



**AN BILLE UM THITHE AN OIREACHTAIS (FIOSRÚCHÁIN,
PRIBHLÉIDÍ AGUS NÓSANNA IMEACHTA), 2013
HOUSES OF THE OIREACHTAS (INQUIRIES, PRIVILEGES
AND PROCEDURES) BILL 2013**

EXPLANATORY MEMORANDUM

Purpose of Bill

The purpose of this Bill is to establish a comprehensive statutory framework for the Oireachtas to conduct inquiries within the current constitutional framework as set down by the Supreme Court in *Maguire v Ardagh* [2002] 1 IR 385 (The Abbeylara judgment). The Abbeylara case decided that Oireachtas inquiries do not have the power, in general, to make findings of fact adverse to the good name of any person who is not either a Member of the Houses or directly accountable to the Houses. Additionally, there are many legitimate inquiries that the Houses can undertake which would not infringe on the good name of private citizens.

The Bill represents a very important step in the process of clarifying the role of the Houses of the Oireachtas in securing accountability through investigations into matters of significant public importance. The approach represents the best assessment of what is constitutionally permissible based on:

- the tenor of the Supreme Court judgments in the Abbeylara case;
- the conclusions of the report of the Joint Oireachtas Committee on the Constitution (January 2011) on the parliamentary power of inquiry which drew on the advice of several constitutional experts;
- the comprehensive legal advice obtained by the Department of Public Expenditure and Reform from the Office of the Attorney General and counsel both in advance of and subsequent to the October 2011 referendum.

This Bill provides specific statutory underpinning for five general types of Oireachtas inquiries ranging from inquiries limited to recording and reporting evidence to inquiries of an adjudicative nature where this flows from the existing constitutional powers of the Oireachtas. It is anticipated that this Bill would facilitate a Banking Inquiry, however, the primary purpose of the Bill is to create a legislative framework for Oireachtas inquiries, outside the normal day to day work of the Oireachtas and Oireachtas Committees, which is of general application.

The draft legislation provides that an inquiry may not take place unless the House or Houses concerned have passed a resolution in

accordance with the rules and standing orders of the Houses. The Bill contains explicit requirements to observe fair procedures and contains provisions in relation to the behaviour of Members to avoid any perception of bias. Access to the courts for directions in respect of any dispute is clearly provided for in the Bill.

This legislation will replace the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997. The Bill will amend and simplify the law on compellability of witnesses, which will apply both to inquiries and to committees conducting other committee business which have power to send for persons, papers and records.

There are extensive provisions in relation to costs contained in the Bill including:

- the creation of a panel of legal cost accountants who may be appointed by the Minister to act as a “Parliamentary Legal Costs Adjudicator” for the adjudication of parliamentary costs;
- provisions for the Oireachtas Commission to prepare guidelines in respect of payment of costs;
- a requirement for an estimate of costs to be incurred in conducting an inquiry to be placed before the House(s);
- the making of an award of costs against a third party who fails to comply with a direction or requirement or otherwise obstructs an investigation.

The focus of the Bill is to provide for application for costs where the good name of a witness may be at issue.

The Bill provides for a qualified statutory privilege for private papers of Members and official documents of the Houses. These provisions are intended to apply in all circumstances and are not restricted to inquiries carried out under the Bill. It also provides for qualified privilege for confidential communication from members of the public who wish to draw wrongdoing to the attention of Members of the Houses of the Oireachtas without having their identities disclosed.

SUMMARY OF PROVISIONS OF THE HOUSES OF THE OIREACHTAS (INQUIRIES, PRIVILEGES AND PROCEDURES) BILL 2013

PART 1

PRELIMINARY AND GENERAL

Section 1 sets out the short title of the Bill and provides for the commencement of the Bill.

Section 2 defines certain terms used in the Bill. Individual Parts and Chapters of the Bill also contain definitions specific to the topic under consideration in those Parts or Chapters.

Section 3 states that any expenses incurred in the administration of the Act shall be paid out of monies provided by the Oireachtas.

Section 4 provides for the laying of regulations made under the Bill before each House.

Section 5 provides for the repeal of previous legislation regulating the Houses of the Oireachtas which is listed in the Schedule.

PART 2

TYPES OF INQUIRIES THAT MAY BE CONDUCTED

Sections 6 to 10 provide for five separate types of inquiry within existing constitutional parameters.

Section 6 makes provision for an inquiry limited to recording and reporting evidence and making findings of uncontested fact or findings of relevant misbehaviour (i.e. non-cooperation with the Inquiry).

Section 7 makes provision for an inquiry relating to the exercise of any one or more legislative functions including whether there is a need for new legislation.

Section 8 makes provision for an inquiry in relation to the removal of certain officeholders as provided for in the Constitution or in other legislation.

