

**GENERAL SCHEME OF THE  
HOUSES OF THE OIREACHTAS (POWERS OF INQUIRY) BILL 2011**

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#### ACTS REFERRED TO

Data Protection Act 1988	1988, No. 25
Freedom of Information Acts 1997 to 2003	
Official Secrets Act 1963	1963, No. 1
Petty Sessions (Ireland) Act 1851	1851, (14&15 Vict.) c.93
Tribunals of Inquiry (Evidence) Acts 1921 to 2011	

PRELIMINARY AND GENERAL

**Head 1: Short title, commencement and cesser.**

- 1.\_\_(1) This Act may be cited as the Houses of the Oireachtas (Powers of Inquiry) Act 2011.
- (2) (a) Where either House by resolution so declares, this Act, in so far as it applies to that House and its members and officers and its committees and their members and officers, shall come into operation on such day as may be specified in the resolution.
- (b) Where each House by resolution so declares, this Act, in so far as it relates to committees appointed jointly by both Houses, their members and officers, shall come into operation on such day as may be specified in the resolution.
- (c) Where either House by resolution so declares, this Act, in so far as it applies to that House and its members and officers and its committees and their members and officers, shall cease to be in operation as on and after such day as may be specified in the resolution.
- (d) Where either House by resolution so declares, this Act, in so far as it relates to committees appointed jointly by both Houses, their members and officers, shall cease to be in operation as on and after such day as may be specified in the resolution.

**Explanatory Note - Head 1 states the short title of the Bill. It provides for the commencement of the Act by either House or both Houses through it being specified in a resolution. It also provides for application of the Act to cease in respect of either House or both Houses through it being specified in a resolution. The precedent for a commencement and cesser clause along the lines of subhead (2) is section 1 of the Ethics in Public Office Act 1995. The Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997 has a similar provision.**

## **Head 2: Interpretation.**

2.\_\_\_\_(1) In this Act -

“accompanying statement”, in relation to an inquiry, means the accompanying statement prepared under *section 7(4)(a)* in respect of the inquiry;

“appropriate person”, in relation to a relevant body, means -

- (a) if the body is the investigator, the requesting committee,
- (b) if the body is the requesting committee, the House;

“authorised person”, in relation to an inquiry, means a person appointed under *section 12(1)* to advise or assist the investigator in relation to any matter within the terms of reference for the inquiry;

“Commission” means the Houses of the Oireachtas Commission;

“committee” means a committee (other than the Committee on Members’ Interests of Dáil Éireann or Seanad Éireann, an Oversight Committee, or a sub-committee of any such committee) appointed by either House or jointly by both Houses upon which, pursuant to the applicable standing orders, a power to send for persons, papers or records has been conferred, and includes a sub-committee of such a committee;

“control”, includes procurement;

“Court” means the High Court;

“document” includes -

- (a) a book, record or other written or printed material in any form,
- (b) a map, plan or drawing,
- (c) a disc, tape or other device in which data other than visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the disc, tape or other device, and
- (d) a film, disc, tape or other device in which visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced from the film, disc, tape or other device;

“effectively”, in relation to an inquiry, includes efficiently and expeditiously;

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

“final report”, in relation to a relevant body, means the report under *section 30(1)* of the body in respect of the relevant matter;

“final report (inquiry)”, in relation to an inquiry, means the final report of the requesting committee;

“final report (investigator)”, in relation to an inquiry, means the final report of the investigator;

“House”, in relation to an inquiry, means -

- (a) subject to *paragraph (b)*, the House of the Oireachtas which passed the resolution referred to in *section 8(1)(b)* which gave rise to the inquiry, and
- (b) if both Houses of the Oireachtas so passed such resolution, both Houses;

“inquiry” means an inquiry conducted or to be conducted under this Act by the requesting committee (and, if applicable, the investigator) into the relevant matter in accordance with the terms of reference for the inquiry;

“interim report”, in relation to a relevant body, means an interim report under *section 29(1)* of the body in respect of the relevant proceedings;

“interim report (inquiry)”, in relation to an inquiry, means an interim report of the requesting committee;

“interim report (investigator)”, in relation to an inquiry, means an interim report of the investigator;

“investigation” -

- (a) in relation to an inquiry, means that part (if any) of the inquiry which comprises an investigation conducted or to be conducted under this Act into a relevant matter in accordance with the terms of reference for the inquiry, and
- (b) in relation to the investigator, means such investigation conducted or to be conducted by the investigator;

“investigator”, in relation to an inquiry, means the person (if any) appointed under *section 6(a)* to conduct the investigation into a relevant matter, and includes any successor in office by virtue of the operation of *section 8(3)* and *(4)*;

“Oversight Committee” -

- (a) in relation to committees of Dáil Éireann, means the Committee on Investigations, Oversight and Petitions of Dáil Éireann appointed under *section 4(1)*,
- (b) in relation to committees of Seanad Éireann, means the Committee on Investigations, Oversight and Petitions of Seanad Éireann appointed under *section 4(1)*, and
- (c) in relation to committees appointed jointly by both Houses, means the Oireachtas Joint Committee on Investigations, Oversight and Petitions referred to in *section 4(2)*,

and the term “the Oversight Committee” means, as the context may require, any of those committees or all of them;

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

“relevant body”, in relation to an inquiry, means, as the context may require -

- (a) the investigator conducting that part of the inquiry which is the investigation,
- (b) the requesting committee conducting that part of the inquiry which is not the investigation, or
- (c) both such investigator and such committee;

“relevant matter” means -

- (a) subject to *paragraph (b)*, a matter of general public importance referred to in *section 5(1)*, and
- (b) in relation to an inquiry, so much of such matter as is the subject of the inquiry;

“relevant proceedings”, in relation to an inquiry, means, as the context may require -

- (a) the proceedings of that part (if any) of the inquiry which is the investigation conducted by the investigator,
- (b) the proceedings of that part of the inquiry (not being proceedings which fall within *paragraph (a)*) conducted by the requesting committee, or
- (c) both such proceedings;

“relevant report”, in relation to a relevant body, means an interim report or the final report of the body;

“relevant report (inquiry)”, in relation to an inquiry, means an interim report or the final report of the requesting committee;

“relevant report (investigator)”, in relation to an inquiry, means an interim report or the final report of the investigator;

“requesting committee”, in relation to an inquiry, means the committee which made the application under *section 5(1)* which gave rise to the inquiry;

“standing orders”, in relation to a House, includes any order of the House made for the purposes of [Article 15.10.2.3 and 4] of the Constitution or this Act, or for the purpose of enabling either that Article or this Act, as the case may be, or both, to have full effect, and includes any order containing such incidental, supplementary or consequential provisions as appear to the House to be necessary or expedient for any of those purposes;

“terms of reference”, in relation to an inquiry, means the terms of reference for the inquiry set under *section 7* as the terms are amended from time to time under that section;

“tribunal” means a tribunal to which the Tribunals of Inquiry (Evidence) Acts 1921 to 2011 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) For the purposes of this Act, any requirement or discretion under this Act relating to a person (including the Oversight Committee and the requesting committee) consulting with another person (including the Oversight Committee and the requesting committee) on any matter shall not be construed to mean that the first-mentioned person is in any way bound by such consultation.

**Explanatory Note - Head 2 defines certain terms used in the Bill. In relation to records held by companies, it establishes by virtue of the officers functions or position that where a document is held by a company it is considered to be held by an officer of that company unless there is evidence to the contrary.**

**Head 3: Application of Act and power to correct errors.**

- 3.\_\_(1) The functions conferred by this Act are performable -
- (a) in aid of the power of inquiry conferred by Article 15.10.2.3 and 4 of the Constitution, and
  - (b) in accordance with any standing orders that are relevant to the function concerned.
- (2) The Oversight Committee has power to consider and to correct any defect, error or omission of a formal nature made by a committee in the performance of the committee's functions under this Act if the Oversight Committee is satisfied that -
- (a) the defect, error or omission, as the case may be, is non-substantial in nature, and
  - (b) a breach of the right to basic fairness of procedures would not be suffered by any person.
- (3) A House has power to consider and to correct any defect, error or omission of a formal nature made by the Oversight Committee in the performance of the Oversight Committee's functions under this Act if the House is satisfied that -
- (a) the defect, error or omission, as the case may be, is non-substantial in nature, and
  - (b) a breach of the right to basic fairness of procedures would not be suffered by any person.

**Explanatory Note - Head 3 allows the Oversight Committee to correct errors made by a committee where they fail to comply with the Act and where the error is not substantial in nature and would not breach the right to fairness of procedures. It also allows a House to correct errors made by the Oversight Committee where they fail to comply with the Act subject to the criteria outlined above. The language is based on section 45(c) of the European Arrest Warrant Act 2003, inserted by section 20 the Criminal Justice (Miscellaneous Provisions) Act 2009.**

## PART 2

### APPOINTMENT OF OVERSIGHT COMMITTEES, DETERMINATION OF APPLICATION FOR INQUIRY, TERMS OF REFERENCE FOR INQUIRY, AND RELATED MATTERS

#### **Head 4: Appointment, etc., of Oversight Committees.**

**4.** (1) Each House shall as soon as may be after the commencement of this section and, thereafter, as soon as may be after the first meeting of that House subsequent to a general election for members of that House, appoint a select committee which shall be known -

- (a) in the case of the committee appointed by Dáil Éireann, as the Committee on Investigations, Oversight and Petitions of Dáil Éireann,
- (b) in the case of the committee appointed by Seanad Éireann, as the Committee on Investigations, Oversight and Petitions of Seanad Éireann,

to perform, in addition to such other functions as it may be given, the functions conferred on it by this Act.

