

DÁIL ÉIREANN

AN COMHCHOISTE UM CHOMHSHAOL, CULTÚR AGUS GAELTACHT

JOINT COMMITTEE ON ENVIRONMENT, CULTURE AND THE GAELTACHT

Dé Máirt, 30 Meán Fómhair 2014

Tuesday, 30 September 2014

The Joint Committee met at 2.15 p.m.

MEMBERS PRESENT:

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| Deputy Ruth Coppinger, | Senator Denis Landy, |
| Deputy Robert Dowds, | Senator Fiach Mac Conghail, |
| Deputy Michelle Mulherin, | Senator Hildegarde Naughton, |
| Deputy Brian Stanley, | Senator Labhrás Ó Murchú. |
| Deputy Peadar Tóibín, | |

In attendance: Deputy Sandra McLellan.

DEPUTY NOEL COONAN IN THE CHAIR.

SCRUTINY OF EU LEGISLATIVE PROPOSALS

The joint committee met in private session until 2.40 p.m.

Scrutiny of EU Legislative Proposals

Vice Chairman: We now continue our consideration of EU proposals: COM (2014) 397, which is on schedule A, and COM (2013) 943, COM (2014) 226, COM (2014) 290, COM (2014) 291, COM (2014) 459 and COM (2014) 466, which are on schedule B.

There is one proposal in schedule A which is COM (2014) 397. This is a proposal for a directive of the European Parliament and of the Council amending directives 2008/98/EC on waste, 94/62/EC on packaging and packaging waste, 1993/31/EC on the landfill of waste, 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries, waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic equipment. It is proposed that this proposal does not warrant further scrutiny. Is this agreed? Agreed.

There are six proposals on schedule B. The first is COM (2013) 943, a proposal for a Council regulation laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency. It is proposed that this proposal does not warrant further scrutiny. Is this agreed? Agreed.

COM (2014) 226 is a proposal for a Council decision determining the composition of the Committee of the Regions. It is proposed that this proposal does not warrant further scrutiny. Is this agreed? Agreed.

COM (2014) 290 relates to the conclusion on behalf of the European Union of the agreement between the European Union and its member states and Iceland concerning Iceland's participation in the joint fulfilment of commitments of the European Union, its member states and Iceland in the second commitment period of the Kyoto Protocol to the United Nations Framework Convention on Climate Change. It is proposed that this proposal does not warrant further scrutiny. Is this agreed? Agreed.

COM (2014) 291 is a proposal for a Council decision on the signing, on behalf of the European Union, of the agreement between the European Union and its member states and Iceland concerning Iceland's participation in the joint fulfilment of commitments of the European Union, its member states and Iceland in the second commitment period of the Kyoto Protocol to the United Nations Framework Convention on Climate Change. It is proposed that this proposal does not warrant further scrutiny. Is this agreed? Agreed.

COM (2014) 459 is a proposal for a Council decision amending Decision 2007/198/EURATOM establishing the European joint undertaking for ITER, the development of fusion energy and conferring advantages upon it. It is proposed that this proposal does not warrant further scrutiny. Is this agreed? Agreed.

COM (2014) 466 is a proposal for a directive of the European Parliament and of the Council relating to a reduction in the sulphur content of certain liquid fuels, that is, codification. It is proposed that this proposal does not warrant further scrutiny. Is this agreed? Agreed.

I propose we suspend for a few moments to allow the first set of witnesses to take their seats, after which we will consider the general scheme of the national cultural institutions (National Concert Hall) Bill 2014 with officials from the Department of Arts, Heritage and the Gaeltacht

and representatives from the National Concert Hall.

Sitting suspended at 2.40 p.m. and resumed at 2.41 p.m.

National Cultural Institutions (National Concert Hall) Bill 2014: Discussion

Vice Chairman: We will consider the general scheme of the national cultural institutions (National Concert Hall) Bill 2014 with officials from the Department of Arts, Heritage and the Gaeltacht and representatives of the National Concert Hall. Is that agreed? Agreed. I welcome Mr. Niall Ó Donnchú, assistant secretary, Mr. Kevin Lonergan, principal officer and Ms Orlaith Gleeson, assistant principal officer, of the Department of Arts, Heritage and the Gaeltacht and Mr. Gerry Kearney, chairman and Mr. Simon Taylor, chief executive of the National Concert Hall. I thank them for their attendance. I propose we take the opening statement of the Department first, followed by that of the National Concert Hall.

By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. However, if they are directed by the committee to cease giving evidence in relation to a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. Witnesses are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. I advise witnesses that the opening statements and any other documents they have submitted to the committee may be published on the committee's website after the meeting. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or any official by name or in such a way as to make him or her identifiable.

The purpose of the Bill we are considering is to give statutory status to the National Concert Hall in line with the governance and accountability regime that applies to other national cultural institutions. Accordingly, we will scrutinise the general scheme of the Bill today with the assistance of officials from the Department of Arts, Heritage and the Gaeltacht and representatives from the National Concert Hall, and, again, on 2 October 2014 with the assistance of representatives of RTE. We will then prepare a report on the general scheme of the Bill and present this report to the Minister for Arts, Heritage and the Gaeltacht, Deputy Heather Humphreys.

Mr. Niall Ó Donnchú: The Department welcomes the opportunity to address the committee on the general scheme of the national cultural institutions (National Concert Hall) Bill as part of its pre-legislative scrutiny process. The National Concert Hall is one of nine national cultural institutions that operate under the aegis of the Minister for Arts, Heritage and the Gaeltacht. It is the most prestigious music venue in the State, as well as being a national venue for the performance of various genres of music. The National Concert Hall is also responsible for the promotion and encouragement of the performance of music and of public knowledge, appreciation and enjoyment of music and the like arts. From its location on Earlsfort Terrace, it operated a busy programme of events that included 942 individual performances which attracted an aggregate of 315,508 patrons in 2013. Access to the arts, culture and Ireland's rich heritage are vital for preserving our society and national identity and helping to promote Ireland's image abroad. The arts, cultural heritage and creative industries also make a major contribution to our economy and to sustaining and creating jobs. Cultural tourism, to which these sectors bring

considerable value, also makes a significant contribution to economic well-being and the re-building of Ireland's reputation on the international stage. The NCH occupies a valuable place in the Irish cultural life and is a key element of our artistic infrastructure.

