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An Comhchoiste um Airgeadas, Caiteachas Poiblí agus Athchóiriú, agus an Taoiseach

**Tuarascáil maidir le Grinnscrúdú Mionsonraithe ar an
mBille um Chomhairle na mBreithiúna (Leasú) [BCP]**

Nollaig 2022

Joint Committee on Finance Public Expenditure and Reform and Taoiseach

**Report on Detailed Scrutiny of the
Judicial Council (Amendment) Bill [PMB]**

December 2022

MEMBERS OF THE JOINT COMMITTEE

Deputies



Mick Barry (SOL-PBP)
Cork North-Central



Pearse Doherty (SF)
Donegal



Bernard Durkan (FG)
Kildare North



Mairéad Farrell (SF)
Galway West



Steven Matthews (GP)
Wicklow



John McGuinness (FF)
Carlow-Kilkenny



Jim O'Callaghan (FF)
Dublin Bay South



Neale Richmond (FG)
Dublin Rathdown



Peadar Tóibín (Aontú)
Meath West

Senators



Maria Byrne (FG)



Pat Casey (FF)



Aidan Davitt (FF)



Alice-Mary Higgins (IND)



Marie Sherlock (LAB)



Cathaoirleach's foreword

The Judicial Council (Amendment) Bill 2021, a Private Members' Bill sponsored by Deputy Pearse Doherty T.D., seeks to require insurance providers to supply information to the Central Bank of Ireland relating to the effect of personal injuries guidelines and related matters.

The Bill's sponsor stated that since the Personal Injury guidelines have come into effect through the Judicial Council Act, the awards have fallen by 42%, and as a consequence, there is currently no mechanism to ensure that these savings by insurance companies are passed onto the customer and the National Claims Information Database (NCID) does not collect this data.

The Joint Committee welcomes all efforts to increase transparency and reform within the insurance industry and held a public engagement with the Alliance for Insurance Reform and Insurance Ireland and welcomed submissions from the Central Bank of Ireland and the Department of Finance. This provided an opportunity for Members and witnesses to discuss various elements of the proposed Bill. The European Central Bank (ECB) and the Office of the Parliamentary Legal Advisors (OPLA) both supplied opinions to ascertain the legal implications of the proposed legislation.

The analysis supplied in these opinions, at the public engagement and in the submissions provided forms the basis for the recommendations in this report. I would like to commend the sponsor of the bill in proposing and advocating for the progression of this legislation. I would also like to express my gratitude to all those who sent in submissions, appeared before the Joint Committee and in particular the ECB and OPLA for their advice and insight regarding this bill.

A handwritten signature in black ink that reads "John McGuinness". The signature is written in a cursive style and is positioned above a horizontal line.

John McGuinness T.D.

5 December 2022

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Recommendations of the Joint Committee

Recommendations and Conclusions

1. The Joint Committee recommends the removal of the word reasonable in the proposed legislation and assigning more specific wording to clarify section 2, subsection (4).
2. The Joint Committee recommends that the minor drafting errors as outlined by the Department of Finance present in the proposed bill be amended.
3. The Joint Committee recommends the insertion of a reimbursement mechanism in order to ensure compliance with the prohibition of monetary financing under Article 123 TFEU.

Introduction

This report outlines the detailed scrutiny undertaken by the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach (“the Committee”) of the Judicial Council (Amendment) Bill 2021, a Private Members’ Bill (PMB). The aim of the bill is to provide for the making of regulations to require insurance providers to provide information to the Central Bank of Ireland relating to the effect of personal injuries guidelines and related matters. The Bill seeks to amend the Judicial Council Act 2019 – the Principal Act.¹

The Bill was first initiated in the House on 21 April 2021 by its sponsor Deputy Pearse Doherty and second stage was completed on the 2 March 2022 after a nine month timed amendment to facilitate further consideration of the Bill. Following this, Deputy Doherty wrote to the Joint Committee on the 9 March 2022 requesting that detailed scrutiny be undertaken at the earliest opportunity. Deputy Doherty proposed that the

¹ Judicial Council Amendment Act is available [here](#)

Alliance for Insurance Reform and the Central Bank of Ireland be invited to make submissions, written or in person to the Joint Committee.

