



REPORT OF THE SUB-COMMITTEE ON DÁIL REFORM

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT AND DÁIL ÉIREANN ON PRIVATE MEMBERS' BILLS

**Adopted by the sub-Committee on
5 December 2018**

TABLE OF CONTENTS

Item	Page no.
Report	5
Appendix 1 – Memorandum of Understanding (MoU)	7
Appendix 2 – Cover letter from the Ceann Comhairle to the Taoiseach	21
Appendix 3 – Response from the Taoiseach to the Ceann Comhairle	23
Appendix 4 – Proposed Standing Orders underpinning the MoU	25

REPORT

Background

In November 2017, the sub-Committee on Dáil Reform decided to seek an agreed position with Government on the management of Private Members' Bills (PMBs), through the mechanism of a Memorandum of Understanding (MoU).

Following discussions between the Houses of the Oireachtas Service and the Department of the Taoiseach at official level, a draft MoU was presented to the sub-Committee on Dáil Reform for its consideration. The MoU was agreed by the sub-Committee on 12 July 2018 and was subsequently agreed by the Government on 24 July 2018. Appendix 1 sets out the text of the MoU as agreed by the two Parties.

The purpose of the MoU is to set out:

- 1) a comprehensive and transparent parliamentary scrutiny process for Private Members' Bills, with the aim of enacting private members legislation which is fit for its intended purpose and which is legally sound, and
- 2) a process for engagement by Government on requests for Money Messages in respect of PMBs, with the aim of ensuring a response from Government to requests for Money Messages within a reasonable time.

The MoU stipulates that the parliamentary scrutiny process set out in the MoU will be underpinned by appropriate amendments to the Standing Orders of Dáil Éireann relative to Public Business. Appendix 2 sets out the text of Standing Orders to give effect to the MoU as agreed between the sub-Committee and the Government, together with consequential and related technical amendments.

Under the new procedures, Private Members' Bills may not be referred to Select Committee for Committee Stage of the Bill, unless they have either undergone pre-Committee Stage scrutiny, or the Business Committee has waived the requirement for scrutiny. In relation to Private Members' Bills referred to Select Committee prior to the adoption of the new Standing Orders, the position is as follows:

- those which have not received pre-Committee Stage scrutiny should be subject to scrutiny in accordance with the guidelines set out in the MoU; and
- where a scrutiny report has been laid before the Dáil, or where scrutiny has been waived (in this case, by the Select Committee itself), the Government will issue a reasoned response within the timeframe outlined in the MoU (i.e., within six weeks).

Recommendation

The sub-Committee therefore recommends that Dáil Éireann takes note of the Report and adopts, with effect from 15 January 2019–

- (a) the Memorandum of Understanding with the Government on Private Members' Bills, as set out in Appendix 1; and
- (b) the amendments and the additions to the Standing Orders of Dáil Éireann relative to Public Business, as set out in Appendix 2, provided that the change to Standing Order 141 shall apply only until further notice in the 32nd Dáil.

Seán Ó Fearghaíl, TD,
Ceann Comhairle,
Chairman of the sub-Committee on Dáil Reform.
5 December 2018

MEMORANDUM OF UNDERSTANDING
BETWEEN THE GOVERNMENT AND DÁIL ÉIREANN
ON
PRIVATE MEMBERS’ BILLS
As agreed by the sub-Committee on Dáil Reform on 12 July 2018

Contents

Preamble – page 8

Memorandum of Understanding:

- 1. Purpose – page 9**
- 2. Scrutiny of Private Members’ Bills by Committees – page 9**
- 3. Provision of Money Messages by Government – page 11**
- 4. Arrangements for review or revocation – page 12**

Appendices

- 1. PMB legislative process diagram – page 13**
- 2. Committee scrutiny process model for PMBs – page 14**
- 3. Framework for Committee Scrutiny of PMBs – page 15**
- 4. Roles and responsibilities in relation to PMBs – page 17**

APPENDIX 1 – MEMORANDUM OF UNDERSTANDING (MoU)

PREAMBLE

Whereas the Constitution of Ireland provides as follows:

- the sole and exclusive power of making laws for the State is vested in the Oireachtas [Art. 15.2] and the Oireachtas shall not enact any law which is in any respect repugnant to the Constitution or any provision thereof [Art 15.4].
- Dáil Éireann shall not pass any vote or resolution, and no law shall be enacted, for the appropriation of revenue or other public moneys unless the purpose of the appropriation shall have been recommended to Dáil Éireann by a message from the Government signed by the Taoiseach [Art. 17.2]
- the Government shall be responsible to Dáil Éireann [Art. 28.4.1] and shall prepare Estimates of the Receipts and Estimates of the Expenditure of the State for each financial year and shall present them to Dáil Éireann for consideration [Art. 28.4.4]
- the Courts shall make decisions as to the validity of any Bill referred by the President [Art 26] or any law enacted by the Oireachtas [Art 34] having regard to the provisions of the Constitution,

Whereas the Standing Orders of Dáil Éireann relative to Public Business provide as follows:

- every Bill to be introduced shall be examined by the Ceann Comhairle for compliance with Standing Orders and, subject to compliance with Standing Orders, any member may move for leave to introduce a Bill, and the Bill shall be printed once leave to introduce is given by the Dáil [SO 147],
- only a member of the Government may move a Bill which involves the appropriation of revenue or other public moneys, other than incidental expenses. Where a Bill involves appropriation in the form of incidental expenses, Committee Stage of the Bill cannot be taken unless the purpose of the appropriation has been recommended to the Dáil by a Message from the Government, the text of which shall be printed on the Order Paper [SO 179].

The Parties to this Memorandum of Understanding recognise that:

- all members of Dáil Éireann have a right to initiate legislation in accordance with their constitutional role as legislators and subject to compliance with Standing Orders,
- all legislation enacted by the Oireachtas should be compliant with the Constitution, fit for its intended purpose and legally sound: therefore, appropriate quality control processes must be in place as part of the legislative process,
- it is the Government's prerogative to decide on the appropriation of revenue or other public moneys under Article 17.2 and 28.4 and, in particular, whether or not to grant a Money Message to any Bill.

In recognition of the initiation of an increasing number of Private Members' Bills (PMBs), the Dáil and the Government have agreed on the necessity for a process whereby Private Members' Bills can be properly considered by Government in a timely manner for determination as to whether a Money Message will be issued. As the process of developing Government legislation has many stages and controls which apply prior to the publication of a Bill, similarly there must be appropriate control processes in place for non-Government legislation. Scrutiny of Private Members' Bills by Oireachtas Committees is an important quality control process which will ensure that PMBs are examined in detail and the results of which will facilitate the Government in its consideration of requests for Money Messages.

APPENDIX 1 – MEMORANDUM OF UNDERSTANDING (MoU)

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MoU) has been agreed between Dáil Éireann and the Government.

