



**Tithe an
Oireachtais**
**Houses of the
Oireachtas**

Tithe an Oireachtais

**An Comhchoiste um Imscrúduithe, Formhaoirsiú agus
Achainíocha**

**Tuarascáil maidir le hOrduithe Tagartha Athbhreithnithe don
Chomhchoiste**

Eanáir 2012

Houses of the Oireachtas

Joint Committee on Investigations, Oversight and Petitions

**Report on Revised Orders of Reference for the Joint
Committee**

January 2012

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Foreword



Tá áthas orm an tuarascáil seo a thíolacadh do Thithe an Oireachtais thar ceann an Chomhchoiste um Imscrúduithe, Formhaoirsiú agus Achainíocha.

Tá cur síos sa tuarascáil ar an obair atá déanta ag an gCoiste ó ceapadh é i mí Iúil 2011 agus tá moltaí déanta maidir lena ról amach anseo d'fhonn cuntasacht Thithe an Oireachtais a fheabhsú.

Le linn don Choiste a orduithe tagartha a fhorbairt, is mian leis na saincheistanna a chíoradh trí shúile an tsaoránaigh agus níos mó caidrimh idir saoránaigh agus an córas parlaiminteach a chumasú maidir le nithe is cáis leo.

Beidh baint ag an obair a dhéanfaimid le réimse leathan beartas, clár agus seirbhísí poiblí. Soláthróidh an Coiste córas achainíocha láidir agus formhaoirsiú láidir ar an tseirbhís phoiblí agus cuirfear an bhéim ar thorthaí a fhreagraíonn do riachtanais na saoránach.

Teastaíonn uaim mo bhuíochas a ghabháil leis na daoine go léir a léirigh a gcuid tuairimí maidir leis na nithe atá faoi bhreithniú sa tuarascáil seo as an gcion luachmhar atá déanta acu agus as an am a thugadar uathu chun bualadh leis an gCoiste.

Tá an Coiste ag súil le glacadh agus cur i ngníomh na moltaí atá leagtha amach sa tuarascáil seo.

On behalf of the Joint Committee on Investigations, Oversight and Petitions, I am pleased to present this report to the Houses of the Oireachtas.

The report outlines the work undertaken by the Committee since its appointment in July 2011 and presents proposals for its future role in enhancing the accountability of the Houses of the Oireachtas.

In developing its orders of reference, the Committee wishes to examine the issues through the lens of the citizen and enable greater citizen interaction with our parliamentary system on matters of concern to them.

Our work will touch upon a wide range of public policies, programmes and services. The Committee will provide a strong petitions system and public service oversight with the emphasis on outcomes that are responsive to the needs of citizens.

I would like to thank those who provided their views on the matters under consideration in this report for their valuable contribution and time they have taken to meet with the Committee.

The Committee looks forward to the acceptance and implementation of the recommendations set out in this report.



Peadar Tóibín TD
Cathaoirleach
11 Eanáir 2012

Introduction

1. The Joint Committee on Investigations, Oversight and Petitions ('the Committee') was established by order of Dáil Éireann of 8 June 2011 and Seanad Éireann of 16 June 2011. Under its current orders of reference the Committee is invited to consider—
 - (a) the design of a petitions system for the Houses of the Oireachtas,
 - (b) the role and remit of the Joint Committee having regard to the Programme for Government, and
 - (c) any other related matters,and to report back to the Houses with recommendations, including revised orders of reference for the Committee, by 27 January 2012¹.

Purpose of Report

2. This report presents the Committee's conclusions and recommendations in accordance with its current orders of reference. It draws on information gathered and views shared with the Committee over a series of meetings which have informed the Committee's deliberations in private session.
3. The Committee presents this report to the Houses of the Oireachtas for their consideration and seeks approval for its orders of reference. The text of the motions for approval by the Houses is set out in Appendix 1 to this report.

Recommendations

4. The Committee recommends that the Houses of the Oireachtas—
 - (a) note the Committee's report,
 - (b) approve the Committee's revised orders of reference as set out in Appendix 1 to this report,
 - (c) adopt the draft Standing Orders relative to Public Business for Dáil Éireann and Seanad Éireann as set out

¹ The Committee's reporting deadline was extended from 30 September 2011 to 27 January 2012 by orders of both Houses of the Oireachtas of 29 September 2011.

in Appendix 1² to give effect to the Committee's revised orders of reference and to establish a procedural framework for receipt and consideration of public petitions by the Houses,

- (d) rescind the Order of the Dáil of 8th June, 2011 relating to the Committee, as amended by the Order of the Dáil of 29th September, 2011, and
- (e) rescind the Order of the Seanad of 16th June, 2011 relating to the Committee, as amended by the Order of the Seanad of 29th September, 2011.

Background and Context to the Proposal for the Committee

The Programme for Government

5. The Programme for Government proposed the establishment of the Committee as:

- (a) a dedicated Ombudsman Committee:

...a formal channel of consultation and collaboration between the Oireachtas and the Ombudsman, responsible for receiving and debating her annual and special reports and for ensuring that her criticisms and recommendations are acted upon.

- (b) (and) a public petitions Committee:

We will establish a petition system to the Dáil, similar to that operating in the European Parliament, to be managed by a specific Dáil committee that will investigate and report on petitions which raise issues warranting attention.

Formal Engagement with the Ombudsman

6. In a paper published in February 2011, *Developing and Optimising the role of the Ombudsman*,³ the Ombudsman advocated greater engagement between her Office and the Oireachtas. To implement this proposal, the Ombudsman

² For ease of reference, only Dáil Standing Orders are referred to throughout this report, however the provisions in Appendix 1 are identical for both Houses.

³<http://www.ombudsman.gov.ie/en/OtherPublications/StatementsandStrategyDocuments/February2011-DevelopingandOptimisingtheroleoftheOmbudsman/File,13559,en.pdf>

proposed the establishment of a designated Oireachtas Committee into which she would report and attend meetings, noting in particular that:

... the work of the Ombudsman will be enhanced where there is a direct reporting relationship with a specific Oireachtas Committee which both monitors and supports the work of the Ombudsman. The Ombudsman envisages that such a Committee would have regular constructive and critical interaction with her. In the event of a recommendation being rejected, it is to this Committee that the Ombudsman would report.

The Ombudsman would expect to have her investigations and recommendations reviewed critically by this Committee which would make its own assessment of her work. Provided the Committee acted independently, and not on a party whip basis, the Ombudsman could have no complaint should the Committee take the view that her recommendation should not be supported. There is also scope for considering whether the Oireachtas, through this Committee, might ask the Ombudsman to conduct specific enquiries on its behalf.

7. The Ombudsman is independent of government but is accountable to the Houses of the Oireachtas through the laying of annual and other reports before the Houses. Section 6 of the Ombudsman Act 1980 sets out the Ombudsman's statutory responsibilities and powers in this regard:
 - (a) statutory responsibility to report annually to the Oireachtas on the general discharge of her functions, and on such other matters with respect to those functions as she thinks fit; and
 - (b) power to lay a special report before the Houses in which she can draw the attention of the Houses to a case where a body is not carrying out her recommendations or where an individual case (or cases) raises wider systemic problems within public administration.

The Referendum on Oireachtas Inquiries

8. In accordance with the proposed constitutional amendment to confer express power on the Houses of the Oireachtas to undertake inquiries into matters of general public importance, and pursuant to the process outlined in the draft heads of the

Houses of the Oireachtas (Powers of Inquiry) Bill 2011, it was proposed that the Committee would exercise oversight responsibility in respect of the operation and conduct of Oireachtas inquiries on behalf of the Houses of the Oireachtas.

9. Following the outcome of the referendum, and given that it does not have the statutory oversight role envisaged, the Committee has reflected on the future role that it should undertake in the accountability function of the Houses of the Oireachtas. The Committee's proposals for its future role and responsibilities are presented at paragraphs 15 to 43 below. Appendix 1 presents draft Standing Orders to implement the Committee's recommendations.

Overview of the Committee's Work

10. In the period since it began its work in July 2011, the Committee has been engaged in consideration and deliberation in relation to the matters within its remit. In September 2011 it presented a Progress Report to the Houses on work undertaken and future work planned.
11. Over the course of its meetings, the Committee considered a series of discussion papers to facilitate consideration of the key areas within its remit. The discussion papers considered the themes and discussion points that the Committee wished to address. The discussion papers are attached at Appendices 4, 5 and 6.
12. The Committee had the opportunity to hear the views of the Minister for Public Expenditure and Reform, Mr. Brendan Howlin TD, the Ombudsman, Ms. Emily O'Reilly, The Ombudsman for Children, Ms. Emily Logan, and the Head of Secretariat of the European Parliament's Petitions Committee, Mr. David Lowe. The information shared with the Committee provided a wider perspective on the issues and has been of great assistance in its work. Transcripts of the Committee's public meetings are available on the website of the Houses of the Oireachtas www.oireachtas.ie⁴
13. In formulating proposals for a petitions system in the Houses of the Oireachtas, the Committee wished to emulate best practice and learn from the experience of other parliaments in enhancing opportunities for members of the public to have meaningful engagement with the democratic process. The Scottish Parliament's petitions system is widely regarded as

⁴ <http://debates.oireachtas.ie/committees/2011/NV.asp>

having led the way in enhancing the public's access to and interaction with the democratic process in Scotland.

14. In that context a delegation from the Committee undertook a study visit the Scottish Parliament to be briefed on the Parliament's petitions system and the work of the Public Petitions Committee in considering and taking action on petitions. The proposals presented by the Committee for a petitions system in the Houses of the Oireachtas are informed by the Scottish Parliament's petitions arrangements.

