



Number 7 of 2002

**TRIBUNALS OF INQUIRY (EVIDENCE) (AMENDMENT)
ACT, 2002**

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
 2. Powers of tribunals as to exclusion of public.
 3. Publication of reports of tribunals.
 4. Membership of tribunals.
 5. Reserve members of tribunals.
 6. Investigators.
 7. Offences.
 8. Non-admissibility in criminal proceedings of evidence given to investigators.
 9. Amendment of section 1(2A) of Principal Act.
 10. Application of Act.
 11. Expenses.
 12. Short title and collective citation.
-



Number 7 of 2002

**TRIBUNALS OF INQUIRY (EVIDENCE) (AMENDMENT)
ACT, 2002**

AN ACT TO AMEND THE TRIBUNALS OF INQUIRY
(EVIDENCE) ACTS, 1921 TO 1998. [27th March, 2002]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

“Act of 1979” means Tribunals of Inquiry (Evidence) (Amendment) Act, 1979;

“Act of 1998” means Tribunals of Inquiry (Evidence) (Amendment) (No. 2) Act, 1998;

“Court” means High Court;

“investigator” means a person appointed by a tribunal in accordance with *section 6* to be an investigator;

“Principal Act” means Tribunals of Inquiry (Evidence) Act, 1921;

“a tribunal” means a tribunal to which the Principal Act is applied under section 1 of that Act.

(2) In this Act—

(a) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended, and

(b) a reference to a subsection is a reference to the subsection of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

2.—Section 2(a) of the Principal Act is amended by the insertion of “and, in particular, where there is a risk of prejudice to criminal proceedings” after “the evidence to be given”. Powers of tribunals as to exclusion of public.

[No. 7.] *Tribunals of Inquiry (Evidence) (Amendment) Act, 2002.* [2002.]

Publication of reports of tribunals.

3.—(1) If, on receipt by the person to whom a tribunal is required, by the instrument by which it is appointed or any instrument amending it, to report of an interim or the final report of the tribunal, that person considers that the publication of the report might prejudice any criminal proceedings, that person may apply to the Court for directions regarding the publication of the report.

(2) Before the Court determines an application under *subsection (1)*, it shall direct that notice of it 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—
 - (i) is described or mentioned in the report concerned, or
 - (ii) is related to any matter into which the tribunal concerned inquired and which is so described or mentioned,

and the Court may receive submissions, and evidence tendered, by or on behalf of any such person.

(3) On an application under *subsection (1)* the Court may, if it considers that the publication of the report concerned might prejudice any criminal proceedings, 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.

(4) An application under *subsection (1)* may be heard otherwise than in public if the Court considers that it is appropriate to do so.

Membership of tribunals.

4.—Section 2 of the Act of 1979 is amended by the addition of the following subsections:

“(3) One or more persons may be appointed to be a member or members of a tribunal at any time after the tribunal is appointed.

(4) Subject to section 6 (as amended by section 3 of the *Tribunals of Inquiry (Evidence) (Amendment) Act, 1997*) of this Act, a decision or determination of a tribunal consisting of more than one member may be that of a majority of its members and, in the case of an equal division among its members as to the decision or determination to be made, the decision or determination shall be that of the chairperson of the tribunal.

(5) If the chairperson of a tribunal is for any reason unable to continue to act as such chairperson, another member of the tribunal may be designated as its chairperson, and the former chairperson may continue to be a member of the tribunal.

(6) An appointment under subsection (3), or a designation under subsection (5), of this section shall be made by an amendment under section 1A (inserted by section 1 of the *Tribunals of Inquiry (Evidence) (Amendment) (No. 2) Act, 1998*) of the

[2002.] *Tribunals of Inquiry (Evidence) (Amendment) Act, 2002.* [No. 7.]

Principal Act of the instrument by which the tribunal concerned S.4 was appointed, and may be so made notwithstanding the fact that the tribunal concerned, while consenting to or requesting the making of the appointment or designation, does not consent to the appointment or designation of the particular person.

(7) An appointment under subsection (3), or a designation under subsection (5), of this section shall not affect decisions, determinations or inquiries made or other actions taken by the tribunal concerned before such appointment or designation.

(8) A member of a tribunal who is unable to act as such member, whether temporarily or for the remainder of the tribunal's inquiry, shall be deemed for the duration of such inability not to be a member of the tribunal.

(9) A tribunal may act or continue to act notwithstanding one or more vacancies among its members if it is satisfied that the legal rights of any person affected by the proceedings of the tribunal would not be thereby unduly prejudiced.”.

5.—(1) One or more persons may be appointed to be a reserve member or members of a tribunal by— Reserve members of tribunals.

(a) the instrument by which the tribunal is appointed, or

(b) an instrument amending that instrument.

(2) A reserve member of a tribunal may—

(a) sit with the member or members of the tribunal during its proceedings and consider any oral evidence given, and examine any documents or things that are produced or sent in evidence, to the tribunal, and

(b) be present at the deliberations of the tribunal,

but may not otherwise participate in those proceedings or deliberations and may not seek to influence the tribunal in its decisions or determinations.