The hall itself was opened to the public in 1981. In tandem with the opening of the hall came the establishment of the National Concert Hall Company to run it. Specifically, the National Concert Hall Company was established as a company limited by guarantee and has operated on this basis ever since. It is now more than 30 years since the NCH was established. During this period there has been an evolution in the thinking and policies surrounding corporate structures and governance, and members will be aware of the Government's public service reform programme, which has led to an examination of the structures of a range of public sector institutions, including the national cultural institutions. In the context of that programme, among other things, the Department has sought to provide, or update where appropriate, the legislative underpinnings for various national cultural institutions to align them with modern corporate governance requirements. As part of this process, the Government recently considered the governance position at the NCH and on 25 February 2014 approved the then Minister's proposal to place it on a statutory footing similar to other national cultural institutions, both existing and proposed.

As stated previously, the NCH is structured as a company limited by guarantee. Companies operating under the Companies Acts must comply with the corporate governance, reporting and accountability provisions of those Acts. Reporting to a Minister or onwards to the Oireachtas is not normal practice for companies established under the Companies Acts. The Minister considered it more appropriate that there would be a statutory based framework for the NCH to provide for reporting and accounting to the Minister and onwards to the Oireachtas. The Minister also considered it essential that the board of the NCH should have absolute clarity in respect of the position on all governance and operational issues at the NCH. As this would not normally be a feature of how companies operate, the Minister considered it appropriate that separate and tailored statutory governance arrangements should be introduced for the NCH. As a statutory body, the NCH will be required to prepare and adopt a statement of strategy, submit progress reports and prepare an annual business plan, to be submitted as appropriate to the Minister and the Oireachtas. This is in common with changes being proposed for other national cultural institutions. Earlier this year, the then Minister put proposals to Cabinet, which approved the decision to introduce statutory governance arrangements for the NCH. The outcome of these deliberations is the general scheme of the national cultural institutions (National Concert Hall) Bill, which is before the committee for the pre-legislative scrutiny process.

Prior to outlining the provisions of the general scheme, I would like to comment on the approach adopted by the Department in its initial drafting of the Bill. In general terms, the purpose of the general scheme of the Bill is to establish the National Concert Hall as a statutory body and to put in place the necessary corporate and reporting structures and supports. The approach of the Department towards the general scheme has been enabling rather than prescriptive in so far as that it is possible. In addition, the Department has been conscious of the special position of the National Concert Hall, which has to operate with a commercial and public service remit, and the legislation endeavours to take account of that. Finally, the Department has drawn from the experience of similar types of legislation enacted in recent years in relation to other public bodies here and abroad.

Part 1 of the general scheme contains standard heads, such as provision for a commencement day and expenses of the Minister. Part 2 deals with matters such as the establishment of

the NCH as a statutory body and the date on which that will happen. It also covers matters such as the functions of the NCH. There is also a provision enabling the Minister for Arts, Heritage and the Gaeltacht to confer additional functions on the NCH. The general scheme also contains a number of heads dealing with the production of a statement of strategy, business plan and annual report by the NCH, and the processes that should be undertaken in this regard.

The next section of the general scheme deals with the board and staff of the NCH, and associated provisions. Head 17 deals with the board of the hall and provides the size of the board shall be cut from 15, as it currently stands, to nine. The Minister considers that the transition to a statute-based national cultural institution would best be managed by a focused expert board. It is provided that appointments to the board should draw on a wide range of experience and skills to ensure the National Concert Hall board has all the necessary range of skills and experience. Such a board might include experts in the fields of governance, accountability, law, music, marketing and venue management. It is intended to rotate board membership to ensure greater continuity at board level. This is a change from the current situation whereby the whole board is appointed at the same time and, accordingly, completes its term of office at the same time. It is intended the chair and the board will operate *pro bono*.

The heads also contain a provision dealing with committees. This will enable the board to include people who are not members of the board and is a useful way of widening the range of expertise available to the board for specific issues such as audit.

Head 23 provides an appropriate statutory underpinning for the position of the director and head 24 for the staff of the hall. In particular, head 24 confirms the staff of the hall will transfer to the new statutory body on the same terms and conditions as they held before the dissolution of the National Concert Hall Company.

Heads 28 to 31, inclusive, contain standard provisions concerning, for example, the ability of the National Concert Hall to borrow moneys and the conditions under which they can do so. Heads 32 to 37, inclusive, cover a variety of issues. A head has been included to enable the National Concert Hall to establish subsidiaries and enter into joint ventures or partnerships. In addition, head 36 deals with the establishment of foundations. The Department is cognisant of the dual operations of the National Concert Hall in both the commercial and public sector. Accordingly, it sees these heads as useful tools for the National Concert Hall. As a statutory body, the National Concert Hall will have enhanced capacity to engage in fund-raising. This, again, is common to other national cultural institutions which are already established as statutory bodies and which have strong fund-raising programmes.

Heads 38 to 44, inclusive, are directed at covering the transitional issues that may arise during the dissolution of the National Concert Hall Company and the establishment of the statutory National Concert Hall body. The primary aim is to place the new statutory body in the shoes of the National Concert Hall Company.

The Department has consulted with the National Concert Hall to obtain the perspective of its board and executive. This has been a useful exercise. I envisage consultations will continue with the hall to ensure the legislation is fit for purpose. In that regard, I would like to express my thanks to the chairperson, the board and the executive for their co-operation and assistance in that matter. The Department also looks forward to receiving the input of the committee when it has had a chance to consider the heads of the Bill.

