



Tithe an
Oireachtais
Houses of the
Oireachtas

An Comhchoiste um Choimirce Shóisialach, Forbairt Pobail agus na hOileáin

Tuarascáil maidir leis an nGrinnscrúdú Mionsonraithe ar an
mBille um Shlántaisceáin agus Taiscí Gaolmhara, 2022 (BCP)

Nollaig 2023

Joint Committee on Social Protection, Community and Rural Development and the Islands

Report on Detailed Scrutiny of the Safe Deposit
Boxes and Related Deposits Bill 2022 (PMB)

December 2023

Table of Contents

Committee Membership.....	2
Cathaoirleachs Foreword	3
Recommendations	4
Introduction	5
Purpose of the Bill	5
Procedural Basis for Scrutiny.....	5
Engagement with Stakeholders	7
Detailed Scrutiny.....	9
Summary of Written Submissions	9
Summary of Evidence	15
Legal Scrutiny of Bill.....	23
Summary of the Office of Parliamentary Legal Advisors (OPLA) Advice	24
Recommendation to the Dáil.....	26
Appendix 1 – Orders of Reference.....	26
Appendix 2 – Framework for Committee Scrutiny of Private Members Bills	37
Appendix 3 – Links to Submissions and Opening Statements	39

Committee Membership



Sen. Paddy Burke
Fine Gael



Jackie Cahill T.D.
Fianna Fáil



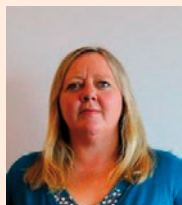
Joe Carey T.D.
Fine Gael



Joan Collins T.D.
Independents 4 Change



Paul Donnelly T.D.
Sinn Féin



Sen. Róisín Garvey
Green Party



Sen. Paul Gavan
Sinn Féin



Sen. Eugene Murphy
Fianna Fáil



Denis Naughten T.D.
Independent
Cathaoirleach



Marc Ó Cathasaigh T.D.
Green Party



Éamon Ó Cuív T.D.
Fianna Fáil



Donnchadh Ó Laoghaire
Sinn Féin



John Paul Phelan T.D.
Fine Gael



Sen. Mark Wall
Labour

Cathaoirleachs Foreword



The Safe Deposit Boxes and Related Deposits Bill 2022, a Private Members' Bill sponsored by Deputy Éamon Ó Cuív, seeks to create a register of property deposits in banks. The Bill also provides for the transfer of unclaimed funds to the Dormant Accounts Fund. All safe deposits will be recorded in chronological order and no safe deposit box held by a bank for less than 80 years will be opened.¹

The Committee welcomed the objective of this Bill to create a framework to allow for the identification and retention of unclaimed property in Safe Deposit Boxes, of historical, archaeological, or historic importance and held for over 80 years, and to make such property available to the state. The Bill was sent to the Office of Parliamentary Legal Advisors (OPLA) to ascertain the legal and constitutional implications of such proposed legislation.

In conducting detailed scrutiny on this Bill, the Committee invited written submissions seeking the views of various stakeholders. Public consultations were held with Officials from Finders International and the Banking and Payments Federation Ireland, along with Officials from the Department of Rural and Community Development, the Department of Finance, and the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media.

I would like to commend Deputy Ó'Cuív for his dedication in proposing and advocating for the progression of this legislation and for his efforts to address this issue. I would also like to express my gratitude on behalf of the Committee to all those who sent in written submissions to the Committee and to the OPLA for their insight into this important Bill. I would like to thank the Officials for their valuable engagement with the Committee, and the Members for their hard work. I would also like to acknowledge the assistance of the Committee Secretariat in preparing this report.

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

Denis Naughten T.D.
Cathaoirleach
December 2023

¹ Safe Deposit Boxes and Related Deposits Bill 2022, Explanatory Memorandum, Available [here](#)

Recommendations

1. The Committee recommends the removal of the role of the Central Bank.
2. The Committee recommends that a wider range of professions be included in the examination to be conducted, in addition to approved statutory auditors.
3. The Committee recommends that section 23 be modified to include a sufficient notice period provision to enable customers or executors to claim the property before it can be sold.
4. The Committee recommends that section 23 be modified to include a general indemnity by the State in respect of any claim against an institution from a depositor.
5. The Committee recommends the insertion of an intermediate step before the role of the National Museum of Ireland, whereby there will be a pre-assessment to alleviate the administrative burden that may be placed on the director of the National Museum of Ireland or her delegates.
6. The Committee recommends that all former Irish Land Commission functions, records and land ownership issues should be transferred to another state body to improve the accessibility and transparency for the public. This does not relate to this Bill, but the Committee made this recommendation based on submissions received.

