



TITHE AN OIREACHTAIS

**AN COMHCHOISTE UM AIRGEADAS, CAITEACHAS
POIBLÍ AGUS ATHCHÓIRIÚ**

**Tuarascáil ar Dhréacht-Scéim
Ghinearálta an Bhille um
Choimisiún Thithe an Oireachtais
(Leasú) 2014**

Aibreán 2014

HOUSES OF THE OIREACHTAS

**JOINT COMMITTEE ON FINANCE, PUBLIC
EXPENDITURE AND REFORM**

**Report on the Draft General
Scheme of the Houses of the
Oireachtas Commission
(Amendment) Bill 2014**

April 2014

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Introduction

The draft heads of the Houses of the Oireachtas Commission (Amendment) Bill 2014 ("the Bill") were furnished by the Minister for Public Expenditure and Reform, Mr. Brendan Howlin TD, to the Joint Committee on Finance, Public Expenditure and Reform on 17 February, 2014.

Procedural basis for pre-legislative scrutiny

Standing Order 123A [Dáil] provides that "[p]rior to its presentation or introduction to the Dáil, the general scheme or draft heads of a Bill shall, save in exceptional circumstances....., be given by a member of the Government or a Minister of State to the Committee empowered under Standing Order 82A to consider Bills published by the member of the Government.".

Standing Order 82A [Dáil] and 70A [Seanad] provide that a Joint Committee "may consider.....in respect of the relevant Department or Departments.....", "the general scheme or draft heads of any Bill published by the Minister." The Joint Committee is required by these Standing Orders to report on its consideration to both Houses of the Oireachtas.

Proceedings of the Joint Committee on the draft heads

The Joint Committee agreed on 26 February 2014 to invite submissions in writing on the draft heads of the Bill from –

- (i) the Ceann Comhairle,
- (ii) the Cathaoirleach of the Seanad,
- (iii) the Houses of the Oireachtas Commission,
- (iv) all members of the Dáil and Seanad, and
- (v) Mr. Kieran Coughlan, former Clerk of the Dáil and Secretary General.

Submissions were to be made by 28 March, 2014.

Submissions were received from –

- (i) the Ceann Comhairle,
- (ii) the Houses of the Oireachtas Commission,
- (iii) Deputy Thomas P. Broughan,
- (iv) Deputy Robert Dowds, and
- (v) Mr. Kieran Coughlan,

and are appended to this Report (*Appendix 3*).

The submissions were considered by the Joint Committee at its meeting of 15 April, 2014. The Committee agreed –

- (i) to record no conclusions or recommendations in respect of the draft heads,
- (ii) that all of the submissions it had received be published by appending them to its report,
- (iii) to forward its report to the Minister for Public Expenditure and Reform.



Ciarán Lynch TD,

Chairman

15 April, 2014

APPENDIX 1

MEMBERS OF THE JOINT COMMITTEE



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JOINT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM

List of Members¹

Chairman:	Ciarán Lynch (LAB) ²
Deputies:	Richard Boyd Barrett (PBP) Michael Creed (FG) Pearse Doherty (SF) Regina Doherty (FG) ³ Stephen S. Donnelly (IND) Timmy Dooley (FF) ⁴ Alan Farrell (FG) ⁵ Seán Fleming (FF) Simon Harris (FG) ⁶ Joe Higgins (SP) Heather Humphreys (FG) Kevin Humphreys (LAB) Mary Lou McDonald (SF) Michael McGrath (FF) Dara Murphy (FG) ⁷ Kieran O'Donnell (FG) Aodhán Ó Riordáin (LAB) ⁸ Arthur Spring (LAB) Brian Stanley (SF) ⁹ Liam Twomey (FG) (Vice-Chair)
Senators:	Seán D. Barrett (IND) Thomas Byrne (FF) Paul Coghlan (FG) ¹⁰ Michael D'Arcy (FG) Aideen Hayden (LAB) Tom Sheahan (FG)

¹ Deputies appointed to the Committee by order of the Dáil on 9 June 2011; Senators appointed to the Committee by order of the Seanad on 16 June 2011. Deputy Alex White elected as Chairman on 23 June 2011; Deputy Liam Twomey elected as Vice-Chairman on 23 June 2011.

² Deputy Alex White promoted Minister of State 2 October 2012; Deputy Ciarán Lynch replaced Deputy White by order of the Dáil on 10 October 2012 and was elected Chairman 10 October 2012.

³ Deputy Regina Doherty appointed on 3 July 2013 in place of Deputy Peter Mathews.

⁴ Deputy Timmy Dooley appointed on 21 June 2011 in place of Deputy Seán Ó Fearghail.

⁵ Deputy Paschal Donohoe appointed on 3 July 2013 in place of Deputy Billy Timmins and discharged on his appointment as Minister of State 12 July 2013 being replaced by Deputy Alan Farrell by order of the Dáil on 18 July 2013.

⁶ Deputy Simon Harris appointed on 28 November 2012 in place of Deputy Jim Daly.

⁷ Deputy Dara Murphy appointed on 19 July 2012 in place of Deputy Olivia Mitchell.

⁸ Deputy Aodhán Ó Riordáin appointed on 28 November 2012 in place of Deputy Michael McNamara who was appointed on 8 December 2011 in place of Deputy Thomas P. Broughan.

⁹ Deputy Brian Stanley appointed on 25 September 2012 in place of Deputy Pádraig Mac Lochlainn who was appointed on 14 December 2011 in place of Deputy Jonathan O'Brien.

¹⁰ Senator Paul Coghlan appointed on 14 June 2012 in place of Senator Denis O'Donovan who was appointed on 10 May 2012 in place of Senator Katherine Zappone.

APPENDIX 2

DRAFT HEADS OF THE HOUSES OF THE OIREACHTAS COMMISSION (AMENDMENT) BILL 2014

JC Finance, Public Expenditure and Reform

Correspondence Item 2014/743(b)

APPENDIX 1

GENERAL SCHEME OF HOUSES OF THE OIREACHTAS COMMISSION (AMENDMENT)
BILL, 2014

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Head 1 - Short title, collective citation and commencement.	
Head 2 – Appointment of Members of Staff of the Houses of the Oireachtas	
Head 3- Secretary General	
Head 4 - Amendment of Section 13 (annual estimate of ongoing expenditure) of Principal Act.	

Head 1 - Short title, collective citation and commencement.

Provide that

- (1) This Act may be cited as the Houses of the Oireachtas Commission (Amendment) Act 2014.
- (2) The Houses of the Oireachtas Commission Acts 2003, 2006, 2009, 2012 and 2013 and this Act may be cited together as the Houses of the Oireachtas Commission Acts, 2003 to 2014.

Explanatory Note

These are standard provisions.

The Act will commence on enactment.

