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An Comhchoiste um Thithíocht, Rialtas Áitiúil agus Oidhreach

Tuarascáil maidir leis an nGrinnscrúdú Réamhrechtach
ar Scéim Ghinearálta an Bhille um Pleanáil
agus Forbairtagus um Imeall Trá (Leasú), 2022

Nollaig 2022

Joint Committee on Housing, Local Government & Heritage
Report on Pre-Legislative Scrutiny of the General Scheme of the
Planning and Development and Foreshore (Amendment) Bill 2022

December 2022

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CATHAOIRLEACH'S PREFACE



In scrutinising the General Scheme, the Committee understands that the purpose of the proposed legislation is to restore public confidence in An Bord Pleanála and facilitate the highest standard of robust and independent planning decision-making. The Committee has made several recommendations based on this understanding.

The General Scheme aims to amend two pieces of legislation, namely the Planning and Development Act 2000, and the Foreshore Act 1933. In scrutinising the replacement of the existing system of nominating bodies for appointments to An Bord Pleanála, among other matters, the Committee sought to ensure that the General Scheme of the Bill made provision for the maintenance of an independent Bord with impeccable integrity, with the requisite diversity of experience and knowledge. Further, in relation to the redefinition of foreshore, the Committee aimed to establish any unintended consequences of this new formulation for both industry and marine users.

In examining the General Scheme of the Bill, the Committee gained valuable insights from those stakeholders who attended before the Committee and those who contributed through written submissions. I would like to express my appreciation to all witnesses for their contributions, the officials from the Department, and Committee Members for their contribution to the scrutiny of the proposed legislation. I hope this report will help to inform the legislative process and make a valuable contribution to the proposed legislation.

A handwritten signature in black ink that reads "Steven Matthews". The signature is written in a cursive style.

Steven Matthews TD.,
Cathaoirleach,
Joint Committee on Housing, Local Government and Heritage,
6th December 2022

INTRODUCTION

In accordance with *Standing Order 173*¹ the *General Scheme of the Planning and Development and Foreshore (Amendment) Bill 2022* (the General Scheme) was referred to the Joint Committee on Housing, Local Government and Heritage (the Committee) on 18 October 2022 by the Minister for Housing, Local Government and Heritage, Mr. Darragh O'Brien T.D. The Committee agreed to undertake pre-legislative scrutiny of the General Scheme at its meeting on 25 October 2022.

The Committee conducted pre-legislative scrutiny in a meeting on 10 November 2022, in which representatives from the Department of Housing, Local Government and Heritage, along with the Irish Environmental Network and the Irish Planning Institute were invited to speak on the General Scheme. The Committee invited additional stakeholders to make written submissions on the General Scheme, which are linked in [Appendix 4](#).

Thursday 10 November 2022

Department of Housing, Local Government and Heritage

- Ms. Maria Graham, Assistant Secretary, Planning Division
- Mr. Frank Gallagher, Principal Officer, Planning Governance Oversight Section
- Ms. Nina Murray, Principal Officer, Foreshore
- Mr. Colin Ryan, Senior Planning Advisor, Planning Division

Irish Environmental Network

- Ms. Attracta Uí Bhroin, Environmental Law Officer
- Ms. Karin Dubsy, Coastwatch Europe Co-ordinator

Irish Planning Institute

- Mr. Gavin Lawlor, Vice President

¹ [Standing Orders 2020 consolidated version as of 26 May 2022 \(oireachtas.ie\)](#)

BACKGROUND

PART 1 – PRELIMINARY AND GENERAL

This Part consists of preliminary matters, including the short title of the Bill and collective citation for a listing of acts, as well as definitions and interpretations of terms used in the General Scheme of the Bill.

This Part also makes provision for the Minister of Housing, Local Government and Heritage (the Minister) to make regulations relating to any prescribed matter in the Bill, for the purpose of enabling any provisions to have full effect.

PART 2 – AMENDMENT OF THE PLANNING AND DEVELOPMENT ACT 2000

This Part of the Bill makes several amendments to the Planning and Development Act 2000. Such amendments relate to several matters concerning the governance of An Bord Pleanála, including an increase in the number of ordinary members on the Bord, adjustments to the appointments process, changes to the quorum of the Bord and amendments to the complaint's procedure.