The National Concert Hall occupies a special place in the Irish cultural world. The Depart-

ment recognises that and wishes to ensure that the general scheme of the Bill will recognise the strengths of the concert hall and leave it fit for operating in this dynamic environment. The coming period will be one of change at the National Concert Hall. The legislative reforms planned for this institution will greatly enhance it for the performers, the staff and the public who visit the National Concert Hall each year. I thank the committee for its attention. My colleagues and I look forward to assisting the committee in its deliberations on the general scheme of the Bill.

Vice Chairman: I thank Mr. Ó Donnchú for his opening statement. I call on Mr. Gerry Kearney to make his opening statement.

Mr. Gerry Kearney: On behalf of the National Concert Hall, I welcome this invitation to contribute to the committee's deliberations on the general scheme of the national cultural institutions (National Concert Hall) Bill 2014.

The proposed legislation presents an opportunity to establish in law the national standing of the National Concert Hall and to put it on an equal footing with other national statutory cultural bodies. Significantly, we also believe the legislation offers the potential to strengthen the hall's mandate and organisational capacity. It can further serve to secure its position as a cultural asset of national importance and considerable international standing, as well as providing a foundation for its further development as the national centre of excellence for the performance of music.

The National Concert Hall has both a public service and commercial remit. This context is one in which we must seek to balance the public interest role of the hall as the national venue with the challenges of conducting much of the operations in a commercial environment. This blend of public service and commercial activity is well reflected by the breakdown of the hall's direct income for 2013. In that year, two thirds or €4.563 million of the direct income was derived from our own income generating activities, while one third or €2.33 million was received from the State by way of a grant-in-aid. Our self-generated income includes diverse elements such as ticket sales, charges and commissions on the hire of the hall to external promoters, rental income from RTE in respect of the residency by the symphony orchestra, income from the catering and bar franchise, membership fees, corporate associates, commercial sponsorship, advertising and philanthropy. Against the background of these competing demands, we believe that the legislation should provide a clear mandate for the concert hall through the articulation of its statutory functions, well aligned with governance provisions appropriate to its commercial challenges.

By way of supporting the work of the committee, it might be helpful if I spoke briefly about the work undertaken to date by the NCH and our recommendations on areas in these proposals that we see as being of particular significance. Following publication of the general scheme, the board of the National Concert Hall established a sub-committee of its members to review the matter and identify areas of particular strategic interest. The sub-committee met on a number of occasions and presented its views to the board meeting at end July 2014. Following discussion, the board agreed an approach in what it saw as a number of key heads and provisions of the proposed Bill. These views were subsequently advised to the Department in early August. We are happy to bring these to the attention of the committee and to discuss them further with it.

At executive level, operational matters have been the subject of review and input by the senior management team and views thereon have also been provided to the Department. Consultations are continuing and the Department presented to the board at its meeting on Thursday

last, both on the context for the legislation and responding to particular proposals that we had put to the Department in August.

There was a small number of heads within the general scheme that we identified at board level as of particular significance. These broadly concern the functions of the National Concert Hall in terms of clarity regarding the purpose for which the hall is to be established on a statutory basis and the powers and functions of the board in support of the achievement and delivery of those functions, financial matters, staffing, and the establishment of subsidiaries. In brief, our focus in regard to the functions of the NCH and powers of the board is to set out the rich diversity of our work and to equip the board to secure its delivery. Our purpose in regard to the financial and staffing areas is to secure discretions and responsibilities appropriate to the commercial environment in which much of our work is undertaken. With regard to subsidiaries, we seek provision with respect to the establishment of these in furtherance of the objects of the National Concert Hall and subject to appropriate ministerial governance controls. Our ultimate purpose, therefore, is a legislative and governance framework that is clear, appropriate and congruent with the particular context and challenges of the NCH.

For completeness, draft recommendations on these heads, as previously forwarded to the Department, were provided to the committee by way of an appendix. We readily acknowledge that the language of the final text of the Bill will express quite differently the content of the heads themselves.

We believe that the establishment of the National Concert Hall on a statutory basis offers a unique platform to build on the hall's significant achievements over the last 30 years and can also serve to advance the opportunities that exist to develop the National Concert Hall to its full potential in the public interest. We are happy to meet the committee this afternoon and to support the committee in its consideration of the general scheme.

Vice Chairman: I thank Mr. Kearney for his opening statement. Before I call on members I extent a welcome to him. He is a fellow Tipperary man and it has not been a great weekend for us. I hope the legislation is more positive.

When Mr. Ó Donnchú was concluding his presentation he stated that the National Concert Hall occupies special place in Irish culture. I have only become acutely aware of that in recent times with the amount of patrons who travel to the NCH from rural areas. I was surprised, when I met some patrons recently in a discussion, to note how many travel up even for the summertime concerts. That is an indication of its special place. As Mr. Kearney was speaking, it crossed my mind that I was unsure whether the board welcomes this legislation. Can he clarify this for me?

Mr. Gerry Kearney: Yes.

Vice Chairman: Before handing over to members, I seek clarification on a few other matters. What might be the key areas of concern for the National Concert Hall, NCH, in respect of the Bill? It struck me that the concert hall's board might have some concerns or may be worried about the Minister having too much say or too much power.

Mr. Gerry Kearney: The general scheme has been discussed before the board twice, namely, on 31 July and last Thursday. The disposition of the board, having gone around the course a number of times, is that it welcomes the establishment of the National Concert Hall, NCH, on a statutory basis. We are of the view that it gives appropriate legal recognition to the prominence

of the NCH as a national institution. We have identified a number of key areas, through which I am happy to walk members briefly for the information of the joint committee, on which the board honed in as being important in respect of pursuing the interests of the hall within a statutory framework and of developing and building on the initial offering from the Department in the general scheme. I will list them briefly for the benefit of members. Heads 9 and 10 deal with the functions and powers of the National Concert Hall and in those areas, we seek and have proposed to the Department certainly a more succinct articulation of what the concert hall should be about. Much of what is contained in the general scheme is taken from the memorandum and articles of association, which are more than 30 years old and which were written in a different context. In this legislation, what we really need is a more succinct, focused and permissive articulation of what the hall is about. It needs some reflection at a policy level, as well as simpler and more clear language as to its particular remit, and this is what we have sought to offer the Department. We want to be absolutely clear that the board has the powers to deliver on this.

