Summary of Regulatory Impact Analysis (RIA)

Department/Office: **Department of Jobs Enterprise and Innovation**	**Title of Legislation:** **Companies (Accounting) Bill 2015**
Stage: Heads of Bill	**Date:** **July 2016**

Related Publications:

Directive 2013/34/EU (on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings) :
http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0034&from=EN

European Commission Impact Assessment (SEC(2011) 1289 final):
http://ec.europa.eu/internal_market/accounting/docs/sme_accounting/review_directives/SEC_2011_1289_2_en.pdf

Country-by-country reporting – Report on findings in relation to the administrative cost of two policy options (European Financial Reporting Advisory Group):
http://www.efrag.org/files/EFRAG%20public%20letters/Country-by-country%20reporting%20-%20EFRAG%20secretariat%20report%20on%20findings.pdf

Summary Report of the responses received to the Commission's Consultation on Country-by-Country Reporting by Multinational Companies
http://ec.europa.eu/internal_market/consultations/docs/2010/financial-reporting/consultation_summary_en.pdf

Available to view or download at:

http://www.djei.ie/

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What are the policy objectives being pursued?

To implement certain provisions of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC. The provisions in question are additional to those addressed in a Regulatory Impact Assessment of February 2015, the most notable being the imposition on large companies and public interest entities, active in the extractive industries or in the logging of primary forests, of a requirement to prepare a report on payments to governments each year, to be filed with the Registrar of Companies.

What policy options have been considered?

1. Do nothing.

2. Transpose Directive 2013/34/EU by amending the Companies Act 2014

Preferred Option:

The "Do Nothing" option is not viable as pursuing it would constitute a breach of Ireland's Treaty obligations and would give rise to infringement proceedings and significant penalties for not transposing the EU Directive.

The preferred option is therefore to transpose Directive 2013/34/EU and amend the Companies Act 2014 as necessary.

POLICY OPTIONS			
	COSTS	**BENEFITS**	**IMPACTS**
Policy option 1	Cost to Exchequer The virtual certainty of infringement proceedings resulting in significant and recurring penalties.		Impact on companies Companies within the intended scope would not have to comply with the relevant requirements of the Directive.
Policy option 2	Cost to Exchequer No significant cost to Exchequer.	Benefit to Exchequer The avoidance of the penalties that would certainly result from a failure to transpose Directive 2013/34/EU.	Impact on companies Companies within the scope would incur the cost of complying with the relevant transposed provisions of the Directive.

2. Description of Policy context and objectives

Introduction

The primary policy objective of EU Directive 2013/34/EU (on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings) is the reduction of administrative burdens on small companies, notably by limiting the ability of Member States to require disclosures in the notes to the financial statements of such companies. The effect of this was addressed in a Regulatory Impact Assessment of February 2015. Government approval for the drafting of a Bill relating to these matters was given on 24 February 2015.

The present Regulatory Impact Analysis relates to a second tranche of Heads of Bill, Government approval for the drafting of which was given on 23 June 2015. The Heads in question, Heads 53 to 118, relate mainly to measures which it had originally been intended to implement by means of Ministerial Regulations to be made under section 3 of the European Communities Act 1972. Heads 103 to 118 relate to amendments of the Companies Act 2014 the need for which became apparent from experience in implementing that Act.

Report on Payments to Governments

A second significant policy objective of EU Directive 2013/34/EU is the bringing about of increased transparency on the part of multinational companies active in the extractive industries or in the exploitation of "primary" forests i.e. natural, uncultivated forests. The transparency in question relates to payments made to governments arising from those activities.

Chapter 10 of Directive 2013/34/EU, Report on Payments to Governments, contains provisions on reports on payments to governments by certain companies active in the extractive industries and in the logging of primary forests. These provisions are totally new; the reports in question do not form part of the financial statements (accounts) and are not subject to audit. The subject matter of Chapter 10 is frequently referred to as "country-by-country reporting" (CBCR).

Chapter 10 is relatively self-contained and, as it does not contain any Member State options, it had been intended to transpose it by means of Regulations to be made under section 3 of the European Communities Act 1972. Parliamentary Counsel advised that it would be preferable to include it in the primary legislation.

This is addressed in greater detail in section A below.

Application of Financial Reporting and Filing Requirements to certain Unlimited Companies

Directive 2013/34/EU applies primarily to limited companies but it can also apply to unlimited companies where such companies are used to carry on a business but the ownership structure is such that the ultimate beneficial owners enjoy de facto limited liability. If the scope of the Directive did not extend to such unlimited companies they would otherwise not have to file statutory financial statements and a directors' report (where applicable) with the Registrar of Companies. There was an equivalent provision in the previous Directive but it was susceptible to avoidance; the new Directive aims to rectify this and the Heads of Bill contain a measure (Head 53) intended to give full effect to the measure. This will involve only a negligible cost to the unlimited companies involved, though their owners may have incurred significant costs in putting in place the structures that enabled them to avoid filing statutory financial statements without being personally exposed to liability for the debts of the unlimited companies.

This is addressed in greater detail in section B below.

Other

Apart from the two significant measures described above, the second tranche of Heads is comprised mainly of changes consequent on the transposition of the Directive, such as the replacement of references to the previous Directive and changes in cross-references to sections. It was originally intended to implement most of these by means of Regulations.

There are also a number of amendments of the Companies Act 2014 to provide for issues that have been identified during the preparations for the commencement of that Act. That Act was commenced on 1 June 2015 and, so far, the implementation has been largely without difficulty. However, some inconsistencies have become apparent, in addition to which the Companies Registration Office, the Office of the Director of Corporate Enforcement, the Irish Auditing and Accounting Supervisory Authority and legal practitioners have identified a few practical implications that were not intended. These are addressed in Heads 103 to 118.

3. Identification and Description of Options

Option 1: Do nothing.

As Directive 2013/34/EU must be transposed into national law the "Do nothing" option is not a viable option.

Option 2: Transpose Directive 2013/34/EU

The transposition of the elements of Directive 2013/34/EU addressed by this Regulatory Impact Analysis will involve the insertion of a new Part into Volume I of the Companies Act 2014, imposing on large companies and public interest entities active in the extractive industries or in the logging of primary forests, a requirement to prepare a report on payments to governments each year, to be filed with the Registrar of Companies. It will also require the inclusion within the scope of the transposed provisions of the Directive of certain unlimited companies that were previously outside the scope of the transposed provisions of Directive 78/660/EEC. In addition, it will require a number of ancillary amendments of the Companies Act 2014.

4. Analysis of Costs, Benefits and Impacts of Options

Option 1: Do nothing.

Costs

Failure to transpose any non-optional element of Directive 2013/34/EU would inevitably result in the instigation of infringement proceedings against the State by the European Commission, which would almost certainly result in the imposition of significant financial penalties.

This option is not recommended.

Option 2: Transpose all aspects of Directive 2013/34/EU

Costs

On the basis of a European Commission estimate, reporting payments to governments is likely to give rise to costs in the order of 0.01% of the annual revenues of the companies involved. Costs of filing statutory financial statements of certain unlimited companies will be negligible.

Benefits

Reporting payments to governments will result in increased transparency, which is expected to benefit the citizens of resource-rich developing countries.

Creditors and potential creditors of certain unlimited companies will benefit from access to the statutory financial statements of those companies.

The State will not be exposed to the infringement proceedings and penalties that failure to transpose the relevant provisions of the Directive would give rise to.

Impacts

National competitiveness: Reporting payments to governments could give rise to some competitive disadvantage vis-à-vis US companies; the US has yet to finalise its equivalent provisions.

The socially excluded and vulnerable groups: No impact.