The Committee's Proposed Future Role and Responsibilities

15. Against this background the Committee considered the role that it should undertake to enhance the accountability function of the Houses of the Oireachtas and to provide greater opportunities for members of the public to engage with their national parliament. It proposed to concentrate its work in a manner that does not impinge on the work of other Oireachtas committees while enabling the Committee to address a range of issues across a number of different departments and public bodies.
16. In that regard the Committee proposed that its remit would encompass three complementary areas of responsibility:
 - (a) Engagement with the Ombudsman;
 - (b) Receiving and Processing Petitions submitted to the Houses of the Oireachtas by members of the public;and, informed by those two activities
 - (c) Oversight of Public Service Delivery.
17. Appendix 2 sets out in diagrammatic form how these three functions would interlink.

Engagement with the Ombudsman

18. The Committee proposes to establish a formal structured relationship with the Ombudsman, drawing on the model of the relationship between Committee of Public Accounts and the Comptroller and Auditor General in the area of public financial accountability. The focus would be on providing constructive and regular parliamentary engagement with the

Ombudsman in a manner appropriate to her statutory independence.

19. In her presentation to the Committee the Ombudsman highlighted the importance of such a relationship, noting that:

To be fully effective, it is important that a national or parliamentary ombudsman has a supportive relationship with parliament.

20. The Ombudsman also expressed the view that:

Apart from acting as a valuable support for the work of the Ombudsman, a good working relationship can help to give much needed impetus to the importance of administrative accountability just as the Comptroller and Auditor General and the Committee on Public Accounts do so in the area of financial accountability.

21. The Ombudsman's reports, which are laid before the Houses, would stand referred to the Committee for examination and debate. The Ombudsman submits three types of reports to the Houses: (i) 'annual reports' which provide an annual review of her complaint handling role; (ii) 'special reports' which highlight instances where a public body has rejected her recommendations; and (iii) 'other reports' which concern matters of significant public interest which the Ombudsman wishes to bring to the attention of the Oireachtas.

22. These reports will provide the Committee with invaluable insights into what citizens expect and experience with respect to public administration. In undertaking consideration of these reports, the Ombudsman suggested that the Committee may wish to focus on cases which illustrate particular trends in complaints or cases worthy of special note. The Ombudsman would make an oral presentation to the Committee on her annual report and other reports as appropriate. In undertaking further examination of the issues raised, the Committee would hold hearings with the relevant Minister/Department/public body with a view to ensuring accountability for actions taken and decisions made by the body concerned.

23. At the conclusion of this process, the Committee would report its findings and conclusions, and any recommendations it considers appropriate, to the Houses drawing the attention of

the Houses to any significant matters relating to the performance of the Department/public body concerned.

24. The Committee could also hold a pre-appointment hearing with the proposed appointee for the post of Ombudsman to underpin and reflect the fact that such appointments require the approval of the Houses under section 2 of the Ombudsman Act 1980.
25. The Committee could also have a right of initiative in bringing specific matters to the Ombudsman for attention. This is referred to in paragraph (6)(a) of the Committees revised orders of reference as set out in Standing Order 165A at Appendix 1. The Ombudsman supports such cooperation. She informed the Committee that:

As far as my Office is concerned we would be happy to receive from the Committee new complaints or petitions on matters falling within my jurisdiction and process them to finality in accordance with our standard procedures. We would be happy to communicate the outcome of each complaint to the Committee.

26. The Committee may also engage with other public sector Ombudsmen and independent review/appeals bodies as appropriate since these bodies have expertise and experience which the Committee may draw on when considering the systems of redress and remedy available to citizens across all services. Accessibility of redress systems to citizens and how complaints and appeals may be used to inform improvements in service design and delivery would also be a focus of the Committee's work.
27. In her presentation to the Committee at its meeting on 11th October 2011, the Ombudsman for Children, Ms. Emily Logan, highlighted the value of such interaction suggesting that:

We might find a deficit in legislation which we could raise with the committee members, who are legislators, and say it is problematic. We can do that through our annual report or, to make it easy and to simplify it, perhaps through an annual meeting and raising with the committee some of the patterns and trends emerging over the year while flagging some of those early warnings.

28. The nature of the Committee's relationship with these bodies would respect the orders of reference and avoid duplication of the activities of other Oireachtas Committees. By way of example, the Ombudsman for Children is a specified body 'under the aegis of' the Department of Children and Youth Affairs. As such, it currently comes within the orders of reference of the Joint Committee on Health and Children. The Office of the Ombudsman for Children informed the Committee that it has a relationship with the Departments of Children and Youth Affairs, Justice and Equality, Education and Skills, Environment, Community and Local Government, and Social Protection. In response to a question on the practice internationally in relation to the form of parliamentary engagement, the Ombudsman informed the Committee that:

With regard to international experience, the interaction is mainly with individual and specialist committees on health, education and justice.

29. The Committee proposes therefore to engage with other public sector Ombudsmen and independent review/appeals bodies in a manner that respects their statutory independence while also having regard to the orders of reference of other Oireachtas Committees. This will allow these bodies the flexibility to derive benefit from their relationship and direct engagement with the relevant specialist subject committee as necessary. See paragraph (6)(b) of the revised orders of reference as set out in Standing Order 165A at Appendix 1.

Public Petitions

30. Under this heading, it is proposed to establish a petitions system in the Houses of the Oireachtas. A parliamentary petition will be defined as a written request to the Houses of the Oireachtas for action on a matter of general public concern or interest. The subject of a petition must relate to a matter on which the Houses have the power to act, i.e. one involving legislation or government administration. The petition must also include reasons for the requested action.
31. Under the arrangement proposed the Committee would receive and process petitions submitted to the Houses by members of the public. A petition presented to the Houses would stand referred to the Committee for consideration and appropriate action.

32. In fulfilling its role the Committee would have a number of options. It could: invite oral submissions from the petitioner, seek oral or written submissions from relevant organisations, invite government ministers to attend meetings and answer questions about the petition, or refer a petition, if appropriate, to the relevant sectoral Committee of the Houses. Where the Committee was satisfied that the petition was appropriately considered, it would close the petition. The Committee could also recommend that an issue raised by a petition be debated in the Houses.
33. In defining its role in relation to petitions, the Committee has been guided by the principle that its work should be complementary with the distinctive role of the Ombudsman and other independent complaint handling bodies and that it should undertake its work in a manner that appropriately respects the independence of those functions. In her presentation to the Committee the Ombudsman underlined the importance of this principle, noting that:

...the Committee would have no role in reviewing [her] Office's decisions on individual complaints. Were it to seek to do so, there would be serious implications for its independence.

34. This principle is specifically provided for in the revised orders of reference set out at Appendix 1.
35. Mr. David Lowe, Head of Secretariat of the European Parliament's Petitions Committee, in his submission to the Committee at its meeting on 21st September 2011, provided insight into how this principle is given practical effect to in the relationship between the European Parliament's Petitions Committee and the European Ombudsman:

As far as the EU is concerned the European Ombudsman has clear responsibilities to investigate allegations of maladministration within the EU Institutions and bodies and our committee does not. Neither is it an appeal mechanism when people do not agree with the Ombudsman's assessment. Nevertheless, our committee is responsible for organising the election of the Ombudsman and of receiving his or her annual report. Beyond that, the Ombudsman is the Ombudsman and the Petitions Committee is the Petitions Committee and there is no overlap. It is decidedly important that the distinction is respected

properly and when a petition comes from a citizen which complains about the fact that a Commission department has not acted properly, we make the point that it is not our competence and we hand over the matter to the Ombudsman who then deals with the matter. We do not touch such cases. Such ground rules are particularly important to avoid overlapping competence.

36. The Committee's revised orders of reference (paragraph (6)(c) as set out in Standing Order 165A) provides that the Committee may engage with the European Parliament's Petitions Committee including in relation to the European Citizens' Initiative.
37. The Committee's work in considering petitions would, therefore, focus in particular on cases which are illustrative of public policy failures or gaps thereby serving the wider public interest. In this regard the Committee will develop guidelines on collaborative working with the Ombudsman in undertaking their respective complementary functions. See paragraph (6)(a) of the revised orders of reference as set out in Standing Order 165A.
38. The Committee is also mindful of Seanad Standing Orders 92-95 which make provision for the Seanad to consider and take action on a petition submitted to it. These procedures have not, to-date, been implemented in practice. The Committee recommends retention of these Standing Orders for the proposed joint petitions system, subject to some modifications. The proposals put forward by the Committee for a petitions system for both Houses are based on those Standing Orders.

Oversight of Public Service Delivery

39. In his presentation to the Committee at its meeting on 15th December, the Minister for Public Expenditure and Reform offered the following observation on this aspect of the Committee's proposed remit:

In view of the particular focus in the Public Service Reform Plan on placing customer service at the core of everything we do, I believe there may well be a valuable role for the Committee relating to citizen interaction with the public service, especially when things go wrong and the systems for redress/appeal appear not to be working as expected.

40. In undertaking oversight of public service delivery, the Committee would contribute to enhancing and strengthening democratic accountability both for decisions and services by public bodies, thereby leading to better services and outcomes for citizens.
41. Within the framework of engagement with the Ombudsman and processing of public petitions, the Committee would be well placed to undertake the complementary and linked role of oversight of the delivery of services by public bodies across the sectors, thereby providing a broader public benefit to advance the public interest. Issues to be addressed in this context will become evident over time as the Committee develops its engagement with the Ombudsman and from its work in considering petitions from the public. In undertaking this work the Committee will gain a unique perspective on public service-wide issues which should be addressed in the public interest.
42. In particular, the information and insights gained from examination of the Ombudsman's reports which are laid before the Houses, and consideration of public petitions submitted to the Houses, will assist the Committee in making an informed evaluation of how a particular policy, programme or statutory framework is being administered. Where underlying and systematic shortcomings are identified, the Committee could propose recommendations thereby helping to drive improvements to the quality and standards of public services.
43. In undertaking oversight of public service delivery, the Committee would assess the impact on citizens as the user of public services. Through monitoring implementation and effectiveness of public policies, whether they are having the desired impact and continue to meet the aims and objectives for which they were formulated, the Committee would also contribute to informing and influencing future policy development. In this way the Committee would usefully contribute to the wider public service reform agenda. The focus would be on the public administrative process from the citizen's perspective.