Heads 23 and 24 relate to the director and staff of the National Concert Hall and, in that space, the board's thinking is that as we are operating largely in a commercial environment, we need some of the freedoms that are enjoyed by commercial bodies and having us subject to the strictures of a Department is not really fit for the purpose of a body that now derives two thirds of its direct income from commercial activities. As for head 33, we welcome what is already there and have suggested this is important. We have introduced more explicitly the issue of fund-raising in this regard. In our deliberations, we noted that the first Schedule to the 1997 legislation governing the national cultural institutions lists the premises at which those bodies are located. We would really welcome it were it possible to reflect in law the premises of the NCH. We recognise this should not be a straitjacket and that, obviously, one would provide the Government and the Minister with the freedom to add additional provision to this, should they so wish. However, in seeking philanthropic giving, in respect of the confidence of donors and in having a National Concert Hall, it appears highly desirable that one would specify that its location would have statutory recognition.

The final point, on which I will conclude, is a horizontal issue in that within the financial area, the board has suggested some areas for improvement. We seek improved discretion in head 24 in terms of staff pay. Within head 30 in respect of accounts, we think our current system for the presentation and preparation of accounts is highly efficient and wish to hold onto that, rather than perhaps slowing it down by bringing it directly into the Comptroller and Auditor General process. Similarly, with regard to heads 33 and 34 in respect of gifts etc., we are happy to elucidate on those points should members so wish.

Senator Labhrás Ó Murchú: Is mian liom fáilte a chur roimh na finnéisithe inniu. Níl aon amhras faoi ná go raibh a gcur i láthair thar a bheith soiléir. I dtosach, tuigimid an tábhacht a bhaineann leis seo agus an struchtúr a bheidh ann ag dul ar aghaidh amach anseo. In welcoming the representatives of the Department and the National Concert Hall today, I first wish to compliment the NCH on the work and the track record it has established to date. It is true that it is central to the cultural life both of this city and of Ireland. I am pleased that reference was made to cultural tourism. Culture ranks exceptionally high in any surveys I have seen which studied visitor experience in this country. It often comes in the top three in such surveys. The importance of the National Concert Hall goes beyond what we would regard as the immediate perception, namely, a venue for performances. Many people might go as far as to say that for an up and coming performer to get onto the stage of the National Concert Hall is close to a player getting into Croke Park for an All-Ireland final. When talking about the National Concert Hall

we are talking about a significant cultural institution.

My first response to the general scheme is that it is vital for any healthy project to examine its position in society and in a changing environment. That is evident in what the National Concert Hall is doing. It is going a step further in that it is also identifying the challenges on the one hand and the opportunities on the other. That is exceptionally important. It is also important that any institution of this calibre must be able to show that two thirds of its income comes from its activities and that it is not completely dependent on the State. That presents a challenge and I am pleased to see the inclusion of that point.

I was not fully clear on the type of subsidiaries which are being considered. Perhaps the chairman, Mr. Kearney, might be able to say a bit more about that. It is good that the committee has an opportunity to examine a Bill at the general scheme stage. Previously, it was done and dusted and that was it. We have the opportunity to examine various aspects of the Bill but my mind has been very much put at ease by what the chairman said about the *modus operandi* that has been employed and the setting up of a sub-committee. It seems to have been done professionally, which is good, because very often with something that might be regarded as not so much radical but certainly a fundamental change in approach, it is very important when an approach is agreed that one can build on it and no subsequent controversies will arise. The method that has been used is very important.

How proactive a role does the board play in the operations of the National Concert Hall? The chairman probably knows where I am coming from with that particular question. It is an important point because we have had controversy in recent days about another institution. The institution in question could have done without it. For that reason, the approach in this case could, in a way, mark our cards in the future in terms of the role of the board and how often it meets. I do not expect the board to deal with bookings but it would be nice if the chairman could expand on the matter. The only two areas on which I seek more information is the type of subsidiaries being considered and to what extent the board is proactive.

I wish those involved in the National Concert Hall well in the future. I do not mind putting on record my admiration for the Department and the work it has done and the accessibility of officials. From experience, that does not apply in any other country. That is most encouraging and helpful. It is one of the marks of the Department of Arts, Heritage and the Gaeltacht. It has provided not just funding, which is one issue, but encouragement and understanding for the vision that arts and culture bodies have in this country. A very good partnership exists between the Department, the National Concert Hall and cultural institutions generally.

Mr. Gerry Kearney: I will take the second question first and ask my colleague, Mr. Simon Taylor, to give more detail on subsidiaries. Both questions are interesting and valuable.

I chair a number of bodies outside the State sector but the National Concert Hall, NCH, is most demanding, in terms of time and board activism. On governance, a number of areas have been identified as needing attention and much of the board's work is conducted through its sub-committees on governance, finance and audit, programme spectrum and so on. There are five sub-committees and they are used to the governance donkey work.

On operation and management, the Senator is correct that the board does not directly intervene but it has influence as there is a diverse range of talent on the board. Micheál Ó Súil-leabhair, from Luimneach, and various others are on the board and there is great talent there. The programme spectrum sub-committee considers the full spectrum of work and the balance

offered by the hall between, for example, traditional classical music and Irish traditional music or modern music. There is active engagement through the sub-committees but we seek to build on the boundaries between the board and executive. A review was carried out by Brigid McManus this year on improving governance at the concert hall and one of our current tasks is the implementation of this review. I acknowledge the prescience of the Senator on this point. In answer to the basic question, it is an active and challenging board that takes up time.

On subsidiaries, the purpose is fund-raising and the model used by other national cultural institutions is having a separate subsidiary for this purpose. I will invite the CEO to say more on this point.

