



TITHE AN OIREACHTAIS

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

**Tuarascáil maidir le héisteachtaí i
ndáil leis an Scéim a bhaineann
leis an mBille um Nochtadh
Cosanta ar mhaithe le Leas an
Phobail, 2012**

Iúil 2012

HOUSES OF THE OIREACHTAS

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

**Report on hearings in relation to
the Scheme of the Protected
Disclosures in the Public Interest
Bill, 2012**

July 2012

31/FPER/010

TABLE OF CONTENTS

Chairman's preface	5
Introduction	7
Observations	9

Appendices

Appendix 1 - Members of the Joint Committee	19
Appendix 2 - Orders of Reference of Joint Committee	20
Appendix 3 – List of Witnesses	23

1. Submissions to the Joint Committee can be accessed on the Oireachtas web site: -
http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/fper-committee/reportsubmissions/
2. Transcripts of the public hearing can be accessed at Oireachtas web site: -
<http://www.oireachtas.ie/parliament/oireachtasbusiness/committees>
3. The Draft Heads, Explanatory Memorandum and an Information note on the General Scheme of the Protected Disclosures in the Public Interest Bill, 2012 are available on the Department of Public Expenditure and Reform web site: -
<http://per.gov.ie/government-reform/>

Chairman's Preface

The Heads of the General Scheme of the Protected Disclosures in the Public Interest Bill, 2012 were referred to the Joint Committee on Finance, Public Expenditure and Reform on the 27th February 2012. The Joint Committee, on the 18th April, met with Minister Brendan Howlin to discuss the provisions of general scheme.

Public hearings were held on the 23rd May, 5th, 6th, 12th and 13th June to discuss issues of concern with interested parties and those with specialist knowledge.

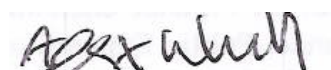
The hearings and submissions made by those attending raised some very important and interesting matters. It is apparent to the Joint Committee that this Bill also seeks to address certain of the recommendations included in the recent report of the Mahon tribunal which recommended the introduction of a cross-sectoral whistleblower protection Act in place of the existing sectoral approach. According to the Mahon tribunal report this fragmented approach has led to a complex and opaque system for protecting whistleblowers which is likely to deter at least some from reporting corruption offences.

It is important that all parties involved should work to find workable solutions to the questions raised and highlighted.

I would like to express my thanks to everyone who took part in this consultative process. All points raised in submissions have been noted and a report will be sent to the Minister as requested.

I look forward to the publication of the Bill and to further engagement with the Minister as the Bill progresses through the Houses.

I would like to express my appreciation to the Members of the Joint Committee, the Clerk, Mr. Ronan Lenihan and the Committee Secretariat Staff, Mr. Eoin Hartnett and Ms. Lorraine West for their commitment and dedication. I hope this work will help to inform the legislative process and make a valuable contribution to the forthcoming legislation.



Alex White T.D.

Chairman

July 2012

Introduction

This Report forms part of the initial stages of a wider legislative process. It is representative of the submissions made to the Committee by those who participated in the consultation process. This Report does not purport to be, and should not be construed as being, a definitive statement of all the issues pertaining to the subject matter of the Bill/Act in question.

The Joint Committee wish, at outset, to the continued use of the term 'whistleblowers' as, in the opinion of the Joint Committee, this is a pejorative expression that does not properly reflect the nature and intent of the proposed legislation. The legislation refers throughout to 'protected disclosures' and this is the term which should be used, in the view of the Joint Committee.

The Programme for Government contains a commitment to introduce protected disclosure legislation. Following Government approval, the general scheme of a Bill was published at the end of February with a view to informing public debate on the measures and to give interested parties the opportunity to provide their input and observations on the proposed approach.

