



TITHE AN OIREACHTAIS

**An Comhchoiste um Airgeadas, Caiteachas Poibli agus Athchóiriú, agus
Taoiseach**

**Tuarascáil maidir leis an nGrinnscrúdú Réamhrechtach ar Scéim
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HOUSES OF THE OIREACHTAS

**Joint Committee on Finance, Public Expenditure and Reform, and
Taoiseach**

**Report on Pre-legislative scrutiny on the General Scheme of the Civil
Service Regulation (Amendment) Bill 2018**

November 2018

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Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach

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1. CHAIRMAN'S PREFACE



The Minister for Finance, Public Expenditure and Reform, Mr. Pascal Donohoe, T.D., submitted the General Scheme of the *Civil Service Regulation (Amendment) Bill 2018* (hereafter, the 'General Scheme') to the Oireachtas Joint Committee on Finance, Public Expenditure and Reform and Taoiseach (hereafter 'the Joint Committee') for the purposes of pre-legislative scrutiny of the General Scheme.

The purpose of this amendment Bill is to improve and simplify the management of performance in the civil service, to bring the management practices, specifically the disciplinary and dismissal procedures in the civil service more in line with other organisations. In that regard, the General Scheme contains sixteen heads and proposes to amend the underlying legislative framework for disciplinary matters in the Civil Service, specifically the *Civil Service Regulation (Amendment) Acts 1956-2005* and the *Public Service Management Act 1997*.

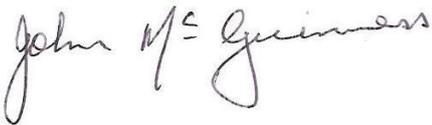
The Joint Committee acknowledges the important role and contribution of the civil service in the functioning of Government and in the delivery of vital services to citizens, therefore, the legislation governing all aspects of the civil service must be fit-for-purpose and reflect the needs of a 21st century Ireland.

The Joint Committee was briefed on the general scheme by officials from the Department of Public Expenditure and Reform on 28 June. The Joint Committee agreed to undertake pre-legislative scrutiny of the general scheme by consulting with relevant stakeholders on the General Scheme. Accordingly, the Committee received a number of submissions to assist it in its consideration of the General Scheme, including from the Civil Service Staff Panel,¹ the Senior Civil Service Association (SCSA), and the Civil Service HR Policy Unit in the Department of Public Expenditure and Reform. The specific comments and suggestions provided in these submissions are discussed under

¹ The Staff Panel represents FÓRSA, the Association of Higher Civil and Public Servants (AHCPS), the Prison Officers Association and the Veterinary Officers Association. FÓRSA is a trade union representing over 80,000 workers, mostly in the public service. The AHCPS is a trade union representing upwards of 3,000 senior civil and public service managers. The Prison Officers Association is a trade union representing prison officers in Ireland. The Veterinary Officers Association is a trade union representing veterinary practitioners registered with the Veterinary Council of Ireland who are employees of a Department of State.

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the Heads to which they relate.² I would like to express my appreciation to the stakeholders for their respective submissions to the Committee. This Report reflects the considered opinion of the Joint Committee as informed by that consultation process and it will help to inform the legislative process and make a valuable contribution to the forthcoming legislation.



John McGuinness T.D.
Chairman

20 November, 2018

² Under the heading 'Detailed examination of the Heads'.

2. INTRODUCTION

The Government's intention in publishing the General Scheme of the Bill is to introduce legislation to further improve the management of discipline and dismissal in the civil service and in particular to allow management decisions to be devolved in the civil service to improve and simplify the management of discipline and dismissal.

The Department of Public Expenditure in announcing the General Scheme set out the following key objectives of the Bill, namely to:-

- give full effect to the legislative intent behind the *Public Service Management Act 1997*, i.e. to devolve responsibility for disciplinary matters below the level of Secretary-General/Head of Scheduled Office;
- allow for the function of dismissal to be assigned below the head of the organisation;
- enable the introduction of a binding internal appeal for civil servants;
- facilitate a two-stage appeals process for the most serious disciplinary sanctions, that is, an internal and external appeal;
- reduce delays related to the current structure of disciplinary and appeals processes;
- bring the civil service disciplinary and appeals process in line with external practice;
- empower civil service managers to manage their staff effectively by providing access to a fuller range of discipline management tools; and
- allow for more flexibility in the management and reform of the civil service disciplinary process and related appeals process.

When enacted, the Department states that the legislation will improve the disciplinary and appeals processes in the civil service, improve fair procedures and natural justice for the individual civil servant, improve and simplify performance management processes by allowing for more proactive management of performance issues and will make the discipline and dismissals process operate better for the benefit of the individual civil servant, the organisation and, ultimately, the tax payer.

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This Report identifies eight key issues which the Committee considers warrant further attention by Government and these are explained in the course of the Report.

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3. PROVISIONS OF THE GENERAL SCHEME

The General Scheme is comprised of sixteen heads, the general provisions of which are set out in Table 1.

Table 1: *Provisions of the General Scheme*

Heads	Provisions
Head 1: Short Title	Provides for the title of the Act and for a commencement date for the new provisions.
Head 2: Amendment of Section 1 <i>Interpretation (CSRAs)</i>	Provides for the definition of various terms used in the legislation i.e. “established service”, “the Minister” and “Ministerial Private Office appointment”.
Head 3: Amendment of Section 2: Appropriate Authority	<p>Amends the definition of Appropriate Authority so that, in general, the Appropriate Authority for all staff will be the Secretary-General or Head of Scheduled Office.</p> <p>Provides for a new enabling provision to be inserted that will allow the Appropriate Authority to assign responsibility for the performance of any function to another officer(s) or grade(s) of officer, and other relevant sections of the Civil Service Regulation Acts and Public Service Management Act will be updated accordingly.</p> <p>Provides for a new section to be included in the Civil Service Regulation Acts to address the legislative ambiguity which currently exists between the Acts and other pieces of primary legislation relating to the functions of, and responsibility for, certain functions, including disciplinary actions and dismissal.</p>