Section 9 provides a power of inquiry relating to the conduct of a Member of either House of the Oireachtas.

Section 10 gives Dáil Éireann the power to undertake an inquiry into the conduct of a current officeholder, senior civil servant or a CEO of a public body who is liable to be held to account by Dáil Éireann by virtue of the terms of his or her contract or statutory appointment.

Section 11 provides for a parliamentary mechanism whereby a proposal by a committee to conduct an inquiry is assessed by the individual or committee designated by the rules and standing orders of the House(s).

Section 12 makes provision for the setting of terms of reference of a Part 2 inquiry.

Section 13 outlines the finding of failure to co-operate with a Part 2 inquiry that a committee conducting a Part 2 inquiry is entitled to make.

PART 3

PART 2 INQUIRIES TO OBSERVE FAIR PROCEDURES

This Part makes provision for fair procedures to be observed when a committee is conducting an inquiry pursuant to this Bill.

Section 14 limits findings of fact which directly impugn a person's good name to certain categories of people.

Section 15 governs the privileges and immunities of a person giving evidence to, or who produces or sends documents to a House or committee conducting a Part 2 inquiry.

Section 16 permits the committee designated by the rules and standing orders of the House(s) to issue guidelines, consistent with the Bill, relating to the procedures of Part 2 inquiries.

Section 17 authorises the Chairperson of an inquiry to issue directions in relation to compliance with this Bill.

Section 18 prohibits a Member of the House(s) from sitting on a committee where a perception of bias might arise in a reasonable person.

Section 19 sets out certain rights of witnesses to the inquiry.

Section 20 outlines the obligations on the Chairperson where the good name of a person is directly impugned.

Section 21 outlines the rights of persons in respect of whom the House is entitled to make findings that directly impugn their good name.

Section 22 contains rights for persons not covered in *section 19* who, in the course of a Part 2 inquiry, are referred to by name or in such other manner as to be capable of being identified.

Section 23 requires the relevant committee conducting a Part 2 inquiry to give notice of intention to exercise powers in relation to compellability, and affords the person an opportunity to make submissions.

Section 24 imposes the civil standard of burden of proof on a committee making a finding of fact and requires it to give reasons for findings adversely affecting the good name of a person.

Section 25 obliges a committee conducting a Part 2 inquiry to inform witnesses of its powers and to advise them of their rights and obligations prior to giving evidence.

Section 26 defines evidence that is not admissible in certain proceedings.

Section 27 outlines circumstances in which documents or information must be preserved.

Section 28 makes provision for Part 2 inquiries to be held in public.

Section 29 contains offences in relation to Part 3.

PART 4

REPORTS AND CERTAIN CONFIDENTIAL DOCUMENTS CONCERNING PART 2 INQUIRIES

Section 30 makes provision for the form and content of a final report to be prepared at the conclusion of a Part 2 inquiry.

Section 31 provides for interim reports.

Section 32 permits the provision of a draft of a report to certain persons.

Section 33 prohibits the disclosure of a draft report.

Section 34 provides for the confidentiality of documents relating to a Part 2 inquiry.

Section 35 provides that where a person receives a draft report which they believe contains commercially sensitive material they may

make a statement requesting that the relevant information be omitted.

Section 36 sets out a procedure whereby a request can be made by a person who has received a draft report to a committee to amend a draft report in certain circumstances.

Section 37 makes provisions for the publication of a final report and also interim reports.

Section 38 contains offences in relation to Part 4.

PART 5

PART 2 INQUIRY LEGAL COSTS, PART 2 INQUIRY EXPENSES AND PRIVATE BILL LEGAL COSTS

CHAPTER 1

Definitions, estimate of Part 2 inquiry legal costs and Part 2 inquiry expenses and parliamentary legal costs adjudicators

Section 39 defines certain terms used in this Part.

Section 40 requires a committee, prior to conducting a Part 2 inquiry, to prepare a report containing an estimate of the sum of Part 2 inquiry legal costs and Part 2 inquiry expenses to be incurred in conducting the inquiry.

Section 41 provides for the appointment of a panel of legal costs accountants willing and able to act as a parliamentary legal costs adjudicator in certain circumstances.

Section 42 governs the powers of the parliamentary legal costs adjudicator.

CHAPTER 2

Part 2 inquiry legal costs

Section 43 empowers the Oireachtas Commission to issue guidelines in respect of Part 2 inquiry legal costs.

Section 44 provides for the recoupment of third party costs in specified circumstances.

Section 45 empowers the Oireachtas Commission to direct certain persons in relation to the payment of costs in specified circumstances.

Section 46 provides for the payment of Part 2 inquiry legal costs by the Oireachtas Commission.

Section 47 prohibits the initiation of proceedings for the recoupment of costs until three months following the delivery of the bill of costs or, if the bill of costs is referred for adjudication, until the costs are finally certified.

