



**Report of the
Commission of Investigation
into the
Death of Gary Douch**

Volume Three

**Rules and Procedures
&
Relevant Statutes**

Sole Member: Gráinne McMorrow S.C.

Table of Contents

Rules and Procedures	3
Introduction	5
Definitions.....	5
Governing principles	7
Documents.....	8
Access to documents	10
Preservation of documents	10
Redaction of documents	11
Privilege and confidentiality	11
Evidence	12
Working method.....	13
Witnesses.....	14
The order of examination	16
Immunities and privileges	17
Non-compliance	17
Powers	18
Legal representation	19
Submissions.....	20
Guidelines on legal costs.....	21
Limited funding of legal costs.....	21
Procedure for seeking legal costs	21
Procedure for seeking certain other expenses	22
Costs cut-off date	23
Time	23
Exceptions to these Rules and Procedures	24
Amendment of these Rules and Procedures.....	24
Reports	24
Contact	25
 Draft forms and Guidelines.....	 27
General Guidelines on Payment of Legal Costs.....	29
Rules of the superior courts (no.2) (discovery) 1999	35
Oath for a Witness.....	39

Affirmation for a Witness	40
Affidavit of Documents.....	41
Affidavit	45
Affidavit verifying evidence	47
Disclosure Notice	49
Witness Notice	55
Draft Interim Report Notice	65
Draft Final Report Notice.....	73
 Terms of reference	 81
 Criminal Law (Insanity) Act.....	 85
 Commissions of Investigation Act 2004	 113

Rules and Procedures

Introduction

The Commission of Investigation into the Death of Gary Douch (hereinafter referred to as “the Commission”) was established on the 2nd May 2007 by Order of the Government made under Section 3 of the Commissions of Investigation Act 2004.

The Terms of Reference of the Commission were published in *Iris Oifigiúil* on the 27th July 2007. A copy of the Terms of Reference of the Commission is set out in Part 3 of these Rules and Procedures.

Ms. Gráinne McMorrow, SC was appointed sole member of the Commission under Section 7 of the Commissions of Investigation Act 2004.

The Commission is required to undertake a thorough investigation and to report to the Minister for Justice, Equality and Law Reform on the specific matters set out in the Terms of Reference.

The Commission is required under Part 3 of the Commissions of Investigation Act 2004 to publish its Rules and Procedures for the information of all persons who are involved in this investigation.

A copy of the Commissions of Investigation Act 2004 is to be found at Part 4 of these Rules and Procedures.

These Rules and Procedures are a general guide. They are not intended to constitute an exhaustive definition or description of the duties, functions or powers of a commission of investigation under the Commissions of Investigation Act 2004.

These Rules and Procedures are definitive as and from the date hereof. It may be necessary in the future to amend these Rules and Procedures in which circumstance the amended form of these Rules and Procedures will be made available to all parties involved in the work of this Commission.

Definitions

The Commissions of Investigation Act 2004 provides definitions of certain words which, in other contexts, may have different or enhanced meanings. It is for this

reason the reader's attention is drawn to the meanings attributed to certain words in this Commission of Investigation.

“the Act”	means, unless otherwise stated, the Commissions of Investigation Act 2004.
“authorised person”	means Ms. Gráinne McMorrow, SC the sole member of the Commission of Investigation into the Death of Gary Douch, or a Section 8 person.
“Commission”	means, the Commission of Investigation into the Death of Gary Douch established by Order of the Government published in <i>Iris Oifigiúil</i> on the 27th July 2007.
“the 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 electrical 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 carried out by a commission of investigation in accordance with its Terms of Reference under the Commissions of Investigation Act 2004.
“legal costs”	means fees, disbursements, charges and expenses included in a bill of costs in respect of a barrister or solicitor.
“personal information”	includes private addresses, private telephone numbers, private family information and details of medical conditions.

“legal representative”	means a barrister or solicitor in current practice.
“person”	includes any individual, body corporate, or unincorporated body.
“Section 8 person”	means a person appointed under Section 8 of the Commissions of Investigation Act 2004 to advise and assist a commission of investigation in relation to the investigation.
“Sole Member”	means Ms. Gráinne McMorrow, S.C., a person appointed under Section 7 of the Commissions of Investigation Act 2004 as Sole Member of the Commission of Investigation into the Death of Gary Douch.
“Terms of Reference”	means the terms of reference of the Commission of Investigation into the Death of Gary Douch published by the Government in <i>Iris Oifigiúil</i> on the 27th July 2007.

Governing principles

In formulating these Rules and Procedures the Commission has adopted a number of guiding principles in relation to this investigation. These principles are as follows:

Independence

Section 9 of the Commissions of Investigation Act 2004 requires the Commission to be independent in the performance of its functions.

Fairness

The Commission has, during the currency of its existence, a continuing duty of fairness to all persons involved in the investigation.

Rights

The Commission has, during the currency of its existence, a continuing duty to have regard to, and take due account of the constitutional and legal rights of all persons involved in the investigation.

Thoroughness

The Commission is required by its Terms of Reference to undertake a thorough investigation of the specific matters of significant public concern.

Urgency

The Commission is required by its Terms of Reference to carry out its investigation and report to the Minister for Justice, Equality and Law Reform within a period of six months. This limited period of time requires the Commission to carry out its functions with considerable urgency.

Co-operation

The Commission asserts that during the currency of its existence there is a continuing duty on all persons concerned with its investigation to promptly and urgently co-operate with the Commission.

Application

All persons involved with the Commission, including all witnesses and their legal representatives are deemed to agree to adhere to these Rules and Procedures.

Discretion

Subject to the requirements of the Commissions of Investigation Act 2004 and these Rules and Procedures, the conduct of and the procedure to be followed in this investigation are under the control and discretion of the Commission.

Documents

The Commission will require access to documents in the possession or power of persons, which documents the Commission considers may be relevant to its investigation.

As a general rule the Commission will initially seek to assess the extent of relevant documents in the possession or power of such persons.

The Commission will then seek to take copies of those documents as a matter of urgency.

The Commission may also seek to inspect those documents in their particular locations.

In the event that a person has, in the opinion of the Commission, declined, failed, or neglected to co-operate with, or subsequently withdraws co-operation from the Commission in permitting access to documents that may be in the possession or power of that person, or for other good reason, the Commission will consider using its compulsory powers of production under Part 3 of the Act.

Where the Commission considers that it may exercise its compulsory powers of production it will, as a general rule, do the following:

- Notify the person concerned of the documents sought by the Commission.
- Notify the person concerned of the reason why the documents are sought by the Commission.
- Notify the person concerned of the time-scale that may be imposed by the Commission for the production of documents.
- Invite the person concerned to make submissions to the Commission promptly but prior to any decision which the Commission may make with regard to such documents.

Where the Commission has decided to direct or order a person to produce documents it will notify that person as soon as practicable thereafter of the decision of the Commission.

Documents produced to the Commission by a person in respect of whom a request, direction or order for discovery has been made must be listed in an affidavit of documents. A suggested draft affidavit of documents is set out in Part 2 of these Rules and Procedures.

The Rules of the Superior Courts (1986), as amended, apply with any necessary modifications in relation to documents sought by the Commission. For your information the text of the Rules of the Superior Courts (No.2) (Discovery), 1999 (S.I. no. 233 of 1999) is set out in Part 2 of these Rules and Procedures.

The original of the affidavit of documents required by these Rules and Procedures together with copies of the scheduled documents must be provided to the Commission within the time specified in the request, direction, or order for discovery.

Access to documents

The Commission is required urgently and effectively to obtain access to all documents relevant to its Terms of Reference.

The prompt and effective co-operation of all persons who may have relevant documents in their possession or power is essential to the work of the Commission.

There is a duty on all such persons to identify promptly the locations and categories of all documents that may be relevant to this investigation.

The decision as to whether a document is relevant to this investigation is a matter for the Commission and not for the person from whom documents are sought.

Preservation of documents

Section 31(1) of the Act imposes a specific statutory duty on any person who has in his or her possession or power a document, or information in any form, relating to any matter within the Commission's Terms of Reference to preserve that document or information for the duration of the Commission, or the completion of a subsequent tribunal of inquiry.

A person in breach of this statutory duty to preserve a document or information may be guilty of a criminal offence under Section 31(2) of the Act.

The text of Section 31 is set out in the copy of the Commissions of Investigation Act 2004 in Part 5.

Redaction of documents

A person who has produced documents or information to the Commission pursuant to a request, direction or order may request the Commission to redact irrelevant personal or other specified information for the purposes of its use and/or publication by the Commission.

Where a person wishes to request such redaction they must, at the time that document or information is produced to the Commission, set out in writing the following:

- details of the material or content sought to be redacted,
- particulars of any facts or circumstances relevant to this request, and
- any legal submissions considered relevant to that request.

Where the Commission has received a request for redaction of documents or information the Commission will notify the person making such request as soon as practicable thereafter of its decision in respect of that request.

Privilege and confidentiality

A person who has been requested, directed or ordered to provide documents, evidence or information to the Commission may request the Commission to consider a claim of privilege or duty of confidentiality in relation to the contents of the documents, evidence or information.

Examples of a claim of privilege include legal professional privilege and executive privilege.

Where a person wishes to assert a claim of privilege or a duty of confidentiality that person must, at the earliest opportunity after receipt of a request, direction or order from the Commission, indicate in writing to the Commission:

- the specific documents, evidence or information in respect of which it is sought to make a claim of privilege or assert a duty of confidentiality,
- the precise privilege or duty of confidentiality asserted,

- particulars of any facts or circumstances relevant to the privilege or duty of confidentiality asserted, and
- any legal submissions in support of the claim of privilege or duty of confidentiality.

Where a person asserts a claim of privilege or a duty of confidentiality over documents, Section 21(4)(b) of the Act requires that the person asserting such claim provide the documents concerned to the Commission in advance of a ruling by the Commission on the claim of privilege or confidentiality.

Where a person has asserted a claim of privilege or a duty of confidentiality in relation to documents, evidence or information, the Commission will determine that claim in accordance with Section 21 of the Act and will notify that person as soon as practicable thereafter of its ruling in that regard.

The text of Section 21 is set out in the copy of the Act in Part 5.

Evidence

The Commission may receive any evidence that it, in its discretion, considers helpful in fulfilling its mandate whether or not such evidence would be admissible in a court of law.

A witness who attends voluntarily, or by direction or order, before the Commission to give evidence or produce documents may be required to give their evidence on oath or affirmation. The terms of the oath and the terms of the affirmation are set out in Part 2 of these Rules and Procedures.

The Commission may, where it considers it appropriate to do so, receive evidence by way of affidavit. A suggested draft of such affidavit is set out at Part 2 of these Rules and Procedures.

The Commission may receive any evidence that it, in its discretion, considers to be helpful in fulfilling its mandate by live video link, video recording, sound recording or by any other mode of communication or transmission as appropriate.

Where a person gives evidence to the Commission otherwise than by attending in person before the Commission or by means of a live video link, that person must provide to the Commission, within a period specified by the Commission, a sworn affidavit acknowledging that the evidence concerned was given by him or her; that the evidence was given voluntarily; and that to the best of his or her knowledge and belief the content of that evidence is true and accurate. A suggested draft affidavit verifying evidence is set out at Part 2 of these Rules and Procedures.

Working method

Section 11 and Section 12 of the Act regulate important aspects of the manner in which the Commission carries out its investigative function.

The text of Sections 11 and 12 are set out in a copy of the Commissions of Investigation Act 2004 in Part 5 of these Rules and Procedures.

The Commission is required to carry out its investigation in private, save in statutorily specified circumstances.

The disclosure by any person of evidence heard or documentation produced in private to the Commission may constitute a criminal offence.

When a person attends before the Commission to give evidence, the Commission can give directions as to the persons, if any, who may be present while that evidence is heard. It may also direct that legal representatives of persons, other than the witness concerned, may be present, if it is satisfied that the presence of such person or persons would be in keeping with the purposes of the Commission and would be in the interests of fair procedures.

The Commission may, in its discretion, permit a witness to be cross-examined by or on behalf of another person.

Where a person is directed by the Commission to attend as a witness before it, or where that person attends voluntarily to give evidence, or if such person is a person about whom evidence is to be given to the Commission, the Commission will disclose to such person the substance of any evidence in its possession that, in its opinion, the person should be aware of for the purposes of the evidence which that person may give or has already given to the Commission.

Where the Commission discloses evidence to a person in these circumstances the Commission will give that person an opportunity, within a specified period of time, to comment by written or oral submissions on such disclosed evidence.

A draft of a Disclosure Notice is set out in Part 2 of these Rules and Procedures.

The Commission may, when considering the evidence to be disclosed to any person during its investigation, rule, in its discretion, not to disclose the source of that evidence or the source of a document produced by a witness in evidence.

Witnesses

Before a person gives evidence to the Commission, the Commission is required by Section 13 of the Act to provide that person with a written statement specifying its powers under Sections 16, 17 and 28 of the Act, indicating that if the person does not voluntarily co-operate with it or withdraws co-operation, the Commission may exercise any of those powers that it considers necessary.

The text of Sections 13, 16, 17 and 28 are set out in the copy of the Act in Part 5 of these Rules and Procedures.

A copy of this witness notice is set out in Part 2.

For the purposes of obtaining evidence the Commission may, in its discretion, do all or any, of the following:

- direct a person in writing to attend before it to give evidence on a date and at a place and time specified and/or, to produce in evidence before the Commission any specified document that is in the person's possession or power,
- direct a person to answer questions that it believes to be relevant to a matter under investigation,
- examine a witness on oath or affirmation,
- require the person to furnish information by way of statutory declaration,
- use written interrogatories,

- examine or cross-examine a witness to the extent that it thinks proper, in order to elicit information relevant to the matter under investigation,
- direct a witness to produce to it any specified document that is in his or her possession or power,
- direct a person in writing to provide it with a list, verified by affidavit, disclosing all documents in the person's possession or power relating to a matter under investigation, and specifying in that affidavit any of the listed documents that the person objects to producing to it and the basis for the objection,
- direct a person in writing to send to it any specified document that is in the person's possession or power,
- direct a person who has made a statement or answered a question while being interviewed by a person under Section 8 of the Act to provide it with a sworn statement in a form acceptable to the Commission confirming, if such be the case, that the statement was made or the answer given voluntarily and that to the best of the person's knowledge the content of the same is true and accurate,
- give any other directions that appear to the Commission to be reasonable and fair.

