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L&RS Note

Private Members' Bills (PMBs): Admissibility, Government messages and detailed scrutiny (updated Note)

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30 May 2019

Abstract

This *L&RS Note* is concerned with Private Members' Bills (PMBs) in the Houses of the Oireachtas. It outlines the circumstances in which **'Money Messages' and 'Financial Resolutions'** from Government are required for PMBs to progress and explains the rationale behind these financial requirements and looks at how similar restrictions are applied in other parliaments. **It explains the purpose and key changes to process brought about by a Memo of Understanding between Government and the Dáil (December 2018**) concerning the provision of Money Messages and the undertaking of 'detailed scrutiny' of PMBs– a new stage in the PMB legislative process.. A list of the PMBs currently awaiting Government Messages is set out. An *infographic* of the PMB process accompanies this *Note* (Appendix 4).

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Legal Disclaimer

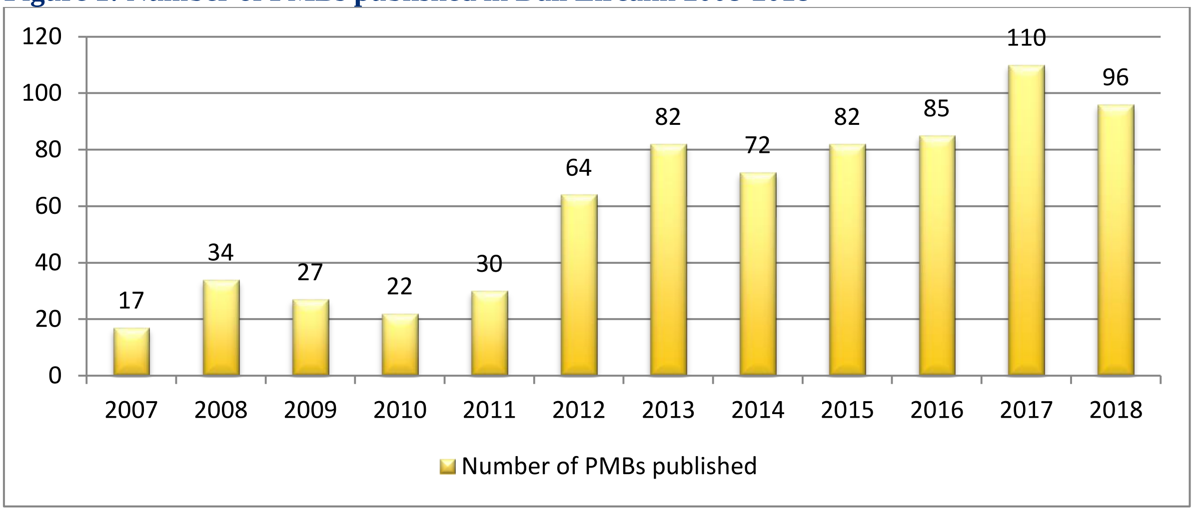
1. Introduction: Private Members' Bills and review of process

A Private Member's Bill (PMB) is a draft law which is proposed by a single Member (Teachta Dála or Senator) or a group of Members, rather than by the Government. PMBs differ from Government Bills in a number of respects; a Government Bill has prior approval from Cabinet, it is drafted by the Office of the Parliamentary Draftsman and, in many cases, a draft of the Bill (i.e., the 'heads' or alternatively, the 'General Scheme') will have been subject to pre-legislative scrutiny by a parliamentary Committee.[1] Further, while the aim of legislation generally is passage through parliament and enactment, PMBs can be used for a variety of purposes. For instance, a PMB can be used as a policy instrument by a Member to initiate debate on legislative and policy change. While successfully steering a PMB from publication to the statute book is one way of achieving legislative or policy change, Members use PMBs in different ways and with different objectives, for example:

- To encourage the government to change policy/legislative approach to an issue;
- To address a gap identified in the law (either through its passage and enactment or government taking it on board);
- To bring new ideas into the legislative process and ensure they get a hearing;
- To respond to topical public and media concerns about an issue and, as such, act as a culmination of the policy debate;
- To attract publicity and build a campaign for a proposed change in the law.[2]

The number of PMBs published has **increased quite dramatically since 2011**. This is primarily the outcome of procedural changes introduced in the 31st Dáil which created more plenary time for the debate of Private Members' Bills and provided a 5-minute slot for a Deputy to outline the PMB's purpose on introduction.[3]

Figure 1: Number of PMBs published in Dáil Éireann 2008-2018



The distinct effect of the make-up of the 32nd Dáil on Private Members' Bills has been **to increase the rate at which PMBs pass Second Stage,** which signals that the general principle of a Bill is supported (or, at least, is not actively opposed) by a majority.

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[1] For a description see Oireachtas Library & Research Service (2014) Pre-legislative scrutiny and parliament

[2] Gleaned from discussion in Brazier and Fox 'Enhancing the backbench MP's role as legislator: the case for urgent reform of Private Members' Bills' *Parliamentary Affairs* (2010) Vol.63.1 pp. 205-207

[3] See Infographic at the end of this *Note* for full description of the stages of the legislative process for PMBs.

While the number of PMBs initiated in the Dáil increased in the 31st Dáil (Figure 1), only 15 PMBs were agreed at Second Stage[4] and only four PMBs were enacted.[5] By way of contrast, 99 PMBs (originating in either House) have been agreed at Second Stage in the 32nd Dáil up to 27 May 2019.[6] Of these PMBs, 68 are at 'referral to Committee' stage and 55 of these 68 require a Money Message from the Government before they may proceed to formal, section-by-section examination at Committee Stage (see Section 2 for discussion). This has also been the effect in the 25th Seanad which, as of 27 May 2019, had agreed 45 PMBs at Second Stage, including seven PMBs which had originated in the Dáil (which have subsequently been enacted).[7]

Table 1: PMBs which have been enacted during the 32nd Dáil

Bill Number	Name of Bill	Sponsor	Originating House
Bill 46 of 2017	Parental Leave (Amendment) Bill 2017	Roisin Shorthall	Dáil
Bill 21 of 2018	Consumer Protection (Regulation of Credit Servicing Firms) Bill 2018	Michael McGrath	Dáil
Bill 26 of 2017	Intoxicating Liquor (Amendment) Bill 2017	Billy Lawless	**Seanad**
Bill 23 of 2017	Mental Health (Amendment) Bill 2017	James Browne	Dáil
Bill 104 of 2016	Intoxicating Liquor (Breweries and Distilleries) Bill 2016	Alan Kelly	Dáil
Bill 103 of 2016	Fossil Fuel Divestment Bill 2016	Thomas Pringle	Dáil
Bill 78 of 2016	Irish Sign Language Bill 2016	Mark Daly	**Seanad**
Bill 37 of 2016	Petroleum and Other Minerals Development (Prohibition of Onshore Hydraulic Fracturing) Bill 2016	Tony McLoughlin	Dáil
Bill 8 of 2016	Competition (Amendment) Bill 2016	Ivana Bacik	**Seanad**
Bill 88 of 2014	Central Bank and Financial Services Authority of Ireland (Amendment) Bill 2014	Pearse Doherty	Dáil

The increase in the number of PMBs has been the focus of some criticism in the media, in particular since the minority government was elected in 2016. On the one hand, critics have blamed high numbers of PMBs for 'clogging up the Dail schedule', including that of its Committees,[8] and thereby slowing up the process of scrutinising and passing legislation. On the other hand, the number of

[4] Agreed at second stage means that the Dáil agrees with the general principles of a Bill and that it should proceed to Committee stage.
[5] In 2011-2015, even if a PMB passed Second Stage (i.e. if the Government did not oppose it at Second Stage) Committees had in-built government majorities.
[6] This figure of 99 includes: 2 PMBs with 'deferred readings; 18 PMBs at 'order for Committee Stage';' 68 at 'referral to Committee Stage' in the Dáil' 1 at 'Order for Report/Report Stage' in the Dáil and 10 PMBs which have been enacted (7 originating in the Dáil and 3 in the Seanad).
[7] 45 Bills originating in the Seanad have been agreed at second stage. Of this figure, one has a deferred reading, 27 are at 'referral to Committee' stage, 4 are at 'order for report /report stage, and 10 are at various stage of the legislative process in the Dáil. A further 10 have been agreed at second stage in the Seanad and have been enacted (three of which originated in the Seanad – Table 1).
[8] For example, *Irish Times* 18 March 2018 Dail returns to its largest in-tray in history; *The Journal,* 19 March 2017 Findfact:'One year in: is this really a do-nothing Dáil?'

PMBs stalled and awaiting Money Messages from the Government, a process explained and described in Section 2 below, has been criticised, and it has been suggested that a rule designed to ensure fiscal responsibility should not be used for any other purpose.[9]

Review of PMB process

The process and the support services for the drafting and scrutiny of Private Members' Bills have been under review by the sub-Committee on Dáil Reform. On foot of a report which it commissioned on the services of the Office of the Parliamentary Legal Advisers (OPLA) (November 2016), a drafting service has been established to ensure that PMBs are drafted to high standards. Research for the policy development is offered by the Oireachtas Library and Research Service.

