



## 2013 CHAPTER 2

### *The inquiry*

#### **The inquiry**

1.—(1) The First Minister and deputy First Minister acting jointly may cause an inquiry to be held under this Act (“the inquiry”).

(2) The terms of reference of the inquiry are as set out in a statement to the Assembly made by the First Minister and deputy First Minister acting jointly on 18th October 2012.

(3) The First Minister and deputy First Minister acting jointly may at any time amend the terms of reference of the inquiry by order after consulting the chairperson if a draft of the order has been laid before, and approved by resolution of, the Assembly.

(4) The inquiry may be known as the Inquiry into Historical Institutional Abuse 1922 to 1995.

(5) The inquiry panel—

- (a) must not rule on; and
- (b) has no power to determine,

any person’s civil or criminal liability.

#### **Appointment of members**

2.—(1) Each member of the inquiry panel must be appointed by the First Minister and deputy First Minister acting jointly by an instrument in writing.

(2) The First Minister and deputy First Minister acting jointly must consult the person they have appointed, or propose to appoint, as the chairperson before they appoint any other member of the inquiry panel under subsection (1).

(3) The First Minister and deputy First Minister acting jointly may at any time during the course of the inquiry appoint an additional member to the inquiry panel—

- (a) to fill a vacancy that has arisen in the panel (including a vacancy in the position of chairperson), or
- (b) to increase the number of members of the panel.

(4) The power to appoint a member under subsection (3) is exercisable only with the consent of the chairperson (except in the case of a vacancy in the position of chairperson).

(5) The power to appoint a replacement chairperson may be exercised by appointing a person who is already a member of the inquiry panel.

#### **Duration of appointment of members**

**3.—**(1) Subject to the following provisions of this section, a member of the inquiry remains a member until the inquiry comes to an end (or until the member's death if the member dies before then).

(2) A member of the inquiry panel may at any time resign by notice to the First Minister and deputy First Minister.

(3) The First Minister and deputy First Minister acting jointly may at any time by notice terminate the appointment of a member of the inquiry panel—

- (a) on the ground that, by reason of physical or mental illness or for any other reason, the member is unable to carry out the duties of a member of the inquiry panel;
- (b) on the ground that the member has failed to comply with any duty imposed on the member in relation to the inquiry;
- (c) on the ground that the member has—
  - (i) a direct interest in the matters to which the inquiry relates, or
  - (ii) a close association with an interested party,such that the impartiality of the inquiry panel could reasonably be regarded as affected by that member;
- (d) on the ground that the member has, since being appointed, been guilty of any misconduct that makes the member unsuited to membership of the inquiry panel.

(4) In determining whether subsection (3)(a) applies in a case where the inability to carry out the duties is likely to be temporary, the First Minister and deputy First Minister acting jointly may have regard to the likely duration of the inquiry.

(5) The First Minister and deputy First Minister acting jointly may not terminate a member's appointment under subsection (3)(c) if they were aware of the interest or association in question when appointing the member.

(6) Before exercising its powers under subsection (3) in relation to a member other than the chairperson, the First Minister and deputy First Minister acting jointly must consult the chairperson.

(7) Before exercising their powers under subsection (3) in relation to any member of the inquiry panel, the First Minister and deputy First Minister acting jointly must—

- (a) inform the member of the proposed decision and of the reasons for it, and take into account any representations made by the member in response, and
- (b) if the member so requests, consult the other members of the inquiry panel (to the extent that no obligation to consult them arises under subsection (6)).

#### **Assessors**

4.—(1) The chairperson may appoint one or more persons to act as assessors to assist the inquiry panel.

(2) A person may be appointed as an assessor only if it appears to the chairperson that the person has expertise that makes the person a suitable person to provide assistance to the inquiry panel.

(3) The chairperson may at any time terminate the appointment of an assessor.

#### **End of inquiry**

5.—(1) For the purposes of this Act the inquiry comes to an end—

- (a) on the date, after the delivery of the report of the inquiry, on which the chairperson notifies the First Minister and deputy First Minister that the inquiry has fulfilled its terms of reference; or
- (b) on any earlier date specified in a notice given to the chairperson by the First Minister and deputy First Minister acting jointly.

