**The Certificate of Registration and the Company Charge Register**

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1. **Introduction**

Part IV of the Companies Act 1963 establishes a system of registration for certain classes of charge created by companies over their property. The system has been in place since the passage of the Companies Act 1900 and requires that certain particulars of charges falling within a statutory list set out in section 99(2) be sent to the Registrar of Companies within 21 days of their creation. The courts have long recognised that the primary purpose of the registration system is to provide information to a company’s creditors and prospective creditors about prior mortgages and charges granted by the company over its assets.[[1]](#footnote-1)

The company charge register is one of several different systems of public registration for security interests in Irish law. Charges over registered[[2]](#footnote-2) and unregistered[[3]](#footnote-3) land, security bills of sale,[[4]](#footnote-4) mortgages over agricultural chattels,[[5]](#footnote-5) security interests over ships[[6]](#footnote-6) and aircraft[[7]](#footnote-7) as well as certain types of security interests over various classes of intellectual property[[8]](#footnote-8) must all be disclosed to the public as a condition either of their validity or priority. When compared to these other systems of public registration, the company charge register has two unusual features. First, the formal obligation to register a charge falls on the company over whose property the charge is created, though registration can be, and in practice frequently is, carried out by the secured creditor. Second, when a charge is registered, the Registrar issues a certificate of registration of the charge. This certificate is deemed by section 104 of the Companies Act 1963 to be conclusive evidence that the requirements of the Act as to registration have been complied with.

This article will examine the judicial interpretation of the conclusive evidence rule. It will argue that the current interpretation of section 104 of the Companies Act 1963 is seriously flawed and is based on an incorrect reading of the statutory text. It will also contend that the current interpretation undermines the legislative policy behind the company register and that an alternative interpretation of the section would enhance the operation of registration system. The article is divided into three sections. The first section summarises the existing legislative provisions which established the system of company charge registration. The second section examines a number of reported Irish and English cases which have required the courts to consider the meaning of section 104 or its English equivalents in various different circumstances. The third section presents an alternative possibility for the interpretation of section 104 and argues that this alternative demonstrates greater fidelity to the statutory text as well as offering a more sensible policy outcome in the operation of the company charge register. A brief conclusion follows which includes a discussion of the proposed changes to Irish company law in the Companies Consolidation and Reform Bill 2012.

1. **The Company Charge Register**

The company charge register was first established by the Companies Act 1900. When introducing the legislation at its second reading in the House of Commons, the then President of the Board of Trade, Charles Ritchie MP, stated that the purpose of the register was to provide the fullest possible publicity of any mortgages or charges over company property and thereby avoid the “evil which at present exists … that when it comes to the winding up of some companies it is found that the whole of the available assets of the company are mortgaged, and there is nothing at all to divide among the unhappy creditors”.[[9]](#footnote-9) The Companies Act 1900 provided for registration of four classes of charge: charges for the purposes of securing an issue of debentures; charges on the uncalled capital of the company; charges which if registered by an individual would require registration as a bill of sale and floating charges. The system was extended to charges over land wherever situate and charges over the company’s book debts in 1907.[[10]](#footnote-10) The Companies Act 1963 added charges over ships, charges over calls on share capital made but not paid and charges on intellectual property to the system in line with previous English legislation.[[11]](#footnote-11) The Companies Act 1990 further extended the system to include charges over aircraft.[[12]](#footnote-12)

At present, the principal legislative provisions for the registration of company charges in Ireland are to be found in sections 99 – 106 of the Companies Act 1963. The scheme can be briefly summarised as follows. Section 99(2) sets out a list of registrable charges. Section 99(1) states that a registrable charge is void against the liquidator and any creditor of the company unless certain information (‘the particulars’) about the charge is delivered to the CRO within 21 days of its creation. In effect, if the requirements of section 99 are not complied with, the secured creditor loses the benefit of the charge and becomes an unsecured creditor in the event of the company’s default. In addition, non-compliance results in any monies secured by the charge becoming immediately repayable. With the exception of the sanction of invalidity, the provisions of Part IV do not affect the priority of registrable charges. For most types of charges, priority will be determined by the order in which the charge was created.[[13]](#footnote-13)

Section 100 establishes that it is the duty of the company creating the charge to deliver the particulars in a timely manner and provides for a criminal sanction against the company and any officer in default in the event that the company’s default results in a registrable charge going unregistered. Section 100 also permits any other person who has an interest in the charge to apply to have the charge registered and to recover the costs of doing so from the company.

The mechanics of the registration process are governed by sections 103-106. Section 103 requires the Registrar of Companies to maintain a register of charges in relation to each company which must contain the following particulars: (a) the date of creation of the charge; (b) the amount secured by the charge; (c) short particulars of the property charged and (d) the details of the person(s) entitled to the charge. Where a charge is to the benefit of the holders of a series of debentures the company must deliver a different set of particulars, including: (a) the total amount secured by the series of debenture (b) the dates and resolutions which authorised the issue together with the date of the covering deed by which the security is created or defined; (c) a general description of the property charged and (d) the names of the trustees, if any for the debenture holders. The Registrar is also required to enter a notice of satisfaction onto the register once supplied with evidence that the secured obligation has been discharged or that some or all of the charged property has been otherwise released from the charge.[[14]](#footnote-14)

Unlike the equivalent provisions in force in England until 2013,[[15]](#footnote-15) there is no requirement for a copy of the original charge documentation to be supplied to the Registrar. The English companies’ legislation is widely regarded as imposing an obligation on the Registrar of Companies to compare the particulars supplied against the original charge document before entering the correct particulars into the charge register.[[16]](#footnote-16) This requirement has been frequently criticised in England as placing an unduly onerous burden on the Registrar and for potentially exposing the Registrar to liability in the event of an error made by the staff of the Registrar.[[17]](#footnote-17) The absence of the requirement to supply the original charge document in all cases to the Registrar in Ireland is the result of an amendment to the Companies Bill, 1962, taken at Committee Stage during the legislation’s passage through Dáil Éireann. Introducing the amendment, the then Minister for Industry and Commerce, Jack Lynch TD, stated that the Government intended it to implement the recommendations of the Jenkins Committee which had criticised the checking function of the English Registrar of Companies.[[18]](#footnote-18) It would seem, therefore that in this jurisdiction the Registrar’s role is purely mechanical and that there is no requirement for the Registrar to check the accuracy of the particulars prior to registering a charge.

In practice, the particulars of a charge are delivered using a statutory form, Form C1, which finds its legal basis in the Companies (Forms) Order, 2001.[[19]](#footnote-19) In contrast to the English position,[[20]](#footnote-20) the text of section 99(1) of the Companies Act 1963 requires that the particulars of a charge be delivered in the prescribed manner and it would therefore appear that Form C1 must be used for this purpose. Form C1 requires the provision of the company’s registered number and an indication of which of the registrable categories set out in section 99(2) the charge falls within. The form also requires the person delivering the particulars to sign the form in a section entitled “Verification”. The guidance notes appended to the form indicate that where the form is signed on behalf of a company, the signature provided must be that of a director, secretary or solicitor acting for the company or of some other person duly authorised by the articles of association.

