORATE ENFORCEMENT AUTHORITY
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NOTE FOR EDITORS

Corporate Enforcement Authority (CEA)

The CEA is Ireland's company law enforcement agency. The CEA's functions include to:

- encourage compliance with the Companies Act 2014,
- investigate instances of suspected breaches of the Companies Act 2014,
- take appropriate enforcement action in response to identified breaches of company law,
- supervise the activities of liquidators of insolvent companies, and
- operate a regime of restriction and disqualification in respect of directors of insolvent companies.

The CEA discharges its mandate to encourage compliance with company law through a range of activities, including developing and publishing accessible guidance materials and through its outreach activities.

The CEA's enforcement remit is both civil and criminal in nature and, in discharging that mandate, the CEA has at its disposal an extensive suite of statutory powers including:

- the power to require the production of documents, including electronic documents, by companies and relevant third parties,
- powers of search and seizure,
- the power of arrest, i.e., by CEA officers who are seconded members of An Garda Síochána, and
- powers to request the courts to order certain additional investigative measures.

The CEA is a multi-disciplinary agency whose staff complement includes, amongst others, accounting and legal professionals, seconded members of An Garda Síochána, and digital forensics experts.

General Scheme of the Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024 - proposals relating to the CEA

The General Scheme includes a number of proposals the effect of which would, if enacted, impact the CEA. Those proposals include:

Information gathering

1. amendment to the powers available to the CEA to seek additional information from auditors following receipt of an indictable offence report – the purpose of which is to simplify, and create efficiencies in, the gathering of such information¹,
2. amendments for the purpose of ensuring that the CEA has ready access to court Orders relating to the restriction and disqualification of directors²,
3. a provision whereby the CEA would be notified of any court application for the purpose of seeking relief from a restriction or disqualification and provided with attested copies of court Orders in proceedings to which it is not a party. This proposal would enhance efficiencies in investigating alleged breaches of restrictions and disqualifications³,
4. proposals to expand the cohort of statutory bodies that are permitted to disclose information to the CEA under specified circumstances^{4 5},

Information sharing

5. proposals to expand the cohort of statutory bodies with which the CEA can, under specified circumstances, share otherwise confidential information^{6 7},

Surveillance powers

6. amending the Criminal Justice (Surveillance) Act 2009 to allow the CEA to exercise surveillance functions in certain circumstances, extending this power to the CEA in line with Government policy for other similar enforcement bodies in the State (including An Garda Síochána, the Revenue Commissioners, and the Competition and Consumer Protection Commission. Conferral of these powers would permit authorised CEA officers to monitor, observe, listen to, or make recordings of persons or their movements, activities, or communications in the context of company directors, or company

¹ Head 21.

² Heads 63 and 65.

³ Head 64.

⁴ Head 74.

⁵ The additional statutory bodies listed are the Registrar of Beneficial Ownership, the Charities Regulator, the Minister for Social Protection, the Pensions Authority, the Financial Services and Pensions Ombudsman, the Data Protection Commission, and the Protected Disclosures Commission.

⁶ Head 61.

⁷ The additional statutory bodies listed are the Registrar of Friendly Societies, the Registrar of Beneficial Ownership, the Insolvency Service of Ireland, the Charities Regulator, the Pensions Authority, the Financial Services and Pensions Ombudsman, the Data Protection Commission, the Protected Disclosures Commission, and the Competition and Consumer Protection Commission.

staff, meeting or discussing criminal activities/conspiracies at locations separate to company offices^{8 9},

7. amending the Criminal Justice (Retention of Data) Act 2011 to enable certain CEA officers to seek data¹⁰ relating to certain company law offences and to align its powers with those of other enforcement agencies like the Competition and Consumer Protection Commission¹¹,

Obstruction/intimidation of CEA officers

8. the creation of a new offence under which a person who delays, obstructs, impedes, interferes with, or resists CEA staff (including seconded members of An Garda Síochána) in the performance of their functions under the Companies Act 2014 shall be guilty of an offence. Under the proposal, such an offence would, upon conviction on indictment, carry a maximum term of imprisonment of 3 years¹²,
9. the creation of a new offence under which a person who utters or sends threats to or, in any way, intimidates or menaces a CEA officer (or any member of the family or civil partner of a CEA officer) shall be guilty of an offence. Under the proposal, such an offence would, upon conviction on indictment, carry a maximum term of imprisonment of 10 years¹³.

