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# **The effect of parliamentary reforms (2011–16) on the Oireachtas committee system**

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## **Abstract**

The literature on parliament identifies many factors which facilitate or impede parliamentary committees in their quest to scrutinise legislation and to oversee and hold government to account, including the formal powers assigned to them, political factors associated with the make-up of parliament, structural factors associated with parliamentary tradition, and the rules and procedure adopted by parliament. This article is concerned with how parliamentary rules and procedure can affect committees. It develops a framework of the procedural variables associated with ‘effective committee systems’ and uses it to assess the Oireachtas committee system prior to and after the reforms introduced by the thirty-first and thirty-second Dáileanna. It finds that many, though not all, of the procedural conditions for a strong committee system have been put in place. However, while changes to procedure can remove obstacles to effective committee systems, other factors – above all, the incentive for politicians to engage with committee work – will ultimately determine whether the reforms truly strengthen parliament.

**Keywords:** Parliamentary procedure, parliamentary reform, Oireachtas committee system, legislature/executive relations

## Introduction

Parliamentary reform – in particular, measures to address the weakness of parliament vis-à-vis the executive – has been high on the agenda during recent general election campaigns and has featured heavily in the programmes for government (2011 and 2016). Many of the proposed reforms are based on the premise that strong parliaments require a strong committee system. While earlier Dáileanna experimented with committee systems and introduced practices and procedures which paved the way for the present system, the Oireachtas committee system as we know it dates from the 1990s. The fundamental features of the committee system introduced by the twenty-seventh and twenty-eighth Dáileanna (1992 and 1997) have remained in place whereby sectoral committees are re-established by each Dáil and Seanad. Their roles include:

- monitoring specific departments and/or policy area;
- playing a formal role in the legislative process (in their Select formats);
- holding government to account in the relevant policy area by scrutinising policy, the administrative system and the estimates; and
- acting as forums for discussion and advice on policy issues.

Sectoral committees work together as Joint Oireachtas Committees and co-exist with Standing Committees, some of which have a long history, most notably the Public Accounts Committee (PAC).

Introducing the new committee system in 1993, then Minister Noel Dempsey, TD, highlighted the ‘potential it gave for each Deputy to influence departmental legislation and spending’ (Dáil Éireann, 1993). Since then, and in particular over the last decade, most parties have advocated a further strengthening of the committee system.

The literature on parliament identifies many factors which facilitate or impede parliamentary committees in their quest to scrutinise legislation and policy, and to oversee and hold government to account, including the formal powers assigned to them, political factors associated with the make-up of parliament, structural factors associated with parliamentary tradition, and the rules and procedure adopted by parliament. This article is concerned with how rules and procedure can affect the performance of committees and, in particular, we focus on the potential for the recently adopted procedural reforms to strengthen committees.

Following a discussion of what we mean by effective committee systems, and of the different factors which affect their strength, we draw on the literature to create a framework of the procedural variables associated with ‘effective’ committee systems. We use this framework to assess the Oireachtas committee system prior to and after the reforms introduced by the thirty-first and thirty-second Dáileanna, drawing conclusions on whether the procedural conditions for a strong committee system have been put in place.

### **What do we mean by an effective committee system?**

Asserting what is ‘effective’ depends not only on the precise functions of parliamentary committees but also on the perspective one takes on how they operate. There are two key perspectives in the literature: a universalist approach, which sees committees as working for parliament; and a partisan approach, which sees them as extensions of the party rivalry seen in the plenary (Cox & McCubbins, 1993, 2004).

A universalist approach sees committees delivering economies of operation by serving as either (i) forums for policy and legislative negotiation between parliamentarians with conflicting goals and interests or (ii) forums which enhance the information and expertise available to parliament on particular policy areas. Committees in the US tend to resemble the first description, as parties are relatively weak and committees are the arena where bargaining over different legislative proposals takes place. In parliamentary democracies, while a certain amount of bargaining over policy may take place in committees, parties are stronger and even powerful committees may be best viewed as forums that enhance parliament’s informational capacity (Mattson & Strom, 2004). The partisan perspective argues that as committees are established and given powers by the majority, and due to the way in which they are appointed and managed, they remain simply the handmaidens of political parties and their leaders (Cox & McCubbins, cited in Mattson & Strom, 2004, p. 96).

In reality, committees in most parliamentary democracies will sometimes function in an inter-party manner and, at other times, in a more non-party, consensus-building manner. And while party loyalty may be stronger than loyalty to committee, the formal aspirations<sup>1</sup> of what parliamentary committees should achieve go beyond the partisan

<sup>1</sup> As outlined in the 2011 programme for government and in the majority of the political parties’ manifesto documents.

perspective described above. We therefore define ‘effective committees’ as committees that deliver for parliament rather than for parties. As such, we take as our starting point that committees are most effective in carrying out their scrutiny and oversight functions when they can operate objectively, independently (of government) and in a cross-party, or at least a non-party, manner, and have the resources and motivation to specialise by developing a subject-related expertise.

### **What factors help committees to be effective in delivering for parliament?**

Based on an analysis of the literature, we argue that the capacity of parliament’s committees to operate independently of government, at least sometimes in a cross-party or non-party manner, is determined by variables which can be categorised into four headings: the formal powers assigned to committees; the external context in which the parliamentary committees operate, which is shaped by parliamentary tradition and history, executive–legislative relations and the party system; parliamentary procedures (as outlined in Standing Orders) affecting the committee’s work and its interaction with the plenary and the government; and the structure and format of committees (including size, resources and number of committees).<sup>2</sup> While this article focuses on the effects of the latter variables, we briefly discuss why the first two sets of variables matter.