The environment: No impact.

Significant policy change in an economic market, including consumer and competition impacts: The requirement to report payments to governments represents a significant policy change for the sectors involved.

The rights of citizens: No impact identified.

Compliance Burdens: Reporting payments to governments will give rise to preparation costs for companies involved.

North-South and East-West Relations: No impact.

Enforcement, Compliance and Review

Provisions will be required to ensure enforcement of and compliance with the reporting payments to governments provisions.

A.1 Report on Payments to Governments

Chapter 10: Report on Payments to Governments
What are the policy objectives being pursued? To implement the provisions of Chapter 10, Report on Payments to Governments, of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC. **What policy options have been considered?** 1. Do nothing. 2. Transpose the provisions of Chapter 10 of Directive 2013/34/EU by inserting a new Part into Volume I of the Companies Act 2014, imposing on large companies and on companies that are public interest entities (as defined) and which are active in the extractive industries or in the logging of primary (i.e. uncultivated) forests, a requirement to prepare a report on payments to governments each year, to be filed with the Registrar of Companies. Preferred Option: The "Do Nothing" option is not viable as pursuing it would constitute a breach of Ireland's Treaty obligations and would give rise to infringement proceedings and significant penalties for not transposing a significant element of the EU Directive. The preferred option is therefore to transpose Chapter 10 of Directive 2013/34/EU and amend the Companies Act 2014 as necessary.

POLICY OPTIONS			
	COSTS	**BENEFITS**	**IMPACTS**
Policy option 1	Cost to Exchequer The virtual certainty of infringement proceedings resulting in significant and recurring penalties.		Impact on companies Companies within the intended scope would not have to incur the cost of preparing such reports.
Policy option 2	Cost to Exchequer No significant cost to Exchequer.	Benefit to Exchequer The avoidance of the penalties that would certainly result from a failure to transpose Directive 2013/34/EU.	Impact on companies Companies within the scope would incur the cost of preparing such reports.

A.2 Description of Policy context and objectives

Chapter 10 of Directive 2013/34/EU contains provisions on reports on payments to governments by certain companies active in the extractive industries and in the logging of primary forests. These provisions are totally new; the reports in question do not form part of the financial statements (accounts) and are not subject to audit.

The provisions of Chapter 10 are self-contained, except to the extent that they are subject to the definitions applicable to the Directive as a whole (though not all of these are relevant). Recitals (44) to (53) of the preamble to Directive 2013/34/EU relate specifically to Chapter 10. As Chapter 10 does not contain any Member State options, it had been intended to transpose it by means of Regulations to be made under section 3 of the European Communities Act 1972. Parliamentary Counsel advised that it would be preferable to include it in the primary legislation.

The motivation for the introduction, at EU level, of the provisions now contained in Chapter 10 of Directive 2013/34/EU rests on the perception that countries rich in natural resources, particularly countries in Africa, have tended not to perform as well economically as countries without such resources and that the wealth generated from the exploitation of such resources has not benefited the populations of those countries. This phenomenon is known as the “resource curse”. While the resource curse can be attributed to a number of causes, some of a purely economic nature, there is

a view that countries that suffer from it tend to be ones with poor governance, low levels of transparency and accountability and high levels of corruption.

It was considered that multinational companies active in the extractive industries in resource-rich developing countries should be required to report publically on payments made to the relevant governments and that this would result in those governments becoming more accountable to their own populations.

The European Commission's proposal for a Directive and the provisions of Chapter 10 of the finalised Directive are not confined to the activities of multinationals and apply as much to activities within the Member States of the EEA (including Ireland) as they do to activities in developing countries.

A large company or a public interest entity that is active in the extractive industries or in the logging of primary forests must prepare and make available to the public an annual report on specified payments to governments. The report must be filed with the Registrar of Companies each year.

Whether a company is a large company or a public interest entity is determined by definitions applicable to Directive 2010/34/EU as a whole. A large company is one which exceeds two or more of the thresholds: balance sheet total €20 million, net turnover €40 million and average number of employees 250. A public interest entity is a company, whatever its size, the securities of which are admitted to trading on a regulated market within the EEA (e.g. the Main Securities Market of the Irish Stock Exchange, but not the Enterprise Securities Market); in addition, a bank or insurance undertaking is a public interest entity whether or not its securities are admitted to trading on a regulated market. Member States may also designate public interest entities. It is proposed to apply this designation to the companies listed in Schedule 5 to the Companies Act 2014 (mainly regulated financial service providers).

The extractive industries are defined in Chapter 10 of Directive 2013/34/EU. The definition is quite wide and extends to activities such as quarrying, the extraction of sand and gravel and the harvesting of peat.

A "primary forest" is a forest of native species, where there is no clearly visible indication of human activities and the ecological processes are not significantly disturbed[1].

[1] Footnote 2 to Recital (44) of the preamble to Directive 2013/34/EU.

“Government” includes local and regional government.

For the purposes of Chapter 10 of Directive 2013/34/EU, “payments” are amounts paid, in money or in kind, in respect of the following:

- Production entitlements
- Taxes levied on the income, production or profits of companies (excluding taxes levied on consumption, such as VAT, personal income taxes or sales taxes)
- Royalties
- Dividends
- Signature, discovery and production bonuses
- License fees, rental fees, entry fees, and other considerations for licenses and/or concessions
- Payments for infrastructure improvements

Any payment, whether made as a single payment or a series of related payments, need not be disclosed if it does not exceed €100,000 within a financial year. Payments disclosed are to reflect the substance, rather than the form, of the payment or activity concerned. Payments and activities are not to be artificially split or aggregated to avoid the disclosure requirements.

The payment report is to include the following in relation to the relevant financial year:

- The total amount of payments made to each government
- The total amount by type of payment, as listed above, made to each government
- Where payments have been attributed to a specific project, the total amount of each type of payment for each project as well as the total amount of payments for each project

Where a parent company that is a large company or a public interest entity is required by Directive 2013/34/EU to prepare consolidated financial statements and it or any of its subsidiaries are active in the extractive industries or in the logging of primary forests, it must prepare the report of payments to governments on a consolidated basis. Where a consolidated report is prepared, the subsidiaries are not required to report separately.

European Commission Impact Assessment

The European Commission conducted a public consultation on country-by-country reporting by multinational companies between 26 October 2010 and 9 January 2011[2](the original deadline of 22 December 2010 was extended), to which it received 73 responses, almost half of which were from Germany and the UK and none were from Ireland.

An explicit assumption underlying the consultation document was that any country-by-country disclosures would relate to activities in third countries, i.e. outside the EEA. The consultation document suggested two approaches, one being the disclosure of comprehensive financial information on a country-by-country basis by multinational companies in general, the other being the disclosure of payments to governments by multinational companies active in the extractive industries (minerals, oil, and gas) in third countries. There was no mention of forests or logging in the consultation document.

The distribution of the responses was:

Preparers (27% industrial associations)	59%
Users (18% NGOs)	23%
Public authorities	7%
Auditors and accountants	7%
Other	4%
	100%

Responses tended to reflect the perspectives of the respondents, with preparers, accountants and auditors being generally opposed to country-by-country reporting while users and others were broadly in favour. However, of the preparers, it seems that those active in the extractive industries were more positively disposed.

A response from a number of the users to a general request for further comments was that the scope of country-by-country reporting should not be limited to multinational corporations operating

[2] http://ec.europa.eu/internal_market/consultations/docs/2010/financial-reporting/consultation_document_en.pdf

in third countries, but should also include those operating within the EU and EEA. The European Commission's summary report[3] of the responses received makes no mention of forests or logging.