The legal consequences of the signature are not clear. Though the use of the term ‘verification’ might be taken to imply that the signature attests the accuracy of the particulars supplied, the form does not contain a statement to this effect. Instead it simply provides spaces for signatures, as well as a description of the signor’s position and interest in the charge. Neither the Companies Acts, nor the Forms Order, specify any penalty for a person who, whether knowingly or otherwise, signs a Form C1 which contains false or inaccurate particulars. Either or both the chargor and chargee may sign the verification statement, but where only one signature is provided, the form states that a certified copy of the original charge document must be supplied along with the form.

Once the Form C1 has been delivered and the Registrar has registered the charge, a certificate of registration (which must include a statement of the amount secured thereby) is issued under section 104 of the 1963 Act. Section 104 provides that this certificate is conclusive evidence that the requirements of Part IV as to registration have been complied with. Finally, section 106 provides the High Court with a jurisdiction to order rectification of the register or to permit the registration of a charge outside the normal 21 day period for registration.

1. **The Existing Interpretation of Section 104**

The available parliamentary records do not definitively explain why the certificate of registration was included in the legislation providing for the establishment of the company charge register. Nonetheless it is fairly clear as a matter of logic that the purpose of the certificate is to give certainty to the parties to a charge that registration has been correctly carried out. Three reasons can be advanced in support of this proposition. First, though the Companies Acts formally place the duty to deliver the particulars on the company, the most serious sanction for failing to do so falls on the secured creditor which loses the benefit of the charge against the liquidator and other creditors. Accordingly, it might be argued that the certificate of registration allows the company to furnish its creditor, or any other interested party, with proof that “it has fulfilled its statutory duty”.[[21]](#footnote-21) Second, under the initial text of the 1900 Act,[[22]](#footnote-22) the company was required to include a copy of the certificate of registration on any debentures or certificates of debenture stock related to the charge.[[23]](#footnote-23) Third and most importantly, the presence of the certificate reduces the risk to that the chargee will find itself unable to enforce its security because of an error in the registration process. The scope of this protection will be explored below.[[24]](#footnote-24) It has also been suggested in the case law that the draftsperson may have included the certificate as a means of preventing the kind of challenges to security interests on technical grounds which had previously been encountered in the registration of bills of sale.[[25]](#footnote-25) In addition, it should be noted that the certificates of registration have played a role in safeguarding the information contained on the register. In 1924, certificates of registration were used to reconstitute the company charge register after the destruction of the Public Record Office during the Irish Civil War.[[26]](#footnote-26)

Section 104 states that the certificate of registration is “conclusive evidence that the requirements of [Part IV of the Act] as to registration have been complied with”. As will be demonstrated below, the courts have interpreted the words “conclusive evidence” in a literal manner. The meaning of this section has been explored by the courts in a number of cases which broadly fall into two categories: cases where inaccurate particulars have been delivered to the Registrar and cases where there has been an irregularity of one kind or another in the registration process.

**Delivery of Inaccurate Particulars**

Most of the case law on section 104 focuses on the delivery of inaccurate particulars to the Registrar. The leading English case in this area is *National Provincial and Union Bank of England v Charnley,[[27]](#footnote-27)* in which the company had granted a charge over a leasehold interest in the land upon which one of its factories was built. The charge also covered the equipment used in or about the premises. The particulars delivered to the Registrar mentioned a charge on the land but made no reference to the equipment. The Registrar entered the particulars as delivered onto the register and issued a certificate of registration. The Registrar failed to notice that the particulars delivered incorrectly described the property which was the subject of the charge. In a subsequent dispute between the chargee and a judgment creditor of the company, the Court of Appeal held that:

[O]nce the registrar has given his certificate that the registration was complete, and that the mortgage or charge was created by an instrument, identifying it, in my opinion you have to go to the instrument to see what was actually charged, there being nothing in the statute which says that when once registration has taken place the register shall be the evidence of the extent of the charge.[[28]](#footnote-28)

The effect of the judgment is that the certificate of registration “must be understood as certifying the due registration of all the charges created by the instrument … the fact that the register was defective and misleading to a potential creditor of the company [will] not sway the court.”[[29]](#footnote-29) A similar result was reached in Ireland in *Re: Valley Ice Cream (Ireland) Ltd.*[[30]](#footnote-30) From a policy point of view, this outcome is entirely unsatisfactory as it results in a situation in which the information by the company charge register cannot be relied upon by interested parties who search the register.

The subsequent case law in England and in Ireland has applied the *Charnley* principle in several different contexts. In *Re: Mechanisations (Eaglescliff) Ltd[[31]](#footnote-31)* and *Re: Shannonside Holdings Ltd[[32]](#footnote-32)* the courts considered a similar fact pattern in which the amount secured by the charge had been misstated in the particulars. In both cases it was held that the certificate of registration meant that the charges had been properly registered and were enforceable to the amount provided for in the charge documents rather than the amount mistakenly entered into the particulars. In *Re: Investment Options and Solutions Ltd,*[[33]](#footnote-33)Laffoy J. suggested *obiter* that the same reasoning would apply to a clerical error about the date of creation of the charge, a conclusion previously endorsed by the English courts in *Re: Eric Holmes (Property) Ltd*.[[34]](#footnote-34)

**Irregularities in the Registration Process**

The second group of cases concerns a situation in which there has been an irregularity in the registration process. In contrast to the defective particulars cases where the error is made by the person filling out the particulars for delivery to the Registrar, the second category of cases will usually involve an allegation that the Registrar has acted improperly in registering the charge as he or she did. The leading case in this category is *Re: Yolland, Husson and Birkett Ltd* in which the company had made two separate issues of a series of debentures supported by a single floating charge. The terms of series provided that the debentures numbered 1-84 were to have priority to later debentures in the series. Initially an attempt was made to register the two issues of the debenture series separately. It would appear that the Registrar objected to this course of action and that following discussions, the whole series was eventually registered as a single charge.[[35]](#footnote-35)The Registrar issued a certificate of registration which made no mention of the priority position of the different debentures in the series. In the Court of Appeal, counsel for the liquidator argued that a separate charge should be been registered for each separate debenture and that as a result the Registrar’s certificate had been incorrectly issued.[[36]](#footnote-36) The court rejected this argument, holding that the conclusive effect of the certificate prevented the court from looking behind it.

An important variation on the *Yolland* theme has been considered by the English courts in *CL Nye[[37]](#footnote-37)* and in Ireland in *Lombard & Ulster Banking Ireland Ltd v Amurec Ltd*[[38]](#footnote-38) In *CL Nye* a charge was created over the company’s property in February 1964. Owing to an oversight in the office of the solicitor for the chargee the particulars of the charge were not delivered to the Registrar. The error was discovered on or about the 18th June 1964 at which point the solicitor inserted that date into the charge document and then presented a set of particulars, also bearing that date to the Registrar. In *Amurec* the charge was created in November 1972. Delivery of the particulars was to be the responsibility of the company’s solicitor but this was not carried out immediately owing to problem with the payment of stamp duty which emerged after the completion of the transaction. In March 1974 the solicitor for the company decided to regularise the situation by dating the charge document 22nd March 1974 and presenting the particulars for registration on 10th April 1974. In both cases the Registrar accepted the particulars and a certificate was duly issued. Both courts, held that the wording of the legislation and the prior case law precluded the court from reaching any other conclusion than that the charges had been validly registered, though Hamilton J. expressed “considerable sympathy”[[39]](#footnote-39) with the arguments of the liquidator that the particulars of the charge had not been delivered within the required time.