Head 2 – Appointment of Members of Staff of the Houses of the Oireachtas

Provide that Sections 5, 6 and 7 of the Staff of the Houses of the Oireachtas Act, 1959 (as amended by the Houses of the Oireachtas Commission Act, 2003) be replaced by the following:

- (1) The Clerk of Dáil Éireann shall be appointed by the Houses of the Oireachtas Commission on the recommendation of the Chairman of Dáil Éireann following an open competition;
- (2) The Clerk-Assistant of Dáil Éireann shall be appointed by the Houses of the Oireachtas Commission on the recommendation of the Chairman of Dáil Éireann;
- (3) The Clerk of Seanad Éireann, and the Clerk-Assistant of Seanad Éireann, shall be appointed by the Houses of the Oireachtas Commission on the recommendation of the Chairman of the Seanad;
- (4) The selection of a candidate for appointment as Clerk of Dail Eireann shall be carried out by means of an open competition, organised by the Top Level Appointments Committee, which shall make recommendations for appointment to the Ceann Comhairle;
- (5) Any person who on the commencement of this Act held any of the following offices shall continue as a member of staff of the Houses of the Oireachtas on terms and conditions that are substantially not less favourable than applied to such person immediately prior to such commencement, until he or she ceases to hold office:
the Clerk of Seanad Éireann, and the Clerk-Assistant of Seanad Éireann, appointed pursuant to Section 6 of the Houses of the Oireachtas Act 1959.

Explanatory Note

This Head provides for the appointment of the Clerk of the Dáil by the Oireachtas Commission on the recommendation of the Chairman of Dáil Éireann. The post would be filled on foot of an open competition organized by TLAC, unlike at present when, in practical terms, appointment is made exclusively from within the staff of the Oireachtas Commission. The three other posts – Clerk-Assistant of the Dáil and Clerk and Clerk-Assistant of the Seanad – which are of less importance than that of the Clerk of the Dail, would be filled in due course from within the staff cadre of the Oireachtas Commission.

The posts of Clerk and Clerk-Assistant of the Dáil are vacant at present. This Head provides that the current holders of two Offices of the Houses which are not vacant, i.e. the posts of Clerk and Clerk-Assistant of the Seanad, will continue to hold those offices until the completion of their terms. When the Seanad posts become vacant, they will be filled as outlined above (as will the post of Clerk-Assistant of the Dáil). The posts of Superintendent of the Houses of the Oireachtas and the Captain of the Guard of the Houses of the Oireachtas are not affected by the proposals in this Bill.

Head 3- Secretary General

Provide that-

S 15 of the Act of 2003 is amended by the addition of

- (1) Without prejudice to the powers of the Secretary General to delegate any function to a member of staff of the Commission, the functions of the Secretary General may be performed-
- (a) in the Secretary General's absence, by such member or members of the staff of the Commission as may have been authorized for that purpose by direction of the Secretary General, or in the absence of such direction, by such member or members of the staff of the Commission as it may authorize for that purpose, or
 - (b) when the post of Secretary General is vacant, by such member or members of the staff of the Commission as it may authorise for that purpose.

Explanatory Note:

This provides for the performance of the duties of the Secretary General in his/her absence or when the post is vacant.

Head 4 - Amendment of Section 13 (annual estimate of ongoing expenditure) of Principal Act.

Provide that

The Principal Act is amended in section 13(3)(b) by the deletion of the words “not later than 30 days”.

Explanatory Note

This is to allow time for the Service to submit estimates in a shorter timeframe, in view of the earlier date of Budget Day.

APPENDIX 3

SUBMISSIONS RECEIVED



noted 21/3/14
[Signature]

Ceann Comhairle

21st March 2014

*Joint Committee on Finance, Public Expenditure
and Reform*

Correspondence Item No: 2014/809

Mr. Ciarán Lynch TD,
Chairman,
Joint Oireachtas Committee on Finance,
Public Expenditure & Reform
Leinster House
Dublin 2

Dear Chairman,

Thank you for your letter of the 3rd inst., in relation to the General Scheme of the Houses of the Oireachtas Commission (Amendment) Bill, 2014.

Having completed three years as Ceann Comhairle, and also as Chairman of the Houses of the Oireachtas Commission, I am satisfied that the senior management structure for the running of the Houses of the Oireachtas should not be based on a similar structure to that of a Government Department. It should be based on the best practice for the most efficient management of two chambers, numerous Committees, and most of all, the Members elected to both Houses.

I believe that the previous position of Secretary General should be divided, and replaced by the Clerk of the Dáil, Clerk of the Seanad and a CEO/Financial Director. The roles of the Clerk of the Dáil and the Clerk of the Seanad are entirely different to that of a person managing the finances and services, e.g. restaurants, bars etc., and the skills required are also different.

The position of Clerk of the Dáil also entails important duties, such as Registrar of Political Parties, membership of the Standards in Public Office Commission (SIPO), and membership of the Boundary Commission, to name but a few.

I believe that the appointments should be for a fixed term, e.g. 10 years maximum, and also, as both the Clerk of the Dáil and the Financial Director are answerable to the Houses of the Oireachtas Commission, they should not, in my opinion, be members of the Commission.

The Heads of the Bill, presently before the Joint Oireachtas Committee on Finance, Public Expenditure & Reform, set out clearly, in Head 2, in my opinion, procedures for the appointments of both the Clerk of the Dáil and the Clerk of the Seanad.

...../.....

However, Head 3 still refers to the post of Secretary General, which, as I have stated earlier, should be replaced by that of the Clerk of the Dáil and CEO/Financial Director. This particular Head should outline how the appointment of the CEO/Financial Director is to be made, and for what term, which, again in my opinion, should be for a maximum of 10 years.

Finally, could I say that I concur with the views that the appointments set out above should, of course, be filled through a TLAC open competition.

Kind regards,

Yours sincerely,

A handwritten signature in dark ink, reading 'Seán Barrett', written over a horizontal line.

Seán Barrett, TD
Ceann Comhairle



Houses of the
Oireachtas Commission
Coimisiún Thithe
an Oireachtais

Leinster House
Dublin 2
Tel +353 1 618 3000

Teach Laighean
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rec'd 2/3/14
Q

Your ref: I 2014/484

Mr. Martin Groves,
Clerk to the Joint Committee on
Finance, Public Expenditure and Reform,
Kildare House.

*Joint Committee on Finance, Public Expenditure
and Reform*

Correspondence Item No: 2014/810

Dear Martin,

I refer to your letter of 3 March 2014 seeking the views of the Commission on the General Scheme of the Houses of the Oireachtas Commission (Amendment) Bill 2014.

Following discussions on the matter, I am to advise you that the majority view of the Commission was to support the proposals contained in the Heads of the Bill.

Please note that the Ceann Comhairle absented himself from the discussions as he has been invited to make a submission to the Joint Committee as an Officeholder.

Yours sincerely,

Breda Burke,
Secretary to the Commission.

20th March 2014.

<p>Joint Committee on Finance, Public Expenditure and Reform</p> <p>Correspondence Item No. 2014/813</p>
--

> On 19 Mar 2014, at 16:29, "Thomas P Broughan" <thomas.broughan@oireachtas.ie> wrote:

>

> Dear Ciarán,

>

> Thank you for your recent email and for bringing the General Scheme of the Houses of the Oireachtas Commission (Amendment) Bill 2014 to my attention.

