



The impact of pre-legislative scrutiny on legislative and policy outcomes

Dr. Shane Martin

Prepared for the *Oireachtas Library & Research Service*

December 2017

Forward

Pre-legislative scrutiny was introduced to the legislative process in the Houses of the Oireachtas, tentatively in 2011, substantially in November 2013, and confirmed by the 32nd Dáil in 2016. In an L&RS Spotlight on Pre-legislative Scrutiny (2014), the benefits of pre-legislative scrutiny – including that it strengthens parliament and can lead to more considered, better legislation – were highlighted, along with factors which ensure its effective implementation. At that point it was too early to undertake an empirical analysis of the effect of pre-legislative scrutiny on legislative and policy outcomes. However, with the 31st Dáil dissolved and over a year into the 32nd Dáil, there is a sufficient number of cases to conduct this analysis. In June 2017 the L&RS commissioned Dr. Shane Martin, an expert in legislative studies, to undertake this research. What follows is a report on his research and his findings.

January 2018

Oireachtas Library & Research Service

1. Contents

Abstract	4
Acknowledgements.....	4
Executive Summary	5
1. Introduction and Context.....	13
1.1 <i>The Concept of Pre-Legislative Scrutiny</i>	13
1.2 <i>International Experience and Lessons</i>	14
1.3 <i>The Evolution of Pre-Legislative Scrutiny in Ireland</i>	16
1.4 <i>Research Framework and Methodology</i>	20
2. Quantitative Analysis	22
2.1 Methodology	22
Data.....	24
2.2 Findings and Analysis	25
The Volume of PLS Recommendations.....	25
The Acceptance of PLS Recommendations.....	27
Causality: what can we conclude?	30
3. Case Studies	33
3.1 Methodology.....	33
3.2 Gender Recognition Bill 2014.....	34
3.3 Misuse of Drugs (Supervised Injecting Facilities) Bill 2016	45
3.4 Education (Admission to Schools) Bill 2015	51
Appendix: PLS Cases.....	61
About the Author	64
References.....	65

Abstract

This report empirically assesses the impact of pre-legislative scrutiny (PLS) on legislative outcomes, and through this, on policy outcomes, since its introduction to the Irish Parliament. PLS is a process whereby parliament scrutinises draft Bills and reports back with observations and/or recommendations to the Minister sponsoring the legislation. Through a content analysis of 50 PLS cases, 467 unique recommendations are identified. In 31 of these 50 cases the Bill had subsequently been published and/or enacted at the time of this analysis. Analysis of the Bills in these 31 cases indicates that Ministers accepted 146 of 350 recommendations, this an acceptance rate of 41.7%. We use matching analysis to compare Committee amendments for Bills with and without PLS processing, which allows us to discount the argument that PLS simply pre-empts a Committee's later role. Rather, we find that both PLS and non-PLS Bills continue to be amended at the formal Committee stage, and it is not the case that PLS merely replaces a Committee's role in the formal legislative process. Qualitative analysis of three Bills complements this conclusion, suggesting that PLS can have a very real and substantive impact on Government legislation in the Irish case. PLS serves to strengthen the role of the Oireachtas in law-making, with positive consequences for stakeholder engagement and the quality of legislation.

Acknowledgements

I would like to acknowledge the assistance of the Oireachtas Library & Research Service in sharing their knowledge and sourcing material for this research, and in particular Keith Fitzgerald, Maria Fitzsimons, and Catherine Lynch. A number of Department officials, Oireachtas staff, politicians, and individuals working in civil society groups with experience of PLS very generously gave their time to be interviewed. Their willingness to share their experience and perspective provided unique insights into PLS for which I am most grateful.

The views and opinions expressed in this report, and any mistakes, should be attributed entirely to the author and not to any other individual or organisation.

Executive Summary

This report presents the results of empirical research on the impact of pre-legislative scrutiny on legislative and policy outcomes in Ireland. It was commissioned by the Oireachtas Library & Research Service.

Context

Pre-legislative scrutiny (PLS) is a process whereby parliament scrutinises draft Bills – in the Irish case, a Bill’s General Scheme – and reports back with observations and/or recommendations to the Minister sponsoring the legislation. Partially introduced to the Houses of the Oireachtas in 2011, PLS was formally adopted into Dáil and Seanad Standing Orders as a requirement for Government Bills (save in exceptional circumstances) in November 2013, a reform which has been retained by the 32nd Dáil and 25th Seanad.

The introduction of PLS should be understood in the context of efforts to strengthen the capacity of Parliament to engage more fully and effectively in the legislative process i.e. to strengthen capacity for legislative scrutiny. In the Irish context, Parliament is perceived as being relatively weak and ineffective in terms of law-making, with the Government dominating the law-making process (see [Chapter 1 of this Report](#) and Oireachtas Library & Research Service, Spotlight, 2016).

During the 31st Dáil (9th March 2011- 3rd February 2016), 52 General Schemes were subject to completed cases of PLS by Joint Committees of the Houses of the Oireachtas. Each of eight PLS-active Committees (a Committee which conducted at least one completed PLS during this period) conducted an average of 6.25 pre-legislative scrutinies. The Joint Committee on Justice, Defence and Equality completed the most PLS investigations, responsible for 28 percent of all PLS cases during this period. Some Committees completed no PLS, though these are generally speaking Committees without heavy legislative functions (e.g. Foreign Affairs and Trade).

Method and Findings

Applying a mixed-method approach (quantitative analysis of all PLS cases and three qualitative case studies), the research evaluates whether or not PLS *permits* engagement

with, and *causes* changes to, a Government Bill (and thus public policy) **that would not otherwise have happened absent of PLS.**

The **quantitative research** ([Chapter 2](#)) assesses the impact of PLS on legislative outcomes by focusing on (a) the degree to which a Joint Committee makes recommendations and (b) whether these recommendations are actioned by the Minister in the Bill as published.

Our content analysis of 50 cases finds a high level of engagement with General Schemes by Oireachtas Committees. 467 unique recommendations from Committees arising from PLS were identified, thus an average of 9.34 recommendations per completed PLS.

Looking only at cases where (a) there was at least one explicit recommendation *and* (b) a Bill was subsequently published in the 31st Dáil, our analysis of 31 PLS reports and the content of the Bills indicates that Ministers accepted 146 of 350 recommendations. This is a recommendation acceptance rate in published Bills of 41.71 percent.

Given the overall rate of acceptance (41.7%), and notwithstanding some individual cases where no recommendations were accepted, it appears that PLS is having a direct impact on the content of Government legislation. To strengthen the validity of this conclusion and to address some of the weaknesses of purely observational data, we use matching analysis, a statistical technique used to evaluate the effect of a *treatment* (in this case PLS) by comparing randomly-chosen units from the treated and non-treated groups. Using matching analysis, where Committee amendments (at formal Committee stage) were compared for Bills subject to PLS with Bills not subject to PLS, **we can discount the argument that PLS simply pre-empts a Committee's later role.** Both PLS and non-PLS Bills continue to be amended at the formal Committee stage, and it is not the case that PLS merely replaces a Committee's role in the formal legislative process.

The highest acceptance rate for any single case was the Horse Racing Ireland Bill 2015, which we concluded had three of its four proposals (75%) accepted. In five cases, the Minister did not accept any of the proposals from the Committee's PLS process. To some extent this appeared to be related to which Department and Minister were the focus of the PLS Report. **The time which elapsed between the referral of a General Scheme and**

completion of PLS by a Committee had no significant bearing on the extent to which recommendations were accepted; although a weak relationship was found between a lower acceptance rate and extended time periods between referral and publication of the Committee report.

There is significant variation in the number of recommendations, depending on the case in question and, in part on the Committee in question (Chapter 2). For example, in eight cases, the Committee highlighted issues related to the Bill but made no explicit recommendations to the Minister. In fact, our analysis found that Committees' responses range from **general observations without any explicit recommendation, to broad recommendations, to very specific recommendations**. It is worth emphasising that, notwithstanding the method used to assess the direct impact of PLS in this study, not making a recommendation does not equate with the PLS process having no impact on the Government's legislative agenda. First, issues may be raised during PLS which are taken on board by the Minister and/or by Parliament but on which the Committee could not reach sufficient agreement to make a recommendation (an indirect effect of PLS not captured by the quantitative study). Second, the very fact that a Committee can undertake PLS may influence the behaviour and attitude of the relevant Minister and his or her officials towards the proposed legislation in what is termed the 'anticipatory' effect of legislative procedures: how a Committee engaged in PLS would react to the General Scheme may influence how a Minister and his or her officials approach its drafting. This was noted by interviewees in the qualitative case studies.

Qualitative analysis ([Chapter 3](#)) of three Bills presented in the 31st Dáil, and the 32nd Dáil (10th March 2016 to date), - the Gender Recognition Bill 2014, the Misuse of Drugs (Amendment) Bill 2015, and the Education (Admission to Schools) Bill 2015 - complements our conclusion from the quantitative analysis suggesting that PLS can have a very real and substantive impact on Government legislation and on the process of legislative scrutiny.

While not every Bill is altered fundamentally by PLS, some are. For example, **the impact of PLS on the Gender Recognition Bill was to change core parts of the Bill**, affecting the ability of those under 18 to have their gender recognised, and changing – arguably quite

dramatically – the mechanism by which those over 18 have their gender choice recognised by the State. A revised General Scheme was brought to Cabinet as a direct consequence of PLS. In other cases, for example, the Education (Admissions to School) Bill 2015, some, if only a minority, of the Committee’s recommendations were taken on board in the first iteration of the Bill, and fundamental issues raised in PLS are reflected in proposals for significant amendments to the second iteration of the Education (Admissions to School) Bill 2016, which is at order for Report Stage in the Dáil at time of publication. While PLS had less impact in the case of the Misuse of Drugs (Amendment) Bill 2015, the case illustrates how PLS can bring greater clarity to the intentions behind legislative proposals, thereby improving legislation.

Further, one of the most interesting features of PLS is how **it may continue to exert influence once a Bill is introduced into Parliament**. Issues raised in submissions and hearings for PLS and/or the recommendations of the Committee can frame subsequent legislative debate on the issue, as demonstrated in two of the three cases – the Education (Admissions to School) Bills 2015 and 2016 and the Gender Recognition Bill. We can thus speak of a potential effect of PLS both during the drafting and in the formal legislative process after a Bill has been presented in the Oireachtas. Members of the Oireachtas do refer to the PLS process during parliamentary debates on Bills. The Library & Research Service reviews PLS in its Bills Digest¹, reminding Members of recommendations or observations made by the Committee and looking at whether or not the Bill deals with them.

Looking more generally at the process, the literature suggests that PLS strengthens parliament’s capacity to scrutinise legislation (a) because it allows parliamentary committees to scrutinise Government’s legislative policy *before* the Bill’s text is firmly entrenched and (b) it allows parliament to engage with stakeholders, experts and interest/advocacy groups in civil society on the consequences of draft Bills, introducing

¹ A briefing and analysis of Bills which is produced for all government Bills in time for the second-stage debate.

more transparency to the policy-making process. The result, our qualitative analysis confirms, is closer consideration of legislation in all three cases.

What can we conclude on how to best support PLS in the Houses?

There is clear evidence from our research that the introduction of PLS has had a positive impact on the law-making process and, more generally, the role of the Oireachtas as the central organ of representative democracy in Ireland, leading us to conclude that:

- **PLS should be retained and mainstreamed further; ideally it would be incorporated into the formal legislative process, with a standard timeline for when the PLS process is to take place, and a requirement for a Minister to respond to the Committee's PLS report (Conclusion 1);**
- **Further, the Houses of the Oireachtas website for each Bill should reflect the full legislative process: it should be possible to access all material relating to the PLS stage (including the General Scheme and the Report) and subsequent legislative stages from one webpage. This should be the case even when a Committee decides not to undertake PLS of a General Scheme (Conclusion 2).**

Relatedly, the mainstreaming of PLS may, in time, allow for consideration of reforming the current formal legislative process, possibly shortening the time allocated to, or even eliminating, one or more stages of the process.

PLS is work for Members and support staff. The research allows us to draw further conclusions regarding the how best to support Members to optimise the PLS process.

In the first instance the composition of the committee appears to be very important for the success of PLS – in terms of the quality and quantity of proposed recommendations. When one or more members of the Committee is interested in the substance of the proposed legislation, the PLS process tends to be more active. Only one person we spoke to expressed an overall negative assessment of the PLS process, a view which was based on the lack of interest and motivation on the part of TDs and the 'over interest' of some Senators. **In**

allocating members to Committees, parties and groups should take into account their expertise and interests (Conclusion 3).

This brings us to how the **broader political context** - such as whether Members perceive a real opportunity to influence government legislation through PLS or believe there are electoral gains from closer legislative scrutiny - affects PLS. For example, while the minority Government status increases the opportunity for Members to influence government legislation, the interviews undertaken suggest that the level of interest in PLS has decreased in the 32nd Dáil with Members more focused on affecting change through the introduction of Private Members' Bills. While data on PLS as of December 2017 (Box 1) suggests otherwise; the quality of this scrutiny and its impact on legislation in the 32nd Dáil was beyond the scope of this study.

Box 1: Status of PLS in the 32nd Dáil (as of December 2017)

- 36 General Schemes had been referred to Oireachtas Committees by Government Ministers in the 32nd Dáil.²
- Committees had undertaken PLS and published a scrutiny report (or letter to the Minister) in 11 cases.
- PLS was underway in nine other cases and in one case, a decision on PLS has yet to be made.
- In 15 cases the committee decided not to conduct PLS. In 11 of these 15 cases, the committee met with the Minister or Departmental officials on the General Scheme prior to taking this decision (and in one of these cases it also met with stakeholders). In just four cases, a decision was made not to undertake PLS without any engagement with the Minister or Departmental officials.
- At the point of writing, subsequent Bills have been published in five cases of PLS in the 32nd Dáil and no Bills have been enacted.

