

APPENDIX 2

COMMISSIONS OF INVESTIGATION ACT 2004



Number 23 of 2004

COMMISSIONS OF INVESTIGATION ACT 2004

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[No. 23.] *Commissions of Investigation* [2004.]
 Act 2004.

ACTS REFERRED TO

Data Protection Act 1988	1988, No. 25
Freedom of Information Acts 1997 to 2003	
National Archives Act 1986	1986, No. 11
Petty Sessions (Ireland) Act 1851	14 & 15 Vict.. c. 50
Tribunals of Inquiry (Evidence) Acts 1921 to 2004	



Number 23 of 2004

COMMISSIONS OF INVESTIGATIONS ACT 2004

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF COMMISSIONS FROM TIME TO TIME TO INVESTIGATE INTO AND REPORT ON MATTERS CONSIDERED TO BE OF SIGNIFICANT PUBLIC CONCERN, TO PROVIDE FOR THE POWERS OF SUCH COMMISSIONS AND TO MAKE PROVISION FOR RELATED MATTERS.

[18th July 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY MATTERS

1.—This Act may be cited as the Commissions of Investigation Act 2004. Short title.

2.—(1) In this Act, except where the context otherwise requires— Interpretation.

“authorised person” has the meaning given by *section 26*;

“chairperson”, in relation to a commission, means the person appointed under *section 7(5)* as the chairperson of the commission;

“commission” means a commission of investigation established under this Act;

“Court” means the High Court;

“document” includes any book, record or other written or printed material in any form, including any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form;

“evidence” includes any expression, orally, in writing or otherwise, of an opinion, belief or intention;

“investigation” means an investigation conducted by a commission in accordance with its terms of reference under this Act;

Pr.1 S.2

“legal costs” means fees, disbursements, charges and expenses included in a bill of costs in respect of a barrister or solicitor;

“legal representative” means a barrister or solicitor;

“premises” includes any building, dwelling, temporary construction, vehicle, ship or aircraft;

“specified Minister”, in relation to a commission, means the Minister specified under *section 3(3)(b)* in the order establishing the commission;

“tribunal” means a tribunal to which the Tribunals of Inquiry (Evidence) Acts 1921 to 2004 apply.

(2) For the purposes of this Act, a document in the power of a body corporate or an unincorporated body of any kind is considered, in the absence of evidence to the contrary, to be also in the power of any individual who, because of his or her functions or position within the body corporate or the unincorporated body, as the case may be, can reasonably be expected to have control over the document.

(3) In this Act—

- (a) a reference to a section is to a section of this Act, unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection or paragraph is to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and
- (c) a reference to any other enactment is to that enactment as amended by or under any other enactment, including this Act, unless the context otherwise requires.

PART 2

ESTABLISHMENT, MEMBERSHIP AND INDEPENDENCE OF COMMISSIONS

Establishment of commissions.

3.—(1) Following a proposal made by a Minister with the approval of the Minister for Finance, the Government may, by order, establish a commission to—

- (a) investigate any matter considered by the Government to be of significant public concern, and
- (b) make any reports required under this Act in relation to its investigation.

(2) An order may be made under this section only if—

- (a) a draft of the proposed order and a statement of the reasons for establishing the commission have been laid before the Houses of the Oireachtas, and
- (b) a resolution approving the draft has been passed by each House.

(3) The order establishing a commission shall specify—

- (a) the matter that is considered by the Government to be of significant public concern and that is to be investigated by the commission, and
- (b) the Minister responsible for overseeing administrative matters relating to the establishment of the commission, for receiving its reports and for performing any other functions given to him or her under this Act.

(4) A commission may be established under this section even if the matter considered by the Government to be of significant public concern arose before the passing of this Act.

4.—(1) The order establishing a commission may authorise the specified Minister to set the commission's terms of reference. How terms of reference are to be set.

(2) If the order establishing a commission does not authorise the specified Minister to set its terms of reference, they may be set by the Government.

(3) Before setting a commission's terms of reference, the specified Minister or the Government, as the case may be, may consult with any persons.

5.—(1) A commission's terms of reference shall, as appropriate and to the extent possible, specify the events, activities, circumstances, systems, practices or procedures to be investigated, including— Content of terms of reference and accompanying statement.

- (a) the dates on which or the periods during which the events occurred, the activities were undertaken, the circumstances arose or the systems, practices or procedures were in operation,
- (b) the location or area within the State where the events occurred, the activities were undertaken, the circumstances arose or the systems, practices or procedures were in operation, and
- (c) the persons to whom or which those events, activities or circumstances relate or whose activities, systems, practices or procedures are to be investigated,

with a view to ensuring that the scope of the investigation into any matter referred to the commission is described precisely.

(2) The specified Minister shall ensure—

- (a) that an accompanying statement is prepared containing—
 - (i) an estimate of the costs (including legal costs) to be incurred by the commission in conducting the investigation and preparing its reports, and
 - (ii) a time frame for the submission of the commission's final report to the specified Minister, and
- (b) that, as soon as possible after the terms of reference are set, they are published with the statement in *Iris Oifigiúil* and in such newspapers or other publications as the Minister considers appropriate.

Pt.2

Amendment of
terms of reference
and accompanying
statement.

6.—(1) The power to set a commission's terms of reference includes the power to amend, at any time before the submission of the commission's final report, those terms with the consent or at the request of the commission for the purpose of clarifying, limiting or extending the scope of its investigation.

(2) A commission may not consent to or request an amendment of its terms of reference if satisfied that the proposed amendment would prejudice the legal rights of any person who has co-operated with or provided information to the commission in the investigation.

(3) No consent or request is required for the amendment of a commission's terms of reference under *section 44(2)*.

(4) The requirements of *section 5(1)* apply with any necessary modifications to the amendment of a commission's terms of reference as it applies to the setting of those terms.

(5) The specified Minister shall ensure that the statement accompanying a commission's terms of reference is revised if, as a consequence of an amendment of those terms under this section or *section 44(2)*, either or both of the following contents of the statement are no longer appropriate:

(a) the estimate of the costs (including legal costs) to be incurred by the commission in conducting the investigation and preparing its reports;

(b) the time frame for the submission of the commission's final report.

