



# **TITHE AN OIREACHTAIS**

**An Comhchoiste um Airgeadas, Caiteachas Poiblí agus  
Athchóiriú**

**Tuarascáil i ndáil leis an Dréacht-Scéim Ghinearálta de chuid  
Bille um Chaighdeáin san Earnáil Phoiblí, 2015**

**Nollaig 2015**

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**HOUSES OF THE OIREACHTAS**

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

**Report in relation to the Draft General Scheme of a Public  
Sector Standards Bill, 2015**

**December 2015**

**31/FPER/032**

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Note: The Draft Heads of General Scheme of Public Sector Standards Bill is available on the [Department of Public Expenditure and Reform website](#).

## CHAIRMAN'S PREFACE

On 18 June 2015, the Minister for Public Expenditure and Reform, Brendan Howlin T.D., forwarded a copy of the Draft General Scheme of a Public Sector Standards Bill 2015 (hereafter, the 'Draft General Scheme') to the Joint Oireachtas Committee on Finance, Public Expenditure and Reform (hereafter, 'the Committee').

In its Statement of Government Priorities 2014-2016, the Government stated its commitment to "publish legislation to consolidate local and national requirements and give effect to the recommendations of the tribunals". The Tribunals referred to being the 'Mahon' and, to a lesser extent, 'Moriarty' Tribunals.

The Draft General Scheme proposes to introduce a new statutory framework for governing disclosure of interests and related matters.

At the time of its publication, the Minister said the following of the Draft General Scheme:

"A strong and effective framework for the management of conflicts of interest and standards of conduct of public officials is integral to the quality and efficacy of public governance and the addressing of corruption risks.

Government approval for the priority drafting of a Bill is a substantial step towards meeting the commitment in the Government's updated Programme to publish legislation to consolidate local and national ethics requirements and give effect to the recommendations of the Tribunals."

According to the press release accompanying the publication of the Draft General Scheme "[t]he proposed reforms complement the measures already introduced in the areas of:

- Protected Disclosures;
- Extending the Ombudsman's remit;
- Providing for a system of Parliamentary inquiries;
- The reform of the appointments system to State Boards;
- Strengthening civil service accountability;

The Committee decided on 1 July 2015 that they would undertake pre-legislative scrutiny (PLS) in respect of this Draft General Scheme. The Oireachtas Library & Research Service (L&RS) was requested by the Committee to assist them in the process of PLS and the Committee held two public hearings in relation to it.

I would like to express my appreciation to the officials from the Department of Public Expenditure and Reform and the other witnesses, and to the members of the Joint Committee, the Committee Secretariat and the Oireachtas Library & Research Service. I hope this report will help to inform the legislative process and make a valuable contribution to the forthcoming legislation. The need to raise standards in public office remains as pressing as ever.



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Liam Twomey T.D.

Chairman

December 2015



## 1. BACKGROUND

A number of tribunals since the 1990's, most notably *The Tribunal of Inquiry into Certain Planning Matters and Payments*, better known as the 'Mahon' Tribunal form an important part of the background to the proposals set out in the Draft General Scheme.

As a result of corruption scandals, The Ethics in Public Office Act 1995 was enacted on 22 July, 1995. This 1995 Act was amended by the Standards in Public Office Act 2001. The 2001 Act established the Standards in Public Office (SIPO) Commission to replace, and assume all of the functions of the Public Offices Commission established by the 1995 Act. The Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001 (hereafter the "Ethics Acts") are the main laws in place for regulating ethics in the public sector, in particular as regards the control of conflicts of interest.

The Council of Europe's Group of States against Corruption (GRECO) also contributed to thinking in relation to Ethics legislation in Ireland. In its 2014 evaluation report on Ireland, GRECO made a number of observations about the Ethics Acts. Overall, it noted that the current regulatory structure for ethical standards and conduct of members of parliament is a "rather complex patchwork consisting of a range of different provisions, including constitutional principles, legislative norms, soft law provisions and guidelines. This creates a requirement to assess which set of standards apply or which standards prevail over the other".

Also through its annual reports since 2001, The SIPO Commission has highlighted difficulties with the current legislation and made a number of recommendations in respect of improving and enhancing the current Ethics Acts.

Other International bodies have adopted measures aimed at ensuring the proper management of conflicts of interest on the part of public officials and inform thinking on ethics legislation in Ireland. These include:

- **Organisation for Economic Cooperation and Development (OECD)**  
*OECD Guidelines for Managing Conflicts of Interest in the Public Service (2003)*
- **United Nations (UN)**  
*UN International Code of Conduct for Public Officials (1996)*  
*United Nations Convention against Corruption (UNCAC) (2003)*
- **The Council of Europe (COE)**  
*Recommendation (2000)10 on Codes of Conduct for Public Officials*  
*Recommendation 60 (1999) on Political Integrity of local and regional elected representatives)*

- **United Kingdom (UK)** Committee on Standards in Public Life

*The Nolan Principles*

The Committee held two meetings as part of the PLS in relation to this Bill. The first on 18 July 2015 with officials from the Department of Public Expenditure and Reform (DPER), and, the second on 11 November 2015 with Dr. Elaine Byrne and representatives of the SIPO Commission.

## 2. 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.



### 3. OBSERVATIONS OF THE COMMITTEE

Below is a list of observations put forward by the committee resulting from its hearings and its consideration of published secondary sources.