INCREASE IN BORD MEMBERS

Increased activity of the Bord has necessitated an increase in its size. The membership of the Bord is currently limited to a chairperson and nine ordinary members. In amending Section 104 of the Planning and Development Act 2000, the potential membership of the Bord has been increased to comprise a chairperson and up to 14 ordinary members. Further, this Head empowers the Minister to increase the number of ordinary members by order, where the Minister is of the opinion that the level and nature of the activity of the Bord necessitates the appointment of additional Bord members, thereby enabling the Bord to fulfil its duty and objectives under the Planning and Development Act 2000.

CHANGE IN APPOINTMENTS PROCESS

The Planning and Development Act 2000 currently illustrates the process of recruitment of ordinary members of the Bord as predominantly consisting of nominations from a series of panels. This process is to be replaced by an alternative procedure, whereby

the Minister will establish a committee which will make recommendations to the Minister, which is intended to deliver a more open process of appointments. Although the proposed committee will advise the Minister on appointments to the Bord, the Minister may establish any other suitable, independent, objective, and transparent procedure to advise the Minister. Additionally, the Minister may make regulations regarding the membership of the committee. However, it is suggested that the committee may be made up of current or retired senior level experts with backgrounds in planning, law, or local government, or indeed individuals with academic backgrounds from planning and environmental domains. It is provided that the Minister may request that the Committee is to be supported by the Public Appointments Service.

Further, the Minister is to ensure that the Bord has an equitable balance between men and women, insofar as is practicable. It is provided that the Minister must also be of the opinion that, among the members, there is a good mix of satisfactory experience or knowledge of several domains, which are set out in the General Scheme: namely, infrastructure delivery, housing, physical planning, sustainable development, architecture, heritage, community and social affairs and corporate governance.

QUORUM

The proposed Bill deletes Sections 108(1A) to 108(1D) of the Planning and Development Act 2000, thereby ending the practice of relying on two-person quorum for deciding cases. The deletion of these provisions removes the power of the Bord to reduce the quorum, thereby allowing for a minority position to be maintained in three-person quorums. In August 2022, this process was ended by the Chairperson of the Bord, and since then, a resolution was passed by the Bord to cease this process. This legislative amendment ensures this practice is removed with finality and is in accordance with Office of the Planning Regulator (OPR) recommendations.²

INQUIRY INTO COMPLAINTS OR MISCONDUCT

Section 110 of the Planning and Development Act 2000 requires the Chairperson of the Bord to form an opinion on the conduct of an ordinary member before subsequent interview or investigation into the matter. The Bill proposes to amend Section 110(2), by

² [OPR-Review-Report-Phase-1-of-ABP-Review.pdf](#)

instead providing clear instructions on the actions to be taken on receipt of a complaint, or where the Chairperson considers the conduct of the member to have been prejudicial to the effective performance of the Bord or brought it into disrepute.

A new subsection 110(3) will be inserted thereafter, which empowers the Minister to instigate such an investigation. Under this subsection, the Minister can request that the Chairperson interview the member or otherwise investigate the matter. Thereafter, the Minister can seek a report from the Chairperson of the Bord on the outcome.

PART 3 – AMENDMENT OF THE FORESHORE ACT 1933

Firstly, Part 3 sets out a standard provision regarding the definition and interpretation of terms used in the General Scheme. The substantive provisions in this Part make definitional amendments to two sections of the Foreshore Act 1933. It is suggested that the definition of foreshore does not include the subsoil below the foreshore, in addition to not including the water column and airspace above the bed of the foreshore. As such, the General Scheme outlines that Section 1 of the Foreshore Act 1933 is proposed to define foreshore as “the bed and shore”, *“including the subsoil below and the water column and airspace above that is”* (as inserted). Similarly, in redefining *tidal lands*, Section 1 of the Foreshore Act 1933 is proposed to be amended to redefine tidal lands as “the bed and shore”, *“including the subsoil below and the water column and airspace above that is”* (as inserted). The intention of amending these definitions is to provide marine users, who wish to occupy or use the foreshore in such a way that includes the body of water above the seabed, with certainty in respect of lease (section 2 of the Foreshore Act 1933), or licence (section 3 of the Foreshore Act 1933) applications.

