



# Pre-legislative scrutiny (PLS) by parliament

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## Editorial

Political reform, including enhancing parliament's role vis-à-vis government, featured heavily in the Programme for Government (2011).

Part of the Government's political reform programme, pre-legislative scrutiny (PLS) was introduced to the Houses of the Oireachtas in 2011 and formalised in parliamentary procedure in November 2013. Pre-legislative scrutiny (PLS) is where parliament, through its committees, scrutinises draft legislation (General Schemes) and reports back to government before a final version of the bill has been drafted. It is a significant development in how parliament and government interact.

This *Spotlight* uses expert literature on legislative scrutiny and the experience of scrutiny in other parliaments to outline the purpose of pre-legislative scrutiny and the conditions under which it is most likely to be effective. It considers the approaches to, and the focus of, pre-legislative scrutiny in the Houses of the Oireachtas and other parliaments before outlining some of the possible impacts.

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## Executive summary

Pre-legislative scrutiny was introduced to strengthen the capacity of the Houses of the Oireachtas to hold government to account. It gives parliament, in Ireland, the opportunity to influence the policy-making process through its public analysis and feedback on draft legislation.

PLS is seen by advocates as a means of achieving a better balance of power between the executive and the legislature.<sup>1</sup> Yet, in undertaking pre-legislative scrutiny, parliament must be aware of the risks of blurring the lines of accountability between parliament and government and the associated risks of co-optation by government departments, stakeholders and interest groups.

While PLS *per se* is not widely practised in other European parliaments, other procedures and practices – the publication of draft bills, transparent, public consultation on draft legislation, the provision of government reports to parliament, and a more substantial policy-oriented role for committees in the formal legislative process – arguably reduce the need for it.

PLS is well-established in some parliaments of the Westminster tradition. In the UK and Australia, PLS to date has been at the Government's discretion i.e. Government decides which bills to publish in draft. This is in contrast to Ireland where Ministers are now expected to provide Oireachtas Committees with drafts of all legislation.

There were 36 cases of pre-legislative scrutiny by Joint Committees of the Houses of the Oireachtas between March 2011 and October 2014, 32 of which were completed (i.e. a report has been published by 31 October 2014). The focus of PLS reports varies and is evolving. Reports tend to highlight the policy or technical issues raised on each 'head' during submissions or hearings. In addition, and increasingly, some Committee reports address issues raised by stakeholders and make recommendations (or note 'key issues') in the context of the policy and legislative framework within which the General Scheme sits.

A review of literature suggests that PLS is most effective where a number of conditions prevail:

- Where a committee has sufficient time and notification to plan for and undertake PLS;
- If procedures are in place to ensure that government engages with PLS, for example if government is obliged to publish a response or to engage in a debate with the Joint Committee;
- Where committees have access to objective and expert sources of information (including information from the government department and drafts of secondary legislation) to support its scrutiny;
- Leadership from within parliament, for example from a Committee of Chairs, is also associated with more effective outcomes.

A Protocol between the Houses of the Oireachtas Service and the Government (2014) includes some of these procedures.

While some PLS processes may directly influence the contents of a bill, the potential impacts of PLS are wider and may extend to influencing the general policy debate and the drafting of secondary legislation.

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<sup>1</sup> For examples of those advocating more PLS see Farrell, O'Malley, Reidy, Suiter, 'Proposals for Dáil reform just don't cut it; No incentive to be aggressive in holding executive to account' *Irish Times* 16 September 2013; and Muiris MacCarthaigh, Executive accountability to Dáil still the elephant in the room' *Irish Independent* 22 July 2013.

## Introduction

In 2011 cabinet procedure was amended to allow Ministers publish legislation in draft format following its approval by Cabinet. Draft legislation is the 'General Scheme' of a Bill which is prepared in numbered 'Heads'.<sup>2</sup>

Between March 2011 and September 2013, approximately 26 General Schemes were published by Government departments, most of which were referred to Oireachtas Joint Committees for pre-legislative scrutiny (PLS).

Pre-legislative scrutiny (PLS) is where parliament, through its committees, scrutinises General Schemes and reports back to government before the bill is fully drafted.

During the Seanad referendum campaign in September 2013, the Government promised parliamentary reform including more extensive pre-legislative scrutiny. In November 2013<sup>3</sup> Dáil Standing Orders were amended to provide for a formal process of pre-legislative scrutiny. This removed the initiative for PLS from government and gave it to parliament.

As a result, Ministers are now *required* to forward the General Scheme of a Bill to the relevant Oireachtas Joint Committee for possible scrutiny except in exceptional circumstances.<sup>4</sup> Where a Minister does not do so, she/he must explain to the House why this was not done.<sup>5</sup> Oireachtas Joint Committees are empowered (but not obliged) under Standing Orders to consider the General Scheme. On receipt of a General Scheme a Committee will decide whether and, typically, how to conduct pre-legislative scrutiny.

This *Spotlight* draws on available studies of legislative scrutiny and the practice of PLS in the Houses of the Oireachtas to date to outline:

1. The purpose of pre-legislative scrutiny by parliament including its practice in other parliaments;
2. The approach taken to pre-legislative scrutiny in the Houses of the Oireachtas, and the focus of its reports compared to those of other parliaments;
3. The conditions under which a parliament is most likely to practice pre-legislative scrutiny effectively;

<sup>2</sup> According to the [Cabinet Handbook \(2007\)](#) 'heads' are numbered and each includes instructions for drafting and explanatory notes.

<sup>3</sup> Amendments were effective from 5 November 2013.

<sup>4</sup> Dáil Standing Order 123A.

<sup>5</sup> Dáil Standing Order 125.

4. The potential impacts of pre-legislative scrutiny.

## Purpose of Pre-legislative scrutiny

### Why publish legislation in draft format?

The publication of legislation in draft format is clearly intended to improve its quality by amending it in the light of expert advice.<sup>6</sup>

The practice of publishing draft bills is common. Ministers are legally required in many European countries to publish draft legislative texts. In some cases, they are further required to hold open consultation processes on the draft and to publish a report explaining how the consultation affected the final bill (Box 1).<sup>7</sup> This process differs from the consultation processes sometimes undertaken by Irish government departments as part of a Regulatory Impact Assessment (RIA).<sup>8</sup> The former process is a statutory requirement and fully transparent. It is carried out on the draft bill and Government must inform parliament how it took the consultation into account in the drafting of the published bill.

### Box 1: Scrutiny of draft legislative texts by Departmental consultation

In Denmark, Norway, Finland, Slovakia and Slovenia, a draft legislative text is (almost) always published by Ministries and an extensive, transparent process of pre-legislative scrutiny is carried out on the draft bill by the sponsoring government department. The department makes all submissions available, writes a report on the outcome of the consultation process including how it has influenced the final draft of a bill. This report must be sent to parliament along with the final draft of the bill and other specified documentation.

In Denmark, if the Ministry does not carry out a proper consultation, the *Folketinget* (the Parliament) cannot table a bill for a first reading and it is removed from the parliamentary agenda. In Norway, the Minister is legally obliged to provide the *Stortinget* (the Parliament) with the documentation described above.

### Why pre-legislative scrutiny by Parliament (PLS)?

The purpose of PLS is to strengthen parliament's capacity to scrutinise government's legislative proposals thereby enabling it to better hold Government to account.

<sup>6</sup> Power Greg (2001) 'Parliamentary scrutiny of draft legislation 1997-1999' UCL Constitution Unit p. 43.

<sup>7</sup> ECPRD Survey conducted by the L&RS on Pre-legislative scrutiny (May-July 2014). Available on request.

<sup>8</sup> See here for a copy of most recent [RIA guidelines](#) (2009).

Parliament, at least in Ireland and the UK, is considered by some analysts to lack the capacity to effectively undertake this scrutiny role. For example, Hunt concluded after an extensive study in 2011 that ‘the current practice in the Houses of the Oireachtas is not conducive to the optimum level of scrutiny.’<sup>9</sup> Korris argues that while Members of the Westminster parliament are ‘constitutionally responsible for putting the government’s legislative ambitions under the microscope’ the amount of legislation and the ‘increasingly complex and technical nature of many statutes’ means there is a ‘mismatch between the scrutiny mission of parliament and its capacity to carry out that mission.’<sup>10</sup>

How does pre-legislative scrutiny strengthen parliament’s capacity to scrutinise?