#### OBSERVATION 1- CATEGORIES OF PUBLIC OFFICIAL

Category A officials are required to make the widest disclosures under the proposals of the Draft General Scheme. Currently, only public officials at the most senior levels are covered within this category. The issue of the composition of the Categories of public official was also discussed at public hearings. Given that public officials at Assistant Secretary General, Principal Officer and Director levels in the Civil and Public Service may often have a significant degree of autonomy and responsibility, it may be appropriate in the context of the Bill that these officials also be included as category A officials. (section 4.3 refers)

#### OBSERVATION 2 - OUTSIDE APPOINTMENTS BOARD

Heads 45 and 46 provide for the establishment of the Outside Appointment Board on a statutory basis. The Draft General Scheme provides that where an official at Assistant Secretary level (category B public official as defined in the Draft General Scheme) and above wishes to take up an appointment within 12 months of ceasing to be a public official, they must first obtain consent (where this is likely to cause a conflict of interest) from the Outside Appointments Board. Consideration should be given to expanding this provision in respect of Assistant Secretaries to include senior public officials between Principal Officer and Assistant Secretary General levels. Following from Observation 1 above, as Assistant Secretaries are included in these Heads as senior officials it seems correct that they would be included also as category A public officials. (section 4.4 refers)

#### OBSERVATION 3 - STAFF EMPLOYED BY PUBLIC OFFICIALS

The Draft General Scheme proposes that special advisors of elected office holders should be included as category A officials. Certain literature relating to which public officials should, optimally, be subject to disclosure of interests suggests that staff employed by elected office-holders (in support of their elected duties) should be included within relevant ethics legislation. Further consideration should be given to the inclusion of the staff of elected office-holders as category A officials (section 4.3 refers)

#### OBSERVATION 4 - NON-STATE ORGANISATIONS IN RECEIPT OF PUBLIC SECTOR CONTRACTS

Private sector consultancy firms and non-governmental organisations may be in receipt of significant public funds by way of public procurement. There may be merit in expanding the proposals to include and categorise such bodies as public bodies for the duration of such contracts (section 4.5 refers)

#### OBSERVATION 5 - THRESHOLDS OF DECLARABLE INTERESTS

The declarable interests (assets and liabilities) provisions set out in the Draft General Scheme are similar to those set out in the existing Ethics Acts: they do not require the actual value of individual interests to be disclosed but rely on thresholds. The Council of Europe's (COE's) Group of States Against Corruption has suggested that declarable interests should reflect "the real value of assets, income and liabilities" and not rely on thresholds. The Mahon Tribunal recommended (Recommendation 3) threshold limits for any income in excess of €1,000 and any gifts in excess of €250 should be applied. The SIPO Commission has also suggested that liabilities, as well as assets, be disclosed as 'registrable interests'. This latter view has also been echoed in the witness statements at the hearings. In this regard, and in the context also that these provisions refer to senior public officials, the 'threshold approach' and the balance between interests (assets and liabilities) should be reconsidered with a view to including all applicable interests outside of public employment. (section 4.6 refers)

#### OBSERVATION 6 - PRINCIPLES OF CONDUCT AND INTEGRITY

Head 6 provides for public officials to uphold appropriate standards of integrity. Head 19 provides for the issuing by the Public Sector Standards Commissioner of a model code of conduct based on the principles set out in Head 6. The scope of the principles of integrity set out was also discussed in the public hearings. Consideration could be given to expanding on the current breadth and definition of principles of integrity as set out in the Draft General Scheme. (section 4.7 refers)

#### OBSERVATION 7 - MEMBERS OF THE OIREACHTAS AND MEETINGS

Head 8 provides that where a public official at a meeting (i.e. meetings of the Houses of the Oireachtas, local government, boards of a public body) knows that they or a connected person (relatives, business partners and companies and other such legal arrangements that the person has a beneficial interest in or is a director of) has a

beneficial or pecuniary interest (assets and liabilities) that is material to the matter under discussion, they must disclose the nature of their own interest or the fact that a connected person has an interest at the meeting. If a public official is aware in advance of a meeting that a matter is to be discussed and a disclosure would be required if they attended, they must make a disclosure in advance of the meeting. Under this Head, it is proposed that Members of the Houses of the Oireachtas be exempt from having to withdraw from meetings where those circumstances occur. In contrast, other categories of public officials must withdraw from such meetings while the matter is being discussed and they must refrain from voting on the issue. The exemption for Members of the Houses of the Oireachtas as stated should be reassessed.

Head 8 also states that the provision to withdraw from meetings does not apply (in respect of all public officials) if 50% or more of members are obliged to withdraw. This also requires careful reassessment given that in theory it allows for a meeting to take place where a majority of its members have “actual knowledge that he or she or a connected person has a pecuniary or other beneficial interest in, or which is material to, the matter” being discussed”. (section 4.8 refers)

#### OBSERVATION 8 – COMMISSIONER/ THE SIPO COMMISSION RELATIONSHIPS

Head 17 provides for the establishment of a Public Sector Standards Commissioner (PSSC). The existing SIPO Commission will be dissolved. The SIPO Commission consists of an independent chairperson (normally a member of the judiciary), the Clerks of the Dáil and Seanad, the Comptroller and Auditor General, and the Ombudsman. The issue of the composition of public standards oversight agency (sole person or commission) and the relationship between this agency, SIPO COMMISSION and its member bodies was noted in the Committee hearings. In addition, the capacity, focus and interrelationship between oversight agencies were also discussed in the public hearings.