(2) The date specified in a notice under subsection (1)(b) may not be earlier than the date on which the notice is sent.

(3) Before exercising their power under subsection (1)(b) the First Minister and deputy First Minister acting jointly must consult the chairperson.

(4) Where the First Minister and deputy First Minister acting jointly give a notice under subsection (1)(b) they must—

- (a) set out in the notice their reasons for bringing the inquiry to an end;
- (b) lay a copy of the notice, as soon as is reasonably practicable, before the Assembly.

### *Inquiry proceedings*

#### **Evidence and procedure**

6.—(1) Subject to any provision of this Act or of rules under section 21, the procedure and conduct of the inquiry are to be such as the chairperson may direct.

(2) In particular, the chairperson may take evidence on oath, and for that purpose may administer oaths.

(3) Subject to any provision of rules under section 21, a statement made to the inquiry on oath by a person outside Northern Ireland through a live link is to be treated for the purposes of Article 3 of the Perjury (Northern Ireland) Order 1979 as having been made in Northern Ireland.

(4) In making any decision as to the procedure or conduct of the inquiry, the chairperson must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).

(5) In this section “live link” means a live television link or other arrangement whereby a person, while absent from the place where the inquiry is being held, is able to see and hear, and be seen and heard by, a person at that place.

(6) For the purposes of subsection (5) any impairment of sight or hearing is to be disregarded.

#### **Public access to inquiry proceedings and information**

7.—(1) Subject to subsection (3) and any restrictions imposed by an order under section 8, the chairperson must take such steps as the chairperson considers reasonable to secure that members of the public (including reporters) are able—

- (a) to attend the inquiry or to see and hear a simultaneous transmission of proceedings at the inquiry;
- (b) to obtain or to view a record of evidence and documents given, produced or provided to the inquiry or inquiry panel.

(2) No recording or broadcast of proceedings at the inquiry may be made except—

- (a) at the request of the chairperson; or
- (b) with the permission of the chairperson and in accordance with any terms on which permission is given.

(3) The proceedings of that part of the inquiry described in its terms of reference as the Acknowledgment Forum are to be held in private and references to the inquiry in subsection (1) do not include that part of the inquiry.

**Restrictions on public access, etc.**

- 8.—(1) Restrictions may, in accordance with this section, be imposed on—
- (a) attendance at the inquiry, or at any particular part of the inquiry;
  - (b) disclosure or publication of any evidence or documents given, produced or provided to the inquiry;
  - (c) disclosure or publication of the identity of any person.
- (2) Restrictions may be imposed by being specified in an order (a “restriction order”) made by the chairperson during the course of the inquiry.
- (3) A restriction order must specify only such restrictions—
- (a) as are required by any statutory provision, enforceable EU obligation or rule of law, or
  - (b) as the chairperson considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).
- (4) Those matters are—
- (a) the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;
  - (b) any risk of harm or damage that could be avoided or reduced by any such restriction;
  - (c) any conditions as to confidentiality subject to which a person acquired information which that person is to give, or has given, to the inquiry;
  - (d) the extent to which not imposing any particular restriction would be likely —
    - (i) to cause delay or to impair the efficiency or effectiveness of the inquiry, or
    - (ii) otherwise to result in additional cost (whether to public funds or to witnesses or others).
- (5) The chairperson may vary or revoke a restriction order by making a further order during the course of the inquiry.
- (6) Subject to subsection (7), restrictions imposed under this section on disclosure or publication of evidence or documents (“disclosure restrictions”) continue in force indefinitely unless—
- (a) under the terms of the relevant order the restrictions expire at the end of the inquiry or at some other time; or
  - (b) the relevant order is varied or revoked under subsection (5) or (8).
- (7) After the end of the inquiry disclosure restrictions do not apply to a public authority (within the meaning of the Freedom of Information Act 2000)

in relation to information held by the authority otherwise than as a result of the breach of disclosure restrictions.

(8) After the end of the inquiry OFMDFM may by a notice published in a way which it considers appropriate—

- (a) revoke a restriction order containing disclosure restrictions which are still in force; or
- (b) vary it so as to remove or relax any of the restrictions.

