



Tithe an
Oireachtais
Houses of the
Oireachtas

Tithe an Oireachtais

An Comhchoiste um Dhlí agus Ceart

Tuarascáil maidir le Grinnscrúdú ar an mBille um
Bás Díniúil, 2020 [BCP]

Iúil 2021

Houses of the Oireachtas

Joint Committee on Justice

Report on Scrutiny of the Dying with Dignity Bill
2020 [PMB]

July 2021

33/JC/11

COMMITTEE MEMBERSHIP

Joint Committee on Justice

Deputies



James Lawless TD (FF) [Cathaoirleach]



Jennifer Carroll MacNeill TD
(FG) [Leaschathaoirleach]



Patrick Costello TD
(GP)



Michael Creed TD
(FG)



Pa Daly TD
(SF)



Brendan Howlin TD
(LAB)



Martin Kenny TD
(SF)



Thomas Pringle TD
(IND)



Niamh Smyth TD
(FF)

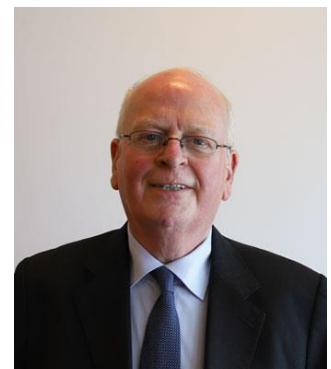
Senators



Robbie Gallagher
(GP)



Vincent P. Martin
(IND)



Michael McDowell (FF)



Lynn Ruane
(IND)



Barry Ward
(FG)

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil on 3rd September 2020.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 25th September 2020.
3. Deputy James O'Connor discharged and Deputy Niamh Smyth nominated to serve in his stead by the Fifth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 19th November 2020.

CATHAOIRLEACH'S FOREWORD

The Dying with Dignity Bill 2020 seeks to allow for the provision of assisted dying to qualifying persons (those suffering from a terminal illness), with the aim of allowing them to achieve a dignified and peaceful end of life. If enacted, this Bill would give a medical practitioner the legal right to provide assistance to a qualifying person to end their life, according to the terms of this Act.¹

While conducting Pre-Committee scrutiny for this Bill, it was decided to allow for public submissions on the topic on 25th November and over 1,400 submissions were received by the deadline in January 2021. These submissions fall under broad categories relating to legal, medical, personal, academic, faith-based and end-of-life or rights-based perspectives on the provisions contained within the Bill. The Bill was also sent to the Office of the Parliamentary Legal Advisers (OPLA) to ascertain the legal and constitutional implications of such proposed legislation. An analysis of both these submissions and the OPLA analysis forms the basis of this report.

The Committee, in considering the matter, recognised that its function is to legislate, however, this comes with particular responsibilities and care must be taken when recommending the progression of legislative proposals.

On foot of its deliberations, the Committee has made a number of observations and an overall recommendation, which can be found at the end of this report.

I would like to commend Deputy Kenny for his dedication in proposing and advocating for the progression of this legislation and for opening up a conversation which needs to be had.

I would also like to express my gratitude on behalf of the Committee to all those who sent in written submissions and to the OPLA for their insight into this important Bill.



James Lawless TD (FF) [Cathaoirleach]
July 2021

¹ Dying with Dignity Bill 2020, Explanatory Memorandum [b2420d-memo.pdf \(oireachtas.ie\)](https://www.oireachtas.ie/bills/2020/b2420d-memo.pdf)

Table of Contents

Committee Membership.....	1
CATHAOIRLEACH'S FOREWORD	4
CHAPTER 1: INTRODUCTION	6
Purpose of the Bill.....	6
Procedural basis for scrutiny.....	6
CHAPTER 2: DETAILED SCRUTINY.....	8
Summary of Written Submissions	8
1. Submissions from legal bodies and from governmental bodies.....	10
2. Submissions on a personal basis.....	12
3. Submissions on an individual medical basis.....	15
4. Submissions from medical stakeholders focusing on mental health issues and palliative care.....	17
5. Submissions from academic stakeholders.....	19
6. Submissions from end-of-life and rights-based organisations.....	21
7. Submissions made on a religious basis and from faith-based organisations.....	24
8. Submissions from the Life Institute.....	26
9. Submissions from stakeholders in other jurisdictions.....	27
Legal Scrutiny of Bill.....	29
Summary of OPLA Advice.....	30
CHAPTER 3: OBSERVATIONS OF THE JOINT COMMITTEE ON JUSTICE.....	322
CHAPTER 4: RECOMMENDATION TO THE DÁIL	366
APPENDICES	377
Appendix 1 – Orders of Reference of the Committee	377
Appendix 2- Framework for Committee Scrutiny of PMBs.....	466

CHAPTER 1 - Introduction

This is the report on detailed scrutiny of the Dying with Dignity Bill 2020, which aims to make provisions for a person to have the legal and medical right of the authorisation of assisted dying, where they are suffering from a terminal illness.

The Bill was referred to the Select Committee on Justice on 7th October 2020. At a meeting of the Select Committee on 20th October 2020 it was agreed that Pre-Committee Stage Scrutiny of this Bill would be undertaken by the Joint Committee. However, it was noted that the decision on whether this Bill would progress to Committee stage is solely a matter for the Select Committee.

Purpose of the Bill

The purpose of the Bill is to allow for the provision of assisted dying to qualifying persons (those suffering from a terminal illness), with the aim of allowing them to achieve a dignified and peaceful end of life. This would give a medical practitioner the legal right to provide assistance to a qualifying person to end his or her own life under certain terms stipulated in the Act. During the second-stage debate on the Bill, Deputy Kenny clarified that the sponsors of the Bill intended that access to assisted dying would be confined *only* to those who are suffering from a terminal illness and access would not extend to other vulnerable groups identified by opponents of the Bill, which included elderly people, those with mental health issues or those with life-threatening physical illnesses.

Procedural basis for scrutiny

Private Members Bills referred to Select Committee are subject to the provisions of Dáil Standing Order 178 and the Memorandum of Understanding, between the Oireachtas and the Government, which was adopted on 15th January 2019.

