



Tithe an Oireachtais

An Comhchoiste um Chultúr, Oidhreacht agus Gaeltacht

Tuarascáil maidir le Grinnscrúdú ar an mBille um Lá Cuimhneacháin Náisiúnta an Ghorta
Mhóir 2017 [PMB]

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Houses of the Oireachtas

Joint Committee on Culture, Heritage and the Gaeltacht

Report on the Detailed Scrutiny of the National Famine Commemoration Day Bill 2017
[PMB]

April 2019

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1. Introduction -

This is the report of the Joint Committee on Culture, Heritage and the Gaeltacht in relation to the detailed scrutiny of the National Famine Commemoration Day Bill 2017 (“the Bill”).

The Bill was referred to the Select Committee on Arts, Heritage, Regional, Rural and Gaeltacht Affairs by Order of the Dáil on 21 February, 2017. The Government issued a Money Message in relation to the Bill on 2 May 2018.

On 14 November 2018, the Joint Committee decided to proceed with detailed scrutiny of the Bill in accordance with the guidelines, and a meeting to discuss the matter was held on 20 November 2018.

2. Procedural basis for scrutiny -

At its meeting of 14th November 2018, the Committee agreed to undertake detailed scrutiny of the Bill in accordance with the provisions of Standing Order 141(2) and 142(2) of Dáil Éireann and of the draft guidelines developed in this regard.

3. Main provisions of the Bill -

The purpose of the Bill is to designate the second Sunday of May each year as the National Famine Commemoration Day to remember and commemorate the famine in Ireland in the period 1845 to 1852 in a central venue, and to provide that the expenses arising be funded by the Exchequer. The aim of such a commemoration as outlined in the Bill will be to mark the famine’s historical, social and cultural significance by way of civil and military ceremonial events and inter-faith services.

4. Detailed scrutiny

On the 28th of November 2018, the Joint Committee held a session scrutinising the Bill. In this session, the sponsor of the Bill, **Colm Brophy T.D.** briefed the Committee on the main provisions of the Bill.

Deputy Brophy informed the Committee that the Bill provides for the designation of the second Sunday of May each year to commemorate the great famine. He added that the State Commemoration, to be funded by the Exchequer, would mark the famine’s historical, social and cultural significance and would include military ceremonial events including an inter-faith service. As an event so central to our history and Ireland today, a definitive date and structure is contained in the Bill which, in the Deputy’s view as expressed to the Committee, will allow the development of a process around the annual commemoration,

resulting in greater education involvement and local participation. Deputy Brophy also recognised that some provisions in the Draft Bill could be tightened up or amended for logistical reasons and he was open to consideration of same.

Officials from the **Department of Culture, Heritage and the Gaeltacht** attended the meeting to express its views on the draft Bill. In its address to the Committee, it described how the National Famine Commemoration had been initiated in 2008, following a Government decision to commemorate the Great Famine with an annual memorial day. A National Famine Commemoration Committee was also set up to consider the most appropriate arrangements for such a commemoration. In the Department's view, this broadly followed the format of other national commemoration days, none of which are provided for in legislation but are undertaken on the basis of Government Decision only. The Department added that no Government since then considered it necessary to introduce legislation for events of this nature. However in 2009, the Government, at the request of the Minister for Culture, Heritage and the Gaeltacht, agreed that the third Sunday of May be designated National Famine Commemoration Day and that the State commemoration could also be held on that day or the preceding Saturday. A decision in this regard would be made by the Minister for Culture, Heritage and the Gaeltacht in consultation with the relevant local authority and host community. These current arrangements are considered by the Department to be fulfilling one of the Bill's main objectives on the setting of a fixed date while also providing flexibility to address local community concerns. In the Department's view therefore, the ability of communities to host the Commemoration in future years could be hampered by the enactment of legislation and lead to a number of unintended consequences, in particular the proposals on the inclusion of "military ceremonial elements" and an "inter-faith service", as part of the Commemoration.

The **Committee for Commemoration of Irish Famine Victims** addressed the Committee expressing its strong support for the Bill and its main proposal that the third Sunday in May be the set day for an annual commemoration each year. In its view, the Bill will bring clarity, certainty and stability for all involved in holding commemorations and will facilitate planning for future commemoration events. A fixed day for an event will provide 'equal footing' with other fixed-day events such as St Patrick's Day.

