



The Centre for Cross Border Studies

39 Abbey Street ❖ Armagh BT61 7EB

Tel: +44 (0) 28 3751 1550 ❖ Fax: +44 (0)28 3751 1721

Email: crossborder@gub.ac.uk ❖ www.crossborder.ie

Submission to the Working Group on Parliamentary Privilege and Citizens' Rights

3rd September 2019

This response has been prepared by the Centre for Cross Border Studies as a contribution to the Houses of the Oireachtas' Working Group on Parliamentary Privilege and Citizens' Rights, as it reviews the Houses' procedures in the light of recent judgements by the Supreme Court.¹

About The Centre for Cross Border Studies

The Centre for Cross Border Studies, based in Armagh, Northern Ireland, has a strong reputation as an authoritative advocate for cross-border cooperation and as a valued source of research, information and support for collaboration across borders on the island of Ireland, Europe and beyond.

The Centre empowers citizens and builds capacity and capability for cooperation across sectors and jurisdictional boundaries on the island of Ireland and further afield. This mission is achieved through research, expertise, partnership and experience in a wide range of cross-border practices and concerns (for more details visit www.crossborder.ie).

The response that follows is closely informed by the Centre's particular knowledge of and experience in engaging with political representatives and Oireachtas Committees on cross-border socio-economic development involving a range of sectors from both Northern Ireland and Ireland, including public bodies, business and civil society.

Representatives from the Centre for Cross Border Studies (CCBS) have appeared before Oireachtas Committees on numerous occasions, with the most recent being:

- 12 June 2019, Committee on Rural and Community Development ("After Brexit: A New Common Charter for cooperation within and between these islands")
- 9 May 2019, Committee on the Implementation of the Good Friday Agreement ("Towards a New Common Chapter" project)
- 12 December 2018, Committee on Rural and Community Development ("Supporting communities and sustaining small rural business within the border region after Brexit")

¹ This response was authored by Dr Anthony Soares, Acting Director of the Centre for Cross Border Studies.

- 10 May 2017, Committee on Arts, Heritage, Regional, Rural and Gaeltacht Affairs (“Development and Co-operation in Border Counties”)
- 25 October 2016, Committee on Jobs, Enterprise and Innovation (“Economic Impact of Brexit”)
- 20 October 2016, Committee on the Implementation of the Good Friday Agreement (“Implications for Good Friday Agreement of UK EU Referendum result”)
- 12 May 2015, Committee on Jobs, Enterprise and Innovation (“All-Island Economy”)
- 26 June 2014, Committee on the Implementation of the Good Friday Agreement (“Developments in North-South cooperation”)

It is important to note the basis on which representatives of the Centre for Cross Border Studies have appeared before Committees. CCBS has been invited (*not compelled*) to appear before Committees, to bring our specific expertise and knowledge to bear on a specific area of work being undertaken or topic being explored by those Committees. Since 2016 such appearances have often been in relation to the potential impacts of the UK’s withdrawal from the EU, although – particularly in relation to our work on the New Common Charter for Cooperation Within and Between these Islands² – the Centre has also initiated appearances by requesting to inform relevant Committees of specific projects.

1. From the perspective of citizens and organisations, **it is important that individual Committees’ overall remits and terms of reference are clearly defined**, as is the case in terms of the remit and terms of reference of Committees when undertaking a particular inquiry or stream of work. Clarity in this regard can assist witnesses in preparing their evidence in a manner most suitable to the Committee and to the work it is undertaking.

2. It is the responsibility of the Chair, seeking the advice of Committee clerks where necessary, to ensure a Committee’s work remains consistent with the remit given to it by the House or Houses, and the members understand and confine themselves within that remit. However, there are clearly reasonable occasions where Committees’ individual remits nevertheless allow for more than one Committee to undertake inquiries into the same issue. A recent example of where such overlap has occurred is in Committees’ assessment of the potential impacts of Brexit on the areas for which they are individually responsible. CCBS has appeared before more than one Committee in regards to the UK’s withdrawal from the European Union, and the Centre’s experience has been that although the respective Committees were examining the same topic, their questions were generally informed by their particular Committee’s remit.

3. As is the case with the definition of Committees’ remits and terms of reference, **it is important that invitations to appear before Committees possess clarity (including in terms of accessibility of language to citizens potentially unfamiliar with terminology employed by members and officials of the Houses), and that the terms under which a citizen or organisation is being asked to appear contain the appropriate level of detail.** It is unhelpful to citizens, and detrimental to a Committee’s work, to issue invitations whose terms are too vague or general in nature.

4. It is important that the practice experienced by CCBS, whereby invitations make clear that citizens or organisations can seek further clarification on the terms of the invitation if they so require, is

² For more information, please see <http://crossborder.ie/towards-a-new-common-chapter/>.

sustained and implemented across all Committees. However, where a Committee Chair is contacted by a citizen or organisation following receipt of an invitation, it should be considered whether meetings between an invitee and a Chair should be undertaken in the presence of a Committee clerk (if this is not already common practice), in order that any implications arising from such a meeting on a Committee's work is communicated to members, and understood clearly by both the Committee and the invitee before appearing before the Committee.

5. It is crucial that invitations are issued as early as possible in order to offer those appearing before a Committee adequate time to prepare, with the same condition applying to where the terms of an invitation are subsequently altered. Whereas some individuals or organisations may potentially have the required resources to divert to the proper preparation of an appearance before a Committee, and therefore be in a position to meet all other existing priorities, this will not be the case for the majority. Maximum timeliness in issuing invitations will contribute to ensuring adequate preparation is undertaken, and thereby to progressing the work of Committees.

6. CCBS's experience of the manner in which Committee meetings have been conducted has been a positive one. We have witnessed the benefits of Chairs making clear the purpose of meetings in which we have appeared, reiterating the general remit of the particular Committee, and the terms of reference issued in the invitation. **The importance of Chairs ensuring members' questions are relevant to the purpose of the meeting** is also clear, and that the Chair offers adequate time for each member present to pose their questions and any follow-up in light of answers given. **Above all, the conduct of Committee meetings should obey the principle that "the constitutional rights of citizens do not disappear inside the gates of Leinster House",** as underlined in the O'Brien judgement.³ **It is the primary responsibility of the Chair of a Committee that this principle is abided by, both in his/her own conduct and those of members at Committee meetings, ensuring citizens appearing before them are treated in a just manner.**

7. The Committee on Procedure (CP) and the Committee on Procedure and Privileges (CPP) must also uphold the core principle that citizens' constitutional rights must all times be protected by both Houses when individuals or organisations are invited to appear before any Committee of a House or Houses, and that there are clear and open channels for citizens to bring a complaint when they judge those rights to have been infringed. Where the CP or CPP, in discharging their responsibility to ensure citizens' constitutional rights are not infringed, find that a complainant is justified in their grievance, the remedy should relieve any reputational damage suffered by the complainant.

8. However, **it is essential that the Houses and their Committees are not restricted in the valuable work that they perform, which can only be enhanced if the processes in place are protective of citizens' constitutional rights, encouraging individuals and organisations to contribute to Committees' work by providing information in a context whose limits are predetermined, recognised by citizens and members, and safeguarded by Committee Chairs.**

3

<http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/2b50a43880a6f1b4802583b40046bc35?OpenDocument>.