Information gathered from the interviews does suggest that Members sometimes find it challenging to find time to prepare for and attend PLS public hearings. The broader political context affects Members' interest in all aspects of legislative scrutiny; not just PLS. Yet legislative scrutiny is parliament's function. **This reinforces the need to continue to invest and allocate resources to support members in their analysis and scrutiny of legislation; in particular to PLS, where the potential to influence and improve legislation is greater. This**

² Data provided to the author by the Library & Research Service.

expertise should be made available to Joint Committees to assist with cases of PLS (Conclusion 4).

The evidence suggests that some committees are overworked and **a single committee should shadow a single portfolio (Conclusion 5)**. For example, the Joint Committee on Education and Social Protection in the 31st Dáil (which undertook two of the three cases we examined) originally shadowed two Government Departments: Education and Skills and Social Protection. These are large Departments, both in terms of Government expenditure, services provided and political saliency – with consequences for the workload of the Committee.

While inviting submissions enhances the role of the general public and interested stakeholders in law-making, the processing of submissions can be a challenging task for the Committee Secretariat. For example, one Bill received in excess of 800 PLS submissions and the verification and acknowledgement then required a significant allocation of resources to the task. The capacity of Committees and Members to support the PLS process would be enhanced if **a central platform to place calls, receive, and process submissions from interested groups or individuals is created alongside the single web source which reflects all stages of the legislative process including PLS (advocated above) (Conclusion 6)**.

Interviews conducted with departmental officials identified the extra time that PLS adds to the law-making process as a challenge (for the 39 PLS cases which resulted in a Bill, the average time between publication of the General Scheme and the Committee's PLS Report/letter/transcript was 4.72 months). This research (Chapter 2) has found that where a Committee takes longer to respond to the referral of a General Scheme with its PLS Report, the PLS Report is not likely to have a greater impact. It could, in fact, have less impact (because the drafting will have begun before its Report is published). As such, **PLS may work best if a way is found for Committees to concentrate hearings, rather than holding sessions spread out over many weeks, without compromising on the depth of the scrutiny process, and with a view to issuing its Report within 12 weeks from referral (Conclusion 7)**. As noted above, while this is challenging for the Committee Secretariat, **a more**

streamlined system of recording the publication of all General Schemes, along with information regarding when a Minister intends to refer a General Scheme to a Committee, will help Committees to schedule PLS and to ensure that it has in place the research and analysis support it will need (Conclusion 8).

Finally, who gets to speak at PLS Committee hearings is important, in part because attendees tend to be very influential in shaping the content of the Committee's PLS report. This was observed in at least two of the three in-depth cases explored in this report. In some cases a Committee will highlight these core concerns in their report; in others it makes a recommendation which directly reflects these core concerns, though not perfectly.

Committees must be careful not to simply act as conduits for select interests. **As commonly happens, it is important that a wide array of views be represented in submissions and hearings, through an open and transparent call for evidence (Conclusion 9).** The Committee, rather than individual members of the Committee, should have a process to select who should be invited to attend hearings.

1. Introduction and Context

This report presents the results of research on the impact of pre-legislative scrutiny (PLS) on legislative and policy outcomes in Ireland. The research was commissioned by the Oireachtas Library & Research Service, part of the Parliamentary Services Division in the Houses of the Oireachtas Service.

1.1 The Concept of Pre-Legislative Scrutiny

PLS is a process whereby a legislative assembly analyses “draft Bills” and reports its observations and/or recommendations to the Minister who sponsored the draft legislation. As Smookler (2006: 522) notes, “PLS typically involves scrutiny by a parliamentary committee before the final drafting of a Bill has been decided and before the formal legislative process begins. The aim of PLS is to enhance the effectiveness of parliament’s role in law-making.”

PLS can be contrasted with other forms of legislative scrutiny (Figure 1.1), including examination of a Bill as it progresses through the law-making process. Post-legislative scrutiny involves the scrutiny of enacted legislation to determine the degree to which the objectives of the legislation were and are being achieved.

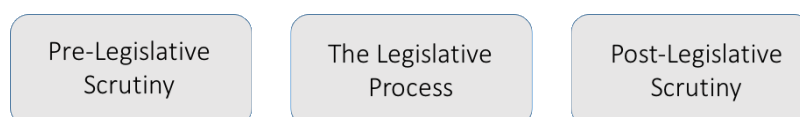


Figure 1.1: Different Forms of Legislative Scrutiny

In Ireland, Oireachtas Committees have the opportunity to engage in PLS through examination of a Bill’s General Scheme. A General Scheme is not a draft of a Bill, per se; a General Scheme sets out a Bill’s broad objectives and provides an overview of the sections of the Bill. PLS was introduced to the Houses of the Oireachtas partially in 2011. The General Scheme of the National Vetting Bureau (Children and Vulnerable Persons) Bill was the first Bill to be referred to a Joint Committee for PLS. PLS was adopted for all Bills via a Sessional

Order³ in 2013 and adopted fully into Standing Orders in 2016 (Oireachtas Library & Research Service 2016). PLS represents an attempt to enhance the influence of the Oireachtas in the public policy-making process.

1.2 International Experience and Lessons

PLS is a relatively recent innovation and is limited to a minority of national assemblies. The United Kingdom was one of the first national legislatures to experiment with PLS. The Conservative administrations of the late 1980s and early 1990s trialled the parliamentary scrutiny of draft Bills, but PLS has only become an established feature of parliamentary life since 1997. PLS in the UK Parliament is at the discretion of the Government.

Most commentary on PLS in the UK indicates that the experimentation has been positive for the role of Parliament in law-making. Exploring the 1997-99 period, Power (2003: 3) concluded that “the use of draft Bills for consultation is widely regarded as an effective way of improving the quality of legislation.” A 2006 Modernisation Committee report on the UK’s Legislative Process concluded that:

[T]here is little doubt that pre-legislative scrutiny produces better laws. As the Law Society told us, 'it would probably be difficult to prove scientifically that more pre- legislative scrutiny has improved legislation, but it would seem unarguable in practice that it has. ... Effective consultation procedures and processes, such as publication and consideration of Bills in draft, would appear to have greatly improved the text presented to Parliament, or to have identified drawbacks in the draft text which require rethinking.

Kalitowski (2008) and Korris (2011) have pointed to the benefit of PLS in the British case as a counterbalance to perceived executive dominance in the law-making process (see also, Slapin et al. 2017). Exploring the impact of PLS through a case study of two Bills, Smookler (2006: 534) concluded that PLS has a “proven record of influencing a Bill’s content before it is entrenched, and providing a locus of guidance for parliamentarians, demonstrating its value as a significant contributor towards the development of better legislation.”

³ This is an amendment to Dáil and Seanad Standing Orders which stands until the end of that particular Dáil or Seanad.

Norton (2013: 84) suggests that “[b]y being able to have some input at the formulation stage, parliamentary influence is maximised.” Goodwin and Bates (2016) studied the impact of PLS on the Human Fertilisation and Embryology Bill, concluding that “Parliament was at its most powerful in the pre-legislative, rather than the legislative phase, and its power was principally exercised in setting the agenda rather than in formal decision making” (Goodwin and Bates 2016: 233).

The relative success of PLS in the British case contrasts with a less successful attempt there to enhance parliament’s role in the formal legislative process. A new stage of the legislative process piloted by the House of Commons in February 2013, the Public Reading Stage, invited the public to comment on a Bill undergoing parliamentary scrutiny via submissions to the relevant Committee. Based on a case study of the Children and Families Bill 2013, Leston-Bandeira and Thompson (2017: 1) concluded that this experiment “failed to make much of a tangible impact on the parliamentary scrutiny of the Bill.” This suggests that innovation in the process of legislative scrutiny does not necessarily lead to an enhanced role of parliament in law-making.

The scholarship on PLS cited above has identified a number of potential benefits of pre-legislative scrutiny including:

- Enhancing a parliament’s capacity to scrutinise a Government’s legislative proposals, with positive consequences for the ability of parliaments to perform their law-making function more effectively.
- Opening parliament up to external actors and citizens affected by legislative change. PLS allows parliament to engage with stakeholders, experts, other civil society groups, and the general public. Engagement with external groups and individuals potentially introduces more transparency to the policy-making process.
- Engaging members of parliament more deeply in the policy-making process and allow them to develop their knowledge of particular policy areas.
- Producing better legislation, and through this, better public policy and governance. There is a perception that Government is more receptive to suggestions for change from Parliament before a Bill is actually published than after the formal drafting stage is complete.

Yet, the experience of PLS at Westminster has not been without criticism. As Russell and Gover (2017: 229) note, most Bills are not subject to PLS in the UK Parliament. The

Government decides which Bills are subject to PLS and for how long it is possible to scrutinise the Bill (Norton 2013: 84). PLS can also be a resource drain on MPs and one former MP reflected (Widdecombe 2005: 8) that this could limit the effectiveness of select committees:

Another limitation to the effectiveness of select committees is the introduction of pre-legislative scrutiny, which at the same time both expands the role of a select committee and limits it. Where a Government Department has a large legislative programme the committee can become so bogged down in examination of proposed Bills that it is restricted in the development of its own programme of work and finds its agenda driven by Government priorities rather than its own.

1.3 The Evolution of Pre-Legislative Scrutiny in Ireland

Plans for the introduction of PLS in the Oireachtas can be traced back to negotiations between coalition-partners in the Government formation following the 2011 General Election. The 2011 general election campaign included calls for parliamentary reform in the light of the economic and banking crisis (Gallagher and Marsh 2011). Most of the academic literature on the Houses of the Oireachtas points to the weakness of the Irish Parliament in terms of executive oversight and political and institutional capacity to influence the Government's legislative agenda.

MacCarthaigh (2005, 2011) bemoans the inability of the Dáil to hold Government Departments and agencies accountable. O'Halpin (1998) notes that Dáil Deputies have neither "bark nor bite" when it comes to law-making. Gallagher (2010) finds that the Government dominates Parliament. Murphy (2006) notes that reforms to strengthen Oireachtas Committees have failed to redress the imbalance of power between the executive and legislature.

Strøm (1998) recognises committees as the most significant internal organisational feature of parliament and a minimum requirement for parliaments to have real and substantive influence in the law-making process. Put another way, committees are the key mechanism by which a legislature develops the ability to counter-balance the many advantages of the executive in terms of policy development.

Study on the impact of pre-legislative scrutiny (commissioned by Library & Research Service)

Traditionally, Irish committees have been described with terms such as ‘weak’, ‘ineffective’ and ‘underdeveloped.’ The perceived historical weakness of committees in the Oireachtas at least partly explains the overall weakness of the Irish parliament, particularly in relation to the executive. In recent decades, significant developments in the operation and role of committees in the Oireachtas are evident. These reforms, beginning in the 1980s, have seen an effective redesign of the Committee system on a number of occasions (Arkins 1988; Lynch 2017; Martin 2010).

Against this backdrop, the *Programme for Government 2011-2016* proposed a package of parliamentary reforms to make for a more effective and efficient Oireachtas, including holding a referendum to abolish the Seanad. Included in the Programme was the commitment that the Government:

[w]ill enhance the democratic process by involving public representatives at an earlier stage of the legislative process, particularly before Bills are published. We will amend cabinet procedure instructions so as to allow Government to publish the general scheme of a Bill so that Oireachtas Committees can debate and hold hearings at an early stage. (Programme for Government 2011-2016: 21)

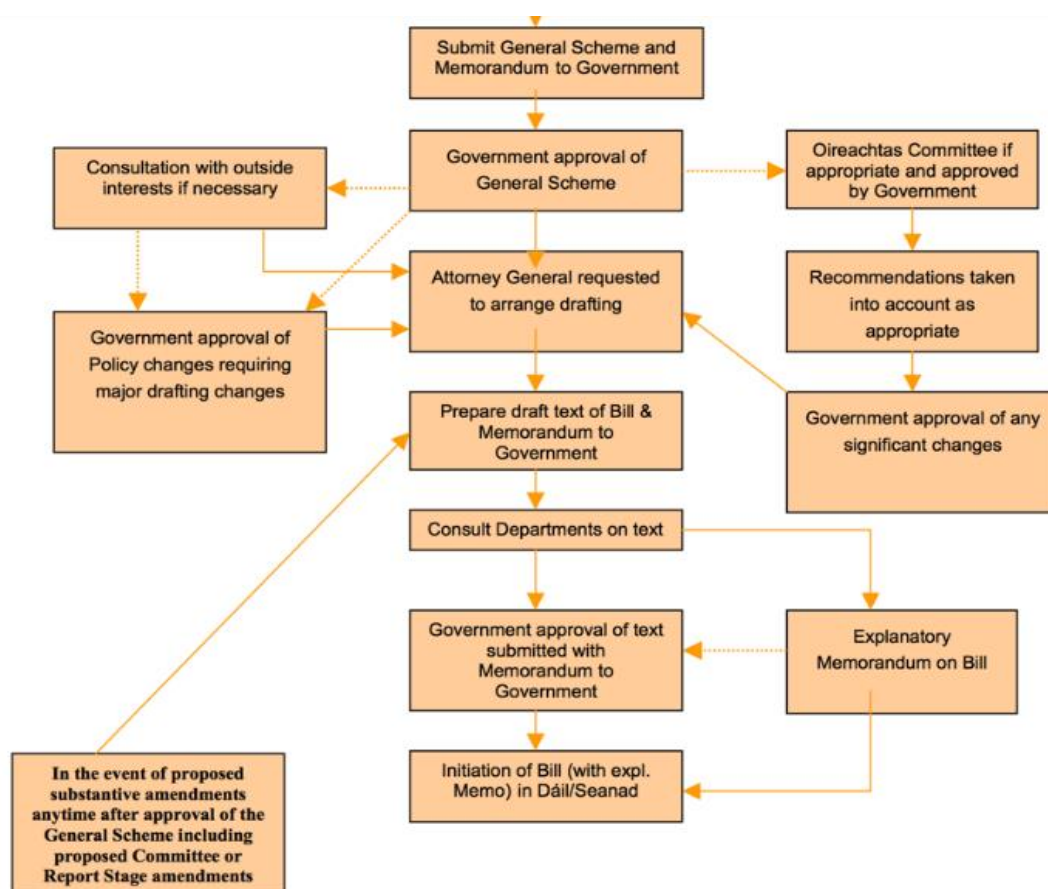
Cabinet procedure was amended in 2011 to allow Ministers to publish legislation in draft format, following its approval by Cabinet. Draft legislation or a legislative proposal is the ‘General Scheme’ of a Bill, which presents a sequential overview of the planned content of the Bill. Specifically, the Cabinet Handbook (*Section 4.11: Referral of Proposals to Oireachtas Committees*) provides that:

Where legislative proposals are to be submitted to Oireachtas Committees for consideration in accordance with their terms of reference, such proposals should be based on a General Scheme. In no case should such proposals be submitted without Government approval.⁴

As can be seen from Figure 1.2, the Cabinet Handbook suggests that the Government decides whether to refer a Bill for PLS once the Cabinet has approved the General Scheme.