The formal powers possessed by parliamentary committees, such as the power to send for persons and papers, and the power to inquire or to initiate legislation, certainly affect their abilities to effectively carry out their roles. Oireachtas committees are considered to be relatively strong in terms of the formal powers assigned to them (Martin, 2010). However, merely possessing a formal power does not imply that a committee system is effective or powerful, and formal powers are tempered by the external environment, the format and structure of committees, and committee procedures. The external context is shaped by the model of parliamentary government (Westminster or consensus), the strength of the party system and of the party leaderships, and the type of government which is most frequently in place. It tends not to change in the short term.

<sup>2</sup> See Appendix 1 for elaboration.

Consensus parliaments, where the agenda is agreed by negotiation and where minority governments prevail, are more conducive to strong oversight by committees. If the agenda is set by the executive (as in most Westminster-style parliaments), parties are strong and cohesive, party leaderships are strong and majority governments prevail, there are limitations on the capacity for committees to conduct independent legislative oversight (Friedberg & Hazan, 2012). However, even within these external constraints, certain procedures can help to ensure that parliamentary committees are effective in Westminster-style parliaments. While the external context tends to be stable in the short term, the dramatic changes to the party system in 2011 and the fragmentation of the party system in the 2016 general election (Gallagher, 2016) suggest that the external context in Ireland may be in transition.

There is a need to disentangle the effect of changes to the external context – the fragmentation of the party system and a minority government (commanding fewer than one-third of the seats) – on the strength of the committee system from the effects of procedural reform. This is addressed in the conclusion to this article.

## **How rules and procedure affect parliamentary committees**

Five aspects of parliamentary procedure in particular, and a number of variables related to structure and format of committees, are considered to shape the behaviour of committees and the extent to which they will perform scrutiny and accountability functions effectively (as per definition above) on behalf of parliament (Table 1).<sup>3</sup>

Below we explain how these internal rules and structures can facilitate or impede the emergence of strong committee systems. The framework is then applied to the Oireachtas committee system prior to and since the reforms applied by the thirty-first and thirty-second Dáileanna.

<sup>3</sup> Drawn from the literature, mainly Mattson & Strom (1995), Doring (1995), Arter (2003), Mattson & Strom (2004), Martin (2010), Mamadouh & Raunio (2003). Other works consulted are referenced throughout the text. Mattson & Strom (1995, 2004) use empirical data to test their hypotheses on procedural factors and the strength of the committee system (which they measure in terms of legislative output).

**Table 1: Procedures and structures affecting effectiveness of committee systems**

<i>Procedure</i>
1. How committee chairs are appointed
2. How ordinary members are appointed to committees
3. The ordering of the legislative process, i.e. when are bills assigned to committees?
4. The time available for a committee to consider matters before it, or referred to it
5. How and if government and/or parliament must respond to a committee report
6. Structure and format of committees
Procedure regarding the size, number and format of committees:
• How many committees, in particular subject-related committees, are there?
• What size are committees (i.e. how many members sit on a committee)?
• Do committees mostly shadow government departments?
How are committees resourced?

**Appointment and removal of committee chairs**

Parliamentary procedure around the appointment and removal of committee chairs shapes and affects their behaviour and incentive structure. Two procedures in particular affect the approach that will be taken by the chair (Martin, 2010; Strom, 1998):

- i. How committee chairmanships are allocated amongst the different parliamentary groupings/parties;
- ii. How individual members are in turn elected or appointed to these chairmanships.

***How are committee chairmanships allocated?***

Chairmanships tend to be allocated in one of two ways. One, they are simply allocated to the majority party, or parties. In this scenario the leadership of the majority can more easily monitor committees and a minister’s control over the relevant committee is enhanced (Russell & Benton, 2011, p. 12). Alternatively, committee chairs are allocated proportionately, reflecting party or group representation in the chamber (irrespective of whether any party holds a majority). In this

scenario, a proportion of committees will have opposition party chairs who tend to be more independent from the minister in the setting of the committee's agenda and approach to legislative and financial scrutiny.

***How are individuals appointed to the pre-allocated chairmanships?***

Aside from how chairmanships are allocated amongst parties and groups in parliament, the chairs are selected in different ways. For example, chairs may be appointed by the House, by the committee itself, or by the speaker of a parliament or some other body. Political scientists argue that if the chairs of parliamentary committees are formally and informally answerable to parliament, and not to parties, committees will tend to be more objective (and more independent from ministers) in the agenda that they set for policy oversight and in the manner in which they carry out their legislative and budgetary/value for money scrutiny roles. There are two main models of appointment/selection, the second of which is quite unusual:

- i. Party leaderships control the selection of chairs through the whips: In this case chairs are elected by their committee but the election is a formality as it is the result of negotiations between party whips. This effectively leaves party leaderships in control of selecting the chairs for all committees. Where the allocation of chairmanships is proportionate, the committee will be restricted to elect a member from the party/group to which the committee chairmanship has been allocated.
- ii. Chairs are elected by secret ballot of the full chamber (following the prior allocation of chairs to parties on the basis of proportionality):<sup>4</sup> Under this procedure, chairs are formally answerable to the chamber, rather than to the party leader who appointed him/her.

***Once appointed, how may a member be removed from the position of chair?***

While in the vast majority of cases party leaders have considerable control over the assignment of individuals to committee chairs, the power that this gives them over the behaviour of a chair depends also on the procedure for his/her removal. If chairs can be removed at will

<sup>4</sup> Procedures for the election are set out in Standing Orders of the UK House of Commons, Standing Order 122(B).

by party leaders, the potential that he/she will lead the committee to work on behalf of parliament reduces; if, on the other hand, there are procedural obstacles to removing a chair once appointed, his/her independence may be enhanced.

In the UK House of Commons, there are procedural obstacles to the removal of a committee chair by a party leader if, for example, he/she does not toe the party line. Under UK House of Commons Standing Orders (122(C)), the chair of a select committee may only be removed where (a) he/she ceases to be a Member of the House, (b) he/she has given written notice to the speaker stating a wish to resign, or (c) the committee reports a vote of no confidence in the chair to the House. Such a no-confidence vote requires the support of a majority of the membership of the committee *and* at least two members from the largest party and one member from another party.<sup>5</sup> While this does not completely remove power from party or group leaders to remove a chair allocated to its chairmanship, it does reduce it.