(6) Even though a commission's terms of reference are not amended, the specified Minister may, at the commission's request, revise the time frame for the submission of its final report to the extent consistent with the objective of having the investigation conducted and the report submitted as expeditiously as a proper consideration of the matter referred to the commission permits.

(7) The specified Minister shall ensure that, as soon as possible after a commission's terms of reference are amended or the accompanying statement is revised or both of those things are done, the amended terms, the revised statement or both, as the case may be, are published in—

(a) *Iris Oifigiúil*, and

(b) each newspaper or other publication in which the original terms were published under *section 5(2)(b)*.

Membership.

7.—(1) A commission may consist of one or more than one member.

(2) Each member of a commission is to be appointed as follows:

(a) by the specified Minister, if authorised to do so by the order establishing the commission;

(b) by the Government, in any other case.

(3) Appointments may be made to a commission at any time, including during the course of its investigation.

PT.2 S.7

(5) Where more than one member is appointed to a commission, the appointing authority shall designate one of the members as the chairperson.

(6) If a commission consists of more than one member—

(a) a decision of a majority of its members on any matter is the commission's decision, and

(b) in the case of an equal division among the members as to a decision to be made, the chairperson's decision on the matter is the commission's decision.

(7) If the chairperson is for any reason unable to continue to act as chairperson, the appointing authority may designate another member of the commission as chairperson.

(8) An appointment under *subsection (3)* or a designation under *subsection (7)* made during the course of an investigation by a commission does not affect decisions made or actions taken by the commission before the appointment or designation.

(9) A member of a commission who is unable to act as a member, whether temporarily or for the remainder of the investigation, is while unable to act deemed not to be a member of the commission.

(10) A commission may act or continue to act despite one or more than one vacancy among its members if satisfied that the legal rights of any person affected by its investigation would not be unduly prejudiced by doing so.

Advice and assistance.

(a) appoint persons with relevant qualifications and experience (including barristers and solicitors) to advise or assist the commission in relation to any matter within its terms of reference, and

(b) determine the terms and conditions of their appointment.

(2) The specified Minister may direct that a competitive tendering process be used in selecting persons with relevant qualifications and experience (including barristers and solicitors) for appointment under *subsection (1)*.

(3) The specified Minister may prepare guidelines that are to be followed if a direction is given to use a competitive tendering process.

(4) Before directing that a competitive tendering process be used, the specified Minister shall consult with the chairperson of the commission concerned or, if the commission consists of only one member, with the sole member.

Pt.2 S.8

(5) In considering whether to direct that a competitive tendering process be used, the specified Minister may have regard to—

- (a) the subject matter of investigation,
- (b) the time frame for the submission of the commission's final report to the specified Minister,
- (c) the qualifications and experience required for appointment,
- (d) the functions to be performed by the persons,
- (e) the likely costs of the performance of those functions, and
- (f) any other relevant factor.

(6) Subject to *subsection (8)*, the chairperson of a commission or, if the commission consists of only one member, the sole member may specify the functions to be performed by persons appointed under this section.

(7) The functions specified under *subsection (6)* may include—

- (a) interviewing persons for the purpose of assessing the relevance or evidential value of information or documents they wish to provide to the commission,
- (b) interviewing persons as to the evidence they propose to give to the commission,
- (c) recording, in writing or otherwise, statements given and answers made by persons while being interviewed,
- (d) reporting to the commission on the results of those interviews,
- (e) requesting persons to provide the commission with written statements concerning any matter relevant for the purposes of the investigation and examining statements provided in response to the requests, and
- (f) providing the commission with any other advice or assistance required in relation to the investigation or the preparation of its reports.

(8) A person appointed under this section may not administer oaths or take affirmations, but, if authorised by the commission to do so, may request a person interviewed as described in *subsection (7)* by him or her to sign a record of a statement made or answer given by that person during the interview.

(9) When requesting that a record of a statement or answer be signed under *subsection (8)*, a person appointed under this section shall inform the person to whom the request is made of the commission's powers—

- (a) under *section 16(1)(h)* to give a direction in relation to the statement or answer, and
- (b) under *section 17* to direct payment of costs for failure to comply with a direction under *section 16(1)(h)*.

9.—A commission shall be independent in the performance of its functions. Pr.2
Independence.

PART 3

INVESTIGATIONS AND RELATED MATTERS

10.—(1) A commission may, subject to this Act and the commission's rules and procedures, conduct its investigation in the manner that it considers appropriate in the circumstances of the case. Conduct of
investigations.

(2) In conducting an investigation, a commission shall, to the greatest possible extent consistent with its duties under this Act—

(a) seek the voluntary co-operation of persons whose evidence is desired by the commission in relation to any matter within its terms of reference, and

(b) facilitate such co-operation.

(3) *Subsection (2)* is not to be taken to limit in any way the powers given by *sections 16, 17 and 28* to a commission or a member of a commission.

(4) A commission shall conduct its investigation as expeditiously as a proper consideration of the matter referred to the commission permits.

11.—(1) A commission shall conduct its investigation in private unless— In general evidence
to be given in
private.

(a) a witness requests that all or part of his or her evidence be heard in public and the commission grants the request, or

(b) the commission is satisfied that it is desirable in the interests of both the investigation and fair procedures to hear all or part of the evidence of a witness in public.

(2) Where the evidence of a witness is heard in private—

(a) the commission may give directions as to the persons who may be present while the evidence is heard,

(b) legal representatives of persons other than the witness may be present only if the commission—

(i) is satisfied that their presence would be in keeping with the purposes of the investigation and would be in the interests of fair procedures, and

(ii) directs that they be allowed to be present.

(c) the witness may be cross examined by or on behalf of any person only if the commission so directs, and

(d) any member of the commission or a person who has been appointed under *section 8* and is authorised by the commission to do so may, orally or by written interrogatories, examine the witness on his or her evidence.