Section 12 of the Act provides that where a person is directed to attend as a witness before the Commission, or who attends voluntarily to give evidence to the Commission, or about whom evidence is given to the Commission, the Commission will disclose to that person the substance of any evidence in its possession that, in its opinion, the person should be made aware of for the purposes of the evidence that that person may give or has already given to the Commission.

The Commission is also required to give a person to whom it has made a disclosure of the substance of evidence or documents an opportunity to comment by written or oral submissions on such disclosed evidence.

The text of Section 12 is set out in the copy of the Act in Part 5 of these Rules and Procedures.

The order of examination

When a person is required to give evidence to the Commission the order of examination, in general, will be as follows:

- The Commission, or, at the request of the Commission, its counsel, will first examine the witness. This evidence may be adduced by both leading and non-leading questions.
- A person directed by the Commission as appropriate to be present while the evidence of a witness is heard, may, subject to the discretion of the Commission, cross-examine that witness to the extent of their specific interest.
- Where the Commission has directed that a person may be present while the evidence of a witness is heard, the legal representatives of that person may also be present, by direction of the Commission where it is satisfied that their presence would be in keeping with the purposes of the investigation and would be in the interests of fair procedures.
- A person, when giving evidence to the Commission, may have their legal representative(s) present and, such legal representative(s) may, subject to the discretion of the Commission, examine their client at the conclusion of cross-examination by persons (other than the Commission or its counsel) present while that evidence is heard.
- The Commission, or, at the request of the Commission, its counsel, may finally further question a witness.
- Except with the permission of the Commission, no person other than the Commission, or at the request of the Commission its counsel, may speak to a witness about his or her evidence while the witness is giving any part of his or her evidence.

- Except with the permission of the Commission, Commission counsel and any other person permitted to be present (including their legal representatives) may not speak to a witness about his or her evidence while being cross-examined by a person present or their legal representatives while that evidence is heard.

Immunities and privileges

A person who gives evidence to the Commission or sends documents to it has the same immunities and privileges in respect of that evidence, and is, in addition to the penalties provided by the Act, subject to the same liabilities as a witness in proceedings in the High Court.

A statement or admission made by a person to the Commission, or to a person appointed under Section 8 of the Act, or a document given or sent to the Commission pursuant to a direction or request of the Commission to that person, or a document specified in an affidavit of documents made by the person and given to the Commission pursuant to a direction or request of the Commission is not admissible as evidence in any criminal or other proceedings with the exception of a tribunal of inquiry.

Non-compliance

Section 17 of the Act provides that if a person:

- has failed, without reasonable excuse, to comply with a direction of the Commission under Section 16 of the Act, or
- has failed, without reasonable excuse, to comply with a request under Sections 14(5) or 21(5), or
- otherwise has obstructed an investigation, and the Commission incurs costs that it would not have otherwise incurred, the Commission may, in writing, direct that 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.

There is also provision in Section 17 of the Act for persons affected by a failure to comply with a direction, a failure to comply with a request, or by an obstruction of the investigation by another person, to seek a direction from the Commission that the person responsible for that act, failure, omission or obstruction pay all, or part of any costs (including legal costs as taxed), the person adversely affected has incurred.

The text of Sections 14(5), 16, 17 and 21(5) are set out in the copy of the Act in Part 5 of these Rules and Procedures.

Powers

The Commission may with the consent of the occupier, or under the authority of a warrant issued under Section 29 of the Act, do all or any of the following:

- 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;
- inspect any documents, or information in any form, on the premises;
- 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;
- 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 the authorised person has reason to believe may be kept there and may relate to the investigation;
- 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;
- remove for later examination or copying any documents, or information in any form, that the authorised person has reasonable grounds to believe may relate

to a matter under investigation and retain them for the period that he or she considers reasonable;

- direct any person on the premises to produce to the authorised person any documents, or information in any form, kept on the premises;
- 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;
- 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.

The text of Section 29 is set out in the copy of the Act in Part 5 of these Rules and Procedures.

Legal representation

All persons who have an involvement with the Commission may, if they consider it appropriate to do so, retain legal representatives to assist them in their dealings with the Commission.

There is no requirement that a person retain a legal representative.

The fact that a person has retained a legal representative does not relieve that person of his or her personal duties to the Commission.

If a person has retained a legal representative that legal representative should, as soon as practicable after being retained do the following:

- contact the Commission and disclose to the Commission the name of the person for whom the legal representative acts,
- identify the person or persons themselves,
- specify an address for correspondence with them,

- provide telephone, fax numbers, an e-mail address, and
- if possible, a telephone number for contact outside normal business hours.

Submissions

The Commission welcomes, where appropriate, submissions from any person involved in this investigation.

Such submissions should be communicated in writing to the Commission, within a time specified by the Commission, and should:

- set out full details of any matter of concern,
- set out full and precise particulars of any facts or circumstances relevant to that concern,
- set out full details of any legal submission considered relevant to that concern,
- identify the portion of the Terms of Reference to which the concern relates, and
- identify the name, address, telephone and fax numbers, and e-mail address of the legal representatives, if any, of such person.

Where appropriate a person's written submissions may, subject to the discretion of the Commission, be augmented by oral submissions provided the person or that person's legal representatives notifies the Commission in writing of the following:

- the specific matters to be canvassed,
- the specific extracts from any documents to be referred to,
- any documents to be referred to,
- a realistic time estimate for the making of those submissions.

Guidelines on legal costs

Before a person gives evidence to the Commission, the Commission is required by Section 23(4) of the Act, to provide that person with a copy of the guidelines on legal costs published by the Government in relation to this commission.

A copy of these guidelines is set out in Part 2 of these Rules and Procedures.

The text of Section 23(4) is set out in the copy of the Act in Part 5.

Limited funding of legal costs

The provisions of Sections 23 and 24 of the Act strictly regulate the recovery of legal costs by a person arising out of that person's involvement with the Commission.

It is important to note that the regimes for recovering legal costs that may operate in the courts or in a tribunal of inquiry are not appropriate guides to the recovery of legal costs in relation to a commission of investigation.

The Government has published guidelines regulating the payment to witnesses of legal costs necessarily incurred by them in connection with this investigation. This is an important document and the Commission requests the reader to read this document carefully.

The text of Sections 23 and 24 are set out in the copy of the Act in Part 5 of these Rules and Procedures.

Procedure for seeking legal costs

Where a person, who has been involved in the investigative work of the Commission, requests it, to direct that all, or part, of that person's legal costs (necessarily incurred) be paid, that person should make such request in writing to the Commission not later than seven days after that person has given evidence or produced documentation to the Commission and specify the following:

- the name of the person making the request,

- the address of the person making the request,
- the telephone and fax numbers of the person making the request,
- an e-mail address for the person making the request,
- the factual basis upon which it is claimed that legal costs were necessarily incurred,
- the factual basis upon which it is claimed that the level and amount of costs are reasonable,
- the total amount of legal costs claimed, and
- the amount of Value Added Tax on those legal costs.

The Commission, in considering a request for recovery of legal costs, is required by Section 24 of the Commissions of Investigation Act 2004 to have regard to specific criteria set out in that sub-Section before making any decision in relation to a claim of legal costs. The legal costs that can be claimed are limited to those specified in Section 24 of the Act.

Procedure for seeking certain other expenses

Where a person, who has been involved in the investigative work of the Commission and has incurred heavy expenses (other than legal costs), requests the Commission to direct, under Section 24 of the Act, that all, or part, of these expenses be paid to that person he or she should make such request in writing to the Commission not later than seven days after that person has given evidence or produced documents to the Commission and specify the following:

- the name of the person making the request,
- the address of the person making the request,
- the telephone and fax numbers of the person making the request,

- an e-mail address for the person making the request,
- the factual basis upon which the expenses are claimed including all original vouchers and receipts in respect of such expenses,
- the total amount of expenses claimed, and
- the amount of Value Added Tax on those expenses, if any.

The Commission, in considering a request for recovery of certain other expenses, is required by Section 24(5) of the Act to have regard to specific criteria set out in that sub-Section before making any decision in relation to a claim for certain other expenses. The expenses that can be claimed are limited to those specified in Section 24(5) of the Act.

Costs cut-off date

The Commission will schedule the costs cut-off date prior to the submission of its final report to the Minister.

Time

The time limits for compliance with requests, directions and orders made under the Commissions of Investigations Act 2004 will, in general, be short.

The time limits traditionally employed in litigation in the courts are not appropriate to this investigation, having regard to its specified completion date.

If a person who is required to take any step in relation to this investigation within a specified limit wishes to contend to the Commission that such time limit cannot reasonably be complied with, the person concerned should write to the Commission at the first available opportunity, and not later than the expiry of the time limit concerned, setting out:

- the particular time limit that it is contended cannot be complied with within the specified time,

- the factual basis for this claim, and
- the period of time said to be required to comply.

The Commission may, in the exercise of its discretion, abridge or enlarge the time for compliance with any request, direction or order it has made.

Exceptions to these Rules and Procedures

These Rules and Procedures may, in the discretion of the Commission, be altered, departed from or varied if the Commission is satisfied for good reason, including the nature of the matter arising, the urgency of the matter, the consent of all or any persons affected by the matter, provided always that any such alteration, departure or variation does not trench upon the thoroughness, timeliness or fairness of the investigation.

Amendment of these Rules and Procedures

These Rules and Procedures may, in the discretion of the Commission, be amended and revised as appropriate, provided always that any such amendment or revision does not trench upon the thoroughness, timeliness or fairness of the investigation.

Reports

The Commission is required under the provisions of Part 5 of the Commissions of Investigation Act 2004 (Sections 32 to 41 of the Act) to 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.

Before submitting an interim or final report to the Minister for Justice, Equality and Law Reform, the Commission is required by Section 34(1) of the Commissions of Investigation Act 2004 to 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.

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.

Section 34(2) of the Commissions of Investigation Act 2004 provides that at the time the draft report, or the relevant part of the draft report is sent to a person that person must be sent a notice specifying the time allowed by the Commission for making submissions or requests under Sections 35(1) and 36(1) of the Commissions of Investigations Act 2004 or applications to the court under Section 35(1)(b) of the Commissions of Investigation Act 2004.

A copy of a draft interim report notice and a copy of a draft final report notice is set out in Part 2 of these Rules and Procedures.

Before submitting an interim or final report to the Minister for Justice, Equality and Law Reform, the Commission is required to give written notice of any amendments to any person identified in or identifiable from the report and who is affected by the amendments.

The text of Part 5 is set out in a copy of the Act in Part 5 of these Rules and Procedures.

Contact

The offices of the Commission are at the State Apartments, Upper Castle Yard, Dublin Castle, Dublin 2.

The offices are open during the hours of 09.30 to 13.00 hours and 14.00 to 17.30 hours.

The Commission telephone number is 01- 7071490

The Commission fax number is 01- 7071574

The Commission e-mail address is info@gd inquiry.ie

Draft forms and Guidelines



**An Coimisiún Imscrúdúcháin
ar Bhás Gary Douch**

**Commission of Investigation into the
Death of Gary Douch**

Gráinne McMorrough, S.C.

Sole Member

**General Guidelines on Payment of Legal Costs
and Other Expenses to Persons Who Become Involved with
the Commission of Investigation**

Purpose of General Guidelines

1. These General Guidelines have been made by the Minister for Justice, Equality and Law Reform, as the specified Minister, following consultation with the Commission and with the consent of the Minister for Finance, as required by the Commissions of Investigation Act 2004.
2. These Guidelines should be read in conjunction with that Act¹.
3. The Commission operates in accordance with these guidelines on costs but is independent in the performance of its functions as set out in the Commissions of Investigation Act 2004.

What Expenses (Other Than Legal Costs) Can A Person Expect To Recover?

¹ In the event of any dispute, the terms of the Act shall prevail.

4. A person who attends as a witness before the Commission of Investigation is entitled to payment of the expenses incurred by reason of that attendance².
5. The expenses to be covered are travel and transport costs, accommodation, meals and any other expenses that are necessarily incurred as a direct result of attendance before the Commission.

Expenses related to loss of earnings will not be paid, unless the person concerned can show to the satisfaction of the Commission that s/he has suffered undue hardship by reason of his/her attendance.

Expenses will not be paid to any serving public servant whose expenses have been met by his/her employer.

Payment in respect of accommodation and meals will be made on the basis of vouched expenses, subject to the following upper limits:

- a maximum of €107.69 in respect of an overnight stay
- a maximum of €33.61 in respect of a period of 10 hours or more
- a maximum of €13.71 in respect of a period of 5 hours or more

Where possible, public transport (bus or rail) should be used. Taxis should only be used where another reasonable alternative does not exist. In the event that use of a private car is necessary, expenses will be met at the rate of €0.62 per kilometre.

6. A person may also request the Commission of Investigation to pay “heavy expenses”³ (other than legal costs) incurred because of

- the nature, volume or location of the documents produced by the witness
- the location outside the State from which the witness travelled to attend before the Commission
- any other factor not within the control of the witness.

² Section 16(3) of the Act refers.

³ Section 24(5) of the Act refers.

It is a matter for the Commission to decide what constitutes “heavy expenses” on a case-by-case basis. The Commission may, on being satisfied that they were necessary in the circumstances, direct that such amount of those expenses as it considers reasonable be paid to the witness.

What Legal Costs Can a Person Expect to Recover?

7. A witness may request recovery of legal costs necessarily incurred.⁴
8. Legal costs shall not be paid except where
 - a) the good name or conduct of the witness are 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.
9. ‘Legal costs’ means fees, disbursements, charges and expenses included in a bill of costs in respect of a barrister or solicitor.
10. Discovery costs may be included as legal costs for a party who has been granted legal representation before the Commission, in which case payment of costs of discovery will be decided in the context of payment of overall legal costs.
11. The amount of legal costs to be paid by the Minister for Justice, Equality and Law Reform, as the specified Minister, shall be assessed by the Commission in the light of the relevant provisions of the Act⁵.

These Guidelines do not place any restriction on the number or type of legal representatives that may be engaged by a party who has been granted legal representation by the Commission of Investigation.

The Commission may, in its discretion, limit the amount of legal costs recoverable in respect of such representation (including the number of those representatives).

