



**Tithe an  
Oireachtais  
Houses of the  
Oireachtas**

# Protocol for persons giving evidence to Committees of the Houses of the Oireachtas

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## Introduction

1. This Protocol applies to witnesses<sup>1</sup> who are asked to appear before or provide documents to Oireachtas Committees while engaged in “*other committee business*.”<sup>2</sup> If you have been directed (i.e. compelled) under Part 7 of the Inquiries Act 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*.<sup>3</sup>
2. For further information on the particular Committee which you will be assisting, please see [www.oireachtas.ie](http://www.oireachtas.ie) where you will find general details about the Committee, as well as its Terms of Reference.<sup>4</sup> 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 witnesses;
  - the rights and responsibilities of witnesses and the consequences that may result from failure to discharge those responsibilities; 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. **It does not purport to be a legal interpretation of the Inquiries Act 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.**
5. This document has been approved by the Dáil Committee on Procedure and Privileges and is subject to periodic review.

## Aims

6. 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,

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<sup>1</sup> For convenience, both persons giving evidence to and otherwise appearing before a Committee are referred to as “witnesses” throughout this document.

<sup>2</sup> See s.2 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 (“the Inquiries Act”). “Other Committee business” is frequently referred to as ordinary committee business, and essentially refers to all committee business save for Part 2 Inquiries.

<sup>3</sup> In case of any conflict, the Guidelines for Witnesses on Compellability should take precedence.

<sup>4</sup> Also referred to as “Orders of Reference”.

- (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 consideration 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; and,
- (5) the good name of persons appearing before the Committee, and the information they impart is respected and otherwise dealt with appropriately.

## **Principles**

- 7. 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.
- 8. 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 reasons stated.
- 9. Committee meetings should proceed in a spirit of co-operation. In particular, the Chairman of the Committee will endeavour to ensure that meetings are conducted in a 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.
- 10. The Committee is not bound by the strict rules of evidence that apply in the Courts but in accepting evidence, the Committee will always have regard to fair procedures and natural justice and the rights of those affected by such evidence.

## **Purpose of the Meeting**

- 11. A broad purpose for the meeting will be agreed by the Committee which will be within the Terms of Reference of the Committee. 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 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

12. Communications from the Committee to witnesses will generally issue through the Clerk.
13. 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.<sup>5</sup> This initial communication with a witness will be in writing, providing contact details for the Clerk to the Committee and setting out the date, time and location of the proposed meeting and the broad areas for consideration.
14. 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).
15. In this initial communication it will make clear to witnesses that Committees meet in public unless there are exceptional circumstances which necessitate a private meeting.
16. Proposed witnesses will also be furnished with:
  - (a) a copy of this Protocol; and,
  - (b) *Factsheet 5: Making Submissions and Presentations to Oireachtas Committees.*
17. 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);<sup>6</sup>
  - (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

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<sup>5</sup> As mentioned above, if you have been directed to give evidence please also have reference to the ***Guidelines for Witnesses on Compellability.***

<sup>6</sup> If 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.

granted anonymity etc.) The Clerk will endeavour to inform you of any change in details of witnesses attending the meeting as they arise.

## Written Statements

18. The Committee may invite<sup>7</sup> a written statement in advance of the meeting and the person concerned may in any case provide a written statement if he/she wishes. Witnesses are expected to comply with reasonable requests of the Committee as regards structure, length or the content of statements to be submitted.
19. In order to allow the Oireachtas to comply with its 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.
20. 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.
21. Statements should be sent to the Clerk to the Committee to arrive at least **two working 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.
22. Documents circulated to Committee members, including documents sent in by witnesses, generally become "documents of a committee".<sup>8</sup> Once such a document of a committee is published, it becomes privileged.<sup>9</sup> 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 any allegations within those documents.

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<sup>7</sup> 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***.

<sup>8</sup> See s.92 of the Inquiries Act.

<sup>9</sup> 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. In s.2 of the Inquiries Act, "publish" is defined as follows: "*publish*", in relation to a statement, utterance, allegation or document, means publish to the public or a section of the public".

## At the Meeting

### Role of the Chairman

23. The Chairman of the Committee is responsible for the conduct of the meeting and for ensuring that it remains orderly, relevant and fair. If a witness has concerns in any of these areas in the course of a meeting, they should be raised with the Chairman.<sup>10</sup>

### Privilege

24. Unless the Chairman of the Committee informs a witness to the contrary, witnesses are protected by absolute privilege in respect of the evidence they provide to the Committee.<sup>11</sup> This means that witnesses, in general, have 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 Chairman's direction.
25. Privilege against defamation does not apply to the publication by you, outside of the meetings held by the Committee, of any matters arising from the meeting.

### Rights of Persons you Identify in Evidence

26. If you identify a person who is not present at a Committee meeting by name or in some other way such that they are identifiable, the Committee may, at their discretion, send a transcript of proceedings to that person. 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 submission to the Committee.