Pr.3 S.11

(3) A person (including a member of the commission) shall not disclose or publish any evidence given or the contents of any document produced by a witness while giving evidence in private, except—

- (a) as directed by a court,
- (b) to the extent necessary for the purposes of *section 12*,
- (c) to the extent otherwise necessary in the interests of fair procedures and then only with the written consent of the chairperson or, if the commission consists of only one member, the sole member, or
- (d) to a tribunal in accordance with *section 45*.

(4) *Subsection (3)* is not to be taken to prohibit the publication in a report under this Act of any facts established by a commission on the basis of evidence received in private.

(5) A person who contravenes *subsection (3)* is guilty of an offence.

Duty to disclose substance of evidence to other witnesses, etc., and to give them a chance to comment.

12.—(1) Subject to *subsection (2)*, a commission shall disclose to a person—

- (a) who is directed to attend as a witness before the commission,
- (b) who attends voluntarily to give evidence to the commission, or
- (c) about whom evidence is given to the commission,

the substance of any evidence in its possession that, in its opinion, the person should be aware of for the purposes of the evidence that person may give or has given to the commission.

(2) *Subsection (1)* does not require the disclosure of the source of any evidence given or document produced by a witness while giving evidence in private under *section 11*, unless the commission considers that, in view of the purposes of the investigation or in the interests of fair procedures, the source should be disclosed.

(3) A commission shall give a person to whom it discloses the substance of evidence under *subsection (1)* an opportunity to comment by written or oral submissions on the evidence.

Duty to inform witnesses of commissions' powers and to advise them of their own rights and obligations.

13.—(1) Before a person gives evidence to a commission, whether voluntarily or on being directed by it to do so, the commission shall give the person a written statement—

- (a) specifying the commission's powers under *sections 16, 17 and 28*, and
- (b) indicating that, if the person does not voluntarily co-operate with the commission or withdraws co-operation, the commission will exercise any of those powers as it considers necessary.

(2) If no legal representative is present to advise a witness, the commission shall advise the witness of his or her legal rights and obligations while giving evidence on oath or affirmation. Pt.3 S.13

(3) The duties imposed on a commission under this section may be performed by any member of the commission or by any person appointed under *section 8* and authorised by the commission to perform those duties.

14.—(1) Subject to *subsection (4)*, a commission may receive evidence given— Form and manner in which evidence may be given.

(a) orally before the commission,

(b) by affidavit, or

(c) as otherwise directed by the commission or allowed by its rules and procedures, including by means of a live video link, a video recording, a sound recording or any other mode of transmission.

(2) A witness who attends before a commission to give evidence may be required to give evidence on oath or affirmation.

(3) Any member of a commission may administer any oaths or take any affirmations necessary for the purposes of an investigation.

(4) A witness who gives evidence otherwise than by attending in person before the commission or by means of a live video link shall provide the commission with a sworn statement in a form acceptable to it indicating that—

(a) the evidence was given by him or her,

(b) the evidence was given voluntarily, and

(c) to the best of his or her knowledge, the content is true and accurate.

(5) A commission that has received evidence from a witness who is required to provide a sworn statement under *subsection (4)* or who is the subject of a direction under *section 16(1)(h)* may request additional information from the witness relating to that evidence.

(6) Subject to *subsection (8)*, a witness shall, within the period specified in the request, comply with a request made to him or her under *subsection (5)*.

(7) The requirements of *subsection (4)* relating to the provision of a sworn statement apply also to any evidence given in response to a request under *subsection (5)*.

(8) A witness who claims to be entitled under any rule of law or enactment to refuse to disclose information requested under *subsection (5)* shall, for the purposes of *section 21* and within the period specified in the request, provide the commission with a written statement specifying the grounds for the claim, including the privilege or the duty of confidentiality relied on.

Pr.3

Powers to establish rules and procedures relating to evidence and submissions.

15.—(1) A commission may, having regard to *sections 11 to 14* and in particular the need to observe fair procedures, establish or adopt rules and procedures for—

- (a) receiving and recording evidence, and
- (b) receiving submissions.

(2) The rules and procedures of a commission may, among other things, specify—

- (a) the form in which and the means by which evidence or submissions may be received by it, and
- (b) the conditions subject to which evidence or submissions may be received by it by means of a live video link, a video recording, a sound recording or any other mode of transmission.

(3) Where a commission consists of more than one member, its rules and procedures may, among other things, provide that evidence may be given before a single member or before more than one but fewer than all the members.

(4) Evidence given under a provision of a commission's rules and procedures authorised by *subsection (3)* is considered to have been given to all the members of the commission.

(5) A commission shall make copies of its rules and procedures available to persons likely to be affected by them.

Powers relating to witnesses and documents.

16.—(1) For the purposes of an investigation, a commission may do any or all of the following:

- (a) direct in writing any person to attend before the commission on a date and at a place and time specified in the direction and there to give evidence and to produce any document that is in the person's possession or power and is specified in the direction;
- (b) direct a witness to answer questions that it believes to be relevant to a matter under investigation;
- (c) examine a witness on oath or affirmation or by use of a statutory declaration or written interrogatories;
- (d) examine or cross examine any witness to the extent the commission thinks proper in order to elicit information relevant to a matter under investigation;
- (e) direct a witness to produce to the commission any document that is in his or her possession or power and is specified in the direction;
- (f) direct in writing any person to—
 - (i) provide the commission with a list, verified by affidavit, disclosing all documents in the person's possession or power relating to a matter under investigation, and

(ii) specify in the affidavit any of the listed documents that the person objects to producing to the commission and the basis for the objection; Pr.3 S.16

(g) direct in writing any person to send to the commission any document that is in the person's possession or power and is specified in the direction;

(h) direct a person who made a statement or answered a question while being interviewed by a person appointed under *section 8* to provide the commission with a sworn statement in a form acceptable to it confirming, if such is the case—

(i) that the statement was made or the answer given by him or her voluntarily, and

(ii) that to the best of his or her knowledge the content is true and accurate;

(i) give any other directions that appear to the commission to be reasonable.

(2) The powers of a commission under *subsection (1)* may be exercised by any member authorised in accordance with *section 15(3)* by the commission's rules and procedures to receive evidence on its behalf, and for that purpose a reference in *subsection (1), (3), (6), (8) or (9)* of this section to "a commission" or "the commission" is to be read as a reference to the authorised member.