The European Commission produced an Impact Assessment (SEC(2011) 1289 final)[4] which was issued in October 2011. It seems that, in the intervening period, the European Commission had bilateral meetings with the 50 stakeholders listed in Annex 7 to the document (pages 50 and 51).

Paragraph 7.1.4, "Increased administrative costs", of the European Commission Impact Assessment (pages 36 to 38) provides an estimate of the total costs, at an EEA level, of its preferred option. This is supplemented by data in Annexes 8 and 9 (pages 52 to 56). The preferred option was, in broad terms, in line with the eventual content of Chapter 10 of Directive 2013/34/EU though, at that stage, it appears that it was still intended to apply to activities in third countries only. The estimated costs may be summarised as follows[5]:

	Number of Companies	**Year one cost**	**Set-up cost**	**Annual cost**
		€ million	€ million	€ million
Listed (extractive)	171	740	548	192
Large unlisted (extractive)	419	397	294	103
Listed and large unlisted (forestry)	26	8	6	2
Total	616	1,145	848	297

The above is based on an extrapolation from information provided by four listed multinational corporations (MNCs) to the European Financial Reporting Advisory Group (EFRAG) on a confidential basis[6]. The companies in question, which were selected by the European Commission, operated in the extractive sector (oil, gas and minerals) and each had prepared country reports under the Extractive Industries Transparency Initiative (EITI)[7] or had otherwise voluntarily disclosed some country-by-country information. In this context "listed" means having securities admitted to trading on an EEA regulated market.

[3] http://ec.europa.eu/internal_market/consultations/docs/2010/financial-reporting/consultation_summary_en.pdf

[4] http://ec.europa.eu/internal_market/accounting/docs/sme_accounting/review_directives/SEC_2011_1289_2_en.pdf

[5] Based on Table 3: Administrative costs of proposed policy (page 38).

[6] http://www.efrag.org/files/EFRAG%20public%20letters/Country-by-country%20reporting%20-%20EFRAG%20secretariat%20report%20on%20findings.pdf

[7] The EITI is adopted voluntarily by governments which apply it to companies operating in their jurisdictions. The resulting information tends to be published in aggregate, rather than on company-by-company basis.

The European Securities and Markets Authority (ESMA) identified 171 extractive companies listed in the EU as at 30 September 2010. The European Commission derived the amounts shown above for the listed companies by extrapolation from the information obtained from the MNCs, with a downward adjustment to exclude costs incurred by 17 companies that are also subject to US requirements, on the assumption that the EU requirements would entail no additional cost to them. The amounts before and after the downward adjustment were:

	€ million	€ million
Set-up costs	672	548
Recurring costs	236	192
Year one cost	908	740

According to the European Commission[8], the €908 million "year one" cost represented 0.05% of the annual revenues of the 171 listed companies. On that basis, the estimated recurring costs of €236 million would be in the order of 0.01% of annual revenues.

The amounts shown above for the large unlisted companies were derived by applying the same extrapolation methodology to data drawn from national company registries. The European Commission estimated that there were 419 large unlisted companies in the extractive sector that were not part of listed groups.

A.3 Identification and Description of Policy Options

Option 1: Do nothing.

As Chapter 10 of Directive 2013/34/EU must be transposed into national law the "Do nothing" option is not a viable option.

Option 2: Transpose Chapter 10 of Directive 2013/34/EU

The transposition of Chapter 10 of Directive 2013/34/EU will involve the insertion of an additional Part into Volume I of the Companies Act 2014.

[8] European Commission Impact Assessment, page 36.

A.4 Analysis of Costs, Benefits and Impacts of Options

Option 1: Do nothing.

Costs

Failure to transpose Chapter 10 of Directive 2013/34/EU would inevitably result in the instigation of infringement proceedings against the State by the European Commission, which would almost certainly result in the imposition of significant financial penalties.

This option is not recommended.

Option 2: Transpose Chapter 10 of Directive 2013/34/EU

Costs

On the basis of the European Commission's estimate as referred to above, costs in the first year represent 0.05% of annual revenues of the companies with recurring costs of in the order of 0.01% of annual revenues.

Benefits

Increased transparency in the area of payments to governments by companies active in the extractive industries and in the logging of primary forests.

The State will not be exposed to the infringement proceedings and penalties that failure to transpose the Directive would give rise to.

Impacts

The people of resource-rich developing countries may be expected to benefit from improved transparency and better governance in their countries.

National competitiveness: Possible competitive disadvantage vis-à-vis US companies; the US has yet to implement equivalent provisions.

The socially excluded and vulnerable groups: No impact in Ireland. Possible benefits to such groups in developing countries.

The environment: No impact.

Significant policy change in an economic market, including consumer and competition impacts: The requirement to report payments to governments represents a significant policy change for the sectors involved.

The rights of citizens: No impact identified.

Compliance Burdens: Will give rise to preparation costs for companies involved.

North-South and East-West Relations: No impact.

Enforcement, Compliance and Review

Article 51 of Directive 2013/34/EU requires Member States to provide for penalties for infringement of the transposed provisions of the Directive; these provisions extend to Chapter 10 "Report on Payments to Governments". It is proposed that a failure to file a payment report with the Registrar of Companies where one is required will be an offence.

B.1 Filing of the Financial Statements of certain Unlimited Companies with the Registrar of Companies

Article 1(1)(b) Inclusion of unlimited companies in the scope of Directive 2013/34/EU in certain circumstances
What are the policy objectives being pursued? To implement the provisions of paragraph (1)(b) of Article 1 (Scope), as informed by Recital (6), of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC. The paragraph extends the scope of the Directive to unlimited companies in certain circumstances.

What policy options have been considered?

1. Do nothing.

2. Transpose the provisions of Article 1(1)(b) of Directive 2013/34/EU by applying the scope of the transposed provisions of the Directive to unlimited companies in the circumstances required by the Directive.

Preferred Option:

The "Do Nothing" option is not viable as pursuing it would constitute a breach of Ireland's Treaty obligations and would give rise to infringement proceedings and significant penalties for not transposing a significant element of the EU Directive.

The preferred option is therefore to transpose the provisions of Article 1(1)(b) of Directive 2013/34/EU in a fully effective manner and amend the Companies Act 2014 as necessary.

POLICY OPTIONS			
	COSTS	**BENEFITS**	**IMPACTS**
Policy option 1	Cost to Exchequer The virtual certainty of infringement proceedings resulting in significant and recurring penalties.		Impact on companies Unlimited companies within the intended scope of Article 1(1)(b) would not have to file financial statements with the Registrar of Companies.
Policy option 2	Cost to Exchequer No cost to Exchequer.	Benefit to Exchequer The avoidance of the penalties that would certainly result from a failure to transpose Directive 2013/34/EU.	Impact on companies Unlimited companies within the intended scope will have to file financial statements with the Registrar of Companies.

B.2 Description of Policy context and objectives

Directive 2013/34/EU applies primarily to limited companies as listed in Annex I to the Directive. By virtue of subparagraph (b) of Article 1(1) it also applies to unlimited companies, partnerships and limited partnerships, as listed in Annex II, where the ownership structure is such that the ultimate beneficial owners enjoy de facto limited liability. Without a provision such as subparagraph (b) of Article 1(1), there would be nothing to prevent an individual from carrying on a business through an unlimited company, with all of the shares of the unlimited company being held by limited companies and the shares in the limited companies being held by the individual. The unlimited company would

not have to submit financial statements to the Companies Registration Office but the ultimate beneficial owner would not be exposed to unlimited liability for the debts of the unlimited company, being sheltered by the limited companies.