### **Powers to require production of evidence**

9.—(1) The chairperson may by notice require a person to attend at a time and place stated in the notice—

- (a) to give evidence;
- (b) to produce any documents in the custody or under the control of that person which relate to a matter in question at the inquiry;
- (c) to produce any other thing in the custody or under the control of that person for inspection, examination or testing by or on behalf of the inquiry.

(2) The chairperson may by notice require a person within a period stated in the notice—

- (a) to provide evidence to the inquiry in the form of a written statement;
- (b) to provide any documents in the custody or under the control of that person which relate to a matter in question at the inquiry;
- (c) to produce any other thing in the custody or under the control of that person for inspection, examination or testing by or on behalf of the inquiry.

(3) A notice under subsection (1) or (2) must—

- (a) explain the possible consequences of not complying with the notice;
- (b) indicate what the recipient of the notice should do to make a claim within subsection (4).

(4) A claim by a person that—

- (a) that person is unable to comply with a notice under this section, or
- (b) it is not reasonable in all the circumstances to require that person to comply with a notice under this section,

is to be determined by the chairperson, who may revoke or vary the notice on that ground.

(5) In deciding whether to revoke or vary a notice on the ground mentioned in subsection (4)(b), the chairperson must consider the public interest in the information in question being obtained by the inquiry, having regard to the likely importance of the information.

(6) For the purposes of this section a thing is under the control of a person if it is in that person's possession or if that person has a right to possession of it.

(7) The powers conferred by this section are exercisable only in respect of evidence, documents or other things which are wholly or primarily concerned with a transferred matter.

(8) In subsection (7) "transferred matter", in relation to a power conferred by this section, means a matter which, when the power is exercised, is a transferred matter within the meaning of the Northern Ireland Act 1998.

### **Privileged information, etc.**

**10.—**(1) A person may not under section 9 be required to give, produce or provide any evidence or document if—

- (a) that person could not be required to do so if the proceedings of the inquiry were civil proceedings in a court in Northern Ireland, or
- (b) the requirement would be incompatible with an EU obligation.

(2) The rules of law under which evidence or documents are permitted or required to be withheld on grounds of public interest immunity apply in relation to the inquiry as they apply in relation to civil proceedings in a court in Northern Ireland.

## *Reports*

### **Submission of reports**

**11.—**(1) The chairperson must deliver the report of the inquiry to the First Minister and deputy First Minister at least two weeks before it is published (or such other period as may be agreed between the First Minister and deputy First Minister acting jointly and the chairperson).

(2) In this section "report" includes an interim report.

### **Publication of reports**

**12.—**(1) The chairperson must make arrangements for the report of the inquiry to be published.

(2) Subject to subsection (3), the report of the inquiry must be published in full.

(3) The chairperson may withhold material from publication to such extent—

- (a) as is required by any statutory provision, enforceable EU obligation or rule of law, or
- (b) as the chairperson considers to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).

- (4) Those matters are—
- (a) the extent to which withholding material might inhibit the allaying of public concern;
  - (b) any risk of harm or damage that could be avoided or reduced by withholding any material;
  - (c) any conditions as to confidentiality subject to which a person acquired information which that person has given to the inquiry.
- (5) Subsection (4)(b) does not affect any obligation of a public authority that may arise under the Freedom of Information Act 2000.
- (6) In this section—
- “public authority” has the same meaning as in the Freedom of Information Act 2000;
  - “report” includes an interim report.

### **Laying of reports before the Assembly**

**13.** Whatever is required to be published under section 12 must be laid before the Assembly by the First Minister and deputy First Minister acting jointly, either at the time of publication or as soon afterwards as is reasonably practicable.

### *Expenses*

#### **Expenses of witnesses, etc.**

**14.—(1)** The chairperson may, with the approval of OFMDFM, award such amounts as the chairperson thinks reasonable to a person—

- (a) by way of compensation for loss of time; or
  - (b) in respect of expenses properly incurred, or to be incurred, in attending, or otherwise in relation to, the inquiry.
- (2) The power to make an award under this section includes power, where the chairperson with the approval of OFMDFM considers it appropriate, to award amounts in respect of legal representation.
- (3) A person is eligible for an award under this section only if the person—
- (a) is giving evidence to the inquiry or attending the inquiry to produce any document or other thing; or
  - (b) in the opinion of the chairperson, has such a particular interest in the proceedings or outcome of the inquiry as to justify such an award.
- (4) The power to make an award under this section is subject to such conditions or qualifications as may be determined by OFMDFM and notified by OFMDFM to the chairperson.



