



An Roinn Gnó,
Fiontar agus Nuálaíochta
Department of Business,
Enterprise and Innovation

Public Consultation on the Registration of Business Names Act 1963

8th July 2019



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Introduction

The Department of Business, Enterprise and Innovation ('the Department') is reviewing the Registration of Business Names Act 1963¹ ('the Act') as part of its ongoing strategic policy agenda "to review and enhance Ireland's regulation and enforcement regime to ensure that we maintain our world class business environment underpinned by appropriate regulation and legislation"².

The Act amended the pre-1922 statute, the Registration of Business Names Act 1916³ ('the 1916 Act') to bring it into line with modern trading conditions at that time, and in particular to extend its application to bodies corporate. A summary of the Act and the issues arising are set out in the following pages with questions posed on specific topics which respondents are asked to comment on.

What is a business name?

A business name is used to carry on a business by any individual, body corporate or partnership, which has a place of business in the State and that name is not the same as their true name(s).

What is the purpose of 1963 Act?

There is no issue if a person(s) carries on business under their own name or under a company name, which can be found on the Companies Register⁴. However, if a business is carried on under an assumed name, it may be difficult for a person to ascertain who the legal entity is behind the business supplying the goods or services and if a cause of action accrues to know "who to sue?". The registration of business names in accordance with the Act enables customers and suppliers to know the legal entity behind a business name. Its main aim is to provide transparency for those doing business.

The Act does not create a legal entity or confer any legal status or proprietary rights. Section 14(3) of the Act provides that registration of a business name shall not be construed as authorising the use of that name, if apart from such registration, the use thereof could be prohibited. It is accordingly no defence to an action for passing off or for infringement of a trademark to claim registration of a particular business name was effected under the Act⁵.

¹ <http://www.irishstatutebook.ie/eli/1963/act/30/enacted/en/html>. The Act came into force on the 1st April 1964.
<http://www.irishstatutebook.ie/eli/1964/si/46/made/en/print>.

² <https://dbei.gov.ie/en/Publications/Publication-files/Statement-of-Strategy-2018-2021.pdf>.

³ <https://www.legislation.gov.uk/ukpga/Geo5/6-7/58/contents/enacted>.

⁴ <https://search.cro.ie/company/CompanySearch.aspx>.

⁵ Courtney, Thomas B, *The Law of Companies*, (4th edn., Bloomsbury Professional, 2016), at 1.012.

Who does the Act apply to?

The Act requires any–

- individual - who trades under a name which is not his/her true name, for example, it would apply to Mr. John Murphy if he traded as “Murphy Builders” but not if he traded as “Murphy” or “John Murphy” or “J. Murphy”,
- partnership - that does not trade under the true names of all the partners whether composed of individuals or bodies corporate or any combination of both,
- body corporate⁶ - which trades under a name which is not its full corporate name, for example, “Murphy Construction Limited” trading as “Murphy Builders” and
- person carrying on the business of publishing a newspaper,

to register their business name with the Registrar of Companies in the Companies Registration Office (“the Registrar”).

What is the Business Names Register?

The Act requires the Registrar to issue a certificate of registration (‘a business name registration certificate’) to applicants and to maintain an index of all business names (‘the Business Names Register’).

Any person may search for a business name on the Register of Business Names free of charge using the Registrar’s search facility⁷. The search will provide information on the type of business, the business name, the registered address, the date registered and the status of the business name (“ceased”, “normal”, “dissolved”). A person may request a business name printout for a nominal fee which provides the business name owner(s) and address(es) details.

Question 1

Do you use the Business Names Register or use services that provide information from that Register? If so, what is the information primarily used for?

What are the registration requirements?

Every person required to register under the Act shall provide the Registrar with the business name, including the title of the newspaper in the case of the proprietor of a newspaper, the general nature of the business and the principal place of business within one month of the adoption of the business name. It also requires the following additional particulars to be furnished to the Registrar by any –

- individual – the name, nationality (if not Irish), the usual residence and other business occupation (if any),

⁶ This requirement is restated in sections 26(4), 969(4), 1008(4), 1178(4) and 1237(4) of the Companies Act 2014 which provides that a body corporate carrying on business under a name other than its corporate name shall register in the manner directed by law for the registration of business names.

⁷ <https://search.cro.ie/company/CompanySearch.aspx>

- body corporate - corporate name and registered/principal office in the State, or
- partnership - the name, nationality (if not Irish), usual residence, other business occupation (if any) for each partner and the corporate name and the registered/principal office in the State for every corporate partner.

Where the business is carried on under two or more business names each of those business names must be stated. A person should notify the Registrar within one month of any change in the details registered.