Dáil Standing Order 178(1) provides that “..the Bill shall be subject to scrutiny by the relevant Committee” and paragraphs (2) and (3) respectively state that “Scrutiny, shall be conducted from a policy, legal and financial perspective...” and that “where the

relevant Committee has completed scrutiny of a private member's Bill, it shall— lay a report thereon before the Dáil, and... send a Message to the Dáil—

- (i) confirming that scrutiny has been completed and reported on, and
- (ii) containing a recommendation on whether or not the Bill may proceed to Committee Stage.”

Paragraph (4) of Standing Order 178 permits scrutiny of the Bill in Joint Committee: “Nothing in these Standing Orders shall preclude a Joint Committee from undertaking scrutiny, and reporting thereon, save that only the relevant Committee may decide on the recommendation as to whether or not the Bill may proceed to Committee Stage.”

CHAPTER 2 – DETAILED SCRUTINY

Summary of Written Submissions

While conducting pre-Committee scrutiny for this Bill, it was decided at a meeting on the 24th November 2020 to have an unrestricted open call for written submissions on the topic, to increase the participation of civil society and reflect their views on the topic, in so far as possible. Over 1,400 submissions were received from various stakeholders, on both an individual and organisational level by the deadline on 22nd January 2021. Given the large amount of submissions received this warranted a significantly more detailed report to capture in sufficient detail, the views expressed within these submissions.

These submissions fall under broad categories relating to

- Legal and governmental
- Personal
- Medical
- Academic
- End-of-life or rights-based organisations
- Faith-based
- International jurisdictions

perspectives, and submissions provided their insights on the topic of assisted dying and on provisions contained within the Bill.

In these submissions, some of the main reasons outlined in favour of the proposed Bill were: allowing people the autonomy to end their suffering as no one should be forced to go through unbearable pain; that the option of assisted dying provides ‘emotional insurance’ to patients, taking away the fear and anxiety they are experiencing and allowing them a better quality of living during their final months; and international experience demonstrates that safeguards work to protect the vulnerable from being abused by this legislation.

However, other submissions outlined reasons they opposed the Bill, including: the risk to vulnerable people and the devaluation of their lives; the lack of robust safeguards in the proposed legislation; that assisted dying undermines anti-suicide messaging; and that

such legislation could provide a 'slippery slope' once enacted and future amendments to Bill would broaden the criteria of those who can avail of assisted suicide, to potentially include those with psychiatric illness and children with terminal illnesses.

Following analysis of the submissions, the sections below provide an outline into the main reasons in favour and against the Bill, provided by each category.

1. *Submissions from legal bodies and from governmental bodies*

Of the 8 submissions in this category, while one was strongly opposed and one was strongly in favour, the other submissions did not adopt a stance on the topic of assisted dying and merely highlighted their perspectives on how the debate surrounding assisted dying should be undertaken and any concerns they had with proposals contained within the Bill.

For example, some submissions felt that the Bill had been rushed through the initial stages of the legislative procedures and that more time should be provided to undertake rigorous examination of the legislation. This would include allowing more media coverage and debates to take place on the topic of assisted dying and achieve greater public awareness about the issue and elicit their views on the topic. One submission highlighted that debates and media coverage of this topic must be careful regarding the terminology they use, as it should not undermine or compromise the fundamental strategies, policies and principles of suicide prevention. The submission claimed that international research highlights the association between sensationalist media reporting of suicide and an imitative effect on suicidal behaviour or that it could trigger people already vulnerable to suicide. It is important that precise and sensitive terminology must be established in these debates that clarify differences between suicide and assisted dying and avoid terms like euthanasia, which is viewed by some as a pejorative term in debates on this topic.

Another recommendation was to allow a Citizens' Assembly take place to ensure detailed consideration of the issues by a representative sample of citizens and to gain perspectives on the topic from as broad a range of stakeholders as possible. Evidence from other jurisdictions where assisted dying has been permitted should also be considered during the deliberation processes, as these jurisdictions could provide an insight into human rights implications of the Bill and the potentially negative impacts on vulnerable groups in society.

The critical need for robust safeguards in such legislation has been highlighted throughout submissions in many different categories. Submissions stated that the proposed safeguards need to be made secure enough so that they balance the desire for legislation that provides assisted dying for those with a terminal illness who wish to avail of this option against the risk of pressure being put on elderly, vulnerable and disabled people to avail of assisted suicide. Indeed, one submission highlighted that for

many the diagnosis of a terminal illness is a peak period of vulnerability. The risk of this legislation being abused could harm these individuals, who may feel forced to opt for assisted dying and be robbed of many more fulfilling years.

In terms of assessing an individual's capacity to make an independent decision to avail of assisted dying under Section 9 of the Bill, it was pointed out that the current Bill does not recommend for a range of practitioners to assess the patient, including a GP that would often have a better knowledge of the person wishing to end their life and thus a better insight into their capacity to make this decision. Additionally, there are insufficient safeguards or penalties in the Bill to discourage a declaration being witnessed by a beneficiary of the estate who could have pressured the individual to avail of assisted dying.

Several submissions recommended that part 8 of the Assisted Decision Making (Capacity) Act 2015 should be enacted urgently, to allow people to plan ahead for when they no longer have ability to make healthcare decisions. They believe that this will allow for greater autonomy in decisions pertaining to end-of-life care.

2. *Submissions on a personal basis*

Submissions made on a personal basis numbered by far the largest amount, with almost 900 submissions in this category received. It is not proposed to publish these as they contained personal data. In the examination undertaken by the Committee, the following is a selection of the key points that were raised in the submissions.

A point that was repeated frequently throughout submissions in all categories was concern that this Bill could result in abuse of the sick and vulnerable, who may perceive themselves to be a burden on their family and feel pressured into opting for assisted dying. This could stem from a personal feeling that they are a burden on their loved ones if they need frequent care, or that they could feel pressure and coercion from relatives who are interested in benefiting from their inheritance after they die or from insurance companies, who would no longer be willing to cover the expense of their end-of-life treatments.

