



Tithe an
Oireachtais
Houses of the
Oireachtas

Seanad Éireann

Dáil Éireann

*An Coiste um Nós Imeachta agus
Pribhléidí*

Committee on Procedure and Privileges

An Coiste um Nós Imeachta

Committee on Procedure

AN CHOMHTHUARASCÁIL

maidir le FREAGAIRT THITHE AN OIREACHTAIS

ar BHREITHIÚNAIS NA CÚIRTE UACHTARAÍ SA CHÁS KERINS

JOINT REPORT

on THE RESPONSE OF THE HOUSES OF THE OIREACHTAS

to THE JUDGMENTS OF THE SUPREME COURT IN THE *KERINS* CASE

NOLLAIG 2020

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JOINT REPORT ON THE RESPONSE OF THE HOUSES OF THE OIREACHTAS TO THE JUDGMENTS OF THE SUPREME COURT IN THE *KERINS CASE*

1. Following the judgments of the Supreme Court in *Kerins v McGuinness and Ors*,¹ the Dáil Committee on Procedure and the Seanad Committee on Procedure and Privileges (“the Committees”) agreed to establish an official-level Working Group to review the procedures of the Houses, and in particular their Standing Orders.²
2. The Working Group was required to consider a broad range of issues in relation to House and Committee procedures, oversight mechanisms, citizens’ rights and remedies and sanctions, and the role of the Houses of the Oireachtas Service; and to report with recommendations to the Committees on the changes to the Standing Orders of both Houses of the Oireachtas, and any other related actions, which are considered necessary in order to respond to the Supreme Court judgments.
3. The Working Group’s Report (which is set out in full at *Part 1* of this joint report) was presented to the Dáil Committee on Procedure on 6 October 2020 and to the Seanad Committee on Procedure and Privileges on 7 October 2020.
4. The Report at *Part 1* contains a number of key principles for the drafting of Standing Orders. The draft Standing Orders (at *Parts 2 and 3* of this joint report) set out a detailed framework to address the following key areas which were highlighted by the Supreme Court as requiring a response by the Houses of the Oireachtas:
 - Oversight of Committee remit
 - Role of the Committee Chair and the conduct of Committee meetings
 - Remedies for persons adversely affected by parliamentary utterances
 - Sanctions for disorder and breach of privilege
5. The *Protocol for persons giving evidence to Oireachtas Committees* which was adopted by the Dáil Committee on Procedure in 2014 has been revised in the light of the new Standing Orders and is set out at *Part 4*.

¹ *Kerins v McGuinness & Ors*. [2019] IESC 11 and *Kerins v McGuinness & Ors*. [2019] IESC 42.

² See Schedule 1 for terms of reference of the Working Group.

6. The Guidelines as to the appropriate and relevant considerations for the determination of submissions and referrals under Dáil Standing Orders 71, 71A and 71B and Seanad Standing Orders 49A, 49B and 49C (set out at *Part 5*) were developed by the Office of the Parliamentary Legal Advisers and presented to both Committees for consideration in the context of the relevant Standing Orders.

7. The Committees having considered this joint report—

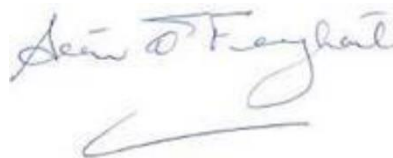
- (1) approve the recommendations set out in the Working Group’s Report at *Part 1*;**
- (2) recommend the adoption by Dáil Éireann and Seanad Éireann of the Standing Orders set out in this joint report at *Parts 2 and 3*;**
- (3) adopt, subject to the adoption by Dáil Éireann and Seanad Éireann of such Standing Orders—**
 - (a) the Protocol for persons giving evidence to Oireachtas Committees (at *Part 4*); and**
 - (b) the Guidelines as to the appropriate and relevant considerations for the determination of submissions and referrals under Dáil Standing Orders 71, 71A and 71B and Seanad Standing Orders 49A, 49B and 49C (at *Part 5*),****and agree to their publication in accordance with Dáil Standing Order 119 and Seanad Standing Order 98.**

8. This joint report was adopted by the Dáil Committee on Procedure on 8th December, 2020, and the Seanad Committee on Procedure and Privileges on 15th December, 2020.



SENATOR MARK DALY,
Cathaoirleach

15th December, 2020



SEÁN Ó FEARGHAÍL, T.D.,
Ceann Comhairle.

15th December, 2020

PART 1: REPORT OF THE WORKING GROUP ON PARLIAMENTARY PRIVILEGE AND CITIZENS' RIGHTS

Chapter 1: Executive Summary

Following the two judgments of the Supreme Court in *Kerins v McGuinness and Ors*,³ the Dáil Committee on Procedure ('CoP') and the Seanad Committee on Procedure and Privileges ('CPP') agreed to establish an official-level Working Group to review the procedures of the Houses, and in particular their Standing Orders.⁴

The Working Group was required to consider a broad range of issues in relation to House and Committee procedures, oversight mechanisms, citizens' rights and remedies and sanctions, and the role of the Houses of the Oireachtas Service; and to report with recommendations to CoP and CPP on the changes to the Standing Orders of both Houses of the Oireachtas, and any other related actions, which are considered necessary in order to respond to the Supreme Court judgments.

At the outset, it is important to state that the Court judgment expressly recognises that Committees form an essential part of the workings of parliament.⁵ Further the Court expressly acknowledges the ability of the Houses of the Oireachtas, individually or collectively, to conduct their legitimate constitutional business through the work of their Committees.⁶

In reaffirming the important Constitutional role being exercised by Committees, the Court confirmed that the same privileges and immunities as arise in proceedings of the Houses, arise in Committee session,⁷ and expressly recognised that these Constitutional privileges and immunities exist to permit the Oireachtas to carry out its legitimate functions in a manner which is not unduly restrained by the risk of outside interference from the courts.⁸

However, as the Constitutional rights of citizens do not disappear at the gates of Leinster House, the Court ruled that it is for the Houses themselves to adopt Standing Orders, or other measures, to protect individuals against inappropriate infringement of their rights, while at the same time protecting the freedom of speech guaranteed to Members and protecting the Oireachtas from undue interference with its entitlement to carry out its constitutional role in whatever way it

³ *Kerins v McGuinness & Ors*. [2019] IESC 11 ("the first judgment") and *Kerins v McGuinness & Ors*. [2019] IESC 42 ("the second judgment").

⁴ See Schedule 1 for terms of reference of the Working Group.

⁵ *Kerins v McGuinness & Ors*. [2019] IESC 11, at para. 7.20.

⁶ *Kerins v McGuinness & Ors*. [2019] IESC 11, at para. 7.4.

⁷ *Kerins v McGuinness & Ors*. [2019] IESC 11, at paras. 7.9 and 7.12.

⁸ *Kerins v McGuinness & Ors*. [2019] IESC 11, at para. 9.27.

considers appropriate.⁹ Part of these rules should also encompass an appropriate mechanism to provide a remedy in the event of a Committee acting inappropriately.¹⁰

The Court also expressed the view that the Houses could establish a mechanism to allow for a quick and efficient way for a Committee to amend its Terms of Reference¹¹ and emphasised that the boundaries of Committees' Terms of Reference need definition and clarity.¹² The Court stated the importance of an effective means whereby the House, or an appropriate Committee, can "*police questions concerning the remit*" of Committees.¹³ The Court examined the issue of invites to witnesses and in that case, the unfairness of "*departing significantly*" from the term of the invitation.¹⁴ The Court also ruled that the role and power of a Committee Chair in ensuring that a Committee operates properly ought to be specified in rules and orders.¹⁵

These key principles enunciated by the Court have set the context for the work of the Working Group, informed by consultation with relevant stakeholders and benchmarking against practice in other parliaments, as set out in more detail in this report.

Overview of the Working Group's recommendations

Remit: acting outside Terms of Reference

Key points of the Supreme Court decision:

- A Court will find a Committee acted unlawfully if it acts "*significantly outside its terms of reference*".
- This is capable of being remedied by the Houses, as the terms of reference can be adjusted by the Oireachtas "*in whatever way it considers appropriate*" as long as those Terms of Reference remain within the constitutional remit of the Houses. That remit is very wide. The Court suggests that a mechanism could be put in place which would allow for quick and efficient changes.
- The boundaries of a Committee's Terms of Reference must be clearly defined.

Recommendations of the Working Group:

1. An internal oversight mechanism via a Committee on Remit Oversight should be established to consider if Committees are acting in breach of their remit. This should also allow for a process to deal with the issue of overlapping remits of Committees.

⁹ *Kerins v McGuinness & Ors.* [2019] IESC 11, at para. 14.4.

¹⁰ *Kerins v McGuinness & Ors.* [2019] IESC 42, at para. 3.5

¹¹ *Kerins v McGuinness & Ors.* [2019] IESC 42, at para. 3.2.

¹² *Kerins v McGuinness & Ors.* [2019] IESC 42, at para. 3.2.

¹³ *Kerins v McGuinness & Ors.* [2019] IESC 11, at para. 14.8.

¹⁴ *Kerins v McGuinness & Ors.* [2019] IESC 42, at para. 3.1, subparagraph 2.

¹⁵ *Kerins v McGuinness & Ors.* [2019] IESC 42, at para. 3.4.

2. As part of this, a procedure should be established for Committees to apply to extend their Terms of Reference for a specific purpose via an instruction motion from the Dáil.
3. The Terms of Reference of each Committee should be reviewed to ensure they accurately reflect the work of the Committee. Where they do not, the Terms of Reference should be amended.
4. The Terms of Reference of Sectoral Committees should be amended to allow for the examination of the use of public monies by non-State bodies in specific circumstances focussed on their performance in the delivery of publicly-funded services.
5. DPER should undertake a review and extension of the remit of the Comptroller and Auditor General to reflect the points in the submissions made to the Working Group which call for a widening of PAC's remit.
6. A mapping exercise of all State bodies should be conducted to assess the feasibility of defining accountability to Oireachtas Committees in a single Oireachtas-specific Act.

Remit - going beyond the witness invitation

Key points of the Supreme Court decision:

- A Court will find a Committee acted unlawfully if it departs significantly from the terms of the invitation to the witness. Problems with the breadth of an invitation can stem from the way the invitation was formulated. An invite can be altered, as long as it is not at such a late stage as to be unfair.
- The witness can always answer questions which go beyond the invite.
- Discussions which take place between an invitee and a Committee or its representatives, in advance of the attendance by a person before the Committee, *"can legitimately be taken into account in assessing the overall scope of the invitation"*.
- When examining the fairness of a hearing, a Court will look at the conduct of the Committee as a whole, e.g. where a citizen is invited to attend on one basis, but the hearing as a whole was *"conducted on a significantly different basis"*.
- The Court does not expect the invitation to be a *"formal legal document"* but is a *"letter of invitation which should be interpreted as a reasonable recipient of the letter concerned might be expected to read it."* The invite should be read in context.

Recommendations of the Working Group:

7. Committee Chairs and Clerks should receive training on the importance of advance notice of areas for questioning to witnesses, and the advantages of being specific in the terms of the invite to witnesses.
8. Chairs and Committees should be made aware of the content of invitations by
 - issuing all invitations under the Chair's signature,
 - circulating invitation letters to Members of the Committee once issued, and

- ensuring the content of the invitation is read out at the start of each Committee meeting.
- 9. A clear process should be established for witnesses to raise a complaint to the Chair in a Committee meeting where the witness has been asked a question which was not within the invitation.
- 10. Training should be provided to Chairs and Clerks on the need for formal recording of conversations with witnesses, and particularly, the need to respect any undertakings given to witnesses.

Conduct of meetings within remit and the invitation

Key points of the Supreme Court decision:

- The Oireachtas can specify, in its rules and orders, the way in which business is to be conducted and, in particular, the role and powers of the Chair of any Committee *“to ensure the committee concerned operates properly within the scope both of its remit and of any invitation issued to an attending citizen”*. The Oireachtas can control this; by adopting appropriate rules and by ensuring the observance of such rules.
- On a number of occasions, the Court mentions the significance of the conduct of the Chair. From this it can be read that the Chairs of Committees will be held to a higher standard.
- A Court will intervene where the unfair conduct and order of the hearing represents the actions of the Committee *as a whole*, rather than an individual Member. Unfair questioning does not refer to loaded, aggressive or inappropriate questions by an individual Member. If a Court examined the tone of questions it would effectively be making Members amenable for their utterances which is not permitted under the Constitution. The judgment does not (and cannot) pinpoint when, in general, an unfair course of action will be seen to be by one or a number of individual Members, as opposed to by the Committee as a whole¹⁶. The Court is at pains to distinguish actions of an individual Member, where it will not intervene, versus stepping in when the Committee as a whole will be considered to have acted unfairly.
- Subsequent meetings, even where an aggrieved witness is not present, can be taken into account if they are *“part of the same process”* to form an overall view of the actions of the Committee.

¹⁶ The Court in this case looked at numerous documents, to see if the Committee was acting *“in unison”*, and influencing factors included: (1) the fact that no votes were called by any Members on the process at issue; (2) there was *“no evidence of any resistance of any sort, whether formal or informal, on the part of Members of the PAC with the course of action being adopted”*. In saying this, the Court did recognise there are political considerations which might tend to lean other Members from being seen to interfere with the questioning of fellow committee Members; (3) specific comments of the Chair which reflected the overall approach of the Committee generally.

Recommendations of the Working Group:

11. Standing Orders should be amended to provide detail on the role and responsibilities of the Chair. This should include:
 - ensuring that the Committee acts within remit and within the scope of any invitation,
 - maintaining order in the Committee and ruling on matters of order when requested by a Member or a witness to do so,
 - ensuring compliance with the Witness Protocol.
12. Standing Orders and the Witness Protocol should be amended to strengthen the role of the Chair and the mechanisms for a witness to call on the Chair to assist.
13. The Witness Protocol should be revised to emphasise the importance of the base rights of witnesses, and the right of witnesses to raise issues with the Chair.
14. Training should be provided to Committee Chairs and all Committee Members on appropriate conduct and the Witness Protocol.

Lack of Remedy**Key points of the Supreme Court decision:**

- A Court will intervene where there is no other remedy for a person.
- The Oireachtas can put in place a remedy where a Committee acts inappropriately.

Recommendations of the Working Group:

15. A process should be established in Standing Orders which allows a witness to raise points of order with a Chair in a Committee meeting.
16. A process should be established in Standing Orders where, if a ruling is made on a point of order by the Chair, and such order is not respected, that consequences arise for Members. This can take the form of ordering a Member to withdraw from a meeting and/or there should be a power to suspend Members from the Committee for more egregious conduct.
17. A process should be established in Standing Orders where a witness (or other person) can complain after a Committee meeting where they have been adversely affected by that Committee meeting. This process should allow for flexible outcomes. There should be an appeal process to an oversight Committee such as the Committee on Procedure.
18. The Witness Protocol should be formally adopted by an oversight Committee such as the Committee on Procedure and it should be the responsibility of the Chair under Standing Orders to enforce compliance with the Protocol.
19. Additional training should be provided to Chairpersons on the rights of witnesses appearing before the Committee meetings as set out in the Witness Protocol.
20. All witnesses should be made fully aware of the existence of the Witness Protocol.

Other recommendations arising from analysis of witness submissions

21. www.oireachtas.ie should be up to date with copies of each Committee's Terms of Reference.
22. The Witness Protocol should be amended to provide that Terms of Reference are furnished to witnesses in advance of Committee appearances.
23. Chairs and Clerks should be trained on the provisions of the Witness Protocol and in particular, notice periods and advance notice of documents and witnesses relevant to the proceedings
24. The Witness Protocol should be strengthened in terms of the protections for Witnesses on notice periods, advance notice of documents and witnesses relevant to proceedings.
25. In particular, the Witness Protocol should be amended to provide that if the provisions on notice periods, advance notice of documents and witnesses are not met, that reasons will be given to the witness for same.

Chapter 2: Working method

Work Programme

The Working Group agreed a two-phase approach to its work programme:

1	Consultation and analysis phase: <ul style="list-style-type: none">• Background research• Stakeholder consultation• International benchmarking• Analysis of submissions	June-December 2019
2	Reporting phase: <ul style="list-style-type: none">• Development of key principles, recommendations and drafting of Standing Orders• Final Report submitted to Dáil CoP and Committee on Standing Orders and Dáil Reform• Report and Standing Orders to Seanad CPP	January-July 2020 <i>[dissolution of the 32nd Dáil on 14/01/20; first meeting of 33rd Dáil held on 20 February 2020; first meeting of Seanad held on 29 June 2020]</i>

Consultation Phase, June-December 2019

In the first phase of its work, the Working Group undertook a comprehensive consultation process, seeking views from relevant stakeholders on the four specific areas highlighted by the Court:

1. **Remit:** the need for Oireachtas Committees to have clear Terms of Reference and to remain within them;
2. **Invitations:** the need for clarity of invitations issued from a Committee to witnesses, and for the Committee to adhere to the terms of such invitations;
3. **Conduct of meetings:** the conduct of hearings by the Committee as a whole, and the supervision of such hearings by the Chair; and
4. **Remedies:** the need for remedies to be available to persons who may be affected by a breach of their rights by a Committee.

Stakeholder Consultation

The Working Group received **38 submissions in total** – these are listed in further detail by stakeholder category below.¹⁷

Members of the Houses of the Oireachtas: Requests for submissions issued to Group and Party Leaders in the Dáil and Seanad, Committee Chairs, and Members of both Houses.

Submission Type	No. contacted	No. of submissions received
Committee Chair	26	4
Group / Party Leader	13	3
Members of Both Houses	218	0

Witnesses before Committees: An open call for submissions was published on the Oireachtas website for witnesses who appeared before Oireachtas Committees in the 32nd or 31st Dáil (i.e. back to 2011).

Submission Type	Contacted	Received
Committee Witnesses in the 31st and 32nd Dáileanna	<ul style="list-style-type: none"> • Open call on website • Committee Clerks brought to the attention of 100 witnesses • Brought to attention of Departments for bodies under their aegis 	31

Government Departments: Submissions were sought in writing in June 2019 from the Secretary General of each Government Department; no submissions were received.

The Comptroller and Auditor General was briefed on the work of the Group and was invited to make a submission.

The analysis of submissions received is set out in Chapter 3.

¹⁷ For list of submissions received see Schedule 2.

International benchmarking

On behalf of the Working Group, the Houses of the Oireachtas Service submitted a survey to the ECPRD¹⁸ and a number of additional parliaments (Australia, India and New Zealand) asking about the remit of Committees, the treatment of witnesses who come before Committees, and any system to regulate and sanction Committees who act outside their remit or fail to act in accordance with principles of natural justice in relation to witnesses.

Responses were received from 30 ECPRD countries (36 chambers), which is 50% of ECPRD Member chambers, and the New Zealand (NZ) parliament.

Submission Type	Contacted	Received
International Parliaments	55 parliaments	30 parliaments ¹⁹

A comprehensive summary report of the responses received was prepared for the Working Group by the Library & Research Service. A summary analysis of the responses prepared by the Office of the Parliamentary Legal Advisers (OPLA) is set out in detail later in this report.

Reporting Phase, January - September 2020

On completion of the consultation and analysis phase, the Working Group reported progress to the Dáil CoP and Seanad CPP in November 2019.

Arising from the Progress Report, both Committees agreed to the establishment of a Political Working Group, to provide political direction, input and feedback for the second phase of the work programme in January 2020 leading to a final report in early 2020. The Political Working Group was to consist of the Ceann Comhairle as Chair, the Cathaoirleach, the Government Chief Whip, the Govt Whip in the Seanad and the Chair of the Working Group of Committee Chairs. However, the Dáil dissolved on 14 January 2020 before any meetings of the Group could be held.

Following the dissolution of the Thirty-Second Dáil in January 2020 and in the period before the nomination of a Government by the Thirty-Third Dáil on 27 June 2020, the Working Group continued its work to finalise this draft report with a view to submitting it to the Committee on Procedure of the Thirty-Third Dáil and to the Seanad CPP at an early stage.

¹⁸ European Centre for Parliamentary Research and Documentation - network of parliaments that are Member states of the European Union and the Council of Europe.

¹⁹ Responses from Austria (House of Representatives) Belgium (both Houses), Canadian parliament, Croatia, Cyprus, Czechian Chamber of Deputies, Estonia, Finland, France (both Houses), Georgia, Germany (both Houses), Greece, Hungary National Assembly, Israel, Italian Senate, Latvia, Lithuania, Moldova, Netherlands (House of Representatives), New Zealand, Norway, Poland (both Houses), Portugal, Romania, Slovakia (House of Representatives), Slovenia (both Houses), Spain (both Houses), Sweden, Turkey and the UK (both Houses).

Chapter 3: Analysis of Submissions received in Response to Consultation

Introduction

The four areas on which views were sought were:

- Remit: the need for Oireachtas Committees to have clear Terms of Reference and to remain within them;
- Invitations: the need for clarity in relation to invitations issued from Committees to witnesses, and for the Committee to adhere to the terms of such invitations;
- Conduct of meetings: the conduct of hearings by the Committee as a whole, and the supervision of such hearings by the Chair; and
- Remedies: the need for remedies to be available to persons who may be affected by a breach of their rights by a Committee.

The working group received 38 submissions in response to the open call (see Schedule 2). This consisted of submissions from:

- 4 Committee Chairs
- 3 Political Parties
- 31 witnesses

The witness category can be further broken down as follows (though in one or two cases there is an overlap):

- meetings with witnesses who were present as stakeholders, interested bodies or experts (the “*expert stakeholder*”) [15 submissions]
- meetings where there was a statutory reporting relationship, and/or the Committee was asserting a right to hold a witness to account (the “*accountable witness*”) [16 submissions]

In the case of *expert stakeholders*, most engagements were with sectoral Committees, and in the case of *accountable witnesses*, the majority of the engagements were with the Committee of Public Accounts.

The capacity in which the witness appeared seemed to have a significant bearing on the witness’s experience of the engagement. The majority of *expert stakeholders* had a broadly positive experience, with many making constructive suggestions for improvements. However, *accountable witnesses* had more negative experiences before Committees.

In terms of the content of the submissions, there was an overall recognition of the importance of Committee work and the public interest served in having an effective Committee system. For many witnesses the value of being able to dialogue on legislative and policy matters was emphasised.

The majority of witness submissions demonstrated an overall satisfaction with the experience of appearing before Committees. For those who did experience difficulties, the most common themes were:

- Lines of questioning which departed from the stated purpose of the meeting
- The attitude of Committee Members toward the witness(es)
- The importance of the Chair in the running of proceedings

Overall, it is important to recognise the significant work done by Committees. While the *Kerins* decisions have made clear that certain processes and procedures in the Committee system need to be strengthened, this should not be to the cost of the public good served by strong Committees holding bodies to account. As put by one witness:

“A careful balance must be struck between the rights of private citizens who appear before the committees and the public good served by allowing the committees to engage in discussion with witnesses.”²⁰

Witness Protocol

It is important to note that there have been procedural changes and improvements since the meetings of February and March 2014 which gave rise to the *Kerins* litigation.²¹ One important change was the introduction of *a Protocol for persons giving evidence to Committees of the Houses of the Oireachtas* (“the Witness Protocol”).²² This document, which under its own terms is to be furnished to all witnesses due to attend before a Committee meeting, establishes certain base rights and responsibilities of witnesses and the Committee, as well as the staff acting in support of it.

That said, a number of the rights of witnesses set out in that document do not appear to match the experience of witnesses from the submissions received. Some of the recommendations below suggest strengthening the terms of this document and improving training for Chairs and Clerks on the contents of same.

²⁰ Threshold submission, at page 3.

²¹ See further Sinn Féin submission, at page 1.

²² Approved by the Dáil CPP on 4th June 2014 and by Seanad CPP on 9th July 2014.

Introduction to Remit

The first area on which submissions were sought was:

- *Remit: the need for Oireachtas Committees to have clear Terms of Reference and to remain within them*

Aside from those core issues of the clarity of the Terms of Reference and acting within same, the following issues of note appeared in the submissions:

- Communication of the Terms of Reference
- Overlapping Terms of Reference
- Expansion of Remit – use of public monies

Clarity of Terms of Reference

Many submissions noted satisfaction with the clarity of the Terms of Reference, for example, *“Oireachtas committees that we have dealt with have clear terms of reference and abide by them.”*²³

However, some submissions referred to issues where Terms of Reference were too broad and/or contained vagueness and ambiguity:

*“The broad remit of the Committees can adversely impact on their capacity to operate effectively. Given the breadth of issues that they may need to address, a tighter and more focused remit may be required.”*²⁴

*“From the perspective of citizens and organisations, it is important that individual Committees’ overall remits and terms of reference are clearly defined, as is the case in terms of the remit and terms of reference of Committees when undertaking a particular inquiry or stream of work. Clarity in this regard can assist witnesses in preparing their evidence in a manner most suitable to the Committee and to the work it is undertaking.”*²⁵

*“...clear terms of reference and a duty to remain within them are of utmost importance both in the interests of fairness and transparency and in the interests of ensuring that maximum benefit is derived from the participation in the work of a Committee by an independent body such as the Council. Clear terms of reference contribute to a comprehensive and constructive dialogue which is likely to help inform decisions on matters such as general policy and the formulation of legislation.”*²⁶

²³ HIQA submission, at page 1.