The Committee's Proposed Powers and Standing

44. The Committee will play a complementary role to the Public Accounts Committee (PAC) in the area of accountability. While

the PAC's remit concerns public financial accountability, the Committee's focus will be accountability in the area of public administration. In recognition of the PAC's legislative establishment and statutory role in relation to public financial accountability, the Committee acknowledges the PAC's jurisdiction in examining public expenditure and financial management including the economy, efficiency and effectiveness and value for money of government expenditure. In practice the PAC scrutinises historical expenditure and in that regard there is unlikely to be any overlap with the work of the two Committees.

45. To that end, the Committee recommends that it should have similar powers to the PAC and should be constituted as a standing committee of both Houses to underline the importance of its role in the accountability function of the Houses and to emphasise the formal status accorded to the petitioning process in the Houses.
46. The Committee also recommends that it be conferred with the power to send for persons, papers and records to assist it in its work.
47. The Committee further recommends that it should operate in a bi-partisan manner, similar to the PAC, in enhancing oversight of matters that impact on the lives of citizens.

Cooperation with Other Committees of the Houses

48. In the same vein, sectoral committees of the Houses should be required to respect the Committee's role by the introduction of a similar prerogative to PAC vis-à-vis the Committee.⁵ See proposed amendment to Standing Order 82 as set out in paragraph (ii) of the draft motion for approval by the Houses at Appendix 1.
49. The Committee wishes to avoid duplicating the work of other Oireachtas Committees. In this regard the Committee will co-operate and liaise appropriately with other committees to ensure there is no inefficiency arising from different committees engaging in the same or a substantially similar area of work. The Committee will also exchange information and papers with other committees as appropriate. Where

⁵ This provides that sectoral committees '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 Service Oversight and Petitions in the exercise of its functions under Standing Order 165A.'

overlap occurs the Committee will endeavour to ensure this work is complementary rather than duplication.

Name of the Committee

50. The Committee considers that the name of the Committee should be changed to more accurately describe the actual scope of its proposed functions and priorities in accordance with its revised orders of reference. The Committee's current name is also causing some confusion in the public mind. The broad focus of the Committee's future work will concern public service delivery and petitions. Therefore the Committee proposes that its name be changed to:

An Comhchoiste um Fhormhaoirsiú ar an tSeirbhís Phoiblí agus Achainíocha

Joint Committee on Public Service Oversight and Petitions

Resources Necessary to Support the Work of the Committee

51. The Committee notes that additional staff resources will be required to support it as its work progresses in implementing its orders of reference. In that context the Committee proposes that the Houses of the Oireachtas Service identify the necessary resources to support the work of the Committee. It recognises that the public service recruitment moratorium applies to the Houses of the Oireachtas Service by decision of the Houses of the Oireachtas Commission. The Committee considers that this should not act as a barrier to supporting the Committee in undertaking its important role.
52. In particular the establishment of a parliamentary petitions system is an innovation in the procedural framework of the Houses. Resources both in terms of staff allocated to administration of petitions and IT systems to support the processing of petitions will be particularly important to the successful implementation and ongoing administration of a petitions system.
53. While it is difficult to precisely quantify the exact workload that will arise from the introduction of such a system, some indication can be gleaned from the Scottish petitions model. In Scotland, the Petitions Committee receives on average 100 new petitions annually and has on average 300 live petitions at any one time. The Committee has a secretariat of four staff and is supported by the Parliament's Research Service which

prepares summary advice notes on each petition for the Committee.

Conclusion

54. The Committee is of the view that the proposals and recommendations presented for its orders of reference will, if implemented, provide an important role for the Committee in enhancing the accountability function of the Houses of the Oireachtas. It also considers that these proposals represent a meaningful opportunity for citizens to engage with the democratic process on matters of concern to them.
55. The Committee submits this report, including draft Standing Orders for consideration by the Committees on Procedure and Privileges of both Houses, to the Houses of the Oireachtas for their consideration and appropriate action.

APPENDIX 1: Draft Standing Orders to establish the Committee and to provide for a Petitions System

DÁIL ÉIREANN MOTION:

That, notwithstanding anything in Standing Orders—

- (1) the Order of the Dáil of 8th June, 2011 relating to the Joint Committee on Investigations, Oversight and Petitions, as amended by the Order of the Dáil of 29th September, 2011, is hereby rescinded; and
- (2) until further notice in the 31st Dáil, the Standing Orders of Dáil Éireann relative to Public Business are hereby amended —
 - (i) by the adoption of the following additional Standing Orders:

Joint Committee on Public Service Oversight and Petitions⁶.

“165A. (1) There shall stand established, following the reassembly of the Dáil subsequent to a General Election, a Standing Committee, which shall be joined with a similar Committee of the Seanad, to form the Joint Committee on Public Service Oversight and Petitions.

- (2) The Joint Committee shall have oversight of public service delivery generally, with a particular focus on investigating and identifying improvements in the delivery of such services to citizens.
- (3) Without prejudice to the generality of paragraph (2), the Joint Committee shall consider—
 - (a) the reports of the Ombudsman which are laid before the Houses of the Oireachtas under the Ombudsman Acts 1980 to 1984,
 - (b) motions pursuant to section 2 of the Ombudsman Act 1980, which shall stand referred to the Joint Committee for

⁶ See Appendix 2 for diagrammatic version of Committee orders of reference

consideration and report to the Houses of the Oireachtas thereon,

- (c) public petitions addressed to the Houses of the Oireachtas which shall stand referred to the Joint Committee in accordance with Standing Orders 165B to E,
- (d) the quality and standards of public service delivery informed by its consideration of the reports and petitions under paragraphs (a) and (c), including the effectiveness of public service complaints and redress systems,
- (e) such other matters as may be referred to the Joint Committee by the Houses of the Oireachtas, and
- (f) any other related matters.

(4) The Joint Committee shall have the following powers:

- (a) the powers defined in Standing Order 83, other than paragraph (4A), (4B) and (6A) thereof; and
- (b) power to refer any matter which has been considered by it (and which has been concluded to be of sufficient importance to require additional consideration) to the relevant Joint Committee appointed under Standing Order 82A for further consideration and report back to the Committee.

(5) The provisions of Standing Order 92 shall apply to the Joint Committee.

(6) In carrying out its role under this Standing Order, the Joint Committee—

- (a) shall agree guidelines on collaborative working between the Committee and the Ombudsman, including a right of initiative for the Committee in bringing specific matters to the attention of the Ombudsman,
- (b) may liaise with such other Ombudsmen, regulatory public bodies or bodies

established for the purpose of redress, as the Committee considers appropriate, and

- (c) may engage with the Committee on Petitions of the European Parliament including in relation to the European Citizens' Initiative.
- (7) It shall be an instruction to the Joint Committee that it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (8) The Joint Committee shall prepare an annual work programme and an annual report as outlined in Standing Order 86, which shall be laid before both Houses of the Oireachtas.
- (9) The Joint Committee shall review its role generally on an ongoing basis and may make recommendations for change by way of report to the Committees on Procedure and Privileges of both Houses.
- (10) The Standing Committee shall consist of fifteen members of Dáil Éireann. The quorum of the Joint Committee shall be six, of whom at least one shall be a member of Dáil Éireann and one a member of Seanad Éireann. The Chairman of the Joint Committee shall be a member of Dáil Éireann.

Lodging a petition⁷.

165B. (1) A petition may be addressed to the Houses of the Oireachtas on a matter of general public concern or interest in relation to their legislative powers or an issue of public policy.

(2) A petition may be lodged by an individual person, a body corporate or an unincorporated association of persons.

(3) A petition shall clearly indicate—

⁷ See Appendix 3 for diagram on petitions system

- (a) the name of the petitioner;
- (b) an address of the petitioner to which all communications concerning the petition should be sent; and
- (c) the name and address of any person supporting the petition.

(4) All petitions addressed to the Houses of the Oireachtas shall stand referred to a Committee empowered to consider petitions under this Standing Order and Standing Orders 165C, D and E (referred to in this Standing Order and Standing Orders 165C, D and E as "the Committee").

(5) The Committee shall, from time to time, determine—

- (a) the proper form of petitions,
- (b) the manner in which petitions are to be lodged with the Houses, and
- (c) such other matters in relation to the consideration of petitions as the Committee considers appropriate and which are not otherwise provided for in these Standing Orders.

Admissibility of petitions.

165C. (1) A petition is admissible unless it—

- (a) requests the Dáil to do anything other than the Dáil has power to do;
- (b) does not comply with Standing Orders or is otherwise not in proper form;
- (c) is *sub-judice* within the meaning of Standing Order 57;
- (d) contains the name or names of individuals;
- (e) contains language which is offensive or defamatory;
- (f) is the same as, or in substantially similar terms to, a petition brought by or on behalf of the same person, body corporate or

unincorporated association during the lifetime of that Dáil and which was closed by agreement of the Committee;

- (g) is frivolous, vexatious or otherwise constitutes an abuse of the petitions system;
- (h) requires the Committee to consider an individual complaint which has been the subject of a decision by the Ombudsman, by another Ombudsman, or by a regulatory public body or a body established for the purpose of redress.

(2) In relation to admissible petitions, the following provisions shall also apply:

- (a) a petition from a body corporate must be made under the common seal of the corporation. Otherwise, it will be viewed as a petition of the individuals who signed it, and
- (b) where a petition deals with—
 - (i) local or regional matters,
 - (ii) matters which are more appropriate to a regulatory public body or a body established for the purpose of redress,

the Committee shall establish that all available avenues of appeal or redress have been utilised by the petitioner prior to the Committee considering the matter.