Section 48 provides for an application for assessment of Part 2 inquiry legal costs.

Section 49 provides for the issuance of certificates of costs.

CHAPTER 3

Part 2 inquiry expenses

Section 50 empowers the Oireachtas Commission to issue guidelines in respect of Part 2 inquiry expenses.

Section 51 provides for payment by the Oireachtas Commission of Part 2 inquiry expenses.

Section 52 empowers the Oireachtas Commission to direct certain persons in relation to the payment of expenses in specified circumstances.

CHAPTER 4

Private Bill legal costs

Section 53 empowers the Oireachtas Commission to issue guidelines in respect of private bill legal costs.

Section 54 makes provision for the award of private bill legal costs to a promoter.

Section 55 makes provision for the award of private bill legal costs to petitioners.

Section 56 prohibits the initiation of proceedings for the recovery of any private bill legal costs until three months following the delivery of the bill of costs or, if the bill of costs is referred for adjudication, until the costs are finally certified.

Section 57 contains additional provisions relating to the adjudication of private bill legal costs referred to in *section 54* and *section 55*.

Section 58 provides for the issuance of certificates of costs.

CHAPTER 5

Miscellaneous

Section 59 provides that the provisions of Part 5 shall with all necessary modifications apply to the ascertainment or adjudication of any other parliamentary costs.

Section 60 empowers the Oireachtas Commission to specify the form of documents required for the purposes of this Part.

Section 61 contains offences in relation to Part 5.

PART 6

COMPELLABILITY, PRIVILEGES AND IMMUNITIES IN RELATION TO PART 2 INQUIRIES

Section 62 defines certain terms used in this Part.

Section 63 provides that Part 6 of this Bill will only apply to a committee whilst it is conducting a Part 2 inquiry and on which a power to send for persons, papers and records is conferred by the House(s).

Section 64 outlines the powers of a committee in relation to obtaining evidence.

Section 65 allows Irish citizens abroad and non-nationals in Ireland to be subject to compellability.

Section 66 makes provisions allowing for certain officeholders and members of the judiciary to be compelled to appear before and provide evidence to a committee in certain circumstances.

Section 67 prohibits a committee from procuring evidence that is irrelevant.

Section 68 provides for the exemption of certain evidence from the operation of *section 64*.

Section 69 makes provision for declarations to be issued in relation to certain exempt evidence which was the subject of a direction under *section 64* in certain circumstances.

Section 70 makes provision for circumstances where a direction is given to a person in his or her capacity as an employee or as a representative of a House or committee.

Section 71 provides a saver in relation to section 65 of the Court Officers Act 1926 and excludes the application of sections 4 and 5 of the Official Secrets Act 1963.

Section 72 contains offences in relation to Part 6.

PART 7

COMPELLABILITY, PRIVILEGES AND IMMUNITIES IN RELATION TO OTHER COMMITTEE BUSINESS

CHAPTER 1

Definitions and application of Chapters 2 and 3

Section 73 defines certain terms used in this Part.

Section 74 provides that Chapters 2 and 3 of this Part only apply to a committee which has the power to send for persons, papers and records while it is exercising compellability powers and conducting committee business that is not a Part 2 inquiry.

CHAPTER 2

Privileges and Immunities etc.

Section 75 governs the privileges and immunities of a person giving evidence to, or who produces or sends documents to a committee.

Section 76 empowers the Oireachtas Commission to issue guidelines relating to the procedures of committees not conducting a Part 2 inquiry.

Section 77 contains rights for persons who, in the course of ordinary committee business, are referred to by name or in such other manner as to be capable of being identified.

Section 78 defines evidence that is not admissible in certain proceedings.

Section 79 contains offences in relation to Part 7 Chapter 2.

CHAPTER 3

Directions that may be given by a committee conducting other committee business and related matters

Section 80 outlines the powers of a committee to obtain evidence.

Section 81 allows Irish citizens abroad and non-nationals in Ireland to be subject to compellability.

Section 82 prohibits a committee from procuring evidence that is irrelevant.

Section 83 provides for the exemption of certain evidence from the operation of *section 80*.

Section 84 makes provision for declarations to be issued in relation to certain exempt evidence which was the subject of a direction under *section 80* in certain circumstances.

Section 85 makes provision for circumstances where a direction is given to a person in his or her capacity as an employee or as a representative of a House or committee.

Section 86 provides a saver in relation to section 65 of the Courts Officers Act 1926 and excludes the application of sections 4 and 5 of the Official Secrets Act 1963.

Section 87 contains offences in relation to Part 7 Chapter 3.

CHAPTER 4

Oireachtas Commission may pay expenses of witnesses etc.

Section 88 provides for the payment by the Oireachtas Commission of the reasonable expenses of a witness in proceedings before a committee.