The Directive that Directive 2013/34/EU replaces, Directive 78/660/EEC, originally had no equivalent provision but one was inserted in 1990, by Directive 90/605/EEC, with the express aim of countering avoidance of the sort described above. The wording of subparagraph (b) of Article 1(1) of Directive 2013/34/EU differs from that introduced into Article 1 of Directive 78/660/EEC in 1990, the apparent objective of the change being to make the provision more effective. Allied to this, Recital (6) to the preamble to Directive 2013/34/EU states that:

> "The scope of this Directive should be principles-based and should ensure that it is not possible for an undertaking to exclude itself from that scope by creating a group structure containing multiple layers of undertakings established inside or outside the Union."

The measures proposed in Head 53 are intended to ensure that an unlimited company cannot avoid submitting financial statements to the Registrar of Companies where, from the perspective of its beneficial owners, it is in substance a limited company.

The provisions of the Companies Act 2014 concerning the form and content of financial statements of unlimited companies are the same as those for limited companies. However, a private unlimited company (an "ULC"), unlike a private limited company, does not have to file financial statements or a directors' report with the Registrar of Companies unless it is a "designated ULC" within the meaning of section 1274 of the Companies Act 2014. The "designated ULC" of section 1274 is an ULC to which the scope of the transposed provisions of the now repealed Directive 78/660/EEC were intended to apply. The only additional requirement associated with being a designated ULC is that of annexing financial statements and a directors' report (where applicable) to the Annual Return filed with the Registrar of Companies.

It is proposed to strengthen the definition of "designated ULC" in section 1274 to ensure that full effect is given to Article 1(1)(b), as informed by Recital (6). The proposed wording is based on wording in use in the UK since 1989, when it first appeared as section 254 of the UK Companies Act 1985, as inserted by section 17 of the Companies Act 1989. The wording in question is understood to be very effective. In effect, an ULC will be a designated ULC if it is a subsidiary of a limited

company. In addition, an ULC that is not in fact a subsidiary will be regarded as a subsidiary for this purpose if its members include a number of limited companies which, if they were a single company, would be its holding company (parent company).

B.3 Identification and Description of Policy Options

Option 1: Do nothing.

As Article 1(1)(b) of Directive 2013/34/EU must be transposed into national law the "Do nothing" option is not a viable option.

Option 2: Transpose Article 1(1)(b) of Directive 2013/34/EU

The transposition of Article 1(1)(b) of Directive 2013/34/EU will involve the amendment of section 1274 of the Companies Act 2014.

B.4 Analysis of Costs, Benefits and Impacts of Options

Option 1: Do nothing.

Costs

Failure to give full effect to Article 1(1)(b) of Directive 2013/34/EU would inevitably result in the instigation of infringement proceedings against the State by the European Commission, which would almost certainly result in the imposition of significant financial penalties.

This option is not recommended.

Option 2: Transpose Directive 2013/34/EU

Costs

The only additional cost to the unlimited companies involved is that of annexing their statutory financial statements to their Annual Returns.

Benefits

Creditors and potential creditors of the unlimited companies in question (designated ULCs) will have the same access to financial statements as they would if the companies were limited companies; this

is beneficial for those parties given that the ownership structures of the unlimited companies in question are such that creditors have, in reality, no recourse to the personal assets of the beneficial owners of the unlimited companies.

Impacts

National competitiveness: Competitors of the unlimited companies in question have access to the filed financial statements (though they already have such access in the case of limited companies).

The socially excluded and vulnerable groups: No impact.

The environment: No impact.

Significant policy change in an economic market, including consumer and competition impacts: No impact (the change is not one of policy but a change in how effectively an existing policy is applied)

The rights of citizens: No impact identified.

Compliance Burdens: None (other than cost of filing).

North-South and East-West Relations: No impact.

Enforcement, Compliance and Review

No additional enforcement, compliance or review mechanisms are required.

C.1 Provision in relation to the listing of debt securities – Head 103

What are the policy objectives being pursued?

To ensure that a company that has listed debt securities prior to the commencement of the relevant provision of the Companies Act 2014 can retain the listing after commencement

What policy options have been considered?

1. Do nothing.

2. Amend section 68 of the Companies Act 2014

POLICY OPTIONS			
	COSTS	**BENEFITS**	**IMPACTS**
Policy option 1	Private companies that have listed debt in the past, in compliance with the law, may need to de-list that debt. This will entail legal and compliance costs for businesses	None	**Impact on companies** The validity of existing debt securities, issued in compliance with the law that obtained at the time, will be in doubt. The continuation of admission to trading or listing may be prevented.
Policy option 2	The measure is intended to maintain an existing regime so there are no direct costs. As issuers will merely be continuing an existing practice, there are no identified costs for them.	Issuers and holders of debt securities will have legal certainty and will not need to take any action.	**Impact on companies** The amendment will give effect to the legislator's intent and will give legal clarity.

Preferred Option:

Option 2 is recommended

C.2 Description of Policy context and objectives

Statement of objectives

All private companies were permitted, subject to certain conditions, to list debt securities since 1 July 2005 (section 7 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006). As a result, some private companies legally listed debt securities at or after that time.

As part of the modernisation and review of company law that made several changes to the private company form, it was decided to introduce 2 main types of private company, the private company limited by shares (the LTD) and the designated activity company (the DAC). One of the distinctions between these 2 forms is that the DAC may list debt securities (not equity securities) while the LTD is prohibited from offering securities (other than certain debt securities) to the public or listing any securities on a market. Accordingly, section 68(2) of the Companies Act 2014 provides that a private company limited by shares may not have securities admitted to trading or listed, whether in the State or outside it. Section 68 is applied to DACs, CLGs, PUCs and PULCs by sections 981, 1191 and 1248.

It has been brought to the Department's attention that the text of section 68(2) could be taken to mean that debt that had been validly listed by a private company under the previous law would now be illegal. This was not the intention behind section 68(2), rather it was to introduce the prohibition prospectively, to align with the introduction of the new LTD company form.

C.3 Identification and Description of Policy Options

Option 1: Do nothing.

Debt securities that have been validly listed under Irish law in the past may no longer be considered legal.

Option 2: <u>Amend section 68 of the Companies Act 2014.</u>

The objective of the amendment is to avoid doubt and to clarify the intention that securities that were validly listed or admitted to trading under the previous company law can continue to be admitted to trading or listed.

C.4 Analysis of Costs, Benefits and Impacts of Options

<u>Policy option 1 – No change</u>

Risks

At worst, issuers and holders of debt securities will be in contravention of the law, even though those debt securities were issued in full compliance with the law that was in force at the time. At least, there will be legal uncertainty as to the validity of the debt securities concerned.

Costs

Private companies that have listed debt in the past, in compliance with the law, may need to de-list that debt. This will entail legal and compliance costs for businesses that are considered unnecessary as this was not the original policy intent.

Benefits

There are no additional benefits associated with the "no change" option.

Impact

The validity of existing debt securities, issued in compliance with the law that obtained at the time, will be in doubt. The continuation of admission to trading or listing may be prevented.

<u>Policy option 2: Amend section 68 of the Companies Act 2014.</u>

Risks

There are no specific risks associated with this option.

Costs

The measure is intended to maintain an existing regime so there are no direct costs. As issuers will merely be continuing an existing practice, there are no identified costs for them.

Benefits

Issuers and holders of debt securities will have legal certainty and will not need to take any action.

Impact

The amendment will give effect to the legislator's intent and will give legal clarity.

Option 2 is recommended

D.1 Provision in relation to the notification of creditors in an application to Court for an order confirming the reduction of capital (Head 104)

What are the policy objectives being pursued?

To remove the requirement that the notification of creditors by a company applying to the Court for an order confirming a reduction of capital must be sent by post

What policy options have been considered?

