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Circular 1/1984:- Guidelines for civil servants appearing before or providing information to Oireachtas Committees

A Chara

I am directed by the Minister for the Public Service to state that the Government have approved guidelines for civil servants dealing with Oireachtas Committees.

2. These guidelines, which supersede the interim guidelines circulated on 14 November 1983, are set out in the attachment to this circular letter. They should be observed by civil servants in their relationships with Oireachtas Committees.

Mise le meas,

K Murphy

Appendix - Guidelines for civil servants appearing before or providing information to Oireachtas Committees

1. Introduction

1.1 The purpose of this document is to provide guidance to Government Departments in their dealings with Oireachtas Committees. The following should be borne in mind by civil servants in contacts with these committees:

- a civil servant who appears before, or provides information to, an Oireachtas Committee does so on behalf of his Minister who, as a corporation sole, is legally responsible for the official acts of his civil servants,
- Departments should assist committees within the general framework authorised under these guidelines.

2. Scope of guidelines

2.1 These guidelines should be observed by Departments in providing written/oral evidence to Oireachtas Committees (in the case of the Public Accounts Committee, they will complement as necessary, but not supplant, the existing well established procedures in relation to departmental dealings with that committee).

2.2 The terms of reference of the committees are subject to change and Departments should keep themselves informed in this regard.

3. Evidence

3.1 Once information (oral or written) is supplied, however informally, to an Oireachtas Committee it becomes evidence and may be published.

3.2 In providing evidence to Oireachtas Committees, regard should be had to the provisions of the Official Secrets Acts.

4. Privilege

4.1 The Committees of the Houses of the Oireachtas (Privilege and Procedure) Act, 1976 makes provision for Privilege and immunity in relation to Oireachtas Committees. The Act confers privilege on members of both Houses of the Oireachtas in respect of any utterance in or before a committee. It extends to any document, official report, or publication of the committee and to the utterances in a committee of; "the members, advisers, officials and agents of the committee", wherever published. The privilege is absolute, in the sense that an action for libel or slander cannot successfully be brought in respect of any statement made or published under the protection of the Act.

4.2 The 1976 Act, however, does not include witnesses before Oireachtas Committees among the identifiable group of persons so protected. Witnesses before Oireachtas Committees enjoy qualified privilege against actions for libel or slander. This type of privilege can be defeated only by proof that the witness was not using the occasion honestly for the purpose for which the law gave it to him and was actuated by some indirect motive not connected with the privilege, e.g. malice in the popular sense of the term or irrelevant statements of a defamatory nature. However, in some cases, qualified privilege will obtain only so long as no third parties, e.g. representatives of the press, are present.

4.3 Departments should note that committees can decide to hold meetings in public and often do. In these cases, civil servants should be particularly careful in avoiding statements which could be construed as being of a defamatory nature. In particular, Departments should try to identify, before evidence is given to a committee, the likely areas where this danger might arise and ensure that civil servants appearing before the committee are fully briefed on the matter and their position in law.

[Note:

It is understood that the Leader of the House has recently circulated a draft memorandum for Government proposing, inter alia, that qualified privilege should apply in all cases where a committee meets in public session, e.g. even where members of the press are present. If the Government accepts this proposal, these guidelines will be amended later.]

5. Oral Evidence

5.1 When a Department receives a request from a committee to supply oral evidence, it should first clarify with the Clerk the likely area of questioning and whether the examination is to be conducted in public or private session. Where feasible, and as considered necessary, a position paper, outlining the official view on the subject involved, should be prepared for issue to the committee prior to its examination of the witness. The agreement of the responsible Minister should, as appropriate, be obtained on:-

- * the nomination of the civil servant(s) to represent the Department;
- * the general lines of any evidence proposed;
- * the contents of the position paper;
- * the withholding of any relevant information (see 7 below).

The position paper can then be issued to the committee.

5.2 During his examination, the civil servant should use the position paper as his main source of reference. If asked to elaborate on a point in the paper, he should respond appropriately in accordance with the general lines of his proposed evidence. The same approach should be adopted if information is sought on a point not covered by the paper. While it is the duty of civil servants to be as thoroughly briefed as possible on the subject matter of the examination, circumstances may arise where the witness may deem it injudicious to answer a question where he:

- (a) does not possess the required information; or
- (b) may consider that the information he has is not sufficiently accurate; or
- (c) may judge that in answering he would infringe the terms of 7 below.

In such cases, the witness should offer to check the matter further and to supply a note on it subject, where appropriate, to the agreement of his Minister (which, in the case of (c), may indicate that the information cannot be supplied).

5.3 Officials appearing before committees are responsible for ensuring that the evidence they give is accurate. A witness should arrange that he be supplied, as soon as possible, with a transcript of his evidence. He should immediately check this record and:-

- (a) in the case of minor inaccuracies (e.g. typing errors) amend the record as necessary with the agreement of the Clerk;
- (b) if substantive corrections are required, consider the desirability of obtaining formal authorisation from the committee for the amendment of the record.