The Draft General Scheme does not set out the relationship between the new PSSC and these bodies. This relationship would appear to be (potentially) important to the performance of the role and functions of the new PSSC. The Bill should provide greater clarity on the relationship of the proposed PSSC with the existing member organisations of the SIPO Commission and other relevant agencies that have responsibility for oversight of corruption/conflict of interest risks and adherence to related standards of conduct. (section 4.10 refers)

#### OBSERVATION 9 - ANONYMOUS AND ORAL COMPLAINTS

Head 22 provides for the making of written complaints to the Commissioner. Recommendation 12 of the Final Report of the Mahon Tribunal stated that SIPO Commission should be permitted to accept anonymous or oral complaints. Consideration should be given for the General Scheme to clearly provide for the making of anonymous and oral complaints. (section 4.11 refers)

#### OBSERVATION 10 - PROMOTION AND TRAINING

Head 19 provides for the PSSC to promote the standards of integrity and prevent conflicts of interests through training, education and research. The issue of training of, and the promotion of the proposed public sector standards to, public officials was discussed at length in the public hearings. Consideration could be given to expanding the promotional and training role of the PSSC. (section 4.12 refers)

#### OBSERVATION 11 - INVESTIGATION APPARATUS

Head 26 provides for the establishment of the Deputy Commissioner and his/her power to appoint investigation officers. The Final Report of the Mahon Tribunal questioned whether the investigation apparatus under the Ethics Acts had the requisite resources to carry out effective investigations. Also, in the public hearings, witnesses highlighted what they believed to be over elaborate and complicated investigation procedures proposed under the Draft General Scheme.

Adequate provision for what is proposed in the Draft General Scheme needs to be guaranteed in order to ensure that the investigation apparatus will be firstly, sufficiently resourced and secondly, efficient in practice. (section 4.13 refers)

## 4. COMMITTEE CONSIDERATION OF DRAFT GENERAL SCHEME WITH STAKEHOLDER COMMENT

### 4.1 INTRODUCTION

This section provides Committee consideration of the Draft General Scheme, including stakeholder comment and background to Committee Observations. As Figure 1 below shows, the Draft General Scheme consists of eight Parts comprising 51 Heads.

**Figure 1: Structure of the Draft General Scheme of a Public Sector Standards Bill 2015**



## 4.2 DEFINITION OF 'CONNECTED PERSONS'

Head 2 (Interpretation), sub-head 2, provides a definition of “connected person”. This definition has been expanded from that in the Ethics Acts based on the recommendations of the Mahon Tribunal. It now includes relatives, business partners and companies and other legal arrangements that the public official has a beneficial interest in or is a director of.

## 4.3 CATEGORIES OF PUBLIC OFFICIAL

Head 3 provides for a definition of “public official”, who holds or held a position as an employee, director or other office as one of the following:

- Category A – elected politicians, special advisers, chairpersons and CEOs of public bodies and those on remuneration at Deputy Secretary level and above in the public sector;
- Category B – those on remuneration between Principal Officer level and Deputy Secretary in the public sector, a member of the board of a public body (excluding the chairperson); and,
- Category C – all other public officials.

Figure 2 below shows a breakdown of officials according to categories A, B and C.

**Figure 2: Categories of public officials as defined by the Draft General Scheme**

Category A public officials:	Indicative basic pay / pay-scale <sup>1</sup>
1. a member of Dáil Éireann / a member of Seanad Éireann;	TD: €87,258 / Senator: €65,000 <sup>2</sup>
2. a member of the European Parliament for constituencies in the State;	MEP: €96,246 <sup>3</sup>
3. a member of a Local Authority;	
4. the Attorney General;	

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<sup>1</sup> Pay scale details have been inputted by the Oireachtas Library and Research Service from secondary sources and are indicative / for illustrative purposes only.

<sup>2</sup> <http://www.oireachtas.ie/parliament/tdssenators/salariesallowances/>

<sup>3</sup> <http://www.europarl.europa.eu/meps/en/newgsasearch.html>

5. a special adviser whose remuneration exceeds a prescribed amount;

6. Chairperson of a public body;

7. Chief Executive Officer (or equivalent) of a public body;

8. Chief Executive of a local authority;

9. Any other person holding a grade or an office or a position in a public body in relation to whom the remuneration is not less than the lowest remuneration in relation to the position of Deputy Secretary General in the Civil Service (within the meaning of the Civil Service Regulation Act 1956);

Deputy Secretary General:  
€156,380<sup>4</sup>

10. any other public official prescribed for the purposes of this paragraph;

**Category B public officials:**

Indicative basic pay / pay-scale

1. a person holding a grade or an office or other position in a public body in respect of which the maximum salary is not less than the maximum salary of a principal (general service grade, Class B PRSI) in the Civil Service,

Principal Officer:  
€75,647 -€92,550<sup>5</sup>

2. member of a board of a public body (excluding the Chairperson of that public body);

3. any other public official prescribed for the purposes of this paragraph;

**Category C public officials:**

1. all other persons holding a grade or an office or other position in a public body

2. the Master of the High Court, Deputy Master of the High Court, Taxing Master, County Registrars, City Sheriffs, County Sheriffs, Property Arbitrators

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<sup>4</sup> <http://www.impact.ie/your-sector/public-sector/civil-service/civil-service-salary-scales/civil-service-salary-scales-for-grades-above-e56000/civil-service-general-service-grades-over-e56000/>

<sup>5</sup> *Ibid*

**and the non-judicial members of the Courts  
Services Board;**

**3. a person who is a member of a local authority  
committee or joint body other than a member of a  
local authority;**

Source: Head 3, Draft General Scheme of a Public Sector Standards Bill, 2015:18-19.

The explanatory note for this head in the Draft General Scheme states the definition of “public official” used in this head is based on the approach to defining public service in the [\*Financial Emergency Measures in the Public Interest Acts and the Public Service Pension \(Single Scheme and Other Provisions\) Act 2012\*](#).