1. **PLS gives parliament the opportunity to scrutinise Government’s legislative policy before a bill’s text is firmly ‘entrenched’.**<sup>11</sup>

The expressed reason for introducing PLS to the Houses of the Oireachtas was to enhance the democratic process by allowing Members of the Dáil/Seanad to consider and debate legislative proposals at an earlier stage.<sup>12</sup>

The legislative process does not start with the formal publication and introduction of a bill into parliament.<sup>13</sup> The published bill is the outcome of a long process involving a Minister and his Department, on the one hand, and the draftsmen in parliamentary counsel, on the other.<sup>14</sup> This process frequently involves formal or informal, public or private, consultation with stakeholders and experts.

The will to substantially amend a bill after this process has been concluded may be lacking – both politically and in the context of the time / resources that would be required. In fact, Hunt concludes that legislation in Ireland is ‘shaped almost exclusively by the Minister and his/her officials and any changes during the legislative process have been carefully devised by them.’<sup>15</sup>

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<sup>9</sup> Hunt Brian (2011) *The Role of the Houses of the Oireachtas in the Scrutiny of Legislation* Houses of the Oireachtas, Parliamentary Fellowship p.105.

<sup>10</sup> Matt Korris (2011) ‘Standing up for Scrutiny: How and Why Parliament should make better law’ *Parliamentary Affairs* Vol, 63 (3) pp. 564-574, p. 565.

<sup>11</sup> Smooker Jennifer (2006) ‘Making a difference: the effectiveness of pre-legislative scrutiny’ *Parliamentary Affairs*, Vol. 59 no. 3. p. 523.

<sup>12</sup> Programme for Government, 2011 p.21 (Dáil reform)

<sup>13</sup> Matt Korris (2011) As above.

<sup>14</sup> Smookler (2006), 523. As above.

<sup>15</sup> Hunt Brian (2011) p. 106.

2. **PLS allows parliamentary committees to question government departmental officials about the policy choices the Minister is making.**

Power describes PLS as a ‘unique opportunity to engage with Departmental officials before the process has too far gone.’<sup>16</sup> The policy rationale can be teased out by parliamentarians and Departmental officials in a manner that does not happen in the formal legislative process.<sup>17</sup> Alternatively, the committee can invite Ministers to appear and discuss the policy choices they are making.

3. **PLS allows parliament to publicly engage with and question interest groups, stakeholders and experts on proposed legislation.**

This introduces transparency to the policy-making process and can reduce the executive’s monopoly on expertise.

When introducing this reform, the Irish Government explained that extending PLS to all proposed bills would

‘allow extensive engagement of the public in law-making; allow parliamentary committees to consult civil society and advocacy groups, stakeholders and experts to develop legislation before bills are fully drafted.’<sup>18</sup>

Interest groups and stakeholders examine a General Scheme from their own perspectives. Through the PLS process their arguments can be tested rigorously in public; as well as (or instead of) the standard procedure whereby groups engage in direct, opaque correspondence with civil servants.<sup>19</sup> Likewise, through the PLS process, the evidence of experts on the policy in question is heard by parliament and may be tested publicly along with the proposals in the General Scheme.

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<sup>16</sup> Power (2001). As above.

<sup>17</sup> Civil servants appearing before Joint Committees are under some constraints as it is the Minister, rather than the official, who is responsible to Parliament. The Programme for Government (2011) proposed to scrap restrictions on the nature and extent of evidence by civil servants to Oireachtas committees and replace with new guidelines for civil servants that reflect the reality of the authority delegated to them and their personal accountability for the way in which it is exercised.” This is discussed in the Government’s (Department of Public Expenditure and Reform) consultation paper in January 2014, [Strengthening Civil Service Accountability and Performance](#) (see section 6.12 in particular).

<sup>18</sup> Link to the [Parliamentary Reforms announced by the Government in September 2013](#).

<sup>19</sup> Power, (2001) p.33-34. As above.

As such, PLS can add a new dimension to any public consultation undertaken by departments; it takes a 'political view,' examining the impact of the draft legislation on constituents and on the 'common good.'

### **Does PLS blur parliament's responsibility to hold Government to account?**

The Westminster model of government places great significance on separating the role of government and the parliamentary opposition. Government makes and implements policy through legislation and other means; the parliamentary opposition scrutinises the government and holds it to account.

Political scientist, David Arter suggests that pre-legislative scrutiny could blur these lines of accountability, co-opting parliament in the policy-making process and thereby undermining its duty to hold government to account.<sup>20 21</sup>

Advocates of PLS<sup>22</sup> argue to the contrary that Government, by virtue of its majority status, still sets the legislative agenda and ultimately takes the decisions about the final draft of a bill. Pre-legislative scrutiny simply brings parliament into the scrutiny process at an earlier stage.

Parliamentary committees might best approach PLS cognisant of the risk highlighted above – that of a potential 'blurring' of the roles of parliament and government.

Means of addressing the above risk include, firstly, the resourcing of committees so that they are facilitated in developing their own interpretation of a General Scheme in addition to that given by departmental officials. In the UK, a dedicated Scrutiny Unit was established to support Committees in relation to PLS (and financial scrutiny processes).<sup>23</sup>

Secondly, committees must have access to independent information; should seek the opinion of experts and not just of interest groups.<sup>24</sup> Power argues that committees have a

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<sup>20</sup> Arter David 'Questioning the Mezey Question' *Journal of Legislative Studies* Vol.12 Nos 3&4 pp. 469-470. Also raised by Dr Juris E.Smith, (May 2010) Professor of Public Law, University of Oslo, address to ECPRD Seminar *Opposition Rights and Responsibilities*.

<sup>21</sup> Power (2001) also raises this risk.

<sup>22</sup> See footnote 1.

<sup>23</sup> Power (2001). The Scrutiny Unit provides expert advice, in particular on how to interpret draft legislation, to Committees involved in pre-legislative and legislative scrutiny. See also UK Parliament on the [Background to the Scrutiny Unit](#).

<sup>24</sup> Professor Michael Gallagher has observed that a (perhaps unintended) consequence of increasing the role of committees in the policy-making process might be to strengthen the power of the interest groups which wield influence over the cross-party committees. Gallagher

duty to address as full a range of views as possible and to raise the concerns of those not represented in a departmental consultation.<sup>25</sup>

### **Why not leave the scrutiny of draft legislation to government departments?**

An alternative to PLS would be for government departments to hold public consultations on the General Schemes and to report to parliament. This is what happens in some countries (described in Box 1 above).

There are two arguments against this approach, the second of which is particularly relevant to the Houses of the Oireachtas:

- firstly, it could be said to bypass parliament and its elected Members, excluding it from an increasingly important stage of the legislative process;<sup>26</sup>
- secondly, in the countries where scrutiny of draft legislation is undertaken by government departments, parliament itself tends to play a more substantive and policy-oriented role in the formal legislative process than is the case in the Houses of the Oireachtas (or in the UK Parliament). This is largely because bills are referred to parliamentary committee for deliberation before they are debated and voted on in plenary. Gallagher sees this order (Box 2, p.6) in the legislation process as 'more significant than realised' in determining how parliament influences legislation.<sup>27</sup>

Russell et al suggest that this contrast between the legislative processes in Westminster-style parliaments and other parliaments is one rationale for PLS in parliaments of the Westminster tradition. They write that in most parliaments:

"Bills [are] considered by permanent, specialist committees shadowing the relevant department, before being discussed in plenary. This allows committee members to give their considered opinion before the 'set piece' debate on the bill, at which point political dividing lines are drawn and may become difficult to shift."<sup>28</sup>

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(2000) 'Parliamentary control of the executive in Ireland'. Presented at the European Consortium of Political Research, Copenhagen p.18. & p.26.

<sup>25</sup> Power Greg (2001) pp.13-14.

<sup>26</sup> Power (2001) p.10.

<sup>27</sup> Gallagher Michael (2010) 'The Oireachtas' in Gallagher and Coakley, eds. *Politics in the Republic of Ireland* 5<sup>th</sup> edition London & New York, Routledge p.213.