²⁴ Education and Training Boards Ireland submission, at page 3.

²⁵ Centre for Cross Border Studies submission, at page 2.

²⁶ Council of the Bar of Ireland submission, at page 3.

Certain political submissions made clear the need to retain a broader or more flexible Committee remit:

“The remit and powers of all Oireachtas committees should be clarified and any suggestion that they should be curtailed should be approached with caution, because an Oireachtas committee without teeth is worthless.”²⁷

“I would note that Oireachtas committees play a vital role in public oversight. There is a need to maintain flexibility in the process and not allow procedures to deaden the scrutiny of the Oireachtas.”²⁸

CONCLUSIONS: CLARITY OF TERMS OF REFERENCE

It appears from the submissions made that some witnesses appearing before Committees are unclear as to the boundaries of Committees’ Terms of Reference. The law is clear that a Committee should act within its Terms of Reference. However, it is not always reasonable for a witness to police that boundary, and therefore an internal Oireachtas mechanism should be established which will oversee Committees’ remit. Members of the Oireachtas are understandably concerned that there should not be unnecessary restrictions on Committees in their Terms of Reference. Additional specificity in the Terms of Reference should not however prevent Committees from carrying out their important functions. Therefore, there should be a mechanism for Committees to apply to extend their Terms of Reference easily.

RECOMMENDATIONS: CLARITY OF TERMS OF REFERENCE

- 1. The Terms of Reference of Committees should be reviewed, to ensure they accurately reflect the work of those Committees. Where they do not, the Terms of Reference should be amended.**
- 2. A procedure for Committees to apply to extend their Terms of Reference should be established.**
- 3. A Committee on Remit Oversight should be established which will consider if Committees are acting in breach of their remit.**

Acting within Terms of Reference

The need for Committees to act within their Terms of Reference was a clear area of concern in the Supreme Court decisions in *Kerins*. It was therefore important to obtain the views of witnesses and parliamentarians about their experiences of this aspect of how Committees function.

²⁷ John McGuinness TD submission, at page 4.

²⁸ Dr Michael Harty TD submission, at page 1.

Both politicians and witnesses agreed that Committees should act within their Terms of Reference:

*“It is important that the terms of reference ... should be adhered to by members of the Oireachtas”.*²⁹

*“Committees must operate within their prescribed terms of reference.”*³⁰

*“There is a need for Oireachtas Committees to have clear terms of reference and to remain within them”.*³¹

There were some witness submissions which seemed to suggest that the person would not have a particular issue with questioning beyond remit. However, in such cases the witness tended to have conflated the invitation and the Terms of Reference. It is not appropriate, even with consent of the witness, for a Committee to question a witness significantly beyond its Terms of Reference.

CONCLUSIONS: ACTING WITHIN TERMS OF REFERENCE

The decisions of the Supreme Court in *Kerins* have restated the critical importance of Committees not departing significantly from their Terms of Reference. This is an issue where there is broad consensus from both witnesses and politicians. The Oireachtas will use the views from the submissions to help frame the procedures that are to be put in place to ensure Committees act within remit.

RECOMMENDATIONS: ACTING WITHIN TERMS OF REFERENCE

- 4. The Oireachtas will establish an internal oversight mechanism via a Committee on Remit Oversight to better ensure Committees do not significantly depart from their Terms of Reference.**

[Communication of the Terms of Reference](#)

A common issue of importance for witnesses was easier access to the Terms of Reference of the Committee:

*“It may be beneficial for each individual Oireachtas Committee to develop easily accessible and customised terms of reference, and these should be communicated to all organisations who are invited to attend, and witnesses”.*³²

²⁹ Fianna Fáil submission, at page 1.

³⁰ Sean Fleming TD submission, at page 1.

³¹ Health Service Executive submission, at page 2.

³² Sport Ireland submission, at page 1.

“The people who are invited to attend an Oireachtas Committee must be made aware of the terms of reference...”³³

“All witnesses should be issued in advance a copy of the wording, and explanation of the committee remit, the limitations of privileges, how committee meetings are conducted, the membership of the committee”³⁴

It does appear that some witnesses were directly furnished with the Terms of Reference (for example, *“These terms of reference are specific and explicit and are shared with witnesses when issuing an invitation to appear before a committee”³⁵*) but this was not the consistent experience of witnesses.

CONCLUSIONS: COMMUNICATION OF THE TERMS OF REFERENCE

It appears from the submissions that not all witnesses are furnished with a copy of a Committee’s Terms of Reference. While Committees Terms of Reference are generally available on www.oireachtas.ie, it would appear useful to strengthen the practices around communication of this vital document.

RECOMMENDATIONS: COMMUNICATION OF THE TERMS OF REFERENCE

- 5. Amend the Witness Protocol to provide that Terms of Reference are furnished to witnesses in advance of Committee appearances.**
- 6. Continue to ensure that www.oireachtas.ie is up to date with copies of each Committee’s Terms of Reference.**

Overlapping Terms of Reference

Linked to this issue of Committees and remit was a theme in the submissions of overlapping remits of Committees:

“... there are clearly reasonable occasions where Committees’ individual remits nevertheless allow for more than one Committee to undertake inquiries into the same issue the Centre’s experience has been that although the respective Committees were examining the same topic, their questions were generally informed by their particular Committee’s remit.”³⁶

“...we have seen blurring of the lines where the [Committee on Public Accounts] and [Joint Committee on Health] Committees strayed into the others terms of reference

³³ Fianna Fáil submission, at page 1.

³⁴ Sinn Féin submission, at page 4.

³⁵ HIQA submission, at page 1.

³⁶ Centre for Cross-Border Studies submission, at page 2.

resulting in the HSE on some occasions being invited to attend both Committees, to deal with the same topic... In some of these cases there seemed to be contention between both Committees as to which would take possession of the issue. The result was often that the HSE was being called before both Committees to deal with the same topic, and answer very similar questions.”³⁷

Deputy John McGuinness expressed the view that “... If there is more than one committee operating within the remit of a department the role of each should be clearly defined”.³⁸ In relation to a mechanism to resolve or rule on disputes in relation to questions of remit, he expressed the view that such matters can be identified through comparing Committees’ work programmes; and should be resolved quickly. His view was that the Committee on Procedure was the appropriate body to do so.

CONCLUSIONS: OVERLAPPING TERMS OF REFERENCE

Where two or more Committees are examining the same or related matters (even if neither Committee is materially exceeding its remit), difficulties can arise if one or more of the following situations occur:

- multiple demands are placed on witnesses, which the witness may consider to be unreasonable.
- disagreement occurs between Committees in relation to “ownership” of the matter under examination. [On occasion in the past, such disagreement has given rise to correspondence between Committees or from a Committee to the Ceann Comhairle].
- there is duplication of effort and inefficient use of the time of witnesses, Members and parliamentary resources; this can be mitigated if each Committee concerned defines the purpose of its examination carefully, having regard to its Terms of Reference and those of the other Committee.

The Terms of Reference of all Committees should be examined with a view to providing greater clarity about their purpose. Standing Orders should provide a mechanism for resolving or clarifying questions of remit where this cannot be done within or between Committees. Orders of reference should be clear enough that conflict or confusion between Committees in relation to matters of remit can generally be avoided.

RECOMMENDATION: OVERLAPPING TERMS OF REFERENCE

- 7. Amend Standing Orders to deal with the issue of overlapping remits of certain Committees.**

³⁷ Health Service Executive submission, at page 2.

³⁸ John McGuinness TD submission, at page 4.

Expansion of Remit – Use of Public Monies

Some of the political submissions made the point that public services are no longer solely delivered by state bodies. Rather, public monies are often provided to private entities or charitable organisations to deliver public services. Existing Terms of Reference of Committees do not reflect that reality and need to be updated accordingly. For example:

*“the current framing of ...remit...through Committees ...in reality [does] not reflect the current operation of the public sector in modern day Ireland”.*³⁹

*“Over many years there have been significant changes in how public bodies deliver frontline services to our citizens, by way of contracting out, outsourcing and delivering services through agencies and third parties. The Oireachtas has not kept up with these changes resulting in billions of euros of public expenditure each year not being subject to Oireachtas scrutiny. Changes to Standing Orders and/or changes to legislation will be required. There should be oversight of organisations that receive the majority of [their] funding from the State to deliver frontline services on behalf of the State. All organisations that are included in the State's balance sheet should be subject to oversight by the Oireachtas.”*⁴⁰

*“It is reasonable to ask whether, if public policy aims are being sought to be achieved through channelling large scale public spending through certain public or private bodies that are not subject to C&AG audit, the ability to examine and report on that spending should depend on the status of the body rather than the source of the funds.”*⁴¹

A number of the political submissions suggested that the PAC was the most appropriate body to examine the use of public monies in this way. Some submissions asked whether extension of the power of the Comptroller and Auditor General's powers to audit such private bodies might be the most appropriate way to approach this change. Thus, for example:

*“Consideration [should] be given to further clarification and/or expansion of the remit of PAC, to cover monies spent and committed, and to include Comptroller and Auditor General reports [on] named bodies and any company or organisation that [receives] revenue/income from the public purse”.*⁴²

“A great deal of Exchequer funds is spent by non-public bodies or by public bodies which are not audited by the C&AG. To take an example removed from the Rehab controversy, local authorities receive a substantial part of their annual funding from various Government Departments and agencies... The financial statements of local authority are audited by the Local Government Audit Service, rather than by the

³⁹ Dr Michael Harty TD submission, at page 4.

⁴⁰ Sean Fleming TD submission, at page 1.

⁴¹ Labour Party submission, at page 2.

⁴² Sinn Féin submission, at page 6.

*C&AG, and the Service also carries out value for money audits of local authority operations. However, because the LGAS operates separate and apart from the C&AG, it follows that, as far as the Comptroller is concerned, he has no remit to follow Exchequer funds once they leave Government Departments and arrive in the hands of local authorities. It is not possible, therefore, the C&AG to attempt a holistic overview of Exchequer spending on, say, housing, because so much Exchequer funding for housing is channelled through local authorities which are not audited by him. And the Comptroller's incapacities in this area are of course shared by the PAC."*⁴³

*"Any review of the work of the PAC should include consideration of an extension of the powers of the Comptroller and Auditor General. It should be standard practice that any entity in receipt of public funding over a certain level can at any time be audited directly by the C&AG..."*⁴⁴

*"There may be good reason to extend the remit of the Comptroller and Auditor General as the PAC's remit is largely determined by the mandate given by the C&AG"*⁴⁵

CONCLUSIONS: EXPANSION OF REMIT – USE OF PUBLIC MONIES

A gap in oversight of private bodies in receipt of public monies is a common theme in many of the political submissions.

The inclusion of a specific and limited remit for Sectoral Committees in relation to non-State bodies which provide public services on foot of an agreement with a Department or other State body would go some way towards meeting political demands. Such a move would appear an appropriate fit within the overall parameters of the traditional remit of such Committees. Any further widening of remit in respect of non-State bodies would most appropriately be met through an explicit delegation from the Dáil to the Committee, and a new mechanism for remit oversight and extensions could facilitate this in specific circumstances. Any such extension of remit could have resource implications for the Committees concerned.

The above recommendations are as far as Standing Orders – as internal rules of the House/s – can go. State body accountability to Committees is both complex and opaque – there are several hundred State bodies⁴⁶ and their accountability to Committees (including PAC) is sometimes defined in parent Acts i.e. from the perspective of the individual body rather than from the perspective of Parliament. A mapping exercise of all State bodies could usefully be carried out with a view to defining accountability to

⁴³ Labour Party submission, at page 2.

⁴⁴ John McGuinness TD submission, at page 3.

⁴⁵ Labour Party submission, at pages 1-2.

⁴⁶ Note that a mapping exercise conducted for the Working Group showed that Oireachtas Committees of the 32nd Dáil had engaged with approximately 300 State bodies in the period 2016-19.

Oireachtas Committees in a single Oireachtas-specific Act. This would bring improved transparency for Committees and witnesses who are invited to appear before them.

As it stands, the PAC's remit is linked directly to examination of reports of the C&AG. If an extended remit was given to the C&AG to audit bodies in receipt of public monies, this would provide another avenue for greater Committee oversight of such bodies. This would require an amendment to the *Comptroller and Auditor General (Amendment) Act 1993* and would have resource implications for the C&AG. *This is outside the scope of the Working Group's Terms of Reference.*

RECOMMENDATION: EXPANSION OF REMIT – USE OF PUBLIC MONIES

- 8. Recommend that DPER undertake a review and extension of the remit of the Comptroller and Auditor General to reflect the points in the submissions, which will result in a widening of PAC's remit.**
- 9. Revise the Terms of Reference of Sectoral Committees to allow for the examination of non-State bodies in specific circumstances focussed on their performance in the delivery of publicly-funded services.**
- 10. Consider a mapping exercise of all State bodies with a view to assessing the feasibility of defining accountability to Oireachtas Committees in a single Oireachtas-specific Act.**

[Introduction to Invitations](#)

The second issue addressed in submissions was:

Invitations: the need for clarity in relation to invitations issued from Committees to witnesses, and for the Committee to adhere to the terms of such invitations

One preliminary point to make is to explain the difference between the Terms of Reference and the Invitation. Many submissions conflated the Terms of Reference of a Committee with the purpose of a meeting as stated in the invitation. For clarity, the Terms of Reference is like the charter or constitution of a Committee; it sets out the entirety of the areas which it can examine for the duration of its existence. Within those broad parameters, a Committee will choose to examine particular issues. When it wants to hear evidence from a witness on one of those issues, it will send a letter of invitation to that witness which should set out *"the broad areas where the Committee believes the person can offer evidence"*.⁴⁷

Below, the core issues of *Clarity of the Invitation* and *Adhering to the Invitation* are examined. Important submissions were also made on other issues relating to the invitation and are examined together under the headings *Invitations: Other Issues*.

⁴⁷ *Protocol for Persons giving evidence to Committees of the Houses of the Oireachtas* ("The Witness Protocol"), at para. 15, page 4.

Clarity of the Invitation

In general, submissions took the view that greater clarity would be to the benefit of both witnesses and the Committee concerned. The Centre for Cross Border Studies expressed the view that *“clarity in this regard can assist witnesses in preparing their evidence in a manner most suitable to the Committee and to the work it is undertaking”*.⁴⁸ Similar views were expressed in several other submissions.

Many submissions took the view that such clarity should extend to notice of the specific issues to be explored or even the questions to be asked:

*“... Without clarity on meeting purpose, the Committee could be seen to mislead witnesses.”*⁴⁹

*“If possible, more detail on the potential background questions covering the topics which are planned would be helpful.”*⁵⁰

*“With regard to the [Joint Committee on Health] quarterly meetings on health issues, the invitation is very general which can make it difficult to prepare for such meetings.”*⁵¹

*“Many invites which we have received in recent years have been very broad in nature and it has been difficult for witnesses to prepare effectively in advance. The provision of more detailed invitations, including a full scoping of the likely questions to be posed by Committee members would greatly improve the effectiveness of the hearings and enhance the quality of material / responses which witnesses could provide.”*⁵²

*“The issues for discussion at the hearing were not adequately articulated or defined. The invitation(s) received outlined the scope of the hearing in very broad and general terms but this was not indicative of the nature and extent of questions posed by Committee members. Because the parameters of the hearing were not clearly established, ETBs put considerable time into preparing for every potential eventuality. Enormous time and effort was invested in preparing for the hearings but the vast majority was this time was ultimately found to be redundant. The open-ended nature of the discussion militates against participants being reasonably prepared and contribute effectively.”*⁵³

CONCLUSIONS: CLARITY OF THE INVITATION

The Witness Protocol provides that *“Insofar as is possible, witnesses will be informed, in advance of their attendance date, of the broad areas where they will be expected to give*

⁴⁸ At page 2.

⁴⁹ National Museum of Ireland submission, at page 2.

⁵⁰ ESRI submission, at page 1.

⁵¹ Health Service Executive submission, at page 2.

⁵² Ibec submission, at page 2.

⁵³ Education and Training Boards Ireland submission, at page 2.

evidence or other assistance. This will enable witnesses to give maximum assistance to Committees in their deliberations.”⁵⁴ It is therefore recognised that it is the interest of both witnesses and Committees that witnesses should know what areas they will be questioned on. While the practice of informing witnesses in advance of the broad areas they will face questioning on is already in place, it would be useful to ensure specific training is given to Committee Chairs and Clerks on this issue. There is also clearly a desire from witnesses to have more specificity in invites.

RECOMMENDATION: CLARITY OF THE INVITATION

11. Ensure that Committee Chairs and Clerks receive training which reminds them of the importance of advance notice of areas for questioning to witnesses, and the advantages of being specific in the terms of that invite.

Adhering to the Invitation

There were a number of submissions from witnesses which indicated they would not have a difficulty with departure from the invite during a meeting:

“There is nothing inherently unfair or inappropriate in a committee straying from the strict bounds of ... the invitation.”⁵⁵

“TII engages most efficiently when the business of the debate remains aligned with the pre-circulated terms. However, TII accepts that matters outside the terms of such invitations may be raised during ... our appearances, either in relation to particular constituency issues or in relation to other matters that arose immediately prior to the scheduled appearance.”⁵⁶

Other witness submissions were critical of the lack of adherence to the terms of the invitation:

“ETBs would contend that the specific purpose behind their attendance may not be as outlined in the invitation. There is a view that the substantial issues raised at the hearing may be completely unrelated to the topics for which the ETBs were summoned to appear.”⁵⁷

“We believe that the rights of witnesses would be more strongly protected, and the effectiveness of hearings improved, if Committee Chairs enforced a zero tolerance of off topic questioning.”⁵⁸

⁵⁴ Protocol for persons giving evidence to Committees of the Houses of the Oireachtas, at page 4, para. 12.

⁵⁵ Threshold submission, at page 3.

⁵⁶ Transport Infrastructure Ireland submission, at page 1.

⁵⁷ Education and Training Boards Ireland submission, at page 2.

⁵⁸ Ibec submission, at page 2.

A number of submissions appear to suggest that the Committee of Public Accounts' understanding of its remit reflects the fact that individual Members are free to raise matters of topical interest in the course of meetings, irrespective of the invitation that has issued:

*"... in the past number of years the Committee has tended to stray more and more from the terms of the invitation and invariably engages in questioning on current year financial issues and day to day operational matters, with limited time spent on the financial year statements and governance issues as outlined in the terms of the invitation. While it is, again, understandable that members would seek to satisfy public interest in topical issues this can lead to frustration on both sides as witnesses seek to answer detailed questions which they had not anticipated or prepared for."*⁵⁹

From the political side, there were submissions which recognised the importance of staying within the terms of the invitation:

"A Committee which has induced a witness to attend on a specific basis should stay reasonably within the scope spelled out in the invitation".⁶⁰

"... All members and other Oireachtas members in attendance ... should be reminded verbally and in written form at the commencement of the meeting of the purpose of that specific meeting ... Chairs [should] suspend meetings in the event of advice that the questioning or comments from Oireachtas members or witnesses that has strayed beyond the hearings remit or is contrary to Standing Orders".⁶¹

However, some political submissions felt strongly there is a need to be flexible in the course of Committee proceedings, *"There is a need to maintain flexibility in the public oversight process and not allow procedures to deaden the scrutiny of the Oireachtas"*.⁶²

A practical issue which impacts whether Members will question within the invite is their awareness of the contents of that invite. One Committee Chair raised an issue about such lack of awareness: *"The content of these invitations has never been provided to any Committee Member or Committee Chairperson."*⁶³

Another Committee Chair submitted: *"I believe all letters of invitation to guests to attend Committee should be signed off by the Committee Chair."*⁶⁴

CONCLUSIONS: ADHERING TO THE INVITATION

The issue of departing from the terms of the invitation issued was of core importance in the *Kerins* decisions. However, the Supreme Court also made clear *"There is no legal*

⁵⁹ Health Service Executive submission, at pages 2-3.

⁶⁰ Labour Party submission, at page 5.

⁶¹ Sinn Féin submission, at page 4.

⁶² Dr Michael Harty TD submission, at page 1.

⁶³ Sean Fleming TD submission, at page 2.

⁶⁴ Mary Butler TD submission, at page 1.

barrier to a citizen answering questions which go beyond the scope of the invitation.”⁶⁵

There are occasions where it will be in the interests of both witnesses and a Committee to be able to approach the content of a meeting flexibly. However, it is important that witnesses should not be forced to answer questions for which they feel unprepared as they had no adequate notice. Therefore, rather than a complete prohibition on questioning beyond the invite, it appears it would be most useful to provide a clear avenue for witnesses to make a complaint about questions which go beyond the invite. As such, the Chair may be required to rule on whether a contribution is relevant or otherwise in order if a Member or witness requests that he or she do so.

Further, there is a need to link the Chair to the invite more clearly and/or to raise awareness of the invite in the Committee.

RECOMMENDATION: ADHERING TO THE INVITATION

12. Establish a clear process for witnesses to raise a complaint to the Chair in a Committee meeting where he/she has been asked a question which was not within the invitation.

13. Ensure Chairs and Committees are aware of the content of invitations by

- **issuing all invitations under the Chair’s signature**
- **circulating invitation letters to Members of the Committee once issued**
- **ensuring the content of the invitation is read out at the start of each Committee meeting.**

[Invitations: Other Issues](#)

Strong submissions were made by the witnesses who have attended Committee meetings about their desire for more time to prepare for the meeting and/or more information about what the meeting would look like.

Some of the most common matters mentioned by witnesses included:

- The need for adequate notice of the meeting: *“At a fundamental level the Oireachtas should lay down minimum notice periods for requests to attend at Committee meetings, which the individual committees do not have discretion to waiver.”⁶⁶*
- Knowledge of the documents which may be discussed: *“...any information/documentation requested should be sought in advance of the meeting or if requested during the meeting it should be provided as soon as practicably possible after the meeting. ... we believe it is in the public interest that ... witnesses*

⁶⁵ *Kerins v McGuinness & Ors* [2019] IESC 42, at para. 3.3.

⁶⁶ Tony O’Brien submission, at page 3. See also for example, the ETBI submission at page 4.

have had the opportunity to examine it in advance of being examined or requested to comment on it at a committee meeting.”⁶⁷

- Notice of any other witnesses: *“It is also helpful to know practical arrangements such as whether other participants have been invited...”⁶⁸*
- The ability to engage with the Clerk or Chair in advance of the meeting to ask questions: *“...officials from the Houses of the Oireachtas have always been very accommodating by responding to any queries in the lead up to any session.”⁶⁹*

CONCLUSIONS: INVITATIONS: OTHER ISSUES

For witnesses appearing before Committees, the submissions indicated a strong desire to be as prepared as possible. As will be set out below, many of the issues raised are already addressed in the Witness Protocol which, if it was being complied with, would address the concerns being raised.

One frequently mentioned issue was to be given adequate notice of the meeting to allow sufficient time to prepare. The issue of notice to be given to witnesses is addressed in the Witness Protocol which provides: *“Communications requesting or directing (i.e. compelling) persons to attend will generally issue not less than **ten calendar days** in advance of the proposed date of the meeting.”⁷⁰* This timeframe is not consistently applied by Committees. While there will always be cases where it is necessary to have exceptions, it is important that Chairs and Committees are reminded that this is the standard position. It may also be useful to amend the Witness Protocol to provide that if standard timeframes are not met, that reasons be provided to prospective witnesses in that regard.

In terms of providing advance notice of the documents to be relied on, this too is addressed in the Witness Protocol. It provides that **five calendar days** before the relevant meeting, certain information will be provided to the prospective witness, including *“a schedule of documents the Committee may wish to refer to during the meeting (which will normally be limited to documents the witness has access to or would have had access to, including those furnished to the person by decision of the Committee)”⁷¹* This provision of the Witness Protocol does not appear to be implemented as a general practice. It is therefore important again for training to be provided to Chairs and Clerks about the provisions of this Protocol, and the need to ensure compliance with same.

In terms of advance notice of other witnesses, this too is addressed in the Witness Protocol. It provides that, **five days before the scheduled meeting**, the witness will be

⁶⁷ Health Service Executive submission, at page 4. See also for example, Dr Michael Harty TD’s submission, at page 5.

⁶⁸ Commission for Regulation of Utilities submission, at page 3.

⁶⁹ Oxfam Ireland submission, at page 1. See also for example, the Centre for Cross Border Studies submission, at page 3.