### **Appointment of ordinary members to committees**

The literature suggests that the less control the party/group leaderships have over the appointment and dismissal, the more likely members are to be motivated to independently carry out the functions of parliamentary committees in a non-party way. Why is this? Firstly, when party leaderships control the appointment to and dismissal from committee seats, members are likely to see committee work as purely an extension of the party's work (rather than, for example, using it as an opportunity to influence their party's policy on the issue). Party loyalty tends to be rewarded more than independent scrutiny of legislation although the two are not mutually exclusive. This makes committees less independent or less cross-party in focus (Friedberg & Hazan, 2012, p. 16). Secondly, when a party has full control over appointments and dismissal, the membership of a committee can be unstable and this reduces its capacity to specialise. The length of time a member engages with committees is found to be critical to a committee's expertise (McKay & Johnson, 2010; Strom, 1998). It has been argued that instability in membership of the newly created, powerful committees of the Scottish parliament made the committees far less effective, independent actors than the architects of the parliament had anticipated (Arter, 2003, p. 104). Mamadouh &

<sup>5</sup> See UK House of Commons, Standing Order 122(C).



Raunio (2003) came to a similar conclusion when examining the European Parliament.

## **Legislative process: Role of committees**

### ***What is the role of committees in the formal legislative process?***

Most analysts of the legislative process agree that if a published bill is referred to committee for scrutiny before parliament has debated and voted on its general principles, the impact of committees on the shape of the legislation will be greater. There is more room for compromise and consensus before party positions are established in such a vote (Martin, 2010, p. 288; Mattson & Strom, 2004). It is also argued that there are benefits in terms of public policy and legislative outcomes to the use of committees for examining bills before they become settled policy (McKenna, 2011; Strom, 1998).

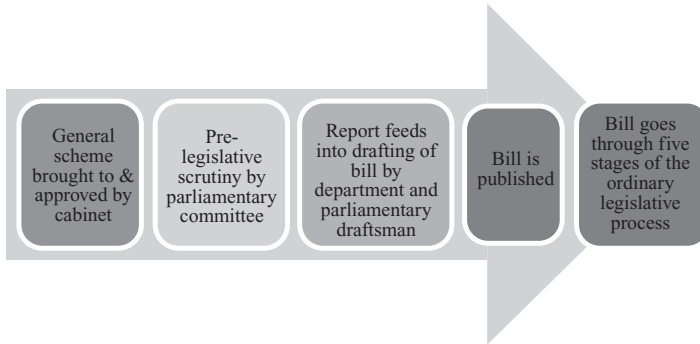
In most parliaments in Europe this is how the legislative process works. Committees scrutinise bills before the plenary debate on the principles of the bill; once published a bill is directed first to the specialist committee, which examines the bill – both the policy intent and the details of the bill – and produces a report for parliament on whether or not the bill should pass. Reports tend to examine both the policy behind the bill and the text of the bill, they may involve extensive consultation with experts and stakeholders and, in some cases, the committee may rewrite sections of the bill. In New Zealand it is also the case that most bills are first scrutinised by committee. There, procedural rules determine that the House decides in a first reading, which is before a debate on the general principles, if the bill merits prior consideration by committee. Following this, the relevant committee examines the bill thoroughly over a period of up to six months, including taking submissions and evidence and recommending amendments (McKenna, 2011, p. 187). It reports back to the House with a recommendation on whether the bill should pass as is or pass with amendments, with policy background explaining why.

### ***Pre-legislative scrutiny by committee***

If committees scrutinise draft bills before they come before parliament in published format (i.e. while they are ‘general schemes of bills’ or ‘heads of a bill’), there are more opportunities for cross-party consensus and independent scrutiny. This scrutiny process is known as ‘pre-legislative’ scrutiny and it has been observed that pre-legislative scrutiny, which is effectively *ex ante* (beforehand) scrutiny of a

legislative proposal, benefits the quality of legislation (McKay & Johnson, 2010, p. 463). The process is outlined in Figure 1.

**Figure 1: Pre-legislative scrutiny**



While pre-legislative scrutiny by parliament is not widely practised in European parliaments, other procedures and practices – transparent public consultations on draft bills and a more substantive role for committees in the formal legislative process (described above) – arguably ameliorate the need, or perhaps substitute for it (Oireachtas Library and Research Service, 2014).

### **Timing: Extent of committees' control over time**

Most literature on parliamentary procedure suggests that committees perform their scrutiny roles more effectively when they control their own agendas (Friedberg & Hazan, 2012, p. 17). Regardless of its formal powers or its role in the legislative process, a committee that is given less than a day, for example, to consider a legislative proposal, whether in draft format or in the form of a bill, will be less effective than one given notice and three months to prepare. The House of Commons Liaison Committee (2013) and the House of Lords Select Committee on the Constitution (2008) found obstacles to the effective practice of pre-legislative scrutiny related to the legislative timetable which is controlled by the executive: the late publication of draft bills, unreasonable deadlines for reporting, unavailability or lateness of key supporting documentation. A committee's control over its own timetable can range from practically no control (the plenary body can set deadlines for the committee and can recall business) to almost full control (committees set their own timetables and the plenary assembly cannot recall business) (Doring, 1995).

Parliamentary procedure can be drafted to give committees some control over their agenda without fully removing the majority's control (bearing in mind that the executive usually tends to control the majority). For example, parliamentary procedure can set a minimum length of time between stages in the legislative process.

In Denmark, parliament's Standing Orders specify that a thirty-day period is a *minimum* time for completing all three reading stages of a bill and that the third reading may not take place earlier than twelve weekdays after the bill has been adopted at the second reading. While ideally parliament would have more time, these minimum thresholds at least protect committees from excessive use of the guillotine.

