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COMMISSION TO INQUIRE INTO CHILD ABUSE ACT, 2000

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COMMISSION TO INQUIRE INTO CHILD ABUSE ACT, 2000

AN ACT TO ESTABLISH A COMMISSION, TO BE KNOWN AS AN COIMISIÚN CHUN DROCHÚSÁID LEANAÍ A FHIOSRÚ, OR, IN THE ENGLISH LANGUAGE, THE COMMISSION TO INQUIRE INTO CHILD ABUSE, TO INVESTIGATE CHILD ABUSE IN INSTITUTIONS IN THE STATE, TO ENABLE PERSONS WHO HAVE SUFFERED SUCH ABUSE TO GIVE EVIDENCE TO COMMITTEES OF THE COMMISSION, TO PROVIDE FOR THE PREPARATION AND PUBLICATION OF A REPORT BY THE COMMISSION CONTAINING THE RESULTS OF ITS INVESTIGATION AND ANY RECOMMENDATIONS IT CONSIDERS APPROPRIATE FOR THE PREVENTION OF CHILD ABUSE, THE PROTECTION OF CHILDREN FROM IT AND THE ACTIONS TO BE TAKEN TO ADDRESS ANY CONTINUING EFFECTS OF CHILD ABUSE ON THOSE WHO HAVE SUFFERED IT AND TO PROVIDE FOR RELATED MATTERS. [26th April, 2000]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act, unless the context otherwise requires— Interpretation.

“abuse”, in relation to a child, means—

- (a) the wilful, reckless or negligent infliction of physical injury on, or failure to prevent such injury to, the child,
- (b) the use of the child by a person for sexual arousal or sexual gratification of that person or another person,
- (c) failure to care for the child which results in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare, or
- (d) any other act or omission towards the child which results in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare,

and cognate words shall be construed accordingly;

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“adviser” means a person appointed under *section 24*;

“Chairperson” shall be construed in accordance with *section 6*;

“child” means a person who has not attained the age of 18 years, and “childhood” shall be construed accordingly;

“Commission” means the Commission to Inquire into Child Abuse established by *section 3*;

“Committee” means, as the context may require, the Confidential Committee or the Investigation Committee or both of them;

“Confidential Committee” means the committee of the Commission established by *section 10(1)(a)*;

“direction” means a direction under *section 14*, and cognate words shall be construed accordingly;

“document” includes any class or description of document or record, or data stored electronically or in any other manner and also includes thing;

“establishment day” means the day appointed under *section 2* to be the establishment day;

“evidence” includes the expression of a belief, opinion or intention;

“inquiry officer” shall be construed in accordance with *section 23*;

“institution” includes a school, an industrial school, a reformatory school, an orphanage, a hospital, a children’s home and any other place where children are cared for other than as members of their families;

“Investigation Committee” means the committee of the Commission established by *section 10(1)(b)*;

“meeting” includes a sitting and a hearing;

“Minister” means the Minister for Education and Science;

“relevant period” means the period from and including the year 1940 or such earlier year as the Commission may determine to and including the year 1999 and such later period (if any) as the Commission may determine;

“serious offence” means an offence for which a person of full age and capacity and not previously convicted may be punished by imprisonment for a term of 5 years or by a more severe penalty.

(2) References in this Act to abuse of children in institutions or which occurred in institutions include references to any case in which abuse of a child took place, not in an institution, but while the child was residing or being cared for in, or attending, an institution and the abuse was committed or aided, abetted, counselled or procured by, or otherwise contributed to by an act or omission of, a person engaged in the management, administration, operation, supervision or regulation of the institution or a person otherwise employed in or associated with the institution.

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(3) References in this Act to the management, administration, operation, supervision and regulation of institutions include references to such management, administration, operation, supervision or regulation effected, supervised, funded or regulated, in whole or in part, by a Department of State, a vocational education committee established by the Vocational Education Act, 1930, a health board, a local authority for the purposes of the Local Government Act, 1941, or any other public body. S.1

(4) 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 provision is intended,
- (b) 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
- (c) a reference to any enactment is a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.

2.—The Minister shall by order appoint a day to be the establishment day for the purposes of this Act. Establishment day.

3.—(1) On the establishment day there shall stand established a commission, to be known as An Coimisiún chun Drochúsáid Leanaí a Fhiosrú, or, in the English Language, the Commission to Inquire into Child Abuse, to perform the functions conferred on it by or under this Act. Establishment of Commission.

(2) The Commission shall be a body corporate with perpetual succession and it shall have power to sue and may be sued in its corporate name.

(3) The Commission and its members shall be independent in the performance of their functions.

(4) When the Minister is satisfied, after consultation with the Chairperson, that the Commission and the Committees have completed the performance of their functions, he or she may by order dissolve the Commission and the Committees and may, subject to the provisions of this Act, include in the order such incidental, ancillary or consequential provisions as the Minister considers necessary or expedient.