>

> I am sure that you are aware of my general views on the need to have a transparent and open appointments process for public service positions.

>

> I strongly agree with the appointment of a Clerk of the Dáil following an open competition. I would also prefer if an open competition was in place for the other three posts (of Clerk-Assistant of Dáil Éireann; Clerk of Seanad Éireann; and Clerk-Assistant of Seanad Éireann). Clearly, parliamentary experience would be very useful for applicants and perhaps a necessary qualification.

>

> Thank you for the opportunity to comment on this general scheme. I look forward to having sight of the Bill in due course.

>

> Very Best Wishes,

>

> Tommy Broughan T.D.

>

> Independent T.D. for Dublin North Bay

> www.tommybroughan.com



Robert Dowds TD

Dáil Éireann, Leinster House, Dublin 2. Phone: (01) 618 3446 Email: robert.dowds@oir.ie Web: www.robertdowds.ie

Ciarán Lynch TD
Chairman, Joint Committee on Finance, Public Expenditure & Reform
Leinster House
Dublin 2

*Rec'd 21/3/14
[Signature]*

20 March 2014

Dear Ciarán,

Thank you for circulating the general scheme of the Houses of the Oireachtas Commission (Amendment) Bill.

My only comment is that, if a majority or a significant cross-party group of TDs should feel that an official were not performing his or her job, I feel there should be a process for removing the person from the post and replacing him or her. I am open to ideas of how this would work in practice.

Thank you for your consideration of this matter.

Yours sincerely,

Robert Dowds

Robert Dowds

Joint Committee on Finance, Public Expenditure and Reform
Correspondence Item No. 2014/814(a)

Martin Groves,
Acting Clerk to the Joint Committee on Finance,
Public Expenditure and Reform,
Houses of the Oireachtas,
Dublin 2,
Ireland

102 Foxrock Pk
Foxrock,
Dublin 18
28/3/14

Your Ref: I 2014/482

Re, General Scheme of the Houses of the Oireachtas Commission (Amendment) Bill 2014

Dear Mr. Groves,

Please find attached my submission to the Joint Committee on Finance, Public Expenditure and Reform in respect of the above.

As the submission is rather long I would draw your attention to Parts 2 and 6 which are the kernel of the issues at hand.

I appreciate being given the opportunity to make a submission to the Committee and I am happy to advise the Committee further if required, either in person or by correspondence.

Yours sincerely,


Former SG, CE and Clerk of the Dail

SUBMISSION BY MR. KIERAN COUGHLAN TO THE OIREACTHAS JOINT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM RE THE GENERAL SCHEME OF THE HOUSES OF THE OIREACTHAS COMMISSION (AMENDMENT) BILL 2014

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APPENDICES

Appendix I – Alternative Draft Head 2 proposed

Appendix II – Functions of SG (source: Commission Members' Handbook)

1. Introduction

At first glance there must be a certain sense of confusion for Committee members as the General Scheme appears so simplified that it is difficult to discern the issues involved and their implications for the future. The core concern, in my opinion, is how the Houses of the Oireachtas Service is going to meet the challenges in providing the requisite support services to Parliament and its members in the 21st century. This is so at a time when there are considerable constraints on public finances, which will continue for some years to come, and in a critical and unforgiving age when politicians' work is under intense scrutiny.

In this submission, as well as giving my considered view on the General Scheme (see Parts 2 and 6 herein), I also attempt (in Part 4 herein) to provide clarity for the Committee as to how the Service has developed over recent years.

The following abbreviations are used in this submission:

the Houses of the Oireachtas Commission is referred to as 'the Commission';

the Houses of the Oireachtas Service is referred to as 'the Service';

the Secretary General of the Houses of the Oireachtas is referred to as 'the SG';

the Chief Executive of the Houses of the Oireachtas Commission is referred to as 'the CE'

(and when both are both are combined, as they mostly are, they are referred to as 'the SG/CE');

the Clerk of the Dáil is referred to as 'the Clerk' and reference to other clerk positions such as Clerk of the Seanad are referred to by their titles;

the interdepartmental Parliamentary Reform Services Group Report is referred to as 'the PSRG Report';

the Top Level Appointments Committee is referred to as 'TLAC';

the Staff of the Houses of the Oireachtas Act 1959 is referred to as 'the 1959 Act';

the Houses of the Oireachtas Commission Acts are referred to as 'the HOC Acts';

2. Draft Head 2: Core Issue

The main issue surrounds Head 2 (appointment of staff of the Houses of the Oireachtas) which provides for the appointment of the Clerk of the Dáil, Clerk of the Seanad and the Clerk Assistant of each House. The important post for present purposes is that of Clerk of the Dáil which under section 15 of the HOC Acts is mandatorily linked to that of Secretary General of the Oireachtas Service and CE of the Commission. This means that the SG and CE positions will be automatically filled on the appointment of the Clerk of the Dáil.

While Head 2 makes a welcome change in having an open competition it pales in comparison with the proposals put forward officially in November 2012 in the PSRG Report: the current Head does not deliver in any shape or form on the modernisation of the senior management structure in the Service which was promised on the record of the Dáil and Seanad on at least 3 occasions. Indeed it goes in the opposite direction by retaining the formal appointment of the Clerk and Clerk Assistant of the Seanad and Clerk Assistant of the Dáil which perpetuates the main barriers to fully achieving a fluid, flexible integrated senior management structure in the Service. Additionally, in giving a dual role to the CC in the nomination *and* appointment process for the Clerk, Head 2 goes too far and lacks the requisite 'check and balance' which is paramount in order to achieve accountability, credibility and transparency in the appointment process needs to be scaled down in keeping with sentiments expressed in the Dáil when the 1959 Act was being passed.

More fundamentally, however, in the absence of any reference in Head 2 to the SG and CE of the Commission, there is an apparent shift away from appointing on broad SG/CE competencies and this brings a real risk that the most senior administrative post in the Service will be primarily recruited on a more narrow institutional basis where parliamentary procedural expertise in support of Dáil chamber work (i.e. plenary session) is deemed paramount over and above the other administrative demands. Thus the opportunity to ensure that the SG/CE post is fit for purpose to meet the changing and challenging demands of a modern Parliament and its members in the 21st century is lost or not availed of.

This approach as it stands, by highlighting the Clerk of the Dáil aspect of the most senior position in the Service and proposing a particular nomination and appointment process, runs the risk that the open competition will not be perceived as being truly open and will fail in its aim to attract as wide pool of suitable candidates as possible.