⁷⁰ Witness Protocol, at page 4, para. 14.

⁷¹ Witness Protocol, at page 5, para. 18(c).

provided with “an indicative list of names of proposed attendees at the meeting (including Committee members and other witnesses, save for witnesses who have been granted anonymity etc.) The Clerk will endeavour to inform you of any change in details of witnesses attending the meeting as they arise.”⁷² Again this provision should be highlighted to Chairs and Clerks via training.

Finally, in terms of engagement with the Clerk or the Chair in advance of the meeting, this practice is ongoing at present and appears to be working well. It is important, in light of the **Kerins** decisions, that engagements between the Chair or Clerk and the witness are recorded adequately, and that any undertakings made to witnesses in light of those discussions are respected. This too should be highlighted in training.

RECOMMENDATIONS INVITATIONS: OTHER ISSUES

- 14. Ensure Chairs and Clerks are adequately trained on the provisions of the Witness Protocol and in particular, notice periods and advance notice of documents and witnesses relevant to the proceedings.**
- 15. Provide training to Chairs and Clerks on the need for formal recording of conversations with witnesses, and particularly, the need to respect any undertakings given.**
- 16. Strengthen the Witness Protocol in terms of the protections for Witnesses on notice periods, advance notice of documents and witnesses relevant to proceedings.**
- 17. Amend the Witness Protocol to provide that if the provisions on notice periods, advance notice of documents and witnesses are not met, that reasons will be given to the witness for same.**

[Introduction to Conduct of Meetings](#)

The third issue on which submissions were invited was:

Conduct of meetings: the conduct of hearings by the Committee as a whole, and the supervision of such hearings by the Chair

In relation to this issue the Supreme Court stated:

“The conduct of the business of a committee of the Oireachtas is, of course, again a matter for the Oireachtas itself. It is for the Oireachtas to specify, in its rules and orders, the way in which business is to be conducted and, in particular, the role and powers of the Chair of any committee to ensure that the committee concerned

⁷² Witness Protocol, at page 5, para. 18(d).

operates properly within the scope both of its remit and of any invitation issued to an attending citizen.”⁷³

Conduct of meetings by Committee as a whole

The submissions made concerned the way Committee meetings proceed, in particular, how Committee Members act and how they treat witnesses.

Overall, it was felt that Committee meetings operated best when conducted civilly and in a spirit of cooperation:

“Fair procedure and a culture of fairness and civility should be encouraged amongst members towards witnesses”⁷⁴

There were a range of issues which were the subject of submissions by witnesses in terms of the conduct of the hearings:

- Unfair and unreasonable behaviour:

“At times during the ... hearings, the conduct of the meetings was neither fair nor reasonable from the point of view of the witnesses.... We would add that not every committee member engaged in this manner, but the majority did so and were not, in our view, reasonably constrained or correctly guided by the Chair”.⁷⁵

- Being treated more like a defendant than a witness:

“... at least some members of a Committee adopt a prosecutorial stance; while those appearing are styled as witnesses but are often cast in the role of defendant. Normally in such kinds of circumstances, the proceedings are impartially chaired in the manner of a judge.”⁷⁶

- Lack of notice in relation to documentation:

“.....briefing notes were provided to the Committee without an opportunity for the HSE to explain and contextualise them....this led to a rush to comment by the PAC on the notes which was a serious misinterpretation of them and ultimately led to calls for the Director General to step aside. However, the Scally scoping enquiry.... [subsequently] confirmed that the interpretation placed on these reports by HSE senior management was correct.”⁷⁷

⁷³ *Kerins v McGuinness & Ors* [2019] IESC 42, at para. 3.4.

⁷⁴ Dr Michael Harty TD submission, at page 1.

⁷⁵ NAME WITH WORKING GROUP submission, at page 2.

⁷⁶ Tony O’Brien submission, at page 2.

⁷⁷ Health Service Executive submission, at page 4.

- Inappropriate questioning which was intended to undermine the evidence given.⁷⁸

- Bias of Committee Members:

*"The Committee must not demonstrate or allow individual members to demonstrate unfounded bias; all claims, arguments and demands must be supported by factual information."*⁷⁹

- Pressure to answer questions which could, if answered, have negative legal consequences:

*"Witnesses should not be expected to answer questions that could potentially defame persons, breach legal requirements and employment obligations."*⁸⁰

- Careless and inappropriate language:

*"the language used by the Chair and Committee members was careless and entirely inappropriate to the circumstances seasoned broadcasters on the Committee used rhetoric, exaggeration and loud and dramatic language unnecessarily throughout..."*⁸¹

- Failure to listen and to give time to respond:

*"...it is reasonable that [witnesses] be allowed a meaningful opportunity to answer the questions they are asked and time to elaborate on these answers, where this is reasonably required. It is important also that answers are listened to carefully and that an opportunity to clarify responses is provided if required."*⁸²

- Prejudicial or harmful comments:

*"All reasonable efforts should be made to establish the factual position before conclusions are arrived at or before [members] engage in prejudicial and/or potentially harmful comments about witnesses, their evidence or the organisation or entity in which they are based"*⁸³

Deputy John McGuinness set out his view of the challenge that presents in this area as follows:

⁷⁸ Ethna Tinney submission, at page 2.

⁷⁹ Killybegs Fishermen's Organisation Ltd. submission, at page 3.

⁸⁰ National Museum of Ireland submission, at page 2.

⁸¹ Citizens' Information Board submission, at page 3.

⁸² NAME WITH WORKING GROUP submission, at page 3

⁸³ NAME WITH WORKING GROUP submission, at page 3. Similar comments were made in the submission of the ETBI, at page 5.

".... People appearing before committees should be treated politely and fairly. Nevertheless, there are occasions where for one reason or another politeness can sometimes be lost in heated exchanges during the course of meetings that are naturally adversarial".

He goes on to say that *"aggressive questioning is often the only answer to stonewalling, time wasting and obfuscation"*.⁸⁴

CONCLUSIONS: CONDUCT OF HEARINGS BY COMMITTEE AS A WHOLE

As can be seen from the submissions, there were a wide range of issues which witnesses experienced in the course of their interactions with Committees. The Witness Protocol does assure witnesses of a base standard of treatment from Members, and expressly states *"Witnesses can expect to be treated fairly and with respect and consideration."*⁸⁵ It also contains a number of other provisions which, if they were applied fully, would avoid unfair treatment the likes of which were outlined in the submission.

From the point of view of Members, it is recognised that sometimes very firm questioning will be required and there is no legal impediment to such conduct. As the Supreme Court said in *Kerins*, *"there might well be questioning which might be considered unfair in a colloquial sense because questions might be deemed loaded or unduly aggressive or inappropriate on a whole range of other bases. However, unfairness of that type does not, as is clear from the principal judgment, potentially give rise to issues concerning the actions of the committee becoming justiciable. It is not the tone of the questioning which needs to be reviewed, for to do so would be to make deputies amenable for their utterances in circumstances which the Constitution does not permit. Rather, it is the substance of the actions of the committee as a whole which requires to be analysed."*⁸⁶

Overall, a balance needs to be drawn between achieving the aims of the Committee with the rights of witnesses. One clear issue is that there is no express mechanism for a witness to seek local resolution of unfair treatment. Further, Committee Members and Chairs could usefully receive training on appropriate conduct during Committee meetings, as well as on the content of the Witness Protocol.

RECOMMENDATIONS: CONDUCT OF HEARINGS BY COMMITTEE AS A WHOLE

- 18. Revise the Witness Protocol to emphasise the importance of the base rights of witnesses, and the right of witnesses to raise issues with the Chair.**
- 19. Provide training to Committees on appropriate conduct and the Witness Protocol.**

⁸⁴ John McGuinness TD submission, at pages 1 and 2.

⁸⁵ At page 8, para. 31.

⁸⁶ *Kerins v McGuinness & Ors.* [2019] IESC 42, at para. 3.7.

The Role of the Chair

The central importance of the role of Chair was touched on in several submissions. NASC described important aspects of the role of the Chair from its perspective as follows:

*“The importance of the Chair and their contribution to the conduct of the hearing cannot be overstated. In our experience the Chair has ensured that the meetings have run in a timely and efficient manner, witnesses are at ease and have an opportunity to fully answer any questions asked of them”.*⁸⁷

This reflected witness experience as communicated in most submissions received.

For witnesses who had a more negative experience in front of Committees, there were strong submissions around the need for the Chair to act impartially, to prevent inappropriate questioning and abusive comments, and to take action if those basic matters of fairness are not met:

*“The Oireachtas needs to put in place procedures to regulate the conduct of meetings and the role of the chair which take account of the entirely unequal balance of power between committee members and witnesses, especially given the exercise of parliamentary privilege, in the room, by members”.*⁸⁸

*“The role of the Chair needs to be impartial and should ensure witnesses are treated fairly and not exposed to excessive or hostile questioning by the Committee or non-Committee attendees. ...The Committee must not demonstrate or allow individual members to demonstrate unfounded bias; all claims, arguments and demands must be supported by factual information. When such conditions are not met, the Committee meeting should be suspended and/or dismissed”.*⁸⁹

*“It should be incumbent on the Chair to protect witnesses from insulting, provocative and sarcastic remarks”.*⁹⁰

*“...there was no interruption or contradiction by the Chair of patent inaccuracies presented by Committee members in the course of the meeting”.*⁹¹

From the point of view of the Chairs who made submissions, the need for the Chair to be allowed discretion, the need for a power to penalise and the importance of the Chair embedding a constructive culture were all mentioned:

⁸⁷ NASC submission, at page 2.

⁸⁸ Tony O’Brien submission, at page 2.

⁸⁹ Killybegs Fishermen's Organisation Ltd submission, page 2-3.

⁹⁰ ETBI submission, at page 5. See also Health Service Executive submission, at page 4.

⁹¹ Citizens' Information Board submission, at page 3.

“It is true that grandstanding takes place from time to time, on both sides, but that happens in many fora too. However, passion, frustration and a desire to get to the truth is not grandstanding, although they may lead to heated exchanges that get out of hand. More often than not the participants on both sides are well able for it, and the chairman should be able to decide when they are not - a decision that will rest on how he/she sees it and what he/she knows about the direction the questioner is taking.”⁹²

“Any attempt to mislead a committee or give false information must be met with some form of sanction. Equally, members deliberately behaving badly by overstepping the bounds of robust questioning of a witness should be sanctioned.”⁹³

“At the Health Committee I attempt to ensure that fair procedures were followed and that a culture of fairness and civility was encouraged amongst members towards witnesses. ...this cultural aspect goes a long way to ensuring that Oireachtas committees can perform their oversight function without abusing power or witnesses.”⁹⁴

One Chair spoke about the need to protect Chairpersons: *“There has been a huge emphasis, as a result of the Kerins Ruling, in relation to protection of witnesses, the Oireachtas and Committee members. I believe an equal amount of protection should be afforded to the Chair of the Committee also.”⁹⁵*

Three out of the four Chairs who made submissions spoke about the need for training:

“All members of Oireachtas committees should be obliged to attend a comprehensive training course.”⁹⁶

“Appropriate training for Committee Chairpersons must be implemented.”⁹⁷

“I believe that when a new chair is appointed to any Committee mandatory training should be provided in relation to Rules & Procedures for chairing the Committee.”⁹⁸

CONCLUSIONS: THE ROLE OF THE CHAIR

The role and responsibilities of the Chair should be elaborated on in Standing Orders, underpinned by clear guidelines and training/support for Chairs. An effective response to the judgment requires Chairs to accept the responsibilities of the role and to be willing to discharge them. Ensuring compliance with witness protocols should be a key responsibility of the Chair.

⁹² John McGuinness TD submission, at page 2.

⁹³ At page 4

⁹⁴ Dr Michael Harty TD submission, at pages 1-2.

⁹⁵ Mary Butler TD submission, at page 1.

⁹⁶ John McGuinness TD submission, at page 4.

⁹⁷ Sean Fleming TD submission, at page 3.

⁹⁸ Mary Butler TD submission, at page 1.

RECOMMENDATIONS: THE ROLE OF THE CHAIR

20. Amend Standing Orders to provide detail on the role and responsibilities of the Chair.
21. Amend Standing Orders and the Witness Protocol to strengthen the role of the Chair and the mechanisms for a witness to call on the Chair to assist.
22. Training must be provided to all Committee Chairs at a minimum, and ideally, to all Committee Members.

Remedies

The fourth area on which submissions were sought was as follows:

- *Remedies: the need for remedies to be available to persons who may be affected by a breach of their rights by a Committee.*

This ground relates to the comments of the Supreme Court that “*the issue of the availability of an appropriate mechanism to provide a remedy in the event of a committee acting inappropriately is a matter which the Oireachtas itself can put in place.*”⁹⁹

The Oireachtas was therefore keen to obtain the views of witnesses and parliamentarians as to the most useful remedies which could be introduced for witnesses, while retaining the effective and free flowing Committee business which serves the public interest.

Suggestions from witnesses included:

*“...an appropriate structure whereby complaints of unfair treatment and questioning which goes beyond the remit of the Committee can be addressed. Such a mechanism could also provide for remedies or sanctions, as appropriate, where a complaint is upheld.”*¹⁰⁰

*“There needs to be very specific rules of engagement for Committees to safeguard attendees. It should be incumbent upon the Chair of the Committee to protect the witnesses from insulting, sarcastic and provocative remarks.”*¹⁰¹

“The Committee on Procedure (CP) and the Committee on Procedure and Privileges (CPP) must also uphold the core principle that citizens’ constitutional rights must at all times be protected by both Houses when individuals or organisations are invited to appear before any Committee of a House or Houses, and that there are clear and open channels for citizens to bring a complaint when they judge those rights to have been infringed. Where the CP or CPP, in discharging their responsibility to ensure citizens’ constitutional rights are not infringed, find that a complainant is justified in

⁹⁹ *Kerins v McGuinness & Ors* [2019] IESC 42, at para. 3.5.

¹⁰⁰ Council of the Bar of Ireland submission, at page 5.

¹⁰¹ ETBI submission, at page 5.

their grievance, the remedy should relieve any reputational damage suffered by the complainant.”¹⁰²

Drawing on the experience of a number of its staff who have appeared at Committee meetings, the Health Service Executive stated in its submission that the remedies available for those who feel that their rights have been breached should include:

“a very clear code of conduct and behaviour in place for members of Committees...

that is clearly understood by all so as to ensure that witnesses’/citizens’ rights are upheld and vindicated.

a right to ask the Chairperson to intervene and request the member(s) to desist and remind them of their obligations to uphold the rights of witnesses.

where a Chairperson or a Committee is not taking seriously the complaint of a witness, that they can make a formal complaint to the Ceann Comhairle.

a right to seek that a remark is withdrawn, and/or an apology is given in public session where it is deemed that their rights have been breached.

the right to have an assurance that, in any future requests to attend a meeting, their rights will be fully respected and vindicated.

a clear, transparent, accessible and adequate disciplinary mechanism to deal with a Committee or members of a Committee where the witness/citizen believes that their rights have been breached.”¹⁰³

Ms. Ethna Tinney made the point that a witness attending in a voluntary capacity may take action where their rights are breached by leaving a meeting: *“[Except where compelled to attend] ...the simplest of remedies is available to a witness who feels that his or her rights are being breached. He or she can walk out and refuse to answer the questions of the Committee.”¹⁰⁴*

The submissions from Members, while recognising that the decision of the Supreme Court meant that changes will have to be made, pointed out that *“we should be careful not to throw out the baby with the bathwater”* when developing changes to rules and practices.¹⁰⁵

One Chair suggested as follows:

“Where a person may have been affected by a breach of their rights by a Committee, they should have the right to request that the Committee or other such body convene

¹⁰² Centre for Cross Border Studies submission, at page 3.

¹⁰³ Health Service Executive submission, at pages 5 - 6.

¹⁰⁴ Ethna Tinney submission, at page 2.

¹⁰⁵ Sinn Féin submission, at page 1.

a meeting so that the matter can be dealt with and appropriate remedies provided.”¹⁰⁶

Where remit or the invitation has been unreasonably exceeded, the Labour Party were of the view that *“there should be a means of complaint or objection available to a witness who contends that either of these rules are being broken. The Dáil in its standing orders must provide a means of controlling the activities of its committees.”¹⁰⁷*

CONCLUSIONS: REMEDIES

If a witness is attending voluntarily, the option simply leaving a Committee meeting where his/her rights are being infringed exists in theory. In practice however, it is a difficult option to exercise, and could lead to reputational damage (as was recognised by the Supreme Court in the *Kerins* decision.¹⁰⁸) It is therefore important to give witnesses access to a process where they can easily raise issues with the Chair, and should not be penalised for same.

That said, there are existing rights of witnesses which, if they were better recognised by witnesses and parliamentarians alike, could provide a solution for a witness who was aggrieved by the actions of a Committee. For example, if a witness is asked a question outside of their invite, they can decline to answer the question. This is in fact expressly provided for in the Witness Protocol, *“...a decision by you to refuse to answer a question for a stated reason will be respected.”¹⁰⁹* The issue of course is that in reality, Committee Members sometimes persist in asking the same question of a witness if they refuse to answer, and/or criticise the witness heavily for simply exercising their stated right. If the Chair was adequately trained to support witnesses where they validly assert their rights, this could avoid some of the more negative scenarios which can arise in Committees taking place. Equally if more witnesses were aware of the assurances available to them in the Witness Protocol, this could point to this document to assert their rights in a meeting.

There does need to be an additional process for witnesses to assert their rights in a Committee meeting, and the suggestion of a number of witnesses that they should be able to raise matters of order with the Chair is a sensible one. If a process was put in place which required a specific ruling from the Chair on such points of order, it would ensure that witnesses obtain a clear and swift answer to whether a Committee Member’s actions are appropriate. Such a procedure also accords with the submissions from the political side about the right to a local remedy.

To complement this process, there needs to be a power granted to the Chair where, if he or she makes a ruling on order and a Member of the Committee (or even other witness)

¹⁰⁶ Sean Fleming TD submission, at page 3.

¹⁰⁷ Labour Party submission, at page 5.

¹⁰⁸ Cf. *Kerins v McGuinness & Ors* [2019] IESC 11 at para. 11.2, subparagraph (h).

¹⁰⁹ *Protocol for persons giving Evidence to Committees of the Houses of the Oireachtas*, at page 8, para. 33(c).

fails to respect that, that there are consequences for such actions. Thus, affording greater powers to Chairs to, for example, require Members to leave a meeting or potentially face suspension from the Committee should mean better discipline in Committee proceedings, with associate benefits for witnesses.

Finally, it is recognised that in some cases a witness may not be in a position to raise an issue at a particular meeting, but rather would prefer to make a complaint after the meeting. Therefore, a clear avenue of complaint should be created which allows witnesses to write to the Chair about adverse effects he/she has suffered as a result of a Committee meeting. The remedies which may arise out of this approach should be flexible, to allow for the correctly tailored response to the adverse effect suffered. They should range from the witness focussed (e.g. being allowed to make a further statement which corrects the record) to those which are Member focussed (e.g. being ordered to withdraw a particular comment). There should be an appeal mechanism to an oversight Committee if a witness is unhappy with the determination of the Chair. It should also clearly allow witnesses to make complaints about the Chair if he/she has been the cause of the adverse effect.

RECOMMENDATIONS: REMEDIES

- 23. Provide additional training to Chairpersons on the rights of witnesses appearing before Committee meetings.**
- 24. Ensure that all witnesses are fully aware of the existence of the Witness Protocol.**
- 25. Establish a process in Standing Orders which allows a witness to raise points of order with a Chair in a Committee meeting.**
- 26. Establish a process in Standing Orders where, if a ruling is made on a point of order by the Chair, and such order is not respected, that consequences arise for Members. This can take the form of ordering a person to withdraw from a meeting and/or there should be a power to suspend Members from the Committee for more egregious conduct.**
- 27. Provide a process in Standing Orders where a witness (or other person) can complain after a Committee meeting where they have been adversely affected by that Committee meeting. This process should allow for flexible outcomes. There should be an appeal process to an oversight Committee such as the Committee on Procedure.**

Chapter 4: Summary analysis of international benchmarking responses

In order to assist and inform the work of the Working Group on Parliamentary Privilege and Citizens Rights, Request 4128 was filed with the ECPRD, eliciting responses from a large number of parliaments.¹¹⁰ These responses are the subject of a separate and comprehensive summary paper by the Library and Research Service.

Given the wide-variety of political systems and traditions present across the responding parliaments, and the striking differences between civil and common law¹¹¹ jurisdictions, not all responses are equally relevant to the considerations of the Working Group.

The most pertinent, practical and relevant examples of parliamentary procedures contained in the responses are therefore summarised in this report, having regarded to the areas of focus of the Working Group. The areas are categorised as follows:

- Rights of Witnesses;
- Remedies and Sanctions;
- Role of the Chair;
- Oversight of remit.

Rights of Witnesses

It must be noted that not all parliamentary Committees hear from witnesses, some hear only public officials or no witnesses at all (e.g. Czech Republic Chamber of Deputies; Swedish Riksdag; Polish Sejm; Slovenian National Council; Belgian Senate; Georgian Parliament) or only very rarely (e.g. Finnish Parliament) but would still hold special commissions of inquiry where needed.

¹¹⁰ Responses from Austria (House of Representatives) Belgium (both Houses), Canadian parliament, Croatia, Cyprus, Czechian Chamber of Deputies, Estonia, Finland, France (both Houses), Georgia, Germany (both Houses), Greece, Hungary National Assembly, Israel, Italian Senate, Latvia, Lithuania, Moldova, Netherlands (House of Representatives), New Zealand, Norway, Poland (both Houses), Portugal, Romania, Slovakia (House of Representatives), Slovenia (both Houses), Spain (both Houses), Sweden, Turkey and the UK (both Houses).

¹¹¹ 'Common law' is a reference to a legal system that features an identifiable body of law that derives from centuries of judicial decisions. It is case law and precedent-oriented. In common law jurisdictions, therefore, Judges take an active role in developing law through legal interpretation. It was judicial interpretation of the competing Constitutional rights of Parliament, and witnesses appearing before Parliament, that has given rise to developments in Irish law, as set out by the Supreme Court in *Kerins*, which has in turn given rise to the Review of Standing Orders and practice now being undertaken by both Houses. For that reason, the approach taken by Common Law jurisdictions is of particular relevance as the law regulating personal rights is largely influenced by judicial decision, as opposed to civil law systems (as exists in the majority of Continental Europe) in which the substantive rules regarding the application of law are contained in codified form, generally statute and fixed codes.

Further, when assessing the responses relating to witnesses, it must be noted that several nations distinguish between ‘witnesses’ who are obliged to attend and ‘invitees’, and therefore the information in some responses tended to focus on full Commissions of Inquiry/Investigation, which seem to be closer to investigations under the *Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013*.

In the Netherlands House of Representatives, a witness whose rights under the Rules of Procedure have been violated can turn to the Chair for assistance, save where their confidentiality is breached by disclosure of a statement in a closed session or confidential documents are leaked, in which case they must approach the Presidium. The Hellenic Parliament permits individuals to complain about unparliamentary conduct to the Special Permanent Committee on Parliamentary Ethics.

Witnesses are normally given an indication of what material the Committee intend to ask about (e.g. UK House of Commons; Cypriot Parliament,), but this appears to be mostly based on the position that witnesses should know in advance what the subject matter of the Committee’s questioning should be, so as to best assist the Committee in their work. In the Hellenic Parliament, there are relatively extensive provisions in relation to invitations; where non-parliamentarians are to be heard, a specific proposal must be made which must include the name and capacity of the proposed witness, and the subject on which they will provide information to the Committee, and the decision resulting from this proposal includes the names of the persons to be called and the object of the Committee’s hearing. In the New Zealand parliament’s response, it was noted that if a hearing raised natural justice issues then details of what was proposed to be discussed would be given, as the subject would have the right to bring counsel and object to irrelevant questions, and the Chair might find it difficult to override such objections where uncertainty as to the purpose of a hearing existed.

In the UK House of Commons it is possible for a defamed person to enlist the aid of another Member to table a motion, ask a question or submit a petition; it is unclear from the responses whether this is effective in practice, but it should be noted that this would not satisfy the concerns raised in *Kerins* wherein the Supreme Court noted that it was arguable that *“there is a constitutional obligation on the Oireachtas to put in place appropriate mechanisms to remedy any wrong done”*. In the Israeli Knesset, any invitee who feels that their rights have been breached can raise a complaint to the Ethics Committee, which has repeatedly ruled that Committee Chairpersons must treat all invitees properly and respectfully.

The Hellenic Parliament’s submission states that *“if a Committee member breaches its remit in such a way that it leads to an offence to the right of personality, for instance by asking the invited experts or witnesses that don’t fall within the scope of their competence or if MPs behave in an offensive way, then the person that has suffered the unlawful offence to his personality has the right not only to claim the cessation and non-recurrence of such offence,*

but also to request compensation...”; this is because parliamentary immunity in the Hellenic Parliament only applies to criminal proceedings. It also explicitly limits questioning of any one witness to one hour.