⁴ Sections 23 and 24 of the Act refer.

⁵ Sections 23 and 24 of the Act refer.

These Guidelines specify a maximum daily rate for Senior Counsel, Junior Counsel and Solicitor in respect of their appearance before the Commission (see paragraph 13 below).

12. The Commission is to be satisfied that any legal costs to be paid were necessarily incurred and that the level and amount of those costs are reasonable and constitute no more than would be levied by a competent and efficient professional.

13. The amounts payable in respect of appearance by a legal representative before the Commission are:

Senior Counsel	A maximum of €1,084 per day (excluding VAT)
Junior Counsel	A maximum of €723 per day (excluding VAT)
Solicitor	A maximum of €736 per day (excluding VAT)

14. The amounts payable in respect of the following affidavits that may be furnished to the Commission, are:

An affidavit of documents	A maximum of €1,000, subject to the exemption set out below
An affidavit verifying evidence	A maximum of €500 per affidavit (to cover payment to all legal representatives)
An affidavit	A maximum of €500 per affidavit (to cover payment to all legal representatives)

These maximum limits may only be exceeded in respect of an affidavit of documents that requires discovery costs in excess of that limit and where, in the Commission's view:

- the volume of documents discovered is substantial
- the documents disclosed were relevant to the Commission's Terms of Reference

- the legal normalities in relation to the swearing of the affidavit of documents was properly and promptly complied with, and
- these costs were necessarily incurred.

15. To the extent possible, legal representation shall be granted on a joint basis to parties with similar interests, and in any event, the costs incurred by such parties shall be assessed by reference to the potential reduction in legal costs that could have been secured through such joint representation irrespective of whether such joint representation occurred, with the distribution of allowable costs to be determined by the Commission by reference to the criteria in the Act.⁶

16. These Guidelines are definitive as to all legal costs or expenses (including heavy expenses) that may be recoverable by a person who seeks to recover such costs or expenses from the Commission. No payment shall be made in respect of brief fees, instruction fees or any other legal costs or expenses, other than those legal costs and expenses expressly specified in these Guidelines.

⁶ Sections 23 and 24 of the Act refer.

Rules of the superior courts (no.2) (discovery) 1999

(S.I. no.233 of 1999)

RULES OF THE SUPERIOR COURTS (NO. 2) (DISCOVERY), 1999

1. The following shall be inserted as Order 31 rule 12 of the Rules of the Superior Courts in substitution for the existing Order 31 rule 12:

“(1) Any party may apply to the Court by way of notice of motion for an order directing any other party to any cause or matter to make discovery on oath of the documents which are or have been in his or her possession or power, relating to any matter in question therein. Every such notice of motion shall specify the precise categories of documents in respect of which discovery is sought and shall be grounded upon the affidavit of the party seeking such an order of discovery which shall:

(a) verify that the discovery of documents sought is necessary for disposing fairly of the cause or matter or for saving costs;

(b) furnish the reasons why each category of documents is required to be discovered.

(2) On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the cause or matter, or by virtue of non-compliance with the provisions of subrule 4(1), or make such order on terms as to security for the costs of discovery or otherwise and either generally or limited to certain classes or documents as may be thought fit.

(3) An order shall not be made under this rule if and so far as the Court shall be of the opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs.

(4) (1) An order under subrule 1 directing any party or under rule 29 directing any other person to make discovery shall not be made unless:

(a) the applicant for same shall have previously applied by letter in writing requesting that discovery be made voluntarily, specifying the precise categories of documents in respect of which discovery is sought and furnishing the reasons why each category of documents is required to be discovered; and

(b) a reasonable period of time for such discovery has been allowed; and

(c) the party or person requested has failed, refused or neglected to make such discovery or has ignored such request.

Provided that in any case where by reason of the urgency of the matter or consent of the parties, the nature of the case or any other circumstances which to the Court seem appropriate, the Court may make such order as appears proper, without the necessity for such prior application in writing.

(2) Any such discovery sought and agreed between parties or between parties and any other person shall, subject to subrule 4 below, be made in like manner and form and have such effect as if directed by order of the Court.

(3) In any case in which discovery has been sought and agreed and has not been made within the time agreed, the party who has sought same may make application pursuant to rule 21 provided that when seeking discovery the party requested was informed that:

(a) such voluntary discovery was being sought pursuant to Order 31 rule 12 subrule 4;

(b) agreement to make discovery would require it to be made in like manner and form and would have such effect as if directed by order;

(c) failure to make discovery may result in an application pursuant to rule 21;

and the Court may, if satisfied that it is proper so to do, make such order under rule 12, 19 and 21 as is appropriate or such other order as appears just in the circumstances.

(4) An application for discovery whether under rule 12(1) or (4) shall be made not later than twenty eight days after the action has been set down or in matters which are not set down, twenty eight days after it has been listed for trial provided that the Court

or the party requested may order or agree, as the case may be, to extend the time for the application for discovery in any case which it appears just and reasonable so to do.

(5) The costs of an application to Court for discovery in any case in which prior written application has not been made or in which application has not been made within the time provided, shall be in the discretion of the Court”.

2. This rule shall be construed together with the Rules of the Superior Courts, 1986 to 1999 and may be cited as the Rules of the Superior Courts (No.2) (Discovery), 1999.

3. This rule shall come into operation on the 3rd day of August 1999

Oath for a Witness

OATH

I swear by Almighty God that the evidence I shall give to this Commission of Investigation shall be the truth, the whole truth, and nothing but the truth.

Affirmation for a Witness

AFFIRMATION

I do solemnly and sincerely declare and affirm that the evidence I shall give to this Commission of Investigation shall be the truth the whole truth and nothing but the truth.



**An Coimisiún Imscrúdúcháin
ar Bhás Gary Douch**

**Commission of Investigation into the
Death of Gary Douch**

Gráinne McMorrow, S.C.

Sole Member

Affidavit of Documents

I, _____ [name], of _____ [address],

_____ [description/occupation] aged 18 years and upwards

MAKE OATH and say as follows:

1. I am _____ [name], of _____ [address] and am _____ [description].
2. I make this affidavit from facts within my own knowledge and from data, documentation and information within my possession, power or procurement save where otherwise appears and where so otherwise appearing I believe the same to be true.
3. I have read the terms of reference of the Commission of Investigation into the death of Gary Douch.

4. I have read the Rules and Procedures document published by the Commission of Investigation into the death of Gary Douch.
5. I have read the _____ [request/direction/order] of the Commission of Investigation into the death of Gary Douch directed to _____ [name person] dated the __ day of _____, 2007.
6. I am aware of, and understand, the requirements of sections 10, 14, 16, 17, 28 and 31 of the Commissions of Investigation Act 2004.
7. I have in my possession, power or procurement the data, document and information relating to the terms of reference of the Commission of Investigation into the death of Gary Douch set out in the Part A and Part B of the First Schedule to this affidavit.
8. I consent to the production of the data, documentation and information in Part A of the First Schedule.
9. I object to the production of the data, documentation and information in Part B of the First Schedule.
10. The grounds of my objection to the production of the data, documentation and information in Part B of the First Schedule are:

[In respect of each individual item of data, documentation or information to which objection is taken specify the ground of objection and specify all facts and circumstances relevant to that objection].

11. I have had, but have not now, in my possession, power or procurement the data, documentation or information in the Second Schedule.
12. The data, documentation and information identified in the Second Schedule were last in my possession, power or procurement on the __ day of _____, 2007.
13. The full circumstances in which the data, documentation and information identified in the Second Schedule are no longer in my possession are:

[Set out full and detailed particulars as to the circumstances in which each individual item of data, documentation and information identified in the Second Schedule is no longer in your possession, power or procurement, and as to whom did you give each such data, documentation or information and the possible locations of the originals or copies of that data, documentation or information.]

14. According to the best of my knowledge, information and belief I have not now, and never had in my possession, power or procurement any data, documentation or information whether by myself, or through the agency of

any other person whatsoever, other than the data, documentation or information listed in the First and Second Schedule to this affidavit.

15. The inquiries and searches for data, documentation and information relevant to the terms of reference of the commission of investigation carried out by me, or on my behalf, prior to the swearing of the affidavit of documents are:

[Set out full and detailed particulars of all inquiries made, and searches undertaken].

SWORN this __ day of _____, 2007

At _____ [address] by _____ [name]

Before me _____ [name]

a Commissioner for Oaths/Practising Solicitor

and I know the deponent.

FIRST SCHEDULE

Part A

[list data, documentation and information]

Part B

[list data, documentation and information]

SECOND SCHEDULE

[list data, documentation and information]



**An Coimisiún Imscrúdúcháin
ar Bhás Gary Douch**

**Commission of Investigation into the
Death of Gary Douch**

Gráinne McMorrow, S.C.

Sole Member

Affidavit

I, _____ [name], of _____ [address],

_____ [description/occupation] aged 18 years and upwards

MAKE OATH and say as follows:

1. I am _____ [name], of _____ [address] and am _____ [description].
2. I make this affidavit from facts within my own knowledge and from data, documents and information within my possession, power or procurement save where otherwise appears and where so otherwise appearing I believe the same to be true.
3. I have read the Terms of Reference of the Commission of Investigation into the Death of Gary Douch.
4. I have read the Rules and Procedures document published by the Commission of Investigation into the Death of Gary Douch.
5. I have read the _____ [request/direction/order] of the Commission of Investigation into the Death of Gary Douch directed to _____ [name person] dated the ____ day of _____, 2007.

6. I am aware of, and understand, the functions and powers of a commission of investigation established under the Commissions of Investigation Act 2004 and my own personal duties and obligations to that commission.

7. The evidence deposed to in this affidavit is:

(a) given by me, ____ [name],

(b) given voluntarily, and

(c) to the best of my knowledge and belief this evidence is true and accurate.

8. [Set out in numbered paragraphs below the evidence to be sworn].

SWORN this __ day of _____, 2007

at _____ [address] by _____ [name]

before me _____ [name]

a Commissioner for Oaths/Practising Solicitor

and I know the deponent



**An Coimisiún Imscrúdúcháin
ar Bhás Gary Douch**

**Commission of Investigation into the
Death of Gary Douch**

Gráinne McMorrow, S.C.

Sole Member

Affidavit verifying evidence

I, _____ [name], of _____ [address],
_____ [description/occupation] aged 18 years and upwards

MAKE OATH and say as follows:

1. I am _____ [name], of _____ [address] and am _____ [description].
2. I make this affidavit from facts within my own knowledge and from data, documentation and information within my possession, power or procurement save where otherwise appears and where so otherwise appearing I believe the same to be true.
3. I have read the Terms of Reference of the Commission of Investigation into the Death of Gary Douch.
4. I have read the Rules and Procedures document published by the Commission of Investigation into the Death of Gary Douch.

5. I have read the _____ [request/direction/order] of the Commission of Investigation into the Death of Gary Douch, directed to _____ [name] dated the __ day of _____, 2007.

6. I am aware of, and understand, the functions and powers of a commission of investigation established under the Commissions of Investigation Act 2004 and my own personal obligations to such commission.

7. I am a person who has given evidence to the Commission otherwise than by attending before the Commission (or, if appropriate, by means of a video link) pursuant to Section 14(4) of the Commissions of Investigation Act 2004.

8. I refer to a text copy of my evidence given on the __ day of ____, 2007 at _____ [address] upon which and marked with the letter "A" I have signed my name prior to swearing this affidavit.

9. I have read the text copy of my evidence given on the __ day of ____, 2007 at _____ [address] and I confirm that:

(a) this evidence was given by me, ____ [name], on the __ day of ____, 2007 at _____ [address],

(b) this evidence was given voluntarily, and

(c) that to the best of my knowledge this evidence is true and accurate.

SWORN this __ day of _____, 2007

at _____ [address] by _____ [name]

before me _____ [name]

a Commissioner for Oaths/Practising Solicitor

and I know the deponent.



**An Coimisiún Imscrúdúcháin
ar Bhás Gary Douch**

**Commission of Investigation into the
Death of Gary Douch**

Gráinne McMorrow, S.C.

Sole Member

Disclosure Notice

The Commission of Investigation into the Death of Gary Douch is required by Section 12 of the Commissions of Investigation Act 2004 to disclose to you the substance of any evidence in the possession of the Commission that, in the opinion of the Commission, you should be made aware of for the purposes of the evidence that you may give or have given to the Commission.

This is an important document and the Commission invites you to read it carefully.

If you have any questions in relation to the matters contained in this notice you are invited, should you consider it appropriate to do so, to contact the Commission for such information or assistance as it may be in a position to provide to you.

Contact may be made as follows:

Postal address: Commission of Investigation into the Death of Gary Douch,
State Apartments, Upper Castle Yard,
Dublin Castle, Dublin 2

e-mail address: info@gd inquiry.ie

Telephone: 01-7071490

Fax: 01-7071574

1. Introduction

The Commission of Investigation into the Death of Gary Douch was established pursuant to Section 3 of the Commissions of Investigation Act 2004 by Order of the Government published in the 27th July 2007 edition of *Iris Oifigiúil*.

2. Terms of Reference

The Terms of Reference of the Commission are set out in the Order made by the Government and are as follows:

To undertake a thorough investigation and make a report in accordance with the provisions of Section 32 of the Commissions of Investigation Act 2004 (No. 23 of 2004) on the following specific matters : -

following on from the report dated 2 March, 2007 of the “Inquiry into the circumstances surrounding the death of Mr. Gary Douch, a Prisoner in Mountjoy Prison” by Mr. Michael Mellett and without prejudice to any criminal or disciplinary proceedings, carry out any further investigations it considers necessary into the circumstances surrounding the death of Mr. Gary Douch including in particular;

- an examination of the chronology of treatment (including medical) and management (including transfers) of the individual identified in the report as “Prisoner A” taking into account all available information and documentation in that regard and examining all persons whose testimony may throw light on the issues which arise;

- a review of policies, practices and procedures regarding the safety of prisoners in custody whether in prison, a place of detention, the Central Mental Hospital or other institution and in particular;

- a review of protocols for those prisoners with specific behavioural problems or vulnerabilities (psychiatric, violent or disruptive or those in need of additional protection),

- a review of their application in this case,

- a review of any changes which have taken place since the 1st August 2006 and

the making of recommendations on what cost effective policies and / or legislative measures could be adopted in the future for the management and treatment of such prisoners together with an estimate of the approximate implementation costs with a view to

- promoting the safety and health of prisoners
- providing a secure and safe environment for prisoners and persons dealing with prisoners and,
- safeguarding the public interest.

