



Tithe an
Oireachtais
Houses of the
Oireachtas

An Comhchoiste um Dhlí agus Ceart

Tuarascáil maidir leis an nGrinnscrúdú Mionsonraithe ar Bhille na nArm Tine agus na nArm Ionsaitheach (Leasú), 2021 [BCP]

Meitheamh 2024

Joint Committee on Justice

Report on Detailed Scrutiny of the Firearms and Offensive Weapons (Amendment) Bill 2021 [PMB]

33/JC/56

June 2024

Table of Contents

| | |
|--|-----------|
| CATHAOIRLEACH'S FOREWORD | 1 |
| COMMITTEE MEMBERSHIP | 2 |
| Joint Committee on Justice..... | 2 |
| CHAPTER 1 – Introduction | 5 |
| Purpose of the Bill | 5 |
| Procedural basis for scrutiny..... | 5 |
| CHAPTER 2 – Detailed Scrutiny..... | 7 |
| Engagement with Sponsor | 7 |
| Legal Scrutiny of Bill | 12 |
| Summary of the Office of Parliamentary Legal Advisors (OPLA) Advice..... | 13 |
| CHAPTER 3: Recommendation to the Dáil | 17 |
| APPENDICES..... | 19 |
| APPENDIX 1 – ORDERS OF REFERENCE OF THE COMMITTEE..... | 19 |
| APPENDIX 2 - FRAMEWORK FOR COMMITTEE SCRUTINY OF PMBs..... | 28 |

CATHAOIRLEACH'S FOREWORD

The Firearms and Offensive Weapons (Amendment) Bill 2021, a Private Members' Bill sponsored by Deputy Jim O'Callaghan, seeks to amend the Firearms and Offensive Weapons Act 1990 by increasing the maximum sentence that can be imposed for the possession of a knife to cause injury to, incapacitate or intimidate any person.¹

The Committee welcomed the objective of this Bill to deter the carrying of knives, noting comments from Deputy O'Callaghan that the motivation behind the introduction of this legislation stemmed from an increased use of knives in disputes in public areas and reports relating to a number of high-profile and tragic cases of knife crime, that resulted in the deaths of boys and young men. The Committee also welcomes the examination of this Bill in light of recent commitments by the Minister for Justice to increase the maximum penalty for serious knife crime offences and in light of recommendations from the knife-crime sub-committee to strengthen legislative powers to tackle knife crime² and hopes that this legislation may prove effective in combatting this serious issue.

As part of its examination into this Bill, the Committee held an engagement with Deputy Jim O'Callaghan to discuss the Bill and the Bill was also sent to the Office of the Parliamentary Legal Advisers (OPLA) to ascertain the legal and constitutional implications of such proposed legislation. The Committee, in considering the matter, recognised that its function is to legislate, however, this comes with particular responsibilities and care must be taken when recommending the progression of legislative proposals.

I would like to commend Deputy O'Callaghan for his dedication in proposing and advocating for the progression of this legislation and for his efforts to address and tackle this serious issue. I would like to express my appreciation to the Members of the Committee for their work on this subject and to express my gratitude on behalf of the Committee to the OPLA for their insight into this important Bill.



James Lawless TD (FF) [Cathaoirleach]
June 2024

¹ Firearms and Offensive Weapons (Amendment) Bill 2021 <https://www.oireachtas.ie/en/bills/bill/2021/41/>

² [gov - Ministers McEntee and Browne amending legislation to increase penalties for knife crime \(www.gov.ie\)](https://www.gov.ie)

COMMITTEE MEMBERSHIP

Joint Committee on Justice

Deputies



James Lawless TD (FF) [Cathaoirleach]



Colm Brophy TD
(FG)



Patrick Costello TD
(GP)



Alan Farrell TD
(FG)



Pa Daly TD
(SF)



Aodhán Ó Ríordáin TD
(LAB)



Mark Ward TD
(SF)



Thomas Pringle TD
(IND)



Niamh Smyth TD
(FF)

