
**COMMITTEES OF THE HOUSES OF THE OIREACHTAS
(POWERS OF INQUIRY) BILL 2010**

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Application of Act.
3. Powers of inquiry of committees.
4. No findings of civil or criminal liability.
5. Purpose of powers and construction of enactments conferring powers.
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ACTS REFERRED TO

Committees of the Houses of the Oireachtas Acts 1976 to 2004

Committees of the Houses of the Oireachtas
(Compellability, Privileges and Immunities of Witnesses) Act 1997

1997, No. 17

Tribunals of Inquiry (Evidence) Acts 1921 to 2004

**COMMITTEES OF THE HOUSES OF THE OIREACHTAS
(POWERS OF INQUIRY) BILL 2010**

BILL

entitled

AN ACT TO CONFER ON EACH HOUSE OF THE OIREACHTAS AND ON BOTH OF THEM ACTING JOINTLY, THROUGH COMMITTEES, A POWER TO APPOINT INQUIRIES INTO AND TO COMMISSION REPORTS UPON MATTERS RELEVANT TO THE EXERCISE OF THE LEGISLATIVE POWER OF THE STATE INCLUDING DEFECTS IN SOCIAL, ECONOMIC OR ADMINISTRATIVE SYSTEMS AND SYSTEMS OF GOVERNANCE WITHIN THE STATE, FOR THE PURPOSE OF PROPOSING LEGISLATION TO REMEDY ANY DEFECTS SO IDENTIFIED AND TO MAKE RECOMMENDATIONS FOR THE BETTER REGULATION AND GOVERNANCE OF THE STATE; AND TO PROVIDE FOR CONNECTED MATTERS.

WHEREAS the Government, its members, their officers and all others given responsibility for administering the public services of the State are trustees and servants of the people;

AND WHEREAS public administration in the State must accordingly be capable of being held to account by the elected representatives of the people in their House of Representatives, Dáil Éireann (being the rulers of the State designated as such, pursuant to Article 6 of the Constitution, by the people);

AND WHEREAS both Dáil and Seanad Éireann have functions in relation to the making of laws, including Private Acts that directly affect the rights and obligations of natural and legal persons;

AND WHEREAS, in furtherance of their legislative functions, the power of the Houses of the Oireachtas must be as ample as is necessary in order to enable them to conduct surveys and inquiries concerning defects in the social, economic or administrative systems of the State, for the purpose of enabling the Houses fully to be informed in considering proposed legislation for the remedy of those defects and the betterment of systems so found;

AND WHEREAS Dáil Éireann has additional functions under the Constitution in relation to the approval and oversight of measures for taxation and for expenditure and the holding of the Government to account, which additional functions must of necessity include –

- (a) the oversight of public administration by the bodies to which public monies are supplied by the Dáil from public revenues,
- (b) the oversight of the manner of administration of existing laws and
- (c) the oversight of probes into Government Departments and other public bodies in relation to which Ministers of the Government are responsible to the Dáil,

in order to identify the potential under existing laws for maladministration, inefficiency or waste and the need to reform those laws;

AND WHEREAS oversight of public administration and the holding of the Government to account constitute a distinct and legitimate area of parliamentary activity, and an essential parliamentary task, under a constitutional framework where the Government is accountable to the Dáil and through it to the public, in relation to the administration of the laws and the public services of the State;

AND WHEREAS the most appropriate means by which the Houses of the Oireachtas can perform such functions is through the appointment of committees of their members;

AND WHEREAS legislation is required in order to give effect to the foregoing;

AND WHEREAS the Oireachtas has had, in enacting this legislation, due regard to the constitutional rights of all persons liable to be thereby affected –

BE IT THEREFORE ENACTED BY THE OIREACHTAS AS FOLLOWS:

1. – In this Act –

“the Acts” means the Committees of the Houses of the Oireachtas Acts 1976 to 2004;

“committee” means a committee appointed by either House or appointed jointly by both Houses; and includes a subcommittee of such a committee;

“House” means House of the Oireachtas.