⁴ Available at [this link](#)

A Minister has three options at this stage. He/she may refer the Bill for PLS, may send the Bill to the Attorney General to arrange drafting, or may refer the Bill for consultation with



outside interests through a Department-arranged process. Some potential tension exists between Government procedures, as outlined in the Cabinet Handbook, and parliamentary procedures, as outlined in *Dáil* Standing Orders. Whereas the Cabinet Handbook implies that PLS is an *option*, Oireachtas procedures view PLS as standard practice, unless otherwise agreed (save in exceptional circumstances and by permission of the Business Committee). Standing Order 146A (*Pre-legislative consideration of Bill by Committee*) provides that:

Prior to its presentation or introduction to the Dáil, the general scheme or draft heads of a Bill shall (save in exceptional circumstances and by permission of the Business Committee), be given by a member of the Government or Minister of State to the Committee empowered under Standing Order 84A to consider Bills published by the member of the Government. The general scheme or draft heads of the Bill shall be considered by the Committee, having regard to guidelines agreed by the Working Group of Committee Chairmen: Provided that the Committee may decide in relation

Study on the impact of pre-legislative scrutiny (commissioned by Library & Research Service)

to a particular Bill that such consideration is not necessary, and in such cases, need not consider the general scheme or draft heads.⁵

A PLS Protocol was agreed between the Government and the Houses of the Oireachtas Service in October 2014. The Protocol requires Departments to appoint a PLS Coordinator who will notify Oireachtas Committees about the General Schemes expected for publication. The Protocol sets out that Joint Committees will have eight weeks to produce a response from the time the General Scheme is referred.

The most recent Government programme, the 2016 *Programme for a Partnership Government*, commits the Government to PLS as well as to post-legislative scrutiny: “We will support mandatory pre-legislative scrutiny for all new Bills and post enactment review of legislation by Oireachtas Committees.”⁶

In general, PLS by Oireachtas Committees operates in the following way (although different Oireachtas Committees can, and have, operated differently):

- General Scheme is published and referred to the relevant Oireachtas Committee by the Minister.
- The Committee decides whether to carry out PLS. If the Committee decides to carry out PLS:
 - The Committee generally invites submissions, either through an open or a targeted call;
 - The Committee generally requests research support from the Oireachtas Library & Research service;
 - The Committee may hold public hearings with Department representatives, stakeholders, and/or experts;
 - The Committee meets to discuss issues arising during its scrutiny of the draft legislation; and
 - The Committee publishes its assessment of the General Scheme and sends it to the Minister.⁷

⁵ Standing Orders of the Dáil - Houses of the Oireachtas. Available at <http://www.oireachtas.ie/parliament/about/publications/standingorders/>

⁶ Available: https://merrionstreet.ie/MerrionStreet/en/ImageLibrary/Programme_for_Partnership_Government.pdf

⁷ Source: Authors Interviews; Figure 1, Spotlight 2016.

Study on the impact of pre-legislative scrutiny (commissioned by Library & Research Service)

Our analysis of Oireachtas records indicates that 266 Government Bills were introduced during the 31st Dáil (9th March 2011- 3rd February 2016). Of these, Joint Committees of the Houses of the Oireachtas completed 52 cases of pre-legislative scrutiny. In 45 cases, an Oireachtas Committee produced a report, in six cases the Committee responded by way of letter to the Minister, and in one case (the General Scheme Securities Market Programme Bill) the Committee forwarded a copy of transcripts of its hearings to the Minister (Oireachtas Library & Research Service 2016). This represents a (completed) PLS rate of 20%; in other words, approximately one in every five Government Bills in the last Dáil resulted in a completed PLS. When interpreting this rate it should be borne in mind that PLS was only formally introduced in Standing Orders as a requirement in November 2013. 121 Government Bills were published after this date (from November 2013 to the end of the 31st Dáil).

1.4 Research Framework and Methodology

In line with the terms of reference as outlined in the tender document, the fundamental research question is as follows: has PLS in the Irish case had an impact on legislative outcomes and, by extension, on policy outcomes?

In order to assess the impact of pre-legislative scrutiny on legislative and policy outcomes we must develop and operationalize a measure of the impact of PLS. Specifically we benchmark the degree to which PLS:

- Strengthens parliament's capacity to scrutinise the Government's legislative proposals, thereby enabling it to better hold Government to account;
- Allows parliamentary committees to scrutinise Government's legislative policy before the Bill's text is firmly entrenched;
- Allows parliament to engage with and question the public – stakeholders, experts and interest/advocacy groups in civil society – on the intended and possibly unintended consequences of draft bills, introducing more transparency to the policy-making process and reducing the executive's monopoly on expertise; and
- Produces legislation that is more considered, and thereby stronger.

The objective of the research reported here is to evaluate whether or not PLS *permits* engagement with, and *causes* changes to, a Government Bill (and thus public policy) that would not otherwise have happened absent of PLS.

To do this, a mixed method approach involving quantitative analysis and qualitative case study research is employed. The quantitative research, presented in Chapter 2, focuses on Government Bills introduced during the period of the 31st Dáil (March 2011-February 2016). This involves a content analysis of the General Scheme(s), transcript of Committee hearings and copy of submissions received, committee PLS Report and recommendations (if any) and the published Bill. To explore further the *causal effect* of PLS, the formal legislative process of Bills which underwent PLS are compared with that of *matched* Government Bills that were not subject to PLS.

[Chapter 3](#) presents three in-depth case studies of PLS from the 31st Dáil, and 32nd Dáil (10th March 2016 to date), providing an essential supplement to the quantitative findings. The case studies allow for a better understanding of the PLS process in action from the perspective of key internal members and parliamentary staff, Departments and stakeholders. These case studies trace the development of three pieces of proposed legislation:

- The Gender Recognition Bill 2014 (later, the Gender Recognition Act 2015);
- The Misuse of Drugs (Amendment) Bill 2015 (later, the Misuse of Drugs (Supervised Injecting Facilities) Act 2017); and
- The Education (Admission to Schools) Bill 2015.

The case studies trace the PLS process, relying on official records and information from interviews with key stakeholders. These include (1) Members who served on the relevant Committees, (2) parliamentary officials who dealt with PLS, including Committee Clerks and Library & Research staff (3) relevant officials within Government Departments, and (4) external stakeholders who participated in PLS through the Committee's PLS submissions and hearings.

2. Quantitative Analysis

2.1 Methodology

This chapter reports on a quantitative analysis of the 52 cases of PLS during the 31st Dáil (March 2011-February 2016) and which are listed in the Appendix.

The impact of PLS on legislative outcomes is assessed by focusing on (a) the degree to which a Joint Committee makes recommendations, and (b) whether or not these recommendations are actioned by the Minister in the Bill as published. Studying a published Bill provides the most direct route to understand how a Minister has responded to the PLS process. An alternative strategy – to study the text of the Act (the Bill, as enacted) – introduces the possibility that the formal legislative process caused the Bill to change rather than the PLS process. While assessing an Act for the effect of PLS recommendations may pick up indirect effects of PLS on the wider legislative process, the focus of the quantitative analysis is on direct effects.

Coding process

In our quantitative analysis, the concept of “recommendations” is the key variable, and is defined as “a suggestion or proposal as to the best course of action, especially one put forward by an authoritative body.”⁸ We code every PLS Report (or Letter) to identify recommendations – creating a record of the topic of the recommendation in each case. This allows us to determine the number of recommendations per Committee Report/Letter. It also allows us contrast the published Bill with both the General Scheme and the PLS recommendations. In particular, content analysis of the published Bill allows us to identify the number of Committee recommendations actually accepted by the Minister at the legislative drafting stage.

Most completed PLS cases include a set of recommendations. On the other hand, some PLS reports or communications present no recommendations. Rather, these reports make

⁸ Oxford English Dictionary

observations and/or summarise the evidence presented in submissions and/or hearings. An observation or conclusion, including an explicit endorsement by the Committee or suggestion for action, is treated as analogous to a recommendation and is coded as such.

On the other hand, if the PLS report simply summarises a submission without expressing an opinion on it, we code this as not being a recommendation.⁹ Summarising the content of a submission or public hearing may have an impact, but it does not send clear signals to the Minister regarding the Committee's preferences.

To further explore the *causal effect* of PLS, cases are compared with amendments to *matched* Government Bills that went through the Oireachtas but were not subject to PLS. In order to randomly match a PLS and non-PLS case, we assigned numbers to each Government Bill published during the 31st Dáil, grouped by Joint Committee portfolio. We then employed a random number algorithm to select two cases – one PLS case and one non-PLS case per Joint Committee portfolio.

⁹ This is a practical, methodological decision. A further study would be necessary to examine the extent to which views articulated during the hearings/submissions and highlighted, but not advocated necessarily, by the committee affect the subsequent Bill.

Data

The quantitative data presented refers to 50 of the 52 cases, unless otherwise stated.¹⁰

As per Table 2.1, eight Committees were involved in PLS. Some Committees undertook no

Committee	No. of PLS Cases Completed	Percentage of all PLS Cases
Agriculture, Food and the Marine	1	2
Education and Social Protection	4	8
Environment, Culture and the Gaeltacht	8	16
Finance, Public Expenditure and Reform	10	20
Health and Children	6	12
Jobs, Enterprise and Innovation	2	4
Justice, Defence and Equality	14	28
Transport and Communications	5	10
Total	50	100

PLS during this period, this in part influenced by the lack of proposed legislation produced by the relevant Department. For example, no PLS was undertaken by the Joint Committees on European Union Affairs; Foreign Affairs and Trade; the Implementation of the Good Friday Agreement; and Public Service Oversight and Petitions.

Each of the eight PLS-active Committees conducted an average of 6.25 pre-legislative scrutinies. There is significant variation between the committees. The Joint Committee on Justice,

Table 2.1: PLS by Joint Committee

¹⁰ We were unable to reach conclusions regarding two PLS cases: The Retention of Records Bill and the Health Information and Patient Safety Bill. The relevant committee did engage in PLS, but no report was produced. We were further unable to locate any communication arising from the PLS process between the committee and the relevant Minister. As such, it is not possible to evaluate the recommendations – if any – or the impact of any recommendations. In both cases, no Bill was published during the lifetime of the 31st Dáil, meaning we cannot measure the difference between the General Scheme and drafted Bill.

Defence and Equality completed 14 PLS investigations, representing 28 percent of all PLS cases in the 31st Dáil.

2.2 Findings and Analysis

The Volume of Recommendations

Across all 50 cases of completed PLS, we identified 467 recommendations (in line with our definition of recommendation set out above).

Total Number of Recommendations in a PLS report	Number of PLS cases with this many recommendations
0	8
1	1
2	1
3	2
4	2
5	2
6	4
7	6
8	2
9	3
10	1
11	5
12	1
16	2
17	4
19	2
21	1
26	1
34	1
35	1

Table 2.2 describes the rate of recommendations. Here, we observe significant variation in the number of recommendations across PLS cases.

Eight of the PLS cases resulted in no recommendations. In these cases, the Committee either (1) summarised any submissions and hearings without highlighting a Committee position on the content, (2) forwarded the submissions and/or a transcript of the hearings to the Minister, or (3) reached conclusions which did not call for changes to the proposed legislation.

The highest number of recommendations in a PLS report was on the Vehicle Clamping Bill 2014, which was the subject of 35 recommendations. This PLS was an arguably special case in that the Joint Committee has been invited to help draft the General Scheme rather than review already-drafted Heads of a Bill. Thus, the Committee was not exploring a complete General Scheme, but contributing to the initial drafting of the legislation, at the request of the (then) Minister for Transport

Table 2.2: Rate of recommendations

Tourism and Sport, Mr. Leo Varadkar TD.

Committee	Total Number of Recommendations by PLS Case	Average Number of Recommendations by PLS Case
Agriculture, Food and the Marine	4	4.00
Education and Social Protection	32	8.00
Environment, Culture and the Gaeltacht	110	13.75
Finance, Public Expenditure and Reform	71	7.10
Health and Children	80	13.33
Jobs, Enterprise and Innovation	13	6.50
Justice, Defence and Equality	97	6.93
Transport and Communications	60	12.00
Total	467	71.61

Table 2.3: Total/Average no. of recommendations per Committee

Table 2.3 illustrates, above all else, the significant variation in the rate of recommendations across committees.

The Joint Committee on Environment, Culture and the Gaeltacht averaged most recommendations (13.75) across its PLS reports.¹¹ The Joint Committee on Finance, Public Expenditure and Reform, on the other hand, accounted for five of the eight cases where the Committee made no recommendations (Environment, Culture and the Gaeltacht, Health and Children and Justice, Defence and Equality each accounting for one additional case of PLS without a recommendation).