Registration by newspaper proprietors

As noted earlier, the Act requires any person carrying on the business of publishing a newspaper to register their business name with the Registrar. Section 2(1) of the Act provides that a newspaper means “any paper containing public news or observations thereon, or consisting wholly or mainly of advertisements, which is printed for sale and is published in the State either periodically or in parts or numbers at intervals not exceeding thirty-six days”.

The Newspaper Libel and Registration Act 1881 required the establishment of a proprietors of newspapers register and this provision was later consolidated into section 27 of the Defamation Act 1961, which required all newspapers to register in accordance with the Registration of 1916 Act. This registration requirement was repealed by and restated in the Act.

Question 2

What are your views on the requirement for all newspaper proprietors to register their business name under the Act? Should this requirement be extended to other types of media or repealed? Please provide reasons for your views.

Disclosure of a business name

An individual or a partnership shall exhibit a certificate of registration in a conspicuous position in the principal place of business and a corporate body shall exhibit it in its registered office and in every branch office or place where the business is normally carried on.

In all letters, circulars and catalogues in which the business name appears, any –

- individual shall state his name and nationality (if not Irish),
- partnership shall state all of the names of all of the partners or the body corporate name, and
- body corporate shall state its body corporate name and the names of every director (body corporate if director) and nationality (if not Irish).

Question 3

What are your views on the disclosure of business name requirements? Should they be expanded, reduced or eliminated? Please provide reasons for your views.

Number of business names registered

In 2018, there were 21,202 new name registrations and a total of 566,312 names on the Business Names Register at the end of the year.

| Business type⁸ | Number registered |
|-------------------------------------|--------------------------|
| Body Corporate | 154,241 |
| Individual | 340,500 |
| Other Corporate bodies ⁹ | 3,452 |
| Partnership | 68,119 |
| Total | 566,312 |

There were 2,610 business name cessations in 2018.

Forms and fees

The Minister may make regulations under the Act in relation to the fees, forms, the general conduct and regulation of registration under the Act and any related incidental matters. The Business Names Regulations 2016¹⁰ (the 2016 Regulations) provides for the current fees to be paid and the forms to be used under the Act.

| Forms & Fees | Section 4 registration of business name | Section 7 change in particulars | Section 12(1) cessation of business under a business name |
|---------------------------|--|--|--|
| Fee for paper filing | €40 | €15 | N/A |
| Fee for electronic filing | €20 | N/A | N/A |
| Individual | RBN1 | RBN2 | RBN3 |
| Partnership | RBN1A | RBN2A | RBN3 |
| Body Corporate | RBN1B | RBN2B | RBN3 |

As noted earlier, the Business Names Register is available to the public for free online. The Regulations further provide that any person may request a business name printout for €3.50, which further provides the business name owner (s) and address or a certified business signed printout for €12.00, which provides all details registered with the Registrar.

⁸ There are approximately 1,000 registered business names that have “newspaper” as their nature of business description.

⁹ Other corporate bodies refer to body corporates that are not on the register of companies itself. This includes Government bodies established under legislation that wish to register a trading name and external companies which are trading in the State that have registered a branch with the Registrar that has a different name than the company itself. Such companies would have their names ending in SARL (societe a responsabilite limitee) and GMBH (gesellschaft mit schranker haftung).

¹⁰ <http://www.irishstatutebook.ie/eli/2016/si/339/made/en/print>.

Removal of business names from the register

The Act provides that the Minister may refuse to permit the registration of an undesirable business name. In practice, the Registrar carries out this function on behalf of the Minister. Before the Registrar registers a business name he/she carries out a public perception test to ensure that the name is not misleading to the public¹¹, offensive or suggests state sponsorship. The restrictions mainly originate from statute and reflect the restrictions on company names¹².

Under section 12 of the Act, there are very limited circumstances for the Registrar to delete or amend a name on the Business Names Register. These include where the Registrar –

- is notified that the person has ceased to carry on a business under the name by (i) the personal representative of an individual, (ii) by every partner in a partnership or (iii) by the liquidator of a body corporate,
- has reasonable cause to believe that any person registered under the Act is not carrying on business under that name and has sent a notice to that person stating that unless an answer is received the business name will be removed within one month and if no response is received or that person confirms they are no longer carrying on that business, or
- is requested by a person to amend/delete details no longer required in relation to a name previous to an inherited title, a name changed or disused before 18 years of age, a name changed or disused for a period of no less than 20 years or a maiden name.

The Registrar is not always aware or notified when a word becomes protected, restricted or regulated by statute. If the Registrar becomes aware of a matter that at the time the business name was registered he/she would not have registered the name and the circumstances do not justify the continued use of the name, there is no straightforward mechanism to amend the Register.