Purpose

Its purpose is to set out:

- 3) a comprehensive and transparent parliamentary scrutiny process for Private Members' Bills, with the aim of enacting private members legislation which is fit for its intended purpose and which is legally sound, and
- 4) a process for engagement by Government on requests for Money Messages in respect of PMBs which involve appropriation of revenue or other public moneys, with the aim of ensuring a response from Government to requests for Money Messages within a reasonable time following the Order for Committee Stage subsequent to the publication of a Committee Scrutiny Report.

This MoU sets out the process whereby a PMB which involves appropriation and which has been deemed suitable to progress by the relevant Committee following scrutiny¹, can obtain from Government either a decision to issue a Money Message, or a reasoned response as to why a Money Message will not be issued.

In this MoU, Dáil Éireann undertakes to conduct a scrutiny process in the relevant sectoral Committee according to the comprehensive scrutiny framework outlined in Appendices 1-3, which will ensure that all relevant factors regarding the quality and suitability of the Bill are explored, thus allowing a clear case for the issuing of a Money Message to be made. In return, Government undertakes to either grant a Money Message, or to issue a reasoned response in accordance with the provisions of this MoU.

The parliamentary scrutiny process set out in this MoU will be underpinned by appropriate amendments to the Standing Orders of Dáil Éireann.

Scrutiny of PMBs by Committees

1. Purpose of Committee scrutiny

The purpose of Committee scrutiny is to assess the Bill from a policy, legal and financial perspective with a view to recommending whether the Bill should proceed to Committee Stage or not.

2. Committee scrutiny process and framework

Scrutiny is conducted as a separate process, prior to Committee Stage. The Order for Committee Stage cannot be moved by the Bill sponsor until the relevant Committee has completed scrutiny of the Bill, has reported on the outcome and has sent a Message to the Dáil recommending that the Bill should proceed (or has secured the Business Committee's consent to a waiver of scrutiny in accordance with paragraph 3 below). The scrutiny process is set out in Appendices 1 and 2 to this MoU and Committees shall conduct scrutiny in accordance with the framework set out in Appendix 3.

3. Waiver of Committee scrutiny

In general terms, PMBs will be required to undergo scrutiny in detail by the relevant Committee in advance of Committee Stage. This is due to the fact that, unlike Government Bills, PMBs are not obliged to go through drafting and other quality assurance processes prior to publication, and are also not required to undergo pre-legislative scrutiny (PLS) in the relevant Committee. In exceptional cases however, a PMB sponsor or a Committee may seek the approval of the Business Committee for a waiver of the scrutiny requirement in respect of a particular Bill. Where the sponsor wishes Committee scrutiny to be waived, he/she should write to the Business Committee setting out the case for

¹ Or following a waiver consent from the Business Committee.

APPENDIX 1 – MEMORANDUM OF UNDERSTANDING (MoU)

waiver in accordance with this MoU and should copy the request to the relevant Committee Chairman. Requests for scrutiny waivers by Committees should be made in writing by the Committee Chairman on behalf of the Committee and copied to the Bill sponsor.

Requests for waivers should set out the basis on which the sponsor or Committee, as appropriate, considers that the Bill is suitable to progress directly to Committee Stage. In considering requests for waivers, the Business Committee will take all relevant matters into account, including - but not limited to - the following:

- the scope and complexity of the Bill,
- the level of consensus on the Bill provisions,
- whether the Bill sponsor and the Committee agree on the request for a waiver,
- any issues or concerns raised during Second Stage regarding the Bill provisions,
- the quality of the drafting,
- whether the Bill has been drafted and cleared by the PMB Drafting Unit in the Office of the Parliamentary Legal Adviser.

In the case of Bills which require a Money Message and in respect of which a scrutiny waiver has been sought, the Business Committee should take account of the views of the Government as to whether, in the absence of Committee scrutiny, there is sufficient information available to enable the Government to make a reasoned decision on the request for a Money Message.

A detailed protocol on the consideration of waiver requests by the Business Committee will be developed on the basis of this MoU.

4. Roles and responsibilities

The roles and responsibilities of the Bill sponsor, the Minister, the Sectoral Committee, the Business Committee and the sub-Committee on Dáil Reform are set out in detail in [Appendix 4](#).

5. Committee scrutiny outputs and outcomes

There are two outputs following Committee scrutiny:

- 1) a [scrutiny report](#) setting out the Committee's critical evaluation of the Bill and its reasoned recommendations in this regard, followed by
- 2) a [Message to the Dáil](#) recommending that the Bill should, or should not, proceed to Committee Stage.

These are **two separate processes**: scrutiny is generally conducted by the Joint Committee, however the Message to Dáil Éireann is a decision for the Dáil Select Committee only.

Scrutiny report: The Committee has wide discretion as to the content of its scrutiny report to the House. The Committee may, for example, identify areas where amendments (which may be technical, legal, drafting or policy-related) may be brought forward to the Bill at Committee Stage. This is the usual outcome of pre-legislative scrutiny (PLS) for Government Bills and, in this way, Committee scrutiny of PMBs serves a similar purpose to PLS. However the Committee does not draft its own amendments and its report is advisory only.

Message to the Dáil: The Dáil Select Committee must consider, taking account of the scrutiny report, whether the Bill should, or should not, continue to Committee Stage. [Examples](#) of grounds on which a Bill *could* be considered unsuitable to progress to Committee Stage are as follows (these should be grounded in the scrutiny report):

- further detailed policy analysis required,
- major technical or legal issues identified,
- significant implementation issues identified,
- drafting issues which cannot be remedied by way of amendment²
- outcome does not require legislation,

² Where, for example, the advice following legal scrutiny is that the Bill would require substantial or complete re-drafting.

APPENDIX 1 – MEMORANDUM OF UNDERSTANDING (MoU)

- substantial duplication of legislation which is at a more advanced stage in proceeding through the House.

If the Committee decides to recommend that the Bill should not proceed to Committee Stage, it will send a Message to the Dáil accordingly. The Bill will remain on the Order Paper at “Order for Committee” unless the sponsor does not accept the Committee’s recommendation and wishes nevertheless to move the Order for Committee. In that case, he/she will have to bring a motion for decision by the Dáil to “notwithstanding” the Committee’s recommendation. If the Dáil rejects the motion, this will act to defeat the Bill and it will be removed from the Order Paper. If the Dáil approves the motion, the Bill may proceed to Committee Stage (subject of course to receiving a Money Message and/or Financial Resolution, where required). If the Committee recommends that the Bill should proceed to Committee Stage, it will send a Message to the Dáil accordingly and the sponsor can move the Order for Committee Stage as normal, having given notice to the Business Committee.

Provision of Money Messages by Government

1. Process for requesting a Money Message

The Bills Office assesses each Bill to consider whether a Money Message is required under Standing Order 179(2) and, if a Message is considered necessary, it is requested from the Department of Public Expenditure and Reform (DPER). In so doing, the Bills Office takes account of issues raised during Second Stage speeches, including any views expressed by the Minister in relation to the financial implications of the Bill.

On receipt of the request for a Money Message, DPER confirm that the provisions of the Bill require the appropriation of public moneys and that a Money Message is required, and then forward the request to the Department of the Taoiseach for consideration by Government.