Moreover, the thrust of the Interdepartmental Parliamentary Service Reform group (PSRG) Report in November 2012 which culminated in an advanced draft memo to Government in May 2013, having earlier being 'noted' at the Commission meeting of 28 May 2013 and which was fully in line with commitments made on the Dáil record to modernise the senior management structure in the Service – has seemingly been discarded. The General Scheme or the accompanying Explanatory Note give no reason for this about-turn, nor is there any record of any discussion, documented or otherwise (other than some media reports), on why the old 1959 structure of formal the appointment of clerks has been retained. That Report (summarised in Part 4.2 of this submission) had recommended more open flexibility and mobility for a more integrated senior management structure (by removal of the 'officer of the House' posts under the 1959 Act, by breaking the mandatory link between the Clerk of the Dáil post and that of the SG/CE, and by setting a 7-year tenure for the SG/CE post).

In short, the General Scheme at best achieves minimal change in providing for an open TLAC competition (the effectiveness of which could be considerably reduced if the main recruitment focus

remains on the narrow Clerk of Dáil operational functions), but in retaining the Clerk and Clerk Assistant appointments it means there is no reform to modernise the Service. As it stands, the General Scheme represent a very old-fashioned institutional perspective which is long past its sell-by date and which if enacted would not achieve the maximisation in efficiency that the Houses and Members are entitled to in fulfilling their constitutional role and serving the people in a very demanding, critical and unforgiving environment.

The remedy would be – as recommended in the PSRG Report – to change Head 2 to recruit a Secretary General and CE for a minimum 5- or maximum 7- year term, doing away with the mandatory link between the Clerk post and that of the SG/CE, and allowing for the procedural chamber support to be dealt with by assigning a senior person to be Clerk of the Dáil, thereby embracing the necessary flexibility and mobility within the Houses which are crucial not least in a time of severe downturn and very stretched resources in the public service. If the CC of the day considered it essential that the SG should be Clerk the revised draft head would allow for such flexibility. The link to both roles can be determined on an ongoing basis depending on the business needs of the Parliament and the members without recourse to further primary legislation. This would allow the role to develop in a fluid and organic way to meet ever-increasing demands and could allow for the SG role to be separate from the Clerk role in line with more advanced systems elsewhere such as in the Danish Folketingt (which may be an appropriate model for Ireland with its bi-cameral system having now been recently confirmed in a constitutional referendum). However, just to be clear if the CC of the day considered that the link between the two roles of SG/CE and Clerk should be retained then the approach suggested, by being flexible, can accommodate this too.

Finally it should be noted that in recommending the alternative draft head there is no playing down of the clerk role as it is accepted that the Ceann Comhairle of the day and the Members depend on the key specialised parliamentary skills and knowledge of the clerk in the running and participation in the business of the Dáil. However the required set of skills for being a successful clerk are very different from the required set of skills for SG/CE of a modern and complex services organisation such as the Oireachtas which spends €100m a year and that is why there has to be a flexible approach as recommended in the alternative draft head.

The alternative Draft Head 2 is attached at Appendix I.

3. The need to dispel some myths

Before going into further detail on the issues raised above, I feel it is important to dispel some myths which have surrounded the publicity that this particular appointment has generated. There are three main ones:

(i) *Perception that Clerk post is the only role to be filled.*

One could be forgiven for thinking that the post to be filled is the Clerk of the Dáil alone as this has attracted publicity to one degree or another. This is understandable in a way, as the profile is associated with plenary sessions in the Dáil which is very much in the public eye, but this is a case of perception most definitely not being the reality. From the chart of functions in the Commission 'Members' Handbook' (attached at Appendix II) a cursory glance shows that the Clerk's procedural functions, while undoubtedly important, are but a fraction of the functions and duties of SG and CE. This is understandable given the array of administrative law which has been passed since the last Clerk was appointed in 1990 when the Oireachtas administration was largely under the auspicious of the Department of Finance and there would have been a greater emphasis on procedural skills. As this is the first time since then that the most senior official position in the Service is to be filled it follows that the SG /CE competencies should form the major part of the recruitment process in order for the Service to be led in a progressive way to meet the challenges in managing the services to be provided to support the running of the parliament. The Clerk functions which are almost exclusively operational and ceremonial can be catered for in the recruitment process by a candidate's demonstrable knowledge of the Constitution and Standing Orders, or demonstrable ability to rapidly acquire same.¹ This was the way both TLAC incumbents in the two Assistant Secretary posts in the Service were successfully recruited in an open TLAC competition. Both of those posts were sanctioned on the basis of modernisation of the Service under the direction of the Commission. The overwhelming thrust of this modernisation means that to recruit to the most senior position mainly or solely on the basis of operational and ceremonial aspects of Dáil chamber work would be flawed. It would do a disservice to the progress already made in the Service and would not place the Service in the best position to meet the increased challenges of a modern parliament (exacerbated as they are in an economic downturn).

(ii) *'Parliament vs. Government'*

Recent publicity in some quarters has misconstrued the Clerk role into a narrow institutional one and furthermore has depicted the issue as a clash between Government and the right of Parliament to determine who should select and appoint the Clerk.

While it may be convenient to present this issue as a defence of the rights of Parliament over Government, the truth of the matter is that the appointment of Clerk by the Taoiseach was never as head of the Government – the Clerk was never an appointee of the

¹ (TLAC notice Assistant Secretary Parliamentary Services Houses of the Oireachtas Service TLA/C/440).2011.

Government. Rather, the Taoiseach made the appointment as Leader of the House i.e. as the leader of the largest party in the Dáil. (This concept is adverted to in the Dáil debates on the 1959 Act.)² Therefore, it is a misunderstanding to think that having the Taoiseach make the appointment strikes against the independence of Parliament.

This spin has taken some considerable foothold and a role for the Taoiseach is now conspicuous in its absence, as is any role for consultation with Party and Group leaders in Head 2. The Commission is not a representative body of all Members for example in the current Commission neither SF nor the TG nor other independents are represented on it. If the appointment process remains as in Head 2, namely highlighting the Clerk of the Dáil role, then consultation with the party leaders, which has been the informal practice since the debate on the 1959 Act, should be formalised in the forthcoming legislation.

(iii) The perception that the filling of the post is about the prestige of parliament

By the same token the filling of the Clerk of the Dáil post has nothing to do with the prestige or standing of the Dáil which would remain unaffected provided the post is filled in the proper way. But it is about putting the correct CE/SG in place to provide leadership in the Service, to ensure the challenges in supporting a modern parliament and its members can be met in a way fitting for the 21st century and not directed backwards to the mid-20th century as crystallised in the Act of 1959 which Head 2 substantially retains.

² Dáil Debates 11th November, 1959 (col.992) Dr. Ryan " ...where the Ceann Comhairle and the Minister for Finance agree on a candidate, then the Taoiseach, as Leader of the House , will appoint"

4. Background: Senior Management structure in the Houses of the Oireachtas

4.1 Evolution of Senior Management structure in the Houses of the Oireachtas

The formal management structure in the Houses of the Oireachtas evolved from as early as 1924: the *Committee on Oireachtas Staff 1924* determined that Houses of the Oireachtas staff would be appointed through the Civil Service Commission and that the Clerk of the Dáil was to be the head of the staff. Against the general backdrop of the Civil Service Regulation Act 1956, the Staff of the Houses of the Oireachtas Act 1959 provided for the appointment of the Clerk and Clerk-Assistant of the Dáil and Seanad by the Taoiseach on the joint recommendation of the respective Chairpersons of the Dáil and Seanad, and the Minister for Finance. It also provided that the Taoiseach should appoint the Superintendent and Captain of the Guard after consultation with the Chairs of the Dáil and Seanad.