Submissions argued that if enacted, the Bill would devalue the lives of the vulnerable in society, including the elderly, those with mental health or psychiatric issues and those with intellectual and physical disabilities and that the value of a life should not be decided based on what a person can contribute to society. In some submissions, elderly people expressed their personal dismay, as they felt that after working hard all of their lives, the prospect of this Bill being passed made them feel as if society was demonstrating that they were of little value. They also expressed fear regarding the consequences this Bill would have on them as older people in society and the pressure that might be on them to avail of assisted dying. Other similar arguments were put forward in submissions in other categories and these stated that the consequences of enacting this legislation would result in social solidarity being undermined and even the fabric of society being destroyed, as assisted suicide may eventually switch from being a 'choice' to becoming a social norm or the expected 'choice'.

In addition, several submissions highlighted that they believed the timing of this Bill was inappropriate, arguing that legislating for assisted dying, at a time when the Government is locking down the country to prevent deaths from Covid-19 seems paradoxical and insensitive.

Others also questioned the conflict between the Bill's intention to promote assisted suicide as an option and the increased societal focus on mental health and suicide prevention, arguing that the Bill essentially undermines this anti-suicide messaging. They believed that if this Bill were enacted it would normalise suicide and introducing this legislation would send a message that makes suicide more acceptable to society. Similarly, some submissions claimed that, where assisted suicide had been introduced in other jurisdictions, the rates of suicide in the general population had increased and stated that the Netherlands had seen a rise in the number of suicides by almost 34% in the 10 years after assisted dying was legalised.

Many of the personal submissions were also based on religious motivations and mentioned the passing of legislation allowing abortion in 2018. They stated that such legislation had devalued the life of the unborn and feared that if the Dying with Dignity Bill were passed it would mark a further step in Irish society towards devaluing life and allowing murder.

Some submissions commented on specific provisions of the Bill. In section 8, many believed that the term "terminally ill" was too broadly defined, with no requirement to be at the end of one's life, as the current phrasing could include people with disabilities such as Parkinson's disease, heart disease, dementia and many other conditions that are incurable but are currently viewed as treatable and liveable conditions. If allowed under the legislation, people with these prognoses could now feel pressure to consider assisted dying if this legislation now signalled that such disabilities meant a perceived poor quality of life.

However, others expressed their support for this Bill in their submission. Some of these people had been diagnosed with a terminal illness and their submissions focused on personal stories of their own illnesses or of relatives faced with terminal illnesses. In some cases, these submissions described the anguish they faced as they had watched their relatives experience so much pain as a result of terminal illness and the helplessness they felt at not being able to intervene to help them. This experience informed their opinion that people should be allowed to have autonomy and choice over their death

where possible. Other arguments in favour also pointed out that huge medical advancements in recent years have resulted in people in most countries living much longer, which also brings the likelihood that we are more likely to spend our final years suffering from an incurable disease that will reduce the quality of our lives during this period. They believed that this legislation would reduce an individual's fears of having to suffer through a debilitating illness in their final weeks and would ensure that their deaths would be in accordance with their wishes and not dictated by others.

Additionally, other arguments in favour of allowing this legislation were that no-one in a civilised society should be forced to die in unnecessary and inhumane pain and that the experience of other jurisdictions who have already enacted such legislation gives Ireland an advantage, by allowing research and evidence from these jurisdictions to be taken into account and to provide examples of how monitoring of this legislation is effectively managed. They argue that other jurisdictions also demonstrate that the fears of the opposition that this legislation will result in a slippery slope where the legislation is changed drastically beyond its original intentions (described in further detail in the [individual medical section](#)) or that this legislation will increase suicide rates are unfounded and do not hold up to scrutiny of other jurisdictions.

Others who had cared for relatives with terminal illnesses, however, believed that palliative care and hope are the most important approaches to a terminal illness and opposed assisted dying as they believed it did not provide such a caring and community-oriented approach. It was also argued that certain people gain immense value and comfort at the opportunity to care for their loved ones during their terminal illness and this can help these people to cope and manage their grief from this experience.

3. *Submissions on an individual medical basis*

In the category of individual medical submissions, the Committee received 64 submissions, the majority of which were *opposed* to this Bill. Their main arguments were as follows.

Many opposed the introduction of this Bill based on the principle that enacting this legislation could begin a 'slippery slope' or 'policy creep', where robust legislation that seeks to limit the circumstances where assisted dying is allowed could be subject to pressure and that future amendments could change the original Bill significantly and result in the criteria allowing those who can avail of assisted dying to be broadened. Submissions highlighted the recent governmental decision in the Netherlands (which had previously been approved in Belgium in 2014), which would allow for assisted dying to include children suffering from a terminal illness once they have consent from the child, their parents and doctors involved. A submission in another category raised a similar question as to how those in charge of making these decisions would determine which lives are proper candidates for termination and 'where the line would be drawn'.

Additionally, submissions highlighted that introducing legislation on assisted suicide could significantly harm the patient-doctor relationship and could undermine the trust between the public and the medical profession. They argued that the deliberate ending of a patient's life goes against core medical ethics and would breach the fundamental principle of 'do no harm' that lies at the heart of the doctor-patient relationship. Some medical practitioners highlighted that patients of theirs have asked to speed up their deaths and were later happy that they did not do so.

Similarly, submissions raised the point that it can be very difficult for physicians to accurately predict the life expectancy of a terminal disease. The diagnostic uncertainty that surrounds end stage treatment of incurable progressive disease like heart disease and cancer could pose risks by allowing individuals with these diseases to apply for assisted dying on the assumption that their death is impending, when in some cases these individuals may live months or even years longer than predicted. They believe that the Bill also fails to set requirements regarding the professional assessing capacity of

doctors when deciding what counts as a terminal illness, stating that mutual agreement on this between clinicians is poor in general.

Additionally, concern was expressed that the Bill contains no requirement for psychiatric assessment of the patient to ensure that they are providing informed and valid consent for this procedure and similarly, a submission in another category highlighted the lack of psychiatric assessment to recommend treatments for patients who may develop depression or suicidal intentions after being diagnosed with a terminal illness.

A few submissions in this category, however, highlighted their support for the Bill, arguing that it would provide a more dignified end to those who have been diagnosed with terminal illnesses by allowing them autonomy over their lives in selecting when to end their suffering and preventing their family members further distress by seeing them in unbearable and ongoing pain.