Following discussions during 2017 and 2018, a **Memorandum of Understanding (MoU)** on Private Members' Bills was agreed between the Government and the sub-Committee on Dáil Reform, and was formally adopted by the Dáil, along with necessary changes to Standing Orders, in December 2018. Its purpose is to put in place a process which supports a Member's right to propose legislation, parliament's duty to scrutinise legislation, and Government's duty to ensure fiscal responsibility. It sets out a 'detailed scrutiny process' for PMBs, as well as a process through which the Government will engage with requests for Money Messages. The MoU process has led to some changes to the legislative process for PMBs, which are described in detail in Section 3 below.

Section 2 explains the rationale for, and the process around, the financial requirements for PMBs.

Section 3 outlines the role of detailed scrutiny (pre-Committee Stage) before and since the MoU.

Section 4 provides data on the status of PMBs in the Houses of the Oireachtas as of 12 April 2019.

This *Note* is almost exclusively focused on the Standing Orders of the Dáil. However, PMBs initiated in the Seanad are clearly also subject to this process when they reach the Dáil. As all Bills must be approved by both Houses prior to becoming law, Bills (including PMBs) which are initiated in the Seanad must be approved by the Dáil. As the Dáil is supreme in matters financial,[10] the financial requirements for PMBs are provided for in Dáil Standing Orders.

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[9] See Kieran Coughlan (former Clerk of the Dáil) in *Irish Times* 26 July 2017 'Government relying on little-known rule to block PMBs'

[10] The combined effects of Articles 17, 21, 22 and 28.4 of the Constitution is to give the Dáil, on the Government's initiation, a constitutional primacy in the area of State finances. See JM Kelly *The Irish Constitution* 4th Edition (2003) p.337.

2. Financial restrictions on PMBs

2.1 Money Messages and Financial Resolutions

There are restrictions on PMBs which propose to either incur expenditure or to impose a charge on the people (raise tax) which can be traced to the Constitution.

Articles 17 and 28.4.4 of the Constitution have been together interpreted as giving the Government more-or-less exclusive authority ***to propose*** what public expenditure should be incurred and what taxes should be imposed, while giving parliament the right to approve the proposals.

Under the Constitution (Article 17.2), the Dáil **may not *pass* legislation** that involves the **expenditure** of public monies without a prior recommendation by Government supporting such expenditure, signed by the Taoiseach.[11]

Article 28.4.4 provides that the Government must prepare annual 'estimates of the receipts' (money received/raised by the State) and 'estimates of expenditure' of the State for each financial year and present them to the Dáil for consideration. Article 17.1.1 requires the Dáil to consider these estimates of receipts and expenditure as soon as possible after their presentation by the Government. Under Article 17.1.2, the legislation required to give effect to the Financial Resolutions (i.e., the Budget) of each year – i.e., the Finance Bill – should be enacted within that year.[12]

Box 1: Article 17.2 Bunreacht na hÉireann

Article 28.4.4:	**The Government shall prepare Estimates of the receipts and Estimates of the expenditure of the State for each financial year, and shall present them to Dáil Eireann for consideration.**
Article 17.1	**17.1.1** As soon as possible after the presentation to Dáil Éireann under Article 28 of this Constitution of the Estimates of receipts and the Estimates of expenditure of the State for any financial year, **Dáil Éireann shall consider such Estimates** **17.1.2** Save in so far as may be provided by specific enactment in each case, the legislation required to give effect to the Financial Resolutions of each year shall be enacted within that year.
Article 17.2	Dáil Éireann ***shall not pass*** any vote or resolution, and no law shall be enacted, for the appropriation of revenue or other public moneys unless the purpose of the appropriation shall have been recommended to Dáil Éireann by a message from the Government signed by the Taoiseach."

A key **rationale for restricting the right of financial initiative to Government** is that active legislative bodies (i.e. those with wide powers to control expenditure and revenue) have been found to be prone to a pro-spending bias.[13] One analyst describes the role of parliament in initiating expenditure as a balancing act "between legislative control of the budgetary process (of expenditure in general) and a budget that is under control".[14] Parliaments of the Westminster system deal with this tension by using procedures that severely restrict the power of legislators to initiate Bills (or amendments to Bills) which incur a charge on the public purse (including amendments to the

[11] Under Article 28.6.3 of the Constitution the Tánaiste may sign on behalf of the Taoiseach.
[12] Note that Financial Resolutions in the Constitution refers to budget resolutions only. The Financial resolutions in Standing Orders are different and refer to the resolutions obtained to allow legislation which involves increases to, or new, taxation to progress. This is explained below.
[13] Wehner Joachim (2010) *Legislature and the Budget Process* Palgrave, MacMillan p. 141.
[14] Wehner Joachim (2010) *Legislature and the Budget Process* Palgrave, MacMillan p. 141.

executive's budget). A **comparative analysis** of how provisions with a similar intent are operated by the Standing Orders of other parliaments of the Westminster tradition (Appendix 1) finds that restrictions on proposing and debating Bills which have financial implications are applied similarly in the UK House of Commons and the Australian Federal Parliament, and more liberally in the Canadian House of Commons and the New Zealand Parliament, where there is more scope to progress PMBs which incur expenditure. Below we explain how these provisions are operated via Dáil Standing Orders on non-Government Members' right to propose legislation (PMBs).

Under Dáil Standing Orders 178 and 179,[15] TDs who are not Ministers may initiate PMBs which involve expenditure or tax-raising, provided they are incidental to the main purpose of the Bill. **However, in the event that such PMBs are approved at Second Stage, the Bill may not be taken at formal Committee Stage without: (a) a 'recommendation' from the Government (Money Message) in the case of expenditure, or (b) a Financial Resolution approved by the Dáil on a motion from a Member of the Government, in the case of taxation.** The Money Message constitutes the recommendation from Government required by Article 17.2 of the Constitution. The Financial Resolution reflects the purpose of the various constitutional provisions which give the Government the broad right of initiative in relation to financial matters.[16]

These Standing Orders (178 and 179) affect the process of initiating, and progressing, a PMB.

Process of initiating and progressing a PMB[17]

A PMB, once drafted, is currently examined for compliance with Dáil Standing Orders at two points in the legislative process, the first prior to its introduction, and the second after a PMB has passed Second Stage. The second examination may take place in two stages and, since the MoU, is not complete until after the detailed scrutiny report on the Bill has been laid in the Oireachtas library (provided the detailed scrutiny process has not been waived – see Section 3 below). (See Appendix 4 for detail of stages in the legislative process.)

1. Examination prior to initiation: is the PMB in order?

Once a PMB is drafted and submitted to the Office of the Ceann Comhairle**,** the **Bills Office** examines it and advises the Ceann Comhairle, who may rule the Bill out of order prior to initiation (first stage in the legislative process) if it contravenes Dáíl Standing Orders. A ruling at this stage means that the Bill cannot be published and printed. A PMB contravenes Standing Orders if one of the conditions (A) or (B) in Table 2 is met. In sum, a Bill is admissible **only** if the cost (either the proposed charge/tax on the people or proposed expenditure) is *incidental* to the overall purpose of the Bill (Box 2).

[15] All references to Dáil Standing Orders refer to the 2016 edition.
[16] See footnote 11 above.
[17] An *infographic* on the PMB process is provided as Appendix 4 of this Note.

Table 2: Conditions under which a PMB is ruled 'out of order' (Standing Orders 178 and 179 and 147)

	Conditions	Detail
A	Charge / Tax	It constitutes a **charge (a tax) on the people,** *other* than an incidental** charge (Standing Order 178(1))
B	Appropriation of Revenue / Expenditure	It constitutes **appropriation of revenue (any expenditure of public moneys from either voted moneys (Departmental or State bodies or agencies) or the Central Fund** (*other* than incidental expenditure) (Standing Order 179(1)).
C	Substantially similar Bill	A Bill may not be initiated if it is identical or substantially similar to a Bill which has already been printed, or for which the Dail has already given leave to introduce (Standing Order 147(3A)). Where the Ceann Comhairle is examining Bills for compliance with Standing Orders, and finds that two or more Bills are identical or substantially similar, the Member sponsoring the Bill first received by the Ceann Comhairle shall be the member permitted to present or move for leave to introduce it.

**Incidental to the purpose of the Bill' (see Box 2 below)

Box 2: 'Incidental' charges / costs and rulings on admissibility

Costs / charges which are incidental to the main purpose of the Bill generally refer to 'ancillary' expenditure or revenue which would arise from the implementation of the proposed legislation. In the case of expenditure, this concept allows most PMBs to be initiated while precluding Bills where the expenditure involved is such that it could not be said to be incidental to the main purpose of the Bill. The test here is whether the expenditure is intrinsic to the achievement of the main purpose of the Bill. The scale of the expenditure is a factor to be weighed, but is not the sole consideration. Decisions on admissibility of Bills are, in effect, rulings on the application of general principles in Standing Orders and, as such, they are applied on a case-by-case basis, based on an assessment of each individual Bill. This process may involve "fine-drawn lines of distinction" [Ruling 142(a) of the Salient Rulings of the Chair].

Illustrative examples:

For example, a PMB might be ruled out of order on introduction where it proposes **a charge** such as:

- An increase in the TV licence fee for all users
- A congestion charge for all motorists

…on the basis that the revenue-raising proposal is not incidental to the Bill's overall purpose. If it's deemed to be incidental, a Financial Resolution would be required prior to Committee Stage (see ***Second Examination*** below).