The HOC Acts 2003 -2012 established the Commission which replaced the Minister for Finance in the nomination for the clerk and clerk assistant posts under the 1959 Act in a consultative capacity and the Clerk of the Dáil was designated as the Secretary General and Chief Executive of the Commission. The HOC Acts incorporated the Public Service Management Act 1997 and the requirements for efficiency and effectiveness in use of resources and stewardship of the finances.

The HOC Acts meant that the role of the Clerk was formally expanded well beyond the Clerk of the Dáil functions and is equivalent to that of a SG in another Department of State or the Chief Executive of a publicly funded body. This expansion reflected earlier trends with the Clerk of the Dáil being made Accounting Officer for the then Houses of the Oireachtas vote in 1983 and designated Head of the Office under the Public Service Management Act 1997.

Within that framework, and arising from the Strategic Management Initiative, the then Office of the Houses of the Oireachtas (now Service) obtained sanction from the Department of Finance and commissioned a number of reports which began a slow process of change management. The Houses of the Oireachtas Senior Management structure is therefore based on two independent reports undertaken by professional consultants:-

- (1) Institute of Public Administration 'Report on the future operation and development of the office of the Houses of the Oireachtas – March 2000';
- (2) Deloitte & Touche Management Consultants 'Review of Staffing and Grading in the office of the Houses of the Oireachtas – Strand 1 – July 2002'.

The IPA report effectively recommended that the Clerk and Clerk Assistant roles could be expanded into playing a "key role in the integrated operation and development of the Office" (now "Service"). This was done with the creation of four directorates at Principal Officer level (Finance scale) and the creation of a more integrated approach to management of the organisation. The Deloitte & Touche Report, which was commissioned in preparation for the establishment of the Commission, evaluated the grades under the IPA structure which at that time had one SG and no Assistant Secretary post and recommended a Senior Management "strategic apex" of one SG and three Assistant Secretaries in the following areas: Corporate Services and Change Management; Houses Operations and Support; and Seanad Operations and Members' Services.

Sanction for two of the Assistant Secretary posts obtained was drawn out over a 7-year period and the case substantially rested on establishing a modernised flexible organisation in line with change management across the whole Public Service. In 2006 the first of these posts (covering Members' and Corporate Services) was sanctioned and filled by open TLAC competition. The Commission recorded at that point that this Assistant Secretary would fill the next Clerk of the Seanad vacancy (to ensure Seanad operations were reported at a senior management level). Thus the modernisation programme was sanctioned on the basis that the traditional Clerk of the Seanad role would be naturally subsumed as part of the duties by the higher grade of Assistant Secretary post.

In December 2010 the second Assistant Secretary post (House Services) was sanctioned and filled through an open TLAC competition. The job specification listed eight functions for the post, one of which was to subsume the Clerk-Assistant of the Dáil functions. Thus the open TLAC competition was held for both Assistant Secretary post based on generic competencies, the procedural work being catered for by a successful candidate's demonstrable knowledge of Standing Orders and the Constitution (or demonstrable ability to acquire same

The natural conclusion and culmination of the modernisation process for the SG post would be to follow the same path, namely the SG should subsume the traditional role of the Clerk of the Dáil, and not the other way around as is proposed in the General Scheme currently before the Committee. The PSRG Report however provided in essence an even greater degree of flexibility by allowing for the procedural role to be separated from the SG role unless the CC preferred the two roles to be combined.

The change formally brought about by the HOC Acts in expanding the role of Clerk of Dáil to embrace SG and CE roles, the demands of the newly incorporated body (the Commission), the shift away from the Chamber in the parliamentary landscape which was happening in any event and the need to modernise traditional work patterns all gave birth to the Procedural Excellence Programme where staff across the Service were trained on procedures and a cadre of temporary clerks were built up over the years to the point where the Clerk and Clerk-Assistant in the Dáil were freed up considerably to meet the demanding work programme outside the chamber. This trend was reflected in the occupancy of the Chair also in that the CC and Leas CC spent proportionately less time presiding in the Dáil than before.

Thus the requirements of a senior management post in the Houses of the Oireachtas *encompass inter alia* procedural Clerk functions but recruitment should be on a broad administrative basis. This imperative should be maintained for the SG/CE position with an inherent flexibility to allow for a separation of the roles of SG and Clerk if necessary in the future without having to wait for primary legislation to do so.

The current senior management structure in the Service is founded on and justified by consistent good progress on modernisation. Any reversion back to over-emphasising the more traditional clerk role and recruiting primarily on this narrow basis runs the real risk that the integration of the senior management structure will be not operate at full capacity and be far less effective and efficient than it should be in an era of declining resources in the Houses of the Oireachtas and across the public service generally.

4.2 Parliamentary Services Reform Group (PSRG) Report

The Commission's statutory funding arrangement means that an opportunity is presented every three years to make improvements in the legislation and for that purpose an inter-departmental group was established between the Service and the Department of Finance (and more recently the Department of Public Expenditure and Reform) in 2006 and again in 2009. All recommendations were accepted at a political level and duly enacted. The salient ones included an obligation on the Service to provide support service to the Members (in addition to the Houses, Committees and Commission), the establishment of a statutory audit committee, and the creation of the Service to underpin the Commission, in line with the evolution of other public bodies most notably the Courts Service which is analogous in terms of having a distinct constitutional role as well.

In a similar manner an inter-departmental group was again formed for the 2012 legislation, this time being called the **Parliamentary Services Review Group (PSRG)** with a broad remit to recommend improvements in the legislation including the senior management structure and *"the need to ensure the significant changes that have taken place in Civil Service Management systems and appointments were embedded in the Oireachtas Service..... This would be particularly important given that a vacancy at SG level will occur during the lifetime of this forthcoming legislation"* and in addition *"a high standard of governance and division of responsibilities between Members of the Commission and the Oireachtas Services set out in the Commission Acts, which replicates the Public Service Management code vis a vis Departments of State, needs to be maintained and enhanced where appropriate in line with best practice in other public bodies"*.³

The PSRG which reported to the Commission in November 2012 made a number of recommendations, the most salient of which for present purposes are:-

Recommendation

The inter-departmental group PSRG recommended the removal of the 'officer of the House' category (including Superintendent and Captain of the Guard) under the 1959 Act, to take effect when vacancies arise in these positions. Explanation: Each 'officer of the House' appointment involves the Chairman of the House having consulted with the Houses of the Oireachtas Commission, recommending a candidate for appointment by the Taoiseach. This process ensures that there is little or no flexibility in assignments to any of these positions and such a person cannot in effect be transferred within the Service. This has proved to be a major stumbling block in achieving flexibility and re-assignment of functions within the Houses of the Oireachtas management structure