**Applications for an Extension of Time or for Rectification of the Company Charge Register**

Section 106 provides that the High Court may, on the application of the company or any person with an interest in the charge, make an order for the extension of time for registration or for rectification of the charge register on such terms as it considers just and expedient. Before making the order the court must be satisfied that that there has been an omission to register or that there has been an error or omission in one of the supplied particulars. The court must also be satisfied that one of the following conditions apply:

1. The error was accidental or due to inadvertence or some other sufficient cause; or,
2. The error is not of a nature to prejudice the position of the company’s creditors or shareholders; or,
3. The making of an order is just and equitable on other grounds.

Relief under Section 106 is discretionary and will not be ordered where it would be futile,[[40]](#footnote-40) where the applicant has been guilty of some misconduct such as failing to disclose all relevant facts to the court,[[41]](#footnote-41) or where the application has been brought after an undue delay.[[42]](#footnote-42) The majority of reported applications under this section are for an extension of time for the delivery of particulars and such applications are usually granted unless a winding up has already commenced.[[43]](#footnote-43) Where an extension of time is granted the order will usually be made subject to the so-called ‘*Joplin* provision’ so that the order is without prejudice to the rights of the other secured parties who have acquired a competing charge before the actual delivery of the particulars to the Registrar.[[44]](#footnote-44)

In view of the conclusive effect of the certificate, it is no surprise to find that applications for rectification of the register are uncommon. Previously the author of a leading Irish company law text book has suggested that an application for rectification should not be made where a certificate of registration has been issued, as doing so might expose the chargee to the imposition of conditions on the registration of the charge which might adversely affect its position.[[45]](#footnote-45) In *Re: Investments Options and Solutions Ltd[[46]](#footnote-46)* the particulars of the charge which had been delivered to the Registrar misstated the date on which the charge had been created, though, in fact, the particulars had been delivered within time. A certificate of registration was issued. The successors in title to the chargee, who had appointed a receiver to the company, sought rectification of the error as they were concerned that the error might give rise to questions about the receiver’s authority to sell the encumbered property. The High Court held that it was appropriate to order rectification since the particulars of the charge had in fact been registered within the relevant time period.

Section 106 proceedings can cause other irregularities in the registration process as was demonstrated in *Exeter Trust Ltd v Screenways Ltd*[[47]](#footnote-47) and *Ali v Top Marques Car Rental Ltd.*[[48]](#footnote-48)In *Exeter Trust* particulars of a registrable charge had not been delivered within the 21 day period. On 5th December 1988 the company issued a notice to its creditors of a creditors’ meeting to take place on 21st December 1988 as part of the process of initiating a creditors’ voluntary winding-up of the company. The chargee partnership received this notice and on the 14th December 1988 it applied to the County Court, under the equivalent of section 106 of the Companies Act 1963 for an order to extend the time for delivery of the particulars. The application was grounded on the affidavit of one of the partners in the chargee which explained the reasons for the failure to register on time but omitted to mention the impending creditors’ meetings. An order extending the time was made on 19th December 1988 extending the deadline for delivery to 9th January 1989. The particulars were delivered on 21st December 1988 approximately 90 minutes before the commencement of the creditors’ meeting and a certificate of registration was duly issued. In April 1989, the liquidator of the company successfully appealed the decision to extend the time for delivery and the court ordered that the register of charges be rectified by the deletion of the charge. In the Court of Appeal, the chargee argued that the certificate of registration precluded the court below from ordering rectification of the companies register. The Court of Appeal allowed the appeal. Delivering the unanimous judgment of the Court, Nourse LJ held that he was unable to distinguish this case from earlier decisions such *Yolland* and *CL Nye* in which the certificate had been held to be conclusive.[[49]](#footnote-49)

In *Top Marques* the chargee had obtained an order extending time for delivery while the company was in administration. The order was made subject to the standard proviso in such cases, (‘a *Re: Charles* order’) [[50]](#footnote-50) i.e., that the company’s administrator or any creditor would be at liberty to apply to the court to discharge the order within 14 days. The secured creditor further gave an undertaking that it would submit to the jurisdiction of the court and would abide by any order made as a result of such an application to discharge the order. At a subsequent hearing, counsel for the administrator sought to have extension of time set aside on the basis that the company was insolvent at the date when the order was made and that it had no prospect of emerging from the administration restored to solvency.[[51]](#footnote-51) Counsel for the chargee argued that there was no need for the court to consider this point, since the particulars had in fact been delivered and a certificate of registration had been issued before the expiry of the 14 day period. The Registrar of Companies gave evidence that the certificate of registration had been issued in error and that the Registrar’s normal practice in such cases was to delay issuing the certificate of registration until any time period specified in extension order had expired.

The court held that in terms of the initial order extending the time for delivery of the particulars amounted to an ‘implied direction’ to the Registrar not to issue a certificate while the order remained subject to review. However, having reviewed the earlier authorities the court held that it was ‘constrained to the view’ that once the certificate had been issued it was beyond the power of the court to order its recall and that the circumstances of the certificate’s issue were not such as to undermine its conclusiveness.[[52]](#footnote-52)

In Ireland, the courts appear to have reached a different conclusion on at least one occasion. In *Re: Telford Motors Ltd,[[53]](#footnote-53)* an order extending the time for registration had likewise been made. At the time of the application, the commencement of a winding up of the company was imminent and as such it was made a condition of the order that if the company was wound-up within 21 days of the date of the order, the company would be at liberty to apply to court to have the order discharged. The applicant committed to submit itself to the jurisdiction of the court and to abide by any order which might be made at that point for the removal of the late registration from the Registrar. The particulars were delivered to the Registrar and eight days later a liquidator was appointed to the company. The Registrar registered the charge two days after the appointment of the liquidator.

The court held that the charge had not been properly registered. Hamilton J. stated that to regard the late registration as valid would be to disregard the terms of the court’s original order and to treat the conditions of that order as an “empty formula”.[[54]](#footnote-54) It can be argued that *Re: Telford* represents a departure from the normal principle that a certificate of registration, once issued, is beyond recall. However, it must be noted that, unlike *Exeter Trust* and *Top Marques* the court was dealing with a fresh application for directions from the liquidator and not a continuation of the proceedings surrounding the original section 106 application. Furthermore, from the judgment, it is not clear that the effect of the certificate of registration was canvassed in argument before the court.

**Judicial Review Proceedings**

The final aspect of the certificate of registration which needs to be considered is its impact in judicial review proceedings. In *R v Registrar of Companies, ex parte Central Bank of India*[[55]](#footnote-55) an attempt was made to utilise judicial review proceedings in order to evade the consequences of the certificate of registration. The judicial review proceedings were taken by the company and a number of intervening creditors as an aspect of a broader set of plenary proceedings in which the applicants wished to dispute the validity of the registration of a charge.

