



1st November 2012

Mr. John McGuinness T.D.
Chairman
Committee of Public Accounts
Leinster House
Dublin 2

Dear John

I refer to our correspondence in late-June and early-July last relating to the Public Account Committee's report on a proposed framework for a banking inquiry.

As you are aware, at its meeting of 31 October, the Government approved the priority drafting with a view to early enactment of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Bill 2012. Please find attached for information a copy of the General Scheme of the Bill and the press release issued following the Government meeting.

My proposals to Government were based on the assessment of the Office of the Attorney General that a general statutory underpinning for Oireachtas inquiries generally is essential and should be put in place prior to any banking inquiry commencing. In the absence of such a statutory framework a banking inquiry would be unlikely to be effective or legally robust.

Under the legislative framework which it is proposed will be put in place responsibility is assigned exclusively to the Houses of the Oireachtas to determine the requirement for a formal inquiry, the terms of reference of that inquiry and the procedural and organisational aspects of the inquiry. This is achieved under the proposed Bill by making provision for a 'gateway' mechanism requiring the Ceann Comhairle of Dail Eireann and / or the Cathaoirleach of the Seanad as appropriate, following consultations with the Committee on Procedures and Privileges, any relevant Minister as well as any other relevant parties, to evaluate proposals for an inquiry and report to the House(s) with his or her views and proposals as to how the matter should be progressed or not. This will help ensure, for

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example, that a proposed inquiry is necessary in terms of the objectives of the legislation, to facilitate the development of clear and focused terms of reference, to pre-empt overlapping or duplicative inquiries and to determine what issues may be appropriate for inquiry by different committees.

The General Scheme has now been submitted to the Office of the Chief Parliamentary Counsel for priority drafting and to the Oireachtas Finance, Public Expenditure and Reform for parallel pre-legislative scrutiny. It is also intended to separately submit parts 7 and 8 of the bill (relating to privilege for private papers of Members, Official documents of the House(s) and confidential communications to Members) to the Committee of Procedures and Privileges of each House for their views.

The position in relation to some specific legal issues identified in the Committee's report addressed in the proposed legislation is as follows:-

Compellability powers:

The Heads provide for the full range of compellability powers previously available under the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997. The Bill, when enacted, will repeal the 1997 Act, in full.

Changes in PAC's Standing Orders

This is superseded by the proposed gateway mechanism included in the legislation (Head 7A). It will be a matter for the House(s) to decide which committee should carry out a banking inquiry and any required changes in Standing Orders will be addressed in that context.

Restrictions on evidence of civil servants and Cabinet Confidentiality rule.

The General Scheme of the Bill incorporates important changes to the existing restrictions on the evidence of civil servants within the inquiry framework (outlined in Head 46). In relation to the confidentiality of Cabinet discussions, you will appreciate that these are restricted from disclosure other than in circumstances set out in Article 28.4.3 of the Constitution. In relation to the confidentiality of documents of Cabinet or Cabinet subcommittees, the legal assessment carried out in advance of the submission of the draft heads, which included consultations with the Department of the Taoiseach did not conclude that any legal changes were required in this area.

Constitutional justice and fair procedures including restrictions on bias:

The Heads provide for an extensive range of provisions to ensure inquiries observe fair procedures, and in particular where the good name of a person has the potential to be impugned. In each case there is scope for recourse to the courts to safeguard individual's constitutional rights.

The Heads also include provisions in relation to the behaviour of Members of the Houses in order to avoid any perception of bias.

If you, or other members of your Committee, wish to receive a detailed briefing in relation to the contents and proposed operation of the draft Bill I would be happy to arrange for officials from my Department to provide same.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brendan Howlin', followed by a long horizontal flourish.

Brendan Howlin T.D.
Minister for Public Expenditure and Reform