At the meeting of the 18th April with Minister Howlin, members were advised that officials in the Minister's Department had consulted with the Irish Congress of Trade Unions and Transparency International and that the initial feedback the Minister received on the legislative proposals had generally been positive. Minister Howlin stressed to members that these proposals meet the recommendation included in the recent report of the Mahon tribunal to introduce a cross-sectoral whistleblower protection Act in place of the existing sectoral approach. It was the opinion of the tribunal that this fragmented approach has led to a complex and opaque system for protecting whistleblowers, which is likely to deter at least some from reporting corruption offences.

The Draft Heads, Explanatory Memorandum and an Information note on the General Scheme of the Protected Disclosures in the Public Interest Bill, 2012 are available on the Department of Public Expenditure and Reform web site - <http://per.gov.ie/government-reform/>

The Joint Committee, following its meeting with Minister Howlin, decided to invite to hearings those listed in Appendix 3, as the Joint Committee considered they had specialist knowledge in the area of protected disclosures. Those invited to address the Joint Committee were requested to make a submission on the Draft Heads and these submissions can accessed at the Oireachtas web site –

<http://www.oireachtas.ie/parliament/oireachtasbusiness/committees>

The Joint Committee, in publishing this report is not making a series of recommendations. Rather, in recognition of how pre-scrutiny can add value to the legislative process the Joint Committee considers that the best approach is to publish, in this report, the issues which the Joint

Committee and those invited to address the Joint Committee consider should be addressed in the legislation.

The Joint Committee wishes to express its thanks to all those who participated in this process and valued the opportunity to engage with interested parties.

Observations

General

It was acknowledged by all those who participated that this legislation is most welcome and that, generally, it addressed the challenge of establishing a fair and balanced regime governing protected disclosures.

The Joint Committee noted the emphasis placed by a number of contributors, including Dr. Elaine Byrne, on the cultural and historical aspects of disclosure in our society, and the reluctance there has often been to “speak truth to power”. The Joint Committee shares the view that legal change alone, whilst essential, will not be sufficient; attitudes too will have to change. This was a point also made by Mr Paul Egan to the Joint Committee when he stated that the proposed new law should *“support the cultivation of a better attitude at work rather than one based on distinctions between what is legal or illegal.”*

The introduction of workplace codes of practice, making it clear that workers and others will have nothing to fear from making disclosures in good faith, will greatly assist in bringing about this change of mindset. In addition, the Joint Committee is of the view that the legislation must be supported by an information campaign to address the fear and negative implications associated with whistleblowing.

In addition, the Joint Committee noted the point made by Dr. Byrne to the effect that disclosure has tended to be gender specific, and in this regard the legislation should be gender proofed to the greatest degree possible.

Detailed Observations

1. That consideration be given to extending the protections provided for in the Bill to everybody who is at work, so that the protection is not confined to employees. The legislation should ensure that “atypical workers” including agency workers, interns or those employed for less than six months are covered. Those who may wish to come forward and report their concerns in the workplace must enjoy protection from the commencement of their employment, regardless of the construction of their contracts of employment or contracts for services.
2. That the protections offered by this legislation must be real. A person who is unfairly dismissed can wait for up to two years to have his or her case heard. If various other appeals mechanisms have to be invoked, one can be three or four years down the line by the time one’s case is finally resolved. It would be unacceptable for a person who has come forward to make a protected disclosure to have to carry such a burden for four years, even if he or she wins his or her case eventually. For this reason, the United Kingdom and many other jurisdictions provide for interim relief. This means that a person may be reinstated in his or her job while waiting for the case to be heard. This provision has not caused any widespread disruption in the labour market or in workplaces in the United

Kingdom and elsewhere. ICTU questions the reason interim relief has not been included in the Heads of Bill and strongly recommends the inclusion of such a provision.

In his response to a question from Deputy Sean Fleming at the Joint Committee on the 18th April, Minister Howlin advised that *"The gold standard we considered is the model in UK and that country was the ground breaker. The New Zealanders learned from that and introduced a refined and better model in 2000. Even since then there has been case law from which we have learned. We believe that when this is enacted, Ireland will represent the gold standard - that is our objective."*¹ ICTU noted that given that the stated intention is for the Bill to follow closely the provisions in the United Kingdom, its omission [legislative provision for interim relief] from the general scheme is obvious and glaring.