1. Do nothing.

2. Amend section 85 of the Companies Act 2014

POLICY OPTIONS			
	COSTS	**BENEFITS**	**IMPACTS**
Policy option 1	A company will incur the costs of paper and postage. As this procedure is in the context of a court application, it is likely that the postage will be by way of registered mail, which adds to those costs.	No additional benefits	**Impact on companies** Where a company has creditors outside of Ireland, it could be considered an unnecessary administrative burden to require that company to contact those creditors by ordinary post. It could also lead to delay as confirmation of delivery might be considered necessary.
Policy option 2	The measure gives the company new flexibility to allow a company to use the most cost effective method for communication. There are no additional costs associated with this option.	The company will be in a position to decide the most appropriate method of communication, taking into account any factors it considers relevant, such as a need for effectiveness and efficiency. Electronic mail, and confirmation of its delivery, is a faster method of communication than ordinary post	**Impact on companies** If the court agrees, companies will be able to communicate with their foreign creditors quickly and efficiently [and minimise the delay in making their application under section 85]. Creditors outside of Ireland can be notified at the earliest opportunity of a change in the company's capital.

Preferred Option:

Option 2 is recommended

D.2 Description of Policy context and objectives

Statement of objectives

Under section 84 of the Companies Act 2014, a company may decide to reduce its capital by a resolution, through using the new Summary Approval Procedure. Under section 85 of the Companies Act 2014, a company may then decide to apply to the court for an order confirming that resolution. Section 85 (2) specifies that part of the application procedure is that the company must notify any creditors outside of the State by ordinary post. This is considered unnecessarily restrictive and that it would be preferable to allow the company flexibility to notify creditors outside of Ireland by ordinary post or by electronic mail where email addresses are available to the company.

D.3 Identification and Description of Policy Options

Option 1: Do nothing.

Where a company has creditors outside of Ireland, it could be considered an unnecessary administrative burden to require that company to contact those creditors by ordinary post. It could also lead to delay as confirmation of delivery might be considered necessary.

Option 2: <u>Amend section 85 of the Companies Act 2014</u>

The objective of the amendment is to allow the company to decide the most appropriate means of communication with its foreign creditors. In this way, the company will have the flexibility to decide whether, in any given case, communication can be by electronic mail, for efficiency, or by ordinary post, as now.

D.4 Analysis of Costs, Benefits and Impacts of Options

<u>Policy option 1 – No change</u>

Risks

The Summary Approval Procedure is a novelty of the Companies Act 2014 and is designed to reduce the administrative burden on companies and to reduce the need for court applications in uncontroversial decisions. As the law stands, it mitigates against those advantages as it requires that contact be made with creditors outside of Ireland by ordinary post only. Often electronic mail is faster, more efficient and capable of providing confirmation of delivery immediately.

Costs

A company will incur the costs of paper and postage. As this procedure is in the context of a court application, it is likely that the postage will be by way of registered mail, which adds to those costs.

Benefits

No additional benefits associated with the “no change” option.

<u>Policy option 2: Amend section 85 of the Companies Act 2014</u>

Risks

There are no specific risks associated with this option.

Costs

The measure gives the company new flexibility to allow a company to use the most cost effective method for communication. There are no additional costs associated with this option.

Benefits

The company will be in a position to decide the most appropriate method of communication, taking into account any factors it considers relevant, such as a need for effectiveness and efficiency. Electronic mail, and confirmation of its delivery, is a faster method of communication than ordinary post

Impact

If the court agrees, companies will be able to communicate with their foreign creditors quickly and efficiently [and minimise the delay in making their application under section 85]. Creditors that are based outside of Ireland can be notified at the earliest opportunity of a change in the company's capital.

Option 2 is the recommended option.

E.1 Provision for disclosure of directors' remuneration paid to a third party (Head 105)

What are the policy objectives being pursued?

To provide for the disclosure of directors' remuneration where it is paid to a third party

What policy options have been considered?

1. Do nothing.

2. Introduce new provisions into the Companies Act 2014

POLICY OPTIONS			
	COSTS	**BENEFITS**	**IMPACTS**
Policy option 1	No additional costs	No obvious benefits	**Impact on companies** The policy of transparency of payments to company directors could be avoided through arrangements between companies and third parties for the services of those companies' directors.
Policy option 2	There may be additional costs for some companies in preparing their financial statements	Company disclosure of remuneration paid to directors will be comprehensive and transparent.	**Impact on companies** Companies will be obliged to give a more comprehensive picture of the remuneration that they pay to their directors.

Preferred Option:
Option 2 is recommended

E.2 Description of Policy context and objectives

Statement of objectives

The Companies Act 2014 maintains the principle of transparency of directors' remuneration. Section 305 of that Act re-enacts the earlier provision that a company disclose, in the notes to its financial statements, remuneration amounts, for both the current and preceding financial year, in respect of persons who were, at any time during the financial year concerned, directors of the company.

The 2014 Act goes further than the previous law in a few ways. In particular, there is now a requirement on a company to include remuneration paid or payable by a company to a person "connected" with a director of that company in the amount of directors' remuneration disclosed. A person connected to a director is defined and includes spouses, civil partners, parents, siblings, children, and other companies controlled by a director. However, where the remuneration is paid to a third party, say, a management company, there is no such obligation. This is seen as a gap in the legislation that should be rectified.

Companies, whose business is the provision of corporate services on a commercial basis, make their employees available to other companies as directors of those companies and invoice those companies for such services. The employees of the corporate services provider are not remunerated by the companies of which they are directors; they are salaried employees of the corporate services provider. At present, the consideration payable for the service is not required to be disclosed by the company availing of the service whereas disclosure would be required if that company made the payment to the director in the form of emoluments.

E.3 Identification and Description of Policy Options

Option 1: Do nothing.

A company will continue to be obliged to disclose remuneration paid to its directors and to people "connected" to its directors. However, it will not be obliged to disclose those remuneration payments if they are made to a third party, such as a management company.

Option 2: <u>Introduce new provisions into the Companies Act 2014</u>

Enact a new provision, new section 306A, in the Companies Act 2014, to oblige the company to disclose payments made to a third party in respect of the services of a person acting as a director of that company.

E.4 Analysis of Costs, Benefits and Impacts of Options

<u>Policy Option 1 – No change</u>

Risks

Companies will avoid disclosure obligations by arranging for their directors' remuneration to be paid to a third party. The legislator's intention that remuneration of directors be disclosed, even where that remuneration is paid to a person that is connected to a director, for example that director's spouse, could be undermined.

Costs

There are no additional costs associated with the "no change" option.

Benefits

No obvious benefits.

Impact

The policy of transparency of payments to company directors could be avoided through arrangements between companies and third parties for the services of those companies' directors.

<u>Policy option 2 – Introduce new provisions into the Companies Act 2014</u>

Risks

No risks have been identified.

Costs

There may be additional costs for companies in preparing their financial statements as they will need to disclose payments that they are not currently obliged to disclose. However, this new obligation will not affect the micro company, as it will be exempt from this new obligation in line with the other exemptions that will apply under the Companies (Accounting) Bill 2015.

Benefits

Company disclosure of remuneration paid to directors will be comprehensive and transparent.

Impact

Companies will be obliged to give a more comprehensive picture of the remuneration that they pay to their directors. This is in line with both national and EU policy.

Option 2 is recommended.

F.1 Provision to allow a company, or a group, to retain the audit exemption in its first year of existence where financial statements are not annexed to its first Annual Return. (Heads 106 & 107)

What are the policy objectives being pursued?