(3) The Committee shall consider and decide in a case of dispute whether a petition is admissible and shall notify the petitioner of its decision and of the reasons for that decision.

Action on petitions.

165D. (1) If a petition is admissible, the Committee shall take such action as it considers appropriate in relation to that petition.

(2) Without prejudice to the generality of paragraph (1), the Committee may—

- (a) refer the petition to any other Committee as it considers appropriate, with a request for further consideration and report back to the Committee;
- (b) report to the Dáil with recommendations, including a request that the report be debated by the Dáil.

(3) The Committee shall notify the petitioner of any action taken under paragraph (2).

Closing of petitions.

165E. (1) The Committee may close a petition at any time.

(2) Where the Committee closes a petition it shall notify the petitioner that the petition is closed and of the reasons for closing it.

(ii) by the insertion in Standing Order 82 of the following subparagraph after paragraph (2)(c):

"(...) that 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 Service Oversight and Petitions in the exercise of its functions under Standing Order 165A."

SEANAD ÉIREANN MOTION:

That, notwithstanding anything in Standing Orders—

- (1) the Order of the Seanad of 16th June, 2011 relating to the Joint Committee on Investigations, Oversight and Petitions, as amended by the Order of the Seanad of 29th September, 2011, is hereby rescinded; and
- (2) until further notice in the 24th Seanad, the Standing Orders of Seanad Éireann relative to Public Business are hereby amended—

(i) by the adoption of the following additional Standing Order:

Joint Committee on Public Service Oversight and Petitions⁸.

"91A. (1) There shall stand established at the commencement of every Seanad, a Standing Committee, which shall be joined with a similar Committee of the Dáil, to form the Joint Committee on Public Service Oversight and Petitions.

(2) The Joint Committee shall have oversight of public service delivery generally, with a particular focus on investigating and identifying improvements in the delivery of such services to citizens.

(3) Without prejudice to the generality of paragraph (2), the Joint Committee shall consider—

(a) the reports of the Ombudsman which are laid before the Houses of the Oireachtas under the Ombudsman Acts 1980 to 1984,

(b) motions pursuant to section 2 of the Ombudsman Act 1980, which shall stand referred to the Joint Committee for consideration and report to the Houses of the Oireachtas thereon,

(c) public petitions addressed to the Houses of the Oireachtas which shall stand referred to

⁸ See Appendix 2 for diagrammatic version of Committee orders of reference

the Joint Committee in accordance with Standing Orders 165B to E,

- (d) the quality and standards of public service delivery informed by its consideration of the reports and petitions under paragraphs (a) and (c), including the effectiveness of public service complaints and redress systems,
 - (e) such other matters as may be referred to the Joint Committee by the Houses of the Oireachtas, and
 - (f) any other related matters.
- (4) The Joint Committee shall have the following powers:
 - (a) the powers defined in Standing Order 71, other than paragraph (4A), (4B) and (6A) thereof; and
 - (b) power to refer any matter which has been considered by it (and which has been concluded to be of sufficient importance to require additional consideration) to the relevant Joint Committee appointed under Standing Order 70A for further consideration and report back to the Committee.
- (5) The provisions of Standing Order 80 shall apply to the Joint Committee.
- (6) In carrying out its role under this Standing Order, the Joint Committee—
 - (a) shall agree guidelines on collaborative working between the Committee and the Ombudsman, including a right of initiative for the Committee in bringing specific matters to the attention of the Ombudsman,
 - (b) may liaise with such other Ombudsmen, regulatory public bodies or bodies established for the purpose of redress, as the Committee considers appropriate, and
 - (c) may engage with the Committee on Petitions of the European Parliament

including in relation to the European Citizens' Initiative.

- (7) It shall be an instruction to the Joint Committee that it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 163 of the Standing Orders of Dáil Éireann relative to Public Business and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (8) The Joint Committee shall prepare an annual work programme and an annual report as outlined in Standing Order 75, which shall be laid before both Houses of the Oireachtas.
- (9) The Joint Committee shall review its role generally on an ongoing basis and may make recommendations for change by way of report to the Committees on Procedure and Privileges of both Houses.
- (10) The Standing Committee shall consist of five members of Seanad Éireann. The quorum of the Joint Committee shall be six, of whom at least one shall be a member of Dáil Éireann and one a member of Seanad Éireann. The Chairman of the Joint Committee shall be a member of Dáil Éireann.

(ii) by the substitution of the following Standing Order for Standing Order 92:

Lodging a petition⁹.

92. (1) A petition may be addressed to the Houses of the Oireachtas on a matter of general public concern or interest in relation to their legislative powers or an issue of public policy.

⁹ See Appendix 3 for diagram on petitions system

(2) A petition may be lodged by an individual person, a body corporate or an unincorporated association of persons.

(3) A petition shall clearly indicate—

- (a) the name of the petitioner;
- (b) an address of the petitioner to which all communications concerning the petition should be sent; and
- (c) the name and address of any person supporting the petition.

(4) All petitions addressed to the Houses of the Oireachtas shall stand referred to a Committee empowered to consider petitions under this Standing Order and Standing Orders 93, 94 and 95 (referred to in this Standing Order and Standing Orders 93, 94 and 95 as “the Committee”).

(5) The Committee shall, from time to time, determine—

- (a) the proper form of petitions,
- (b) the manner in which petitions are to be lodged with the Houses, and
- (c) such other matters in relation to the consideration of petitions as the Committee considers appropriate and which are not otherwise provided for in these Standing Orders.

(iii) by the amendment of Standing Order 93 as follows:

(1) the insertion of “within the meaning of Standing Order 47” after “*sub-judice*” in paragraph (1) (c); and

(2) the insertion of the following subparagraphs after paragraph (1)(f):

“(g) is frivolous, vexatious or otherwise constitutes an abuse of the petitions system;

(h) requires the Committee to consider an individual complaint which has been the subject of a decision by the Ombudsman, by another Ombudsman, or by a

regulatory public body or a body established for the purpose of redress.”.

(3) the substitution of the following for paragraph (1)(ii):
“where a petition deals with—

(i) local or regional matters;

(ii) matters which are more appropriate to a regulatory public body or a body established for the purpose of redress,

the Committee shall establish that all available avenues of appeal or redress have been utilised by the petitioner prior to the Committee considering the matter”.

(iv) by the substitution of the following paragraph for Standing Order 94(2):

“(2) Without prejudice to the generality of paragraph (1), the Committee may—

(c) refer the petition to any other Committee as it considers appropriate, with a request for further consideration and report back to the Committee,

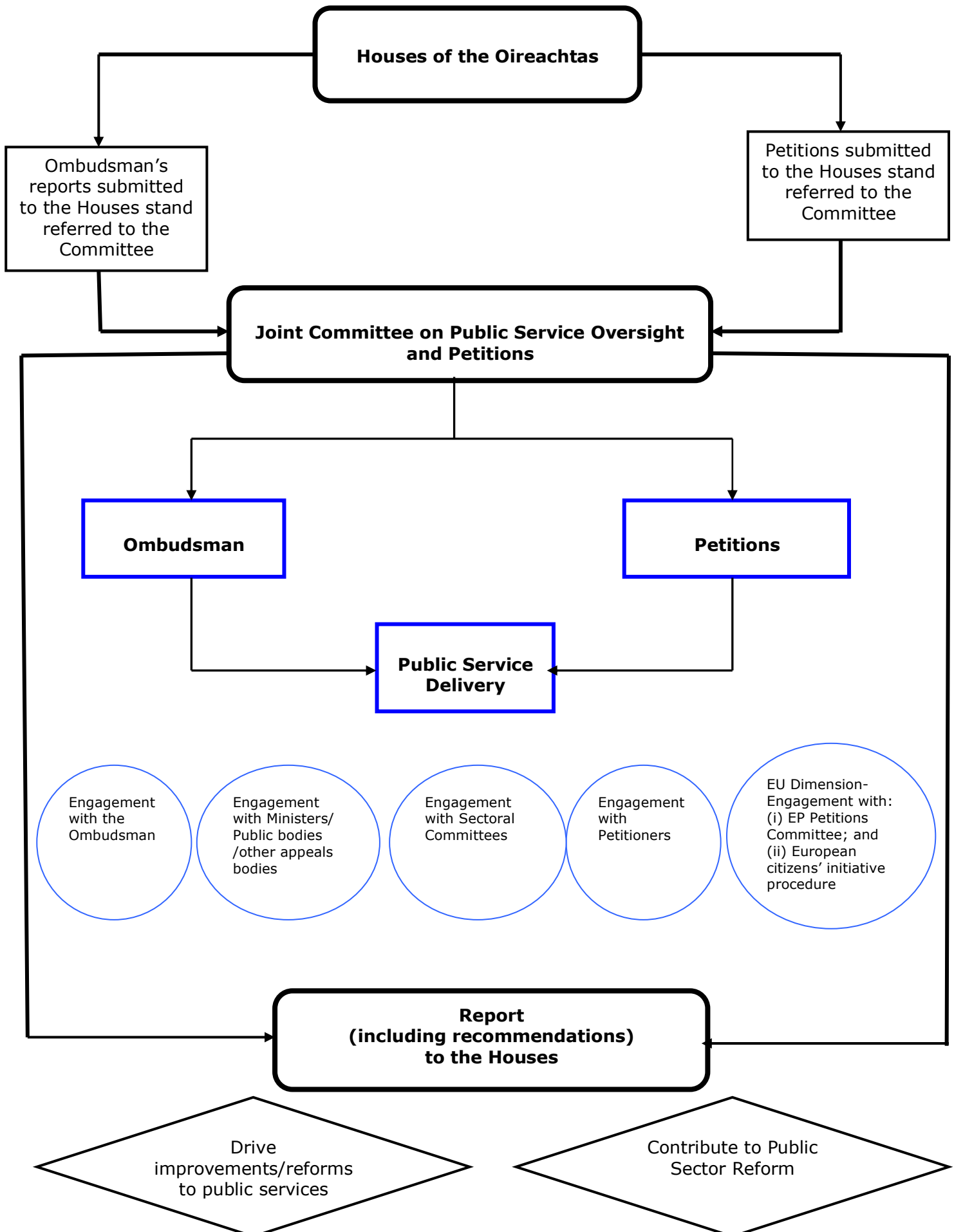
(d) report to the Seanad with recommendations, including a request that the report be debated by the Seanad.”.