During the hearings, Deputy Twomey raised concerns about the composition of the categories and category A in particular:<sup>6</sup>

“To some degree the vast majority of people in this Parliament have no power whatsoever. The procurement officer of a large semi-State company or State organisations or senior planning officer of a local authority is far more susceptible to corrupt practices than most junior Ministers and certainly all non-office holders in Dáil Éireann”

A similar point was made by Deputy Fleming at the first public hearing:<sup>7</sup>

“I recommend that principal officers across the public sector should be in category A [in similarity to] Oireachtas members on principal officer level salaries. Public officials on the same salary scale as Oireachtas Members should be in the same category. We have pointed out that, when it comes to negotiations on issues in a Department, public bodies or at director of services level in the local authorities, sometimes a manager can be a little hands off and leaves it to his couple of directors and sometimes directors have phenomenal powers and influence, which is more than any Member of the Oireachtas who is not a Minister.”

#### **4.4 OUTSIDE APPOINTMENTS BOARD (OAB)**

Head 45 provides that a public official must inform the head of their public body if they intend to be engaged with an outside business they have had official dealings with or that would gain an unfair advantage from employing them.

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<sup>6</sup> Meeting of the Joint Committee on Finance, Public Expenditure and Reform, [November 11 2015](#)

<sup>7</sup> *Ibid*, [July 18 2015](#).



In addition, an official at Assistant Secretary level or above must first obtain the consent of the Outside Appointments Board where a post-term employment taken up within 12 months might give rise to a conflict of interest. The Outside Appointments Board may give consent unconditionally or subject to conditions or refuse to give consent for specified periods.

Head 46 provides for the establishment of the Outside Appointments Board on a statutory basis. The Draft General Scheme's summary notes that "details of the OAB's powers etc. will be developed in conjunction with the OPC [Office of the Parliamentary Counsel, i.e. during the drafting of the Bill itself]".<sup>8</sup>

#### **OBSERVATION 1: Categories of public official**

Category A officials are required to make the widest disclosures under the proposals of the Draft General Scheme. Currently, only public officials at the most senior levels are covered within this category. The issue of the composition of the Categories of public official was also discussed at public hearings. Given that public officials at Assistant Secretary General, Principal Officer and Director levels in the Civil and Public Service may often have a significant degree of autonomy and responsibility, it may be appropriate in the context of the Bill that these officials also be included as category A officials. (section 4.3 refers)

#### **OBSERVATION 2: Outside Appointments Board**

Heads 45 and 46 provide for the establishment of the Outside Appointment Board on a statutory basis. The Draft General Scheme provides that where an official at Assistant Secretary level (category B public official as defined in the Draft General Scheme) and above wishes to take up an appointment within 12 months of ceasing to be a public official, they must first obtain consent (where this is likely to cause a conflict of interest) from the Outside Appointments Board. Consideration should be given to expanding this provision in respect of Assistant Secretaries to include senior public officials between Principal Officer and Assistant Secretary General levels. Following from Observation 1 above, as Assistant Secretaries are included in these Heads as senior officials it seems correct that they would be included also as category A public officials. (section 4.4 refers)

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<sup>8</sup> Department of Public Expenditure and Reform, [Summary of the draft General Scheme of a Public Sector Standards Bill 2015](#).

### **OBSERVATION 3: Staff employed by public officials**

The Draft General Scheme proposes that special advisors of elected office holders should be included as category A officials. Certain literature relating to which public officials should, optimally, be subject to disclosure of interests suggests that staff employed by elected office-holders (in support of their elected duties) should be included within relevant ethics legislation. Further consideration should be given to the inclusion of the staff of elected office-holders as category A officials. (section 4.3 refers)

## **4.5 PUBLIC BODIES**

Head 4 provides a definition of “public body” to whom the provisions of the proposals will apply.

Similarly to the categories of public officials discussed above, the definition of “public body” used in this head is based on the approach to defining public service in the [\*Financial Emergency Measures in the Public Interest Acts and the Public Service Pension \(Single Scheme and Other Provisions\) Act 2012\*](#).

### **Box 9: Definition of a ‘public body’ as set out in the Draft General Scheme**

Each of the following is a “public body” for the purposes of this Act:

1. the Civil Service;
2. the Garda Síochána;
3. the Permanent Defence Force;
4. a local authority;
5. the Health Service Executive;
6. the Central Bank of Ireland;
7. an education and training board;
8. a higher education institution in receipt of public funds;
9. a body established:
  - by or under an enactment (other than the Companies Acts), or
  - under the Companies Acts in pursuance of powers conferred by or under another enactment, and financed wholly or partly by means of money provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government

in respect of which a public service pension scheme exists or applies or may be made,

10. a body that is wholly or partly funded directly or indirectly out of money provided by the Oireachtas or from the Central Fund or the growing produce of that Fund and in respect of which a public service pension scheme exists or applies or may be made,
11. any subsidiary of, or company controlled (within the meaning given by section 10 of the Taxes Consolidation Act 1997 ) by, a body to which paragraph 1 to 10

- relates and in respect of which a public service pension scheme exists or applies or may be made;
12. notwithstanding the repeal of the Act of 1995 or Act of 2001 a body that was a public body within the meaning of those Acts prior to the coming into operation of this Act.

Source: Adapted and paraphrased from Head 4, Public Body, Draft General Scheme of a Public Sector Standards Bill, 2015:21-22.