(3) A person who attends, whether voluntarily or otherwise, before a commission is entitled to be paid by the specified Minister such amount in respect of the expenses of his or her attendance as is determined in accordance with guidelines prepared by that Minister with the consent of the Minister for Finance and after consulting with the commission.

(4) The rules of court relating to the discovery of documents in proceedings in the Court apply with any necessary modifications in relation to the disclosure of documents under *subsection (1)(f)*.

(5) Where a statement made or an answer given to a person appointed under *section 8* is confirmed in accordance with a direction under *subsection (1)(h)* of this section, the statement or answer is considered to have been received as evidence by the commission.

(6) Where a person does not comply with a direction given by a commission under this section, the Court may, on application by the chairperson or, if the commission consists of only one member, by the sole member—

(a) order the person to comply with the direction, and

(b) make any other order the Court considers necessary and just to enable the direction to have full effect.

(7) If a person against whom an order is made under *subsection (6)(a)* fails to comply with the direction specified in the order, the Court may deal with the matter as if it were a contempt of the Court.

(8) A person who, without reasonable excuse, fails to comply with a direction under *subsection (1)(a)* to attend before a commission is guilty of an offence.

Pr.3 S.16

(9) The failure of a person to comply with a direction under *subsection (1)(a)*—

(a) may be punished as a contempt even though it could be punished as an offence. and

(b) may be punished as an offence even though it could be punished as a contempt,

but the person is not liable to be punished twice.

(10) In *subsection (3)* “expenses” does not include any legal costs.

Power to direct
certain persons to
pay costs.

17.—(1) If as a result of a person—

(a) failing, without reasonable excuse, to comply with a direction under *section 16*,

(b) failing, without reasonable excuse, to comply with a request under *section 14(5)* or *21(5)*, or

(c) otherwise obstructing an investigation,

a commission incurs costs that it would not otherwise have incurred, it may, in writing, direct the person to pay to the Minister for Finance those costs, including legal costs as taxed by a Taxing Master of the Court and costs arising from any delay in completing the investigation.

(2) If any person who attends before or gives evidence to a commission is adversely affected as a result of an act or omission described in any paragraph of *subsection (1)*, the commission may—

(a) on its own initiative, or

(b) at the request of the person adversely affected,

direct the person whose act or omission had that result to pay to the person adversely affected all or part of any costs (including legal costs as taxed by a Taxing Master of the Court) that he or she incurred as a result of the act or omission.

(3) A direction of a commission to pay costs under *subsection (1)* or (2) does not take effect until it is confirmed by the Court on application by the chairperson of the commission or, if a commission consists of only one member, by the sole member.

(4) On application under *subsection (3)* for an order confirming a direction of the commission to pay costs to the Minister for Finance or another person, the Court may—

(a) make an order confirming the direction with or without modification, or

(b) refuse to make such an order.

(5) Subject to *subsection (3)*, any sum payable pursuant to a direction under this section may be recovered as a simple contract debt in any court of competent jurisdiction.

(6) A person may be directed to pay costs under this section even though the act or omission that resulted in the direction is punishable

as contempt or as an offence against a provision of this Act, and the direction does not prevent the person being punished for contempt or the bringing of proceedings in respect of the offence. Pt.3 S.17

18.—Any person who, while giving evidence pursuant to this Act, makes a statement material in the investigation concerned that the person knows to be false or does not believe to be true is guilty of an offence. Offence of making false statement.

19.—(1) None of the following is admissible as evidence against a person in any criminal or other proceedings, except proceedings in relation to an offence against *section 18*: Evidence given to commissions not admissible in certain proceedings.

- (a) a statement or admission made by the person to a commission or to a person appointed under *section 8*;
- (b) a document given or sent to a commission pursuant to a direction or request of the commission to the person;
- (c) a document specified in an affidavit of documents made by the person and given to a commission pursuant to a direction or request of the commission.

(2) *Subsection (1)* is not to be taken to limit in any way the application of *section 45(3)* to evidence received by a commission and made available to a tribunal under *section 45(1)*.

20.—A person who gives evidence to a commission or who produces or sends documents to a commission as directed by the commission— Privileges and immunities of witnesses.

- (a) has the same immunities and privileges in respect of that evidence or those documents, and
- (b) is, in addition to the penalties provided by this Act, subject to the same liabilities,

as a witness in proceedings in the Court.

21.—(1) Subject to *subsection (4)*, nothing in this Act compels— Determinations on privilege.

- (a) the disclosure by any person of any information that the person would be entitled under any rule of law or enactment to refuse to disclose on the grounds of any privilege or any duty of confidentiality, or
- (b) the production of any document in the person's possession or power containing such information.

(2) Where a person claims to be entitled under any rule of law or enactment to refuse, on the grounds of any privilege or any duty of confidentiality—

- (a) to disclose any information required in the course of an investigation by a commission (including information required in response to a request made under *section 14(5)* or to a question put under *section 16* and information in a statement or answer that is the subject to a direction under *section 16(1)(h)*), or

Pr.3 S.21

- (b) to produce any document in the person's possession or power that the person is directed under this Act to produce,

the commission may, subject to *subsection (4)* of this section, determine whether the privilege or the duty of confidentiality applies to that information or document.

(3) Where the commission determines that the privilege or the duty of confidentiality relied on by a person as grounds for refusing to disclose information referred to in *subsection (2)(a)* does not apply to the information, the person shall disclose that information to the commission unless the determination is overturned under *section 22*.

(4) A determination may only be made under *subsection (2)(b)* in relation to a document if the commission has—

(a) examined the document, and

(b) considered a written statement provided by the person concerned specifying the grounds for the claim, including the privilege or duty of confidentiality relied on.

(5) For the purposes of *subsection (4)*, the person concerned shall, at the commission's request—

(a) submit the document to the commission within the period specified in the request, and

(b) unless exempted under *subsection (6)*, provide the commission, within that period, with the written statement referred to in *subsection (4)(b)*.

(6) A person who has already provided the commission with an affidavit under *section 16(1)(f)* specifying the basis for objecting to the production of a document need not provide a written statement under *subsection (5)(b)* of this section concerning the same document.