3. Powers

The Commission of Investigations Act 2004 provides specific statutory powers to the Commission to facilitate the discharge of its function. These powers include powers relating to witnesses and documents, power to direct certain persons to pay costs, and powers of entry and inspection.

The text of the Commissions of Investigation Act 2004 is set out in Part 5 of the Commission's Rules and Procedures.

The Commission wishes to specifically draw your attention to Section 12 of the Commissions of Investigation Act 2004 which sets out the duty of the Commission to disclose the substance of evidence to you and to give you an opportunity to comment by written or oral submissions.

4. Section 12

Section 12 of the Commissions of Investigation Act 2004 provides:

(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.

5. Co-operation

The Commission is required by Section 10 of the Commissions of Investigation Act 2004 to seek the voluntary co-operation of persons whose evidence is desired by the Commission in relation to any matter within its Terms of Reference, to facilitate such co-operation, and to conduct its investigation as expeditiously as possible.

The Commission is required to make its final report to the Minister for Justice, Equality and Law Reform not later than the 31st of December 2007.

In the event that you do not voluntarily co-operate with the Commission, or you withdraw co-operation, the Commission will consider exercising its compulsory powers under the Commissions of Investigation Act 2004.

6. Legal representation

You are entitled to have a legal representative present to advise you when you give evidence to the Commission. If you have no legal representative present to advise you the Commission will advise you of your legal rights and obligations while giving evidence.

1. Disclosure

The evidence disclosed to you under Section 12 of the Commissions of Investigation Act 2004 is set out in the First Schedule to this Disclosure Notice.

2. Confidentiality

The contents of any evidence given or the contents of any document produced, by a witness while giving evidence to the Commission must not be disclosed by any person except in the circumstances specified in Section 11 of the Commissions of Investigation Act 2004.

A person in breach of this statutory duty of confidentiality may be guilty of a criminal offence under Section 11(5) of the Commissions of Investigation Act 2004.

The text of Section 11 is set out in a copy of the Commissions of Investigation Act 2004 in Part 5 of the Commission's Rules and Procedures.

Dated this ____ day of _____, 2007.

Signed:

Gráinne McMorrow, S.C.

Sole Member



**An Coimisiún Imscrúdúcháin
ar Bhás Gary Douch**

**Commission of Investigation into the
Death of Gary Douch**

Gráinne McMorrow, S.C.

Sole Member

Witness Notice

The Commission of Investigation into the Death of Gary Douch is required by Section 12 of the Commissions of Investigation Act 2004 to disclose to you the substance of any evidence in the possession of the Commission that, in the opinion of the Commission, you should be made aware of for the purposes of the evidence that you may give or have given to the Commission.

This is an important document and the Commission invites you to read it carefully.

If you have any questions in relation to the matters contained in this notice you are invited, should you consider it appropriate to do so, to contact the Commission for such information or assistance as it may be in a position to provide to you.

Contact may be made as follows:

Postal address: Commission of Investigation into the Death of Gary Douch,
State Apartments, Upper Castle Yard,
Dublin Castle, Dublin 2

e-mail address: info@gd inquiry.ie

Telephone: 01-7071490

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2. Terms of Reference

The Terms of Reference of the Commission are set out in the Order made by the Government and are as follows:

To undertake a thorough investigation and make a report in accordance with the provisions of Section 32 of the Commissions of Investigation Act 2004 (No. 23 of 2004) on the following specific matters : -

following on from the report dated 2 March, 2007 of the “Inquiry into the circumstances surrounding the death of Mr. Gary Douch, a Prisoner in Mountjoy Prison” by Mr. Michael Mellett and without prejudice to any criminal or disciplinary proceedings, carry out any further investigations it considers necessary into the circumstances surrounding the death of Mr. Gary Douch including in particular;

an examination of the chronology of treatment (including medical) and management (including transfers) of the individual identified in the report as “Prisoner A” taking into account all available information and documentation in that regard and examining all persons whose testimony may throw light on the issues which arise;

a review of policies, practices and procedures regarding the safety of prisoners in custody whether in prison, a place of detention, the Central Mental Hospital or other institution and in particular;

a review of protocols for those prisoners with specific behavioural problems or vulnerabilities (psychiatric, violent or disruptive or those in need of additional protection),

a review of their application in this case,

a review of any changes which have taken place since the 1st August 2006 and

the making of recommendations on what cost effective policies and / or legislative measures could be adopted in the future for the management and treatment of such prisoners together with an estimate of the approximate implementation costs with a view to

- promoting the safety and health of prisoners
- providing a secure and safe environment for prisoners and persons dealing with prisoners and,
- safeguarding the public interest.

3. Powers

The Commission of Investigations Act 2004 provides specific statutory powers to the Commission to facilitate the discharge of its function. These powers include powers relating to witnesses and documents, power to direct certain persons to pay costs, and powers of entry and inspection.

The text of the Commissions of Investigation Act 2004 is set out in the Commission's Rules and Procedures & Relevant Statutes.

In particular, Sections 16, 17 and 28 of the Commissions of Investigation Act 2004 set out important powers that may, in the discretion of the Commission, be invoked by the Commission.

4. Section 16

Section 16 of the Commissions of Investigation Act 2004 provides:

- (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;
- (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.
- (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.

5. Section 17

Section 17 of the Commissions of Investigation Act 2004 provides:

- (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) 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.

6. Section 28

Section 28 of the Commissions of Investigation Act 2004 provides:

- (1) Subject to *Section 27*, any authorised person⁷ may do any or all of the following:
 - (a) enter at any reasonable time any premises in which the authorized

⁷ An *authorised person* is defined by *Section 26* of the Act as (1) any member of the Commission; or (2) any person appointed under *Section 8* of the Act and authorised by the Commission in writing to exercise the powers given in *Section 28* to authorised persons.

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 authorized 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 authorized person any information that the authorised person may reasonably require with regard to a matter under investigation.

- (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.

7. Co-operation

The Commission is required by Section 10 of the Commissions of Investigation Act 2004 to seek the voluntary co-operation of persons whose evidence is desired by the Commission in relation to any matter within its Terms of Reference, to facilitate such co-operation, and to conduct its investigation as expeditiously as possible.

In the event that you do not voluntarily co-operate with the Commission, or you withdraw co-operation, the Commission will exercise its powers under Sections 16, 17 and 28 of the Commissions of Investigation Act 2004 as it considers necessary.

8. Legal representation

You are entitled to have a legal representative present to advise when you give evidence to the Commission. If you have no legal representative present to advise you the Commission will advise you of your legal rights and obligations while giving evidence.

Dated this ____ day of _____, 2007.

Signed:

Gráinne McMorrow, S.C.

Sole Member



**An Coimisiún Imscrúdúcháin
ar Bhás Gary Douch**

**Commission of Investigation into the
Death of Gary Douch**

Gráinne McMorrow, S.C.

Sole Member

Draft Interim Report Notice

The Commission of Investigation into the Death of Gary Douch is required by Section 34(2) of the Commissions of Investigation Act 2004 to give you notice in writing specifying the time allowed for making:

- (a) submissions or requests to the Commission under Section 35(1)(a) or Section 36(1) and,
- (b) applications to the High Court under Section 35(1)(b)

of the Commissions of Investigation Act 2004.

This is an important notice. The Commission invites you to read this notice carefully. The contents of this notice contain matters that, in the opinion of the Commission, concern you.

If you have any questions in relation to the matters contained in this notice you are invited, should you consider it appropriate to do so, to contact the Commission for such information or assistance as it may be in a position to provide to you.

Contact with the Commission may be made as follows:

Postal address: Commission of Investigation into the Death of Gary Douch,
State Apartments, Upper Castle Yard,
Dublin Castle, Dublin 2

e-mail address: info@gd inquiry.ie

Telephone: 01-7071490

Fax: 01-7071574

Introduction

The Commission of Investigation into the Death of Gary Douch has prepared a draft interim report in relation to its investigation into the matters specified in its Terms of Reference. A copy of the draft report or part of the draft report is set out in **Schedule 1** of this notice.

The purpose of this notice is to afford you an opportunity within the time period specified by the Commission to exercise your statutory rights under the Commissions of Investigation Act 2004 to make submissions or requests to the Commission, or applications to the Court concerning the draft report or part of the draft report.

The Terms of Reference of the Commission of Investigation into the Death of Gary Douch are set out in an Order of the Government published in the 27th July 2007 edition of *Iris Oifigiúil*. A copy of these Terms of Reference is set out in Part 3 of the Rules and Procedures.

The Commission wishes to bring to your notice the provisions of Sections 34, 35, 36 and 37 of the Commissions of Investigation Act 2004. A copy of the text of the Commissions of Investigation Act 2004 is in Part 5 of the Commission's Rules and Procedures.

Section 34

Section 34 of the Commissions of Investigations Act 2004 provides:

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.
- (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.

Section 35

Section 35 of the Commissions of Investigation Act 2004 provides:

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-

- (a) submit to the Commission a written statement setting out the reasons for the belief and requesting the Commission to review the draft in the 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 submissions that it considers 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 by the amendments.

Section 36

Section 36 of the Commissions of Investigation Act 2004 provides:

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.

Time

The Commission is required to specify the time allowed to you for making:

- (a) submissions or requests to the Commission under Section 35(1)(a) or Section 36(1), and
- (b) applications to the Court under Section 35(1)(b) of the Commissions of Investigation Act 2004.

The time specified to you to make submissions or requests to the Commission, or applications to the Court is a period of ____ days.

The time specified will expire on the __ day of ____, 2007.

Confidentiality

The contents of the draft report or part of the draft report provided to you must not be disclosed, or the fact that you have received that draft report or part of a draft report must not be divulged in any way, except with the prior written consent of the Commission or to the extent necessary for the purposes of an application to the Court.

Contravention of this statutory requirement of confidentiality is a criminal offence.

Section 37 of the Commissions of Investigation Act 2004 provides:

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.

Dated this ____ day of ____, 2007.

Signed:

Gráinne McMorrow, S.C.

Sole Member



**An Coimisiún Imscrúdúcháin
ar Bhás Gary Douch**

**Commission of Investigation into the
Death of Gary Douch**

Gráinne McMorrow, S.C.

Sole Member

Draft Final Report Notice

The Commission of Investigation into the Death of Gary Douch is required by Section 34(2) of the Commissions of Investigation Act 2004 to give you notice in writing specifying the time allowed for making:

- (a) submissions or requests to the Commission under Section 35(1)(a) or Section 36(1) and,
- (b) applications to the High Court under Section 35(1)(b)

of the Commissions of Investigation Act 2004.

This is an important notice. The Commission invites you to read this notice carefully. The contents of this notice contain matters that, in the opinion of the Commission, concern you.

If you have any questions in relation to the matters contained in this notice you are invited, should you consider it appropriate to do so, to contact the Commission for such information or assistance as it may be in a position to provide to you.

Contact with the Commission may be made as follows:

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- (4) 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).

- (5) 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.

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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-

- (a) submit to the Commission a written statement setting out the reasons for the belief and requesting the Commission to review the draft in the 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.
- (5) 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.
- (6) 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:
- (d) submit the draft report to the specified Minister without making any amendments;
 - (e) give a person specified by the Court an opportunity to give any evidence or make any submissions that it considers should, in the interests of fair procedures, be received by the Commission before the draft report is finalised;
 - (f) submit the draft report to the specified Minister after making such amendments as the Court may direct.

- (7) 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 by the amendments.

Section 36

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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.

Time

The Commission is required to specify the time allowed to you for making:

- (a) submissions or requests to the Commission under Section 35(1)(a) or Section 36(1), and
- (b) applications to the Court under Section 35(1)(b) of the Commissions of Investigation Act 2004.

The time specified to you to make submissions or requests to the Commission, or applications to the Court is a period of ____ days.

The time specified will expire on the __ day of ____, 2007.

Confidentiality

The contents of the draft report or part of the draft report provided to you must not be disclosed, or the fact that you have received that draft report or part of a draft report must not be divulged in any way, except with the prior written consent of the Commission or to the extent necessary for the purposes of an application to the Court.

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- (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.

Dated this ____ day of ____, 2007.

Signed:

Gráinne McMorrow, S.C.

Sole Member

Terms of reference

IRIS OIFIGIÚIL, JULY 27th, 2007

825

AN tORDÚ UM CHOMHAIRLEOIRÍ SPEISIALTA A
CHEAPADH (AN tAIRE EALAÍON, SPÓIRT AGUS
TURASÓIREACHTA) 2007APPOINTMENT OF SPECIAL ADVISERS (MINISTER
FOR ARTS, SPORT AND TOURISM) ORDER 2007

Do rinne an Rialtas inniu The Government today made
Ordú dar teideal thuas. an Order entitled as above.

Féadfar cóipeanna den Ordú Copies of this Order may be
seo a fháil san Oifig Díolta obtained at the Government
Foilseachán Rialtais, Teach Publications Sale Office, Sun
Sun Alliance, Sráid Theach Alliance House, Molesworth
Laighean, Baile Átha Cliath Street, Dublin 2, or through
2, nó trí aon díoltóir leabhar. any bookseller.

D. Mac CÁRTHAIGH
Ard-Rúnaí an Rialtais
(Secretary General to the Government)

BAILE ÁTHA CLIATH, DUBLIN,
An 18ú lá seo d'Iúil, 2007. This 18th day of July, 2007.

[10A]

AN tORDÚ CHOINBHINSIÚN TAMPERE (PRIBHLÉIDÍ
AGUS DÍOLÚINTÍ) 2007TAMPERE CONVENTION (PRIVILEGES AND
IMMUNITIES) ORDER 2007

Do rinne an Rialtas inniu The Government today made
Ordú dar teideal thuas. an Order entitled as above.

Féadfar cóipeanna den Ordú Copies of this Order may be
seo a fháil san Oifig Díolta obtained at the Government
Foilseachán Rialtais, Teach Publications Sale Office, Sun
Sun Alliance, Sráid Theach Alliance House, Molesworth
Laighean, Baile Átha Cliath Street, Dublin 2, or through
2, nó trí aon díoltóir leabhar. any bookseller.