For example, a PMB may be ruled out of order on introduction where it proposes **expenditure** such as:

- Free Medical Care for children up to 18 years
- A Home help package to be provided automatically to all those over 65

…on the basis that the appropriation of revenue or other public moneys is not incidental to the Bill's overall purpose (rather, it is the purpose of the Bill). If it's deemed to be incidental, a Money Message would be required prior to Committee Stage (see ***Second Examination*** below).

Once a PMB is ruled 'in order' (admissible) by the Ceann Comhairle, it is placed on the Order Paper for **first stage (introduction).** At first stage a Member makes a five-minute speech in favour of his/her proposed legislation and seeks the permission (leave) of the House to introduce it. Once a Member has this permission, the Bill is published and tabled for a Second Stage debate, following which there is a House decision on the general principles (policy) of the Bill.[18] Note that it is also

[18] A PMB may be listed on the Order Paper for many months before it is scheduled for a Second Stage debate.

possible for a 'Parliamentary Group' to present a PMB under Standing Order 143F(1). This means that the Group does not need to seek the permission of the House to publish and print the PMB and it instead proceeds directly to order for Second Stage (provided that it is admissible along the lines outlined above).[19] However, a Group may only have one such PMB on the Order Paper at any one time. Accordingly, the vast majority of PMBs are introduced by individual Members, rather than presented by a Group.

2. Examination following Second Stage: is a Message/Motion from Government required?

If the PMB is approved at Second Stage, it is examined to assess whether a Money Message or a Financial Resolution is required before it may proceed to formal Committee Stage.

- **Where a PMB involves public expenditure which is incidental to the purpose of the Bill, a Money Message from Government is required** for it to proceed to formal section-by-section examination at Committee Stage (Standing Order 179, which is intended to implement the recommendation required under Article 17.2 of the Constitution).
- **Where a PMB imposes an charge on the people (tax) which is incidental to the purpose of the Bill, a Financial Resolution – brought forward on a motion proposed by a Member of the Government and approved by the Dáil – is necessary** *before* the Bill is taken at formal Committee Stage (Standing Order 178).

Incidental expenses under Dáil Standing Order 179 may include research and consultation on, and development of a new policy, its implementation and monitoring, a subsequent review process, and possible enforcement costs.

Table 3: Financial Resolutions and Money Messages

Financial Resolutions	Money Messages
Required in cases **where a PMB proposes a charge (tax) on the people** *including* where incidental to the purpose of the Bill.	Required in cases where a PMB proposes **expenditure of public moneys from either voted moneys (Departmental or State bodies or agencies) or the Central Fund** *including* where incidental to the purpose of the Bill.
Proposed on a motion by a member of the Government –on approval by the Dáil, becomes a resolution.	Provided by the Government and printed on the Order Paper.
	There are three categories of Money Messages depending on the fund the cost would be charged to: *Oireachtas Money Messages* occur where the expenditure incidental to the purposes of the Bill proposed by the PMB would come out of a Department's voted expenditure (approved annually by the Dáil); *Central Fund Money Messages* occur if the incidental expenditure proposed is from the Central Fund (non-voted or Exchequer funding); *Oireachtas and Central Fund Money Messages* are a combination of both of the above.

While a PMB which involves a charge or expenditure **cannot** proceed to formal Committee Stage without a Money Message/Financial Resolution from Government, **neither is required for a Bill which passes Second Stage to undergo 'Detailed Scrutiny' by the relevant Select or Joint Committee.** In fact, under the MoU (December 2018), this stage is no longer discretionary but a requirement (with some caveats). It will take place before a request for a Money Message is issued, and the outcome (the Committee's **report on detailed scrutiny) will be taken into consideration when making a final determination on the need for a Money Message.** The purpose of the detailed scrutiny stage, which was a focus of the MoU discussions along with the process of providing Money Messages, is discussed in Section 3 of this *Note.*

Government decisions on Money Messages

Whether or not to provide a Money Message or propose a motion for a Financial Resolution is a Cabinet decision and is therefore subject to Cabinet confidentiality. Requests for Money Messages are processed by the Department of Public Expenditure and Reform (DPER) and requests for Financial Resolutions by the Department into which the policy area falls. Both liaise with the Department of the Taoiseach in respect of the Cabinet decision. Standing Orders do not set down a time-frame within which a Money Message or motion for a Financial Resolution must be either provided or declined by Government. This has contributed to the growing number of PMBs at 'referral to Committee Stage' (on the Order Paper described as at 'Order for Committee Stage') which have yet to receive a response to a Money Message request, and it was a key reason for the review of the PMB process and the MoU. When the MoU was agreed in December 2018, 69 PMBs were at 'referred to Committee Stage', the vast majority requiring a Money Message to proceed.

The MoU has sought to address this problem by requiring Government to respond to a request within an agreed timeframe, subject to the Committee having conducted and concluded detailed scrutiny. The process is described in Section 3 below, after a brief section on one further financial requirement.

2.2 Other financial requirement: opinion of the European Central Bank (ECB)

Under Article 127(4) of the Treaty on the Functioning of the European Union, national authorities must consult with the ECB, and give due consideration to its opinion, where it is considered that a Bill (either initiated by Government or a Private Member) may impact on the ECB's competencies, e.g. that it:

- Impacts on the **role of the Central Bank of Ireland** (as a national central bank within the Euro-system[20] which is governed by the ECB); and/or
- Relates to rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets.

Article 2(1) of Decision 98/415/EC lists the categories explicitly considered to be within the ECB's field of competences[21] regarding draft legislative provisions, although this list is not exhaustive:

- Currency matters;
- Means of payment;
- National central banks;

[20] The Central Bank of Ireland represents Ireland in the Eurosystem (euro area central banks and the ECB). The Eurosystem is governed by the ECB, which is responsible for monetary policy (i.e., currency) for the euro area, comprising 19 Member States of the European Union. The wider European System of Central Banks (ESCB) comprises the ECB and the national central banks of all EU Member States, whether they have adopted the euro or not.

[21] See: ECB (2015) *Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions*, October 2015.

- The collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics;
- Prudential supervision (Single Supervisory Mechanism – SSM);
- Payment and settlement systems; and
- Rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets.

In addition, all euro area Member States must consult the ECB on draft legislative provisions concerning the instruments of monetary policy.

Box 3: Article 127(4) of the Treaty on the Functioning of the European Union

The European Central Bank shall be consulted:
- on any proposed Union act in its fields of competence;
- **by national authorities regarding any draft legislative provision in its fields of competence,** but within the limits and under the conditions set out by the Council.

The European Central Bank may submit opinions to the appropriate Union institutions, bodies, offices or agencies **or to national authorities** on matters in its fields of competence in accordance with the procedure laid down in Article 129(4) of TFEU.

The consultation process is intended to ensure that the national legal framework in general:
a. Contributes to the achievement of the objectives of the ECB and/or the European System of Central Banks (ESCB);
b. Is compatible with the legal framework of the Eurosystem/ESCB and of the ECB; and
c. Is in line with Eurosystem/ESCB and ECB policies.

How this Treaty requirement is implemented is a matter for each national authority. In Ireland, Dáil Standing Orders effectively provide that a PMB on which an ECB consultation is required may not be taken at Committee Stage until that process is complete and the outcome has been reported to the Dáil. (However, if the ECB does not provide an opinion within the deadline set, that cannot prevent the progress of the Bill – see below.)

Admissibility test (ECB)[22]

The assessment as to whether an ECB consultation is necessary is done at the same time as the admissibility test for PMBs which have passed Second Stage (see page 9 above and Appendix 2). Following this assessment, the Ceann Comhairle will advise the Bill sponsor on whether an ECB consultation is required. If it is, the relevant Committee sends the request to the President of the European Central Bank. The Committee may set out a timeframe within which to receive a response (as set down in Article 3(1) of the Council decision 98/415/EC); the deadline must be at least one month from the date on which the President of the ECB receives notification.[23] Once the time limit has expired, the relevant authorities (in this case, the Dáil) can continue the procedure for considering the draft legislation, which has been suspended during the ECB consultation, i.e. the Bill may be taken at formal Committee Stage. If the Committee receives an ECB opinion after this date and when formal Committee Stage has commenced, the opinion is laid in the Oireachtas library.

[22] Since January 2019, this process is set out in Dáil Standing Order 148C.
[23] The ECB may request an extension of the time limit for up to an additional four weeks and cannot be "unreasonably declined" by the consulting authority. The time taken, which varies depending on the nature, complexity and sensitivity of the draft legislative provisions concerned, is on average approximately six weeks from receipt of notification.

It is important to note that in cases where an ECB opinion is needed, a PMB cannot proceed to Committee Stage until the ECB consultation has been completed and an opinion has been received (except where the ECB fails to respond by the agreed deadline). However, national legislators are **not** obliged to follow the ECB's opinion. The requirement is designed to ensure that national legislation is adopted only after **due consideration of the ECB's opinion**. All opinions are also published on the ECB's website.[24] Under Dáil Standing Order 148C, the Committee should include the outcome of a consultation with the ECB in its detailed scrutiny report.