In the German Bundestag, committees themselves determine the deadline for the scrutiny of legislation. Ten weeks after a bill has been referred to it, the plenary may ask the committee to report on its progress. The UK House of Commons Liaison Committee (2010) argued that twelve weeks as a bare minimum should be allocated by the government to pre-legislative scrutiny. The coalition government in the UK (2010–15) committed to a three-month minimum time period for pre-legislative scrutiny (House of Commons Library, 2015).

### **Must government respond to all committee reports?**

Where government is required to respond to the reports of committees, the executive's accountability to parliament is enhanced. Russell & Benton (2011, p. 86) cite one UK civil servant who said that committee reports 'create 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.' If parliamentary procedure obliges the government to respond, it can ensure government's engagement with the committee's recommendations and may, as such, create incentives for the committee to fully engage with the scrutiny processes.

In the UK, convention<sup>6</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 such a report is debated in parliament (Russell & Benton, 2011, p. 11). 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.

<sup>6</sup> Referred to as the Osmotherly Rules.

## Structure and format of committees

### *Size and number of committees*

When members sit on too many committees, the time available to them to develop expertise is limited, absenteeism tends to be more frequent and generally the quality of scrutiny decreases as resources are spread too thinly (Arter, 2003; Strom, 1998). One way of avoiding multiple membership is to include in procedure a restriction on the number of committees on which a member can serve. In Norway a specialised committee system exists in which each legislator serves on one, and only one, committee. There are 165 seats in the 13 permanent committees and 165 members to occupy them (European Centre for Parliamentary Research and Documentation, 2008; Strom, 1998). In Finland the situation is more like it is in the Oireachtas and members tend to sit on two committees. The only restriction in Finland is that, unlike the case in the Oireachtas, MPs serving as ministers *may not* also be on committees.

The literature suggests striking a balance between reducing the incidence of multiple membership while at the same time having enough committees to ensure that all ministries are scrutinised, and by committees with a sufficient number of members to be effective. There are drawbacks to very small committees with, for example, seven members, as is the case in the Scottish parliament (Arter, 2003). Firstly, while the incentive to develop expertise may exist, there is a question as to the capacity of such small committees to develop expertise, especially if they are poorly resourced. Further, committees which are small in size but which have considerable powers (e.g. to initiate and rewrite legislation) can give a disproportionate influence to sectional interests (Strom, 1998, p. 35). The Scottish parliament's Standards, Procedure and Public Appointments Committee reviewed its committee system in 2016 and recommended retaining its small, seven-member committees while encouraging the Bureau (Business Committee) to minimise turnover in committee membership (Scottish Parliament, 2016).

### *Resources, including resources to support legislative and financial scrutiny*

Committees which have dedicated staff and, perhaps, a budget to commission further expert research when required have greater capacity to use their formal powers and the procedural advantages at their disposal to effectively scrutinise proposed legislation and hold government to account. Further, where processes are in place to

ensure the timely delivery of accurate information from government departments, a committee's capacity to undertake legislative scrutiny, financial scrutiny and oversight is strengthened.

### **Effect of recent parliamentary reforms on the Oireachtas committee system**

We apply the framework outlined above to assess whether, and to what extent, the reforms adopted by the thirty-first and thirty-second Dáil have removed procedural and structural obstacles to the emergence of a strong Oireachtas committee system. The result, which is displayed in Table 2, shows that while few of the procedures associated with effective committee systems were in place prior to 2011, Dáil reform from 2011 to 2016 has included a number, though not all, of these features. Each procedure and the ways in which reforms have changed them are discussed in detail under each of the six headings below.

### **Appointment and removal of committee chairs of Oireachtas committees**

Until 2016, committee chairmanships in the Dáil were allocated to the majority and never allocated on a proportional basis, although some sharing of committee assignments existed and the chair of the PAC came from the opposition. In January 2016, in an effort to strengthen the legislature in its relationship with the executive, the Fine Gael/Labour coalition brought amendments to Standing Orders (which were approved by the Dáil) to provide for the proportionate allocation of chairmanships using the d'Hondt system. This Standing Order was operated for the first time in 2016 and, as a result, committee chairmanships were allocated across parties and groups<sup>7</sup> in the following way (Table 3). There was a two-step process, which first used the d'Hondt formula to allocate the nineteen chairmanships to parties/groups in sequential order (1 to 19); following this, parties/groups selected one of the nineteen committees.<sup>8</sup>

<sup>7</sup> Reforms agreed by the thirty-second Dáil removed from Standing Orders the rule that there could only be one technical group. Under reforms, there is no limit on the number of 'groups' and groups which must be composed of five members. The way in which d'Hondt was applied meant that parties/groups with seven seats were allocated a chairmanship.

<sup>8</sup> For more detail on how the d'Hondt formula was applied, see Oireachtas Library and Research Service (2016).

Table 2: Presence of procedures before and since reforms (2011–16)

<i>Procedure associated with 'effective' committee systems</i>		<i>Prior to reforms</i>	<i>Since reforms</i>
1.	Appointment and removal of committee chairs		
	Chair positions are allocated proportionately	✗	✓
	Party leaders do not control appointment of chair to allocated chairmanship	✗	✗
	Once appointed, chairs may not be removed by party/group leaders	✓	✓
2.	How ordinary members are appointed to committees		
	Ordinary members are appointed by a Committee of Selection and/or by a vote in the House rather than by party leaders	✗	✓
3.	Role of committees in the legislative process		
	Committees scrutinise, report on and may amend/rewrite bill before a yes/no vote on the principles of a bill in plenary	✗	✗
	Drafts (general schemes) of bills must be published and subject to pre-legislative scrutiny by committee	✗	✓
	Where bills are not subject to pre-legislative scrutiny, the ordering of the legislative process is changed (so a committee receives it prior to plenary vote on principles)	✗	✗/✓ (only partially and only for PMBs)
4.	Timing: Extent of committees' control over time		
	Committee fully controls its own timetable/agenda	✗	✗
	Committee at least partly controls its own agenda via minimum length of time between stages of the legislative process set out in rules of procedure	✗	✗ (but sub-committee report aspires to minimum amount of time between stages)