4. *Submissions from medical stakeholders focusing on mental health issues and palliative care*

Nearly all the 36 submissions in this category stated their *opposition* to the proposed Bill or raised their doubts and concerns over elements contained within the Bill.

Firstly, several stakeholders objected to the title of the Bill. They believed that it undermines the work of palliative organisations by implying that assisted dying is the better or the only way to have dignity when dying. Thus, they argued that it should be changed to 'Assisted Dying' to more accurately reflect the intentions behind the Bill and to represent that palliative care also provides a dignified death.

Many stakeholders in this category had experience working in a palliative capacity and believed in the significant benefits of good palliative care and pain management, which they believe provide a sufficient alternative to ease a patient's suffering from a terminal illness. These submissions argued that portraying assisted dying as an alternative to suffering, would promote the wrong message in relation to terminal illnesses and that society should place more value on palliative care in general, as individuals may have an inadequate understanding of how palliative medicine can transform the quality of their life. Critiquing the ongoing underfunding and regional disparity in the provision of palliative care services they were also concerned that assisted dying could be seen as a more 'cost-effective' approach to addressing the needs of those facing end-of-life illnesses, and that this would shift the focus away from the development and the delivery of palliative care services and discourage research into palliative care. Therefore, they argued that investment and expansion of these palliative care services and hospice service should be the priority and focus over legislating for assisted dying.

In relation to Section 13 of the Bill, some of these submissions highlighted their concern that the right to conscientious objection does not stipulate that pharmacists can avail of this, even though they would also play a role in the process of assisted dying similar to other assisting healthcare professionals. They also argue that the similar exclusion of pharmacists due to the narrow definition of assisting healthcare professionals in section 2 of the Bill, means they are not being afforded sufficient legal protection if they do take part in the assisted dying of a patient, as stipulated in section 12 of the Bill.

Several submissions also expressed their belief that the current legislation is lacking robust, and carefully monitored safeguards in several areas, despite the critical need for

such safeguards. In addition, they believe that the legislative process must provide the insight of key stakeholders and those personally affected and should not be rushed, as it appears to have been thus far. These stakeholders claimed that there should be adequate consultation of medical, nursing, or allied healthcare personnel to establish whether or not the changes to their practice proposed in the Bill are acceptable, and that this has not yet occurred.

5. *Submissions from academic stakeholders*

The Committee received five submissions from stakeholders in an academic profession. Four of these gave a clear stance on the topic, of these, *half were in favour* of assisted dying and *half were against*.

One stakeholder in favour of assisted death argued that it would regulate a practice that is happening anyway. It was pointed out that already terminally ill patients are availing of assisted suicide abroad, but difficulties restrict many from availing of this option. The financial costs of this, which are estimated at about €10,000, mean that only those with significant financial means can afford this and some individuals who opt for this must choose to travel earlier than planned to avoid the possibility of being physically unable to travel to other jurisdictions if their condition deteriorates significantly. Individuals may also worry about the risk of prosecution for relatives that assist them travelling to access assisted dying. Individuals who assist in the suicide of another person can incur a sentence of up to 14 years in prison and submissions mentioned a situation in the UK where individuals were subject to a police investigation for these reasons.

Furthermore, there have been cases where those who cannot travel to avail of assisted dying engage in self-starvation as a form of protest and where some individuals diagnosed with a terminal illness will choose to commit suicide where they have no alternatives to palliative care. Submissions argued that all of these incidences result in a stressful, undignified experience for the terminally ill. By providing assisted dying in Ireland it would allow those who choose this option a more dignified end of life, where they are relieved of the anxiety surrounding their death and of experiencing unbearable pain. It would also prevent their loved ones experiencing psychological distress if they chose to alternatively commit suicide.

In submissions that argued against the Bill, one stakeholder with longstanding experience in palliative care provision said that requests for assisted dying are infrequent and mostly a 'cry for help'. They argued that these requests dissolve once patients are offered sufficient care and support and that of the small number of requests that persist, this usually stems from a desire not to be a burden on their loved ones. It was argued that offering such support and care was a more appropriate reaction to this situation, as opposed to offering a 'quick fix' or irreversible option of assisted dying.

Regarding the definition of ‘terminally ill’ it was argued that this was poorly defined and that medical prognostication is so unpredictable, it is not a solid basis on which to determine whether someone should live or die. Additionally, the stakeholder pointed out that most common chronic illnesses in communities are, by definition, without a cure, which demonstrates further the poor definition provided within section 8.

Submissions argued that evidence from other jurisdictions also demonstrates that the risk of abuse of legislation has occurred and that it would be naïve to assume this would not be repeated in Ireland if this legislation was introduced. Based on such evidence, if assisted dying becomes a medical treatment for end-of-life care, they believe it will be subject to cost-benefit analysis similar to other end of life treatments. Experience from other jurisdictions seems to suggest that in certain situations patients may be denied access to treatments such as chemotherapy but would be facilitated for assisted dying as it's the cheaper option.

6. *Submissions from end-of-life and rights-based organisations*

Among submissions in this category were those representing pro-life organisations and also those representing organisations that support the right to die. Of the 29 submissions in this category, *over half of them were against* the Bill or raised their concern with elements of the Bill. However, there was a *significant minority* representing groups in favour of allowing assisted dying, who outlined their strong reasons in favour of the Bill.

These stakeholders argued that the reality of palliative care means that while it accommodates the needs of the majority, it cannot prevent all suffering and that it is inhumane to allow people to suffer through unbearable pain. One stakeholder argued that ‘We do not extend to our fellow-citizens the same compassion and relief of suffering that we extend to the animals in our care’.

It was also argued that assisted dying can provide a form of ‘emotional insurance’ to patients, where the fear of a bad death is removed. This can alleviate a terminal patient’s stress and allow them to enjoy the remaining time they have, improving their quality of life during this period. They point out that around 35% of patients who qualify for assisted dying choose not to avail of it, as the emotional insurance itself proves sufficient for them.

Stakeholders argued that discussing and recognising an individual’s autonomy regarding their wish to avail of assisted dying all contribute to greater acceptance of death and an easier grieving process for the loved ones. The ability to say goodbye properly and at a chosen time also has the potential to be of great psychological relief for patients and loved ones.