D. Mac CÁRTHAIGH
Ard-Rúnaí an Rialtais
(Secretary General to the Government)

BAILE ÁTHA CLIATH, DUBLIN,
An 18ú lá seo d'Iúil, 2007. This 18th day of July, 2007.

[10B]

COMMISSION OF INVESTIGATION (DEATH OF
MR. GARY DOUCH IN MOUNTJOY PRISON)

TERMS OF REFERENCE

Following on from the report dated 2 March 2007 of the "Inquiry into the circumstances surrounding the death of Mr. Gary Douch, a Prisoner in Mountjoy Prison" by Mr. Michael Mellett the Commission shall without prejudice to any criminal or disciplinary proceedings, carry out any further investigations it considers necessary into the circumstances surrounding the death of Mr. Gary Douch including in particular:

an examination of the chronology of treatment (including medical) and management (including transfers) of the individual identified in the report as "Prisoner A" taking into account all available information and documentation in that regard and examining all persons whose testimony may throw light on the issues which arise;

a review of policies, practices and procedures regarding the safety of prisoners in custody whether in prison, a place of detention, the Central Mental Hospital or other institution and in particular:

- a review of protocols for those prisoners with specific behavioural problems or vulnerabilities (psychiatric, violent or disruptive or those in need of additional protection),
- a review of their application in this case,
- a review of any changes which have taken place since the 1st August 2006;

the making of recommendations on what cost effective policies and/or legislative measures could be adopted in the future for the management and treatment of such prisoners together with an estimate of the approximate implementation costs with a view to:

- promoting the safety and health of prisoners,
- providing a secure and safe environment for prisoners and persons dealing with prisoners,
- and safeguarding the public interest.

STATEMENT OF COSTS AND TIMEFRAME FOR
INVESTIGATION

The Commission of Investigation was established on the 2nd May 2007. It will be required to make a final report to the Minister for Justice, Equality and Law Reform, as the specified Minister not later than 31st December 2007.

The Commission will comprise a Sole Member. Staffing of the Commission will comprise a Senior Counsel, a Junior Counsel, a Documentary Counsel, a solicitor, an expert psychiatrist and psychologist, if and when required, and 3 support staff.

The estimated legal fees, salaries and other administrative costs total €800,000 for the period in question. This does not include any third party costs that may be awarded by the Commission.

[11]

Criminal Law (Insanity) Act



Number 11 of 2006

CRIMINAL LAW (INSANITY) ACT 2006

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Orders.
3. Designated centres.
4. Fitness to be tried.
5. Verdict of not guilty by reason of insanity.
6. Diminished responsibility.
7. Appeals (fitness to be tried).
8. Appeals (not guilty by reason of insanity).
9. Appeals (supplemental provisions).
10. Establishment day.
11. Mental Health (Criminal Law) Review Board.
12. Powers of Review Board.
13. Review of detention.
14. Temporary release, transfer and other matters.
15. Transfer of prisoner to designated centre.
16. Clinical director of designated centre to be notified of date on which prisoner detained in centre ceases to be prisoner, etc.
17. Review of prisoner's detention in designated centre.
18. Transfer back to prison.
19. Notice to be given of intention to adduce evidence as to mental condition, etc.
20. Application to existing detentions.
21. Amendment of Defence Act 1954.

22. Amendment of Infanticide Act 1949.
23. Expenses.
24. Grants to Review Board.
25. Repeals and transitional provision.
26. Short title and commencement.

SCHEDULE 1

MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD

SCHEDULE 2

ENACTMENTS REPEALED

ACTS REFERRED TO

Central Criminal Lunatic Asylum (Ireland) Act 1845	8 & 9 Vic., c. 107
Civil Service Regulation Act 1956	1956, No. 46
Courts of Justice Act 1924	1924, No. 10
Criminal Justice Act 1960	1960, No. 27
Criminal Justice Act 1999	1999, No. 10
Criminal Lunatics Act 1800	39 & 40 Geo. 3, c. 94
Criminal Lunatics (Ireland) Act 1838	1 & 2 Vic., c. 27
Criminal Procedure Act 1967	1967, No. 12
Defence Act 1954	1954, No. 18
Infanticide Act 1949	1949, No. 16
Juries Act 1976	1976, No. 4
Lunacy (Ireland) Act 1821	1 & 2 Geo. 4, c. 33
Lunatic Asylums (Ireland) Act 1875	38 & 39 Vic., c. 67
Medical Practitioners Acts 1978 to 2002	
Mental Health Act 2001	2001, No. 25
Trial of Lunatics Act 1883	46 & 47 Vic., c. 38



Number 11 of 2006

CRIMINAL LAW (INSANITY) ACT 2006

AN ACT TO AMEND THE LAW RELATING TO THE TRIAL AND DETENTION OF PERSONS SUFFERING FROM MENTAL DISORDERS WHO ARE CHARGED WITH OFFENCES OR FOUND NOT GUILTY BY REASON OF INSANITY, TO AMEND THE LAW RELATING TO UNFITNESS TO PLEAD AND THE SPECIAL VERDICT, TO PROVIDE FOR THE COMMITTAL OF SUCH PERSONS TO DESIGNATED CENTRES AND FOR THE INDEPENDENT REVIEW OF THE DETENTION OF SUCH PERSONS AND, FOR THOSE PURPOSES, TO PROVIDE FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS AN BORD ATHBHREITHNITHE MEABHAIR-SHLÁINTE (AN DLÍ COIRIÚIL), OR, IN THE ENGLISH LANGUAGE, THE MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD, TO REPEAL THE TRIAL OF LUNATICS ACT 1883, TO AMEND THE INFANTICIDE ACT 1949, AND TO PROVIDE FOR RELATED MATTERS.

[12th April, 2006]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act, save where the context otherwise requires—

Interpretation.

“act” includes omission and references to committing an act include references to making an omission;

“the Act of 2001” means the Mental Health Act 2001;

“approved medical officer” means a consultant psychiatrist (within the meaning of the Mental Health Act 2001);

“clinical director” has the meaning assigned to it by the Mental Health Act 2001, and, where an approved medical officer is duly authorised by a clinical director to perform his or her functions under this Act, the officer shall, in relation to those functions, be deemed, for the purposes of this Act, to be a clinical director;

“court” means any court exercising criminal jurisdiction and includes court martial;

“designated centre” shall be construed in accordance with *section 3*;

“establishment day” means the day appointed under *section 10* to be the establishment day;

“intoxication” means being under the intoxicating influence of any alcoholic drink, drug, solvent or any other substance or combination of substances;

“legal representative” means a practising barrister or a practising solicitor;

“mental disorder” includes mental illness, mental disability, dementia or any disease of the mind but does not include intoxication;

“Minister” means the Minister for Justice, Equality and Law Reform;

“patient”, in *sections 12, 13 and 14*, means a person detained in a designated centre pursuant to this Act;

“prison” means a place of custody administered by the Minister;

“prisoner” means a person who is in prison on foot of a sentence of imprisonment, on committal awaiting trial, on remand or otherwise;

“Review Board” means the Mental Health (Criminal Law) Review Board established under *section 11*;

“special court” means a special court established under Article 38.3.1° of the Constitution.

Orders.

2.—Every order made by the Minister or by the Minister for Health and Children under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made.

Designated centres.

3.—(1) The Central Mental Hospital is hereby designated as a centre (in this Act referred to as a “designated centre”) for the reception, detention and care or treatment of persons or classes of persons committed or transferred thereto under the provisions of this Act.

(2) The Minister for Health and Children by order may after consultation with the Mental Health Commission established under section 32 of the Act of 2001, designate a psychiatric centre as a centre (in this Act referred to as a “designated centre”) for the reception, detention and, where appropriate, care or treatment of persons or classes of persons committed or transferred thereto under the provisions of this Act.

(3) Part 4 of the Act of 2001 shall apply to any person who is detained in a designated centre under this Act.

(4) In this section, “psychiatric centre” means a hospital or in-patient facility in which care or treatment is provided for persons suffering from a mental disorder within the meaning of the Act of 2001.

Fitness to be tried.

4.—(1) Where in the course of criminal proceedings against an accused person the question arises, at the instance of the defence, the prosecution or the court, as to whether or not the person is fit to be tried the following provisions shall have effect.

(2) An accused person shall be deemed unfit to be tried if he or she is unable by reason of mental disorder to understand the nature or course of the proceedings so as to—

- (a) plead to the charge,
 - (b) instruct a legal representative,
 - (c) in the case of an indictable offence which may be tried summarily, elect for a trial by jury,
 - (d) make a proper defence,
 - (e) in the case of a trial by jury, challenge a juror to whom he or she might wish to object, or
 - (f) understand the evidence.
- (3) (a) Where an accused person is before the District Court (in this section referred to as “the Court”) charged with a summary offence, or with an indictable offence which is being or is to be tried summarily, any question as to whether or not the accused is fit to be tried shall be determined by the Court.
- (b) Subject to *subsections (7) and (8)*, in a case to which *paragraph (a)* relates, the Court determines that an accused person is unfit to be tried, that Court shall adjourn the proceedings until further order, and may—
- (i) if it is satisfied, having considered the evidence of an approved medical officer adduced pursuant to *subsection (6)* and any other evidence that may be adduced before it that the accused person is suffering from a mental disorder (within the meaning of the Act of 2001) and is in need of in-patient care or treatment in a designated centre, commit him or her to a specified designated centre until an order is made under *section 13*, or
 - (ii) if it is satisfied, having considered the evidence of an approved medical officer adduced pursuant to *subsection (6)* and any other evidence that may be adduced before it that the accused person is suffering from a mental disorder or from a mental disorder (within the meaning of the Act of 2001) and is in need of out-patient care or treatment in a designated centre, make such order as it thinks proper in relation to the accused person for out-patient treatment in a designated centre.
- (c) Where in a case to which *paragraph (a)* relates, the Court determines that the accused person is fit to be tried the proceedings shall continue.
- (4) (a) Where an accused person is before the Court charged with an offence other than an offence to which *paragraph (a)* of *subsection (3)* applies, any question as to whether that person is fit to be tried shall be determined by the court of trial to which the person would have been sent forward if he or she were fit to be tried and the Court shall send the person forward to that court for the purpose of determining that issue.

- (b) Where an accused person is sent forward to the court of trial under *paragraph (a)*, the question of whether the person is fit to be tried shall be determined by the judge concerned sitting alone.
 - (c) If the determination under *paragraph (b)* is that the accused person is fit to be tried, the provisions of the Criminal Procedure Act 1967, shall apply as if an order returning the person for trial had been made by the Court under section 4A of that Act (inserted by section 9 of the Criminal Justice Act 1999) on the date the determination was made but, in any case where section 13 of that Act applies, the person shall be returned for trial.
 - (d) If the determination under *paragraph (b)* is that the person is unfit to be tried the provisions of *subsection (5)* shall apply.
 - (e) Where the court subsequently determines that the person is fit to be tried the provisions of the Criminal Procedure Act 1967, shall apply as if an order returning the person for trial had been made by the Court on the date the determination was made.
- (5) (a) Where an accused person is before a court other than the Court charged with an offence and the question arises as to whether that person is fit to be tried the provisions of this subsection shall apply.
- (b) The question of whether the accused person is fit to be tried shall be determined by the judge concerned sitting alone.
 - (c) Subject to *subsections (7) and (8)*, if the judge determines that the accused person is unfit to be tried, he or she shall adjourn the proceedings until further order, and may—
 - (i) if he or she is satisfied, having considered the evidence of an approved medical officer adduced pursuant to *subsection (6)* and any other evidence that may be adduced before him or her that the accused person is suffering from a mental disorder (within the meaning of the Act of 2001) and is in need of in-patient care or treatment in a designated centre, commit him or her to a specified designated centre until an order is made under *section 13*, or
 - (ii) if he or she is satisfied, having considered the evidence of an approved medical officer adduced pursuant to *subsection (6)* and any other evidence that may be adduced before him or her that the accused person is suffering from a mental disorder or from a mental disorder (within the meaning of the Act of 2001) and is in need of out-patient care or treatment in a designated centre, make such order as he or she thinks proper in relation to the accused person for out-patient treatment in a designated centre.
 - (d) Where the court determines that the accused person is fit to be tried the proceedings shall continue.
- (6) (a) For the purposes of determining whether or not to exercise a power under *subsection (3) or (5)* the court—

- (i) for that purpose, may commit him or her to a designated centre for a period of not more than 14 days, and
 - (ii) shall direct that the accused person concerned be examined by an approved medical officer at that centre.
- (b) Within the period of committal authorised by the court under this subsection, the approved medical officer concerned shall report to the court on whether in his or her opinion the accused person committed under *paragraph (a)* is—
- (i) suffering from a mental disorder (within the meaning of the Act of 2001) and is in need of in-patient care or treatment in a designated centre, or
 - (ii) suffering from a mental disorder or from a mental disorder (within the meaning of the Act of 2001) and is in need of out-patient care or treatment in a designated centre.

(7) Where on the trial of an accused person the question arises as to whether or not the person is fit to be tried and the court considers that it is expedient and in the interests of the accused so to do, it may defer consideration of the question until any time before the opening of the case for the defence and if, before the question falls to be determined, the jury by the direction of the court or the court, as the case may be, return a verdict in favour of the accused or find the accused person not guilty, as the case may be, on the count or each of the counts on which the accused is being tried the question shall not be determined and the person shall be acquitted.

(8) Upon a determination having been made by the court that an accused person is unfit to be tried it may on application to it in that behalf allow evidence to be adduced before it as to whether or not the accused person did the act alleged and if the court is satisfied that there is a reasonable doubt as to whether the accused did the act alleged, it shall order the accused to be discharged.

(9) Where evidence is adduced before the court under *subsection (8)* but the court decides not to order the accused person to be discharged, no person shall publish a report of the evidence or the decision until such time, if any, as—

- (a) the trial of the person concludes, or
- (b) a decision is made not to proceed with the trial of the person or the trial is otherwise not proceeded with.

(10) A person who contravenes *subsection (9)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months or to both.

5.—(1) Where an accused person is tried for an offence and, in the case of the District Court or Special Criminal Court, the court or, in any other case, the jury finds that the accused person committed the act alleged against him or her and, having heard evidence relating to the mental condition of the accused given by a consultant psychiatrist, finds that—

Verdict of not guilty by reason of insanity.