**Table 2: Presence of procedures before and since reforms (2011–16) (contd.)**

<i>Procedure associated with 'effective' committee systems</i>		<i>Prior to reforms</i>	<i>Since reforms</i>
Committee controls its agenda for pre-legislative scrutiny, i.e. minimum length of time for pre-legislative scrutiny agreed/set out in procedure		✗	✓ (protocol (agreed 2014) gives committees up to 8 weeks; may require renewal)
5. Government must respond to committee reports			
Government must issue formal response to committee report		✗	✗
Committee has (relatively unrestricted) right to have its report debated in plenary		✗	✓ (in private members' time)
6. Structure and size of committees (including policy support/resources)			
Committees shadow a government department		(Generally but not from 2011 to 2016)	✓
Size of a committee means that members rarely belong to more than one policy-related committee (allows specialisation)		✗	✓ (this was the intention behind the reforms)
Procedure allows members to focus on committee work		✗	✓ (e.g. committees no longer meet at same time as plenary)
Size is sufficiently large to ensure committee is not 'captured' by special interests		✓	✓ (with senators, size is 11)
Resources – in particular, objective policy advice – is available to committees to undertake scrutiny work <sup>1</sup>			

<sup>1</sup> Resources have been enhanced since 2011; however, so has the workload of committees, so it is not possible to assess if resources are at level to enhance committees' effectiveness at this juncture. In particular, the creation of an Independent Parliamentary Budget Office has the potential to enhance the scrutiny capacity of committees.

**Table 3: Allocation of committee chairs following application of d'Hondt formula**

<i>Party/group to which chair positions were allocated (and order of allocation)</i>	<i>Committee the party/group chose to chair</i>
1. Fine Gael	Budget Committee
2. Fianna Fáil	PAC
3. Fine Gael	Health
4. Sinn Féin	Justice
5. Fianna Fáil	Finance
6. Fine Gael	Housing
7. Fianna Fáil	Education
8. Fine Gael	Agriculture
9. Sinn Féin	Regional and Rural Development (and Arts, Heritage and the Gaeltacht)
10. Fianna Fáil	Jobs and Enterprise
11. Fine Gael	Transport, Tourism and Sport
12. Fianna Fáil	Social Protection
13. Fine Gael	Communications, Climate Action and Environment
14. Sinn Féin	Implementation of the Good Friday Agreement
15. Fianna Fáil	Foreign Affairs and Defence
16. Fine Gael	Children and Youth Affairs
17. Tech Group 3 (Rural Independent Group)	EU Affairs
18. Labour	Petitions
19. Tech Group 1 (Independents for Change)	Irish Language

This procedure should enhance the effectiveness of committees (under our definition above), reducing the majority's (which is generally the government's) control over the agenda. This proportionate allocation of chairs reflects the practice in most European parliaments and also in New Zealand, Scotland and Northern Ireland. Since 2010 this is also the practice for the UK House of Commons Select Committees.

Once the chairmanships were allocated to parties and groups using d'Hondt, it was necessary to decide how to assign a member to the chairmanship. There were two possibilities: the party/group to which the chairmanship was allocated could put forward a number of candidates, allowing the committee to elect the chair, or the party or



group would simply allocate the chairmanship to one of its deputies. A third possibility – that chairs be elected by secret ballot of the House – was not considered.

The second option was adopted, which gives party/group leaders greater control; once allocated the position, the parties or groups *choose* a chair and appoint him/her to the position (Standing Order 93(2)). Before the introduction of proportionate allocation (d'Hondt), chairs were elected by the committees themselves, although this election tended to be a formality as the government usually controlled committees. It would be possible to apply d'Hondt while simultaneously retaining the committee's election of chair (i.e. the second option) by allowing the allocated party to present a committee with a number of options for chair. This may reduce the control of the party leaders over the process, albeit marginally. However, it may also be impractical; for example, in a number of cases the party/group to which the chair has been allocated has only one seat on the committee (e.g. Labour Party, Rural Independents Group and Independents for Change).

The possible weakness associated with this procedure is in part addressed by the procedure for the removal of chairs; while parties/groups control the choice of chair, parties and groups may not easily dismiss chairs if, for example, they are not toeing the party line or if they lose the party whip. Under Standing Order 145(1) and 145(3) (2016), the matter of appointing and removing a member (including a chair) from a committee is dealt with by Order;<sup>9</sup> and such an Order requires the approval of the Dáil.

### **Appointment of ordinary members to Oireachtas committees**

Regarding the appointment of ordinary members, the Business Committee meets as a committee of selection, which is responsible for allocating deputies to each committee. Parties and groups are awarded positions on committees broadly in proportion to their size.<sup>10</sup> This effectively leaves the allocation of deputies to committee seats in the

<sup>9</sup> Under Standing Order 145, all matters for decision are brought to the Dáil by motion for a simple Resolution or Order and, under 145(3), the matter of appointing and removing a member from a committee is dealt with by Order.

<sup>10</sup> The Business Committee (see article by Lynch et al. in this issue) is cross-party and it operates on the basis of consensus, although ultimately its decisions may be put to a vote in the chamber in the event of disagreement.