PART 8

PRIVILEGE AND IMMUNITY OF COMMITTEES AND MEMBERS OF THE HOUSES AND RESTRICTION OF EVIDENCE OF CERTAIN PERSONS

Section 89 provides that a member of either House shall not be amenable to any court and authority other than the House by which the relevant committee was appointed in respect of any utterance in or before a committee. It also provides that certain documents may be privileged.

Section 90 places restrictions on the evidence of certain persons.

PART 9

APPLICATIONS TO THE HIGH COURT IN RELATION TO RELEVANT PROCEEDINGS, ETC.

Section 91 provides for an application to the High Court for directions in relation to relevant proceedings where a person is of the opinion that any matter relating to the proceedings is not being inquired into or otherwise dealt with in accordance with the Act.

Section 92 makes provisions for an application to the High Court when a committee is of the opinion that a report could prejudice any criminal proceedings.

Section 93 provides that a direction by the Oireachtas Commission to a person to pay Part 2 inquiry costs, Part 2 inquiry expenses or private bill legal costs shall not take effect until it is confirmed by the High Court.

Section 94 provides that the High Court may authorise the commencement of proceedings for the recovery of costs prior to the expiration of three months following the delivery of a bill of costs.

Section 95 permits a parliamentary legal costs adjudicator to refer a question of law arising in the context of an application for an adjudication of Part 2 inquiry costs or private bill legal costs to the High Court for the opinion of the Court.

Section 96 permits a committee to apply to the High Court where a person fails to comply with a direction.

Section 97 provides for an appeal to the High Court against certain directions under *section 64(1)* or *section 80(1)*.

Section 98 permits a committee to apply to the High Court to request the disapplication of *section 91(5)(a)* or *(b)* or *97(2)(b)* in certain circumstances.

Section 99 gives the High Court discretion to hear certain matters related to this Bill otherwise than in public if the Court is satisfied that it is just and reasonable to do so.

Section 100 affords the Court the discretion to make such related orders as it considers just and reasonable in the circumstances in any application made to it pursuant to this Bill.

PART 10

PRIVILEGES IN RELATION TO PRIVATE PAPERS AND CONFIDENTIAL COMMUNICATIONS

Section 101 defines certain terms used in this Part.

Section 102 provides qualified privilege for the private papers of members and for confidential communications to members.

Section 103 outlines circumstances where communication may or may not be disclosed.

Section 104 provides for the determination of what constitutes a private paper or confidential communication.

Section 105 provides for guidelines to be developed by the Houses of the Oireachtas.

Section 106 sets out the arrangements which will apply to the private papers or confidential communications of former or deceased Members of the Houses.

Section 107 provides for the protection of private papers during the giving of evidence.

Section 108 contains offences in relation to Part 10.

PART 11

PRIVILEGE IN RELATION TO OFFICIAL DOCUMENTS

Section 109 defines certain terms used in this Part.

Section 110 provides for a power to make rules designating categories of official documents.

Section 111 provides for qualified privilege for official documents of the Houses.

Section 112 provides for the protection of official documents during the giving of evidence.

Section 113 contains offences in relation to Part 11.

PART 12

EVIDENCE ON OATH

Section 114 governs the power of either of the Houses of the Oireachtas and any committee to examine witnesses and administer oaths.

Section 115 gives a committee power to require evidence on oath.

Section 116 contains offences in relation to Part 12.

PART 13

LAYING OF DOCUMENTS

Section 117 defines certain terms used in this Part.

Section 118 provides a procedure for the laying of documents.

Section 119 provides relevant time periods for the laying of documents.

PART 14

MISCELLANEOUS

Section 120 provides for offences by bodies corporate.

Section 121 makes provision for proceedings in court.

Section 122 provides that a prosecution for an offence under this Act may be brought only by or with the consent of the DPP.

Section 113 establishes that the discontinuation of a Part 2 inquiry or the termination of other committee business or the dissolution of either House will not prevent any court proceedings from being taken or terminate any on-going court proceedings.

Section 114 contains restrictions on the Freedom of Information Acts 1997 and 2003.

Section 125 provides for the consequential amendment of the Witnesses (Public Inquiries) Protection Act 1892.

Section 126 provides for the consequential amendment of Section 21 of the Companies Act 1990.

Section 127 provides for the consequential amendment of Section 46 of the Freedom of Information Act 1997.

Section 128 provides for the consequential amendment of Section 13 of the Child Trafficking and Pornography Act 1998.

Section 129 provides for the consequential amendment of Section 17 of the Defamation Act 2009.

Section 130 contains offences in relation to Part 14.

SCHEDULE

The Schedule provides for a repeal of previous Acts relating to the Oireachtas that are either obsolete or are replaced by this Bill.

Department of Public Expenditure and Reform,
May, 2013.