The New Zealand parliament has, under the New Zealand Bill of Rights Act 1990, imposed a right to fair procedures on parliament, but this is not cognisable by any court and it is for parliament to apply; it is described in the New Zealand book on parliamentary practice under the heading of natural justice. Standing Order 238 not only allows a person defamed by evidence before a Committee to respond, but also if needs be to call rebuttal evidence.¹¹²

Conclusions relating to Rights of Witnesses:

Not all Committees hear from witnesses; some hear from no-one or only from public officials. Further, several nations distinguish between “witnesses”, whose attendance is obligatory, and “invitees”, with greater protections being afforded to witnesses, similar to those found in the *Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013*. Some parliaments allow witnesses to lodge complaints as regards their treatment before Committees, while others require another Member to lodge a complaint on the witness’ behalf.

It is the usual practice to give witnesses guidance as to what areas the Committee intends to explore so that witnesses are in a position to give assistance, though some parliaments see this as a matter of natural justice.

Remedies and Sanctions

It would appear that the sanctions available in Ireland may be quite moderate compared to some other parliaments. No parliaments seem to sanction Committees, but instead sanction individuals. The Polish Sejm states that although there are no sanctions, political accountability is not excluded and nor is dismissing Chair of a Committee or all Members of the Committee.

Almost every parliament had some mechanism to discipline Members, but the exact nature and mechanics of this varies widely; the Swedish Riksdag does not impose sanctions for abuse of privilege or breach in plenary or Committee sessions, but instead seems to leave it to the political party of the Member to enforce discipline. The Canadian House of Commons only permits a Chair to report a Member to the House. The Finnish Eduskunta has a general duty on Members, which applies in Committees, to behave with dignity and decorum and not behave offensively to another person, for breaching which a Member may be eventually suspended for two weeks.

¹¹² This information does not appear in the submission but is found in documents referenced in their submission and found on the parliament’s website.

Some parliaments allow for proceedings for defamation (e.g. Hellenic Parliament; Latvian Saeima where the statement is known to be false), meaning that defamed persons can self-enforce through the courts, perhaps abating somewhat the need for internal procedures. The Supreme Court in *Kerins* emphasised the need for “*the Oireachtas rather than the courts to protect the rights of individuals in circumstances where the Oireachtas and its members enjoy the privileges and immunities conferred by Article 15*”; obviously, if those immunities were not present, then it would be a matter for the Courts to vindicate the rights of affected persons.

Many respondent parliaments do not seem to distinguish between whether a Member’s offending speech took place in a parliament chamber or in one of the bodies of the parliament e.g. Czech Republic Chamber of Deputies). In regards to those that do draw such a distinction, it is not clear in all cases that the proceedings of such Committees are as public as those in Ireland, which may lead to a difference of consideration.

Most commonly, there is provision for sanction for disruption or breach of proper decorum (e.g. Polish Sejm) but in many responses it is not clear that this necessarily covers aggressive or defamatory behaviour towards witnesses (but would evidently cover ignoring the Chair’s direction to cease such questioning).

The Israeli Knesset permits admonition, but it is gradated according to severity as comment, admonition, reprimand and severe reprimand. The Knesset can restrict a Member’s parliamentary activity in a number of ways, such as prohibiting them from initiating bills or motions, revoking their right to speak for up to ten meetings or suspending them from sittings for six months.

Several parliaments permit fines for serious disruptive breaches by Members (e.g. Polish Sejm), however fines are mostly applicable where Members fail to attend.

Further, some parliaments can withdraw privilege from their Members if they wish, most commonly where a (relatively minor) criminal act is committed (e.g. Portuguese Assembleia; Slovenian National Council; Slovenian National Assembly; Hellenic Parliament; Estonian Riigikoju; Polish Sejm), but civil immunity can also be withdrawn in some countries by consent of the parliament (e.g. Polish Sejm).

Conclusions relating to Remedies and Sanctions:

It would appear that the sanctions available in Ireland are moderate compared to some other parliaments. No parliaments seem to sanction Committees, but instead sanction individuals. Almost every parliament had some mechanism to discipline Members, but the exact nature and mechanics of this varies widely. Sanctions take many forms e.g. comment, admonition, reprimand, limitation of parliamentary participation, suspension.

Where parliaments permit proceedings for defamation, this may abate the need for internal procedures.

Role of the Chair

The role of the chair of a parliamentary Committee ('Committees') is an important one in most of the respondent countries, generally charged with the maintenance of order (e.g. Parliament of New Zealand). Their authority and responsibility (e.g. Hellenic Parliament) or powers (e.g. Moldova; Romanian Senate) are sometimes explicitly tied to the powers, or a portion thereof, of the person who presides over the hearing in parliament. In the Hellenic Parliament, part of the role of the Chair is described as including ensuring that their Committee remains within remit.

In the Spanish Congress of Deputies, the constitutional rights of those appearing before Committees otherwise than in formal investigations are expressly guaranteed, and it is the Chair who is responsible for ensuring compliance. It is seen as part of the functions of the Chair to ensure respect for the rights of those appearing. Similarly, in the Cypriot Parliament, the Chair of a Committee has responsibility for ensuring the protection of invited person from "unbecoming expressions or the launching of accusations or personal attacks". In the German Bundestag, there are no specific legal regulations, but it is stated that the duty of the Chair is to ensure that an individual is treated fairly, and that if a person is treated unfairly they can complain to the President of the Bundestag. The Norwegian Storting notes that the Chair has general responsibility to ensure that questions are within the stated topic and the "security on the law" of the person summoned to give information is safeguarded.

In some parliaments, Chairs have few formal powers but are expected to rely on their own authority as Chair; in others, more explicit powers are granted to Chairs. Even in those parliaments where few powers are granted, the power of suspension of a Committee meeting in the face of disruption seems to be common (e.g. UK House of Commons;) and the right to withdraw the floor (e.g. Moldova; Polish Sejm).

In general, the Chair has the power to maintain order and discipline at meetings, and as part of that may caution any speaker or withdraw the floor from them (e.g. Portuguese Assembleia; Cypriot Parliament) or expel them temporarily (e.g. Slovenian National Assembly; Romanian Senate; Netherlands House of Representatives; Hellenic Parliament). Where a Member is expelled, then this can be regarded as an unjustified absence for the purposes of any consequences which may flow from non-attendance at parliament (e.g. Slovenian National Assembly).

Some parliaments allow appeals by the disorderly Member to the house from the decision of the Chair (Slovakian National Council; Polish Sejm), others do not (e.g. Netherlands House of Representatives; Hellenic Parliament).

In the Canadian House of Commons, where Committees can only report Members to the House for discipline, the Speaker will generally only hear questions of privilege based on a report from a Committee and not from an individual member.

Conclusions relating to the Role of the Chair:

The role of the chair of a Committees is an important one in nearly all of the respondent countries, being generally charged with the maintenance of order in meetings. This can include treatment of witnesses, and respect of remit. In some countries the Chair is specifically granted the role of safeguarding those who appear in front of the Committee. In many countries, Chairs are granted specific powers to carry out their role e.g. the power to caution speakers, withdraw the floor from them, expel them from the meeting or impose greater discipline.

Oversight of Remit

In many civil law jurisdictions, Committees are largely limited to examining work assigned to them by the relevant House, or a particular centralised Committee, and do not have the roving jurisdiction often found in common law jurisdictions (e.g. Finland; Norwegian Storting; Belgian Senate). As such, in many responses it was clear that the issue of conflict of remit could not arise, as work was largely assigned. Even in such jurisdictions, however, work could often be assigned to more than one Committee if it were felt relevant to both. In such cases, a lead Committee is often designated with the lesser Committee either reporting first (e.g. Spanish Congress of Deputies; Slovenian National Council) or not reporting at all and simply contributing to the lead Committee's report (e.g. Portuguese Assembleia; Grand National Assembly of Turkey) perhaps by being asked for an opinion (e.g. German Bundestag). The Slovenian National Council refers to 'competent committees' and 'interested committees'.

In the Israeli Knesset, the House Committee is entitled to decide the order of determination among Committees examining the same material and has a power to resolve differences of opinion among Committees and prevent duplication of work. Strikingly, a person summoned to testify has the right to seek a determination of the order of deliberation.

Some parliaments simply allow Committees to complete reports into those aspects which are relevant to them (e.g. Latvia Saeima) and do not see any issue with Committee overlap. The German Bundestag state that it is not unusual for Committee's remits to overlap, and for them to examine the same issues; if a case is borderline, the Committee takes a decision on remit. In the Slovakian National Council, a Minister is obliged to attend whatever Committee requires his presence for the discussion of a topic.

Even where work is assigned, most parliaments allow for an appeal mechanism from assignment (e.g. Moldova; Romanian Senate).

The Hellenic Parliament noted that issues were allocated to the competent Committees by both the Speaker referring issues to them, and a Conference of Parliamentary Chairs engaging in weekly scheduling of their work.

Some parliaments seek to resolve conflicts of remit by agreement. In the UK House of Commons, a Liaison Committee composed of all select Committee Chairs helps coordinate the work of such Committees (with no sanctions for Committees straying outside of remit); Committees are encouraged to work together, share evidence and agree joint reports where they share interest in a subject matter, and they can agree to do so between themselves. Multiple parliaments had a provision entitling Committees to work jointly with joint meetings (e.g. UK, House of Commons; Swedish Riksdag; Slovenian National Council; Canadian House of Commons) though they normally retain a separate character and report separately (e.g. Portuguese Assembleia; Estonian Riigikogu). In the Slovenian National Assembly, if two Committees share competence they hold joint hearings. In the German Bundestag, the political groupings monitor whether Committees are breaching remit.

Although many parliaments normally resolve such matters by agreement, other parliaments have a body which resolves such disputes; this is normally a body with other related functions rather than a bespoke body (e.g. the Bureau of the Commission of Spanish Congress of Deputies; President of the Assembly of the Portuguese Assembleia; Presidium of the Polish Sejm). This is commonly the equivalent to the Ceann Comhairle (e.g. the President of the Slovenian National Assembly) or a body similar to the Business Committee (e.g. Romanian Senate) or the Committee on Procedure (e.g. Croatian Parliament) or the Committee of Chairs (e.g. Conference of Presidents of Belgian House of Representatives). In the Portuguese Assembleia, an aggrieved Committee can ask for the assignment of work to be reconsidered by the President, and if still unhappy can appeal to a competent Committee.

In the response of New Zealand, it was speculated that the meeting of a Committee outside of remit might not be supported or publicised by the Clerk's Office, and might be regarded simply as a meeting of MPs. Further, it was speculated that it might be regarded as a contempt of the House to purport to be a Committee, and further that parliamentary privilege might not apply. It would seem that this assumes a significant and utter departure from remit.

As above, no parliaments seem to sanction Committees, but instead sanction individuals.

Conclusions relating to Oversight of Remit:

In many nations, Committees are limited to assigned work and do not have the broader roving jurisdiction found in Ireland, so the issue of conflict of remit does not arise. Often, where multiple Committees share an interest, Committees can work together on issues, either jointly or with one Committee as lead Committee. Mechanisms to resolve conflict of remit between Committees include appeals to the House, the Chair of the House, or to a

Committee similar to the Committee on Procedure, the Business Committee or the Committee of Chairs.

Chapter 5: Key principles for drafting Standing Orders

Introduction

This Chapter sets down a number of key principles which have formed the basis for drafting the amendments to Standing Orders (referred to as “drafting principles”).

These principles are drawn from the entirety of the Working Group’s research and discussions, including:

- the conclusions and recommendations arising from the analysis of submissions (as set out in Chapter 3);
- the practices and procedures of other jurisdictions (as summarised in Chapter 4);
- the Supreme Court decisions in *Kerins* and other important legal principles; and,
- its experience as a group of parliamentary procedure and practice.

It is intended that - by implementing these principles by means of Standing Orders, rules and guidelines - the risk of any further proceedings will be reduced as the amendments are focussed on addressing many of the issues which led to the justiciability of the proceedings in *Kerins*.

Safeguarding the Role of Committees

The work of Committees in supporting the Constitutional functions of the Houses of the Oireachtas should not be unnecessarily restricted in response to the judgment.

“Fair procedure needs to be balanced against the need for a workable system of Parliamentary oversight”¹¹³.

“...the constitutional role of the Oireachtas is not confined to the pure task of legislation...the Oireachtas also has a key function in holding the executive to scrutiny and also in providing representation for the public in the political sphere.”¹¹⁴

As can be seen, the Supreme Court has explicitly acknowledged the key constitutional role of the Houses of the Oireachtas – as conducted through the Committee system - in relation

¹¹³ Dr Michael Harty page 4

¹¹⁴ *Kerins v McGuinness & Ors* [2019] IESC 11, at para. 7.4

to scrutiny of the executive and public representation. The work of Committees is carried out in the public interest; a strong Committee system is internationally recognised as a key benchmark of an effective legislature.

Parliamentary Committees legitimately operate in a political context. The Supreme Court has explicitly stated that the court is not entitled to examine members' utterances in terms of "tone". Loaded, aggressive or inappropriate questions by Members are, in effect, non-justiciable. What is justiciable will be a "*significant and unremedied unlawful action on the part of a Committee.*" With reference to the judgments, with emphasis added, paragraph 10.14 and 15 state:

"But, if it should transpire that a committee acts, in a material and significant manner, in an unlawful way then there is an obligation, under the Constitution, on the Oireachtas to do something about it. If the Oireachtas provides some means of controlling the unlawful activities of its own committees then that fact would weight most heavily against it being appropriate for a court to intervene. The Court would have to afford a very significant margin of appreciation to the decisions of any properly constituted body within the Oireachtas charged with providing a remedy for unlawful actions occurring within the Oireachtas itself."

This is important to acknowledge as it runs contrary to fears expressed by some of a "chilling effect" on the work of the Committees as a result of the judgment.

Vindicating the Rights of Witnesses

A streamlined process to provide a remedy to a witness or a third party who has been adversely affected by utterances within the Dáil or a Committee should be set out in Standing Orders¹¹⁵

Based on the principle of "local resolution first", this process should be based on an initial submission to the Chair, with a right to make a further submission to the Committee on Procedure (CoP) if dissatisfied with the initial ruling. However, the CC should have the right to refer submissions to CoP without making an initial ruling, at his discretion.

The Dáil CoP / Seanad Committee on Procedure and Privileges (CPP) will act as oversight bodies for the rights of individuals affected by utterances in the House/s or Committees. Each Committee should have authority in Standing Orders to receive and consider submissions from affected persons and to recommend appropriate measures in response.

¹¹⁵ This involves significant amendment of the current DSO 71 (utterances in the nature of being defamatory).

In order to respond to the Supreme Court decision, the right to make a submission will be offered to any person adversely affected by any utterance made under parliamentary privilege (including witness utterances). Therefore, a non-witness who has been adversely affected and is readily identifiable may make a submission requesting a remedy in respect of an utterance by a Member or by a witness appearing before a Committee. In the case of a non-Member, a sanction involving suspension from the House or Committee clearly cannot apply but other remedies can apply. The impact on CoP / CPP of such a wide scope is mitigated by the “local resolution first” principle, which will ideally see many matters resolved to mutual satisfaction without a further submission to the CoP / CPP.

To simplify the implementation of the Standing Order, it is also proposed that the concept of “utterance in the nature of being defamatory” will be changed to a more closely aligned concept of “adverse effect” (in line with other jurisdictions) i.e. a claim to have been adversely affected by the utterance and to have suffered damage to that person’s reputation as a result of the utterance. Based on review of the current Standing Order 71, the following amendments are also proposed:

- Removal of the requirement for a three-quarters of Members present and voting majority.
- Removal of frivolous or vexatious as grounds for dismissal of submissions.
- Provision of flexibility in the process of consideration of submissions and decision-making on the appropriate remedy by, for example, removing the matters to be considered such as the ‘totality of record’.

The OPLA will devise guidelines and advice for CoP on the process for considering submissions under the new Standing Order, and these will be published in due course.

Vindicating the Rights of Witnesses

Drafting principles:

- A.** Any person who has been adversely affected by utterances within the Dáil or a Committee should have the right under Standing Orders to make a submission to the Ceann Comhairle or Committee Chair (via the relevant Clerk) within 6 weeks of the making of the utterance.
- B.** The Ceann Comhairle or Committee Chair should be required to make a ruling on the submission and notify the ruling to the person as soon as practicable thereafter. The Ceann Comhairle may, at his discretion, refer the submission to CoP without making a ruling.
- C.** CoP should be explicitly charged under Standing Orders with making determinations on submissions from persons who have been adversely affected by utterances in the Dáil or Committees (and only in respect of persons who have made an initial submission to the CC or Committee Chair and are dissatisfied with the outcome).

- D.** If the affected person is dissatisfied with the response of the Committee Chair, he or she may make a further submission to the Committee on Procedure no later than 12 weeks after making the initial submission. Alternatively, if no response is received from the Committee Chair within 6 weeks, the person may make a further submission no later than 12 weeks after the initial submission. The time limits for making a submission may be extended by the CoP by exception where satisfied that there are compelling reasons to do so.
- E.** Under Standing Orders, CoP should have authority to recommend appropriate sanctions and remedies to the House as it sees fit¹¹⁶.

The Central Role of the Committee Chair

The Chair of the Committee is responsible for the proper conduct of Committee business, for enforcement of order, and for safeguarding the rights of witnesses, including the enforcement of witness protocols.

The role and responsibilities of the Chair should be clearly communicated and understood by the Chair, Committee Members and witnesses.

The responsibilities and authority of Committee Chairs should be set out more explicitly in Standing Orders. Standing Orders should include a right for the Chair to report a Committee Member to the House for gross disorder, such as disregarding the authority of the Chair. Where the Chair sends such a report, the matter should go directly to the floor of the House, with the Ceann Comhairle (or Cathaoirleach) naming the Member at the first practicable opportunity. Committees should also have the right to make a report to the House, on the proposal of the Committee Chair.

The Central Role of the Committee Chair

Drafting principles:

¹¹⁶ Examples of sanctions and remedies are (these are merely illustrative):

- a recommendation that an affected person be given a formal right of reply/rebuttal in a form and manner determined by CoP.
- a recommendation that a Committee Member or Members be instructed to formally withdraw an utterance adversely affecting a person.
- a recommendation that a Committee Member or Members be named for disorderly conduct and suspended from the service of a Committee and the House.
- a recommendation that a Committee be instructed to proceed in a particular manner.

- F.** Standing Orders should provide for the Committee Chair to have the same authority and responsibility as the Ceann Comhairle and Cathaoirleach in the House and should include reference to the Chair's responsibility to enforce order during the debate (including policing of relevance and repetition) and to balance the rights of witnesses with those of Members.
- G.** In a similar vein, Standing Orders should set out that Committee Chairs (and vice Chairs) should make a similar declaration as the Ceann Comhairle and Leas-Cheann Comhairle when they first take the Chair following their election.
- H.** The Chair should have specific responsibility for compliance with the Witness Protocols as approved by the Dáil Committee on Parliamentary Privileges and Oversight.
- I.** Disorder in Committee should be sanctioned by the House in the form of suspension from meetings of the relevant Committee (Select and Joint). Disorder in Committee on a report by the Chair should be sanctioned on the scaled-up approach used for the House (i.e. two meetings for first offence, four meetings for second offence, eight meetings for third or subsequent offence). Disorder in Committee on a report by the Committee as a whole should be sanctioned by the House in a more severe form of suspension (i.e. four days for first offence, eight for second or subsequent offences).

Local resolution first

The Chair's responsibility to seek to resolve issues relating to the rights of witnesses should be reflected in Standing Orders

For the majority of Committee engagements with witnesses, matters currently proceed in an appropriate manner and this is borne out in the majority of witness submissions to the Working Group. Where an issue or query arises, practice is that it is generally resolved locally by the Committee secretariat and the Committee Chair. Any proposed change must reflect this practice and only make provision for the exceptional cases where Committee proceedings adversely affect witnesses, or other third parties, and it is not possible to resolve matters locally.

It is current, established administrative practice that witnesses may raise concerns on remit, scope, the conduct of the meeting or any other relevant issue with the Clerk to the Committee in advance of the meeting. However, the practice of requesting a ruling of the Chair in the course of a meeting, although permitted, would benefit from being more transparently set out in Standing Orders.

‘Local Resolution First’

Drafting principles:

- J. Standing Orders should set out a process whereby – in the course of the meeting - a witness (or a Member of the Committee or duly nominated substitute) may raise concerns on any matter including for example –
- relevance of proceedings,
 - scope of questioning,
 - the conduct of the meeting
 - adherence to witness protocols, or
 - utterances made,

by requesting a ruling of the Chair on the matter at issue. Where a ruling is requested, Standing Orders will provide that the Chair must rule immediately or at the first practicable opportunity.

[It is longstanding parliamentary practice that, once made, the ruling of the Chair may not be further challenged; Committee business should not be interrupted as a consequence of a refusal to accept a ruling on the part of a Member or a witness.

However a witness will have the right to make a subsequent written submission to the Chair if they feel that they have been adversely affected by the Committee proceedings and that this was not adequately remedied by the Chair during the meeting. Once the Chair has responded to the witness submission, there will be no appeal or direct complaints mechanism against the Chair’s response – this reflects the fact that a Chair can only be censured by motion in the House. However there is a separate right of submission to the CPPO for a witness who feels that they have been adversely affected by Committee proceedings].

Public accountability

There is a public accountability gap to Committees arising from the use of non-State bodies to provide public services funded by public moneys.

Public Accountability

Drafting principles:

- K. The Terms of Reference of Committees should include services which are provided by non-State bodies on the basis of an agreement with a State body or a Government Department. This represents an extension of remit beyond central Government and

State bodies, to private entities which are providing publicly funded services on foot of an agreement with a Department or State body. But this is a limited extension and only covers the performance of that private entity in respect of the agreement in question¹¹⁷.

- L.** Where, in a specific case and for a particular purpose, a Committee wishes to go beyond these parameters, the Committee can submit a proposal to the Committee on Remit Oversight for an extension of remit for that purpose, which can be agreed by motion in the House/s as appropriate. Importantly, this process will ensure clear and appropriate delegation of authority from the House/s to the Committee.
- M.** Committees would benefit from a statement of purpose set out in Standing Orders, at a high level of principle covering for example, holding Government (and State/other bodies) to account for –
- performance in delivering public services,
 - ensuring value for money in the use of public moneys.

Such a statement would cover the “why” of Committee activities as well as the “what” and the “how” and would provide an overall context for decisions on remit extensions.

***Note** - the drafting changes at K. and M. have already been implemented in the context of the establishment of sectoral Committees by the Dáil in July 2020. Standing Order 95 has been reviewed and edited for clarity and a new paragraph (3) inserted to set out the general purpose of sectoral Committees.*

Remit of Sectoral Committees: clarity

The remit of sectoral Committees as set out in Standing Orders requires streamlining and clarification, with reference to remit relating to State agencies, as the language in this respect is inconsistent, unclear and arguably ambiguous.

Remit of Sectoral Committees- clarity

Drafting principles:

- N.** The Terms of Reference of Sectoral Committees (as set out in DSO 95) should be streamlined to refer to “State bodies within the responsibility of Government Departments”. The current text uses several phrases interchangeably. The term

¹¹⁷ Note that this extension of remit does empower the Committee to compel the attendance of private entities – this can only be done on a statutory basis. The remit extension merely authorises the Committee to invite attendance of relevant entities on a voluntary basis.

“State body” will be interpreted in the context of the definition set out in the Code of Practice for State bodies published by the Department of Public Expenditure and Reform – see relevant extract in Figure 1 below.

- O. DSO 95 (Functions of Departmental Select Committees) should be generally reviewed and edited for clarity, along with DSO 94 (Scope and Context for Activities of Select Committees) and 96 (Powers of Select Committees).

Note: The drafting changes in this section have already been implemented in the context of the establishment of sectoral Committees by the Dáil in July 2020. Standing Order 95 has been reviewed and edited for clarity in this context.

Figure 1: Extract from Code of Practice for the Governance of State Bodies (Department of Public Expenditure and Reform, 2016)

Definition of a State Body: While there is no precise definition of a State body, the following criteria will be of assistance in defining such a body¹¹⁸:

1. The Minister¹¹⁹ presents legislation relating to the body to the Houses of the Oireachtas.
2. The Minister lays the body’s financial statements and/or annual report before the Houses of Oireachtas.
3. The Minister and/or the Department has statutory responsibility for one of more of the following:
 - a) provision of funding;
 - b) presentation of estimates in the Dáil;
 - c) nomination / dismissal of all / majority of the members of a body’s Board, Authority or other governing body;
 - d) appointment of Chief Executive Officer (CEO);
 - e) consent functions in relation to remuneration, superannuation, fees; and/or
 - f) consent functions in relation to borrowing.
4. The statutory basis of the body.
5. The Minister sets policy direction for the body.
6. The Minister has the power to issue directions, codes, regulations or guidelines in respect of the body.
7. The Minister approves Statements of Strategy.
8. The Secretary General of the parent Department is the Accounting Officer for the State body.
9. Employees in the body are participating/are eligible to participate in a Public Service Pension Scheme.

