

**Head of the Civil Service****Head of the Office of the First Minister & Deputy First Minister****Dr Malcolm McKibbin BSc MBA DPhil CEng FICE****Room FD.34, Stormont Castle, BELFAST BT4 3TT, NORTHERN IRELAND****Tel: 028 9037 8133 Fax: 028 9037 8205 Email: hocs@ofmdfmi.gov.uk****HCS/167/13****FROM: MALCOLM MCKIBBIN****Our Ref: SUB/259/12****DATE: 4 MARCH 2013****cc OFMDFM SCS****TO: PERMANENT SECRETARIES****GUIDANCE FOR OFFICIALS ON APPEARING BEFORE ASSEMBLY COMMITTEES**

The paper prepared by the Permanent Secretaries Group and entitled "Guidance for Officials on Appearing before Assembly Committees" was agreed by the Executive on 27 February. The document, a copy of which is attached, has been placed on the NICS Intranet site and can be accessed via the following link

<http://online.nigov.net/guidance-for-officials-on-appearing-before-assembly-committees.pdf>. You may wish to consider circulating the Guidance widely throughout your own departments.

Many thanks.

**MALCOLM MCKIBBIN**



## GUIDANCE FOR OFFICIALS ON APPEARING BEFORE ASSEMBLY COMMITTEES

### Status and Scope of the Guidance

1. This guidance is intended to provide a procedural framework for departmental and agency officials who are called upon to give evidence before Assembly Committees. It should be noted, however, that while the guidance accords fully with relevant legislation and Assembly Standing Orders, it has no formal standing in the Assembly and has not been subject to Assembly approval of its contents.
2. The guidance is intended to apply to the procedural arrangements of all of the Assembly's statutory committees and most of the Assembly's standing committees. It does not, however, apply in every respect to the Public Accounts Committee (PAC), because of the special position of Accounting Officers in relation to that Committee and the direct access of the Comptroller and Auditor General to departmental records. Advice on giving evidence to PAC can be obtained from DFP's Accountability and Financial Management Division (AFMD – Tel No: 029 91858276, Ext 68276) and from the HM Treasury document "A Guide to Scrutiny of Public Expenditure" - <http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/d/FE67C08B-BCDC-D4B3-12E3BD9EFCF5AC98.pdf>.
3. Officials who are called upon to give evidence before an Assembly committee should also familiarise themselves with the guidance note which has been prepared by the Assembly authorities "Guide for Witnesses appearing before

Assembly Committees” - <http://www.niassembly.gov.uk/Assembly-Business/Committees/Guide-for-Witnesses-appearing-before-Assembly-Committees/>

4. As well as observing this guidance officials should also seek legal advice where appropriate and particularly in cases relating to the withholding of information, and matters which are sub judice or are likely to become to subject of litigation.

## **Powers of Statutory Committees**

5. Statutory Committees of the Northern Ireland Assembly have been established under Section 29 of the Northern Ireland Act 1998 (as amended) and Standing Orders 46 and 48(1) of the Assembly to advise and assist:-
  - (i) the First Minister and deputy First Minister in the formulation of policy with respect to matters within their responsibilities as Ministers jointly in charge of the Office of the First Minister and deputy First Minister; and
  - (ii) each Northern Ireland Minister in the formulation of policy with respect to matters within his or her responsibilities as a Minister.
6. Standing Order 48(2) confers on these Statutory Committees the powers described in paragraph 9 of Strand One of the Belfast Agreement. These are:
  - (i) to consider and advise on Departmental budgets and Annual Plans in the context of the overall budget allocations;
  - (ii) to approve relevant secondary legislation and take the Committee Stage of relevant primary legislation;
  - (iii) to call for persons and papers;
  - (iv) to initiate enquiries and make reports; and

- (v) to consider and advise on matters brought to the Committee by its Minister.
7. Statutory Committees, under Standing Order 48(2), can also exercise the power conferred on the Assembly by Section 44(1) of the Northern Ireland Act 1998 by which it may require any person:
- (i) to attend its proceedings for the purpose of giving evidence
  - (ii) to produce documents in their custody or under their control.
8. By virtue of the roles accorded to Assembly committees, their contact with departmental officials is therefore both regular and varied in nature, and can include formal evidence sessions, as well as briefings and updates on issues of interest to the committee.