(7) If a person does not, within the specified period, comply with a request of a commission to submit a document for a determination under this section or to provide a written statement under *subsection (5)(b)*—

(a) the chairperson of the commission or, if the commission consists of only one member, the sole member may apply to the Court for an order directing the person to comply with the request, and

(b) on the hearing of the application, the Court may make or refuse to make the order.

(8) Where the commission determines that the privilege or the duty of confidentiality relied on as grounds for refusing to produce a document applies to any of the information in the document, the document is not considered to be evidence received by the commission, except to the extent authorised under *subsection (10)*.

(9) Where the commission determines that the privilege or duty of confidentiality relied on as grounds for refusing to produce a document applies to any of the information in the document, the commission may cause to be prepared a summary version of the document that excludes that information, but only if—

(a) the document so allows, and

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(b) in the commission's opinion, it is in the interests of both the investigation and fair procedures to do so.

(10) Where a commission causes a summary version of a document to be prepared in accordance with this section, the summary version forms part of the evidence received by the commission.

(11) Where the commission determines that the privilege or the duty of confidentiality relied on as grounds for refusing to produce a document does not apply to any of the information in the document, the document is considered for the purposes of this Act to have been received as evidence by the commission unless the determination is overturned under *section 22*.

22.—(1) A person whose refusal to disclose information or to produce a document is the subject of a determination by a commission under *section 21(2)* may appeal to the Court against that determination.

Right of appeal to High Court against determinations on privilege.

(2) The appeal must be brought within 14 days after the person concerned was notified by the commission of the determination.

(3) On the hearing of the appeal, the Court may make any order or give any direction it thinks fit, including an order—

(a) confirming the determination under appeal, or

(b) modifying or overturning that determination.

23.—(1) With the consent of the Minister for Finance and after consulting with the commission concerned, the specified Minister shall prepare general guidelines concerning the payment by the specified Minister to witnesses of legal costs necessarily incurred by them in connection with an investigation.

Guidelines concerning recovery of legal costs necessarily incurred by witnesses.

(2) For the purposes of this section and *section 24*, legal costs are necessarily incurred by a witness in connection with an investigation by a commission if—

(a) the good name or conduct of the witness is called into question by any evidence received by the commission, or

(b) other personal or property rights of the witness are at risk of being jeopardized as a result of any evidence received by the commission.

(3) The guidelines may—

(a) restrict the types of legal services or fees for which payment may be made, and

(b) otherwise limit (including by specifying maximum amounts) the extent to which legal costs may be paid.

(4) Before evidence is given to a commission, the commission shall give the witness a copy of the guidelines prepared by the specified Minister.

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Request for recovery of legal costs necessarily incurred and certain other expenses.

24.—(1) Where a witness requests a commission to direct that all or part of the legal costs necessarily incurred by the witness in connection with its investigation be paid by the specified Minister, the commission may—

(a) if satisfied as to the matters specified in *subsection (2)* of this section and that the payment comes within the guidelines prepared under *section 23*, direct that such amount of those costs as it considers reasonable be paid to the witness, or

(b) if not so satisfied, refuse to give such direction.

(2) Before a direction is given under *subsection (1)*, the commission is to be satisfied that—

(a) the legal costs were necessarily incurred, and

(b) the level and amount of those costs are reasonable.

(3) For the purpose of satisfying itself as to the matters specified in *subsection (2)*, the commission shall consider all relevant factors, including—

(a) the nature, complexity and extent of the evidence given to the commission by the witness,

(b) the nature, complexity and volume of any documents or list of documents provided by the witness to the commission,

(c) whether evidence given by or relating to the witness was given in private or in public,

(d) whether the witness was cross examined by or on behalf of other persons,

(e) whether there has been any improper failure by the witness to co-operate with the commission in its investigation and, if so, the degree of failure, and

(f) any potential consequences for the witness arising from the publication of the commission's report.

(4) After considering all relevant factors, the commission may direct that a witness be paid less than the maximum amount provided for in the guidelines prepared under *section 23* in respect of any legal costs necessarily incurred by the witness.

(5) If a witness who has incurred heavy expenses (other than legal costs) because of—

(a) the nature, volume or location of the documents produced by the witness,

(b) the location outside the State from which the witness travelled to attend before the commission, or

(c) any other factor not within the control of the witness,

requests payment of all or part of those expenses, the commission may, on being satisfied that they were necessary in the circumstances, direct that such amount of the expenses as it considers reasonable be paid by the specified Minister.

(6) On receiving a direction under this section, the specified Minister may request the commission to review the direction if he or she considers that the amount specified in it is excessive having regard to—

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- (a) in the case of a request for payment of legal costs necessarily incurred, the guidelines prepared under *section 23* and relevant factors referred to in *subsection (3)* of this section, and
- (b) in the case of a request for payment of expenses incurred as described in *subsection (5)*, the ability of the witness who made the request to pay those expenses.

(7) On receiving a request to review a direction under this section, a commission may—

- (a) reduce the amount specified in the direction, or
- (b) confirm that amount.

(8) The specified Minister shall, in accordance with a direction of a commission, pay to a witness requesting payment of legal costs or other expenses—

- (a) the amount specified in the direction, or
- (b) if that amount is reduced under *subsection (7)*, the reduced amount.

25.—A written direction of a commission must be signed by—

Signing of written directions.

- (a) the chairperson or a member designated by the chairperson, or
- (b) if the commission consists of only one member, by the sole member.

PART 4

OTHER POWERS RELATING TO INVESTIGATIONS

26.—(1) In relation to a commission, the following are authorised persons for the purposes of this Part:

Persons authorised to exercise powers of entry, inspection, etc.

- (a) any member of the commission;
- (b) any person appointed under *section 8* and authorised by the commission in writing to exercise the powers given under *section 28* to authorised persons.

(2) Persons appointed under *section 8* may be authorised by a commission to exercise the powers given by this section in respect of a specified matter or event or generally for the purposes of the investigation.

(3) The commission shall provide each authorised person with a warrant identifying the person and indicating that he or she has authority to exercise the powers given under *section 28*.