Introduction

Purpose of the Bill

The Safe Deposit Boxes and Related Deposits Bill 2022 concerns abandoned safe deposit boxes residing in some of the oldest banks still in operation today. This Act provides for property deposited in safe deposit boxes or other such safe keeping arrangements in certain institutions. It requires such institutions to establish and maintain a register of deposited property and to take certain steps to identify and notify persons entitled to ownership of, or an interest in, certain deposited property and for those purposes to provide for the examination by institutions of certain deposited property that is unclaimed.

This Bill also provides for inspection and retention on behalf of the State of unclaimed property by the Director of the National Museum of Ireland and inspection of unclaimed property by certain other bodies; it provides for disposal of unclaimed property that is not retained by the Director of the National Museum of Ireland, including by means of sale; it provides for the transfer of moneys from unclaimed property, including the proceeds of any sale of such property, to the Dormant Accounts Fund; to make certain provisions in relation to supervision and enforcement of compliance by institutions with the provisions of this Act; to make certain consequential amendments to other enactments; and to provide for related matters.

Procedural Basis for Scrutiny

Private Members Bills referred to Select Committee 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 15th January 2019.

Dáil Standing Order 178(1) provides that “...the Bill shall be subject to scrutiny by the relevant Committee” and paragraph (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: “Nothing in these Standing Orders shall preclude a Joint Committee from undertaking scrutiny, and reporting thereon, save that only the relevant Committee may decide on the recommendation as to whether or not the Bill may proceed to Committee Stage.”

Engagement with Stakeholders

The Joint Committee on Social Protection, Community and Rural Development and the Islands invited submissions from stakeholders in relation to the Safe Deposit Boxes and Related Deposits Bill 2022.

On 24th May 2023, the Committee began public engagements as laid out in the table below:

Date	Witnesses
24 th May 2023	<p><i>Officials from the Department of Rural and Community Development</i></p> <ul style="list-style-type: none"> • Mr Ken Jordan – Principal Officer, Finance & Evaluation Unit <p><i>Officials from the Department of Finance</i></p> <ul style="list-style-type: none"> • Mr Pat Leahy – Principal Officer • Ms Fidelma Cotter – Assistant Principal Officer <p><i>Officials from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media</i></p> <ul style="list-style-type: none"> • Ms Deirdre Mahony – Principal Officer, Cultural Policy and Institutions Unit • Ms Ciara Moloney – Assistance Principal Officer, Cultural Policy and Institutions Unit
31 st May 2023	<p><i>Officials from Finders International Ireland</i></p> <ul style="list-style-type: none"> • Ms Lorna Fleming – Private Client Manager • Ms Maeve Mullin - Director
21 st June 2023	<p><i>Officials from the Banking and Payments Federation Ireland</i></p> <ul style="list-style-type: none"> • Ms Bernice Evoy – Solicitor, Head of Legal and Regulatory • Ms Michelle Byrne – Head of Consumer Banking

Visit to Bank of Ireland

As part of the detailed scrutiny of the Safe Deposit Boxes and Related Deposits Bill 2022 (PMB), the Committee visited the Bank of Ireland, College Green on 17 October to visit the Safe Keeping and Safety Deposit Boxes. This is the largest collection of items held for safe keeping in the state. Upon arrival, Members were welcomed by the Director of Distribution Channels at Bank of Ireland and were given an overview on the safe keeping and safety deposit offering from the Senior Operations Support Manager, as well as a brief overview on the governing legislation from a member of their legal team. This gave a practical grounding in the aims of the bill and reaffirmed the advice received in the course of the public hearings to simplify the bill. Members found this trip to be very valuable in informing their detailed scrutiny of this Bill and wish to thank the Bank officials for their time

Detailed Scrutiny

Summary of Written Submissions

The Central Bank of Ireland in their submission² to the Committee outline that the Bill proposes a number of functions and powers for the Central Bank, which include:

- Monitoring and enforcement responsibility for all aspects of institutions' compliance with their obligations under the Bill (e.g., in respect of institutions' examination of unclaimed property, engagement with the Director of the National Museum and disposal of assets for best price reasonable obtainable).
- A direct role of the Central Bank in respect of consenting to the disposal of assets which are unsuitable for sale because there is no intrinsic value and determining an appropriate means of disposal of such assets (section 23(3)).

The Central bank feel that these such powers are not consistent with the existing functions and responsibilities of the Central Bank and go beyond their current expertise.