The provisions cover a broad range of public entities, sub-head 2(a) provides for the Minister, following consultation with the PSSC, other Ministers or Committees of the Houses of the Oireachtas, to declare by order a body to be a prescribed body for the purposes of the proposed Act. This sub-head also provides “to the need to ensure the oversight of staff of a certain body and the need for adherence to standards of integrity (as set out in head 6) and to principles of transparency and accountability in government affairs as respects those of their activities”.<sup>9</sup>

#### **OBSERVATION 4: Non-State organisations in receipt of public sector contracts**

Private sector consultancy firms and non-governmental organisations may be in receipt of significant public funds by way of public procurement. There may be merit in expanding the proposals to include and categorise such bodies as public bodies for the duration of such contracts. (section 4.5 refers)

#### **4.6 DECLARABLE INTERESTS AND REPORTING THRESHOLDS**

Head 5 provides definitions of “public declarable interests” and “private declarable interests”.

In her evidence to the Committee, Dr. Elaine Byrne, questioned the thresholds set out in the Draft General Scheme and particularly in respect of liabilities:<sup>10</sup>

“Under head 5(3)(c) there is a reference to declarable interests which specifies that any liability in excess of €50,000 should be on a register of liabilities. I would ask why the figure is so high compared to that which applies in other jurisdictions, where the limit is much lower. I would ask why the register is private rather than public and why private homes are not included on it. In Ireland, members of the National Treasury Management Agency, NTMA, who are assigned to work for the National Asset Management Agency, NAMA, are already legislatively required to be on the register of liabilities. They are the only public figures who are on a register of liabilities. Since 2009, the

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<sup>9</sup> Head 4, Public Body, General Scheme of a Public Sector Standards Bill, 2015:22.

<sup>10</sup> Meeting of the Joint Committee on Finance, Public Expenditure and Reform, [November 11 2015](#)

Standards in Public Office Commission, SIPO, has recommended that a public representative "who has significant liabilities to, for example, a financial institution, could be materially influenced in the course of performing their duties where such duties involve dealing with that financial institution"

Often, the focus, when we are discussing registers is on the assets public representatives have and not on their liabilities. People are as influenced, in terms of conflicts of interest, by their liabilities as by their assets. According to the current register of interests, at least a quarter of our Deputies and Ministers have significant holdings in holiday homes, rental properties or second properties. In the lifetime of this Government, in a reflection of the general population, a Minister and a Minister of State have experienced significant financial difficulties. This has raised questions about why the public did not know the extent of those Members' liabilities. Australia, Finland, New Zealand, Poland, Spain and Canada require politicians to publicly disclose any debts they may have, including outstanding loans, debts or mortgages. The international best practice note provided for the documentation relating to the general scheme of the Bill does not focus on the models in Finland, Poland or Spain. In Canada, all assets and liabilities of a public figure and his or her family members which exceed \$10,000 must be disclosed. In Ireland, the proposed limit is €50,000. In Canada, the Office of the Conflict of Interest and Ethics Commissioner maintains a public register of publicly declarable information."

#### **OBSERVATION 5: Thresholds of declarable interests**

The declarable interests (assets and liabilities) provisions set out in the Draft General Scheme are similar to those set out in the existing Ethics Acts: they do not require the actual value of individual interests to be disclosed but rely on thresholds. The Council of Europe's (COE's) Group of States Against Corruption has suggested that declarable interests should reflect "the real value of assets, income and liabilities" and not rely on thresholds. The Mahon Tribunal recommended (Recommendation 3) threshold limits for any income in excess of €1,000 and any gifts in excess of €250 should be applied. SIPO COMMISSION has also suggested that liabilities, as well as assets, be disclosed as 'registrable interests'. This latter view has also been echoed in the witness statements at the hearings. In this regard, and in the context also that these provisions refer to senior public officials, the 'threshold approach' and the balance between interests (assets and liabilities) should be reconsidered with a view to including all applicable interests outside of public employment. (section 4.6 refers)

#### **4.7 STANDARDS OF CONDUCT AND PRINCIPLES OF INTEGRITY**

Head 6 places a duty on public officials to maintain proper standards of integrity and concern for the public interest. Head 6 provides that in carrying out his or her functions, public officials should adhere to the following principles:

- maintain proper standards of integrity and concern for the public interest;
- to use resources efficiently and effectively; and,
- to be appropriately guided by the principles of impartiality, objectivity, honesty, respect, accountability, openness and transparency.

Head 19 provides for the Public Sector Standards Commissioner to devise a model code of conduct for public official based on these principles.

In its submission to the Committee, the SIPO Commission stated that it has made recommendations in its annual reports for improvement of the ethical framework and the establishment of a clear set of principles which apply to all in public life. It noted that many of these are reflected in the Draft General Scheme. Additionally, the SIPO Commission observed:<sup>11</sup>

“that a strong ethical framework should be aspirational in nature. The structure underpinning the statute should have a strong promotional role and not just be engaged in detecting non-compliance. The statutory framework should codify public service values and principles, use these as the basis of a statutory code of conduct and provide clear guidance and training. These provisions should form the centre of the framework. Such values and principles would include the requirements that public officials act solely in the public interest, act fairly and impartially, are accountable for their actions and show leadership by acting in accordance with the highest standards and promoting these standards to other public officials by their conduct.

The draft general scheme gives centre stage to conflicts of interest, which formed the basis of the Ethics in Public Office Act 1995. However, other aspects of behaviour such as the requirements on public officials to have respect for equality of opportunity, to perform their functions openly and transparently to the greatest extent possible and to avoid the misuse of public resources also need to feature, in the context of the fundamental obligation of public officials to act ethically in the public interest, which must be emphasised to be of the highest priority.

The commission therefore considers that the general scheme should be reordered to emphasise the high standards of conduct and integrity which are expected of public officials, along with the provisions regarding the codes of conduct and that other provisions setting out specific obligations should follow”.