<sup>28</sup> Russell, Morris, Larkin (June 2013) 'Fitting the Bill: Bringing Commons Select Committees into line with best practice' UCL, Constitution Unit. p.44 and p.55.

## Box 2: Legislative process in European Parliaments

PLS *per se* is not a regular feature of the parliamentary process in European parliamentary democracies.

On the other hand, in the vast majority of parliaments bills are firstly referred to the relevant parliamentary committee which deliberates on the bill, frequently holding hearings and inviting written submissions. It then sends a report to parliament. This committee report substantially informs parliament's subsequent debate and vote on the general principles of the bill.

In some parliaments, for example the **German Bundestag**, an amended draft of the bill is sent with the report; in others, the **Danish Folketing** for example, the committee report includes suggested amendments. Minority opinions are frequently included in such committee reports.

This is also the case in the **New Zealand** Parliament which adopted reforms in the 1990s to make it closer to a consensus-model parliament.

The **Scottish Parliament** has also adopted this legislative process where bills firstly go to committees which report on the legislation prior to the plenary debate. This process can take up to 4 months.

As such, while PLS by parliament is not widely practised in many European parliaments, other procedures and practices – transparent public consultations on draft bills and a more substantive role for committees in the formal legislative process - arguably ameliorate the need, or perhaps substitute for it.

## Pre-legislative scrutiny in other parliaments

In parliaments of the Westminster tradition the legislative process resembles that in the Houses of the Oireachtas. In the parliaments of the UK and Australia, for example, bills firstly go to second stage and are accepted by committee after a debate has taken place and a vote has been held on the general principles. Committees do not tend to take an inquiry approach to their subsequent scrutiny of bills.

We now examine the PLS processes undertaken in parliaments that are both of the Westminster, and of alternative traditions.

### PLS in the United Kingdom (Westminster)

The UK House of Commons led the way amongst Westminster tradition parliaments with its gradual introduction of PLS from 1993.<sup>29</sup> It is

<sup>29</sup> The Rippon Commission (1992) in the UK called for more scrutiny of draft bills so that potential shortcomings in legislation could be pointed out at an early stage. John Major's government (1992-97) produced a number of bills

not mandatory for Ministers to publish bills in draft format nor is it mandatory that they are referred to a parliamentary committee for PLS if they are published. According to David Heath, Deputy Leader of the House of Commons, the UK Government aims 'to publish legislation in draft format whenever it is *appropriate* to do so.'<sup>30</sup> Government will, as such, make decisions on which draft bills to publish in accordance with its policy and political goals.

The selection of bills for publication in draft remains patchy, and they are always a small minority of the total.<sup>31</sup> By way of example, in the 2010- 2012 term the number of draft bills was 11; the number of bills published was 45.<sup>32</sup> Of those published in draft, the majority undergo PLS. In the Sessions 2010-12 to 2013-14, 25 of the 31 draft bills (or substantial sets of clauses of draft bills) underwent PLS.<sup>33</sup>

Westminster committees, by virtue of the number of PLS reports produced, have a wealth of experience in conducting PLS and a dedicated 'Scrutiny Unit' was created to support them. PLS is undertaken by either a House of Commons 'Departmental Select Committee' or by an '*ad hoc* Joint Committee' made up of MPs and Peers (House of Lords). There is a political debate about the advantages of each approach (Box 3).

### Box 3: PLS assigned to Select or *ad hoc* Joint Committee?

The advantages of using Select Committees is their expertise in the general policy area and their permanence (the committee will still exist when the bill is published and at second stage). Further, Select Committees are considered more independent of Government as membership of Select Committees is set, rather than selected on a case-by-case basis by the majority, and Chairs are elected by a secret ballot of the House of Commons.

The advantages of using *ad hoc* committees is that Select Committees' agendas are not clogged up. *Ad hoc* Committees are Joint Committees; Members and Peers generally choose to sit on them and, as such, the level of engagement is high; a disadvantage is their short time-span which may limit effective follow-up.

in draft, and Labour came to power in 1997 with a commitment to publish more. Russell et al (2013)p.24.

<sup>30</sup> House of Commons Library Standard Note 5859 (June 2014) *Pre-legislative scrutiny under the Coalition Government*.

<sup>31</sup> Russell et al (2013) p.44.

<sup>32</sup> House of Commons Library Standard Note 5859 (2014) and UK Parliament website.

<sup>33</sup> House of Commons Library Standard Note *ibid* p.4.

In the **Scottish Parliament**, approximately 25% of bills are published as drafts and government takes this decision. If a draft bill is published, parliamentary committees decide whether or not to undertake PLS but it is relatively uncommon.

<sup>34</sup> However, as pointed out above, the Scottish Parliament is like most European parliaments; its committees play a more policy-oriented role in the formal legislative process.

### **PLS in the Australian Parliament**<sup>35</sup>

Australia has a bicameral parliament. The committees of the Senate are strong and independent scrutinisers of legislation.

Draft bills (which are referred to as 'exposure drafts') may be published with Cabinet agreement. While not all bills are published in draft format, it is increasingly the practice. In the House of Representatives, the Minister decides whether to refer a draft bill to a committee for PLS. In the Senate, a majority of the House refers a draft bill to committee and requests that it inquire and report. In July 2014, Standing Orders in the Senate were amended so that the Senate's Committee for the Scrutiny of Bills may decide to consider 'exposure drafts'.

Not all 'exposure drafts' are tabled in parliament.

<sup>36</sup> Between January 2011 and June 2014, four PLS inquiries were conducted by committees of the Senate and one PLS inquiry by the House of Representatives. The Senate inquiries concerned privacy legislation, anti-discrimination legislation; legislation to prohibit the importation and sale of illegally-logged timber and legislation relating to Australian jobs.

While PLS is still quite rare in the Australian Parliament, it is increasingly being called for. In its 2010 report *Building a Modern Committee System*, the House Procedure Committee stated that it "strongly supports more pre-legislation proposals, subordinate legislation and other matters being referred to House committees." This sentiment has been echoed by other committees, with the Joint Committee on Intelligence and Security recommending "the Government ensure that the draft legislation be subject to Parliamentary committee scrutiny."<sup>37</sup>

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<sup>34</sup> According to L&RS contact with the Scottish Parliament's secretariat.

<sup>35</sup> Information is from L&RS correspondent in the Australian Parliament.

<sup>36</sup> The Australian parliament did not provide a total number of 'exposure drafts' published since 2011 since many are not tabled in parliament, There is no central coordinated list of published exposure drafts.

<sup>37</sup> Joint Committee on Intelligence and Security (Australian Senate) *Report of the Inquiry into Potential Reforms of Australia's National Security Legislation*, 2013, p.138.

### **PLS in other Parliaments**

In the New Zealand Parliament, government may elect to publish and refer to parliament 'draft exposures' of bills. However, it is not obliged to.

In Denmark, there is a long tradition between government and parliament that parliament does not scrutinise draft bills (which are always published). However, as interest groups and the media have started to take an interest in draft legislation, some parliamentary committees have recently (2014) held hearings on them.

In the Netherland's Parliament (***Staten Generaal***), a draft text of a lower law (secondary legislation) is sent for commentary (but it does not have the formal right of amendment). Further, all proposed legislation (bills, statutory instruments and treaties) must be sent in draft to the Council of State (*de Raad van State*)<sup>38</sup> which scrutinises it to a set formula (see Box 6, p.10) and issues an advisory report on the draft. This advisory report must be available to parliament. Parliament submits Private Members' Bills to the Council of State for an advisory report.

### **Summary of PLS in other parliaments**

Pre-legislative scrutiny is a well-established practice in the UK Parliament and many who seek to enhance parliament's role vis-à-vis government favour more pre-legislative scrutiny. It is also practiced in Australia and its use there looks likely to increase.

In the UK and Australia, PLS to date has been at the government's discretion. Government decides which bills to publish in draft and government decides which drafts to refer to parliament for PLS. This has been cited as a weakness.

In Scotland, parliament has a little more discretion over PLS. While government decides which draft bills to publish, parliament decides which draft bills to scrutinise. Since July 2014, this is also the case in the Australian Senate.

In Ireland, parliament has most discretion. Government is expected to publish almost all General Schemes and parliament decides which to scrutinise.

