

GUIDELINES FOR WITNESSES AND OTHER PERSONS ON COMPELLABILITY

Introduction

1. The Committees on Procedure and Privilege of Dáil Éireann and Seanad Éireann hereby make guidelines relating to the rules on compellability for witnesses and other persons compelled to give evidence or documents to an Oireachtas Committee conducting “*other committee business*”¹ or a “*Part 2 Inquiry*”².
2. In these Guidelines a committee engaging in “*other committee business*” will be referred to as an “*Oireachtas Committee*”. A committee carrying out a Part 2 Inquiry will be referred to as a “*Part 2 Inquiry Committee*”. References simply to a “*Committee*” refer to both the Oireachtas Committee and the Inquiry Committee.
3. This document is intended to give assistance to witnesses or other persons who have been or may be compelled. **This document does not purport to be a legal interpretation of the Inquiries Act or any other legislation. This document should not be used as a substitute for legal advice. These Guidelines are not intended to have binding legal effect.**

Who may be compelled?

4. In general, any person in the State, any Irish citizen outside the State, or any person in an Irish registered vessel or aircraft or on an Irish diplomatic mission outside the State may be compelled.³
5. Exceptions exist in certain circumstances for the President, an officer of the President, Judges⁴, the Master of the High Court, the Attorney General, an officer of the Attorney General, the DPP, an officer of the DPP and persons entitled to diplomatic immunity.⁵

Which committees have the power to compel?

6. A Committee seeking to use compellability powers must have the power to send for “*persons, papers and records*”. This means the Committee can insist upon the attendance of witnesses and the production of papers and other material.
7. In terms of a Part 2 Inquiry, any existing Oireachtas Committees or indeed a new Committee set up for that purpose could seek to hold an inquiry. Any committee seeking to run such an inquiry may ask the House to confer it with the power to send for persons, papers and records.⁶
8. In terms of committees engaged in “*other committee business*”, (referred to in these Guidelines simply as an Oireachtas Committee) a number of Committees currently

¹ See s.2 of the Inquiries Act which defines other committee business as follows: “*other committee business*” means any business, other than a Part 2 inquiry, conducted or to be conducted by a committee”.

² See s.2 which defines a Part 2 Inquiry as “a section 7 inquiry, section 8 inquiry, section 9 inquiry, section 10 inquiry, section 11 inquiry or section 16 inquiry conducted or to be conducted by a committee”.

³ See s.68(1) for Part 2 Inquiries and s.84(1) for Other Committee Business. This general rule is subject to s.67(5), (6) and (7) and s.68(2) for Part 2 Inquiries and s.83(4), (5) and (6) and s.84(2) for Other Committee Business.

⁴ Note the exception for Judges to whom a Part 9 Inquiry relates in s.69.

⁵ See s.67(5), (6) and (7) and s.68(2) for Part 2 Inquiries and s.83(4), (5) and (6) and s.84(2) for Other Committee Business. See s.67(8) and s.83(7) for further assistance in interpreting those subsections.

⁶ See s.13(1)(a)(ii). See for example the Joint Committee of Inquiry into the Banking Crisis

hold the power to send for persons, papers and records in their Orders of Reference.⁷

What procedures must be followed by a Committee in compelling a person?

9. There are different procedures for a Part 2 Inquiry Committee and an Oireachtas Committee.

Procedures for a Part 2 Inquiry Committee

10. The Inquiry Committee must have the power to send for persons, papers and records conferred on it by the House.⁸ The House will determine the extent of the power and can impose conditions on the exercise of the power.⁹ Where the Inquiry Committee intends to exercise its compellability powers:
 - (a) it shall give a notice in writing to the person of its intention to so exercise such powers and the proposed extent of such exercise, and
 - (b) inform the person of his or her entitlement to give oral submissions or submissions in writing, or both, to the committee, within 14 days (or longer if specified) after being given the notice, as to whether the powers under Part 6 of the Act relating to compellability should be exercised by the committee against him or her and, if so, to what extent.¹⁰
11. The Part 2 Inquiry Committee cannot exercise its compellability powers until the time for receipt of the persons submissions has expired and it has taken into account the submissions (if any) given by the person.¹¹