Recommendation 1

The Committee recommends the removal of the role of the Central Bank

The Banking and Payments Federation Ireland, in their submission³ to the Committee had many observations and recommendations on the Bill and broke them down as follows:

Commencement of the Act

Section 1 - Commencement

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

³ Banking and Payment Federation Ireland Submission, Page 1, available [here](#)

The timeline afforded for the Bill coming into effect is noted in Section 1 (3) as “... 3 years after the date of its passing or on such earlier date then the said 3 years as the Minister may order appoint.”

In a written submission, the Banking & Payments Federation Ireland (BPFI)⁴ noted that the requirements set out in the Bill would demand a considerable amount of human and financial resources and presents a logistical challenge as currently drafted. The conditions of the Bill would require the implementation of several new processes and operational changes that institutions would have to put into effect to comply with the Bill. Therefore, the BPFI support the 3-year timeline proposed before the requirements are effective. If a shorter timeframe for enactment were to be considered, the BPFI believe this should necessitate engagement between institutions, the Central Bank of Ireland and the Minister to confirm institutions are in a position to proceed and to avoid any unintended consequences arising as a result of early enactment.

Definition of “Deposited Property”

Section 2 (1) – Interpretation

The definition of “*deposited property*” is “... any article, item, asset or other property, or any collection of such property, deposited in an institution in a safe deposit box”, while a “*safe deposit box*” means any box, vault, or other safe keeping arrangement maintained by an institution for the safe storage of deposited property”.

In the context of the definitions provided, it is important to note that, for some members, a distinction exists in relation to how items are stored currently, and the use of the two terms interchangeably in the Bill may give rise to confusion in relation to how items are stored currently, and the use of the two terms interchangeably in the Bill may give rise to confusion in relation to interpretation of its scope. Currently, items are either stored in “*safekeeping*” or “*safe custody*” – held securely by an institution on behalf of a customer in an envelope/box/suitcase etc. – or stored in a “*safety deposit box*” – held in a locked facility, to which a customer holds a key as

⁴ Banking & Payments Federation Ireland Submission, Page 2, available [here](#)

does the institution and both of which are required to open the box, and for which a customer may pay a fee.

Owing to the potential challenge presented because of this, BPFİ propose that the Committee considers whether the Bill should apply to safe deposit boxes only to avoid misinterpretation and to ensure alignment with the existing Ireland Safe Deposit Box Bank and Payment Accounts Register (ISBAR)⁵ requirements resulting from transposition of the Anti-Money Laundering Directive⁶, or if a phased approach would be more appropriate.

Proposed date of deposit and dormancy period

Section 2 (4) – Interpretation and Section 6 – Register of Deposited Property, subsection (7)

The Bill requires that where a record of the date of deposit does not exist, an institution is to presume that the item was deposited on or before 31 December 1850.

In addition, Section 6 (7) defines “*unclaimed property*” as having been in an institution for a period of not less than 80 years; has not been access since deposited or has not been accessed in 80 years or more i.e., since 1942.

In their submission to the Committee, the BPFİ⁷ raised concerns regarding records of items held by members that may not be complete and the date of deposit and/or the date of the most recent access by the customer may not be known. In this instance, the BPFİ submission mentions that the Bill would require an institution to assume that items have not been accessed, which cannot be taken to be the case. It may be that items have been accessed in that period, but a record of same was not

⁵ Article 32A of 4AMLD (EU Directive 2015/849) as amended by 5AMLD, provides for the establishment of “*centralised automated mechanisms, such as central registries or central electronic data retrieval systems, which allow the identification, in a timely manner, of any natural or legal persons holding or controlling payment accounts and bank accounts identified by IBAN, as defined by Regulation (EU) No 260/2012 of the European Parliament and of the Council territory*”. In response to this legislative requirement the Department of Finance has conferred responsibility for the establishment of Ireland Safe Deposit Box Bank and Payment Accounts Register (ISBAR), on the Central Bank of Ireland.

⁶ ISBAR Legislative Framework, page 3-4, available [here](#)

⁷ BPFİ Submission, Page 3, available [here](#)

taken. It is noted by BPGI that this raises concerns for members regarding the potential for challenge when customers learn that their items have been accessed, transferred and potentially sold without their knowledge. Members require assurances in this regard in relation to the inclusion of indemnification within the Bill.

The BPGI also state that further clarification on the definition of “unclaimed property” is necessary. There may have been legally bound terms and conditions that the customer agreed to when placing the items with the bank initially. If an institution is subsequently obligated to comply with the requirements of the Bill, the institution could potentially be breaking the terms and conditions agreed with the customer.