It was also pointed out that there is no significant moral distinction between individuals consenting to their treatments being withdrawn which will result in their death and in giving a drug during assisted dying which is intended to shorten or end the patient’s life.

Contrary to previous opinions that assisted dying harms the doctor-patient relationship, these organisations stated that international experience demonstrates that the provision of assisted dying enhances the doctor-patient relationship, as the doctor gains an appreciation of their patients wishes during their difficult experience. Their opinion and judgement of their patients’ best options are crucial to whether or not patients may be granted permission to utilise assisted dying.

Organisations also argued that there does not need to be a clash between palliative care or assisted dying as both are compatible by striving to serve the interests of terminally ill patients. Both could form part of a more holistic palliative care process that respects the rights of the terminally ill to choose whichever option they prefer.

Stakeholders in favour of the Bill agreed with the importance that this legislation would ensure sufficient safeguards are in place to protect the vulnerable. They stated that safeguard procedures usually include an analysis of an individual's decision to avail of assisted dying, while best practice also recommends that the individual is considered in the context of family and social circumstances to ascertain if there are potential pressures being applied on them to avail of assisted dying. They argue that there is no evidence of coercion in international practice despite this legislation being in place for more than 20 years in some jurisdictions.

Contrary to the 'slippery slope' or 'policy-creep' narrative that says legislation could be altered to expand the criteria and place vulnerable people at risk, these stakeholders believe that there is no evidence this has happened in the countries and regions that introduced assisted dying legislation, naming Oregon Switzerland, the Netherlands, Canada, and Luxembourg as examples. They argue that in terms of the legislation being abused, for example where life is ended non-voluntarily, that this does not occur more frequently in jurisdictions where assisted dying is permitted than in ones where it is banned, and that often it occurs less frequently. Over time societies with assisted dying show an increased acceptance of the practice (acceptance levels in the Netherlands are at 90%), even among groups traditionally more opposed such as health care professionals and religious individuals.

The arguments from organisations that had concerns with the Bill were that the consultation process should be extended as they did not feel that has been adequate opportunity to consult on the Bill and to allow for a broad, timely and adequate consultation process, particularly with key stakeholders including older people's councils and national age sector organisations, and stakeholders representing those living with dementia and people with disabilities.

Additionally, pro-life organisations highlighted the ‘burden’ argument and elaborated that pressure on vulnerable people to avail of assisted suicide could take a subtle form. This could occur due to shifting attitudinal perspectives in society that would begin to devalue the lives of vulnerable people after assisted dying was introduced or through the lack of appropriate supports and services, as stakeholders believe that funding towards palliative care may decrease if assisted dying is a cheaper option for end-of-life care. Thus, stakeholders added to views expressed in [the medical category](#) who argued that focusing on assisted dying as a solution to better end-of-life care is incorrect and that the focus should be on improving palliative care provision so that access to services is even across every region and that palliative health care assistants receive more support, training and feel less undervalued in their role. They also point out that if carers feel more respected and supported, then those in their care need not feel as much of a burden on them. They believe that society should affirm the dignity of people who are dependent on others for their care and highlight the fact that a natural death can be dignified even if the end of life involves dependence and disability for the individual concerned.

7. *Submissions made on a religious basis and from faith-based organisations*

Individuals, groups, and organisations who sent submissions to the Committee on a religious basis accounted for approximately 435 submissions and *all* of these submissions fundamentally opposed this Bill on religious grounds, while also highlighting several other reasons for their opposition. Many of the submissions made on a personal religious basis used the same template to express their opposition to the Bill, which highlighted five key reasons to oppose assisted dying.

Firstly, many of the submissions felt that assisted dying was always morally wrong and they equated assisted dying with murder, highlighting that it would breach the fifth Commandment of God, which proclaims ‘Thou shalt not kill’. They believe that human beings have been created in the image of God and that it is God who gives life, therefore the end of life should be entirely in God’s hands.

[As stated previously](#), many of the submissions based on religious beliefs expressed their displeasure with assisted dying and with the previous legalisation of abortion in 2018, drawing comparisons between the two and arguing both of these essentially allow for vulnerable individuals to be killed. They argued that Irish society is still nominally Christian and needs to reflect on itself and on its core values.

Secondly, these submissions believed in the sanctity of life or that all lives have value, and repeated previous arguments that introducing assisted dying would further devalue human life. Thirdly, they argued that we have a duty to protect the vulnerable in society, who would face increasing pressure to avail of assisted dying if it were introduced. Some submissions even argued that allowing assisted dying would alter society’s attitudes towards the elderly and vulnerable and create a culture where these groups are not valued and they may begin to think that ‘they’re better off dead’.

Finally, they also believe that assisted dying would be a step back for genuine healthcare and that it is unnecessary as palliative care is a sufficient method of assisting those who are terminally ill. These submissions highlighted research by the Irish Palliative Medicine Consultants’ Association (IPMCA) which had demonstrated that palliative care experts and other members of the medical profession were themselves strongly opposed to the introduction of assisted dying. A survey undertaken by the IMPCA in 2020 found that 88% of palliative medicine doctors are opposed to assisted suicide. This sentiment was also

expressed by several palliative care professionals in their submissions [in the medical section](#). Submissions questioned the rationale and fairness behind proposals to introduce assisted dying if those who were expected to undertake this task were themselves strongly opposed to it.

One submission argued that despite the stated intention of the Bill to be motivated by compassion for the terminally ill, their understand having compassion to mean “suffering with” someone and that assisted dying reflects a failure of compassion on the part of society to respond to the challenges of caring for patients at the end of their lives.

In addition to these five points, submissions in this category were also submitted from individuals in Northern Ireland who were concerned at the effect of the legislation on Northern Ireland and the prospect of ‘Euthanasia tourism’ where people from Northern Ireland could cross the border to avail of assisted dying. Finally, other submissions mentioned points previously highlighted in other categories which include the ‘slippery slope’ argument and the risk that assisted dying would be viewed as a cheaper option for insurance companies than conventional treatments for patients.