- (a) the accused person was suffering at the time from a mental disorder, and
- (b) the mental disorder was such that the accused person ought not to be held responsible for the act alleged by reason of the fact that he or she—
 - (i) did not know the nature and quality of the act, or
 - (ii) did not know that what he or she was doing was wrong, or
 - (iii) was unable to refrain from committing the act,

the court or the jury, as the case may be, shall return a special verdict to the effect that the accused person is not guilty by reason of insanity.

(2) If the court, having considered any report submitted to it in accordance with *subsection (3)* and such other evidence as may be adduced before it, is satisfied that an accused person found not guilty by reason of insanity pursuant to *subsection (1)* is suffering from a mental disorder (within the meaning of the Act of 2001) and is in need of in-patient care or treatment in a designated centre, the court shall commit that person to a specified designated centre until an order is made under *section 13*.

- (3) (a) For the purposes of *subsection (2)*, if the court considers that an accused person found not guilty by reason of insanity pursuant to *subsection (1)* is suffering from a mental disorder (within the meaning of the Act of 2001) and may be in need of in-patient care or treatment in a designated centre, the court may commit that person to a specified designated centre for a period of not more than 14 days and direct that during such period he or she be examined by an approved medical officer at that centre.
- (b) The court may, on application to it in that behalf by any party and, if it considers it appropriate to do so, after consultation with an approved medical officer, extend the period of committal under this subsection, but the period or the aggregate of the periods for which an accused person may be committed under this subsection shall not exceed 6 months.
- (c) Within the period of committal authorised by the court under this subsection the approved medical officer concerned shall report to the court on whether in his or her opinion the accused person committed under *paragraph (a)* is suffering from a mental disorder (within the meaning of the Act of 2001) and is in need of in-patient care or treatment in a designated centre.

(4) Where on a trial for murder the accused contends—

- (a) that at the time of the alleged offence he or she was suffering from a mental disorder such that he or she ought to be found not guilty by reason of insanity, or
- (b) that at that time he or she was suffering from a mental disorder specified in *section 6(1)(c)*,

the court shall allow the prosecution to adduce evidence tending to prove the other of those contentions, and may give directions as to the stage of the proceedings at which the prosecution may adduce such evidence.

6.—(1) Where a person is tried for murder and the jury or, as the case may be, the Special Criminal Court finds that the person— Diminished responsibility.

- (a) did the act alleged,
- (b) was at the time suffering from a mental disorder, and
- (c) the mental disorder was not such as to justify finding him or her not guilty by reason of insanity, but was such as to diminish substantially his or her responsibility for the act,

the jury or court, as the case may be, shall find the person not guilty of that offence but guilty of manslaughter on the ground of diminished responsibility.

(2) Subject to *section 5(4)*, where a person is tried for the offence specified in *subsection (1)*, it shall be for the defence to establish that the person is, by virtue of this section, not liable to be convicted of that offence.

(3) A woman found guilty of infanticide may be dealt with in accordance with *subsection (1)*.

7.—(1) An appeal shall lie to the Circuit Court from a determination by the District Court, pursuant to *section 4(3)*, that an accused person is unfit to be tried. Appeals (fitness to be tried).

(2) On an appeal from a determination referred to in *subsection (1)*, the Circuit Court shall, if it allows the appeal, order that the appellant be tried or retried, as the case may be, by the District Court for the offence alleged, but if the District Court, pursuant to *section 4(7)*, postponed consideration of the question as to the accused's fitness to be tried and the Circuit Court is of opinion that the appellant ought to have been found not guilty before the question as to fitness to be tried was considered, the court shall order that the appellant be acquitted.

(3) An appeal shall lie to the Court of Criminal Appeal from a determination by the Central Criminal Court, the Circuit Court or the Special Criminal Court that an accused person is unfit to be tried, and if the Court of Criminal Appeal allows the appeal it shall order that the appellant be tried or retried as the case may be for the offence alleged but if the court concerned, pursuant to *section 4(7)*, postponed consideration of the question as to the accused's fitness to be tried and the Court of Criminal Appeal is of opinion that the appellant ought to have been found not guilty before the question as to fitness to be tried was considered, the court shall order that the appellant be acquitted.

(4) Where an order is made pursuant to *subsection (2)* or *(3)* directing the accused be tried or retried, as the case may be, for the offence alleged, the accused may be tried or retried for an offence other than the offence alleged in respect of which he or she was found unfit to be tried being an offence of which he or she might be found guilty on a charge for the offence alleged.

(5) No appeal shall lie to the Supreme Court from a determination by a court that an accused person is unfit to be tried.

Appeals (not guilty by reason of insanity).

8.—(1) A person tried for an offence in the District Court and found not guilty by reason of insanity may appeal against the finding to the Circuit Court on any or all of the following grounds:

- (a) that it was not proved that he or she had committed the act in question;
- (b) that he or she was not, at the time when the act was committed, suffering from a mental disorder of the nature referred to in *section 5(1)(b)*;
- (c) that the District Court ought to have made a determination in respect of the person that he or she was unfit to be tried.

(2) If on an appeal to the Circuit Court on the ground referred to in *subsection (1)(a)*, the Court is satisfied that it was not established that the appellant had committed the act in question it shall order that the appellant be acquitted.

(3) If, on an appeal to the Circuit Court on the ground referred to in *subsection (1)(b)*, the court is satisfied that the appellant committed the act alleged but having considered the evidence or any new evidence relating to the mental condition of the appellant given by a consultant psychiatrist is satisfied that he or she was not suffering from a mental disorder of the nature referred to in *section 5(1)(b)*, the court shall substitute a verdict of guilty of the offence charged or of any other offence of which it is satisfied that the person could (by virtue of the charge) and ought to have been convicted, and shall have the like powers of punishing or otherwise dealing with the person as the District Court would have had if the person had been convicted of the offence in respect of which the verdict of guilty has been so substituted.

(4) If, on appeal to the Circuit Court on the ground set out at *subsection (1)(c)*, the court is satisfied that the appellant ought to have been found unfit to be tried it shall make a finding to that effect and, in that case the provisions of *section 4(5)(c)* shall apply.

(5) If on appeal to the Circuit Court the court is satisfied, having considered the evidence or any new evidence relating to the mental condition of the appellant, that he or she was at the time that the offence alleged was committed suffering from a mental disorder of the nature referred to in *section 5(1)(b)* and that but for that disorder the appellant would have been found guilty of the offence charged or of another offence of which the person could have been found guilty by virtue of the charge, the court shall dismiss the appeal.

(6) A person tried on indictment in the Circuit Court, the Central Criminal Court or the Special Criminal Court and found not guilty by reason of insanity may appeal against the finding to the Court of Criminal Appeal on one or more or all of the following grounds:

- (a) that it was not proved that he or she had committed the act in question;
- (b) that he or she was not, at the time when the act was committed, suffering from any mental disorder of the nature referred to in *section 5(1)(b)*;

- (c) that the court ought to have made a determination in respect of this person that he or she was unfit to be tried.

(7) Subject to *section 9*, if on an appeal to the Court of Criminal Appeal on the grounds referred to in *subsection (6)(a)* the court is satisfied that it was not proved that the appellant had committed the act in question it shall order that the appellant be acquitted.

(8) Subject to *section 9*, if on an appeal to the Court of Criminal Appeal on the ground referred to in *subsection (6)(b)* the court is satisfied that the appellant committed the act alleged but, having considered the evidence or any new evidence relating to the mental condition of the accused given by a consultant psychiatrist, is satisfied that he or she was not suffering from any mental disorder of the nature referred to in *section 5(1)(b)* the court shall substitute a verdict of guilty of the offence charged or, in the case of murder where *section 6(1)(c)* applies, guilty of manslaughter on the grounds of diminished responsibility or of any other offence of which it is satisfied that the person could (by virtue of the charge) and ought to have been convicted, and shall have the like powers of punishing or otherwise dealing with the person as the trial court would have had if the person had been convicted of the offence in respect of which the verdict of guilty has been so substituted.

(9) If, on an appeal to the Court of Criminal Appeal, on the ground set out at *subsection (6)(c)*, the court is satisfied that the appellant ought to have been found unfit to be tried it shall make a finding to that effect and, in that case the provisions of *section 4(5)(c)* shall apply.

(10) If, on an appeal to the Court of Criminal Appeal, the court is satisfied that the appellant was at the time that the offence alleged was committed suffering from a mental disorder of the nature referred to in *section 5(1)(b)* and that but for that disorder the appellant would have been found guilty of the offence charged or of another offence of which the person could have been found guilty by virtue of the charge, the court shall dismiss the appeal.

9.—(1) An appeal against a decision by the court of trial (but not a decision by an appellate court), to make or not to make an order of committal under *section 4(3)(b)*, *4(5)(c)*, *4(6)(a)*, *5(2)* or *5(3)* shall lie at the instance of the defence or the prosecution to the Circuit Court or the Court of Criminal Appeal, as may be appropriate, and the court hearing the appeal may, having considered the evidence or any new evidence relating to the mental condition of the accused given by a consultant psychiatrist, make such order, being an order that it was open to the court of trial to make, as it considers appropriate and, without prejudice to the provisions of *section 13* relating to the review of orders of committal, no further appeal shall lie from an order made on an appeal under this section.

Appeals
(supplemental
provisions).

(2) Where the Circuit Court or the Court of Criminal Appeal allows an appeal against a conviction or against a verdict of not guilty by reason of insanity on the ground that the appellant ought to have been found unfit to be tried, or allows an appeal against a conviction on the ground that the appellant ought to have been found not guilty by reason of insanity, it shall have the same powers to deal with the appellant as the court of trial would have had under *section 4* or *section 5* if it had come to the same conclusion.

(3) All ancillary and procedural provisions contained in a statute

or an instrument made under statute relating to appeals against convictions, including provisions relating to leave to appeal, shall apply with the necessary modifications to appeals under *sections 7, 8 and 9(1)*.

(4) The powers of an appellate court in an appeal under *section 7, 8 or 9(1)* shall include the power to make any such order as may be necessary for the purpose of doing justice in accordance with the provisions of this Act.

Establishment day. **10.**—The Minister may by order appoint a day to be the establishment day for the purpose of *section 11*.

Mental Health
(Criminal Law)
Review Board. **11.**—(1) On the establishment day there shall stand established a board to be known as *An Bord Athbhreithnithe Meabhair-Shláinte (An Dlí Coiriúil)* or, in the English Language, the Mental Health (Criminal Law) Review Board (in this Act referred to as “the Review Board”) to perform the functions conferred on it by or under this Act.

(2) The Review Board shall be independent in the exercise of its functions under this Act and shall have regard to the welfare and safety of the person whose detention it reviews under this Act and to the public interest.

(3) The provisions of *Schedule 1* shall have effect in relation to the Review Board.

Powers of Review
Board. **12.**—(1) The Review Board shall—

- (a) hold sittings for the purpose of a review by it under this Act and at the sittings may receive submissions and such evidence as it thinks fit,
- (b) take account of the court record (if any) of the proceedings of the court to whose decision the request for review relates and, where such a record exists, the court shall make it available to the Board,
- (c) assign a legal representative to a patient the subject of the review unless he or she proposes to engage one.

(2) The Review Board may, for the purposes of its functions—

- (a) subject to *subsection (10)*, direct in writing the consultant psychiatrist responsible for the care or treatment of a patient the subject of the review concerned to arrange for the patient to attend before the Review Board on a date and at a time and place specified in the direction,
- (b) direct in writing any person whose evidence is required by the Review Board to attend before the Review Board on a date and at a time and place specified in the direction and there to give evidence and to produce any document or thing in his or her possession or power specified in the direction,
- (c) direct any person in attendance before the Review Board to produce to the Review Board any document or thing

in his or her possession or power specified in the direction,

- (d) direct in writing any person to send to the Review Board any document or thing in his or her possession or power specified in the direction, and
- (e) give any other directions for the purpose of the proceedings concerned that appear to the Review Board to be reasonable and just.

(3) The reasonable expenses of witnesses directed under *subsection (2)(b)* to attend before the Review Board shall be paid by the Board out of moneys at the disposal of the Board.

(4) A person who—

- (a) having been directed under *subsection (2)* to attend before the Review Board and, in the case of a person so directed under *paragraph (b)* of that subsection, having had tendered to him or her any sum in respect of the expenses of his or her attendance which a witness summoned to attend before the High Court would be entitled to have tendered to him or her, without just cause or excuse disobeys the direction,
- (b) being in attendance before the Review Board pursuant to a direction under *paragraph (b)* of *subsection (2)*, refuses to take the oath on being required by the Review Board to do so or refuses to answer any question to which the Review Board may legally require an answer or to produce any document or thing in his or her possession or power legally required by the Review Board to be produced by the person,
- (c) fails or refuses to send to the Review Board any document or thing legally required by the Review Board under *paragraph (d)* of *subsection (2)* to be sent to it by the person or without just cause or excuse disobeys a direction under *paragraph (c), (d)* or *(e)* of that subsection, or
- (d) does any other thing in relation to the proceedings before the Review Board which, if done in relation to proceedings before a court by a witness in the court, would be contempt of that court,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months or to both.

(5) If a person gives false evidence before a Review Board in such circumstances that, if he or she had given the evidence before a court, he or she would be guilty of perjury, he or she shall be guilty of that offence.