Senators



Robbie Gallagher
(FF)



Vincent P. Martin
(GP)



Michael McDowell
(IND)



Lynn Ruane
(IND)



Barry Ward
(FG) [Leaschathaoirleach]

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil on 3rd September 2020.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 25th September 2020.
3. Deputy Jennifer Carroll MacNeill elected as Leas-Chathaoirleach on 6 October 2020.
4. Deputy James O'Connor discharged and Deputy Niamh Smyth nominated to serve in his stead by the Fifth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 19th November 2020.
5. Deputy Michael Creed discharged and Deputy Alan Farrell nominated to serve in his stead by the Fifteenth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 28th June 2022.
6. Deputy Brendan Howlin discharged and Deputy Aodhán Ó Ríordáin nominated to serve in his stead by the Nineteenth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 8th November 2022.
7. Deputy Jennifer Carroll MacNeill was discharged, pursuant to Standing Order 34, on 21st December 2022.
8. Senator Barry Ward was elected as Leas-Chathaoirleach at the Committee meeting on 15th February 2023.
9. Deputy Colm Brophy nominated to serve on the Committee by the Twenty First Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 7th March 2023.
10. Deputy Martin Kenny discharged and Deputy Mark Ward nominated to serve in his stead by the Twenty-Third Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 26th April 2023.

CHAPTER 1 – Introduction

This is the report on detailed scrutiny of the Firearms and Offensive Weapons (Amendment) Bill 2021.

The Bill was referred to the Select Committee on Justice on 15th July 2021. The Select Committee agreed on 7th May 2024 that detailed scrutiny of this Bill would be undertaken by the Joint Committee. However, it was noted that the decision on whether this Bill would progress to Committee stage is solely a matter for the Select Committee.

Purpose of the Bill

The purpose of the Bill is to increase the maximum sentence that can be imposed for the possession of a knife to cause injury to, incapacitate or intimidate any person.³

Procedural basis for scrutiny

Private Members Bills referred to Select Committee are subject to the provisions of Dáil Standing Order 178 and the Memorandum of Understanding, between the Oireachtas and the Government, which was adopted on 15th January 2019.

Dáil Standing Order 178(1) provides that “..the Bill shall be subject to scrutiny by the relevant Committee” and paragraphs (2) and (3) respectively state that “Scrutiny, shall be conducted from a policy, legal and financial perspective...” and that “where the relevant Committee has completed scrutiny of a private member’s Bill, it shall– lay a report thereon before the Dáil, and... send a Message to the Dáil–

- (i) confirming that scrutiny has been completed and reported on, and
- (ii) containing a recommendation on whether or not the Bill may proceed to Committee Stage.”

Paragraph (4) of Standing Order 178 permits scrutiny of the Bill in Joint Committee: “Nothing in these Standing Orders shall preclude a Joint Committee from undertaking

³ [Firearms and Offensive Weapons \(Amendment\) Bill 2021 – No. 41 of 2021 – Houses of the Oireachtas](#)

scrutiny, and reporting thereon, save that only the relevant Committee may decide on the recommendation as to whether or not the Bill may proceed to Committee Stage.”

CHAPTER 2 – Detailed Scrutiny

Engagement with Sponsor

A public meeting of the Joint Committee took place on 28th June 2024 to conduct detailed scrutiny of the Firearms and Offensive Weapons (Amendment) Bill 2021. This engagement allowed the sponsor of the Bill, Deputy Jim O’Callaghan, to make some opening remarks on the Bill which was followed by contributions and observations from the members of the Committee.