(2) The committees appointed under *subsection (1)* shall, as soon as may be after they are appointed, be joined together to form a joint committee, which shall be known as the Oireachtas Joint Committee on Investigations, Oversight and Petitions, to perform, in addition to such other functions as it may be given, the functions conferred on it by this Act.

**Explanatory Note - Head 4 provides for the establishment of a Committee on Investigations, Oversight and Petitions of each House once they have adopted this Act. Once established these Committees join to form a Joint Committee. Precedent for this approach can be found in sections 1 and 8 of the Ethics in Public Office Act 1995.**

**Head 5: Circumstances in which committee may conduct inquiry.**

5.\_\_(1) Subject to *section 8*, a committee may conduct an inquiry into a matter stated by the committee to be of general public importance only if -

- (a) it has made an application to the Oversight Committee for its consent to the inquiry and -
  - (i) if there has been a relevant investigation into the matter and a report made thereon, the report is annexed to the application,
  - (ii) the application sets out, in addition to the matter, the committee's reasons -
    - (I) why it considers the matter to be of general public importance, and
    - (II) why it considers that it should hold an inquiry into the matter,and
  - (iii) if the committee is of the opinion that part of the inquiry should be an investigation into the matter conducted by an investigator, the application sets out, in addition to the matter and the reasons referred in *subparagraph (ii)*, the opinion and the reasons why the committee is of that opinion,and
- (b) the Oversight Committee has consented to the inquiry.

(2) The reference in *subsection (1)* to a matter includes a matter which arose wholly or partly before the passing of this Act.

(3) In this section -

“relevant investigation” means an investigation by a person exercising powers under another Act that are broadly equivalent to the powers conferred on an investigator under this Act;

“report” means a report arising from a relevant investigation.

**Explanatory Note - Head 5 provides for the Oversight Committee subject to the approval of the House(s) to give consent to a committee to hold an inquiry into a matter of general public importance. An inquiry can also be held into matters that occurred before this Act was passed.**

**Head 6: Determination by Oversight Committee of application for consent to inquiry.**

**6.** \_\_\_ Where a committee has made an application under *section 5(1)* to the Oversight Committee for its consent to an inquiry, the Oversight Committee shall consider the application and any report annexed to it and, after consultation with the committee and such other persons as the Oversight Committee thinks fit -

- (a) if the Oversight Committee considers that the relevant matter is of general public importance and is satisfied that an inquiry should be conducted into the matter, consent, subject to *sections 7* and *8*, to the inquiry and if, *paragraph (b)* of *subsection (2)* of *section 7* is applicable, appoint an investigator,
- (b) if the Oversight Committee does not consider that the relevant matter is of general public importance or, if it does so consider the matter to be of such importance, is not satisfied that an inquiry should be conducted into the matter, refuse to consent to the inquiry and give the committee notice in writing of the refusal and specify in the notice the reasons for the refusal.

**Explanatory Note - Head 6 establishes that the Oversight Committee will consider if a matter proposed for inquiry by another committee is a matter of general public importance. It will consider any existing investigative report into the matter and will decide whether to recommend that an inquiry go ahead.**

**Head 7: Setting, amending and content of terms of reference for inquiry, etc.**

7.\_\_(1) Where the Oversight Committee has given consent under *section 6(a)* to the requesting committee to conduct an inquiry into the relevant matter, the Oversight Committee shall set the terms of reference for the inquiry.

(2) The Oversight Committee, for the purposes of setting the terms of reference for an inquiry -

- (a) shall consult with the requesting committee and may consult with any other person as it thinks fit, and
- (b) if it is satisfied that part of the inquiry should be an investigation into the relevant matter conducted by an investigator, specify in the terms that such investigation should be conducted

(3) The terms of reference for an inquiry, with a view to ensuring that the scope of the inquiry is described as precisely as is practicable and with view to enabling the inquiry to be conducted as effectively as is practicable, shall, as appropriate and to the extent possible, and whether or not by reference to all or parts of any report annexed to the application under *section 5(1)* concerned, specify the events, activities, circumstances, systems, practices or procedures to be inquired into, including -

- (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 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 those events, activities or circumstances relate or whose activities, systems, practices or procedures are to be inquired into.

(4) The Oversight Committee shall -

- (a) prepare an accompanying statement containing -
  - (i) an estimate of the costs (including legal costs) to be incurred in conducting the inquiry and preparing the relevant reports,
  - (ii) if *paragraph (b)* of *subsection (2)* is applicable, a time frame for the submission to the requesting committee of the final report (investigator), and
  - (iii) a time frame for the submission to the House of the final report (inquiry),

and

- (b) as soon as possible after the terms of reference for the inquiry are set and the resolution concerned referred to in *section 8(1)(b)* has been passed, publish the terms, together with the accompanying statement, in such newspapers or electronic media, or both, as the Oversight Committee considers appropriate.

(5) The requesting committee, after consultation with the Oversight Committee, unless the requesting committee is satisfied that a proposed amendment to the terms of reference for an inquiry would prejudice the legal rights of any person who has co-operated with or provided information to the inquiry -

- (a) may amend, at any time before the submission by it to the House of the final report (inquiry), the terms for the purpose of clarifying, limiting or extending the scope of the inquiry, and
- (b) may amend the accompanying statement if, as a consequence of the amendment of the terms, any of the following contents of the statement are no longer appropriate:
  - (i) the estimate of the costs (including legal costs) to be incurred in conducting the inquiry and preparing the relevant reports;
  - (ii) if *paragraph (b) of subsection (2)* is applicable, the time frame for the submission to the requesting committee of the final report (investigator);
  - (iii) the time frame for the submission to the House of the final report (inquiry).

(6) Even though the terms of reference for an inquiry are not amended, the requesting committee may, after consultation with the Oversight Committee, amend the accompanying statement to alter the time frame for the submission to it of, if *paragraph (b) of subsection (2)* is applicable, the final report (investigator), or the submission by it to the House of the final report (inquiry), or both, to the extent consistent with the objective of having the inquiry conducted and the final report (investigator) submitted to it, or the final report (inquiry) submitted by it to the House, as expeditiously as a proper consideration of the relevant matter permits.

(7) The requesting committee shall ensure that, as soon as possible after the terms of reference for an inquiry are amended or the accompanying statement is amended, or both of those things are done, under this section and the resolution concerned referred to in *section 8(2)(b)* has been passed, the amended terms, the revised statement, or both, as appropriate, are published in each newspaper or electronic media in which the original terms of reference for the inquiry and the accompanying statement were published or, if any such newspaper has

ceased to be published or any such electronic media has ceased operations, in another newspaper or electronic media, as the case may be, in lieu thereof.

(8) The investigator may submit a request in writing to the requesting committee to amend under this section the terms of reference for an inquiry and shall in the request specify the reasons for the request.

(9) Subject to *subsection (10)*, the requesting committee shall consider a request submitted under *subsection (8)* to it and decide whether to grant the request (whether in whole or in part) or refuse the request.

(10) The requesting committee, for the purposes of making a decision under *subsection (9)* -

- (a) shall consult with the Oversight Committee, and
- (b) may consult with any other person.

(11) The terms of reference for an inquiry, or an amendment to the terms, may specify that *section 30(1)* shall apply for the purposes of a final report (investigator) as if the words “and such other findings, including recommendations (if any), as the body considers appropriate” were deleted from that section.

(12) Where *paragraph (b)* of *subsection (2)* is applicable, and without prejudice to the generality of *subsection (11)*, the terms of reference for an inquiry may make different provision for that part of the inquiry to be conducted by the investigator and that part of the inquiry to be conducted by the requesting committee.

(13) Where the final report (investigator) has been submitted to the requesting committee, the requesting committee may, after considering the report and upon being satisfied that the inquiry should be dissolved after the publication under *section 35* of the report, amend the terms of reference for the inquiry to that effect.

**Explanatory Note - Head 7 allows the Oversight Committee to hold consultations before setting the terms of reference for an inquiry. It defines how the terms of reference for the inquiry, the estimated legal costs and accompanying statement are to be set or amended prior to seeking approval of the House(s). It also provides for the publication of these documents. This is based on sections 3 to 6 of the Commissions of Investigation Act 2004.**

**Head 8: Approval by House of terms of reference for inquiry, etc.**

**8.** (1) The terms of reference for an inquiry and the appointment (if any) of an investigator shall not have effect, and no part of the inquiry shall be conducted, unless and until –

- (a) the Oversight Committee has laid before the House -
    - (i) a statement setting out -
      - (I) the relevant matter,
      - (II) the reasons why the Oversight Committee considers that the matter is of general public importance,
      - (III) the reasons why the Oversight Committee is satisfied that an inquiry should be conducted into the matter, and
      - (IV) if *paragraph (b) of subsection (2) of section 7* is applicable, the reasons why the Oversight Committee is satisfied that part of the inquiry should be an investigation into the matter by an investigator,
    - (ii) a draft of the terms of reference for the inquiry,
    - (iii) if *paragraph (b) of subsection (2) of section 7* is applicable, a draft of the appointment of the investigator,
    - (iv) a draft of the accompanying statement, and
    - (v) if there was a report annexed to the application concerned under *section 5(1)*, a copy of the report,
- and
- (b) a resolution -
    - (i) approving the statement, the draft of the terms of reference for the inquiry, the draft of the appointment of the investigator (if applicable) and the draft of the accompanying statement, and
    - (ii) stating that the House considers that the matter the subject of the statement is a matter of general public importance,
- has been passed by the House.