¹¹⁸ Adapted from “Corporate Governance Standard for the Civil Service” (Department of Public Expenditure and Reform, November 2015) pg 28

¹¹⁹ ‘Minister’ in this section refers to the Minister of the parent Department under whose aegis the State body lies.

Remit of Committees: Committee of Public Accounts and Sectoral Committees
The respective roles of the PAC and Departmental Select Committees should be further elaborated in Standing Orders, which should also make provision for management of overlaps

The Committee of Public Accounts merits particular consideration because its remit parallels the remit of sectoral Committees, while being distinct from that of those Committees in a number of fundamental respects. Drawing and maintaining this distinction has been increasingly problematic in practice in recent years¹²⁰.

Standing Order 212¹²¹ defines the remit and powers of the Committee of Public Accounts. Under the Standing Order, PAC's remit is confined to examining and reporting on C&AG-audited accounts and C&AG reports. It follows therefore that examination of any matter outside of audited accounts and C&AG reports (unless arising from, incidental to, and forming part of such examination) is not contemplated by the Standing Order.

In practice however, the Committee does not confine itself to this interpretation and there is a widely held view that PAC has a general remit in relation to all public moneys, regardless of whether such moneys are the subject of an audit report from the Comptroller and Auditor General. The picture is further complicated by various statutory provisions which define reporting and accountability obligations to PAC for various office-holders (Accounting Officers under section 19 of the Comptroller and Auditor General (Amendment) Act 1993) and CEOs of various State bodies under a range of parent Acts¹²². From a legal perspective, it is important that the formal remit of the PAC reflects what the Committee does in practice, and this would imply that the Standing Order requires amendment to better reflect the reality of the operation of the Committee.

¹²⁰ For example, in the Thirty-Second Dáil, the then Chairs of the Joint Committees on Health and Justice complained in writing about PAC consideration of current matters within the Joint Committees' remit, namely, CervicalCheck, and matters related to An Garda Síochána respectively.

¹²¹ Paragraph (1)(a) of the Standing Order authorises the Committee *"to examine and report to the Dáil upon—*

- a) the accounts showing the appropriation of the sums granted by the Dáil to meet the public expenditure and such other accounts as they see fit (not being accounts of persons included in the Second Schedule of the Comptroller and Auditor General (Amendment) Act 1993) which are audited by the Comptroller and Auditor General and presented to the Dáil, together with any reports by the Comptroller and Auditor General thereon;*
- b) the Comptroller and Auditor General's reports on his or her examinations of economy, efficiency, effectiveness evaluation systems, procedures and practices; and*
- c) other reports carried out by the Comptroller and Auditor General under the Act."*

¹²² For one such example out of many – see section 20 of the Strategic Banking Corporation of Ireland Act 2014 (Accountability to Committee of Public Accounts).

Definition of the remit of the Committee of Public Accounts and Sectoral Committees

Drafting principles:

- P.** The main focus of Sectoral Committees should be on assessing the current performance of Departments and public bodies in delivering public services while achieving value for money.
- Q.** Sectoral Committees should be precluded from considering matters directly related to accounts audited by the C&AG, unless the Committee of Public Accounts consents to this.
- R.** The main focus of the Committee of Public Accounts should be on audited accounts and Reports of the Comptroller and Auditor General with a focus on value for money delivered over time.
- S.** The Committee of Public Accounts should formally communicate its conclusions and recommendations on particular accounts to the attention of the relevant sectoral Committee.
- T.** Where the Committee of Public Accounts wishes to engage in an examination of a matter which is not comprehended within an audited account or a C&AG report, the Committee may make an application to the Committee on Remit Oversight for a specific extension to the Committee's Terms of Reference.
- U.** Where there is a dispute between the Committees, either Committee can make an application to the Committee on Remit Oversight for a determination.

Note: The drafting changes in this section have already been implemented in the context of the establishment of Committees by the Dáil in July 2020. A substitute Standing Order 218 (Terms of Reference of PAC) was agreed by the Dáil in this context. Standing Order 95(4) (Orders of Reference of Sectoral Committees) requires PAC consent for any Sectoral Committee to consider matters which are related to accounts, unless PAC has already reported on same.

Oversight of Committee remit

Standing Orders should set out a process whereby a Committee may seek an authoritative determination on matters of remit, either in respect of its own work or in respect of the work of another Committee on an area which is closely related to its own remit. This should include a process for extension of remit for a specific purpose.

Oversight of Committee Remit

Drafting principles:

- V.** A new Committee on Remit Oversight (CRO) will have power to make determinations on remit on request by a relevant Committee, an affected Committee, or on referral by the Ceann Comhairle.
- W.** The CRO may- on application by a Committee - recommend to the House that a Committee's remit be extended for a particular purpose by way of a specific instruction motion.
- X.** Where a Committee is acting, or is proposing to act, outside its orders of reference, the CRO may recommend to the House that such Committee be instructed to desist from further considering the matter; in this case, the CRO shall consider whether witness rights are being / are likely to be adversely affected, and/or whether the matter constitutes an abuse of privilege. Pending approval by the House, the CRO may give the Committee a written instruction to desist, which must be complied with by the Committee until the matter is disposed of by the House. The Committee may give a written undertaking to the CRO in which case the instruction to desist shall not be tabled unless the Committee breaches the undertaking.
- Y.** The Committee on Procedure should be empowered to act as the Committee on Remit Oversight. The CRO should meet jointly with a similar Seanad Committee where matters relating to Joint Committees are concerned.

Consistency between the Standing Orders of Dáil Éireann and Seanad Éireann

Both Houses should adopt the same Standing Orders to ensure consistency of treatment of witnesses before Joint Committees and consistency of procedure in Joint Committees.

Schedule 1: Terms of Reference of the Working Group

The Working Group was tasked with making recommendations to the Dáil Committee on Procedure and the Seanad Committee on Procedure and Privileges on amendments to the Standing Orders of both Houses and any other related actions which are necessary by way of response to the Supreme Court judgments in the Kerins case. In particular, the Working Group was required to consider and report on the following matters:

- House procedures
- Committee procedures, including remit and the role of the Chair
- Oversight mechanisms
- Citizens' rights and remedies, including guidelines and supports and complaints mechanisms
- Sanctions

- The role of the Houses of the Oireachtas Service

Membership: Elaine Gunn (*Assistant Secretary Parliamentary Services, Clerk-Assistant of the Dáil*) [Chair], Mellissa English (*Assistant Secretary, Chief Parliamentary Legal Adviser*), Noreen Banim (*Principal Officer, House Services*), Bridget Doody (*Clerk-Assistant of the Seanad*), Tom Malone (*Principal Officer, Committees*), Elaine Muldoon/Paula Cowan (*Clerk to Dáil Committee on Procedure*) [Secretary to the Group]

Schedule 2: List of submissions received by the Working Group

	Name	Category
1	An Coimisinéir Teanga	Committee Witness (regulator)
2	Butler, Cormac	Committee Witness
3	Butler, Mary TD*	Committee Chair, Joint Committee on Jobs, Enterprise and Innovation [32 nd Dáil 2016-20]
4	Central Bank of Ireland	Committee Witness (regulator)
5	Centre for Cross-Border Studies	Committee Witness
6	Citizens' Information Board	Committee Witness
7	Commission for Regulation of Utilities	Committee Witness (regulator)
8	Coughlan, Kieran	Committee Witness
9	Council of the Bar of Ireland	Committee Witness
10	Dóchas	Committee Witness
11	Education and Training Boards Ireland	Committee Witness
12	ESRI	Committee Witness
13	Fianna Fáil	Political Party
14	Fleming, Seán TD*	Committee Chair, Committee of Public Accounts [32 nd Dáil 2016-20]
15	Harty, Michael TD*	Committee Chair, Joint Committee on Health [32 nd Dáil 2016-20]
16	Higgins, Mary	Committee Witness
17	Health Information and Quality Authority	Committee Witness (regulator)
18	Health Service Executive	Committee Witness
19	Ibec	Committee Witness
20	ICTU	Committee Witness
21	Irish Primary Principals Network	Committee Witness
22	Kavanagh, Shane	Committee Witness
23	Killybegs Fishermen's Organisation Ltd	Committee Witness
24	Labour Party	Political Party
25	McGuinness, John TD*	Committee Chair, Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach [32 nd Dáil 2016-20]
26	NAME WITH WORKING GROUP	Committee Witness

27	Nasc	Committee Witness
28	National Museum of Ireland	Committee Witness
29	O'Brien, Tony	Committee Witness
30	Office of the Director of Corporate Enforcement	Committee Witness
31	Oxfam	Committee Witness
32	Sinn Féin	Political Party
33	Social Justice Ireland	Committee Witness
34	Sport Ireland	Committee Witness
35	Threshold	Committee Witness
36	Tinney, Ethna	Committee Witness
37	Transport Infrastructure Ireland	Committee Witness
38	Trócaire	Committee Witness

PART 2: AMENDMENTS TO THE STANDING ORDERS OF DÁIL ÉIREANN RELATIVE TO PUBLIC BUSINESS APPROVED BY THE COMMITTEE ON STANDING ORDERS AND DÁIL REFORM ON 2 DECEMBER 2020

Oversight of Committee Remit

93A. Committee on Remit Oversight

To insert the following additional Standing Order:

93A. (1) A Committee on Remit Oversight shall stand established following the reassembly of the Dáil subsequent to a General Election, to consider the following requests relating to the remit of Standing, Select or Special Committees:

- (a) a request by a Committee for a determination as to whether the consideration of a matter is within its remit,
- (b) a request by the Ceann Comhairle for a determination under paragraph (a) in respect of a particular Committee,
- (c) a request by a Committee for an extension to its orders of reference for a particular purpose, in accordance with Standing Order 93B, including any submission from an affected Committee.

(2) For the purpose of this Standing Order and Standing Orders 93B and 93C –

“consideration of a matter” shall include any proposal by a Committee to engage in an activity, exercise a power or discharge a function,

“remit” shall mean the orders of reference of a Committee as authorised by Standing Orders or by Order of the Dáil.

(3) The Committee on Remit Oversight shall consider a request under paragraph (1) as soon as is practicable. The Committee shall endeavour to make a determination within a week of receipt of a request, unless the Committee forms the opinion that the matter does not require an urgent determination, in which case the timescale for a decision will be notified to the requester.

(4) The Committee on Remit Oversight shall have the power to make such determinations, and attach such conditions, as it sees fit in relation to requests under paragraph (1). In exercising this power, the Committee may determine that a matter is within the remit of more

than one Committee, and, if it considers it necessary to do so, may designate a lead Committee to consider the matter.

(5) When considering requests under this Standing Order which relate to Joint Committees, the Committee on Remit Oversight shall be joined with a similar Committee of Seanad Éireann, to form the Joint Committee on Remit Oversight.

(6) Where a member of the Committee on Remit Oversight is also a member of a Committee affected by any request to be considered by the Committee on Remit Oversight, such member shall recuse themselves from all proceedings in respect of that request: Provided that another member may substitute for such member for such proceedings in accordance with Standing Order 106(2).

93B. [Instruction may be sought for an extension of Committee orders of reference.](#)

To insert the following additional Standing Order:

93B. (1) Where a Select, Special or Standing Committee wishes to consider any matter which, in the opinion of the Chair, may not be within its remit, the Committee shall make a request to the Committee on Remit Oversight for a determination on the matter; and the request for a determination may also include a request for an extension of the orders of reference of the Committee, if required for the purpose of consideration of the matter.

(2) A Committee intending to make a request under paragraph (1) shall notify any affected Committee of its intention to make the request, and the affected Committee may make a submission to the Committee on Remit Oversight in respect of the matter. Where a requesting Committee fails to notify an affected Committee in accordance with this Standing Order, the Committee on Remit Oversight shall notify such affected Committee on receipt of the request.

(3) A request to the Committee on Remit Oversight under paragraph (1) shall include the following:

- (a) the scope and purpose of the Committee's proposed consideration of the matter (including the precise matter to be considered, the activity to be engaged in, the power to be exercised, or the function to be discharged);
- (b) the reason the matter ought properly to be the subject of Committee consideration;
- (c) the manner in which the matter relates to a function of the Dáil;
- (d) confirmation that the requesting Committee has notified any affected Committee of the intention to make the request (including any response from the affected Committee);

- (e) where practicable, the witnesses or categories of witnesses with whom the requesting Committee intends to engage.

(4) The Committee on Remit Oversight may decide to grant, or partially grant, a request under this Standing Order, and may attach such conditions to its decision as it sees fit. In this regard, the Committee may seek such further information from the requesting Committee as it thinks fit, and may consult any other Committee, or any persons or bodies as it considers appropriate.

(5) Upon making a decision under paragraph (4) to extend the orders of reference of a Committee, the Committee on Remit Oversight shall table a motion to instruct the Committee in accordance with the terms of its decision. Such motion shall be decided without amendment.

(6) The requesting Committee shall not consider the matter unless and until it has been instructed by the Dáil on foot of a motion tabled by the Remit Oversight Committee under paragraph (5).

93C. Instruction by Committee on Remit Oversight to desist

To insert the following additional Standing Order:

93C. (1) Where, in the exercise of its functions, the Committee on Remit Oversight determines that a Committee (“the relevant Committee”) has acted, is acting, or intends to act, in breach of its remit, the Committee on Remit Oversight may table a motion for an Order of Dáil Éireann to instruct the relevant Committee in accordance with paragraph (4).

(2) In deciding whether to table a motion under paragraph (4), the Committee shall consider whether the relevant Committee’s actions have adversely affected, or are likely to adversely affect, any person, within the meaning of Standing Order 71.

(3) Where the Committee decides to table a motion under paragraph (4), it may also determine that the relevant Committee has abused privilege by acting outside its remit and may report such determination to the Dáil.

(4) A motion under this Standing Order shall instruct the relevant Committee to desist from considering or further considering the matter and shall be taken by the Dáil at the first practicable opportunity. Such motion shall be decided without amendment. Upon agreement of the motion by Order of the Dáil, the relevant Committee shall desist from considering the matter in accordance with the terms of the Order.

(5) Pending the taking of a motion under paragraph (4) and subject to paragraph (6), the Committee on Remit Oversight shall give a written instruction to the relevant Committee to

desist from considering the matter and shall provide a copy of such instruction to any witness concerned in the proceedings: Provided that a motion shall be taken in the Dáil for the purpose of confirming such written instruction as soon as is practicable, and provided further that the relevant Committee shall desist, as instructed, unless and until the instruction is reversed by Order of the Dáil.

(6) Where a written instruction is given to a relevant Committee under this paragraph and before a motion is taken in the Dáil, the relevant Committee may give a written undertaking to the Committee on Remit Oversight that it will conduct its proceedings in such a way as to abide by the terms of the written instruction. Where this is acceptable to the Committee on Remit Oversight, the relevant Committee may proceed in the manner set out in its undertaking and shall provide a copy of such undertaking to any witness concerned in the proceedings. No motion shall be taken under paragraph (5) for so long as the Committee abides by the terms of the written undertaking.

Role of the Chair

72. Role of the Chair in maintaining order and making rulings

To insert the following Standing Order in substitution for Standing Order 72:

72. (1) For the purpose of this Standing Order, “Chair” shall mean—

- (a) the Ceann Comhairle, the Leas-Cheann Comhairle, or a temporary Chair acting pursuant to Standing Order 18, or
- (b) a Chair, vice-Chair or a temporary Chair of a Committee appointed pursuant to these Standing Orders;

(2) The Chair is the sole judge of order in proceedings and has authority to suppress disorder, and to enforce prompt obedience to his or her ruling.

(3) The Chair has authority to interpret Standing Orders and to rule on matters which are not expressly covered in Standing Orders, including but not limited to matters relating to relevance, repetition and appropriate use of privilege during debate.

(4) Nothing in this Standing Order, or in these Standing Orders generally, shall prevent the House from suspending a member from the service of the Dáil and its Committees in accordance with the provisions of Standing Order 74.

96A. Raising matters of order in Committee

To insert the following additional Standing Order:

96A. (1) Where, in the course of the proceedings of a Committee appointed by the Dáil, or any sub-Committee thereof, a member or a witness requests a ruling on a matter of order, the Chair shall rule on the matter forthwith, or as soon as is practicable.

(2) Matters of order under paragraph (1) may relate but are not limited to—

- (a) the relevance of the proceedings to the orders of reference of the Committee,
- (b) the relevance of questioning to the matter or matters under examination during the proceedings as set out in the invitation to the witness,
- (c) utterances made in the course of the proceedings,
- (d) inadequate notice of matters raised during the proceedings, including documents,
- (e) compliance with any guidelines or protocol adopted by the Committee on Parliamentary Privileges and Oversight in accordance with Standing Order 119, and
- (f) any other matter related to the general conduct of the proceedings.

104. Declaration by Chair and vice-Chair

In Standing Order 104, to insert the following paragraph immediately before paragraph (4):

“(3A) Upon first taking the Chair after his or her election, the Chair and vice-Chair shall make the following declaration:

‘I do solemnly declare that I will duly and faithfully and to the best of my knowledge and ability, execute the office of [vice-]Chair of the..... [insert the name of Committee] without fear or favour, apply the rules as laid down by the House in an impartial and fair manner, maintain order and uphold the rights and privileges of members in accordance with the Constitution and Standing Orders.’ ”

105. Responsibility of Committee Chair for compliance with Standing Orders, rules and protocols

To insert the following Standing Order in substitution for Standing Order 105:

105. (1) The Chair of every Committee appointed by the Dáil shall be responsible for ensuring compliance by his or her Committee with the Standing Orders and rules laid down by the House/s and for the orderly and fair conduct of the proceedings of the Committee, in accordance with Standing Order 72.

(2) It shall be the responsibility of the Chair to —

- (a) ensure that the Committee acts within the scope of its orders of reference as determined by the House,
- (b) ensure that the Committee acts within the scope of the terms of any invitation issued to any witness to appear before the Committee,
- (c) maintain order in the Committee, including ruling on matters of order when requested to do so by a member, witness or third party,
- (d) balance the rights of persons referred to during proceedings with the rights of members, having regard to such guidelines or protocols as shall be adopted by the Committee on Parliamentary Privileges and Oversight in accordance with Standing Order 119, and
- (e) ensure compliance with such administrative rules governing Committees as may be determined by the Houses of the Oireachtas Commission.

(3) Where a Chair makes a ruling in respect of adherence by the Committee to its orders of reference under paragraph (2)(a) of this Standing Order, such ruling shall be notified to the Committee, and to the Ceann Comhairle in his or her capacity as Chair of the Committee on Remit Oversight.

(4) Where in the opinion of the relevant Committee, the Committee Chair has failed to discharge his or her responsibilities as set out in these Standing Orders, the Committee may, on substantive motion, censure the Chair and report thereon to the Committee on Parliamentary Privileges and Oversight.

Remedies: submissions re utterances having an adverse effect

71. Privilege: Utterances which may have had an adverse effect: submission to Chair

To insert the following Standing Order in substitution for Standing Order 71:

71. (1) For the purpose of this Standing Order, Standing Order 71A and Standing Order 72—

“adversely affected by an utterance” means that a person has been referred to in proceedings by name or in such a way as to be readily identifiable, and there is a significant likelihood that that person, to a substantial degree—

- (a) has been adversely affected in reputation, or in respect of dealings or associations with others,
- (b) has been injured in occupation, trade, office or financial credit, or
- (c) has had their privacy unreasonably invaded,

by reason of that reference to them: Provided that an utterance which has had an adverse effect on a person will not necessarily constitute an abuse of privilege within the meaning of these Standing Orders.

“Chair” means—

- (a) the Ceann Comhairle in the case of the proceedings of Dáil Éireann, or
- (b) the Chair of the Committee in the case of the proceedings of—
 - (i) a Committee appointed by Dáil Éireann, or
 - (ii) a Joint Committee appointed by both Houses,
 or any sub-Committee thereof,

“relevant Clerk” means—

- (a) in the case of Dáil proceedings, the Clerk of Dáil Éireann, or
- (b) in the case of the proceedings of a Select, Special or Joint Committee, the Clerk of the Committee.

“proceedings” include the proceedings of—

- (a) Dáil Éireann and Committee of the whole Dáil, and
- (b) in relation to Committees—
 - (i) a Committee appointed by Dáil Éireann, and
 - (ii) a Joint Committee appointed by both Houses,
 or any sub-Committee thereof, and

“utterance” includes all matters published in the Official Report of the Debates.

(2) This Standing Order and Standing Order 71A shall not apply to a witness attending before a Committee pursuant to a direction under either sections 67 or 83 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013.

(3) A person who is of the opinion that they have been adversely affected by an utterance may make a written submission to the relevant Clerk not later than 6 weeks following the

making of the utterance. The relevant Clerk shall, as soon as practicable following receipt of a submission, furnish the submission to the Chair for his or her consideration under paragraph (4).

(4) The Chair shall, as soon as practicable, and in accordance with any relevant guidance issued by the Working Group on Committee Chairs under Standing Order 120 as appropriate, determine the action, if any, to be taken in response to a submission under paragraph (3), and shall notify the person who has made the submission accordingly: Provided further that the Ceann Comhairle may, at his or her discretion, at any time refer the submission to the Committee on Parliamentary Privileges and Oversight for consideration in accordance with Standing Order 71A.

71A. Privilege: Utterances which may have had an adverse effect: Submission to Committee on Parliamentary Privileges and Oversight

To insert the following additional Standing Order:

71A. (1) A person who—

- (a) is not satisfied with the notification of the Chair's response to his or her initial submission under Standing Order 71(4), or
- (b) has not received such a notification within 6 weeks of the making of the initial submission,

may, not later than 12 weeks following the making of the initial submission, make a further submission to the Committee on Parliamentary Privileges and Oversight.

(2) Paragraph (1) shall not prevent a person who has received a notification in response within 6 weeks of making an initial submission from making a further submission to the Committee on Parliamentary Privileges and Oversight: Provided that such further submission is made not later than 12 weeks after the initial submission.

(3) The Committee on Parliamentary Privileges and Oversight shall consider any submission or referral made—

- (a) under paragraph (1), or
- (b) by the Ceann Comhairle under Standing Order 71(4) or under this Standing Order,

as soon as practicable following its receipt. The Committee on Parliamentary Privileges and Oversight may, by exception, decide to accept a submission later than the time periods specified in this Standing Order where, in all the relevant circumstances, the Committee on Parliamentary Privileges and Oversight is satisfied that the person has acted promptly, and

that there are compelling reasons, supported by evidence, for the Committee on Parliamentary Privileges and Oversight to accept the submission.

(4) Where a submission has not been made under Standing Order 71 or under this Standing Order, the Ceann Comhairle may, where he or she is of the opinion that a person may have been adversely affected, refer an utterance to the Committee on Parliamentary Privileges and Oversight for consideration in accordance with this Standing Order.

(5) Where the Committee on Parliamentary Privileges and Oversight has received a submission or referral under this Standing Order, it shall notify the member who made the utterance, and shall afford such member an opportunity to make their own submission to the Committee on Parliamentary Privileges and Oversight.

(6) Where a submission or referral under this Standing Order relates to an utterance by a member of the Committee on Parliamentary Privileges and Oversight, such member shall recuse themselves from all proceedings in respect of that submission or referral: Provided that another member may substitute for such member for such proceedings in accordance with Standing Order 106(2).

(7) When making a determination under this Standing Order (which may include a determination on whether an abuse of privilege has occurred), the Committee on Parliamentary Privileges and Oversight shall have regard to the public interest, fair procedures and the requirements of natural and constitutional justice, and such other considerations as it considers appropriate and relevant as set out in such guidelines as shall be adopted by the Committee in accordance with Standing Order 119.

(8) In considering the public interest for the purposes of making a determination under this Standing Order, the Committee on Parliamentary Privileges and Oversight shall balance—

- (a) the rights of Members to engage freely in debate on matters of public importance (which rights are subject to the provisions of Standing Orders and rulings of the Chair made pursuant to Standing Order 72), and
- (b) the rights of all persons affected by such debate.

(9) For the purposes of this Standing Order, “public interest” includes, but is not limited to, consideration of the following matters:

- (a) the degree to which the utterance is in relation to, and in furtherance of, a matter of public policy,
- (b) the degree to which it relates to a matter of significant public concern,
- (c) whether the utterance was made in the course of the performance of a member’s parliamentary duty,

- (d) the degree to which it was made in a responsible manner, including its relevance to the proceedings, and
- (e) the degree to which the utterance adversely affects an identifiable person.