In the course of the public hearing, a number of important points were discussed and Members raised some of the following points and concerns in relation to the legislation:

- Members asked how effective the proposed increase of penalties for offences under section 9 of the Firearms and Offensive Weapons Act 1990 (‘the 1990 Act’) will be, in decreasing the incidence of these offences;
- Some Members asked whether it would have been more effective for the provisions within this Bill to have been included as an amendment to other pieces of Criminal Justice legislation that may be progressing through the Houses, rather than being progressed as a standalone piece of legislation;
- In the course of the Committee’s consideration, a question was raised in relation to the interaction between the provisions of the Bill and the Bail Act 1997; [addressed on page 11];
- Members asked whether the penalty proposed under Section 1(7)(a) of the Bill is intended to list only a term of imprisonment, rather than providing the option of imposing a term of imprisonment or a fine, as is provided under the relevant sections in the 1990 Act;
- Members asked whether the current maximum term of imprisonment of five years for breaches of section 9, as stipulated under the 1990 Act, would be more suitable, rather than increasing the maximum term of imprisonment to 10 years, as stipulated under Section 1(7)(b)(ii) of the Bill; Members noted that the

Government recently indicated a proposal to increase the maximum sentence from five years to 7 years;

- In the course of the Committee's consideration, Members agreed that knife crime is a complex social issue. A question was raised regarding the driving factors of knife crime and possession, and whether the proposed amendments would have the desired impact, given that punishment often fails to address the root causes and alternatives to violence. Members noted that knife crime is often reactive and coincides with other social and environmental factors, including adverse childhood experiences, fear, trauma, and intergenerational criminal activity within families and communities. The Committee acknowledges that the evidence appears to suggest that longer sentences do not necessarily result in an increase in deterrence.
- Members agreed that there is a need for a more targeted response, within the criminal justice system, in order to effectively address the incidence of knife crime and possession. Members highlighted other jurisdictions such as Scotland and the UK, which have taken a more innovative approach. It was suggested that similar approaches may work in an Irish context, including preventative diversion projects specific to knife crime, knife amnesties, educational campaigns, investing in communities where violence is more prevalent, and reviewing alternative responses, such as community sanctions or restorative justice that may seek to better address and respond to the underlying causes and associated risks of weapon possession and knife crime.

In outlining the purpose of the Bill and in responding to observations and questions highlighted by Members, Deputy O'Callaghan firstly thanked the Members of the Committee for facilitating detailed scrutiny on this Bill.

Deputy O'Callaghan stated that the purpose of the Bill is straightforward, seeking to amend section 9 of the Firearms and Offensive Weapons Act 1990 ('the 1990 Act') and to increase the maximum sentence available for persons who are convicted on indictment of possession of a knife for the purpose of seeking to inflict harm on another.

Deputy O'Callaghan underlined that his original motivation for introducing this Bill was due to the significant increase in the number of knives being seized by An Garda

Síochána (AGS) in the years leading up to the Bill's introduction and argued that this remains a relevant issue which warrants attention.

The Deputy highlighted statistics, which showed that the figures of knives seized by Gardaí increased from 1,200 knives being seized in 2016 to over 2,000 knives being seized in 2022. In addition, he stated that there was a 12% increase in the number of knife assault victims that were treated in hospitals in 2023.

In response to questions around the potential effectiveness of the legislation, the Deputy argued that, while the introduction of heavier penalties for those convicted under section 9 of the 1990 Act might not result in the number of offences decreasing in the short-term, increasing the penalties under this Bill would be important in order to demonstrate that the Oireachtas considers offences committed under this section to be extremely serious.

The Deputy acknowledged that there are some areas within the Bill as proposed to which he would be willing to introduce amendments at Committee stage, should it be decided by the Select Committee members that the Bill is suitable to proceed to Committee stage.

These included some of the following amendments:

- The Deputy indicated he would be willing to introduce an amendment in relation to the commencement provisions within the Bill, so that it would follow the approach of other legislation which provide that the Minister would commence the Bill by way of a Statutory Instrument.
- The Deputy indicated that he would be willing to bring forward an amendment to section 1(7)(a) of the Bill, to provide for the option of either a fine or prison time as possible sanctions available to the courts to impose, so that the sanctions arising from breach of this section are not as limited.
- The Deputy stated he would be willing to reduce the proposed increase of the maximum sentence under section 1(7)(b)(ii) of the Bill from ten years to seven years, on the basis that the Taoiseach has indicated that the Government would be willing to accept an increase of the current maximum penalty to seven years.