The BPGI believe that institutions will need clarification from the Joint Committee that the Bill will have the effect of taking precedence over any Terms and Conditions, as well as over any bank assurances/confirmations given to customers.

Requirement to establish and maintain registers.

Section 6 (1) & (2) – Register of deposited property and Section 8 – Publication of notice.

Section 6 requires institutions to establish and maintain a register of items, listing the details for inclusion. However, it may be the case that not all the information required will be available to an institution, given the extent to which information is currently held about items in safe custody, along with their owners who may now be deceased. The Banking and Payment Federation Ireland in their submission, stated that the process set out in the Bill would require significant effort and customer communications to ensure the requirements could be met. Additionally, BPGI raised concerns regarding individuals who deposit items in safe custody may not expect an institution to access and create a record of the items held, which may create privacy and data protection risks.

Requirement to notify customers.

Section 7 – Notification Procedure

Under this section, an institution is required to notify each person in writing, based on the information available, that they appear to be a *depositor of unclaimed property*.

Section 7 (2) requires that notifications be sent by ordinary post to the last known address.

The BPFİ are concerned with the risk of breaching customer confidentiality and potential fraud, given the definition of *unclaimed property*. The BPFİ feel that it is likely that the customer will no longer be at the last known address, given the time that will have lapsed, and that some historic addresses may no longer exist given the substantial redevelopment of urban areas in the subsequent decades.

Requirements relating to examinations.

Section 9 – Examination of unclaimed property

The requirements proposed regarding the examination of unclaimed property are noted in Section 9 of the Bill, in particular Section 9 (5) which specifies an examination to be conducted by not less than two persons, one of whom must be a statutory auditor and one to be independent of the institution.

The Banking and Payments Federation Ireland have a number of concerns in this regard. They propose that a wider range of professionals should be allowed for in this provision, in addition to approved statutory auditors. The BPFİ feel that the fact that many items are stored at branch level by some institutions adds to the complexity of this process, necessitating access to items in branches across the country would involve the scheduling of examinations, security arrangements, potential secure transfer of documents to alternate branch locations to facilitate collection etc.

The BPFİ also feel that significant costs will be incurred due to the prescriptive nature of the process as outlined in the Bill.

Recommendation 2

The Committee recommends that a wider range of professions be included in the examination to be conducted, in addition to approved statutory auditors.

Provision of Indemnification

Section 10 – Indemnification in respect of examinations

Section 10 provides an indemnification in the case of an institution, an officer of an institution and a person referred to in Section 9 (5) i.e., a statutory auditor, in relation to the examination of unclaimed property as set out in Section 9.

The BPFÍ feel that this indemnification needs to be expanded in respect of all parts of the Bill relating to an institution providing items to the Director and selling or disposing of items in order to address the concerns that currently exist regarding legal challenges by customers or their representatives.

Requirements to sell items deemed not to be of historical interest.

Section 23 – Disposal of unclaimed property

Section 23 (2) requires that the institution “*shall sell*” any item deemed not to be of historic interest. While this requirement might benefit an institution and the State by including a statutory duty to sell/dispose of items. The BPFÍ feel that there needs to be careful consideration of the impact of the sale of such items on the customer as many items held may be of emotional or sentimental value to customers.

The Banking and Payments Federation Ireland propose that sufficient notice and fair opportunity for customers or executors to claim the property is very important, noting that the customer left the property with the bank with the understanding that the items would not be opened by anyone other than the customer.

The BPFÍ support the requirement under Section 23 (3), if it is retained in its current drafting, which states that “*If an institution considers that any individual article, item, asset or other property is, by reason of its intrinsic value, not suitable for sale, it may, with the consent of the Central Bank, dispose of it in such manner as the Central Bank considers appropriate.*”

Overall, section 23 raises concerns for the BPFÍ regarding the privacy and property rights of customers and the potential for litigation against an institution taken by a customer or their personal representatives. BPFÍ believe that if these requirements are to remain, an indemnification must be provided in relation to those sections.

They propose that the Bill includes a general indemnity by the State in respect of any claim against an institution from a depositor, where the institution dealt with the items as set out in the Bill under Parts 2 to 5 under Section 10, as relevant.

Recommendation 3

The Committee recommends that section 23 be modified to include a sufficient notice period provision to enable customers or executors to claim the property before it can be sold.

Recommendation 4

The Committee recommends that section 23 be modified to include a general indemnity by the State in respect of any claim against an institution from a depositor.