It may be that Committees take different approaches to PLS and/or are more “activist” in their engagement with PLS.

Such variation may have consequences for the number of recommendations made. At the same time, the level of recommendations should not be treated as a measure of how “seriously” a Committee takes PLS. Some General Schemes may provide little opportunity or need for recommendations; on others there may be little scope for agreement in a multi-party Committee. In fact, in spite of the methodology employed in this study (which looks at

¹¹ Although being the committee to issues the highest average number of recommendations per report, it too reported with zero recommendations on one occasion.

direct impact of a committee's PLS), it is worth emphasising that the absence of any recommendations does not equate with the PLS process having no impact on the Government's legislative agenda. The very act of being able to undertake PLS may influence the behaviour and attitude of the Minister and his/her officials – what is termed the anticipatory effect of legislative procedures.

The Acceptance of PLS Recommendations

When an Oireachtas Committee issues recommendations as part of the PLS process, the Minister faces a number of choices. The Minister can ignore all of the recommendations, accept some recommendations, or he/she can accept all of the Committee's recommendations. Accepting recommendations may require that the General Scheme be revised, resulting, in some instances, in it returning to Cabinet for new approval (as will be discussed in the next chapter). Subsequently, a Bill is either published and enters the legislative process, or it remains unpublished and/or unrepresented.

In our study of 50 cases of PLS, eleven of these saw no published Bills before the end of the 31st Dáil.¹² Interestingly, General Schemes that did not result in a published Bill had a slightly greater number of PLS recommendations than those resulting in a published Bill. PLS reports where a Bill was subsequently published have 8.97 recommendations on average, whereas cases without published Bills contained an average of 10.63 recommendations.

In 31 cases, a Joint Committee issued at least one recommendation and a Bill was subsequently presented during the 31st Dáil. Our hand-coded content analysis of these 31 reports and the content of the published Bill indicates that 146 of 350 recommendations arising from PLS during this period were accepted by Ministers. This is a recommendation acceptance rate of 41.71 percent. In other words, this analysis finds that just over 40 percent of PLS recommendations were accepted and acted upon by the Government, with the published Bill reflecting these changes. Thus, on average, just under four

¹² By committee, the breakdown for PLS cases for which a Bill was not subsequently published are as follows: Justice, Defence and Equality (7), Environment, Culture and the Gaeltacht (3), and Health and Children (1).

recommendations were accepted per PLS case (there is an average accepted recommendation rate per PLS case of 3.74).

It is worth noting that in no PLS case during the 31st Dáil were all recommendations accepted and incorporated into the Government Bill. The highest acceptance rate for any single case was the Horse Racing Ireland Bill 2015, which had three of its four proposals accepted. In five cases, the Minister did not accept any of the recommendations from the Committee's PLS process. They were:

- The European Stability Mechanism (Amendment) Bill 2014, where PLS was undertaken by the Joint Committee on Finance, Public Expenditure and Reform;
- The Sport Ireland Bill 2014, where PLS was undertaken by the Joint Committee on Transport and Communications;
- The National Minimum Wage (Low Pay Commission) Bill 2015, where PLS was undertaken by the Joint Committee on Jobs, Enterprise and Innovation;
- The Industrial Relations (Amendment) Bill 2015, where PLS was undertaken by the Joint Committee on Jobs, Enterprise and Innovation; and
- The Public Sector Standards Bill 2015, where PLS was undertaken by the Joint Committee on Finance, Public Expenditure and Reform.

Table 2.4 reports the recommendation acceptance rates by Joint Committees. Some interesting trends are evident, notwithstanding the small number of cases of PLS for some Committees.¹³ During the 31st Dáil, the Committee on Jobs, Enterprise and Innovation conducted PLS on two separate General Schemes, issuing (by our analysis) six recommendations on the National Minimum Wage (Low Pay Commission) Bill 2015 and seven recommendations related to the Industrial Relations (Amendment) Bill 2015. By our analysis, the Minister did not accept or action any of these recommendations in the published Bills. All other Departments accepted some of the recommendations arising from PLS, albeit at varying rates. Both Transport and Communications and Health and Children accepted, on average, just over half of the recommendations made arising from PLS.

¹³ Agriculture, Food and the Marine undertook one completed PLS, and with three of the four recommendations accepted, this gives a headline acceptance rate of 75 percent

Committee	Total Recommendations	Total Accepted Recommendation	Recommendation Acceptance Rate
Agriculture, Food and the Marine	4	3	75
Education and Social Protection	32	13	40.63
Environment Culture and the Gaeltacht	56	24	42.86
Finance, Public Expenditure and Reform	71	21	29.58
Health and Children	61	31	50.82
Justice, Defence and Equality	53	22	41.51
Transport and Communications	60	32	53.33
Jobs, Enterprise and Innovation	13	0	0

Table 2.4: PLS Recommendation Acceptance, by Oireachtas Committee, 31st Dáil.

Note: Includes only cases where recommendations were made and a bill was published.

We tested to see if the time between referral of a General Scheme and completion of PLS by a Committee (i.e. the time it issues its report) appeared to have a bearing on the outcome. On average, 4.72 months lapsed between referral of a General Scheme and completion of PLS by a Committee. Again, we observe significant differences. In the Central Bank Bill 2014 (Number 27 of 2014), PLS was concluded in a week. In contrast, 12 months elapsed between the referral of the Planning and Development (Amendment) Bill 2016 and the publication of the Committee’s PLS Report.

No statistically significant relationship was found between time used by the Committee to undertake PLS and the number of recommendations accepted by Government (our measure of outcome). The correlation between time elapsing between referral and completion of PLS and number of accepted recommendations is very weakly negative (-0.02): in other words,

as the time between referral and completion of PLS increases the number of recommendations accepted slightly decreases but this relationship is not strong. One explanation for this may be that where too much time elapses the Committee loses the opportunity to influence the Bill. However, in an OLS regression,¹⁴ this weak negative correlation fails to reach conventional levels of statistical significance. The t-value equals -0.14 and the 95 percent confidence interval includes zero (-0.63, .55). Again, we cannot reject the null hypothesis that no relationship exists between time and number of recommendations.

The correlation between time elapsing between referral and completion of PLS and number of recommendations made by a Committee is weakly positive (0.12) (i.e. there is a weak positive relationship between the number of recommendations a Committee makes the greater time it has to conduct PLS). However, in an OLS regression, the weak positive correlation fails to reach conventional levels of statistical significance. The t-value equals 0.73 and the 95 percent confidence interval includes zero (-.61, 1.3). Given this, we cannot reject the null hypothesis that time has no effect on the number of recommendations.

Causality: what can we conclude?

The analysis reported above demonstrates that PLS typically results in a set of recommendations. On 146 occasions, a recommendation arising from PLS was accepted by the Minister, representing a recommendation acceptance rate of just over 40 percent. Given the rate of recommendations and the overall rate of success – some individual cases of non-change as a result of PLS notwithstanding – it appears that PLS in the Irish case does impact the content of Government legislation.

It should be emphasised that the use of observational data can never provide conclusive evidence that PLS has an exclusive *causal* effect on the content of a Government Bill. It could be, for example, that the Department would change the content of the Bill in

¹⁴ This is a statistical method which estimates the relationship between one or more independent variables and a dependent variable.

comparison to the content of the General Scheme even without PLS. It could also be that the legislative process would have resulted in the same impact on the legislation through the Committee's role in the legislative process. After all, even absent PLS, an Oireachtas Committee still has the opportunity to engage in an assessment of proposed legislation within its policy jurisdiction.

To test whether PLS merely replaces a Committee's impact at the formal legislative process (i.e. would have happened anyway absent PLS), we compare the Committee stages of the formal legislative process for Bills which were, and were not, subject to PLS. We use matching analysis, which is a statistical technique used to evaluate the effect of a *treatment* by comparing randomly chosen units from the treated and non-treated groups in an observational study.¹⁵ The results of our matching exercise, which are presented in Table 2.5, allow the conclusion that **Bills subjected to PLS has no monotonous effect on the rate of amendments during the Committee stage of the legislative process.**

As we see, for example, in the comparison between the Industrial Relations Bill of 2015 with the Competition and Consumer Protection Bill in 2014, some Bills which were subjected to PLS receive fewer amendments than Bills not subject to PLS. In other cases, Bills which were subject to PLS receive more amendments at Committee stage, as shown in the comparison between the Assisted Decision-Making (Capacity) Bill 2013 and the Legal Services Regulation Bill 2011 at Committee stage. **The importance of the above exercise is that it allows us to discount the argument that PLS simply pre-empts a Committee's later role;** both PLS and non-PLS Bills continue to be amended at the formal Committee stage. In other words, PLS in the 31st Dáil has had a distinct impact on legislative outcomes; an impact separate from that of the formal legislative process.

¹⁵ In order to randomly match a PLS and non-PLS case, we assigned numbers to each Government Bill published during the 31st Dáil, grouping Bills by Joint Committee portfolio. We then employed a random number algorithm to select two cases – one PLS case and one non-PLS case per Joint Committee portfolio.

Table 2.5: Accepted Committee-Stage Amendments, Select Bills, 31st Dáil

PLS Bill	Non PLS Bill	PLS Bill Committee Amendments	Non-PLS Bill Committee Amendments
Horse Racing Ireland Bill 2015	Animal Health and Welfare Bill 2012	21	29
Education and Training Boards Bill 201	Further Education and Training Bill 2013	37	23
National Cultural Institutions (National Concert Hall) Bill 2015	Local Government (Miscellaneous Provisions) Bill 2012	3	11
Freedom of Information Bill 2013	Microenterprise Loan Fund Bill 2012	16	0
Public Health (Standardised Packaging of Tobacco) Bill 2014	Public Health (Tobacco) (Amendment) 2011 Bill	0	0
Industrial Relations (Amendment) Bill 2015	Competition and Consumer Protection Bill 2014	17	43
Assisted Decision-Making (Capacity) Bill 2013	Legal Services Regulation Bill 2011	388	80
State Airports (Shannon Group) Bill 2014	National Tourism Development Authority (Amendment) Bill 2011	4	0

3. Case Studies

3.1 Methodology

This chapter presents three in-depth case studies of PLS – two from the 31st Dáil, and one from the current Dáil. Qualitative case study research provides an essential supplement to the quantitative findings presented in Chapter 2. The case studies allow for a better understanding of the PLS process in action from the perspective of Members, parliamentary staff, Departments and external stakeholders. The case studies trace the PLS process (and for the two Bills which have become law, the formal legislative process), relying on official records and information from interviews with key stakeholders. These include (1) Members who served on the relevant Committees, (2) parliamentary officials who dealt with PLS, including Committee Clerks and Library & Research staff, (3) relevant officials within Government Departments, and (4) external stakeholders who participated in PLS through the Committee’s PLS submissions and hearings.

The three cases were selected using a case-selection method where we look at the typical, deviant, and influential cases. This permits the selection of cases which illustrate both how PLS typically works, how PLS can sometimes work differently and how PLS can be more or less influential. Interviews with Parliamentary staff that had direct experience with PLS was used to match the selection criteria to actual PLS cases. These staff were not subsequently involved in any way in the qualitative research. The three Bills selected were:

- The Gender Recognition Bill 2014 (later, the Gender Recognition Act 2015);
- The Misuse of Drugs (Amendment) Bill 2015 (later, the Misuse of Drugs (Supervised Injecting Facilities) Act 2017); and
- The Education (Admission to Schools) Bill 2015.

3.2 Gender Recognition Bill 2014

The Gender Recognition Bill was brought forward by the Government in response to a ruling of the High Court. The ruling said that the State was in contravention of its obligations under Article 8 of the European Convention on Human Rights by not having a process to legally recognise the acquired gender of transgender persons. Irish legislation was incompatible with the European Convention regarding the registration and issue of birth certificates for people who changed their gender. The State appealed this ruling to the Supreme Court, but later withdrew the appeal. In May 2010, the Government established an inter-Departmental gender recognition advisory group. The group reported in August 2011 suggesting Ireland adopt a medical-based model of gender-recognition, as earlier UK legislation had done.

On 17th July 2013, the then Minister for Social Protection, Joan Burton TD, published a Draft Heads of Bill for Gender Recognition. The General Scheme provided for a mechanism to recognize change of gender for those over 18 who were unmarried and allowed for the acquisition of a new birth certificate that reflects this change. Minister Burton referred the General Scheme to the Joint Committee on Education and Social Protection. The Committee agreed to engage in PLS and subsequently issued a report on the General Scheme of a Gender Recognition Bill in January 2014. In June 2014, Minister Burton published a revised General Scheme for the Gender Recognition Bill 2014 and in December 2014, the Gender Recognition Bill 2014 was published and presented in Seanad Éireann. The Bill was signed into law on 22th July 2015.

The Committee and PLS Process

The Joint Committee on Education and Social Protection shadowed two Government Departments: the Department of Education and Skills and the Department for Social Protection. These are large Departments, both in terms of Government expenditure,

services provided and political saliency. The significance of the two portfolios resulted in a heavy workload for the Committee.¹⁶

During the 31st Dáil, the Committee comprised 21 members – fifteen Dáil deputies and six Senators. The Fine Gael-Labour coalition Government held thirteen seats on the Committee, including the Committee Chairperson, Joanna Tuffy, TD (Labour).¹⁷ Interviews with parliamentarians and parliamentary staff suggest that the composition of the Committee, in terms of which individuals that serves, is very important for the success of PLS – and Committee activity in general. Where one or more members of the Committee have a pre-existing interest in the substance of the proposed legislation, the PLS process tends to be more active. This, it was suggested, was the case for the Gender Recognition Bill.¹⁸ In fact, one member, Deputy Aengus Ó Snodaigh, had previously introduced a Private Members' Bills on the topic of gender recognition. The Gender Recognition Bill 2013 provides the legal recognition of the preferred gender identity of persons so seeking. Thus, gender recognition was a topic with which some members of the Committee were already strongly engaged.