Accordingly, the General Scheme proposes to insert Section 3D into the Foreshore Act 1933, thereby making provision regarding the amended definition of foreshore for applications made under section 2 and 3 of the Foreshore Act 1933. The new section ensures that in circumstances where the definition of foreshore was understood to include the subsoil below and the water column and airspace above the bed and shore, applications relating to this understanding can continue to be assessment and regulated according to the new definition of foreshore. In this way, the intention is that this is a technical amendment which puts the Minister’s decision-making powers, regarding

lease and licence applications, beyond doubt, where such applications concern the amended definition of foreshore.

KEY ISSUES WITH THE PROPOSED LEGISLATION

In examining the General Scheme, the Committee has identified several Heads that are of particular interest and where further consideration, or amendments should be provided. In scrutinising the General Scheme, the Committee largely focussed on five Heads of the General Scheme.

HEAD 4: INCREASE IN BORD MEMBERS

The Committee notes that Head 4 of the General Scheme provides that the membership of the Bord is to increase up to 14 ordinary members, in addition to the chairperson. In discussing this aspect of the General Scheme, the Committee queried the rationale underpinning this provision. In response, the Department indicated that a membership of at least 15 allows the quorum of the Bord to be increased and brings a better flow of expertise to the membership of the Bord. In addition, the Department indicated that the Bord has an increased workload, and there is an increasing complexity regarding the nexus between planning and environmental law which requires expanded capacity.

In its attendance at the Committee, the Irish Planning Institute (IPI) was concerned that, where the size of the Bord would be explicitly linked to the number of cases, expertise may be lost where a Bord member with specialist expertise is removed from the Bord due to a decreased caseload, which would be contrary to best practice. The Committee considers it important that a balance of expertise is retained among Bord members at any one time. Therefore, the Committee proposes that a provision specifying a balance of expertise is included under Head 4 of the General Scheme.

The Committee notes that, under Head 4 of the General Scheme, the Minister may by order increase the size of the Bord where the Minister is of the opinion that the workload of the Bord necessitates the appointment of one or more additional Bord members. Moreover, the Committee notes that Head 4 of the General Scheme proposes the deletion of Section 104(3) of the Planning and Development Act 2000, which provides for Oireachtas oversight on the order by the Minister to increase the size of the Bord. The Irish Environmental Network (IEN) outlined their concern with the extensive discretion afforded to the Minister under this Head, and the proposed removal

of Oireachtas oversight on such orders made. The Committee is of the opinion that the Minister is afforded undue power over the size and operations of the Bord without the appropriate oversight, which may conflict with An Bord Pleanála's independence. Therefore, the Committee asks that the provision for Oireachtas oversight outlined in Section 104(3) of the Planning and Development Act 2000 is retained.

RECOMMENDATIONS

1. The Committee recommends that in the proposed Section 104(2), the Minister may by order increase the number of ordinary members in the stated circumstances, while also ensuring the need to retain a balance of expertise on the Bord. Where the Minister is changing the size of the Bord, the Minister shall lay a report before the Houses of the Oireachtas setting out the rationale for doing so and the order shall not be made by the Minister until both Houses of the Oireachtas have debated and voted on a motion on the report.
2. The Committee recommends that Section 104(3) of the Planning and Development Act 2000 is retained.

HEAD 5: APPOINTMENTS TO THE BORD

The Committee notes that Head 5 of the General Scheme sets out several proposed provisions relating to a new appointments process. In particular, the Committee considered the need for diverse expertise, and the committee system, which is proposed to replace the panel system of appointments to An Bord Pleanála.

SKILLS MIX

Firstly, the Committee notes that Head 5 of the General Scheme outlines that the Minister may appoint ordinary members to the Bord under the proposed Section 106(2), where the Minister is of the opinion that, among the membership, there is a good mix of experience or knowledge of infrastructure delivery, housing, physical planning, sustainable development, architecture, heritage, community and social affairs, and

corporate governance. In discussing the prescribed areas, the Committee expressed its opinion that this skillset is far too limited. The Committee notes that, although the areas detailed in Head 5 of the General Scheme may incorporate several domains, it is important that each area is explicitly set out. As such, the Committee asks that several areas are added: namely, environmentally sustainable development, ecology, marine ecology, climate, water resource management, air quality, agriculture, local government, and disability/accessibility. Further, stakeholders who attended at the Committee suggested the addition of architecture, law, planning, archaeology, landscape, hydrology, Irish language and built heritage.

