



TITHE AN OIREACHTAIS

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

**Tuarascáil ar an nGrinnscrúdú Réamhrechtach ar
Scéim Ghinearálta an Bhille Airgeadais (Achomhairc Chánach) (Leasú),
2019**

Meitheamh 2019

HOUSES OF THE OIREACHTAS

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

**Report on Pre-Legislative Scrutiny of the General Scheme of the Finance
(Tax Appeals) Amendment Bill 2019**

June 2019

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

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1. INTRODUCTION



On 2 April 2019, Mr Paschal Donoghue, T.D., Minister for Finance and Public Expenditure and Reform, sent to the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach the General Scheme of the Finance (Tax Appeals) Amendment Bill 2019 in accordance with Standing Orders (146A of Dáil Éireann, and 143 of Seanad Éireann) and the guidelines for pre-legislative scrutiny by Committees of the Houses of the Oireachtas.

At its meeting on 9 May, the Committee agreed –

- to invite the Department of Finance and the Tax Appeals Commission to a meeting of the Committee regarding the pre-legislative scrutiny of the General Scheme
- to request written submissions from the Revenue Commissioners and the Irish Tax Institute regarding the General Scheme.

On 28 May, the Minister wrote to the Committee, also in accordance with the above Standing Orders and guidelines, regarding Heads of the Part 23 Companies Act (Prospectus Regulations) Amendment Bill 2019, indicating that he intended that these Heads would be included in the Finance (Tax Appeals) Amendment Bill 2019.

The purpose of the above mentioned General Scheme is –

- to provide for the role and responsibilities of the Chairperson of the Tax Appeals Commission, and
- to provide a legislative basis for changes to improve the performance and efficiency of the Commission.

The Tax Appeals Commission is an independent administrative tribunal that adjudicates on disputes between taxpayers and the Revenue Commissioners in relation to a range of taxes including income tax, corporation tax, VAT, Capital Gains Tax, Capital Acquisition Tax, Stamp Duties, Customs and Excise Duties and Local Property Tax.

The additional Heads (indicated above) to be included in the Finance (Tax Appeals) Amendment Bill 2019 relate to the transposition into national law of the Prospectus Regulation (EU) 2017/2019. The Regulation lays down requirements in relation to the prospectus to be published when securities are offered to the public or traded on a market situated in a Member State.

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On 30 May, the Committee met the Department of Finance and the Tax Appeals Commission on the above mentioned General Scheme and Heads, and this is the Report of the Committee's consideration of both.

I would like to thank the Library & Research Service of the Houses of the Oireachtas for their assistance in preparing the Report.

John McGuinness T.D.

Chairman

18 June, 2019.

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2. BACKGROUND

In June 2018, the Minister for Finance appointed Ms Niamh O'Donoghue to conduct a review of the staffing structure, governance and operation structure of the Tax Appeals Commission (TAC). The aim of the review was to produce a report with recommendations on -

- the staffing resources required at various grades
- governance structures, independence and accountability
- internal operational structures and the potential to improve workflow and efficiency
- potential legislative amendments that could facilitate the work of the TAC.

The review found that stakeholders were of the opinion that the appeals system, which was put in place with the establishment of the TAC in 2016, was not working properly. In particular, there was concern in relation to –

- delays in bringing matters to hearing in the first instance and in issuing determinations
- deficiencies in communications with and within the TAC
- a lack of transparency in relation to the progress of appeals.

Consequently, the expectations of stakeholders in relation to the performance of the TAC were not being realised.

The report recommended –

- that the Minister appoint a Commissioner to be Chairman, Accounting Officer and Head of Office in the TAC. The Chairman would also be responsible for overseeing case allocation, quality assurance, consistency and management of the operations of the TAC; (It should be noted, however, that the Commission remains accountable to the Department of Finance in relation to its budget and expenditure)
- the provision of additional human resources, including Appeal Commissioners (two of which would be Temporary Commissioners) as well as management and clerical staff to facilitate the management of backlogs together with the current caseload;
- the putting in place of a plan to deal with the backlog of cases-on-hands and indicate a timeframe for the elimination of the backlog and targets for progressing this;
- a number of steps to improve the process of dealing with appeals;
- a number of possible legislative amendments.

The Report's recommendations were supported by the Minister for Finance.

3. ANALYSIS OF THE GENERAL SCHEME AND HEADS

This section considers that Heads of the Finance (Tax Appeals) Amendment Bill 2019.