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<sup>38</sup> The Netherland's Council of State has two distinct functions: (1) it is the highest administrative court; and (2) it separately advises the government and parliament on legislation and governance. Members and State Councillors are appointed on the basis of their expertise and experience and are drawn from academia, public administration, the judiciary and government. The Advisory Division is supported by a 16-staff legislative division See Website of the Council of State (de Raad van State).

In the Netherlands, government is obliged to submit draft legislation to the extra-parliamentary Council of State for scrutiny. While the Council's advisory report is available to parliament during the formal legislative process, PLS is not conducted by parliament.

## PLS in the Houses of the Oireachtas

Of the approximately 45 General Schemes published between March 2011 and October 2014, the majority underwent pre-legislative scrutiny by an Oireachtas Joint Committee. Only 9 draft bills were not scrutinised (or have yet to be assigned for scrutiny).

Of these 9, some were published early in the session, before changes to Standing Orders (November 2013) and were not referred to a Joint Committee by the Minister. For example, the General Schemes of the *Electoral (Amendment) Political Funding Bill* and the *Road Traffic No.2 Bill* were not referred to the relevant Joint Committee. In other cases, the government department invited submissions.<sup>39</sup>

There were 36 cases of pre-legislative scrutiny between March 2011 and October 2014.<sup>40</sup> In five of these cases the PLS process was ongoing in the Joint Committee (as of 31 October 2014).

Of the 32 cases of PLS that were complete by 31 October 2014, 30 responded with reports, one with a letter to the Minister highlighting the submissions and hearings, and in one the Joint Committee held hearings, transcripts of which are publicly available, without issuing a formal response. All are listed in Appendix 1.

### Steps in the PLS process in the Houses of the Oireachtas

The approach to PLS is evolving and has varied from committee to committee. However, since amendments to Standing Orders in November 2013, Joint Committees generally take the steps outlined in Figure 1.

Figure 1: PLS in Houses of the Oireachtas



The outcome of PLS depends on the decisions made by the Joint Committee at Stage 2. These decisions will themselves be determined by political and practical considerations. Practical considerations include the resources (including availability of experts) and time at the committee's disposal throughout the scrutiny process. Political concerns include committee Members' judgement as public representatives (and that of their political party) as to the significance of the General Scheme / policy area. Also of concern is the complexity of the legislation.

<sup>39</sup> For example, the General Scheme of the *Criminal Justice (Money Laundering and Terrorist Financing) Bill* published in June 2012 and the General Scheme of the *Seanad Electoral University Seats (Amendment) Bill* published in 2014.

<sup>40</sup> In the case of the *Vehicle Immobilisation Bill*, PLS was carried out in respect of policy proposals rather than a General Scheme.

To date (since 2011), many committees have opted to invite departmental officials to discuss the General Scheme and the vast majority have invited submissions and held hearings. Increasingly, and particularly since the reforms of November 2013, committees request research support from the Oireachtas Library & Research Service (L&RS) throughout the scrutiny process.<sup>41</sup> The depth of research depends in part on the time available to the committee to carry out PLS.

Procedure in the Houses of the Oireachtas is quite similar to that for PLS in the UK and Australian parliaments (Box 4).

#### Box 4: Approach to PLS (Australia & the UK)

**In Australia** both Houses usually take an approach, similar to that taken for a policy-related inquiry. It will:

- Make a public call for submissions;
- Invite some who submitted to public (and/or private) hearing. Where time allows; Committees consult departments, agencies, NGOs, lobby groups and experts/academics.
- The Committee will often ask for response to written questions from the responsible government department;
- Occasionally it might use a roundtable hearing format if the timeframe is short.

The Committee reports back to the chamber with a summary and with its recommendations.

**At Westminster** Committees undertaking PLS usually:

- Invite written submissions and examine the evidence;
- Follow this by inviting a smaller number of groups who would be affected by the legislation and/or have expertise on the area for oral presentations;
- On the basis of the evidence, the Committee deliberates and formulates recommendations which it sends in a report to Government.

#### What is the focus of PLS?

An overview of PLS (for cases see Appendix 1) in the Houses of the Oireachtas finds there have been three different types of PLS Report published by Joint Committees to date.

The first type, in particular though not exclusively published in 2011, compiled submissions received (or invited) and transcripts of hearings, along with a communiqué from the Joint Committee citing the issues raised during the drafting process. For example, the *General*

<sup>41</sup> The L&RS provides impartial research and information services to support to work of the Houses, Committees and individual Members in respect of their parliamentary duties. Since the reforms of November 2013, the eight sectoral Committees undertaking PLS have received research support from the L&RS.

*Scheme of the Mediation Bill* and the *General Scheme of Houses of the Oireachtas Inquiries Bill* (the latter which invited submissions from political parties).

A second type of report takes a more in-depth approach and, to varying degrees, aims to set out the Joint Committee's opinion of the General Scheme of the bill. Such PLS Reports:

- Identify **key issues raised** by stakeholders and experts – generally (though not always) head-by-head;
- Include the **Committee's recommendations or 'key issues.'** Particular attention may be drawn to certain issues raised in the head-by-head analysis and/or the Committee may include more general recommendations about the policy and legislative context and the extent to which the General Scheme is meeting the Government's policy intentions and/or will have other, unintended consequences.

The Joint Committee on Health and Children's Report on the *General Scheme of the Children First Bill* (2012) and the Joint Committee on Justice, Defence and Equality's Report on the *General Scheme of the Mental Capacity Bill* (2012) are examples of this type of report.

A third type of PLS report (increasingly the norm since the November 2013 reforms) identifies key issues and includes recommendations (as per type 2 above) but it also explicitly sets out the broader **policy framework and legislative background** to the General Scheme. Recommendations made or key issues highlighted tend to be set in the context of this policy framework.

For example, the Joint Committee on Health and Children's pre-legislative scrutiny of the *General Scheme of the Public Health (Standardised Packaging of Tobacco) Bill*, the Joint Committee on Education and Social Protection's scrutiny of the *General Schemes of the Technological Universities Bill* and the *Education (Admission to Schools) Bill*, the Joint Committee on Transport and Communication's Report on the *Sports Ireland (General Scheme)* and the Joint Committee on Justice, Defence and Equality's Report on the *Children and Family Relationships (Heads of) Bill*.

PLS in the Houses of the Oireachtas is relatively new and is evolving. As such, it is difficult to generalise about the nature of the recommendations made and/or key issues highlighted by Joint Committees.

In some PLS processes, for example in respect of the *General Scheme of the Gender Recognition Bill 2014*, one of the basic policy proposals within the proposed legislation was questioned and the Scheme was subsequently amended in line with the Joint Committee's report.<sup>42</sup>

While the majority of PLS reports do not question the basic policy proposals within a General Scheme (and none has opposed the fundamental policy intention), most offer recommendations on how the policy might be better achieved and/or highlight aspects of the General Scheme which may have unintended consequences.

In other parliaments, PLS tends to consider policy, technical and legal perspectives and almost all reports include recommendations from the Committee to Government.

### How does this focus compare to PLS in other parliaments?

PLS in other parliaments, in general, tend to examine draft legislation from a policy, technical and legal perspective. PLS Reports examine the policy rationale behind a draft bill and make both policy and technical recommendations to Government.

Policy recommendations may judge the merits of the policy or consider whether the draft legislation is likely to address the policy issue as intended. Technical recommendations aim to iron out possible flaws or unintended consequences in the legal requirements as set out in the draft Bill (Box 5).

## Box 5: Focus of PLS reports

In **Australia**, in general inquiries tend to focus on:

- The policy rationale for the proposed legislation and whether the provisions of the draft bill will deliver the intended outcome;
- Alternatives to the legislation and technical details will be examined if they are raised in the submission process;

Committees do not tend to cost alternatives they may recommend though with the establishment of the Parliamentary Budget Office in 2012 this may become more common practice.