(5) When the order under *subsection (4)* is proposed to be made, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

4.—(1) The principal functions of the Commission are, subject to the provisions of this Act— Functions of Commission.

- (a) to provide, for persons who have suffered abuse in childhood in institutions during the relevant period, an opportunity to recount the abuse, and make submissions, to a Committee,

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(b) through a Committee—

- (i) to inquire into the abuse of children in institutions during the relevant period,
- (ii) where it is satisfied that such abuse has occurred, to determine the causes, nature, circumstances and extent of such abuse, and
- (iii) without prejudice to the generality of any of the foregoing, to determine the extent to which—
 - (I) the institutions themselves in which such abuse occurred,
 - (II) the systems of management, administration, operation, supervision, inspection and regulation of such institutions, and
 - (III) the manner in which those functions were performed by the persons or bodies in whom they were vested,contributed to the occurrence or incidence of such abuse,

and

(c) to prepare and publish reports pursuant to *section 5*.

(2) Subject to the provisions of this Act, the inquiry under *subsection (1)* shall be conducted in such manner and by such means as the Commission considers appropriate.

(3) The Commission shall have all such powers as are necessary or expedient for the performance of its functions.

(4) (a) The Government may, if they so think fit, after consultation with the Commission, by order confer on the Commission and the Committees such additional functions or powers connected with their functions and powers for the time being as they consider appropriate.

(b) The Government may, if they so think fit, after consultation with the Commission, amend or revoke an order under this subsection.

(c) Where an order is proposed to be made under this subsection, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made unless a resolution approving of the draft has been passed by each such House.

(5) The Commission may invite and receive oral or written submissions.

(6) In performing their functions the Commission and the Committees shall bear in mind the need of persons who have suffered abuse in childhood to recount to others such abuse, their difficulties in so doing and the potential beneficial effect on them of so doing and, accordingly, the Commission and the Committees shall endeavour to ensure that meetings of the Committees at which evidence is being given are conducted—

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- (a) so as to afford to persons who have suffered such abuse in institutions during the relevant period an opportunity to recount in full the abuse suffered by them in an atmosphere that is as sympathetic to, and as understanding of, them as is compatible with the rights of others and the requirements of justice, and S.4
- (b) as informally as is possible in the circumstances.

5.—(1) The Commission shall, having had regard to the reports under *sections 13 and 16*, prepare a report in writing in relation to the matters referred to in *section 4(1)(b)* (“the report”) and shall specify in it the determinations made by the Commission pursuant to that provision. Report of Commission.

(2) The Commission may include in the report any recommendations that it considers appropriate including recommendations in relation to the action that it considers should be taken—

- (a) to alleviate or otherwise address the effects of the abuse referred to in *section 4* on those who suffered it, and
- (b) to prevent where possible and reduce the incidence of abuse of children in institutions and to protect children from such abuse.

(3) The report—

- (a) may, if the Commission is satisfied that abuse of children, or abuse of children during a particular period, occurred in a particular institution, contain findings to that effect and may identify the institution and the persons who committed the abuse,
- (b) may contain findings in relation to the management, administration, operation, supervision and regulation, direct or indirect, of an institution referred to in *paragraph (a)* and, as respects those functions, the persons in whom they were vested and may identify those persons,
- (c) shall not identify, or contain information that could lead to the identification of, persons the subject of abuse in childhood, and
- (d) shall not contain findings in relation to particular instances of alleged abuse of children.

(4) If the report contains findings that are based on findings in a report of the Confidential Committee, the report shall include a statement to the effect that the first-mentioned findings are based, solely or partly, as the case may be, on the latter findings and that the evidence on which the latter findings are based could not be tested or challenged by any person and (if it be the case) was not corroborated.

(5) (a) The report shall be published to the general public by the Commission in such manner and at such time during the specified period as the Commission may determine.

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(b) In *paragraph (a)* “the specified period” means the period of 2 years from the establishment day or such longer period as the Government, after consultation with the Commission, may specify by order.

(c) When an order is proposed to be made under *paragraph (b)*, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

(6) The Commission—

(a) shall, not more than one year after the establishment day, prepare an interim report on such matters relating to the inquiry aforesaid or otherwise relating to its functions as it may determine, and

(b) may, if and whenever it considers it appropriate to do so, prepare other such interim reports,

and *subsections (2), (3) and (4)* shall apply to such interim reports as they apply to the report referred to in those subsections.

(7) A report under *paragraph (a)* of *subsection (6)* shall be published to the general public by the Commission in such manner during the year after the establishment day as the Commission may determine and a report under *paragraph (b)* of that subsection shall be so published in such manner and at such time as the Commission may determine.

Membership of
Commission.