The Committee agreed to Deputy Doherty's request that it undertake scrutiny of the Judicial Council (Amendment) Bill 2021 pursuant to Standing Order 178. While noting that it was a matter for the Select Committee to recommend whether Private Members' Bills (PMBs) should progress to Committee Stage following scrutiny, the Committee previously agreed that scrutiny of PMBs would be undertaken by the Joint Committee.

The Committee, therefore, began scrutiny of the Bill in May 2022, holding one public meeting with the Alliance for Insurance Reform and requesting a written submission from the Minister for Finance and Central Bank of Ireland and subsequent opinions from the European Central Bank and the Office of the Parliamentary Legal Advisor (OPLA) all of which informed its detailed consideration of the proposed legislation.

Purpose of the Bill

The purpose of the Judicial Council (Amendment) Bill 2021 is to amend the Judicial Council Act 2019 – the Principal Act. This Act established a body to be known as the Judicial Council; to provide for its functions and for related matters.

The purpose of this Bill is to make provision for the reporting of the effects of the Personal Injuries Guidelines, as adopted and given effect under the Judicial Council Act, on the cost of insurance, by requiring insurance providers to provide information to the Central Bank of Ireland about the effect of the personal injuries guidelines on individuals who hold policies of insurance with insurance providers, and for reports of that information to be presented to the Minister for Finance and brought before both Houses of the Oireachtas.²

The 2019 Principal Act contains six parts, the Judicial Council (Amendment) Bill 2021 proposes to amend this Act by inserting a new section after section 99 in Part 6, Miscellaneous.

² Explanatory Memorandum, Judicial Council (Amendment) Bill 2021, Page 3, available [here](#)

Procedural basis for scrutiny

Private Members Bills referred to Select Committees are subject to the provisions of Dáil Standing Order 178 and the Memorandum of Understanding, between the Houses of the Oireachtas and the Government, which was adopted on 15 January 2019.

Dáil Standing Order 178(1) provides that "...the Bill shall be subject to scrutiny by the relevant Committee" and paragraphs (2) and (3) respectively state that "Scrutiny, shall be conducted from a policy, legal and financial perspective..." and that "where the relevant Committee has completed scrutiny of a private member's Bill, it shall– lay a report thereon before the Dáil, and... 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".

Paragraph (4) of Standing Order 178 permits scrutiny of the Bill in Joint Committee, viz.: "Nothing in these Standing Orders shall preclude a Joint Committee from undertaking scrutiny, and reporting thereon, save that only the relevant [Select] Committee may decide on the recommendation as to whether or not the Bill may proceed to Committee Stage."

Detailed Scrutiny and Consideration of the Bill

Meetings Held

The Joint Committee held a meeting on 4 May 2022 to discuss the amendments to the Judicial Council Act proposed in the Bill with representatives from the Alliance for Insurance Reform and Insurance Ireland respectively. Further details and links to the opening statements and the Official Report of these meetings are included in Appendix 1 of this report.

The Joint Committee also received written submissions from the Department of Finance (available [here](#)) and the Central Bank of Ireland (available [here](#)) on the Bill.

The Joint Committee also requested a submission from the Department of Justice, however in response to this request, the Department of Justice stated the Bill fell under the remit of the Department of Finance.

Alliance for Insurance Reform

The Alliance for Insurance Reform have welcomed any attempt to increase transparency and accountability in the insurance industry, in particular Mr. Peter Boland stated in his presentation to the Joint Committee, that the Government must get liability insurance premiums down to affordable levels with reforms that keep them that way.³ While broadly in support of the Bill, Mr. Boland raised some issues with the wording in Subsections 4)(b), (4)(d), (4)(f) and (4)(h) of the proposed new section 100, the Alliance finds them to be unclear and potentially open to interpretation due to the use of the word 'reasonable'. This gives rise to potential issues with the value of the data collected through the National Claims Information Database (NCID).