5. Committee Discussion on Draft Bill

5.1 Senator Marie Louise O'Donnell asked why the Minister for Culture Heritage and the Gaeltacht having agreed on 30 April 2018 to the designation of a fixed day now appeared to be questioning it. It was the Senator's view that it was now unclear what the Minister's position was in this regard.

Senator O'Donnell also asked Deputy Brophy to give specific reasons as to why he was proposing a fixed day and to provide further details of any provisions in the bill he wished to amend.

The Department responded that it did not support the Bill as drafted and that consideration needed to be given to the narrow weather window and logistical issues arising for schools to organise events locally. Flexibility around a date was intended to facilitate local communities requesting date changes.

Deputy Brophy in his response to the Senator explained that the Bill had been around since 2017 and that the Government, subsequent to the Bill's introduction, had made its decision to allow it go forward as it has no problem with it. He added that he had no problem moving the proposed date in the Bill to the third Sunday in May and any further amendments around military and interfaith participation but he was not in agreement to the total removal of an interfaith element. He was of the view that flexibility on what takes place on the actual day can be retained and is something a famine organising committee can decide on a yearly basis. However, the Deputy was strongly of the view that it was not acceptable to have a randomly rotating date to suit the diaries of those who may be attending. While he welcomed the Government decision to hold the commemorative event on the third Sunday in May, without legislation, such a decision could be changed any time by any cabinet in the future.

5.2 **Senator Warfield** had no issues with legislating for a National Famine Commemoration Day but proposed that the English-language title '*the Great Famine*' be referred throughout all of the Bill by its Irish title '*An Gorta Mór*' only. He further proposed the removal of 'civil and military ceremonial events' from Section 2(3) and an amendment to Section 2(4) whereby the central venue for the commemoration be designated by the Department of Culture, Heritage and the Gaeltacht, and not by the Taoiseach. He further added that the day itself be set as a public holiday.

With regard to using the Irish language only, Deputy Brophy favoured retaining both languages as this would work better internationally. He also expressed reservations on the commemoration event ending up as a public holiday which in his view could be exploited to become something different. He repeated his view that he was not as opposed to the interfaith element as some of the Members but was open to looking at change in this section to allow greater flexibility on how it may be done. Either way he did not agree with the event having no faith element at all.

5.3 The **National Famine Commemoration Committee** was established by Government decision in 2008 and is chaired by the Minister for Culture, Heritage and

the Gaeltacht. Its membership is made up of representatives from various Government departments and other interested parties. A representative from the Commemoration Committee described the three thrusts of the commemoration event as fulfilling a national and international commemoration; reaching out and engaging the diaspora; and providing awareness of hunger issues worldwide. The commemoration event which is organised by the National Famine Commemoration Committee has been rotating to each province every year with each community addressing it in different ways and this has played a part in its success. In addition, a new website is adding to the success of the annual event by also serving as a research tool for the period 1841 to 1851, with the potential to develop as a repository in engaging the public to add their own information and artefacts. Mention was also made of potential concerns for those in Northern Ireland around a military event. The Commemoration Committee also had concerns around the inclusion of an interfaith service.

5.4 Deputy Éamon Ó Cuív expressed the view that legislation can have un-intended consequences which can only be addressed with new legislation and would therefore affect any flexibility or addressing concerns arising in organising an annual event of this nature. The Deputy was in favour of retaining reference to military involvement in the Bill, explaining that the military is a force for peace keeping and internal security and represents the State in a formal way showing that an independent Irish state recognises these citizens who died during and as a result of the famine. He added that while some elements of such a commemorative event may pose difficulties for Northern Ireland at times, flexibility would be necessary to deal with such concerns and would be much less possible if the event was legislated for.

With regard to the inclusion of an inter-faith service, Deputy Ó Cuív was not in favour.

Deputy Ó Cuív stressed the importance of including communities throughout all 32 counties of Ireland. He expressed disappointment that a decision had been made not to rotate the national event explaining that when the Commemoration Day was initially set up, it was done with the intention that it belonged to the small places of Ireland and it was important therefore to resist any temptation that it be grabbed by cities and bigger communities. In addition, he expressed concern that Section 2(4) of the Bill made reference to the central venue for the commemoration being designated by the Taoiseach and that a commemoration advisory committee would not be consulted. He reminded the Joint Committee that the initiative had been designed in principle and in practice no decisions would be made without the view of an advisory committee.

