



Tithe an Oireachtais Houses of the Oireachtas

CPPO Guidelines on utterances having an adverse effect

Guidelines on appropriate and relevant considerations for determinations under Dáil Standing Orders 71 and 71A and Seanad Standing Orders 49A and 49B

Introduction

These Guidelines have been agreed by the Committees on Parliamentary Privileges and Oversight of both Houses (hereinafter referred to as ‘the Committee’) in order to set out the relevant and appropriate considerations which each Committee will take into account in making a determination under Dáil Standing Orders 71, 71A or 71B and Seanad Standing Orders 49A, 49B and 49C, as appropriate, 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’.

The 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 8 December 2020.

They were adopted by the Seanad Committee on 15 December 2020.

Source of these guidelines

These guidelines have been extracted from the [Joint Report on the Response of the Houses of the Oireachtas to the Judgments of the Supreme Court in the Kerins Case](#) (laid before the Houses of the Oireachtas on 15 December 2020). On 16 December 2020, Dáil Éireann and Seanad Éireann formally agreed and adopted the amendments and additions to the Standing Orders of Dáil Éireann and Seanad Éireann recommended in the Report.