Recommendation *The inter-departmental group PSRG recommended that the mandatory link between the SG/CE role with the Clerk of the Dáil be terminated and provision be made in law to afford the Ceann Comhairle power to assign the functions the Clerk of the Dáil to a member of the senior management including the SG if desired. A similar function in relation to the Clerk of the Seanad should rest with the Cathaoirleach.*

The most salient reasons for change given were as follows:

- *"It is the first time since the enactment of Commission legislation in 2004 that [the] SG/CE role has become vacant – in fact it is the first vacancy at this level for over 20 years.*

³ Letter from SG Oireachtas to SG Dept. of Public Expenditure & Reform, 21 March 2012

- *Major changes in public service administration and governance since then – which are reflected in role of SG/CE in HOC legislation including the Comptroller and Auditor General (Amendment) Act 1993 and the Public Sector Management Act.*
- *The Clerk's role as part of the SG/CE position, while important has far less impact on the role of SG with procedural work being down to less than 20% of weeks work – the Clerk's role is therefore radically different to what it was in 1990.*
- *Procedural expertise has been the subject of development programmes over the last number of years and a cadre of experienced officials are now capable of being temporary clerks in both Dáil and Seanad Chambers, and indeed are already fulfilling this role. Therefore the reliance on the traditional clerk of the House is vastly different to that in 1990 when the post last became vacant.*
- *The mandatory link of the SG/CE role with the procedural role is not the optimum use of the resource and out of step with the legal requirements already imposed on [the] SG.*
- *Public Service bodies require flexible innovative management structures to meet unprecedented challenges of a severe downturn in available funding and resources and the mandatory link would inhibit this.*
- *International practice allows for a separation of the role with in some cases the title of Clerk being retained by the SG/Director in effect in a nominal capacity.*
- *In modern governance of Public Sector bodies a general guiding principle is the head of the body does not have to be an expert but be a manager of experts e.g. CEs in private enterprise are no longer exclusively accountants.*
- *The accepted practice in both public and private enterprise is that top management contracts are for 7 year max – the Clerk role is of greater duration in order to enhance procedural expertise – therefore both the SG/CE and Clerk roles are not compatible other than in a nominal way.”⁴*

The Commission adjourned consideration of the PSRG report on 20th November 2012 and noted the report at its meeting of 24th May 2013. In parallel with the Commission's consideration, a draft memo to Government was finalised in May 2013 along the same lines as the PSRG report.

⁴ PSRG report p.2

4.3 Commitment to modernise senior management structure in the Service.

Modernisation of the senior management structures has been long promised in the Dáil. In 2009 the Minister of State at the Department of Foreign Affairs, on behalf of the Minister for Finance, when moving the second stage of the Houses of the Oireachtas Bill 2009, teed up change to the 1959 Act namely that the configuration particularly in senior management structures needed to be modernised and:

"in that regard the Minister for Finance is committed to ensuring, in co-operation with the Commission, that the administrative structures of the Oireachtas do not become out of step with Civil Service norms in terms of adapting flexibly to the needs and demands of modern management practices".⁵

This commitment was repeated in December 2011 during the passage of the Houses of the Oireachtas Commission Bill, and further elaborated on by the Minister for Public Expenditure and Reform in 2013 when he stated:

"I am on record as being committed to ensuring, in co-operation with the Houses of the Oireachtas Commission, that the administrative structures of the Oireachtas do not become out of step with Civil Service norms in terms of adopting flexibility to the needs and demands of modern management practices. Legislation which would change the management structure at the Houses of the Oireachtas service and have the chief executive of the service selected from as wide a pool as possible in line with top level appointments in the Civil Service generally is being considered in my Department."⁶

Against this background of the PSRG report and the commitment on the record of the Dáil to modernise the senior management structure, the Genááeral Scheme pales in comparison to what was agreed at official level and the reasons for the U-turn are not clear as there is no indication if this was considered by the Minister and his Department in drawing up the General Scheme now before the Committee for consideration.

⁵ Dáil Debate 17 December 2009

⁶ Dáil Debate 15 May 2013

4.4 Role of an independent parliamentary Service and cultural issues

The Service (and its earlier iteration the Office of the Houses of the Oireachtas) has a long and proud tradition of impartiality and being avowedly non-political. These two attributes are identified as being the founding principle of the civil service systems generally.⁷ The adage that “public services are increasingly seen as a necessary evil to be tolerated only when no other is available”⁸ applies to the Houses of the Oireachtas as it does similarly elsewhere. The (correct and appropriate) higher expectations of the public can be more acute in a very challenging age for politics generally, parliament and members in particular. Nowadays the administration namely the Service must not only *be* strong and independent but must *be seen* to have sufficient distance and independence from the political world.

The whole thrust of modernisation of the public service is the delegation of day to day and strategic functions to the appropriate administrative level. This major feature of the Public Service Management Act has been incorporated into the Houses of the Oireachtas Commission legislation and underpins the necessary separation of functions between the Oireachtas Service and the political world within the overarching framework of course of being subject to direction of the Commission. This modernisation should continue.

However, it can happen that the distance between respective roles of Houses of the Oireachtas members and the Oireachtas Service can become blurred and can breed an undesirable culture which could damage the reputation of members and the standing of the Houses. This can manifest itself in various ways and in the present case culturally there is a perception that a near exclusive focus on Clerk of the Dáil recruitment weakens the SG role and the independence of Oireachtas Service. There is a small element of old school members, which does not want an administration too independent from parliamentarians’ perceived needs and priorities, which would not always appreciate “robust” financial accountability and would have disdain for any civil service advice which appears to go against Members’ wishes. This “club culture” mentality, where an elitism exists in a tiny few and which would be abhorrent to the vast majority of Members, manifests itself in such issues as the late opening of the Dáil bar during late sittings being referred to the Dáil CPP as if it were a parliamentary privilege, pronouncements such as no Secretary General /CE is necessary or needed and certainly not as a member of the Commission, or of more concern where the Dáil CPP can, make a recommendation to the Commission that external audit of members allowances, which is at a very low threshold in any event, should be moved in-house as a cost saving exercise. This approach is blinkered and out of touch with reality and if not held in check could potentially mean that members of both Houses could sleep-walk into a crisis on the allowances regime which would be on par with the catharsis that occurred in Westminster a number of years ago.

The Service can be affected culturally as well. The current Head 2 by providing for the retention of the appointment system for the Clerk and Clerk Assistant of the Seanad and Clerk Assistant of the Dáil (albeit at a lower level from Taoiseach to the Chairman of each House thus theoretically more flexible), perpetuates one of the difficulties in trying to achieve an integrated management in the

⁷ Muiris Mac Carthaigh ‘Government in Modern Ireland’, IPA 2008 p.