Procedures for an Oireachtas Committee

12. The Oireachtas Committee must have the power to send for persons, papers and records in its terms of reference. If it seeks to exercise those powers of compellability, it must seek the consent in writing of the Committee on Procedure and Privileges (“the CPP”).¹² The CPP may give such consent generally or in any particular case.¹³ Any consent may be given subject to such conditions and directions as are specified by the CPP at the time the consent is given.¹⁴ Once the Oireachtas Committee obtains the requisite consent it may give the direction to the relevant persons in line with procedural rules.¹⁵
13. If you are being directed to appear before an Oireachtas Committee of Dáil Éireann or Seanad Éireann the following procedures will also be complied with:

⁷ At the time of issuing these Guidelines the Committees holding the power to send for persons, papers and records were the Committee on Public Accounts, the Joint Sub-Committee on the Ombudsman, the Standing Joint Committee on Consolidation Bills and the Joint Committee of Inquiry into the Banking Crisis.

⁸ See s.66

⁹ See s.66

¹⁰ See s.26(1) and (2)

¹¹ S.26(3)

¹² See s.77 and s.76 for the definition of appropriate Committee. See also Standing Order 99(2)(f).

¹³ See s.77

¹⁴ See s.2(4)(b).

¹⁵ See SO 83A and 71A of the Standing Orders relevant to Public Business for Dáil Éireann and Seanad Éireann respectively.

- a. You will be given reasonable notice of your required attendance date, and/or a reasonable period for providing evidence or a document, or otherwise complying with the direction.¹⁶
- b. You will also be informed of the broad areas of business that the committee is or will be conducting to which the direction relates.¹⁷
- c. The direction will at all times be relevant to the proceedings of the Committee.¹⁸

Other procedures relevant to Committees when exercising their compellability function

14. A direction which is required to be given in writing under the Act must be signed by the Chairman or another Committee Member authorised to do so by the Chairman or by the Clerk to the Committee.¹⁹ All other directions must be given by the Chairman.²⁰
15. If a direction is sent to a person in their capacity as an employee, a representative of the House or another committee, the Committee must, at least 10 days before the date specified in the direction (i.e. the date which the person is being asked to attend) notify the person's employer, the House or the other committee as relevant.²¹ The Committee will also inform them of the matter to which the evidence or document relates. The employer, House or committee can seek to nominate another person to take the place of the person originally requested.²² If the Committee "*so decides*"²³, this other nominee may appear before the Committee.²⁴

What you can be compelled to do

16. You may be directed to attend before the committee on a date and at a time and place to give evidence and to provide any document in your possession or control.²⁵ The details will be specified in the direction.
17. You may be directed to give to the committee any document in your possession or control as specified in the direction.²⁶
18. You may be directed to make discovery on oath of any documents that are or have been in your possession or control relating to any matter relevant to the proceedings of the committee and to specify in the affidavit of documents concerned any documents mentioned therein which you object to producing to the committee and the grounds for the objection.²⁷ The rules of court relating to the discovery of

¹⁶ See SO 83A(2) and 71A(2) of the Standing Orders relevant to Public Business for Dáil Éireann and Seanad Éireann respectively.

¹⁷ See SO 83A(3) and 71A(3) of the Standing Orders relevant to Public Business for Dáil Éireann and Seanad Éireann respectively.

¹⁸ See SO 83A(3) and 71A(3) of the Standing Orders relevant to Public Business for Dáil Éireann and Seanad Éireann respectively.

¹⁹ See s.67(4)(a) for Part 2 Inquiries and s.83(3)(a) for Other Committee Business

²⁰ See s.67(4)(b) for Part 2 Inquiries and s.83(3)(b) for Other Committee Business

²¹ See s.73(1)(a) for Part 2 Inquiries and s.88(1)(a) for Other Committee Business. Procedures applicable to the Committee on which person/body to send the direction to are set out in s.73(2) and s.88(2).