On 29th August 2013, the Joint Committee on Education and Social Protection invited interested individuals and groups to send written submissions on the General Scheme. Three individuals (Deirdre O'Byrne, Ben Power, and Adrienne Smith) and eight groups responded to the call. The eight groups were:

- Transgender Equality Network Ireland (TENI);
- TransParenCI;
- BeLonG To Youth Services;
- LGBT Noise;
- Free Legal Advice Centres (FLAC);
- Amnesty International;

¹⁶ Interview B.

¹⁷ This report uses the gender-neutral term “chairperson” in contrast to the Oireachtas practice of using the word “chairman.” The Committee comprised Deputies James Bannon (FG), Ray Butler (FG), Joan Collins (PBPA), Clare Daly (IND), Brendan Griffin (FG), Jim Daly (FG), Derek Keating (FG), Charlie McConalogue (FF), Nicky McFadden (FG), Jonathan O'Brien (SF), Willie O'Dea (FF), Aodhán Ó Ríordáin (Lab), Aengus Ó Snodaigh (SF), Brendan Ryan (Lab), and Senators Terry Brennan (FG), Jim D'Arcy (FG), Marie Moloney (Lab), Mary Moran (Lab), Marie-Louise O'Donnell (IND) and Averil Power (FF).

¹⁸ Interview A and Interview B.

- Equality Authority; and
- Ombudsman for Children's Office.

Public Hearings on PLS were held on 23th October 2013 (lasting approximately 2.5 hours), and 24th October (lasting approximately 1.5 hours). Thirteen Committee members were present for the Wednesday afternoon public hearings and six members were present for the Thursday morning public hearings. Senator Katherine Zappone, who had previously proposed her own Private Members' Bill on the topic– the Legal Recognition of Gender Bill 2013 – but who was not a member of the Committee, was present on both days. Deputies Derek Nolan, Mattie McGrath and Senator Fidelma Healy Eames attended for the Thursday morning hearings.

It was noted in interviews that it can be challenging to find time in the parliamentary schedule for Committee business. The PLS process adds greatly to the work of some Committees, particularly where the Committee is associated with a Department engaged with multiple legislative proposals. Dáil deputies noted in several interviews that it could be difficult to balance the policy-making and oversight demands with other work in the chamber and their duties and responsibilities to constituents.¹⁹ This is the case across all the three case studies. As the Chair of the Committee noted, PLS:

[...] is a work-intensive process, which unfortunately does not get the publicity it should. I was out canvassing yesterday when someone told me that the only committee that did any work was the Committee of Public Accounts. I had to put the alternative point of view. We do not necessarily go for headlines, but we undertake constructive work on policy. The report is part of that work.²⁰

According to the transcript, the following individuals participated in the committee's PLS hearings:

- Ms Simonetta Ryan (Department of Social Protection);
- Ms Sara Phillips (TENI);
- Ms Catherine Cross (TransParenCI);
- Mr. Andy Mannion (BeLonG);

¹⁹ Interview A, Interview B, Interview E, Interview F, and Interview L.

²⁰ Deputy Joanna Tuffy Friday, 9 May 2014, Dáil Éireann Debate, Vol. 840 No. 4, Report on the General Scheme of the Gender Recognition Bill 2013: Motion.

- Ms Leslie Sherlock (LGBT Noise);
- Professor Donal O'Shea (an endocrinologist);
- Mr. Ciaran Feely;
- Noeline Blackwell and Yvonne Woods (Free Legal Advice Centres);
- Brian Merriman, Dr. Fergus Ryan and Dr. Tanya Ní Mhuirthile (Equality Authority);
- Marco Perolini (Amnesty International); and
- Dr. Philip Crowley of the Health Service Executive. Dr. Crowley was available to respond to members' questions, but did not give a presentation to the Committee.

Civil society groups engaged in the gender recognition issue were undoubtedly well represented at the PLS hearings.²¹ The Committee also had available expert opinion. In managing the PLS process, Committee members and parliamentary officials are mindful to seek a balanced perspective on the issues before the Committee.²² Identifying relevant actors can be challenging, including alerting potentially interested parties to the PLS process.

In some cases, the Oireachtas Library & Research Service is called upon by Committee Clerks to identify relevant experts and interested groups. In other cases – as in this case – an open call is made to solicit submissions. In opening the debate, the Committee Chairperson noted that, “We could not invite everybody, but invited organisations and individuals with long-standing expertise in the area.”²³ Later, the Chair clarified this policy:

I would like to clarify who has been invited to appear. We made a call for submissions. We had a process whereby people could apply to make a presentation to the committee as part of their submission. Every group that requested the opportunity to make a presentation to these hearings has been invited to do so [...]. It would have been inappropriate for us to put conditions on who could make the presentations. That is not considered appropriate. All groups who requested to make a presentation are being allowed to do so without condition.

²¹ Interview D.

²² Interview B, Interview F, and Interview L.

²³ Joint Committee on Education and Social Protection Debate, Wednesday, 23th October 2013.

Who gets to speak at PLS Committee hearings is important, in part because attendees can be very influential in shaping the content of the Committee's PLS report – as we will see in each case explored in this chapter.

Although the interviewed civil society organizations expressed mostly positive feelings about their involvement in PLS and the Committee hearings in particular, one concern related to the short amount of time provided to each group to “make their pitch” on what is a complex public policy issue. As one interviewee suggested, the allotted 5 minutes to give an “opening and closing statement” was very limiting.²⁴

Topics raised by those in attendance for the PLS hearings included:

- The sectors' general preference for a system of “self-declaration” of gender rather than the proposed bill's requirement of a physician's statement to confirm a transition. The General Scheme's system was considered by many speakers to be stigmatising and degrading. Ms Leslie Sherlock urged the committee to “make strong recommendations to the Minister for a process that is simple, speedy and respectful”;
- The age criteria for gender recognition and the possibility to change this from 18 (as proposed in the General Scheme) to 16 or perhaps even lower;
- That, unfairly, the provisions of the Bill do not apply to married people. Under head 5(d) of the General Scheme of the Bill, couples would have to divorce as a condition of recognising the transgender partner in their preferred gender;
- That schools should be issued with guidelines on gender identity issues;
- That the General Scheme's proposal to permit transgender and intersex people to be excluded from competitive sport with a view to securing fair competition and the safety of competitors be removed from the Bill; and
- To include discrimination on the grounds of transgender or intersex gender identity in equality legislation.

The presentations – even abbreviated due to time constraints – led to questions and comments from Committee and other Members of the Oireachtas, including Deputy Aengus Ó Snodaigh, Averil Power, Deputy Joan Collins, Deputy Aodhán Ó Ríordáin, Deputy Brendan Griffin, Senator Marie Moloney, Senator Fidelma Healy Eames, Senator Katherine Zappone, and Senator Mary Moran.

²⁴ Interview D.

PLS Report and Recommendations

The Joint Committee on Education and Social Protection issued a 48-page report on the General Scheme of a Gender Recognition Bill in January 2014. As the Chair noted:

The General Scheme does not meet all of the wishes of the Groups and individuals advocating change in this area. On the other hand, some of the issues raised by the General Scheme were of particular concern to certain Members of the committee, and there was a divergence of views, especially in relation to making provision for transgender persons under the age of 18 years, and for persons who are married or in a civil partnership.²⁵

In addition to summarising the content of the submissions and public hearings, the committee made seven recommendations in relation to the General Scheme of Gender Recognition Bill 2013. These can be summarised as follows:

- **Terminology:** Consideration should be given to whether the term “preferred gender” should replace the term “acquired gender” in the Bill;
- **Age Criterion:** The committee recommended that the age at which a person is entitled to apply for a Gender Recognition Certificate should be reduced from 18 years to 16 years. In addition, measures should also be taken to address the day-to-day concerns of transgender people under the age of 16 years;
- **Single Criterion:** The committee believes that if a person is in an existing marriage or a civil partnership, this should not prevent him or her from qualifying for a Gender Recognition Certificate, and urges the Minister to revisit this issue;
- **Evidence of Transition:** The committee recommended that the current wording in the Bill with respect to evidence of transition should be reconsidered. The wording should address the concerns regarding people being stigmatised because of requirements like this;
- **Guidelines for Schools:** The committee recommended that guidelines on supporting the inclusion of transgender young people in schools should be developed;
- **Participation in Sport:** The provisions in the General Scheme regarding sport organisations should be reconsidered. Irish sporting regulatory bodies receiving public funding should develop comprehensive policies in relation to the participation of transgender people; and

²⁵ Joint Committee on Education and Social Protection (2014: 4).

- **Equality Acts:** Consideration should be given to amending equality legislation to add “gender identity” to the existing nine grounds under which discrimination is illegal.

Interestingly, these recommendations closely reflect the core concerns of the civil society groups included in the PLS process. As such, the Committee appears to have been acting as a conduit for the civil society groups. It should be noted that this might simply reflect the prior preferences of members of the Committee. Regardless, in this case it would be hard to conclude anything other than that the Committee’s PLS recommendations mirror the stated preferences and concerns of the civil society stakeholders who submitted and subsequently in the Public Hearings, although not perfectly.

Government’s Reaction to PLS

In a parliamentary debate on the PLS Report, the then Minister for Social Protection, Joan Burton TD, noted that:

The contents of the report of 14th January and the contributions made at the hearings the committee held on 23th and 24th October 2013 have made an important and valuable contribution to the overall understanding of the complex issues that are being addressed in this legislation.²⁶

Minister Burton declined to elaborate further on the effect of the PLS as the General Scheme was being returned to the Cabinet for approval. In fact, the Committee’s PLS report had such a significant impact on the General Scheme that it could no longer be employed to prepare the full draft of the Bill.²⁷ Instead, a revised General Scheme was drafted and sent to Cabinet for approval. As Minister Burton noted:

The Government agreed when discussing the general scheme of the Bill last year that if significant changes to the legislation were recommended by the committee, I would bring the matter back to Cabinet for the committee's recommendations to be considered.²⁸

²⁶ Dáil Debates, Friday, 9 May 2014.

²⁷ Interview C.

²⁸ Dáil Debates, Friday, 9 May 2014.

In June 2014, the Cabinet approved the revised General Scheme of Gender Recognition Bill 2014, and the Bill was subsequently published in December. In exploring the Bill, it is possible to observe the changes to the Bill as a result of PLS.²⁹ The same is observed in the communications between the Department and the Houses of the Oireachtas Service.

With regard to the Committee's first recommendation, the then Minister for Social Protection, Joan Burton T.D., accepted the change in terminology. The term "preferred gender" replaced the term "acquired gender" in the Bill. It could be argued that this was both a symbolic change, but also a substantive change – recognising the right of individuals to prefer a gender.

With regard to the Committee's second recommendation, the revised draft legislation now provided that those aged 16 and 17 could have their gender change recognised, although the process required the involvement of a judge. Providing this pathway for those aged 16 and 17 was a clear response to the PLS process. Appearing before the Committee's PLS public hearing on 23rd October 2013 the Department representative, Ms Simonetta Ryan, noted that, "[t]he Government made a very clear decision that the age would be 18 years. The legislation is being drawn up on that basis." The Government's position changed as a result of the PLS process.³⁰

The Committee's third recommendation to remove the unmarried criteria was not accepted by Minister Burton. The Department faced a legal problem in that the Irish Constitution at that time specifically forbid recognition of a marriage between two people of the same gender. In its reply to the Oireachtas Library & Research Service, the Department noted that, "[i]t was decided to legislate now for the large majority of the people affected who are single, and await the outcome of the referendum on same-sex marriage due to be held in May [2015]".³¹

²⁹ Oireachtas Library & Research Service 2015a .

³⁰ Interview A.

³¹ Oireachtas Library & Research Service 2015a.

The Committee's fourth recommendation regarding evidence of transition was arguably relatively vague and made a direct change difficult. For example, the recommendation did not clearly specify an alternative mechanism to recognise gender change. The Department did move some way to addressing the Committee's recommendations, although at this stage it did not adopt the "self-declaration" model suggested by a number of groups during the PLS hearing.³²

With regard to the Committee's fifth recommendation (school guidance), no changes to the Bill were made. The Department felt school guidance was an issue for the Department of Education and Skills, but the then Minister for Social Protection, Joan Burton TD, did write to the then Minister for Education and Skills, Ruairi Quinn TD in that regard. The Department subsequently worked with stakeholders to produce a guide for post-primary schools – *Being LGBT in School*.³³

In a clear case of direct causal impact, the Committee's sixth proposal (participation in sport) resulted in the removal of the section which permitted transgender and intersex people to be excluded from competitive sports. That clause was originally based on a similar clause in UK legislation, but at the PLS the civil society sector suggested this would severely hinder transgender people's participation in sports.³⁴

The Committee's final recommendation – specifying gender identity as a ground for discrimination – was considered, but the Department made no change to the proposed legislation in this regard. As the Department explained:

[t]his issue was not included as legal advice sought indicates that it is not necessary to add explicit provisions in respect of equality for transgender persons and intersex persons as discrimination on the basis of transgender status was already prohibited under the gender ground.³⁵

³² Interview C.

³³ Available at: <https://www.education.ie/en/Publications/Education-Reports/Being-LGBT-in-School.pdf>

³⁴ Interview D.

³⁵ Oireachtas Library & Research Service (2015a).

Impact of the PLS?

There is clear evidence that significant changes were made to the substance of the proposed legislation as a direct result of the PLS process. However, the Departments and Ministers did not simply accept all seven recommendations from the Committee. From the Department's perspective, PLS - resulted in "a lot of learning" and this learning formed the basis for the changes to the General Scheme. These changes necessitated bringing the General Scheme back before Cabinet, with significant consequences for the content of the subsequent Bill.³⁶

Yet, in the case of the Gender Recognition Bill, the influence of PLS extended beyond changes to the General Scheme and the published Bill. The process also influenced subsequent parliamentary debate and ultimately led to a crucial amendment during the formal legislative process. The Bill was introduced in the Seanad on 21st January 2015 for the Second Stage debate. This stage continued on the 28th January.