Head 1 – Appointment of Chairperson of the Tax Appeals Commission (TAC)

This Head proposes to amend section 4 of the *Finance (Tax Appeals) Act 2015* which deals with membership of TAC to provide that the Minister for Finance will appoint a Chairperson to the TAC.

The appointment of a Tax Appeals Commissioner to be the Chairperson of TAC was a recommendation made by the *Review of the Workload and Operations of the Tax Appeals Commission*.¹ The review noted that; ‘a basic difficulty [with the TAC] appears to be that none of the Commissioners is *primus inter pares* in relation to the duties of the Commission’ and went on to say that: ‘the fact that all Commissioners are independent in their activities and not accountable to each other means that there is no structural mechanism to establish, monitor and enforce standards in relation to the performance of functions by individual Commissioners under the Act.’

The review envisaged that in addition to a Commissioner being the Chairperson, he or she would be the head of organisation in all respects and would be the Accounting Officer for the funds voted to the TAC. It also stated that ‘it may be appropriate, as for other similar bodies, for the Chairman to receive additional remuneration in respect of these additional duties.’

Head 2 – Functions of Chairperson of the TAC

This Head proposes that:

1. The Chairperson shall ensure that the functions of the TAC are performed efficiently and that the caseload assigned to each member of the TAC is disposed of as expeditiously as may be consistent with fairness and natural justice.
2. The Chairperson may issue to the members of the TAC guidelines on the practical application and operation of the provisions or any particular provisions of the 2015 Tax Appeals Act.
3. The Chairperson may —

¹<http://www.budget.gov.ie/Budgets/2019/Documents/18.%20Independent%20review%20of%20the%20workload%20and%20operations%20of%20the%20Tax%20Appeals%20Commission.pdf>

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(a) Require a member of the TAC or a temporary Commissioner to prepare a report of their determination of each appeal within a period specified in the guidelines referred to at 2 above, and

(b) Require a member of the TAC to prepare a report on any aspect of the transaction of the business assigned to the member.

4. The Chairperson—

May accord priority to an appeal when he or she is of the opinion that it is in the interests of justice and the efficient operation of the tax appeals system to do so,

5. The Chairperson may from time to time convene a meeting with a member or members of the TAC for the purpose of discussing matters relating to the transaction of the business assigned to the member or members, including, in particular, such matters as the avoidance of undue divergences in the transaction of business by the members.

6. The Chairperson shall convene a meeting of the members at least once a year to review the transaction of business by members.

Head 2 proposes to set out the role of the Chairperson as envisaged in the Review report.

Head 3 – Reports under section 21 to be made by the chairperson of the TAC

Section 21 of the *Finance (Tax Appeals) Act 2015* requires the Commissioners to prepare an annual report on the performance of their functions in the preceding year, and submit it to the Minister. The Commissioners can also provide ad hoc reports, and may also be directed by the Minister to prepare a report on any particular matter relating to the activities of the Commissioners as the Minister considers appropriate.

Head 3 provides that references in s. 21(1), s.21(5), s.21(6), s. 21(7) and s.21(8) of the *Finance (Tax Appeals) Act 2015* to the preparation, submission and publication of reports by the Commissioners will now be references to the Chairperson of the TAC.

Head 4 – Determinations alleged to be erroneous on a point of law.

This Head aims to provide that the appealing party must state their disagreement/dissatisfaction in relation to a determination received and state in what particular respect the determination is alleged to be erroneous on a point of law. This is not a recommendation of the Review

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The rationale for this Head is that currently the reason for making an appeal to the High Court does not have to be given prior to the hearing. A case should only be appealed to the High Court where there has been an error on a point of law, rather than where the appellant does not agree with TAC's finding. The Head aims to make it clear that an allegation of an error on a point of law must be included in a s.949AP(2)² notice to appeal to the High Court. Where an error in law is not specifically alleged, it is difficult for a Commissioner to draft a case stated because the grounds of appeal are not specified in the s.949AP(2) notice. Where the legislative requirements of a s.949AP(2) notice have not been met, a question as to the validity of the case stated appeal will arise.'

As is outlined in the TAC's 2018 Annual Report³, during 2018, the Commissioners signed 11 cases stated pursuant to section 949AQ TCA 1997 to enable determinations to be appealed to the High Court. In addition to the foregoing 11 cases stated, the TAC had 43 pre-establishment cases stated (i.e. appeals which were determined and where requests for a case stated were made by a dissatisfied party prior to the establishment of the TAC) and 2017 cases stated on hand at the beginning of 2018. Four of these requests for case stated were withdrawn during 2018. A further 12 appeals confirmed that they intended to proceed via case stated. Correspondence was ongoing in relation to a further 27 requests for pre-establishment cases stated.