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<p>Head 4: New provision in the Civil Service Regulation Acts</p>	<p>Provides an enabling provision that would allow for the assignment of the responsibility for the performance of any function of an Appropriate Authority, within the meaning of this Act, to other officer(s) or grade(s) of officer, as appropriate.</p>
<p>Head 5: Repeal of Section 4 regarding staff of the National Library of Ireland</p>	<p>The repeal of section 4 of the Civil Service Regulation Acts and consequential amendments to section 6 and section 7.</p>
<p>Head 6: Tenure of office of established civil servants</p>	<p>The deletion of subsection (5) as Ministers will only be in the role of Appropriate Authority in respect of Ministerial Private Office Appointees who are unestablished officers for the duration of their appointment. (This section relates to the tenure of established officers.)</p>
<p>Head 7: Persons appointed on probation to established positions</p>	<p>The amendment of certain roles and functions of the Minister for Public Expenditure & Reform and to allow for these roles and functions to be carried out by the Appropriate Authority and assigned to another officer(s) or grade(s) of officer as provided for under Head 4.</p>
<p>Head 8: Amendment of Section 8A: Appointment of civil servants beyond normal retirement age</p>	<p>Provides for a maximum appointment age to the civil service of 3 years less than the maximum retirement age.</p>
<p>Head 9: Retirement on the ground of ill-health</p>	<p>Updates the provisions in respect of retirement on the ground of ill-health incorporating a provision for capability dismissal.</p>

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<p>Head 10: Suspension of civil servants from duty</p>	<p>Proposes amendment of sections 13(1)(a) and 13(1)(c) to remove references to “grave” misconduct and replace this with references to “serious” misconduct.</p> <p>To remove reference to “irregularity” in line with the proposed amendments outlined in Head 11.</p>
<p>Head 11: Disciplinary measures</p>	<p>Proposes a number of revisions in respect of disciplinary measures.</p>
<p>Head 12: Amendment to Schedule 2</p>	<p>Proposes that the Director General of the Irish Prison Service and the Chief State Solicitor be the appropriate authority for their respective organisations.</p>
<p>Head 13: Tenure of office of persons appointed to excluded positions</p>	<p>Provides for the repeal of section 2 of the Civil Service Regulation (Amendment) Act 1958.</p>
<p>Head 14 : Responsibility and accountability within Departments and Offices</p>	<p>Proposes amendment to the Public Service Management Act in line with the proposals in Heads 3-4.</p>
<p>Head 15: Assignment of responsibility in respect of functions</p>	<p>To allow the Secretary-General/Head of Scheduled Office to assign responsibility for the performance of functions relating to all aspects of appointments, performance and discipline, including dismissals, to other officer(s) or grade(s) of officer.</p>
<p>Head 16: Special Advisers</p>	<p>Amends the Public Service Management Act to allow for work-sharing arrangements to be put in place, where required, for Ministerial special advisers and to allow a temporary appointment to be made where a special adviser is on long-term leave.</p>

4. CONTEXT FOR THE DEVELOPMENT OF THE GENERAL SCHEME

Notwithstanding reforms implemented by the 2005 Act, figures show that only 97 people were dismissed from the Civil Service between 2008 and 2016, out of a service of approximately 35,000.³ This reflects a widely held public perception that there is a lack of accountability for poor performance in the Civil Service.⁴

In this same period, a renewed interest was taken in public service reform, beginning with a 2008 OECD report. The Report, entitled [*Ireland: Toward an Integrated Public Service*](#), identified a number of important challenges for the public service, many of them reflecting macro issues in the structure of the public service generally. Some of the challenges that were identified that are germane to the present legislation include:⁵

- **Centralised human resource management controls limiting management flexibility within organisations and mobility across the Public Service:** the OECD noted that this tends to “inhibit the autonomy of local level management.”
- **Absence of managerial flexibility and delegation requiring a strengthening of staff performance management:** The OECD stated that “further delegation of managerial responsibilities to senior management... should be implemented incrementally, as performance management and reporting is strengthened at the organisational level.”

Many of the recommendations of the Report regarding the structure of the public service, were reflected in the reforms that resulted in the establishment of the Department of Public Expenditure and Reform in 2011. Issues surrounding discipline and dismissal were returned to with the [*Civil Service Renewal Project*](#), which began in June 2013. The project sought out views from the entire Civil Service as to how management and accountability could be improved. As part of

³ It should be noted that this does not include termination of probationary contracts.

⁴ RTÉ News, [Accountability in civil service needs to improve](#) (11 May 2018); The Irish Times, [Civil Service performance review deemed failure as majority pass](#) (3 December 2013); The Irish Times, [Only 15% of Civil Service staff believe ‘poor performance’ being tackled](#) (28 March 2018).

⁵ OECD, *Ireland: Toward an Integrated Public Service*, Pp. 26-28.

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this project, a consultation paper, entitled [Strengthening Civil Service Accountability and Performance](#), was published in 2014. It included among its options for reform amendments to the existing legislative framework necessary to provide for greater devolution and delegation of responsibilities. The reforms are also a response to dissatisfaction within the Civil Service as to how poor performance is managed. In a 2017 Civil Service Employee Engagement Survey 15% of respondents agreed that “poor performance is effectively addressed throughout the Department”.⁶

In addition, an internal review of the disciplinary process in the Civil Service conducted by the Department of Public Expenditure and Reform concluded that the disciplinary process is unnecessarily complex when compared with those in the private sector, and indeed what is required by employment law. The review recommended that the existing statutory framework be amended to streamline the disciplinary decision-making and appeals process, including, by the delegation of disciplinary functions.⁷

The Government, with the benefit of the above-mentioned review, agreed on 7 July 2015 to amend the *Civil Service Regulation Acts 1956 – 2005* and the [Public Service Management Act 1997](#). In particular, that the existing legislation be amended to allow for dismissal of staff by a person other than the head of the organisation, usually the Secretary-General. This Bill also builds on the [People Strategy for the Civil Service 2017-2020](#), which includes a commitment to empowering managers to more effectively manage their staff, including the capacity to impose meaningful sanctions. The Government approved the draft heads of the General Scheme on 11 April 2018.

⁶ The Irish Times, [Only 15% of Civil Service staff believe ‘poor performance’ being tackled](#) (28 March 2018).

⁷ The outcome of this internal review is noted in the [Regulatory Impact Analysis](#) conducted by the Department at para. 2.1.