6.—(1) The Commission shall consist of a chairperson (“the Chairperson”) and such number of ordinary members as the Government may determine.

(2) The Government shall appoint a person to be the Chairperson and, after consultation with the Chairperson, persons to be the ordinary members of the Commission.

(3) Members of the Commission (other than a member who is the holder of a judicial office) shall be paid such remuneration (if any) as may be determined by the Minister with the consent of the Minister for Finance and members of the Commission shall be paid such allowances for expenses as may be so determined.

Meetings and
procedure of
Commission.

7.—(1) The Commission shall hold such and so many meetings as may be necessary for the performance of its functions.

(2) The Chairperson shall fix the date, time and place of the first meeting of the Commission.

(3) A meeting of the Commission or a part of such a meeting may, if the Commission considers it appropriate, having had regard to the desirability of holding such meetings in public, be held otherwise than in public.

(4) Subject to the provisions of this Act, the Commission shall regulate, by standing orders or otherwise, the procedure and business of the Commission.

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(5) The Commission may act notwithstanding one or more vacancies among its members. S.7

(6) The Commission shall make such arrangements as it considers appropriate for the making of as complete a record as is practicable of the proceedings of the Commission and the Committees and, in relation to the custody, and the disposal (otherwise than in a manner that would contravene the National Archives Act, 1986), after the dissolution of those bodies, of the documents of the Commission or a Committee and of copies of any documents given in evidence to the Commission or a Committee.

8.—(1) The Commission shall, as soon as may be after the establishment day, provide itself with a seal. Seal of Commission.

(2) The seal of the Commission shall be authenticated by the signature of the Chairperson or another member of the Commission authorised by the Commission in that behalf.

(3) Judicial notice shall be taken of the seal of the Commission and an instrument purporting to be an instrument made by the Commission and to be sealed with its seal (purporting to be authenticated in accordance with *subsection (2)*) shall be received in evidence and shall be deemed to be such instrument without proof unless the contrary is shown.

9.—(1) The Commission may, with the consent of the Minister and the Minister for Finance, appoint such and so many persons as the Commission may determine to be members of the staff of the Commission. Staff of Commission.

(2) The Minister may, with the consent of the Commission and the Minister for Finance, second to the Commission such and so many of his or her officers as he or she may determine and the Minister for Health and Children may, with the like consents, second to the Commission such and so many of his or her officers as he or she may determine, and a person so seconded shall be deemed, for the purposes of this Act, to be, during the period of the secondment, a member of the staff of the Commission.

(3) A person appointed or seconded under this section to a position shall hold the position upon and subject to such terms and conditions as the Minister, or the Minister for Health and Children (if the person was seconded by him or her) may, with the consent of the Minister for Finance, determine, being, in the case of a person so seconded, terms and conditions not less favourable to the person than those applicable to him or her as an officer of the Minister or the Minister for Health and Children, as the case may be.

10.—(1) On the establishment day there shall stand established— Committees of Commission.

(a) a committee of the Commission which shall be known as the Confidential Committee, and

(b) a committee of the Commission which shall be known as the Investigation Committee.

(2) A Committee shall consist of a chairperson and such number of ordinary members as the Chairperson may determine.

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(3) The chairperson and the ordinary members of each Committee shall be appointed by the Chairperson.

(4) Each member of a Committee shall be a member of the Commission.

(5) The Chairperson shall be the chairperson of the Investigation Committee.

(6) A person may not be a member of both Committees.

(7) A meeting of a Committee may, if the Committee considers it appropriate, be held, and evidence may be received by it, outside the State.

(8) A Committee may act notwithstanding one or more vacancies among its members.

Meetings and procedure of Committees.

11.—(1) A Committee shall hold such and so many meetings as may be necessary for the performance of its functions.

(2) A meeting of the Confidential Committee shall be held otherwise than in public.

(3) (a) A meeting of the Investigation Committee, or a part of such a meeting, at which evidence relating to particular instances of alleged abuse of children is being given shall be held otherwise than in public.

(b) Other meetings of the Investigation Committee or other parts of such meetings may, if the Committee considers it appropriate, having had regard to the desirability of holding such meetings in public, be held otherwise than in public.

(4) Subject to the provisions of this Act, the Commission shall regulate, by standing orders or otherwise, the procedure and business of a Committee.

(5) A Committee may invite and receive oral or written submissions.

(6) (a) A Committee may, if and whenever the Chairperson so determines, act in divisions each of which shall consist of such members of that Committee as the Chairperson may determine.

(b) There shall be a chairperson of a division of a Committee who shall be such member of the division as the Chairperson may determine.

(c) A division of a Committee shall perform, in relation to such matters as the Chairperson may determine, such functions of the committee as may be so determined and shall prepare and furnish to the Committee a report in writing of the results of such performance.