(2) An amendment under *section 7* to the terms of reference for an inquiry or to an accompanying statement shall not have effect unless and until –

- (a) the requesting committee has laid before the House –
    - (i) a draft of the amendment, and
    - (ii) a statement setting out the reasons why the requester considers that the amendment should be made,
- and

- (b) a resolution has been passed by the House –
  - (i) approving the draft of the amendment and the statement, and
  - (ii) stating that the House considers the matter the subject of the statement remains a matter of general public importance

(3) The requesting committee may, before the submission to it of the final report (investigation), terminate, for stated reasons, the appointment of the investigator and appoint another person to be the investigator.

(4) The termination of the appointment of the investigator and the appointment of another person to be the investigator under *subsection (3)* shall not have effect unless and until -

- (a) the requesting committee has laid before the House -
    - (i) a draft of the termination of the appointment of the investigator and the appointment of another person to be the investigator, and
    - (ii) a statement setting out the reasons why the requesting committee considers that the appointment of the investigator should be terminated and another person appointed to be the investigator,
- and
- (b) a resolution approving the draft and the statement has been passed by the House.

(5) It shall be the duty of a person whose appointment as the investigator has been terminated under *subsections (3) and (4)* to render such assistance as the investigator appointed in his or her place may reasonably require to enable the investigator to complete the investigation, and such assistance may be or include the provision of documents, or copies thereof, relating to the investigation in the possession or control of the person.

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

(7) Where the House refuses to pass a resolution referred to in *subsection (1)(b), (2)(b) or (4)(b)*, it may, at the same time or subsequently, pass a resolution giving such directions as it thinks fit to the Oversight Committee or the requesting committee concerned after having regard to the reasons why the House refused to pass the first-mentioned resolution.

(8) The Oversight Committee or the requesting committee concerned shall comply with any directions given to it under *subsection (7)*.

**Explanatory Note - Head 8 establishes the conditions under which the terms of reference for an inquiry and the appointment of an investigator, if any, shall have effect. It also sets out the conditions under which an amendment to the terms of reference for an inquiry shall have effect. The conditions include the passing of a resolution by the House(s). This is based on the Commissions of Investigation Act 2004.**

**Head 9: Independence of investigator, etc.**

**9.**\_\_\_(1) An investigator shall be independent in the performance of his or her functions under this Act.

(2) Without prejudice to the generality of any other functions that the requesting committee is required to, or may, perform under this Act, the requesting committee is responsible for overseeing administrative matters relating to an investigation.

**Explanatory Note - Head 9 states that an investigator shall be independent in the performance of his/her functions, and that the requesting committee is responsible for overseeing administrative matters relating to an investigation.**

**Head 10: Requesting committee conducting inquiry may form sub-committee, etc.**

**10.**\_\_\_ (1) The requesting committee conducting an inquiry may, if it thinks fit to do so, form a sub-committee to conduct all or so much of the inquiry as the committee specifies in a notice in writing given to the sub-committee.

(2) The requesting committee conducting an inquiry and any sub-committee referred to in *subsection (1)* may consult with any person for the purposes of the inquiry.

(3) Subject to *sections 7(13)* and *40*, on the submission by the requesting committee of the final report (inquiry) to the House, the inquiry is dissolved.

**Explanatory Note - Head 10 states that the requesting committee conducting an inquiry may form a sub-committee to conduct all or part of the inquiry. For the purposes of the inquiry, the requesting committee and any sub-committee may consult with any person. Submission of the final report to the House(s) dissolves the inquiry.**

**Head 11: Oversight Committee to prepare and issue guidelines relating to legal costs and procedures.**

**11.** (1) The Oversight Committee shall, with the consent of the Commission and after consulting with the requesting committee concerned, prepare and issue guidelines concerning the payment by the Commission to witnesses of legal costs necessarily incurred in connection with the relevant proceedings.

(2) Guidelines under *subsection (1)* may -

- (a) restrict the types of legal services or fees for which payment may be made,
- (b) otherwise limit (including by specifying maximum amounts) the extent to which legal costs may be paid,
- (c) provide that a relevant body shall, prior to authorising any legal representation, give an opinion, for specific persons, on the amount of legal representation that is appropriate, on the parts of the relevant proceedings where legal representation is required, or on whether witnesses can be represented jointly.

(3) Subject to *subsection (4)*, the Oversight Committee, subject to the approval of the House(s) shall make rules relating to the conduct of the relevant proceedings and to the procedure generally of relevant bodies or a class of relevant bodies.

(4) Rules under *subsection (3)* shall include rules relating to -

- (a) fair procedures applicable to witnesses,
- (b) any distinctions which may be drawn between procedures applicable to all witnesses and those against whom allegations are made,
- (c) the granting of legal representation or rights to cross-examine, or both, in certain circumstances where a risk that a person's good name or conduct may be impugned, so as to assist relevant bodies in forming a judgement as to when legal costs are necessarily incurred under *section 11(1)*,
- (d) the circumstances in which evidence in writing rather than oral evidence may be appropriate,
- (e) protocols for relevant bodies (including members thereof) in refraining from public comment in relation to a relevant matter both before, and during the course of, an inquiry to avoid the perception of bias,
- (f) the payment of expenses (other than legal expenses) to witnesses,

- (g) the information to be provided to witnesses on matters relating to non-cooperation with the inquiry and offences under this Act, and
  - (h) the considerations to be taken into account in determining the appropriate balance between the rights of persons and the public interest in ensuring an effective inquiry, including the public interest in concluding the inquiry within a reasonable time frame, in the efficiency and cost effectiveness of the inquiry, and in ensuring fairness of procedures for persons against whom allegations of wrongdoing are made.
- (5) A relevant body shall -
- (a) comply with any rules under *subsection (3)* that apply to the body, and
  - (b) comply, in so far as is practicable, with any guidelines under *subsection (2)* that apply to the body.
- (6) A relevant body shall, before evidence is given to the body by a witness, give

the witness copies of any rules under *subsection (3)* and guidelines under *subsection (2)* that apply to the body.

**Explanatory Note - Head 11 provides for guidelines for an inquiry in respect of legal costs to be issued by the Oversight Committee following consultation with the relevant body. These guidelines may restrict the types of legal services for which payment may be made, and limit the legal costs. It also provides that subject to approval by the House(s) the Oversight Committee shall make rules for the conduct of inquiries. A copy of the rules and guidelines will be given to witnesses. This is based on section 13 of the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997 and section 23 of the Commissions of Investigation Act 2004.**

PART 3

INQUIRIES

Chapter 1

*Powers of investigator, etc.*

**Head 12: Advice and assistance.**

- 12.\_\_\_\_ (1) An investigator, with the approval of the requesting committee -
- (a) may appoint a person with relevant qualifications and experience to advise or assist the investigator in relation to any matter within the terms of reference for the inquiry in so far as the terms relate to the investigation, and
  - (b) may determine the terms and conditions of the person's appointment.
- (2) The requesting committee may -
- (a) direct that a competitive tendering process be used in selecting persons for appointment under *subsection (1)*, and
  - (b) prepare and issue rules that are to be followed if such a direction is given.
- (3) An investigator shall comply with rules under *subsection (2)(b)* that apply to him or her.
- (4) Without prejudice to the generality of *subsection (1)* and subject to *subsection (5)*, an investigator may specify one or more of the following as functions to be performed by an authorised person:
- (a) interviewing persons for the purpose of assessing the relevance or evidential value of information or documents they wish to provide to the investigator;
  - (b) interviewing persons as to the evidence they propose to give to the investigator;
  - (c) recording, in writing or otherwise, statements given and answers made by persons while being interviewed;
  - (d) reporting to the investigator on the results of those interviews;

- (e) requesting persons to provide the investigator with statements in writing concerning any matter relevant for the purposes of the investigation and examining statements provided in response to the requests; and
- (f) providing the investigator with any other advice or assistance required in relation to the investigation or the preparation of the relevant reports (investigator).

(5) Subject to *section 22(3)*, an authorised person shall not administer oaths or take affirmations, but, if authorised by the investigator concerned to do so, may request a person interviewed as referred to in *subsection (4)* by him or her to sign a record of a statement made or answer given by that person during the interview.

(6) An investigator may direct a person who made a statement or answered a question while being interviewed by an authorised person to provide the investigator with a sworn statement in a form acceptable to the investigator confirming, if such is the case -

- (a) that the statement was made or the answer given by him or her voluntarily, and
- (b) that to the best of his or her knowledge the content of the statement is true and accurate.

(7) Where a statement made or an answer given to an authorised person is confirmed in accordance with a direction under *subsection (6)*, the statement or answer is considered to have been received as evidence by the investigator concerned.

(8) An authorised person shall, when requesting that a record of a statement or answer be signed under *subsection (5)* by a person, inform the person of -

- (a) an investigator's power under *subsection (6)* to give a direction in relation to the statement or answer, and
- (b) an investigator's power under *section 27* to direct payment of costs for failure to comply with the direction.