2. – This Act applies to a committee (other than the Committee on Members’ Interests of Dáil Éireann and the Committee on Members’ Interests of Seanad Éireann) on which, pursuant to the rules and standing orders of the House or Houses concerned, a power to send for persons, papers or records has been conferred.

3. – (1) A committee has power to inquire into, and report to either or both Houses upon, any matter for purposes –

- (a) appropriate to the order of reference by which it was appointed and any standing or other orders of either House applicable to it, and
- (b) appropriate to the functions of the House or Houses by which it was appointed, referred to in the recital to this Act, including in particular –
 - (i) the power of making laws for the State exercisable by the House or Houses that appointed it, and
 - (ii) in the case of a committee appointed by Dáil Éireann –

- (I) the function of holding the Government responsible to the Dáil, in accordance with Article 28.4 of the Constitution, and
- (II) the function of controlling taxation and supply and scrutinising public expenditure, in accordance with Articles 17 and 33 of the Constitution.

(2) The power of making laws for the State referred to in *subsection (1)* includes the power to make Private Acts affecting the rights and obligations of specified persons.

(3) A committee may inquire into and report upon matters that arose before the passing of this Act.

4. – (1) A committee is not to consider, and has no power to decide or report upon, findings or opinions on any individual’s civil or criminal liability or to make findings which could reasonably be seen to attribute civil or criminal liability to any individual.

(2) A report of a committee –

- (a) is in its entirety an expression of the opinion of the committee, and
- (b) has the same status for every purpose in law as is given to a report of a tribunal of inquiry appointed pursuant to the Tribunals of Inquiry (Evidence) Acts 1921 to 2004.

(3) A committee is not to be inhibited in the performance of its functions by the possibility of liability being inferred from any matter in relation to which it express an opinion or from any recommendations that it makes appropriate to the purposes (referred to in *section 3*) for which it conducted an inquiry and report.

5. – (1) The power of compellability of witnesses, and associated powers, conferred by the Acts are exercisable in aid of the power conferred on committees by *section 3*.

(2) In any application to the High Court to which the Acts relate, and in any appeal from such an application to the Supreme Court:

- (a) the court concerned shall bear in mind the public interest in securing on behalf of the people by and through their elected public representatives, to the greatest extent possible consistent with the separation of powers and the rule of law, a proper degree of openness, accountability and transparency in the public administration of the State, bearing in mind the democratic and therefore ultimately accountable nature of the State and its organs and institutions;
- (b) all other relevant considerations, including the safeguarding to an appropriate degree of constitutional rights of persons liable to be thereby affected, shall be weighed against that consideration and the purpose and spirit of this Act.

6. – (1) If a committee considers that it requires the advice, guidance or assistance of experts in respect of any matter arising at or in connection with the performance of its functions, it may, upon such terms and conditions as it may determine, appoint such number of assessors having

expertise in relation to that matter as it may determine to provide it with such advice, guidance or assistance.

(2) A committee may appoint a barrister or solicitor of not less than 12 years' standing to act as legal assessor and to advise and assist the committee in deciding all matters of procedure, in order to ensure compliance with relevant rules and orders of the House or Houses that appointed the committee, compliance with relevant enactments and the safeguarding of the constitutional rights of persons affected.

7. – (1) This section applies to a committee in respect of which the consent of the appropriate subcommittee relating to specified functions of the committee has been given under section 3 (9) of the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997.

(2) Following a proposal made by a committee and with the approval by resolution of the House or Houses that appointed it, the committee may appoint a person (or more than one person) of appropriate knowledge, experience or expertise to be an investigator to perform the functions conferred on investigators by this section.