### **Conduct and Relationships**

9. It is in the interests of both Departments and their Committees to promote good working relationships between them and to maintain effective channels of communication. Apart from correspondence between the Chair and the Minister, contact will principally be channelled between the Committee Clerk and the Departmental Assembly Liaison Officer (DALO). In giving their evidence, officials should observe the core values of the Civil Service Code of Ethics in respect of Integrity, Honesty, Objectivity and Impartiality and should accord the Committee the respect due to them as members of the Northern Ireland Assembly.
10. The Code of Conduct for Members of the Northern Ireland Assembly also acknowledges ‘that the exchange of ideas and opinions on policies may be robust, but this should be kept in context and not extend to individuals being subjected to unreasonable and excessive personal attack. Members should keep in mind that rude and offensive behaviour may lower the public’s regard for, and confidence in, Members and the Assembly itself. Members should therefore show respect and consideration for others at all times.’

**Ministerial Accountability and the Role of Officials**

11. Ministers are directly accountable to the Assembly both for their own policies and for the actions of their departments. Officials are accountable to their Minister and they carry out their departmental functions at all times subject to the direction and control of the Minister. Officials who give evidence to Assembly committees do so, therefore, on behalf of their Minister for the primary purpose of supporting and contributing to the observance of Ministerial accountability.

**Attendance by and the Summoning of Named Officials**

12. While it is for Ministers to decide which official or officials should represent them in any engagement with an Assembly committee, officials attending committees to give evidence will normally be those with responsibility for, and/or experience in, the relevant subject area. Where a committee indicates that it wishes to take evidence from a particular named official, Ministers should be advised of the request, especially where this is likely to expose the individual concerned to questioning either about his or her personal responsibility for a matter, or the responsibility of others. This will be particularly the case where the official concerned has been, or may be subject to, an internal departmental inquiry and/or disciplinary proceedings. See also paragraphs 27-29 below on Disciplinary Matters.
13. Ministers may, in such circumstances, decide that evidence to a committee should be given not by the official or officials directly involved in the issue, but either by the Minister personally or by another designated senior official. Ministers may therefore propose an alternative official to that requested by a committee. However, it should be noted that if a committee insists on a particular official appearing before them, it could ultimately issue a formal order for attendance under Standing Order 48(2). In such an event, the official, as any other citizen, would be obliged to comply with the order.
14. Where an Assembly committee wishes to take evidence on matters assigned to an Agency, Ministers will wish to nominate the official best placed to represent

them - this will often be the Agency Chief Executive. While Agency Chief Executives have managerial authority to the extent set out in their Framework Documents, they, and all other Agency officials, also give evidence on behalf of the Minister to whom they are accountable and are subject to that Minister's instruction and the protocols outlined in this guidance.

### **Provision of Information**

15. Officials should be as forthcoming as they can in providing information relevant to an Assembly committee's legitimate field of inquiry. Any withholding of information should only take place following consultation with the relevant Minister and should usually be limited to reservations that are necessary in the public interest. Public interest should not be interpreted in a way which unreasonably restricts the information provided to committees. Care should also be taken to ensure that no information is withheld which would not be exempted if a parallel request were made to obtain it under legislation governing access to information. Legal advice should not be disclosed without prior consultation with the Departmental Solicitors Office.
16. Officials appearing before Assembly committees are also responsible for ensuring that the evidence they give is accurate. They will therefore need to be fully briefed on the main facts of the matters on which they expect to be examined, particularly as a committee's questions can range widely and can be expected to be testing. Should it nevertheless subsequently be discovered that any evidence given unwittingly contained factual errors, these should be made known to the committee, via the Committee Clerk, at the earliest opportunity and the appropriate corrections provided.

### **Discussion of Policy**

17. Officials should, as far as possible, confine their evidence to questions of fact and explanation relating to policies and actions. They should be ready to explain what the policies in question are; the objectives of those policies and the extent to which they have been met; and also to explain how administrative factors may have affected both the choice of policy measures and the manner of their

implementation. Officials should not disclose the advice they have given to their Minister nor identify any differences between this and a Minister's final decision.

18. While officials may be asked by a committee to give a full account of their department's policies, or indeed of their own actions or recollections of particular events, they should not offer personal views, judgements or conjecture on matters of policy. Officials should also decline to offer comment on the internal consideration being given to an issue in a way that could be construed either as apportioning responsibility for delay or as pre-empting the final decision to be taken on any matter by the Minister, and where appropriate, the Executive.
19. Any comment by officials should always be consistent with the principle of civil service political impartiality. Officials should, as far as possible, avoid being drawn into discussion of the merits of alternative policies where this is politically contentious, or offer comment on political disagreement or the positions taken by other Ministers. If officials are pressed by the committee to go beyond these limits, they should respond by stating that the matters under question should be referred to Ministers.
20. A committee may invite specialist (as opposed to administrative) officials to comment on the professional or technical issues underlying policies or decisions. This can require careful handling where committees wish to take evidence from, for example, departmental economists or statisticians on issues which relate to policy questions, which may also be matters of controversy within the particular profession; or where their own judgement on professional issues has, or appears to have, implications for the presentation of Ministerial or Executive Committee policies.
21. It is not generally open to such officials to describe or comment upon the advice which they have given to departments, or would give if asked. The status of such evidence should, if necessary, be made clear to the committee. If pressed for a professional judgement on the question the official should, if necessary, refer to the political nature of the issue and, as above, respond by stating that the line of questioning be referred to Ministers.