(d) A division of a Committee and its chairperson shall have, for the purposes of the performance of the functions of the division, the powers of the Committee and its chairperson, respectively.

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12.—(1) The principal functions of the Investigation Committee are, subject to the provisions of this Act—

Functions of Investigation Committee.

- (a) to provide, for persons who have suffered abuse in childhood in institutions during the relevant period, an opportunity to recount the abuse and make submissions to the Committee,
- (b) to inquire into the abuse of children in institutions during the relevant period,
- (c) to determine the causes, nature, circumstances and extent of such abuse, and
- (d) without prejudice to the generality of any of the foregoing, to determine the extent to which—
 - (i) the institutions themselves in which such abuse occurred,
 - (ii) the systems of management, administration, operation, supervision and regulation of such institutions, and
 - (iii) the manner in which those functions were performed by the persons or bodies in whom they were vested, contributed to the occurrence or incidence of such abuse,and
- (e) to prepare and furnish reports pursuant to *section 13*.

(2) The Investigation Committee shall have all such powers as are necessary or expedient for the performance of its functions.

13.—(1) The Investigation Committee (“the Committee”) shall prepare a report in writing of the results of the inquiry referred to in *section 12* (“the report”) and shall specify in it the determinations made by it pursuant to that section.

Report of Investigation Committee.

(2) The report—

- (a) may, if the Committee is satisfied that abuse of children, or abuse of children during a particular period, occurred in a particular institution, contain findings to that effect and may identify the institution and the person who committed the abuse,
- (b) may contain findings in relation to the management, administration, operation, supervision and regulation, direct or indirect, of an institution identified in the report pursuant to *paragraph (a)* and, as respects those functions, the persons in whom they were vested and may identify those persons, and
- (c) shall not contain findings in relation to particular instances of alleged abuse of children.

(3) The Committee shall furnish the report to the Commission.

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(4) The Committee—

- (a) shall, not more than one year after the establishment day, prepare and furnish to the Commission an interim report on such matters relating to the inquiry aforesaid or otherwise relating to its functions as it may determine, and
- (b) may, if and whenever it considers it appropriate to do so, prepare and furnish to the Commission other such interim reports.

Powers of
Investigation
Committee.

14.—(1) Subject to the provisions of this Act, the chairperson of the Investigation Committee (“the Committee”) may for the purposes of the functions of the Committee—

- (a) direct in writing any person whose evidence is required by the Committee to attend before it on a date and at a time and place specified in the direction and there to give evidence and to produce any document specified in the direction in the possession or control of the person,
- (b) direct a person in attendance before the Committee pursuant to *paragraph (a)* to produce to the Committee any document specified in the direction in the possession or control of the person,
- (c) direct in writing any person to send to the Committee any document specified in the direction in the possession or control of the person,
- (d) direct in writing any person to make discovery on oath of any documents that are or have been in the possession or control of the person relating to any matter relevant to the functions of the Committee and to specify in the affidavit of documents concerned any documents mentioned therein which the person objects to produce to the Committee and the grounds for the objection; and the rules of court relating to the discovery of documents in proceedings in the High Court shall apply in relation to the discovery of documents pursuant to this paragraph with any necessary modifications,
- (e) give any other directions that appear to the Committee to be reasonable, just and necessary.

(2) A direction in writing shall be signed by the chairperson of the Committee.

(3) Where a person fails or refuses to comply with or disobeys a direction, the High Court may, on application to it in a summary manner in that behalf by the Committee, order the person to comply with the direction and make such other (if any) order as it considers necessary and just to enable the direction to have full effect.

(4) A person who—

- (a) having been directed under *paragraph (a)* of *subsection (1)* to attend before the Committee and having had tendered to him or her an amount determined in accordance with a scheme under *section 20* in respect of the expenses of his or her attendance before the Committee, without just

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cause or excuse, fails or refuses to comply with or disobeys the direction, S.14

- (b) being in attendance before the Committee pursuant to a direction under the said *paragraph (a)*, refuses to take the oath on being required by the Committee pursuant to *section 22* to do so or refuses to answer any question to which the Committee may legally require an answer,
- (c) without just cause or excuse, disobeys a direction under *paragraph (b), (c), (d) or (e) of subsection (1)*,
- (d) in relation to the discovery of documents pursuant to *paragraph (d) of subsection (1)*, contravenes a rule of court referred to in that paragraph, or
- (e) does any other thing in relation to the matters before the Committee which, if done in relation to proceedings before a court by a witness in the court or any other person, would be contempt of that court,

shall be guilty of an offence.

(5) The Committee may, for sufficient reason if it considers it appropriate to do so, arrange for the examination of a person at any place in or outside the State by a member of the Committee, a member of the staff of the Commission or any other person and may receive, in such form as it may determine, the evidence of the person taken at the examination; and the relevant rules of court relating to evidence in proceedings in the High Court shall apply in relation to the matters aforesaid with any necessary modifications.