In response to questions around the maximum term of imprisonment under Section 1(7)(b)(ii), Deputy O'Callaghan also stated that it is unusual for the courts to impose

maximum sentences in the majority of cases. He pointed out that while it is at the discretion of the courts, maximum sentences would normally be reserved for cases where an individual has been charged with another crime and where the facts of the case are particularly egregious.

In response to comments around the need to use more innovative measures within the criminal justice system, to effectively tackle the issue of carrying knives and knife crime, Deputy O'Callaghan acknowledged that the introduction of stronger criminal offences is one of several avenues that could be followed to decrease the incidence of knife crime and possession. While not within the scope of this Bill, he recognised that in order to fully address this issue, it is critical to introduce educational programmes for young boys and men to educate them on the dangers of carrying knives. He pointed out that, a 'bin the blade' amnesty campaign previously took place in Ireland in the 1990s and was relatively successful in achieving its objectives.

Deputy O'Callaghan underlined that the introduction of this legislation and the progression of other measures to address knife crime, including educational programmes, diversion programmes or work carried out within communities or as part of youth work programmes in this area are not mutually exclusive and that the introduction of other sanctions to tackle this issue may be worthy of consideration in the wider context relating to the issue of knife crime. He underlined that the primary function of the Oireachtas is to legislate, hence the purpose of introducing this Bill and pointed out that the Department of Justice may be better placed to progress additional measures to tackle knife crime and the carrying of knives.

The Deputy also highlighted that for the majority of legislation, either a fine or a maximum term of imprisonment are normally set out as the penalties for breaches of criminal law. He suggested that it may be useful, separate to this Bill but in a broader context, to consider what other types of sanctions could be applied to criminal justice legislation. In response to points raised relating to the long-term impact of crimes of this nature, and legislative measures such as the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, he noted that perhaps other types of sentences could be considered in the future.

Deputy O'Callaghan also stated that he would have no difficulty with the provisions within this Bill being brought forward under an existing or separate Criminal Justice Bill rather than through this Bill, if this was a more effective way of ensuring these provisions are enacted.

In response to questions around the interaction between the provisions of the Bill and the Bail Act 1997, it was suggested that the two possible effects of this Bill in relation to bail, were it enacted in its present form, would be:

- (1) While simple possession contrary to section 9(1) would remain within the Schedule to the 1997 Act, the maximum custodial penalty for it would by the further replacement of section 9(7)(a) as proposed by section 1 of the Bill, be reduced to 12 months' imprisonment. Section 9(1) would no longer be "an offence...for which a person of full capacity and not previously convicted may be punished by a term of imprisonment for a term of 5 years or by a more severe penalty". Accordingly, where a person was charged with this offence only, it would only be possible to refuse them bail on the basis that, if released on bail, they would probably not turn up for trial or would probably interfere with witnesses (or jurors) or evidence, and not on the ground that it was reasonably necessary to refuse bail to prevent the person from committing a serious offence.
- (2) On the other hand, were the Bill was enacted in its present form, and were a person subsequently charged with an offence under section 9(4) or (5), because the maximum sentence for those offences would now, following the proposed amendment of section 9(7)(b), be 10 years, in considering whether refusal of bail was reasonably necessary for preventing the accused from committing a serious offence, the court would be entitled to take into account under section 2(2)(iii) of the 1997 Act as amended "the nature and likelihood of any danger to the life or personal safety of any person or danger to the community that may be presented by the [accused's] release on bail".

Before concluding the discussion, the Joint Committee was reminded that, while it is open to the Joint Committee to make recommendations, the specific question on which the Select Committee is to decide is whether the Bill should proceed to Committee Stage.

Legal Scrutiny of Bill

A private meeting of the Joint Committee took place on 28th June 2024, following the Committee's public engagement on the Bill, for the purpose of obtaining a legal briefing from the Office of Parliamentary Legal Advisors (OPLA) on its analysis of the Firearms and Offensive Weapons (Amendment) Bill 2021.