In its submission, An Taisce commented that the language in the proposed Section 106(2)(b) reflecting “an equitable balance *across genders*” would be more appropriate than “an equitable balance *between men and women*”. In addition, An Taisce commented, to ensure the Bord upholds the public interest in planning, that the Bord and its decision-making should reflect the diversity of Irish society, including perspectives across ethnicities, socio-economic backgrounds, rural and urban areas, among others. The Committee suggests that this is important in reflecting public interest.

In discussing this matter with stakeholders who attended the Committee, it was noted that there was no reference to “expertise” in the legislation. IEN commented that it would be favourable that members bring multiple skills and disciplines to the Bord. IPI agreed that this is advantageous, as having single discipline members on the Bord may be limiting where a member completes their term, and the Bord is left short of that member’s specific expertise. The Committee suggests that in appointing ordinary members to the Bord, the Minister ensures members have multidisciplinary expertise, except where it is felt that an expertise in a specific discipline is missing from the Bord. Additionally, to ensure appointments to the Bord do not all come to an end at the same time and corporate knowledge is lost, the Committee asks that provision is made for mid-term reappointments, and that no more than one-third of Bord members are replaced at any one time.

RECOMMENDATIONS

1. The Committee recommends, in addition to the skillsets set out in the proposed Section 106(2)(a), that the following areas are included: environmentally sustainable development, ecology, marine ecology, climate, water resource management, air quality, agriculture, local government, architecture, law, planning, archaeology, landscape, hydrology, Irish language, built heritage and disability/accessibility and that the required qualifications for suitable candidates be set out in the Bill.
2. The Committee recommends that the language of the proposed Section 106(2)(b) is updated to state that the Minister shall endeavour to ensure that “there is an equitable balance *across genders*”, rather than “*between men and women*”.
3. The Committee recommends that in addition to a gender balance, provision is made in the proposed Section 106(2) for the Minister to ensure, insofar as is practicable, that public interest is represented through a diverse membership of the Bord across ethnicities, socioeconomic backgrounds, and rural/urban areas.
4. The Committee recommends that the proposed legislation stipulates that the Minister shall ensure that in appointing ordinary members of the Bord, that such members shall have multidisciplinary expertise and experience, rather than expertise in one single domain, except in circumstances where it is felt that an expertise in a specific discipline is missing from the Bord.
5. The Committee recommends, to ensure Bord members’ terms do not all end simultaneously, that provision is made for mid-term reappointments, and that no more than one-third of Bord members are replaced at any one time.

COMMITTEE TO ADVISE THE MINISTER ON APPOINTMENTS

The Committee notes that Head 5 of the General Scheme replaces the panel system with a committee which will advise the Minister on appointments of ordinary members. The Committee queried on what basis the panel system was being replaced. The Department informed the Committee that, under the current panel system, the nominations process is not as transparent as is appropriate. The Department outlined that the proposed committee would set the terms of what is required, but there is complete openness on who may apply.

In its opening statement, IEN commented that, although the panel system needs to be updated, it reflects an important political commitment to society, as it allows the Bord to be comprised of an independent jury of civic society, which gives rise to public support due to the involvement of the public interests. The Committee broadly agreed that there is merit in reforming the current panel system. An Taisce submitted to the Committee that the current panel system is advantageous as it represents various fields and civil society groups which are independent from Government, bringing a range of perspectives and expertise from civil society. Nevertheless, An Taisce set out reforms that could be implemented, including the addition of a standalone panel for environmental considerations, and the update of panels to reflect the increasing diversity of Irish society, including younger generations and vulnerable communities. The Committee asks that the current panel system is reformed, reviewed and updated. In addition, the Committee asks that there would be an annual review of the panel of candidates, in order to identify if there is a change of circumstance of those candidates, which may create a conflict of interest.

The Committee discussed the concentration of Ministerial power in relation to the proposed committee system as set out in Head 5 of the General Scheme. In its submission, An Taisce detailed its concern that Head 5 of the General Scheme empowers the Minister in an unrestrained manner, yet there is no provision requiring the Minister to provide reasoned conclusions or justification for the selections made onto the proposed committee. The Committee notes that there are no safeguards or Oireachtas oversight provided for in the General Scheme on this matter. The Committee is of the opinion that the discretion allotted to the Minister may conflict with the independence of the Bord.