Box 4: Summary of admissibility tests for compliance with financial requirements

- A PMB ***may not* be initiated** in the Dáil (at first stage) if it constitutes a charge on the people (a tax, levy) or expenditure of public money except, in both cases, where it is incidental to the purpose of the Bill;
- Where a PMB will result in expenditure incidental to the purpose of the Bill, it may proceed to formal Committee Stage **only with a Money Message** from Government;
- Where a PMB will result in an charge on the people (tax raising) incidental to the purpose of the Bill, it may proceed for formal Committee Stage **only with a Financial Resolution** (on a motion from a Member of the Government agreed by the Dáil);
- Where a PMB may impact on the competencies of the European Central Bank, it may proceed to formal Committee Stage **only if the correct procedure for consulting with the ECB is followed**.

[24] Full detail of the ECB process ECB (2015) *Guide to consultation of the European Central Bank by national authorities regarding draft legislative proposals*, October 2015.

3. 'Detailed Scrutiny' of a PMB

'Detailed Scrutiny'– a new stage in the legislative process for PMBs - was introduced in 2016 in response to the increasing numbers of PMBs passing Second Stage and with a view to ensuring that PMBs are subjected to a similar level of scrutiny as are Government Bills (via the pre-legislative scrutiny process introduced in November 2013). Taking place after Second Stage, and prior to formal Committee Stage, 'detailed scrutiny' is undertaken even where a Financial Resolution, Money Message or opinion from the ECB is required to proceed to formal Committee Stage.

'Detailed scrutiny' and procedure before and since the MoU

Prior to the MoU, following approval at Second Stage, a PMB stood at 'referral to Committee Stage' in the legislative process and, under Dáil SO 141, it was referred to the relevant Select Committee for 'detailed scrutiny'. Detailed scrutiny *was* at the discretion of the Committee (i.e., the Committee decided whether or not detailed scrutiny was necessary), and on conclusion of detailed scrutiny, the Committee would report to the Dáil or to both Houses as appropriate (for role of the Seanad in detailed scrutiny, see Box 5 below).

The MoU has introduced two key changes to this process. First, Standing Orders have been amended to make 'detailed scrutiny' compulsory, rather than discretionary, provided that: (a) the sponsor of the PMB requests that the Committee undertake detailed scrutiny, and (b) the Business Committee does not grant a 'waiver for detailed scrutiny' (on application from the Committee or the sponsor).[25] After scrutiny (which may be undertaken by the Joint Committee as per Box 5), the Committee lays its report before the Dáil, followed by a message which makes a recommendation on whether the PMB should proceed to formal Committee Stage. A request for a Money Message (or Financial Resolution) is issued *after* the scrutiny report is laid.

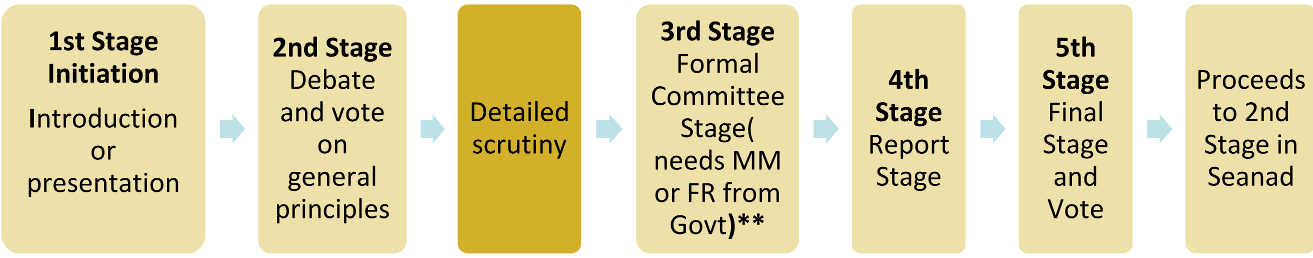
Secondly, once a detailed scrutiny report is laid, and a request for a Money Message has issued, under the MoU, the Government will respond within six weeks with either a Money Message or a 'reasoned response' which explains why it will not provide a Money Message (drawing on the Government's analysis of the Bill <u>and</u> on the Committee's report).[26] It may set out the necessary steps for a Money Message to be granted.[27]

Yet if the steps set out in a reasoned response would require amendments to the PMB, a Member may have to seek permission to introduce a new (re-drafted) PMB if he/she wishes to progress the initiative. This is because amendments cannot be tabled until formal Committee Stage which itself cannot be taken without a Money Message.

For the many PMBs at 'referral to Committee' in the Dail for which a Money Message was requested prior to the commencement of the MoU (15 January 2019), it was agreed that the Government would respond in the agreed time-frame as soon as a detailed scrutiny report had been laid.

[25] Dáil Standing Orders 148A and 148B (revised edition, 2019)
[26] The MoU is silent on Financial Resolutions.
[27] Under the MoU, if the Government cannot meet this deadline (for example because of a heavy departmental legislative workload), the Minister will write to the Committee outlining a proposed different time-frame.

Figure 2: Dáil PMB legislative process (as of January 2019)



** Needs Money Message or Financial Resolution if it involves expenditure or taxation which is incidental to the Bill's purpose (if expenditure/taxation is not incidental to the purpose of the Bill, the Bill will already have been ruled out of order prior to introduction).

Box 5 Joint Committee and detailed scrutiny

Under SO148B(4), detailed scrutiny may be undertaken by a Joint Committee of the Dáil and Seanad (rather than by the Dáil Select Committee). To date, 'detailed scrutiny' has generally been undertaken by Joint Committees. The Joint Committee then reports to both Houses prior to formal Committee Stage which is undertaken by the Dáil Select Committee.

There is **no** provision in Seanad Standing Orders for a similar process of 'detailed scrutiny' by Senators of a 'Seanad' PMB. As such, when a Seanad PMB is approved at Second Stage, it proceeds to formal Committee Stage, a stage which tends to be taken by a Committee of the whole House. Seanad Standing Order 150 does permit a PMB, on conclusion of Second Stage, to be "referred to some other Committee" (i.e., other than Committee of the whole Seanad) but this occurs rarely. If a Seanad PMB passes all stages in the Seanad, it proceeds to Second Stage in the Dáil, and, at this point, it will follow the same procedure as a Dáil PMB.

The approach to detailed scrutiny

Under revised Standing Orders, a Committee should examine the PMB from a policy, legal and financial perspective in accordance with guidelines which are set out in a scrutiny framework in the MoU (Appendix 3).[28] In general, a Committee will seek to hear from:

- The PMB's Sponsor (explanatory memos are now mandatory on publication of all Bills);
- The relevant Minister and/or his departmental officials;
- Other relevant stakeholders and experts who can bring evidence to bear on the PMB.

A Committee will receive assistance in the form of a pre-meeting briefing paper which identifies key issues for its consideration from the Library and Research Service. A Committee will consult the Office of the Parliamentary Legal Advisers (OPLA) regarding legal and drafting issues.

The outcome of 'Detailed Scrutiny' is a report to the Dáil which is, in effect, a political judgement on the PMB and the policy underlying it. This report is laid before the House (or Houses in the event that scrutiny is undertaken by a Joint Committee). The report may refer to topics such as the policy gap the Bill is attempting to address, the broad legislative and policy context, possible issues with the Bill which would require amendmentsat formal Committee Stage, and/or possible unintended legal or policy consequences which should be addressed. It will frequently engage with proposed Government legislation or other PMBs with similar policy intentions. It is open to the Committee to consider the possible financial implications of a PMB and, where a PMB might require a Money

[28] A draft scrutiny framework, which had been prepared by L&RS and Committee Chairs in April 2017, was updated and is part of the MoU.

Message, this may, in fact, be useful. Under revised Standing Orders (January 2019) a report should be followed by a message which makes a recommendation on whether or not the PMB should proceed to formal Committee Stage (Figure 2).

4. Status of PMBs before Committees (as of 27 May 2019)

As of 27 May 2019, there were **68** PMBs at 'referred to Committee' stage in the Dáil. Of these 68, 55 require a Money Message (one of these 55 requires a Financial Resolution). Of the 55, in three cases, Money Messages have been granted, and in two cases, a Money Message has been refused by way of a reasoned response from Government.

In 17 of the cases requiring a Money Messages, a 'detailed scrutiny report' has been laid by the Committee, and detailed scrutiny is underway in many other cases (Table 3). Given the six-week time-frame for a response to a Money Message request in cases where a detailed scrutiny report has been laid, a response from Government is anticipated shortly for a number of these bills. Fourteen PMBs at referral to Committee Stage do not require a Money Message to proceed. In five of these cases a detailed scrutiny report has been laid (Table 4).

The two reasoned responses to money message requests in respect of PMBs published to date are available at the links below:

Waste Reduction Bill 2016

Committee report is here; reasoned response is here. An *L&RS Note* provided an exchequer-cost-estimate analysis of the Waste Reduction Bill 2017 [PMB] and closely related proposals. It can be accessed here.

Local Government (Town Council Commission) Bill 2017

Committee report is here, reasoned response is here.

