



## **NewsBrands Ireland, Local Ireland, and RTÉ response to the Department of Enterprise, Tourism and Employment public consultation on proposed changes to the Companies Act 2015 and related legislation**

NewsBrands Ireland is the representative body for Ireland's leading multi-platform national news publishers. Its remit is to promote the fundamental role of a free and independent press, to support a legislative framework that enables sustainable public service journalism, and to ensure a fair and competitive media environment for all news publishers.

Local Ireland is the promotional brand of the Regional Newspapers and Printers Association of Ireland, formerly the Provincial Newspaper Association, founded in 1919, and the oldest newspaper association in Ireland.

RTÉ is a public service broadcaster regulated by the Broadcasting Act, 2009 as amended. It is mandated to provide a free to air public broadcasting service and to provide news and current affairs programming as part of its broadcasting obligations.

NewsBrands Ireland, Local Ireland and RTÉ welcome the opportunity to respond to the public consultation regarding proposed changes to the Companies Act 2014, the Co-operative Societies Bill and the Registration of Limited Partnerships and Business Names Bill.

### **Section A: General Comments**

The recommendations of the Company Law Review Group (CLRG), with which the Department of Enterprise, Tourism and Employment (the Department) concurs, are made in the context of the EU's 6<sup>th</sup> Anti-Money Laundering Directive and the judgment of the Court of Justice of the EU in *WM and Sovim SA -v- Luxembourg Business Registers* (2022).

The former is summarised by the CLRG as follows:

*The 6th Anti-Money Laundering Directive, which must be transposed into national law by 10 July 2027, sets out the importance of identifying and verifying beneficial owners across entities. It also sets out how record retention and data protection clarifications would improve the work of competent authorities. It also aims to make sure that, rather than the general public, only those who could show a legitimate interest, such as journalists and civil society organisations could gain access to information on beneficial ownership in registers.*

The relevant part of the 6<sup>th</sup> Directive for the purposes of this submission is paragraph 41. This reads:

*Non-governmental organisations, academics and investigative journalists have contributed to the objectives of the Union in the fight against money laundering, its predicate offences and terrorist financing. They should therefore be considered to have a legitimate interest in accessing beneficial ownership information, which is of vital importance for them to undertake their functions and exert public scrutiny, as appropriate. The ability to access the central registers should not be conditional on the medium or platform through which they carry out their activities, or on previous experience in the field. In order to enable such categories to carry out their activities effectively and avoid risks of retaliation, they should be able to access information on legal entities and legal arrangements without demonstrating a link with those entities or arrangements. As provided for under Union data protection rules, any access by beneficial owners to information on the processing made of their personal data should not adversely affect the rights and freedoms of others, including the right to security of the person. Disclosure to the beneficial owner that persons acting for the purposes of journalism or civil society organisations have consulted their personal data risks undermining the safety of journalists and of members of civil society organisations who carry out investigations into potential criminal activities. Therefore, in order to reconcile the right to the protection of personal data with the freedom of information and expression for journalists in accordance with Article 85 of Regulation (EU) 2016/679 of the European Parliament and of the Council <sup>[15]</sup> and in order to ensure the role of civil society organisations in the prevention, investigation and detection of money laundering, its predicate offences or terrorist financing in accordance with Article 23(1), point (d), of that Regulation, entities in charge of central registers should not share with beneficial owners information on the processing of their data by those categories of the public, but only the fact that persons acting for the purposes of journalism or civil society organisations have consulted their data.*

In short, the 6<sup>th</sup> Directive is predicated upon the fact that journalists have an entitlement, in the exercise of their professional functions, to access beneficial ownership information, which necessarily includes the residential addresses of company officers.

It is important also to note that, while the 6<sup>th</sup> Directive has, as its primary purpose, the identification of beneficial ownership of companies across the EU, it is only one part of a series of actions by the EU to combat money laundering, corporate wrongdoing and to increase corporate transparency. The ability of the media to access information to allow it properly to report upon corporate activity and, where necessary wrongdoing, is crucial in ensuring business transparency.

The recommendations of the CLRG fail properly to balance the requirement for transparency in company dealings, the rights of individual directors and company secretaries and the fundamental rights of freedom of expression and the public's right to know guaranteed under the European Convention on Human Rights.

It is a startling omission that there is no reference whatsoever to the rights of the media in the CLRG's report, appendices or recommendations. The European Court of Human Rights has, over a series of decisions, recognized the importance of the 'watchdog role' of the press, acting as 'the eyes and ears of the public'. This role should never be lightly interfered with but that is precisely what the recommendations of the CLRG seek to do.

Any interference with the rights of the media must be proportionate, particularly in circumstances where, as here, there is no evidence that its right to access information on the residential addresses of company officers has been abused. The recommendations of the CLRG in this regard are wholly disproportionate.