(6) In relation to the matters specified in *subsection (1)* and, in so far as they relate to the Committee, *subsection (5)*, the Committee shall have all such powers, rights and privileges as are vested in the High Court or a judge of that Court on the occasion of an action and, in relation to the matters specified in *subsection (5)*, in so far as they relate to a person conducting an examination pursuant to that subsection, that person shall have all the powers, rights and privileges aforesaid.

(7) If a person gives false evidence before the Committee or to a person examining him or her pursuant to *subsection (5)* in such circumstances that, if the person had given the evidence before a court, the person would be guilty of perjury, the person shall be guilty of an offence and shall be liable on conviction on indictment thereof to the penalties applying to perjury.

15.—(1) The principal functions of the Confidential Committee (“the Committee”) are, subject to the provisions of this Act—

Functions of Confidential Committee.

- (a) to provide, for persons who have suffered abuse in childhood in institutions during the relevant period and who do not wish to have that abuse inquired into by the Investigation Committee, an opportunity to recount the abuse, and make submissions, in confidence to the Committee,
- (b) to receive evidence of such abuse,
- (c) to make findings of a general nature, based on the evidence aforesaid, in relation to the matters specified in *section 4(1)(b)*, and

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(d) to prepare and furnish reports pursuant to *section 16*.

(2) The Committee shall have all such powers as are necessary for the performance of its functions.

Report of Confidential Committee.

16.—(1) Subject to *subsection (2)*, the Confidential Committee (“the Committee”) shall prepare a report in writing (“the report”), based on the evidence received by it pursuant to *subsection (1)(b)* of *section 15*, setting out in general terms the findings made by it pursuant to *subsection (1)(c)* of that section.

(2) The report—

(a) shall not identify, or contain information that could lead to the identification of, persons alleged to have suffered abuse in childhood or persons alleged to have committed such abuse or any institutions or any other persons,

(b) shall not contain findings in relation to particular instances of alleged abuse of children.

(3) The Committee shall furnish the report to the Commission.

(4) The Committee—

(a) shall, not more than one year after the establishment day, prepare and furnish to the Commission an interim report on such matters relating to the evidence and findings aforesaid or otherwise relating to its functions as it may determine, and

(b) may, if and whenever it considers it appropriate to do so, prepare and furnish to the Commission other such interim reports.

Privilege.

17.—(1) Utterances made by a member of the Commission or a Committee, a member of the staff of the Commission, a person conducting an examination pursuant to *section 14(5)*, an inquiry officer or an adviser to the Commission or a Committee, for the purposes of the performance of the functions of the Commission or a Committee, shall be absolutely privileged and such utterances and documents prepared by the Commission or a Committee or any of the other persons aforesaid for the purposes of such performance and reports of the Commission or a Committee, shall be absolutely privileged wherever and however published.

(2) In *subsection (1)* references to the Commission include references to the commission to inquire into child abuse established pursuant to a decision of the Government made on 11 May, 1999.

Privileges and immunities of witnesses, etc.

18.—(1) (a) A person whose evidence has been, is being or is to be given before the Commission or a Committee, or who produces or sends a document to the Commission or a Committee or who is requested by the Commission or a Committee or directed to give evidence or produce a document to it or to attend before it and there to give evidence or produce a document or who makes a submission to the Commission or a Committee shall be entitled to the same privileges and immunities in respect of those matters

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as a witness before the High Court in respect of S.18 evidence.

(b) In *paragraph (a)* references to the Commission include references to the commission to inquire into child abuse established pursuant to a decision of the Government made on 11 May, 1999.

(2) A person whose evidence has been, is being or is to be given to an inquiry officer or who produces or sends a document to him or her or who is requested by an inquiry officer to give evidence or produce a document to him or her or to attend before him or her and there to give evidence or produce a document shall be entitled to the same privileges and immunities in respect of those matters as a witness before the High Court in respect of evidence.

(3) A person whose evidence has been, is being or is to be given to a person for the purposes of an examination by him or her pursuant to *section 14(5)* or who produces or sends a document to him or her or who is requested for such purposes by such a person to give evidence or produce a document to him or her or to attend before him or her and there to give evidence or produce a document shall be entitled to the same privileges and immunities in respect of those matters as a witness before the High Court in respect of evidence.

19.—(1) Notwithstanding *section 14(4)*, a person who is giving, or is to give, evidence to a Committee of alleged abuse suffered by the person in childhood may at any time cease giving, or decline to give, evidence to that Committee and, if he or she does so, may give evidence to the other Committee of the alleged abuse.

Option for certain persons in relation to evidence to a Committee.