(6) The procedure of the Review Board in relation to a review by it under this Act shall, subject to the provisions of this Act be such as shall be determined by the Review Board with the consent of the Minister and the Review Board shall, without prejudice to the generality of the foregoing, make provision for—

- (a) for the purpose of *subsection (1)(c)*, the making, with the consent of the Minister and the Minister for Finance, of

a scheme or schemes for the granting by the Review Board of legal aid to patients,

- (b) notifying the consultant psychiatrist responsible for the care or treatment of the patient the subject of the review and the patient and his or her legal representative of the date, time and place of the relevant sitting of the Review Board,
 - (c) giving the patient the subject of the review and his or her legal representative a copy of any document furnished to the Review Board and an indication in writing of the nature and source of any information relating to the matter which has come to notice in the course of the review,
 - (d) subject to *subsection (10)*, enabling the patient the subject of the review and his or her legal representative to be present at the relevant sitting of the Review Board and enabling the patient the subject of the review to present his or her case to the Review Board in person or through a legal representative,
 - (e) enabling the Minister, the Director of Public Prosecutions and, where appropriate, the Minister for Defence to be heard or represented at sittings of the Review Board,
 - (f) enabling written statements to be admissible as evidence by the Review Board with the consent of the patient the subject of the review or his or her legal representative,
 - (g) enabling any signature appearing on a document produced before the Review Board to be taken, in the absence of evidence to the contrary, to be that of the person whose signature it purports to be,
 - (h) the examination by or on behalf of the Review Board and the cross-examination by or on behalf of the patient the subject of the review concerned on oath or otherwise as it may determine of witnesses before the Review Board called by it,
 - (i) the examination by or on behalf of the patient the subject of the review and the cross-examination by or on behalf of the Review Board (on oath or otherwise as the Review Board may determine), of witnesses before the Review Board called by the patient the subject of the review,
 - (j) the determination by the Review Board whether evidence at the Review Board should be given on oath or otherwise,
 - (k) the administration by the Review Board of the oath to witnesses before the Review Board, and
 - (l) the making of a sufficient record of the proceedings of the Review Board.
- (7) A witness whose evidence has been, is being or is to be given before the Review Board in proceedings under this Act shall be entitled to the same privileges and immunities as a witness in a court.

(8) Sitings of a Review Board for the purposes of an investigation by it under this Act shall be held in private.

(9) The following shall be absolutely privileged:

- (a) documents of the Review Board and documents of its members connected with the Review Board or its functions, wherever published;
- (b) reports of the Review Board, wherever published;
- (c) statements made in any form at meetings or sittings of the Review Board by its members or officials and such statements wherever published subsequently.

(10) A patient shall not be required to attend before the Review Board under this section if, in the opinion of the Review Board, such attendance might be prejudicial to his or her mental health, well-being or emotional condition.

13.—(1) Where a person is detained under this Act in a designated centre being a prison, the duties and powers conferred by this section and by *section 14* of this Act on a clinical director shall be carried out by the governor of the prison on the advice of an approved medical officer. Review of detention.

(2) The Review Board shall ensure that the detention of a patient is reviewed at intervals of such length not being more than 6 months as it considers appropriate and the clinical director of the designated centre where the patient is detained shall comply with any request by the Review Board in connection with the review.

(3) (a) Where the clinical director of a designated centre forms the opinion in relation to a patient detained pursuant to *section 4* that the patient is no longer unfit to be tried for an offence he or she shall forthwith notify the court that committed the patient to the designated centre of this opinion and the court shall order that the patient be brought before it, as soon as may be, to be dealt with as the court thinks proper.

(b) Where the clinical director of a designated centre forms the opinion in relation to a patient detained pursuant to section 202 of the Defence Act 1954, that the patient is no longer unfit to take his or her trial he or she shall forthwith notify a convening authority (within the meaning of Chapter V of the Defence Act 1954) of this opinion and the convening authority shall convene a court-martial which may thereupon order that the patient be brought before it as soon as may be to be dealt with as the court martial thinks proper.

(4) Where the clinical director of a designated centre forms the opinion in relation to a patient detained pursuant to *section 4* or to section 202 of the Defence Act 1954, that the patient, although still unfit to be tried, is no longer in need of in-patient care or treatment at a designated centre he or she shall forthwith notify the Review Board of this opinion.

(5) Where the Review Board receives a notification under *subsection (4)*, it shall order that the patient be brought before it as soon as may be, and shall, having heard evidence relating to the mental

condition of the patient given by the consultant psychiatrist responsible for his or her care or treatment, determine the question whether or not the treatment referred to in *subsection (4)* is still required in the same manner as if that question were being determined pursuant to the relevant provision of this Act or the Defence Act 1954, as may be appropriate, and shall make such order as it thinks proper in relation to the patient, whether for further detention, care or treatment in a designated centre or for his or her discharge whether unconditionally or subject to conditions for out-patient treatment or supervision or both.

(6) Where the clinical director of a designated centre forms the opinion in relation to a patient detained pursuant to *section 5* or *section 203* of the Defence Act 1954, that he or she is no longer in need of in-patient care or treatment at a designated centre he or she shall forthwith notify the Review Board of this opinion.

(7) Where the Review Board receives a notification under *subsection (6)*, it shall order that the patient be brought before it, as soon as may be, and shall, having heard evidence relating to the mental condition of the patient given by the consultant psychiatrist responsible for his or her care or treatment, determine the question whether or not the treatment referred to in *subsection (6)* is still required and shall make such order as it thinks proper in relation to the patient, whether for further detention, care or treatment in a designated centre or for his or her discharge whether unconditionally or subject to conditions for out-patient treatment or supervision or both.

(8) A patient detained pursuant to *section 4* or to *section 202* of the Defence Act 1954, may apply to the Review Board for a review of his or her detention and the Review Board shall, unless satisfied that such a review is not necessary because of any review undertaken in accordance with this section, order that the patient be brought before it, as soon as may be, and—

- (a) if, having heard evidence relating to the mental condition of the patient given by the consultant psychiatrist responsible for his or her care or treatment, the Review Board determines that he or she is no longer unfit to be tried by reason of mental disorder or to participate in proceedings referred to in *section 4* it shall order that the patient be brought before the court which committed him or her to the designated centre to be dealt with as that court thinks proper or in the case of a patient detained pursuant to *section 202* of the Defence Act 1954, it shall notify a convening authority (within the meaning of Chapter V of the Defence Act 1954) and the convening authority shall convene a court-martial which shall order that the patient be brought before it to be dealt with as the court-martial thinks proper, or
- (b) if the Review Board determines that the patient, although still unfit to be tried is no longer in need of in-patient care or treatment at a designated centre, the Review Board may make such order as it thinks proper in relation to the patient, whether for further detention, care or treatment in a designated centre or for his or her discharge whether unconditionally or subject to conditions for out-patient treatment or supervision or both.

(9) A patient detained pursuant to *section 5* or to *section 203* of the Defence Act 1954, may apply to the Review Board for a review of his or her detention and the Review Board shall, unless satisfied

that such a review is not necessary because of any review undertaken in accordance with this section, order that the patient be brought before it, as soon as may be, and shall, having heard evidence relating to the mental condition of the patient given by the consultant psychiatrist responsible for his or her care or treatment, determine the question of whether or not the patient is still in need of in-patient treatment in a designated centre and shall make such order as it thinks proper in relation to the patient whether for further detention, care or treatment in a designated centre or for his or her discharge whether unconditionally or subject to conditions for out-patient treatment or supervision or both.

(10) The Review Board may on its own initiative review the detention of a patient detained pursuant to *section 4* or *5* or to *section 202* or *203* of the Defence Act 1954, and *subsection (8)* or *(9)*, as appropriate, shall apply to such review as if the patient had applied for the review under the subsection concerned.

14.—(1) The clinical director of a designated centre may, with the consent of the Minister, direct the temporary release of a patient on such conditions and for such period or periods as the clinical director deems appropriate. Temporary release, transfer and other matters.

(2) The clinical director of a designated centre may, with the consent of the Minister and the Minister for Health and Children, direct the transfer to another designated centre of a patient on such condition and for such period or periods as the clinical director deems appropriate with the consent of the clinical director of the other centre.

(3) Where the release or transfer of a patient under *subsection (1)* or *(2)* is made subject to conditions, the conditions shall be communicated to the patient by notice in writing at the time of his or her release or transfer.

(4) A patient whose temporary release or transfer is directed under this section shall comply with any conditions to which his or her release or transfer is made subject.

(5) A patient who, by reason of having been temporarily released from a designated centre, is at large shall be deemed to be unlawfully at large if—

- (a) the period for which he or she was temporarily released has expired, or
- (b) a condition to which his or her release was made subject has been broken.

(6) Where, by reason of the breach of a condition to which his or her release was made subject, a patient is deemed to be unlawfully at large and is arrested under *subsection (7)* or otherwise or returns voluntarily, the period for which he or she was temporarily released shall thereupon be deemed to have expired.

(7) Without prejudice to any other power conferred by law, a member of the Garda Síochána shall, or an officer or servant of the designated centre may, arrest without warrant any person whom he or she suspects to be unlawfully at large while subject to an order for his or her detention in a designated centre under this Act and bring him or her back to such centre.

(8) (a) A patient may be removed from a designated centre to a hospital in order to receive medical attention not available in the designated centre and while detained in that hospital he or she shall be in lawful custody.

(b) Where a patient is removed from a designated centre pursuant to this subsection the clinical director shall within 48 hours of such removal forward a report of the circumstances regarding the removal to the Minister.

(9) The Minister may, where he or she is satisfied that it is in the interests of justice to do so, direct that a patient be removed from a designated centre to a specified place and during such authorised absence the patient shall be deemed to remain in the lawful custody of the designated centre.

Transfer of prisoner
to designated
centre.

15.—(1) Where—

(a) a relevant officer certifies in writing that a prisoner is suffering from a mental disorder for which he or she cannot be afforded appropriate care or treatment within the prison in which the prisoner is detained, and

(b) the prisoner voluntarily consents to be transferred from the prison to a designated centre for the purpose of receiving care or treatment for the mental disorder,

then the Governor of the prison may direct in writing the transfer of the prisoner to any designated centre for that purpose.

(2) Where 2 or more relevant officers certify in writing that a prisoner is suffering from a mental disorder for which he or she cannot be afforded appropriate care or treatment within the prison in which the prisoner is detained, then the Governor of the prison may direct in writing the transfer of the prisoner to any designated centre for the purpose of the prisoner receiving care or treatment for the mental disorder notwithstanding that the prisoner is unwilling or unable to voluntarily consent to the transfer.

(3) The Governor of a prison who gives a direction under *subsection (1)* or *(2)* shall cause—

(a) the original of the direction to be sent to the clinical director of the designated centre to which the prisoner the subject of the direction is to be transferred,

(b) a copy of the direction to be given to the prisoner before the prisoner is transferred to the centre,

(c) a copy of the direction to be sent to the Minister, and

(d) where *subsection (2)* is applicable—

(i) the original of the certification concerned referred to in that subsection to accompany the original referred to in *paragraph (a)*,

(ii) a copy of that certification to accompany the copy referred to in *paragraph (b)*, and

(iii) a copy of that certification to accompany the copy referred to in *paragraph (c)*.

(4) A direction under *subsection (1)* and (2) shall be sufficient authority to transfer the prisoner the subject of the direction from the prison in which the prisoner is detained to the designated centre specified in the direction.

(5) Where a prisoner who has been transferred to a designated centre pursuant to a direction under *subsection (1)* refuses to receive care or treatment there for a mental disorder, then—

(a) if 2 or more relevant officers certify in writing that the prisoner is suffering from a mental disorder for which the prisoner should remain in the centre for the purpose of the prisoner receiving care or treatment for the mental disorder, the prisoner shall continue to remain in the centre for that purpose,

(b) in any other case—

(i) the prisoner shall be transferred back to the prison from which he or she was transferred to the centre, or

(ii) the prisoner shall be transferred to such other prison as the Minister considers appropriate in all the circumstances of the case.

(6) Where *subsection (5)(a)* is applicable to a prisoner transferred to a designated centre, the clinical director of the centre shall cause—

(a) a copy of the certification referred to in that subsection to be given to the prisoner as soon as is practicable after the certification has been made, and

(b) a copy of that certification to be sent to the Minister as soon as practicable after the certification has been made.

(7) Where a prisoner transferred to a designated centre pursuant to a direction under *subsection (1)* or (2) is required to appear in court, the prisoner may be transferred to and from court as so required.

(8) A prisoner transferred under this section—

(a) from a prison to a designated centre is deemed to be in lawful custody while being so transferred, while at the centre and while being transferred back to prison,

(b) from a designated centre to a court is deemed to be in lawful custody while being so transferred, while in court and while being transferred back to the centre,

(c) while being so transferred may be escorted by any members of the staff of the prison or centre, and

(d) while being so escorted by any such members is deemed to be in their lawful custody.

(9) In this section, “relevant officer” means—

(a) an approved medical officer, or

(b) a person registered in the General Register of Medical

Practitioners established under the Medical Practitioners
Acts 1978 to 2002.

Clinical director of
designated centre to
be notified of date
on which prisoner
detained in centre
ceases to be
prisoner, etc.

16.—(1) Where a prisoner is detained in a designated centre pursuant to *section 15*, the Governor of the prison from which the prisoner was transferred to the centre shall, as soon as it is practicable to do so, give notice in writing to the clinical director of the centre of—

(a) the date, if known, on which the prisoner will cease to be a prisoner, and

(b) any change to such date.

(2) Nothing in this Act shall be construed as prohibiting or restricting, on and after the date on which a prisoner who is detained in a designated centre pursuant to *section 15* ceases to be a prisoner, the voluntary or involuntary admission to or detention in any place of the former prisoner pursuant to the provisions of the Act of 2001 or any other enactment.

(3) Nothing in this Act shall be construed as prohibiting or restricting any steps being taken, before the date on which a prisoner who is detained in a designated centre pursuant to *section 15* ceases to be a prisoner, to ascertain whether or not the prisoner should, on or after that date, be admitted or detained as mentioned in *subsection (2)*.

Review of
prisoner's detention
in designated
centre.

17.—(1) Where the Minister is satisfied that it is in the interests of justice to do so, the Minister may direct the Review Board to review the detention of a prisoner in a designated centre in any case where the detention arises pursuant to a certification referred to in *section 15(2)* or *(5)(a)*.

(2) The Review Board shall ensure that the detention of a prisoner in a designated centre pursuant to *section 15* is reviewed at intervals of such length not being more than 6 months as it considers appropriate and the clinical director of the centre shall comply with any request by the Review Board in connection with the review.

(3) A prisoner detained in a designated centre pursuant to *section 15* may apply to the Review Board for a review of his or her detention and the Review Board shall, unless satisfied that the review is, in all the circumstances of the case, not necessary, conduct the review and—

(a) if satisfied that the prisoner is suffering from or continues to suffer from a mental disorder for which he or she cannot be afforded appropriate treatment within the prison from which the prisoner was transferred to the centre, refuse to make an order referred to in *paragraph (b)*,

(b) in any other case, after consultation with the Minister—

(i) order the prisoner to be transferred back to the prison from which he or she was transferred to the centre, or

(ii) order the prisoner to be transferred to such other prison as the Minister considers appropriate in all the circumstances of the case.