Additional considerations may be set out in guidelines adopted by the Committee in accordance with Standing Order 119.

(10) Having made a determination under paragraph (7), the Committee on Parliamentary Privileges and Oversight may make such recommendations as it considers appropriate and shall report to the Dáil thereon. Such recommendations may include, but are not limited to, one or more of the following—

- (a) that the relevant Committee be instructed by the Dáil to take such action, subject to such conditions, as the Committee on Parliamentary Privileges and Oversight shall determine;
- (b) that a member be censured by the Dáil for stated reasons:

Provided that where the Committee on Parliamentary Privileges and Oversight makes a recommendation under this paragraph, nothing shall preclude it from making a finding that the relevant utterance constituted an abuse of privilege.

(11) The Dáil shall consider a motion under paragraph (10) as soon as is practicable.

(12) Where the report of the Committee on Parliamentary Privileges and Oversight finds that an abuse of privilege has occurred, the member who made the utterance is required to withdraw it during the proceedings of the Dáil or the relevant Committee, as appropriate, and within such time period and in such form of words as shall be specified by the Committee in its report. The Ceann Comhairle (or Committee Chair, as the case may be) shall, following consultation with the member concerned, determine the time and the day for the making of the withdrawal, and the Ceann Comhairle or Chair shall read out the Committee on Parliamentary Privileges and Oversight's finding on the utterance immediately prior to calling on the member to withdraw the utterance.

(13) If the member does not withdraw their utterance in the manner outlined in paragraph (12), the Ceann Comhairle (having been notified where applicable by the Clerk to the relevant Committee that the member has not withdrawn the utterance), shall, immediately prior to the Order of Business, or immediately following Questions on Promised Legislation under Standing Order 35(3), on the next sitting day of Dáil Éireann after the day determined for the withdrawal of the utterance, or as soon as is practicable thereafter, read out the Committee on Parliamentary Privileges and Oversight's finding on the utterance and name the member for suspension from the service of the Dáil and its Committees in accordance with Standing Order 74.

71B. Privilege: Prior notice of intention to make an utterance

To insert the following additional Standing Order:

71B. Notwithstanding the provisions of Standing Order 71 or 71A, any member who considers that it is in the public interest for him or her to make an utterance which could, within the meaning provided for in Standing Order 71, adversely affect a person, may give prior private notice in writing to the Ceann Comhairle (or Committee Chair, as the case may be) of his or her intention to make such an utterance and the reasons therefor; and such notice shall be taken into account in the consideration of the application of the provisions of Standing Order 71A.

Sanctions: Dealing with disorder

74. Suspension of member

To insert the following Standing Order in substitution for Standing Order 74:

74. (1) A member may be named by the Ceann Comhairle for suspension from the service of the Dáil and its Committees, where, in the opinion of the Ceann Comhairle, the member's conduct in the Dáil or in Committee of the whole Dáil is grossly disorderly.

(2) A member shall be named by the Ceann Comhairle in accordance with the provisions of these Standing Orders—

- (a) on a report of the Committee on Parliamentary Privileges and Oversight containing a determination that a member has abused privilege, or
- (b) on the report in accordance with Standing Order 113, of a Committee Chair, or a Committee appointed by the Dáil, that a member has been grossly disorderly and has disregarded the authority of the Chair.

(3) Where a member is named, the Ceann Comhairle shall move and forthwith put the question in the appropriate form on the motion, no amendment, adjournment or debate being allowed. If, on the declaration of the result, the member stands suspended from the service of the Dáil, the member shall withdraw from the chamber forthwith: Provided, on an exceptional basis, a division may be claimed on the question and shall take place immediately, and the member shall be entitled to vote in any such division.

(4) Subject to paragraph (5), the Ceann Comhairle, on receiving from a suspended member a written and approved expression of regret, to be entered in the Journal of the Proceedings of the Dáil, shall—

- (a) lay the expression of regret before the Dáil, and

- (b) move the motion without notice, amendment, adjournment or debate immediately prior to the Order of Business, or immediately following Questions on Promised Legislation under Standing Order 35(3), on the next sitting day, or as soon as is practicable thereafter, and forthwith put the question for the discharge of the Order of suspension, whereupon, on the declaration of the result, the Order shall be discharged, and the member re-admitted: Provided on an exceptional basis a division may be claimed on the question and shall take place forthwith.

(5) Where a member is suspended pursuant to having been named for not having withdrawn an utterance found to be an abuse of privilege—

- (a) suspension shall not prevent the member entering the Dáil Chamber solely for the purposes of withdrawing the utterance, and
- (b) where the member has withdrawn their utterance, the Ceann Comhairle shall move to discharge the Order of suspension in accordance with paragraph (4): Provided that no motion for discharge of the Order of suspension may be made unless the member has withdrawn their utterance, even where the member has given the Ceann Comhairle a written and approved expression of regret.

74A. Types of suspension from the service of the Dáil and its Committees

To insert the following additional Standing Order:

74A. (1) Suspension from the service of the Dáil where the member has been named under Standing Order 74—

- (a) for gross disorder in the Dáil or in Committee of the whole Dáil, or
- (b) for not having withdrawn an utterance found to be an abuse of privilege,

shall include suspension from the service of any Committee appointed by the Dáil to which the member shall have been appointed previous to, or during, his or her suspension.

(2) Where a member has been named on the report of the Chair of a Committee appointed by the Dáil, or on the report of a Committee appointed by the Dáil, the member's suspension shall be solely from service with that Committee.

(3) A suspension of a member shall on the first occasion last for two sitting days, on the second occasion for four sitting days, and on the third or any subsequent occasion for eight sitting days: Provided that—

- (a) in any suspension, the day on which the member is suspended shall be counted in calculating the number of days, and

- (b) where a member is suspended pursuant to having been named—
 - (i) for not having withdrawn an utterance found to be an abuse of privilege, or
 - (ii) on the report of a Committee appointed by the Dáil,the member's suspension shall last for four sitting days.

(4) Where a member is suspended from the service of any Committee appointed by the Dáil—

- (a) the reference to “sitting days” in paragraph (3) shall be interpreted as referring to the number of occasions on which a Committee meets (with a meeting of a Select Committee considered as a separate meeting to that of a Joint Committee); and
- (b) where the member is not suspended from the service of the Dáil but is suspended solely from the service of a Committee appointed by the Dáil, the written expression of regret under Standing Order 74(4) shall be received by the Chair of the Committee, who may approve it. An approved expression of regret shall be laid before the Dáil, and a copy sent to the Ceann Comhairle. On receipt of the copy, the Ceann Comhairle shall move to discharge the Order of suspension in accordance with Standing Order 74(4).

(5) Nothing in this Standing Order shall prevent a member from acting in substitution for a member suspended from the service of a Committee, in accordance with Standing Order 106(2).

113. Disorderly conduct in Committees

To insert the following Standing Order in substitution for Standing Order 113:

113. (1) The Chair of a Committee appointed by Dáil Éireann, or a sub-Committee thereof, shall order a member of the Committee, a member of Dáil Éireann attending pursuant to Standing Order 106, or any other person present, whose conduct is grossly disorderly, to withdraw immediately from the meeting of the Committee for the remainder of that meeting. The member or other person ordered to withdraw in pursuance of this Standing Order shall forthwith withdraw from the meeting.

(2) For the purposes of this Standing Order, gross disorder shall include disregarding the authority of the Chair, such as contravening a direction by the Chair to cease particular questioning or refusing to withdraw an utterance when directed to do so by the Chair.

(3) If, on any occasion, the Chair of a Committee appointed by the Dáil, or any sub-Committee thereof, deems that the powers conferred under paragraph (1) are inadequate to

deal with the disorderly conduct of a member, the Chair may make a report to the Dáil in the form below, recommending that the member be named for suspension from service with the Committee. The Chair shall announce at the meeting at which the disorderly conduct occurs that he or she intends to make the report, and shall send a message in that regard to the Clerk of the Dáil in writing and in the following form:

“I hereby report that Deputy..... [*insert the name of the deputy*] at a meeting of the..... [*insert the name of the Committee*] on..... [*insert the date*] having been grossly disorderly and having disregarded my authority as Chair, falls to be named for suspension from the service of the..... [*insert the name of the Committee*] in accordance with Standing Order 74.”

Such a message shall constitute a report under this paragraph.

(4) A Chair of a Committee may, in place of making a report under paragraph (3), propose that a report be made by the Committee as a whole in the form below in relation to the disorderly conduct of a member, recommending that the member be suspended from the service of the Committee. Where a Committee has agreed to make such a report, it shall send a message to the Clerk of the Dáil in writing and in the following form:

“The..... [*insert the name of the Committee*] hereby reports that Deputy..... [*insert the name of the deputy*] at a meeting on..... [*insert the date*] having been grossly disorderly and having disregarded the authority of the Chair, falls to be named for suspension from the service of the..... [*insert the name of the Committee*] on in accordance with Standing Order 74.”

Such a message shall constitute a report under this paragraph.

(5) On receipt by the Clerk of the Dáil of a report under paragraph (3) or (4), the Ceann Comhairle shall, immediately prior to the Order of Business, or immediately following Questions on Promised Legislation under Standing Order 35(3), on the next sitting day, or as soon as is practicable thereafter, name the member [*having previously notified the Business Committee in that regard*] in accordance with Standing Order 74, and the provisions of that Standing Order shall apply.

Committee on Parliamentary Privileges and Oversight

119. Committee on Parliamentary Privileges and Oversight

To insert the following Standing Order in substitution for Standing Order 119:

119. (1) There shall stand established, following the reassembly of the Dáil subsequent to a General Election, a Standing Committee, to be known as the Committee on Parliamentary Privileges and Oversight (hereinafter referred to in this Standing Order as ‘the Committee’).

(2) The functions of the Committee shall be to—

- (a) consider matters relating to the parliamentary privileges attaching to membership of Dáil Éireann and its Committees, including reporting to the Dáil on abuse of privilege and considering submissions or referrals in relation to parliamentary utterances pursuant to Standing Order 71A,
- (b) oversee procedure generally, including procedure in Standing, Select and Special Committees and in particular to—
 - (i) consider and where appropriate make determinations on submissions or referrals in relation to parliamentary utterances in Committees pursuant to Standing Order 71A,
 - (ii) adopt and publish guidelines in accordance with Standing Order 71A(7),
 - (iii) act as the Committee on Remit Oversight pursuant to Standing Orders 93A to 93C inclusive,
 - (iv) adopt and publish a protocol for persons giving evidence to Committees of the Houses of the Oireachtas,
 - (v) consider a report from a Committee on censure of its Chair pursuant to Standing Order 105(4),
- (c) perform functions in relation to Part 2 inquiries as follows:
 - (i) to act as the designated Committee in relation to any proposals for a Part 2 inquiry as set out in Standing Orders 136 to 141 inclusive, and
 - (ii) to consider matters relating to perception of bias in respect of a Part 2 inquiry as set out in Standing Orders 115 to 117 inclusive,
- (d) issue such guidelines as it considers appropriate in relation to—
 - (i) Part 2 inquiries, and
 - (ii) other Committee business where a power to send for persons, papers and records has been conferred,

in accordance with sections 19 and 79 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013,

- (e) perform functions relating to the protection of the official documents of the Dáil and the private papers of its members under Article 15.10 of the Constitution, as conferred by Standing Orders 153 and 154,
- (f) perform the functions as the Part 10 committee and the Part 11 committee under the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013, as conferred by Standing Orders 155 and 156.

(3) The Committee shall have the following powers:

- (a) power to appoint sub-Committees as defined in Standing Order 96(4);
- (b) power to engage consultants as defined in Standing Order 96(14);
- (c) power to travel as defined in Standing Order 96(15) (other than as defined in subparagraph (a) thereof);
- (d) power to print and publish reports and to authorise sub-Committees to report directly to the Dáil as defined in Standing Order 100(1);
- (e) power to act on behalf of Dáil Éireann and members of Dáil Éireann in relation to any legal proceedings or other public hearing or inquiry; and
- (f) power to give consent in writing to the giving of a direction or directions in relation to persons, papers and records for Committee business, other than Part 2 inquiries.

(4) The Committee shall consist of the Ceann Comhairle, who *ex officio* shall be Chair, and who shall have only one vote, and seventeen other members; and eight shall constitute a quorum. In the unavoidable absence of the Ceann Comhairle, the Leas-Ceann Comhairle may act as Chair. The Committee shall be constituted so as to be impartially representative of the Dáil.

(5) The Committee is a continuation in being of the Committee which, under the Standing Orders of Dáil Éireann relative to Public Business, was previously titled the Committee on Procedure, and prior to that, the Committee on Procedure and Privileges.

Consequential drafting changes: Committee on Parliamentary Privileges and Oversight

To amend Standing Orders as follows:

1. In Standing Order 69, by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure”.
2. In Standing Order 115, in paragraph (2), by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure”.
3. In Standing Order 117, by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure” wherever it occurs.
4. In Standing Order 120—
 - by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure” wherever it occurs,
 - in paragraph (2), by the substitution of “, the Committee on Standing Orders and Dáil Reform and the Business Committee” for “and the Business Committee”, and
 - in the proviso to paragraph (4), by the substitution of “, the Committee on Standing Orders and Dáil Reform or the Business Committee” for “or the Business Committee”.
5. In Standing Order 137, by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure” wherever it occurs.
6. In Standing Order 138, in sub-paragraph (i), by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure”.
7. In Standing Order 139, by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure” wherever it occurs.
8. In Standing Order 140, by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure” wherever it occurs.
9. In Standing Order 141, by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure”.
10. In Standing Order 153, by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure” wherever it occurs.
11. In Standing Order 155, by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure”.
12. In Standing Order 156, by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure”.
13. In Standing Order 157, by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure”.
14. In Schedule 1, by the deletion of paragraph (n).

PART 3: AMENDMENTS TO THE STANDING ORDERS OF SEANAD ÉIREANN RELATIVE TO PUBLIC BUSINESS APPROVED BY THE COMMITTEE ON PROCEDURE AND PRIVILEGES ON 1 DECEMBER 2020

Oversight of Committee Remit

94A. Committee on Remit Oversight

To insert the following additional Standing Order:

94A. (1) A Committee on Remit Oversight shall stand established following the reassembly of the Seanad subsequent to a General Election, to consider the following requests relating to the remit of Standing, Select or Special Committees:

- (a) a request by a Committee for a determination as to whether the consideration of a matter is within its remit,
- (b) a request by the Cathaoirleach for a determination under paragraph (a) in respect of a particular Committee,
- (c) a request by a Committee for an extension to its orders of reference for a particular purpose, in accordance with Standing Order 94B, including any submission from an affected Committee.

(2) For the purpose of this Standing Order and Standing Orders 94B and 94C –

“consideration of a matter” shall include any proposal by a Committee to engage in an activity, exercise a power or discharge a function,

“remit” shall mean the orders of reference of a Committee as authorised by Standing Orders or by Order of the Seanad.

(3) The Committee on Remit Oversight shall consider a request under paragraph (1) as soon as is practicable. The Committee shall endeavour to make a determination within a week of receipt of a request, unless the Committee forms the opinion that the matter does not require an urgent determination, in which case the timescale for a decision will be notified to the requester.

(4) The Committee on Remit Oversight shall have the power to make such determinations, and attach such conditions, as it sees fit in relation to requests under paragraph (1). In

exercising this power, the Committee may determine that a matter is within the remit of more than one Committee, and, if it considers it necessary to do so, may designate a lead Committee to consider the matter.

(5) When considering requests under this Standing Order which relate to Joint Committees, the Committee on Remit Oversight shall be joined with a similar Committee of Dáil Éireann, to form the Joint Committee on Remit Oversight.

(6) Where a member of the Committee on Remit Oversight is also a member of a Committee affected by any request to be considered by the Committee on Remit Oversight, such member shall recuse themselves from all proceedings in respect of that request: Provided that another member may substitute for such member for such proceedings in accordance with Standing Order 82.

94B. [Instruction may be sought for an extension of Committee orders of reference.](#)

To insert the following additional Standing Order:

94B. (1) Where a Select, Special or Standing Committee wishes to consider any matter which, in the opinion of the Chair, may not be within its remit, the Committee shall make a request to the Committee on Remit Oversight for a determination on the matter; and the request for a determination may also include a request for an extension of the orders of reference of the Committee, if required for the purpose of consideration of the matter.

(2) A Committee intending to make a request under paragraph (1) shall notify any affected Committee of its intention to make the request, and the affected Committee may make a submission to the Committee on Remit Oversight in respect of the matter. Where a requesting Committee fails to notify an affected Committee in accordance with this Standing Order, the Committee on Remit Oversight shall notify such affected Committee on receipt of the request.

(3) A request to the Committee on Remit Oversight under paragraph (1) shall include the following:

- (a) the scope and purpose of the Committee's proposed consideration of the matter (including the precise matter to be considered, the activity to be engaged in, the power to be exercised, or the function to be discharged);
- (b) the reason the matter ought properly to be the subject of Committee consideration;
- (c) the manner in which the matter relates to a function of the Seanad;

- (d) confirmation that the requesting Committee has notified any affected Committee of the intention to make the request (including any response from the affected Committee);
- (e) where practicable, the witnesses or categories of witnesses with whom the requesting Committee intends to engage.

(4) The Committee on Remit Oversight may decide to grant, or partially grant, a request under this Standing Order, and may attach such conditions to its decision as it sees fit. In this regard, the Committee may seek such further information from the requesting Committee as it thinks fit, and may consult any other Committee, or any persons or bodies as it considers appropriate.

(5) Upon making a decision under paragraph (4) to extend the orders of reference of a Committee, the Committee on Remit Oversight shall table a motion to instruct the Committee in accordance with the terms of its decision. Such motion shall be decided without amendment.

(6) The requesting Committee shall not consider the matter unless and until it has been instructed by the Seanad on foot of a motion tabled by the Remit Oversight Committee under paragraph (5).

94C. [Instruction by Committee on Remit Oversight to desist](#)

To insert the following additional Standing Order:

94C. (1) Where, in the exercise of its functions, the Committee on Remit Oversight determines that a Committee (“the relevant Committee”) has acted, is acting, or intends to act, in breach of its remit, the Committee on Remit Oversight may table a motion for an Order of Seanad Éireann to instruct the relevant Committee in accordance with paragraph (4).

(2) In deciding whether to table a motion under paragraph (4), the Committee shall consider whether the relevant Committee’s actions have adversely affected, or are likely to adversely affect, any person, within the meaning of Standing Order 49A.

(3) Where the Committee decides to table a motion under paragraph (4), it may also determine that the relevant Committee has abused privilege by acting outside its remit and may report such determination to the Seanad.

(4) A motion under this Standing Order shall instruct the relevant Committee to desist from considering or further considering the matter and shall be taken by the Seanad at the first practicable opportunity. Such motion shall be decided without amendment. Upon agreement

of the motion by Order of the Seanad, the relevant Committee shall desist from considering the matter in accordance with the terms of the Order.

(5) Pending the taking of a motion under paragraph (4) and subject to paragraph (6), the Committee on Remit Oversight shall give a written instruction to the relevant Committee to desist from considering the matter and shall provide a copy of such instruction to any witness concerned in the proceedings: Provided that a motion shall be taken in the Seanad for the purpose of confirming such written instruction as soon as is practicable, and provided further that the relevant Committee shall desist, as instructed, unless and until the instruction is reversed by Order of the Seanad.

(6) Where a written instruction is given to a relevant Committee under this paragraph and before a motion is taken in the Seanad, the relevant Committee may give a written undertaking to the Committee on Remit Oversight that it will conduct its proceedings in such a way as to abide by the terms of the written instruction. Where this is acceptable to the Committee on Remit Oversight, the relevant Committee may proceed in the manner set out in its undertaking and shall provide a copy of such undertaking to any witness concerned in the proceedings. No motion shall be taken under paragraph (5) for so long as the Committee abides by the terms of the written undertaking.

Role of the Chair

50. Role of the Chair in maintaining order and making rulings

To insert the following Standing Order in substitution for Standing Order 50:

50. (1) For the purpose of this Standing Order, “Chair” shall mean—

- (a) the Cathaoirleach, the Leas-Chathaoirleach, or a temporary Chair acting pursuant to Standing Order 14, or
- (b) a Chair, vice-Chair or a temporary Chair of a Committee appointed pursuant to these Standing Orders;

(2) The Chair is the sole judge of order in proceedings and has authority to suppress disorder, and to enforce prompt obedience to his or her ruling.

(3) The Chair has authority to interpret Standing Orders and to rule on matters which are not expressly covered in Standing Orders, including but not limited to matters relating to relevance, repetition and appropriate use of privilege during debate.

(4) Nothing in this Standing Order, or in these Standing Orders generally, shall prevent the House from suspending a member from the service of the Seanad and its Committees in accordance with the provisions of Standing Order 52.

72A. Raising matters of order in Committee

To insert the following additional Standing Order:

72A. (1) Where, in the course of the proceedings of a Committee appointed by the Seanad, or any sub-Committee thereof, a member or a witness requests a ruling on a matter of order, the Chair shall rule on the matter forthwith, or as soon as is practicable.

(2) Matters of order under paragraph (1) may relate but are not limited to—

- (a) the relevance of the proceedings to the orders of reference of the Committee,
- (b) the relevance of questioning to the matter or matters under examination during the proceedings as set out in the invitation to the witness,
- (c) utterances made in the course of the proceedings,
- (d) inadequate notice of matters raised during the proceedings, including documents,
- (e) compliance with any guidelines or protocol adopted by the Committee on Parliamentary Privileges and Oversight in accordance with Standing Order 98, and
- (f) any other matter related to the general conduct of the proceedings.

Declaration by the Cathaoirleach and Leas-Chathaoirleach

5A. Declaration by Cathaoirleach

To insert the following additional Standing Order:

5A. Upon first taking the Chair after his or her election, the Cathaoirleach shall make the following declaration:—

“I do solemnly declare that I will duly and faithfully and to the best of my knowledge and ability, execute the office of Cathaoirleach of Seanad Éireann without fear or

favour, apply the rules as laid down by this House in an impartial and fair manner, maintain order and uphold the rights and privileges of members in accordance with the Constitution and the Standing Orders of Seanad Éireann.”

6A. Declaration by Leas-Chathaoirleach

To insert the following additional Standing Order:

6A. Upon first taking the Chair after his or her election, the Leas-Chathaoirleach shall make the following declaration:—

“I do solemnly declare that I will duly and faithfully and to the best of my knowledge and ability, execute the office of Leas-Chathaoirleach of Seanad Éireann without fear or favour, apply the rules as laid down by this House in an impartial and fair manner, maintain order and uphold the rights and privileges of members in accordance with the Constitution and the Standing Orders of Seanad Éireann.”

81. Declaration by Chair and vice-Chair

In Standing Order 81, to insert the following paragraph immediately before paragraph (3):

“(2A) Upon first taking the Chair after his or her election, the Chair and vice-Chair shall make the following declaration:

‘I do solemnly declare that I will duly and faithfully and to the best of my knowledge and ability, execute the office of [vice-]Chair of the..... [insert the name of Committee] without fear or favour, apply the rules as laid down by the House in an impartial and fair manner, maintain order and uphold the rights and privileges of members in accordance with the Constitution and Standing Orders.’ ”

79. Responsibility of Committee Chair for compliance with Standing Orders, rules and protocols

To insert the following Standing Order in substitution for Standing Order 79:

79. (1) The Chair of every Committee appointed by the Seanad shall be responsible for ensuring compliance by his or her Committee with the Standing Orders and rules laid down by the House/s and for the orderly and fair conduct of the proceedings of the Committee, in accordance with Standing Order 50.

(2) It shall be the responsibility of the Chair to —

- (a) ensure that the Committee acts within the scope of its orders of reference as determined by the House,
- (b) ensure that the Committee acts within the scope of the terms of any invitation issued to any witness to appear before the Committee,
- (c) maintain order in the Committee, including ruling on matters of order when requested to do so by a member, witness or third party,
- (d) balance the rights of persons referred to during proceedings with the rights of members, having regard to such guidelines or protocols as shall be adopted by the Committee on Parliamentary Privileges and Oversight in accordance with Standing Order 98, and
- (e) ensure compliance with such administrative rules governing Committees as may be determined by the Houses of the Oireachtas Commission.

(3) Where a Chair makes a ruling in respect of adherence by the Committee to its orders of reference under paragraph (2)(a) of this Standing Order, such ruling shall be notified to the Committee, and to the Cathaoirleach in his or her capacity as Chair of the Committee on Remit Oversight.

(4) Where in the opinion of the relevant Committee, the Committee Chair has failed to discharge his or her responsibilities as set out in these Standing Orders, the Committee may, on substantive motion, censure the Chair and report thereon to the Committee on Parliamentary Privileges and Oversight.