Mr. Simon Taylor: Just for clarity, we are conscious that we receive a substantial State subsidy of €2.3 million or 30%. Obviously, this means we must draw from many other sources and the main contribution to the budget of the National Concert Hall comes from its own activity, including concert promotion, hiring out the hall and RTE. Traditionally, the hall has been weaker at raising money from the private sector through sponsorship, philanthropy and so on and we must develop this, though times are challenging in this regard. We believe an independent foundation that is under the scrutiny of the board will allow the National Concert Hall to develop further, especially in terms of the capital development of the site.

Deputy Ruth Coppinger: I thank the witnesses for the presentation and I have some questions, the first of which relates generally to the purpose of all this. I hear alarm bells ringing when I hear reference to the Government's public service reform programme. Private funding was mentioned so is this an attempt to make the National Concert Hall and other arts institutions more dependent on the private sector and less dependent on the Government? I have spoken to workers in various cultural institutions recently and some have been on strike - I am concerned by the impact on work conditions and terms of employment for staff. How will 24 confirmed staff transfer to the new statutory body on the same terms and conditions as previously? Will the staff remain public sector workers, or will new staff be recruited on the same terms and conditions?

Reference was made to the controversy concerning the governance and autonomy of national cultural institutions in view of recent events. Mr. Ó Donnchú said that we must have absolute clarity about how these boards will function. Can he confirm whether there are vacancies on the board of the Irish Museum of Modern Art at this time?

Vice Chairman: We are discussing the National Concert Hall today. There will be an opportunity to discuss vacancies on other boards at a later date.

Deputy Ruth Coppinger: When will that opportunity arise? The assistant secretary is here today and might know the answer to my question.

Vice Chairman: Mr. Ó Donnchú is here by invitation of the committee to discuss the national cultural institutions (National Concert Hall) Bill 2014.

Deputy Ruth Coppinger: He might want to answer.

Vice Chairman: As Chair of this meeting, I am explaining why he is here today.

Deputy Ruth Coppinger: Is the Chairman preventing Mr. Ó Donnchú from answering my question?

Vice Chairman: Does Mr. Kearney wish to respond to the Deputy's first question?

Deputy Ruth Coppinger: To clarify, is the Chairman preventing me from asking about another cultural institution?

Vice Chairman: I am pointing out to the Deputy the function of the committee today, which is to deal with the Bill in front of us.

Deputy Ruth Coppinger: My question is very much related to that Bill, because it is about how boards will be run and governed. Mr. Ó Donnchú may wish to answer it.

Vice Chairman: We are dealing with the National Concert Hall today. There will be separate legislation dealing with other bodies, and the Deputy will have an opportunity to raise this particular issue when we come to that legislation.

Deputy Ruth Coppinger: The issue is in the public domain at this time.

Vice Chairman: I have indicated what we are discussing today.

Deputy Ruth Coppinger: The Chairman is not allowing my question.

Vice Chairman: Does Mr. Kearney wish to respond to the Deputy's first question?

Mr. Gerry Kearney: It is perhaps more appropriate that Mr. Ó Donnchú should respond in the first instance, after which I will comment.

Mr. Niall Ó Donnchú: The Deputy asked whether these proposals are an attempt to make the National Concert Hall more dependent on the private sector. That is absolutely not the case. The purpose of the Bill is to update the governance framework within which the National Concert Hall operates. The special purpose vehicle that was established more than 30 years ago is no longer appropriate to the workings of a national cultural institution. The Bill sets out to apply an up-to-date statutory framework to the functions of the National Concert Hall. It is not an attempt to make it more dependent on the private sector. In fact, these provisions will ensure its future statutorily as a cultural institution, giving it more certainty than it has right now. There is no suggestion whatsoever in anything that is proposed here that would push it in the direction of more of its funding coming from the private sector.

What is envisaged is a complex funding model, as set out by Mr. Kearney. Unlike some of the other institutions, it involves a mixture of revenue streams, including from ticket sales and sponsorship, some income from philanthropy and partnerships, and one third coming from the public purses. That mix may vary in future, but we do not envisage a significant change in the level of public sector support. The purpose of the subsidiaries is to give the institution the flexibility into the future to move with the times and engage in third-party partnerships and other fund-raising activities.

The Deputy's second question was about the terms and conditions of employees. The staff of the National Concert Hall will remain within the public sector and transfer on the terms and conditions they currently enjoy. Mr. Kearney referred to a discussion that has been going back and forth between him and the Department around the flexibility which should be afforded the National Concert Hall, given its remit within the commercial sector, to allow a measure of adjustability in terms of staffing and terms and conditions. That is a policy issue in terms of public pay and so on and is probably not best grounded within the legislation. We must be mindful of not putting in place anything that is restrictive and would not allow the institution to capture

those types of opportunities. Just to confirm, staff in the National Concert Hall will transfer on the pay and conditions that they have at the moment. That is provided for very specifically in the legislation. I referred to the memorandum and articles of the National Concert Hall which currently allows for 15 members. The proposal in the legislation is to bring that number to nine.

Deputy Ruth Coppinger: The reason I ask is my information is that, for example, IMMA was to have 15 members which was then to be reduced to nine. It would have exceeded that with recent appointments. It is very relevant to this. It was the assistant secretary himself who raised the issue of clarity as to how the boards are governed and how much autonomy they will have.

Senator Fiach Mac Conghail: I thank all the witnesses who have attended. I wish to note at the outset and put on the record that I was appointed Senator as a nominee of the Taoiseach, I presume on the basis that I have some interest in and experience of the arts world. I also want to put on record that I am director of the Abbey Theatre, which is a national cultural institution, and I am a member of the council of national cultural institutions. I am familiar, therefore, with the work of many of my colleagues in the national cultural institutions. My questions come from the experience of having worked in both the commercial and subsidised sectors. I welcome the pre-legislative scrutiny because it is a non-combative way of trying to unpick the various issues. I see certain polite conflicts between the National Concert Hall and the Department on key areas.