**Payment of inquiry expenses by OFMDFM**

- 15.—**(1) OFMDFM may agree to pay to—
- (a) the members of the inquiry panel;
  - (b) any assessor, counsel or solicitor to the inquiry; and
  - (c) any person engaged to provide assistance to the inquiry,
- such remuneration and expenses as OFMDFM may determine.
- (2) OFMDFM must pay any amounts awarded under section 14.
- (3) OFMDFM must meet any other expenses incurred in holding the inquiry, including the cost of publication of the report (and any interim report) of the inquiry.
- (4) Subsection (5) applies where OFMDFM—
- (a) believes that there are matters in respect of which the inquiry panel is acting outside the inquiry's terms of reference, or is likely to do, and
  - (b) gives a notice to the chairperson specifying those matters and the reasons for that belief.
- (5) Subject to provision made by rules under section 21, OFMDFM is not obliged under this section or otherwise to pay any amounts or to meet any expenses in so far as they are referable—
- (a) to any matters certified by OFMDFM, in accordance with such provision, to be outside the inquiry's terms of reference, and
  - (b) to any period falling after the date on which the notice under subsection (4) was given.
- (6) Within a reasonable time after the end of the inquiry OFMDFM must publish the total amount of what OFMDFM has paid (or remains liable to pay) under this section.

*Supplementary***Offences**

- 16.—**(1) A person who without reasonable excuse—
- (a) contravenes a restriction order; or
  - (b) fails to do anything which that person is required to do by a notice under section 9,
- is guilty of an offence.
- (2) A person who during the course of the inquiry does anything which is intended to have the effect of—

- (a) distorting or otherwise altering any evidence, document or other thing which is given, produced or provided to the inquiry, or
- (b) preventing any evidence, document or other thing from being given, produced or provided to the inquiry,

or anything which that person knows or believes is likely to have that effect, is guilty of an offence.

(3) A person who during the course of the inquiry intentionally—

- (a) suppresses or conceals a document which is, and which that person knows or believes to be, a relevant document, or
- (b) alters or destroys a relevant document,

is guilty of an offence.

(4) For the purposes of subsection (3) a document is a “relevant document” if it is likely that the chairperson would (if aware of its existence) wish to be provided with it.

(5) A person does not commit an offence under subsection (2) or (3) by doing anything which that person is authorised or required to do—

- (a) by the chairperson, or
- (b) by virtue of section 10 or any privilege that applies.

(6) Only the chairperson may institute proceedings for an offence under subsection (1).

(7) Proceedings for an offence under subsection (2) or (3) may be instituted only by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(8) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding six months, or to both.

### **Enforcement by High Court**

17.—(1) Where a person—

- (a) fails to comply with, or acts in breach of, a notice under section 9 or an order made by the chairperson; or
- (b) threatens to do so,

the chairperson may certify the matter to the High Court.

(2) The High Court, after hearing any evidence or representations on the matter certified to it under subsection (1), may make any order by way of enforcement or otherwise which it could have made if the matter had arisen in proceedings before it.

**Immunity from suit**

**18.—**(1) No action lies against a person who is—

- (a) a member of the inquiry panel;
- (b) an assessor, counsel or solicitor to the inquiry; or
- (c) engaged to provide assistance to the inquiry,

in respect of any act done or omission made in the execution of that person's duty as such, or any act done or omission made in good faith in the purported execution of that person's duty as such.

(2) Subsection (1) applies only to acts done or omissions made during the course of the inquiry.

(3) For the purposes of the law of defamation, the same privilege attaches to—

- (a) any statement made in or for the purposes of proceedings before the inquiry (including the report and any interim report of the inquiry); and
- (b) reports of proceedings before the inquiry,

as would be the case if those proceedings were proceedings before a court in Northern Ireland.