Under this MoU, the Bills Office will conduct a *preliminary* assessment in relation to Money Messages once the Bill has passed Second Stage. However the assessment will not be finalised until Committee scrutiny is completed, and Messages will not be requested from DPER until after the Order for Committee Stage is agreed³.

The Minister will set out the Government’s position on the Bill during the Second Stage speech and should specifically state, where possible at this stage, whether the Bill involves the appropriation of revenue or other public moneys. A key part of the Committee scrutiny process will be to assess the financial implications of the Bill (see Part A of the Scrutiny Framework in Appendix 3). It is important that all implications, and in particular financial implications, are set out in detail from the Government’s perspective during the Committee scrutiny process.

2. Responses from Government to requests for Money Messages

The Government has a constitutional role in managing the fiscal and executive affairs of the State and is accountable to the Dáil under Article 28. The Government has absolute prerogative under Article 17.2 of the Constitution as to whether to grant a Money Message or not. The Committee Scrutiny Report on the Bill will assist the Government in its consideration of the request for the issuing of a Money Message.

Government will provide either (1) a Money Message or (2) a reasoned response to the Committee Scrutiny Report, within 6 weeks of the receipt of the formal request for a Message. This will allow 4 weeks for Departmental consideration and 2 weeks to bring the relevant Memorandum to Government. Provided that in circumstances where it is not possible to adhere to this timeframe (e.g. because of a heavy Departmental legislative workload), the Minister will write to the relevant Committee and the sponsor outlining the proposed timescale for a response.

³ Messages are currently formally requested shortly after the Second Stage is agreed. Under this MoU, the Committee Chairman and the Bill sponsor will be advised of the results of the preliminary assessment following Second Stage, but the decision to seek a Message will not be taken (and formally communicated to DPER) until after scrutiny is completed and therefore the preliminary assessment may be subject to change.

APPENDIX 1 – MEMORANDUM OF UNDERSTANDING (MoU)

Where a Money Message is not being issued, the response will outline the reasons why, drawing from the Committee Scrutiny Report and Government's own analysis of the Bill. The reasoned response may also set out the steps that would need to be taken in order for the Government to further consider the issuing of a Money Message.

The reasoned response will be approved by Government and will be laid before the Dáil. The sponsor of the Bill and the Chair of the relevant Committee will also be given a copy of the reasoned response.

3. Arrangements to deal with backlog of requests for Money Messages

There are a number of Bills that have completed Second Stage but in accordance with Standing Order 179(2) cannot advance to Committee Stage without a Money Message. Where these Bills have been the subject of Committee scrutiny and a Scrutiny Report has been laid before the Dáil, Government will issue a reasoned response in accordance with this MoU. The remaining Bills awaiting Committee Stage should undergo Committee scrutiny under the terms of this MoU in advance of a reasoned response being issued by Government.

Arrangements for review or revocation

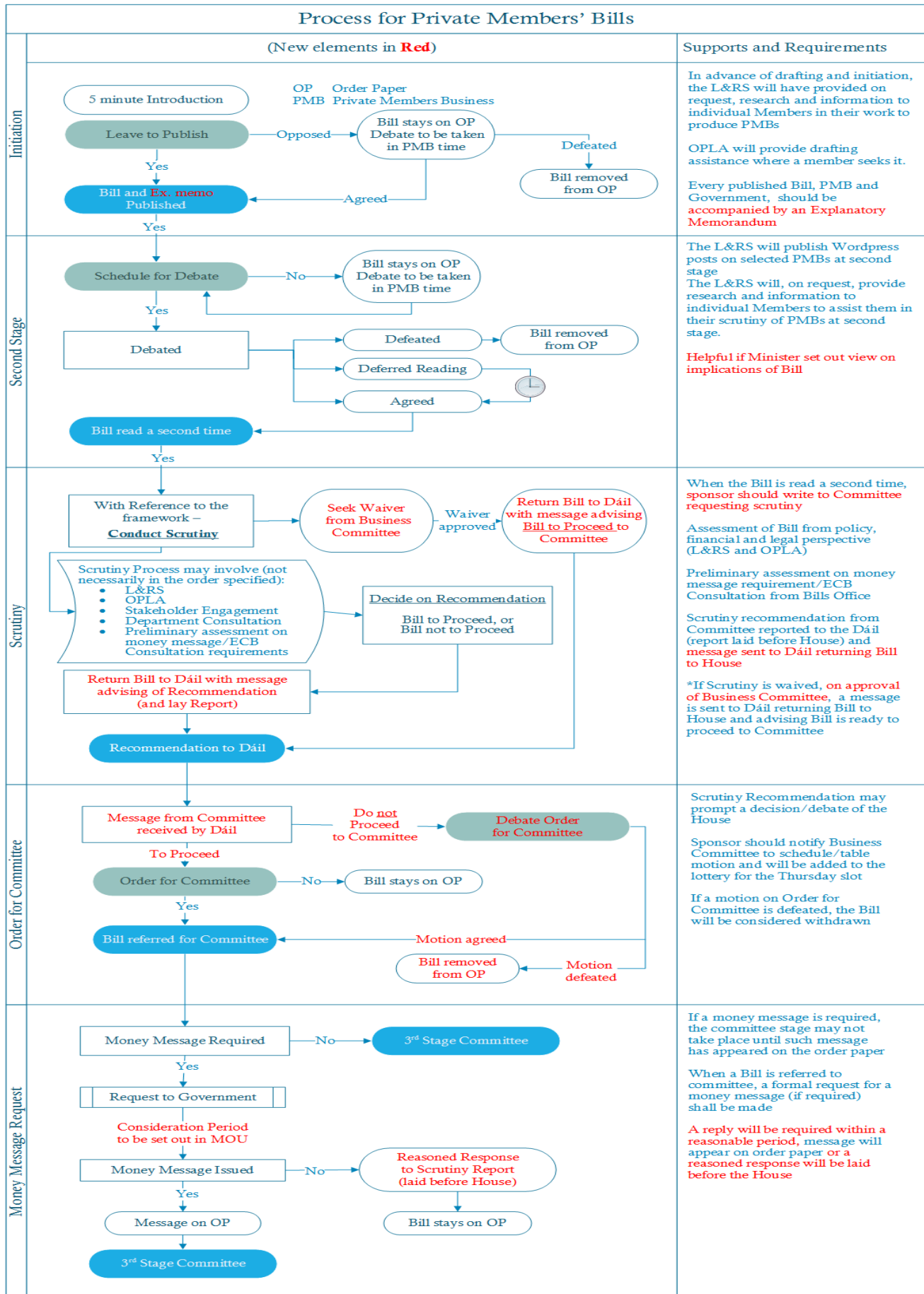
This MoU will be formally reviewed by both parties within 12 months of the first meeting of Dáil Éireann following a General Election.

This MoU may be reviewed, at any time, at the request of either party.

