



Number 9 of 1999

**CRIMINAL JUSTICE (LOCATION OF VICTIMS'
REMAINS) ACT, 1999**

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Number 9 of 1999

**CRIMINAL JUSTICE (LOCATION OF VICTIMS'
REMAINS) ACT, 1999**

AN ACT TO MAKE PROVISION IN RELATION TO THE INDEPENDENT COMMISSION FOR THE LOCATION OF VICTIMS' REMAINS ESTABLISHED UNDER THE AGREEMENT BETWEEN THE GOVERNMENT AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND DONE AT DUBLIN ON THE 27TH DAY OF APRIL, 1999, TO AMEND SECTION 24 OF THE FREEDOM OF INFORMATION ACT, 1997, AND TO PROVIDE FOR RELATED MATTERS. [19th May, 1999]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

“the Agreement” means the Agreement between the Government and the Government of the United Kingdom of Great Britain and Northern Ireland establishing the Independent Commission for the Location of Victims' Remains, done at Dublin on the 27th day of April, 1999, the text of which is set out in the *Schedule* to this Act;

“the Commission” means the Independent Commission for the Location of Victims' Remains established by the Agreement;

“functions” includes powers and duties;

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

“the process” means the objective and functions of the Commission as set out in Article 3 of the Agreement;

“Secretary of State” means a Secretary of State in the Government of the United Kingdom of Great Britain and Northern Ireland;

“victim” means a victim of violence;

“victim of violence” shall be construed in accordance with Article 3(3)(a) of the Agreement.

S.1	<p>(2) In this Act—</p> <p>(a) a reference to a subsection or paragraph is a reference to a subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and</p> <p>(b) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.</p>
Status of Commission.	<p>2.—(1) The Commission shall be independent in the performance of its functions.</p> <p>(2) The Commission shall have the legal capacity of a body corporate.</p>
Objective and functions of Commission, etc.	<p>3.—(1) The objective and functions of the Commission shall be as set out in Article 3 of the Agreement.</p> <p>(2) The arrangements specified in Articles 4 and 8 of the Agreement shall apply to the Commission.</p>
Provision of services to Commission.	<p>4.—The Minister may provide to the Commission such moneys, premises, facilities and services (including the services of staff) as may be necessary for the performance of its functions.</p>
Prohibition on use of evidence, etc.	<p>5.—(1) Subject to <i>subsection (2)</i>, any evidence obtained, directly or indirectly, whether inside or outside the State, resulting from the process, or resulting from an examination or test carried out for the purpose of <i>subsection (4)</i> or <i>(5)</i>, shall not be admissible in any criminal proceedings.</p> <p>(2) <i>Subsection (1)</i> does not apply to the admission of evidence adduced in criminal proceedings on behalf of the accused.</p> <p>(3) Subject to <i>subsections (4)</i> and <i>(5)</i>, any human remains or other item found, whether inside or outside the State, resulting from the process shall not be subjected to forensic examination or testing.</p> <p>(4) <i>Subsection (3)</i> does not prohibit forensic examination or testing the purpose of which is to discover information in relation to an item where the information is sought for the purpose of establishing, for the purposes of an inquest, the identity of a deceased person, or how, when and where he or she died.</p> <p>(5) <i>Subsection (3)</i> does not prohibit a test or procedure the purpose of which is to determine whether an item can safely be moved or otherwise dealt with.</p>
Confidentiality.	<p>6.—(1) Subject to <i>subsection (2)</i>, information provided to the Commission in relation to the process shall not be disclosed to any person except for the purpose of facilitating the location of the remains to which the information relates.</p>

(2) The Commission may disclose or arrange for the disclosure to members of a victim's family— S.6

- (a) the fact that information has been provided to the Commission relating to the remains of the victim, and
- (b) the place where, according to that information, the victim's remains may be found.

7.—(1) (a) The Minister may by order make provision for the purposes of *paragraph (b)* as respects inviolability, exemptions, facilities and immunities, privileges and rights in relation to the Commission. Immunities and privileges, etc. relating to Commission.