The Bill entered committee stage on 3rd February and was debated over two days, before entering the final and report stage on 17th February, where it was passed. On 5th March, the Gender Recognition Bill was debated in the Dáil.

After the initial parliamentary debates, and under significant pressure, the Minister agreed to consult further on the need to involve a medical practitioner in the gender recognition process.³⁷ On 3rd June, it was announced that trans-people over the age of 18 would be able to self-declare their gender identity without requirement of certification from a medical practitioner.

The Bill was revised in the Select Sub-Committee meeting on 17th June and all medical criteria for individuals over 18 was removed. In other words, "self-declaration" was to be the basis of the decision. The removal of the term "medical evaluation" spoke directly to the fourth recommendation in the Committee's PLS Report. The proposed requirement of a

³⁶ Interview C and Interview D.

³⁷ Interview D.

primary treating physician confirming the person has transitioned or is transitioning to their acquired gender represents another significant change to the Bill. This was actioned during the legislative process, but was very much a direct result of the Committee's PLS Report and parliament's positive response to the content of that report.

As the Chairperson of the Committee which undertook PLS of the Gender Recognition Bill stated:

It was probably one of our first pre-legislative scrutiny exercises. It was very good for us to see the result of the work we had put into it being taken on board by the Minister and the Minister of State and their officials.³⁸

Speaking during the final debate in the Oireachtas on the passage of the Bill, the then Minister for Social Protection, Joan Burton TD noted that:

The general scheme was subjected to pre-legislative scrutiny by the Oireachtas Joint Committee on Education and Social Protection, which published its report in January 2014. I believe this was a positive process which added much to our knowledge of the issues involved. Following the committee's report, I brought the matter back to the Cabinet and the revised general scheme of the Bill was published in June last year. The work of drafting the legislation was accelerated and prioritised and we were then in a position to introduce the Bill in this Chamber in January this year. Some key aspects of the committee's report are reflected in the Bill before us, for instance, the use of the term "preferred gender", as well as provision for persons aged between 16 and 18 years. Other changes to the Bill have reflected the debates in both Houses since the start of the year. I was particularly pleased to be able to secure agreement at the Cabinet on the most significant change of all – the introduction of a system of self-declaration.³⁹

From the Government's perspective, the only negative aspect of PLS in this case related to timing and, in particular, the delay that a PLS process can bring to the law-making process.

³⁸ Gender Recognition Bill 2014: Committee Stage. Wednesday, 17th June 2015

³⁹ Gender Recognition Bill 2014 [Seanad Bill amended by the Dáil]: Report and Final Stage Seanad Éireann Debate Vol. 241 No. 8, Wednesday, 15th July 2015

The Department calculated that PLS on the Bill took seven months to complete, which if not unchecked would probably cause PLS “to collapse.”⁴⁰

One of the most interesting features of the PLS on the Gender Recognition Bill is the extent to which the PLS public hearings and the Committee’s PLS report to the Minister continued to exert influence once the Bill was introduced into Parliament. This led to a change in the process for gender identity recognition, as originally suggested by a number of stakeholders appearing before the Committee’s PLS hearings. We can thus speak of a direct effect of PLS both during and after the process.

3.3 Misuse of Drugs (Supervised Injecting Facilities) Bill 2016

For a number of years, voluntary organizations in Ireland working with drug-users had called for supervised injection facilities, even preparing a draft Bill.⁴¹ Supervised injection facilities are controlled environments where drug users may inject drugs they have brought with them. Such centres reduce the risk of infection, while also reducing the incidence of drug injection and drug-related litter in public places. Illicit drug use is often cited as a significant public health problem in Ireland. Street injecting in central Dublin and other cities and towns is a common occurrence.

Following his appointment in 2015 as Minister of State at the Department of Health with responsibility for the National Drugs Strategy, Aodhán Ó Ríordáin TD expressed support for legislating for supervised injection facilities.⁴² Draft legislation was approved by Cabinet in December 2015, although a general election in February 2016 interrupted the legislative process for the Bill.

The new Government appointed following the 2017 general election reengaged with the proposed legislation. In October 2016 Catherine Byrne, TD (Fine Gael), the Minister of State at the Department of Health with responsibility for Health Promotion and the National Drugs Strategy, presented the Bill to the Oireachtas for pre-legislative scrutiny.

⁴⁰ Interview C.

⁴¹ Interview H.

⁴² Interview E.

The General Scheme provided for the establishment, licensing, operation and regulation of supervised injecting facilities. Among other things, the Bill proposed to exempt “authorised users” from the application of certain offences under the [Misuse of Drugs Acts 1977 to 2016](#) and the holders of licences (for the operation of SIFs) from the application of certain offences under the same anti-drugs legislation.

The Committee and PLS Process

The Oireachtas Joint Committee on Health comprises eleven members drawn from the Dáil and Seanad, chaired by Dr. Michael Harty, TD (Independent, Rural Independent Technical Group).⁴³

The Committee agreed to undertake PLS and invited interested parties to engage with the Committee.⁴⁴ Unlike the Gender Recognition Bill, the solicitation of submissions and expressions of interest was not undertaken by way of public notice/advertisement.

A public hearing of the Oireachtas Joint Committee on Health was held on the afternoon of 30th November 2016. Six members of the Committee were present. In addition, three other Members of the Oireachtas attended on behalf of three absent members of the Committee. Deputy Jack Chambers and Senator Aodhán Ó Ríordáin were also in attendance. Opening statements were given by Mr. Tony Duffin (Director of the Ana Liffey Drug Project) and Mr. Mark Kennedy (head of day services at Merchants Quay Ireland). Both organizations were supportive of the proposed legislation. Gerard Bury (Professor of General Practice at University College Dublin) also made an opening statement. In the afternoon, the Committee heard from officials from the Department of Health, and representatives from An Garda Síochána.

⁴³The other members are Deputies Bernard Durkan (Fine Gael), Billy Kelleher (Fianna Fáil), Alan Kelly (Labour), Kate O'Connell (Fine Gael), Margaret Murphy O'Mahony (Fianna Fáil), Louise O'Reilly (Sinn Féin), and Senators Colm Burke (Fine Gael), John Dolan (Civil Engagement Technical Group), Rónán Mullen (Independent), and Dr. Keith Swanick (Fianna Fáil).

⁴⁴ Interview F.

External stakeholders were supportive of the Bill as outlined in the General Scheme.⁴⁵ Indeed, the concern of at least some of the stakeholders was that the Bill would be subjected to unnecessary and unhelpful change from the Committee and other parts of the legislative process. In this PLS case, it was members of the Committee who raised concerns regarding the proposed legislation. Members' concerns during the public hearings centred around three issues:

- The legal position regarding people on the way to a supervised injection facility – after all, users would be in possession of drugs for personal use and this could result in their arrest and prosecution;
- The right of An Garda Síochána to enter the unit without a warrant; and
- The plan regarding data collection. The committee worried that any requirement for a person to register to use the facility would reduce addicts' willingness to use the facility.

While acknowledging the points raised by Members, the invited stakeholders were minded to recommend against making changes to deal with any these issues. In addition, external stakeholders had worried that Committee members would be concerned with other issues, such as the status of minors and pregnant drug-users who wished to use the facilities.⁴⁶ These issues did not arise in the public hearings.

PLS Report and Recommendations

The Committee reported to the then Tánaiste and Minister for Justice and Equality, Frances Fitzgerald TD by way of letter dated 8th December 2016. The letter noted that “[i]n general terms the Committee was very supportive of your proposal to legislate for the licensing and establishment of supervised injection facilities.” The Committee Chairperson went on to make three recommendations, as follows:

Recommendation 1: That the legislation provides that use of the service will not require advance registration and that data collected will be anonymous.

⁴⁵ Interview H.

⁴⁶ Interview H and Interview G.

Recommendation 2: That a code of practice regarding policing and Supervised Injecting Facilities be developed and published to preclude legitimate “authorised users” from being arrested while on their way to making use of such facilities.

Recommendation 3: That a sample Service Level Agreement between the HSE and a licence holder be published in conjunction with the Bill.

Government reaction and the impact of the PLS Process

The Bill was presented on 8th February 2017, exactly two months after the Committee wrote to Minister Fitzgerald. With regard to recommendation 1, a new section was introduced into the Bill as follows:

Obligation of licence holder to provide information

8. (1) A licence holder shall, at the request of the Minister or the Executive, give to the Minister or the Executive such information as the Minister or the Executive may reasonably require for the purpose of evaluating the safety, utility, and cost effectiveness of the supervised injecting facility concerned, or such other information as may be prescribed for the purpose of such evaluation.

2) Subsection (1) does not apply to personal records (whether in written or electronic form) relating to an authorised user, who may be identified from them.

The inclusion of this section did not rule out advance registration, but the requirement for advance registration did not appear in the published Bill. In communications with the Oireachtas Library & Research Service, the Department noted that the new section:

[p]rovides for anonymised data to be shared with the Minister or the HSE only for the purposes of evaluating the facility. Personal records that could be used to identify individual users of a supervised injecting facility cannot be shared.⁴⁷

Both the civil-society sector (which would likely be responsible for running such centres – subject to a tender competition) and the Department indicated that it was never the intention of the Bill to provide for compulsory registration that could identify the user.

⁴⁷ Oireachtas Library & Research Service (2017).

Instead, for statistical purposes, it was deemed necessary to find a mechanism to record the number of users and the rate of repeat use of the facility. As such, the amendment reflects both the recommendation of the Committee and helps clarify the position of the Department and the intention of the legislation.⁴⁸

With regard to the second recommendation, there is no evidence that the then Tánaiste and Minister for Justice and Equality, Frances Fitzgerald TD accepted it. Indeed, the Department responded that “[s]uch a provision may impede An Garda Síochána in their undertakings to counteract criminal activity and drug trafficking. To do so could also create the unintended consequence of making vulnerable people injecting drugs targets for unscrupulous criminal elements.”⁴⁹

The third recommendation also appears to have been rejected by the then Tánaiste and Minister for Justice and Equality, Frances Fitzgerald TD, as no trace of the service level agreement appears in the Bill or alongside the Bill. Indeed, the Department replied that, “[d]evelopment of a service level agreement in advance of the publication of the Bill would unnecessarily delay the publication and could have a negative impact on any tendering or expressions of interest process that might be undertaken by the HSE for the operation of a pilot supervised injecting facility.”⁵⁰

In summary, two of the Committee’s three recommendations were clearly rejected while one recommendation led the Department to clarify its intent and interest in the Bill when published. It has been suggested that the latter did not alter the Government’s policy, which had simply been misunderstood by the Committee.⁵¹ As such, the PLS process may be seen as leading to clearer legislation in this instance.

⁴⁸ Interview G.

⁴⁹ Oireachtas Library & Research Service (2017).

⁵⁰ *ibid.*

⁵¹ Interview H.

Looking at the **formal legislative process**, the Bill received its second-stage reading on Thursday, 23th February 2017. During the debate, Deputy Jonathan O'Brien, made reference to the PLS process and the Committee's recommendations:

As the Minister of State will be aware, the committee carried out the pre-legislative scrutiny. The Library and Research Service produced a fine document on it. Page 39 of that publication covers the main issues raised during the pre-legislative scrutiny and how well the Bill addresses those concerns. It found that the majority of observations fell into three main areas. Unfortunately, two of the three have not been addressed in the Bill, which is disappointing.⁵²

The Committee considered the Bill on 22th March 2017. During Committee stage, there were no proposed amendments to the Bill. On the 30th March 2017, in the Report and Final Stages, an amendment by the opposition was voted on and lost. The amendment did not relate to any of the issues raised in PLS, but to the requirement for a "sunset clause" by which parliament would review the legislation and would consider renewing the legislation every two years. The proposal to insert a review clause had been discussed during Committee stage but had not been the subject of a formal amendment. The proposal for a sunset clause could, in some circumstances, be related to PLS in that it is a way for the Committee to ensure that the issues it considered problematic would be addressed at a later date if they materialise. However, in this case it does not appear to have arisen from issues raised during PLS and it was proposed by a Deputy who was not member of the Committee (Deputy Maureen O'Sullivan).

The Bill was signed into law in May 2017. PLS undoubtedly led to a "clearer" Bill, in that the published Bill better clarified the data collection requirements and the fact that the facilities would not be expected or allowed hand over sensitive personal information regarding users to the Government. The PLS had little impact with regard to the two other recommendations.

⁵² Misuse of Drugs (Supervised Injecting Facilities) Bill 2017: Second Stage (Continued)
Thursday, 23 February 2017, Dáil Éireann Debate, Vol. 940 No. 2, Unrevised

One possible conclusion from this case study is that PLS is unlikely to be as influential, all else equal, when the civil society and other impacted groups are already widely pre-disposed to the draft legislation. In the case of the Supervised Injection Facilities General Scheme, the proposed legislation at that point already reflected well the preferences of the various groups engaged on the topic. They therefore urged the Committee not to “interfere” with the proposed legislation.⁵³ In such cases, the Committee itself must then work to find recommendations – and without the support of the relevant Department or the interested parties – such recommendations are less likely to win support necessary for changing the proposed legislation.

3.4 Education (Admission to Schools) Bill 2015

If enacted, the Education (Admission to Schools) Bill 2015 would require schools to prepare and publish a pupil admission policy. The policy would have to contain a statement that schools shall not discriminate in their admissions on specified grounds including gender, civil status, family status, sexual orientation, religion, disability, race, membership of the Traveller community or special educational needs.⁵⁴ A “parent-friendly” appeals system is provided for should disputes arise.