(2) Where a person has ceased giving, or declined to give, evidence to a Committee pursuant to *subsection (1)*, the evidence given or any statement or outline of the evidence proposed to be given by the person shall be disregarded for all purposes other than the purposes of proceedings in relation to an offence under *section 14(7)* or *29*, and *section 18(1)* shall be construed and have effect accordingly.

20.—(1) The Minister may, with the consent of the Minister for Finance and after consultation with the Commission, make a scheme providing for the payment by the Commission to a person who—

Expenses of witnesses, etc.

(a) pursuant to a request of a Committee or a direction attends before a Committee, or

(b) makes an oral submission to the Commission or a Committee in person or through a legal representative,

of such reasonable amount in respect of the expenses incurred by the person in relation to such attendance or submission as may be determined by the Commission in accordance with the scheme.

(2) The Minister may, with the consent and after the consultation aforesaid, make a scheme amending or revoking a scheme under this section.

(3) The Commission shall carry out a scheme under this section in accordance with its terms.

(4) The Commission may pay to a person who makes discovery of documents pursuant to a direction under *section 14(1)(d)* such

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reasonable amount in respect of the expenses incurred by the person in relation to the discovery as, in default of agreement between the Commission and the person, may be determined by a Taxing Master of the High Court.

Admissibility of certain evidence.

21.—(1) Notwithstanding *section 18*—

(a) a person who gives evidence before the Investigation Committee or to a person for the purposes of an examination by him or her pursuant to *section 14(5)* shall not be entitled to refuse to answer any question put to him or her, and

(b) a person shall not be entitled to refuse to produce or send a document pursuant to a direction,

on the ground that his or her answer or the document might incriminate him or her.

(2) A statement or admission made by a person—

(a) before the Commission or a Committee,

(b) to a person conducting an examination of him or her pursuant to *section 14(5)*,

(c) to an inquiry officer, or

(d) in a document prepared for and sent by a person to a person specified in *paragraph (a), (b) or (c)*, or to a member of the Commission or a Committee, or a member of the staff of the Commission, for the purposes of the functions of the Commission,

shall not be admissible as evidence against the person, or any person who may be liable for the acts or omissions of the person, in any criminal proceedings (other than proceedings in relation to an offence under *subsection (4) or (7) of section 14 or section 29*), or in any civil proceedings in a court or other tribunal.

Evidence on oath.

22.—(1) A witness before the Commission or a Committee or before a person examining him or her pursuant to *section 14(5)* may be required by it or by the person, as the case may be, to give his or her evidence on oath.

(2) Where a requirement under *subsection (1)* is made, the Chairperson or the chairperson of the Committee concerned or a member of the staff of the Commission authorised in that behalf by the Commission or the person conducting the examination aforesaid, as the case may be, may administer the oath to the witness concerned.

Inquiry officers.

23.—(1) The Commission may authorise such and so many members of its staff as it may determine (referred to in this Act as “inquiry officers”) to perform the functions conferred on inquiry officers by this section.

(2) Whenever so requested by the Investigation Committee, an inquiry officer shall, for the purpose of assisting it and the Commission in the performance of their functions, carry out a preliminary

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inquiry into an allegation by a person that he or she suffered abuse in childhood in an institution during the relevant period by— S.23

- (a) requesting the person, at the option of the person, to—
 - (i) provide him or her with a statement in writing of the evidence that the person proposes to give to the Investigation Committee in relation to the matter, or
 - (ii) make a statement of the evidence aforesaid at a meeting with him or her which the officer shall write down,

within such reasonable period as may be specified by the officer,
- (b) furnishing the person against whom the allegation is made with copies of the statement or statements under *paragraph (a)* and with copies of any relevant documents and requesting the person, at the option of the person, to—
 - (i) provide him or her with a statement in writing of the evidence that the person proposes to give to the Investigation Committee in relation to the matter, or
 - (ii) make a statement of the evidence aforesaid at a meeting with him or her which the officer shall write down,

within such reasonable period as may be specified by the officer, and
- (c) where appropriate, conducting interviews with the persons referred to in *paragraphs (a)* and *(b)*, and questioning them, for the purpose of the making of the statements aforesaid.

(3) Following an inquiry pursuant to *subsection (2)*, the inquiry officer concerned shall prepare a report in writing of the results of the inquiry and shall furnish the report and the statement or statements under *subsection (2)* and any relevant documents to the Investigation Committee; and the report shall not contain any determinations or findings.

(4) A statement under *subsection (2)* shall be signed (or, where necessary, otherwise identified) by the person by whom it was made and, if the statement was made pursuant to *paragraph (a)(ii)* or *(b)(ii)* of that subsection, the signing shall be effected in the presence of the inquiry officer concerned who shall then sign the statement.

(5) An inquiry officer may request the production by a person of any document in the possession or control of the person that the officer considers relevant to his or her inquiry.