3. In regard to interim relief, Senator Hayden questioned whether it could not be incorporated into the legislation that if an applicant has made a disclosure to a particular body, that body should apply to the courts for interim relief on behalf of the complainant. In other words, the duty to make the application for interim relief, where a *prima facie* case is established, should be on the body to whom the complaint is made rather than on the individual.
4. That it would be helpful if the legislation could provide guidance (to employers and employees) as to the steps a person should take to make a protected disclosure in their workplace. In the event that a person is making a protected disclosure to a regulator or into the wider domain, it would be helpful if all involved were clear as to the steps he or she would be expected to take in order to keep within the protections of the legislation

The IHRC have noted in their observations on the legislation that, in order to encourage persons in possession of relevant information to come forward, and so that potential whistleblowers are aware of the impact of the legislation, clear, readily accessible guidelines must be made available. It recommends that following the enactment of any legislation, such guidelines are produced and widely publicised.

5. The Joint Committee considers that the compensation provision under Schedule 4.3.(c) should be examined with a view to the deletion of all words after '... all the circumstances.' The Joint Committee notes that the legislation proposes a maximum award of up to 2 years' remuneration. Given the potential loss of career and livelihood, setting the maximum at 2 year's remuneration could serve as a deterrent to prospective disclosures.
6. In evidence to the Joint Committee it was noted that it is also important to ensure that protection is provided for those who make

¹ Seen at <http://debates.oireachtas.ie/FIJ/2012/04/18/00005.asp>

protected disclosures and who may be threatened with disciplinary action short of dismissal. It was noted that the focus in the draft legislation would appear to be on actual outcomes, whereas sometimes the same result can be achieved by threatening an outcome, without implementing it. The employer can achieve the same result by threat without seeing it through. The concern is that employers may attempt to threaten to take such action, perhaps more in order to set an example to other employees about the consequences of making protected disclosures rather than necessarily punishing the particular individual. Therefore, the legislation should seek, as far as possible, to discourage that kind of behaviour.

7. In regard to the Health Sector it was noted that Section 103 of the Health Act 2007 inserted a new Part 9A in the Health Act of 2004. Part 9A allows for protected disclosure in the public health sector. However, it was considered that the experience has been that the remedy falls short. This is because the remedy comes after the event and one must prove one was adversely affected. Therefore, one would not proactively seek to open up areas that might raise issues that need to be brought to the Minister's attention. Accordingly, the provisions should be the same for private health sector employees and should include private hospitals, agencies and GP practices where it is very unlikely that an individual, on a one-to-one employment relationship basis, will make a protected disclosure. In this regard the legislation should provide real protection and echo the provisions of Part 9A. This should allow for an authorised person, as in Part 9A, outside of the employment to ensure the employee can make a confidential disclosure if there is something occurring in a particular workplace that affects the welfare of the people under care. The Bill proposes that confidential disclosure would be, for example, to a statutory body and currently, HIQA does not have any responsibility in private practice areas such as GP practices or private hospitals. Therefore, there is no body to which a person with a concern can go outside of the immediate employer. This may negate an individual making a disclosure.

It is important to note that agency staff are covered by Part 9A of the Health Act and are considered employees for the purpose of protected disclosures. This should follow into this legislation. The Joint Committee were advised that it was the general experience that when issues have been raised, it has usually been done by individuals who are not working permanently in the environment – a relative or external service provider (hairdresser, chiropodist etc). Such external persons see issues or incidents as out of the ordinary, they are not accustomed to them and they raise concerns. In the private nursing home sector, where there is still a high dependency on workers who are visa dependent for residence, the likelihood of these workers making a protected disclosure that would put their right to reside in the State in jeopardy is limited, unless they have real protections. The Joint Committee was advised

that an amendment should be proposed so that the disclosure can be made to the Minister, in this case the Minister for Health who has responsibility for the provision of health care, particularly in the private sector where public funds are being used, for example, in the form of subsidies for GPs and private hospitals in the provision of public care, and that the same principles should apply in the private health care sector as will apply in the public health care sector. Further, the issue of confidentiality versus anonymity must be examined. It is important in a small area of employment where there is a one-to-one relationship that the confidential disclosure is made to an authorised person, who may not necessarily be in that employment. That, it is noted, is not an anonymous complaint, but a confidential complaint or disclosure.