If enacted, the Bill would enable the Minister for Education and Skills to make regulations concerning the content of those policies. As such, much of the detail in respect of the changes brought about by it would be contained in the regulations. The Bill provides that an independent person may, in certain circumstances, be appointed to operate a school’s admission policy. Where a child is unable to secure a school place, the Bill provides certain state agencies with powers to designate a school place.

The Minister for Education and Skills, Mr. Ruairí Quinn T.D., published the Draft General Scheme of the Education (Admission to Schools) Bill on 2nd September 2013. Uniquely, the General Scheme was also accompanied by associated draft regulations (as mentioned

⁵³ Interview G and Interview H.

⁵⁴ Denominational schools would continue to be able to prioritise or refuse enrolment in accordance with religious denomination.

above). Publishing both the General Scheme and a draft of the Ministerial regulations provided an opportunity for those engaged with the Bill at PLS to better understand the likely consequences of the legislation, as foreseen by the relevant Minister.⁵⁵

The Committee and PLS Process

As already noted, the Joint Committee on Education and Social Protection in the 31st Dáil shadowed two Government Departments: the Department of Education and Skills and the Department for Social Protection. These are large Departments, both in terms of Government expenditure, services provided and political saliency. During the 31st Dáil, the committee comprised 21 members - fifteen Dáil Deputies and six Senators. The Fine Gael-Labour Coalition Government held thirteen seats on the Committee, including the Committee Chairperson, Joanna Tuffy, TD (Labour).

The Committee invited written submissions from parties and individuals via an open call.⁵⁶ This was the first instance of PLS in Ireland where the draft regulations were examined in tandem with the General Scheme of the Bill. In total, 57 submissions were received. The Oireachtas Library & Research Service (2015b: Table III) summarised the source of the submissions as follows, a conclusion confirmed by this report's relocation of the submissions:

- 15 submissions from education partners;
- 11 submissions from patron bodies;
- 20 submissions from representative groups and stakeholder bodies;
- 13 submissions from schools; and
- 31 personal submissions.

PLS hearings for the draft General Scheme by the Joint Committee on Education and Social Protection took place over three days in December 2013 and January 2014. 22 invitations were issued based on the submissions received.⁵⁷

On 4th December 2013, the Joint Committee met at 13:10 and adjourned at 15:25. Twelve members were present for this hearing. The Committee heard from:

⁵⁵ Interview with Individual I.

⁵⁶ Interview with Individual I.

⁵⁷ Interview with Parliamentary Official I.

Study on the impact of pre-legislative scrutiny (commissioned by Library & Research Service)

- Mr. Martin Hanevy, assistant secretary, and Mr. Hubert Loftus, principal officer, both at the Department of Education and Skills;
- from the National Parents Council Ms Áine Lynch, chief executive officer;
- from the National Association of Boards of Management in Special Education Ms Breda Corr, general secretary;
- from Education and Training Boards Ireland Mr. Evan Buckley, education officer;
- from the Church of Ireland Board of Education Dr. Ken Fennelly;
- from the National Council for Special Education Ms Teresa Griffin, chief executive officer;
- from the INTO Ms Deirdre O'Connor, a senior official; and
- from the Irish Traveller Movement Ms Brigid Quilligan, director.

The following week, the Joint Committee met at 13:00 on 11th December 2013, adjourned at 15:30. Eight members were present, and the Committee heard from:

- Dr. Ríona Ní Fhrighil of Cearta Oideachais;
- Mr. Kevin De Barra of Comhdháil Náisiúnta na Gaeilge;
- Ms Bláthnaid Ní Ghréacháin of Gaelscoileanna Teo;
- Mr. Mark O'Connor of Inclusion Ireland;
- Ms Hilary Harmon of Pavee Point Traveller and Roma Centre;
- Ms Jane Donnelly of Atheist Ireland;
- Mr. Ken Whyte of Presentation College, Cork; and
- Mr. Caoimhin Ó hEaghra of An Foras Pátrúnachta.

On 15th January 2014, the Joint Committee met at 13:00. Ten members were present, including Senator Katherine Zappone (who was not a member of the Committee at that time). This session heard from Sr. Marie Céline Clegg, Loreto Education Centre, Mr. John Suttle, Ms Derval Duggan, Mr. Noel P. Malone, Coláiste Chiaráin, Croom, Limerick, Mr. Gabriel McCabe, Ms Eithne Read O'Doherty and Ms Eukaria O'Grady.

In each case, the witness was invited to make an initial presentation of no more than five minutes in duration. Witnesses were discouraged from reading their submission, and encouraged instead to provide an overview of their submission due to time constraints.

It should be noted that the time provided for public hearings as part of the Bill's PLS was significant. As noted earlier, Dáil Deputies and Senators face competing demands on their limited time and other resources. Even if Committee work in general, and PLS in particular, is considered a high priority for some members, dedicating time to preparing for public

hearings can be burdensome.⁵⁸ The result can be Committee members who appear disinterested in the topic and witnesses appearing before the Committee. By the very nature of their attendance, the topic being scrutinised as part of PLS is of great interest to those individuals appearing before the Committee; this is not necessarily the case for members of the Committee.

Presentations and the subsequent discussions covered a wide number of policy areas, including the issue of denominational schools and whether an admission policy, which may favour prospective students and their parents based on religion, was constitutional or unconstitutional. Committee hearings also covered the circumstances of specific sectors (such as the further education sector), the role of the police service and health service and the process for appealing School admission decisions.

PLS Recommendations

The Committee published a 72-page report on 5th March 2014, containing 14 conclusions. These conclusions are set out below. In our assessment, not all conclusions constitute recommendations (see Chapter 2) from the Committee to the Minister with regard to the proposed legislation; some are more general observations or summaries of the opinions expressed by one or more witnesses.

For example, Conclusion 1 deals with the issue of denominational schools and admission policy which may favour prospective students and their parents based on religion. In a carefully worded summary, the Committee noted that:

Notwithstanding the provision by Vocational Educational Committees over the years of multidominational education at post-primary level, and the growth in the provision of such education by the Educate Together patronage body, and at primary level in more recent times by the Educate Together patronage body and Education and Training Boards, several stakeholders including the Ombudsman for Children noted the lack of diversity of school types available in Ireland. In that context, concerns were raised by stakeholders in respect of Head 3 (iii)(II), which reaffirms the religious ethos exemption provided for in Section 7(3)(c) of the Equal Status Act, 2000.

⁵⁸ Interview A and Interview L.

Some stakeholders claimed that this provision may be in breach of provisions of Bunreacht na hÉireann, and Ireland's obligations under the European Convention on Human Rights and the United Nations Convention on the Rights of the Child. On the other hand, others claim that Bunreacht na hÉireann, in effect, protects the position of denomination-based education. Section 7(3)(c) has not been challenged in the Courts. As the Committee noted, there is a potential tension between Articles 42 (Education) and 44 (Religion) of Bunreacht na hÉireann, and this poses a particular difficulty when legislating in this policy area."⁵⁹

From our reading, this conclusion does not offer a recommendation; rather it noted the (often conflicting) conclusions of various groups. The second conclusion goes further in offering a recommendation:

Multiple patronage and ethos as a basis for policy can lead to segregation and inequality in the education system. The objectives of admission policy should be equality and integration.

Yet this recommendation is relatively general, and only specifies what should be an objective of the policy; it makes no specific recommendations regarding the specific content of the Bill, or how to achieve the overarching objectives.

In contrast, the last conclusion is relatively specific. The Committee writes that "[i]t needs to be clarified whether or not the Bill will apply to the Further Education Sector. If it does, the proposed Regulations [...] should take into account the importance to the Sector (a) of being permitted to interview prospective students, and (b) of recognising prior academic achievement in assessing applications for admission to certain specialised courses."

Contrasting these three "conclusions" provides a good example of how a Committee, or different members of a Committee, can see PLS as having different roles, from making general observations without making any recommendations, to making a broad recommendation, or to make very specific recommendations. The remaining conclusions in the PLS report were as follows:

⁵⁹ The Report is available at http://opac.oireachtas.ie/AWData/Library3/Final_Report_270214ts_Final_105853.pdf

- Schools' **admission policies** (see Head 4) should be written in a simple and plain style so that they are accessible to all parents. Guidance in this regard from the Department of Education and Skills could be strengthened;
- Concerns have been raised in relation to the implications for the parents and students concerned of the proposed provision (Head 4) to allow an objection to enrolment of an applicant by An Garda Síochána or the Health Service Executive (HSE). Safeguards are required to address these concerns. This issue also emphasises the need for an **independent appeals system**;
- The use of **waiting lists can give rise to discrimination** against newcomers to an area. This discrimination should be addressed sooner rather than later. It is proposed to allow schools that currently use waiting lists to phase out this practice over a number of years (draft Content of Policy' Regulations (no.16)). Unless there are legal obstacles, waiting lists should be phased-out as soon as possible, and preferably from 2015. Pending the phasing-out of such lists, there is a need for greater transparency, for applicants and others, in relation to their management and use. It has also been pointed out to the Committee by stakeholders that the transitional use of waiting lists could be viewed as particularly unfair towards children in care and may potentially place them at risk of isolation in their community. It may be that this risk could be mitigated by giving children in care a high priority in relation to school admissions policies – not just in the transitional period, but also on an on-going basis. A comprehensive strategy should be developed in relation to the position of children in care to ensure that they are not directly or indirectly discriminated against in school admission policies;
- Some stakeholders argued that the derogation included in the draft Content of Policy' Regulations (no.15) in respect of **children of past pupils** may not be compatible with the objectives as set out by the Minister. It is also unclear as to why the relevant percentage was set at 25%. The committee considers that there should be no such derogation, and that a school should not be permitted to give priority to a student on the grounds that he or she is the son or daughter of a former student of the school. The committee considers that a school should be permitted to give priority to a student who has a sibling who is currently attending the school;
- The Minister may wish to review whether a school admission policy should be allowed to give priority to an applicant, one of whose **parents is a member of staff** of the school;
- The ways in which Boards of Management could be offered some protection from litigation in the case of appeals, while also protecting the rights of parents to take legal action where they deem it necessary, should be explored. If the section 29 appeals process is replaced, there should be an independent and transparent appeals process, and this could possibly be provided for on a regional basis. Consideration should also be given, in the context of such a process, to provide for **independent appeals** in relation to

the refusal of a school to offer a pupil a place in Transition Year. A standard template or checklist should be used in relation to such appeals in order to ensure a fair hearing;

- Where a school is designated to enrol a student with **special educational needs**, resources should be provided by the Department of Education and Skills within a statutory timetable (Head 9);
- Where a **Patron** has more than one school in a particular area, consideration could be given to requiring that Patron to put-in-place a common application system. Schools in a particular area should, irrespective of their patronage, cooperate in relation to admissions;
- It may be worth ensuring that Head 11 providing for a **common applications system** between schools takes account of the Common Application System (CAS) currently in operation in Limerick, as well as systems in other States (including the United Kingdom), and the effectiveness and impact of such systems;
- Consideration could be given to the specific linguistic needs and status of schools within **Gaeltacht Language Planning Areas** (GLPAs - as defined in the Gaeltacht Act 2012) and the language planning process, which is being rolled out under the auspices of the Department of Arts, Heritage and the Gaeltacht; and
- The proposed legislation needs to take account of the need to protect the **integrity of Irish medium schools** while ensuring that no discrimination takes place in relation to admissions. The proposed legislation could take into account the Twenty-year Strategy for the Irish language by considering allowing a high priority in their enrolment policies to the small percentage of schoolchildren who are native speakers of Irish (outside of the Gaeltacht).

Government reaction and the impact of PLS

In our assessment, three changes arose from the PLS Report when the conclusions in the Report are compared with the content of the Education (Admission to Schools) Bill 2015 as published on 8th April 2015.

First, in response to the recommendation to clarify whether or not the Bill will apply to the Further Education Sector, the Department explicitly noted that the Bill will apply to recognised schools. Second, with regard to the role of An Garda Síochána or the Health Service Executive, the Department's communication with the Oireachtas Library & Research Service noted that:

[T]he proposed provision to allow an objection to enrolment of an applicant by An Garda Síochána or the Health Service Executive was removed from the General Scheme when seeking Government approval to draft the Bill.⁶⁰

Third, with regard to the appeal procedure, the Department informed the Oireachtas that:

Having regard to the Committee's conclusion, this issue is being re-examined and the Minister will bring alternative proposals to Government involving the continuation of an independent appeal process through an amendment to Section 29 of the Education Act to be introduced at committee stage of the Bill.⁶¹

It should be noted that much of the PLS debate and report considered the content of the draft Ministerial regulations. Although providing a Committee with draft Ministerial regulations may allow a Committee better insight into the then Minister's thinking, it is inappropriate to compare a Bill to draft Ministerial regulations. The latter can be changed by a Minister without consulting the Oireachtas, and as such, they can be more easily amended. As such, we consider here only recommendations which resulted in a change to the Bill.

The Bill was presented in the Oireachtas in April 2015, but did not progress before the 31st Dáil was dissolved in February 2016. While the Bill did not become law during the 31st Dáil, the PLS did serve to impact the Bill as published, with a minority of the committee's conclusions being responded to. A similar Bill – the Education (Admission to Schools) Bill 2016 - was reintroduced following the 2016 General Election, but the process was not complete at the time of writing. As such, it is not possible to fully assess the impact of PLS on the legislative process in this case.

However, the **formal legislative process** for the Education (Admission to Schools) Bill 2016 is important to fully understanding the possible impact of PLS. The 2016 Bill itself was not presented to the Committee as a General Scheme for PLS (as was noted above, it was very similar to the 2015 Bill which had already undergone PLS). However, after the second-stage debate on the 2016 Bill, the Select Committee quite unusually decided that, prior to formal

⁶⁰ Provided (on request) by the Department of Education and Skills to the Oireachtas Library & Research Service.