Remedies: submissions re utterances having an adverse effect

49A. Privilege: Utterances which may have had an adverse effect: submission to Chair

To insert the following additional Standing Order:

49A. (1) For the purpose of this Standing Order, Standing Order 49B and Standing Order 50—

“adversely affected by an utterance” means that a person has been referred to in proceedings by name or in such a way as to be readily identifiable, and there is a significant likelihood that that person, to a substantial degree—

- (a) has been adversely affected in reputation, or in respect of dealings or associations with others,
- (b) has been injured in occupation, trade, office or financial credit, or
- (c) has had his or her privacy unreasonably invaded,

by reason of that reference to him or her: Provided that an utterance which has had an adverse effect on a person will not necessarily constitute an abuse of privilege within the meaning of these Standing Orders.

“Chair” means—

- (a) the Cathaoirleach in the case of the proceedings of Seanad Éireann, or
- (b) the Chair of the Committee in the case of the proceedings of—
 - (i) a Committee appointed by Seanad Éireann, or
 - (ii) a Joint Committee appointed by both Houses,
 or any sub-Committee thereof,

“relevant Clerk” means—

- (a) in the case of Seanad proceedings, the Clerk of Seanad Éireann, or
- (b) in the case of the proceedings of a Select, Special or Joint Committee, the Clerk of the Committee.

“proceedings” include the proceedings of—

- (a) Seanad Éireann and Committee of the whole Seanad, and
- (b) in relation to Committees—
 - (i) a Committee appointed by Seanad Éireann, and
 - (ii) a Joint Committee appointed by both Houses,
 or any sub-Committee thereof, and

“utterance” includes all matters published in the Official Report of the Debates.

(2) This Standing Order and Standing Order 49B shall not apply to a witness attending before a Committee pursuant to a direction under either sections 67 or 83 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013.

(3) A person who is of the opinion that he or she has been adversely affected by an utterance may make a written submission to the relevant Clerk not later than 6 weeks following the

making of the utterance. The relevant Clerk shall, as soon as practicable following receipt of a submission, furnish the submission to the Chair for his or her consideration under paragraph (4).

(4) The Chair shall, as soon as practicable and in accordance with any relevant guidance issued by the Working Group on Committee Chairs under Standing Order 99 as appropriate, determine the action, if any, to be taken in response to a submission under paragraph (3), and shall notify the person who has made the submission accordingly: Provided further that the Cathaoirleach may, at his or her discretion, at any time refer the submission to the Committee on Parliamentary Privileges and Oversight for consideration in accordance with Standing Order 49B.

[49B. Privilege: Utterances which may have had an adverse effect: Submission to Committee on Parliamentary Privileges and Oversight](#)

To insert the following additional Standing Order:

49B. (1) A person who—

- (a) is not satisfied with the notification of the Chair's response to his or her initial submission under Standing Order 49A(4), or
- (b) has not received such a notification within 6 weeks of the making of the initial submission,

may, not later than 12 weeks following the making of the initial submission, make a further submission to the Committee on Parliamentary Privileges and Oversight.

(2) Paragraph (1) shall not prevent a person who has received a notification in response within 6 weeks of making an initial submission from making a further submission to the Committee on Parliamentary Privileges and Oversight: Provided that such further submission is made not later than 12 weeks after the initial submission.

(3) The Committee on Parliamentary Privileges and Oversight shall consider any submission or referral made—

- (a) under paragraph (1), or
- (b) by the Cathaoirleach under Standing Order 49A(4) or under this Standing Order,

as soon as practicable following its receipt. The Committee on Parliamentary Privileges and Oversight may, by exception, decide to accept a submission later than the time periods specified in this Standing Order where, in all the relevant circumstances, the Committee on Parliamentary Privileges and Oversight is satisfied that the person has acted promptly, and

that there are compelling reasons, supported by evidence, for the Committee on Parliamentary Privileges and Oversight to accept the submission.

(4) Where a submission has not been made under Standing Order 49A or under this Standing Order, the Cathaoirleach may, where he or she is of the opinion that a person may have been adversely affected, refer an utterance to the Committee on Parliamentary Privileges and Oversight for consideration in accordance with this Standing Order.

(5) Where the Committee on Parliamentary Privileges and Oversight has received a submission or referral under this Standing Order, it shall notify the member who made the utterance, and shall afford such member an opportunity to make their own submission to the Committee on Parliamentary Privileges and Oversight.

(6) Where a submission or referral under this Standing Order relates to an utterance by a member of the Committee on Parliamentary Privileges and Oversight, such member shall recuse themselves from all proceedings in respect of that submission or referral: Provided that another member may substitute for such member for such proceedings in accordance with Standing Order 82.

(7) When making a determination under this Standing Order (which may include a determination on whether an abuse of privilege has occurred), the Committee on Parliamentary Privileges and Oversight shall have regard to the public interest, fair procedures and the requirements of natural and constitutional justice, and such other considerations as it considers appropriate and relevant as set out in such guidelines as shall be adopted by the Committee in accordance with Standing Order 98.

(8) In considering the public interest for the purposes of making a determination under this Standing Order, the Committee on Parliamentary Privileges and Oversight shall balance—

- (a) the rights of Members to engage freely in debate on matters of public importance (which rights are subject to the provisions of Standing Orders and rulings of the Chair made pursuant to Standing Order 50), and
- (b) the rights of all persons affected by such debate.

(9) For the purposes of this Standing Order, “public interest” includes, but is not limited to, consideration of the following matters:

- (a) the degree to which the utterance is in relation to, and in furtherance of, a matter of public policy,
- (b) the degree to which it relates to a matter of significant public concern,
- (c) whether the utterance was made in the course of the performance of a member’s parliamentary duty,

- (d) the degree to which it was made in a responsible manner, including its relevance to the proceedings, and
- (e) the degree to which the utterance adversely affects an identifiable person.

Additional considerations may be set out in guidelines adopted by the Committee in accordance with Standing Order 98.

(10) Having made a determination under paragraph (7), the Committee on Parliamentary Privileges and Oversight may make such recommendations as it considers appropriate and shall report to the Seanad thereon. Such recommendations may include, but are not limited to, one or more of the following—

- (a) that the relevant Committee be instructed by the Seanad to take such action, subject to such conditions, as the Committee on Parliamentary Privileges and Oversight shall determine;
- (b) that a member be censured by the Seanad for stated reasons:

Provided that where the Committee on Parliamentary Privileges and Oversight makes a recommendation under this paragraph, nothing shall preclude it from making a finding that the relevant utterance constituted an abuse of privilege.

(11) The Seanad shall consider a motion under paragraph (10) as soon as is practicable.

(12) Where the report of the Committee on Parliamentary Privileges and Oversight finds that an abuse of privilege has occurred, the member who made the utterance is required to withdraw it during the proceedings of the Seanad or the relevant Committee, as appropriate, and within such time period and in such form of words as shall be specified by the Committee in its report. The Cathaoirleach (or Committee Chair, as the case may be) shall, following consultation with the member concerned, determine the time and the day for the making of the withdrawal, and the Cathaoirleach or Chair shall read out the Committee on Parliamentary Privileges and Oversight's finding on the utterance immediately prior to calling on the member to withdraw the utterance.

(13) If the member does not withdraw their utterance in the manner outlined in paragraph (12), the Cathaoirleach (having been notified where applicable by the Clerk to the relevant Committee that the member has not withdrawn the utterance), shall, immediately prior to the Order of Business, on the next sitting day of Seanad Éireann after the day determined for the withdrawal of the utterance, or as soon as is practicable thereafter, read out the Committee on Parliamentary Privileges and Oversight's finding on the utterance and name the member for suspension from the service of the Seanad and its Committees in accordance with Standing Order 52.

49C. Privilege: Prior notice of intention to make an utterance

To insert the following additional Standing Order:

49C. Notwithstanding the provisions of Standing Order 49A or 49B, any member who considers that it is in the public interest for him or her to make an utterance which could, within the meaning provided for in Standing Order 49A, adversely affect a person, may give prior private notice in writing to the Cathaoirleach (or Committee Chair, as the case may be) of his or her intention to make such an utterance and the reasons therefor; and such notice shall be taken into account in the consideration of the application of the provisions of Standing Order 49B.

Sanctions: Dealing with disorder

52. Suspension of member

To insert the following Standing Order in substitution for Standing Order 52:

52. (1) A member may be named by the Cathaoirleach for suspension from the service of the Seanad and its Committees, where, in the opinion of the Cathaoirleach, the member's conduct in the Seanad or in Committee of the whole Seanad is grossly disorderly.

(2) A member shall be named by the Cathaoirleach in accordance with the provisions of these Standing Orders—

- (a) on a report of the Committee on Parliamentary Privileges and Oversight containing a determination that a member has abused privilege, or
- (b) on the report in accordance with Standing Order 89, of a Committee Chair, or a Committee appointed by the Seanad, that a member has been grossly disorderly and has disregarded the authority of the Chair.

(3) Where a member is named, the Cathaoirleach shall move and forthwith put the question in the appropriate form on the motion, no amendment, adjournment or debate being allowed. If, on the declaration of the result, the member stands suspended from the service of the Seanad, the member shall withdraw from the chamber forthwith: Provided, on an exceptional basis, a division may be claimed on the question and shall take place immediately, and the member shall be entitled to vote in any such division.

(4) Subject to paragraph (5), the Cathaoirleach, on receiving from a suspended member a written and approved expression of regret, to be entered in the Journal of the Proceedings of the Seanad, shall—

- (a) lay the expression of regret before the Seanad, and
- (b) move the motion without notice, amendment, adjournment or debate immediately prior to the Order of Business on the next sitting day, or as soon as is practicable thereafter, and forthwith put the question for the discharge of the Order of suspension, whereupon, on the declaration of the result, the Order shall be discharged, and the member re-admitted: Provided on an exceptional basis a division may be claimed on the question and shall take place forthwith.

(5) Where a member is suspended pursuant to having been named for not having withdrawn an utterance found to be an abuse of privilege—

- (a) suspension shall not prevent the member entering the Seanad Chamber solely for the purposes of withdrawing the utterance, and
- (b) where the member has withdrawn their utterance, the Cathaoirleach shall move to discharge the Order of suspension in accordance with paragraph (4): Provided that no motion for discharge of the Order of suspension may be made unless the member has withdrawn their utterance, even where the member has given the Cathaoirleach a written and approved expression of regret.

52A. Types of suspension from the service of the Seanad and its Committees

To insert the following additional Standing Order:

52A. (1) Suspension from the service of the Seanad where the member has been named under Standing Order 52—

- (a) for gross disorder in the Seanad or in Committee of the whole Seanad, or
- (b) for not having withdrawn an utterance found to be an abuse of privilege,

shall include suspension from the service of any Committee appointed by the Seanad to which the member shall have been appointed previous to, or during, his or her suspension.

(2) Where a member has been named on the report of the Chair of a Committee appointed by the Seanad, or on the report of a Committee appointed by the Seanad, the member's suspension shall be solely from service with that Committee.

(3) A suspension of a member shall on the first occasion last for two sitting days, on the second occasion for four sitting days, and on the third or any subsequent occasion for eight sitting days: Provided that—

- (a) in any suspension, the day on which the member is suspended shall be counted in calculating the number of days, and

- (b) where a member is suspended pursuant to having been named—
 - (i) for not having withdrawn an utterance found to be an abuse of privilege, or
 - (ii) on the report of a Committee appointed by the Seanad,the member's suspension shall last for four sitting days.

(4) Where a member is suspended from the service of any Committee appointed by the Seanad—

- (a) the reference to “sitting days” in paragraph (3) shall be interpreted as referring to the number of occasions on which a Committee meets (with a meeting of a Select Committee considered as a separate meeting to that of a Joint Committee); and
- (b) where the member is not suspended from the service of the Seanad but is suspended solely from the service of a Committee appointed by the Seanad, the written expression of regret under Standing Order 52(4) shall be received by the Chair of the Committee, who may approve it. An approved expression of regret shall be laid before the Seanad, and a copy sent to the Cathaoirleach. On receipt of the copy, the Cathaoirleach shall move to discharge the Order of suspension in accordance with Standing Order 52(4).

(5) Nothing in this Standing Order shall prevent a member from acting in substitution for a member suspended from the service of a Committee, in accordance with Standing Order 82.

89. Disorderly conduct in Committees

To insert the following Standing Order in substitution for Standing Order 89:

89. (1) The Chair of a Committee appointed by Seanad Éireann, or a sub-Committee thereof, shall order a member of the Committee, a member of Seanad Éireann attending pursuant to Standing Order 106, or any other person present, whose conduct is grossly disorderly, to withdraw immediately from the meeting of the Committee for the remainder of that meeting. The member or other person ordered to withdraw in pursuance of this Standing Order shall forthwith withdraw from the meeting.

(2) For the purposes of this Standing Order, gross disorder shall include disregarding the authority of the Chair, such as contravening a direction by the Chair to cease particular questioning or refusing to withdraw an utterance when directed to do so by the Chair.

(3) If, on any occasion, the Chair of a Committee appointed by the Seanad, or any sub-Committee thereof, deems that the powers conferred under paragraph (1) are inadequate to

deal with the disorderly conduct of a member, the Chair may make a report to the Seanad in the form below, recommending that the member be named for suspension from service with the Committee. The Chair shall announce at the meeting at which the disorderly conduct occurs that he or she intends to make the report, and shall send a message in that regard to the Clerk of the Seanad in writing and in the following form:

“I hereby report that Senator..... [*insert the name of the Senator*] at a meeting of the..... [*insert the name of the Committee*] on..... [*insert the date*] having been grossly disorderly and having disregarded my authority as Chair, falls to be named for suspension from the service of the..... [*insert the name of the Committee*] in accordance with Standing Order 52.”

Such a message shall constitute a report under this paragraph.

(4) A Chair of a Committee may, in place of making a report under paragraph (3), propose that a report be made by the Committee as a whole in the form below in relation to the disorderly conduct of a member, recommending that the member be suspended from the service of the Committee. Where a Committee has agreed to make such a report, it shall send a message to the Clerk of the Seanad in writing and in the following form:

“The..... [*insert the name of the Committee*] hereby reports that Senator..... [*insert the name of the Senator*] at a meeting on..... [*insert the date*] having been grossly disorderly and having disregarded the authority of the Chair, falls to be named for suspension from the service of the..... [*insert the name of the Committee*] on in accordance with Standing Order 52.”

Such a message shall constitute a report under this paragraph.

(5) On receipt by the Clerk of the Seanad of a report under paragraph (3) or (4), the Cathaoirleach shall, immediately prior to the Order of Business on the next sitting day, or as soon as is practicable thereafter, name the member] in accordance with Standing Order 52, and the provisions of that Standing Order shall apply.

Committee on Parliamentary Privileges and Oversight

98. Committee on Parliamentary Privileges and Oversight

To insert the following Standing Order in substitution for Standing Order 98:

98. (1) There shall stand established, following the reassembly of the Seanad subsequent to a General Election, a Standing Committee, to be known as the Committee on Parliamentary Privileges and Oversight (hereinafter referred to in this Standing Order as ‘the Committee’).

(2) The functions of the Committee shall be to—

- (a) consider matters relating to the parliamentary privileges attaching to membership of Seanad Éireann and its Committees, including reporting to the Seanad on abuse of privilege and considering submissions or referrals in relation to parliamentary utterances pursuant to Standing Order 49B,
- (b) oversee procedure generally, including procedure in Standing, Select and Special Committees and in particular to—
 - (i) consider and where appropriate make determinations on submissions or referrals in relation to parliamentary utterances in Committees pursuant to Standing Order 49B,
 - (ii) adopt and publish guidelines on relevant and appropriate considerations, including fair procedures and the requirements of natural and constitutional justice, to be considered in making a determination on a submission or referral under Standing Order 49B,
 - (iii) act as the Committee on Remit Oversight pursuant to Standing Orders 94A to 94C inclusive,
 - (iv) adopt and publish a protocol for persons giving evidence to Committees of the Houses of the Oireachtas,
 - (v) consider a report from a Committee on censure of its Chair pursuant to Standing Order 79(4),
- (c) perform functions in relation to Part 2 inquiries as follows:
 - (i) to act as the designated Committee in relation to any proposals for a Part 2 inquiry as set out in Standing Orders 119 to 124 inclusive, and
 - (ii) to consider matters relating to perception of bias in respect of a Part 2 inquiry as set out in Standing Orders 91 to 93 inclusive,
- (d) issue such guidelines as it considers appropriate in relation to—
 - (i) Part 2 inquiries, and
 - (ii) other Committee business where a power to send for persons, papers and records has been conferred,

in accordance with sections 19 and 79 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013,

- (e) perform functions relating to the protection of the official documents of the Seanad and the private papers of its members under Article 15.10 of the Constitution, as conferred by Standing Orders 134 and 135,
- (f) perform the functions as the Part 10 committee and the Part 11 committee under the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013, as conferred by Standing Orders 136 and 137.

(3) The Committee shall have the following powers:

- (a) power to appoint sub-Committees as defined in Standing Order 72(2);
- (b) power to engage consultants as defined in Standing Order 72(10);
- (c) power to travel as defined in Standing Order 72(10);
- (d) power to print and publish reports and to authorise sub-Committees to report directly to the Seanad as defined in Standing Order 77(1);
- (e) power to act on behalf of Seanad Éireann and members of Seanad Éireann in relation to any legal proceedings or other public hearing or inquiry; and
- (f) power to give consent in writing to the giving of a direction or directions in relation to persons, papers and records for Committee business, other than Part 2 inquiries.

(4) The Committee shall consist of the Cathaoirleach, who *ex officio* shall be Chair, and who shall have only one vote, and the Leas-Chathaoirleach, the Leader of the House and nine other members; and five shall constitute a quorum. In the unavoidable absence of the Cathaoirleach, the Leas-Chathaoirleach may act as Chair in his or her stead.

(5) Notwithstanding anything in Standing Order 82, in the absence of a member nominated to serve on the Committee, a substitute, who is a member of the same group as the absent member, may take part in the proceedings and shall be entitled to vote in the absent member's stead; Provided that any such substitute shall have been nominated in writing to and recognised as such by the Cathaoirleach on a standing basis and may act as substitute in the absence only of the member by whom he or she was nominated; Provided further that a substitute shall not attend a meeting or that part of a meeting at which matters arising under sub-paragraphs (2)(c), (d), (e) and (f) of this Standing Order are considered or at which the power specified in sub-paragraph (3)(f) of this Standing Order is being exercised.

(6) The Committee is a continuation in being of the Committee which, under the Standing Orders of Seanad Éireann relative to Public Business, was previously titled the Committee on Procedure and Privileges.

Consequential drafting changes: Committee on Parliamentary Privileges and Oversight

To amend Standing Orders as follows:

1. In Standing Order 16, in paragraph (1), by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges”.
2. In Standing Order 47, by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges”.
3. In Standing Order 57:
 - In paragraph (1) by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges”.
 - In paragraph (2) by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges”.
4. In Standing Order 77,
 - in paragraph (3), by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges”.
 - in paragraph (6), by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges”.
5. In Standing Order 91, in paragraph (2), by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges”.
6. In Standing Order 93, by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges” wherever it occurs.
7. In Standing Order 98, in paragraph (1), by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges”.
8. In Standing Order 107, by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges” wherever it occurs.
9. In Standing Order 120,
 - in paragraph (1), by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges”.
 - in paragraph (2), by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges”.
10. In Standing Order 121, in paragraph (i), by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges”.
11. In Standing Order 122, by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges” wherever it occurs.
12. In Standing Order 123, by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges” wherever it occurs.

13. In Standing Order 124, by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges”.
14. In Standing Order 134, by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges” wherever it occurs.
15. In Standing Order 136, in paragraph (2), by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges”.
16. In Standing Order 136, in paragraph (2), by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges”.
17. In Standing Order 137, in paragraph (2), by the substitution of “Committee on Parliamentary Privileges and Oversight” for “Committee on Procedure and Privileges”.

PART 4: PROTOCOL FOR PERSONS GIVING EVIDENCE TO COMMITTEES OF THE HOUSES OF THE OIREACHTAS

[adopted by the Dáil Committee on Procedure on 8th December, 2020, and by the Seanad Committee on Procedure and Privileges on 15th December, 2020]

Introduction

1. This Protocol applies to witnesses who are asked to appear before or provide documents to Oireachtas Committees while engaged in ordinary committee business.¹²³ If you have been directed (i.e. compelled) to attend before a Committee or to give evidence or provide documents to a Committee, please read this Protocol in conjunction with the *Guidelines for Witnesses on Compellability*.¹²⁴
2. For further information on the particular Committee which you will be assisting, please see <https://www.oireachtas.ie/en/committees/> where you will find general details about the Committee, as well as its Terms of Reference.¹²⁵ The Terms of Reference set out, among other things, some of the powers and areas of remit of the Committee.
3. This Protocol addresses:
 - what a Committee expects from witnesses¹²⁶;
 - the rights and responsibilities of witnesses; and
 - what witnesses may expect from the Committee and the staff acting on its behalf or otherwise in support of it.
4. This document is intended to assist witnesses in engaging with a Committee. The Protocol does not expressly distinguish between persons who are accountable to a Committee under a statutory or other duty from individuals with no such obligation. However, Committees will take a witness's particular status into account, and accountable persons should expect to be held to a different standard to, for example, a private individual. The provisions of this Protocol should be read accordingly.
5. **This Protocol does not purport to be a legal interpretation of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 or any other legislation mentioned within it. This document should not be used as a substitute for legal advice. This Protocol is not intended to have binding legal effect.**

¹²³ This Protocol has been prepared under s.79 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 and in particular, s.79(2)(a).

¹²⁴ In case of any conflict, the *Guidelines for Witnesses on Compellability* should take precedence.

¹²⁵ Also referred to as "Orders of Reference".

¹²⁶ For convenience, both persons giving evidence to and otherwise appearing before a Committee are referred to as "witnesses" throughout this document.

6. This document has been approved by the Dáil Committee on Procedure and the Seanad Committee on Procedure and Privileges¹²⁷ and is subject to periodic review.

Aims

7. This Protocol is designed to ensure that:
- 1) you can fully assist the Committee in discharging its remit efficiently and effectively and as the Committee considers appropriate;
 - 2) you are aware of:
 - a) how the Committee will conduct its business insofar as the purpose of your attendance is concerned;
 - b) how your attendance will be managed;
 - c) your rights and privileges as a witness and how these will be applied in practice;
 - d) the status of your evidence (i.e. how it may be used); and,
 - e) whether you may expect to be identified and to give evidence at a meeting held in public or private session;
 - 3) you have confidence that you will be treated fairly, with respect and that your evidence will be assessed on its merits alone;
 - 4) the public, having all reasonable access to the evidence and other information upon which the Committee has based its opinions and recommendations, can have confidence in how meetings are conducted, the conclusions arrived at and recommendations made by the Committee.

Principles

8. Committees are committed to proceeding in a manner that fosters and maintains public confidence in their objectivity and fairness. They will endeavour to ensure that their meetings are as open as possible, recognising that this is one of the ways in which the public can have confidence in the integrity and independence of their process.
9. In the interests of openness and transparency, all evidence given before Committees should be given in public unless there are compelling reasons for the taking of evidence in private session. A decision to take evidence in private session is one entirely for the Committee to take. Any such decision will, however, be taken for stated reasons.
10. Committee meetings should proceed in a spirit of co-operation. In particular, the Chair of the Committee will endeavour to ensure that proceedings are conducted in a

¹²⁷ The successor-in-title for both of these Committees ie. “Committee on Parliamentary Privileges and Oversight” is used in this document in anticipation of the relevant Standing Order changes being agreed by both Houses imminently.

manner consistent with this Protocol, that each witness is given a fair hearing at the meeting, and that any request made by a witness is given due consideration and not unreasonably refused. Witnesses' assistance to the Committee is voluntary and they may leave the Committee meeting at any stage in the proceedings.

11. The Committee is not bound by the strict rules of evidence that apply in the Courts but in accepting evidence, the Committee will always seek to have regard to fair procedures and natural justice and the rights of those affected by such evidence.

Purpose of the Meeting

12. A broad purpose for the meeting will be agreed by the Committee which will be within the Terms of Reference of the Committee. Witnesses will be informed, in advance of their attendance date, of the broad areas where they will be expected to give evidence or other assistance. This will enable witnesses to give maximum assistance to Committees in their deliberations. It is a matter for the Committee to decide if witnesses are to be invited and, if so, who such witnesses will be.