All PMBs approved at Second Stage in the Dáil after 15 January 2019 (under the MoU) are at 'order for Committee Stage', as well as a number of other earlier PMBs. As of 27 May 2019, there are 18 PMBs at 'order for Committee Stage.' These PMBs require an order to be formally referred to Committee. The status of these Bills, including where detailed scrutiny has commenced, is set out in Table 5.

Table 3: PMBs referred to Select Committee and requiring a Money Message

	Name	Money Message Required (requested)	Money Message Received	Detailed scrutiny report laid (or otherwise)
1	Anti-Evictions Bill 2018	Y required	N	Scrutiny underway
2	Bail (Amendment) Bill 2017	Y 18/09/2018	N	Scrutiny required
3	Banded Hours Contract Bill 2016	Y 11/09/2017	N	Scrutiny not scheduled
4	Cannabis for Medicinal Use Regulation Bill 2016	Y 20/02/2017	N	Yes
5	Central Bank (Amendment) Bill 2018	Y 06/03/2018	N	Scrutiny not scheduled
6	Civil Liability and Courts (Amendment) Bill 2018	Y 19/11/2018	N	Scrutiny not required
7	Civil Liability (Amendment) (Prevention of Benefits from Homicide) Bill 2017	Y 23/10/2018	N	Scrutiny underway
8	Consumer Insurance Contracts Bill 2017	Y 03/10/2017	N	Yes
9	Consumer Protection (Amendment) Bill 2017	Y 18/09/2018	N	Yes
10	Coroners Bill 2015	Y 22/09/2016	N	Yes
11	Criminal Justice (Aggravation by Prejudice) Bill 2016	Y 03/03/2017	N	Yes
12	Criminal Justice (Victims of Crime) (Amendment) Bill 2018	Y 16/11/2018	N	Scrutiny scheduled
13	Digital Safety Commissioner Bill 2017	Y 27/03/2018	N	Scrutiny underway
14	Education (Amendment) Bill 2015	Y 05/10/2016	N	Yes
15	Electoral (Amendment) (No. 3) Bill 2014	Y 03/03/2017	Y 22/05/19	Yes
16	Employment Equality (Abolition of Mandatory Retirement) Bill 2016	Y 27/03/2017	N	Yes
17	Equality(Miscellaneous Provisions) Bill 2017	Y 09/03/2018	N	Scrutiny concluded Report not laid
18	Famine Memorial Day Bill 2016	Y 16/05/2018	N	Scrutiny not scheduled
19	Flood Insurance Bill 2016*	Y 16/05/2017	N	Yes
20	Gambling Control Bill 2018**	Y 12/06/2018	N	Scrutiny required
21	Garda Síochána (Amendment) (No. 2) Bill 2014	Y	Y 08/11/2016	Scrutiny not scheduled
22	Genuine Progress Indicators and National Distributional Accounts Bill 2017	Y 27/03/2018	N	Scrutiny underway
23	Harassment, Harmful Communications and Related Offences Bill 2017	Y 09/02/2018	N	Scrutiny not required
24	Housing (Homeless Families) Bill 2017	Y 05/12/2017	N	Scrutiny complete report not laid
25	International Protection (Family Reunification) (Amendment) Bill 2017 [*Seanad*]	Y required	N	Scrutiny completed Report not laid
26	Irish Human Rights and Equality Commission (Gender Pay Gap Information) Bill 2017 [Seanad]	Y 25/01/2019	N	Scrutiny not required
27	Island Fisheries (Heritage Licence) Bill 2017	Y 09/02/2018	N	Yes
28	Judicial Appointments Commission Bill 2016	Y 23/11/2016	N	Yes
29	Local Government (Establishment of Town Councils (Commission) Bill 2017	Y 05/07/2017	N - MM refused 29/03/2019	Yes
30	Local Government (Restoration Of Town Councils) Bill 2018	Y 30/10/2018	N	Yes
31	Local Government (Water Pollution) (Amendment) Bill 2018	Y required	N	Scrutiny required
32	Mental Health Parity Bill 2017	Y 03/07/2018	N	Scrutiny not required
33	Microgeneration Support Scheme Bill 2017	Y required	N	Scrutiny scheduled

34	Mortgage Arrears Resolution (Family Home) Bill 2017	Y 03/10/2017	N	Yes
35	Multi-Party Actions Bill 2017	Y 05/12/2017	N	Scrutiny concluded report not laid
36	National Famine Commemoration Day Bill 2017	Y 27/04/2017	Y 02/05/2018	Yes
37	Online Advertising and Social Media (Transparency) Bill 2017	Y 05/02/2018	N	Scrutiny underway
38	Pensions (Amendment) (No. 2) Bill 2017	Y 02/03/2017	N	Scrutiny underway
39	Petroleum and Other Minerals Development (Amendment) (Climate Emergency Measures) Bill 2018	Y 27/05/2019	N	Dáil agreed to discharge requirement to report on detailed scrutiny 28/03/2019
40	Prisons (Solitary Confinement) (Amendment) Bill 2016	Y 20/02/2017	N	Yes
41	Protection of Employees (Collective Redundancies)Bill 2017	Y 05/07/2017	N	Scrutiny not scheduled
42	Provision of Objective Sex Education Bill 2018	Y 12/06/2018	N	Scrutiny not scheduled
43	Public Services and Procurement (Social Value) Bill 2017	Y 03/03/2017	N	Scrutiny required
44	Residential Institutions Statutory Fund (Amendment) Bill 2016	Y 15/11/2017	N	Scrutiny not scheduled
45	Residential Tenancies (Amendment) Bill 2018	Y 05/02/2018	N	Scrutiny required
46	Residential Tenancies (Greater Security of Tenure and Rent Certainty) Bill 2018	Y 10/07/2018	N	Scrutiny underway
47	Residential Tenancies (Student Rents, Rights and Protections) Bill 2018	Y 10/07/2018	N	Scrutiny underway
478	Sale of Illicit Goods Bill 2017	Y 16/11/2018	N	Scrutiny not scheduled
49	Sale of Tickets (Sporting and Cultural Events) Bill 2017	Y 20/02/2018	N	Yes
50	Shared Maternity Leave and Benefit Bill 2018	Y required	N	Not scheduled
51	Statute of Limitations (Amendment) Bill 2018	Y required	N	Scrutiny required not yet scheduled
52	Urban Regeneration and Housing (Amendment) Bill 2018	Y 18/09/2018	N	Scrutiny underway
53	Vacant Housing Refurbishment Bill 2017	Y 11/10/2017	N	Scrutiny concluded report not laid
54	Vulnerable Persons Bill 2015	Y required	N	Scrutiny required not scheduled
55	Waste Reduction Bill 2017	Y 18/10/2017	N - MM refused 21/03/2019	Yes

* The Flood Insurance Bill 2016 requires a Central Fund Message** The Gambling Control Bill 2018 requires a Financial Resolution.***Scrutiny not scheduled generally means that a final decision has not yet been made on whether scrutiny is required. Note for any Bills agreed at second stage after 15 January 2019, the committee does not have this discretion.

Table 4: PMBs referred to Select Committee and not requiring a Money Message

	Name	Date referred	Detailed scrutiny Report laid
1	Central Bank (Variable Rate Mortgages) Bill 2016		Yes
2.	Consumer (Credit) Amendment Bill 2018		Decision on scrutiny not yet made
3	Equal Status (Admission to Schools) Bill 2016		Decision on scrutiny not yet made
4	Ethical Public Investment (Tobacco) Bill 2017		Decision on scrutiny not yet made
5	Garda Síochána (Amendment) Bill 2017		Scrutiny concluded report not laid
6	Health and Social Care Professionals (amendment) Bill 2016		Yes
7.	Maternity Protection Members of the Houses of the Oireachtas Bill)		Scrutiny not required
8	Medical Practitioners (Amendment) Bill 2017		Yes
9	Petroleum and Other Minerals Development (Amendment) (Climate Emergency Measures) Bill 2018		Scrutiny concluded report not laid
10	Ramming of Garda Vehicles Bill 2015		Decision on scrutiny not yet made
11.	Social Housing Bill 2016		Decision on scrutiny not yet made
12	Thirty-fifth Amendment of the Constitution (Water in Public Ownership) (No. 2) Bill 2016		Yes
13	Thirty-fourth Amendment of the Constitution (Presidential Voting) Bill 2014		Yes
14	University College Galway (Amendment) Bill 2017		Decision on scrutiny not yet made

Table 5 Bills at 'order for Committee Stage'

PMB		Sponsor	Detailed scrutiny
1.	Housing (Sale of Local Authority Housing) Bill 2016	Barry Cowen	Order for Committee
2	Local Government Reform (Amendment) (Directly Elected Mayor of Dublin) Bill 2016	John Lahart	Order for Committee
3	Local Government (Mayor and Regional Authority of Dublin) Bill 2016	Eamon Ryan, Catherine Martin	Order for Committee
4	Nursing Home Support Scheme (Amendment) Bill 2016	Willie O'Dea	Order for Committee
5	Equality (Miscellaneous Provisions) (No. 2) Bill 2017	James Browne, Jim O'Callaghan, Fiona O'Loughlin	Order for Committee
6	Management Fees (Local Property Tax) Relief Bill 2018	Darragh O'Brien	Order for Committee
7	Comptroller and Auditor General (Amendment) Bill 2017	Dara Calleary	Order for Committee
8	Prohibition of Above-cost Ticket Touting Bill 2017	Noel Rock, Stephen S. Donnelly	Order for Committee
9.	Civil Liability and Courts (Amendment) Bill 2019	Barry Cowen	Order for Committee