It is stated in head 9, section 3 that the Minister may give general policy direction in writing to the hall board in the performance of its functions with the exception of functions relating to artistic and curatorial matters. It is an extraordinary power to give to any Minister. While artistic and curatorial matters are disassociated, I would like to hear from the chairman and Mr. Ó Donnchú as assistant secretary on this matter because in the running of a national cultural institution, there is very little to differentiate between putting on a play or a concert and the business of putting on that play or concert. A particular head would be required to define when an issue is not artistic and when it is not business. It is fairly predominant throughout the proposed scheme that the Minister has a huge amount of power in terms of managing and interfering, with no arm's-length principle, and that he or she can find many different ways to influence the board, from appointments to the board, the necessary qualifications for which are very vague and while some are listed, there is no mention of artists or composers being on the board, to the issue of gender balance, which is dealt with by requiring it to the greatest extent practical, whereas the Bill should be very clear about gender balance, to issues around the submission of the statement of strategy. My cynical reading of this is to see it as a way for the Minister to have day-to-day involvement in the running of the National Concert Hall. I would like to hear whether that is true and whether it is the intention. It is only a scheme and there might be a way we can unpick that. That is one broad question.

I welcome Mr. Ó Donnchú's statement that this is enabling rather than prescriptive legislation and that he has looked at similar types of legislation. What are the other examples of legislation, particularly in Ireland? The National Concert Hall is a quasi-commercial organisation which depends on punters buying tickets at a show, performance or concert and on how good that production is.

Its activity is fairly commercial so it has to be nimble and be able to turn on a sixpence. The general scheme of the Bill does not reflect the need to be nimble about staffing, notwithstanding the rights of the staff. Could Mr. Ó Donnchú and Mr. Taylor explain how they would manage the National Concert Hall's business in this environment?

My third question is for Mr. Kearney and the Department. Was the code of practice for the governance of State bodies considered an appropriate mechanism? What are its advantages? The only advantage I see is that the Minister has significant power over everything the National Concert Hall is doing. That is the only big difference because at the moment there is an arm's-length relationship between them. We should get some reassurance on that. I am concerned about the fit-for-purpose legislation.

Mr. Kearney has mentioned staffing, financial matters and what I call the nimbleness. He said too that there should be some discretion and responsibility appropriate to the commercial environment in which the work is undertaken. I do not see that reflected here. He has had various discussions with the Department. I do not see any of the board's suggestions in the general scheme of the Bill. Where does he think this committee might support the board?

This point might appear in other legislation but under head 23, section 9 relates to the fact that the director, who is the Accounting Officer has to go before committees and the Comptroller and Auditor General to give account of the board. Section 9, however, states:

In the performance of the duties of Director under subsection (8), the Director shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

Not only will the Minister control absolutely everything the National Concert Hall will do – in fact the Minister might as well be running the National Concert Hall – but this will emasculate the independence of the director general's view of policy. I might have misread this and I am happy to be corrected on that. Those are my broad concerns, that the Minister is increasing her power, which does not bode well in light of the recent issues around the Irish Museum of Modern Art. I could have misread all of this and I look forward to Mr. Ó Donnchú's reply.

Mr. Niall Ó Donnchú: I will start with the last question. The director of the National Concert Hall will not be the Accounting Officer. The Accounting Officer will be the Secretary General of the Department of Arts, Heritage and the Gaeltacht insofar as the concert hall's income from the Exchequer is concerned. I will come back to that question later.

I will start with the principles that governed the decision process-----

Senator Fiach Mac Conghail: It does say that the director shall be the “accountable person”.

Mr. Niall Ó Donnchú: Accountable person is different from Accounting Officer.

Senator Fiach Mac Conghail: Does that answer the question about not being critical of any Government policy?

Mr. Niall Ó Donnchú: Accounting Officer is a very different term. The accountable officer has very different responsibilities from the Accounting Officer. Perhaps it was a misuse of the term.

Senator Fiach Mac Conghail: But I refer to section 9.

Mr. Niall Ó Donnchú: The purpose of head 23 is to clarify the directors' accountability to the Committee of Public Accounts. It underlines the directors' accountability to the Oireachtas, and in tandem with the accountability there is an obligation on the director not to question or ex-

press an opinion on the merits of any policy of the Government or a Minister of the Government on the merits or demerits of the objective of such a policy. The provision is not unusual and has appeared in a number of recent pieces of legislation such as the 2014 Act governing the Irish Human Rights and Equality Commission, the Competition and Consumer Protection Agency Act 2014 and the Education and Training Boards Act 2013. I reassure members that there is no intention to subject a director to a standard that is different to the CEOs of other organisations appearing before Oireachtas committees. There is always a full and frank exchange of views between the directors of institutions and the Department. Such ongoing dialogue is essential to the way we conduct our business. Without it propositions such as the one before us do not pass the experience and operational test, which is crucial in terms of what informs legislation and what is taken into consideration. I hope that clarifies the issue.

That is what this exercise is all about in terms of pre-legislative scrutiny. We have an open mind when it comes to making sure that as civil servants making an input into the legislation we get feedback and get it right in so far as is foreseeable.

Senator Fiach Mac Conghail: In the spirit of what was said, and because of all the other questions around ministerial powers, it might be necessary to examine how the arm's length principle regarding the performance of the director might be enshrined in legislation, which clarifies the role of the Minister. We know that a way could be found by which that might be exposed.

Mr. Niall Ó Donnchú: Again, I can say that by going back to the principles on which this exercise is grounded, it was not the intention for the Minister in any way to step into the curatorial and artistic functions of the board or the director of the National Concert Hall, or any cultural institution for that matter. The policy direction provision which Senator Mac Conghail raised is based on section 5(3) of the Arts Act 2003, in which the arm's length principle is also grounded in a separate part of the Act. None the less, that is where it stems from. We are discussing the general scheme of the Bill and if the position needs to be clarified further then it is open to the committee to ask that it would be done.