Question 4

What are your views on extending the the powers of the Registrar to amend or delete a name from the Business Names Register in certain circumstances? If so, please provide examples.

Alignment of the Business Names Register with other Registers

When a corporate body ceases trading the Registrar updates its status on the Companies Register in accordance with the Companies Act 2014¹³ in respect of companies. The Registrar also updates the Limited Partnership ('LP') list when an LP ceases trading in accordance with the Limited Liability Partnerships Act 1907¹⁴.

¹¹ Similar or identical names are permitted.

¹² <https://www.cro.ie/Portals/0/Leaflets/Info%20Leaflet%201%20v8.2%202014%20Act.pdf>

¹³ <http://www.irishstatutebook.ie/eli/2014/act/38/enacted/en/index.html>

¹⁴ <http://www.irishstatutebook.ie/eli/1907/act/24/enacted/en/print.html>

A business name owner is required under section 12(1) of the Act to notify the Registrar that a business has ceased trading under the business name and must submit an RBN3 form to the Registrar who updates the business name status on the Register to “ceased”. There is no correlation between the Business Names Register and the Companies Register and the LP list. A Business Name can remain registered with no legal entity behind it when a business ceases trading.

Question 5

What are your views on the Registrar automatically updating the Business Names Register when the Companies Register and the Limited Partnership list is updated?

Proof of identity

The Act does not provide for proof of identity when applying for a business name and the Registrar accepts business names applications in good faith on prima facie information. Currently, the Registrar only requires proof of identity for non-EU/EEA and non-Swiss citizens who must provide an Irish Residence Permit (IRP).

Question 6

What are your views on requiring business name registration applicants to provide proof of identity to ensure that the information on the Business Names Register is accurate?

Applications from minors

There is no age limit in the Act for persons applying for a business name. Whilst registration under the Act does not require an applicant’s date of birth, the Registrar is aware of transition year students registering business names.

In general terms, there is nothing under partnership law to prevent a minor becoming part of a partnership. However, section 131 of the Companies Act 2014 provides that no person shall be appointed as a company director unless they have attained the age of 18 years.

Question 7

What are your views on a minor registering a business name under the Act?

Renewal of a registered business name

There are currently over 560,000 names on the Business Names Register as there has been a very low level of notifications of cessation of a business under the Act over the years. There has been a very low level of business name cessations under the Act over recent years and all were on foot of the submission of a form RBN3 cessation of a business name form (‘RBN3’ form). In a recent High Court Judicial Review, Regan J. observed “a multiplicity of different and unconnected persons can and often do hold identical or confusingly similar business name registrations”¹⁵. It has not been the practice of the

¹⁵ *Fitzpatrick V Behan (In his Capacity of Taxing Master of the High Court)* [2018] IEHC 764.

Registrar to issue a notice under section 12(4) where he/she has reasonable cause to believe that a person is not carrying on business under a name.

Question 8

What are your views on the compulsory regular renewal of a business name to ensure the Business Names Register is current and accurate, and why? If your views support renewal of a business name, how often should this occur?

Offences and penalties

The Minister for Business, Enterprise and Innovation is statutorily entitled to initiate summary prosecutions under the Act whilst the Registrar is responsible for the administration of the Act.

The table below sets out the offences and penalties under the Act.

| Section | Offence | Penalty |
|---------|---|---|
| 8(2) | failure to exhibit a certificate of registration in a conspicuous position | Class C fine; a fine not greater than €147 |
| 10 | failure to submit particulars, particulars requested by the Minister or a change in particulars | |
| 12(1) | failing to notify the Registrar if a business name ceases to carry on business under that name | |
| 14(1) | carrying on business under an undesirable business name that was refused by the Minister | |
| 11 | furnishes a false statement on any matter under the Act | Class C fine; a fine not greater than €147 or a term not exceeding 6 months |
| 18(2) | failure to state particulars in all letters, circulars and catalogues | Class D fine; a fine not greater than €59 |

Question 9

What are your views on providing the Registrar with the power to bring and prosecute offences under the Act?

Question 10

Do you have any observations to make in relation to the offences and penalties provided for under the Act?

Retention of fees

Over the past number of years, the number of refunds of fees under the Act for non-complying business names application forms has increased from 19 in 2012 to 1,320 in 2018. This is an expensive and time-consuming process for the Registrar to administer.

Section 889(3) of the Companies Act 2014 provides that the Registrar may retain fees prescribed under that Act in certain circumstances, for example, where a registration of company is declined or otherwise not proceeded with by the Registrar or where the application is withdrawn.