In **Westminster**, case studies find that committees:

- **Start PLS by identifying the key policy issues**

Policy issues are identified either in discussion with the department or independently, or both. The Committee works through them considering how the proposed bill addresses them. Power found that Committees tend to identify between 6 and 10 issues for investigation and test how far the draft bill is meeting the objectives;

- **Take a viewpoint on policy.**

Some, for example, the Freedom of Information Committee in the Lords, challenge government policy. Others took the view that they would be most productive by addressing issues either on which there was no settled policy and/or examined what was omitted from the legislation;

- **Make recommendations.**

A recent study broke down the types of recommendations made by PLS committees into commentary (46%), technical, which aimed to iron out flaws in the drafting of a bill especially around legal requirements (22%) and policy (i.e. changing the way the legislation would operate (32%));

- **Seek to influence secondary legislation:**

Smookler found that a number of recommendations sought to influence the context of secondary legislation or guidance to the Act and that this was generally well-received by Government.

In **the Netherlands**, the Council of State's (*de Raad van State*) Advisory Report has a set assessment framework. It applies three tests to the proposed law: a policy test, legal test and technical test.

- **Policy test**

Is there a real policy problem to be addressed?  
Is the proposed legislation an effective solution?  
Can the legislation, as drafted, be effectively implemented?

- **Legal test**

Is the proposal compatible with the Constitution and the European Convention on Human Rights?  
Is it well integrated into the legislative framework?

- **Technical test**

Examines the draft for internal consistency, clear structure and comprehensibility.

<sup>42</sup> "A key recommendation of the Report of the Joint Oireachtas Committee was that the minimum age at which a person could apply for a gender recognition certificate should be 16, instead of 18". See Department of Social Protection [Press release of 18 June 2014](#)

## Conditions under which PLS is likely to be effective

As with all procedural reforms, whether PLS truly enhances a parliament's capacity to scrutinise legislation and to hold government to account, depends on time allocated, other parliamentary procedures, information and resources and political will and/or leadership.<sup>43</sup> The following section explains these conditions under four headings and considers whether they exist in the Irish, the UK and Australian parliaments.

### 1. Time allocated to PLS

Time, and some control over time, is central to parliament's capacity to scrutinise and hold the executive to account.<sup>44</sup>

In the UK, the legislative timetable, controlled by the executive, has been found to pose challenges to effective pre-legislative scrutiny. Late publication of draft bills, unreasonable deadlines for reporting, and excessively tight timetables have been criticised. Further, the unavailability or late receipt of key supporting documentation and the process whereby public consultation by departments was ongoing simultaneously to PLS were found to make PLS less effective.<sup>45</sup>

The legislative timetable has also presented challenges to undertaking PLS in the Houses of the Oireachtas although this may relate to the recent introduction of PLS and the fact that procedures are still evolving.

For example, the *Central Bank Bill 2014* was published two and a half weeks after the General Scheme had been referred to the relevant Joint Committee for PLS.

In other cases, Joint Committees have decided not to conduct PLS because of insufficient time. For example, the Government referred policy proposals from the General Scheme of a *Housing (Miscellaneous Provisions) Bill* to the Joint Committee on Environment, Culture and the Gaeltacht in March 2014. According to Minister of State, Jan O'Sullivan, the Joint Committee responded that:

<sup>43</sup> See L&RS Note, September 2013, Parliamentary Procedure and Effective Committee Systems.

<sup>44</sup> Korris (2011), Hunt (2011) L&RS Note (2013) [Parliamentary Procedure and Effective Committee Systems](#)

<sup>45</sup> Power, 2001, 31; UK House of Lords Constitution Committee, (2008) *Pre-legislative scrutiny 2006/7 Session*. UK House of Commons Liaison Committee (2010), [The Work of Committees in Session 2008-2009](#)

'given the overall timeline in respect of publication and enactment, it would be unable to meet the requirements of pre-legislative scrutiny by facilitating a session for consideration of the Bill.'<sup>46</sup>

The allocation of sufficient time to undertake PLS needs to be balanced against the fact that it is in parliament's interest to conduct it in a *reasonably* tight deadline as the drafting process may be underway by the parliamentary draftsman.

Table 1 below summarises the amount of time in the Houses of the Oireachtas between the publication of a General Scheme and the completion of the PLS process in 29 cases from 2011-September 2014.

**Table 1: Time for PLS in the Houses of the Oireachtas (2011-2014)<sup>47</sup>**

Time between publication of General Scheme and publication of Joint Committee Report	Number of PLS Reports
A month or less	2
2-4 months	16
5-7 months	7
Over 9 months	4
Total cases	29

By way of comparison, the four PLS inquiries undertaken by committees of the Australian Senate since 2011 lasted for two to three months - except for the inquiry into draft privacy legislation which ran for fifteen months (but it took place on either side of a general election).<sup>48</sup>

A review of international secondary sources reveals that suggested solutions to impediments to PLS caused by insufficient time include:

- Standing Orders set out that **at a bare minimum 12 weeks** is allocated by the government to parliamentary pre-legislative scrutiny.<sup>49</sup> It is not unusual for

<sup>46</sup> Minister of State, Jan O'Sullivan, 13 May 2014 2<sup>nd</sup> Stage Debate on *Housing Miscellaneous Provisions Bill 2014*.

<sup>47</sup> Based on PLS cases in Appendix 1. Appendix 2 lists bills where the PLS process was undertaken in less than a month or between 2 and 4 months.

<sup>48</sup> Direct contact between L&RS and Research Department in the Australian parliament.

<sup>49</sup> See House of Commons PLS Standard Note (2013) quoting recommendations of the House of Commons Liaison Committee (2009).

Standing Orders to guarantee minimum amounts of time for Committees to conduct inquiries (Box 6).

- Parliament is provided with a list of General Schemes due for publication in the forthcoming session and updated if this changes. Committees can then assign time and contact those it hopes to consult during PLS.<sup>50</sup>
- Each bill would (ideally) have a two-year cycle from publication in draft to enactment.<sup>51</sup>
- Committee investigations are held after departmental consultations and documents related to departmental consultation are made available to the Committee.<sup>52</sup>

#### Box 6: Standing Orders in some parliaments and allocation of time

Standing Orders in some European parliaments allocate time in the ordinary legislative process in order to guarantee a minimum amount of time for committees to scrutinise and report on bills. For example, in the German *Bundestag* ten sitting weeks after referral of a bill to committee, a parliamentary group or 5% of Members of the Bundestag may demand that it submit a report on the progress of its deliberations.

#### Do these conditions apply to PLS in any parliament?

A minimum time allocation for PLS is not formal parliamentary procedure in the UK or in Australia.

In the UK House of Commons or the Australian House of Representatives the Minister who is referring the legislation sets a deadline. In the Australian Senate, the Senate itself determines the deadline although it will tend to accommodate the Minister (as there are majority governments). The House rarely refuses to extend the time available if the committee requests it.

A Protocol agreed by the Irish Government and the Houses of the Oireachtas Service in October 2014 sets out procedures in respect of time allocation and notification for PLS. The Protocol (Box 7) anticipates that PLS will be carried out within an eight-week timetable. While this is a relatively short time period in which to complete in-depth PLS (compare with Table 1), the Protocol obliges departments to provide a co-ordinated and timely notification to Oireachtas

<sup>50</sup> Power Greg (2001) p.48

<sup>51</sup> Korris (2011) p. 570

<sup>52</sup> Power Greg (2001) p. 48

Joint Committees of General Schemes due for publication. This should enhance a Joint Committee's ability to plan, schedule and deliver PLS.

#### Box 7: PLS Protocol (2014)

In the Protocol it was agreed that:

##### In supporting a process for notification:

Each department will appoint a **PLS Coordinator** who will notify Oireachtas Committees about the General Schemes expected for publication each session and will update Committees if other General Schemes emerge and seem likely to be published

##### Regarding time

The Protocol sets out that Joint Committees will have **eight weeks** to produce a response from the time the General Scheme is referred. However, where the General Scheme is complex, or where it is considered that consultation and engagement with stakeholders is necessary, a later timetable can be discussed with the Minister.

## 2. Parliamentary Procedures and PLS

The literature suggests that the scrutiny process by parliament is enhanced if:

- Government is required to respond to a parliamentary committee's PLS report;
- If parliament (and not the Minister) decides which bills are treated by PLS;
- Committees consider and tackle the potential for agenda overload.

### **Government must respond to Reports**

A key part of the accountability of Government to parliament's committees is the requirement to respond to its reports.<sup>53</sup> Russell and Bannet cite one UK civil servant who suggested that the committee report 'creates a climate where it becomes imperative to address issues.' In this 'Select Committee reports differ in an important way from reports by almost any other body.'

