



The Occupied Territories Bill and the Money Message: An Explainer

What is a “Money Message”?

A Money Message is a message sent by the Government to the Dáil recommending the expenditure of public money that is provided for in a particular Bill. It has its basis in Article 17.2 of the Constitution which says that Bills “for the appropriation of revenue or other public moneys” cannot be passed by the Dáil without such a message. Article 17.2 is a perfectly sensible and, on its face, quite uncontroversial provision. Its purpose is to give the Government, which is responsible for public finances, control over how public money is spent by the Dáil. There is nothing unusual about the Irish Constitution in containing such a provision.

The Dáil Standing Orders – i.e. the rules of the Dáil (which are made by the Dáil itself) – also contain a rule which gives effect to Article 17 of the Constitution. They do so, however, in a way that seems to go beyond what Article 17 requires because the relevant Standing Order, paragraph (2) of Standing Order 179, says: “The Committee Stage of a Bill which involves the appropriation of revenue or other public moneys, including incidental expenses, shall not be taken unless the purpose of the appropriation has been recommended to the Dáil by a Message from the Government.” The words “incidental expenses” are not to be found anywhere in the Constitution. As with all Dáil Standing Orders, their interpretation is a matter for the Ceann Comhairle of the Dáil alone. In other words, the Courts do not interpret their meaning as they do with the Constitution or legislation, for example. In practice, the Ceann Comhairle takes advice on the interpretation of Standing Order 179 – and therefore the meaning of the term “incidental expenses” – from an office in Leinster House called the Bills Office.

The abuse of the Money Message by the Government

When a Government has a majority, the requirement that certain Bills be the subject of a Money Message before they are passed has little or no significance. If the Government wants to pass a Bill which it has initiated and that Bill requires a Money Message, it simply provides one as a formality. Similarly, a Government with a majority can defeat any Bill initiated from the opposition benches (these are known as “Private Members Bills” or “PMBs” for short) by simply voting it down so the question of a Money Message doesn’t even arise. The situation is different, however, where, as is the case at present, the Government does not command a majority in the Dáil. This obviously means that the Government doesn’t have the numbers to defeat PMBs by simply voting them down.

For this reason, the current Government has sought to rely on the requirement for a Money Message to block the enactment of Bills that have majority support in the Dáil. The Government is perfectly entitled to do so in relation to Bills that legitimately require a Money Message.

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The problem, however, is that the Bills Office has taken an extremely broad interpretation of the meaning of the term “incidental expenses” in Standing Order 179 (2) with the result that the Ceann Comhairle, who as a matter of convention always acts on the advice of the Bills Office, is effectively offering the Government a veto over the vast majority of PMBs coming before the Dáil. And the Government is taking full advantage.

As of the 27th May, 2019, of 68 PMBs which have passed second stage in the Dáil, 55 have been deemed by the Bills Office to require a Money Message, and of these 55 Bills, the Government has provided a Money Message for only 3 of them. In a recent [opinion piece in the Irish Times](#), two leading experts in Irish constitutional law said that the Government’s blocking of so many Bills “has the makings of a constitutional crisis.”

The Process in relation to Money Messages

There are a number of key stages that a PMB must pass through in the Dáil before it is enacted. Firstly, the principle of a particular PMB is debated in the Dáil. This is called the “second stage” debate (the “first stage” is simply the publication of the Bill). Then the Bill is referred to the relevant Oireachtas Committee for “detailed scrutiny” which involves the Committee inviting submissions and preparing a report on the Bill in question which will ultimately recommend that the Bill does or does not progress to “Committee Stage.” That is where the same Committee has an opportunity to table amendments. The full Dáil then has a further opportunity to table amendments at “Report Stage” and finally there is a vote on whether or not to pass the Bill.

When it comes to deciding whether a PMB requires a Money Message, what happens is that the Bills Office read the transcript of the Second Stage debate after it has taken place and, on the basis of statements made about the financial implications of the Bill in question, give their preliminary assessment of whether the Bill requires a Money Message. Then, the financial implications of the Bill are further considered by the relevant Oireachtas Committee at the “detailed scrutiny” stage. A final assessment is then made by the Bills Office once it has reviewed the report of that Committee. If it decides that the Bill requires a Money Message, the Bill cannot proceed to Committee Stage without one. If the Government then decides not to provide one, it must give its reasons for this decision. It is, however, open to the Government to provide a Money Message at any time so Bills which have been refused a Money Message simply sit on the “Order Paper” of the Dáil.

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In opposing the Occupied Territories Bill when it was debated at Second Stage in the Dáil on the 23rd January, 2019, the Tánaiste stated:

“costs would also arise for the relevant authorities in the implementation of the law, which would create new offences, the investigation, enforcement and potential prosecution of which would have resource implications for the customs authorities, An Garda Síochána and the criminal justice system more broadly, including, perhaps, the Prison Service. [...] I should state clearly at this point that because of these costs across a wide range of areas, there can be no doubt that the Bill will require a money message to proceed to Committee Stage.”

This statement prompted the Bills Office to give its preliminary view that the Occupied Territories Bill requires a Money Message because of the costs associated with its implementation.

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A written opinion has been authored by Senator Michael McDowell, Senior Counsel and Hugh McDowell, barrister which confirms that, for the purpose of Article 17.2 of the Constitution, the Bill does not require a Money Message on the basis that it will be implemented out of funds provided by a separate law (called the Appropriation Act) which has already been the subject of a Money Message. Insofar as it may be the additional “incidental expenses” language in Standing Order 179 which is the basis for the position of the Bills Office, the opinion also confirms that it would be open to the Dáil to amend the Standing Orders to bring them into line with the Constitution.

There is growing frustration among opposition TDs at the use by the Government of the Money Message as a device by which to block the enactment of PMBs which have majority support in the Dáil. An amendment may well therefore be made to the Standing Orders that restricts the ability of the Government to continue to do so. If an amendment of this kind were to be made, it would almost certainly stop the Government from blocking the Occupied Territories Bill. An amendment to the Standing Orders can be made by way of a simple once-off motion in the Dáil.

Barring such an amendment to the Standing Orders, the only way the Bill can proceed in the current Dáil is if sufficient pressure is brought to bear on the Government to provide a Money Message. The argument would be simple: the Government is effectively claiming, in withholding a Money Message, that the State cannot afford to implement the Occupied Territories Bill. This is an absurd position and an abuse of the democratic process, bearing in mind the fact that the Bill has been passed by the Seanad and approved at Second Stage in the Dáil by 78 votes to 46.

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Irish Times Opinion Piece: <https://www.irishtimes.com/opinion/government-blocking-of-legislation-is-constitutionally-dubious-1.3924971>