Process to transfer money to the Dormant Accounts Fund

Section 24 – Transfer of unclaimed moneys to Fund

Section 24 outlines the process for the transfer of unclaimed money to the National Treasury Management Agency (NTMA) for inclusion in the Dormant Accounts Fund. BPFi note that the requirements in the Bill would necessitate the development of additional processes that would be separate to the process currently in place regarding dormant accounts.

Summary of Evidence

The issues raised in public consultations concerned the following:

Part 2 of the Bill

Part 2 of the bill contains a number of provisions. It seeks to enable the establishment of a register of property deposited in safe deposit boxes in relevant financial institutions. This register would include depositor details and information on when the property was deposited and last accessed by, or on behalf of, the depositor. These provisions are key to the proposed Bill, with the register forming the basis on which property would be defined as “unclaimed”, effectively where a period of 80 years has passed since the property was accessed by the depositor. This part of the Bill also sets out that, where items are identified as unclaimed, the institutions should take specific steps to reunite the property with its owner.

Part 2 then provides for the examination of property which remains unclaimed, by the relevant institutions, for the purposes of ascertaining the identity of the depositor. The Department of Rural and Community Development noted that the key issues around Part 2 relate to regulations on financial institutions, and place significant responsibilities on these institutions. As such, the Department of Finance feel that it is the views of those entities and colleagues in the Department that are key to this part of the Bill.

There were concerns raised by the Department of Finance regarding the timelines outlined in this Bill and Officials feel that the record-keeping of the banks, the further back one goes, is limited. Items that may have been deposited in good faith years ago and it may be impossible to determine a timeline there. The Department of Finance mentioned that the BPFi pointed out that as you go further back, there may not be detailed information. BPFi feel that the 80-year timeline poses challenges in understanding the most recent access to the items, and that is not always clear. Items that come into that 80-year scope every year it would have to be assessed. The BPFi suggested the possible removal of the timeline to allow for a one-off project whereby all items would be opened and dealt with.

Part 3 of the Bill

Part 3 builds on the register and steps detailed in Part 2 and covers the proposed retention by the State of unclaimed property. The provisions require institutions to give notice to the director of the National Museum of Ireland of the details

of property which remains unclaimed. The director, or a person authorised by the director, would then be obliged to make a determination as to whether the unclaimed property concerned is of historical, archaeological, or artistic importance. Items of importance can then be retained by the State, however with the rightful owners able to reclaim property at any point in the future. As with Part 2, there are detailed provisions here which do not relate to the remit of the Department of Rural and Community Development, and which will require the consideration of the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media.

Part 5 of the Bill

Part 5 provides for the sale of unclaimed property, not retained by the State, by the institutions, in a manner that would “obtain the best price reasonable attainable”. These funds would then be transferred to the Dormant Accounts Fund, net of reasonable costs incurred by the institution. In addition, cash deposits would be transferred to the Dormant Accounts Fund directly. The rightful owner can reclaim transferred funds from the relevant institution, with the funds then recouped from the Dormant Accounts Fund. This Part also provides for the disposal of items deemed to have little intrinsic value.

In public session with the Joint Committee on Social Protection, Community and Rural Development and the Islands, officials from the Department of Rural and Community Development raised a number of key questions around Part 5 of the Bill, in relation to the Dormant Accounts Fund which would require further consideration.

1. How costly would the process be?
2. How significant are the potential funds that could be transferred to the Dormant Accounts Fund?
3. Is it intended that the sale of items would cover all costs for the institutions, including establishing and maintaining the register, contacting customers, publishing notices, examining items etc.?
4. If a rightful owner emerges, is it proposed they get the full market value of the item, or the value less administration and sale costs?
5. What happens if a rightful owner demands the item that has been sold?

6. Regarding the proposed transfer of cash deposits to the fund, is it likely that older cash deposits have more value as a collector's item and should be treated as such?
7. How exactly would the proposed disposal of items deemed to have little intrinsic value work?
8. Could rightful owners challenge the decision to dispose of their item, and what would happen items of historical interest but not of sufficient importance to be held in care by the State?

The Department of Finance sees value in the broad aims of the Bill in seeking to determine whether there are items of historical and-or cultural value in financial institutions and providing a process whereby these items could be recovered. The Department think the Bill could focus more on the recovery of potential historical and-or cultural items. Such an approach would likely provide a stronger public interest rationale and legal basis. This approach could involve an assessment of items in the safe deposit boxes or otherwise in the possession of financial institutions, transfer of items considered to possess historical or cultural merit based on appropriate analysis and items retained by these cultural institutions on a safekeeping basis and returned to individuals who make a valid claim to ownership.