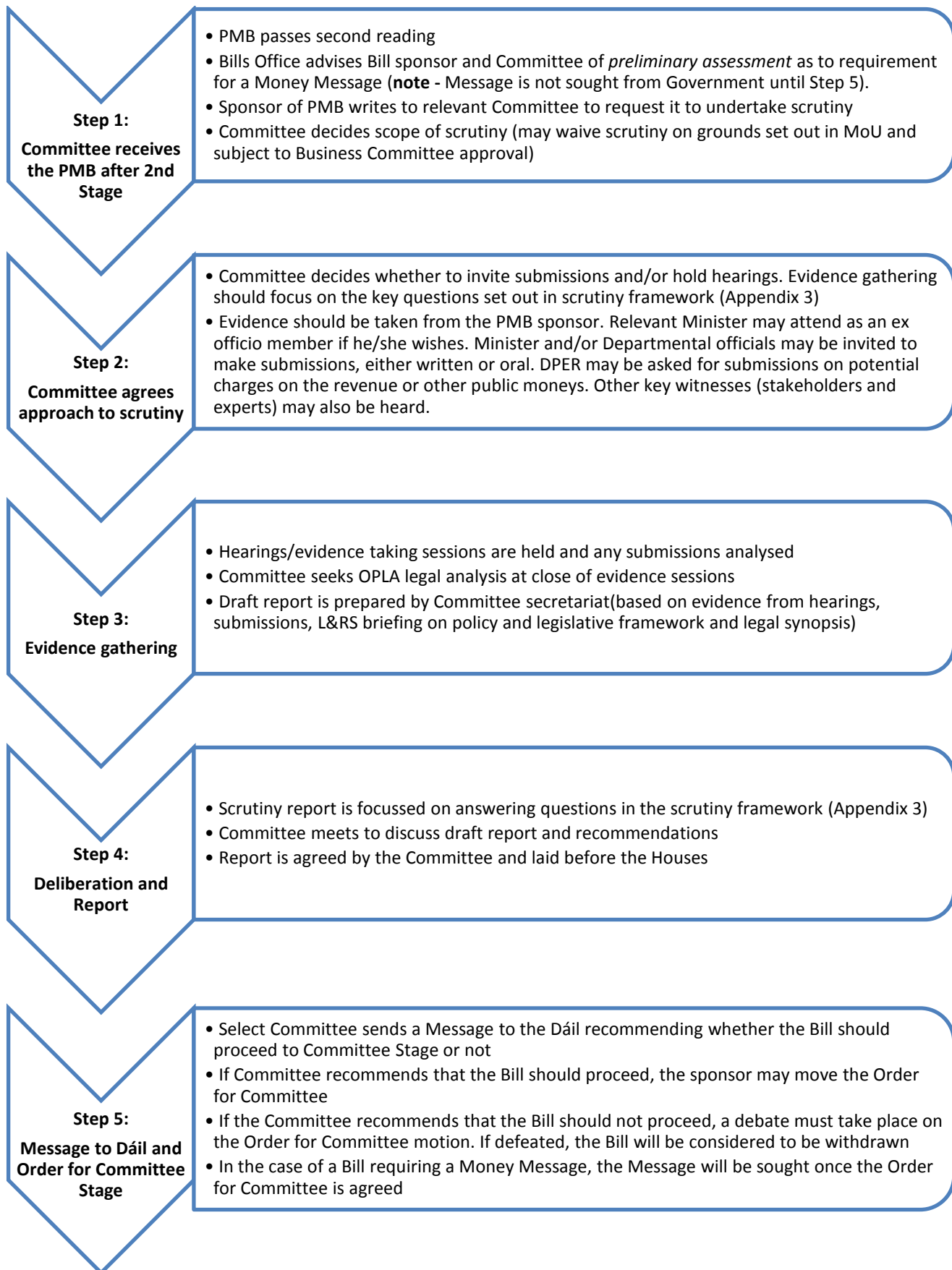
Either party may revoke this MoU on giving 6 weeks notice to the other party.

APPENDIX 1 – MEMORANDUM OF UNDERSTANDING (MoU)

Appendix 1



Appendix 2 - Committee scrutiny process model for PMBs



Appendix 3 - Framework for Committee Scrutiny of PMBs

PART A: Policy and Legislative Analysis⁴

The 'policy Issue' and the policy and legislative context

1. Define the problem / the policy issue which the Bill is designed to address; to what extent is it an issue requiring attention? What is the scale of the problem and who is affected? What is the evidence base for the Bill?
2. What is the current policy and legislative context, including are there any proposed Government Bills or general schemes designed to address the issue? Have there been previous attempts to address the issue via legislation?
3. Is there a wider EU/international context?

Implications and implementation of the Bill's proposals

Policy implications / implementation

4. How is the approach taken in the Bill likely to best address the policy issue?
5. What alternative and/or additional policy, legislative and non-legislative approaches were considered, including those proposed by the Government and what, does the evidence suggest, are the differences between and the merits of each?
6. Are there Government-sponsored Bills (or General Schemes) which are related to and/or broadly aim to address the same issue? Are there merits in combining them?
7. What are the specific policy implications of each proposal contained within the Bill (environmental / economic / social / legal)? Has an impact assessment (environmental/ economic /social / legal) been published⁵ (by Government or a third party) in respect of each proposal contained within the Bill?⁶
8. Could the Bill, as drafted, have unintended policy consequences, if enacted?
9. Has the Committee taken due consideration of the opinion of the European Central Bank (ECB) on the Bill, if applicable⁷?
10. How would the Bill, if enacted, be implemented?
11. Are there appropriate performance indicators which the Department, or whoever is ultimately charged with implementing the Bill, can use to assess the extent to which it meets its objective? Does it include formal review mechanisms?

Cost evaluation

12. Will there be enforcement or compliance costs?
13. What are the likely financial costs⁸ of implementing the proposals in the Bill, and what is the likely

⁴ The Library & Research Service (L&RS) has the capability to provide this policy research and analysis, however L&RS will require additional research staff resources to provide this level of support for all PMBs referred for Committee scrutiny.

⁵ A Bill sponsor is not required to draft an impact assessment or cost-benefit analysis (CBA) but should identify where one has been published (by Government, an external body, or otherwise) in respect of the proposals contained within the Bill, particularly where a proposal is modelled on international best practice.

⁶ Currently, PMBs do not undergo Regulatory Impact Assessment. However, certain proposals may have undergone scrutiny by other bodies which may be publically available to inform the Committee.

⁷ Where a PMB falls within the field of competence of the ECB (i.e. impacts on the role of the Central Bank of Ireland, or relates to rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets) consultation with the ECB is mandatory under the Treaties – the process is set out in Dáil SO 149(3)-(7). The ECB opinion is advisory only but the Committee is obliged to consider and report on it as part of the scrutiny process. The Ceann Comhairle will advise the Committee and the Bill sponsor as to whether an ECB consultation is required. If it is, the relevant Committee sends the request to the President of the ECB.

APPENDIX 1 – MEMORANDUM OF UNDERSTANDING (MoU)

overall fiscal impact on the exchequer?

14. Have cost-benefit analyses (CBA) been provided / published (by Government or a third party) in respect of each proposal contained within the Bill? Will benefits /costs impact on some groups / stakeholders more than others?