(4) Notwithstanding *subsection (1)*, the Review Board may on its own initiative review the detention of a prisoner in a designated centre pursuant to *section 15*, and *subsection (3)* shall apply to such review as if the prisoner had applied for the review under that subsection.

(5) This section shall, with all necessary modifications, apply to a prisoner detained in a relevant place before the commencement of this section as it applies to a prisoner detained in a designated centre on or after that commencement.

(6) In *subsection (5)*, “relevant place” means any place which, on or after the commencement of this section, is a designated centre.

18.—Where the clinical director of a designated centre forms the opinion in relation to a prisoner detained in the centre pursuant to *section 15* that he or she is no longer in need of in-patient care or treatment he or she shall, after consultation with the Minister, direct in writing—

Transfer back to prison.

(a) the transfer of the prisoner back to the prison from which he or she was transferred to the centre, or

(b) the transfer of the prisoner to such other prison as the Minister considers appropriate in all the circumstances of the case.

19.—(1) Where in any proceedings for an offence the defence intends to adduce evidence as to the mental condition of the accused, notice of the intention shall be given to the prosecution within 10 days of the accused being asked how he or she wishes to plead to the charge.

Notice to be given of intention to adduce evidence as to mental condition, etc.

(2) Where the notice referred to in *subsection (1)* is not given within the period specified in that subsection, then, without prejudice to any other provision of this Act, evidence shall not, without leave of the court, be adduced by the defence during the course of the trial for the offence concerned as to the mental condition of the accused.

(3) A notice referred to in *subsection (1)* shall be in such form as rules of court provide.

20.—(1) This Act shall apply to a person detained under section 17 of the Lunacy (Ireland) Act 1821, as if he or she were a person detained pursuant to an order under *section 4* and, accordingly, such a person shall be entitled to the benefit of the provisions of this Act.

Application to existing detentions.

(2) This Act shall apply to a person found guilty but insane and detained under section 2 of the Trial of Lunatics Act 1883, as if he or she were a person detained pursuant to an order of the court made under *section 5* and, accordingly, such a person shall be entitled to the benefit of the provisions of this Act.

Amendment of
Defence Act 1954.

21.—The Defence Act 1954, is hereby amended by the substitution for sections 202, 203 and 203A thereof of the following sections:

“Mental
disorder at
time of trial.

202.—(1) Where at the trial by court-martial of a person charged with an offence it appears that such person is by reason of mental disorder unfit to take his trial the following provisions, subject to subsection (4), shall have effect, that is to say:

- (a) the court-martial shall find specially that fact,
- (b) the court-martial, if it is satisfied having heard evidence relating to the mental condition of the person given by a consultant psychiatrist that such person is suffering from a mental disorder (within the meaning of the Act of 2001) and is in need of in-patient care or treatment in a designated centre, shall commit him to a specified designated centre until an order is made under *section 13 of the Criminal Law (Insanity) Act 2006*.

(2) A finding under this section shall not require confirmation or be subject to revision.

(3) A person charged with an offence shall not be fit to take his trial if he is unable by reason of mental disorder to understand the nature or course of the proceedings so as to—

- (a) plead to the charge,
- (b) instruct a legal representative,
- (c) make a proper defence, or
- (d) understand the evidence.

(4) After the court-martial has found that a person charged with an offence is unfit to take his trial, it may on application to it and without prejudice to any further proceedings allow evidence to be adduced before it as to whether or not that person did the act or made the omission alleged against him and if the court-martial is satisfied that there is a reasonable doubt that the person committed that act or made the omission it shall acquit him.

(5) In this section and in section 203 of this Act ‘mental disorder’ and ‘designated centre’ shall have the meanings respectively assigned to them by *section 1 of the Criminal Law (Insanity) Act 2006*, unless the context otherwise requires.

Mental
disorder at
time of
commission of
offence.

203.—(1) Where at the trial by court-martial of a person charged with an offence, the court-martial finds that the person did the act or made the omission charged but, having heard evidence

relating to his mental condition given by a consultant psychiatrist, finds that he was at the time when he did the act or made the omission suffering from a mental disorder and that the mental disorder was such that he should not be held responsible for the act or omission alleged by reason of the fact that—

- (a) he did not know the nature and quality of the act he was doing, or
- (b) he did not know what he was doing was wrong, or
- (c) he was unable to refrain from committing the act or making the omission,

the court-martial shall specially find that the person is not guilty by reason of insanity.

(2) If the court-martial having considered any evidence adduced before it is satisfied that the person found not guilty by reason of insanity is suffering from a mental disorder (within the meaning of the Act of 2001) and is in need of in-patient care or treatment in a designated centre the court-martial shall, after consultation with the clinical director of the designated centre concerned, commit him to a specified designated centre until an order is made under *section 13* of the *Criminal Law (Insanity) Act 2006*.

(3) A finding under this section shall not require confirmation or be subject to revision.

Diminished responsibility. 203A.—*Section 6* of the *Criminal Law (Insanity) Act 2006*, shall apply with any necessary modifications to a person subject to military law who is tried by court-martial for murder as it applies to a person who is tried for murder.”.

22.—*Section 1(3)* of the *Infanticide Act 1949* is hereby amended— Amendment of Infanticide Act 1949.

- (a) in subsection (3)(c), by the substitution of “by reason of a mental disorder (within the meaning of the *Criminal Law (Insanity) Act 2006*)” for “by reason of the effect of lactation”, and
- (b) by the substitution of “as for manslaughter and, on conviction may be dealt with under *section 6(3)* of the *Criminal Law (Insanity) Act 2006* as if she had been found guilty of manslaughter on the grounds of diminished responsibility” for “and punished as for manslaughter”.

23.—The expenses incurred by the Minister and the Minister for Health and Children in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. Expenses.

24.—The Minister may, in each financial year, after consultation with the Review Board in relation to its proposed work programme and expenditure for that year, make grants of such amount as may Grants to Review Board.

be sanctioned by the Minister for Finance out of moneys provided by the Oireachtas towards other expenditure incurred by the Review Board in the performance of its functions.

Repeals and
transitional
provision.

25.—(1) The enactments specified in *column 3* of *Schedule 2* to this Act opposite a reference number specified in *column 1* are hereby repealed to the extent specified in *column 4* of that Schedule opposite the mention of that reference number.

(2) An instrument made under an enactment repealed by this Act and in force immediately before the commencement of this section shall, notwithstanding the repeal, continue in force after such commencement.

Short title and
commencement.

26.—(1) This Act may be cited as the Criminal Law (Insanity) Act 2006.

(2) This Act shall come into operation on such day or days as, by order or orders made by the Minister under this section, may be fixed therefor either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions.

Section 11.

SCHEDULE 1

MENTAL HEALTH (CRIMINAL LAW) REVIEW BOARD

1. The Review Board shall consist of a chairperson and such number of members as the Minister, after consultation with the Minister for Health and Children, may from time to time as the occasion requires appoint. The Review Board shall have as an ordinary member, at least one approved medical officer.

2. The chairperson shall have had not less than 10 years' experience as a practising barrister or practising solicitor ending immediately before his or her appointment or shall be a judge of or former judge of the Circuit Court, High Court or Supreme Court.

3. The members of the Review Board shall, subject to the provisions of this Schedule, hold office upon such terms and conditions as the Minister may determine.

4. The term of office of a member of the Review Board shall be 5 years and subject to the provisions of this Schedule, he or she shall be eligible for re-appointment as such member.

5. A member of the Review Board may at any time resign his or her office by letter addressed to the Minister and the resignation shall take effect on and from the date of receipt of the letter.

6. A member of the Review Board may be removed from office by the Minister, after consultation with the Minister for Health and Children, for stated reasons.

7. The chairperson other than a chairperson who is a serving judge and each member of the Review Board shall be paid, out of monies provided by the Oireachtas, such remuneration (if any) and such allowances or expenses as the Minister may, with the consent of the Minister for Finance, determine.

8. If a member of the Review Board dies, resigns, becomes disqualified or is removed from office, the Minister may appoint another person to be a member of the Review Board to fill the casual vacancy so occasioned and the person so appointed shall be appointed in the same manner as the member of the Review Board who occasioned the vacancy and shall hold office for the remainder of the term of office for which his or her predecessor was appointed.

9. The Minister may appoint such and so many persons to be members of the staff of the Review Board as he or she considers necessary to assist the Review Board in the performance of its functions and such members of the staff of the Review Board shall hold their offices or employment on such terms and subject to such conditions and receive such remuneration as the Minister may, with the consent of the Minister for Finance, determine.

10. Members of the staff of the Review Board shall be civil servants within the meaning of the Civil Service Regulation Act 1956.

11. The Review Board shall hold such sittings as may be necessary for the performance of its functions under this Act.

12. Every question at a sitting of the Review Board shall be determined by a majority of the votes of the members voting on the question and, in the case of an equal division of votes, the chairperson shall have a casting vote.

13. Subject to the provisions of this Schedule, the Review Board shall establish its own rules of procedure.

SCHEDULE 2

ENACTMENTS REPEALED

Reference Number	Session and Chapter or Year and Number	Short Title	Extent of Repeal
(1)	(2)	(3)	(4)
1.	39 & 40 Geo. 3 c.94	Criminal Lunatics Act 1800	The whole Act
2.	1 & 2 Geo. 4 c.33	Lunacy (Ireland) Act 1821	Sections 17 and 18
3.	1 Vict., c.27	Criminal Lunatics (Ireland) Act 1838	Sections 2 and 3
4.	8 & 9 Vict., c. 107	Central Criminal Lunatic Asylum (Ireland) Act 1845	Sections 8 and 12
5.	38 & 39 Vict., c.67	Lunatic Asylums (Ireland) Act 1875	Section 13
6.	46 & 47 Vict., c.38	Trial of Lunatics Act 1883	The whole Act
7.	1924, No. 10	Courts of Justice Act 1924	Section 35
8.	1960, No. 27	Criminal Justice Act 1960	Section 8
9.	1976, No. 4	Juries Act 1976	Section 19(2)
10.	1999, No. 10	Criminal Justice Act 1999	Section 4A(1)(c)

Commissions of Investigation Act 2004



Number 23 of 2004

COMMISSIONS OF INVESTIGATION ACT 2004

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY MATTERS

Section

1. Short title.
2. Interpretation.

PART 2

ESTABLISHMENT, MEMBERSHIP AND INDEPENDENCE OF COMMISSIONS

3. Establishment of commissions.
4. How terms of reference are to be set.
5. Content of terms of reference and accompanying statement.
6. Amendment of terms of reference and accompanying statement.
7. Membership.
8. Advice and assistance.
9. Independence.

PART 3

INVESTIGATIONS AND RELATED MATTERS

10. Conduct of investigations.
11. In general evidence to be given in private.
12. Duty to disclose substance of evidence to other witnesses, etc., and to give them a chance to comment.

Section

13. Duty to inform witnesses of commissions' powers and to advise them of their own rights and obligations.
14. Form and manner in which evidence may be given.
15. Powers to establish rules and procedures relating to evidence and submissions.
16. Powers relating to witnesses and documents.
17. Power to direct certain persons to pay costs.
18. Offence of making false statement.
19. Evidence given to commissions not admissible in certain proceedings.
20. Privileges and immunities of witnesses.
21. Determinations on privilege.
22. Right of appeal to High Court against determinations on privilege.
23. Guidelines concerning recovery of legal costs necessarily incurred by witnesses.
24. Request for recovery of legal costs necessarily incurred and certain other expenses.
25. Signing of written directions.

PART 4

OTHER POWERS RELATING TO INVESTIGATIONS

26. Persons authorised to exercise powers of entry, inspection, etc.
27. Governing principle for exercise of powers of entry, inspection, etc.
28. Powers of entry, inspection, etc.
29. Power of District Court to issue warrant authorising entry.
30. Offence of obstructing, etc., authorised persons.
31. Preservation of documents.

PART 5

REPORTS AND RECORDS OF COMMISSIONS

32. Preparation and content of final reports.
33. Interim reports.

Section

34. Draft reports to be sent to certain persons.
35. Amendment of draft reports for reasons relating to failure to observe fair procedures.
36. Amendment of draft reports to preserve confidentiality of sensitive commercial information.
37. Confidentiality of draft reports.
38. Publication of final and interim reports.
39. Restriction of Data Protection Act 1988.
40. Restriction of Freedom of Information Acts 1997 to 2003.
41. Availability of records for inspection by public under National Archives Act 1986.

PART 6

MISCELLANEOUS MATTERS

42. Privilege of members and persons appointed under *section 8*.
 43. Dissolution of commissions.
 44. If a tribunal of inquiry is established.
 45. Commissions' evidence and documents to be available to tribunals.
 46. Protection of identifying information by tribunals.
 47. Proceedings in the High Court.
 48. Offences by bodies corporate.
 49. Prosecutions.
 50. Penalties for offences.
 51. Expenses.
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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;

“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.

Pr.2 S.3
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.

(4) Before appointing a person to be a member of a commission, the appointing authority (the specified Minister or the Government) shall be satisfied that, having regard to the subject matter of the investigation, the person has the appropriate experience, qualifications, training or expertise. Pr.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.

8.—(1) The chairperson of a commission or, if the commission consists of only one member, the sole member may, with the approval of the specified Minister given with the consent of the Minister for Finance— 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.

(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.

(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. Pr.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.

Pt.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 Pr.3 S.16 that the person objects to producing to the commission and the basis for the objection;
 - (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.

(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. Pr.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

- (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

Pr.3 S.21

(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.

Pt.3

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—

Pr.3 S.24

- (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*.

(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. Pr.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.

Pt.4
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

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 or impair the commission's investigation. Pr.5 S.38

(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

PT.5 S.40

(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; Pr.6 S.42
- (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.

(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.

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. Pt.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.

Pt.6
Expenses.

51.—(1) If the Minister for Finance is the specified Minister in relation to a commission, any expenses incurred by him or her in the administration of this Act shall be paid out of money provided by the Oireachtas.

(2) If any other Minister is the specified Minister in relation to a commission, any expenses incurred by him or her in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of money provided by the Oireachtas.