

NORTHERN IRELAND (LOCATION OF VICTIMS' REMAINS) ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: Definitions

6. This section defines various expressions used in the Act. *The Commission* is defined in *subsection (2)* by reference to the Treaty establishing the Independent Commission for the Location of Victims' Remains. *Subsections (3), (4) and (5)* define the three key terms *relevant information*, *victim of violence* and *proscribed organisation*.
7. For a person to be a victim of violence, two conditions must be satisfied—
 - The killing must have taken place before the date of the Belfast Agreement (10th April 1998);
 - It must be the result of an act of violence connected with an organisation which is proscribed for the purpose of the Northern Ireland (Emergency Provisions) Act 1996.
8. The following organisations are currently proscribed for the purposes of that Act: The Irish Republican Army, Cumann na mBan, Fianna na hEireann, The Red Hand Commando, Saor Eire, The Ulster Freedom Fighters, The Ulster Volunteer Force, The Irish National Liberation Army, The Irish People's Liberation Organisation, The Ulster Defence Association, The Loyalist Volunteer Force, The Continuity Army Council, The Red Hand Defenders and the organisation using the name "The Orange Volunteers" and being the organisation in whose name a statement described as a press release was published on 14th October 1998.
9. Only information received by the Commission which relates to the whereabouts of the remains of such a victim of violence – termed *relevant information* – will trigger the Act's protections.

Section 2: The Commission

10. This section makes supplementary provision about the Commission. *Subsections (1) and (2)* provide power for the Secretary of State to make various provision about the Commission by Order. The subsections are similar to section 7(2) of the Northern Ireland Arms Decommissioning Act 1997. An Order was made under section 2(2) on 27th May 1999 (S.I. 1999/1437), providing for the Commission to enjoy immunities and privileges largely similar to those conferred on the Independent International Commission on Decommissioning by SI 1997/2231, made under section 7(2) of the 1997 Act.
11. *Subsections (5) and (6)* provide for the commencement and duration of the provisions relating to the Commission. As the Commission is an international organisation, it is underpinned by domestic legislation in the Republic of Ireland, as well as by this Act.

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Section 2 has therefore been brought into force to coincide with the commencement of the parallel provisions in the Irish legislation, following consultation with the relevant Minister in the Government of Ireland (see further paragraph 20 below). Once the Commission's task is completed, it will no longer be needed and subsection (6) therefore confers power to provide that section 2 will cease to have effect following similar consultation.

Section 3: Admissibility of evidence in criminal proceedings

12. This section contains the first key protection for relevant information provided to the Commission. *Subsection (1)(a)* provides that such information shall not be admissible in evidence in any criminal proceedings, and *subsection(1)(b)* extends the bar on admissibility to evidence which comes to light as a result of the information being provided. The result is that where relevant information, which may or may not lead to the location of remains, leads to the recovery of other items, whether in the course of the search for the remains themselves or as a result of matters discovered during that search, all such evidence will be inadmissible in any criminal proceedings anywhere in the United Kingdom. Private prosecutions are also covered by the provision.
13. *Subsection (2)* creates an exception for the admission of evidence on behalf of the accused, in order to cater for the possibility that such evidence might in some circumstances be helpful to the defence.

Section 4: Restrictions on forensic testing

14. The provision of relevant information to the Commission will, it is hoped, lead to the recovery of human remains. Whether or not remains are recovered, other items may also of course be found, such as items of clothing, bullets or firearms. The results of any forensic testing of the remains themselves or of such other items might be useful to the prosecution in any criminal proceedings, and this section therefore provides protection in this respect. *Subsection (1)* prohibits forensic testing for any of the purposes set out in paragraphs (a) to (f) of any human remains or other item found as a result of relevant information having been provided to the Commission.
15. The prohibition on testing is subject to two exceptions:
 - Testing for inquest purposes is allowed (*subsection (2)*); and
 - Testing is allowed in order to establish whether an item can safely be moved (*subsection (3)*); this is to cater for the situation where explosives or other potentially dangerous items are recovered.

Section 5: Restrictions on disclosure of information

16. *Subsection (1)* completes the range of protection provided for relevant information by prohibiting its disclosure other than for the purpose of facilitating the location of the remains to which it relates. The subsection will therefore, for example, prevent the disclosure of any such information to a third party with no legitimate role in the process of locating the remains. The prohibition on disclosure will continue to apply after information has properly been passed by the Commission to a third party, such as the police.
17. *Subsection (2)* will, however, leave the Commission with a discretion to pass certain information to the family of the victim.

Section 6: Powers of entry

18. This section makes provision for the grant of warrants authorising entry and search of private premises in the special circumstances to which the Act relates. This is needed because, in searching for the remains of victims, the police will not be conducting criminal investigations and it would therefore be inappropriate for them to seek warrants

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under the provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 or its equivalents in Great Britain.

19. The effect of *subsections (1) and (2)* is that a warrant may be granted to a constable by a resident magistrate in Northern Ireland or by a justice of the peace in Great Britain if the court is satisfied that —

— The Commission has certified that the remains of a victim of violence are likely to be found at the premises in question; and

— There are reasonable grounds for believing that *either*:

1) it is not practicable to communicate with the person entitled to allow entry; *or*

2) entry will not be granted without a warrant.