The facts were as follows. The company had opened a series of documentary credits at Allied Arab Bank (‘AAB’). The agreement required the company to provide security when called upon to do so by AAB. A call for security was made in February 1984 by the delivery of a draft debenture the company. The company refused to comply and AAB then obtained an order for specific performance requiring the company to provide the security required under the agreement. AAB took the view that the call for security coupled with the order for specific performance had the effect of creating a charge over the company’s property which required registration as of the 4th February 1984. The bank delivered a copy of the charge document and the particulars on 29th February 1984. On 23rd March 1984 one of the Registrar’s officials contacted the bank’s solicitors and stated that the particulars which had been submitted were unsatisfactory in a number of respects. It was agreed that the documents would be returned to the solicitors for amendment and resubmission. In line with the Registrar’s practice at the time, it was further agreed that the resubmitted documents would be treated as a having been submitted on the 29th February 1984. Revised particulars were resubmitted to the Registrar on the 29th March 1984. A certificate of registration duly issued which recorded that the charge had been registered on 29th February 1984.

The company sought an order of *certiorari* to quash the registration of the charge together with the certificate of incorporation. At the hearing, three grounds were argued by the applicants:

1. that the Registrar had exceeded his jurisdiction in considering the particulars delivered on 29th March because these particulars were delivered outside the 21 day time limit specified in the legislation;
2. that there was an error on the face of the record in that the documents delivered on 29th February were in fact the prescribed particulars required by the Act;
3. that there had been a breach of fair procedures in that in the peculiar circumstances of the case, the Registrar ought not to have taken a decision to register the charge without affording the company or other intervening creditors an opportunity to make representations as to the appropriate course of action;

At first instance the court held that in principle a decision of the Registrar of Companies to issue a certificate of registration is amenable to judicial review. Having considered *Yolland* and the other English cases which have examined the effect of the certificate in ordinary litigation, Mervyn-Davies J. held that in judicial review proceedings, concerns about “commercial uncertainty must give way to the policy that the decisions of public officials ought to be subject to … scrutiny.”[[56]](#footnote-56) He went on to hold that in issuing the certificate based on the amended particulars, the Registrar had assumed a jurisdiction which was not provided for by the statute and made an order quashing the Registrar’s decision to register the charge and the certificate of registration issued pursuant to that decision.

The Registrar of Companies successfully appealed the decision of the High Court. In reversing the court below, the court accepted the submissions of counsel for the Registrar to the effect that conclusiveness of the certificate of registration is a rule of evidence and not a rule which exempts the Registrar from judicial review. On this view if “an unsecured creditor seeks judicial review solely on the ground that the chargee did not deliver the prescribed particulars he cannot put the necessary evidence before the court.”[[57]](#footnote-57) Lawton LJ also recorded, without making a positive comment as to their validity, that counsel for the Registrar had suggested three limitations on this principle.

1. Where an unsecured creditor seeks judicial review on other grounds, such as that the certificate was obtained by fraud, there might be a case for judicial review.
2. Since the Companies Acts are not expressly binding on the Crown it might be open to the Attorney General to challenge the validity of a certificate of registration.
3. A chargee who has failed to disclose information to the Registrar which might have affected his decision on whether to register the charge or not may find himself estopped from relying on the charge in proceedings with an unsecured creditor.

*Central Bank of India* suggests that there is little practical prospect of utilising public law remedies to alleviate the effect of the Registrar’s certificate. Whether the Irish courts would take a similar view of the effect of the certificate in public law proceedings has never been judicially considered.

1. **A Re-Interpretation of Section 104**

The conclusive effect of the issue of a certificate of registration has obvious advantages when viewed from the perspective of a secured creditor. In light of the case law reviewed in the previous section it would appear that once a certificate is issued, there is virtually no risk whatsoever of the chargee being unable to enforce their security against the liquidator or a competing creditor as a result of a defect in the registration process. From the perspective of a person interested in promoting the broad policy objectives of the company charge register however, the certificate of registration must be viewed very differently.

The purpose of the company charge register is to provide information to interested parties about the charges which a company has granted over its property. In *Yolland,* the ‘mischief’ which promoted the introduction of the system was described in the following terms:

It was that companies were allowed to issue debentures, charging very frequently all their present and future assets, and there might be no means of ascertaining, at all events for a considerable time, whether any such debentures were issued; and therefore, for the protection of the general creditors of the company, or of persons desiring to trade with the company, it was thought fit to require that there should be a register of mortgages of that particular kind, not merely in the company's own books, but kept by the registrar.[[58]](#footnote-58)

The certificate for registration actively undermines the ability of third parties to rely on the information obtained by a search of the register. Where erroneous information is given to the Registrar as in cases like *Charnley, Shannonside Holdings* and *Mechanisations*, there is a real and obvious risk that a person examining the register of company charges may be misled into believing that some or all of the company’s assets are unencumbered when in fact this is not the case. In cases such *CL Nye* and *Amurec* the danger is even greater, in that interests which were not registered within the requisite time period may be validated as a result of a certificate of registration erroneously issued weeks or even months after the time for delivery of the particulars has passed. Since competing charges normally rank in order of their time of creation, this opens the possibility that a later creditor, who takes a subsequent charge before registration of the first charge actually occurs, may find himself losing priority to an earlier, undiscoverable, interest.

The courts have consistently answered arguments of this nature by stating that, as a matter of statutory interpretation, the wording of the statute requires the court to refrain from looking behind the certificate of registration. In some cases there is evidence of judicial discomfort with the consequences of the existing interpretation. For instance, Hamilton J. in *Amurec* stated that he had considerable sympathy with the position of the liquidator who was seeking to set the certificate aside,[[59]](#footnote-59) while Pennycuick J. in *Eric Holmes* stated that he felt that there must be some ‘lacuna’ in the Acts which resulted in the court having to uphold a certificate made on the basis of particulars which were incorrect and “might even be fraudulent”.[[60]](#footnote-60)

The purpose of this section is to challenge the view that there is no interpretation, other than the current one, open to a court when presented with a certificate of registration. Since this section of the article requires a close reading of the relevant provisions, it is necessary to reproduce some of the most significant sections of the Act here. Section 99(1) of the Companies Act 1963 establishes the requirement for charges to be registered and sets out two the consequences of a failure to register. It reads as follows:

99. —(1) Subject to the provisions of this Part, every charge created after the fixed date by a company, and being a charge to which this section applies, shall, so far as any security on the company's property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, verified in the prescribed manner, are delivered to or received by the registrar of companies for registration in manner required by this Act within 21 days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge becomes void under this section, the money secured thereby shall immediately become payable.

Section 100 imposes a duty on the company to deliver the particulars of charges created over its property to the Registrar of Companies and provides for a criminal sanction where this step is not carried out. The relevant portions of the section read as follows:

100.—(1) It shall be the duty of a company to send to the registrar of companies for registration within the time required by section 99 the particulars of every charge created by the company, and of the issues of debentures of a series requiring registration under section 99, together with any documents required by that section, but registration of any such charge may be effected on the application of any person interested therein.

Section 103 requires the Registrar of Companies to maintain the company charge register and to enter on to the register the particulars of charges. The relevant subsection reads as follows:

103.—(1) The registrar of companies shall keep, in relation to each company, a register in the prescribed form of all the charges requiring registration under this Part, and shall, on payment of such fee as may be prescribed, enter in the register, in relation to such charges, the following particulars ….

Section 104 provides for the issuing and effect of the certificate of registration and reads as follows:

104.—The registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this Part, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

A close reading of these sections suggests the following. A registrable charge is void under section 99(1) if, and only if, the prescribed particulars have not been “delivered to or received by the registrar of companies” with the time limit provided. The purpose of making that delivery is to enable the Registrar of Companies to register the charge. The statute does not in fact make the validity of the charge dependent on the particulars being registered.