The proposed changes to the Companies Act 2014 will mean in practice that very few company secretaries or directors will make their usual residential address publicly available as the 'contact address' published on the Register of Companies maintained by the CRO. It is also likely that directors will in many cases use a P.O. box or services office address as the 'contact address' and that they may also use a different address for the registration of each company in which they are involved.

The effects on journalism of this will be profound and will include the following.

The media will be gravely hindered in trying to carry out proper investigations into possible corporate wrongdoing. They will be unable to identify with sufficient certainty the identity of company directors and secretaries during their investigations and before publication. It will become almost impossible for the press to link directors along possibly connected corporate bodies, particularly where there are options to include different variations of a person's name e.g. in English or Irish or with a middle name or initial. This stands in contrast with the position at present where if company officers are required to provide their usual residential address, there is generally only one address across all the companies with which they are involved.

An inability to access the residential addresses of company officers linked to money laundering, corporate wrongdoing and other illegal activities will mean that media investigations into such activities, which are already difficult under Ireland's restrictive defamation laws, will become vanishingly rare. It will prevent, in appropriate cases, pre-publication contact being made with the relevant company directors and secretaries, which, in the absence of a right to reply, will make publication close to impossible.

The proposed changes will also greatly increase the risk of unintentional defamation, which is a tort of strict liability. They will, as a result, have a chilling effect on the ability of the media to carry out its primary function of informing the public of matters of interest. Indeed, the CLRG indirectly touched upon this issue in its summary of the current legislative provisions under the 2014 Act. It stated that: *The inclusion of the requirement for the usual residential address facilitates the identification of the Relevant Officer by both the CRO and more generally by the public (e.g. to distinguish Sam Smith with an address in Athlone and Sam Smith with an address in Bantry).* This will no longer be open to the media, unquestionably leading to a plethora of expensive claims from the 'Sam Smiths' of the corporate world.

The parties do not accept that the 6<sup>th</sup> Anti-Money Laundering Directive or the judgment of the Court of Justice of the EU in *WM and Sovim SA -v- Luxembourg Business Registers* requires the Government to, in effect, abolish the requirement that the usual residential addresses of company officers be publicly available upon payment of a fee. Rather, the existing system, with appropriate amendments to section 150 (11) of the 2014 (which allows exemptions to the general rule) would suffice.

That said, in the event that the Department intends broadly to accept the recommendations of the CLRG, the very least that could be done to meet the requirements of the ECHR and the 6<sup>th</sup> Directive is that the Minister would prescribe the media as a relevant entity with permission to access the relevant officer's 'usual residential address'.

The relevant category to be added to those on page 9 of the Department's Public consultation document would be: "a *bona fide* member of the Press or broadcast media to include:

- A person who produces a valid current/in date National Press Card issued by the National Union of Journalists; or
- A person who produces a valid ID identifying them as a reporter/correspondent, employed by a national or regional or online news title or site which is a member of the Press Council of Ireland; or
- A person who produces a valid ID identifying them as a reporter/correspondent employed by a national or local broadcaster which is licensed by Coimisiun na Mean; or
- A person who produces a valid current/in date International Federation of Journalists Press Card."

This is the formula employed in the rules made under section 159(7) of the Data Protection Act 2018 and as defined by the Courts Service Operations Directive in its guidelines on the operation of the Act of October 2018.

#### Question A1

See above.

#### Question A2

See above.

#### Question A3

See above.

The following category should be added to the proposed list of entities that may be granted access to the 'usual residential address' of relevant officers: " a *bona fide* member of the Press or broadcast media".

#### Question A4



See above.

### Section B and Section C

A similar approach to that outlined above should be adopted for the Co-operative Societies Bill and the Registration of Limited Partnership and Business Names Bill.

### NewsBrands members:

**The Irish Times DAC** – Irish Examiner; The Irish Times; irishtimes.com; examiner.ie; breakingnews.ie

**The Agricultural Trust:** Farmers Journal; farmersjournal.ie

**Business Post Group;** Business Post; BusinessPost.ie

**News Ireland:** The Sunday Times; The Irish Sun; thetimes.ie; irishsun.ie

**DMG Media Ireland:** Irish Daily Mail; Irish Mail on Sunday; Evoke.ie; Extra.ie,

**Reach Ireland:** Irish Daily Star; Irish Daily Mirror; Irish Sunday Mirror; Buzz.ie; Mirror.ie

**Local Ireland** represents 37 weekly paid-for newspapers and their digital products. The membership includes three groups – The Irish Times Regionals (plus the Cork Echo), Iconic Media and Celtic Media Group. It also includes independently-owned publishers – The Southern Star, The Munster Express, The Nenagh Guardian, The Donegal News (part of northern-based North West News), The Tuam Herald and the Clare Champion.

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