5. THE EXISTING LEGISLATIVE FRAMEWORK

The existing legislative framework poses limitations on avenues for reform of the disciplinary process in the Civil Service.⁸ The *Civil Service Regulation Acts 1956-2005* at present provide that the “appropriate authority” in respect of the dismissal, demotion, suspension or reduction in pay of a civil servant at the grade of Principal Officer or above is the relevant Minister. For officers below the grade of Principal Officer, it is the relevant Secretary-General/Head of Scheduled Office. The *Civil Service Regulation Acts 1956-2005* make no provision for the devolution or assignment of these functions. The effect is that any meaningful disciplinary action must be taken at the top of the organisation. The result is that a considerable period of time can elapse from when a manager recommends a sanction to when the sanction is actually imposed, often more than three months.⁹

This extended delay is to a large extent caused by the complexity of the current appeals process.¹⁰ A civil servant must take an appeal *before* the appropriate authority comes to a decision to impose a serious disciplinary sanction, but *after* a recommendation has been made by his or her manager to this effect.¹¹ The Disciplinary Appeals Board¹² can direct a manager to amend or reconsider his or her recommendation, but it has no power to overturn the final decision of the appropriate authority.

Continuing to identify the appropriate authority as the Secretary-General/Head of Scheduled Office makes any form of meaningful internal appeal impossible, as there is no one more senior to hear the appeal than the appropriate authority. Equally, an appeal heard by an appeal’s board after the decision of the appropriate authority could only result in a recommendation to the appropriate authority, who could decide whether or not to reaffirm his or her original

⁸ [Regulatory Impact Analysis](#), para. 3.1.

⁹ *Ibid*, para. 3.2.

¹⁰ *Ibid*.

¹¹ [Civil Service Disciplinary Code](#), p. 20.

¹² An appeal of a recommendation of a serious disciplinary sanction must be made directly to the Disciplinary Appeals Board, an external appeals body. Less serious disciplinary sanctions must be appealed first to an Internal Appeal Officer, and latterly to an External Appeals Officer. For full discussion of the appeals process, see the Civil Service Disciplinary Code, p. 21.

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decision. This is arguably a breach of fair procedures, as it results in the decision-maker being the same at first instance and on appeal.

In a submission to the Committee, the Department also notes that where a civil servant brings a case to the Workplace Relations Commission to appeal a dismissal, the decision-maker must attend the hearing to defend their decision. Under the current legislative framework, this would generally require the Minister or the Secretary-General to attend the hearings. The Department notes that an amendment is required to allow this function to be performed by “more suitable representatives”.¹³

The language used in the *Civil Service Regulation Acts 1956-2005* is also somewhat outdated. The sections of the 1956 Act dealing with disciplinary measures and suspension use terms such as “irregularity” and “neglect”, as well as referring to “grave” misconduct. The most recent iteration of the Civil Service Disciplinary Code limits itself to more simple and direct language, preferring simply “underperformance” and “misconduct” as sufficient to cover any issues giving rise to disciplinary measures. Similarly, the term “serious” is preferred to “grave”.¹⁴

¹³ Submission of Civil Service HR Policy Unit, Department of Public Expenditure and Reform.

¹⁴ See Civil Service Circular 19/2016 available at <https://circulars.gov.ie/pdf/circular/per/2016/19.pdf>.

6. DETAILED EXAMINATION OF THE HEADS

The Committee, in this section, sets out its consideration of the Heads of the General Scheme including key issues identified by it as requiring further attention by Government.

Head 1 – Short title and commencement

This Head proposes a section setting out the short title of the Bill and provides for its commencement. It proposes that the Minister may appoint a day or days on which the Act or particular parts of the Act will come into force. This is a standard provision.

Head 2 – Interpretation

This Head proposes certain amendments to section 1 of the *Civil Service Regulation Acts 1956-2005*. Section 1 defines various terms used in the Acts. The amendments are technical in nature, including an amendment to specify that the term “Minister” should now be read as referring to the Minister for Public Expenditure and Reform rather than the Minister for Finance.

Heads 3 and 4 – Definition of “Appropriate Authority”

The central reform proposed in this General Scheme relates to the definition of “appropriate authority” and the devolution of that authority further down Civil Service organisations. Head 3 proposes an amendment to the *Civil Service Regulation Act 1956* in the following terms:¹⁵

“The amendment of the definition of Appropriate Authority in section 2 of the Civil Service Regulation Acts so that, in general, the Appropriate Authority for all staff be the Secretary-General/Head of Schedules Office, i.e. to remove the distinction between the Appropriate Authority for Principal Officers and above and Assistant Principals and below.”

The present position is that the appropriate authority for all civil servants below the rank of Principal Officer is the Secretary-General/Head of Scheduled Office, and for civil servants above that rank, it is the relevant Government Minister.

¹⁵ [General Scheme of the Bill](#), Head 3.

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Head 3 proposes to eliminate this distinction and to simply provide that the appropriate authority for all civil service employees is the Secretary-General/Head of Scheduled Office. The appropriate authority for all Secretaries General/Heads of Scheduled Offices (and the Director of Audit in the Comptroller and Auditor General, a position equivalent to that of the Head of a Scheduled Office) will be the Government. The Head does include an exception to this general position. The appropriate authority for the CEO of the Courts Service will continue to be the Board of the Courts Service, as is provided for in the *Courts Service Act 1998*.¹⁶ The reason for exempting this office from the proposed reform lies in the principle of the Separation of Powers. Given the constitutional imperative that the workings of the Judicial branch of government be free from the interference of the Executive branch, it is deemed appropriate that the power for dismissing the Courts Service most senior administrative officer be vested in a body other than the Government.

The Head also excludes the Houses of the Oireachtas Service from the scope of the proposed reform to the definition of appropriate authority. The roles of various officers within the Service, such as the Superintendent of the Houses of the Oireachtas, and the Captain of the Guard of the Houses of the Oireachtas, are distinguished with reference to the business of Dáil and Seanad Éireann and “in all other respects”.¹⁷ This brings complexity to the definition of who the appropriate authority ought to be in each instance. The appropriate authority in respect of the Secretary-General of the Houses of the Oireachtas will also continue to be the Houses of the Oireachtas Commission.¹⁸

The Head proposes a number of other consequential amendments to the other subsections of section 2 of the Act necessary to reflect the changes outlined above. In particular, amendments are proposed to specify that the appropriate authority for the staff of the Office to the Secretary-General to the President is the Secretary-General to the President, and the appropriate authority for all civilian staff of An Garda Síochána is the Commissioner of An Garda Síochána.