At the hearings, the Ombudsman, Peter Tyndall, in his capacity as a member of the SIPO Commission stated that the principles that might underpin ethics legislation:<sup>12</sup>

“sets out the aspirations we as a nation have for ethical behaviour and what we see it resembling. I suggest something along the lines of the Nolan principles, setting out for Ireland what we believe people should aspire to - selflessness,

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<sup>11</sup> SIPOC opening statement, meeting of the Joint Committee on Finance, Public Expenditure and Reform, [November 11 2015](#)

<sup>12</sup> Meeting of the Joint Committee on Finance, Public Expenditure and Reform, [November 11 2015](#).

leadership, complete propriety and acting in a way that benefits the people of the State rather than those individuals. The arrangements here go a long way towards that, but fall a little short. When one speaks to people internationally, one finds that Ireland is regarded as having the leading piece of legislation on lobbying in the world at the moment. On the ethics front, however, I do not think this quite reaches the same standard.”

#### **OBSERVATION 6: Principles of conduct and integrity**

Head 6 provides for public officials to uphold appropriate standards of integrity. Head 19 provides for the issuing by the Public Sector Standards Commissioner of a model code of conduct based on the principles set out in Head 6. The scope of the principles of integrity set out was also discussed in the public hearings. Consideration could be given to expanding on the current breadth and definition of principles of integrity as set out in the Draft General Scheme. (section 4.7 refers)

#### **4.8 AD HOC DECLARATIONS**

Head 8 provides for a requirement for a public official to make an *ad hoc* disclosure where they know that they or a connected person has a beneficial or pecuniary interest that is material to the performance of their functions. Such declarations by Category A officials will be made to the Commissioner and published; for category B and C, the Statement is made to the relevant person (to be set out in schedule 2), but not published. Sub-head 7 states the obligation to withdraw (from a meeting where a matter in which they have pecuniary interest is discussed) “does not apply if 50% or more of the members of the body in question would be obliged to withdraw by virtue of this head”.<sup>13</sup>

#### **OBSERVATION 7: Members of the Oireachtas and meetings**

Head 8 provides that where a public official at a meeting (i.e. meetings of the Houses of the Oireachtas, local government, boards of a public body) knows that they or a connected person (relatives, business partners and companies and other such legal arrangements that the person has a beneficial interest in or is a director of) has a beneficial or pecuniary interest (assets and liabilities) that is material to the matter under discussion, they must disclose the nature of their own interest or the fact that a connected person has an interest at the meeting. If a public official is aware in

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<sup>13</sup> Head 8, Public Body, Draft General Scheme of a Public Sector Standards Bill, 2015:38.

advance of a meeting that a matter is to be discussed and a disclosure would be required if they attended, they must make a disclosure in advance of the meeting. Under this Head, it is proposed that Members of the Houses of the Oireachtas be exempt from having to withdraw from meetings where those circumstances occur. In contrast, other categories of public officials must withdraw from such meetings while the matter is being discussed and they must refrain from voting on the issue. The exemption for Members of the Houses of the Oireachtas as stated should be reassessed

Head 8 also states that the provision to withdraw from meetings does not apply (in respect of all public officials) if 50% or more of members are obliged to withdraw. This also requires careful reassessment given that in theory it allows for a meeting to take place where a majority of its members have “actual knowledge that he or she or a connected person has a pecuniary or other beneficial interest in, or which is material to, the matter being discussed”. (section 4.8 refers)

#### 4.9 DEALING WITH LAND

Head 10 prohibits local elected representatives whose outside role primarily involves the sale / development of land, from dealing with land during their term of office (and for two years afterward) where their local authority has changed the planning or zoning status of that land and s/he has voted on the decision.

#### 4.10 OFFICE OF THE PUBLIC SECTOR STANDARDS COMMISSIONER

Head 17 provides for the establishment of the Office of the Public Sector Standards Commissioner and creates the role of Public Sector Standards Commissioner, who will be independent in the performance of their functions. Sub-head 13 states that on dissolution of the existing Commission, the SIPO Commission, the Chairperson and its members shall cease to hold office.

In its submission to the Committee, the SIPO Commission noted the proposal in the Draft General Scheme for its replacement by a single office holder, the Public Sector Standards Commissioner. While the SIPO Commission considers that there is some merit in this proposal it also considers that:<sup>14</sup>

“there has been merit in the existing approach [SIPO COMMISSION]. The

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<sup>14</sup> Meeting of the Joint Committee on Finance, Public Expenditure and Reform, [November 11 2015](#)



wide range of experience brought to it by its current and former members (former High Court judges, the Comptroller and Auditor General, the Ombudsman, the Clerks of Dáil and Seanad Éireann and former Oireachtas members and Ministers) has been of great benefit to it in performing its functions under the Ethics Acts. The Commission is of the opinion that careful consideration should be given to this proposal. The current structure of the Commission and its implementation of its statutory powers has indicated the established ability for the Commission to perform its functions in an open and transparent manner covering a wide range of issues. Appropriate legislative amendments (where necessary) could be made whilst substantially retaining the current structure of the Commission.”