Head 5 – Presentation of documents for inclusion in the case stated.

This Head provides that the appealing party must present all relevant exhibits to a case stated to the High Court, rather than relying on TAC to provide them. It is not a recommendation of the TAC review.

The rationale for the proposed change is that it would increase efficiency in case management. It appears that the current legislation is being interpreted by some parties as requiring the TAC to prepare, photocopy and collate the exhibits as part of the preparation of the case stated.

Head 6 – Power of the TAC to enter into contracts

This provides that the *Finance (Tax Appeals) Act 2015* be amended to provide that the TAC has all powers necessary or expedient for the performance of its functions. This is

² Section.949AP(2) of the *Finance (Tax Appeals) Act 2015* - A party who is dissatisfied with a determination as being erroneous on a point of law may by notice in writing require the Appeal Commissioners to state and sign a case (in this Chapter referred to as a 'case stated') for the opinion of the High Court.

<http://www.irishstatutebook.ie/eli/2015/act/59/enacted/en/print.html>

³ <http://www.taxappeals.ie/fileupload/AnnualReports/Annual%20Report%202018%20-%20Final.pdf>

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a provision which is standard for many bodies such as the Health Information and Quality Authority⁴ and NAMA.⁵

Section 6 of the *Finance (Tax Appeals) Act 2015* outlines the functions of the Commissioners. These include, for example, determining appeals and providing written determinations. The power to enter into contracts is not specifically set out in section 6 although this does not mean that the TAC cannot enter into contracts. It appears that the TAC has received independent legal advice that indicates at least a lack of clarity as to whether the TAC can enter into contracts. It is not a recommendation of the TAC review.

Head 7 – Consequential amendments

This will provide for any consequential amendments that are necessary because of the more substantive Heads. Changes may be needed to sections 5, 6, 7, 8, 9, 13, 14 and possibly other sections of the *Finance (Tax Appeals) Act 2015*. While the amendments are not been drafted, such consequential amendments are generally technical in nature.

Changes to Part 23 of the *Companies Act 2014*

The Finance (Tax Appeals) Amendment Bill 2019 also proposes to amend Part 23⁶ of the *Companies Act 2014* which deals with public offers of securities. The Heads concerned are intended to transpose into Irish law, to the extent necessary, the EU Prospectus Regulation.⁷ The Regulation states that:

‘The aim of this Regulation is to ensure investor protection and market efficiency, while enhancing the internal market for capital. The provision of information which, according to the nature of the issuer and of the securities, is necessary to enable investors to make an informed investment decision ensures, together with rules on the conduct of business, the protection of investors. Moreover, such information provides an effective means of increasing confidence in securities and thus of contributing to the proper functioning and development of securities markets. The appropriate way to make that information available is to publish a prospectus.’

⁴ <http://www.irishstatutebook.ie/eli/2007/act/23/section/8/enacted/en/html>

⁵ <http://www.irishstatutebook.ie/eli/2009/act/34/section/12/enacted/en/html>

⁶ Public offers of securities

⁷ EU Prospectus Regulation (Regulation (EU) 2017/1129 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1129>)

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The current Prospectus Regulations⁸ have been in force in Ireland since 2005. They are an important part of the overall investor protection regime as they set out the minimum information and disclosure requirements that apply to offers of securities in Ireland and ensure that the information provided to prospective investors is accurate and not misleading through either the omission of key information or deliberate misstatement. The Regulations ensure the integrity and stability of the Irish market as a leading exchange in Europe for new securities listings.

In 2017, the EU agreed a new Prospectus Regulation that will have direct application in Member States from 21 July 2019. Within the EU Regulation, there are specific Member State discretions that must be implemented through national legislation, and to ensure the continued and effective operation of Ireland's prospectus regime after the 2017 Regulation enters into force, it is essential that these discretions are fully transposed before that date.

Certain provisions related to Irish Prospectus Law are also contained in Part 23 of the Companies Act 2014. The proposed amendments -

- will update references in Part 23 of the Companies Act to refer to the 2017 EU Regulation and the relevant legal definitions
- will also transpose provisions contained in Article 11 of the Regulation that restrict the civil liability of certain persons involved in a security offering.