⁸ Mark Callinan ed ‘Ireland 2002: Towards One Hundred Years of Self- Government

Service. Even in boom times the Service has struggled to achieve an integrated management despite being recommended as far back as in 2000 in the IPA report.⁹ Effectively none of the occupants of the officer of the House positions (of Clerk and Clerk-Assistant of each House and the Superintendent and Captain of the Guard) were capable of being transferred and mobility among staff at that level was non-existent. Efficiency in any organisation is not optimal if such a broad swathe of senior officials are not capable of being moved to other positions both for their own good and that of the organisation as a whole. The “job for life” mentality meant that not all officers were open to an integrated management concept and it was resisted quite successfully for years and in truth was never fully achieved up to August 2013 at any rate. My own personal experience was that with the embedded officer of the house positions I and other senior colleagues had one hand tied behind our back in management terms.

The best way to this is to ensure that the roles of Clerk and Clerk-Assistant of the Seanad and Clerk-Assistant of the Dáil are not put in legislation as appointments but rather are allocated by way of assignment by the Chairman of the relevant House in respect of both clerk positions and the by the SG in consultation with the Chairman of the relevant House for both clerk-assistant positions, allowing for fluid movement among senior staff which would be a minimum expectation in this day and age.

⁹ PAC Houses of the Oireachtas Commission Accounts 2005. Thursday, 8 February 2007 Accounting officer's opening address "The Commission brings its own opportunities and challenges to the culture of the office, which has been predominately focussed on operations in running the Houses since the foundation of the State and now must embrace strategic issues. Parliaments throughout the world are faced with the same need to evolve in this way and to be able to demonstrate accountability to taxpayers in how services are administered.. Much has been achieved in the Office in the near seamless transition to our new governance arrangements under the Commission without impacting on the delivery of key services to run the business of Parliament. A major challenge for our management development and training programmes is to ensure that the Office culture is appropriate to our context under the Commission. We intend to meet this challenge using a multifaceted approach through the integrated work of our senior management committee, continued prudent financial management, our modernisation agenda, in particular the use of cross-functional teams, an enhanced focus on strategic thinking, improved service delivery to Members in response to feedback on our performance and risk and project management and evaluation processes. We must also ensure that we have the optimum organisation structure and skills base in place and that we remain flexible and responsive in order to deliver on the Commission's priorities in its new strategic plan. We will do this through a comprehensive review of our founding legislation with a view to a consolidated parliamentary services Act in the near future."

5. Comparative data

There is considerable variety in parliamentary support structures internationally and in how the administrative head whether it be styled Clerk, Secretary General or Director is appointed. The breakdown of the various strands of responsibilities in these can be wide-ranging, for example the Northern Ireland Assembly Clerk and Chief Executive has functions from advising the Speaker and committee chairpersons on procedure and practice *“to develop[ing] and implement[ing] an organisational structure and governance arrangements appropriate to the delivery of legislation and enhanced scrutiny of government.....and ensur[ing] the Commission is accountable for its performance to the Members and fulfils its regulatory obligations”*.¹⁰

Whereas in Denmark the *Folketingt* model provides for a Secretary General and a Clerk at Deputy SG level allowing for the necessary flexibility in meeting the challenges of running a modern Parliament. The Secretary General role is recruited in line with modern public service practices. The evolution of the *Folketingt* is described by the current SG of the Danish parliament thus: *“In 1990 an organizational change was implemented, after which the total administration in principle was placed under the general secretary, although the clerk still had a formalized independence and direct reference to the Speaker. When a new clerk was appointed in 2001, the function entered into the overall administration as Deputy Secretary-General and daily contact with the Speaker – and referring to the Secretary General. The reason for this development has been the desire to improve the management of the parliamentary administration as a whole.”*¹¹

Notwithstanding the parliamentary administrative model used, one common denominator to all would be that the parliamentary services follow the same structures of the respective countries' public or civil service. In Ireland the Oireachtas Service is based on a civil service mode, the main distinction (because of the constitutional role) being that the staff are civil servants of the state and not civil servants of the government (in common with other non-government bodies or departments of state, such as the Revenue Commissioners or Office of the President). Moreover the overarching governance model is that of a publicly funded body with the board (here, the Commission) subject to standards set for such bodies which are wholly funded by the State. Therefore there is a strong administrative / management structure underpinning the support services provided to the Houses of the Oireachtas which needs to be ever-flexible to react to the changing political environment while at the same time also being capable of delivering highly specialised services. For example, under the Lisbon Treaty new EU-related roles were conferred on national parliaments – this is just one example of where parliament needs to adapt (as it has).

¹⁰ NIA Clerk/Chief Executive Role Succession Planning Documents

¹¹ Email from Carsten U Larsen (SG Folketingt) to Kieran Coughlan (then SG Oireachtas), 29 October 2012

6. Conclusions

6.1 Why the Draft Head must be changed to focus on the appointment of an SG and remove the mandatory link with the Clerk of the Dáil

- (i) Modernisation of the senior management structure is more likely to be achieved by having a fluid integrated senior management team operating under a SG/CE who is fully accountable and subject to the direction of the Commission. The Clerk of the Dáil appointment and the retention of the formal appointment of the Clerk of the Seanad and Clerk-Assistants of both Houses under the current draft head 2 makes this far more difficult and would hamper full integration with a resultant loss in efficiency which is out of step with the transformation agenda now being advanced across the public service.
- (ii) The Service is an entity in its own right and acts as the public service body administering the Houses of the Oireachtas services on behalf of the Commission as the governing authority. The functions of the Services are set out in the 2009 Act as providing advice and support services to: (a) the Commission, (b) the Houses and their Committees, and (c) Members of the Houses. The HOC Acts specifically exclude Clerk functions from the remit of the Commission. As the Service has developed and evolved in support of the broader dimension of the Parliament, the Clerk role is largely, operational, procedural and ceremonial, and is increasingly of less impact on the overall direction of the administration and demands of a modern Parliament. In essence the SG/CE role has overtaken that of Clerk functions and it would be fundamentally wrong to recruit for this position headlining only "Clerk of the Dáil" functions.
- (iii) The Dáil procedural work namely Chamber support services has progressively reduced its overall proportion of the combined work of Clerk and SG/CE, to comprising in August 2013 less than 20% of a week's work. This trend reflects both the nature of Members' work and the reduced need for constant attendance of both the CC and Leas-CC where the use of temporary chairpersons is much more extensive than previously. The decline in the hitherto central role of parliamentary procedures is not unique to the Houses of the Oireachtas but is a trend reflected in other Parliaments and Assemblies for example in the House of Commons which has

traditionally been viewed as the bastion of parliamentary procedures and as the mother of parliaments under the Westminster model.¹²