**Time limit for applying for judicial review**

**19.—**(1) An application for judicial review of a decision made—

- (a) by OFMDFM in relation to the inquiry; or
- (b) by a member of the inquiry panel,

must be brought within 14 days after the day on which the applicant became aware of the decision, unless that time limit is extended by the court.

(2) Subsection (1) does not apply where an earlier time limit applies by virtue of rules of court.

(3) Subsection (1) does not apply to—

- (a) a decision as to the contents of the report of the inquiry;
- (b) a decision of which the applicant could not have become aware until the publication of the report.

(4) In this section—

“OFMDFM” includes the First Minister and deputy First Minister;

“report” includes any interim report.

**Power to make supplementary, etc. provision**

**20.—**(1) OFMDFM may by order make such supplementary, transitional, incidental or consequential provision as it considers appropriate for the purposes

of this Act or in consequence of, or for giving full effect to, any provision of this Act.

- (2) An order under subsection (1) is subject to negative resolution.

### *General*

#### **Rules**

- 21.**—(1) OFMDFM may make rules dealing with—
- (a) matters of evidence and procedure in relation to the inquiry;
  - (b) the return or keeping, after the end of the inquiry, of documents given to or created by the inquiry;
  - (c) awards under section 14.
- (2) Rules under subsection (1)(a) may in particular—
- (a) provide that evidence given for the purposes of any particular part of the inquiry must not be disclosed—
    - (i) in the proceedings of any other part of the inquiry unless the chairperson so orders; or
    - (ii) in any criminal or civil proceedings in Northern Ireland unless it is necessary to avoid a breach of Convention rights (within the meaning of the Human Rights Act 1998);
  - (b) make provision for orders similar to witness anonymity orders within the meaning of section 86 of the Coroners and Justice Act 2009.
- (3) Rules under subsection (1)(c) may in particular—
- (a) make provision as to how and by whom the amount of awards is to be assessed, including provision allowing the assessment to be undertaken by the chairperson or by such other person as the chairperson may nominate;
  - (b) make provision for review of an assessment at the instance of a person dissatisfied with it.
- (4) Rules under this section are subject to negative resolution.

#### **Application to the Crown**

**22.**—(1) This Act binds the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland except as provided by subsection (2).

(2) The powers conferred by section 9 are not exercisable so as to require any evidence, document or other thing to be given, produced or provided by or on behalf of Her Majesty's Government in the United Kingdom, the Scottish Ministers or the Welsh Ministers.

### **Consequential amendments**

**23.—**(1) In Article 9(5)(a) of the Commissioner for Complaints (Northern Ireland) Order 1996 (matters not subject to investigation), after “2005” there shall be inserted “or the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013”.

(2) In Article 13(3) of the Commissioner for Children and Young People (Northern Ireland) Order 2003 (actions which may be investigated: restrictions and exclusions), after “2005” there shall be inserted “or the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013”.

### **Interpretation**

**24.—**(1) In this Act—

“assessor” means an assessor appointed under section 4;

“chairperson” means chairperson of the inquiry;

“document” includes information recorded in any form;

“harm” includes death or injury;

“the inquiry” has the meaning given by section 1;

“interested party” means a person with a particularly significant interest in the proceedings or outcome of the inquiry;

“member” includes chairperson;

“notice” means notice in writing;

“OFMDFM” means the Office of the First Minister and deputy First Minister;

“restriction order” means an order under section 8.

(2) References in this Act to—

(a) the inquiry panel are to the members of the inquiry (including the chairperson);

(b) the course of the inquiry are to the period beginning with the commencement of this section and ending with the date on which the inquiry comes to an end.

(3) References in this Act to producing or providing a document, in relation to information recorded otherwise than in legible form, are to be read as references to producing or providing a copy of the information in a legible form.

### **Commencement, etc.**

**25.—**(1) This Act comes into operation on the day after the day on which it receives Royal Assent.

(2) The following provisions cease to have effect on such day or days as OFMDFM may by order appoint—

- (a) section 9 (powers to require production of evidence);
- (b) section 10 (privileged information, etc.).

**Short title**

**26.** This Act may be cited as the Inquiry into Historical Institutional Abuse Act (Northern Ireland) 2013.