6. Written Evidence

6.1 Departments should supply committees with factual, non-confidential information requested, subject to the agreement of the responsible Minister and to the limitations specified in 7 below. Departments should also facilitate, wherever feasible, the research needs of committees, subject to the same limitations.

6.2 Committees may request copies of reports commissioned or prepared by Departments. The decision to grant or refuse such a request (whether the report in question is an internal document, the product of an inter-departmental committee or one which was prepared with outside assistance) should be made by the responsible Minister. In the case of an inter-departmental committee report, other Ministers whose Departments, or agencies reporting to them, were represented on the inter-departmental committee which produced the report should be consulted. In this context it should be noted that the fact that a report is known to have been prepared does not of itself oblige a Minister to reveal its contents. Similarly, requests for information not previously published on the methods of operation of a Department or on reviews of its organisation and functions should be decided on by the Minister.

7. Limitations on the provision of evidence

7.1 As a general guideline, Oireachtas Committees should not be supplied with information which would not be disclosed in replies to Parliamentary Questions.

7.2 The following special types of information should not be disclosed to Oireachtas Committees:

- A. Information pertaining to the collective responsibility of the Government

The Irish system of Government is based, under the Constitution, on the collective responsibility of Government and, accordingly, no information should be given on:-

- * the advice given to Ministers by their Departments;
- * inter-departmental exchanges on policy issues, including advice contained in proposals submitted to Government;
- * the level at which decisions were taken;
- * the manner in which a Minister consulted his colleagues;
- * Government decisions not previously made public except with specific Ministerial authorisation;
- * Government procedures not previously made public;
- * the existence or work of Government sub-committees not previously made public.

In no circumstances should copies of Government papers (e.g. memoranda, draft legislation, decisions) be supplied to a committee.

B. Secret or Confidential Information

In the normal course, certain information is not made public either because it was obtained on a confidential basis or because its publication would not be in the national interest. Accordingly, Departments should refrain from disclosing:

- * information affecting national security which would normally be withheld from the Houses of the Oireachtas;
- * information concerning the private affairs of individuals and institutions which was supplied to Departments in confidence (including information available by virtue of an individual either being engaged in, or considered for, public employment);
- * information on matters which are, or may become, the subject of sensitive negotiations with Governments or other bodies (including the European Communities) without prior consultation with the Minister concerned;
- * sensitive information of a commercial, economic, financial, political or diplomatic nature which would normally be withheld from publication.

C. Legal Matters

- * legal advice to a Minister or a Department should not be disclosed without the express authority of the Attorney General;
- * civil servants should not provide information or engage in discussion on sub-judice matters (i.e. those in which legal proceedings have been initiated or are before the Courts);
- * details of cases where the Minister has a quasi-judicial or appellate function should not be disclosed,

* information on specific matters being examined by the Ombudsman should be withheld.

D. Policy matters

The formulation of policy is the responsibility of Government. It is, accordingly, for the responsible Minister to decide how much information a committee should be given on policy matters. In general, civil servants can factually explain existing policies as outlined by Ministers/Government. However, they should not discuss the merits of particular policies or policy alternatives (including their administrative and financial feasibility) or allow themselves to be drawn into debating the merits of particular policy decisions, including expenditure decisions. If criticism is levelled at witnesses by members of committees in regard to policy decisions or related aspects which reflect on the competence, judgment or good name of the witness or other persons, the witness may point out that:

* he is precluded from disclosing policy advice given to a Minister;

* criticisms of policy decisions are appropriate to Ministers who are answerable to the Oireachtas.

The position of officers with specialist knowledge (often those in professional or technical grades) raises certain problems. Such officers should not reveal details of advice they gave their Minister on an issue. Furthermore, if their opinion is sought on an ostensibly professional issue which has political implications they should refer to the political nature of the issue and indicate that such an issue is more appropriate for the Minister.

8. Liaison between Departments

8.1 Where the subject being examined by a committee affects the interests of more than one Department, then the Departments concerned should keep in touch in the preparation of their evidence to avoid conflict.

8.2 If the Departments are in dispute on any matter related to the provision of evidence, then such a dispute should be resolved by consultation between the responsible Ministers. If a committee seeks oral evidence on such a matter, then it is advisable that a representative of each Department concerned attend.

9. Evidence from outside bodies

9.1 Each Department should arrange that public sector bodies under its aegis inform it immediately a committee requests them to supply information. It is advisable that Departments keep in contact with their public bodies in such cases and that the public bodies concerned supply their Departments, in advance, with copies of written evidence as well as discussing with them the general lines of any evidence to be given. The degree of consultation desirable will depend, to a large extent, on the amount of control which the Minister exercises over such bodies. It is recommended that suitable guidelines in this matter should be prepared by Departments and made available on an informal basis to State bodies under their aegis.

10. Official Comment on Reports of Oireachtas Committees

A. Immediate Comment

10.1 Any initial reaction of a Minister or his Department should not pre-empt the final and considered reply of Government (see B below).

B. Government's reply

10.2 The Government's final reply will respond to the recommendations of the report. The Department concerned should prepare a memorandum for the Government providing the necessary background information and proposing possible replies to the recommendations of the committee.