- To provide that a company can retain audit exemption where financial statements are not annexed to the first Annual Return
- To provide that a company can retain audit exemption where financial statements are not annexed to the first Annual Return (in a group situation)

What policy options have been considered?

1. Do nothing.

2. Amend section 363 (for companies) and section 364 (for groups) of the Companies Act 2014.

POLICY OPTIONS			
	COSTS	**BENEFITS**	**IMPACTS**
Policy option 1	Companies will have the additional burden and cost of producing financial statements earlier than currently required or risk losing the audit exemption.	No obvious benefits	**Impact on companies** An unnecessary administrative burden will be maintained on newly formed companies. This burden is also at odds with the purpose of the audit exemption, which is a reduction in that burden on small and medium sized enterprises.
Policy option 2	There are no costs identified	Newly formed companies will not lose the opportunity to avail of the audit exemption, provided that they meet the criteria for the exemption, where they are in compliance with the law on filing obligations for their first Annual Return.	**Impact on companies** An unnecessary administrative burden will be removed from newly formed companies

Preferred Option:
Option 2 is recommended

F.2 Description of Policy context and objectives

Statement of objective

To remove an anomaly in the Companies Act 2014 whereby a newly formed company can lose the audit exemption as an automatic consequence of not attaching financial statements to its first Annual Return, even though there is no obligation to annexe financial statements to a company's first Annual Return.

A company is obliged to file its first Annual Return with the Companies Registration Office (the CRO) within 6 months of its date of incorporation. Section 349 of the Companies Act 2014 exempts companies from annexing financial statements to that first Annual Return. That company is then required to annex financial statements to its second and subsequent Annual Returns. The second Annual Return must be made up to a date no later than 18 months from the date of incorporation and filed with the CRO within 28 days.

Chapter 15 of Part 6 of the 2014 Act provides that certain companies and groups can avail of the audit exemption if they meet specified criteria, related to the size of the company or group. Sections 363 and 364 provide that a company or group loses the audit exemption automatically if it fails to file its annual return on time and with the financial statements annexed. While sections 363 and 364 refer to a distinction between the first annual return and all subsequent annual returns, the CRO advises that any company or group that files its first annual return without the financial statements will lose the right to the audit exemption by operation of law, regardless of the fact that section 349 permits the filing of that first annual return without financial statements.

This was not the legislator's intent.

F.3 Identification and Description of Policy Options

Option 1: Do nothing.

A newly formed company can lose the audit exemption as an automatic consequence of not attaching financial statements to its first Annual Return, even though there is no obligation to annexe financial statements to a company's first Annual Return.

Option 2: Amend section 363 (for companies) and section 364 (for groups) of the Companies Act 2014.

Newly formed companies will not lose the opportunity to avail of the audit exemption, provided that they meet the criteria for the exemption.

F.4 Analysis of Costs, Benefits and Impacts of Options

<u>Policy Option 1 – No change</u>

Risks

Newly formed companies will need to prepare financial statements within their first 6 months of existence, covering that period, and annex those to the first Annual Return if they want to avail of the audit exemption. This is a full year earlier than they currently have to submit financial statements. If they do not annex the financial statements, they lose the audit exemption automatically for a 2 year period, even if they would meet the criteria for the exemption in each of those 2 years.

The law will be brought into disrepute by, on the one hand, allowing companies to file their first annual return without financial statements while, on the other, penalising them for doing so by removing the entitlement to an audit exemption for two years.

Costs
Companies will have the additional burden and cost of producing financial statements earlier than currently required or risk losing the audit exemption.

Benefits

No obvious benefits.

Impact

An unnecessary administrative burden will be maintained on newly formed companies. This burden is also at odds with the purpose of the audit exemption, which is a reduction in that burden on small and medium sized enterprises.

Policy Option 2: Amend section 363 (for companies) and section 364 (for groups) of the Companies Act 2014.

Risks

There are no risks identified with this option.

Costs
There are no costs identified.

Benefits

Newly formed companies will not lose the opportunity to avail of the audit exemption, provided that they meet the criteria for the exemption, where they are in compliance with the law on filing obligations for their first Annual Return.

Impact

An unnecessary administrative burden will be removed from newly formed companies.

Option 2 is recommended

G.1 Provision to amend the rules on reporting offences to the Director of Corporate Enforcement (Head 108)

What are the policy objectives being pursued?
To provide for the reporting to the ODCE of offences under market abuse law, prospectus law and transparency (regulated markets) law

What policy options have been considered?
1. Do nothing.

2. Amend section 393 of the Companies Act 2014

POLICY OPTIONS			
	COSTS	**BENEFITS**	**IMPACTS**
Policy option 1	No costs associated with the "no change" option.	No benefits.	**Impact on companies** There is a reporting regime with a lacuna, where only some serious offences, not all, must be reported to the ODCE. There would be a lack of clarity for auditors on their responsibilities.
Policy option 2	There may be some additional costs for auditors to ensure that they report 3 further offences.	A more robust enforcement regime as all serious offences under the Companies Act 2014 will be treated the same as far as reporting obligations on auditors are concerned. Auditors will have clarity as to when that reporting obligation arises.	**Impact on companies** The amendment should have a positive effect on the enforcement regime by providing the same reporting rules for offences of a similar character and ensuring that ODCE is in receipt of information on all of the more serious offences. The amendment will also bring clarity for auditors on their obligations.

Preferred Option:

Option 2 is recommended

G.2 Description of Policy context and objectives

Statement of objectives

Section 393 of the Companies Act 2014 obliges auditors of companies to report certain offences to the Office of the Director of Corporate Enforcement (ODCE). Those offences are the more serious category 1 and 2 offences. However, since the enactment of the 2014 Act, it has been brought to the Department's attention that section 393 omits to oblige auditors to report the similarly serious offences under EU law concerning breaches of market abuse, prospectus and transparency law. The Department considers that this was an oversight.

The reporting obligation arises in section 393 where an auditor has reasonable grounds for believing that a company or an officer of a company "has committed" a relevant offence. However, this is

considered too restrictive and could lead to inappropriate delay in reporting. Accordingly, the Department now considers that the obligation should be on the auditor where s/he has reasonable grounds to believe that the offence “may have been committed”. Without this qualification, it could be construed that the auditor must have confirmation that the offence had been committed before being obliged to report.

G.3 Identification and Description of Policy Options

Option 1: Do nothing.

Auditors would not be required to report the serious offences under market abuse, prospectus and transparency law. Auditors might take the view that their obligation to report serious offences only arises after an offence has been committed and not where the offence may have been committed, even if they have reasonable grounds for suspecting that to be the case.

Option 2: <u>Amend section 393 of the Companies Act 2014</u>

Amend the existing requirement to add the 3 serious offences of breaches of market abuse, prospectus and transparency law to the list of offences that auditors must report to the ODCE. Amend the existing requirement to report in an offence has been committed to also include a requirement where an auditor has reasonable grounds to believe that an offence “may have been committed”.

G.4 Analysis of Costs, Benefits and Impacts of Options

<u>Policy Option 1 – No change</u>

Risks

Some serious offences, that are breaches of EU law, would not be reported to the ODCE. There would be uncertainty among auditors as to when they are obliged to report serious offences to the ODCE.

Costs

No costs associated with the “no change” option.

Benefits

No benefits.

Impact

There is a reporting regime with a lacuna, where only some serious offences, not all, must be reported to the ODCE. There would be a lack of clarity for auditors on their responsibilities.

Policy Option 2 – Amend section 393 of the Companies Act 2014

Risks

There are no obvious risks associated with this option.

Costs

There may be some additional costs for auditors to ensure that they report 3 further offences.