(b) The Commission, its property and a person (being a member of the Commission or a member of the staff of, or a person performing functions assigned to him or her by, the Commission or an agent of the Commission) shall have and enjoy inviolability, exemptions, facilities and immunities, privileges and rights in such manner, to such extent and subject to such limitations (including the waiver thereof) as may be provided for in each case in the order under *paragraph (a)*.

(c) An order made under this section may make different provision for different cases or classes of case.

(2) The Minister may by order amend or revoke an order under this section.

(3) An order under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order has been laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

8.—(1) If on an application made by a member of the Garda Síochána, not below the rank of inspector, a judge of the District Court is satisfied that the Commission has certified that the remains of a victim are likely to be found at any place or premises, he or she may issue a warrant authorising a named member of the Garda Síochána, accompanied by such other persons as may be necessary, to enter, within one week from the date of issue of the warrant, on production, if so requested, of the warrant, if necessary by the use of reasonable force, the place or premises named on the warrant and, for as long as may be necessary, to search it and recover the remains of the victim and anything found with the remains. Search warrants.

(2) The power to issue a warrant under this section is in addition to and not in substitution for any other power to issue a warrant for the search of any place or premises.

(3) A document purporting to be a certificate stating where the remains of a victim are likely to be found and to be signed by or on behalf of the Commission shall be deemed, unless the contrary is shown, to be such certificate and so signed and the certificate shall be admissible as evidence of the facts stated therein.

S.8. (4) A person who obstructs or interferes with a member of the Garda Síochána, or any person accompanying the member, acting under the authority of a warrant under this section, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500, or to imprisonment for a term not exceeding 6 months, or to both.

(5) A member of the Garda Síochána acting under the authority of a warrant under this section may arrest without a warrant any person who obstructs or interferes with that member, or any person accompanying the member, in so acting.

Amendment of section 24 of Freedom of Information Act, 1997.

9.—Section 24 of the Freedom of Information Act, 1997, is hereby amended—

(a) in subsection (1)—

(i) by the deletion in paragraph (c) of “or”,

(ii) by the substitution in paragraph (d) for “Northern Ireland” of “Northern Ireland, or”, and

(iii) by the insertion after paragraph (d) of the following paragraph:

“(e) matters relating to the functions of the Independent Commission for the Location of Victims' Remains (within the meaning of the *Criminal Justice (Location of Victims' Remains) Act, 1999.*”,

and

(b) in subsection (2)(a)(ii) by the insertion—

(i) in clause (II), after “1939,” of “or”, and

(ii) after clause (II) of the following clause—

“(III) the functions of the Commission referred to in subsection (1)(e),”.

Restriction on power of coroner to summons member, or member of staff, of Commission.

10.—Section 26(1) of the Coroners Act, 1962, does not apply to a member of the Commission or a member of the staff of, or a person performing functions assigned to him or her by, the Commission, or an agent of the Commission in relation to any matter within his or her knowledge resulting from the process.

Minister may direct inquest of victim to be held by coroner other than coroner within whose district remains are lying.

11.—Notwithstanding the provisions of the Coroners Act, 1962, where the remains of a victim have been located resulting from the process, the Minister may, if he or she so thinks proper, direct that a coroner, other than the coroner in whose district the remains are lying, shall hold an inquest in relation to the death, and thereupon the coroner so directed shall hold the inquest in like manner as if the remains were lying within his or her district.

Dissolution of Commission.

12.—The Commission shall stand dissolved upon such day as the Minister may, after consultation with the Secretary of State, by order

appoint, and the Minister may include in the order such transitional or consequential provisions as appear to him or her to be expedient. S.12.

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

14.—(1) This Act may be cited as the Criminal Justice (Location of Victims' Remains) Act, 1999. Short title and commencement.

(2) This Act shall come into operation on such day as the Minister may, after consultation with the Secretary of State, by order appoint.

SCHEDULE

Section 1.