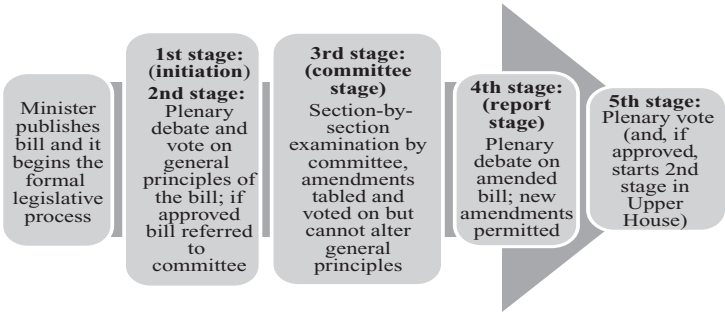
hands of party and group leaders. However, by having a committee of selection it introduces more transparency to the process and encourages consensus amongst all parties/groups as to the personnel allocated to different committees.

The make-up of the current Dáil somewhat obscures the effect of these procedural reforms, which have removed, or at least nuanced, the power of a majority (including any majority government in the future) to control a committee’s agenda. Further, while the reforms have not substantially reduced the power of party and group leaders in the appointment of their members to their allocated chairmanships and in the appointment of ordinary members to a committee, their power is nuanced by the fact that, once appointed, (a) a chair’s removal requires the support of a majority of the Dáil and (b) the same goes for ordinary members of a committee.

**Legislative process: Role of committees**

Unlike the parliaments described above, in the Houses of the Oireachtas and in the UK House of Commons, the general principles (including the policy intent) of the bill have already been debated and agreed (at the second-stage reading) before the committee is consulted on the bill. The reforms of the thirty-first and thirty-second Dáil have not addressed this weakness in the formal legislative process; in the thirty-second Dáil, bills still go first to plenary and do not undergo detailed scrutiny by committee until after the general principles have been approved by the Dáil. Committees do not consult, hear evidence on bills or deliberate or report to the House on whether the bill should pass; committees undertake line-by-line scrutiny after second stage (Figure 2).

**Figure 2: Formal legislative process**



However, with the introduction of pre-legislative scrutiny, the Dáil and Seanad have the potential to significantly address this weakness in the legislative process and to enhance the effectiveness of parliament's committees. Pre-legislative scrutiny, which was introduced to the Dáil partially in 2011, and more fully in 2013, was retained in the reforms agreed by the thirty-second Dáil.<sup>11</sup> Under Standing Orders (2016), all draft government legislation is published following the approval of the general scheme by cabinet. The general scheme is referred to the relevant committee, which decides whether or not to conduct pre-legislative scrutiny. Figure 2 illustrates the changes which pre-legislative scrutiny has introduced to the process. As a result, in the thirty-first Dáil, committees undertook fifty-two cases of pre-legislative scrutiny, resulting in forty-five reports and six letters sent to the relevant minister.

The literature suggests that pre-legislative scrutiny will enhance the effectiveness of parliament's committees if a number of conditions are met (Oireachtas Library and Research Service, 2014):

- government is required to respond to a committee's report on a draft bill and to explain why it is or is not taking its recommendations on board;
- there is a set procedure in place as to the goal of pre-legislative scrutiny and the manner in which it is carried out and reported on, possibly through a coordinating role for a committee of all chairs;
- criteria or guidelines are drawn up as to which bills ought not to be subjected to this process (e.g. short, technical bills) so as to avoid clogging up committees' agendas (Hunt, 2011);
- there is adequate time and notice for committees to scrutinise draft bills (discussed below).

<sup>11</sup> In 2011 cabinet procedure was amended to allow ministers to publish the general schemes of bills once the scheme was approved by cabinet. Ministers could then decide whether or not to refer the general scheme to an Oireachtas committee. In November 2013, following a commitment to strengthen the Lower House's capacity to scrutinise legislation, made during the Seanad referendum campaign, Standing Orders were changed to require ministers, except in exceptional circumstances, to refer general schemes to Oireachtas committees for pre-legislative scrutiny. Pre-legislative scrutiny was formalised as part of the legislative process via a Sessional Order (an amendment to Standing Orders for the duration of that Dáil only). In 2016 the sub-committee recommended retaining this and amending Standing Orders permanently. This is reflected in the most up-to-date Consolidated Dáil Standing Orders (2017).

To what extent do these conditions underpin pre-legislative scrutiny in the Dáil?

Under newly agreed Standing Orders (November 2016), a committee's pre-legislative report is sent to the minister, who has no formal obligation to respond to the committee (although some ministers have met with the committee to discuss the report). The only procedure to ensure that a committee's pre-legislative scrutiny report feeds into the formal legislative process is a slot allocated by Standing Orders to the chair of the committee at the second-stage debate on the bill (an opportunity to discuss the bill in the context of the committee's pre-legislative scrutiny). While the Sub-Committee on Dáil Reform agreed that the government should have to formally respond to a committee's pre-legislative scrutiny report, it was agreed to implement this via guidelines from the working group of committee chairs rather than in Standing Orders.

While there are no official guidelines about the type of bill that does not require pre-legislative scrutiny, the committee to which a general scheme is referred has the power to decide whether to undertake scrutiny, and the depth and breadth of that scrutiny exercise.

Russell et al. (2013, pp. 44–5) suggest that legislative scrutiny would be more effective if parliamentary rules stated that where bills are not scrutinised through pre-legislative scrutiny, the order of the legislative process is amended, i.e. the bill is first considered by a committee prior to the vote in the plenary (in line with other parliaments). While this idea may have been floated during the sub-committee's discussions, it was agreed that all government legislation should be made available for pre-legislative scrutiny (i.e. published as general schemes) and, as such, this was perhaps seen as unnecessary. However, this weakness in the legislative process was exposed in the context of private members' bills (PMBs).

Given the make-up of the thirty-second Dáil, and the additional time available for private members' business, the potential for PMBs to be heard and to be approved at second stage has dramatically increased. However, for a variety of reasons related to the disparity in resources available to private members and government ministers for the preparation of bills, and the need to avoid clogging up committees' agendas, the Sub-Committee on Dáil Reform recommended that PMBs not be required to undergo pre-legislative scrutiny. This left a situation whereby PMBs, which are not drafted by the Office of the Parliamentary Draftsman and generally have far less policy support

behind them than that of government bills, were passing second stage with less scrutiny than government bills (which are all supposed to have undergone pre-legislative scrutiny).