**Explanatory Note - Head 12 provides for the appointment of appropriately qualified people to advise and assist the investigator. Where the requesting committee decides that a tendering process is required guidelines will be produced. The advisor will conduct interviews in line with the terms of reference. This is based on sections 8 and 16 (1) (h) of the Commissions of Investigation Act 2004.**

### **Head 13: Conduct of investigation.**

**13.**\_\_\_ (1) An investigator, subject to this Act (including the terms of reference for the inquiry) and standing orders -

- (a) may conduct the investigation in the manner that he or she considers appropriate in all the circumstances of the case, and
- (b) shall conduct the investigation as efficiently, effectively and expeditiously, and may conduct it in as informal a manner, as a proper consideration of the relevant matter permits.

(2) An investigator shall, in conducting the investigation, to the greatest possible extent consistent with his or her duties under this Act -

- (a) seek the voluntary co-operation of persons whose evidence is desired in relation to any matter within the terms of reference for the inquiry, and
- (b) facilitate such co-operation.

(3) *Subsection (2)* is not to be taken to limit in any way the powers given under this Act to an investigator.

(4) An investigator shall conduct the investigation in private unless he or she 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.

(5) Where the evidence of a witness is being heard in private -

- (a) the investigator concerned 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 investigator -
  - (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 investigator so directs, and
- (d) the investigator or an authorised person who is authorised by the investigator to do so may, orally or by interrogatories in writing, examine the witness on his or her evidence.

(6) A person (including the investigator concerned and, if *section 8(3)* and *(4)* is applicable, any former investigator) 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) if *section 8(5)* is applicable, to the extent necessary for the purposes of that section,
- (c) to the extent necessary for the purposes of *section 23*,
- (d) to the extent otherwise necessary in the interests of fair procedures and then only with the consent in writing of the investigator, or
- (e) to a tribunal in accordance with *section 40*.

(7) *Subsection (6)* is not to be taken to prohibit the publication in a relevant report (investigator) of any facts established by an investigator on the basis of evidence received in private.

(8) A person who contravenes *subsection (6)* is guilty of an offence.

**Explanatory Note - Head 13 defines how the investigation is to be conducted. It allows for the evidence of a witness to be heard in private where the investigator deems it appropriate and fair. It allows the investigator to permit cross examination of a witness. It defines the circumstances under which evidence might be made public. This is based on sections 10 and 11 of the Commissions of Investigation Act 2004.**

**Head 14: Form and manner in which evidence may be given.**

- 14.\_\_\_\_ (1) Subject to *subsection (4)*, an investigator may receive evidence given -
- (a) orally,
  - (b) by affidavit, or
  - (c) as otherwise directed by the investigator, 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 an investigator to give evidence may be required to give evidence on oath or affirmation.
- (3) An investigator may administer any oath or take any affirmation necessary for the purposes of the investigation.
- (4) A witness who gives evidence otherwise than by attending in person before an investigator or by means of a live video link shall provide the investigator with a sworn statement in a form acceptable to the investigator 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) An investigator, who 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 12(6)*, may request additional information from the witness relating to that evidence within the period specified in the request.
- (6) Subject to *subsection (8)*, a witness shall comply with a request made to him or her under *subsection (5)* within the period specified in the request.
- (7) *Subsection (4)* shall, with all necessary modifications, apply to any evidence given in response to a request under *subsection (5)* as *subsection (4)* applies to a sworn statement.
- (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 37* and within the period specified in the request, provide the investigator concerned with a statement in writing specifying the grounds for the claim, including the privilege or the duty of confidentiality relied on.

**Explanatory Note - Head 14 defines a witness may give evidence. It allows for a sworn statement confirming the truthfulness and accuracy of the evidence where the evidence is taken via live video link or other than in person. It allows the investigator to request further information relating to evidence given. Where a witness claims to be entitled under law to refuse to give evidence that witness must make a written statement specifying the grounds on which they are refusing.**

**Head 15: Powers to establish procedures relating to evidence and submissions.**

**15.** (1) An investigator shall, after consultation with the Inquiry Committee, having regard to this Act (including rules made under *section 11*) and in particular the need to observe fair procedures, establish or adopt procedures for -

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

(2) Procedures established or adopted under *subsection (1)* by an investigator may, among other things, specify -

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

(3) Copies of procedures established or adopted by an investigator under *subsection (1)*, shall be made available to persons likely to be affected by them.

**Explanatory Note - Head 15 defines the power of the investigator to establish fair procedures relating to evidence and submissions. Copies of these procedures will be available to anyone likely to be affected by them. This is based on section 15 of Commissions of Investigation Act 2004.**

**Head 16: Powers of entry, inspection, etc.**

- 16.\_\_\_\_ (1) (a) In this section “relevant person” means -
- (i) an investigator, and
  - (ii) an authorised person authorised in writing by the investigator to exercise the powers given under this section to relevant persons.
- (b) An investigator may authorise authorised persons to exercise the powers given under this section in respect of a specified matter or event or generally for the purposes of the investigation.
- (c) The investigator concerned shall provide each relevant person with a warrant identifying the relevant person and indicating that the relevant person has authority to exercise the powers given under this section.
- (d) A relevant person shall, when exercising powers given under this section and if requested by anyone affected, produce his or her warrant for inspection.
- (2) The powers given under this section to relevant persons may be exercised only -
- (a) at the direction of an investigator, and
  - (b) if the relevant person considers that the exercise of the powers is reasonable and necessary for the purposes of the investigation.
- (3) Subject to *subsection (2)*, a relevant person may do any or all of the following:
- (a) enter at any reasonable time any premises in which the relevant person has reasonable grounds to believe there are any documents, or there is information in any form, relating to any matter within the terms of reference for the inquiry;
  - (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 relevant 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 relevant 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 relevant person has reason to believe may relate to the relevant matter and retain them for the period that he or she considers reasonable;
- (g) direct any person on the premises to produce to the relevant 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 relevant person with all reasonable assistance in relation to the equipment, apparatus or material;
- (i) direct any person on the premises to give to the relevant person any information that the relevant person may reasonably require with regard to the relevant matter.

(4) Notwithstanding *subsection (3)*, a relevant 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 *subsection (7)* by a judge of the District Court.

(5) A relevant person may be accompanied by a member of the Garda Síochána when exercising powers given under this section.

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

- (7) (a) Where satisfied on the sworn information of a relevant 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 the relevant matter and within the terms of reference for the inquiry and required by the investigator concerned for the purposes of the investigation, a judge of the District Court may issue a warrant authorising a named relevant 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 under *subsection (3)*.

- (b) The warrant issued by a judge of the District Court may also permit -
  - (i) the named relevant 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 relevant persons and members of the Garda Síochána as the named relevant person thinks necessary, and
  - (ii) the use of such reasonable force as is necessary for the purposes of entry.
  
- (8) A person is guilty of an offence if the person -
  - (a) intentionally obstructs a relevant person in the exercise of any of his or her powers given under this section,
  - (b) fails, without reasonable excuse, to comply with a direction given by a relevant person in the exercise of those powers, or
  - (c) in purporting to give information required by a relevant person in the exercise of those powers -
    - (i) knowingly or recklessly provides false or misleading information in a material particular, or
    - (ii) intentionally fails to disclose any material particular.

**Explanatory Note - Head 16 defines the persons authorised to exercise the power of entry and inspection. It allows the investigator to secure documents, equipment or premises deemed to be relevant to the investigation. Copies can be taken of evidence in any format specified. This head also establishes that a warrant must be obtained from a District Court Judge to enter a private dwelling and defines the terms under which the warrant is issued. It allows for Gardaí to be present for searches of private dwellings. It defines the offence of obstruction of a relevant person. This is based on Part 4 of the Commissions of Investigation Act 2004.**

**Head 17: Dissolution of investigation.**

**17.**\_\_\_ (1) Subject to *section 40(1)*, on the submission by an investigator of the final report (investigator) to the requesting committee the investigation is dissolved.

(2) An investigator shall, before the dissolution of the investigation, deposit with the requesting committee all evidence received by and all documents created by or for the investigation.

(3) For the purposes of *subsection (2)* and *section 40(2)*, “documents created by or for the investigation” includes -

- (a) records of interviews conducted by authorised persons,
- (b) reports in writing to the investigator prepared by authorised persons, and
- (c) statements provided to the investigator at the request of authorised persons in the performance of the function described in *section 12(4)(e)*.

**Explanatory Note - Head 17 provides for the termination of the investigation and the depositing of documents with the requesting committee.**

## Chapter 2

### *Giving of evidence to relevant body*

#### **Head 18: Irrelevant evidence.**

**18.**\_\_\_ A relevant body shall not direct a person to give evidence, or produce or send a document, to the body, or attend before the body to give evidence, or produce a document, to the body, that is not relevant to the relevant proceedings.