Obliging the Government to respond ensures that Government must engage with the Committee's recommendations and may, as such, create incentives for the Committee to fully engage with the PLS process.

In the UK, convention<sup>54</sup> determines that Government must respond to a Select Committee's report (and to *ad hoc* Joint Committees where appointed) within two months. However, there is no requirement that

<sup>53</sup> Russell Meg and Bennett, (2011) '*Selective Influence: the Policy Impact of House of Commons Select Committees*' London: University College London, Constitution Unit. p.86.

<sup>54</sup> Referred to as the Osmotherly rules.

such a report is debated in parliament.<sup>55</sup> A study of Government responses to Select Committee Report in the UK found that there were differences in the quality and depth of responses.

The Australian Government must table a response to recommendations made by Senate Committees within three months of the Committee's report. The Minister's response is also usually included in the second reading speech.

In respect of the Houses of the Oireachtas, the Government is not obliged to respond to a PLS report. However, as a result of amendments to Dáil Standing Orders (November 2013), where there has been a pre-legislative stage the Chair or Vice Chair of the Joint Committee has an equal right to speak, i.e. in addition to the Minister and the Opposition spokespersons during the second-stage debate on the bill.

The rules of the second-stage debate in the Dáil determine that the Minister responds after all Members have spoken. As such, the Minister is not obliged to engage directly in a discussion with the Committee Chair on the recommendations set out in the PLS Report during this second-stage debate unless she/he chooses to.

### **Parliament (and not the Minister) decides which bills are treated by PLS**

Allowing parliament to determine the agenda for PLS clearly enhances its capacity to independently scrutinise government's legislative process. As pointed out above, the Houses of the Oireachtas has more control over the PLS agenda than the other parliaments in which it is practised. In Ireland, Ministers are obliged (save in exceptional circumstances) to provide Oireachtas Committees with the General Scheme. Parliament, therefore, decides what to scrutinise in the Irish system. The House of Lords Constitution Committee<sup>56</sup> recommended this for the UK: that all bills be published in draft and that where a bill is not published in draft an explanation be given.

While the Australian Senate and the Scottish Parliament also select which draft bills it will scrutinise, the Government does not, as a rule, publish all bills as General Schemes.

<sup>55</sup> Russell and Benton, 2011, *Selective Influence: the Policy Impact of House of Commons Select Committees* London: University College London, The Constitution Unit. p.11.

<sup>56</sup> House of Lords Constitution Committee (2008) *Pre-legislative scrutiny 2006-7 session*.

### **Committees consider and tackle the potential for agenda overload**

Should all General Schemes be scrutinised?

Russell *et al*, while welcoming the idea that all bills be published as drafts, suggest it may not be practical for all legislation to be published and scrutinised in draft.<sup>57</sup>

This raises the question of agenda overload and the concern that scrutinising all draft legislation monopolises a committee's agenda and reduces its control over its own elective inquiry work.<sup>58</sup> Hunt, discussing the (then) possibility of pre-legislative scrutiny in the Houses of the Oireachtas says that criteria should be drawn up as to what types of bills ought *not* to be subjected to PLS. He gives the example of short, technical bills.<sup>59</sup>

Russell *et al* recommend that where PLS does not take place, bills should have a first reading at committee. This would bring practice in line with most other parliaments in Europe and the Scottish and the New Zealand parliaments.

### **3. Leadership of PLS in parliament**

Political parties are the most powerful actors in parliament and, as such, the success of PLS will ultimately depend on there being political will for it to succeed. Power suggests that the political will to undertake PLS may be enhanced if a parliamentary actor, such as a committee of Chairs, takes a leadership role in developing PLS.<sup>60</sup> Such a committee would:

- Co-ordinate with government on when to expect publication of General Schemes and ensures that Government prepares a pre-legislative programme;
- Develop and put in place a set procedure as to the goal of pre-legislative scrutiny and the manner in which it is carried out and reported on;
- Identify draft bills which are relevant to more than one Joint Committee and ensure that all relevant Joint Committees are involved in the PLS process;
- Report on government response to PLS reports by committees and on government's commitment, in general, to the PLS process.

<sup>57</sup> Russell et al (2013) p.44.

<sup>58</sup> An issue also raised by Smookler (2006)

<sup>59</sup> Hunt Brian (2011) *Role of the Houses of the Oireachtas in the Scrutiny of Legislation* Parliamentary Fellowship of the Houses of the Oireachtas.

<sup>60</sup> Power Greg (2001) 49.

The [House of Commons Liaison Committee](#) has taken on this type of leadership role in the UK.

#### 4. Information and resources for PLS

Case studies of PLS in the UK suggest that the process is enhanced if:

- Drafts of Secondary Legislation and Ministerial Guidelines are published with the General Scheme. They have a large bearing on whether and how the legislation will achieve its policy objectives;
- There is a resource such as Scrutiny Unit<sup>61</sup> so a committee does not only depend on departmental officials for a correct interpretation of the legislation, the policy background and possible alternatives;
- Departmental officials are made available to the committee for questioning;
- Committees engage experts as well as stakeholders and departmental officials as witnesses in the PLS process;
- Background documentation, including RIA on the draft bill (if completed) and the proceedings of any consultation process by the Department, is made available to the committee as a matter of course.

To what extent do these conditions exist in the Houses of the Oireachtas?

According to the Protocol,<sup>62</sup> when referring a General Scheme, a Minister's letter should outline the Department's own scrutiny in advance of the drafting of the General Scheme. This is described as 'expert groups, consultation papers, departmental analysis, the dates of this work', and 'a list of all stakeholder submissions received in connection with it.' It does not oblige a Minister to forward copies of this information but to outline its scrutiny process. A Committee may decide to request this. The Protocol does not specifically mention draft secondary legislation although a Joint Committee may request it from the Government. However, secondary legislation has been referred for PLS in the case of the General Scheme of the *Education (Admission to Schools) Bill*.

#### Summary of conditions for effective PLS

The conditions discussed above, which are found by studies to facilitate effective PLS, are summarised in Table 2 below.

<sup>61</sup> The Scrutiny Unit is within the Committee Office but not attached to any Committee. Its key purpose is to provide expert advice to Committees involved in pre-legislative, and legislative scrutiny (especially financial and European).

<sup>62</sup> Agreed between Houses of the Oireachtas Service and the Government in September 2014.

**Table 2: Conditions for effective PLS**

<b>Time</b>	<ul style="list-style-type: none"> <li>• Standing Orders set out a minimum of 12 weeks for PLS;</li> <li>• Committees given advance notice of General Schemes due for publication each session;</li> <li>• Committee investigations are held after departmental consultations (if any) and documents related to departmental consultation are made available to the Committee;</li> <li>• As an ideal, bills have a two-year cycle from publication in draft to enactment.</li> </ul>
<b>Parliamentary Procedure</b>	<ul style="list-style-type: none"> <li>• Government must issue a response to PLS report;</li> <li>• Parliament (not Government) decides which bills will go to PLS;</li> <li>• Committees tackle the potential for agenda overload, for example, by prioritising certain General Schemes;</li> </ul>
<b>Leadership</b>	<ul style="list-style-type: none"> <li>• A parliamentary actor, such as a Committee of Chairs, takes a leadership role in developing PLS.</li> </ul>
<b>Information</b>	<ul style="list-style-type: none"> <li>• Drafts of secondary legislation and ministerial guidelines are published with General Schemes;</li> <li>• Departmental officials are available to the committee for questioning;</li> <li>• Committees are resourced so they do not depend only on departmental officials for a correct interpretation of the legislation, its policy background and alternatives;</li> <li>• Committees engage experts as well as stakeholders as witnesses;</li> <li>• Background documentation, including an RIA and submissions to any consultation process undertaken by a Department, is available to the Committee.</li> </ul>

The final section examines the possible impacts of PLS and any evidence of impact within the Houses of the Oireachtas to date.

## Possible Impacts of PLS

If PLS achieves its goals, what impacts might be expected to see?

Studies of PLS in the UK<sup>63</sup> have found a number of impacts which we summarise below. The extent and type of impact will always depend on the nature and complexity of the bill, the policy area, the political situation, the extent of cross-party agreement as well as time and resources allocated to the process.