Under the proposed approach, there would be no assessment of the value of most item where it was not possible to locate an owner, and now would such items be sold and the resulting amounts transferred to the Dormant Accounts Fund. The financial institutions would continue to be responsible for safeguarding items originally entrusted to them for safekeeping. The Department of Finance proposes this approach as it is not obvious that there are significant items of value in safe deposit boxes that could be put up for sale to be passed to the fund.

The Role of the Central Bank

The Department of Finance also noted, in their public session with the Committee, the role for the Central Bank. The Bill proposes a role for the Central Bank in monitoring institutions in the discharge of its obligations under legislation, taking enforcement action where institutions have failed in the discharge of their responsibilities under the Bill, assisting the Minister for Rural and Community

Development in respect of regulations making disclosures from the register and consenting to the disposal of assets unsuitable for sale and determining an appropriate means of disposal of such assets. The Department of Finance feel that it is not obvious that these roles are consistent with the mandate of the Central Bank or are within its specific expertise. The specific expertise of the Central Bank in respect of section 23(3), consenting to the disposal of assets, is not obvious.

Additionally, the Department of Finance see the enforcement processes and ensuring institutions engage with the director of the National Museum of Ireland as a matter for legislation involving cultural institutions, not the Central Bank. The Central Bank is required to establish and maintain a central register of information on safe deposit boxes and bank and payment accounts, according to regulations made on the foot of EU legislation signed by the Minister for Finance in February 2022. The register identifies the holders and beneficial owners of bank and payment accounts and safe deposit boxes in Ireland. With the exception of this specific purpose, The Department of Finance feel that the Central Bank does not have a role in supervising institutions in respect of their management of safe deposit boxes. They feel that it is not clear that the roles envisaged in the Bill for the bank would be accommodated by the legislation providing for this specific purpose.

The Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (hereafter referred to as the Department of Tourism) believes there is merit in considering whether all boxes meeting the criteria set out in the Bill need to be referred to the director or just those boxes where there has been a prior determination that the contents may be of national importance. They feel the current drafting sees the assessment by financial institutions as just a review of the materials with a view to identifying the owner, which is a limited assessment. Accordingly, the Department of Tourism, with the director of the National Museum of Ireland, would be happy to consider ways to support the financial institutions in assessing the importance of items, including through the development of a set of criteria that could be used by the institution to assess whether an object should be referred to the Director for further consideration.

The Department of Tourism feel that this step would be critical in ensuring the role provided for in the Bill continues to align with the role and functions of the directors as set out in the establishing legislation and would not lead to the introduction of an administrative function that is outside their area of specialist expertise.

The Department of Finance would like it noted that any involvement, as this Bill envisages, in the imposition of new functions and power on the bank will require consultation by the Department of Finance with the European Central Bank, (ECB) on such a legislative proposal.

The Role of the National Museum of Ireland

The Department of Tourism raised concerns before the Joint Committee, regarding the drafting with regard to the scope and nature of the role designated to the director of the National Museum of Ireland. The Department of Tourism feel that engaging the directors of the National Museum of Ireland and the National Archives in particular in this consultation is essential to ensuring there are no adverse or unforeseen effects.

The Department of Tourism notes that, even though they have no objection to the Bill creating a vehicle for potentially valuable artefacts to enter the national collections, the current drafting may create a potentially significant administrative burden on the director or her nominees. As such, the Department of Tourism consider that further analysis of the number of such boxes and the short timeframe for examination by the director would be beneficial to the process.

The Department are conscious of an administrative burden that may be placed on the director of the National Museum of Ireland or her delegates of looking in every box. That would potentially be a huge amount of time requiring a variety of expertise depending on the kinds of artefacts involved. The Department of Tourism would be keen to see an intermediate step whereby there is some sort of pre-assessment.

Recommendation 5

The Committee recommends the insertion of an intermediate step before the role of the National Museum of Ireland, whereby there will be a pre-assessment to alleviate the administrative burden that may be placed on the director of the National Museum of Ireland or her delegates.

Indemnification

In public consultation with the Banking and Payments Federation Ireland (BPF), officials raised concerns in respect for the need for indemnification throughout the Bill, in case BPF members' compliance with the Bill should result in legal challenges in the future. They note the indemnification proposed under section 10 but believe that it should go further. While depositors or their representatives will be able to reclaim any items in the future or any funds realised from the sale of items, the latter may be deemed insufficient in the context of any sentimental or emotional value attaching to the item.

BPF members also mentioned concerns regarding the potential breach of data protection and the privacy rights of customers should items be accessed or sold without prior notification to the depositor or their representatives. The majority of items held by banks are more than likely to be of personal value rather than historical or cultural importance.