**Explanatory Note - Head 18 establishes that evidence irrelevant to the inquiry shall not be requested.**

**Head 19: Exemption of certain evidence.**

**19.**\_\_\_ (1) Subject to this Act, a relevant body shall not direct a person to give evidence, or produce or send a document, to the body or attend before the body to give evidence, or produce a document, to the body -

- (a) relating to discussions at a meeting of the Government,
- (b) if the evidence or document could, if given, sent or produced to the body, reasonably be expected -
  - (i) to prejudice a matter the subject of proceedings currently before a court in the State,
  - (ii) to affect adversely the security of the State or to be prejudicial to the State in its relations with other States. or
  - (iii) to prejudice or impair the prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of lawful methods, systems, plans or procedures employed for the purposes of the matters mentioned in this subparagraph,
- (c) if that person is the Attorney General or an officer of the Attorney General except -
  - (i) where the body is the Committee of Public Accounts, and
  - (ii) in so far as the body's direction relates to evidence or a document concerning the general administration of the office of the Attorney General,or
- (d) if that person is the Director of Public Prosecutions or an officer of the Director of Public Prosecutions except -
  - (i) where the body is the Committee of Public Accounts, and
  - (ii) in so far as the body's direction relates to evidence or a document concerning -
    - (I) the general administration of the office of the Director of Public Prosecutions, or
    - (II) statistics relevant to a matter referred to in a report of and published by the Director of Public Prosecutions in relation to the activities generally of the office.

(2) Where a direction is given under *section 21* by a relevant body to a person in relation to evidence or a document and -

- (a) the person is of opinion that the evidence or document, as the case may be, could, if given, produced or sent to the body, reasonably be expected to prejudice proceedings currently before a court in the State and so informs the body, or
- (b) a person who is a party to any such proceedings is of opinion that the evidence or document, as the case may be, could, if given, produced or sent as referred to in *paragraph (a)*, reasonably be expected to prejudice the proceedings and so informs the body,

then –

- (i) if the body does not withdraw the direction -
  - (I) the person may, not later than 21 days after being informed by the body of its decision not to do so, apply to the Court in a summary manner for the determination of the question whether the evidence or document, as the case may be, could, if given, produced or sent as referred to in *paragraph (a)*, reasonably be expected to prejudice such proceedings, or
  - (II) the body may make such an application,
- (ii) if such an application is made, the body shall, if necessary, adjourn the investigation for such period as it considers requisite and the Court shall determine the question, and
- (iii) if the Court determines that the evidence or document, as the case may be, could, if given, produced or sent to the body, prejudice such proceedings, the body shall withdraw the direction.

**Explanatory Note - Head 19 provides for the exemption of evidence relating to discussions at Government Meetings or that could be prejudicial to the proceedings before a Court, to the security of the state or International Relations or to the prevention, detection or investigation of offences. This Head also allows exemptions for the Attorney General and Director of Public Prosecution or officers of those offices from giving evidence unless it is in relation to administrative matters and the Committee concerned is the Public Accounts Committee. This is based on section 5 of the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997.**

**Head 20: Declarations in relation to directions.**

- 20.\_\_\_\_ (1) (a) Where a person -
- (i) is directed by a relevant body to give evidence or produce or send a document to the body, and
  - (ii) the person is of opinion that the evidence or document, as the case may be, could, if given, sent or produced to the body, reasonably be expected to have the effect specified in *section 19(1)(b)(ii) or (iii)*,
- the person may inform the body of that opinion and, if the person does so and the body does not withdraw the direction, the body shall request the person to furnish to the body a declaration under *paragraph (d)* in relation to the matter.
- (b) Where a request is made under *paragraph (a)* by a person to a relevant body, the body concerned shall, on the application of the person, allow such period, not being more than 21 days, as the body considers reasonable for responding to the request and, if appropriate, the giving of a declaration under *paragraph (d)* and, for that purpose, the body shall, if necessary, adjourn the relevant proceedings for such period as the body considers requisite.
  - (c) Where a declaration under *paragraph (d)* is furnished to the relevant body who gave the direction to which the declaration relates, the body shall withdraw the direction.
  - (d) Where a request is made under *paragraph (a)* by a person to a relevant body, the Secretary to the Government may, on application to him or her in that behalf by the person, if he or she considers that the evidence or document, as the case may be, concerned could, if given, sent or produced to the body, reasonably be expected to have the effect specified in *section 19(1)(b)(ii) or (iii)*, give to the person a declaration in writing to that effect made by him or her.

**Explanatory Note - Head 20 establishes that the Secretary to the Government may provide a statement declaring that evidence that could be reasonably expected to be prejudicial to the investigation or prosecution of offences or to the security of the state is exempt. This is based on section 7 of the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997.**

**Head 21: Powers relating to witnesses and documents.**

**21.**\_\_\_ (1) A relevant body may do any or all of the following:

- (a) direct in writing any person to attend before the body 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 the body believes to be relevant to the relevant matter;
- (c) examine a witness on oath or by use of a statutory declaration or interrogatories in writing;
- (d) examine or cross-examine any witness to the extent that the body thinks proper in order to elicit information relevant to the relevant matter;
- (e) direct a witness to produce to the body 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 body with a list, verified by affidavit, disclosing all documents in the person's possession or power relating to the relevant matter, and
  - (ii) specify in the affidavit any of the listed documents that the person objects to producing to the body and the basis for the objection;
- (g) direct in writing any person to send to the body any document that is in the person's possession or power and is specified in the direction; and
- (h) give any other directions that appear to the body to be reasonable.

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

(3) Where a person does not comply with a direction given by a relevant body under this section, the Court may, on application by the body -

- (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.

(4) Where a person against whom an order is made under *subsection (3)(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.

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

(6) 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.

(7) Sections 4 and 5 of the Official Secrets Act 1963 shall not apply to evidence given or a document produced or sent to a relevant body pursuant to a direction under this section.

**Explanatory Note - Head 21 defines the power of the relevant body i.e. committee of inquiry or investigator in relation to witnesses and documentation. It establishes that the relevant body may direct a person to attend, answer questions and provide relevant documents. A relevant body may examine and cross examine a witness. Where the witness objects to documents being produced an affidavit may be requested identifying the documents and reason for the objection. The rules of Court apply regarding discovery of documentation. An application may be made to the Court where a person fails to comply with the direction of the body. Evidence given under the instruction of the relevant body will not be subject to sections 4 and 5 of the Official Secrets Act 1963. This is based on section 16 of the Commissions of Investigation Act 2004. Subhead (7) is based on section 16 of the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997.**

**Head 22: Duty to inform witnesses of relevant body's powers and to advise them on rights and obligations.**

**22.**\_\_\_\_ (1) A relevant body shall, before a person gives evidence to the body, whether voluntarily or on being directed by the body to do so, give the person a statement in writing -

- (a) specifying that body's powers under this Act, and
- (b) indicating that, if the person does not voluntarily co-operate with the relevant proceedings or withdraws co-operation, that body will exercise any of those powers as the body considers necessary.

(2) A relevant body shall advise a witness of his or her legal rights and obligations while giving evidence on oath or affirmation except where a legal representative is present to advise the witness.

(3) The duties imposed on a relevant body under *subsection (1)* or *(2)* who is an investigator may be performed by any authorised person authorised by the investigator to perform those duties.

**Explanatory Note - Head 22 establishes the duty of the relevant body to inform the witness of the body's powers and to indicate the body will use any of its powers. This Head also provides for the witness to be advised of their rights and obligations where the witness is giving evidence under oath and has no legal representative. This is based on section 13 of the Commissions of Investigation Act 2004.**

**Head 23: Duty to disclose substance of evidence to other witnesses in order to give them chance to comment, etc.**

23.\_\_\_\_ (1) Subject to *subsection (2)*, a relevant body shall disclose to a person -

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

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

(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 unless the relevant body to whom the evidence is given considers that, in view of the purposes of the relevant proceedings or in the interests of fair procedures, the source should be disclosed.

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

(4) Where a relevant body hears evidence from a witness that impugns the good name or conduct of another person, the body may permit a legal representative of that other person to cross-examine the witness in relation to that evidence.

**Explanatory Note - Head 23 provides for a person to be informed of the substance of evidence which has an impact on the person's evidence, their good name or conduct. This Head allows the witness to comment on the evidence. Where evidence is given in private the source is not required to be disclosed except in the interest of a fair inquiry. Where evidence of a witness impugns a person's good name or conduct, a legal representative may be permitted to cross examine the witness. This is based on section 12 of the Commissions of Investigation Act 2004.**

**Head 24: Offence of making false statement, etc.**

**24.**\_\_\_ A person who knowingly or recklessly provides false or misleading information to a relevant body, which is material in the relevant proceedings, is guilty of an offence.

**Explanatory Note - Head 24 establishes the offence of making a false statement.**

**Head 25: Evidence given to relevant bodies, etc. not admissible in certain proceedings.**

**25.**\_\_\_ None of the following is admissible as evidence against a person in any criminal or other proceedings except proceedings in relation to an offence under this Act or the offence of perjury:

- (a) a statement or admission made by the person to a relevant body or to an authorised person;
- (b) a document given or sent to a relevant body pursuant to a direction of the body to the person;
- (c) a document specified in an affidavit of documents made by the person and given to a relevant body pursuant to a direction of the body;
- (d) a document created by or for a relevant body (including any document which is incomplete or in draft form only).
- (e) all reports including (including final, interim and progress reports etc.) prepared for a relevant body (including any report which is incomplete or in draft form only) whether submitted or not.

**Explanatory Note - Head 25 defines the evidence that is not admissible in proceedings except those arising in connection with an offence under this Act or the offence of perjury. This evidence includes any statement or document including those listed in an affidavit. This is based on sections 19 of the Commissions of Investigation Act 2004 and section 12 of the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997.**

**Head 26: Preservation of documents.**

**26.**\_\_\_ (1) A person who has in the person's possession or control a document, or other information in any form, relating to any matter within the terms of reference for the inquiry shall preserve that document or information, as the case may be -

- (a) until the final report (inquiry) has been submitted to the House or, if *section 8(13)* is applicable, upon the dissolution of the inquiry, or
  - (b) if, before the final report (inquiry) has been submitted to the House, a tribunal is established to inquire into all or part of the relevant matter, until the tribunal has completed its inquiry.
- (2) A person who contravenes *subsection (1)* is guilty of an offence.