PART B - Legal Analysis⁹

[Note - In conducting scrutiny under Part B, the Committee shall have regard to whether the Bill has been cleared by the OPLA drafting service]

15. Is the draft PMB compatible with the Constitution (including the 'principles and policies' test)?
16. Is the draft PMB compatible with EU legislation and human rights legislation (ECHR)?
17. Is there ambiguity in the drafting which could lead to the legislation not achieving its objectives and/or to case law down the line?
18. Are there serious drafting deficiencies or technical drafting errors (e.g. incorrect referencing to Acts etc.)?
19. Are there potential unintended legal consequences which may stem from the PMB as drafted?
20. Are appropriate administrative and legal arrangements necessary for compliance and enforcement of the provisions of the Bill included? (e.g. if draft Bill contains a prohibition, whether the necessary criminal sanctions - including the class of fine - are included).

⁸ PMBs may only be taken at Committee Stage (normally following Committee scrutiny stage) if (a) in the case of Bills involving charges on the people – SO 178(2) - a Financial Resolution has been passed, or (b) in case of Bills involving appropriation of revenue or public monies (SO 179(2) - a Money Message has been received from Government.

⁹ The Office of the Parliamentary Legal Advisor (OPLA) will provide this analysis, subject to the availability of relevant resources. The OPLA will provide a full legal opinion which will be legally privileged, however a legal synopsis will be provided by the OPLA which may be published as part of the Committee's scrutiny report.

APPENDIX 1 – MEMORANDUM OF UNDERSTANDING (MoU)

Appendix 4 – Roles and responsibilities in relation to PMBs

Role of the Bill Sponsor: The Bill sponsor advocates for his/her Bill and pursues its progress at all stages through the Houses.

Publication, Second Stage and Committee scrutiny: The sponsor is responsible for introducing the Bill and providing an explanatory memorandum¹⁰, tabling the Bill for Second Stage debate (either as part of his/her group rota slot or through the Thursday lottery slot), leading the Second Stage debate, and requesting (in writing) the Committee to conduct scrutiny post-Second Stage.

Where scrutiny takes place, the sponsor will provide evidence on the Bill where requested by the Committee and should consider the Committee's scrutiny report when it is laid before the House. The sponsor may also apply to the Business Committee to seek a waiver of scrutiny in accordance with this MoU (see **Waivers**).

Following Committee scrutiny: On the conclusion of Committee scrutiny, and on receipt of a Message from the Committee to the Dáil (and the laying of the scrutiny report), the sponsor will be responsible for deciding whether (and when) to move the Order for Committee Stage. There are two scenarios here:

- 1) If the Committee has recommended that the Bill should proceed to Committee Stage (even where areas for potential amendment have been identified as a result of Committee scrutiny), the sponsor may move the Order for Committee (which will refer the Bill to the relevant Select Committee) without debate having given notice in line with current arrangements¹¹.
- 2) If however the Committee has recommended that the Bill should not proceed (for stated reasons set out in its scrutiny report), a debate must take place on the Order for Committee, either in the Tuesday or Wednesday PMB slot, or at a time provided by the Business Committee at the request of the sponsor. The sponsor will have to lead the debate on the motion to "notwithstanding" the Committee's recommendation and argue the case against the Committee's recommendation.

Committee and remaining Stages: Where the Committee's scrutiny report has identified areas for potential amendment at Committee Stage, the sponsor is not bound to table these amendments, unless he/she supports them. Other members of the Committee may also table amendments in response. Assuming that the Bill proceeds through Committee Stage, the sponsor is also responsible for moving the Order for Report Stage, the scheduling of Report Stage, and submitting amendments as necessary for Report Stage.

In the event that an Instruction to Committee is required (Standing Order 154) for any amendment to the Bill, the sponsor, as the member in charge of the Bill, is responsible for tabling the motion for an Instruction. Note that, under Standing Order 178(3) and 179(3), non-Government sponsors may not table amendments which could have the effect of imposing or increasing a charge on the people or on the revenue.

Role of the Minister: The Minister leads the Government's response to the Bill through all stages. The Minister should set out the Government's views on the implications of the Bill during the Second Stage speech. If there are implications in terms of charges on the revenue or on the people, the Minister should address these, as far as possible, during his/her Second Stage speech. The Minister and Department should give their considered assessment as to the potential financial implications of the Bill during the Committee scrutiny process, so as to inform the subsequent assessment by the Bills Office of the necessity to seek a Money Message or Financial Resolution (under Standing Orders 178(2) and 179(2)). The Minister is an *ex officio* member of the relevant Committee during the scrutiny process and during Committee Stage and is entitled to attend as a full (voting) member for both stages. The Minister may be invited by the Committee to make submissions as part of scrutiny, and may table amendments during Committee Stage. If the scrutiny process identifies areas for amendment which may give rise to charges on the revenue or the people, these can only be tabled by the Minister or by a Minister of State. If, following scrutiny, a Money Message is requested, the Minister will be responsible for considering the

¹⁰ To ensure equivalence with Government Bills, Standing Orders will be amended to require the provision of explanatory memos for all Bills on publication.

¹¹ Member should give prior notice to the Business Committee and may move Order for Committee after the OB / promised legislation on Tuesday, Wednesday or Thursday.

APPENDIX 1 – MEMORANDUM OF UNDERSTANDING (MoU)

request, taking account of the Committee's scrutiny report and the Government's own criteria, and for bringing a recommendation to Government on the response to the request for a Message (see **Money Messages** for further detail). Similarly, if a Financial Resolution is required, it is a matter for the relevant Minister to move the relevant motion under SO 178.

Role of the Sectoral Committee¹²: The role of the Committee is to critically evaluate the Bill following its second reading, assuming that the scrutiny process has been triggered by a written request from the Bill sponsor. If, on an exceptional basis, the Committee considers that a waiver request to the Business Committee is appropriate, having regard to the guidelines set by the sub-Committee on Dáil Reform (see **Waivers**), it should agree and submit a business case requesting the waiver. Where a waiver is granted, the Committee will send a Message to the Dáil advising it accordingly.

In general, the Committee should follow the comprehensive scrutiny process and framework set out in Appendices 1 to 3. The ultimate purpose of scrutiny is to assess whether the Bill is fit to proceed to Committee Stage and the Committee has an important role in this regard.

The MoU works on the assumption that scheduling of scrutiny and of Committee Stage should be left in the Committee's hands. In terms of timescales for scrutiny, Committees have discretion in managing their own work programmes and are best placed to make decisions on the timing of scrutiny and on the taking of Committee Stages. For example, where a Committee has produced a detailed scrutiny report which highlights a number of issues which would merit detailed consideration before progressing to Committee Stage, the Committee may decide to allow some time for further analysis and work (either by the sponsor, the Department or other members) before scheduling Committee Stage and triggering deadlines for amendments. Once the Order for Committee Stage is made, the Bill sponsor should therefore liaise with the Committee to discuss scheduling in the light of the Committee scrutiny report and the sponsor's own readiness to proceed. In any event, in the case of Bills which require a Money Message, there will generally be a six week period before a response is received from Government (see **Money Messages**) and, under SO 179, Committee Stage may only proceed where a Message is received.