Further support for this view can be found in section 100(1) which defines the duty of the company in terms of “sending” the particulars to the Registrar and not in terms of carrying out registration. It is suggested that if a company or chargee could prove, for instance by *via voce* evidence that the necessary particulars were in fact delivered to the Registrar, the charge would be valid even if the Registrar had taken no action whatsoever after the delivery had taken place. Authority for this point can be found in the decision of the High Court in *Re: Investment Options and Solutions Ltd* in which Laffoy J. was satisfied, without need to refer to the certificate that a charge had been registered within time.[[61]](#footnote-61) Additional support can be found in *Grove v Advantage Healthcare (T10).*[[62]](#footnote-62)There the particulars which delivered to the Registrar were correct in all respects; however the form which was used misstated the company’s registered number and instead bore the number of a related company, Advantage Healthcare (T9) Ltd. A certificate of registration was issued bearing T9’s registered number. Lightman J. held that the certificate was conclusive evidence that T9 had registered a charge but that with reference to T10 the certificate was a nullity. Nonetheless, the court held that the company’s number is not a prescribed particular, and since there was clear evidence that T10 had in fact delivered all of the particulars the court held that the charge was not invalidated by the equivalent of section 99(1). Finally it should be pointed out that the last clause in section 100(1) permits a third party with an interest in the charge to make an application to the Registrar to have the charge registered. It does not permit the third party to actually make the registration on its own behalf.

That the duty to attend to registration falls on the Registrar rather than the person who delivers the particulars seems to be beyond doubt in light of the wording of section 99(2) and section 100(1) both of which speak of delivering particulars to the Registrar “for registration”. Further confirmation can be found in the wording of section 103 which imposes a dual duty on the Registrar: first to maintain a register of charges for each company and then to enter the particulars of each charge into that register on receiving payment of the required fee.

Once it is clearly understood that the Registrar is required to attend to registration of the charge and that the duty of the company is merely to deliver the particulars to the Registrar in order to facilitate the registration of the charge, section 104 can be read in a different light. Section 104 speaks of the certificate as being “conclusive evidence that the requirements of this Part *as to registration* have been complied with” (emphasis added). If registration, as distinct from delivery of particulars, is the duty of the Registrar of Companies, then a literal reading of section 104 can only result in the conclusion that the certificate is evidence that the *Registrar* has complied with his duty under Part IV. On this view, the certificate of registration provides no evidence at all, much less evidence of a conclusive nature, on the separate question of whether the company has complied with its duty to deliver the particulars to the Registrar.

Such an approach appears particularly apposite in the Irish context when it is borne in mind that in 1963 the Oireachtas removed the requirement that the Registrar be provided with the original charge document along with the prescribed particulars. The role of the Registrar in the Irish system is purely a mechanical one of receiving particulars and entering them on the register. In light of such a system, it is surely absurd to claim that the Oireachtas, having repealed the ability of the Registrar to verify the particulars, simultaneously intended that the Registrar would certify their veracity. Such a result, it is suggested, would require clear words to that effect to be located in the statute and no such words appear in section 104.

It can also be pointed out that there is at least are two cases in which the English courts seem to have ignored the conclusive effect of the certificate in a manner which would fit with proposed re-interpretation of section 104. In *Esberger & Son v Capital and Counties Bank*[[63]](#footnote-63) a company deposited title deeds to its land together with a signed and sealed, though undated, memorandum of a charge which was to secure certain future advances made by the bank. A series of advances were made by the bank under the arrangement. Some nine months after the deposit, a manager in the bank filled in that day’s date into the memorandum and then proceeded to send details of the charge to the Registrar. In the High Court, Sargant J. held that the charge had been created at the date on which the first advance had been made and that it was void for want of registration within 21 days of that date. The court did not offer any reason for ignoring the certificate of registration; indeed it would appear that the certificate point was not argued between the parties at the hearing and *Yolland* was not cited in argument. Similarly in *Re: N Defries & Co*[[64]](#footnote-64) Buckley J. examined considered whether, as a matter of fact, the charge in question had been registered within time despite the presence a certificate of registration.  *Defries* was not cited before the Court of Appeal in *Yolland.*

A re-interpretation of section 104 has the further advantage that provides a more harmonious fit between section 104 and section 106. At present, the rectification mechanism provided for by section 106 is virtually redundant since in all cases once a certificate of registration has been issued there can be no question but that the charge is valid no matter what errors may appear on the register. Under the re-interpretation contended for in this article, section 106 would have an important role to play in the registration of company charges. It would provide a mechanism for the correction of errors. At the same time it would allow for the protection the reasonable expectations of those who rely, in good faith on the accuracy of the register through the court’s jurisdiction to impose conditions on an order for rectification.

While a fresh interpretation of section 104 would have several advantages, it is important to note there are limits to what a judicial rethink of the legislative framework can achieve. The certificate would continue to have conclusive effects as regards the actions of the registrar, with the result that in fact patterns such *Exeter Trust* and *Top Marques* it would probably continue to be beyond the reach of the courts to conclude that the charge had been properly registered. Similarly, it would appear that re-interpretation would not open the possibility of applications for a judicial review of the Registrar’s decision making since the certificate would continue to act as conclusive evidence that the Registrar had discharged his function correctly.

Two objections can be mounted to this interpretation of section 104. One is based on the decision in *Yolland* and the many cases which have followed it. The second is based on pragmatic considerations of policy.

In *Yolland* the Court of Appeal recognised that registration of a charge involves two steps, one of delivery and one of registration. It also recognised that the different parties to the process have different duties but said of the certificate:

“[It] means not merely that he has done his mechanical duties, but that that has been done which is required to be done by any person upon whom a duty is imposed by this Act in order to get the benefit of the security, including the company itself.”[[65]](#footnote-65)

The difficulty with this statement is two-fold. First, Cozens-Hardy MR provides no textual basis in the statute itself for his assertion that the certificate is intended to provide evidence that persons other the Registrar have done their duty under the Act. Second, the statement must be regarded as an *obiter dictum*, because what was being decided in that case was whether the Registrar’s decision to register a series of debentures under a single entry was correct or not. In other words the court was being asked to consider whether the Registrar had performed his duty or not. The question of whether the company had fulfilled its duty by sending (or “filing” to use the language of section 14(6) of the Companies Act 1900 as it then stood) the prescribed particulars to the Registrar was not before the court.

The policy objection to the above is that if the certificate of registration is not conclusive evidence that a charge has been properly registered, then all company charges are at risk of being challenged by liquidators and creditors of companies. For chargees it might be claimed, this would be, as Cozens-Hardy MR put it in *Yolland*, “an unendurable state of things”[[66]](#footnote-66) and the spectre would be raised of the company charge register attracting the same sort of interminable litigation over the technical requirements of registration as has made the registration system for the bills of sale commercially unworkable.[[67]](#footnote-67)

The extent to which it is appropriate to have regard to detailed arguments about the desirability of a particular policy outcome when engaged in statutory interpretation is of course open to question. Leaving that qualification to one side however, several responses can be made to the policy argument. First, had the legislature wished to extend the protection of the certificate to the delivery of particulars it would have been easy do to so by inserting the words “and delivery of particulars” after the word registration in section 104.