Recommendation 1

The Committee recommends the removal of the word reasonable in the proposed legislation and assigning more specific wording to clarify section 2, subsection (4).

Insurance Ireland

The Joint Committee had a presentation from Insurance Ireland by Ms Moyagh Murdock, CEO. Ms Murdock was accompanied by her colleagues; Mr. Florian Wimber, Director of Advocacy, Communications, and Public Affairs; Ms Jacqueline Thornton, Director of Regulation and Policy Development and Company Secretary; and Mr. Michael Horan, non-life-insurance manager.

Ms Murdock explained that while Insurance Ireland and its members firmly support the agenda for insurance reform and the implementation of the personal injuries

³ JCFPERT Transcript, 4 May 2022, Page 4, available [here](#)

guidelines, the organisation feels that this bill ‘duplicates existing and alternative data sources such as the NCID, which already captures granular information on premiums and claim costs over a number of years.’⁴

Government Response to the legislation

The Joint Committee received a submission from the Department of Finance on the Bill – available [here](#). It is the Departments view that this Bill proposes duplicating some of the data provided by the National Claims Information Database (NCID). They also advocate that the proposal would impose an unnecessary burden on insurance undertakings and could potentially add cost pressures. The Department additionally feels that the Bill does not adequately take account of the other reform issues that have been initiated as part of the Government’s *Action Plan for Insurance Reform*⁵. The submission highlights the requirement for an ECB opinion on the proposed bill and the possibility of unlawful monetary financing in the case that there was not a reimbursement mechanism for the Central Bank in place. The submission also highlights some minor drafting and technical errors such as the regulations which should be in the name of the Minister rather than the Department.

Recommendation 2

The Joint Committee recommends that the minor drafting errors as outlined by the Department of Finance present in the proposed bill be amended.

Due to their reservations and views summarised above, the Departmental officials have not recommended to Ministers that Government support the passage of this Bill.

⁴ JCFPERT Transcript, 4 May 2022, Page 16, available [here](#)

⁵ Dept. of Finance Submission, Page 2, available [here](#)

Central Bank of Ireland Submission

The Central Bank of Ireland (CBOI) submitted a letter to the Joint Committee on the proposed Judicial Council (Amendment) Bill 2021 on 6 May 2022. In this submission, the Central Bank advocates that it will continue to improve transparency and insights collected through the National Claims Information Database (NCID) reports. The submission notes that the NCID was established to “improve transparency in the Irish Insurance claims environment and to support data driven policy-making.”⁶ The CBOI believes that the NCID despite some shortcomings to be “appropriate, consistent, and resource-efficient”⁷

Specifically in relation to the proposed legislation, the CBOI presents a concern that there are “likely to be difficulties in isolating the application of the Guidelines on premiums”⁸ and that the costs involved in the approach would be material. They lastly remark that these costs would subject to the rules on monetary financing.

ECB Response to the Legislation

The Judicial Council (Amendment) Bill 2021 proposes involvement of a role for the Central Bank. Article 2(1) of Decision 98/415/EC details that Members State shall consult with the European Central Bank (ECB) on any draft legislative provision within the ECB’s field of competency. Under the Treaties of the European Union, the ECB’s competency includes

- National central banks
- The collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics

In light of the fact that failure to consult the ECB on legislation that falls within its remit, can have an impact on the legality of the legislation in question, it was recommended that the Joint Committee consult the ECB in relation to the Bill in advance of finalising its own opinion. The Committee wrote to the ECB on the 1 July 2022.

⁶ Central Bank of Ireland Submission, Page 1, available [here](#)

⁷ Central Bank of Ireland Submission, Page 2, available [here](#)

⁸ Central Bank of Ireland Submission, Page 2, available [here](#)

Reimbursement Mechanism

The proposed legislation would require the Central Bank to review and assess the information provided to it by insurers, and to prepare annual reports for a period of four years. The ECB, in its opinion, must decide if this is a ‘Governmental’ or ‘Central Bank’ task and if it is the case, it is the former, the latter must be reimbursed for carrying out the task. This is a reimbursement mechanism and would ensure that arrangements contemplated by the Bill do not constitute unlawful monetary financing.