⁶¹ *ibid.*

line-by-line scrutiny, it would invite relevant stakeholders to a meeting to discuss the Bill. The result of this scrutiny process was a Committee [Report \(June 2017\)](#) in which the Committee made several ‘observations’ which it called on the Minister to ‘take on board’ at Committee stage (i.e. recommendations by our definition (p.15 of the Report)).

Two of its recommendations, those on ‘access to local schools’ and on ‘the baptism barrier,’ are of particular interest because they are similar to Conclusion 1 of the PLS process (which the Committee could not agree on as a recommendation and instead included as a conclusion – see page 52 above) and second, because of the impact they appear to have had on the Bill. They are:

- **Access to local Schools** – Children should be able to attend a local school if they so wish and not have to travel a great distance simply to secure an education but recognising the rights of parents to send their children to a school reflecting their ethos; and
- **Baptism Barrier** – it is imperative that the relevant legislation is, at the very least, amended so that no child is denied admissions to a State funded school on the basis of their religion or beliefs.

Looking at impact, Minister Bruton appears to have accepted these ‘observations.’ At formal Committee stage,⁶² he indicated his intention to move amendments to the Bill on report stage to remove the capacity for state-funded denominational primary schools (where they are oversubscribed) to use religion as a criteria in admissions process except, in three scenarios:

- where it would not otherwise be possible to maintain the ethos of the school;
- where the school is established by a minority religion, in order to ensure that students of that religion can find a school place in a school of that ethos; and

⁶² House of the Oireachtas Select Committee Education and Skills, 28 June 2017 [Committee Stage of Education Admissions Bill 2016](#).

- where the school is established by a minority religion, in order to admit a student of that religion who resides in a community consistently served by that school.⁶³

Issues prevalent during PLS continue to characterise the debate in 2017. The Ombudsman for Children has warned that by allowing schools of a minority-religion to continue to prioritise members of their religion in order to protect their ethos in cases where they are oversubscribed, some children will end up being treated differently (i.e. those on waiting lists for schools of a minority religion).⁶⁴

⁶³ House of the Oireachtas Select Committee Education and Skills, 28 June 2017 [Committee Stage of Education Admissions Bill 2016](#). Also as reported in Irish Examiner (28 June 2017) [Legislation to end baptism barrier welcome but key structural issue in education not addressed](#).

⁶⁴ Irish Times, 4 January 2018 [Ombudsman critical of baptism barrier rule](#)

Appendix: PLS Cases

Bill	Committee	Final Status (if not enacted)
Horse Racing Ireland Bill 2015 (Number 83 of 2015)	Agriculture, Food and the Marine	
Education and Training Boards Bill 2012 (Number 83 of 2012)	Education and Social Protection	
Education (Admission to Schools) Bill 2015 (Number 35 of 2015)	Education and Social Protection	Bill Published
Gender Recognition Bill 2014 [Seanad] (Number 116 of 2014)	Education and Social Protection	
Technological Universities Bill 2015 (Number 121 of 2015)	Education and Social Protection	Second Stage
Climate Action and Low Carbon Development Bill 2015 (Number 2 of 2015)	Environment Culture and the Gaeltacht	
Planning and Development (Amendment) Bill 2016 (Number 1 of 2016)	Environment, Culture and the Gaeltacht	Bill Published
Dublin Docklands Development Authority (Dissolution) Bill 2015 (Number 45 of 2015)	Environment, Culture and the Gaeltacht	
Urban Regeneration and Housing Bill 2015 (Number 51 of 2015)	Environment, Culture and the Gaeltacht	
National Cultural Institutions (National Concert Hall) Bill 2015 (Number 52 of 2015)	Environment, Culture and the Gaeltacht	
Maritime Area and Foreshore (Amendment) Bill	Environment, Culture and the Gaeltacht	No Bill
Housing (Regulation of Approved Housing Bodies) Bill 2015	Environment, Culture and the Gaeltacht	No Bill
Official Languages (Amendment) Bill	Environment, Culture and the Gaeltacht	No Bill
Finance (Tax Appeals) Bill 2015 (Number 71 of 2015)	Finance, Public Expenditure and Reform	
Consumer Protection (Regulation of Credit Servicing Firms) Bill 2015 (Number 1 of 2015)	Finance, Public Expenditure and Reform	
Credit Union Bill 2012 (Number 82 of 2012)	Finance, Public Expenditure and Reform	
Houses of the Oireachtas (Inquiries, Privileges and Procedures) Bill	Finance, Public Expenditure	

Study on the impact of pre-legislative scrutiny (commissioned by Library & Research Service)

2013 (Number 53 of 2013)	and Reform	
Protected Disclosures Bill 2013 [Seanad] (Number 76 of 2013)	Finance, Public Expenditure and Reform	
Freedom of Information Bill 2013 (Number 89 of 2013)	Finance, Public Expenditure and Reform	
Central Bank Bill 2014 (Number 27 of 2014)	Finance, Public Expenditure and Reform	
Regulation of Lobbying Bill 2014 (Changed from Registration of Lobbying Bill 2014) (Number 59 of 2014)	Finance, Public Expenditure and Reform	
European Stability Mechanism (Amendment) Bill 2014 (Number 87 of 2014)	Finance, Public Expenditure and Reform	
Public Sector Standards Bill 2015 (Number 132 of 2015)	Finance, Public Expenditure and Reform	Bill Published
Child Care (Amendment) Bill 2015 [Seanad] (Number 94 of 2015)	Health and Children	
Adoption (Information and Tracing) Bill	Health and Children	No Bill
Protection of Life During Pregnancy Bill 2013 (Number 66 of 2013)	Health and Children	
Children First Bill 2014 (Number 30 of 2014)	Health and Children	
Public Health (Standardised Packaging of Tobacco) Bill 2014 [Seanad] (Number 54 of 2014)	Health and Children	
Public Health (Alcohol) Bill 2015 (Number 120 of 2015)	Health and Children	Second Stage
National Minimum Wage (Low Pay Commission) Bill 2015 [Seanad] (Number 42 of 2015)	Jobs and Enterprise	
Industrial Relations (Amendment) Bill 2015 (Number 44 of 2015)	Jobs and Enterprise	
International Protection Bill 2015 [Seanad] (Number 102 of 2015)	Justice, Defence and Equality	
Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Bill 2012 [Seanad] (Number 32 of 2012)	Justice, Defence and Equality	
Personal Insolvency Bill 2012 (Number 58 of 2012)	Justice, Defence and Equality	
National Vetting Bureau (Children and Vulnerable Persons) Bill 2012 (Number 71 of 2012)	Justice, Defence and Equality	
Assisted Decision-Making (Capacity) Bill 2013 (Number 83 of 2013)	Justice, Defence and Equality	
Irish Human Rights and Equality Commission Bill 2014 (Number 20 of 2014)	Justice, Defence and Equality	
Children and Family Relationships Bill 2015 (Number 14 of 2015)	Justice, Defence and Equality	

Study on the impact of pre-legislative scrutiny (commissioned by Library & Research Service)

Mediation Bill	Justice, Defence and Equality	No Bill
Criminal Procedure Bill	Justice, Defence and Equality	No Bill
Criminal Justice (Victims of Crime) Bill	Justice, Defence and Equality	No Bill
Criminal Justice (Corruption)	Justice, Defence and Equality	No Bill
Gambling Control	Justice, Defence and Equality	No Bill
Criminal Justice (Community Sanctions) Bill	Justice, Defence and Equality	No Bill
Bail Bill	Justice, Defence and Equality	No Bill
Road Traffic Bill 2016 [Seanad] (Number 3 of 2016)	Transport and Communications	Second Stage
State Airports (Shannon Group) Bill 2014 [Seanad] (Number 35 of 2014)	Transport and Communications	
Vehicle Clamping Bill 2014 [Seanad] (Number 51 of 2014)	Transport and Communications	
Sport Ireland Bill 2014 (Number 85 of 2014)	Transport and Communications	
Harbours Bill 2015 (Number 66 of 2015)	Transport and Communications	

Source: Oireachtas Library & Research Service 2016.

About the Author

Shane Martin is Reader in Comparative Government and Deputy Head of the Department of Government at the University of Essex. He holds a BA in Political Science from Trinity College Dublin, and a MBS and PhD in Government from Dublin City University. He previously taught at the University of Leicester, Dublin City University, the Pennsylvania State University, and the University of California, San Diego. He has held a Government of Ireland Postdoctoral Research Fellowship and was a British Academy Mid-Career Fellow. Dr. Martin's research focuses on legislative organisation and, in particular, on how electoral incentives shape representatives' preferences, the internal structures of parliaments, executive oversight and the production of public policy. He has consulted for a number of parliaments and agencies on parliamentary strengthening and parliamentary reform. He is co-editor of *The Oxford Handbook of Legislative Studies* (Oxford: Oxford University Press, 2014). Recent peer-reviewed research by him on the topic of parliaments and legislatures has appeared in *Legislative Studies Quarterly*, *The Journal of Legislative Studies*, *Political Research Quarterly*, *West European Politics*, *Party Politics*, *Comparative Political Studies*, *British Journal of Political Science* and *Irish Political Studies*.

References

- André, Audrey, Sam Depauw, and Shane Martin (2016) "Trust Is Good, Control Is Better: Multiparty Government and Legislative Organization." *Political Research Quarterly* 69(1): 108-120.
- Arkins, Audrey (1988) "The Committees of the 24th Oireachtas." *Irish Political Studies* 3: 91-97.
- Gallagher, Michael (2010) "Parliamentary Parties and the Party Whips," in Muiris MacCarthaigh and Maurice Manning (eds.) *The Houses of the Oireachtas: Parliament in Ireland*. Dublin: Institute of Public Administration, pp. 129-152.
- Gallagher, Michael, and Michael Marsh, eds. (2011) *How Ireland Voted 2011: The full story of Ireland's earthquake election*. Basingstoke: Palgrave Macmillan.
- Goodwin, Mark, and Stephen Bates (2016) "The 'powerless parliament'? Agenda-setting and the role of the UK parliament in the Human Fertilisation and Embryology Act 2008." *British Politics* 11(2): 232-255.
- Kalitowski, Susanna (2008) "Rubber stamp or cockpit? The impact of parliament on Government legislation." *Parliamentary Affairs* 61(4): 694-708.
- Korris, Matt (2011) "Standing up for Scrutiny: How and Why Parliament Should Make Better Law." *Parliamentary Affairs* 64(3): 564-574.
- Leston-Bandeira, Cristina, and Louise Thompson (2017) "Integrating the view of the public into the formal legislative process: public reading stage in the UK House of Commons." *The Journal of Legislative Studies*. Online first: [10.1080/13572334.2017.1394736](https://doi.org/10.1080/13572334.2017.1394736)
- Lynch, Catherine. 2017. "The effect of parliamentary reforms (2011–16) on the Oireachtas committee system." *Administration* 65(2): 59-87.
- Lynch, Catherine, Eoin O'Malley, Theresa Reidy, David M. Farrell, and Jane Suiter (2017) "Dáil reforms since 2011: Pathway to power for the 'puny'parliament?." *Administration* 65(2): 37-57.
- Martin, Shane (2010) "The Committee System," in Muiris MacCarthaigh and Maurice Manning (eds.) *The Houses of the Oireachtas: Parliament in Ireland*. Dublin: Institute of Public Administration, pp. 285-302.
- MacCarthaigh, Muiris (2010) "Parliamentary Scrutiny of Departments and Agencies," in Muiris MacCarthaigh and Maurice Manning, eds., *The Houses of the Oireachtas: Parliament in Ireland*. Dublin: Institute of Public Administration, pp. 358-376.

Study on the impact of pre-legislative scrutiny (commissioned by Library & Research Service)

- MacCarthaigh, Muiris (2005) *Accountability in Irish Parliamentary Politics*. Dublin: Institute of Public Administration.
- Modernisation Committee, *The Legislative Process*. 7th September 2006, HC 1097 2005-06.
- Murphy, Mary C. (2006) "Reform of Dáil Éireann: The dynamics of parliamentary change." *Parliamentary Affairs* 59: 437-453.
- Norton, Philip (2013) *Parliament in British Politics*. Basingstoke: Palgrave Macmillan.
- Oireachtas Joint Committee on Education and Social Protection (2014) *Report on the General Scheme of a Gender Recognition Bill 2013*.
- Oireachtas Library & Research Service (2016) *Pre-legislative scrutiny (PLS) by parliament*. Spotlight, No. 8 of 2014 (Appendix and figures Updated April 2016).
- Oireachtas Library & Research Service (2015a) *Bills Digest: Gender Recognition Bill 2014*. No. 116 of 2014. 20th January 2015.
- Oireachtas Library & Research Service (2015b) *Bills Digest: Education (Admission to Schools) Bill 2015*. No.35 of 2015. 18th June 2015
- Power, Greg (2000) *Parliamentary Scrutiny of Draft Legislation 1997-1999*. London: UCL Constitution Unit.
- Programme for Government 2011-2016*. Dublin: Department of the Taoiseach.
- Russell, Meg, and Daniel Gover (2017) *Legislation at Westminster: Parliamentary Actors and Influence in the Making of British Law*. Oxford: Oxford University Press.
- Slapin, Jonathan B., Justin H. Kirkland, Joseph A. Lazzaro, Patrick A. Leslie, and Tom O'Grady (2017) "Ideology, Grandstanding, and Strategic Party Disloyalty in the British Parliament." *American Political Science Review* Online first: 1-16.
- Smookler, Jennifer (2006) "Making a difference? The effectiveness of pre-legislative scrutiny." *Parliamentary Affairs* 59(3): 522-535.
- Strøm, Kaare (1998) "Parliamentary Committees in European Democracies." *Journal of Legislative Studies* 4(1): 21-59.
- Widdecombe, Ann (2005) "The Role of an MP: An Opposition view," in Nicholas Baldwin (ed.) *Parliament in the 21st Century*. London: Politico.