¹⁶ Section 23 of the 1998 Act.

¹⁷ See section 2(2) of the *Civil Service Regulation Act 1956*, as amended.

¹⁸ Section 2(2)(a) of the *Civil Service Regulation Act 1956*, as amended.

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Importantly, it proposes a section that would provide that the definition of “Appropriate Authority” in this legislation would “take precedence” over any other similar provisions in other pieces of primary legislation. This provision is designed to pre-empt any confusion that might arise where the definition of “Appropriate Authority” in this legislation were to conflict with an alternative definition provided in another Act.¹⁹

The Committee queries the Department’s approach from a drafting perspective. While the intent of the amendment is readily discernible, this is not terminology that is used in relation to non-textual amendments²⁰. It is not clear how a person reading legislation would determine whether or not the definition provided here would “take precedence” over a separate definition.²¹ It would appear that an ordinary blanket amendment²² would not be suitable as the term is used in a variety of contexts in different pieces of legislation.²³ However, it appears that where it is used in the present context, i.e. in relation to discipline in the Civil Service, the term is defined in the relevant legislation as meaning “appropriate authority” within the meaning of the *Civil Service Regulation Acts 1956-2005*. This would seemingly make the basic textual amendment proposed sufficient. The Committee understands that the drafting of this section is being worked on by the Department in conjunction with the Office of the Parliamentary Counsel.

Head 4 is the second step in the reform of the appropriate authority process. It provides for the devolution of the authority vested in the appropriate authority, as defined in Head 3. It is proposed that this will be an enabling provision that will provide for a power to assign responsibility for the carrying out of

¹⁹ [General Scheme of the Bill](#), Head 3, Explanatory Note, p. 6.

²⁰ A non-textual amendment is an amendment that alters the meaning or scope of operation of a piece of legislation, but without changing the text. This is done by creating a provision that refers to another provision.

²¹ A submission made to the Committee by the Department states that this amendment is intended to make the *Civil Service Regulation Acts 1956-2005* the “superseding source” for the definition of appropriate authority.

²² A “blanket amendment” is an amendment that purports to apply to the statute book generally rather than to one particular Act or series of Acts. For example, a piece of legislation can specify that a particular term, wherever it appears in the statute book, should be defined or interpreted in a particular way.

²³ A search of the statute book suggests that approximately 81 pieces of legislation use the phrase “appropriate authority”.

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disciplinary functions, including dismissal, without being prescriptive regarding whom such functions may be assigned to. The Head reads:

“An enabling provision that would allow for the assignment of responsibility for the performance of any function of an Appropriate Authority, within the meaning of the Act, to other officer(s) or grade(s) of officer, as appropriate.”

The Head refers to “officers” and “grades” in the plural as it is proposed that multiple officers may be assigned to exercise the devolved authority of the appropriate authority. This is necessary in order to provide for a disciplinary decision-maker at both first instance and on appeal. By assigning disciplinary functions further down the organisation, it is possible to provide for internal appeals processes i.e. the assignee can impose the sanction and an officer of equivalent or more senior position can hear the appeal.

This amendment is designed to bring the *Civil Service Regulation Acts 1956-2005* into line with the *Public Service Management Act 1997*, which already provides for the delegation of certain functions of the Secretary-General, but does not include the power of dismissal.²⁴

The most significant question raised in relation to this Head is the absence of any restriction as to who may be assigned by the appropriate authority to administer disciplinary functions. The argument made by the Department is that the intent is to provide flexibility to a process previously marked by rigidity and time-consuming fidelity to established procedure. It is proposed that it be a matter for each organisation to include who the most appropriate officer to carry out these functions might be. The criteria an organisation uses to identify the officer who should carry out these functions might not be based entirely on the rank of the officer but other factors, such as their HR experience and expertise. The Committee has a concern that legislation is not the appropriate place to deal with the particulars of a disciplinary process. Legislation cannot be amended quickly and efficiently in response to emerging needs and changing

²⁴ See section 9 of the 1997 Act.

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circumstances. Enshrining disciplinary procedure in legislation may, therefore, create an unresponsive and outdated process down the line.

However, there may be good reasons why both the impugned officer and the civil service organisation would want some 'lower floor' of seniority in the disciplinary process. An officer being disciplined could potentially feel a sense of unfairness if a very significant decision affecting his or her life and livelihood is being made by a relatively junior officer within their organisation. The organisation may too wish to ensure that it keeps central control and oversight over some of the most important decisions it makes. This may be necessary to ensure rigorous standards are maintained in the disciplinary process. While it is inarguable that the finer details of disciplinary procedure should not be dealt with in primary legislation, it is debatable whether the assignation of the officer responsible for determining major sanctions, up to and including dismissal, is such a "fine" detail.

This issue is further complicated by the suggestion in the General Scheme that the power of assignation could itself be delegated:²⁵

"To make this process administratively simple it would be desirable to provide that the Appropriate Authority could delegate the power of assignment to, for example, a HR Manager. The HR Manager could then have a subsidiary power to pick the individual Assistant Secretary or Principal who is to carry out a particular disciplinary process."

This indicates that the General Scheme envisages a disciplinary framework in which authority for the performance of disciplinary functions can be delegated by multiple degrees. While it is indicated that the ultimate decision-maker should not be of a rank below Assistant Secretary or Principal Officer,²⁶ it is not proposed that this is to be provided for in the legislation.

In a submission to the Committee, the HR Policy Unit of the Department of Public Expenditure and Reform noted concerns raised about the absence of a

²⁵ [General Scheme of the Bill](#), Head 4, Explanatory Note, p. 8.

²⁶ *Ibid*, p. 7.