In the opinion, President of the ECB, Christine Lagarde states in a previous opinion given on the Central Bank (National Claims Information Database) Bill 2018, that the tasks undertaken by the NCID were found to be government tasks and consequently, in order to ensure compliance with the prohibition of monetary financing under Article 123 of the Treaty on the Functioning of the EU (TFEU), the CBoI must be “fully and adequately remunerated for carrying out the task of collecting and studying data from insurance undertakings on the income and expenditure associated with the carrying on of business of certain relevant classes of non-life insurance business”⁹ Under the Central Bank (National Claims Information Database Act, the Central Banks expenses are paid either by levies charged to the insurance undertakings or by advances from the Minister for Finance.

As the proposed bill is a standalone bill, the reimbursement mechanism set out in section 11 of the Central Bank (National Claims Information Database) Act 2018 would not apply directly to the specifications developed in the proposed bill. The ECB suggest introducing a comparable reimbursement mechanism.

⁹ ECB Opinion, Page 3, available [here](#)

Recommendation 3

The Committee recommends the insertion of a reimbursement mechanism in order to ensure compliance with the prohibition of monetary financing under Article 123 TFEU.

Legal scrutiny

Basis for scrutiny

Private Members' Bills referred to Select Committees are subject to the provisions of Dáil Standing Order 178 and the Memorandum of Understanding, between the Oireachtas and the Government, which was adopted on 15 January 2019.

Following the conclusion of its meetings with stakeholders in relation to the Bill and in line with the Memorandum of Understanding (MOU) between Government and Dáil Éireann on Private Members' Bills adopted on 5 December 2018, the Committee sought legal opinion primarily taking account of the following questions:

- Is the Bill compatible with the Constitution?
- Is the Bill compatible with EU legislation and human rights legislation (ECHR)?
- Is there ambiguity in the drafting which could lead to the legislation not achieving its objectives and/or to case law down the line?
- Review for serious drafting deficiencies or technical drafting errors
- Review for potential unintended legal consequences which may stem from the PMB as drafted
- Are appropriate administrative and legal arrangements necessary for compliance and enforcement of the provisions of the Bill included?

Summary of Advice

A summary of the legal opinion in relation to the Bill, commissioned by the Office of the Parliamentary Legal Advisors (OPLA), is set out in **Appendix 2**.

The legal opinion echoes the findings of the European Central Bank in identifying the core issue with the bill as the reimbursement requirement. The Central Bank cannot take on a 'government task' and as such a reimbursement mechanism must be contained within the bill. There are some minor issues with the drafting of the legislation, such as the regulations should be in the name of the Minister rather than the Department.

The Committee notes the legal opinion and that issues raised in it would require addressing in detail should the Bill proceed to Committee Stage.

Committee's conclusions

The Joint Committee welcomes all improvements to transparency and accountability within the insurance industry and continues to take a considerable interest in the developments of the government's Action Plan for Insurance Reform. The Joint Committee is grateful to those who attended the public engagements and made submissions on the proposed Bill and looks forward to the implementation of the recommendations made in this report.

In accordance with Dáil Standing Order 178(4), the Bill will now proceed to the Select Committee on Finance, Public Expenditure and Reform, and Taoiseach for the decision to recommend whether or not the Bill may proceed to Committee Stage.

Appendix 1 – Stakeholder Engagement

The Committee engaged with Mr. Peter Boland from Alliance for Insurance Reform and Ms. Maya Murdock and colleagues from Insurance Ireland on Wednesday, 4 May 2022.

The Official Report of the meeting is available [here](#).

The Committee received the following submissions:

- A written submission from the Department for Finance on the Bill and it is available [here](#)
- A written submission from the Central Bank of Ireland on the Bill and it is available [here](#)
- An opinion on the bill from the ECB is available [here](#)

Appendix 2 – Legal Scrutiny

Basis for scrutiny

As noted in Chapter 4, Private Members' Bills referred to Select Committees are subject to the provisions of Dáil Standing Order 178 and the Memorandum of Understanding, between the Oireachtas and the Government, which was adopted on 15 January 2019.