Head 1 – Amendments to Section 1348(1) of the Companies Act 2014

This Head amends the definition of “local offer” by the substitution of references to –

- an increase in threshold from €5 million to €8 million
- the 2017 Prospectus Regulations instead of the 2003 Directive

Under the article 3.2 of Prospectus Regulation, in order to reflect the varying sizes of financial markets across the EU, Member States may decide to exempt offers of securities to the public from the obligation to publish a prospectus provided, inter alia, that the total consideration of such offers do not exceed €8 million. Below the threshold, Member States may, under article 1.3, require other disclosure requirements at national level to take into account the level of domestic investor protection they deem to be appropriate.

⁸ Current Central Bank: A guide to prospectus approval in Ireland (19 November 2018)

<https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/securities-markets/prospectus-regulation/prospectus-handbook/prospectus-handbook.pdf?sfvrsn=10>

Head 2 – Amendments to Section 1350 of the Companies Act 2014

This Head gives effect to article 11(2) of the 2017 Prospectus Regulation, which requires Member States to ensure that no civil liability will attach to a person solely on the basis of a prospectus summary (required under article 7 of the Regulation) unless it is misleading, inaccurate, inconsistent, or fails to provide key information.

Head 3 – Amendments to Section 1351 of the Companies Act 2014

Section 1349 of the Companies Act sets out the persons who are liable to pay compensation to a person who, on the basis of a Prospectus, suffers loss or damage sustained as a result of an untruth or omission. While section 1351 limits the categories of people who are potentially liable to pay compensation in the case of a Prospectus solely in respect of non-equity securities, this Head makes it clear that a person convicted on indictment of certain offences under Part 23 of the Act (which provides in relation to offers of securities covered by the Directive) may be liable to pay compensation.

Head 4 – Amendments to Section 1361 of the Companies Act 2014

Section 1361 sets out information that must be included in documentation provided in relation to a local (i.e. below-threshold) offer. This Head up-dates the reference to the governing EU Prospectus Regulation, and adds to the information that must be provided in the documentation. It is intended that this will improve investor protection and has been drafted following consultation with the Central Bank of Ireland as the National Competent Authority for the Prospectus Regulation.

Head 5 – Consequential amendments

This will provide for any consequential amendments and transitional measures related to the transposition of the Prospectus Regulation.

4. KEY ISSUES

The Committee considers that it is important that the State's tax system provides taxpayers (both individuals and businesses) and the State with modern, efficient and transparent structures and process that generate confidence on the part of all involved. As an integral part of the overall tax system, the Tax Appeals Commission has a significant contribution to make in this regard.

The Committee is supportive of the findings and recommendations of the Review of the *Workload and Operations of the Tax Appeals Commission* (2018). It also welcomes the support of the Minister for Finance for those recommendations and the commitment that has been given to provide the additional financial and staffing resources that are necessary to give effect to them. It notes that the Estimates for expenditure of the Commission for 2019 is €3.208, increased €1,626 from in 2018, and that progress is being made in putting the additional Temporary Commissioners and support staff in place.

The Committee is anxious to see the recommendations being fully implemented as soon as possible.

The Committee also supports the provisions of Heads 1 to 7 of the General Scheme of the Bill.

Caseload and delays

In the course of its meeting with the Department of Finance and the TAC, the Committee expressed its concern at the number of appeals currently before the TAC and the time being taken to consider those appeals.

The total caseload is comprised of –

- current appeals, i.e. those that were received on or after 1 January 2016
- legacy appeals, i.e. appeals that were submitted directly to the Revenue Commissioners prior to the establishment of the TAC, and transferred to the TAC during the second half of 2016
- pre-establishment appeals, i.e. appeals that were on hand in the Office of the Appeal Commissioners prior to 21 March 2016.

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The numbers of appeals on hands at the end of 2018 were as follows:

		Legacy Appeals	Pre-Establishment Appeals	Current Appeals		
				2016	2017	2018
Total	3,453	728	163	279	1085	1,198

The amount of tax involved in relation to appeals on hands is approximately €3.6 billion, a substantial part of which is accounted for by a very small number of appeals. The average time taken by the TAC to deal with an appeal is 353 days. The Committee is concerned about the size of both of these metrics and considers that both need to be reduced. The Tax Appeals Commission agrees with this. While the TAC is not yet in a position to set maximum limits for the time taken by it to deal with appeals, it does envisage doing so in due course – perhaps by adopting limits for cases of different levels of complexity. However, some appeals (including cases involving a very large amount of tax) cannot be progressed where a stay on the progression of appeals by the TAC has been placed by Order of the High Court, Court of Appeal or the Supreme Court.