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grade “floor”. However, the Department remains of the view that, following consultation with HR personnel from across the Civil Service, a “rigid and predefined structure would be unworkable in practice.” The submission also stated that it wanted to “future-proof” the legislation by not providing for a lower floor of seniority. The submission suggests that the HR context can change over time, with roles that might now be considered inappropriate to a particular grade becoming more appropriate as time goes by.²⁷

By contrast, a submission to the Committee from the Civil Service Staff Panel, representing FÓRSA, the Association of Higher Civil and Public Servants, the Prison Officers Association and the Veterinary Officers Association, took a very different view.²⁸ The Panel takes the view that the functions of the appropriate authority should not be assigned below the level of Secretary-General in the case of dismissal. It also takes the view that a “limit of discretion” as to who an appropriate authority may assign responsibility for sanctions short of dismissal should also be set out in the Bill.

The Panel notes that were a Principal Officer to be assigned the power of dismissal, he or she would be empowered to dismiss an Assistant Principal Officer with whom they may be working in close quarters. It expresses the opinion that the final decision maker in the case of serious disciplinary sanctions should be at a remove from the office concerned. The Panel also observes that the proposed reforms would remove the right of appeal to the Disciplinary Appeals Board, in favour of an internal appeals procedure. The Panel takes the view that changes of this nature ought to be agreed through the industrial relations process. It states that the role of the appropriate authority is to consider the recommendations of the Disciplinary Appeals Tribunal and rejects the assessment in the General Scheme that the process is particularly onerous or time-consuming. The Panel objects “in the strongest terms” to the proposal

²⁷ Submission to Joint Committee, Civil Service HR Policy Unit, Department of Public Expenditure and Reform.

²⁸ FÓRSA is a trade union representing over 80,000 workers, mostly in the public service. The AHCPS is a trade union representing upwards of 3,000 senior civil and public service managers. The Prison Officers Association is a trade union representing prison officers in Ireland. The Veterinary Officers Association is a trade union representing veterinary practitioners registered with the Veterinary Council of Ireland who are employees of a Department of State.

that an appropriate authority or assignee would hear an appeal in serious disciplinary cases.

The Senior Civil Service Association (SCSA), in a separate submission, also raises concerns about this Head. It notes that it is “an extremely broad enabling provision” and that the lack of specificity could give rise to “an inconsistency of approach” across the Civil Service. The SCSA argues that there is floor below which disciplinary responsibility should not be assigned, and suggests that in the case of dismissal, it arguably should not be assigned below the Secretary-General.

Head 6 – Amendment to section 5: Tenure of established civil servants

Head 6 of the General Scheme proposes the deletion of s. 5(5) of the 1956 Act. This deletion is necessary to reflect the amendments made in Heads 3 and 4 to the definition of appropriate authority. The existing subsection provides that a Minister of the Government shall not exercise his or her authority to dismiss an established civil servant save where a recommendation to that effect has been received from a Secretary-General/Head of Scheduled Office. As it is proposed that the Minister will no longer be the appropriate authority for any civil servant other than unestablished Private Office appointees, this subsection is no longer required.

Head 7 – Amendment to section 7: Reverting persons on probation to previous position

Head 7 provides for amendments to the process for reverting staff who have failed the conditions of their probationary contract to a higher grade to the grade they previously held. Under the existing legislation, the Minister is responsible for the reverting of civil servants who have failed to fulfil the conditions of their probation to the grade they previously held. The General Scheme proposes that this function now be dealt with by the appropriate authority, namely the Secretary-General/ Head of Scheduled Office. This brings the process for reverting civil servants into line with that of disciplinary process more broadly, including as provided for in Heads 3 and 4 of the General Scheme.

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In a submission to the Committee, the Civil Service Staff Panel objected to this amendment and suggested that ultimate responsibility for reverting civil servants back to a previous grade should rest with the Secretary-General/Head of Scheduled Office, and should not be delegated below that level. The Panel related the view of its members that such a decision is one best taken at a remove from the direct workplace at a senior level. It takes the view that this is necessary to maintain objectivity and impartiality²⁹. The Senior Civil Service Association, in a separate submission, also took this view.³⁰

Head 8 – Maximum appointment age to the Civil Service

Head 8 provides for a maximum appointment age to the Civil Service of three years less the maximum retirement age. It proposes to amend section 8A of the 1956 Act. Section 8A was inserted into the 1956 Act by the *Civil Service Regulation (Amendment) Act 2005* in response to the abolition of the retirement age for new entrants in the *Public Service Superannuation (Miscellaneous Provisions) Act 2004*. Section 8 as a whole deals with the retiring age for civil servants. Section 8A provides that “nothing in section 8 should be taken to prevent the appointment of a person who has attained the age of 65 years” to the Civil Service.

The *Public Service Pensions (Single Scheme and Other Provisions) Act 2012* introduced a maximum retirement age of 70 years for anyone entering the Civil Service from 2012 onwards.³¹ The General Scheme expresses a concern that section 8A as currently worded could be interpreted as circumventing this general maximum retirement age and allowing the appointment of a person past the age of 65 with no upper age-limit attaching.³²

A further rationale for the introduction of a maximum appointment age is that the Civil Service needs to allow for the recovery of resources spent on recruitment and training in the form of productivity from the new employee over a minimum of a 3 year period. The manner in which the proposed amendment is worded, in terms of the “maximum appointment age” as opposed to “70 years”,

²⁹ Civil Service Staff Panel, Submission to the Joint Committee, p. 4.

³⁰ Senior Civil Service Association, Submission to the Joint Committee.

³¹ Section 13(2) of the Act.

³² General Scheme of the Bill, Head 8, Explanatory Note.

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is designed to account for changes in the maximum retirement age. The [Public Service Superannuation \(Age of Retirement\) Bill 2018](#) is currently before the Oireachtas and proposes to empower the Minister to raise the maximum retirement age to 75 years of age.