Benefits

A more robust enforcement regime as all serious offences under the Companies Act 2014 will be treated the same as far as reporting obligations on auditors are concerned. Auditors will have clarity as to when that reporting obligation arises.

Impact

The amendment should have a positive effect on the enforcement regime by providing the same reporting rules for offences of a similar character and ensuring that ODCE is in receipt of information on all of the more serious offences. The amendment will also bring clarity for auditors on their obligations.

H.1 To provide for the production of a directors' compliance statement by an Unregistered Company. (Head 111)

What are the policy objectives being pursued?

To provide for the production of a directors' compliance statement by an Unregistered Company

What policy options have been considered?

1. Do nothing.

2. Amend section 393 of the Companies Act 2014

POLICY OPTIONS			
	COSTS	**BENEFITS**	**IMPACTS**
Policy option 1	There are no costs associated with this option.	There are no benefits associated with this option.	**Impact on companies** An identified gap in the law would be allowed to continue.
Policy option 2	There will be a cost to affected unregistered companies to produce a directors' compliance statement. In the preparation of the Companies Act 2014, this cost was assessed as marginal. Bank of Ireland is the only company known in Ireland to be affected by this.	All companies of a specified size, regardless of the company form that they take, will be treated consistently with regard to the application of the principles of good corporate governance. A significant large company will be obliged to provide a directors' compliance statement.	**Impact on companies** The proposed amendment will remove an anomaly.

Preferred Option:

Option 2 is recommended

H.2 Description of Policy context and objectives

Statement of objectives

To require all companies of a specified size, regardless of their company form, to produce a directors' compliance statement. This is in line with good corporate governance.

Under section 225 of the Companies Act 2014, companies to which the section applies (i.e. with a year end balance sheet total of more than €12.5 million and annual turnover of more than €25 million) must produce a statement acknowledging that they are responsible for securing the company's compliance with its relevant obligations and addressing certain things to do with compliance. This statement is known as the "directors' compliance statement". Schedule 14 of the Companies Act 2014, which provides for unregistered companies", does not apply section 225 to unregistered companies. The Bank of Ireland is the main known unregistered company, and it meets the criteria for size.

H.3 Identification and Description of Policy Options

Option 1: Do nothing.

If the Companies Act 2014 is not changed, the Bank of Ireland would not be required to produce a directors' compliance statement, which is contrary to principles of good corporate governance.

Option 2: <u>Amend section 393 of the Companies Act 2014</u>

All companies of a specified size, regardless of their company form, will be required to produce a directors' compliance statement.

H.4 Analysis of Costs, Benefits and Impacts of Options

<u>Policy Option 1 – No change</u>

Risks

A company of significant size would not be obliged to produce a directors' compliance statement.

Costs

There are no costs associated with this option.

Benefits

There are no benefits associated with this option.

Impact

An identified gap in the law would be allowed to continue.

<u>Policy Option 2 – Amend section 393 of the Companies Act 2014</u>

Risks

There are no risks associated with this option.

Costs

There will be a cost to affected unregistered companies to produce a directors' compliance statement. In the preparation of the Companies Act 2014, this cost was assessed as marginal. Bank of Ireland is the only company known in Ireland to be affected by this.

Benefits

All companies of a specified size, regardless of the company form that they take, will be treated consistently with regard to the application of the principles of good corporate governance. A significant large company will be obliged to provide a directors' compliance statement.

Impact

The proposed amendment will remove an anomaly.

Policy option 2 is recommended.

I.1 Provision in relation to the qualification of liquidators. (Head 112)

What are the policy objectives being pursued?

To provide that the Supervisory Authority (IAASA) can attach terms and conditions to the authorisation of a liquidator granted under paragraph 5 of the Table to Section 633 and to enable such a liquidator to request the withdrawal of his or her authorisation.

What policy options have been considered?

1. Do nothing.

2. Amend Section 634 of the Companies Act 2014.

POLICY OPTIONS			
	COSTS	**BENEFITS**	**IMPACTS**
Policy option 1	No additional costs associated with the "no change" option.	No additional benefits associated with the "no change" option.	**Impact on companies** The gap in the regulatory tools available to IAASA may have inappropriate consequences for affected liquidators in that liquidators might suffer a harsh penalty (withdrawal or suspension of authorisation) in the absence of an alternative or conversely escape any sanction at all which would not be desirable for others affected by the conduct of the liquidation
Policy option 2	The measure is an enabling one so there are no direct costs. Compliance with terms and conditions may entail some costs for individual liquidators, depending on the nature of those terms and conditions.	IAASA's ability to vary the terms and conditions of authorisations in relation to individual liquidators should result in a more nuanced regulatory regime. This should benefit both creditors and relevant liquidators.	**Impact on companies** The amendment should have a positive effect on the oversight of liquidators in the fifth category.

Preferred Option:

Option 2 is recommended

I.2 Description of Policy context and objectives

Statement of Objectives

The Companies Act 2014 sets out for the first time in Irish law the qualifications for appointment as a liquidator. As a result, liquidators are now required to be qualified and there are 5 categories of people who can qualify. They include members of a prescribed accountancy body and practising solicitors. The fifth category is the so-called "grandfather" category and provides for people who have practical experience of winding up and knowledge of the law. They must also apply to the Irish Auditing and Accounting Supervisory Authority (IAASA) for authorisation and pay a fee. However, the Companies Act 2014 does not allow IAASA to attach terms and conditions to an authorisation granted to a person in this fifth category.

I.3 Identification and Description of Policy Options

Option 1: Do nothing.

IAASA would not have the authority to attach terms and conditions to the authorisation of a liquidator in the fifth category nor to amend those terms and conditions.

Option 2: Amend Section 634 of the Companies Act 2014

The objective of the amendment is to remedy a deficiency in the Companies Act 2014 so as to allow IAASA attach terms and conditions to an authorisation granted to a person in the fifth category of liquidator.

I.4 Analysis of Costs, Benefits and Impacts of Options

Policy Option 1: The "no change" option

Risks

The suite of regulatory tools available to IAASA would be limited. If IAASA needed to exercise its supervisory powers in relation to a liquidator in the fifth category, its options would be either to continue the authorisation or, following an enquiry, to withdraw or suspend an authorisation. There is no intermediate sanction available. Thus inappropriate conduct, falling short of that which would justify a suspension or withdrawal of authorisation, might not be sanctioned. Conversely, such conduct may result in an inappropriately harsh sanction. Neither is desirable.

Costs

No additional costs associated with the "no change" option.

Benefits

No additional benefits associated with the "no change" option.

Impact

The gap in the regulatory tools available to IAASA may have inappropriate consequences for affected liquidators in that liquidators might suffer a harsh penalty (withdrawal or suspension of authorisation) in the absence of an alternative or conversely escape any sanction at all which would not be desirable for others affected by the conduct of the liquidation .

Policy Option 2: Amend Section 634 of the Companies Act 2014

Risks

There are no specific risks associated with this option.

Costs

The measure is an enabling one so there are no direct costs. Compliance with terms and conditions may entail some costs for individual liquidators, depending on the nature of those terms and conditions.

Benefits

IAASA's ability to vary the terms and conditions of authorisations in relation to individual liquidators should result in a more nuanced regulatory regime. This should benefit both creditors and relevant liquidators. Providing that IAASA can attach terms and conditions to an authorisation will allow it to exercise lesser sanctions than suspension or withdrawal of an authorisation.

Impact

The amendment should have a positive effect on the oversight of liquidators in the fifth category.

Policy option 2 is recommended.

J.1 To permit the Irish Auditing and Accounting Supervisory Authority to recover costs associated with investigating possible breaches of accountancy body standards. (Head 113)

What are the policy objectives being pursued?