Further, the Joint Committee considers that a provision should be considered allowing for reports to be made to a relevant professional body or another third party designated for the purpose of receiving such reports, such as the IMO.

8. On the question of good faith reporting, this issue normally arises in circumstances where a person has made a report which is not accurate. The challenge is how to implement a system that looks at whether the incorrect report was made maliciously, or otherwise than in good faith. Was there good faith in making it, even though the information given was not accurate? In the Draft Heads there is a three tier approach, with the onus on a person to establish the facts being less onerous where the report is made internally than if it is to be made to a regulator or another person (It should be noted, however, that the explanatory note for Head 5 is not absolutely accurate in this regard). The Joint Committee considers that the balance is right in the Draft Heads and the Joint Committee commends the three tier approach which should not be changed. In noting this, the Joint Committee considers that there are many circumstances where a person will not know all of the facts. That is the point at which a person should make an internal disclosure and be protected from reprisals from colleagues or others.
9. Deputy Fleming questioned the concept of 'good faith reporting', as even reporting in 'bad faith' should not detract from the substance of what is being reported. Mr. Paul Egan in reply stated that "... .. *a large proportion of disclosures is motivated by the desire for vengeance. However, a key point is there must be a bona fide belief in the correctness of the information. This is where the question of 'good faith' arises. In many cases people will disclose information in circumstances where they have been wronged but they should have a good faith belief in the truth of their accusations. We are trying to get away from the concept of being compliant... .. our proposed law [should] support the cultivation of a better attitude at work rather than one based on distinctions between what is legal or illegal.*"

The Joint Committee note that the absence of any definition of 'good faith' in the UK Public Interest Disclosure Act has led to legal and practical difficulties for the courts, employers and workers. The Joint Committee considers that the existing statutory definitions of 'in good faith' used in section 61(3) of the UK Sale of Goods Act 1979 and section 90 of the UK Bills of Exchange Act 1882 could be applied. In both cases Parliament defined the term as follows: 'A thing is deemed to be done in good faith within the meaning of this Act when it is in fact done honestly, whether it is done negligently or not'. Similar provisions are contained in US federal law.

The Joint Committee regard this issue as one that merits consideration.

10. External, good faith reporting exists to defend workers; internal reporting – through acting as an essential part of good corporate governance – will serve the company and its officers. The Draft Heads propose that State organisations must have stated policies regarding internal treatment of information. This should be extended to include the private sector and the law should not discourage internal reporting.

Vicarious liability should extend to employers where they have allowed whistleblowers to be bullied by co-workers. Transparency International, in its presentation to the Joint Committee, urged that the Minister consider a provision of vicarious liability of the employer for any detriment suffered by a worker as a result of informal or formal retaliation by co-workers.

11. On the issue of trade union protection it was noted that a person might seek advice on what he or she should do with what he or she might know. The person concerned should be able to have a discussion with a union representative because when people think about how they should approach their employer, their first point of call is normally their shop steward; therefore, the discussion with the person's trade union should be protected.

The Joint Committee noted the comments by Transparency International who have suggested that a person considering a disclosure should be able to consult with a qualified professional who is a member of a body recognised by the Minister.