(6) Where a document is produced by a person to an inquiry officer pursuant to a request under *subsection (5)*, the officer may, with the consent of the person, retain the document in his or her possession for a reasonable period for the purpose of examining and copying it.

(7) A person being interviewed pursuant to *subsection (2)* may decline to answer any question asked, or refuse a request to produce

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a document made, by the inquiry officer concerned and may terminate the interview at any time and a person to whom a request is made under *subsection (2) or (5)* may refuse to comply with the request.

(8) An inquiry officer shall be furnished with the authorisation under *subsection (1)* relating to him or her and when exercising a power under this section, shall, if so requested by a person affected, produce the authorisation or a copy of it to the person.

Advice and research.

24.—(1) If the Commission considers that it, or a Committee, in the performance of its functions requires the advice, guidance or assistance of experts in respect of any matter, it may, upon such terms and conditions as it may determine, appoint such and so many advisers having expertise in relation to that matter as it may determine to provide it or the Committee, as the case may be, with such advice, guidance or assistance.

(2) The Commission may, for the purpose of the performance of its functions, conduct, or commission the conduct of, research.

Directions, etc., of High Court.

25.—(1) The Commission may, whenever it considers appropriate to do so, apply in a summary manner to the High Court sitting otherwise than in public for directions in relation to the performance of any of the functions of the Commission or a Committee or for its approval of an act or omission proposed to be done or made by the Commission or a Committee for the purposes of such performance.

(2) On an application to the High Court for the purposes of *subsection (1)*, that Court may—

(a) give such directions as it considers appropriate (including a direction that the Commission or a Committee should make a report and, if that Court considers it appropriate, an interim report, to it at or before such times as it may specify in relation to the matter the subject of the application or any related matter),

(b) make any order that it considers appropriate,

(c) refuse to approve of an act or omission referred to in *subsection (1)*.

(3) The Commission or a Committee, as the case may be, shall comply with a direction or order of the High Court under this section and shall not do any such act as aforesaid or make any such omission as aforesaid if the High Court has refused to approve of it.

(4) The High Court shall give such priority as it reasonably can, having regard to all the circumstances, to the disposal of proceedings in that Court under this Act.

(5) The Superior Court Rules Committee may, with the concurrence of the Minister for Justice, Equality and Law Reform, make rules to facilitate the giving of effect to *subsection (4)*.

Power of High Court to order disclosure of information.

26.—(1) Where the High Court is satisfied that—

(a) for the purposes of the exercise of its jurisdiction in relation to the Commission or the Investigation Committee, or

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- (b) on application to it in that behalf in a summary manner by the Commission or the Investigation Committee, for the purposes of its functions, S.26

it is necessary that information to which this section applies should, having regard to the public interest, the interests of justice and the rights of persons to whom the information relates, be disclosed to that Court or to either such body, it may order such disclosure.

(2) Subject to *subsection (3)*, this section applies to information the disclosure of which is prohibited by a statute or an instrument made under a statute, or any other rule of law, or is so prohibited in certain circumstances and the case concerned is one to which the prohibition applies.

(3) This section does not apply to information the disclosure of which, or the disclosure of which in certain circumstances, is prohibited by, or in pursuance of, an act of an institution of the European Union.

27.—(1) Subject to the provisions of this section but notwithstanding any provision of, or of an instrument made under, a statute or any rule of law, a person (including the Confidential Committee) shall not disclose information provided to the Confidential Committee and obtained by the person in the course of the performance of the functions of the person under this Act.

Prohibition of disclosure of information provided to Confidential Committee.

(2) A person referred to in *subsection (1)* (“the person”) shall disclose information so referred to—

- (a) for the purpose of the performance of the functions of the person under this Act,
- (b) to the legal representatives of the parties to any proceedings referred to in *subsection (3)*,
- (c) to a member of the Garda Síochána if the person is acting in good faith and reasonably believes that such disclosure is necessary in order to prevent the continuance of an act or omission constituting a serious offence, and
- (d) to an appropriate person (within the meaning of the Protections for Persons Reporting Child Abuse Act, 1998) if the person is acting in good faith and reasonably believes that such disclosure is necessary to prevent, reduce or remove a substantial risk to life or to prevent the continuance of abuse of a child.

(3) Information referred to in *subsection (1)* shall, if so ordered by a court in connection with proceedings before it for the judicial review of a decision of the Confidential Committee, be disclosed by a person referred to in that subsection to the court if, and to the extent only, that the court is satisfied that such disclosure is necessary in the interests of justice; and any disclosure pursuant to this subsection shall not identify, or contain information that could lead to the identification of, persons the subject of abuse in childhood.

(4) Proceedings referred to in *subsection (3)* shall be heard otherwise than in public.