It should also be noted that the [Public Service Superannuation \(Age of Retirement\) Bill 2018](#) proposes an amendment to section 8 of the *Civil Service Regulation Acts 1956-2005*. It proposes to specify that the retirement age for all civil servants shall be that provided for under the new legislation i.e. 70 years of age, subject to the power of the Minister to increase to a maximum of 75 years of age.³³

Head 9 – Retirement on grounds of ill-health

Head 9 proposes to amend section 9 of the *Civil Service Regulation Act 1956*, which deals with retirement on the grounds of ill-health. The section provides that where a civil servant contests a determination by the appropriate authority that he or she is not capable of discharging his or her duties, the Minister shall appoint a medical referee to examine the civil servant. The medical referee shall then prepare a report determining whether or not the infirmity the civil servant is suffering from is likely to be temporary or permanent. If the report confirms that such infirmity is likely to be permanent, the civil servant is required to resign from the Civil Service. The medical referee's report does not speak to the assessment of the appropriate authority as to whether the infirmity renders the civil servant incapable of performing his or her duties.

Head 9 proposes to amend the section to provide that the medical referee shall be appointed by the Chief Medical Officer of the Civil Service, rather than by the Minister. It also proposes to provide a more specific definition of "medical referee", including that they be a "specialist medical practitioner who is suitably qualified to assess medical fitness for work" and "not a treating doctor of the civil servant". This is to ensure the independence of the medical referee. More significantly, this Head proposes to provide for the dismissal of civil servants on the grounds of capacity who are not "incapable of discharging the duties of [their] position" within the meaning of section 9. The General Scheme states

³³ The L&RS has published a Bill Digest in respect of this Bill, available [here](#).

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that this amendment is necessary to “explicitly” permit the Minister to dismiss civil servants in these circumstances. There is a concern that the specific provision of ill-health retirement in the Civil Service could be interpreted as limiting the power of the appropriate authority to simply dismiss a civil servant on the grounds of capacity.³⁴

The dismissal of employees who are no longer capable of performing the duties is subject to the [Employment Equality Act 1998](#), which provides for the right of employers to dismiss employees who are no longer “fully capable of performing the duties attached to the position”.³⁵

The [Employment Equality Act 1998](#) prohibits discrimination in the workplace, including hiring and dismissal, on various different grounds including race, sex, sexual orientation and disability. However, disability is a substantially different ground to race or sex or sexual orientation given the fact that a disability may in fact limit a person’s ability to do the job, something that is not a factor with respect to race or sex or sexual orientation. Reflecting this fact, section 16 of the Act provides for a refusal to hire or freedom to dismiss an individual who is not fully competent to fulfil the role. The section further states that a person with a disability should not be deemed to be incompetent to fulfil the role where reasonable accommodation on the part of the employer, including the provision of “special treatment or facilities”,³⁶ would render them able to perform the role. The Act goes into some detail about what reasonable accommodation or “appropriate measures” are required of the employer. It specifies that the employer will not be required to take any steps to accommodate the person that would impose a “disproportionate burden” on him or her. Thus, where a person with a disability could be accommodated in the workplace but to do so would impose a disproportionate burden on the employer, he or she may dismiss or refuse to hire that person, and it will not constitute discrimination under the Act.

The lengthy specifications of the Act notwithstanding, assessing exactly what constitutes “reasonable accommodation” as opposed to a “disproportionate

³⁴ [General Scheme of the Bill](#), Head 9, Explanatory Note.

³⁵ Section 16 of the Act.

³⁶ Section 16(3)(a) of the Act.

burden” is often not clear cut. A great volume of case law has developed on the question, a full discussion of which is beyond the scope of the paper.³⁷

The General Scheme indicates that the proposed amendment would be “in line with” the [Employment Equality Act 1998](#). The General Scheme does not, however, give detail as to the precise wording that is proposed to effect this amendment, something that is likely to be important in the context of this provision. The General Scheme alternates between referring to employees who are “not permanently incapable”, “not fully capable”, and terminating employment “on the grounds of capacity”. Each of these terms could have a significantly different effect on the scope of the appropriate authority’s power to terminate a civil servant’s employment for reasons relating to their capacity to perform their job.

Given the extensive case law that has developed around the provisions of the 1998 Act and the consequent clarity we have on the legal effect of those terms, it is worth considering exactly how it is proposed that the new provision will interact with the existing body of law.

Head 10 – Amendment to section 13: Suspension of civil servants

Head 10 proposes to amend section 13 of the *Civil Service Regulation Act 1956*. Section 13 provides for the suspension of civil servants from duty. The section provides that a civil servant can be suspended where he or she is guilty of, or is under investigation for, “grave misconduct” or “grave irregularity”.

The Head proposes to remove reference to “irregularity”, and to replace any reference to “grave” with that of the word “serious”. This amendment is proposed in order to modernise the language used in the legislation and to align it with the language currently used in the [Civil Service Disciplinary Code](#).

Head 11 – Amendment to section 15: Disciplinary measures

Head 11 proposes to amend section 15 of the *Civil Service Regulation Act 1956*, as amended by the 2005 Act. Section 15 deals with disciplinary measures falling short of dismissal including, reduction of pay, demotion of rank, and suspension

³⁷ For a full discussion, see Murphy and Regan (eds.), *Employment Law* (Bloomsbury, 2nd ed. 2017) pp. 716-726.

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without pay. Section 15 of the Act empowers the appropriate authority to impose such a sanction on a civil servant where that civil servant is guilty of “misconduct, irregularity, neglect or unsatisfactory behaviour” that is associated with his or her “official duties”.

Head 11 proposes a number of important amendments to this section. It proposes to modernise the language used, along similar lines to the amendments proposed under Head 10. It proposes to replace the reference to “misconduct, irregularity, neglect or unsatisfactory behaviour” with a simple reference to “misconduct or underperformance”. This is to bring the language used in the Act into line with that used in the [Civil Service Disciplinary Code](#).

The Head also proposes to remove the reference to “in relation to his official duties” from the legislation. The General Scheme states that this in order to allow the appropriate authority, or a person assigned the disciplinary functions of the appropriate authority, to discipline a civil servant for behaviour outside of the workplace, where it has an impact, or could reasonably be likely to have an impact within the workplace. This potentially substantially broadens the scope of behaviour to which an appropriate authority can have regard in disciplining a civil servant. The relevance of conduct outside the workplace to discipline and dismissal is a matter of uncertainty in employment law. The Employment Appeals Tribunal addressed the question in a recent decision involving the dismissal of a postman following a conviction for possession of heroin:³⁸

“There is considerable uncertainty as to whether an employee’s conviction for a crime committed outside the workplace would entitle the employer to dismiss the employee. In such circumstances the employer would argue that the bond of trust had broken down. The matter is not that straightforward. *The basic principle is that usually an employer’s jurisdiction over misconduct of the employee ends at the company gate.* The guiding principle in cases involving misconduct outside the workplace is that the employer must be able to show a connection between the misconduct and the company’s operational requirements.”