(v) by the deletion of “,or any other Committee to which a petition has been referred,” in Standing Order 95(1) and

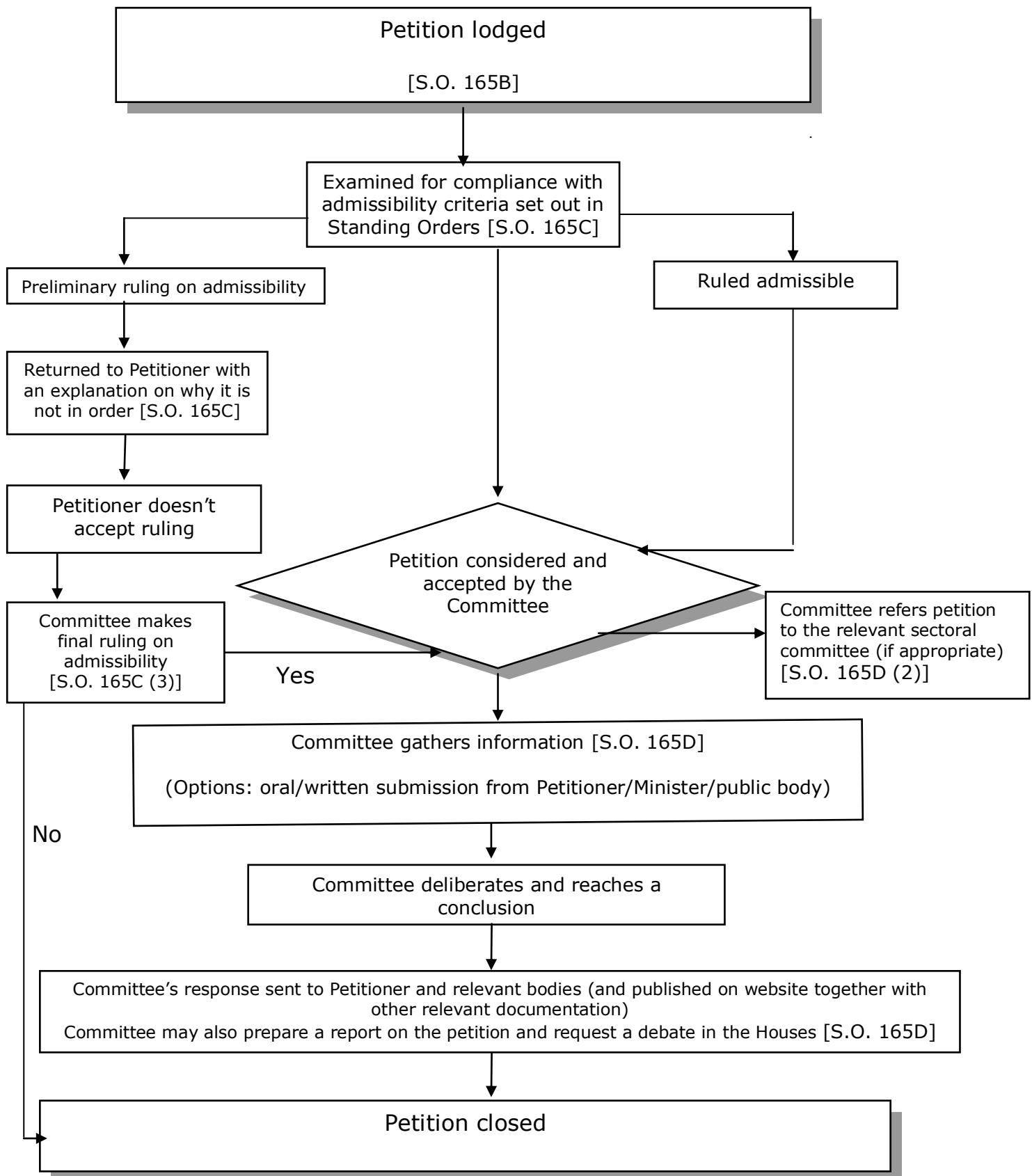
(vi) by the insertion in Standing Order 70 of the following subparagraph after paragraph (2)(c):

“(...) that 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 Service Oversight and Petitions in the exercise of its functions under Standing Order 165A.”

APPENDIX 2: Orders of Reference of the Committee in Diagrammatic Form



APPENDIX 3: Petitions System for the Houses of the Oireachtas



Appendix 4: Developing the Committee's Orders of Reference

Discussion Paper (No. 1) ¹⁰

Introduction

1. This Discussion Paper has been prepared to facilitate the Committee's consideration and discussion of the key issues arising at this stage of its work with a view to preparing a final report to the Houses seeking approval for the Committee's orders of reference in accordance with the resolution passed by both Houses on 28 September 2011 which sets a deadline of 27 January 2012 for the Committee's report in this matter.
2. The Paper presents an overview of the issues to be considered and a suggested approach to undertaking the Committee's future work programme. Issues raised by the Cathaoirleach and Vice-Chairman in the preparation of this paper are also taken account of.
3. **The Committee is invited to consider and provide its views on the discussion points set out in this paper.** On the basis of the Committee's considered position, the Secretariat will prepare a draft final report for consideration and agreement by the Committee, including draft Standing Orders relating to the orders of reference for the Committee and the framework for a petitions system.

Background and context

Current orders of reference

4. Under its current orders of reference, the Joint Committee is required to make recommendations to the Houses of the Oireachtas on revised orders of reference for the Committee incorporating proposals on:
 - (a) the design of a petitions system for the Houses of the Oireachtas;
 - (b) the role and remit of the Joint Committee having regard to the Programme for Government; and
 - (c) any other related matters.

¹⁰ Considered by the Committee at meeting on 9 November 2012

Proposal in the Programme for Government in relation to the Committee:

5. The Programme for Government proposed the establishment of this Committee as:

- (a) a dedicated Ombudsman Committee:

"...a formal channel of consultation and collaboration between the Oireachtas and the Ombudsman, responsible for receiving and debating her annual and special reports and for ensuring that her criticisms and recommendations are acted upon."

- (b) (and) a public petitions Committee:

"We will establish a petition system to the Dáil, similar to that operating in the European Parliament, to be managed by a specific Dáil committee that will investigate and report on petitions which raise issues warranting attention."

Proposal by the Ombudsman

6. In a [paper](#) published in February 2011, *Developing and Optimising the role of the Ombudsman*,¹¹ the Ombudsman advocated greater engagement between her Office and the Oireachtas to enhance the Ombudsman's effectiveness and the effectiveness of Oireachtas scrutiny of public administration accountability. To implement this proposal, the Ombudsman proposed the establishment of a designated Oireachtas Committee into which she would report and attend meetings, noting in particular that:

... the work of the Ombudsman will be enhanced where there is a direct reporting relationship with a specific Oireachtas Committee which both monitors and supports the work of the Ombudsman. The Ombudsman envisages that such a Committee would have regular constructive and critical interaction with her. In the event of a recommendation being rejected, it is to this Committee that the Ombudsman would report.

The Ombudsman would expect to have her investigations and recommendations reviewed critically by this Committee which would make its own assessment of her work. Provided the Committee acted independently, and not on a party whip basis,

¹¹<http://www.ombudsman.gov.ie/en/OtherPublications/StatementsandStrategyDocuments/February2011-DevelopingandOptimisingtheroleoftheOmbudsman/File,13559,en.pdf>

the Ombudsman could have no complaint should the Committee take the view that her recommendation should not be supported. There is also scope for considering whether the Oireachtas, through this Committee, might ask the Ombudsman to conduct specific enquiries on its behalf.

7. Key issues for consideration and discussion in respect of these functions are outlined in the following sections.

Scrutiny of public service delivery and relationship with Public Service Ombudsman

8. Under this heading the Committee would undertake scrutiny of policy implementation and administrative decision-making, contribute to informing policy development and help drive improvements in the quality and standards of public service delivery to citizens.
9. The Committee would undertake this work through a process of formal engagement with the Public Service Ombudsman. The Ombudsman reports directly to the Houses and at present has no formal reporting relationship with any Oireachtas Committee.
10. Having regard to the proposal by the Ombudsman for a dedicated Oireachtas Committee which would bring a special focus to and take a special interest in and support the work of her Office, and the role envisaged for the Committee in the Programme of Government, it is proposed that the Committee would have a formal structured relationship with the Public Service Ombudsman, drawing on the model of the relationship between Committee of Public Accounts and the C&AG in the area of public financial accountability.
11. The Public Service Ombudsman has an overarching remit across the public service and her jurisdiction extends to administrative actions of government departments, local authorities, the Health Service Executive, An Post and the North South bodies. In addition, there is a general provision in the 1980 Act which states that the Ombudsman may investigate actions taken by or on behalf of Schedule 1 bodies which clearly extends her jurisdiction beyond those bodies listed in Schedule 1 (there are 100 approx listed). The Ombudsman (Amendment) Bill, currently before the Houses, provides for an extension of the Ombudsman's remit to approximately 120 additional public bodies in the non-commercial state sector and the third level education sector, including universities and other third level colleges.