Role of the Business Committee: The Business Committee has a role under Standing Orders in relation to the taking of legislation both in the House and in Select Committees. In this context, the Business Committee monitors the general progress of legislation through Select Committees on a weekly basis. The Business Committee will, under this MoU, make decisions on requests for scrutiny waivers on PMBs from Sectoral Committees or Bill sponsors, in the same way as the Committee makes decisions on requests from Government for waivers of the requirement to provide General Schemes/Draft Heads of Government Bills to the relevant Sectoral Committee under SO 146A. In the case of PMBs which require a Money Message and in respect of which a scrutiny waiver has been sought, the Business Committee should take account of the views of the Government as to whether, in the absence of Committee scrutiny, there is sufficient information available to enable the Government to make a reasoned decision on the request for a Money Message.

Role of the Dáil Reform sub-Committee: The sub-Committee on Dáil Reform considers matters of procedure generally, including amendments and additions to Standing Orders, and also oversees the procedure in Committees. The draft Standing Orders to implement this MoU envisage that the sub-Committee on Dáil Reform will agree guidelines on Committee scrutiny of PMBs, and criteria for the waiver of Committee scrutiny of PMBs. **The contents of this MoU, once adopted by the sub-Committee, will serve as such guidelines.** The sub-Committee will also be responsible for reviewing this MoU in accordance with agreed review arrangements.

¹² While scrutiny may be conducted by the Joint Committee, the Committee recommendation and Message to Dáil Éireann is a decision for the Dáil Select Committee only

APPENDIX 1 – MEMORANDUM OF UNDERSTANDING (MoU)

Oireachtas support services for PMBs: The Houses of the Oireachtas Service will provide supports as follows:

For individual members who wish to research, draft and publish a Bill:

- 1) the **Oireachtas Research Service PMB team** will help Members explore their PMB policy proposal by using an analytical framework. It will provide impartial research and analysis to the Member drawing on authoritative peer reviewed sources.
- 2) the **PMB Drafting Unit in the Office of the Parliamentary Legal Adviser** will provide legislative drafting services to Members.
- 3) the **Public Bills Office** is responsible for the publication and processing of Bills and Committee/Report Stage amendments. The Office also provides procedural advice re admissibility of Bills and issues requests for Money Messages and Financial Resolutions.

For Committees conducting scrutiny of PMBs:

Committees will be supported by:

- 1) the **Oireachtas Research Service PMB team**, who will provide policy and legislative analysis services, and
- 2) the **Office of the Parliamentary Legal Adviser**, who will provide legal analysis services,

in conducting scrutiny according to the framework set out in Appendix 3.

A detailed service protocol in relation to PMB supports will be finalised in conjunction with the rollout of the new process.

APPENDIX 2 – COVER LETTER FROM THE CEANN COMHAIRLE TO THE TAOISEACH



Tithe an
Oireachtais
Houses of the
Oireachtas

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Mr Leo Varadkar TD
An Taoiseach
Government Buildings

12 July 2018

Dear Taoiseach,

I understand your meeting with Party and Group Leaders yesterday was very useful in bringing about general agreement among those present to the processes documented in the draft Memo of Understanding (MoU) between the Government and Dáil Éireann on Private Members' Bills.

Following that meeting, a revised draft of the MoU was prepared for the sub-Committee on Dáil Reform, and, at its meeting this morning, the sub-Committee agreed the revised draft. I am pleased to present this draft to you now for Government approval, as requested by the sub-Committee.

When approved, the Standing Orders underpinning the MoU will be presented for final agreement by the sub-Committee before being scheduled for agreement by the Dáil. It is anticipated that this will happen immediately following the summer recess.

Yours sincerely,

Seán Ó Fearghaíl TD
Ceann Comhairle



Oifig an Taoisigh
Office of the Taoiseach



1st August, 2018

Mr Seán Ó Fearghail T.D.,
Ceann Comhairle,
Leinster House,
Dublin 2.

**Memorandum of Understanding (MOU) between the Government
and Dáil Éireann on Private Members' Bills.**

Dear Ceann Comhairle

I would like to inform you that at its meeting on 24 July, 2018, the Government approved the text of the Memorandum of Understanding between the Government and Dáil Éireann on Private Members' Bills as agreed by the sub Committee on Dáil Reform at its meeting on 12 July, 2018 and which you forwarded to me in your letter of 12 July, 2018.

I understand that the Standing Orders underpinning the MOU will be brought to the sub Committee on Dáil Reform and then onto the Dáil itself for agreement when we return following the summer recess.

Establishing a quality assurance process for private members' Bills enables Government to comprehensively assess the granting of money messages for them. I look forward to the successful implementation of the MOU, and the progression of good quality private members' legislation through to enactment.

I would like to thank you and your staff for all the work done in developing, and securing agreement to, the MOU.

Oifig an Taoisigh, Tithe an Rialtais, Baile Átha Cliath 2, D02 R583.
Office of the Taoiseach, Government Buildings, Dublin 2, D02 R583.



Amendments to Standing Orders

- 1) **New SO 27AC** – ‘Request for waiver of requirements of Standing Orders relating to scrutiny of legislation’ [*amends Business Committee orders of reference for consideration of requests for waiver of requirement for: (a) provision of heads/scheme of Govt Bill for pre-legislative scrutiny, and (b) pre-Committee Stage scrutiny of private members’ Bills*]
- 2) **Amend SO 141** [*makes SO 141 into a sessional Standing Order, to cover those private members’ Bills which have already been referred to Select Committee, but which have not undergone pre-Committee Stage scrutiny*]
- 3) **New SO 147A** – ‘Provision of explanatory memoranda for Bills’ [*explanatory memoranda required on publication of Government and private members’ Bills*]
- 4) **New SO 148A** – ‘Where a private member’s Bill has passed its second reading’ [*provides for notification from Clerk of Dáil that private member’s Bill has passed its second reading*]
- 5) **New SO 148B** – ‘Scrutiny by Committees of private members’ Bills which have passed their second reading’ [*provides for pre-Committee Stage scrutiny of private members’ Bills*]
- 6) **New SO 148C** – ‘Consultation with ECB on private members’ Bills, pursuant to Treaty on the Functioning of the European Union’ [*contains a restructuring of former SO 149 content into a standalone ECB SO*]
- 7) **New SO 148D** – ‘Private members’ Bills: Order for Committee Stage’ [*inter alia, provides that where Order for Committee is defeated, Bill is deemed to be withdrawn*]
- 8) **Amend SO 149** [*ECB content moved to new SO 148C*]
- 9) **Consequential amendment to SO 27C** [*this change is for the purposes of allowing an Order for Committee (i.e., referral) motion on a private member’s Bill to be selected by the Business Committee for the Thursday evening slot*]
- 10) **Consequential amendment to SO 84A** [*this change is for the purposes of expanding the orders of reference of Select Committees to include pre-Committee Stage scrutiny of private members’ Bills*]
- 11) **Drafting amendment to SO 91** [*changes ‘consider’ to ‘take note of’ in respect of motions re Committee reports*]
- 12) **Consequential amendment to SO 95** [*provides that Minister is an ex officio member of the Committee for pre-Committee Stage scrutiny*]
- 13) **Amendment to SO 140** [*allows an Order for Committee (i.e., referral) motion on a private member’s Bill to be taken during the Thursday evening slot*]
- 14) **Consequential amendment to SO 146A** [*provides for request to Business Committee to waive PLS*]
- 15) **Consequential amendment to SO 148** [*consequential on amendment of SO 149*]
- 16) **Consequential amendment to SO 162** [*provides that a motion for referral of a Bill to Select Committee is not subject to amendment*]
- 17) **SO 164 to be renumbered as SO 150A**