Appearing before the Committee, Dr. Elaine Byrne argued for broader review of agencies whose focus is on corruption and therein public sector standards. On the basis of the findings of such a review, she suggested increasing the capacity and operational ability of such agencies.<sup>15</sup>

“The pretext of much of the general scheme is focused on the 22 tribunal recommendations. Much of the debate on ethics is no longer necessarily relevant, particularly in view of the fact that it is grounded in the context of what happened in political life in the 1980s or 1990s. Matters have moved on. Instead of looking to what happened in Ireland in the past, perhaps this and other proposed ethics legislation should be used to examine international best practice and what has happened in other jurisdictions. In the context of additional responsibilities relating to an office of the commissioner, perhaps we should examine how Ireland’s oversight agencies operate. In the UK after the economic crisis, there was an independent review - the De Grazia review - and audit of the capacity and operational ability of oversight agencies to prosecute ethical offences. Instead, we are examining ethical transgressions in the focus of one agency rather than considering where those ethical transgressions have occurred and where other agencies have similar functions which are duplicated or there is a lack of information sharing. Instead of considering one agency, perhaps there needs to be an audit and a review of oversight agencies in Ireland in general. In 2010, the Office of the Director of Corporate Enforcement gave a White Paper to the Department of Justice and Equality listing the problems it had doing its business. Instead of looking to the past, perhaps we need to examine an overview of how audit or oversight agencies need to focus in general. The UK response to the economic crisis was an independent audit of the capacity and operational ability of its oversight agencies to prosecute financial crime.”

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<sup>15</sup> Dr. Elaine Byrne, opening statement, meeting of the Joint Committee on Finance, Public Expenditure and Reform, [November 11 2015](#)



#### **OBSERVATION 8: Commissioner/SIPO COMMISSION relationships**

Head 17 provides for the establishment of a Public Sector Standards Commissioner (PSSC). The existing SIPO Commission will be dissolved. The SIPO Commission consists of an independent chairperson (normally a member of the judiciary), the Clerks of the Dáil and Seanad, the Comptroller and Auditor General, and the Ombudsman. The issue of the composition of public standards oversight agency (sole person or commission) and the relationship between this agency, the SIPO Commission and its member bodies was noted in the Committee hearings. In addition, the capacity, focus and interrelationship between oversight agencies were also discussed in the public hearings.

The Draft General Scheme does not set out the relationship between the new PSSC and these bodies. This relationship would appear to be (potentially) important to the performance of the role and functions of the new PSSC. The Bill should provide greater clarity on the relationship of the proposed PSSC with the existing member organisations of the SIPO Commission and other relevant agencies that have responsibility for oversight of corruption/conflict of interest risks and adherence to related standards of conduct. (section 4.10 refers)

#### **4.11 COMPLAINTS TO THE COMMISSIONER**

Head 22 provides for the making of complaints to the Commissioner and Head 23 allows for these to be dismissed by the Commissioner in certain circumstances. The current Ethics Acts prescribed specific categories of person who could make complaints and have complaints made about them. This distinction has been removed and any person may make a complaint in writing to the Commissioner.

#### **OBSERVATION 9: Anonymous and oral complaints**

Head 22 provides for the making of written complaints to the Commissioner. Recommendation 12 of the Final Report of the Mahon Tribunal stated that the SIPO Commission should be permitted to accept anonymous or oral complaints. Consideration could be given for the General Scheme to clearly provide for the making of anonymous and oral complaints. (section 4.11 refers)

#### **4.12 PROMOTION AND TRAINING**

Head 19, having regard to the provisions and principles of Head 6, states the PSSC will promote the highest standards of integrity “and the prevention of conflicts of interests through training, education and research”.

In its opening statement to the Committee, the SIPO Commission stated that the “structure underpinning the Statute should have a strong promotion role, and not just be engaged in detecting non-compliance”.<sup>16</sup>

Additionally at the public hearings, Peter Tyndall, Ombudsman and member of the SIPO Commission, stated that:<sup>17</sup>

“I am a strong believer in a promotional role, offering clear guidance for people who are bound by codes to have a code of practice that is well set out and to have examples available. I am drawing partly on my experience from a previous job. When I was Ombudsman in Wales I was responsible for investigating complaints that members of local authorities had breached their code of conduct. As part of that, I spent a lot of time producing clear guidance, casebooks setting out examples of what had happened, and so on. However, much of the role was actually about training people in what it is to be a public representative and how best to perform that role, to avoid having the types of criticism that arise. Investigation should be at the margins; it is promotion that is really important, and having a good framework in place”

Mr, Jim O’Keeffe, former Member of the Oireachtas and current member of the SIPO Commission, echoed this view and suggested that promotion of the standards of conduct and the responsibilities as set out in the Draft General Scheme required significant promotion:<sup>18</sup>

“It must be emphasised that we are speaking not only about elected representatives but 300,000 plus public servants. These people must be made aware of what is happening and be willing to buy into it. There will also need to be adequate guidance and training at all levels. One will probably find that currently this is not happening. The Standards in Public Office (SIPO) Commission will have a huge role to play into the future in terms of promotion, guidance and training.”

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<sup>16</sup> Mr. Justice Daniel O’Keefe, SIPOC opening statement, meeting of the Joint Committee on Finance, Public Expenditure and Reform, [November 11 2015](#)

<sup>17</sup> Mr. Peter Tyndall, meeting of the Joint Committee on Finance, Public Expenditure and Reform, [November 11 2015](#)

<sup>18</sup> Mr. Jim O’Keeffe, meeting of the Joint Committee on Finance, Public Expenditure and Reform, [November 11 2015](#)

#### **OBSERVATION 10: Promotion and training**

Head 19 provides for the PSSC to promote the standards of integrity and prevent conflicts of interests through training, education and research. The issue of training of, and the promotion of the proposed public sector standards to, public officials was discussed at length in the public hearings. Consideration could be given to expanding the promotional and training role of the PSSC. (section 4.12 refers)

#### **4.13 DEPUTY PUBLIC SECTOR STANDARDS COMMISSIONER**

Head 26 provides for the establishment of a Deputy Commissioner who will have the power to appoint investigations officers. The Deputy Commissioner and the investigation officers will be independent in the carrying out of investigations. The Deputy Commissioner will prescribe the procedure to be followed in the conduct of the investigations. Subhead (5) provides for the Commissioner, within certain time limits, to refer matters to the Deputy Commissioner for investigation where a valid complaint has been made, where the Commissioner considers that a breach may have occurred or where he/she considers a matter should be investigated in the public interest.