5.5 The **Department of Culture, Heritage and the Gaeltacht** re-stated there was a Government decision in place to hold the national event during a specific weekend and that there was no intention to have this decision revoked. In the Department's view, a fixed date serves the purpose that a bank or public holiday serves in ensuring that the event, as intended, takes place annually. The venue for the next commemoration should be announced at the conclusion of the preceding event.

5.6 **Deputy Aengus Ó Snodaigh (Chair)**, in referring to a proposed fixed date, expressed the view that this served the same purpose as a public holiday. With regard to the venue for the national commemoration, Deputy Ó Snodaigh proposed that this be announced at the end of each annual event for the following year as this would allow communities to make a bid and the advisory committee to fulfil its role to best effect.

However he added that the proposed fixed day of the third Sunday in May would present difficulties to get the involvement of secondary schools as most students would be undergoing exams. However, on the other hand, if an event was taking place in a small local community, it would be more than likely that all of the community would want to be involved. It was also therefore very important to note that schools' programmes are key to locally organised events and the famine must remain on the national school curriculum. This would further encourage schoolchildren to take an interest and attend any local or community events in spite of the fixed date during exam times.

With regard to the inclusion of an interfaith element in the Bill, it was the Deputy's view that all events run by the State should be non-sectarian. He agreed that the involvement with communities in organising the commemoration was essential and proposed that the date be announced with the support of the advisory committee which will represent the communities.

With regard to the proposal to put the commemoration committee on some sort of statutory footing, the Department clarified that it had not yet given any consideration to this. Deputy Ó Cuív, in response, stated that the reference to the Taoiseach designating the commemoration's central venue without any reference to the commemoration committee would make the committee somewhat redundant.

5.7 **Senator Marie Louise O'Donnell** asked if the Bill could incorporate artistic, creative, literary, and or historical elements. With regard to reference to a military element in the Bill, the Senator had no issue further adding that military brings respect and honour to the State event and should be included at a level 'that gets it right'.

5.8 Deputy Eamon Ó Cuív was of the view that the Bill in its present form was highly flawed and he proposed that the Bill's proposer, Deputy Brophy, in consultation with the Department, draft amendments informed by the Committee's recommendations and bring these before the Committee at a future stage.

6. Analysis by the Office of Parliamentary Legal Advisor

6.1 The date proposed in the Bill coincides with the annual Daniel O'Connell Commemoration. In addition, legislating for a specific day for the annual commemoration could be open to legal challenge should the event not take place.

6.2 The Bill is compatible with Irish legislation. It is also compatible with EU legislation and does not concern human rights legislation.

6.3 The Bill proposes an annual Famine Commemoration Day and is not proposing a new public holiday. It is seen therefore not to impact on the Organisation of Working Time Act 1997 nor on the Organisation of Working Time (Public Holiday) Regulations 1999.

6.4 The provision in Section 2(2) of the Bill that "*...the commemoration shall occur on the second Sunday of May every year...*" differs from the date of "*...the third Sunday in May...*" in the Government Decision of 30 April 2018.

6.5 Subsection (3) provides for the inclusion of an '*inter-faith*' element for which there is presently no legal definition. Cognisance should be given in carefully defining such a term in order to avoid a legislative obligation beyond the control of the State.

This subsection also contains reference to military ceremonial elements and this could leave the State open to litigation if for some reason the military was not in a position to have representation at the event.

6.6 The year in the Act's title, if enacted, as defined in Section 4 of the Bill, will need amendment to indicate the year of enactment.

6.7 The role of the National Famine Commemoration Committee needs further clarification as to whether it will have a statutory function as adviser to the Department of Culture, Heritage and the Gaeltacht.

7. Observations and Conclusion of the Joint Committee -

The Committee in its detailed scrutiny of the Bill and pursuant to Standing Orders, agreed to report to the Houses of the Oireachtas that it has undertaken and completed detailed scrutiny of the Bill. The Committee has made the following observations and conclusions:-

7.1 The existing arrangements at national level to commemorate the national famine annually (which are implemented on foot of a Government Decision on a non-statutory basis with the involvement of the National Famine Commemoration Committee) have proven to be effective and flexible, in particular by facilitating the participation of communities throughout the State.

7.2 Further consideration needs to be given to the loss of flexibility that would arise by setting a fixed day of the third Sunday in May for a National Famine Commemoration Day.