During its engagement with concerned stakeholders, the Committee suggested a merging of the panel and committee systems, thereby involving civic society and creating a transparent nominations process. The Committee proposes, should the proposed legislation proceed with the committee system as outlined in the General Scheme, that the legislation prescribe the organisations which have the right to nominate members onto the proposed committee. Thus, this approach would reflect the panels' perspectives in the disciplines outlined in proposed Section 106(2), in addition to disciplines added in the recommendations of this report. The Committee suggests that these organisations should be reviewed periodically. Further, the Committee proposes that those nominated onto the proposed committee are required to declare any circumstance which may pose a conflict of interest to their work, and that these declarations be made public.

The Committee understands that, although the proposed committee may be established by the Minister, the Minister may establish any other suitable procedure under proposed Section 106(3). The Committee notes that the Minister is allotted discretion to establish any appointments procedure under Head 5 of the General Scheme without the appropriate oversight. As such, the Committee proposes that Oireachtas oversight should be prescribed, and the proposed Section 106(3) will be reconsidered at Committee stage of the Bill.

If the proposed committee system is introduced, as IEN asserted at the Committee in its opening statement, very significant safeguards would need to be provided for in primary legislation, in addition to allowing for public consultation on this matter. Therefore, the Committee asks that in the interest of accountability, transparency, and public understanding, that robust safeguards and oversight are prescribed in this primary legislation.

RECOMMENDATIONS

1. The Committee recommends that the existing panel system is reformed, reviewed, and updated for the purpose of improving the transparency of the system and accurately reflecting Irish civil society to ensure maintenance of the independence of the Bord and balance of skills, experience, expertise,

and perspectives in its composition. The existing panel system should also be expanded to include environmental perspectives and community perspectives.

2. The Committee recommends that there is an annual review of the panel of candidates to identify changes in circumstance which may make individuals on the panel unsuitable for membership of the Bord.
3. The Committee recommends, should the legislation proceed with the Ministerial committee system outlined in the General Scheme, that the legislation prescribe the organisations that may nominate members onto the proposed committee, reflecting the panels' perspectives contained in proposed Section 106(2) and recommendation 8 of this report. The list of organisations should be reviewed periodically. Those nominated onto the proposed committee shall be required to declare any directorships, shareholdings or other interests that may pose a conflict of interest to their work on the proposed committee and these declarations shall be available to the public.
4. The Committee recommends that in relation to proposed Section 106(3), Ministerial discretion to establish some alternative procedure of appointments is reconsidered at Committee stage with Oireachtas oversight.
5. The Committee recommends, should the proposed legislation proceed with the committee system outlined in the General Scheme, that appropriate and robust safeguards and oversight are prescribed in the proposed legislation to ensure undue power is not concentrated in the Minister.

HEAD 7: INQUIRY INTO COMPLAINTS OR MISCONDUCT

The Committee notes that Head 7 refers to the complaint's procedure, which sets out actions the chairperson of the Bord or the Minister may, at their discretion, take upon receipt of a complaint, or where they are of the opinion that the conduct of a Bord

member brings the Bord into disrepute or may have been prejudicial to the effective performance of the Bord. In its submission, An Taisce outlined that it is crucial to the restoration of confidence in the Bord that the chairperson and Minister are obliged to act, rather than having the mere discretion to act. The Committee considers it vital that there is an obligation to act in these circumstances. Further, the Committee is of the opinion that any conflicts of interest that are declared in this process are made available to the public.

RECOMMENDATIONS

1. The Committee recommends, pursuant to the proposed Sections 110(2) and 110(3), that the chairperson or the Minister, respectively, are specified as having an obligation to act, rather than the option to act. The chairperson shall be required to declare any directorships, shareholdings or other interests that may pose a conflict of interest to their work on the Bord, and these declarations shall be available to the public.

HEADS 9 & 10: FORESHORE

The Committee notes that Head 9 of the General Scheme outlines that foreshore is to be redefined under the Foreshore Act 1933, to include the subsoil below the foreshore, as well as the water column and airspace above the foreshore. The Committee notes that Head 10 of the General Scheme concerns the assessment of lease and licence applications in light of the amended definition.