To deal with this situation – and with the possibility that the Houses might pass poorly drafted legislation and/or legislation that is not fully worked out because parliamentary procedure did not create opportunities for the proper scrutiny of PMBs – Standing Order 141 was agreed by the Dáil in September 2016.

Under Standing Order 141, should a PMB pass its second reading it shall be referred to the relevant select committee which ‘shall undertake detailed scrutiny of the provisions... having regard to guidelines agreed by the Working Group of Committee Chairmen, and shall report thereon to the Dáil prior to Committee Stage’. It also provides that a committee may decide that detailed scrutiny of a particular bill is not required. Standing Order 141(3) permits committees to undertake this scrutiny as a joint committee.

This procedure closely resembles the recommendation of Russell et al. (2013) referred to above; it introduces an additional scrutiny stage – an opportunity for committees to scrutinise the policy intent and the bill itself – after a PMB has been approved at second stage but before the formal committee stage. This allows PMBs with sufficient political support to receive in-depth scrutiny, while it does not clog up the agenda of committees with PMBs unlikely to have enough political support to pass second stage.

Up until 5 December 2016, twenty-two PMBs had passed the second stage of the Dáil, of which five had a deferred date for passing second stage and seventeen were either awaiting further scrutiny by committee or awaiting a decision by the committee as to whether scrutiny would take place.<sup>12</sup> While the approach taken to this scrutiny process has not yet been finalised, it is expected that it will resemble the process for undertaking pre-legislative scrutiny and that it will be possible for a committee to recommend to the Dáil that the PMB proceeds no further (with explanations).

Historically, the agenda in the Dáil has almost entirely been set by the executive. Prior to the most recent Dáil reforms (thirty-second Dáil), the Taoiseach controlled the Dáil’s plenary and committee agenda under Standing Orders and he/she announced the order of business each day. Further, in spite of the 2011–16 government’s intention to restrict the use of ‘allocation of time orders’ (the

<sup>12</sup> Information provided to the author by officials in the Houses of the Oireachtas.

‘guillotine’), the length of time available for plenary and committee scrutiny of legislation has regularly been restricted for decades. In an effort to reduce the use of the guillotine, the Sub-Committee on Dáil Reform recommended that its use be approved by the Business Committee (May 2016). Committees still report back to the plenary on bills according to deadlines set by the plenary.

In the case of pre-legislative scrutiny a protocol between the Houses of the Oireachtas Service and the Chief Whip’s Office in 2014 gave committees a degree of control or at least certainty about the time available for scrutiny. The protocol set out that committees should have at least eight weeks to undertake pre-legislative scrutiny before the minister and his/her department moved forward to draft the legislation more fully.

### **Timing: Extent of Oireachtas committees’ control over time**

Given that the majority (which has tended to be controlled by the executive) has for a long time controlled the agenda, including the deadlines by which committees report back to the plenary, it is not surprising that the Irish parliament has tended to have far less time available for the scrutiny of legislation than others. Mattson & Strom (2004, p. 106), in their analysis of 18 parliaments, found the average duration of committee deliberation of a bill was 113 days (i.e. time between referral to committee and committee report to plenary). McKenna (2011) found that in 2008 in Ireland the average time between referral and completion of consideration was 19 days.

The final report of the Oireachtas Sub-Committee on Dáil Reform identified time as an issue from two different perspectives. On the one hand, the Business Committee aims to programme legislation to end the use of the guillotine and to provide certainty in way of sufficient time between stages. While it was not incorporated into Standing Orders, it was agreed that there should be *at least* two weeks between stages of the ordinary legislative process. On the other hand, the sub-committee was keen to ensure that bills do not languish on the order paper (e.g. recommending that there should be no more than ten weeks between second-stage and the commencement of committee stage in the legislative process) (2016, p. 8). The programming of bills is at an early stage and, as outlined above, while minimum and maximum times between stages have been recommended as principles, they have not been incorporated into Standing Orders.

## **How must government respond to Oireachtas committees' reports?**

As discussed already, Dáil Standing Orders do not require government to formally respond to a committee report (whether that report be on the subject of pre-legislative scrutiny or another policy-related investigation). However, two procedures may encourage the executive's engagement with committee reports (beyond the political incentives to engage). Firstly, there is now a biweekly slot on a Thursday evening for the debate of committee reports during private members' time,<sup>13</sup> and ministers must partake in this debate; secondly, a slot during the second-stage debate on a bill is reserved for the chair of the committee which undertook pre-legislative scrutiny on the bill. Further, a committee may request that the minister appear before it to discuss the government's reaction to the contents of any report, including those on the pre-legislative scrutiny of general schemes.

## **Structure and format of Oireachtas committees**

### *Size and number of committees*

The report of the Sub-Committee on Dáil Reform (2016) identified weaknesses in the committee structure of the thirty-first Dáil; this had deviated from the principle of a committee shadowing a government department, leaving some committees shadowing three departments and introducing many large committees. This led to many cases of multiple membership and may have prevented members from specialisation.

The sub-committee advocated a structure which is more likely to encourage specialisation and, as such, the Dáil appointed committees which shadow one or, in a few cases, two departments, and committees which are small in size (seven TDs). The reduction in the size of each committee to seven members has reduced the incidences of members serving on more than one permanent, policy-focused (sectoral)

<sup>13</sup> Under the newly revised Standing Orders (November 2016), on Thursdays, immediately following topical issues, the second stage of a bill initiated by a private member or, on alternate weeks, a debate on a committee report, either of which having been selected by the Business Committee pursuant to Standing Orders 91 and 140A for consideration, are debated for not more than two hours. Under Standing Order 91, a committee, on issuing report, may request (by motion) that it is debated in the Dáil and/or the committee chair may make a request to the Business Committee that the report be debated. The Business Committee selects the committee reports for debate every second Thursday.

committee and, as such, has increased the opportunities for members to specialise. The possible drawback of small committees is reduced by the bicameral system, as joint committees (which undertake the bulk of scrutiny, e.g. pre-legislative scrutiny) have eleven members (four senators, seven TDs).