Deputy Jim O'Callaghan was also in attendance at this meeting.

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

- Is the PMB compatible with the Constitution?
- Is the PMB compatible with EU legislation and human rights legislation (ECHR)?
- Is there ambiguity in the drafting which could lead to the legislation not achieving its objectives and/or to case law down the line?
- Review for serious drafting deficiencies or technical drafting errors.
- Review for potential un-intended legal consequences which may stem from the PMB as drafted.
- Are appropriate administrative and legal arrangements necessary for compliance and enforcement of the provisions of the Bill included?

The OPLA's legal assessment of the Bill was noted by the Committee and a summary of the OPLA's legal advice to the Committee is included in the following section of the Report.

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

1. Existing law.

S. 9(1) of the *Firearms and Offensive Weapons Act 1990* (“1990 Act”) makes it an offence, subject to defences set out in s. 9(2) and (3), for a person to have with them in any public place⁴ a knife or other article with a blade or a sharply pointed article. Two more serious offences are created by s. 9(4) and (5). S. 9(4) applies to a person who, without lawful authority or reasonable excuse, has with them in a public place a flick-knife⁵ or other article made or adapted for use for causing injury to or incapacitating a person. The offence under s. 9(5) is for a person to have with them in any public place any article intended by them unlawfully to cause injury to, incapacitate or intimidate any person, either in a particular eventuality or otherwise (certain inferences as to intent may, in the absence of a reasonable explanation from the accused, be drawn under s. 9(6), and it is not necessary to show intent to injury, incapacitate, or intimidate a particular person).

Sentence for these offences is prescribed by s. 9(7)(a) and (b) of the 1990 Act, paragraph (a) applying to offences under s. 9(1), and paragraph (b) applying to offences under s. 9(4) and (5). By virtue of amendments to s. 9(7) by s. 64 of, and Schedule 1 to, the *Criminal Justice Act 2006*, and s. 39 of the *Criminal Justice (Miscellaneous Provisions) Act 2009*, the sentences under each paragraph are now the same, namely on summary conviction a fine not exceeding €5,000, imprisonment for not more than 12 months, or both, and on conviction on indictment, an unlimited fine, imprisonment for not more than 5 years, or both.

⁴ S. 9(8) defines a “*public place*” for the purpose of s. 9 to include a highway, or premises or a place to which at the time the public have or are permitted to have access, whether on payment or otherwise, within which is encompassed club premises, and a train, vessel, or vehicle in respect of which passengers are charged a fare for being carried.

⁵ Defined by s. 9(9) as a knife with a blade opening on pressure being applied by hand to a device in or attached to the handle, or a knife with a blade released from the handle or sheath by gravity or the application of centrifugal force, the blade being, upon that application of gravity or other force, locked open by a device on release.

2. The PMB.

The long title of the PMB describes it as “*An Act to amend the Firearms and Offensive Weapons Act 1990 by increasing the maximum sentence that can be imposed for the possession of a knife to cause injury to, incapacitate or intimidate any person.*”

S. 1 of the PMB proposes to replace s. 9(7) of the 1990 Act with the following.

- “(7) (a) A person guilty of an offence under subsection (1) shall be liable on summary conviction to imprisonment for a term not exceeding 12 months.
- (b) A person guilty of an offence under subsection (4) or (5) shall be liable—
- (i) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or to both, or
 - (ii) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 10 years or to both.”

