An Roinn Airgeadais
Department of Finance

JFPERT-1-0498
Mr John McGuinness, T.D.
Chair to the Committee ,
Joint Committee on Finance, Public
Expenditure and Reform, and Taoiseach
Leinster House
Dublin 2
D02 XR20

28 April 2022

Re: Detailed Scrutiny of the Judicial Council (Amendment) Bill 2021

Dear Deputy McGuinness,

As requested by the Committee in your correspondence dated 5 April 2022, please find attached a written submission from the Department of Finance on the Private Member's Bill -*Judicial Council (Amendment) Bill 2021*.

Yours sincere y,

John Hogan
Secretary General

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Department of Finance - Submission to the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach - Detailed Scrutiny of the *Judicial Council (Amendment) Bill 2021*

Introduction

The Department for Finance initially considered this Private Member's Bill - the *Judicial Council (Amendment) Bill ('The Bill' thereafter)* - in 2021 when it was published and subsequently underwent Second Stage in Dail Eireann on 1 June 2021. At that time, the Government supported a nine-month timed amendment in order to facilitate further consideration of the Bill.

Following further deliberation on this Bill, and taking account of my officials' engagement with officials from the Central Bank of Ireland on enhancements to the National Claims Information Database (NCID), the Department's view is that the Bill would duplicate the role already provided by the NCID, impose unnecessary regulatory burden on insurance undertakings and could potential add cost pressures. The NCID already delivers an extensive quantitative insight into the operation of the Irish insurance market. Furthermore, ongoing enhancements to the data specification in the NCID will enable the Government and the public to assess the impact of the Personal Injuries Guidelines, and the range of other measures being pursued as part of the ongoing insurance reform agenda.

Key Points

- Sufficient account of the existing *National Claims Information Database* (NCID) housed within the Central Bank of Ireland has not been taken in this Bill. The NCID already collects much of the data proposed within this Bill and the NCID is being continually enhanced to collect additional data following the introduction of the Personal Injuries Guidelines. This work is underpinned by existing legislation.

- The transparency that is now provided by the wealth of data published by the Central Bank of Ireland in the NCID is a very significant development. Recent enhancements to the NCID will build on such transparency and obviate the need for the proposed provisions in this Bill.

- It is possible that the Bill could impose additional costs on industry, which could then be passed on to consumers. Increased costs and any unnecessary extra regulatory burden on industry could also diminish Ireland's attractiveness to either existing market participants expanding their product range or new providers entering the market. Deepening the supply of insurance, particularly in certain "pinch-point" markets, is an important policy objective of the Government's Office to Promote Insurance Competition.

- There are questions around the quality of the data collection requirements proposed, especially the ability to calculate the counterfactual position, and whether this could be done on a sound and robust basis.

- In this regard, it should be noted that the Bill also goes much further than legislation introduced in England and Wales, and appears to apply to a greater number of insurers/claims. This gives rise to concerns around proportionality.

- Finally, the Bill potentially imposes a cost to the Exchequer, which would require a money message from the Government in accordance with Article 17.2 of the Constitution. Separately, matters relating to activities of the Central Bank oflreland may give rise to monetary financing and therefore require an Opinion from the European Central Bank (ECB).

Policy rationale for the Bill

The purported purpose of this Bill is to make provision for the reporting of the effects of the Personal Injuries Guidelines, as adopted by the Judicial Council pursuant to the *Judicial Council Act 2019*, by requiring insurance providers, to provide audited information to the Central Bank of Ireland. It is envisaged that the Central Bank of Ireland would then present annual reports, over a four year period, to the Minister for Finance which would then be brought before both Houses of the Oireachtas.

The Bill does not adequately take account of impacts from the wider reform agenda , such as: Personal Injuries Assessment Board (PIAB) reform, and duty of care reform, which are principal actions identified under the whole-of-Government *Action Plan for Insurance Reform.*

However, a number of concerns the Department has with the Bill are outlined, below:

The Bill does not adequately take account of the NCID legislation already in place

The National Claims Information Database (NCID) was established under the *Central Bank (National Claims Information Database) Act 2018*, to collect and publish aggregate claims data, including claims costs and premium prices.

The NCID is a significant tool that has already increased transparency in the insurance market , giving a quantitative insight that is unrivalled in the European Union or in the United Kingdom. Work is ongoing separately to enhance the NCID to monitor the impact of the Personal Injuries Guidelines.