However, the advantages of small committees may have been offset by the establishment of a greater number of committees. This has largely been caused by political pressure to create more temporary committees to deal with complex policy issues on which some consensus is required (e.g. Committee on the Future of Health, Committee on Water Charges, Committee on Housing and Homelessness).

### ***Resources (to support legislative and financial scrutiny)***

In the Houses of the Oireachtas, the resources available to committees were enhanced over the duration of the thirty-first Dáil, primarily through the appointment of policy advisers to each committee (Houses of the Oireachtas Commission, 2016). This is in addition to policy research conducted on committees' requests by the Oireachtas Library and Research Service (since 2009).

The thirty-second Dáil has approved enhanced resources in support of the drafting and scrutiny of PMBs and the establishment of an Independent Parliamentary Budget Office. Procedures to ensure adequate, accurate and timely information on budgetary matters from government departments to the new Committee on Budgetary Scrutiny have been identified as necessary to strengthen parliament's capacity to undertake financial scrutiny.

## **Conclusion**

The framework has aimed to highlight the potential effect of procedural reforms on the performance of committees. Table 2 clearly demonstrates that some procedures predicted to facilitate the emergence of a more effective parliamentary committee system have been introduced by the recent reforms. Of particular note are the procedures for selecting committee chairs, the introduction of pre-legislative scrutiny and the greater consideration given to ensure that time is available for parliamentary scrutiny.

Yet the formal legislative process remains weak in that bills do not undergo detailed scrutiny by committee prior to the plenary's approval of their general principles. While the weaknesses associated with this



ordering of the legislative process may be reduced by pre-legislative scrutiny in the case of government bills, and by the new scrutiny phase (Standing Order 141) for PMBs that have passed second stage, the sequencing is not considered to be optimal.

Regarding time, while the executive's use of the guillotine must now be approved by the Business Committee, and the sub-committee has recommended that the Business Committee ensures a minimum time (two weeks) between stages, minimum times have not been incorporated into Standing Orders.

On the structure and format of the committees of the thirty-second Dáil, many features associated with effective committee systems were adopted, allowing members to specialise and even schedule plenary and committee meetings so they do not clash. However, the pressure to set up one-off additional committees may reduce the positive effect of these changes by increasing the incidences of multiple membership (i.e. members on more than one sectoral committee). Further, simple issues related to the lack of available physical space to hold multiple committee meetings simultaneously may present obstacles to fully operating this reform.

To truly gauge the significance of procedural reforms to the strength of the Oireachtas committee system it is important to disentangle their potential effect on the behaviour of committees from the effect of the unusual make-up of the thirty-second Dáil (the small minority government).

By way of example, the government is in a far weaker position to control a committee's agenda in the thirty-second Dáil than in previous Dáileanna; however, this is purely because the executive does not hold a majority and it is not the result of procedural change. On the other hand, regardless of the make-up of the Dáil, procedural reform could enhance a committee's control over its agenda if Standing Orders were amended to introduce minimum time frames for the scrutiny of legislation by committees.

Taking another example, the introduction of pre-legislative scrutiny and the changes to how committees scrutinise PMBs (which have passed second stage) are changes to procedure which facilitate more effective parliamentary committees (according to our definition) regardless of the make-up of future Dáileanna. This is the case in spite of the fact that the latter was a response to the make-up of the current Dáil.

Finally, it is important to bear in mind that while factors internal to parliament's organisation, such as procedure and structure, can create

the conditions for the emergence of effective committee systems, other factors outside of the control of procedure are always at play. And above all, effective committee systems require that members see an incentive and electoral reward from committee work. As noted by Martin (2012, p. 164), ‘perhaps the greatest barrier to an enhanced committee system is the inability of electorally conscious incumbents to dedicate appropriate time and resources to committee work at the expense of electorally necessary constituency work.’

### **Appendix 1: Factors determining the effectiveness of parliamentary committees**

<i>Factors determining effectiveness of parliamentary committees</i>		<i>Variables</i>
External context	Parliamentary model Executive–legislature relations Party system Type of government most frequently in place	
Formal powers	Power to initiate legislation Revision of bills Control of committee’s timetable Power to set its own agenda in terms of policy matters and inquiries Power of committee to amend government’s expenditure proposals and present amended version in a report to the house Power of committee to amend the government’s revenue-raising proposals (budget) and to present an amended version in a report to the house Information acquisition – hearings, documents, power to send for persons, paper or records (to support its work in all of its main functions) Right to approve appointments to the boards of the government’s administrative agents	
Structure and format	Number of committees Size of committees (i.e. number of members on each committee) Multiple membership (i.e. are members on more than one committee?) Scope of committee’s jurisdiction Active role for a committee that co-ordinates the work of all committees?	

**Appendix 1: Factors determining the effectiveness of parliamentary committees (contd.)**

<i>Factors determining effectiveness of parliamentary committees</i>		<i>Variables</i>
Structure and format (contd.)		Resources for committees (eg. how well resourced is the committee secretariat? Is there a scrutiny unit supporting committees?)
Procedure		How are members appointed to committees? Chair selection and allocation (i.e. who controls the allocation of chair positions?) Timing: When is committee stage of legislative process? Timing: Is pre-legislative scrutiny part of the legislative process and how much time is allocated and by whom? Timing: Time allocated to committees to conduct its scrutiny functions (eg. pre-legislative, legislative or financial scrutiny) and who controls the timing? Power to establish subcommittees

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