The Department of Tourism feels that there is a need to expand consideration of indemnity for the State in taking objects into the national collections. In addition to consideration of the general protections for the State and the director of the National Museum of Ireland, a further area of consideration not currently provided for in the Bill is where items have been conserved or restored and could be considered by an owner at a future date as an unlawful change to the object.

Records of the Former Irish Land Commission (ILC)

During the hearing with Finders International, it was discerned that there is an issue in reuniting those with their records that the access to the Irish Land Commission records can be unnecessarily arduous. The Committee agreed to write to the

Minister for Agriculture, Food and the Marine (hereafter referred to as the Minister/Department for Agriculture) on that matter and in their response, the Committee were informed that the Department have not granted the public access to Irish Land Commission records primarily to ensure the safekeeping of the records themselves which are old and fragile. The Department of Agriculture does not possess the expertise required to properly safeguard the collection in the context of managing public access to the records. In addition, the current premises housing the Irish Land Commission record was not designed with members of the public in mind and is not capable of accommodating public access to the records.

The Joint Committee further requested information on the Department of Agriculture's plans for these records to be digitised and made available online. The Department of Agriculture informed the Committee of the difficulty with digitising these records is that it is not practical given the sheer scale of the archive which contains anywhere between 8 and 11 million individual records. Other digitisation projects tend to be much smaller in scale and according to the Department of Agriculture, it is very unlikely that the Land Commission records could ever be digitised in full. Additionally, attempts at digitising the records could prove very costly in terms of effort and finance and may still be unable to deliver public access to the records.

Based on reasons outlined above, the Department of Agriculture has decided not to begin such a large-scale digitisation project for the full Irish Land Commission record collection and as such it might be preferable to transfer these records to another state body which might be more equipped to manage this process such as Tailte Éireann or the National Museum.

Recommendation 6

The Committee recommends that all former Irish Land Commission functions, records and land ownership issues should be transferred to another state body to improve the accessibility and transparency for the public. This does not relate to

this Bill, but the Committee made this recommendation based on submissions received.

Legal Scrutiny of Bill

A private meeting of the Joint Committee took place on 8 November 2023, following the Committee's public engagement on the Bill, for the purpose of obtaining a legal briefing from the Office of Parliamentary Legal Advisors (OPLA) on its analysis of the Safe Deposit Boxes and Related Deposits Bill 2022.

This analysis was undertaken in accordance with the Memorandum of Understanding between the Government and Dáil Éireann on Private Member's Bills adopted on 5th December 2018 and required that the Bill be examined, primarily taking account of the following questions:

- Is the PMB compatible with the Constitution?
- Is the PMB 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?

The OPLA's legal assessment of the Bill and the various positions presented in written submissions to the Committee and the arguments that were expressed in favour of and against the proposed Bill were noted by the Committee

Summary of the Office of Parliamentary Legal Advisors (OPLA) Advice

The OPLA opinion has considered in turn each of the questions required to be answered pursuant to the Memorandum of Understanding. These questions can be answered as follows:

- The Bill as drafted appears to be compatible with the Constitution. While there is some interference with the property rights and privacy rights of institutions and depositors under the Bill, this interference is both rationally connected to the legitimate aims of the bill and proportionate.
- The Bill appears compatible with the requirements of EU law. The Bill is GDPR compliant and provides a lawful and proportionate basis for the processing of personal data, within the meaning of the GDPR. As the Bill relates to the processing of personal data, the Data Protection Commission must be consulted in respect of it (GDPR, Article 36(4)). The Bill also appears compatible with the European Convention on Human Rights (which is binding on the State in international law and which has a number of bearings on how Irish law is interpreted and applied pursuant to the European Convention on Human Rights Act 2003). The Bill does give rise to some interference with the property and privacy rights of depositors, as guaranteed by Article 8 of, and the first Protocol to, the Convention. But this interference appears to be proportionate and in pursuit of a legitimate aim and is therefore likely to fall within the margin of appreciation afforded to contracting states under the Convention.
- A possible concern arising from the definition of “depositor” in section 2(1) was addressed in written submissions to the Committee. Having regard to well-established principles of construction and the presumption of constitutionality, the definition should not have the consequence of conferring the status of “depositor” on the executors, administrators, heirs and assigns of the person who deposited the property in a safe deposit box, even where that person was not the owner of the property or grant the status of “depositor” under the Bill to persons who do not, and whose ancestors never had, any right of ownership contained in the safe deposit box.