12. In regard to Head 4 (g) – Protected disclosures, the Joint Committee believes that consideration should be given to the insertion of the word 'negligent' between 'corruption' and 'or' to read as follows; *(g) that an unlawful, corrupt, negligent or irregular use of public monies has occurred, is occurring or is likely to occur.*

13. The Chairman noted that Head 4, sections (f) and (g) appear to be confined to public sector events. The Joint Committee considers that this should be examined to include the private sector and this may need to include the multinational sector and companies headquartered outside Ireland.
14. As a general rule, where there is an actionable wrong by reason of the activity of an individual who is an employee, the employer has vicarious liability. If an employee discloses misbehaviour by another employee, the disclosing employee is exempt from legal action that results but potentially the employer may have exposure. As the Bill is drafted, (see Head 13 in particular) the employer does not have the protection enjoyed by the disclosing employee or the immunity from being sued. Therefore, consideration should be given to the employer gaining that immunity.
15. Deputy Donnelly enquired as to what can be done to make people more aware of the legislation. In reply Dr. Elaine Byrne observed that *"The Standards in Public Office Commission has called for consolidation of the legislation so that we can find a way to show off the legislative architecture in place."* The Joint Committee suggests that in terms of rebuilding Ireland's reputation, the call by the Standards in Public Office Commission for the consolidation of the legislation has merit.
16. IBEC were of the view there should be a requirement to make an internal complaint (Head 5) before one has recourse to Head 6 unless there are exceptional circumstances. Mr. Kenan Furlong advised that there are similar criteria for a disclosure to qualify as a protected disclosure to an employer under Head 5 and to a relevant body under Head 6. The employer channel requires the disclosure be made in good faith and that the worker has a reasonable belief that the information disclosed shows or tends to show an impropriety which is captured by Head 4. The regulatory channel under Head 6 also requires good faith but the difference is that it requires that the worker reasonably believes the disclosure is substantially true. The worker effectively will have a choice on whether to report under the internal channel or the external channel, that is, to the regulatory body.

The nature of the type of disclosures attracting protection under Head 4 is particularly broad. It ranges from disclosures relating to a breach of the criminal law, a miscarriage of justice, a health and safety issue and damage to the environment. Second, there is no *de minimis* requirement for the level of information or the seriousness of information relating to any of these issues and there is no requirement to be reasonable.

Mr. Furlong noted that if *"... ..a worker had a concern about several files lying around in a corridor of his workplace and that the worker held the view that this posed some sort of health and safety risk,*

under the Bill as currently drafted, that worker would be entitled to go directly to the Health and Safety Authority, HSA, with the concern and make a protected disclosure, even if there were adequate policies to deal with the matter internally. Similarly, if a worker was concerned about the absence of recycling bins on a particular floor of his building, then he would be entitled to go directly to the Environmental Protection Agency, EPA, with the concern, even if there was a perfectly valid and appropriate internal whistleblowing policy to deal with these issues... ..the worker should be obliged to exhaust these procedures unless there are reasonable grounds for his not doing so."

Mr. Furlong offered another practical example "*... ..If a worker hears an allegation regarding illegal dumping he or she is entitled to make a protected disclosure of this allegation to his or her employer without making any assessment of its truthfulness on the basis that this information would show or tend to show damage to the environment. Naturally, if the worker sought to disclose this information to the EPA via the external channel under head 6, then he or she would have to make an assessment as to its veracity before doing so to be satisfied that it was substantially true. If the requirement under head 5 was indeed for a worker to believe in the truth of the information then, surely, this would have the unintended consequence that the criteria for protection under the employer channel would be more onerous than those under the regulatory channel."*

The Joint Committee regard this issue as one that merits consideration.

