

## GUIDELINES FOR WITNESSES AND OTHER PERSONS ON OFFENCES

### Introduction

- The Committee on Procedure and Privileges of Dáil Éireann and Seanad Éireann hereby make guidelines under s.19(2)(f) to set out the offences relevant to witnesses<sup>1</sup> (and other persons) under the *Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013* (“the Inquiries Act”).
- All witnesses should have reference to the *Guidelines for persons giving evidence or documents to the Committee of Inquiry*.
- The below offences are only those which may arise in the context of a Part 2 Inquiry.<sup>2</sup> Please note that this Guide is solely for reference purposes only, and by its nature contains summaries of offences only. This document should not be used as a substitute for legal advice. These Guidelines are not intended to have binding legal effect. For full detail of the offences please have reference to the sections of the Inquiries Act referred to in the footnotes.

### Types of Offences under the Act

1. Any witness attending before the Committee conducting the Inquiry should be aware that numerous offences and penalties exist under the Inquiries Act.<sup>3</sup> In general, these offences apply where witnesses fail to cooperate with the Part 2 Inquiry. Certain of these offences also apply to parties who may not be appearing as witnesses before the Inquiry.
2. These offences include (for Part 2 Inquiries):
  - a. Providing false or misleading information to the Committee<sup>4</sup>;
  - b. Failing to preserve “relevant material” for the Inquiry<sup>5</sup>;
  - c. Disclosure of a draft report<sup>6</sup> or other confidential documents<sup>7</sup> in contravention of the Act;
  - d. Unlawful publication of a draft report<sup>8</sup> or other confidential documents<sup>9</sup>;
  - e. Providing false or misleading information (by evidence, affidavit or in any document produced) to the parliamentary legal costs adjudicator<sup>10</sup>;
  - f. Failing to attend the Inquiry (this applies to certain compelled witnesses only who have received certain expenses in advance)<sup>11</sup>;
  - g. Failing to take the oath or answer certain questions (this applies to certain compelled witnesses only)<sup>12</sup>;

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<sup>1</sup> See s.2 of the Inquiries Act which defines witness as follows ““witness”, in relation to relevant proceedings, includes a prospective witness.”

<sup>2</sup> See s.2 of the Inquiries Act for the definition of Part 2 Inquiry.

<sup>3</sup> For details of the non-criminal sanctions which might apply where persons fail to cooperate with an Inquiry please have reference to the Inquiries Act and the Guidelines available. In particular, please have reference to the guidance on “relevant misbehaviour” contained in the *Guidelines for Witnesses or other Persons against whom Allegations are made*.

<sup>4</sup> S.32(1)

<sup>5</sup> See s.32(2) and s.30

<sup>6</sup> See s.41(1) and s.36(1)

<sup>7</sup> See s.41(4) and s.37

<sup>8</sup> See s.41(2)

<sup>9</sup> See s.41(5) and s.37

<sup>10</sup> See s.45 and s.64(1)

<sup>11</sup> See s.75(1)(a) and s.67(1)(a)

- h. Failing, when directed, to give documents, to make a statement or to comply with other reasonable directions (this applies to certain compelled witnesses only)<sup>13</sup>;
  - i. Doing anything in relation to the proceedings of a Committee, which if done in Court, would be contempt of Court<sup>14</sup>;
  - j. Giving false evidence before a Committee, which if done in Court, would amount to perjury<sup>15</sup>.
3. The Inquiries Act also creates a number of criminal offences arising out of the unauthorised disclosure of the private papers and confidential communications of members of the Oireachtas and of the official documents of either House of the Oireachtas. Although these offences are not specifically related to the conduct of a Part 2 Inquiry, it is possible that they may be committed by a person who has access to such material by reason of his or her involvement with such an Inquiry. These offences include:
- a. Disclosing a private paper<sup>16</sup> or confidential communication<sup>17</sup> in contravention of the Act;
  - b. Publishing a private paper or confidential communication which was disclosed in contravention of the Act<sup>18</sup>;
  - c. Disclosure of an official document of a House in contravention of the Act<sup>19</sup>;
  - d. Publishing an official document of a House which was disclosed in contravention of the Act<sup>20</sup>.
4. In addition to the specific offences described above, the Inquiries Act also creates a number of more general offences which may be committed by an individual in the context of the exercise by the Houses or a Committee of any of the functions conferred upon them under the Act. Thus, although the offences in question are not limited to the circumstances of a Part 2 Inquiry, they may be committed in connection with such an Inquiry. These include:
- a. Giving false or misleading evidence while under oath<sup>21</sup>;
  - b. Threatening to injure or injuring a witness or member, or offering a reward to a witness or member with the intent to influence evidence, or in retaliation for certain evidence<sup>22</sup>.
5. Where an offence is committed by a body corporate and the offence was committed with the consent, connivance, or was attributable to any or wilful neglect, of a person who was a director, manager, secretary or other officer of the body

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<sup>12</sup> See s.75(1)(b) and s.67(1)(a)

<sup>13</sup> See s.75(1)(c) and s.67(1)

<sup>14</sup> See s.75(1)(d)

<sup>15</sup> See s.75(2)

<sup>16</sup> See s.111(1)

<sup>17</sup> See s.111(2)

<sup>18</sup> See s.111(3)

<sup>19</sup> See s. 116

<sup>20</sup> See s.116(3)

<sup>21</sup> See s.119

<sup>22</sup> See s.133

corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, is guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.<sup>23</sup> If you have any concerns in relation to your position in a body corporate you may wish to consider obtaining legal advice.

### Bringing a Prosecution

6. A prosecution for an offence under this Act may be brought only by or with the consent in writing of the Director of Public Prosecutions.<sup>24</sup>
7. A summary offence under this Act may be prosecuted by the Oireachtas Commission acting with the consent in writing of the Director of Public Prosecutions.<sup>25</sup>

### Penalties

8. In general, a person guilty of an offence under the Inquiries Act is liable:
  - a. on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both, or
  - b. on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 5 years, or both.<sup>26</sup>

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<sup>23</sup> See s.123

<sup>24</sup> See s.125(1)

<sup>25</sup> See s.125(2)

<sup>26</sup> See Sections 32(3), 41(7), 64(2), 75(3), 111(4), 116(3), 119 (2) and 133(3).