10.	Finance (Office of Tax Simplification) Bill 2018	Michael McGrath	Order for Committee
11.	Sex Offenders (Amendment) Bill 2018	Maureen O'Sullivan	Order for Committee
12.	Road Traffic (All Terrain Vehicle and Scrambler Motor-cycle) (Amendment) Bill 2019	John Lahart, John Curran	Order for Committee
13.	Treatment of Cancer (Advertisements) Bill 2018	Kate O'Connell	Order for Committee
14.	Landlord and Tenant (Ground Rent) (Amendment) Bill 2017 [*Seanad*]	Robbie Gallagher	Order for Committee
15	Health (Pricing and Supply of Medical Goods) (Amendment) Bill 2018	John Brassil	Detailed scrutiny requested and underway
16	Control of Economic Activity (Occupied Territories) Bill 2018 [*Seanad*]	Niall Collins	Detailed scrutiny requested and underway
17	Industrial and Provident Societies (Amendment) Bill 2018	Clare Daly, Joan Collins, Maureen O'Sullivan, Catherine Connolly, Thomas Pringle, Mick Wallace, Thomas P. Broughan	Detailed scrutiny requested and underway
18	No Consent, No Sale Bill 2019	Pearse Doherty	Detailed scrutiny requested and underway

In total, Money Messages have been issued in respect of seven Private Members' Bills in the 32nd Dáil:

Table 6: Money Message granted in respect of PMBs in the 32nd Dáil

Bill	**Current status**
Electoral (Amendment) no.3 Bill 2014	Referral to Committee Stage
Intoxicating Liquor (Breweries and Distilleries) Bill 2016 (money message and Financial Resolution received);	Order for Report Stage
Parole Bill 2016	Order for Report Stage
Competition (amendment) Bill 2016	Enacted (See Table 1)
Garda Siochana (Amendment) (No.2) Bill 2014	Referral to Committee (see Table 3)
National Famine Commemoration Day Bill 2017	Referral to Committee (see Table 3)
Recognition of Irish Sign Language for the Deaf Bill 2016	Enacted (see Table 1)

Appendix 1: Rationale for the Constitutional provision and comparison with other parliaments

A key rationale for restricting the right of financial initiative to Government is that active legislative bodies (i.e., those with wide powers to control expenditure and revenue) are prone to a pro-spending bias.[29] One analyst describes the role of parliament in initiating expenditure as a balancing act "between legislative control of the budgetary process (of expenditure in general) and a budget that is under control". [30] Parliaments of the Westminster system address this tension by using procedures that severely restrict the power of legislators to initiate Bills (or amendments to Bills) which incur a charge on the public purse (including amendments to the executive's budget). This is the rationale for Article 17.2 of the Constitution.

Not all legislatures are restricted in this way in terms of the financial initiative. At the other extreme (e.g., the US Congress), the legislature may revise the budget and make its own revenue and spending decisions. Most parliaments in Europe fall somewhere between the US and the UK extremes; they permit legislators to modify the budget, but do not permit changes to the totals; research has shown that the pro-spending bias which characterises parliaments with strong budgetary powers is reduced where parliament's power is focused on allocative choices within a 'hard' budget.[31] In these parliaments, there tend to be no formal restrictions on the proposal of PMBs or amendments to government Bills which may involve expenditure or the raising of revenue. In other words, parliaments with most power to amend the budget have few restrictions on the right to initiate PMBs which involve a charge.

Of particular interest to the Irish Parliament is whether parliaments which face similar constitutional restrictions on the financial initiative are permitted to table and progress PMBs which incur either substantial or incidental charges on the revenue. An overview of four such parliaments (Table 5) finds that the restrictions on proposing and debating Bills which have financial implications are applied similarly in the **UK House of Commons** and the **Australian Federal Parliament,** and more liberally in the Canadian House of Commons and the New Zealand Parliament, where there is more scope to progress PMBs which incur expenditure.

In neither the UK Houses of Parliament nor the Australian Federal Parliament may formal Committee Stage take place without a Money Message or Financial Resolution, where required. In the **Canadian House of Commons** there is more scope to debate PMBs which propose expenditure; a money resolution from the Government is not required until the PMB has reached its third reading (i.e. after formal Committee and Report stages). In the **New Zealand Parliament,**

[29] Wehner Joachim (2010) *Legislature and the Budget Process* Palgrave, MacMillan p. 141.
[30] Wehner Joachim (2010) *Legislature and the Budget Process* Palgrave, MacMillan p. 141.
[31] Schick Allen (2002) 'Can National Legislatures Regain an effective Voice in Budget Policy?' OECD Journal on Budgeting p. 15- 41.

rather than requiring a Money Message or Financial Resolution for the debate and passage of a PMB, the Government exercises a financial veto which it may use just prior to a PMB passing the final stage. This financial veto, which is rarely used, may be debated in parliament. In all four parliaments, the numbers of PMBs tabled for Second Stage debate is, at present, lower than the numbers in the Houses of the Oireachtas.

Table 5: International examples of treatment of PMBs re Money Messages

Canadian Federal Parliament
A *Royal Recommendation* (similar to a Money Message in Ireland) must accompany any Bill that proposes to appropriate funds. Before 1994, such a *Royal Recommendation* was required prior to the introduction into Parliament of any Bill involving the appropriation of funds (expenditure). Since changes to Standing Orders in 1994, a *Royal Recommendation* is required before the Bill is passed[32] (i.e. after formal Committee and Report Stages). This has affected procedure around the admissibility of Private Members' Bills which incur a charge. Prior to the change in Standing Orders, PMBs which infringed on the financial initiative of the Crown were disallowed by the Speaker. Since 1994, PMBs involving the spending of public money have been allowed on the basis that a royal recommendation will be submitted by a Minister of the Crown before the Bill is to be read a third time and passed; if such a royal recommendation is not produced by the time the House is ready to decide on the motion for the third reading, the Speaker must stop the proceedings and rule the Bill out of order. A *Ways and Means Motion* **(like a Financial Resolution)** must accompany any Bill that proposes to raise taxation (but it is not required where a bill proposes to alleviate/eliminate taxation). A Ways and Means motion (Financial Resolution) must be proposed and voted on prior to the introduction of a Bill to raise tax. However, a PMB proposing tax credits or reductions could proceed through the legislative process and become adopted (as it does not impose a tax). This is in spite of the fact that such a PMB could have significant consequences for the public finances [33]
New Zealand Parliament[34]
Before 1996, the New Zealand parliament operated a Money Message system similar to the Dáil. Under these procedures, proposals for taxation or increases in expenditure were out of order unless they were *initiated* by the crown. Under the *financial veto* system adopted as part of parliamentary reform in 1996, Members may propose PMBs which incur a charge (expenditure or taxation), but if the Government issues a 'financial veto' to say that the PMB would have more than a minor impact on the composition of expenditure, the House may not pass the legislation. The veto certificate may only be delivered by the Government when a Bill is awaiting its third (final) reading, and if the certificate relates to only one or some provisions of the Bill, the Bill may proceed to third reading if amended to remove these sections. Standing Orders of the New Zealand Parliament do not set out what should be in a Veto Certificate; it is sufficient for the Government to issue one, along with an explanation. However, all such vetoes may be debated in parliament.

[32] 'Before the Bill is read a third time and passed' i.e. equivalent to fifth stage in the Dáil.
[33] See Lukynuik Michael (2011) 'Tax Bills and the Ways and Means process' *Canadian Parliamentary Review 2011* Vol.34:2
[34] Conversation between L&RS and David Bagnall, Clerk on Procedure, New Zealand Parliament May 2016 and New Zealand Parliament Committee on Standing Orders, 2014, 25 .

UK Parliament

A *Money Resolution* (similar to a Money Message) must accompany a Bill that proposes to appropriate funds; a *Ways and Means Resolution* **(like a Financial Resolution)** must accompany any Bill which proposes the 'creation, extension or increase' of taxes or other charges.'[35]

In line with the Crown's exclusive right to initiate proposals for expenditure (a right taken on by the Government), a PMB is not admissible if its primary aim is expenditure.[36] Where a PMB incurs expenditure, but that expenditure is not its primary aim, it is admissible but it (or the provisions giving rise to the charges within it) may not proceed to Committee stage without a Money Resolution tabled by a Government Minister and agreed by the House. A Money Resolution is an explicit recognition of a Bill's financial implications.

PMBs which propose to create a new tax, tax increase or similar kind of charge can only proceed **if the House has agreed** a Ways and Means Resolution, which again, may only be tabled by a Minister.

By Convention, the UK Government does not to refuse to supply a Money, or a Ways and Means Resolution, for a Bill which has passed second reading. However, recently this Convention has been open to question.[37] Delays in the provision of such messages led the House of Commons Procedure Committee to recommend in 2013 "that the Government be required to make a written Ministerial statement on the reasons for the delay if a Money or Ways and Means Resolution, where required, has not been put to the House within three weeks of a Bill being given (and passing) a second reading". This recommendation was rejected by the Government**."**[38]

Australian Federal Parliament

Under Standing Order 180 of the Australian House of Representatives, all proposals for the appropriation of revenue or moneys require a message to the House from the Governor-General recommending the purpose of the appropriation (in accordance with Article 56 of the Constitution). For an Appropriation or Supply Bill, this message must be announced before the Bill is initiated.