17. Mr. Furlong noted that the "*... ..criminal immunity to be granted by this legislation should be confined to immunity for liability arising from the making of a whistleblowing report and should not extend to liability arising from a person's participation in the disclosed impropriety.As currently drafted, the Bill notes that the full extent of the criminal immunity is yet to be determined. An international debate is under way over the extent of immunity that should be awarded to whistleblowers. There is a significant divergence in our national and international laws regarding the scope of immunity that should be granted to whistleblowers. I offer several examples to illustrate the point. Under the Dodd-Frank legislation in the United States a whistleblower can be awarded 30% of any financial sanction imposed by the US Securities and Exchange Commission arising from a whistleblowing report. Certain stringent criteria are attached to such an award and it is discretionary, but in the past two years the SEC has imposed fines ranging from \$150 million to \$550 million. This gives a sense of the potentially significant bounty that is available for the right whistleblower in the right circumstances."*

The Joint Committee regard this issue as one that merits consideration and in that context also notes that under US

legislation dating back to 1867 provision is made for rewards but not for blanket immunity. The Irish DPP, as is the case for many public prosecutors overseas, has discretion over a decision to grant immunity.

18. Mr. McErlean made the point that Head 16 of the draft Bill *“...requires that every person to whom a protected disclosure is made should merely use his or her best endeavours to keep the identity of the whistleblower confidential. This is a very low threshold that is not reflected in the equivalent United States statute, for example, which by contrast states that the identity of an individual who makes a disclosure may not be disclosed. In addition, in other legislative provisions where confidentiality is perceived as important, for example, in regard to the Central Bank’s confidentiality obligations, there is no such ambiguity or uncertainty. Consequently, from a practical point of view, as long as the draft legislation contains an element of uncertainty about the confidentiality of the process, there may not be any marked improvement in the willingness of individuals to come forward with important information.”*

The Joint Committee regard this issue as one that merits consideration.

19. IBEC in presenting to the Joint Committee outlined the importance of protecting Ireland’s international reputation as Ireland exports over 80% of all produce and services and is heavily reliant on our international reputation for foreign direct investment. In relation to five key sectors; 1) the ICT sector with Intel, Microsoft, Hewlett-Packard, Google, PayPal, eBay and, more recently, Twitter, LinkedIn and Facebook - all ten of the major technology companies in the world have a base in Ireland. Many have European headquarters in Ireland. 2) The medical devices sector; eleven of the 13 major medical technology companies in the world have European headquarters in Ireland. 3) The pharmaceutical sector, eight of the ten largest pharmaceutical companies in the world have headquarters in Ireland and 12 of the 25 top-selling drugs in the world are produced and manufactured here, 4) The Agrifood sector and, finally 5) The international financial services sectors. IBEC made the point that the proposed legislation needs to be careful in terms of the creation of the potential for a leak into the wrong hands of information of a very commercially sensitive nature.

The Joint Committee is of the view that, if anything, our ‘international reputation’ has been damaged by not having such legislation in place. The Committee regards this issue as one that merits consideration in that robust legislation will enhance rather than threaten Ireland’s international reputation.

With regard to commercially sensitive information, the Joint Committee notes that no evidence or studies were referred to that explained how commercial or intellectual property rights would be

negatively affected by this Bill, or indeed how investment into the country would be affected.

20. IBEC raised the clear commitment in the programme for Government to subject important Bills to a regulatory impact assessment. It appears to the Joint Committee that this legislation should be subjected to a regulatory impact analysis which should be published.
21. The Joint Committee note the point made by IBEC in regard to the multifarious pieces of legislation that abound in the area of disclosures. The new legislation will coexist with the existing legislation. The Draft Heads refer to 16 Acts that deal with whistleblowing. If the new legislation were to be added to these, how would they all work together? There clearly is a need for a 'joined-up approach' such that there is in place one piece of legislation clarifying and codifying protections and obligations alike.
22. Transparency Ireland made a point in regard to protection for students and other categories of persons who they felt ought to be afforded protection against civil liability. They based this on precedent from elsewhere, for example Norway, where there is protection against civil liability for students. This is particularly apposite where a student, in particular a research student, is working on an assignment where he or she may uncover wrongdoing. He or she may find it very difficult to secure other research opportunities in the future and may suffer from a legal action taken by the university.

The Joint Committee is of the view that the issue of protected disclosures for students and other apprentices or trainees is one that merits consideration.