Second, the requirements imposed on the company by sections 99 and 100 are nowhere near as complicated as those imposed on an individual seeking to register a security bill of sale under the Bills of Sale (Ireland) Acts 1879-1883. To take but one example, section 9 of Bills of Sale (Ireland) (1879) Amendment Act 1883 provides that every bill of sale must, as a condition of its validity’ be drafted “in accordance with” a sample bill which is set out in Schedule 1 to the Act. It is extremely difficult to define with a precision how far one can safely depart from the statutory form without infringing section 9.[[68]](#footnote-68) There is no equivalent requirement for a company charge.

Third, the loss of certainty which would be suffered by chargees under a revised interpretation of section 104 would be offset by the increased certainty produced for those who rely on the information provided by the register in their day to day dealings. It might also be said that the degree of uncertainty faced by chargees can be reduced by taking due care to ensure that particulars delivered to the Registrar are fully accurate. On this view, a chargee who loses their security as a result of an error in registration is the author of his own misfortune and has only himself (or his legal advisor) to blame. It is certainly easier for a chargee to ensure that the particulars are accurate when presented to the Registrar than it is for a member of the public to verify whether the information contained on the company charge register is correct. Since the avowed purpose of the company charge registration system is to provide information to the public it is difficult to argue in favour of an interpretation of section 104 which undermines the accuracy of that information. Finally, as noted above, in the event that an error in the registered particulars is discovered, section 106 provides a mechanism whereby a chargee can seek to rectify the difficulty by application to court, a relief not afforded to the holder of an unregistered bill of sale.

1. **The Companies Consolidation and Reform Bill 2012**

The previous sections have argued for a judicial reconsideration of the interpretation of section 104 of the Companies Act 1963. The final section of this article will consider the impact of the proposed changes to the company charge registration system contained in the Companies Consolidation and Reform Bill 2012.

In its Second Report on the reform of Irish company law, the Company Law Review Group (‘CLRG’) considered the impact of section 104 on the charge registration system. Focusing in particular on the existing requirement to describe the property subject to the charge, the CLRG acknowledged, under the present law, “it is quite possible that … Certificates of Charge, … have been issued by the Registrar where the requirements [as to registration] have not in fact been complied with.”[[69]](#footnote-69)

The CLRG made a number of recommendations for reform of the process for registering charges in Ireland. It argued for the abolition of the list of registrable charges currently provided in section 99 and its replacement with a general requirement that all charges be brought within the registration system.[[70]](#footnote-70) The CLRG suggested extensive changes in the system of charge registration and argued for a transition to a wholly electronic system of registration in which the date of registration would be used in establishing priority between competing charges.[[71]](#footnote-71) The CLRG also recommended substantial alterations to the particulars which must be sent to the CRO in order to satisfy the registration requirement. The suggested particulars would omit the requirement to specify the category of the charge being registered and would omit the requirement to specify the amount secured by the charge. The requirement to supply a description of the property subject to the charge was retained; however the CLRG recommended that the law be changed so as to restrict to the conclusive effect to the certificate “only as to the charges particulars of which have been filed”.

The changes recommended by the CLRG have found legislative expression in Part 7, Chapter 25 of the Companies Consolidation and Reform Bill 2012 (‘the 2012 Bill’).[[72]](#footnote-72) While the 2012 Bill implements the reforms suggested by the CLRG, the drafting of the key provisions retains much of language and structure of the current legislation. In particular, much of the legislative language which has been analysed above in arguing that the present understanding of the effect of the certificate of registration is flawed is repeated in the new proposed legislation.

Clause 410 of the 2012 Bill establishes the principle that a charge is void against the liquidator and any creditor of the company unless one of two registration procedures has been followed. The two registration systems are designed to enable a charge to be registered either before or after a charge has been created and both procedures involve a prescribed set of particulars in the prescribed form.[[73]](#footnote-73) Under the first procedure (‘the normal registration procedure’) a charge is void unless the prescribed particulars are delivered within 21 days of the date of creation. Under the second procedure (‘the early registration procedure’), a notice of an intention to create a charge may be delivered to the Registrar along with the prescribed particulars. Within 21 days of the delivery of notice, a second notice must be delivered to the Registrar confirming that the charge has been created. Where this is done, the charge is treated for priority purpsoes as having been registered at the date the initial notice was received. Where the second notice is not filed within a timely manner, the charge is declared void.

The prescribed particulars have not been specified in the primary legislation; however it would appear from the CLRG report and from Clause 415, which imposes a duty on the Registrar to maintain the charge register for each company, that the following particulars will be included:

1. The name and registered number of the company creating the charge;
2. The date of creation of the charge;
3. The name and contact details of the person presenting the particulars to the Registrar;
4. The name and contact details of the person entitled to the charge;
5. A description of the property subject to the charge.[[74]](#footnote-74)

In setting out the procedures for carrying out registration, Clause 410(3) and 410(4) make it clear that the procedures for registration are completed when the Registrar of Companies has received the prescribed particulars. Thus, under the 2012 Bill, the actual registration of the charge itself remains the function of the Registrar.[[75]](#footnote-75) Clause 416 provides for the issuing and effect of the certificate of registration and is worth setting out in full:

416.—(1) The Registrar shall give a certificate of the registration of any charge registered in pursuance of this Part.

(2) Subject to subsection (3), such a certificate shall be conclusive evidence that the requirements of this Part as to the registration of the charge have been complied with.

(3) To the extent that the particulars of a charge delivered to the Registrar in purported compliance with this Part omit the required 25 particulars in respect of one or more properties to which the charge relates, the evidential effect of the certificate provided under subsection (2) shall not extend to the particular property or properties in respect of which that omission occurs.

(4) In subsection (3) “property” includes an interest in, or rightover, property.

The intended effect of this clause seems to be to disapply the (presumed) conclusive effect of the certificate of registration from descriptions of the property subject to the charge. Thus the outcomes of cases with fact patterns such as those in *Charnley*[[76]](#footnote-76)and *Re: Valley Ice Cream*[[77]](#footnote-77) will be reversed under the new legislation and such cases will decided in accordance with the interpretation argued for in the previous sections. If passed, clause 416(3) will amount to a legislative rejection of the policy arguments presented by Cozens-Hardy MR in *Yolland* in that it will force those who send particulars to the Registrar to bear the consequences of errors in the documentation which they supply – at least in so far as those errors relate to the description of the property which is subject to the charge.

While clause 416(3) clarifies the intention of the legislature in respect of errors relating to the description of the property subject to the charge, the courts will still have to determine the scope of protection afforded by the certificate of registration where other irregularities have occurred in the registration process. Errors relating to the date of creation of the charge provide an interesting example. Clause 410 retains the requirement that the particulars of a charge be presented within 21 days of the date of creation, or within 21 days of the filing of a notice of the intention to create a charge in the case of the early registration procedure. One effect of the inclusion of these 21 day time limits is that there remains a possibility of an *Amurec* type fact pattern emerging in which a certificate of registration is issued to a chargee who did not, as a matter of fact, deliver the particulars of the charge in time.