8. *Submissions from the Life Institute*

Some 324 submissions were sent in from those affiliated with the Life Institute, an organisation which is pro-life, pro-family and believes in the sanctity of human life. They *strongly oppose* this Bill. Among the points raised in their submissions, additional to the points raised in other categories include

- That assisted suicide is strongly resisted by disability rights groups for the clear impact it would have on devaluing the lives of those with disabilities and the risks it poses to them.
- That the High court case in *Marie Fleming v Ireland* gave a damning judgement regarding the perceived difficulties of ensuring that safeguards adequately protect the vulnerable members of society under assisted dying legislation, stating that:

“even with the most rigorous systems of legislative checks and safeguards, it would be impossible to ensure that the aged, the disabled, the poor, the unwanted, the rejected, the lonely, the impulsive, the financially compromised and emotionally vulnerable would not avail of this option to avoid a sense of being a burden to their family and society.”²
- They claim that increased pressures on national healthcare budgets, which were struggling to provide resources for long term care and global trends towards ageing populations in certain areas of the world create a risk that assisted dying would be used as a solution and a cheaper alternative for end-of-life healthcare provision, at the expense of increasing investment in palliative care and other end-of-life services. They quote a recent paper published in *The Canadian Medical Association Journal*, which they state claimed that millions of dollars could be saved in health care spending by ‘assisting’ people to die. Similarly, a Canadian budget report allegedly stated that \$149 million could be “saved” on the annual cost of end-of-life care by utilising assisted suicide.

² Members should note, however, that this ruling also stated that there is no Constitutional impediment to the enactment of legislation to provide for assisted dying in specific circumstances, once sufficient safeguards to protect vulnerable people are included.

9. *Submissions from stakeholders in other jurisdictions*

Submissions were received from individuals and organisations in other jurisdictions, including some of whom were Irish but lived abroad and wanted to bring the perspective of their jurisdiction into their submissions. Of the 10 submissions received in this category there was an *even split* between those in favour of legislation on assisted suicide and those against.

Amongst the jurisdictions discussed in the submissions were the experiences of introducing legislation to allow assisted dying in the Netherlands, Australia, Canada. These submissions pointed out the positive implementation of such legislation in their jurisdiction, while underlining, however, the need for such legislation to possess robust safeguards and oversight mechanisms to ensure it is not abused. Among the positive elements of this legislation, were that it provides the opportunity to allow and support patients to make fully informed and autonomous choices to avail of assisted suicide if they wished to. Many of the submissions in favour highlighted how providing option of assisted dying for terminal patients reduces the fear of death experienced by the vast majority of patients with a terminal diagnosis and allows them to feel in control. A similar point was put forward in a submission (from another category) which stated that the definition of what allows for a 'good death' is entirely subjective to the individual concerned and for some the ability to control the time and manner of their death is of the most value to them.

Some submissions made technical recommendations for the Bill. Among these were recommendations that a 'suffering criterion' be introduced in section 7 and an explicit statement that injury, disability, and advanced age are not, on their own, sufficient to qualify for an assisted death. A timeframe of expected death of within 12 months should be stipulated in the Bill to narrow the conditions allowing those with terminal illness to avail of assisted dying. Furthermore, they recommend the inclusion of a minimum timeframe between first and last requests for assisted dying of as specified in Section 11 and suggest that a maximum of 10 days is appropriate to avoid unnecessary delays.

Other submissions however, outlined the negative experiences of assisted dying legislation in their jurisdictions. For example, one submission outlined the experience in Canada, where they argued that recently introduced legislation had resulted in significant impacts on palliative care. Additionally, they have seen continuous cases of non-

compliance with the law and increasing cases of vulnerable, elderly people being suggested to avail of medical assistance in dying because the costs of their care is too great or their perceived quality of life is too poor. End of Care Life Europe argued that the implementation of legislation on assisted dying in other jurisdictions has shown an increasing numbers of deaths year on year, lax safeguards and the continual expansion in all jurisdictions of the qualifying criteria for euthanasia and assisted suicide, highlighting Belgium and the Netherlands as examples of this.

Legal Scrutiny of Bill

A meeting of the Joint Committee [the Committee] took place on 13th July 2021 for the purpose of obtaining a legal briefing from the Office of Parliamentary Legal Advisors (OPLA) on its analysis of the Dying with Dignity Bill 2020 - a Private Members' Bill [PMB] sponsored by Deputies Gino Kenny, Bríd Smith, Paul Murphy, Mick Barry and Richard Boyd Barrett. Deputy Gino Kenny was in attendance at this meeting.

This analysis was undertaken in accordance with the Memorandum of Understanding between the Government and Dáil Éireann on Private Member's Bills adopted on 5th December 2018 and required that the Bill be examined, primarily taking account of the following questions:

- Is the PMB compatible with the Constitution?
- Is the PMB compatible with EU legislation and human rights legislation (ECHR)?
- Is there ambiguity in the drafting which could lead to the legislation not achieving its objectives and/or to case law down the line?
- Review for serious drafting deficiencies or technical drafting errors.
- Review for potential un-intended legal consequences which may stem from the PMB as drafted.
- Are appropriate administrative and legal arrangements necessary for compliance and enforcement of the provisions of the Bill included?

The OPLA's legal assessment of the Bill and the various positions presented in written submissions to the Committee and the arguments that were expressed in favour of and against the proposed Bill were noted by the Committee.