23. Consideration should be given to including a provision in the legislation providing for remedies for persons who suffer future work-place discrimination (including unjust denial of work opportunities) on the grounds that they made a protected disclosure during the course of previous employment. In that regard the Joint Committee considers that this could be accommodated in an amendment to the Employment Equality Acts.
24. Head 10 - Disclosure to a legal adviser. Consider extending this provision to include trade union officials, auditors and independently accredited advisors such as ethics and compliance officers.

The Joint Committee considers that this merits consideration.

25. The Joint Committee considers it prudent and necessary to include a provision that requires a statutory review of the effectiveness of the legislation to be undertaken at five or ten year intervals. There

should also be provision for Oireachtas oversight in regard to public bodies.

26. Head 22 – The inclusion of ‘matters relating to Northern Ireland’ is vague and it is unclear what the precise purpose of its inclusion is. The legislation requires clarity as to what matter/s relating to ‘Northern Ireland’ is being providing for.

**List of Members of the Joint Oireachtas Committee on
Finance, Public Expenditure and Reform**

Chairman:	Alex White (LAB)
Deputies:	Richard Boyd-Barrett (IND) Michael Creed (FG) Jim Daly (FG) Pearse Doherty (SF) Stephen Donnelly (IND) Timmy Dooley (FF)* Sean Fleming (FF) Joe Higgins (IND) Heather Humphreys (FG) Kevin Humphreys (LAB) Peter Mathews (FG) Pádraig Mac Lochlainn (SF)*** Mary Lou McDonald (SF) Michael McGrath (FF) Michael McNamara (LAB)** Olivia Mitchell (FG) Kieran O'Donnell (FG) Arthur Spring (LAB) Billy Timmins (FG) Liam Twomey (FG) (Vice-Chair)
Senators:	Sean D. Barrett (IND) Thomas Byrne (FF) Senator Paul Coghlan (FG)***** Michael D'Arcy (FG) Aideen Hayden (LAB) Tom Sheahan (FG)

Notes:

1. Deputies appointed to the Committee by order of the Dáil on 9 June 2011
2. Senators appointed to the Committee by order of the Seanad on 16 June 2011
3. *Deputy Timmy Dooley appointed on 21 June 2011 in place of Deputy Seán O'Feirghaíl
4. Deputy Alex White elected as Chairman on 23 June 2011
5. Deputy Liam Twomey elected as Vice Chairperson on 23 June 2011
6. **Deputy Michael McNamara appointed on 8 December 2011 in place of Deputy Thomas P. Broughan
7. ***Deputy Pádraig Mac Lochlainn appointed on 14 December 2011 in place of Deputy Jonathan O'Brien
8. *****Senator Denis O'Donovan appointed on 10 May 2012 in place of Senator Katherine Zappone
9. *****Senator Paul Coghlan appointed on 14 June 2012 in place of Senator Denis O'Donovan

Orders of Reference of the Joint Committee on Finance, Public Expenditure and Reform

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.

List of Witnesses

Mr. Brendan Howlin TD, Minister for Public Expenditure and Reform

Irish Congress of Trade Unions (ICTU):

Ms. Esther Lynch (ICTU)

Ms. Phil Ní Sheaghdha (INMO)

Mr. Matt Stauntan (IMPACT)

Mr. Seamus Shields (IBOA)

National Union of Journalists (NUJ):

Mr. Gerry Curran, Cathaoirleach, Irish Executive Council

Mr. Séamus Dooley, Irish Secretary

Mr. Paul Egan, Partner, Mason Hayes & Curran Solicitors

Dr. Elaine Byrne, Lecturer, Trinity College Dublin

Mr. Kenan Furlong, Partner, A&L Goodbody

Mr. Eugene McErlean, former AIB Internal Auditor

IBEC:

Mr. Brendan Butler, Director of Policy and International Affairs

Ms. Siobhan Masterson, Head of Public Services Organisation

Ms. Aoife Newton, Solicitor

Transparency International Ireland:

Mr. John Devitt, Chief Executive

Ms. Lauren Kieran, Advisor to Mr. Devitt