As per the Explanatory Note accompanying the General Scheme, '*The intention of Heads 75 and 76 is to criminalise actions...to deter intimidation of a staff member of the CEA from completing the performance of their functions to the fullest extent for fear that there may be consequences for him or her*'.¹⁴

Legal professional privilege

10. amendments to the CEA's current obligations to apply to the High Court where seized material (e.g., under warrant) is apprehended to include legally privileged material. The amendments proposed include providing:
 - the CEA with an expanded timeframe (14 as opposed to the current 7 days) to make such applications, and
 - that such applications will be made on an *ex parte* basis (as opposed to on notice)¹⁵,

⁸ Head 85.

⁹ It is intended that the Authority's surveillance powers would be limited to apply only to Category 1 and Category 2 offences as provided for by section 871 of the Companies Act 2014.

¹⁰ Section 1 of the 2011 Act defines data as "*data" means traffic data or location data and the related data necessary to identify the subscriber or user*".

¹¹ Head 86.

¹² Head 75.

¹³ Head 76.

¹⁴ Page 108.

¹⁵ Head 62.

Right of appearance and to be heard in court

11. providing the CEA with the right to appear and be heard in any court application by an undischarged bankrupt for leave (i.e., permission) to take part in the promotion, formation, or management of a company where, by virtue of being an undischarged bankrupt, they are otherwise prohibited from doing so¹⁶,

Process advisors' and liquidators' obligations to report to the CEA

12. amending the current requirement that, where it appears to a process advisor (i.e., in the SCARP¹⁷ process) that a past or present officer or member of the company has been guilty of an offence, the process advisor's report to the CEA must be submitted forthwith¹⁸. A similar proposed amendment is included in Head 53, which relates to liquidators,

Liquidators' reports and subsequent court proceedings

13. in the context of liquidators' reporting obligations to the CEA, amendment providing that a liquidator's obligations extend to defending any appeal(s) against restriction¹⁹.

General Scheme of the Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024 – other proposals

Other proposals contained with the General Scheme include:

14. proposals relating to the repeal of certain interim, Covid-19 related provisions and the re-enactment of same on a permanent basis, including in relation to the holding of companies' general meetings²⁰,
15. a proposal that section 1(1) of the Probation of Offenders Act 1907 would not apply to an offence where a company fails to file an annual return²¹,
16. the proposed amendment of the rules applying to small companies relating to loss of audit exemption for failing to file annual returns²²,
17. provisions relating to receivers, which derive from the CLRG's²³ *Report on the Regulation of Receivers*²⁴,
18. proposed amendments relating to SCARP²⁵, and

¹⁶ Head 7.

¹⁷ Small Company Administrative Rescue Process.

¹⁸ Head 43.

¹⁹ Head 50.

²⁰ Multiple Heads. Regarding Head 8, the Covid-19 'interim period' has been extended to 31 December 2024.

²¹ Head 19.

²² Head 20.

²³ Company Law Review Group.

²⁴ Multiple Heads.

²⁵ Multiple Heads.

19. a proposal to introduce new grounds for the involuntary strike-off of a company by the Registrar of Companies, namely, on the grounds of:

- failure to deliver notice of change of the situation of the company's registered office²⁶,
- there being no current company secretary of the company recorded in the Companies Registration Office²⁷, and
- failure to notify the Registrar of Beneficial Ownership of certain information in relation to the beneficial owner of a company²⁸ (it is proposed that these new grounds would not give rise to consequential disqualification)²⁹.

The General Scheme

The text of the General Scheme is available [here](#).

²⁶ Head 55.

²⁷ Head 55.

²⁸ Heads 54 and 55.

²⁹ Head 57.