²² See s.73(3) for Part 2 Inquiries and s.88(3) for Other Committee Business

²³ See s.73(1)(a) for Part 2 Inquiries and s.88(1)(a) for Other Committee Business.

²⁴ See s.73(1)(a) and (3) and s.88(1)(a).

²⁵ See s.67(1)(a) for Part 2 Inquiries and s.83(1)(a) for Other Committee Business

²⁶ S.67(1)(b) for Part 2 Inquiries and s.83(1)(b) for Other Committee Business

²⁷ S.67(1)(c) for Part 2 Inquiries and s.83(1)(c) for Other Committee Business

documents in proceedings in the Court apply to this process with any necessary modifications.

19. You may be directed to make a statement in writing on the matters on which you are required to give evidence.²⁸
20. Committees also have an overarching power to give any other directions that appear just and reasonable.²⁹
21. If you fail to comply with a direction, the chairman of the Committee may apply for a Court order which requires compliance with the direction.³⁰
22. If you are a civil servant, member of the Permanent Defence Force or Garda Síochána, or are a “*relevant person*”³¹ under the Act, and if you are directed to furnish a Committee with a document which an “*appropriate person*”³² (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.³³ Please refer to section 93 of the Inquiries Act if this section applies to you for full details on its operation.

What you cannot be compelled to do

23. A person may only be compelled by a Committee to give evidence or documents to it which are relevant to proceedings.³⁴ If you are directed to give evidence or a document to a Committee and you are of the opinion that it is not relevant to proceedings, you should inform the Committee.³⁵ The Committee will then consider your opinion and will decide whether to withdraw or confirm the direction. It will send you a notice in writing of its decision.³⁶ This is subject to the general power of witnesses and other affected people to apply to the Court for directions on what is permissible under the Act and what is in fact relevant to proceedings.³⁷
24. A list of specific matters which a Committee may not direct evidence in relation to is set out in the Act.³⁸ This, in summary, includes evidence or documents:
 - (a) relating to discussions at Government meetings³⁹;
 - (b) relating to discussions at meetings of committees appointed by the Government whose members include members of Government⁴⁰;
 - (c) which could reasonably be expected to prejudice criminal proceedings/investigations⁴¹;
 - (d) which could reasonably be expected to prejudice the security of the State or be prejudicial to relations with other states⁴²;

²⁸ See s.67(1)(d) for Part 2 Inquiries and s.83(1)(d) for Other Committee Business

²⁹ See s.67(1)(e) for Part 2 Inquiries and s.83(1)(e) for Other Committee Business

³⁰ See s.99

³¹ See s.93(4)

³² See s.93(4)

³³ See s.93(2) and (3)

³⁴ See s. 70 in relation to Part 2 Inquiries and s.85 in relation to Other Committee Business

³⁵ See s. 70(2) in relation to Part 2 Inquiries and s.85(2) in relation to Other Committee Business

³⁶ See s. 70(3) in relation to Part 2 Inquiries and s.85(3) in relation to Other Committee Business

³⁷ See s.94 and in particular s.94(6)(c), to which both s.70(3) and s.85(3) are subject.

³⁸ See s.71 for Part 2 Inquiries and s.86 for Other Committee Business

³⁹ See s.71(1)(a) for Part 2 Inquiries and s.86(1)(a) for Other Committee Business. See also the further exception in s.71(2) and s.86(2).

⁴⁰ See s.71(1)(a) and (b) for Part 2 Inquiries and s.86(1)(a) and (b) for Other Committee Business. See also the further exception in s.71(2) and s.86(2).