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(4) When exercising powers under *section 28*, an authorised person shall, if requested by anyone affected, produce the warrant for inspection.

Governing principle for exercise of powers of entry, inspection, etc.

27.—The powers given under *section 28* to authorised persons may be exercised only—

- (a) at the direction of a commission, and
- (b) if it considers that the exercise of those powers is reasonable and necessary for the purposes of its investigation.

Powers of entry, inspection, etc.

28.—(1) Subject to *section 27*, any authorised person may do any or all of the following:

- (a) enter at any reasonable time any premises in which the authorised person has reasonable grounds to believe there are any documents, or there is information in any form, relating to any matter within the commission's terms of reference;
- (b) inspect any documents, or information in any form, on the premises;
- (c) secure for later inspection any documents, any information in any form and any equipment in which those documents or that information may be held, if the authorised person has reason to believe that the documents or information may be relevant to the investigation;
- (d) secure for later inspection the premises, or any part of the premises, but only if the authorised person considers it necessary to do so in order to preserve for inspection documents or information in any form that he or she has reason to believe may be kept there and may relate to the investigation;
- (e) take copies of or extracts from any documents or any electronic information system on the premises, including in the case of information in a non-legible form, copies of or extracts from such information in a permanent legible form;
- (f) remove for later examination or copying any documents, or information in any form, that the authorised person has reason to believe may relate to a matter under investigation and retain them for the period that he or she considers reasonable;
- (g) direct any person on the premises to produce to the authorised person any documents, or information in any form, kept on the premises;
- (h) direct any person on the premises having charge of, or otherwise concerned with the operation of, data equipment or any associated apparatus or material to provide the authorised person with all reasonable assistance in relation to the equipment, apparatus or material;
- (i) direct any person on the premises to give to the authorised person any information that the authorised person may

reasonably require with regard to a matter under investigation. Pt.4 S.28

(2) Despite *subsection (1)*, an authorised person may not enter a private dwelling or the part of any premises that is used as a private dwelling, except—

(a) with the consent of the occupier, or

(b) under the authority of a warrant issued under *section 29* by a judge of the District Court.

(3) When exercising powers under this section, an authorised person may be accompanied by a member of the Garda Síochána.

(4) The production of a document in compliance with a direction under this section does not prejudice a person's lien on the document.

29.—(1) If satisfied on the sworn information of an authorised person that there are reasonable grounds for suspecting that in any private dwelling or on any premises part of which is used as a private dwelling there are any documents, or there is information in any form, relating to a matter within a commission's terms of reference and required by the commission for the purposes of its investigation, a judge of the District Court may issue a warrant authorising a named authorised person to enter, on production of the warrant, the private dwelling or the part of those premises used as such a dwelling, at any time or times within one month after the date of issue of the warrant, for the purpose of exercising there the powers given by *section 28*.

Power of District Court to issue warrant authorising entry.

(2) The warrant issued by a judge of the District Court may also permit—

(a) the named authorised person to be accompanied during the entry and inspection of the private dwelling or the part of the premises used as such a dwelling by such other authorised persons and members of the Garda Síochána as the named authorised person thinks necessary, and

(b) the use of such reasonable force as is necessary for the purposes of entry.

30.—A person is guilty of an offence if the person—

Offence of obstructing, etc., authorised persons.

(a) intentionally obstructs an authorised person in the exercise of any of his or her powers under this Part,

(b) fails, without reasonable excuse, to comply with a direction given by an authorised person in the exercise of those powers, or

(c) in purporting to give information required by an authorised person in the exercise of those powers—

(i) makes a statement knowing it to be false or misleading in a material particular, or

(ii) intentionally fails to disclose any material particular.

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Preservation of documents.

31.—(1) A person who has in the person's possession or power a document, or information in any form, relating to any matter within a commission's terms of reference shall preserve that document or information—

(a) until the commission is dissolved under *section 43(1)*, or

(b) if the commission is dissolved under *section 44(1)*, until the tribunal established to inquire into the matter that was within the commission's terms of reference has completed its inquiry.

(2) A person who contravenes *subsection (1)* is guilty of an offence.

PART 5

REPORTS AND RECORDS OF COMMISSIONS

Preparation and content of final reports.

32.—(1) On the conclusion of its investigation, a commission shall prepare a written report, based on the evidence received by it, setting out the facts it established in relation to the matters referred to it for investigation.

(2) If for any reason (including insufficient, conflicting or inconsistent evidence) a commission considers that the facts relating to a particular issue have not been established, the commission in its report—

(a) shall identify the issue, and

(b) may indicate its opinion as to the quality and weight of any evidence relating to the issue.

(3) A commission may omit from its report any information that identifies or that could reasonably be expected to lead to the identification of a person who gave evidence to the commission or any other person, if in its opinion—

(a) the context in which the person was identified has not been clearly established,

(b) disclosure of the information might prejudice any criminal proceedings that are pending or in progress,

(c) disclosure of the information would not be in the interests of the investigation or any subsequent inquiry, or

(d) it would not be in the person's interests to have his or her identity made public and the omission of the information would not be contrary to the interests of the investigation or any subsequent inquiry.

(4) The commission shall endeavour to submit the report to the specified Minister within the time frame specified under *section 5(2)*.

Interim reports.

33.—(1) If requested by the specified Minister, a commission shall make interim reports to him or her at the intervals stated in the request.

(2) The specified Minister may request an interim report on the general progress of a commission's investigation or on a particular aspect of the investigation.

(3) If a commission requests that the time frame for submitting its final report be revised under *section 6(6)*, the commission shall submit an interim report to the specified Minister with the request. Pr.5 S.33

(4) *Section 32(2)* and (3) applies also in respect of an interim report.

34.—(1) Before submitting the final or an interim report to the specified Minister, a commission shall send a draft of the report, or the relevant part of the draft report, to any person who is identified in or identifiable from the draft report. Draft reports to be sent to certain persons.

(2) The draft report must be accompanied by a notice from the commission specifying the time allowed for making—

(a) submissions or requests to the commission under *section 35(1)(a)* or *36(1)*, and

(b) applications to the Court under *section 35(1)(b)*.