**Explanatory Note - Head 26 establishes that evidence in any format that falls within the terms of reference of an inquiry must be preserved until the final report is published or the inquiry is dissolved. Failure to do so is an offence.**

## Chapter 3

### *Legal and other costs*

#### **Head 27: Power to direct certain persons to pay legal costs.**

27.\_\_\_\_ (1) Where as a result of a person -

- (a) failing, without reasonable excuse, to comply with any direction under this Act,
- (b) failing, without reasonable excuse, to comply with a request under *section 14(5)*, or
- (c) otherwise obstructing an investigation,

a relevant body incurs costs that the body would not otherwise have incurred, the body may direct in writing the person to pay to the Commission those costs, including legal costs and costs arising from any delay in completing the relevant proceedings.

(2) Where any person who attends before or gives evidence to a relevant body is adversely affected as a result of an act or omission referred to in *paragraph (a), (b) or (c) of subsection (1)*, the body may -

- (a) on the body's own initiative, or
- (b) at the request of the person adversely affected,

direct in writing 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) that he or she incurred as a result of the act or omission.

(3) A direction of a relevant body to pay costs under *subsection (1) or (2)* does not take effect until it is confirmed by the Court on application by the body.

(4) The Court may, on an application under *subsection (3)* for an order confirming a direction of a relevant body to pay costs to the Commission or another person -

- (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.

(7) A relevant body (and the Court, in an application under *subsection (3)*) shall, in determining whether the act or omission of a person constitutes an obstruction of the relevant proceedings, have regard to the conduct of the person, including -

- (a) any conduct that is unreasonably prolix, dilatory or evasive or which otherwise results in the proceedings being needlessly prolonged or in unnecessary costs being incurred,
- (b) whether it was reasonable for the person to raise, pursue or contest a particular allegation or issue,
- (c) the manner in which the person has pursued or defended his or her position or a particular allegation or issue, and
- (d) the importance of the matter to the person and other affected persons.

(8) The orders as to costs which a relevant body may make include an order that a person shall pay any or any combination of the following:

- (a) a proportion of another person's costs;
- (b) a stated amount in respect of another person's costs;
- (c) costs from or until a certain date only;
- (d) costs incurred before the relevant proceedings have commenced;
- (e) costs relating to particular steps taken in or in relation to the relevant proceedings;
- (f) costs relating only to a distinct part of the relevant proceedings;
- (g) interest on costs from or until a certain date.

**Explanatory Note - Head 27 provides for costs to be recouped by the Commission where a person hinders the inquiry. A witness who is adversely affected may request payment of costs incurred as a result of an act or omission of this nature. The direction to pay costs must be confirmed by the Courts. Further proceedings may be brought by the Courts in respect of the offence. This is based on section 17 of the Commissions of Investigation Act 2004.**

**Head 28: Request for recovery of legal costs necessarily incurred and certain other expenses.**

**28.**\_\_\_ (1) Subject to *subsection (9)*, where a witness requests a relevant body to direct that all or part of the legal costs necessarily incurred by the witness in connection with the relevant proceedings be paid by the Commission, the body may -

- (a) if satisfied as to the matters specified in *subsection (2)* and that the payment comes within the guidelines prepared and issued under *section 11*, direct in writing that such amount of those costs as it considers reasonable be paid to the witness,
- (b) if not so satisfied, refuse to give such a direction.

(2) A relevant body shall not give a direction under *subsection (1)* unless the body is satisfied that -

- (a) the legal costs were necessarily incurred, and
- (b) the level and amount of those costs are reasonable.

(3) A relevant body shall, for the purposes of being satisfied as specified in *subsection (2)*, consider all relevant factors, including -

- (a) the nature, complexity and extent of the evidence given to the body by the witness,
- (b) the nature, complexity and volume of any documents or list of documents provided by the witness to the body,
- (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 cooperate with the body in its investigation and, if so, the degree of failure,
- (f) whether the witness insisted on the body taking evidence orally when the body was satisfied that the evidence had already been given in writing to the body, and
- (g) any potential consequences for the witness arising from the publication of the relevant reports.

(4) A relevant body may, after considering all relevant factors, direct in writing that a witness be paid less than the maximum amount provided for in the guidelines prepared and issued under *section 11* in respect of any legal costs necessarily incurred by the witness.

(5) Where a witness in the relevant proceedings 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 relevant body concerned, or
- (c) any other factor not within the control of the witness,

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

(6) The Commission may, on receiving a direction under this section from a relevant body, request the body to review the direction if it considers that the amount specified in it is excessive having regard to -

- (a) in the case of a request for payment of legal costs necessarily incurred, the guidelines prepared and issued under *section 11* and relevant factors referred to in *subsection (3)*, and
- (b) in the case of a request for payment of expenses incurred as referred to in *subsection (5)*, the ability of the witness who made the request to pay those expenses.

(7) A relevant body may, on receiving a request from the Commission to review a direction under this section -

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

(8) The Commission shall, in accordance with a direction under this section of a relevant body, 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.

(9) (a) A relevant body shall take account of an opinion of the kind referred to in *section 11(2)(c)*, set out in guidelines prepared and issued under

*section 11* that are applicable to the body, on the appropriate amount and type of legal representation that is required.

- (b) In any case where a witness fails to act in accordance with that opinion, then that amount which, in the opinion of the body, is the difference between -
  - (i) the costs actually incurred by the witness, and
  - (ii) the costs that would have been incurred by the witness if the witness had acted in accordance with that opinion,

shall not be the subject of a direction *subsection (1)* except where the body is satisfied that there are exceptional circumstances which warrant the whole or part of that amount being the subject of such a direction.

(10) The Commission may, after consultation with the relevant body concerned, prepare and issue guidelines in respect of the payment by it of the expenses (excluding legal costs) necessarily incurred by a person in respect of his or her attendance, whether voluntarily or otherwise, before the body.

**Explanatory Note - Head 28 sets out the terms and conditions under which costs are to be paid to a witness. Where a witness requests payment of costs the body may pay costs in line with the guidelines. It must first be satisfied that the costs were necessary and reasonable. The body may direct that all or part of the expenses are paid. An instruction to pay legal costs will be in line with the guidelines in Head 11. The Commission may request a review of the instruction to pay expenses if it considers them excessive. This is based on section 24 of the Commissions of Investigation Act 2004.**

## Chapter 4

### *Interim and final reports*

#### **Head 29: Interim reports.**

- 29.** (1) The appropriate person may, at any time before the submission to the appropriate person of the appropriate final report -
- (a) request the relevant body concerned to submit interim reports in writing to it, at the intervals stated in the request (being intervals reasonable in all the circumstances of the case), on the general progress of the relevant proceedings or on a particular aspect of the relevant proceedings, or
  - (b) request the relevant body concerned to submit an interim report in writing to it, before the expiration of the period specified in the request (being a period reasonable in all the circumstances of the case), on the general progress of the relevant proceedings or on a particular aspect of the relevant proceedings.
- (2) A relevant body shall comply with a request under *subsection (1)* made to the body.
- (3) *Section 30(2) and (3)* shall, with all necessary modifications, apply to an interim report as it applies to the final report.
- (4) In this section, “appropriate final report”, in relation to a relevant body, means -
- (a) if the body is the investigator, the final report (investigator),
  - (b) if the body is the requesting committee, the final report (inquiry).

**Explanatory Note - Head 29 allows for interim reports on request from the committee of inquiry and the investigator. These reports can give information on the general progress of an inquiry or on a part of the inquiry. This is based on section 33 of the Commissions of Investigation Act 2004.**

### **Head 30: Final report.**

**30.**\_\_\_ (1) Subject to *subsections (2) to (4)*, a relevant body shall, on the conclusion of the relevant proceedings, prepare and submit to the appropriate person a final report in writing, based on the evidence received by the body, setting out the facts that the body established in relation to the relevant matter and such other findings, including recommendations (if any), as the body considers appropriate.

(2) Where for any reason (including insufficient, conflicting or inconsistent evidence) a relevant body considers that the facts relating to a particular issue have not been established, the body -

- (a) shall, in the final report, identify the issue, and
- (b) may, in the final report, indicate the body's opinion as to the quality and weight of any evidence relating to the issue.

(3) A relevant body may omit from the final report any information that identifies or that could reasonably be expected to lead to the identification of a person who gave evidence to the body or any other person if, in the body's opinion -

- (a) the context in which the person was identified has not been clearly established,
- (b) disclosure of the information could prejudice any criminal proceedings that are pending or in progress,
- (c) disclosure of the information would not be in the interests of the relevant proceedings or any subsequent investigation or inquiry (whether under this Act or another Act) that has been commenced before the submission of the final report to the appropriate person, 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 relevant proceedings or any subsequent investigation or inquiry (whether under this Act or another Act) that has been commenced before the submission of the final report to the appropriate person.

(4) The references to facts, other findings and recommendations in *subsection (1)* also include facts, other findings and recommendations covered by an interim report submitted to the appropriate person by the relevant body concerned.