Nature of the appeals process

Concern was also expressed by the Committee in relation to what it saw as the relatively slow, bureaucratic and legalistic appeals process now in place, especially when compared with the appeals system that was in place prior to the establishment of the TAC. The TAC confirmed that perhaps 40% of appeals cases involve representation on behalf of the client by professionals (e.g. members of the legal profession, accountants or tax advisors).

Procedures for case stated (Head 5)

In its written observations to the Committee, the Irish Taxation Institute states that in relation to determinations of the TAC that are appealed to the High Court –

- the documents appended to or exhibited form part of *the case stated* and are of the utmost importance
- it is the role of the TAC to decide what should be exhibited, although they may have regard to representations made by either party to the appeal.

The ITI considers believe that that this role of the TAC should not change, and it suggests that the proposed legislation should provide that the TAC may request either

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party to prepare, photocopy or collate relevant exhibits to the extent that they are within their possession. The Committee feels that this issue warrants further consideration so as to ensure that in relation to *cases stated*, all required and appropriate documentation is available to the High Court.

Transposition of the Prospectus Regulation (EU) 2017/1129

The Heads proposed in this regard consist of technical amendments to Part 23 of the Companies Act 2014 to ensure that Ireland fully complies with the Prospectus Regulation and that there are no legislative gaps in the national prospectus regime in Ireland.

The Committee considered the proposed increase in the threshold in Ireland (i.e. from €5 million to €8 million) below which the requirements of the Prospectus Regulation would not apply. The intention in so doing is to enable smaller companies to have easier access to capital markets. In the case of such “below threshold” offers of securities, it is proposed to add to existing measures, provided for in the Companies Act 2014, to ensure that adequate investor protections are in place. The Committee notes that –

- a number of EU Member States (e.g. the UK, France, Denmark, Finland and Italy) have also set their thresholds at €8 million
- others (e.g. Austria, Croatia, Estonia, Greece, Iceland, Lithuania, Luxembourg, Malta, Netherlands, Norway, Portugal and Spain) have set their thresholds at €5 million.
- both Belgium and Germany have a €5 million base threshold, with a threshold of €8 million applying in certain circumstances
- the remaining States (e.g. Bulgaria, Cyprus, Czech Republic, Hungary, Latvia, Poland, Romania, Slovakia, Slovenia and Sweden) have set a range of thresholds between €1 million and €5 million.

The Committee is anxious that the disclosure requirements for offers of securities that are exempt from the Prospectus Regulations provide an adequate level of protection for investors, and that there is adequate oversight and monitoring of such offers.

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5. RECOMMENDATIONS

The Committee recommends that –

- the Finance (Tax Appeals) Amendment Bill 2019 be published and considered by the Houses of the Oireachtas as soon as possible;
- the Tax Appeals Commission continues to make progress in implementing the recommended improvements in governance, staffing and other matters with a view to reducing the number of appeals on hands and the time taken to consider appeals;
- in the interest of achieving an efficient and timely tax appeals process, the Tax Appeals Commission should consider, where possible, how –
 - procedural requirements can be streamlined and simplified, and
 - the need for parties to appeals to obtain the assistance of professional advisors can be minimised;
- the Tax Appeals Commission should report on a quarterly basis to the Department of Finance in relation to the number of appeals determined and the number of appeals on hands;
- consideration be given to how best to respond to the proposal of the Irish Taxation Institute that the TAC should be able to request either party to provide documentation in relation to *cases stated* so that all required and appropriate documentation is available to the High Court;
- in relation to transposition of the Prospectus Regulation and the proposed threshold of €8 million -
 - the balance between the desirability of ensuring access to capital markets for smaller companies on the one hand, and the protection of the interests of potential investors in the case of offers securities that are exempt from the Prospectus Regulations on the other, is kept under review
 - there is adequate oversight and monitoring of such offers to ensure that an adequate level of protection is maintained for those investing in such securities.

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Appendix 1 - Membership of the Joint Committee

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. (Solidarity-PBP)

Senators:

Gerry Horkan (FF) (Vice-Chairman)

Paddy Burke (FG)

Rose Conway-Walsh (SF)

Kieran O'Donnell (FG)

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Appendix 2 - Meeting Transcript and Submissions

Transcript

[Meeting of the Joint Committee on 30 May](#)

Submissions

[Irish Tax Institute](#)

[Revenue Commissioners](#)

[Tax Appeals Commission](#)

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Appendix 3 - 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

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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.

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- (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) 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

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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 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

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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.