

Opening Statement by Mr. Gary Tobin, Assistant Secretary in the Department of Finance, to the Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach

Tuesday 2 April 2019

I would like to thank the Joint Committee for inviting the Department to address it in relation to the matter of the Detailed Scrutiny of the Private Members *No Consent, No Sale Bill 2019*.

I am accompanied today by Des Carville, Head of the Shareholding and Financial Advisory Unit, John Palmer and Gráinne Goggin of the Banking Division. I welcome this opportunity to briefly highlight the Department's views on this Private Members Bills.

As requested, the Department submitted a very detailed submission, addressing specific issues as outlined in the new Memorandum of Understanding on Private Members Bill.

As the Committee will be aware, the Department has engaged fully with Committee members on a significant number of private members' bills. These include:

- Deputy McGrath's *Consumer Protection (Regulation of Credit Servicing Firms) Act 2018*,
- Deputy Doherty's *Central Bank and Financial Services Authority of Ireland (Amendment) Act 2017*,
- Deputy Pringle's *Fossil Fuel Divestment Act 2018*, and

- Deputy Doherty's *Central Bank (Amendment) Bill 2018*.

In each case, we have sought to engage constructively in the pre-legislative scrutiny process. We have sought to give open and honest feedback regarding our views on the proposed legislation and the drafting of each of the Bills. In a number of cases we have successfully worked with the Deputies to progress the draft legislation into law, following Government approval to do so.

In particular, we have already worked with Oireachtas members to progress a number of pieces of legislation designed to enhance the protection for mortgage holders who are in arrears with their lenders. Specifically, Deputy McGrath's *Consumer Protection (Regulation of Credit Servicing Firms) Act 2018* and Minister of State Boxer Moran's *Land and Conveyancing Law Reform (Amendment) Bill 2019*.

In relation to this specific private members' bill, we would share the "grave concerns" expressed by the Governor of the Central Bank when he appeared before this Committee last week. We have two types of concerns about the Bill. Firstly, in relation to the potential unintended consequences and secondly in relation to its timing.

To deal with the second concern first, and as highlighted by the Governor last week, we would be very concerned about the potential implications of this Bill for the financial stability of the banking sector and wider economy coming so close as it does to Brexit. As regards the potential unintended consequences, our assessment is that this Bill will lead to:

- higher mortgage interest rates for consumers,
- reducing the availability of mortgage lending overall,

- potentially severely restrict Irish banks' capacity to access Eurosystem credit, particularly in a crisis or at times of market stress. It is worth noting that lending to Irish domiciled institutions rose to €140 billion towards the end of 2010.
- institutions losing their ability to use securitisation,
- an increase in repossessions by banks as their ability to reduce NPLs through sales will be severely reduced,
- a reduction in new entrants and less competition in the Irish mortgage market, and
- significantly reduce the value of the State's shareholding in the banks.

In terms of a money message, the Government is strongly of the view that one is required. There are direct and indirect costs to the Exchequer that we have outlined in our detailed submission to the Committee.

The Department also believes that the Bill is unconstitutional as it is currently drafted. The Bill overrides existing contractual rights for persons that issued mortgages to sell them on to third parties and purports to introduce a unilateral alteration of existing contractual terms for mortgages. The mortgagors concerned, would have agreed, as a condition to borrow, that the mortgage could be sold on. In doing so the Bill is overriding or abrogating vested private property rights. Constitutionally, this can only be done in a proportionate manner and where justified by the exigencies of the common good. After consulting with the Office of the Attorney General, the Department of Finance is of the view that the interference proposed by this Bill is disproportionate and therefore unconstitutional.

I know that the intention behind this Bill is to help those who believe they will be worse off as a result of their loan being sold. However, this Bill will confer no additional protections and will only serve to cause significant harm to the mortgage market for consumers and to the economy more generally.

My colleagues and I are happy to answer any questions you may have.