(3) For the purposes of this section and *section 35*, a person is identifiable from a draft report if the report contains information that could reasonably be expected to lead to the person's identification.

35.—(1) A person who receives a draft report or part of a draft report from a commission under *section 34* and who believes that the commission has not observed fair procedures in relation to the person may, within the period specified by the commission— Amendment of draft reports for reasons relating to failure to observe fair procedures.

(a) submit to the commission a written statement setting out the reasons for the belief and requesting the commission to review the draft in light of the statement, or

(b) apply to the Court for an order directing that the draft be amended before the submission of the report to the specified Minister.

(2) After considering a statement submitted under *subsection (1)(a)* and reviewing the draft report, the commission may—

(a) amend the report, including by omitting any part of the report based on evidence received without observing fair procedures,

(b) apply to the Court for directions, or

(c) submit the report to the specified Minister without making any amendments.

(3) After hearing an application under *subsection (1)(b)* or *(2)(b)*, the Court may make any order or give any directions it thinks fit, including a direction to the commission to do one or more of the following:

(a) submit the draft report to the specified Minister without making any amendments;

(b) give a person specified by the Court an opportunity to give any evidence or make any submission that it considers

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should, in the interests of fair procedures, be received by the commission before the draft report is finalised;

(c) submit the draft report to the specified Minister after making such amendments as the Court may direct.

(4) Before submitting the report to the specified Minister, the commission shall give written notice of any amendments made under this section to any person who is identified in or identifiable from the report and who is affected by the amendments.

Amendment of draft reports to preserve confidentiality of sensitive commercial information.

36.—(1) A person who receives a draft of a report or part of a draft report from a commission under *section 34* may, within a period specified by the commission, request the commission to omit from the report any information provided by the person to the commission—

(a) that the person considers to be commercially sensitive, and

(b) the disclosure of which is not, in the person's opinion, necessary for the purposes of the investigation.

(2) After considering the request, the commission shall review the draft report and may, if satisfied that the information is commercially sensitive and that its disclosure is not necessary for the purposes of the investigation, omit the information from the report.

(3) For the purposes of this section, information is commercially sensitive if its disclosure could reasonably be expected to—

(a) materially prejudice the commercial or industrial interests of the person who provided that information to the commission or of a group or class of persons to which that person belongs, or

(b) prejudice the competitive position of a person in the conduct of the person's business, profession or occupation.

Confidentiality of draft reports.

37.—(1) A person who receives a draft of a report or part of a draft report from a commission under *section 34* shall not disclose its contents or divulge in any way that the draft or part of the draft has been sent to that person, except—

(a) with the prior written consent of the commission, or

(b) to the extent necessary for the purposes of an application to the Court.

(2) A person who contravenes *subsection (1)* is guilty of an offence.

Publication of final and interim reports.

38.—(1) Subject to *subsection (2)*, the specified Minister—

(a) shall cause a commission's final report to be published as soon as possible after it is submitted to him or her, and

(b) may, at his or her discretion and following consultations with the chairperson or, if the commission consists of only one member, with the sole member, cause an interim

report to be published, unless publication would hinder Pt.5 S.38 or impair the commission's investigation.

(2) If the specified Minister considers that the publication of the final report or an interim report of the commission might prejudice any criminal proceedings that are pending or in progress, he or she shall apply to the Court for directions concerning the publication of the report.

(3) Before determining an application under *subsection (2)* in respect of a report of a commission, the Court shall direct that notice be given to the following:

(a) the Attorney General;

(b) the Director of Public Prosecutions;

(c) a person who is a defendant in criminal proceedings relating to an act or omission that is mentioned in the report or that is related to any matter investigated by the commission and mentioned in the report.

(4) On an application under *subsection (2)*, the Court may—

(a) receive submissions, and evidence tendered, by or on behalf of any person mentioned in *subsection (3)*, and

(b) hear the application in private if the Court considers it appropriate to do so.

(5) If, after hearing the application, the Court considers that the publication of the report might prejudice any criminal proceedings, it may direct that the report or a specified part of it be not published—

(a) for a specified period, or

(b) until the Court otherwise directs.

39.—Section 4 of the Data Protection Act 1988 does not apply to personal data provided to a commission for as long as the data is in the custody of—

Restriction of Data Protection Act 1988.

(a) the commission,

(b) the specified Minister after being deposited with him or her under *section 43(2)*,

(c) a tribunal of inquiry after being made available to it under *section 45*, or

(d) a body after being transferred to it on the dissolution of a tribunal of inquiry to which the data was made available under *section 45*.

40.—(1) The Freedom of Information Acts 1997 to 2003 do not apply to a record relating to an investigation by a commission unless—

Restriction of Freedom of Information Acts 1997 to 2003.

(a) the record was created before the making of the order establishing the commission, or

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(b) the record relates to the expenses of the commission or the appointment of persons under *section 7* or *8* or other matters concerning the general administration of the commission.

(2) *Subsection (1)* applies whether the record concerned is held by—

(a) the commission,

(b) the specified Minister after being deposited with him or her under *section 43(2)*,

(c) a tribunal of inquiry after being made available to it under *section 45*, or

(d) a body after being transferred to it on the dissolution of a tribunal of inquiry to which the record was made available under *section 45*.

(3) In this section, “record” has the same meaning as in the Freedom of Information Acts 1997 to 2003.

Availability of records for inspection by public under National Archives Act 1986.

41.—(1) Records of a commission that constitute Departmental records within the meaning of section 2(2) of the National Archives Act 1986 are, on the expiry of 30 years after the date of the commission’s dissolution, deemed to have been prescribed under section 8(11) of that Act as a class of records to which a certificate granted under section 8(4) of that Act may relate.

(2) As soon as practicable after the date on which records of a commission are deemed to have been prescribed as described in *subsection (1)*, an officer of a Department of State authorised for the purposes of section 8(4) of the National Archives Act 1986 shall consider whether, subject to any consent required under that section, the commission’s records should be certified under that section.

(3) *Subsections (1)* and *(2)* apply whether the records concerned have been—

(a) deposited with the specified Minister under *section 43(2)*,

(b) made available to a tribunal of inquiry under *section 45*, or

(c) transferred to a body on the dissolution of a tribunal of inquiry to which they were made available under *section 45*.