³⁸ *Crowe v An Post* EAT UD1153/2014 available at https://www.workplacelrelations.ie/en/Cases/2016/January/UD1153_2014.html.

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While the Tribunal ultimately upheld the employee's dismissal, in that case it made clear that the external misconduct must have some particular relevance to the work of the employer. The Employment Appeals Tribunal set out a list of the scenarios under which dismissal for conduct outside the workplace would be considered appropriate. While section 15 deals with disciplinary measures short of dismissal, the list is nonetheless instructive:³⁹

- it leads to a breach of trust and/or causes reputational and/or other damage to the company;
- the employee's offence makes the employee unsuitable to continue in the job - for example if an employee is convicted of theft and his job involved dealing with cash then this could well be sufficient grounds for dismissal;
- the employee's offence causes the employer to genuinely lose trust and confidence in the employee;
- the employee's behaviour risks bringing the employer's name into ill repute;
- dismissal is more likely to be fair if the conviction is reported in the press – for example in *Post Office v Liddlard [2001] All ER(D) 46 (Jun) CA* the dismissal of an employee, whose conviction for hooliganism at a football match in France was reported in the press in a "name and shame" campaign was held to have brought the company into disrepute and was held to be a fair dismissal.

While the proposed wording in the General Scheme is not inconsistent with the guidance of the Employment Appeals Tribunal, further consideration might be given to whether the legislation might be more specific in identifying the circumstances under which conduct outside the workplace may result in disciplinary action. The Senior Civil Servants Association, in evidence to the Committee, stated the view that "the definition of inappropriate behaviour, and the means by which it is established, examined and proven, needs to be

³⁹ *Ibid.*

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sufficiently articulated to ensure fairness and transparency and safeguard the rights of individuals.”⁴⁰

The Head also proposes to remove the reference made in Section 15 of the Act to the particular types of disciplinary sanctions available to the appropriate authority. At present, the section identifies; reduction of remuneration, reduction of rank or grade, and suspension without pay. The General Scheme takes the view that these sanctions are set out in the Civil Service Disciplinary Code and can be dealt with there. The 2005 Act added the sanction of suspension without pay, illustrating the fact that at present primary legislation is required to change the types of sanction available to an appropriate authority. The General Scheme does not detail the exact wording that would replace the current list but indicates the appropriate authority would instead be empowered to impose “disciplinary measures” as defined by reference to those disciplinary measures contained in the Civil Service Disciplinary Code, which is soon to be known as the Civil Service Disciplinary Policy.⁴¹ It should be noted that the Civil Service Staff Panel has objected to this change in designation in a submission made to the Committee. It takes the view that this designation implies a lesser standing and that changes to the Code are an industrial relations issue and ought not to be pursued “unilaterally” through legislation.⁴²

This Head also proposes to delete subsection (3) of section 15 of the Act, which provides for a right of a civil servant to make representations to the appropriate authority before he or she imposes a disciplinary sanction. The rationale for this amendment is that under the new framework established by this Act, a civil servant would have the benefit of an internal appeal before an official that need not necessarily be the appropriate authority. The amendment is therefore necessary to accomplish the broader objective of settling disciplinary matters further down the chain of the organisation.⁴³

The Head further proposes the deletion of subsection (4) of section 15. Section 15(4) of the 1956 Act provides that before disciplinary measures are imposed for

⁴⁰ Senior Civil Service Association, Submission to the Joint Committee.

⁴¹ [General Scheme of the Bill](#), Head 11, Explanatory Note, p. 17.

⁴² Civil Service Staff Panel, Submission to the Joint Committee, p. 5.

⁴³ *Ibid.*

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underperformance, the appropriate authority must be satisfied that “measures aimed at improving the performance of the civil servant through training and development” have either failed or have no reasonable prospect of success. The General Scheme considers that it is more appropriate to address this level of detail in the Civil Service Disciplinary Code.⁴⁴

A general issue raised by this Head is what level of detail is considered appropriate to primary legislation vis-à-vis the disciplinary code. Whilst too much detail in primary legislation may contribute to an overly rigid and unresponsive system, it might be recalled that the Civil Service Regulation Acts are similar to a contract of employment for civil servants. In that regard, it may be considered appropriate to retain some level of detail as to the kinds of disciplinary measures an employee may face within that “contract”. This issue reflects a broader theme as to what level of detail is appropriate to primary legislation vis-à-vis the disciplinary code.

In evidence to the Committee, the Civil Service Staff Panel objected to this Head for the reasons offered in relation to its objections to Heads 3 and 4: that the amendment would legally entitle an appropriate authority to assign responsibility for disciplinary functions to a junior officer, such as an Executive Officer.⁴⁵

Head 12 – Amendment to Schedule 2

This Head proposes to add the Irish Prison Service and the Chief State Solicitor’s Office to Schedule 2 to the *Civil Service Regulation Acts 1956 – 2005*. This amendment will bring those offices within the meaning of “Scheduled Office” under section 1 of the Acts. It will further specify the appropriate authority for those organisations. In the Irish Prison Service, the appropriate authority will be the Director General. In the Chief State Solicitor’s Office, it will be the Chief State Solicitor.

Head 13 – Amendment to Civil Service Regulation (Amendment) Act 1958

This Head proposes to delete section 2 of the *Civil Service Regulation (Amendment) Act 1958*. This section is no longer considered valid as it relates

⁴⁴ *Ibid.*

⁴⁵ Civil Service Staff Panel, Submission to Joint Committee, p. 5.