The Committee queried the Department on the circumstances which brought about this amendment. In response, the Department informed the Committee that, under the Foreshore Act 1933, the word “foreshore” has always been interpreted as including the water column, subsoil, and the airspace above the foreshore. The Department further stated that applicants have been applying for leases and licences on this basis and that, in a regulatory context, the Minister has been operating on the basis of this interpretation. According to the Department, the amendment to the definition of foreshore is merely to put the authority of the Minister beyond doubt, while bringing certainty to both the Minister and lease and licence applicants.

Despite the Department's assertion, stakeholders, in communication with the Committee, disagreed. In attendance at the Committee, Coastwatch expressed its concern that the Minister is being afforded additional powers in respect of the airspace, informing the Committee that the interpretation of foreshore is not understood to extend to the airspace. It highlighted that it is problematic where additional powers are afforded to the Minister without clarity on the reasons for these amendments and without certainty of the implications. IEN echoed this, outlining to the Committee that concerns and considerations must be properly examined, including unintended and unforeseen consequences which must be analysed, well-documented, and be made explicit.

Moreover, the Committee received several submissions from concerned stakeholders, who illustrated the unintended consequences of this proposed amendment. Wind Energy Ireland (WEI) submitted that this legislation is a new departure from the previous interpretation, which included neither the water column nor the airspace. WEI outlined that offshore wind energy projects cannot proceed without survey investigations of the Irish foreshore. It stated that, at present, non-invasive surveys such as aerial surveys, do not require a licence. WEI maintain that aerial surveys would require a licence under the proposed legislation, which has the potential to delay renewable energy by at least 2 years, as the current wait time for the processing of applications is 20 months or more.

The Marine Renewables Industry Association submitted that adding airspace to the definition of foreshore may halt all air surveying activity, perhaps for several years, which would call Ireland's offshore governance regime into question. WEI assert that this is out of step with EU policy, as the European Commission asked Member States earlier this year to expedite the granting of permit applications for renewable energy projects.³ Consequently, WEI stated it has serious concerns that the proposed changes would greatly slow the development of renewable energy, thereby undermining efforts to deliver Ireland's legally binding carbon emission reductions required by the Climate Action and Low Carbon Development (Amendment) Act 2021.

³ [EUR-Lex - C\(2022\)3219 - EN - EUR-Lex \(europa.eu\)](#)

Furthermore, WEI outline that Section 114 of the Maritime Area Planning Act 2021 allows the Minister to classify activities in Schedule 7 of this Act as “exempted usages”, therefore a licence would not be required where there is no effect on marine life. The Committee notes that the Foreshore Act 1933 does not have a provision similar to Section 114 of the Maritime Area Planning Act 2021. WEI commented that the legislative changes outlined in Heads 9 and 10 of the General Scheme are untimely given the forthcoming establishment of the Maritime Area Regulatory Authority.

In its submission, Coastwatch outlined that the aforementioned issues may be overcome by an amendment to the Land and Conveyancing Law Reform Act 2009. Coastwatch stated that, firstly, the definition of foreshore under the Foreshore Act 1933 may be amended to the definition of ‘land’ within the meaning of the Land and Conveyancing Law Reform Act 2009. Thereafter, airspace powers may be clarified in Section 3(e) of the Land and Conveyancing Law Reform Act 2009 by inserting “or water” after “the airspace above the surface of land”. The Committee asks that the Department considers this as a possible solution to this issue.

In light of the level of concern coming from these groups in respect of this amendment, the Committee is of the opinion that it is appropriate to obtain and publish detailed expert scrutiny and legal advice on the potential consequences of the foreshore amendment in advance of proceeding with the redefinition in the proposed legislation.

RECOMMENDATIONS

1. The Committee recommends that the Department assesses if the Land and Conveyancing Law Reform Act 2009 would be a more appropriate instrument for the intended purpose of the amendment in Head 9 of the General Scheme.
2. The Committee recommends that the Department obtain and publish expert legal advice and stakeholder consultation, namely, with marine environmental stakeholders, the fishing community, and the offshore renewable energy industry, so as to inform the provision of safeguards in respect of the amendment in Head 9 of the General Scheme.