(3) If a member of a tribunal is for any reason unable to continue to act as such member, whether temporarily or for the remainder of the tribunal's inquiry, a reserve member of the tribunal may be appointed to be a member of it.

(4) An appointment under *subsection (3)* shall be deemed, other than for the purposes of *subsection (5)*, to be operative from the date on which the person concerned was appointed to be a reserve member of the tribunal concerned or such later date as may be specified in the amendment under *subsection (6)* of the instrument by which the tribunal concerned was appointed giving effect to the appointment.

(5) An appointment under *subsection (3)* shall not affect decisions, determinations or inquiries made or other actions taken by the tribunal concerned before such appointment.

(6) An appointment under *subsection (1)(b)* or (3) shall be made by an amendment under section 1A (inserted by section 1 of the Act of 1998) of the Principal Act of the instrument by which the tribunal concerned was appointed, and may be so made notwithstanding the

[No. 7.] *Tribunals of Inquiry (Evidence)* [2002.]
(Amendment) Act, 2002.

S.5 fact that the tribunal concerned, while consenting to or requesting the making of the appointment, does not consent to the appointment of the particular person.

Investigators.

6.—(1) A tribunal may, with the approval of—

- (a) the Government, if it was appointed by the Government, or
- (b) the Minister of the Government by whom it was appointed and the consent of the Minister for Finance,

appoint such and so many persons to be investigators to perform the functions conferred on investigators by this section.

(2) The appointment of an investigator shall be for such term and subject to such other terms and conditions (including terms and conditions relating to remuneration and allowances for expenses) as the tribunal concerned may, with the approval of—

- (a) the Government, if it was appointed by the Government, or
- (b) the Minister of the Government by whom it was appointed and the consent of the Minister for Finance,

determine.

(3) Whenever an investigator is so requested by the tribunal by which he or she was appointed, he or she shall, for the purpose of assisting it in the performance of its functions and subject to its direction and control, carry out a preliminary investigation of any matter material to the inquiry to which the tribunal relates.

(4) An investigator may, for the purposes of a preliminary investigation under *subsection (3)*, require a person to—

- (a) give to him or her such information in the possession, power or control of the person as he or she may reasonably request,
- (b) send to him or her any documents or things in the possession, power or control of the person that he or she may reasonably request, or
- (c) attend before him or her and answer such questions as he or she may reasonably put to the person and produce any documents or things in the possession, power or control of the person that he or she may reasonably request,

and the person shall comply with the requirement.

(5) An investigator may examine a person mentioned in *subsection (4)* in relation to any information, documents or things mentioned in that subsection and may reduce the answers of the person to writing and require the person to sign the document containing them.

(6) Where a person mentioned in *subsection (4)* fails or refuses to comply with a requirement made to the person by an investigator under that subsection, the Court may, on application to it in a summary manner in that behalf made by the investigator with the consent of the tribunal concerned, order the person to comply with the

[2002.] *Tribunals of Inquiry (Evidence) (Amendment) Act, 2002.* [No. 7.]

requirement and make such other (if any) order as it considers necessary and just to enable the requirement to have full effect. S.6

(7) A person to whom a requirement under *subsection (4)* is made shall be entitled to the same immunities and privileges as if he or she were a witness before the Court.

(8) An investigator shall not, without the consent of the tribunal by which he or she was appointed, disclose other than to that tribunal any information, documents or things obtained by him or her in the performance of his or her functions under this section.

(9) An investigator shall be furnished with a warrant of appointment and when performing a function under this section shall, if so requested by a person affected, produce the warrant or a copy of it to the person.

7.—(1) A person who, without reasonable cause, by act or omission obstructs or hinders an investigator in the performance of his or her functions under *section 6*, or fails or refuses to comply with a requirement made to the person under *subsection (4)* of that section, shall be guilty of an offence. Offences.

(2) A prosecution for an offence under this section may be brought only by or with the consent of the Director of Public Prosecutions.

(3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both.

8.—A statement or admission made by a person before an investigator shall not be admissible as evidence against the person in any criminal proceedings. Non-admissibility in criminal proceedings of evidence given to investigators.

9.—(1) Subsection (2A) (inserted by section 3 of the Act of 1979) of section 1 of the Principal Act is amended by the substitution— Amendment of section 1(2A) of Principal Act.

(a) in paragraph (a), of “€300,000” for “£10,000”, and

(b) in paragraph (b), of “€3,000” for “£500”.

(2) *Subsection (1)* shall apply in respect of offences committed after the passing of this Act irrespective of whether the tribunal concerned was appointed before or after such passing.

10.—(1) Subject to *section 9(2)* and *subsections (2)* and *(3)*, this Act shall apply to tribunals appointed after the passing of this Act. Application of Act.

(2) *Sections 4* and *5* shall apply to tribunals appointed before or after the passing of this Act.

(3) *Section 6* shall not apply to a tribunal appointed before the passing of this Act unless such application is provided for by an amendment under section 1A (inserted by section 1 of the Act of 1998) of the Principal Act of the instrument by which the tribunal was appointed.