12. The Ombudsman's reports, which are laid before the Houses, would stand referred to the Committee for examination and debate. The Ombudsman submits three types of reports to the Houses: (i) 'annual reports' which provide an annual review of her complaint handling role; (ii) 'special reports' which highlight instances where a public body has rejected her recommendations; and (iii) 'other reports' which deal with matters of significant public interest which the Ombudsman wishes to bring to the attention of the Oireachtas.
13. The Ombudsman would make an oral presentation to the Committee on her reports. In undertaking further examination of the issues raised, the Committee would hold hearings with the relevant Minister/Department/public body with a view to ensuring accountability for actions taken and decisions made by the relevant Department or public body. At the conclusion of this process, the Committee would report its findings and conclusions, and any recommendations it considers appropriate, to the Houses drawing the attention of the Houses to any significant matters relating to the performance of the Department/public body concerned. The Committee is not precluded from conducting investigations into matters of public policy where such investigations will not result in findings of fact in respect of the conduct of any person.
14. The Committee could also hold a pre-appointment hearing for the post of Ombudsman. This would be along the lines of hearings conducted by other Oireachtas Committees in relation to appointments of Chairs to State Boards. Following such hearings the relevant Committee forwards its considerations on the candidate's suitability for the post to the relevant Minister.
15. The Committee could also have a right of initiative in bringing specific matters to the Ombudsman for attention.
16. This form of relationship between the Committee and the Public Service Ombudsman would be consistent with and complement and inform the Committee's other proposed role in considering and taking action on public petitions submitted to the Houses of the Oireachtas.

Relationship with sectoral Ombudsmen

17. In formulating orders of reference for this aspect of the Committee's remit, the areas of responsibility and scope of activities of other Committees (including the Public Accounts Committee and the Sectoral Committees) must be considered.

18. Under their Orders of Reference, sectoral Oireachtas Committees have a formal relationship with the relevant sectoral Ombudsman and are generally empowered to consider, as part of their work programmes, the following in relation to the relevant Ombudsman, as “bodies under the aegis” of the Committee:
- (a) Government policy;
 - (b) annual reports;
 - (c) the overall operational results of the bodies concerned;
 - (d) statements of strategy; and
 - (e) corporate plans.
19. By way of example, the Ombudsman for Children is a specified body “under the aegis of” the Department of Children and Youth Affairs. As such, it currently comes within the orders of reference of the Joint Committee on Health and Children. Similarly, An Coimisinéir Teanga is a specified body under the aegis of the Department of Arts, Heritage and the Gaeltacht and therefore currently comes within the orders of reference of the Joint Committee on Environment, Transport, Culture and the Gaeltacht.
20. While the Public Service Ombudsman reports to the Department of Public Expenditure and Reform for accounting purposes, the office is not a specified body under the aegis of the Joint Committee on Finance and Public Expenditure.

Key discussion points under this heading:

- **Should the Committee focus initially on developing a structured relationship and engagement with the Public Service Ombudsman?** This approach would enable the Committee to engage in a focussed scrutiny of public service delivery by the broad range of bodies within the remit of the Ombudsman. Given that some 300+ bodies come under the Public Service Ombudsman’s remit, the reach of the Committee would therefore be very extensive.
- **What type of engagement is appropriate for sectoral Ombudsmen?** Each sectoral Ombudsman already has a reporting relationship with the relevant Oireachtas sectoral Committee. To ensure a joined up approach, while avoiding overlap and duplication of functions, the Committee could undertake engagement with sectoral Ombudsmen on particular issues as appropriate, in consultation with the relevant sectoral committee.

Consideration of petitions submitted to the Houses of the Oireachtas

21. Under this heading, it is envisaged that the Committee would receive and process petitions submitted to the Houses of the Oireachtas by members of the public. A petition presented to the Houses would stand referred to the Committee for consideration and appropriate action.
22. In fulfilling its role the Committee would have a number of options: invite oral submissions from the petitioner, seek oral or written submissions from relevant organisations, invite government ministers to attend meetings and answer questions about the petition, or refer a petition, if appropriate, to the relevant sectoral Committee of the Houses. If after initial consideration, the Committee perceived that the petition did not merit further consideration, it would close the petition. The Committee could also recommend that an issue raised by a petition be debated in the Houses.
23. The procedural framework governing the petitions process would give the Committee broad authority to take any other action which the Committee considered appropriate.

Key discussion points under this heading:

- **The detailed design of a petitions system requires further consideration by the Committee.**
- The Committee should note that decisions on the design of the petitions system will impact on the staff resources required to support it. Based on discussions and research to date, the staff resources required to support such a system are expected to be significant in the Irish context. By way of benchmarks with other parliamentary committees which deal exclusively with public petitions–
 - the PETI Committee in the European Parliament receives on average 1230 submissions annually and has a secretariat of 20 (although some of this resource requirement is attributable to the multi-lingual nature of their work).
 - In Scotland, the Petitions Committee receives on average 100 new petitions annually and has on average 300 live petitions at any one time. The Committee has a secretariat of 4 staff and is supported by the Parliament's Research Service (SPICe).

The current position in relation to Oireachtas inquiries

24. In the light of the referendum result on the 30th Amendment of the Constitution proposal, the statutory role envisaged for the Committee in that context is unlikely to be implemented in the short term. Ultimately it is for the Government to make decisions and bring forward proposals in this area.
25. The Working Group of Committee Chairs (WGCC), at its meeting on 8 November, requested a briefing at its next meeting in December on the current position in relation to the conduct of inquiries by the Houses (i.e. the post-Abbeylara position) with a view to identifying the steps, if any, which can be taken in the short term at parliamentary level by the Houses. The Chairman of the Joint Committee is a member of the WGCC and will participate in these discussions in that capacity.

Composition, name and organisation of the Committee

26. At present the Joint Committee has 20 members including the Cathaoirleach.

Key discussion points under this heading:

- **Should the Committee be renamed to better reflect its functions and recent developments on inquiries?** In the light of the decision on inquiries referred to above and the subsequent change in the role envisaged for the Committee in that context, the word “investigations” may be a source of confusion. Some suggestions:

Joint Committee on Public Administration and Petitions

Joint Committee on Public Service Delivery and Petitions

Joint Committee on the Ombudsman and Petitions

- **Should a joint sub-Committee be established to consider petitions?** i.e. *Joint sub-Committee on Public Petitions*. If agreed, the appropriate number of members and chairing of the sub-Committee should be considered by the Committee.
- **Should the party whip apply to the Committee?** The operation of the whips system is a political mechanism which cannot be regulated by Standing Orders. Therefore Standing Orders cannot provide for the non-application of the Party Whip to the Committee; this is a matter for decision at the individual parliamentary party level.

Next steps in the Committee's work programme

- (a) **Discussion and agreement on the detailed design of a petitions system.**
- (b) **Adoption of a final position paper on the role of the Committee.**
- (c) **Presentation of a final report, including draft Standing Orders, to the Houses.** The report should recommend that a review of the Committee's orders of reference should be undertaken within 2 years.

Note re staff resources: The Committee should note that any additional staff resources required for the operation of a petitions system will require approval of the Houses of the Oireachtas Commission. In the current climate of reducing budgets and a public service moratorium on recruitment, the ability of the Houses of the Oireachtas Service to support a petitions system will require careful consideration by the Committee and will ultimately have to be addressed by the Houses of the Oireachtas Commission in the context of other priorities and demands on Committees generally.

Appendix 5: Implementing of a Petitions System in the Houses of the Oireachtas

Discussion Paper (N0. 2)¹²

Introduction

1. This Discussion Paper has been prepared to facilitate the Committee's consideration and discussion of the key issues arising in formulating proposals for a petitions system in the Houses of the Oireachtas. Under the arrangement proposed, the Committee would receive and process petitions submitted to the Houses of the Oireachtas by members of the public.
2. **The Committee is invited to consider and provide its views on the discussion points set out in this paper.** On the basis of the Committee's considered position, the Secretariat will prepare a draft procedural framework, including draft Standing Orders defining the Committee's functions and powers in the petitions process, for agreement by the Committee and approval by the Houses.

Background and context

Current orders of reference:

3. Under its current orders of reference the Committee's responsibilities include inter alia:

the design of a petitions system for the Houses of the Oireachtas.

Proposal in the Programme for Government in relation to public petitions:

4. The Programme for Government proposed the establishment of a public petitions committee. It stated:

[at page 20]

The Committee would receive parliamentary petitions from individuals and groups in the community seeking the redress of grievances connected with the public services of the State and with the public administration generally. Its functions would be to act as a "clearing house", directing complaints to those bodies most competent to act on them: the Ombudsman, the Data Protection Commissioner, the Local Government Auditor, the

¹² Considered by the Committee at meeting on 16 November 2011

Oireachtas committee that has oversight of the relevant Department, and so on.

[at page 22]

We will establish a petition system to the Dáil, similar to that operating in the European Parliament, to be managed by a specific Dáil committee that will investigate and report on petitions which raise issues warranting attention.

Study of parliamentary petitions systems in the European Parliament and the Scottish Parliament

5. Having regard to the role proposed for it, the Committee considered the petitions system in the Scottish Parliament and the European Parliament and the work of the respective parliamentary petitions committees. The principal themes and processes identified from that study are considered in this paper in the context of their application to a petitions system in the Houses of the Oireachtas.

Principles that should underpin the design of a petitions system

6. In her submission to the Committee the Ombudsman suggested three important principles that should attach to the design of a petitions system for the Houses of the Oireachtas:
 - (a) it should not seek to replicate or overlap with the role or remit of existing independent complaint handling bodies;
 - (b) it should seek to respect and protect the independence of those complaint handling bodies;
 - (c) it should seek to avoid becoming the default location for complaints and petitions relating to areas of public administration where there is currently no independent oversight in place.