Following the conclusion of its meetings with stakeholders in relation to the Bill and in line with the Memorandum of Understanding (MOU) between Government and Dáil Éireann on Private Members' Bills adopted on 5 December 2018, the Committee sought legal opinion primarily taking account of the following questions:

- Is the Bill compatible with the Constitution?
- Is the Bill compatible with EU legislation and human rights legislation (ECHR)?
- Is there ambiguity in the drafting which could lead to the legislation not achieving its objectives and/or to case law down the line?

- Review for serious drafting deficiencies or technical drafting errors
- Review for potential unintended legal consequences which may stem from the PMB as drafted
- Are appropriate administrative and legal arrangements necessary for compliance and enforcement of the provisions of the Bill included?

A summary of the legal opinion in relation to the Bill, commissioned by the Office of the Parliamentary Legal Advisors (OPLA), is as set out as follows.

Summary of legal opinion:

The Judicial Council (Amendment) Bill 2021 is a Private Members' Bill (the 'PMB') which provides for the insertion of a new section into the Judicial Council Act 2019 (the '2019 Act'). The PMB provides for the making of regulations which will require insurance providers to furnish certain information to the Central Bank of Ireland, with a view to establishing whether savings, which may have arisen as a result of the Personal Injuries Guidelines provided for in the 2019 Act, have been passed on to consumers. As part of its Committee Stage Scrutiny, Querist has requested that the Office of Parliamentary Legal Advisers (the 'OPLA') conducts a legal analysis of the PMB.

APPENDIX 3 – Orders of Reference

Standing Orders 94, 95 and 96 – scope of activity and powers of Select Committees and functions of Departmental Select Committees

Scope and context of activities of Select Committees.

94.(1) The Dáil may appoint a Select Committee to consider and, if so permitted, to take evidence upon any Bill, Estimate or matter, and to report its opinion for the information and assistance of the Dáil. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum, and may appoint a date upon which the Committee shall report back to the Dáil.

(2) It shall be an instruction to each Select Committee that—

(a) it 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;

(b) 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;

(c) it shall not consider 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 Order 125(1)6; and

(d) it 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—

(i) a member of the Government or a Minister of State, or

(ii) the principal office-holder of a State body within the responsibility of a Government Department or

(iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

Functions of Departmental Select Committees.

95. (1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

(a) legislation, policy, governance, expenditure and administration of—

(i) a Government Department, and

(ii) State bodies within the responsibility of such Department, and

(b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

(a) stand referred to the Committee by virtue of these Standing Orders or statute law, or

(b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

(a) for the accountability of the relevant Minister or Minister of State, and

(b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

- (a) consents to such consideration, or
- (b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—

- (a) the Committee Stage of a Bill,
- (b) Estimates for Public Services, or
- (c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, 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, or

(d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings, the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:

(i) members of the European Parliament elected from constituencies in Ireland,

(ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and

(iii) at the invitation of the Committee, other members of the European Parliament.

(9) 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 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: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas

Powers of Select Committees.

96. Unless the Dáil shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

(a) minutes of such evidence as was heard in public, and

(b) such evidence in writing as the Committee thinks fit;

(2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;

(3) power to draft recommendations for legislative change and for new legislation;

(4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—

(a) require any Government Department or other instrument-making authority concerned to—

(i) submit a memorandum to the Select Committee explaining the statutory

Instrument, or

(ii) attend a meeting of the Select Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Dáil,

And

(b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss—

(a) policy, or

(b) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a

member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially

responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 197;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(a) State body within the responsibility of a Government Department or

(b) non-State body which is partly funded by the State,

shall attend meetings of the Select Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil;

and

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under Standing Order 120(4)(a).'

APPENDIX 4 – Framework for Scrutiny of PMBs

PART A: Policy and Legislative Analysis

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 published (by Government or a third party) in respect of each proposal contained within the Bill?
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 applicable?

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 costs of implementing the proposals in the Bill, and what is the likely 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 Analysis

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).

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