In such cases the courts will be faced with determining the meaning of clause 416(3) of the Bill the language of which is drawn directly from the existing section 104 of the 1963 Act. Such a case will present the courts with an identical interpretive dilemma to that currently posed by the existing statutory text. Clause 410, the analogue of section 99 of the 1963 Act, states that a charge is void unless either the normal or early registration procedures have been carried out. These procedures are detailed in Clause 410(3) and 410(4) respectively and involve the delivery of notices and particulars to the registrar within defined time limits. Clause 415, the analogue of section 103 of the 1963 Act, imposes duties on the Registrar to companies to maintain registers and carry on registrations. Under the new legislation therefore, the meaning of the phrase “conclusive evidence that the requirements of this Part as to the registration of the charge have been complied with” will remain important in at least some cases.

1. **Conclusion**

This article has argued that the courts ought to re-appraise the interpretation of section 104 of the Companies Act 1963. It has demonstrated that the existing authorities have accorded the certificate of registration a significance which is not envisaged by a plain reading of the words of the statute and which is incompatible with the legislative policy underlying Part IV of the 1963 Act.

The interpretive dilemma addressed by this article has important consequences for the liquidation of Irish companies. Where a charge is void because of a failure to comply with the requirement to send particulars of registration to the Registrar, the assets which were the subject of that charge ought to be distributed to the company’s general body of preferred and unsecured creditors rather than being delivered up the to the charge holder.[[78]](#footnote-78) It is suggested that the result of the present interpretation is unduly favourable to secured creditors whose charges have not been disclosed to the public in the manner intended by the Oireachtas. While it seems likely that the text of section 104 of the Companies Act 1963 will soon be consigned to history, it should be noted that clause 421 of the Companies Consolidation and Reform Bill 2012 provides that the terms of the 1963 Act will continue to apply to charges created prior to the repeal of the existing legislation. For this reason, the true meaning of section 104 will continue to be of concern to liquidators and creditors for some years to come.

This article has also argued that the changes to company charge registration proposed in 2012 Bill, while clarifying the position in respect of the description of the property subject to the charge, will continue to present the courts the same problems of interpretation posed by previous versions of the Companies Acts. In interpreting statutes which seek to consolidate earlier enactments, the courts have long recognised that the state of the law before the new legislation was passed is a relevant factor in interpreting the meaning of the new section.[[79]](#footnote-79) It is submitted therefore that the precise meaning and effect of section 104 will continue to be a matter of considerable practical importance after the passage of the 2012 Bill.

The meaning and effect of the section 104 has been considered settled law for many years. Nonetheless, it is notable that neither the Supreme Court in this jurisdiction, nor the equivalent courts of final appeal in the United Kingdom have ever been presented with an opportunity to review the interpretations of section 104 propounded by High Court and Court of Appeal judges over the last century. The cases reviewed in this article have all taken as their starting point the statements of Cozens-Hardy MR in *Yolland* about the role of the certificate. This article has shown that those statements have been repeated in an uncritical manner by judges and commentators over the years and, perhaps by mere force of repetition, they have become to be regarded as definitive. Be that as it may, as Hardiman J. has recently reminded the legal community, “[t]he judgment of a judge, however eminent, should not be construed as though it were a statute.”[[80]](#footnote-80) It might be that a re-interpretation of section 104 would cause an unanticipated alteration of the law as it is presently understood to be but, it is respectfully submitted that a careful, plain reading of the existing statute would require the judiciary to confine the decision in *Yolland* to its proper context and to reassess those cases which have broadened its impact. Such a reappraisal would, it is suggested, restore the Registrar’s certificate to its proper function and would render the company charge register a more useful and reliable source of information about charges created by Irish companies.