⁴¹ See s.71(1)(c) for Part 2 Inquiries and s.86(1)(c) for Other Committee Business

⁴² See s.71(1)(d) for Part 2 Inquiries and s.86(1)(d) for Other Committee Business

- (e) which could reasonably be expected to prejudice the prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the methods, systems, plans or procedures relating thereto⁴³;
- (f) relating to information kept for assessing certain taxes or duties⁴⁴.
25. If you are of the view that a direction which you have been given will have the effect set out in (d) or (e), you can inform the Committee⁴⁵. If the Committee does not withdraw the direction, it will ask you to furnish a declaration from a Government Minister (in relation to (d)) or the DPP or Garda Commissioner (in relation to (e)).⁴⁶ You can then apply for a period of time to respond (which will be at least 14 days) and the Committee will, if necessary, adjourn the proceedings for a period.⁴⁷ If you do obtain such a declaration, the direction from the Committee will be withdrawn.⁴⁸ If you form the opinion that a direction which you have been given will have the effect in (c), you should inform the Committee.⁴⁹ If the Committee does not withdraw the direction, you may apply to Court for a determination on the issue.⁵⁰ You also have a general right to seek directions from the Court on whether any of these prohibitions apply.⁵¹
26. If you are a civil servant, member of the Permanent Defence Force or Garda Síochána, or are a “*relevant person*”⁵² under the Act, 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.⁵³

What rights do you have?

27. In general⁵⁴, a person who is directed to give evidence or a document to a Committee or to attend before a Committee and is there to give evidence or a document has the same immunities and privileges in respect of that evidence or document, as a witness to proceedings in the High Court.⁵⁵
28. However, in relation to a Part 2 Inquiry only, this does not entitle you to refuse to answer a question or furnish a document on the grounds that it would incriminate you or any other person.⁵⁶
29. If you provide the Committee with documents pursuant to a direction, they will not be admissible in any other proceedings (except for proceedings in relation to an offence under the Inquiries Act or perjury).⁵⁷

⁴³ See s.71(1)(e) for Part 2 Inquiries and s.86(1)(e) for Other Committee Business

⁴⁴ See s.71(1)(f) for Part 2 Inquiries and s.86(1)(f) for Other Committee Business

⁴⁵ See s.72 for Part 2 Inquiries and s.87 for Other Committee Business

⁴⁶ See s.72(3) for Part 2 Inquiries and s.87(3) for Other Committee Business

⁴⁷ See s.72(2) for Part 2 Inquiries and s.87(2) for Other Committee Business

⁴⁸ See s.72(4) for Part 2 Inquiries and s.87(4) for Other Committee Business

⁴⁹ See s.100. This power to seek directions may also be used by a person who is party to such criminal proceedings or who is conducting such criminal investigation and who is aware that someone has been given a direction to give evidence or a document which could prejudice criminal proceedings or investigation.

⁵⁰ See s.100(2)(a)

⁵¹ See s.94 and in particular, s.94(6)(d).

⁵² See s.93(4)

⁵³ See s.93

⁵⁴ This principle is subject to s. 18(2) and (3) for Part 2 Inquiries, s.78(2) for Other Committee Business and s.94 for both. In terms of s.18 and Part 2 Inquiries, this applies generally and not just when a direction has issued.

⁵⁵ See s.18(1) for Part 2 Inquiries, see s. 78(1) for Other Committee Business. In terms of s.18 and Part 2 Inquiries, this applies generally and not just when a direction has issued.

⁵⁶ S. 18(2) for Part 2 Inquiries. In terms of s.18 and Part 2 Inquiries, this applies generally and not just when a direction has issued.

30. Statements or admissions made by you to the Committee during the course of Committee proceedings and documents created by or for the Committee (including any document which is incomplete or in a draft form only) for the purposes of Committee proceedings, will not be admissible in any other proceedings (except for proceedings in relation to an offence under the Inquiries Act or perjury).⁵⁸
31. You have the right to absolute privilege (i.e. a complete defence to a defamation action) in respect of evidence which you give to a Committee.⁵⁹ However, if you are giving evidence in relation to a particular matter and are directed by the Chairman of the Committee to cease giving such evidence, you will only be entitled to qualified privilege in respect of any evidence given after the direction.⁶⁰ Qualified privilege provides a weaker defence in defamation as it may only be used if there was no malice in the untrue statement.
32. If you are compelled to attend and do attend before a Committee, your reasonable expenses will be paid.⁶¹ These expenses do not include legal costs.
33. If you are a person to whom the Official Secrets Act 1963 applies, you may note that the prohibition on disclosure of official information (s.4) and disclosure of confidential information in official contracts (s.5) does not apply to evidence or documents given to a Committee pursuant to a direction.⁶²
34. In terms of Oireachtas Committees you have the right, having given reasonable notice to the Committee, to be accompanied by one other person who may be a legal practitioner.⁶³
35. In terms of Oireachtas Committees, the Committee will act with due regard to:
 - a. fair procedures;
 - b. your rights;
 - c. the rights of any person affected by the direction.⁶⁴

What obligations do you have?