### Direct influence

This is when PLS is found to have had a direct influence on the policy objective(s) and/or the contents of the bill: Smookler found that in some cases a Committee's recommendations resulted in the Government changing its policy significantly. In other cases there was a change in emphasis in line with the Committee's recommendations; in other cases, comments were taken on board but implemented in different ways.<sup>64</sup>

Yet, if direct influence cannot be discerned, it may not be that PLS has had no influence. In fact, the knowledge that proposed legislation will undergo PLS may affect the way in which Government, officials and drafters approach the drafting process in the first place.<sup>65</sup> This impact may not, however, be clear to third parties.

### Wider influence in legislative process

The report resulting from PLS may have effects beyond the pre-legislative stage; it can frame the debate during its subsequent passage through parliament. In some cases examined by Smookler,<sup>66</sup> recommendations made in the PLS report were accepted as amendments during the ordinary legislative process (eg. House of Lords' amendments to the *Disability Discrimination Bill*). Further, it may influence the drafting of secondary legislation.

### Secondary legislation

PLS may influence the content of secondary legislation or Ministerial Guidance Notes that will accompany the Act.<sup>67</sup>

### Influence parliamentary debate

PLS can clarify the purpose of a bill for parliament, highlight key issues and frame subsequent debate in parliament. Power argues that with PLS the purpose and contents of a bill should be very clear by the time the final bill is

published and begins the formal legislative process.

Smookler found that the influence of the PLS 'lives on' through both the report and the Members who sat on the Committee; these Members tend to play an active role in subsequent debate on the bill.

### Impact in Houses of the Oireachtas

It is too early to fully assess the impact of PLS in the Houses of the Oireachtas. In many cases, the bill relating to the General Scheme has yet to be published.

Table 3 give the status of each bill on which PLS has been completed since 2011. It shows that:

- In 13 of the 32 (completed) cases of pre-legislative scrutiny (as of October 2014), a bill has yet to be published;
- In 19 cases a bill has since been published. In 7 of these 19, the Bill is before the Houses. In the other twelve, it has been enacted (Table 3).

### Tables 3: Status of General Schemes of Bills (GS) which underwent PLS (Appendix 1 for details)

3.1 Bill not yet published (as of 1 October 2014)
<ul style="list-style-type: none"><li>• Education (Admission to Schools) Bill 2013;</li><li>• Technological Universities Bill 2014;</li><li>• Gender Recognition Bill 2013 (revised General Scheme, June 2014);</li><li>• Maritime Area and Foreshore (Amendment) Bill;</li><li>• Climate change and Low Carbon Development Bill;</li><li>• Aftercare Bill;</li><li>• Gambling Control Bill;</li><li>• Criminal Justice (Corruption) Bill;</li><li>• Criminal Justice (Community Sanctions) Bill;</li><li>• Mediation Bill;</li><li>• Children and Family Relationships Bill;</li><li>• DDDA (Dissolution) Bill;</li><li>• Harbours (Amendment) Bill.</li></ul>
3.2 Bill subsequently published (but not yet enacted)
<ul style="list-style-type: none"><li>• Sport Ireland Bill 2014;</li><li>• Vehicle Clamping Bill 2014 (previously Regulation of Vehicle Immobilisation Bill);</li><li>• Registration of lobbying Bill, 2014 (General Scheme published as the Regulation of Lobbying Bill);</li><li>• ESM (Amendment) Bill;</li><li>• Children First Bill;</li><li>• Public Health (Standardised Packaging of Tobacco) General Scheme of a Bill</li><li>• Assisted Decision Making (previously Mental Capacity General Scheme of a Bill).</li></ul>

<sup>63</sup> Power (2001) and Smookler (2006).

<sup>64</sup> Smookler (2006).

<sup>65</sup> Russell and Bennett (2011) p.86.

<sup>66</sup> Smookler (2006).

<sup>67</sup> Smookler (2006) and Power (2001).

### 3.3 Bill subsequently published and enacted

- Education and Training Boards Act, 2013;
- State Airports Act, 2014 (General Scheme of Shannon Aviation Services and Miscellaneous Provisions Bill);
- Central Bank Act 2014 (General Scheme of a Securities Market Programme Bill);
- Credit Union Act 2012;
- Protection of Life During Pregnancy Act 2013;
- Protected Disclosures Act 2014;
- Freedom of Information Act, 2014;
- Houses of the Oireachtas Inquiries Act, 2013;
- Irish Human Rights and Equality Commission Act, 2014;
- Personal Insolvency Act 2012;
- National Vetting Bureau Act 2012;
- Criminal Justice (withholding of information on offences against children) Act, 2012.

### Appendix 1: PLS on General Schemes by Joint Committees (March 2011-31 October 2014)

There were 36 cases of PLS between 2011 and October 2014. In four cases the Joint Committee had not yet issued a response and PLS was ongoing. Of the 32 cases which were complete, the Joint Committee issued full reports in the vast majority (30). In one case it responded with a letter to the Minister (General Scheme of Criminal Justice (Corruption) Bill) and in one case the outcome was a transcript of hearings with departmental officials (General Scheme Securities Market Programme (later Central Bank) Bill). In 12 of the 31 cases of PLS, a Bill has yet to be published. In 19 cases, Bills had been published. Of these, 12 had been enacted and 7 were going through the formal legislative process.

	Date draft Bill published	Title of Bill	Committee Report / Response	Submissions and hearings	Status of Bill as of 1 October 2014	Joint Committee
<b>Department of Agriculture</b>						
1.	June 2014	Horse Racing Ireland (Amendment) Bill	<a href="#">Report</a> published 24 October 2014	Hearings over five different dates	Not yet published	JC Agriculture, Food and the Marine
<b>Department of Education and Skills</b>						
2.	Oct-11	Education and Training Boards Bill	<a href="#">Report</a> published Dec 2011	Hearings and submissions	Published December 2011	JC Education and Social Protection
3.	Sep-13	Education (Admission to Schools) Bill	<a href="#">Report</a> published April 2014	Hearings over 3 days in Dec 2013 and January 2014	not yet published	JC Education and Social Protection
4.	Jan-14	Technological Universities Bill	<a href="#">Report</a> published April 2014	Submissions (15) and Hearings (8)	not yet published	JC Education and Social Protection
<b>Department of Social Protection</b>						
5.	Jul-13	Gender Recognition Bill	<a href="#">Report</a> published January 2014	Submissions (11) and hearings (4)	Not yet published. A <a href="#">revised general scheme</a> was published in June 2014	JC Education and Social Protection

	Date draft Bill published	Title of Bill	Committee Report / Response	Submissions and hearings	Status of Bill as of 1 October 2014	Joint Committee
<b>Department of Transport, Tourism and Sport</b>						
6.	April 13 (GS) but Policy proposals published Dec 2011	Regulation of Vehicle Immobilisation Bill <sup>68</sup>	Committee <a href="#">report</a> (2012) was on the pre heads. (policy proposals)	Hearings and submissions on pre-heads proposals - the Regulation of Vehicle Clamping (March 2012)	Published in June 2014 as <b>Vehicle Clamping Bill</b>	JC Transport and Communications
7.	Jul-13	Shannon Aviation Services and Miscellaneous Provisions Bill	<a href="#">Report</a> published Nov-13	Hearings and submissions	Bill published 24 April 2014 as State Airports Bill	JC Transport and Communications
8.	Jan-14	Sport Ireland	<a href="#">Report</a> published March 2014	Hearings with two key stakeholders over one day	Published in August 2014	JC Transport and Communications
9.	May 2014	Harbours (Amendment) Bill	Not yet published	14 submissions received. Hearings date not set.	Not yet published	JC Transport and Communications
<b>Department of Environment, Community and Local Government</b>						
10.	Feb-13	Climate Change and Low Carbon Development Bill	<a href="#">Report</a> published in Nov 2013	Hearings with 16 invited to submit comments; also received written submissions	Not yet published	JC Environment Culture and the Gaeltacht
11.	Oct-13	Maritime Area and Foreshore (Amendment) Bill	<a href="#">Report</a> published in February 2014	Hearings on 12 Nov (5 presentations) and 19 Nov (9 presentations)	Not yet published	JC Environment Culture and the Gaeltacht

<sup>68</sup> In this case PLS was undertaken in respect of policy proposals referred by the Minister rather than on the General Scheme.