Question 11

What are your views on the retention of fees by the Registrar for non-complying business name application forms?

Mandatory E-filing

In 2017 and 2018, 90% and 92% of business names applications and 84.5% and 86% of all business names documents in general were filed online.

Section 897(1) of the Companies Act 2014 provides that the Minister may make an order (after consultation with the Registrar) providing that the sole means to be used to deliver a document to the Registrar shall be those provided for under the Electronic Commerce Act 2000. The Minister has made two Orders¹⁶ under this section requiring the mandatory electronic filing of 11 documents to the Registrar.

Question 12

What are your views on the mandatory e-filing of registration of business names forms?

Continuation of the Business Names Register

Following a review in the UK, the 1916 Act (as amended¹⁷) was repealed by the Companies Act 1981¹⁸ ('the 1981 Act') and the UK Registry of Business Names was closed on the 26th February 1982. Although business names are no longer registered by the state in the UK, business names are regulated by Part 41 of the Companies Act 2006¹⁹ and a number of secondary regulations made under that Act –

- Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009²⁰,
- Company, Limited Liability Partnership and Business (Sensitive Words and Expressions) Regulations 2014²¹, and
- Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015²².

These include:

¹⁶ <http://www.irishstatutebook.ie/eli/2016/si/458/made/en/print>,
<http://www.irishstatutebook.ie/eli/2015/si/203/made/en/print>.

¹⁷ The Companies Act 1947 extended the register to cover limited companies and repealed the regulations regarding the disclosure of nationality and amended the regulations regarding the disclosure of former names.

¹⁸ 1981 C. 62.

¹⁹ <http://www.legislation.gov.uk/ukpga/2006/46/contents>.

²⁰ <https://www.legislation.gov.uk/uksi/2009/1804/contents/made>.

²¹ <http://www.legislation.gov.uk/uksi/2014/3140/contents/made>.

²² <http://www.legislation.gov.uk/uksi/2015/17/contents/made>.

- restrictions on the use of certain words in a name that could mislead or harm the public by implying a connection with a government authority, public body, a regulated activity or suggests a specific status or functions (eg. 'British', 'Institute', 'Tribunal', 'Bank'),
- restrictions on the inappropriate and misleading use of a name ending, for example 'limited' at the end of the name. If the company is trading, there are rules to prevent the use of names that could mislead the public,
- rules requiring a sole trader or partnership that uses a different trading name, to display their own name (sole trader) or all the partners' names (partnership) in a prominent position at the business premises,
- rules requiring a sole trader or partnership to include their own name or partner's names in legible characters on, among other things, business letter, emails invoices and written orders for goods or services to be supplied to the business²³, and
- rules requiring a company to display its registered name at its registered office and other places of business, on business documents and on websites.

Question 13

What are your views in relation to the continuation of business names registration by the Registrar? Please provide reasons for your views?

Question 14

The Department would welcome any other comments you may have in relation to the Act and the registration of business names.

Queries

If you have any queries regarding this public consultation, please contact Caroline Kiernan, CRO/RFS Policy and Liaison Unit by email at caroline.kiernan@dbei.gov.ie or you may call 01-6312631.

Closing date

Responses to this public consultation should be returned by email with Business Names Consultation in the subject line to caroline.kiernan@dbei.gov.ie by **5 pm on Tuesday, 10th September 2019**.

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

Freedom of Information Act 2014 and Publication of Submissions

The Department will make public on its website all submissions received under this consultation. Your attention is also drawn to the fact that information provided to the

²³ A UK address must be included in order that documents may be physically delivered, and acknowledgement of delivery obtained.

Department may be disclosed in response to a request under the Freedom of Information Act 2014.

Therefore, should you consider that any information you provide is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Department will consult with you regarding information identified by you as sensitive before publishing or otherwise disclosing it.

General Data Protection Regulation

Respondents should note that the General Data Protection Regulation ('GDPR') entered into force in Ireland on 25th May 2018 and it is intended to give individuals more control over their personal data. The key principles under the Regulation are as follows:

- Lawfulness, fairness and transparency;
- Purpose Limitation;
- Data minimisation;
- Accuracy;
- Storage Limitation;
- Integrity and confidentiality, and
- Accountability.

The Department of Business, Enterprise and Innovation is subject to the provisions of the Regulation in relation to personal data collected by it from 25 May 2018. Any personal information which you volunteer to this Department, will be treated with the highest standards of security and confidentiality, strictly in accordance with the Data Protection Acts 1988 to 2018.

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The Department would welcome any other comments you may have in relation to the Act and the registration of business names.