- The Bill does not appear to give rise to any unintended legal consequences stemming from its drafting.
- The Bill contains appropriate administrative and legal arrangements necessary for compliance with and enforcement of its provisions, in the form of criminal sanctions for breaches of certain sections of the Bill, and the application of the administrative and regulatory regimes contained in the relevant provisions of the Dormant Accounts Act 2001 and the Central Bank Act 1942 to the operation of the Bill.

The Committee endorses the recommendation outlined by the OPLA regarding typographical errors within the Bill.

Recommendation to the Dáil

In accordance with Standing Order 178(3), the Select Committee on Social Protection, Community and Rural Development and the Islands has met and determined that the Safe Deposit Boxes and Related Deposits Bill 2022 (PMB) may proceed to Committee Stage. A message to the Dáil has been issued in this regard.

Appendix 1 – Orders of Reference

Scope and context of activities of Select Committees (DSO 94 and SSO 70)

DSO 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); 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 officer – 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.

SSO 70

- 1) The Seanad may appoint a Select Committee to consider any Bill or matter and to report its opinion for the information and assistance of the Seanad and, in the case of a Bill, whether or not it has amended the Bill. 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 thereof, and may appoint a date upon which the Committee shall report back to the Seanad.
- 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 Seanad;
 - 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 108 (1); 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 officeholder of a State body within the responsibility of a Government Department, or

- iii. The principal officeholder of a non-State body which is partly funded by the State,

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

Functions of Departmental Select Committees (DSO 95 and SSO 71)

DSO 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) That 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 principal 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 of both Houses of the Oireachtas.

- 1) The Seanad may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Seanad 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 Seanad.
- 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 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 Dáil 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 Seanad: provided that the Joint Committee shall not consider –
 - a) The Committee Stage of a Bill,
 - b) Estimate 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 a Joint Committee pursuant to this Standing Order shall be a member of Dáil Éireann.
- 8) Where a Select Committee proposes to consider –
 - a) EU draft legislative acts standing referred to the Select Committee under Standing Order 116, 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 EC 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 reported laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 113 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 (DSO 96 and SSO 72)

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/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 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/Seanad, 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 DSO 197/SSO 168;
- 9) Subject to any constraints otherwise prescribed by law, power, to require that principal officeholders 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 officeholder may decline to attend for stated reasons given in writing to the Select 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 – Framework for Committee Scrutiny of Private Members Bills

In November 2017, the Sub-Committee on Dáil Reform sought an agreed position with the Government on the management of Private Members' Bills (PMBs) by

means of a Memorandum of Understanding⁸ ('MoU'). Following discussions between the Houses of the Oireachtas Service and the Department of the Taoiseach, a draft MoU was presented to the Sub-Committee on Dáil Reform for its consideration. The MoU was agreed by the Sub-Committee on 12 July 2018 and agreed by the Government on 24 July 2018.

One of the purposes of the MoU is to set out a comprehensive and transparent parliamentary scrutiny process for PMBs with the aim of enacting private members' legislation that is fit for purpose and legally sound.

The MoU is reflected in Standing Orders of Dáil Éireann (SO 178) and SO 178(2) provides for scrutiny of the PMB in the following:

"Scrutiny shall be conducted from a policy, legal and financial perspective, and in accordance with the guidelines set out in the Memorandum of Understanding agreed between the Dáil and the Government and laid before Dáil Éireann."

⁸ Report of the Sub-Committee on Dáil Reform, Memorandum of Understanding between the Government and Dáil Éireann on Private Members' Bills (Adopted by the Sub-Committee on 5 December 2018). Available [here](#)

Appendix 3 – Links to Submissions and Opening Statements

Submissions Received		
Banking and Payments Federation Ireland		Available here
Central Bank of Ireland		Available here
Finders International		Available here

Opening Statements		
24 May 2023	Kenneth Jordan, Principal Officer, Finance and Evaluation Unit, Department of Rural and Community Development	Available here
24 May 2023	Pat Leahy, Principal Officer, Department of Finance	Available here
24 May 2023	Deirdre Mahony, Principal Officer, Cultural Policy and Institutions Unit, Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media	Available here
31 May 2023	Maeve Mullin, Director, Finders International Ireland	Available here

21 June 2023	Michelle Byrne, Head of Consumer Banking, Banking and Payments Federation Ireland	Available here
-----------------	--	--------------------------------

Houses of the Oireachtas

Leinster House

Kildare Street

Dublin 2

Do2 XR20

www.oireachtas.ie

Tel: +353 (0)1 6183000

Twitter: @OireachtasNews

Connect with us



Download our App