(3) Whenever an investigator is so requested by the committee by which he or she was appointed, he or she shall, for the purpose of assisting it in the performance of its functions and subject to its direction and control, carry out a preliminary investigation of any matter material to the inquiry and report to which consent of the appropriate subcommittee relates.

8. – (1) An investigator –

- (a) is not to consider, and has no power to decide or report upon, findings or opinions on any person's civil or criminal liability or to make findings which could reasonably be seen to attribute civil or criminal liability to any individual,
- (b) is not to be inhibited in the performance of his or her functions by the possibility of liability being inferred from any matter in relation to which he or she express an opinion or from any recommendations that he or she makes appropriate to the purposes for which the investigation was conducted,
- (c) may make use of his or her knowledge, experience and expertise, as well as the information gathered in the course of his or her investigation, to provide an expert opinion and recommendations to the committee in relation to the matters the subject of the investigation, including the manner in which relevant laws, regulations, administrative systems, procedures and practices have been employed and applied, identifying in particular –
 - (i) any defects in planning, information-gathering and information-analysis on the part of public authorities,
 - (ii) any other defects in systems of regulation and oversight on the part of public authorities,
 - (iii) any systematic default on the part of regulated persons or bodies in their duty to comply with relevant regulations,

(iv) any defects in relevant laws or regulations.

(2) The report of an investigator may be published by a committee and its contents may be made use of for the purposes of its inquiry and report.

9. – (1) An investigator may, for the purposes of a preliminary investigation under *section 7*, require a person to –

- (a) give to him or her such information in the possession, power or control of the person as he or she may reasonably request,
- (b) send to him or her any documents or things in the possession, power or control of the person that he or she may reasonably request, or
- (c) attend before him or her and answer such questions as he or she may reasonably put to the person and produce any documents or things in the possession, power or control of the person that he or she may reasonably request,

and the person shall comply with the requirement.

(2) An investigator may examine a person mentioned in *subsection (1)* in relation to any information, documents or things mentioned in that subsection and may reduce the answers of the person to writing and require the person to sign the document containing them.

(3) Where a person mentioned in *subsection (1)* fails or refuses to comply with a requirement made to the person by an investigator under that subsection, the High Court may, on application to it in a summary manner in that behalf made by the investigator with the consent of the committee concerned, order the person to comply with the requirement and make such other (if any) order as it considers necessary and just to enable the requirement to have full effect.

(4) A person to whom a requirement under *subsection (1)* is made is entitled to the same immunities and privileges as if he or she were a witness before the High Court.

(5) An investigator shall not, without the consent of the committee by which he or she was appointed, disclose other than to that committee any information, documents or things obtained by him or her in the performance of his or her functions under this section.

(6) An investigator shall be furnished with a warrant of appointment and when performing a function under this section shall, if so requested by a person affected, produce the warrant or a copy of it to the person.

(7) A statement or admission made by a person before an investigator shall not be admissible as evidence against the person in any criminal proceedings.

(8) A person who, without reasonable cause, by act or omission obstructs or hinders an investigator in the performance of his or her functions under this section, or fails or refuses to comply with a requirement made to the person under *subsection (1)*, is guilty of an offence and is liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

10. (1) This Act may be cited as the Committees of the Houses of the Oireachtas (Powers of Inquiry) Act 2010.

(2) This Act and the Acts may be cited together as the Committees of the Houses of the Oireachtas Acts 1976 to 2010.

- (3) (a) If either House by resolution so declares, this Act, insofar as it applies to committees appointed by that House, comes into operation on the day specified in the resolution.
- (b) If each House by resolution so declares, this Act, insofar as it relates to committees appointed jointly by both Houses, comes into operation on the day specified in the resolution.
- (c) If either House by resolution so declares, this Act, insofar as it applies to committees appointed by that House, ceases to be in operation as on and from the day specified in the resolution.
- (d) If either House by resolution so declares, this Act, insofar as it relates to committees appointed jointly by both Houses, ceases to be in operation as on and from the day specified in the resolution.