The Bill does not adequately take account of the whole-of-Government approach to insurance reform and evidence gathering

The establishment of the NCID was one of the recommendations made by the Cost of Insurance Working Group (CIWG). As part of these efforts, a standing Data Sub-Group was established to develop the evolving NCID data in order that policymakers can respond to new events. This Sub-Group is a cross-government structure chaired by the Central Bank of Ireland.

The NCID will not only show the impact of the Guidelines, but also the range of other insurance reforms being pursued *via* this whole-of-Government *Action Plan for Insurance Reform* and stands as a clear example of an evidence-based approach to policymaking.

Due regard of when the Guidelines were introduced and how quickly the impact from the Guidelines could be fully assessed is required

The NCID has already begun gathering information from the Personal Injuries Guidelines, which will start to be made available from later this year, and can be developed further. Over time, the NCID will be able to capture trends and developments in premium and claim costs arising from the impact of Guidelines, in addition to other claim channels.

In the third NCID Private Motor Report, published in November 2021, the Central Bank oflreland confirmed that it would commence collecting further claim settlement data following the introduction of the Guidelines, with the intention of collecting this for all classes of business within the remit of the NCID. The Fourth NCID Private Motor Report (to be published later this year) and Third EL/PL Report (to be published in 2023) will contain initial data on the Guidelines.

Data limitations, quality and concerns regarding the counter/actual

Developments that may be created from other areas of the Government's insurance reform agenda may not be adequately captured in the Bill. As such the information that the Bill seeks to mandate is publicly provided and may be of more limited use to consumers, policymakers, and other stakeholders.

The Bill suggests providing data on the assumption that the Personal Injuries Guidelines had not been adopted, namely establishing the counterfactual. There are concerns regarding the robustness of any data that could be accurately determined by individual insurers, and the ability to provide a consistent approach to the calculation of a counterfactual.

It is of note that taking account of similar legislation that is in place **in** the UK, the Regulatory Policy Committee cautioned against the use of counterfactual methodologies, *via* policy case histories.

Increased unnecessary regulatory burden on insurers and potential diminution of the attractiveness of the Irish market

The Bill proposed goes much further than the measures that were introduced in the much bigger UK market. In that regard it is considered that the Bill could disproportionately increase the administrative burden on Irish insurers.

The provisions in this Bill appear to apply to all insurers covering third-party injury, while the UK legislation specifically targets only the larger motor insurers (those with over 100,000 customers). It would also require an annual report for four years, against a single report covering three years as required in the UK.

As such, the Bill may increase transaction costs for all stakeholders, especially smaller firms or those offering sector-specific, "niche" insurance.

Layered on top of the other very significant developments introduced in Ireland, such as the NCID reports, the Bill could have the unintended consequences of diminishing Ireland's attractiveness to potential overseas entrants, which runs contrary to Government policy, *via* the *Office to Promote Competition in the Insurance Market*, of actively seeking to attract new providers in order to increase capacity in the market.

Technical, legal and drafting aspects of the Bill

There are also a number of drafting issues that require further consideration, i.e. the requirement for the Department as opposed to the Minister to make regulations. From a legal perspective, it would be preferable that the policy objectives are clearly set out so that it is clear from the Bill how such objective would be achieved and the principles underpinning the Bill, rather than imposing a requirement on the Minister to make regulations.

The Bill potentially imposes a cost to the Exchequer, which would require a money message from the Government in accordance with Article 17.2 of the Constitution.

In addition, the Central Bank of Ireland has advised that in accordance with Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and Article 2(1) of Council Decision 98/415/EC, the European Central Bank (ECB) would need to be consulted on the Bill, since it falls within the ECB's field of competence in so far as it includes provisions dealing with national central banks. Specifically, the Bill requires the Central Bank to review and assess the information provided to it by ins urers, and to prepare annual reports for a period four years.

If the ECB deemed these as Governmental rather than Central Bank tasks, the Bank would need to be remunerated in respect of same. This is to ensure that the arrangements contemplated by the Bill do not constitute unlawful monetary financing. This could either entail a cost to the Exchequer or potentially a new levy on the insurance industry, which would have to be addressed in the drafting of the Bill.

Conclusion

Following further consideration of the Bill, and engagement with the Central Bank of Ireland on enhancements to the NCID, the Department's view is that the Bill would duplicate the role already served by the NCID, impose an unnecessary regulatory burden on insurance undertakings , potentially adversely impacting on costs and supply of insurance and does not adequately take account of the other reform issues that have been recently been brought in or initiated by Government on foot of its insurance reform agenda.

As such the Department, has not recommended to Ministers that Government support the passage of this Bill.