**Explanatory Note - Head 30 establishes the content of a final report. It allows for issues to be identified and weight given to the evidence where the facts have not been fully determined. This Head also allows for information to be omitted where it may identify a person or prejudice criminal proceedings, or where the information would not be in the interests of the inquiry. This is based on section 32 of the Commissions of Investigation Act 2004.**

**Head 31: Draft of relevant report to be given to certain persons.**

**31.**\_\_\_ (1) Subject to *subsections (3) and (4)*, a relevant body -

- (a) shall, before submitting a relevant report to the appropriate person, give a draft of the report, or the part concerned of the report, to any person who is identified in or identifiable from the report or part, as the case may be, and who did not have legal representation before the body, and
- (b) may also, before submitting a relevant report to the appropriate person, give a draft of the report, or the part concerned of the report, to any person who is identified in or identifiable from the report or part, as the case may be, and who did have legal representation before the body.

(2) Where a relevant body exercises its discretion under *subsection (1)(b)*, then the body shall ask all persons who provided information to the body to identify information that would be considered to come within the meaning of *section 33*.

(3) The draft report shall set out the facts and other findings required by *section 29 or 30*, as the case requires, to be set out in it or such of those facts and other matters as are relevant to the part concerned of the draft report.

(4) The draft report or part concerned of the draft report shall be accompanied by a notice in writing from the relevant body concerned specifying the time allowed for making in writing -

- (a) submissions or requests to the body under *section 32(1)(a)*, and
- (b) applications to the Court under *section 32(1)(b)*.

(5) For the purposes of this section and *section 32*, 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.

(6) *Sections 32 to 34* shall, with all necessary modifications, apply to a part of a draft report received by a person from a relevant body under this section as they apply to a draft report received by a person from a relevant body under this section.

**Explanatory Note - Head 31 allows for a draft of report (or a part thereof) to be given to any person identified in or identifiable from the report, before the relevant report is submitted to the appropriate person. It shall be accompanied by a notice specifying the time allowed for making submission/requests to the body, or applications to the Court.**

**Head 32: Amending draft reports for non-observation of fair procedures.**

**32.**\_\_\_ (1) A person who receives a draft report from a relevant body under *section 31* and who believes that the body has not observed fair procedures in relation to the person may, within the period specified by the body -

- (a) submit to the body a statement in writing setting out the reasons for the belief and requesting the body to review the draft report in light of the statement, or
- (b) apply to the Court for an order directing that the draft report be amended before the submission of the draft report to the appropriate person as a relevant report.

(2) A relevant body, after considering a statement submitted under *subsection (1)(a)* to it and reviewing the draft report, may -

- (a) amend the draft report, including by omitting any part of the draft report based on evidence received without observing fair procedures,
- (b) apply to the Court for directions, or
- (c) submit the draft report to the appropriate person as a relevant report without making any amendments.

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

- (a) submit the draft report to the appropriate person as a relevant report 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 body before the draft report is finalised;
- (c) submit the draft report to the appropriate person as a relevant report after making such amendments as the Court may direct.

(4) A relevant body shall, before submitting a relevant report to the appropriate person, give 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.

**Explanatory Note - Head 32 sets out the process for when a person receives a draft report and believes that fair procedures have not been observed in relation to them. The relevant body shall give notice, to any person identified in or identifiable from the report, of any amendments made as a consequent of this process before submitting the report to the appropriate person.**

### **Head 33: Preserving confidentiality of commercially sensitive information.**

**33.**\_\_\_ (1) A person who receives a draft report from a relevant body under *section 31* may, within a period specified by the body, request the body to omit from the draft report any information provided by the person to the body -

- (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 relevant proceedings.

(2) A relevant body, after considering a request under *subsection (1)* made to it, 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 relevant proceedings, 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 relevant body concerned 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.

**Explanatory Note - Head 33 states that a person who receives a draft report may request information provided by them, that is commercially sensitive and the disclosure of which is not necessary, be omitted from the report. Commercially sensitive information is defined in this context.**

**Head 34: Confidentiality of draft reports.**

**34.**\_\_\_ (1) A person who receives a draft report from a relevant body under *section 31* shall not disclose its contents, or divulge in any way that the draft report has been sent to that person, except -

- (a) with the prior consent in writing of the body, 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.

**Explanatory Note - Head 34 establishes the offence of disclosing the contents of draft reports, or divulging that the draft report has been sent.**

**Head 35: Publication of final report and interim reports.**

- 35.\_\_\_\_ (1) Subject to *subsection (2)*, the appropriate person -
- (a) shall cause a final report to be published as soon as possible after the report is submitted to the appropriate person, and
  - (b) may, at its discretion and following consultation with the relevant body who submitted the interim report concerned to the appropriate person, cause the interim report to be published unless publication would hinder or impair the relevant proceedings.
- (2) Where the appropriate person considers that the publication of a relevant report submitted to the appropriate person could prejudice any criminal proceedings that are pending or in progress, the appropriate person shall apply to the Court for directions concerning the publication of the report.
- (3) The Court shall, before determining an application under *subsection (2)* in respect of a relevant report, direct that notice be given to -
- (a) the Attorney General,
  - (b) the Director of Public Prosecutions, and
  - (c) a person who is a defendant in criminal proceedings relating to an act or omission that is referred to in the report or that is related to the relevant proceedings and referred to in the report.
- (4) The Court may, on an application under *subsection (2)* -
- (a) receive submissions, and evidence tendered, by or on behalf of any person referred to in *subsection (3)*, and
  - (b) hear the application in private if the Court considers it appropriate to do so.
- (5) Where the Court, after hearing an application under *subsection (3)* in respect of a relevant report, considers that the publication of the report could 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.

**Explanatory Note - Head 35 provides that the inquiry committee may request an interim report to be published unless publication would hinder the proceedings. The final report will be published as soon as possible once the House(s) has received it. Where criminal proceedings are pending or in progress the committee of inquiry will request an instruction from the Court concerning publication of the report. The Court will notify the Attorney General, Director of Public Prosecutions and the defendant of the report. The Court may direct that the report or part of it not be published. This is based on section 38 of the Commissions of Investigation Act 2004.**

**Head 36: Privileges and immunities of witnesses.**

**36.** (1) A person who gives evidence to a relevant body or who produces or sends documents to a relevant body as directed by the body -

- (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.

(2) Where a person who is giving evidence to a relevant body in relation to a particular matter is directed by the body to cease giving such evidence, the person shall be entitled only to qualified privilege in relation to defamation in respect of any evidence given prior to the giving of the direction unless and until the body withdraws the direction.

(3) Where a person -

- (a) is directed by a relevant body to give evidence, or produce or send a document, to the body, or attend before the body to give evidence, or produce a document, to the body, and
- (b) is of opinion that, by virtue of *subsection (1)*, he or she is entitled to disobey the direction,

the person may inform the body of that opinion and, unless the information is conveyed to the body in person, it shall be so conveyed in writing.

(4) Where a relevant body is informed pursuant to *subsection (3)* of the opinion referred to in that subsection of a person and does not withdraw the direction concerned -

- (a) the body shall apply to the Court in a summary manner for the determination of the question whether the person is entitled, by virtue of *subsection (1)*, to disobey the direction,
- (b) the Court shall determine the question and the body shall, if necessary, adjourn the proceedings concerned for such period as the body considers requisite, and

- (c) if the Court determines that the person is entitled, by virtue of *subsection (1)*, to disobey the direction, the body shall withdraw the direction.

(5) Where a person informs a relevant body pursuant to *subsection (1)* of his or her opinion in relation to evidence or a document referred to in that subsection, the person shall (where appropriate, in proceedings held otherwise than in public) specify to the body the reasons for the opinion.

(6) Where it is determined that the privilege relied on as grounds for refusing to produce a document applies to part only of the information in a document, the relevant body concerned may cause to be prepared a summary version of the document that excludes that information, but only if -

- (a) the document so allows, and
- (b) in the body's opinion, it is in the interests of both the relevant proceedings and fair procedures to do so.

(7) Where a relevant body 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 body.

**Explanatory Note - Head 36 provides that a person who gives evidence to a committee is entitled to the same privileges, immunities and responsibilities as a witness before the Courts. Where the witness is directed to stop giving evidence the privilege will be in relation to the evidence given prior to the instruction. Where the witness has privileges or immunity the witness must inform the body of them. Where the body has been notified of a witness's privileges and its instruction is not withdrawn it must apply to the Court to have the question of privilege addressed. If the privilege refers only to part of a document a summary version of the document can be requested. This is based on sections 6 and 11 of the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997 and section 20 of the Commissions of Investigation Act 2004.**

**Head 37: Privilege of relevant bodies, etc.**

**37.**\_\_\_ The following are absolutely privileged:

- (a) the documents of a relevant body (including the relevant reports), wherever published;
- (b) the documents of the members of a relevant body relating to the body or the body's functions, wherever published;
- (c) the documents of authorised persons relating to a relevant body or the body's functions, wherever published;
- (d) the documents of an Oversight Committee relating to a relevant body or the body's functions, wherever published;
- (e) documents of the staff of the Commission relating to a relevant body or the body's functions, wherever published;
- (f) the statements made in any form by the members of a relevant body, authorised persons, members of the Oversight Committee, or the staff of the Commission, in performing their respective functions under this Act and such statements wherever subsequently published.