The purpose of the amendment is to allow IAASA to recover its costs from the relevant prescribed accountancy body on an-going basis throughout the investigation while maintaining the current wording to cover both possibilities.

What policy options have been considered?

1. Do nothing.

2. Amend section 934(9) of the Companies Act 2014

POLICY OPTIONS			
	COSTS	**BENEFITS**	**IMPACTS**
Policy option 1	IAASA could incur costs in funding investigations as they progress.	There are no benefits associated with this option.	**Impact on companies** IAASA's other work might be affected by the need to divert resources to investigations.

	COSTS	BENEFITS	IMPACTS
Policy option 2	As the prescribed accountancy body defrays the costs of such an investigation under the existing law, there is no change to the amount to be paid by the body. The change is to the fact that this can be levied over the course of the investigation and not only at the end.	IAASA will be able to fund investigations in a more manageable fashion.	**Impact on companies** IAASA will have a more workable funding model for investigations.

Preferred Option:
Option 2 is recommended

J.2 Description of Policy context and objectives

Statement of objectives

Section 934 provides for the Irish Auditing and Accounting Supervisory Authority (IAASA) to conduct investigations into possible breaches of standards of the prescribed accountancy bodies by members of those bodies. Section 934(9) provides that the costs of such an investigation are to be defrayed by the accountancy body of which the person investigated is a member. However, section 934(9) implies that these costs can only be collected by IAASA after the investigation has concluded and not during it. An investigation of this type could last for a number of years, leading IAASA to incur significant costs whilst being unable to recover them until the outcome of the investigation has been determined.

It is intended to permit IAASA to collect costs from the relevant accountancy body in the course of the investigation.

J.3 Identification and Description of Policy Options

Option 1: Do nothing.

In this option, IAASA is likely to be prevented from collecting costs associated with an investigation for a breach of standards until that investigation concludes. As these investigations can take a long time, IAASA could face significant delay in recovering its costs.

Option 2: **Amend section 934(9) of the Companies Act 2014**

Amend section 934(9) to clarify that the relevant prescribed accountancy body shall defray the costs of an IAASA investigation where one of its members is the subject of such an investigation (i.e. ongoing investigation) and not just where that member has been the subject (i.e. past tense).

J.4 Analysis of Costs, Benefits and Impacts of Options

Policy Option 1 – No change

Risks

IAASA could face unnecessary administrative and financial difficulties in conducting its investigations of accountants.

Costs

IAASA could incur costs in funding investigations as they progress.

Benefits

There are no benefits associated with this option.

Impact

IAASA's other work might be affected by the need to divert resources to investigations.

Policy Option 2 – Amend section 934(9) of the Companies Act 2014

Risks

There are no risks associated with this option.

Costs

As the prescribed accountancy body defrays the costs of such an investigation under the existing law, there is no change to the amount to be paid by the body. The change is to the fact that this can be levied over the course of the investigation and not only at the end. Section 934(9)(a) of the Companies Act 2014 provides that IAASA can prescribe by regulations that specified procedures and methods of calculation shall apply in the determination of the amount of costs to be defrayed.

Benefits

IAASA will be able to fund investigations in a more manageable fashion.

Impact

IAASA will have a more workable funding model for investigations.

Option 2 is recommended.

K.1 Amendment of section 412 (Priority of charges) of the Companies Act 2014 (Head 114)

What are the policy objectives being pursued?

The proposed amendment provides that the Registrar of Companies shall not be under a duty to register particulars of a negative pledge, any events that crystallise a floating charge or any restrictions on the use of any charged asset (with the exception of particulars of a negative pledge included in particulars of a floating charge granted to the Central Bank) but is not prevented from so doing. The existing wording prohibits the registration of such particulars.

What policy options have been considered?

1. Do nothing.

2. Amend Section 412 of the Companies Act 2014

POLICY OPTIONS			
	COSTS	**BENEFITS**	**IMPACTS**
Policy option 1	If the Registrar were to examine each charge in order to determine the "extraneous matter", the regulatory burden on the Companies Registration Office would increase as additional resources would be required to examine each charge.	No obvious benefits.	**Impact on companies** The "no change" option has the potential to generate confusion as to the extent of the Registrar's obligations and to increase the workload of the Companies Registration Office for no discernible benefit.
Policy option 2	The clarification of the Registrar's duty will eliminate the potential for additional costs; it is a cost containment measure.	The duty of the Registrar is clarified.	**Impact on companies** The clarification will remove any doubt as regards the Registrar's duty and eliminate any additional regulatory burden for the Office.

Preferred Option:

Option 2 is recommended

K.2. Description of Policy context and objectives

Statement of Objectives

Section 412 concerns the priority of charges. The Company Law Review Group recommended that the practice of delivering additional information to the Registrar of Companies in relation to negative pledges and other restrictions on the use of charged assets be discontinued. However, the section, as enacted, places an obligation on the Registrar of Companies not to enter extraneous matter on the register of charges (with the exception of particulars of a negative pledge included in particulars of a floating charge granted to the Central Bank). This could be viewed as placing an additional regulatory burden on the Registrar and her staff to determine what is and what is not "extraneous matter". Such was not the intention.

K.3 Identification and Description of Policy Options

Option 1: Do nothing.

Although potentially mitigated by the terms of subsection (6) (b) of section 412, there would be a doubt as to the obligation of the Registrar in relation to the non- registration of "extraneous matter".

Option 2: <u>Amend Section 412 of the Companies Act 2014</u>

The proposed amendment provides that the Registrar of Companies shall not be under a duty to register particulars of a negative pledge, any events that crystallise a floating charge or any restrictions on the use of any charged asset (with the exception of particulars of a negative pledge included in particulars of a floating charge granted to the Central Bank) but is not prevented from so doing.

K.4 Analysis of Costs, Benefits and Impacts of Options

<u>Policy Option 1 - No change</u>

Risks

There would be continuing uncertainty as to the extent of the Registrar's duties.

Costs

If the Registrar were to examine each charge in order to determine the "extraneous matter", the regulatory burden on the Companies Registration Office would increase as additional resources would be required to examine each charge. Extra appropriately qualified staff would be required.

Benefits

No obvious benefits.

Impact

The "no change" option has the potential to generate confusion as to the extent of the Registrar's obligations and to increase the workload of the Companies Registration Office for no discernible benefit.

Policy Option 2 - Amend Section 412 of the Companies Act 2014

Risks

There are no specific risks associated with this option.

Costs

The clarification of the Registrar's duty will eliminate the potential for additional costs; it is a cost containment measure.

Benefits

The duty of the Registrar is clarified.

Impact

The clarification will remove any doubt as regards the Registrar's duty and eliminate any additional regulatory burden for the Office.

Option 2 is recommended.

L.1 Amendment of Section 916 of the Companies Act 2014 (Head 115)
Statement of Objectives

Section 14 of the Companies (Auditing and Accounting) Act 2003 provided that IAASA was empowered to levy prescribed accountancy bodies for the purposes of meeting expenses properly incurred by it in performing its functions and exercising its powers under that Act. Section 916 of the Companies Act 2014 re-enacted section 14 of the 2003 Act but inadvertently appeared to limit the application of the levy amounts to IAASA's reserve fund only. Following legal advice, section 916 is to be amended to remove any possible ambiguity and to explicitly provide that monies from the levy may be used for the purposes in section 915(1).

The regime is identical to the one that previously existed under the 2003 Act. As there is no regulatory impact, no RIA is provided.

M.1 To provide for the rectification of incorrect cross-references in the Companies Act 2014. (Head 117)

These are purely technical amendments, proposed to correct erroneous cross-references. As there is no regulatory impact, no RIA is provided.