S. 2(2) of the PMB provides: “*This Act shall come into operation on the day of its passing.*”

S. 2(1) gives it its short title.

3. Summary of Advice

2.1 As it currently stands the PMB would probably be unconstitutional and incompatible with Article 7(1) of the European Convention on Human Rights. The difficulty is not with the substance of the PMB, but with the commencement provision in s. 2(2). This provides that the PMB is to come into force on the date on which it is passed, which under s. 15(1) of the *Interpretation Act 2005* means the date of the day on which the President signs it. There is a strong presumption that that means the last instant of the day beforehand. That in turn means that, were an offence under the relevant provisions of the 1990 Act (in particular s. 9(4) and (5)) committed early on the day on which the President subsequently signed the PMB, the maximum penalty for that offence would be retrospectively increased for a number of hours, which would be contrary to the guarantee of trial “*in due course of law*” under Article 38.1 of the Constitution and the prohibition in Article 7(1) of the European Convention on Human Rights on retrospectively increasing the penalty for an offence.

While this is wholly a matter for the Committee, the difficulty could be remedied by the substitution for s. 2(2) of the PMB as currently drafted of a boilerplate commencement clause in one of the forms commonly included in legislation.

- 2.2 The substance of the Bill is compatible with the Constitution and the European Convention on Human Rights.
- 2.3 If it is intended to create an offence one of the penalties for which is a fine, the standard practice would be to cross-reference the classes of fine established by the *Fines Act 2010*. A fine of not more than €5,000 is a “*Class A fine*” as defined in s. 3 of the 2010 Act.
- 2.4 The long title fails to encompass all measures encompassed by the PMB (such as increased penalties for going about with items other than knives adapted to cause harm and an apparent reduction in penalty for simple possession of a knife or blade). There is a common drafting practice of concluding a long title with the words “...*and to provide for related matters*” or some similar phrase.
- 2.5 The effect of the PMB, if passed, would be—
 - (a) To reduce the maximum permitted prison sentence for simple possession in a public place of a knife, blade, or pointed article contrary to s. 9(1) from 5 years to 12 months.
 - (b) To eliminate the possibility of this offence being tried in the Circuit Court on indictment.
 - (c) To eliminate the possibility of the new summary offence being punished by a fine.
 - (d) To increase from 5 years’ to 10 years’ imprisonment the maximum custodial sentence for possession in a public place without lawful authority or reasonable excuse of a flick-knife or other article adapted to injure or incapacitate (s. 9(4)) or possession in a public place of any article for the purpose of unlawfully injuring, incapacitating, or intimidating (s. 9(5)).

The substance of the PMB as drafted would be workable, and therefore it is difficult to state that the PMB entails unintended legal consequences. But points (a) to (c)

are not accommodated by the long title and are contrary to the intention expressed in the Explanatory Memorandum which was to increase the current maximum sentence on conviction on indictment of an offence under any of s. 9(1), (4) or (5) from 5 to 10 years' imprisonment. The effect of the PMB as drafted therefore does not appear to reflect the objects stated in the Explanatory Memorandum or, arguably, in the long title.

One further consequence of points (a) and (b) is that the offence under s. 9(1) would be taken out of the scope of s. 2(1) of the *Bail Act 1997*, and it would cease to be an offence for which bail might be refused under that section because the court thought refusal necessary to prevent the accused from committing a “*serious offence*”⁶. Instead, bail could only be refused on the ground that the court was satisfied that the accused, if released on bail, would probably not attend for trial or would probably interfere with witnesses (or jurors) or evidence.

2.6 Issues under EU law or, subject to the foregoing, about the adequacy of administrative or legal arrangements, do not arise.

⁶ Defined by s. 1(1) of the *Bail Act 1997* as “*an offence specified in the Schedule for which a person of full capacity and not previously convicted may be punished by a term of imprisonment for a term of 5 years or by a more severe penalty*”.

CHAPTER 3: Recommendation to the Dáil

At its meeting on 11th June 2024, the Select Committee, based on its consideration as outlined in this Report, determined that while the Bill, as currently drafted, is compatible with the Constitution and the European Convention on Human Rights, certain elements of the Bill require amendment.

Of particular concern was the commencement provision in section 2(2) of the Bill, which the Committee considered may be found to be unconstitutional in its current wording.

Another concern was that the long title did not encompass all measures contained within the Bill.

Also, while not specifically referred to, as the Bill intends to alter the seriousness of an offence, the Committee queried the potential impact on provisions for bail.