Senator Fiach Mac Conghail: I thank Mr. Ó Donnchú. Certainly when it comes to the Arts Council, one can see why a Minister would give direction, because the Arts Council is a policy organisation whereas the National Concert Hall is not.

Vice Chairman: I will allow Senator Mac Conghail to speak again later but I wish to be fair to the other two members who wish to ask questions. We will get a response to the questions already asked and then I will allow them to ask questions. The Senator will have other opportunities to speak again.

Senator Fiach Mac Conghail: That is okay.

Mr. Niall Ó Donnchú: The second question related to the skills of those on the board. Again, we must bear in mind that we are discussing the general scheme of the Bill. Head 17(4) refers to the fact that the board shall have regard to the need for appropriate expertise on the board, such as skills and/or expertise in arts and music, learning and access, finance, business, administration, marketing, fund-raising and philanthropy. Head 17(2) states that all appointments by the Minister shall have regard to an independent assessment process based on a published skills matrix to be drawn up by the Minister and managed by the Public Appointments Service. I hope that clarifies the point. Clearly, there will be a reference to gender quotas, as appropriate to legislation as well.

Senator Fiach Mac Conghail: Could I interject on one point, a Chathaoirligh, because it is important, as we are discussing the general scheme? It might be appropriate for us to consider whether the chair of the board might also have an input into the skills matrix, because he or she would have a sense of the skills that might be required where there are vacancies to fill.

Mr. Niall Ó Donnchú: Yes, and the director.

Senator Fiach Mac Conghail: Yes.

Mr. Niall Ó Donnchú: One other point related to examples of other legislation. Going back to the guiding principle here, in response to Senator Mac Conghail on the blend and balance to which the Vice Chairman also referred, the intention here is not to push the National Concert Hall towards one particular facet of its role, that is, the so-called public service remit, or towards the other one that is grounded in a more commercial environment. We seek here - Senator Mac Conghail is correct that there are few examples of it - almost to blend and balance both so that it veers neither one way nor the other. Part of the rationale for consultation with the board and the executive was to proof that through their operational experience of how it works as they operate in that environment every day.

There has been a lengthy consultation. The chairman of the board gave a flavour of some of the issues that have come up. We have taken quite a few of those on board - I do not propose to go through them. That consultation continues, in terms of refining and distilling this, and the feedback from this committee will be part of the consideration set before the Bill is finalised and produced.

Mr. Gerry Kearney: I will take some of the questions and my colleague will take others.

On the Senator's first point about the powers of the Minister, this was raised at the board and we had a number of questions in particular regarding head 9.3 about where was the precedent for this and how does it work in practice. As the committee heard, the Department responded by quoting section 5(3). We saw the other exercise of powers around the heads as fairly consistent with statutory provision, with the exception of heads 23 and 34, where flexibility and agility is needed in staff numbers and hiring. We need more space there.

The next question we asked about head 9.3 was how consistent this was with the provisions and requirements on other national institutions. We did not want to be oppressed by provision for ministerial direction. If these were standard provisions, our sense was that these were legacy provisions and we could see considerable benefits in them being looked at afresh. That was reflected in our deliberations.

Senator Fiach Mac Conghail: Is there more opportunity to discuss with the Department how this might consolidate the artistic and business management independence? The Arts Council is different because it is a development agency and the National Concert Hall is not such an agency. In a sense, the hall is producing an art product and commissioning art work. As someone who has worked on both sides, including for a Minister, there is scope there for ambiguity. Has that been discussed at the board?

Mr. Gerry Kearney: I set out clearly the interests of the board in ensuring that we have adequate discretions. There is an acceptance as well about the accountability that goes with it. It is not simply about the Oireachtas and Government losing control. There is also a trade-off in terms of increased accountability. We have raised questions in relation to the remit of the Minister, particularly under head 9.3. We would certainly welcome that as something the De-

partment may wish to look at through the drafting process.

On a final point before I hand over to the CEO, the response to our points is not reflected in the general scheme because the general scheme came to the committee before the response. The board responded fairly positively to the feedback from the Department in understanding the points we raised and seeing they had a reasonable legitimacy. The code of practice already applies to the board and to the body, and that is not an alternative.

In response to Deputy Coppinger's point, we are moving the concert hall closer to the firmament of the public service by placing it on a statutory basis and by explicitly making the staff effectively public servants where their entitlements and pension arrangements travel with them. That is an alternative perspective, as opposed to taking them off a statutory basis and pushing them into a private company which would be quite a different discourse. I acknowledge the points she raised. I met staff last week and addressed that point - the importance of their participation, their understanding and their reassurance that their terms and conditions are preserved in the new arrangement.

Vice Chairman: Before Mr. Taylor responds, a vote has been called in the Seanad so I will let in Senator Naughton.

Senator Hildegarde Naughton: I thank the Vice Chairman. I apologise but I will be obliged to leave in a few moments. I welcome the witnesses. Head 2 is the usual provision enabling the Minister to grant further functions under the Act. While this is quite in order, I would prefer the granting of further functions to be done with the addition of a requirement for consultation with the relevant Oireachtas committees. I address this point to the Chairman and to the representatives of the Department. Would they have any difficulties with this? I also welcome the reduction in the numbers on the board from 15 down to nine. I would welcome the appearance of all members-designate before this committee prior to their confirmation. In the case of this institution, perhaps the eight ordinary members could appear together and the chairperson could appear separately. This would be to ensure the presence in the cultural institutions of the particular expertise outlined by the Department.

Finally, in respect of heads 23 and 24, to which Mr. Kearney already has made reference. I note that in its submission the National Concert Hall is seeking powers to hire staff in its own right on whatever terms it deems appropriate. However, the heads contain the usual statutory provisions about seeking the consent of the line Minister, as well as that of the Minister for Public Expenditure and Reform in this regard. I recognise that the Minister has a duty to ensure there is value for money and must ensure there are reasonable salary caps for executives. However, the Comptroller and Auditor General is eminently suited to the role of ensuring that people do not lose the run of themselves. Do the witnesses believe there is a requirement for both Ministers to be involved or to give their consent in this particular instance? I apologise but as a vote has been called in the Seanad, I must leave.