**Handling of Sensitive Information in Oral Evidence**

22. Evidence which a department wishes to be treated as confidential should not be given at a public session of the committee. If it appears likely that matters on the agenda of a forthcoming public session are such as would permit officials only to give substantive answers in confidence, a request should be made to have that part of the department's evidence taken in closed session. Arrangements for closed sessions should be discussed in the first instance between the Committee Clerk and the DALO, but if agreement cannot be achieved, the Minister may write to the Committee Chairperson explaining why a closed session is necessary.
23. If a committee questions an official witness in public session on confidential matters, or if such matters are raised unexpectedly, the official should inform the committee that the questions could only be answered on a confidential basis. The committee may then decide to go into closed session or request a confidential memorandum. If, however, the committee does not go into closed session and continues to ask such questions, the official should request the opportunity to refer the question back to the relevant Minister.

**Matters which may be Sub Judice**

24. Committees are subject to the same rules by which the Assembly regulates its conduct in relation to matters subject to the adjudication of the courts. Standing Orders prohibit members from discussing active cases without the permission of the Speaker or, for a Committee, its Chairperson. If a department has reason to believe that a matter already before the courts is likely to come up for discussion before a committee at a public session, the DALO should confirm with the Committee Clerk that the committee is also aware of the issues concerned. It should be noted, however, that the Chairperson has an overriding discretion to determine what is appropriate in the hearing of evidence.
25. Officials should also take care in discussing or giving written evidence on matters which may subsequently become the subject of litigation but which, at the time, do not strictly come under the rules precluding public discussion of sub



judice questions. In such circumstances it would be appropriate to bring the issue to the attention of Ministers in advance of the committee meeting.

### **Privilege**

26. Under Section 50 of the Northern Ireland Act 1998 “proceedings of the Assembly” are privileged for the purposes of the law of defamation only. The term “proceedings of the Assembly” includes the work of the committees. This privilege covers all evidence given by a witness to a committee whether in oral or in written form. It also covers the publication of any statement or report made under the Assembly’s authority. As a result of such privilege no action may lie in defamation against a witness in respect of statements, whether written or oral, to the Assembly. In giving evidence to committees officials should not abuse Assembly privilege to make defamatory statements.

### **Disciplinary Matters**

27. Committees have no role either in the management of individual departmental officials or as disciplinary tribunals. Where disciplinary action against an official is considered necessary as a result of, for example, any inquiry initiated by the Permanent Secretary or the Head of the Civil Service into particular events, this will be handled in accordance with established NICS disciplinary procedures.
28. In such circumstances, officials should therefore decline either to assign blame to, or name a specific official or officials in relation to perceived shortcomings in a department’s actions. Should a committee or an individual Member adopt such a line of questioning, the official in attendance should advise the committee that he or she will refer the matter back to the department for further response.
29. In this context, departments should also adhere to the principle that disciplinary and employment matters are issues of confidence and trust which extend in law beyond the end of employment. In such circumstances, public disclosure may damage an individual’s reputation without that individual having the same “natural justice” right of response which is recognised by other forms of tribunal or inquiry.

**Further Information**

30. Any queries on this guidance should be referred to Assembly Section, OFMDFM.

**WEDNESDAY 27 FEBRUARY 2013**

**Public Accounts Committee (PAC) Membership**



**Mr Robin Swann (Chair)**

UUP, North Antrim

Committee for Agriculture, Environment & Rural Affairs



**Mr Daniel McCrossan (Deputy Chair)**

SDLP, West Tyrone

Committee for Infrastructure



**Mr Trevor Lunn**

Alliance, Lagan Valley

Committee for Justice



**Mr Robbie Butler**

UUP, Lagan Valley

Committee for Health



**Mr Trevor Clarke**

DUP, South Antrim

Committee for Health



**Mr Gordon Dunne**

DUP, North Down

Committee for Economy



**Mr Alex Easton**  
DUP, North Down  
Committee for Infrastructure



**Ms Carla Lockhart**  
DUP, Upper Bann  
Committee for Education



**Ms Michelle Gildernew**  
SF, Fermanagh and South Tyrone  
Committee for Communities



**Mr Declan Kearney**  
SF, South Antrim  
Committee for Justice



**Mr Olliver McMullan**  
SF, East Antrim  
Committee for Agriculture, Environment & Rural Affairs