New Standing Order 27AC [‘Request for waiver of requirements of Standing Orders relating to scrutiny of legislation’]

27AC. (1) At any of its meetings, the Business Committee may consider requests for waivers under–

- (a) Standing Order 146A [‘Pre-legislative consideration of Bill by Committee’], or
- (b) Standing Order 148B [‘Scrutiny by Committees of private members’ Bills which have passed their second reading’],

in accordance with any guidelines agreed thereon by the sub-Committee on Dáil Reform.

(2) Having considered a request for a waiver, the Business Committee shall notify its decision in writing to–

- (a) the relevant member of Government or Minister of State,
- (b) the relevant Select Committee, and
- (c) in the case of a private member’s Bill, the member in charge of the Bill.

(3) If the Business Committee decides to grant the waiver, it shall send a Message to this effect to the Dáil. Such a Message shall be in writing, signed by the Clerk to the Committee, and shall be addressed to the Clerk of the Dáil. The Ceann Comhairle shall, at the first convenient opportunity, communicate any such Message to the Dáil.

Substitute sessional Standing Order 141 [for duration of 32nd Dáil only] [Private members' Bills referred to Select Committee before 15th January 2019]

141. Select Committees to which private members' Bills are referred before 15th January 2019 shall undertake detailed scrutiny of the provisions of such Bills, and shall report to the Dáil thereon prior to Committee Stage consideration: Provided that:

- (a) the Committee may decide in relation to a particular Bill referred before 15th January 2019 that detailed scrutiny is not necessary; and
- (b) Standing Orders 148A, 148B (save for paragraph (2) thereof), and 148D shall not apply to such Bills; and
- (c) nothing in this Standing Order shall preclude a Joint Committee from undertaking the detailed scrutiny and reporting thereon to both Houses prior to Committee Stage consideration of the Bill by the Select Committee.

New Standing Order 147A ['Provision of explanatory memoranda for Bills']

EXPLANATORY MEMORANDA

147A. A Bill shall be printed only if accompanied by an Explanatory Memorandum which shall, in clear terms–

- (a) set out the purpose of the Bill in the context of existing law and the changes proposed in the Bill, and
- (b) explain the provisions of the Bill on a section-by-section basis.

BILLS

Private members' Bills: pre-Committee Stage scrutiny

Proposed new Standing Order 148A ['Where a private member's Bill has passed its second reading']

148A. The Clerk of the Dáil shall cause a notification that a private member's Bill has been read a second time to be sent to—

- (a) the Clerk to the relevant Select Committee appointed pursuant to Standing Order 84A (in these Standing Orders referred to as the 'relevant Committee'),
- (b) the member in charge of the Bill, and
- (c) the member of the Government within whose policy remit the Bill falls.

Proposed new Standing Order 148B ['Scrutiny by Committees of private members' Bills which have passed their second reading']

148B. (1) Where—

- (a) the notification that a private member's Bill has been read a second time has been circulated to the relevant Committee¹³ by the Clerk to the Committee; and
- (b) the member in charge of the Bill has sent a written request to the relevant Committee to undertake detailed scrutiny of the Bill (referred to in these Standing Orders as 'scrutiny'),

the Bill shall be subject to scrutiny by the relevant Committee: Provided that the Business Committee may waive, in accordance with Standing Order 27AC, the requirement for scrutiny, following a request from the member in charge of the Bill, or the relevant Committee. Such a request for a waiver may only be made where the Bill has been read a second time, shall be in accordance with guidelines adopted by the sub-Committee on Dáil Reform¹⁴, and shall be subject to notice having been given to the Business Committee not later than 11 a.m. on the fourth day preceding its weekly meeting: Provided that, by permission of the Ceann Comhairle, a request for a waiver may be made on shorter notice. The member in charge of the Bill may request a scrutiny

¹³ See definition of 'relevant Committee' in Standing Order 148A.

¹⁴ Guidelines re waivers by the Business Committee of the requirement for pre-Committee Stage scrutiny shall be developed in addition to the MoU.

waiver even having asked the relevant Committee to undertake scrutiny. The relevant Committee may only ask for a waiver following the scrutiny request.

(2) Scrutiny, or detailed scrutiny under Standing Order 141, shall be conducted from a policy, legal and financial perspective, and in accordance with the guidelines set out in the Memorandum of Understanding agreed between the Dáil and the Government, and laid before Dáil Éireann.

(3) Where the relevant Committee has completed scrutiny of a private member's Bill, it shall–

- (a) lay a report thereon before the Dáil, and
- (b) following the laying of the report, send a Message to the Dáil–
 - (i) confirming that scrutiny has been completed and reported on, and
 - (ii) containing a recommendation on whether or not the Bill may proceed to Committee Stage.

Such a Message shall be in writing, signed by the Clerk to the Committee, and shall be addressed to the Clerk of the Dáil. The Ceann Comhairle shall, at the first convenient opportunity, communicate such Message to the Dáil.

(4) Nothing in these Standing Orders shall preclude a Joint Committee from undertaking scrutiny, and reporting thereon, save that only the relevant Committee may decide on the recommendation as to whether or not the Bill may proceed to Committee Stage.

Private members' Bills: ECB consultation

Proposed new Standing Order 148C ['Consultation with ECB on private members' Bills, pursuant to Treaty on the Functioning of the European Union']

148C. (1) Where, in the opinion of the Ceann Comhairle, a private member's Bill falls within Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union, and thereby requires consultation with the European Central Bank, the relevant Committee shall undertake that consultation (referred to in this Standing Order as

‘consultation’), and shall consider any resulting opinion from the Bank, as part of scrutiny¹⁵, or as part of detailed scrutiny under Standing Order 141.

(2) As part of consultation, the relevant Committee shall specify a time limit for submission of the Bank’s opinion. Where the Bank requests an extension of the specified time limit in accordance with that decision, the relevant Committee shall give due consideration to the Bank’s request.

(3) Where the time limit specified by the relevant Committee pursuant to paragraph (2), or any extension of time granted pursuant to that paragraph, has expired, the absence of an opinion from the Bank shall not prevent the relevant Committee from proceeding with scrutiny, or detailed scrutiny under Standing Order 141: Provided that any opinion received thereafter shall be brought to the attention of the relevant Committee, and shall be laid before the Dáil by the Clerk to the Committee.

(4) The outcome of the consultation with the Bank on a private member’s Bill shall be reported in accordance with Standing Order 141, or Standing Order 148B, as appropriate, and any recommendations arising from consideration of the Bank’s opinion shall be included in the report.