7.3 Further consideration also needs to be given to the issue of the event being held in a central venue, as opposed to the current practice of rotating the venue throughout the State in order to achieve a more equitable and participative presence amongst the towns, localities and regions. Furthermore, the National Famine Commemoration Committee's view on the venue each year should be sought by the Department of Culture, Heritage and the Gaeltacht.

The venue for the commemoration for the following year should be announced at the end of each annual event in order to allow communities to participate as fully as possible and to allow the National Famine Commemoration Committee to fulfil its role to best effect

7.4 While there was general support for the inclusion of a military element to a national commemoration, concern was expressed on the inclusion of an interfaith element, given that there is no current legal definition of 'interfaith' nor a finite list of what can be considered 'interfaith' organisations and or representatives.

7.5 Further clarification should be provided in the Bill on the role of the National Famine Commemoration Committee in relation to the national commemoration and a formal recognition of its work. The importance of its advice in relation to the selection of a venue for the commemoration each year was stressed.

8. Decision

The Committee concluded that the Bill should, subject to the views of Dáil Éireann in relation to this Report, proceed to Committee Stage and that the proposer of the Bill take account of the observations and conclusions of the Committee to bring forward amendments to the Bill.

Aengus Ó Snodaigh T.D.
Chair

17 April 2019

Appendix 1 – Committee Membership

Joint Committee on Culture, Heritage and the Gaeltacht

Committee Membership:

Chairperson: Aengus Ó Snodaigh (Sinn Féin)

Deputies

Seán Canny (Independent)

Michael Collins (Independent) – Rural Independent Group

Danny Healy Re (Independent) - Rural Independent Group

Martin Heydon (Fine Gael)

Éamon Ó Cuív (Fianna Fáil)

Niamh Smyth (Fianna Fáil)

Senators

Maura Hopkins (Fine Gael)

Marie-Louise O'Donnell (Independent)

Aodhán Ó Ríordáin (Labour)

Fintan Warfield (Sinn Féin)

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil of 16 June 2016.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 21 July 2016.
3. Deputy Michael Collins was elected vice-Chairman on 2 November 2016
4. Deputy Seán Canney replaced Ciaran Cannon under the Eleventh Report of the Standing Committee of Selection – 13 July 2017
5. Deputy Aengus Ó Snodaigh replaced Peadar Tóibín as Chair under the Twenty-Second Report of the Standing Committee of Selection and Appointment in accordance with Standing Order 27F, copies of which were laid before Dáil Éireann on 8th November, 2018, and pursuant to Standing Order 93(2).

Appendix 2 – Terms of Reference of Committee

COMMITTEE ON ARTS, HERITAGE, REGIONAL, RURAL AND GAELTACHT AFFAIRS

TERMS OF REFERENCE

a. Functions of the Committee – derived from Standing Orders [DSO 84A; SSO 70A]

(1) The Select Committee shall consider and report to the Dáil on—

(a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and

(b) European Union matters within the remit of the relevant Department or Departments.

(2) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.

(3) Without prejudice to the generality of paragraph (1), the Select Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments, such—

(a) Bills,

(b) proposals contained in any motion, including any motion within the meaning of Standing Order 187,

(c) Estimates for Public Services, and

(d) other matters

as shall be referred to the Select Committee by the Dáil, and

(e) Annual Output Statements including performance, efficiency and effectiveness in the use of public monies, and

(f) such Value for Money and Policy Reviews as the Select Committee may select.

(4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:

(a) matters of policy and governance for which the Minister is officially responsible,

(b) public affairs administered by the Department,

(c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,

(d) Government policy and governance in respect of bodies under the aegis of the Department,

(e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,

(f) the general scheme or draft heads of any Bill,

(g) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,

(h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,

(i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,

(j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and

(k) such other matters as may be referred to it by the Dáil from time to time.

(5) Without prejudice to the generality of paragraph (1), the Joint Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments—

(a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,

(b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,

(c) non-legislative documents published by any EU institution in relation to EU policy matters, and

(d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.

(6) The Chairman of the Joint Committee appointed pursuant to this Standing Order, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee.

(7) The following may attend meetings of the Select or Joint Committee appointed pursuant to this Standing Order, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:

(a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,

(b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and

(c) at the invitation of the Committee, other Members of the European Parliament.

**b. Scope and Context of Activities of Committees (as derived from Standing Orders)
[DSO 84; SSO 70]**

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (4) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceannt Comhairle / Cathaoirleach whose decision shall be final.
- (5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.