**Explanatory Note - Head 37 establishes that privilege will attach to any documents of a relevant body, of members of the body, of an Oversight Committee, or of staff of the Commission which relate to the body or its functions. It also provides that privilege will apply to statements made by any of the above in performing their duties under this act. This is based on section 42 of the Commissions of Investigation Act 2004.**

## Chapter 5

### *Inquiries and other Acts*

#### **Head 38: Restriction of Data Protection Act 1988.**

**38.**\_\_\_ Section 4 of the Data Protection Act 1988 does not apply to personal data provided to a relevant body for as long as the data is in the custody of -

- (a) the body,
- (b) the Commission,
- (c) a tribunal after being made available to it under *section 40*, or
- (d) any other body after being transferred to it on the dissolution of a tribunal to which the data was made available under *section 40*.
- (e) the Oversight Committee

**Explanatory Note - Head 38 provides that section 4 of the Data Protection Act 1988 does not apply when personal data is in the custody of the investigator, Requesting Committee, the Commission, Tribunal of Inquiry (or any other body to which it has been given on the termination of a Tribunal of Inquiry). This is based on section 39 of the Commissions of Investigation Act 2004.**

### **Restriction of Freedom of Information Acts 1997 and 2003.**

**39.**\_\_\_ (1) The Freedom of Information Acts 1997 and 2003 do not apply to a record relating to the relevant proceedings unless -

- (a) the record was created before the relevant proceedings commenced, or
  - (b) the record relates to the expenses of the relevant body concerned or the appointment of authorised persons or other matters concerning the general administration of the body.
- (2) *Subsection (1)* applies whether the record concerned is held by -
- (a) the relevant body concerned,
  - (b) the Commission,
  - (c) a tribunal after being made available to it under *section 40*, or
  - (d) any other body after being transferred to it on the dissolution of a tribunal to which the record was made available under *section 40*.
  - (e) the Oversight Committee

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

**Explanatory Note - Head 39 provides that the Freedom of Information Acts 1997 and 2003 apply to the records of the body if the record was created before the proceedings, relates to expenses of the relevant body, an appointment of authorised persons or general administration where the record is held by the relevant body, the inquiry committee, the Oversight Committee, the Commission or a Tribunal of Inquiry. This is based on section 40 of the Commissions of Investigation Act 2004.**

**Head 40: Inquiry under Tribunals of Inquiry (Evidence) Acts 1921 to 2011.**

- 40.\_\_\_\_ (1) (a) Where a tribunal is established to inquire into a matter that is, whether in whole or in part, within the terms of reference for an inquiry and there is nothing in the terms which falls outside that matter, the relevant body concerned shall, as soon as may be, report that fact to the appropriate person and end the relevant proceedings.
- (b) Where a tribunal is established to inquire into a matter that is, whether in whole or in part, within the terms of reference for an inquiry but there is something in the terms which falls outside that matter, the requesting committee shall, as soon as may be, amend under *section 7* the terms to the extent necessary to ensure that there is, or will be, no overlap between the relevant proceedings and the tribunal's inquiry.
- (2) (a) Where a tribunal is established to inquire into a matter all or part of which was within the terms of reference for the inquiry, all evidence received by and all documents created by or for the relevant body concerned relating to the matter or that part of the matter, as the case may be, shall, at the request of any member of the tribunal, be made available to the tribunal by the relevant body or, if the body has ceased to have such evidence and documents within the body's power or control, such other person who has such evidence and documents within the person's [power and control].
- (b) Nothing in this subsection prevents a relevant body who falls within *subsection (1)(b)* from retaining copies of any evidence or documents made available by the body to a tribunal under *paragraph (a)*.
- (c) Evidence that is received by a relevant body and that is made available to a tribunal under *paragraph (a)* is deemed to have been received as evidence by the tribunal in accordance with the Tribunals of Inquiries (Evidence) Acts 1921 to 2011.
- (3) (a) Where any evidence or document made available to a tribunal under *subsection (2)(a)* contains information omitted under *section 30(3)* (including that section as read with *section 29(4)*) from a relevant report because it identifies a person or could reasonably be expected to lead to the identification of a person ("the person concerned"), the tribunal shall not disclose that information in the course of conducting its inquiry or in its report or otherwise except -
- (i) as authorised under this subsection, and
- (ii) to the extent necessary for the purposes of its inquiry.

- (b) A tribunal may decide to disclose information referred to in *paragraph (a)* (other than information withheld by the body by virtue of *section 23(2)*) if the tribunal -
  - (i) has notified the person concerned that it proposes to disclose the information,
  - (ii) has given the person concerned an opportunity to comment, by oral submissions or submissions in writing, on the proposal and has considered the comments (if any) of the person concerned, and
  - (iii) is satisfied that, in the interests of fair procedures and in order to facilitate the inquiry, it is appropriate to disclose the information.
- (c) Where a tribunal decides under *paragraph (b)* to disclose information, it shall notify the person concerned of -
  - (i) its decision, and
  - (ii) the person's right to apply to the Court within the period of 14 days after being notified for an order under *paragraph (e)* prohibiting the disclosure.
- (d) A decision to disclose information does not take effect -
  - (i) until the expiry of the period allowed under *paragraph (c)* for applying for an order under *paragraph (e)* prohibiting the disclosure, and
  - (ii) if an application is brought within that period, until the Court determines the application.
- (e) On the hearing of an application made within the period specified in *paragraph (c)*, the Court may make any order or give any direction it thinks fit, including an order prohibiting the disclosure of the information concerned.
- (f) An application under this subsection for an order prohibiting the disclosure of information may be heard in private if the Court considers it appropriate to do so.

**Explanatory Note - Head 40 provides for procedures where a Tribunal of Inquiry is established to enquire into matters which are within the Inquiry's terms of reference. This based on sections 44 to 46 of the Commissions of Investigation Act 2004.**

PART 4  
MISCELLANEOUS

**Head 41: Proceedings in High Court.**

**41.**\_\_\_ (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.

(2) Proceedings in the Court under *section 36* may be heard otherwise than in public.

**Explanatory Note - Head 41 allows the Court to give priority to the disposal of proceedings under this Act and for proceedings to be held in private. This is based on section 47 of the Commissions of Investigation Act 2004.**

**Head 42: Penalties for offences.**

**42.**\_\_\_ A person guilty of an offence under this Act is liable -

- (a) on summary conviction, to class A fine or to imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €500,000 or imprisonment for a term not exceeding 5 years or both.

**Explanatory Note - Head 42 provides that where a person is guilty of an offence they can be tried by a Judge in the District Court where they can receive a fine and a maximum sentence of 12 months, or they can be tried by Judge and Jury in a Higher Court where they can receive a maximum fine of €500,000 and a maximum sentence of 5 years.**

**Head 43: Offences by bodies corporate.**

**43.**\_\_\_ (1) Where -

- (a) a contravention of a provision of the Act is committed by a body corporate, and
- (b) the contravention is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any neglect on the part of, a person who was either -
  - (i) a director, manager, secretary or other similar officer of the body corporate, or
  - (ii) a person purporting to act in any such capacity,

that person is also guilty of an offence and liable to be proceeded against and punished as if the person were guilty of the contravention referred to in *paragraph (a)*.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* shall apply in respect of the acts or defaults of a member in connection with the member's functions of management as if the member were a director or manager of the body corporate.

(3) *Subsection (1)* and *(2)* shall, with all necessary modifications, apply in respect of offences under this Act committed by an unincorporated body.

**Explanatory Note - Head 43 establishes that where a corporate body commits an offence that officers of the body at that time of the offence who contributed to the offence or were aware of the offence and did not try to prevent it are guilty of the offence. The Head provides that the officer may be proceeded against. This is based on section 48 of the Commissions of Investigation Act 2004.**

**Head 44: Prosecutions.**

**44.**\_\_\_ (1) A prosecution for an offence under this Act may be brought only by or with the consent of the Director of Public Prosecutions.

(2) Notwithstanding *section 10(4)* of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act to which that provision applies may be instituted -

- (a) within 12 months from the date on which the offence was committed, or
- (b) within 6 months from the date on which evidence sufficient, in the opinion of the person instituting the proceedings, to justify proceedings comes to that person's knowledge.

whichever is the later, provided that no such proceedings shall be commenced later than 2 years from the date on which the offence concerned was committed.

(3) For the purposes of *subsection (2)(b)*, a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence referred to in that subsection came to his or her knowledge shall be evidence of that date and, in any legal proceedings, a document purporting to be a certificate under this subsection and to be signed shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.

**Explanatory Note - Head 44 provides for the Director of Public Prosecutions to consent to a prosecution being brought under this act. Proceeding may be brought within two years of the offence being committed. This Act allows for changes to the limits for bringing summary proceedings from those stated in the Petty Sessions (Ireland) Act 1851. This is based on section 49 of the Commissions of Investigation Act 2004.**

**Head 45: Legal proceedings not to fall on discontinuation of relevant proceedings.**

**45.**\_\_\_ The discontinuation of the relevant proceedings pursuant to *section 7(13), 10(3), 17(1) or 40(1)* shall not of itself cause any civil or criminal proceedings relating to the relevant body concerned that are pending or in progress to be discontinued or otherwise fall.

**Explanatory Note - Head 45 established that the termination of an inquiry or investigation will not prevent any court proceedings from being taken or terminate any ongoing court proceedings.**

**Head 46: Expenses.**

**46.**\_\_\_ The expenses incurred in the administration of this Act shall be paid out of money provided by the Commission.

**Explanatory Note - Head 46 provides that the Commission will pay for any expenses resulting from the administration of this Act.**