3. The Committee recommends that the Minister address, as a matter of urgency, adequate resourcing of the foreshore unit and the Marine Area Regulatory Authority, to ensure timely and compliant processing of licences to facilitate the lawful conduct of marine surveys necessary for offshore renewable energy in particular.
4. The Committee recommends that a) there is proper regulatory oversight of geophysical and geotechnical surveys in the marine environment, and any aerial surveys associated with offshore renewable energy, and b) the enjoyment of and exercise of interests and rights of other marine users and the State's security interests, and interests in the seafloor are protected.
5. Finally, the Committee recommends that in any part of the legislation where regulations are required to or may be made, the requirement for the Minister to make such regulations be specified as either discretionary or mandatory through the use of "may" and "shall" appropriately, and that the subject matter of the regulations be circumscribed clearly and precisely.

RECOMMENDATIONS

RECOMMENDATIONS

1. The Committee recommends that in the proposed Section 104(2), the Minister may by order increase the number of ordinary members in the stated circumstances, while also ensuring the need to retain a balance of expertise on the Bord. Where the Minister is changing the size of the Bord, the Minister shall lay a report before the Houses of the Oireachtas setting out the rationale for doing so and the order shall not be made by the Minister until both Houses of the Oireachtas have debated and voted on a motion on the report.
2. The Committee recommends that Section 104(3) of the Planning and Development Act 2000 is retained.
3. The Committee recommends, in addition to the skillsets set out in the proposed Section 106(2)(a), that the following areas are included: environmentally sustainable development, ecology, marine ecology, climate, water resource management, air quality, agriculture, local government, architecture, law, planning, archaeology, landscape, hydrology, Irish language, built heritage and disability/accessibility and that the required qualifications for suitable candidates be set out in the Bill.
4. The Committee recommends that the language of the proposed Section 106(2)(b) is updated to state that the Minister shall endeavour to ensure that “there is an equitable balance *across genders*”, rather than “*between men and women*”.
5. The Committee recommends that in addition to a gender balance, provision is made in Section 106(2) for the Minister to ensure, insofar as is practicable, that public interest is represented through a diverse membership of the Bord across ethnicities, socioeconomic backgrounds, and rural/urban areas.

6. The Committee recommends that the proposed legislation stipulates that the Minister shall ensure that in appointing ordinary members of the Bord, that such members shall have multidisciplinary expertise and experience, rather than expertise in one single domain, except in circumstances where it is felt that an expertise in a specific discipline is missing from the Bord.
7. The Committee recommends, to ensure Bord members' terms do not all end simultaneously, that provision is made for mid-term reappointments, and that no more than one-third of Bord members are replaced at any one time.
8. The Committee recommends that the existing panel system is reformed, reviewed, and updated for the purpose of improving the transparency of the system and accurately reflecting Irish civil society to ensure maintenance of the independence of the Bord and balance of skills, experience, expertise, and perspectives in its composition. The existing panel system should also be expanded to include environmental perspectives and community perspectives.
9. The Committee recommends that there is an annual review of the panel of candidates to identify changes in circumstance which may make individuals on the panel unsuitable for membership of the Bord.
10. The Committee recommends, should the legislation proceed with the Ministerial committee system outlined in the General Scheme, that the legislation should prescribe the organisations that may nominate members onto the proposed committee, reflecting the panels' perspectives contained in proposed Section 106(2) and recommendation 8 of this report. The list of organisations should be reviewed periodically. Those nominated onto the proposed committee shall be required to declare any directorships, shareholdings or other interests that may pose a conflict of interest to their

work on the proposed committee and these declarations shall be available to the public.

11. The Committee recommends that in proposed Section 106(3), Ministerial discretion to establish some alternative procedure of appointments is reconsidered at Committee stage with Oireachtas oversight.
12. The Committee recommends, should the proposed legislation proceed with the committee system outlined in the General Scheme, that appropriate and robust safeguards and oversight are prescribed in the proposed legislation to ensure undue power is not concentrated in the Minister.
13. The Committee recommends, pursuant to the proposed Sections 110(2) and 110(3), that the chairperson or the Minister, respectively, are specified as having an obligation to act, rather than the option to act. The chairperson shall be required to declare any directorships, shareholdings or other interests that may pose a conflict of interest to their work on the Bord, and these declarations shall be available to the public.
14. The Committee recommends that the Department assesses if the Land and Conveyancing Law Reform Act 2009 would be a more appropriate instrument for the intended purpose of the amendment in Head 9 of the General Scheme.
15. The Committee recommends that the Department obtain and publish expert legal advice and stakeholder consultation, namely, with marine environmental stakeholders, the fishing community, and the offshore renewable energy industry, so as to inform the provision of safeguards in respect of the amendment in Head 9 of the General Scheme.
16. The Committee recommends that the Minister address, as a matter of urgency, adequate resourcing of the foreshore unit and the Marine Area

Regulatory Authority, to ensure timely and compliant processing of licences to facilitate the lawful conduct of marine surveys necessary for offshore renewable energy in particular.