Summary of OPLA Advice

1. The Supreme Court has acknowledged that the right to life in Article 40.3.2 of the Constitution extends to a right to die a natural death or to let nature take its course.³
2. The Supreme Court has also found that there is no constitutional right which the State, including the courts, must protect and vindicate, either to commit suicide, or to arrange for the termination of one's life at a time of one's choosing.⁴
3. The lack of a constitutional right to die does not preclude the State from legislating and therefore enacting a Bill such as the Dying with Dignity Bill, once the Oireachtas is satisfied that measures with appropriate safeguards are being introduced.⁵
4. A wide margin of appreciation is afforded to Members States by the European Court of Human Rights in the context of regulating end-of-life decision making.
5. Section 3, in its current form, would be vulnerable to a constitutional challenge as it is an over-delegation of Ministerial power which current caselaw has found to be no longer compatible with the Constitution.
6. The ambiguities and serious drafting errors in sections 7, 8, 9, 10 and 11 of the Bill, in their current form, contain flaws that could potentially also render them vulnerable to challenge before the courts. Sections 7, 8, 9, 10 and 11 could be collectively termed the 'safeguarding provisions' of the Bill. As discussed in the legal briefing, these safeguarding provisions contain ambiguities and errors that arise as a result of significant questions of policy not being addressed in the Bill.
7. There are errors of a more technical nature in all other sections of the Bill.
8. The Bill has no enforceable compliance or offence provisions, which is hugely problematic for this legislation given the statements from both the Irish Supreme Court

³ *Re a Ward of Court (withholding medical treatment) (No 2)* [1996] 2 IR 79, [1995] 2 ILRM 401.

⁴ *Fleming v Ireland* [\[2013\] IESC 19](#), [2013] 2 IR 417.

⁵ *Fleming v Ireland* [\[2013\] IESC 19](#), [2013] 2 IR 417 at para 108.

and the European Court of Human Rights on the utmost importance of safeguards in legislation such as this.

9. Given the gravity of the debate, assisted dying warrants as rigorous an examination as possible. It is an important topic that would benefit from a detailed consideration of the issues by a Citizens' Assembly or from referral to a Special Oireachtas Committee for further consideration. It was noted in the legal briefing that these fora cannot offer a debate on the issue in the immediate term, but there are significant policy questions outstanding, particularly in respect of the 'safeguarding provisions', which are required to be resolved before this Bill could be amended or progressed in any way.

CHAPTER 3 - OBSERVATIONS OF THE JOINT COMMITTEE ON JUSTICE

The Committee firstly acknowledged that Deputy Kenny has invested a significant amount of time and effort in bringing forward this Bill and progressing it to this stage.

Members also acknowledged that Deputy Kenny's motivation in publishing this Bill was to allow people who had been diagnosed with a terminal illness to avoid a prolonged and potentially painful dying process and prevent the need for their loved ones to witness this suffering.

In recognition of this, and the importance of the topic to society, the Committee decided to put out an open call for submissions rather than limit the call to specific stakeholders, thereby affording the Bill the fullest scrutiny possible.

Following a briefing from the OPLA, the Cathaoirleach invited Deputy Kenny to make some opening remarks on the Bill which was followed by contributions and observations from the members of the Committee. A summary of the comments and observations follows.

In his opening remarks, Deputy Kenny outlined his reasons for bringing forward this legislation indicating that it deals with a profound issue, with safeguards being at the crux of this legislation. This topic raises serious moral, ethical and medical considerations and a discussion needs to be had on the implications of this Bill.

Deputy Kenny, in acknowledging that the Bill was not perfect, stated that his fundamental point was that, through the legislative process, the Bill could be amended to address any legal and policy matters to allow the Bill to progress to conclusion. He considered the Bill to be a blank canvas affecting a very broad spectrum of stakeholders who should be given the opportunity to air their views.

He referenced suggestions that the matter might be referred to a Citizen's Assembly for consideration. While he acknowledged that Citizen's Assemblies do provide thorough scrutiny, he believes that the Bill should remain with the Justice Committee. In making this argument, he stated that it was the role of Committees and of Deputies to legislate

and that forwarding this matter to a Citizen's Assembly would be a prevarication and result in consideration of this matter taking more time than is necessary.

He also referenced the possibility of the Bill be referred to a Special or standalone Committee for examination. However, while not ruling this out completely, he argued that it would be imperative that a time-limit be placed on that Committee to undertake its work to avoid any undue delays.

Following Deputy Kenny's remarks, the Cathaoirleach then opened the discussion to the members of the Committee. During the ensuing discussion on the Bill a number of points were made in favour and against the progress of the Bill. The key points, and some general comments are summarised below.

Among the arguments in favour of allowing the Bill progressing were:

- While the legal advice is sound and must be taken seriously, it does not mean that the Bill cannot be improved and still progress to the next stage;
- The topic deserves to have a sufficient level of scrutiny and debate undertaken and that it was the Members' responsibility to consider what the best method of undertaking such scrutiny would be;
- Establishing an Oireachtas Special Committee to undertake detailed consideration of the topic was suggested, as this could provide all stakeholders with an opportunity to express their opinions while affording the topic the level of consideration that it merits;
- The Bill should be discussed by the Joint Committee as this was the most direct route to examine the Bill;
- It is the role of Parliament to progress and debate legislation and that the Committee structure is the best format for this.

Among the arguments against allowing the Bill to progress to the next stage were that:

- The Bill in its current form was simply unworkable, particularly where fundamental elements of the Bill surrounding safeguards were identified as problematic;
- The legal analysis demonstrated that this Bill was not fit for purpose and that new legislation would need to be designed if this topic were to be progressed further through the legislative process;
- It would not be appropriate for the Committee to continue further examination of a Bill or to recommend that it progressed in view of the serious flaws identified and where sections of it may be vulnerable to constitutional challenge;
- The Committee was conscious that the topic contained in the Bill was of such gravity it would benefit from the attention of a standalone Committee to ensure a thorough examination could be undertaken;
- It would not be possible for the Justice Committee to devote significant time to examine a topic of this gravity, nor would it do justice to the topic to have it competing with other items currently on its Work Programme;
- It was questioned whether it is the function of the Justice Committee to salvage and amend a PMB when the Committee has its own work commitments to progress and suggested that this would more likely be a function of the Dáil generally.

General Comments:

- It was argued against proposing that the matter be referred to a Citizen's Assembly as Members considered that Parliament is the appropriate forum for consideration of this matter;
- Concern was expressed that if the matter was sent to an Oireachtas Special Committee, there was a risk that, in reality, progress may be delayed due to the need to establish and populate such a Committee;
- Concern was also expressed regarding the capacity and feasibility of the Justice Committee to dedicate the necessary time and resources to scrutinise the matter

in sufficient detail. It was suggested that, the only way to achieve this would entail considering the matter in a series of carefully timetabled modules over the lifetime of the Committee and this may not be possible.