(4) Subject to this section, the National Archives Act 1986 applies to records of a commission that constitute Departmental records within the meaning of section 2(2) of that Act.

PART 6

MISCELLANEOUS MATTERS

Privilege of members and persons appointed under *section 8*.

42.—The following are absolutely privileged:

(a) documents of a commission (including its interim, final and draft reports), wherever published;

- (b) documents of the members of a commission relating to the commission or its functions, wherever published;
- (c) documents of persons appointed under *section 8* relating to a commission or its functions, wherever published;
- (d) statements made in any form by members of a commission or persons appointed under *section 8* in performing their functions under this Act and such statements wherever subsequently published.

43.—(1) Subject to an order under *section 44(1)*, a commission is dissolved on the submission of its final report to the specified Minister. Dissolution of commissions.

(2) Before the dissolution of a commission, the chairperson or, if the commission consists of only one member, the sole member shall deposit with the specified Minister all evidence received by and all documents created by or for the commission.

(3) For the purposes of *subsection (2)* and *section 45* “documents created by or for the commission” includes—

- (a) records of interviews conducted by persons appointed under *section 8* by the chairperson of the commission or, if the commission consists of only one member, by the sole member,
- (b) written reports to the commission prepared by those persons, and
- (c) statements provided to the commission at the request of those persons in the performance of the function described in *section 8(7)(e)*.

44.—(1) If a tribunal is established to inquire into a matter all of which is within a commission’s terms of reference, the Government shall, by order notified in *Iris Oifigiúil*, appoint the day on which the commission is to be dissolved. If a tribunal of inquiry is established.

(2) If a tribunal is established to inquire into only part of the matter that is within a commission’s terms of reference, those terms shall be amended either by the specified Minister who set them, or by the Government, to take account of the inquiry.

45.—(1) If a tribunal is established to inquire into a matter all or part of which was within a commission’s terms of reference, all evidence received by and all documents created by or for the commission relating to the matter or that part of the matter shall, at the request of any member of the tribunal, be made available to it by— Commissions’ evidence and documents to be available to tribunals.

(a) the specified Minister, if the commission has been dissolved, or

(b) the commission, if not already dissolved.

(2) Nothing in this section prevents a commission whose terms of reference are amended under *section 44(2)* from retaining copies of any evidence or documents made available by it to a tribunal of inquiry.

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(3) Evidence that is received by a commission in accordance with this Act or with its rules and procedures and that is made available to a tribunal under *subsection (1)* is deemed to have been received as evidence by the tribunal in accordance with the Tribunals of Inquiries (Evidence) Acts 1921 to 2004.

Protection of
identifying
information by
tribunals.

46.—(1) If any evidence or document made available to a tribunal under *section 45* contains information omitted under *section 32(3)* from a commission's report because it identifies a person or could reasonably be expected to lead to the identification of a person, the tribunal shall not disclose that information in the course of conducting its inquiry or in its report or otherwise, except—

(a) as authorised under this section, and

(b) then only to the extent necessary for the purposes of its inquiry.

(2) A tribunal may decide to disclose information referred to in *subsection (1)* (other than information withheld by the commission by virtue of *section 12(2)*) if the tribunal—

(a) has notified the person concerned that it proposes to disclose the information,

(b) has given that person an opportunity to comment, by written or oral submissions, on the proposal and has considered the person's comments, if any, and

(c) is satisfied that, in the interests of fair procedures and in order to facilitate the inquiry, it is appropriate to disclose the information.

(3) If a tribunal decides under *subsection (2)* to disclose information, it shall notify the person concerned of—

(a) its decision, and

(b) the person's right to apply to the Court within the period of 14 days after being notified for an order under *subsection (5)* prohibiting the disclosure.

(4) A decision to disclose information under this section does not take effect—

(a) until the expiry of the period allowed under this section for applying for an order under *subsection (5)* prohibiting the disclosure, and

(b) if an application is brought within that period, until the Court determines the application.

(5) On the hearing of an application made within the period specified in *subsection (3)*, the Court may make any order or give any direction it thinks fit, including an order prohibiting the disclosure of the information concerned.

(6) An application under this section for an order prohibiting the disclosure of information may be heard in private if the Court considers it appropriate to do so.

47.—(1) The Court shall give such priority as, having regard to all the circumstances, it reasonably can to the disposal of proceedings in the Court under this Act. Pr.6 Proceedings in the High Court.

(2) The Superior Court Rules Committee may, with the concurrence of the Minister for Justice, Equality and Law Reform, make rules to facilitate the giving of effect to *subsection (1)*.

48.—(1) Where a body corporate commits an offence against a provision of this Act, each person who was an officer of the body corporate when the offence was committed is guilty of an offence against this section if it is proved that he or she— Offences by bodies corporate.

(a) willingly participated in, connived at or consented to the commission of the offence by the body corporate, or

(b) knowing that the body corporate was committing or about to commit that offence, failed to take all reasonably practicable steps to prevent its commission.

(2) A person may be proceeded against for an offence against this section whether or not the body corporate has been proceeded against or been convicted of the offence committed by that body.

(3) A person guilty of an offence against this section is liable to a fine not exceeding the fine for which the body corporate is liable for the offence.

(4) In this section “officer”, in relation to a body corporate, means a director, manager, executive officer, secretary or other person concerned in the management of the body corporate.

49.—(1) A prosecution for an offence against this Act may be brought only by or with the consent of the Director of Public Prosecutions. Prosecutions.

(2) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851 proceedings for an offence against this Act may be instituted at any time within 2 years after the date alleged to be the date on which the offence was committed.

50.—(1) A person, other than a body corporate, guilty of an offence against *section 11, 16(8), 18, 30, 31 or 37* is liable— Penalties for offences.

(a) on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €300,000 or imprisonment for a term not exceeding 5 years or both.

(2) A body corporate guilty of an offence against *section 11, 16(8), 18, 30, 31 or 37* is liable—

(a) on summary conviction, to a fine not exceeding €3,000, or

(b) on conviction on indictment, to a fine not exceeding €300,000.