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directly to the *Civil Service Commissioners Act 1956*, which has since been repealed.⁴⁶

Heads 14 and 15– Amendment to Public Service Management Act 1997

Heads 14 and 15 propose amendments to the *Public Service Management Act 1997* necessary to make that Act coherent with the amendments to the definition of appropriate authority proposed in Heads 3 and 4 of this General Scheme. Head 14 would amend section 4 of the 1997 Act to remove the distinction between management of staff below the grade of Principal Officer and above. It will instead provide, in line with the amendments in Heads 3 and 4, that the appropriate authority for all staff will be the Secretary-General/Head of Scheduled Office. Head 15 proposes to amend section 9 of the 1997 Act to provide that the appropriate authority can assign responsibility for the performance of his or her disciplinary functions, as is the case with the reforms to the Civil Service Regulation Acts proposed in Heads 3 and 4.

Head 16 – Appointment of Special Advisers

Head 16 proposes an amendment to section 11 of the *Public Service Management Act 1997*. Section 11 provides for the appointment of Special Advisers to Government Ministers, up to a maximum of two per Minister.⁴⁷ Head 16 proposes an amendment to the section to allow for work-sharing in the role of Special Adviser. The Head proposes to allow the appointment of two or more Special Advisers to one post to allow for such work-sharing arrangements. An amendment is also proposed to allow for the temporary appointment of a Special Adviser in the stead of a Special Adviser who is on long-term leave due to illness, injury or statutory leave.

⁴⁶ *Public Service Management (Recruitment and Appointments) Act 2004*, Sch. 2.

⁴⁷ There is no limit provided on Special Advisers available to the Taoiseach, Tánaiste or the leader of a political party.

7. RECOMMENDATIONS OF THE JOINT COMMITTEE

This section outlines recommendations made by the Joint Committee pertinent to the General Scheme of the Civil Service Regulation (Amendment) Bill 2018.

Recommendation 1: The absence of conditions as to whom disciplinary functions can be delegated by the Appropriate Authority

The Committee recommends that, in view of the submissions it received from the staff side objecting to the broad enabling provision, that the Department give further consideration to whether or not the legislation should impose some conditions on to whom disciplinary functions can be assigned by the Appropriate Authority. While maintaining a maximum degree of flexibility in the process is in keeping with the primary motivating concerns of the Bill, the Committee notes in particular that there is cause for some debate about the absence of any lower floor of seniority in the determining of major disciplinary sanctions. The Committee further recommends that the Department develop guidelines for the assignation of disciplinary responsibilities to which the Committee could have regard in its consideration of the General Scheme.

Recommendation 2: Provision that the definition of Appropriate Authority "take precedence" over any other related provisions in other pieces of primary legislation

The General Scheme proposes that the definition of "Appropriate Authority" in the *Civil Service Regulation Acts 1956-2005*, as amended by the present legislation, will "take precedence" over related provisions in other pieces of legislation. It is unclear what is meant for the definition to "take precedence" over other similar definitions. The Committee recommends that further consideration be given regarding the form of the proposed amendment, in particular whether a simple amendment should instead be proposed to the definition. If there is concern as to any particular conflict with a specific piece of legislation, perhaps that legislation should be directly amended.

Recommendation 3: Provision reverting persons on probation to previous position

The General Scheme proposes that this function now be dealt with by the appropriate authority, namely the Secretary-General/Head of Scheduled Office. The Committee recommends that responsibility for reverting civil servants back to a previous grade should rest with the Secretary-General/Head of Scheduled Office and should not be delegated below that level.

Recommendation 4: Dismissal of a civil servant on the grounds of capacity

The Committee recommends that the precise scope of the proposed power of the appropriate authority to dismiss a civil servant on the grounds of capacity, where that civil servant is not permanently incapable of performing his or her duties be clarified. The Committee is of the opinion that as the law governing the dismissal of employees on the grounds of incapacity is well-developed under the *Employment Equality Act 1998*, it recommends that any amendment proposed to provide that the power to dismiss a civil servant on the grounds of incapacity be subject to the conditions of that Act.

Recommendation 5: Will modernisation of the language used have any substantive impact?

The Committee recommends that further consideration be given as to whether there is any conduct caught by "irregularity, neglect or unsatisfactory behaviour" in section 15 that would not be caught by the proposed language of "misconduct or underperformance".

Recommendation 6: Conduct outside the workplace giving rise to disciplinary action

The Committee recommends that the legislation be specific in identifying the circumstances under which conduct outside the workplace may result in disciplinary action in order to ensure fairness and transparency and safeguard the rights of individuals.

Recommendation 7: Designation of available disciplinary sanctions

The Committee recommends that the Department consider whether, in the context of ensuring fairness and transparency and safeguarding the rights of individuals, it is desirable for the designation of available disciplinary sanctions to be removed from the Civil Service Regulation Acts.

Recommendation 8: Removal of reference to “measures aimed at improving the performance of the civil servant through training and development”

The Committee recommends that the Department consider the desirability of removing from the legislation the requirement for appropriate authorities to ensure that “measures aimed at improving the performance of the civil servant through training and development” are put in place prior to the imposition of a disciplinary sanction.

Appendix 1 - Orders 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 mattersas 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,

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- (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.

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- (6) Where a Select Committee appointed pursuant to this Standing Order has been joined with a Select Committee appointed by Seanad Éireann, the Chairman of the Dáil Select Committee shall also be the Chairman of the Joint 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.
- (8) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department or Departments, consider—
 - (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
 - (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select.

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; and
- (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; and
- (4) any matter which is being considered, or of which notice has

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been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Orders [DSO 111A and SSO 104A].

- (5) 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 Ceann Comhairle / Cathaoirleach whose decision shall be final.

- (6) 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.

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Appendix 2 - Membership

Members of the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach

Deputies:

John McGuinness T.D. (FF) (Chairman)

Peter Burke T.D. (FG)

Joan Burton T.D. (Lab)

John Deasy (FG)

Pearse Doherty T.D. (SF)

Michael McGrath T.D. (FF)

Paul Murphy T.D. (Ind)

Senators:

Gerry Horkan (FF) (Vice-Chairman)

Paddy Burke (FG)

Rose Conway-Walsh (SF)

Kieran O'Donnell (FG)

Appendix 3 - Written Submissions

Links to Written Submissions received

[Civil Service Staff Panel of Unions comprising the AHCPS \[Association of Higher Civil & Public Servants\], FÓRSA, POA \[Prison Officers Association\] and the VOA \[Veterinary Officers Association\]](#)

[Department of Public Expenditure and Reform](#)

[Senior Civil Service Association](#)