In its opening statement to the public hearings of the Committee, the SIPO Commission gave the following assessment of the proposed investigation arrangements:<sup>19</sup>

“The commission considers that the structure and procedure proposed for investigation of contraventions is over elaborate and unnecessary. It considers that, given its experience of dealing with complaints under the ethics Acts, the investigative function should be provided within a single organisation without the need for an external structure.”

Speaking at the public hearings, Mr. Peter Tyndall questioned the efficacy of the investigations apparatus provided for in the Draft General Scheme.<sup>20</sup>

“It seems to me that some of the elements of the scheme are close to the cutting edge. Other elements - there has been some mention particularly of the

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<sup>19</sup> Mr. Justice Daniel O’Keefe, SIPOC opening statement, meeting of the Joint Committee on Finance, Public Expenditure and Reform, [November 11 2015](#)

<sup>20</sup> Mr. Peter Tyndall, meeting of the Joint Committee on Finance, Public Expenditure and Reform, [November 11 2015](#)

investigation arrangements - seem, as drafted, to be cumbersome and likely to be long drawn out and difficult in practice.”

**OBSERVATION 11: Investigation apparatus**

Head 26 provides for the establishment of the Deputy Commissioner and his/her power to appoint investigation officers. The Final Report of the Mahon Tribunal questioned whether the investigation apparatus under the Ethics Acts had the requisite resources to carry out effective investigations. Also, in the public hearings, witnesses highlighted what they believed to be over elaborate and complicated investigation procedures proposed under the Draft General Scheme.

Adequate provision for what is proposed in the General Scheme needs to be guaranteed in order to ensure that the investigation apparatus will be firstly, sufficiently resourced and secondly, efficient in practice. (section 4.13 refers)

## APPENDIX I

### COMMITTEE MEMBERS

**Chairman:** Liam Twomey (FG) (Chair)

**Deputies:** Richard Boyd Barrett (PBP)

Tom Barry (FG)

Ciaran Cannon (FG)

Ciara Conway (LAB)

Michael Creed (FG)

Pearse Doherty (SF)

Regina Doherty (FG)

Stephen S. Donnelly (IND)

Timmy Dooley (FF)

Alan Farrell (FG)

Seán Fleming (FF)

Ciarán Lynch (LAB)

Mary Lou McDonald (SF)

Michael McGrath (FF)

Paul Murphy (SP)

Kieran O'Donnell (FG)

Pat Rabbitte (LAB)

Arthur Spring (LAB)

Peadar Toibín (SF)

Brian Walsh (FG)

**Senators:** Seán D. Barrett (IND)

Paul Coghlan (FG)

Michael D'Arcy (FG)

Aideen Hayden (LAB) (Vice-Chair)

Marc MacSharry

Tom Sheahan (FG)

## APPENDIX 2

### TERMS OF REFERENCE

#### **a. Functions of the Committee – derived from Standing Orders [DSO 82A; SSO 70A]**

(1) The Select Committee shall consider and report to the Dáil on—

(a) such aspects of the expenditure, administration and policy of the relevant Government Department or Departments and associated public bodies as the Committee may select, and

(b) European Union matters within the remit of the relevant Department or Departments.

(2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee for the purposes of the functions set out below, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.

(3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—

(a) Bills,

(b) proposals contained in any motion, including any motion within the meaning of Standing Order 164,

(c) Estimates for Public Services, and

(d) other matters

as shall be referred to the Select Committee by the Dáil, and

(e) Annual Output Statements, and

(f) such Value for Money and Policy Reviews as the Select Committee may select.

(4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies, and report thereon to both Houses of the Oireachtas:

(a) matters of policy for which the Minister is officially responsible,

(b) public affairs administered by the Department,

- (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
  - (d) Government policy in respect of bodies under the aegis of the Department,
  - (e) policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
  - (f) the general scheme or draft heads of any Bill published by the Minister,
  - (g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
  - (h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
  - (i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in paragraph (4)(d) and (e) and the overall operational results, statements of strategy and corporate plans of such bodies, and
  - (j) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,
  - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
  - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
  - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees:
- (a) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and
  - (b) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.

- (7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any sub-Committee or Committees standing established in respect of the Select Committee.
- (8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
  - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
  - (c) at the invitation of the Committee, other Members of the European Parliament.

**b. Scope and Context of Activities of Committees (as derived from Standing Orders [DSO 82; SSO 70])**

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 26. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.
- (4) The Joint Committee 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 Dáil Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
  - (a) a member of the Government or a Minister of State, or
  - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.



## APPENDIX 3

### MEETING WITNESS LIST AND LINKS TO TRANSCRIPTS

Pre-Legislative Scrutiny on the Draft General Scheme of a Public Sector Standards Bill

#### **Session A (8 July 2015)**

Name	Organisation
Mr William Beausang	Dept. of Public Expenditure and Reform
Ms Evelyn O'Connor	Dept. of Public Expenditure and Reform
Mr Kieran Sheedy	Dept. of Public Expenditure and Reform

Transcript of Debate:

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/FIJ2015070800001?opendocument>

#### **Session B (11 November 2015)**

Name	Organisation
Dr Elaine Byrne	European Commission on Governance in Ireland
Mr Dan O'Keeffe, Chairman	Standards in Public Office Commission
Mr Peter Tyndall	Standards in Public Office Commission
Mr Jim O'Keeffe	Standards in Public Office Commission

Transcript of Debate:

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/FIJ2015111100001?opendocument>