AGREEMENT BETWEEN THE GOVERNMENT OF IRELAND AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ESTABLISHING THE INDEPENDENT COMMISSION FOR THE LOCATION OF VICTIMS' REMAINS

The Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland,

Recalling the Agreement between the Government of Ireland and the Government of the United Kingdom of Great Britain and Northern Ireland done at Belfast on 10th April 1998 and the Multi-Party Agreement reached at Belfast on 10th April 1998;

Reaffirming their total commitment to the principle of non-violence and to a new beginning in relationships within Northern Ireland, within the island of Ireland and between the peoples of these islands;

Remembering the victims of violence and the suffering of the families of those victims;

Recognizing that the location of the remains of the victims of violence is essential to reconciliation and a new beginning in relationships;

Have agreed as follows:

ARTICLE 1

The Independent Commission for the Location of Victims' Remains (hereinafter "the Commission") is hereby established.

ARTICLE 2

1. The Commission shall be independent in the performance of its functions.

2. The Commission shall have the legal capacity of a body corporate.

ARTICLE 3

1. The objective of the Commission is to facilitate the location of the remains of victims of violence.

Sch.

2. The Commission shall have the following functions:

- (a) to receive information relating to the location of remains of such victims;
- (b) to disclose the above information for the purpose of facilitating the location of remains to which the information relates;
- (c) to report on its activities to both Governments no later than one year after its establishment and annually thereafter.

In addition, the Commission may, subject to the provisions of Article 7 below, provide or arrange for the provision of such information as it considers appropriate to the families of victims of violence.

3. For the purposes of this Agreement:

- (a) "victims of violence" means persons killed before 10th April 1998 as the result of acts committed on behalf of, or in connection with, an unlawful organization;
- (b) "unlawful organization" means:
 - (i) an unlawful organization within the meaning of the Act of the Oireachtas entitled the Offences against the State Act, 1939, in respect of which a suppression order has been made under that Act; or
 - (ii) an organization proscribed for the purposes of the Act of Parliament of the United Kingdom entitled the Northern Ireland (Emergency Provisions) Act 1996.

ARTICLE 4

1. The Commission shall have not less than two members. The members shall be appointed jointly by the two Governments who may also appoint additional members from time to time. The two Governments may jointly appoint one of the members as Chairperson. The members of the Commission shall serve on terms and conditions to be determined by the two Governments.

2. The Commission may appoint such staff as may be required to assist it in the discharge of its functions on such terms and conditions as the Commission may, subject to the approval of both Governments, determine.

ARTICLE 5

The Commission, its members, staff, property and premises, and any agents of or persons carrying out work for or giving advice to, the Commission shall have such privileges, immunities and inviolabilities as may be conferred or provided by orders made in accordance with the relevant legislation of Ireland and of the United Kingdom.

ARTICLE 6

Such moneys, premises, facilities and services as may be necessary for the proper functioning of the Commission shall be provided by the two Governments on a basis to be determined by them.

ARTICLE 7

Sch.

Members and staff of the Commission, any persons carrying out work for or giving advice to the Commission and any agents of the Commission shall be bound not to disclose any information obtained in the course of the performance of their functions except in accordance with the provisions of the relevant legislation of Ireland and of the United Kingdom.

ARTICLE 8

The Commission shall keep proper accounts and proper records of all moneys received or expended by it and shall, at the joint request of the two Governments, appoint auditors who shall audit the accounts of the Commission. The reports of the auditors shall be submitted to both Governments.

ARTICLE 9

This Agreement shall enter into force on the date on which the two Governments exchange notifications of their acceptance of it.

ARTICLE 10

The Agreement shall continue in force until terminated by mutual agreement of the two Governments and shall thereafter cease to have effect save in so far as and to the extent necessary for meeting any liabilities or disposing in an orderly manner of any remaining assets of the Commission.

In witness whereof, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in two originals at Dublin on the 27th day of April 1999.

For the Government
of Ireland

For the Government of the
United Kingdom of Great
Britain and Northern Ireland