Communication with Witnesses

13. Communications from the Committee to witnesses will generally issue through the Clerk.
14. Communications requesting or directing (i.e. compelling) persons to attend will generally issue not less than **ten calendar days** in advance of the proposed date of the meeting.¹²⁸ This initial communication with a witness will be in writing, signed by the Committee Chair, will provide contact details for the Clerk to the Committee (to whom correspondence should be directed or copied) and will set out the date, time and location of the proposed meeting and the broad areas for consideration.
15. This communication will also, where possible, set out the broad areas where the Committee believes the person can offer evidence, and invite the person to:
 - a) confirm their availability to attend on the dates specified;
 - b) where relevant, make a written statement;
 - c) make any other requests he or she wishes the Committee to consider (including whether he or she wishes to be accompanied).
16. This initial communication will make clear to witnesses that Committees meet in public unless there are exceptional circumstances which necessitate a private meeting.

¹²⁸ As mentioned above, if you have been directed to give evidence please also have reference to the *Guidelines for Witnesses on Compellability*.

17. Proposed witnesses will also be furnished with:
 - a) a copy of this Protocol;
 - b) *Guidance Note: Making Submissions and Presentations to Oireachtas Committees*; and
 - c) the Terms of Reference of the Committee.
18. The Clerk to the Committee or a member of staff acting on behalf of the Clerk will endeavour, **five calendar days** before the relevant meeting of the Committee, to provide each witness with the following information in writing:
 - a) the date, time and place of the meeting, its expected duration, planned breaks and an indicative timetable;
 - b) whether the meeting will be held in public or in private session (while at the same time advising the witness that the Committee retains a discretion to transfer the meeting from public session to private and vice versa);¹²⁹
 - c) a schedule of documents the Committee may wish to refer to during the meeting (which will normally be limited to documents the witness has access to or would have had access to, including those furnished to the person by decision of the Committee); and
 - d) an indicative list of names of proposed attendees at the meeting (including committee members and other witnesses, save for witnesses who have been granted anonymity etc.) The Clerk will endeavour to inform you of any change in details of witnesses attending the meeting as they arise.

The timeframes set out above are best practice and should be met save in exceptional circumstances. If a Committee fails to meet those timelines, for example, where you have not received the recommended 10 days' notice of the meeting, clear reasons should be provided to you as to why this it is necessary to shortcut this process. If you feel you are unable to prepare adequately for a meeting as a result of the timeframes not being met, please contact the Clerk to the Committee.

Equally, if any of the other matters which should be contained in the communications to you have not been addressed adequately (for example if the matters for which you are being invited to attend have not been clearly outlined) please contact the Clerk to the Committee.

Written Statements

19. The Committee may invite¹³⁰ a written statement in advance of the meeting and the person concerned may in any case provide a written statement if he/she wishes.

¹²⁹If a private session was requested but the Committee has decided to hear all or part of the evidence in public, or if the witness has asked not to be identified, but the Committee disagrees, reasons will be given for such decisions.

¹³⁰ In certain circumstances a Committee also has the power to direct (i.e. compel) you to give a statement. As mentioned above, if you have received such a direction please have reference to the *Guidelines for Witnesses on Compellability*.

Witnesses should comply with reasonable requests of the Committee as regards structure, length or the content of statements to be submitted.

20. In order to allow the Houses of the Oireachtas to comply with their obligations under the Disability Act 2005, witnesses are asked, so far as possible, to e-mail their statements in Word format to the Clerk to the Committee.
21. All statements relating to evidence to be heard in public will be treated as publishable unless reasons are given why they should not be published and the Committee agrees that the statement should not be published. If the Committee does not agree, you will be informed and given an opportunity to amend or withdraw your statement. The final decision on whether or not to publish all or part of a statement is the Committee's.
22. Statements should be sent to the Clerk to the Committee to arrive at least **three calendar days** before the date of the meeting unless earlier delivery has been requested. These statements may be circulated to other witnesses and Committee members, unless they contain confidential information which has been clearly identified by the witness as being confidential, and which the Committee agrees is in fact confidential. If the Committee does not agree, you will be informed and given an opportunity to amend or withdraw your statement.
23. Documents circulated to Committee members, including documents sent in by witnesses, generally become "committee documents". Once such a committee document is published, it becomes privileged.¹³¹ Privilege refers to a zone or area of legal immunity. In the case of committee documents which become privileged, it means that you may have a defence of privilege in defamation proceedings in respect of those documents.

At the Meeting

Role of the Chair

24. The Chair of the Committee has overall responsibility for the conduct of committee meetings. Some specific responsibilities of the Chair are provided for in Standing Orders and some of the more significant ones are set out in this Protocol. If a witness has any questions about rights and responsibilities stemming from the Standing Orders s/he may raise these with the Clerk.
25. The Chair is the sole judge of order in proceedings and has authority to suppress disorder and to enforce obedience to his or her ruling.¹³² The Chair also has authority to interpret Standing Orders and to rule on matters which are not expressly covered

¹³¹ Note also the power under [s.92\(4\)](#) whereby a document can cease to be a document of the Committee if it so decides. If this is done, the document will no longer have privilege against defamation.

¹³² Dáil Standing Order 72(2) and Seanad Standing Order 50(2).

in Standing Orders, including matters relating to relevance, repetition and appropriate use of privilege during debate.¹³³

26. The Chair is responsible for ensuring compliance by his/her Committee with the Standing Orders and rules laid down by the House/s and for the orderly and fair conduct of the proceedings of the Committee.¹³⁴ .
27. The responsibility of the Chair also includes¹³⁵:
 - balancing the rights of persons referred to during proceedings with the rights of members, and ensuring that the Committee complies with the terms of this Witness Protocol;
 - ensuring that the Committee acts within the scope of its orders of reference (also referred to as Terms of Reference) as agreed by the House or Houses by which it was appointed;
 - ensuring that the Committee acts within the scope of the terms of any invitation issued to any witness to appear before the Committee;
 - ensuring order in the Committee, including ruling on matters of order when requested to do so by a member, witness or third party;
 - ensuring compliance with such administrative rules governing Committees as may be determined by the Houses of the Oireachtas Commission.

If a witness has concerns in respect of any of the above during a meeting, they should be raised with the Chair¹³⁶. See further the section on ‘Remedies’ below.

Privilege

28. Witnesses giving evidence from within the parliamentary precincts are protected by absolute privilege in respect of the evidence they give to a Committee¹³⁷. This means that a witness has a full defence in any defamation action for anything said at a Committee meeting. However, witnesses are expected not to abuse this privilege and may be directed to cease giving evidence on an issue at the Chair’s direction. Witnesses should follow the direction of the Chair in this regard and are reminded of the longstanding parliamentary practice to the effect that, as is reasonable, no adverse commentary should be made as against an identifiable third person or entity.
29. Witnesses who are to give evidence from a location outside the parliamentary precincts are asked to note that they may not benefit from the

¹³³ Dáil Standing Order 72(3) and Seanad Standing Order 50(3).

¹³⁴ Dáil Standing Order 105 (1) and Seanad Standing Order 79(1).

¹³⁵ Dáil Standing Order 105 (2) and Seanad Standing Order 79(2).

¹³⁶ Where a Chair fails to meet his/her responsibilities, he/she may be censured by the Committee and reported to the Committee on Parliamentary Privileges and Oversight – see Dáil Standing Order 105(4) and Seanad Standing Order 79(4).

¹³⁷ Article 15.12 Irish Constitution.

same level of immunity from legal proceedings as a witness giving evidence from within the parliamentary precincts does and may consider it appropriate to take legal advice on this matter.

30. Privilege against defamation does not apply to the publication by you, outside of the proceedings held by the Committee, of any matters arising from the proceedings.

What the Committee asks of Witnesses

31. You are asked to:
- a) attend the meeting when invited or directed;
 - b) arrive punctually for the meeting and make yourself known;
 - c) assist the Committee, to the fullest extent possible, in its consideration of matters falling within the areas in which you have been invited by giving relevant, succinct and complete replies to questions asked;
 - d) give the Committee documents it requests;
 - e) ensure that any documents you give the Committee are true, accurate and complete;
 - f) preserve any relevant evidence;
 - g) behave in an appropriate manner;
 - h) show respect to other witnesses;
 - i) generally assist the forward progression of the Committee meeting.

How Witnesses can expect to be treated

32. Witnesses can expect to be treated fairly and with respect.
33. The Chair will give due consideration to reasonable requests for support and assistance from witnesses. The Chair will also endeavour to:
- a) put nervous or vulnerable witnesses at ease;
 - b) give special care and attention to vulnerable witnesses;
 - c) cater for witnesses with additional needs;
 - d) keep witnesses informed about delays and, in particular, will undertake to inform witnesses of foreseeable delays before the witness attends at the Houses of the Oireachtas;
 - e) ensure that witnesses understand the proceedings in which they are taking part;
 - f) ensure that a person's right to their good name is respected;
 - g) ensure that witnesses are treated in a respectful way.
34. Witnesses can expect that the following standards will apply in relation to Committee meetings:

- (a) you will be aware of the broad areas for consideration at the meeting which you have been asked to attend and can reasonably be expected to only be questioned on matters coming within those areas. It is your decision as a witness as to whether you consent or refuse to answer questions which go beyond the remit of the Committee or beyond the terms of the letter of invitation and you will not be penalised if you so refuse;
- (b) any or all undertakings given to you will be respected, including undertakings to protect the anonymity of witnesses where relevant;
- (c) with the exception of cases where you have been directed (i.e. compelled) to give evidence under the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013, a decision by you to refuse to answer a question for a stated reason will be respected. If the stated reason refers to a matter which may in fact be suitable for private session (e.g. if it involves commercially sensitive or otherwise confidential information), the Committee may move the meeting to private session to deal with the particular issue at hand;
- (d) witnesses will not be questioned or otherwise involved in discussion of matters that the Committee knows to be *sub judice* save as provided for in the Standing Orders of Dáil Éireann and/or Seanad Éireann.¹³⁸ If a witness has concerns in this regard, those concerns should be brought to the attention of the Chair at the earliest opportunity;
- (e) during public session reference will not, in general, be made to information discussed during private session;
- (f) witnesses will not be subjected to unduly lengthy questioning or required to attend meetings for an unreasonably lengthy period of time. As a general rule—
 - i. you will not be required to attend or present evidence or be subjected to questioning by members for periods in excess of two hours;
 - ii. where your attendance for longer periods is required, the meeting will be suspended for an appropriate period [minimum 15 minutes] after any two hour period of questioning;
 - iii. you will not be questioned continuously for a period of longer than two hours unless your express consent is given to proceed;
 - iv. if a witness has indicated to the committee before their attendance date that, due to their personal circumstances,¹³⁹ they will be unable to undergo standard periods of questioning, the Committee may schedule more frequent breaks.

¹³⁸ See Dáil Standing Order 69 and Seanad Standing Order 47.

¹³⁹ This might include, for example, serious ill health. Where appropriate, supporting documentation may be furnished to the Committee.

35. If you are a civil servant, member of the Permanent Defence Force or Garda Síochána, or are a “*relevant person*”¹⁴⁰ under the Act, you may give evidence for the purpose of establishing facts and giving the committee a factual account of a matter. You may not be compelled to offer an opinion (nor indeed may you volunteer such an opinion) on the merits of a Government or Ministerial policy.¹⁴¹ Further, if you are directed to furnish a Committee with a document which an “*appropriate person*”¹⁴² (essentially, your Principal Officer or Secretary General) believes contains material which includes an expression of opinion on Government or Ministerial policy, he or she must work with you to redact that document if necessary.¹⁴³ Please refer to section 93 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 if this section applies to you for full details on its operation.

Remedies

36. Where a witness or a member requests a ruling on a matter of order, the Chair shall rule on the matter forthwith, or as soon as practicable.¹⁴⁴ This includes:¹⁴⁵
- a) the relevance of proceedings to the orders of reference (or Terms of Reference) of the Committee;
 - b) the relevance of questioning to the matter or matters under examination during the proceedings as set out in the invitation to the witness;
 - c) utterances made in the course of the proceedings;
 - d) inadequate notice of matters raised during the proceedings, including documents;
 - e) compliance by the Committee with the terms of this protocol, or
 - f) any other matter relating to the general conduct of the proceedings.
37. If the Chair makes a ruling on a matter of order, and a member of the Committee fails to respect that ruling, the Chair has power to require the person to withdraw and/or in serious cases, to recommend the Member’s suspension from the Committee.¹⁴⁶
38. Witnesses should be aware that under the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 it is possible for witnesses to make an application to the High Court for directions. However, this only applies where a Committee is using a power under the Act to compel the witness to appear or provide documents

¹⁴⁰ See s.93(4).

¹⁴¹ See s.93.

¹⁴² See s.93(4).

¹⁴³ See s.93(2) and (3).

¹⁴⁴ Dáil Standing Order 96A(1) and Seanad Standing Order 72A(1).

¹⁴⁵ Dáil Standing Order 96A(2) and Seanad Standing Order 72A(2).

¹⁴⁶ See further Dáil Standing Order 113 and Seanad Standing Order 89.

and the witness believes that the actions of the Committee are not in accordance with that Act. Compelled witnesses should read the separate *Guidelines for Witnesses on Compellability*.

39. Following the conclusion of a meeting, if you feel you have been adversely affected by an utterance at that meeting, you may make a written submission to the Clerk of the Committee within 6 weeks.¹⁴⁷ There is no provision to extend this deadline. The Clerk shall then bring your submission to the attention of the Chair. The relevant Standing Order defines “*adversely affected by an utterance*” as meaning that a person has been referred to in proceedings by name or in such a way as to be readily identifiable, and there is a significant likelihood that that person, to a substantial degree:

- (a) has been adversely affected in reputation, or in respect of dealings or associations with others,
- (b) has been injured in occupation, trade, office or financial credit, or
- (c) has had their privacy unreasonably invaded,

by reason of that reference to them. An utterance which has had an adverse effect on a person will not necessarily constitute an abuse of privilege within the meaning of the Standing Orders.

40. The Chair has a duty to make a determination on your submission. If you are unhappy with that determination (or the Chair fails to make one within six weeks of your submission being received by the Clerk) you can make a further submission to the Committee on Parliamentary Privileges and Oversight no later than 12 weeks following the making of the initial submission.¹⁴⁸ Where your submission to the Committee on Parliamentary Privileges and Oversight has been made outside the 12 week period, it may extend the time for you to do so, but such extensions are exceptional, and the Committee will only grant such an extension where you have acted promptly, and there are compelling reasons supported by evidence. A complaint may be made under this Standing Order against any member of the Committee, including the Chair.
41. The Committee on Parliamentary Privileges and Oversight will determine the matter and may make such recommendations as it considers appropriate and will report to the Dáil thereon. The recommendations may, for example, include an instruction to a Committee to take specified actions or the censuring of a member for stated reasons¹⁴⁹. When that committee is considering the matter, it will take into consideration such issues as are referred to the *Guidelines agreed by the Committee on Parliamentary Privileges and Oversight as to the appropriate and relevant considerations for the determination of submissions and referrals arising under Dáil*

¹⁴⁷ Dáil Standing Order 71 and Seanad Standing Order 49A.

¹⁴⁸ For full details on this process see Dáil Standing Orders 71 and 71A and Seanad Standing Orders 49A and 49B.

¹⁴⁹ Dáil Standing Order 71A(10) and Seanad Standing Order 49B(10).

Standing Orders 71, 71A and 71B and Seanad Standing Orders 49A, 49B and 49C published on www.oireachtas.ie.

Attendance at and Broadcasting of Meetings

42. Public meetings may be attended by the media and members of the public, and may be broadcast on television or radio, or streamed on the internet in accordance with the Rules of Coverage.¹⁵⁰

Witnesses may be Accompanied

43. Witnesses may wish to be accompanied at meetings, for example, by a friend, colleague, counsellor or trade union representative, who may sit next to them if permitted to attend. For meetings held in public session, other friends and colleagues can in the normal course attend as members of the public and sit in the public gallery. If a witness wishes for any reason to be accompanied when giving evidence, he/she should so request, ideally when first invited to give evidence.¹⁵¹
44. The Committee will consider all such requests on a case by case basis. Save in exceptional circumstances, witnesses are expected to attend Committee meetings by themselves. Exceptional circumstances would include, for example, if a witness has additional needs. It should be noted that, save where required by law, the Committee will not pay the expenses incurred by virtue of having any person accompany a witness.
45. Save where agreed by the Committee, a person accompanying a witness will not be permitted to address the Committee or speak on behalf of witnesses. Communication between the witness and the person accompanying them is permitted but should not disrupt the meeting.

Miscellaneous matters relevant to the conduct of the meeting

46. Written statements from people or bodies not invited to attend a meeting may, at the Committee's discretion, be taken into account by the Committee and where so taken into account, will be published in full by the Committee subject to the guidance on confidentiality above.

¹⁵⁰ The rules on broadcasting of proceedings are set out at Dáil Standing Order 158 and at Seanad Standing Order 97. These provide, *inter alia*, that "... recordings or extracts of the proceedings shall not be used in programmes of light entertainment, political satire, party political broadcasts or in any form of advertising or publicity, other than in the form of news and current affairs programme trailers..."

¹⁵¹ If you have been directed (i.e. compelled) to attend before the Committee, you are entitled, under Standing Order 97(4) and Seanad Standing Order 73(4), to be accompanied by a legal practitioner. See further the *Guidelines for Witnesses on Compellability*.

47. If during the meeting, a person is named or otherwise identified who is not present at the meeting, they may be, at the Committee's discretion, provided with transcripts of relevant evidence. Those persons may then send a statement and/or relevant documents to the Committee, if they are of the opinion that there is any mistake of fact or misstatement (including a misstatement which arises through omission of context) in the transcript which affects them. Such person may also make a submission to the Committee and to the Committee on Parliamentary Privileges and Oversight if they have been adversely affected by any utterance made in Committee proceedings¹⁵².

After the Meeting

Publication of Evidence

48. The "official report of debates" is the phrase used to describe the record kept of evidence given by a witness at a public Committee meeting. In general, the official report is substantially but not strictly a verbatim record because it is accepted that the spoken word must be lightly edited for a readership rather than a listenership. However, where evidence is given under oath, the record of evidence given will be verbatim. The official report is always published in full (i.e. no parts of it are redacted.)
49. In terms of witnesses who give their evidence in public, the official report of each witness's evidence will, in general, be placed on www.oireachtas.ie as soon as is practicable after the conclusion of their evidence. The official report of debates may also be appended to any eventual report of the Committee.
50. Where evidence has been given at a meeting held in private session, an audio recording may be made of such evidence. The purpose of this recording is to assist the Clerk in compiling the minutes of the proceedings. A transcript of evidence (in other words, an official report of debates) will not be prepared, printed or published unless a motion has been passed by the House to specifically sanction same. If it is proposed to bring such a motion, any witness who gave evidence in private session will be informed and will be given an opportunity to make submissions on the proposed motion. Though confidential to the Houses, such recordings are not considered to form part of the Official Record of the Houses and are deleted once they are no longer required"¹⁵³

¹⁵² Dáil Standing Order 71 and 71A and Seanad Standing Order 49A and 49B.

¹⁵³ i.e. once the recording is no longer required because the minutes of proceedings of the Committee or a draft report of the Committee to which they relate has been approved by the Committee.

Further evidence

51. Any witness who wishes to give further evidence should contact the Clerk to the Committee. The Committee will consider such requests carefully. If the Committee wishes to recall a witness, the Committee will provide such notice as it considers to be reasonable in the circumstances.
52. The Committee may also decide, at any point before it makes its report, to seek or accept further oral or written evidence from a witness or witnesses, either in relation to a particular aspect of the matter under examination or the matter generally.

The Committee's Report

53. A Committee report will not make findings of fact which impugn the good name of named or otherwise identifiable individuals. The Committee has a discretion to furnish its draft report to certain persons, including any person who is named or is otherwise identifiable or is significantly affected by any proposed finding or recommendation in the draft report. Any person whom the Committee chooses to furnish with the draft report may be offered the opportunity to make submissions on the content of the report including arguing whether any information should be excluded. The Committee will then decide whether to amend the draft report on the basis of the submissions made.
54. Where evidence has been given at a meeting held in private session, the Committee will give careful consideration to how best to draw on, and explain in public, such evidence. It may also publish details of same, where appropriate and only where the consent of the witness has been obtained. This will be done with due regard to law (including the laws on breach of confidence) and the Standing Orders of the Houses.
55. Any Reports of the Committee will be published on the Oireachtas Website www.oireachtas.ie.

PART 5: GUIDELINES AS TO THE APPROPRIATE AND RELEVANT CONSIDERATIONS FOR THE DETERMINATION OF SUBMISSIONS AND REFERRALS ARISING UNDER DÁIL STANDING ORDERS 71 AND 71A AND SEANAD STANDING ORDERS 49A AND 49B

Introduction

These Guidelines have been agreed by the Committee on Parliamentary Privileges and Oversight (hereinafter referred to as ‘the Committee’) in order to set out the relevant and appropriate considerations which the Committee takes into account in making a determination under Dáil Standing Orders 71, 71A or 71B and Seanad Standing Orders 49A, 49B and 49C, including a determination as to whether an abuse of privilege has occurred. Such considerations are relevant where the Committee has received a submission from a person who is of the opinion that they have been adversely affected by an utterance made in the course of any proceedings of the Houses or their Committees, or such a submission referred to the Committee by a Chair; submissions and referrals are collectively described herein as ‘complaints’.

This Committee is only concerned with utterances made during the course of proceedings of a House or a Committee, and not comments made in other fora.

Standing Orders

At the time of adoption of these guidelines, the relevant Standing Orders are Dáil Standing Orders 71, 71A and 71B and Seanad Standing Orders 49A, 49B and 49C. In particular, these Guidelines are made in order to particularise the appropriate and relevant considerations anticipated by Dáil Standing Order 71A(7) and Seanad Standing Order 49B(7) and are made pursuant to Dáil Standing Order 119(b)(ii) and Seanad Standing Order 98(b)(ii).

Should those Standing Orders be amended such as to alter their numbering, these Guidelines shall continue in force in relation to any replacement standing order until such time as they are further and consequentially amended.

Transitional Saver

Nothing in these guidelines shall affect any existing complaints or complaints that are being determined by the Committee before the adoption of these guidelines.

Adversely affected by an utterance

For a person to be “adversely affected by an utterance”, that person must have been referred to in proceedings in such a way that there must be a significant likelihood that that person has to a substantial degree:

- been adversely affected in reputation, or in respect of dealings or associations with others,
- been injured in occupation, trade, office or financial credit, or
- had their privacy unreasonably invaded.

Degree of Adverse Effect

Free speech is a fundamental aspect of the parliamentary function. As such, the Committee will only consider complaints as being well grounded where the subject matter of the complaint is sufficiently serious so as to warrant investigation. The adverse effect of the utterance must have the potential to have a substantial impact on the person in question to be properly considered.

Findings as to the Truth of Utterances

The Committee shall not reach a determination as to the truth or otherwise of an utterance.

Public Interest

Without limiting the scope of the concept of public interest, public interest includes whether the utterance:

- was in relation to and in furtherance of a matter of public policy,
- relates to a matter of significant public concern,
- was made in the course of the performance of parliamentary duties,
- was made in a responsible manner, including its relevance to the proceedings, and
- adversely affects an identifiable person.

When considering the public interest, the Committee shall also balance the rights of Members to engage freely in debate on matters of public importance and the rights of all persons affected by such debate.

Readily Identifiable

A submission will not be considered where the complainant is not readily identifiable. The complainant does not have to be named in the utterance to be identifiable. It is sufficient for the Committee to be of the view that the complainant has been referred to in such a way as to be readily identifiable.

Responsible Manner

The Committee will take into account the circumstances surrounding the making of the utterance including whether:

- it was made in a responsible manner,
- it was made in good faith,
- the Member was instructed by the relevant Chair to cease making their utterance and persisted,
- the Member had a sound basis for making the utterance.

Prior Notice

The Committee will consider whether the Member gave prior notice in writing of their intention to make the utterance to the appropriate Chair, and the degree to which the utterance made accorded with such notice.

Subsequent Statement

The entirety of a Member's utterances must be considered in relation to a matter, including the whole contribution giving rise to a submission and any subsequent statement withdrawing, clarifying, modifying or ameliorating that contribution.

Totality of the Parliamentary Record

The contributions of other Members and witnesses may be relevant to the consideration of a submission, particularly but not limited to circumstances where other Members intervened and contradicted the relevant utterance, or otherwise minimised its impact.

Prior Comment

The extent to which matters have been discussed or reported on in the media or are otherwise in the public domain prior to the making of the utterance is relevant to the considerations of the Committee.

Reasonable Excuse or other consideration

The above considerations do not limit the Committee from considering any reasonable excuse which the Member may have had for making the utterance, nor from taking into account any other relevant and appropriate consideration which may arise in a particular instance.

Abuse of Privilege

An utterance which has had an adverse effect on a person will not necessarily constitute an abuse of privilege.

Amendment

These Guidelines may be amended from time to time by the Committee.
They were adopted by the Dáil Committee on 8th December, 2020.
They were adopted by the Seanad Committee on 15th December, 2020.