For other Bills which propose the appropriation of revenue or moneys (including PMBs), this message must be announced immediately after the second reading of the Bill (before formal Committee Stage). Standing Orders 178-9 set out that only a Minister may: (a) initiate a proposal to impose, increase or decrease a tax or duty, or change the scope of any charge, and (b) move an amendment to the proposal which increases or extends the scope of the charge proposed beyond the total already existing under any Act of Parliament. A Member may move an amendment to the proposal *which does not increase or extend the scope of the charge proposed beyond the total already existing under any Act of Parliament.*

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[35] UK House of Commons, MP's Guide to Procedure 'Timetabling and Money' *Ways and Means Resolutions* [accessed 25 May 2019]

[36] Erskine May *Parliamentary Practice 24th edition* pp.542-543 cited in House of Commons Library (18 May 2018) 'Emergency Debate on the expectation that the Government table a money resolution for a private Member's bill'

[37] House of Commons Library (18 May 2018) cited above.

[38] The House of Commons Procedure Committee has twice (in 2013-2014 and in 2016) issued reports on the Private Members' Bills Process. See Report of UK House of Commons Procedure Committee: Private Members' Bills (2016) p.20 and Report of UK House of Commons Procedure Committee: Private Members' Bills (2013). The Government response is available on the website.

Appendix 2: Samples of Financial Resolutions, Money Messages, and ECB Opinions

Financial Resolutions

Example: Intoxicating Liquor (Breweries and Distilleries) Bill 2016

Intoxicating Liquor (Breweries and Distilleries) Bill 2016
FINANCIAL RESOLUTION
An Bille Deochanna Meisciúla (Grúdlanna agus Drioglanna), 2016
RÚN AIRGEADAIS

GO ndéanfar foráil san Acht lena dtabharfar éifeacht don Rún seo chun dleacht mháil a mhuirearú, a thobhach agus a íoc, de réir an Achta seo, i ndáil le ceadúnas chun deochanna meisciúla a dhíol i ngrúdlanna, i ndrioglanna agus in áitribh dá samhail.

THAT provision be made in the Act giving effect to this Resolution for the charging, levying and paying in accordance with the Act of a duty of excise in relation to a licence for the sale of intoxicating liquor at breweries, distilleries and similar premises.

Money Messages

Money Messages have a standard lead-in, followed by the long title of the Bill. There are 3 main categories of Money Messages, as follows:

Category 1: **Oireachtas**

Initial Text: For the purpose of Article 17.2 of the Constitution, the Government recommend that it is expedient to authorise such payments out of moneys provided by the Oireachtas as are necessary to give effect to any Act of the present session…

Category 2: **Central Fund**

Initial Text: For the purpose of Article 17.2 of the Constitution, the Government recommend that it is expedient to authorise such charges on and payments out of the Central Fund or the growing produce thereof as are necessary to give effect to any Act of the present session…

Category 3: **Central Fund & Oireachtas**

Initial Text: For the purpose of Article 17.2 of the Constitution, the Government recommend that it is expedient to authorise such charges on and payments out of the Central Fund or the growing produce thereof and such payments out of moneys provided by the Oireachtas as are necessary to give effect to any Act of the present session…

European Central Bank (ECB) Opinions

An ECB consultative opinion was requested in respect of five PMBs to date. ECB opinions have been received / published for two Bills, as follows:

Table 6a: ECB opinions received on PMBs

PMB Title	Date published
Flood Insurance Bill 2016	7 April 2017
Central Bank (Variable Rate Mortgages) Bill 2017	17 November 2016

An opinion was also requested in relation to the Consumer Insurance Contracts Bill 2017 on 29 March 2017. The ECB responded on 2 May 2017 stating that it decided **not to issue / adopt an opinion**.[39]

Opinions have been requested for a number of others Bills, which has not yet been received / published:

Table 6b: ECB opinions requested on PMBs (outstanding)

PMB Title	Date requested
Central Bank (Amendment) Bill 2017	11 April 2018
Consumer Protection (Regulation of Credit Servicing Firms (Amendment) Bill 2018	28 March 2018

[39] The ECB concluded that the proposed Bill "does not substantially affect the advisory competencies of the ECB" and that, as proposed, the Bill / proposed law would not confer a genuinely new role in the field of insurance prudential supervisor or consumer protection on the Central Bank.

Appendix 3: Detailed Scrutiny Framework (Appendix 1 MoU)

PMB scrutiny framework

PART A: Policy and Legislative Analysis[40]

The 'policy Issue' and the policy and legislative context

1. Define the problem / the policy issue which the Bill is designed to address; to what extent is it an issue requiring attention? What is the scale of the problem and who is affected? What is the evidence base for the Bill?
2. What is the current policy and legislative context, including are there any proposed Government Bills or general schemes designed to address the issue? Have there been previous attempts to address the issue via legislation?
3. Is there a wider EU/international context?

Implications and implementation of the Bill's proposals

Policy implications / implementation

4. How is the approach taken in the Bill likely to best address the policy issue?
5. What alternative and/or additional policy, legislative and non-legislative approaches were considered, including those proposed by the Government and what, does the evidence suggest, are the differences between and the merits of each?
6. Are there Government-sponsored Bills (or General Schemes) which are related to and/or broadly aim to address the same issue? Are there merits in combining them?
7. What are the specific policy implications of each proposal contained within the Bill (environmental / economic / social / legal)? Has an impact assessment (environmental/ economic /social / legal) been published[41] (by Government or a third party) in respect of each proposal contained within the Bill?[42]
8. Could the Bill, as drafted, have unintended policy consequences, if enacted?
9. Has the Committee taken due consideration of the opinion of the European Central Bank (ECB) on the Bill, if applicable[43]?
10. How would the Bill, if enacted, be implemented?
11. Are there appropriate performance indicators which the Department, or whoever is ultimately charged with implementing the Bill, can use to assess the extent to which it meets its objective? Does it include formal review mechanisms?

Cost evaluation

12. Will there be enforcement or compliance costs?
13. What are the likely financial costs[44] of implementing the proposals in the Bill, and what is the likely overall fiscal impact on the exchequer?
14. Have cost-benefit analyses (CBA) been provided / published (by Government or a third party) in respect of each proposal contained within the Bill? Will benefits /costs impact on some groups /

[40] The Library & Research Service (L&RS) has the capability to provide this policy research and analysis however L&RS will require additional research staff resources to provide this level of support for all PMBs referred for Committee scrutiny.

[41] A Bill sponsor is not required to draft an impact assessment or cost-benefit analysis (CBA) but should identify where one has been published (by Government, an external body, or otherwise) in respect of the proposals contained within the Bill, particularly where a proposal is modelled on international best practice.

[42] Currently, PMBs do not undergo Regulatory Impact Assessment. However, certain proposals may have undergone scrutiny by other bodies which may be publically available to inform the Committee.