Vice Chairman: I apologise to Mr. Taylor, who may now resume.

Mr. Simon Taylor: I thank the Vice Chairman. It was simply to revert to the point asked by Senator Mac Conghail on the challenges the operation of the concert hall faces, being both a public service and a commercial organisation. To a large extent, this cuts to the very core of this proposed legislation because it is a tricky one on which to get the right balance, as I believe everyone recognises. However, we are in a special place in being a national cultural institution while at the same time having as significant a commercial operation as we do. We have all ex-

ercised quite a lot of time in trying to find a perfect model for this and this process is showing up that we still have a little bit of work to do in this regard.

For us, the challenge is that, obviously, we welcome and absolutely endorse the public service remit we have in supporting the musical life and fabric of the country. However, we also recognise we must operate in a way that is on a good business footing. In trying to make decisions on what is the statutory provision, therefore by nature of this we must have a good deal of independence of operation to make the necessary business decisions that also would help to support the public service remit of the hall. I do not perceive the two things as being mutually antagonistic in any way. To a large extent, our successful commercial operation helps to underpin further our success in delivering the public service remit. We must find the right balance and if this legislation can help us to achieve this more effectively than our current model, then we all would welcome it.

Vice Chairman: I thank Mr. Taylor. Does Deputy Mulherin wish to put a question?

Deputy Michelle Mulherin: No, I simply am interested in this debate and welcome the witnesses. Senator Mac Conghail, in conjunction with many of the other questions posed, raises interesting questions about the whole idea of accountability. I refer to the idea that artistic integrity and that side of things be preserved, but yet the realisation that once one is talking about taxpayers' money, one is not actually independent. Consequently, integrity and independence are actually two different things and this debate is really bringing this point to the fore. Members have had a few debates on this issue previously and to my mind, when it is taxpayers' money, then it is the policy of Government or general arts policy. However, that can only be healthy if there is a dialogue going on with those who actually are experts in the field and that it is not a dictatorial process. The Minister is not necessarily going to be an expert in the arts. On the Minister's side, and in the public interest, one would always like to think that these policies that are forthcoming are well debated in the democratic sense, and therefore that the public interest is being accounted for and that pressure is being put on people within the arts where they are being funded by taxpayers to reach out to the community, to be relevant to the public and to get more people involved in and feeling the benefit of the arts. As Mr. Carney has pointed out, we are talking about a statutory basis which would copperfasten the public service side of things and I understand the legislators are teasing through issues. I would welcome it and I welcome this debate also.

Vice Chairman: In responding perhaps Mr. Kearney would address the questions posed by Senator Martin as well, heads 2, 23 and 24, powers to hire staff, cap on executives' salaries, etc.

Mr. Gerry Kearney: Certainly. From where we are standing, consultation on the proposal in regard to additional functions being conferred is very welcome. I have a small suspicion, and I am sure the staff of the Department is better equipped on this matter, that one would want to have a fairly good legal reference for the conferral of additional functions on a statutory body when those functions are already set out. It would want to be fairly cautiously framed. It has to be relevant to what the Oireachtas has approved. The proposal for consultation is very welcome but even within that there would be certain limits that the courts would set on what was appropriate for a Minister to confer, even with the agreement of the body.

Going back to Deputy Mulherin's point, there is a balance to be struck between accountability and independence. The narrative is probably a general policy issue about board members coming before Oireachtas Committees as a collective. There are certain merits there. It is perhaps unusual to hear it from this side of the table, but there are merits beyond what is put on

a paper application and put into an institutional process. Part of it is about interpersonal competence and there is a part that is richer than that. I think the proposal was trying to reach into that. It is a matter of public policy that goes well beyond ourselves, but the suggestion certainly has merit that the Department may wish to consider.

Mr. Simon Taylor: If I may add one thing which has been missed but which is very important. Currently the board of the National Concert Hall is appointed in entirety every five years. In the legislation it is proposed to introduce a degree of board rotation, which means we will have a much better governance paradigm where we will have proper rotation of the board and not a completely new start every five years. That is independent from the size of the board but simply from an operational point of view this makes much more business sense and I welcome it.

Mr. Niall Ó Donnchú: Taking up the points raised by Senator Naughton, head 11 is the one she was referring to, it is based on section 15 of the National Cultural Institutions Act which contains a similar provision, as does the Arts Council Act. Section 15 of the National Cultural Institution Act requires that an order conferring similar functions should be laid before the Houses of the Oireachtas in draft form and subject to a motion approving the draft. That may be an option but I would not disagree with the general consensus emerging here today, which is valuable to have.

In regard to the pay issue, we cannot have it both ways *per se*, subject to what I was saying earlier about flexibility, and as Senator Mac Conghail calls it, being able to respond to market forces. If one is in the public sector, one is subject to public sector pay constraints and that means approval by the Minister subject to the approval of the Minister for Public Expenditure and Reform. We are working through that policy point around nimbleness and so on. Already the National Concert Hall is able to act flexibly in terms of bringing in some casual staff to deal with particular pressures. The important aspect in the context of legislation is that we do not put in place something that is restrictive. We have to be very wary of unintended consequences. It is important we do not put in place something that is restrictive and does not enable that. We have to be very wary of unintended consequences.

Vice Chairman: I thank Mr. Ó Donnchú. That concludes our consideration of this topic today. We will consider it further with representatives of RTE at our next meeting at 10 a.m. on Thursday, 2 October 2014. I thank members for their consideration and co-operation on this matter. I also thank Ms Orlaith Gleeson, Mr. Niall Ó Donnchú, Mr. Kevin Lonergan, Mr. Simon Taylor and Mr. Gerry Kearney for assisting us in our consideration of this matter today.

The joint committee adjourned at 3.50 p.m. until 10 a.m. on Thursday, 2 October 2014.