Definition of a parliamentary petition

7. A parliamentary petition is a written request to the parliament for action on a matter of general public concern or interest. The subject of a petition must relate to a matter on which the Houses have the power to act, i.e. one involving legislation or government administration. The petition must also include reasons for the requested action. For example, a petition could request that the Oireachtas, the Government or a Minister take, or refrain from taking, some action for reasons stated. A petition may also contain

a request to introduce new legislation or to repeal or amend existing legislation for reasons stated.

Purpose of a Parliamentary Petitions System

8. The purpose of a petitions system is to enhance engagement between Parliament and the people. The petitions system provides a means for members of the public to submit a request directly to the Parliament requesting action on a matter of general public concern or interest which is within the scope of powers of the Parliament.
9. Consistent with this approach to promoting public engagement with the democratic process, the petitions systems in the Scottish and European Parliaments do not set any threshold for the number of signatures required for petitions.

Petition Admissibility Criteria

10. The petitions system may not be exploited as a lobbying mechanism or used inappropriately or unlawfully for sectional interests. In these respects, a petition must meet certain conditions of admissibility.

Form and content of a petition

11. A petition must comply with the Standing Orders in terms of its form and content. Only those petitions determined to satisfy the admissibility criteria set down in Standing Orders would be considered by the Petitions Committee. The more significant requirements are that:
 - (a) a petition must be addressed to the parliament;
 - (b) it must come within the definition of a parliamentary petition (i.e. a request for action on a matter of general public concern or interest on which the Houses have the power to act);
 - (c) it should contain the signature and address of at least one person; if more than one person signs the petition, a principal petitioner must be identified;
 - (d) it must concern matters that come within the powers of the parliament;
 - (e) it should state the facts which the petitioner wishes to bring to the notice of the parliament;

- (f) it should state the action taken in trying to resolve the matter;
 - (g) it should conclude with a request that the parliament take, or not take, some course of action;
 - (h) it should not be the same or substantially similar to a petition which was closed in the previous twelve months, and
 - (i) the terms of the petition are not expected to exceed 250 words.
12. A proposed form of petition, based on the Scottish petition template, is set out in Appendix 2 to this Paper.
13. In considering whether a petition complies with the admissible criteria, it would be necessary to consider the action that the petitioner has taken to progress the issue and whether there is a general public interest issue involved. Where a petition arises from an individual case of private interest, it would be assessed to determine whether the aim of the petition is to rectify a specific issue of individual concern or to address a general issue of public interest that the specific case uncovered.

Inadmissible Petitions

14. Petitions would not be admissible if they contained:
- (a) a request concerning a matter that falls outside the power of the Houses, (i.e. if it didn't comply with the definition of a petition);
 - (b) a request to intervene in the operational decision of a public body;
 - (c) a request to adjudicate on personal or commercial interests;
 - (d) matters which are sub judice or contained information protected by a court;
 - (e) offensive language; (potentially) defamatory statements or are otherwise frivolous or vexatious;
 - (f) a document consisting solely of a statement of opinion without requesting some action;

- (g) a request in relation to a matter that was under active consideration by the Ombudsman or other complaints/appeals bodies;
- (h) a request to review the decision of the Ombudsman or other independent appeals body.

Interaction between the petitions process and other statutory complaints/appeals bodies

15. In order to avoid duplication and/or overlap with other complaints/appeals bodies, petitioners are expected to have taken reasonable steps to resolve the issues of concern, for example, where there is a statutory right of appeal to an independent appeals body, petitioners would be expected to have used that avenue to progress the matter before petitioning the Houses.
16. This approach is consistent with the Ombudsman legislation (section 4(5) of the 1980 Act) which confers a discretion on the Ombudsman not to investigate, or to discontinue an investigation, where it appears that there is an alternative avenue for redress to which it would be reasonable for a complainant to resort.

Action that could be taken by the Committee on admissible petitions

17. A petition presented to the Houses would stand referred to the Committee for consideration and appropriate action. In considering petitions the Committee would have a number of options. It could:
 - (a) invite oral submissions from the petitioner;
 - (b) seek oral or written responses from relevant organisations;
 - (c) invite government ministers to attend meetings and answer questions about the petition;
 - (d) refer a petition, if appropriate, to the relevant sectoral committee of the Houses;
 - (e) recommend that an issue raised by a petition be debated in the Houses (by way of a report submitted to the Houses).
18. The procedural framework governing the petitions process would give the Committee broad authority to take any other action which the Committee considered appropriate.

Closing petitions

19. The Committee, or any other committee to which a petition has been referred, would have power to close a petition at any time. Where a committee closed a petition it would be necessary to notify the petitioner that the petition was closed and of the reasons for closing it.

Key discussion points:

Who can submit Petitions?

20. Under the petitions systems considered, petitions are accepted from a broad range of individuals and groups, for example:
- (a) an individual member of the public;
 - (b) a group of individuals;
 - (c) non-governmental organisations;
 - (d) citizens' organisations;
 - (e) interest groups;
 - (f) a company with its registered office in the state (under the seal of the company).

How would the Committee process petitions which concerned dissatisfaction with the decision of the Ombudsman or other independent complaint handling body?

21. In her presentation to the Committee, the Ombudsman stated that there were only two avenues open to such complainants: One is to seek an internal review of the decision; the second is to seek judicial review of the decision by the courts. In these circumstances the Committee would have no role in reviewing the Ombudsman's decisions on individual complaints. Were it to seek to do so, it would interfere with the independence of the Ombudsman. This approach is provided for in the admissibility criteria, see paragraph 13(j).

Would every petitioner be invited to make an oral presentation to the Committee?

22. Under the Scottish and European Parliament systems, petitioners are not automatically invited to make submissions and are only invited if the relevant committee considers that the petitioner can provide additional information. Petitioners are kept informed of the progress of their petitions at every stage of the process.

Repeat / vexatious petitions

23. Some form of restriction on resubmission of petitions may be considered appropriate to prevent abuses of the system (in order to prevent 'vexatious petitions'). This is provided for in the admissibility criteria, see paragraph 11(h).

What will be the impact of introducing a petitions system on the Houses in terms of costs and time?

24. Resourcing (both in terms of staff allocated to administration of petitions and IT systems to support the processing of petitions) will be particularly important to the successful implementation and ongoing administration of a petitions system. Whatever system is established must be able to cope with the levels of demand which might follow. Any consequent resource implications will be identified before the introduction of a petitions system in the Houses.

Appendix: TEMPLATE FOR LODGING A PETITION



Tithe an
Oireachtais
Houses of the
Oireachtas

This example is for illustrative purposes only

(For official use only) PUBLIC PETITION NO.	PE 123
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1. Name of Principal Petitioner	
John Black	
2. Petition title	
Voter Education Programme	
3. Petition text	
Calling on the Houses of the Oireachtas to request the Minister for Education and Skills to bring forward a proposal for the introduction of a voter education programme, as part of the senior cycle programme in second-level schools, to promote awareness of the right to vote among newly eligible voters.	
4. Action taken to resolve issues of concern before submitting the petition	
Presented an oral submission to the Joint Committee on the Constitution	
5. Petition background information	
Disengagement of the youngest section of the electorate from the political system is reflected in the low turnout of this group at elections. Measures are required to enhance the level of engagement of young people with the democratic process.	
6. Administrative information (not for publication)	
Name	John Black
Address	Dublin

Telephone nos.	Home: Mobile:
E-mail address	
Statement to the committee Should the Public Petitions Committee consider it necessary to broaden its understanding of your petition, it may ask a petitioner to appear before it to speak and answer questions. If asked, would you wish to appear?	
YES / NO (Delete as appropriate)	
Signature of principal petitioner When satisfied that your petition meets all the criteria outlined in <i>How to submit a public petition</i> the principal petitioner should sign and date below.	
Signature Date	
Completed forms should be returned to— The Clerk to the Public Petitions Committee Houses of the Oireachtas Leinster House Dublin 2 petitions@oir.ie Tel: 01 618 3000 Fax: 01 618 1234	

Appendix 6: Relationship between the Ombudsman and the Public Petitions Committee

Discussion Paper (No. 3) ¹³

Introduction

1. This Discussion Paper has been prepared to inform further consideration by the Committee of the key considerations in fostering appropriate co-operation between the Petitions Committee and the Ombudsman while respecting the separate responsibilities and independence of both bodies.
2. To help ensure that matters are not investigated in parallel by the Ombudsman as a complaint and by the Petitions Committee as a petition with both possibly taking different approaches to and reaching different conclusions on the same matter, it would be appropriate to develop a cooperative working relationship between the Committee and the Ombudsman. The same considerations would apply where alternative review bodies exist.
3. The Paper considers the relationship between the European Parliament's Committee on Petitions and the European Ombudsman and between the Scottish Petitions Committee and the Scottish Ombudsman with respect to the processing of petitions. The Paper also considers the views of the Ombudsman as expressed in her presentation to the Committee at its meeting on 20 July 2011.
4. In general, parliamentary petitions committees have a formal relationship and work in close cooperation with the national Ombudsman within the framework of parliamentary accountability and scrutiny of the Executive. The Ombudsman's annual and special reports are presented to and reviewed by the petitions committee. The committee also undertakes pre-appointment hearings with the nominated candidate for the post of Ombudsman.
5. This arrangement is consistent with the role proposed for the Investigations, Oversight and Petitions Committee under which the Committee is to be the Ombudsman's principal point of contact with the Oireachtas. The Committee will examine, debate and respond to her special and annual reports which are laid before the Houses of the Oireachtas. The Ombudsman will appear before the Committee as necessary to present information on the work of her office including significant matters arising from her casework. The Committee would also have a right of initiative in bringing specific matters to the Ombudsman for attention. The Committee would

¹³ Considered by the Committee at meeting on 7 December 2011

also undertake pre-appointment hearings with the nominated candidate for the post of Ombudsman.