The role of the Committee in the scrutiny process is to determine whether the Bill may proceed to Committee stage or not and, in this case, the Committee finds that the objectives of the Bill are sound and well intentioned.

The Committee also considers the issues within the Bill to be of a technical and/or drafting nature which could be rectified by way of simple amendment. The Committee considers that given the Bill's intention to introduce new proposals and the potential impact on existing resources in the Justice sector, a Regulatory impact assessment should be undertaken in advance.

In the course of the scrutiny process, Deputy O'Callaghan, in his engagement with the Committee, accepted these observations and agreed that, should the Bill proceed to Committee stage, he would table appropriate amendments to rectify these issues.

The Committee acknowledges the intention behind Deputy O'Callaghan's Bill and its objectives.

Therefore, the Select Committee, while acknowledging the issues identified in the Bill, recommends that the Firearms and Offensive Weapons (Amendment) Bill 2021 may proceed to Committee stage.

APPENDICES

APPENDIX 1 – ORDERS OF REFERENCE OF THE COMMITTEE

Standing Orders 94, 95 and 96 – scope of activity and powers of Select Committees and functions of Departmental Select Committees

Scope and context of activities of Select Committees.

94.(1) The Dáil may appoint a Select Committee to consider and, if so permitted, to take evidence upon any Bill, Estimate or matter, and to report its opinion for the information and assistance of the Dáil. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum, and may appoint a date upon which the Committee shall report back to the Dáil.

(2) It shall be an instruction to each Select Committee that—

(a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

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

(c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 125(1)⁷; and

⁷ Retained pending review of the Joint Committee on Public Petitions

(d) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(i) a member of the Government or a Minister of State, or

(ii) the principal office-holder of a State body within the responsibility of a Government Department or

(iii) the principal office-holder of a non-State body which is partly funded by the State,

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

(3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

Functions of Departmental Select Committees.

95. (1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

(a) legislation, policy, governance, expenditure and administration of—

(i) a Government Department, and

(ii) State bodies within the responsibility of such Department, and

(b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

(a) stand referred to the Committee by virtue of these Standing Orders or statute law, or

(b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

(a) for the accountability of the relevant Minister or Minister of State, and

(b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

(a) consents to such consideration, or

(b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—

(a) the Committee Stage of a Bill,

(b) Estimates for Public Services, or

(c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

(a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,

- (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
- (c) non-legislative documents published by any EU institution in relation to EU policy matters, or
- (d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings, the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:
 - (i) members of the European Parliament elected from constituencies in Ireland,
 - (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (iii) at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
- (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months

(excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.⁸

⁸ Retained pending review of the Joint Committee on Public Petitions.

Powers of Select Committees.

96. Unless the Dáil shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

(a) minutes of such evidence as was heard in public, and

(b) such evidence in writing as the Committee thinks fit;

(2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;

(3) power to draft recommendations for legislative change and for new legislation;

(4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—

(a) require any Government Department or other instrument-making authority concerned to—

(i) submit a memorandum to the Select Committee explaining the statutory

Instrument, or

(ii) attend a meeting of the Select Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Dáil,

and

(b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss—

(a) policy, or

(b) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially

responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 197;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(a) State body within the responsibility of a Government Department or

(b) non-State body which is partly funded by the State,
shall attend meetings of the Select Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil;

and

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under Standing Order 120(4)(a).'

APPENDIX 2 - FRAMEWORK FOR COMMITTEE SCRUTINY OF PMBs

PART A: Policy and Legislative Analysis

The 'policy Issue' and the policy and legislative context

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

Implications and implementation of the Bill's proposals

Policy implications / implementation

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

Cost evaluation

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

PART B - Legal Analysis

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

Houses of the Oireachtas

Leinster House
Kildare Street
Dublin 2
D02 XR20

www.oireachtas.ie

Tel: +353 (0)1 6183000 or 076 1001700

Twitter: @OireachtasNews

Connect with us



Download our App