36. In some circumstances a witness may seek to claim privilege in respect of a document which they have been directed to provide to a Committee. Where it is determined that the privilege relied on as a ground for refusing to give a document applies to only part of the information in a document, the person directed to give the document must prepare a redacted or summary version (or both) of the

⁵⁷ See s.29(1)(b) and for documents listed on affidavit, s.29(1)(c) for Part 2 Inquiries and s.81(1)(b) and (c) for Other Committee Business. Note the exception in s.81(2) for pre-existing documents.

⁵⁸ See s.29(1)(a) and (d) for Part 2 Inquiries and s.81(1)(a) and (d) for Other Committee Business. In terms of s.29(1)(a) and (d) and Part 2 Inquiries, this applies generally and not just when a direction has issued. Note the exception in s.29(2) and s.81(2) for pre-existing documents.

⁵⁹ See s.17(l) of the Defamation Act 2009

⁶⁰ See s.18(3) for Part 2 Inquiries, and s.78(2) for Other Committee Business. In terms of s.18 and Part 2 Inquiries, this applies generally and not just when a direction has issued.

⁶¹ See s. 67(3) for Part 2 Inquiries and s.83(2) for Other Committee Business. Please also have reference to the Guidelines on Expenses.

⁶² See s.74(2) for Part 2 Inquiries and s.89(2) for Other Committee Business

⁶³ Standing Order 83A(4) and 71A(4) of the Standing Orders relevant to Public Business for Dáil Éireann and Seanad Éireann respectively for Other Committee Business. A similar right to be accompanied by your legal practitioner is set out in s.22 for Part 2 Inquiries which applies generally and not just when a direction has issued. See further the Protocol for persons giving evidence to the Committee of Inquiry (Banking Inquiry). Please note that, in terms of Oireachtas Committees, the Committee will not pay the expenses or legal costs incurred by virtue of having any person accompany a witness. In terms of Part 2 Inquiries, please have regard to the Guidelines on Legal Costs and the Guidelines on Expenses.

⁶⁴ Standing Order 83A(5) and 71A(5) of the Standing Orders relevant to Public Business for Dáil Éireann and Seanad Éireann respectively.

document, as directed by the Committee.⁶⁵ This direction will only be given if the document is suitable, and in the committee's opinion, it is in the best interests of the Committee and of fair procedures to do so. This redacted or summarised version will form part of the evidence.⁶⁶ If you are unsure if privilege applies to the document at issue, you may need to seek legal advice.

Sanctions for failure to comply

37. In general⁶⁷, a person who is directed under the Inquiries Act to give evidence or a document to a Committee or to attend before a Committee and is there to give evidence or a document is, in addition to the penalties provided by the Act, subject to the same liabilities as a witness to proceedings in the High Court.⁶⁸
38. Failure to comply with a direction of a Committee may amount to an offence. Given the serious nature of these offences any person compelled to appear before a Committee should read the relevant section of the Act, s.75 in the case of Part 2 Inquiries and s.90 in the case of Other Committee Business.
39. In summary, the following amount to offences under the Act:
 - (a) If you have been directed to attend to give evidence, failing without reasonable excuse to comply with that direction where you have had certain expenses tendered to you in advance⁶⁹;
 - (b) If you have been directed to attend to give evidence, refusing to take the oath or answer a question to which the Committee is entitled by law to an answer⁷⁰;
 - (c) For other types of directions⁷¹, failing without reasonable excuse to comply with the direction⁷²;
 - (d) Doing any thing in relation to the Committee proceedings which, if done in relation to Court proceedings, would amount to contempt⁷³;
 - (e) Giving false evidence to the Committee, which, if given in Court, would amount to perjury⁷⁴.
40. It may also amount to a criminal offence to fail to comply with an order of the Court. A Court order may arise in the context of Committee proceedings if, for example, a person fails to comply with a direction of the Committee and the Committee obtains