Independence of the Ombudsman

6. The Ombudsman Act 1980 provides for the appointment and functions of the Ombudsman. To emphasise her separation and independence from the Government and the Houses of the Oireachtas, the Ombudsman is appointed by the President upon resolution by both Houses (section 2(2)). Removal from office of the Ombudsman is only possible by the President upon resolution of both Houses (section 2(2)(b)). In this way, the Ombudsman has security of tenure for the period of her appointment, and in that respect can be considered independent of the Houses and the Government.
7. In recognition of the independence of the Ombudsman, section 4(1) of the Ombudsman Act 1980 states:

The Ombudsman shall be independent in the performance of his function.

In her presentation to the Committee, the Ombudsman underlined the importance of her independence, noting that:

...the Committee would have no role in reviewing [her] Office's decisions on individual complaints. Were it to seek to do so, there would be serious implications for its independence.

8. In this regard it would be appropriate to pursue cooperation between the Petitions Committee and the Ombudsman in a manner that maintains an appropriate separation between their respective responsibilities and activities.

The Ombudsman and the Petitions Committee – Complementary Functions

9. The Ombudsman has jurisdiction to investigate complaints concerning instances of maladministration by government departments and public bodies. Petitions committees usually have a broader subject-matter remit than an Ombudsman covering issues of a political rather than an administrative nature. For example, petitions are not necessarily linked to maladministration and a petitions committee can consider a petition concerning any matter that comes within the parliament's field of activity. Additionally a petitions committee may recommend new legislation or amendments to existing legislation arising from its investigation of

petitions. In contrast, the Ombudsman cannot formally propose changes to the law.

10. The Ombudsman can act either on his/her own initiative or on a complaint received from a member of the public. A petitions committee can only initiate an investigation on receipt of a petition. A petitions committee can also refer appropriate complaints to an Ombudsman for investigation. The Ombudsman and the petitions committee are therefore intended to be complementary functions.

Co-operation between the European Parliament's Committee on Petitions and the European Ombudsman

11. The Committee on Petitions of the European Parliament is responsible for relations with the European Ombudsman. The Committee examines the work of the Ombudsman including a review of his annual and other reports. The Ombudsman appears before the Committee as necessary to give evidence on the work of his office. The Committee also undertakes pre-appointment hearings with candidates for the post of European Ombudsman.
12. In his presentation to the Committee on the work of the Petitions Committee of the European Parliament, Mr. David Lowe underlined the importance of avoiding overlap between the two bodies:

As far as the EU is concerned the European Ombudsman has clear responsibilities to investigate allegations of maladministration within the EU Institutions and bodies and our committee does not. Neither is it an appeal mechanism when people do not agree with the Ombudsman's assessment. Nevertheless, our committee is responsible for organising the election of the Ombudsman and of receiving his or her annual report. Beyond that, the Ombudsman is the Ombudsman and the Petitions Committee is the Petitions Committee and there is no overlap. It is decidedly important that the distinction is respected properly and when a petition comes from a citizen which complains about the fact that a Commission department has not acted properly, we make the point that it is not our competence and we hand over the matter to the Ombudsman who then deals with the matter. We do not touch such cases. Such ground rules are particularly important to avoid overlapping competence.

13. In principle, it is for the individual to choose whether to address a petition to the Committee on Petitions or to apply to the Ombudsman. However, it may not always be obvious which course of action is the more appropriate in the circumstances. The

Committee on Petitions and the Ombudsman have therefore co-operated closely in order to clarify their respective functions and to establish methods of co-operation. A procedure has been established for the transfer of cases between the Committee on Petitions and the Ombudsman, with the agreement of the petitioner or complainant. Similarly, the Ombudsman informs complainants who submit inadmissible complaints to him which might be suitable for conversion to petitions, that they could submit their complaints to the European Parliament as petitions.

14. In undertaking its work the Committee on Petitions considers it important that it should avoid 're-hearing' individual cases dealt with by the Ombudsman, i.e. it should not act as a court of appeal against the Ombudsman's findings or recommendations. The same considerations apply to the Ombudsman's consideration of matters dealt with by the Petitions Committee. The Ombudsman will consider inadmissible any complaint about decisions of the Committee on Petitions since its decisions are political matters.
15. It has also been agreed that the Ombudsman will not deal with a matter pending before the Committee on Petitions unless, with the consent of the petitioner, that Committee transfers it to the Ombudsman. Nor will the Ombudsman deal with a case that has already been examined and dealt with by the Committee on Petitions unless there are relevant new elements that justify recourse to the Ombudsman.

Co-operation between the Scottish Petitions Committee and the Scottish Ombudsman

16. The Public Petitions Committee in the Scottish Parliament does not have a formal relationship with the Scottish Ombudsman. Admissible petitions do not concern individual circumstances. In order for a petition to be admissible it must have a national dimension, for example, in relation to diabetes treatment, an admissible petition would concern the availability of insulin pumps across Scotland. A petition requesting the Scottish Parliament to investigate why a particular individual was refused an insulin pump would not be admissible.
17. The role of the PPC is not to provide a further/alternative avenue of appeal. If a petition arises from a decision of the Ombudsman, the Committee will consider the petition if it can be demonstrated that the matter is of general public concern or interest, for example, a request to change or amend the relevant legislation.

18. Petitioners are expected to have made some attempt to have the issue considered by an alternative avenue of redress before submitting a petition to the Scottish Parliament.

The Ombudsman's Investigation - a Remedy of Last Resort

19. Where an alternative complaints/appeals process is available, a complainant will generally be expected to have exhausted alternative avenues before seeking the intervention of the Ombudsman. The discretion to decline to investigate a complaint that has not been raised with the source of the service provision first reflects the role of the Ombudsman as a remedy of last resort. This is reflected in the Ombudsman legislation (section 4(5) of the 1980 Act) which confers a discretion on the Ombudsman not to investigate, or to discontinue an investigation, where it appears that there is an alternative avenue for redress to which it would be reasonable for a complainant to resort.
20. In general the Ombudsman will exercise her discretion not to investigate until redress has been sought at a local level for reasons of fairness in that the public body should have the opportunity to seek to resolve the complaint at a local level first before the Ombudsman becomes involved. In such circumstances the complainant will be referred to the alternative review process. If the matter is not resolved through that process, it is then open to the complainant to approach the Ombudsman seeking an investigation of the complaint.
21. In keeping with the 'last resort' principle, the Ombudsman Act 1980 does not provide for a further review of the Ombudsman's decision, although in common with other public bodies, the Ombudsman's decision is subject to judicial review.

Appendix 7: Current Orders of Reference of the Joint Committee

The orders of reference of the Investigations, Oversight and Petitions Committee, as set out in the motion establishing it, are:

(1) That a Select Committee consisting of fifteen members of Dáil Éireann be appointed to be joined with a Select Committee to be appointed by Seanad Éireann to form the Joint Committee on Investigations, Oversight and Petitions, to consider—

(a) the design of a petitions system for the Houses of the Oireachtas,

(b) the role and remit of the Joint Committee having regard to the Programme for Government, and

(c) any other related matters,

and to report back to both Houses of the Oireachtas with recommendations, including revised Orders of Reference for the Joint Committee, by 30th September, 2011.¹⁴

(2) The Joint Committee shall have the powers defined in Standing Order 83, other than paragraph (2A), (4A), (4B) and (6A) thereof.

(3) The Chairman of the Joint Committee shall be a member of Dáil Éireann.

¹⁴ The Committee's reporting deadline was extended to 27 January 2012 by the Order of Dáil Éireann and Seanad Éireann of 29 September, 2011.

Appendix 8: Relevant Extract from the Programme for Government

The Programme for Government proposed the establishment of the Committee. It stated:

[at page 20]

We propose an Investigations, Oversight and Petitions Committee of the Oireachtas. It would be a powerful committee, constructed on the lines of the Public Accounts Committee, bi-partisan in structure and chaired by a senior member of the opposition.

The Committee would be the formal channel of consultation and collaboration between the Oireachtas and the Ombudsman, responsible for receiving and debating her annual and special reports and for ensuring that her criticisms and recommendations are acted upon. For that purpose, she would attend as a regular witness before the committee.

The Committee would receive parliamentary petitions from individuals and groups in the community seeking the redress of grievances connected with the public services of the State and with the public administration generally. Its functions would be to act as a "clearing house", directing complaints to those bodies most competent to act on them: the Ombudsman, the Data Protection Commissioner, the Local Government Auditor, the Oireachtas committee that has oversight of the relevant Department, and so on.

[at page 22]

We will establish a petition system to the Dáil, similar to that operating in the European Parliament, to be managed by a specific Dáil committee that will investigate and report on petitions which raise issues warranting attention."

Appendix 9: Membership of the Committee

Deputies



Dara Calleary TD (FF)



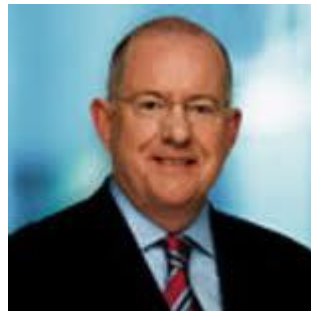
Joan Collins TD (TG)



Michael Conaghan TD (Lab)



Alan Farrell TD (FG)



Charles Flanagan TD (FG)



Michael Healy-Rae TD (Ind)



Peter Mathews TD (FG)



Michael McCarthy TD (Lab)
(Vice-Chairman)



Charlie McConalogue TD
(FF)



Michelle Mulherin TD (FG)



Derek Nolan TD (Lab)



Aengus Ó Snodaigh TD (SF)



John Paul Phelan TD (FG)



Peadar Tóibín TD (SF)
(Chairman)



Mick Wallace TD (TG)

Senators



Tony Mulcahy (FG)



Susan O'Keeffe (LAB)



Jimmy Harte (LAB)



Darragh O'Brien (FF)



Trevor Ó Clochartaigh (SF)