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   See *Re: Jackson and Bassford Ltd* [1906] 2 Ch 467, 476; *Re: Cardiff Workmen’s Cottage Company Ltd* [1906] 2 Ch 627, 629; *Dublin City Distillery v Doherty* [1914] AC 823, 854. [↑](#footnote-ref-1)
2. See s.62 Registration of Title Act 1964 (as amended). [↑](#footnote-ref-2)
3. Part 3, Registration of Deeds and Title Act 2006 which re-enacts, with substantial amendments, the scheme of registration originally established by the Registration of Deeds Act 1707. [↑](#footnote-ref-3)
4. Bills of Sale (Ireland) Acts 1878-1883. [↑](#footnote-ref-4)
5. Part II, Agricultural Credit Act 1978. [↑](#footnote-ref-5)
6. ss.50-56 Mercantile Marine Act 1955. [↑](#footnote-ref-6)
7. See International Interests in Mobile Equipment Act 2005 which implements the provisions of the Cape Town Convention on International Interests in Mobile Equipment and its associated Protocol on Matters Specific to Aircraft Equipment into domestic law. [↑](#footnote-ref-7)
8. s.85 Patents Act 1992, s.29 Trade Marks Act 1996, and s.41 Industrial Designs Act 2001. [↑](#footnote-ref-8)
9. Hansard, HC Deb, 26 June 1900, vol 84, col 1143. [↑](#footnote-ref-9)
10. s.10 Companies Act 1907, re-enacted as s.93 Companies (Consolidation) Act 1908 [↑](#footnote-ref-10)
11. See s.43(1) Companies Act 1928, re-enacted by s.79 Companies Act 1929. [↑](#footnote-ref-11)
12. s.122 Companies Act 1990, the section also creates a power for the Minister for Enterprise, Jobs and Innovation to add, remove or vary the categories of registrable charge by statutory instrument. This power has never been used. [↑](#footnote-ref-12)
13. The priority rules vary depending on the nature of the competing charges and the order of creation rule does not apply to a conflict between a floating charge and later fixed charge see *Re: Russell Murphy* [1976] IR 15. For a summary of the present position see M Donnelly, *The Law of Credit and Security* (Roundhall, 2011), [15-79] – [15-83]. [↑](#footnote-ref-13)
14. s.105 Companies Act 1963. [↑](#footnote-ref-14)
15. s.860 Companies Act 2006 as originally enacted; the system of company charge registration has been substantially altered by introduction, in April 2013, of the Companies Act 2006 (Amendment of Part 25) Regulations 2013 (S.I. 600 of 2013). These Regulations establish a single system of company charge registration throughout the United Kingdom. The changes made to English charge registration by these regulations are extensive but owing to considerations of space they will not be considered in this article. [↑](#footnote-ref-15)
16. Beale and others, (n 13) 766-767. G McCormack, *Registration of Company Charges* (3rd edn, Jordans, 2009), 214. [↑](#footnote-ref-16)
17. Board of Trade, *Report of the Company Law Committee* (Cmnd 1749, HMSO, 1962), [302]; A Diamond, *A Review of Security Interests in Property* (HMSO, 1989), 98-101. [↑](#footnote-ref-17)
18. Dáil Deb, Special Committee on the Companies Bill 1962, 21st February 1962. [↑](#footnote-ref-18)
19. Companies (Forms) Order, 2001, SI 466 of 2001. [↑](#footnote-ref-19)
20. See *R v Registrar of Companies, ex parte Central Bank of India* [1986] 1 QB 1114, 1171. [↑](#footnote-ref-20)
21. W Gough, *Company Charges,* (2nd edn, Lexis Nexis, 1996), 716. [↑](#footnote-ref-21)
22. s.14(6) Companies Act 1900. [↑](#footnote-ref-22)
23. This requirement has been retained in England under s.865 Companies Act 2006 but was repealed in Ireland in 1963. [↑](#footnote-ref-23)
24. See *Re: Yolland, Husson and Birkett Ltd* [1908] 1 Ch 152 at 158 per Cozens-Hardy MR hereafter ‘*Yolland*’; *National Provincial and Union Bank of England v Charnley* [1924] 1 KB 431 at 447-448 per Scrutton LJ hereafter ‘*Charnley*’ and *Re: CL Nye Ltd* [1971] 1 Ch 442 at 470 per Harman LJ and 474 per Russell LJ, here after ‘*CL Nye*’. [↑](#footnote-ref-24)
25. See *Charnley* ibid. at 453 per Atkin LJ. [↑](#footnote-ref-25)
26. See ss.3-4 and Schedule 4 of the Companies (Re-Constitution of Records) Act 1924. [↑](#footnote-ref-26)
27. *Charnley* (n 24). [↑](#footnote-ref-27)
28. ibid. at 444-445. [↑](#footnote-ref-28)
29. G McCormack, (n 15), 215. [↑](#footnote-ref-29)
30. Unreported, High Court, McCracken J.,22nd July 1998. [↑](#footnote-ref-30)
31. [1966] 1 Ch 20, hereafter ‘*Eric Holmes*’. [↑](#footnote-ref-31)
32. Unreported, High Court, Costello J., 20th May 1993. [↑](#footnote-ref-32)
33. [2010] IEHC 107. [↑](#footnote-ref-33)
34. [1965] 1 Ch 1052. [↑](#footnote-ref-34)
35. See the detailed statement of facts in the headnote to the first instance decision at [1907] 2 Ch 471, 473. [↑](#footnote-ref-35)
36. *Charnley*, (n 25), 155. [↑](#footnote-ref-36)
37. *CL Nye* (n 25). [↑](#footnote-ref-37)
38. [1976-1977] ILRM 222, hereafter ‘*Amurec*’. [↑](#footnote-ref-38)
39. *ibid,* 224. [↑](#footnote-ref-39)
40. *Re: Farm Fresh Frozen Foods Ltd* [1980] ILRM 131, 136. [↑](#footnote-ref-40)
41. *Re: Telomatic Ltd* [1994] 1 BCLC 90, 94. [↑](#footnote-ref-41)
42. *Re: Ashputron Estates* [1983] Ch 110. [↑](#footnote-ref-42)
43. Beale and others (n 13), 350. [↑](#footnote-ref-43)
44. *Re: Joplin Brewery* [1902] 1 Ch 79. [↑](#footnote-ref-44)
45. T Courtney, *Law of Private Companies* (2nd edn. Lexis Nexus, 2002), [21.090]. Courtney’s views have changed in light of *Re: Investment Options and Solutions Ltd* (n 31). See T Courtney, *Law of Private Companies* (3rd edn. Bloomsbury Professional, 2012), [19.092]. See also L McCann and T Courtney, *Companies Acts 1963-2006* (Bloomsbury Professional, 2007), 225. [↑](#footnote-ref-45)
46. *Re: Investment Options and Solutions Ltd* (n 31) [↑](#footnote-ref-46)
47. [1991] BCLC 888, hereafter ‘*Exeter Trust*’. [↑](#footnote-ref-47)
48. [2006] EWHC 109 (Ch), hereafter *‘Top Marques*’. [↑](#footnote-ref-48)
49. *Exeter Trust*  (n 44), 893. [↑](#footnote-ref-49)
50. See *Re: Charles (LH) & Co Ltd* [1935] WN 15. [↑](#footnote-ref-50)
51. On the significance of the company’s solvency to the making of an order extending the time for registration see *Re: Ashpurton Estates Ltd* (n 39) and *Re: Resnoid & Mica Products Ltd* [1983] Ch 132 (decided in 1967). See also Beale and others (n 13), 352 and McCormack (n 15), 224-225. [↑](#footnote-ref-51)
52. *Top Marques* (n 45) at [29]-[30]. [↑](#footnote-ref-52)
53. Unreported, High Court, 27th January 1978. [↑](#footnote-ref-53)
54. ibid., 10. [↑](#footnote-ref-54)
55. [1986] 1 QB 1114, hereafter ‘Central Bank of India’. [↑](#footnote-ref-55)
56. *ibid.* 1134. [↑](#footnote-ref-56)
57. *ibid.* 1169. [↑](#footnote-ref-57)
58. *Yolland* (n 25),156. [↑](#footnote-ref-58)
59. *Amurec* (n 26), 227. [↑](#footnote-ref-59)
60. *Eric Holmes* (n 33), 1072. [↑](#footnote-ref-60)
61. [2010] IEHC 107, [9]. [↑](#footnote-ref-61)
62. [2000] 1 BCLC 661. [↑](#footnote-ref-62)
63. [1913] 2 Ch 366. [↑](#footnote-ref-63)
64. [1904] 1 Ch 37. [↑](#footnote-ref-64)
65. *Yolland* (n 25),159. [↑](#footnote-ref-65)
66. ibid., 158. [↑](#footnote-ref-66)
67. For an overview of the experiences with the bills of sale register in Ireland see B Maguire, ‘Bills of Sale: The Forgotten Relation?’ (1997) 4 *Commercial Law Practitioner* 3. The difficulties with the system are best summed up by Goode who has claimed that “it is easier for a camel to pass through the eye of a needle than for a bill of sale to be drafted which complies with all the technical requirements of the Acts”, see RM Goode, ‘Removing the Obstacles to Commercial Law Reform’ (2007) 123 *Law Quarterly Review* 602, 603. [↑](#footnote-ref-67)
68. See W Johnston, *Banking and Security Law in Ireland* (Butterworths, 1996), 418-426. [↑](#footnote-ref-68)
69. Company Law Review Group, *Report on Second Work Programme of Company Law Review Group 2002-2003* (2004), [8.11.4]. [↑](#footnote-ref-69)
70. *ibid.* [8.2.5]. The general principle of requiring registration is subject to an exception for financial collateral arrangements see European Communities (Financial Collateral Arrangements) Regulations 2004 (S.I. 1/2004) and the European Communities (Financial Collateral Arrangements) (Amendment) (No. 2) Regulations 2011 (S.I. 318/2011). [↑](#footnote-ref-70)
71. Company Law Review Group, (n 66), [8.3.11] [↑](#footnote-ref-71)
72. For a detailed consideration of the effect of the proposed legislation on the company charge register see N McGrath, ‘'The Company Charge Register in Ireland: Some Reflections on the Reform Proposals in the Companies Consolidation and Reform Bill 2012’ [2013] *Journal of Business Law* 303. [↑](#footnote-ref-72)
73. See cl. 410(3) and (4) Companies Consolidation and Reform Bill 2012. [↑](#footnote-ref-73)
74. See Company Law Review Group (n 66), [8.4.1]-[8.4.11]. [↑](#footnote-ref-74)
75. See cl. 415 Companies Consolidation and Reform Bill 2012 which phrased in almost identical terms to s.100 Companies Act 1963. [↑](#footnote-ref-75)
76. *Charnley* (n 24). [↑](#footnote-ref-76)
77. *Re: Valley Ice Cream Ltd* (n 30). [↑](#footnote-ref-77)
78. See s.284(1) Companies Act 1963.

    *cc*c *A* [↑](#footnote-ref-78)
79. *A* [↑](#footnote-ref-79)
80. [↑](#footnote-ref-80)