### What the Committee will expect of Witnesses

27. You will be expected 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 asked to assist by giving evidence 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

28. Witnesses can expect to be treated fairly and with respect and consideration.

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<sup>10</sup> See also the statutory power to furnish a "notice of objection" to the chairman under s.94 of the Inquiries Act. If you have been directed to give evidence, you may have other statutory rights to raise matters with the Committee. For further information please have reference to the Guidelines for Witnesses on Compellability.

<sup>11</sup> See further s.17 of the Defamation Act, 2009.

29. The Chairman and members of the Committee will give due consideration to reasonable requests for support and assistance from witnesses. They will also endeavour to:
- (a) put nervous or vulnerable witnesses at ease;
  - (b) pay special care to vulnerable witnesses;
  - (c) cater for witnesses with special needs;
  - (d) keep witnesses informed about delays;
  - (e) ensure that witnesses understand the meeting 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.
30. 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 (where possible you will have this information in advance of the meeting) and will only be questioned on matters coming within those areas;
  - (b) any and 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 Inquiries Act,<sup>12</sup> 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 are *sub judice* save as provided for in the Standing Orders of Dáil Éireann and/or Seanad Éireann.<sup>13</sup> If a witness has concerns in this regard, those concerns should be brought to the attention of the Chairman 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 three hours;
    - ii. where your attendance for longer periods is required, the meeting will be suspended for an appropriate period [minimum 15 minutes] after any three hour period of questioning;

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<sup>12</sup> If you are a witness who has been given a direction to give evidence under the Inquiries Act, please have reference to the Guidelines for Witnesses on Compellability.

<sup>13</sup> See Standing Order 57 (Dáil Éireann) or Standing Order 47 (Seanad Éireann)

- iii. you will not be questioned continuously for a period of longer than three 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 exceptional personal circumstances,<sup>14</sup> they will be unable to undergo standard periods of questioning, the Committee may schedule more frequent breaks.
31. If you are a civil servant, member of the Permanent Defence Force or Garda Síochána, or are a “*relevant person*”<sup>15</sup> under the Inquiries 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.<sup>16</sup> Further, if you are directed to furnish a Committee with a document which an “*appropriate person*”<sup>17</sup> (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.<sup>18</sup> Please refer to section 93 of the Inquiries Act if this section applies to you for full details on its operation.
32. If at any point you feel that any matter is not being dealt with in accordance with the Inquiries Act or other law, you should raise these issues with the Chairman on an informal basis. Alternatively, or if you do not feel that the issues you have raised informally have been satisfactorily addressed, you may give the Chairman a notice of objection in line with s.94 of the Inquiries Act. The Committee will then consider the notice and if it agrees with the notice, it may take action on foot of same.<sup>19</sup> If the Committee disagrees with the notice, the witness is entitled to apply to the Court for directions.<sup>20</sup> Alternatively the Committee may apply directly to Court for directions on the notice of objection. If any of these steps are taken, the Committee may cease to inquire into the matter.<sup>21</sup>

### Attendance at and Broadcasting of Meetings

33. 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.<sup>22</sup>

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<sup>14</sup> This might include, for example, serious ill health. If a witness feels that they have exceptional personal circumstances, they should furnish any supporting documentation for this to the Committee.

<sup>15</sup> See s.93(4)

<sup>16</sup> See s.93.

<sup>17</sup> See s.93(4)

<sup>18</sup> See s.93(2) and (3)

<sup>19</sup> See s.94(3)(a) to (c).

<sup>20</sup> See s.94(4) of the Inquiries Act

<sup>21</sup> For full detail on this procedure, see s.94 of the Inquiries Act.

<sup>22</sup> The rules on broadcasting of meetings are set out at Standing Order 116 of the Standing Orders relative to Public Business of Dáil Éireann and at Standing Order 97 of the Standing Orders relative to Public Business of Seanad Éireann (both available on [www.oireachtas.ie](http://www.oireachtas.ie)). 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...”

## Witnesses may be Accompanied

34. 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.<sup>23</sup>
35. 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 a disability. 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.
36. 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

37. Written statements from people/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.

## After the Meeting

### Publication of Evidence

38. 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.)
39. 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](http://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.
40. 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 meeting. A transcript of evidence (in other words, an official report of debates) will not be prepared, printed or published unless

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<sup>23</sup> If you have been directed (i.e. compelled) to attend before the Committee, you are entitled, under Standing Order 83A of Standing Orders relative to Public Business of Dáil Éireann, to be accompanied by a legal practitioner. See further the Guidelines for Witnesses on Compellability.

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 to the Committee on the proposed motion.

### **Further evidence**

41. 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 Clerk to the Committee will provide appropriate notice.
42. 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**

43. 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 individuals, 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 making a submission as to whether any information should be excluded. The Committee will then decide whether to amend the report on the basis of the submissions made.
44. 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 rules and Standing Orders of the Houses.
45. Any Reports of the Committee will be published on the Oireachtas Website [www.oireachtas.ie](http://www.oireachtas.ie).