- (iv) The term 'Parliament' itself has different connotations today as well – parliamentary functions extend to a whole range of activity beyond plenary session in the Chamber, such as Committee work in addition to a host of 'secondary' activities such as the public representative role and constituency supports.
- (v) There has been a conspicuous absence of debate or recorded consideration of the appointment process put forward in the General Scheme in contrast to the PSRG recommendations of November 2012 (which were included in a draft memo for Government in May last year). Therefore no substantive business case has been made for the current proposal which would assist the Committee in its deliberations.
- (vi) The legal and administrative framework has changed significantly since the last Clerk appointment was made in 1990. The C&AG Act 1993, the Public Service Management Act 1997, the Houses of the Oireachtas Commission Acts and the creation of the Oireachtas Service under the 2009 Act, have made such an impact that it is no longer feasible to base the recruitment of the most senior administrative post on the traditional skill-set of the Clerk of the Dáil.
- (vii) The closest analogy to the Houses of the Oireachtas Service supporting a similarly independent institution constitutionally is the Courts Service. On its establishment in 1998 it did not opt to make its most senior official (the Registrar of the Supreme Court) the new CE of the Courts Service but recruited a CE in its own right, recognising that institutional expertise, no matter how well founded, does not equate to the requisite skill-set (namely to provide leadership to drive change management and integration across the organisation in order to maximise the efficiency and effectiveness of support services to the judiciary and the courts). Even within the Oireachtas Service, if future recruitment to the two the Assistant Secretary posts namely (i) Members and Corporate Affairs and (ii) House Services

¹² A Speaker's ability to give clear rulings on complicated issues has now become less important than the ability to be a fair chairman. Robert Rodgers, the Clerk of the House of Commons, explains why:

"The House itself is less procedurally minded. You rarely see members getting a copy of (Erskine) May and looking things up [...] but in the past, I think, many more members have had an instinctive understanding of how the House works and the rules and what lay behind them. That's far less the case now."

The role of the Member reflects this and has changed too and is exemplified in Westminster again:

"The role of an MP has changed because the public expect their local representative to be a community champion working hard in the constituency rather than a skilled parliamentarian who spends all his or her time in Westminster. The office of Speaker has, therefore, evolved with that change. Rather than learning all the rules, a modern Speaker has got to be more conscious of allowing Members the opportunity to raise the concerns of their constituents on the floor of the House." Laban, M. (2013), 'Mr. Speaker The Office and the Individuals since 1945' Biteback Publishing, London.

were on an outmoded basis emphasising the Clerk of the Seanad and Clerk – Assistant of the Dáil roles to which both are respectively linked, this would be seen as patently ludicrous and not sustainable. In the same way it is not sustainable to recruit the SG/CE of the Houses of the Oireachtas Service by simply highlighting the Clerk of the Dáil role and without making changes to provide for flexibility in how the SG/CE and Clerk functions can be configured in a very demanding parliamentary landscape.

6.2 Why the proposed role for Ceann Comhairle needs to be scaled back

Under the draft head the Ceann Comhairle of the day's role has been increased significantly by having a pivotal *duel* role as sole nominator of a candidate (from those selected by the TLAC) for appointment *and* chairman of the appointing body. This proposal could breed an unprofessional culture and runs the risk, however remote, as outlined in the debate on the Staff of the Houses of the Oireachtas in the Dáil on 11 Nov 1959

- "Dr. Ryan:
- *It may happen that the Ceann Comhairle at some future time may be influenced in his judgment by having worked so long with a certain man or something like that. We are rather fortunate discussing this question now because it is not likely that any of those appointments will be made in our time. We have young men in the positions and we can, therefore, discuss the matter disinterestedly. That is what I am afraid might happen—that some Ceann Comhairle in the future would be unduly prejudiced in favour of a certain person and that, in spite of consultation and so on, he would go back to that appointment."*

Having the Ceann Comhairle of the day as sole nominator of a candidate for appointment *and* chairman of the appointing body , would also appear to bring the Public Service Appointment and Recruitment legislation into play in that arising from amendments to that legislation last year , appointments arising out of recommendations by TLAC are no longer excluded positions under that legislation while officer of the houses positions remains so! Be that it as it may there is an element of risk of a potential conflict accentuated by the fact the Ceann Comhairle of the day is as ex officio Chairperson of the Public Appointments Commission. To avoid any such risk, however remote, it would be prudent to provide for the leader of the largest party in Dáil to nominate from the candidates selected by TLAC to the Houses of the Oireachtas Commission leaving the Ceann Comhairle in a pivotal position as chairman of the appointing body. This would strike a better balance more in keeping with standards of the Public Appointments Commission and with the sentiments expressed in the Dáil when the 1959 legislation was being passed.

In conclusion, I am happy to advise the Committee further if required, either in person or by correspondence.


KIERAN COUGHLAN,

**FORMER SECRETARY GENERAL OF THE HOUSES OF THE OIREACHTAS
SERVICE, CHIEF EXECUTIVE OF THE COMMISSION AND CLERK OF THE DÁIL**

28TH MARCH ,2014

Appendix I – Alternative to Head 2

(Based on the PSRG Report which was finalised for a draft Government memorandum in May 2013)

Amendment of Section 15 (Secretary General of Service) of Principal Act.

Provide that the Principal Act is amended by substituting for Section 15 (as amended by section 11 of the Act of 2009) the following:

“15.—(1) The Secretary General of the Service (in this Act referred to as the “Secretary General”) is the chief executive of the Commission.

(2) The Secretary General shall be the principal officer of the Service and the officer accountable for the accounts of the Commission for the purposes of the Comptroller and Auditor General Acts 1866 to 1998.

(3) Subject to subsection (4), the Secretary General shall be appointed in accordance with the provisions of the Public Service Management (Recruitment and Appointments) Acts 2004 and 2013.

Or

(3) The selection of a candidate for appointment as Secretary General shall be carried out by means of an open competition, organised by the Top Level Appointments Committee, which shall make recommendations for appointment to the Houses of the Oireachtas Commission;

Assignment of roles to staff from within the Service.

Provide that the Principal Act is amended by inserting after section 16 the following:

“x. —(1) Subject to section 15, the functions of Clerk of Dáil Éireann may be assigned from time to time from among the staff of the Service by the Chairman of Dáil Éireann in consultation with the leaders of the parties in Dáil Éireann and the Commission.

(2) The functions of Clerk of Seanad Éireann may be assigned from time to time from among the staff of the Service by the Chairman of Seanad Éireann in consultation with the leaders of the groups in Seanad Éireann and the Commission.

(3) The functions of Clerk-Assistant of Dáil Éireann and the Clerk-Assistant of Seanad Éireann may be assigned from time to time from among the staff of the Service by the Secretary General.

(4) The functions of Superintendent of the Houses of the Oireachtas and the Captain of the Guard of the Houses of the Oireachtas may be assigned from time to time from among the staff of the Service by the Secretary General.

(5) Subsections (1), (2), (3) and (4) shall have effect in relation to the next assignments made to those office listed therein.

(5) *For the avoidance of doubt, staff of the service means staff appointed in accordance with the provisions of the Public Service Management (Recruitment and Appointments) Acts 2004 and 2013.”.

**APPENDIX 2 FUNCTIONS OF THE SECRETARY GENERAL
UNDER THE HOUSES OF THE OIREACHTAS COMMISSION ACTS 2003 TO 2009**