	Date draft Bill published	Title of Bill	Committee Report / Response	Submissions and hearings	Status of Bill as of 1 October 2014	Joint Committee
12.	April 2014	DDDA (Dissolution) Bill	<a href="#">Report</a> published in October 2014	Pre-leg hearings on 14 May and 10 June	Not yet published	JC Environment Culture and the Gaeltacht
<b>Department of Arts, Culture and the Gaeltacht</b>						
13.	4 April 2014	Official Languages (Amendment) Bill <sup>69</sup>	Not yet published	Hearings on 27 May by sub Committee on 20 year strategy for Irish Language	Not yet published	JC Environment Culture and the Gaeltacht
14.	Sept 2014	National Cultural Institutions (National Concert Hall) Bill	Not yet published	Committee hearings 30 September 2014	Not yet published	JC Environment, Culture and Gaeltacht
<b>Department of Finance</b>						
15	28-Jun-12	Credit Union Bill (Credit Union and Cooperation with Overseas regulators)	<a href="#">Report</a> published Nov 2012	Department held a public consultation in July & Aug 2012; Joint Committee reviewed submissions received and arranged hearings for 19-20 Sept. Bill published on 28 Sept so Committee forwarded the submissions to the Minister so the submissions could be used by Dept and a report was published in Nov.	Bill published on 28 Sept 2012; Enacted December 2012	JC Finance, Public Expenditure and Reform

<sup>69</sup> The Department organised an in-depth review of *Acht na dTeangacha Oifigiúla, 2003*, the Official Languages Act, 2003. Approximately 1,400 survey responses and 262 submissions were received during the consultation process which was organised as part of the review.

	Date draft Bill published	Title of Bill	Committee Report / Response	Submissions and hearings	Status of Bill as of 1 October 2014	Joint Committee
16.	19-Mar-14	Securities Market Programme Bill (renamed Central Bank Bill 2014)	<a href="#">Hearings</a> with departmental officials (26 March 2014).	Hearings with departmental officials	Bill published on 7 April (2.5 weeks after Heads were published)	JC Finance, Public Expenditure and Reform
17.	July 2014	ESM (Amendment) Bill	<a href="#">Report</a> published September 2014	Hearings with departmental officials	Bill published September 2014	JC Finance, Public Expenditure and Reform
<b>Department of Public Expenditure and Reform</b>						
18	27-Feb-12	Protected Disclosures Bill	<a href="#">Report</a> published July 2012	Hearings over 5 sessions in May/June 2012	Bill published July 2013; enacted July 2014	JC Finance, Public Expenditure and Reform
19	25-Jul-12	Freedom of Information (Amendment) Bill	<a href="#">Report</a> published 5 June 2013	Hearings on four different dates in Jan, Feb and March 2013	Bill published 24 July 2013; enacted October 2014.	JC Finance, Public Expenditure and Reform
20.	31 October 2012	Houses of the Oireachtas Inquiries	<a href="#">Report</a> published March 2013 <sup>70</sup>	Hearing with the department officials outlining the scheme. Submissions then sought from political parties.	Bill published 17 May 2013; enacted.	JC Finance, Public Expenditure and Reform
21	Apr-13	Regulation of Lobbying	<a href="#">Report</a> published Nov-13	Report summarised the submissions received in the Department's consultation process	Bill published June 2014 as <b>Registration of Lobbying Bill</b>	JC Finance, Public Expenditure and Reform

<sup>70</sup> In early 2011 JC on the Constitution published extensive report on Inquiries and the Joint Committee had consulted widely for this report.

	Date draft Bill published	Title of Bill	Committee Report / Response	Submissions and hearings	Status of Bill as of 1 October 2014	Joint Committee
<b>Department of Children and Youth Affairs</b>						
22	Apr-12	Children First Bill	<a href="#">Report</a> published July 2012 (600 pages)	Written consultation and targeted hearings	Revised heads published 23 July 2013, Bill published April 2014	JC Health and Children
<b>Department of Health</b>						
23	30-Apr-13	Protection of life during pregnancy	<a href="#">Report</a> published 30 May 2013	Targeted hearings held on 17,19 and 20 May 2013 plus written submissions received.	Bill published 13 June 2013; second stage in Dail on 26 June, Second stage Seanad 17 July; enacted on 30 July 2013	JC Health and Children
24	Dec-13	Public Health (Standardised Packaging of Tobacco) Bill	Report ( <a href="#">Vol.1</a> and <a href="#">Vol.2</a> ) published April 2014	Written consultation (over 90 submissions received) and targeted hearings over 4 days	Published in June 2014	JC Health and Children
25	Jan-14	Aftercare Bill	<a href="#">Report</a> published July 2014	Hearings	Not yet published	JC Health and Children
<b>Department of Justice and Equality</b>						
26	2008	Assisted Decision Making (previously Mental Capacity) Bill	<a href="#">Report</a> published on 1 May 2012	Over 70 written submissions and oral hearings with targeted experts and stakeholders over 2 days (22 Feb and 29 Feb 2012).	Bill published on 17 July 2013	JC Justice, Defence and Equality

	Date draft Bill published	Title of Bill	Committee Report / Response	Submissions and hearings	Status of Bill as of 1 October 2014	Joint Committee
27	Jul-11	National Vetting Bureau	Published two reports on hearings and submissions. <a href="#">September 2011</a> and <a href="#">November 2011</a>	17 written submissions and public hearing on 21 Sept 2012	Bill was published in June 2012 & had passed all stages December 2012	JC Justice, Defence and Equality
28	13-Jul-11	Criminal Justice (withholding of information on offences against children)	Published <a href="#">report</a> 18 January 2012	Invited 9 written submissions and held one public hearing to which it invited 4 of the 9 on 30 November 2011	Bill published April 2012; enacted July 2012	JC Justice, Defence and Equality
29	25-Jan-12	Personal Insolvency Bill	<a href="#">Report</a> published 5 March 2012	Views of Committee were sought by Minister by 1 March and Dept issued a general public call for comments simultaneously.	Bill was published in June 2012 and was enacted in December 2012	JC Justice, Defence and Equality
30	Apr-12	Mediation Bill	<a href="#">Report</a> published on 21 June 2012	Submissions received and hearings on 8 and 22 May 2012	Not yet published	JC Justice, Defence and Equality
31	29-May-12	Irish Human Rights and equality Commission	<a href="#">Report</a> published in July 2012	16 submissions received and two public hearings were held.	Bill published 21 March 2014 and enacted July 2014	JC Justice, Defence and Equality

	Date draft Bill published	Title of Bill	Committee Report / Response	Submissions and hearings	Status of Bill as of 1 October 2014	Joint Committee
32	Jun-12	Criminal Justice (Corruption)	Letter to the Minister, June 2013	Written submissions.	Not yet published	JC Justice, Defence and Equality
33	Jul-13	Gambling Control	<a href="#">Report and Appendices A and B</a> published in November 2013	29 written submissions received and hearings were held on 2 and 9 October	Not yet published	JC Justice, Defence and Equality
34	30-Jan-14	Children and Family Relationships Bill	Minister requested JC Justice and JC Health conduct a public consultation on the heads with deadline of April 2014. <a href="#">Report</a> published 29 May 2014 <sup>71</sup>	Committee sought written submissions; Public hearings were on 9 April in two sessions	Not published yet	JC Justice, Defence and Equality
35	Feb-14	Criminal Justice (Community Sanctions) Bill	<a href="#">Report</a> published in June 2014	Committee considering general scheme in May 2014	Not yet published	JC Justice, Defence and Equality

<sup>71</sup> [http://www.oireachtas.ie/parliament/oireachtasbusiness/committees\\_list/jde-committee/reports/](http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/jde-committee/reports/)

	<b>Date draft Bill published</b>	<b>Title of Bill</b>	<b>Committee Report / Response</b>	<b>Submissions and hearings</b>	<b>Status of Bill as of 1 October 2014</b>	<b>Joint Committee</b>
36.	April 2014	Criminal Justice (Procedure) Bill	Not yet published	Committee sought submissions and received just one submission. No hearings.	Not yet published	JC Justice, Defence and Equality