¹⁵ Pursuant to Standing Order 148B.

Private members' Bills: Order for Committee Stage

Proposed new Standing Order 148D ['Private Members' Bills: Order for Committee Stage']

148D. (1) The Committee Stage consideration of a private member's Bill shall take place in a Select Committee appointed pursuant to Standing Order 84A.

(2) Such Committee Stage consideration may only be ordered following scrutiny of the Bill by the relevant Committee¹⁶, save where the requirement for scrutiny has been waived by the Business Committee. Where the scrutiny requirement has been waived, or where the post-scrutiny recommendation is that the Bill may proceed to Committee Stage, the member in charge of the Bill may, on notice given to the Business Committee, move the Order for Committee Stage at the first practicable opportunity after the Order of Business, or after questions on promised legislation under Standing Order 28, and such motion shall be taken without debate.

(3) Where the relevant Committee's recommendation¹⁷ is that the private member's Bill may not proceed to Committee Stage, and the member in charge of the Bill does not agree with that recommendation, he or she may table a motion in writing in the following terms:

“Notwithstanding the recommendation of the Committee on [*insert name of relevant Committee appointed pursuant to Standing Order 84A*] that the [*insert name of Bill*] may not proceed to Committee Stage, the Bill is hereby referred to the Select Committee on [*insert name of relevant Committee appointed pursuant to Standing Order 84A*].”.

(4) The motion under paragraph (3) may be moved—

- (a) during a private members' time slot under Standing Order 143F(3),
- (b) on a Thursday immediately following topical issues, in accordance with Standing Order 140(2), or
- (c) at a time and date to be agreed by the Business Committee, and subject to arrangements agreed on the Order of Business.

¹⁶ Pursuant to Standing Order 148B.

¹⁷ I.e., the recommendation under Standing Order 148B(3).

APPENDIX 4 – PROPOSED STANDING ORDERS UNDERPINNING THE MoU

(5) A member who wishes to move a motion under paragraph (3) on a Thursday in accordance with paragraph (4)(b) shall give notice to the Business Committee not later than 11 a.m. on the fourth day preceding the weekly meeting of the Business Committee.

(6) If a motion under paragraph (3) is defeated, the Bill shall be deemed to have been withdrawn.

Third Stage

Standing Order 149 [‘When a Government Bill is read a second time’]¹⁸

149. (1) When a Bill, other than a private member’s Bill, has been read a second time, it may either be ordered to be considered in Committee of the whole Dáil on a day then named, or be referred to some other Committee.

(2) Should a Bill, other than a private member’s Bill, be ordered to be referred to a Special Committee, such order shall fix—

- (a) the date for the commencement of the Committee Stage,
- (b) the number of members to serve on the Committee, and
- (c) the quorum of it,

and Standing Orders 92 and 93 shall otherwise apply: Provided that the Dáil may, on motion made by the member in charge of the Bill, commit the Bill to a Select or Special Committee in respect of some of its provisions, and to a Committee of the whole Dáil in respect of other provisions, and that if such a motion is opposed, the Ceann Comhairle shall permit an explanatory statement from the member who moves, and from a member who opposes the motion, before he or she puts the question thereon.

¹⁸ The existing Standing Order 149 will be replaced by this version.

Amendments to other Standing Orders arising from changes outlined above

In **Standing Order 27C**, by the substitution for subparagraph (f) of the following:

“(f) the selection of—

- (i) a motion for a Committee report pursuant to Standing Order 91,
- (ii) a private member’s Bill at Second Stage pursuant to Standing Order 140A, or
- (iii) a motion relating to the Order for Committee Stage of a private member’s Bill pursuant to Standing Order 148D,

for consideration on Thursdays pursuant to Standing Order 140(2);”.

In **Standing Order 84A**, in paragraph (4), by the insertion of the following subparagraph after subparagraph (f):

“(ag) scrutiny of private members’ Bills in accordance with Standing Order 148B, or detailed scrutiny of private members’ Bills in accordance with Standing Order 141,”.

In **Standing Order 91**, in paragraphs (1), (2) and (4), by the replacement of “to consider” with “to take note of” wherever it occurs.¹⁹

In **Standing Order 95**, in paragraph (1), after “paragraphs (3)(a), (b) and (c)”, to insert “and (4)(ag)”.

In **Standing Order 140**, by the substitution of the following for paragraph (2):

“(2) Immediately following topical issues on Thursdays, one of the following items of business (having been selected by the Business Committee pursuant to Standing Orders 91, 140A or 148D) shall be taken for not more than two hours:

- (a) the Second Stage of a Bill initiated by a private member,
- (b) a motion for a Committee report, or

¹⁹ Drafting change.

- (c) a motion relating to the Order for Committee Stage of a private member's Bill.”.

By the substitution of the following for **Standing Order 146A**–

“**146A.** (1) Prior to its presentation or introduction to the Dáil, the general scheme or draft heads of a Bill shall be given by a member of the Government or Minister of State to the Committee empowered under Standing Order 84A to consider Bills published by the member of the Government: Provided that the Business Committee may waive this requirement, in accordance with Standing Order 27AC, on foot of a request by the member of Government or Minister of State. Such a request for a waiver shall be in accordance with guidelines adopted by the sub-Committee on Dáil Reform²⁰, and subject to notice having been given to the Business Committee not later than 11 a.m. on the fourth day preceding its weekly meeting: Provided that, by permission of the Ceann Comhairle, a request for a waiver may be made on shorter notice.

(2) A general scheme or draft heads which have been given under paragraph (1) shall be considered by the Committee empowered under Standing Order 84A to consider Bills published by the member of the Government: Provided that the Committee may decide in relation to a particular Bill that such consideration is not necessary, and in such cases, need not consider the general scheme or draft heads.”.

In **Standing Order 148**, by the insertion of the following proviso in paragraph (2) following the words “in a personal capacity by that member in the course of the debate;”:

“Provided further that where a Government Bill falls within Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and thereby requires consultation with the European Central Bank, the outcome of the consultation with the Bank shall be reported to the Dáil in the course of the Second Stage speech of the relevant member of the Government or Minister of State: Provided further that if the report is not made in the course of that speech, the

²⁰ Guidelines re waivers by the Business Committee of the requirement under Standing Order 146A to provide the heads/scheme of the Bill shall be developed in addition to the MoU.

APPENDIX 4 – PROPOSED STANDING ORDERS UNDERPINNING THE MoU

relevant member of the Government or Minister of State may lay a report before the Dáil with the outcome of the consultation;”.

In **Standing Order 162**, by the insertion of the following after “fixing the date for the next Stage of a Bill”–

“, or referring a Bill to a Committee,”.

By the renumbering of **Standing Order 164** [‘**Provision of revised Explanatory Memorandum in relation to Bills**’] as **Standing Order 150A**²¹

²¹ This change involves moving Standing Order 164 to a more appropriate point in the Standing Orders, i.e., closer to Standing Order 150, which provides for Bill amendments at Committee and Report Stages.