(5) Documents provided to the Confidential Committee or prepared by it (other than a report under *section 16*), or prepared by a

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person for it in the course of the performance of his or her functions as a member of that Committee, a member of the staff of the Commission, or an adviser, shall not constitute Departmental records within the meaning of section 2(2) of the National Archives Act, 1986.

(6) A person who contravenes *subsection (1)* shall be guilty of an offence.

Non-disclosure of information.

28.—(1) Subject to *subsection (2)* but, notwithstanding any other provision of, or of an instrument made under, a statute or any other rule of law, a person (including the Commission and the Investigation Committee) shall not be required to disclose information provided to the Commission or the Investigation Committee and obtained by the person in the course of the performance of the functions of the person under this Act.

(2) A person referred to in *subsection (1)* shall disclose information so referred to—

(a) to a member of the Garda Síochána if the person is acting in good faith and reasonably believes that such disclosure is necessary in order to prevent an act or omission constituting a serious offence, and

(b) to an appropriate person (within the meaning of the Protections for Persons Reporting Child Abuse Act, 1998) if the person is acting in good faith and reasonably believes that such disclosure is necessary to prevent, reduce or remove a substantial risk to life or to prevent the continuance of abuse of a child.

Obstruction.

29.—A person who by act or omission obstructs or hinders the Commission or a Committee or a person carrying out an examination pursuant to *section 14(5)* in the performance of the functions of the Commission or that Committee or person under this Act shall be guilty of an offence.

Preservation of documents, etc.

30.—(1) A person who has in his or her possession or control a document or information in any form that is relevant to the functions of the Commission or a Committee shall preserve the document, data or information until the Commission is dissolved.

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

Provisions in relation to discovery.

31.—(1) A court shall not make an order against the Commission or a Committee in proceedings to which the Commission or a Committee is not a party for the discovery, inspection, production or copying of—

(a) a document created by the Commission, a Committee, a person conducting an examination pursuant to *section 14(5)* or an inquiry officer, or

(b) a document given or sent to a person referred to in *paragraph (a)* and in the possession or control of any person so referred to.

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(2) Where a document is in the custody of a person pursuant to *section 7(6)*, other than the person who produced or sent it to the Commission or a Committee, a court shall not make an order for the discovery, inspection, production or copying of the document against the first-mentioned person. S.31

(3) Where—

(a) a document is produced or sent by a person (“the sender”) to a person referred to in *subsection (1)(a)* for the purposes of the functions of the Commission, and

(b) an order for the discovery of the document is made by a court against the sender at a time when it is in the possession or control of the person to whom it was so produced or sent,

the document shall be deemed to be in the control or procurement of the sender and the Commission shall make it available to him or her.

32.—Sections 4 and 5 of the Official Secrets Act, 1963, do not apply to evidence given to the Commission or a Committee or a person conducting an examination pursuant to *section 14(5)* or to a document produced or sent to the Commission or a Committee or such a person as aforesaid. Restriction of Official Secrets Act, 1963.

33.—Section 4 of the Data Protection Act, 1988, does not apply to personal data provided to the Commission or a Committee while the data is in the custody of the Commission or a Committee, or in the case of such data provided to the Confidential Committee, of a body to which it is transferred by the Commission upon the dissolution of the Commission. Restriction of Data Protection Act, 1988.

34.—(1) A head may refuse to grant a request (including a request made before the passing of this Act) under section 7 of the Freedom of Information Act, 1997 (“a request”), if access to the record concerned could, in the opinion of the head, reasonably be expected to prejudice the effectiveness of the performance of its functions by the Commission or a Committee or the procedures or methods employed for such performance. Application of Freedom of Information Act, 1997, to certain records.

(2) *Subsection (1)* does not apply in relation to a case in which in the opinion of the head concerned the public interest would, on balance, be better served by granting than by refusing to grant the request concerned.

(3) Before forming the opinion referred to in *subsection (1)* or (2), a head shall consult with the Chairperson.

(4) A head shall refuse to grant a request in relation to a record held by the Confidential Committee and transferred to a public body by the Commission upon the dissolution of the Commission.

(5) In this section “head”, “public body” and “record” have the meanings assigned to them by section 2 of the Freedom of Information Act, 1997.

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Penalties.

35.—A person guilty of an offence under this Act shall be liable—

(a) on summary conviction, to a fine not exceeding £1,500 or imprisonment for a term not exceeding 6 months or both, or

(b) on conviction on indictment, to a fine not exceeding £20,000 or imprisonment for a term not exceeding 2 years or both.

Expenses.

36.—(1) The expenses incurred by the Minister for Finance in the administration of this Act shall be paid out of moneys provided by the Oireachtas.

(2) 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.

Short title.

37.—This Act may be cited as the Commission to Inquire into Child Abuse Act, 2000.