Before concluding the discussion, the Joint Committee was reminded that, while it is open to the Joint Committee to make recommendations, the specific question on which the Select Committee is to decide is whether the Bill should proceed to Committee Stage.

The Committee noted the contributions and the briefing was concluded.

CHAPTER 4: RECOMMENDATION TO THE DÁIL

Based on its consideration, as outlined above, the Select Committee has determined that the Bill has serious technical issues in several sections, that it may have unintended policy consequences (particularly regarding the lack of sufficient safeguards to protect against undue pressure being put on vulnerable people to avail of assisted dying), that the drafting of several sections of the Bill contain serious flaws that could potentially render them vulnerable to challenge before the courts, and that the gravity of such a topic as assisted dying warrants a more thorough examination which could potentially benefit from detailed consideration by a Special Oireachtas Committee. However, this should be undertaken at the earliest opportunity with a set timeframe within which the Special Committee must report.

Therefore, the Select Committee recommends that the Dying with Dignity Bill 2020 should not proceed to Committee stage but that a Special Oireachtas Committee should be established, at the earliest convenience, to undertake an examination on the topics raised within and which should report within a specified timeframe. In addition, all submissions received by the Justice Committee would be shared with any such Committee.

APPENDICES

APPENDIX 1 – ORDERS OF REFERENCE OF THE COMMITTEE

Standing Orders 94, 95 and 96 – scope of activity and powers of Select Committees and functions of Departmental Select Committees

Scope and context of activities of Select Committees.

94.(1) The Dáil may appoint a Select Committee to consider and, if so permitted, to take evidence upon any Bill, Estimate or matter, and to report its opinion for the information and assistance of the Dáil. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum, and may appoint a date upon which the Committee shall report back to the Dáil.

(2) It shall be an instruction to each Select Committee that—

(a) it 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;

(b) 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;

(c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 125(1)⁶; and

⁶ Retained pending review of the Joint Committee on Public Petitions

(d) it 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—

(i) a member of the Government or a Minister of State, or

(ii) the principal office-holder of a State body within the responsibility of a Government Department or

(iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(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 to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

Functions of Departmental Select Committees.

95. (1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

(a) legislation, policy, governance, expenditure and administration of—

(i) a Government Department, and

(ii) State bodies within the responsibility of such Department, and

(b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

(a) stand referred to the Committee by virtue of these Standing Orders or statute law, or

(b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

(a) for the accountability of the relevant Minister or Minister of State, and

(b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

(a) consents to such consideration, or

(b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—

(a) the Committee Stage of a Bill,

(b) Estimates for Public Services, or

(c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

(a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, 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, or
- (d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings, the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:
 - (i) members of the European Parliament elected from constituencies in Ireland,
 - (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (iii) at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
- (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months

(excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.⁷

⁷ Retained pending review of the Joint Committee on Public Petitions.

Powers of Select Committees.

96. Unless the Dáil shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

(a) minutes of such evidence as was heard in public, and

(b) such evidence in writing as the Committee thinks fit;

(2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;

(3) power to draft recommendations for legislative change and for new legislation;

(4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—

(a) require any Government Department or other instrument-making authority concerned to—

(i) submit a memorandum to the Select Committee explaining the statutory

Instrument, or

(ii) attend a meeting of the Select Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Dáil,

and

(b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss—

(a) policy, or

(b) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially

responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 197;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(a) State body within the responsibility of a Government Department or

(b) non-State body which is partly funded by the State, shall attend meetings of the Select Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil;

and

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under Standing Order 120(4)(a).'

APPENDIX 2 - FRAMEWORK FOR COMMITTEE SCRUTINY OF PMBs

PART A: Policy and Legislative Analysis

The 'policy Issue' and the policy and legislative context

1. Define the problem / the policy issue which the Bill is designed to address; to what extent is it an issue requiring attention? What is the scale of the problem and who is affected? What is the evidence base for the Bill?
2. What is the current policy and legislative context, including are there any proposed Government Bills or general schemes designed to address the issue? Have there been previous attempts to address the issue via legislation?
3. Is there a wider EU/international context?

Implications and implementation of the Bill's proposals

Policy implications / implementation

4. How is the approach taken in the Bill likely to best address the policy issue?
5. What alternative and/or additional policy, legislative and non-legislative approaches were considered, including those proposed by the Government and what, does the evidence suggest, are the differences between and the merits of each?
6. Are there Government-sponsored Bills (or General Schemes) which are related to and/or broadly aim to address the same issue? Are there merits in combining them?
7. What are the specific policy implications of each proposal contained within the Bill (environmental / economic / social / legal)? Has an impact assessment (environmental/ economic /social / legal) been published (by Government or a third party) in respect of each proposal contained within the Bill?
8. Could the Bill, as drafted, have unintended policy consequences, if enacted?
9. Has the Committee taken due consideration of the opinion of the European Central Bank (ECB) on the Bill, if applicable?
10. How would the Bill, if enacted, be implemented?
11. Are there appropriate performance indicators which the Department, or whoever is ultimately charged with implementing the Bill, can use to assess the extent to which it meets its objective? Does it include formal review mechanisms?

Cost evaluation

12. Will there be enforcement or compliance costs?
13. What are the likely financial costs of implementing the proposals in the Bill, and what is the likely overall fiscal impact on the exchequer?

14. Have cost-benefit analyses (CBA) been provided / published (by Government or a third party) in respect of each proposal contained within the Bill? Will benefits /costs impact on some groups / stakeholders more than others?

PART B - Legal Analysis

15. Is the draft PMB compatible with the Constitution (including the 'principles and policies' test)?
16. Is the draft PMB compatible with EU legislation and human rights legislation (ECHR)?
17. Is there ambiguity in the drafting which could lead to the legislation not achieving its objectives and/or to case law down the line?
18. Are there serious drafting deficiencies or technical drafting errors (e.g. incorrect referencing to Acts etc.)?
19. Are there potential unintended legal consequences which may stem from the PMB as drafted?
20. Are appropriate administrative and legal arrangements necessary for compliance and enforcement of the provisions of the Bill included? (e.g. if draft Bill contains a prohibition, whether the necessary criminal sanctions - including the class of fine - are included).