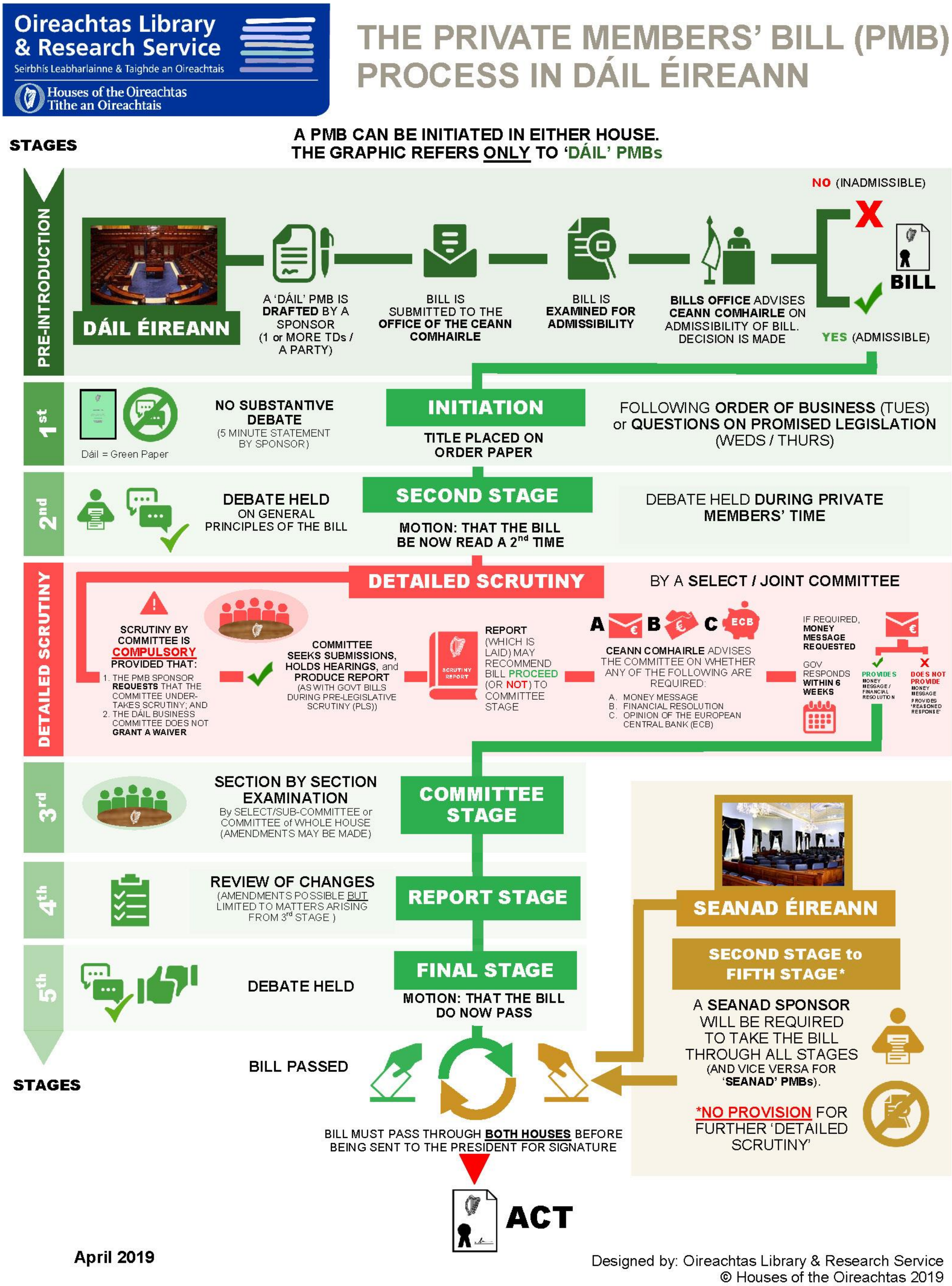
[43] Where a PMB falls within the field of competence of the ECB (i.e. impacts on the role of the Central Bank of Ireland, or relates to rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets) consultation with the ECB is mandatory under the Treaties – the process is set out in Dáil SO 149(3)-(7). The ECB opinion is advisory only but the Committee is obliged to consider and report on it as part of the scrutiny process. The Ceann Comhairle will advise the Bill sponsor (and/or the Committee) on whether an ECB consultation is required. If it is, the relevant Committee sends the request to the President of the ECB.

[44] PMBs may only be taken at Committee Stage (the Stage following Detailed Scrutiny stage) if a Financial Resolution has been passed (in the case of Bills involving charges on the people – 178(2)) or a Money Message has been received from Government (for Bills involving appropriation of revenue or public monies – 179(2)). The requirement for a Money Message or a Financial Resolution does not, however, apply to all PMBs.

stakeholders more than others?
PART B - Legal Analysis[45] 15. Is the draft PMB compatible with the Constitution (including the 'principles and policies' test)? 16. Is the draft PMB compatible with EU legislation and human rights legislation (ECHR)? 17. Is there ambiguity in the drafting which could lead to the legislation not achieving its objectives and/or to case law down the line? 18. Are there serious drafting deficiencies or technical drafting errors (e.g. incorrect referencing to Acts etc.); 19. Are there potential unintended legal consequences which may stem from the PMB as drafted? 20. Are appropriate administrative and legal arrangements necessary for compliance and enforcement of the provisions of the Bill included? (e.g. if draft Bill contains a prohibition, whether the necessary criminal sanctions - including the class of fine - are included)

[45] The Office of the Parliamentary Legal Advisor (OPLA) will provide this analysis – additional resources are being recruited.

Appendix 4: Infographic on the PMB Process in Dáil Éireann



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THE PRIVATE MEMBERS' BILL (PMB) PROCESS IN DÁIL ÉIREANN

THE STAGES EXPLAINED

PRE-INTRODUCTION

Any Member of Dáil Éireann (Teachta Dála) who is not a Minister may draft and introduce a PMB e.g.

- Members of the **governing party/parties** (i.e. Government 'backbenchers');
- Members of **opposition parties;** and/or
- **Independent** Members.

PMBs can relate to any subject matter that is suitable for public / Government legislation but may not have, as its main purpose (a) the creation of a charge upon the people, other than incidental (i.e. a tax) or (b) creation of new public expenditure, other than incidental.

Any Member (or Members) proposing the Bill are known as the Bill 'sponsor(s)'. The Bill is submitted to the **Office of the Ceann Comhairle** who arranges for the Bill to be examined for compliance with Standing Orders by **the Bills Office**. The Bills Office advises the Ceann Comhairle regarding admissibility.

STAGE 1 INTRODUCTION

Once a PMB has been ruled 'in order', it may be introduced following the Order of Business (Tuesdays) or following Questions on Promised Legislation (Wednesdays / Thursdays). Debate is limited to a 5 minute statement by the proposer / sponsor.

STAGE 2 SECOND STAGE

At this stage, a substantive debate on the general principles of the Bill (as with Government legislation) is held during private members' business. Under Standing Order 140, private members' business is held:

- On **Tuesdays,** between 8pm and 10pm;
- On **Wednesdays,** for two hours following topical issues (or following Government business); and
- On alternate **Thursdays** (Bill is determined by the Dáil Business Committee).

The House hears speeches from the proposing / sponsoring Member(s), a member of the Government or Minister of State, and any other Member. The Bill is again examined by the Bills Office to ascertain whether there is a charge / cost, including an incidental cost, and if a **Financial Resolution** or **Money Message** is required (see right).

STAGE PRE-COMMITTEE STAGE 'DETAILED SCRUTINY' STAGE

If it receives support of the House, the Bill shall proceed to *detailed scrutiny* stage, an intermediate stage between Second Stage and Committee Stage as set out under Standing Order 141. The Bill is referred to the relevant sectoral / Select Committee (or Joint Committee) which can invite submissions and/or hold hearings with stakeholders and experts, as necessary. The Committee can also seek the views of the relevant Government Department / Minister on the policy, technical and legal aspects and can seek the assistance of the L&RS and the OPLA, as required.

The Bill sponsor(s) is/are required to submit an **explanatory memorandum** to the Committee which details the following (a) rationale for the Bill / policy issue (b) legislative context (c) implementation issues and considerations and (3) financial implications / other impacts, as well as section by section explanatory notes. Scrutiny cannot commence until this memo is received.

Detailed scrutiny by Committee is compulsory provided that (a) the sponsor(s) request(s) that the committee undertake *detailed scrutiny* and (b) the Dáil Business Committee does not grant a 'waiver for detailed scrutiny' (on application from the committee or the sponsor). A Bill which requires a **Money Message,** a **Financial Resolution** or the **opinion of the European Central Bank (ECB)** cannot proceed past this stage (see right). If the Committee decides to undertake *detailed scrutiny*, it produces a report on the outcome of the scrutiny process. The primary aim of the report is to inform the Committee's decision to proceed (or not to proceed) to Committee Stage. A request for a Money Message (or Financial Resolution) is issued **after the scrutiny report is laid.** The Government will respond within **6 weeks** (see right).

STAGE 3 COMMITTEE STG. 4 REPORT STG. 5 FINAL STG.

- **Committee Stage**: All components of the Bill are examined by a Committee;
- **Report Stage**: A review of changes made at Committee occurs. Each amendment is debated in turn;
- **Final Stage**: A final debate and vote on the Bill is held. The Bill is revised to take account of agreed amendments and the debate takes place on a motion "That the Bill do now pass". The Bill is then sent to other House and is re-entered at Second Stage.

WHAT ARE STANDING ORDERS?

Article 15.10 of the **Constitution** gives Dáil Éireann the power to make its own rules for the conduct of business – the **Standing Orders of the House**. The Standing Orders are *written rules of procedure that have been decided and adopted by the House itself*. The rules cover a broad range of topics, from the declaration which must be made on election by the Ceann Comhairle, to the deadlines for the submission of motions for the Order Paper.

'OUT OF ORDER' PMBs AND GOVT MESSAGES

A PMB is first examined by the Bills Office and ruled out of order prior to introduction if:

- It constitutes a **charge (a tax) on the people,** *other* than an incidental charge (Standing Order 178(1)); or
- It constitutes **expenditure** (i.e. any public spending by a Department or central fund spending (*other* than incidental expenditure)) (Standing Order 178(2)).

Following passage at second stage, a PMB is again examined by the Bills Office.

- For a PMB which imposes an incidental charge (tax) on the people a **Financial Resolution** from the Government is necessary *before* the Bill is taken at Committee stage (section by section);
- For a PMB which involves incidental public expenditure a **Money Message** is required for it to proceed to Committee stage.

A **Financial Resolution** and **Money Message** constitute the recommendation from Government signed by the Taoiseach' required under Article 17.2. of the Constitution.

Once a detailed scrutiny report is laid, and a **request for a Money Message has been issued**, the Government will respond **within 6 weeks (consideration period)** with either:

- A Money Message (or move a Financial Resolution); or
- A 'Reasoned Response' which explains why it will not provide a Money Message (drawing on the Government's analysis of the Bill and on the Committee's Report). It may set out the necessary steps for a Money message to be granted.

April 2019

Designed by: Oireachtas Library & Research Service

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