⁶⁵ See s. 18(4) and (5) for Part 2 Inquiries, and s.78(3) and (4) for Other Committee Business. In terms of s.18 and Part 2 Inquiries, this applies generally and not just when a direction has issued.

⁶⁶ S.18(5) for Part 2 Inquiries and s.78(4) for Other Committee Business. In terms of s.18 and Part 2 Inquiries, this applies generally and not just when a direction has issued.

⁶⁷ This principle is subject to s. 18(2) and (3) for Part 2 Inquiries, s.78(2) for Other Committee Business and s.94 for both. In terms of s.18 and Part 2 Inquiries, and in terms of s.94 for both, these sections apply generally and not just when a direction has issued.

⁶⁸ See s.18(1) for Part 2 Inquiries, see s. 78(1) for Other Committee Business. In terms of s.18 and Part 2 Inquiries, this applies generally and not just when a direction has issued.

⁶⁹ See s.75(1)(a) for Part 2 Inquiries and s.90(1)(a) for Other Committee Business

⁷⁰ See s.75(1)(b) for Part 2 Inquiries and s.90(1)(b) for Other Committee Business

⁷¹ Under s.67(1)(b) to (e) for Part 2 Inquiries or s.83(1)(b) to (e) for Other Committee Business

⁷² See s.75(1)(c) for Part 2 Inquiries and s.90(1)(c) for Other Committee Business

⁷³ See s.75(1)(d) for Part 2 Inquiries and s.90(1)(d) for Other Committee Business

⁷⁴ See s.75(2) for Part 2 Inquiries and s.90(2) for Other Committee Business. In relation to Other Committee Business only, where the Committee is exercising compellability powers, see s.82 which provides an offence for providing false or misleading information knowingly or recklessly.

a court order requiring the person to comply with its direction.⁷⁵ The person is then bound to comply with the order of the Court.

41. A person found guilty of one of these offences may be subject, on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both, or on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 5 years, or both.⁷⁶
42. If you fail, without reasonable excuse, to comply with any direction from a Part 2 Inquiry Committee, this may have consequences in relation to legal costs or expenses.⁷⁷

Rights of persons identified

43. If you identify a person who is not present at the Committee by name or in some other way such that they are identifiable, the committee shall, if having regard to fair procedures it considers it appropriate to do so, send a transcript of the relevant part of proceedings to that person.⁷⁸ If this person believes that the transcript contains mistakes of fact or misstatements (including a misstatement which arises through omission of context) in relation to them, they may then send a statement of evidence and any relevant documents to the Committee⁷⁹ and/or may be allowed, on their request, to give oral evidence or by directing another specified person to give oral evidence.⁸⁰

⁷⁵ See s.99. Note in s.75(4) and s.90(4) it provides that if you have been sanctioned for failing to comply with an order under s.99 you cannot also be sanctioned under s.75(2) or s.90(2), or vice versa.

⁷⁶ See s.75(3) for Part 2 Inquiries and s.90(3) for Other Committee Business

⁷⁷ See s.48(1)(a) and s.55(1)(a)

⁷⁸ See s.25(1) for Part 2 Inquiries and s.80(1) for Other Committee Business. In terms of Part 2 Inquiries, s.25 applies generally and not just when a direction has issued.

⁷⁹ See s.25(2)(a) for Part 2 Inquiries and s. 80(2)(a) for Other Committee Business. In terms of Part 2 Inquiries, s.25 applies generally and not just when a direction has issued.

⁸⁰ See s.25(2)(b) for Part 2 Inquiries and s. 80(2)(b) for Other Committee Business. In terms of Part 2 Inquiries, s.25 applies generally and not just when a direction has issued.