17. The Committee recommends that a) there is proper regulatory oversight of geophysical and geotechnical surveys in the marine environment, and any aerial surveys associated with offshore renewable energy, and b) the enjoyment of and exercise of interests and rights of other marine users and the State's security interests, and interests in the seafloor are protected.
18. Finally, the Committee recommends that in any part of the legislation where regulations are required to or may be made, the requirement for the Minister to make such regulations be specified as either discretionary or mandatory through the use of "may" and "shall" appropriately, and that the subject matter of the regulations be circumscribed clearly and precisely.

APPENDIX 1: ORDERS OF REFERENCE

a. FUNCTIONS OF THE COMMITTEE – DERIVED FROM STANDING ORDERS [DSO 95; SSO 71]

(1) The Adil 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.

b. SCOPE AND CONTEXT OF ACTIVITIES OF COMMITTEES (AS DERIVED FROM STANDING ORDERS) [DSO 94; SSO 70]

1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(2) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil/Seanad;

(3) 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 DSO 125(1) and SSO 108(1); and

(4) 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—

- (a) a member of the Government or a Minister of State, or
- (b) the principal office-holder of a State body within the responsibility of a Government Department or
- (c) 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.

(5) 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.

c. POWERS OF COMMITTEES (AS DERIVED FROM STANDING ORDERS) [DSO 96; SSO 72]

Unless the Dáil/Seanad 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/Seanad;

(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 Joint Committee explaining the statutory instrument, or
- (ii) attend a meeting of the Joint Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Joint 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 Joint 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 Joint 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 Joint 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 Joint 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 Joint 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 Joint Committee in relation to the consideration of a report under DSO 197/SSO 168;

(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 Joint 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 Joint Committee, which may report thereon to the Dáil/Seanad; 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 DSO 120(4)(a)/SSO 107(4)(a).

APPENDIX 2: COMMITTEE MEMBERSHIP

DEPUTIES



Francis Noel Duffy
Green Party



Joe Flaherty
Fianna Fáil



Thomas Gould
Sinn Féin



Emer Higgins
Fine Gael



Steven Matthews
Cathaoirleach
Green Party



Paul McAuliffe
Leas-Cathaoirleach
Fianna Fáil



Cian O'Callaghan
Social Democrats



Richard O'Donoghue
Independent



Eoin Ó Broin
Sinn Féin

SENATORS



Victor Boyhan
Independent



John Cummins
Fine Gael



Mary Fitzpatrick
Fianna Fáil



Rebecca Moynihan
Labour



Mary Seery Kearney
Fine Gael

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil of 30 July 2020.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 18 September 2020.
3. The Dáil Committee of Selection nominated Deputy Joe Flaherty to replace Deputy Jennifer Murnane O'Connor on 2 February 2021.

APPENDIX 3: LINK TO MEETING TRANSCRIPT

- [Thursday 10 November 2022](#)

APPENDIX 4: LINKS TO OPENING STATEMENTS & SUBMISSIONS

OPENING STATEMENTS

- [Ms. Maria Graham, Assistant Secretary, Planning Division, Department of Housing, Local Government and Heritage](#)
- [Ms. Attracta Uí Bhroin, Environmental Law Officer, Irish Environmental Network](#)
- [Mr. Gavin Lawlor, Vice President, Irish Planning Institute](#)

SUBMISSIONS

- [Irish Environmental Network](#)
- [Irish Planning Institute](#)
- [Office of the Planning Regulator](#)
- [Marine Renewables Industry Association](#)
- [Wind Energy Ireland](#)
- [An Taisce](#)
- [Royal institute of Architects of Ireland](#)
- [Coastwatch](#)

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