

**NORTHERN IRELAND (LOCATION OF VICTIMS' REMAINS)
ACT 1999***

(1999 c. 7)

ARRANGEMENT OF SECTIONS

SECT.

1. Definitions.
2. The Commission.
3. Admissibility of evidence in criminal proceedings.
4. Restrictions on forensic testing.
5. Restrictions on disclosure of information.
6. Powers of entry.
7. Short title.

An Act to make provision connected with Northern Ireland about locating the remains of persons killed before 10th April 1998 as a result of unlawful acts of violence committed on behalf of, or in connection with, proscribed organisations; and for connected purposes. [26th May 1999]

PARLIAMENTARY DEBATES

Hansard, H.C. Vol. 330, col. 345 (1R), Vol. 331, cols. 38 (2R), 324 (Comm., 3R). H.L. Vol. 600, col. 1375 (1R), Vol. 601, cols. 153 (2R), 408 (MfA), 639, 678 (Comm., RS).

INTRODUCTION AND GENERAL NOTE

The purpose of the Northern Ireland (Location of Victims' Remains) Act 1999 (c. 7) ("the Act") is to grant, in effect, immunity to members of proscribed organisations so as to gain access to information on the location of persons who have gone missing over the last 27 years. The immunity operates through major restrictions on the admissibility of evidence in future criminal proceedings. However, the Act is likely to have only a limited effect in Northern Ireland (and in the rest of the UK). It is part of a series of statutes and international agreements with the Republic of Ireland ("ROI"), designed to bring peace and democracy to Northern Ireland, associated with the Belfast Agreement (known colloquially as the Good Friday Agreement) of April 10, 1998.

The Legal Context

The Government cited, as a precedent, the Northern Ireland Arms Decommissioning Act 1997 (c. 7) (Royal Assent, February 27, 1997). This led to an agreement between the UK Government and the Government of the Republic of Ireland: *Establishing the Independent International Commission on Decommissioning*, Belfast, August 26, 1997 (Cm. 3753 (1997)). This entered into force on September 24, 1997. Similar legislation had been promulgated in the ROI on February 26, 1997.

The Northern Ireland Arms Decommissioning Act 1997 provides an amnesty for a series of scheduled offences (s.4). Section 5 prevents the admissibility of evidence in connection with acts and articles of decommissioning in criminal proceedings (except where helpful to the accused). The testing of decommissioned articles is prohibited by s.6 (except for the purposes of removal and disposal).

Secondly, the Belfast Agreement of April 10, 1998, (Cm. 3883 (1998)). This is given legal form by the agreement between the UK Government and the Government of Ireland: the British-Irish Agreement ("the BIA"), made at Belfast. The BIA has yet to enter into force (Ireland No. 1 (1999), (Cm. 4292 (1999)). Under the "Prisoners" section of Annex 1 (p. 41), the UK and Irish Governments agree to the release of prisoners by June 30, 2000 at the latest. The "Decommissioning" section of the BIA [p. 35] affirms a commitment to decommission all paramilitary arms by May 22, 2000. The release of prisoners on licence was provided for in the Northern Ireland (Sentences) Act 1998 (c. 35) (ss.4, 6 and 9). That Act received Royal Assent on July 28, 1998.

Thirdly, the agreement between the UK Government and the Government of Ireland establishing the *Independent Commission for the Location of Victims' Remains* ("the International Agreement") was signed in Dublin on April 27, 1999. The International Agreement entered into force on May 28, 1999, and the Commission was thereby established under art. 1 (Ireland No. 7 (1999), (Cm. 4344 (1999)). The Act is a direct consequence of the International Agreement. The objective of the Commission is to facilitate the location of the remains of "victims of violence"

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(art. 3.1), by receiving and disclosing information. Similar legislation has been enacted in the ROI.

The Bill

The Northern Ireland (Location of Victims' Remains) Bill ("the Bill") contained a statement from the Secretary of State and Lord Dubs, under s.19(1)(a) of the Human Rights Act 1998 (c. 42), to the effect that the provisions of the Bill were compatible with Convention rights as defined in that Act. Section 19 came into force on November 24, 1998, under the Human Rights Act 1998 (Commencement) Order 1998 (S.I. 1998 No. 2882 (C.71)).

The Bill passed its main stages without amendment in the House of Commons on May 10 and 12, 1999, and similarly in the House of Lords on May 18 and 24, 1999. The Bill in the ROI had been debated, without amendment, on May 5, 12 and 13, 1999. Royal Assent followed on May 26, 1999, with Promulgation in the ROI on the following day.

The Independent Commission for the Location of Victims' Remains

On May 28, 1999, the Independent Commission for the Location of Victims' Remains ("the Commission") was established in international law by the two Governments, and in UK and Irish municipal law by the respective legislatures. The UK member is Sir Kenneth Bloomfield, former head of the Northern Ireland Civil Service. As the Northern Ireland Victims' Commissioner, he had reported to the Secretary of State on April 29, 1999; his report, *We will remember them*, was published by the NIO in May 1999. The Irish member is a former Tánaiste, Mr John Wilson, who performed a similar role in the ROI. The idea of a third commissioner was dropped.

COMMENCEMENT

There is no specific commencement provision in the Act. Sections 1, and 3 to 7 came into force on Royal Assent (May 26, 1999). Section 2 (the Commission, established by the International Agreement, contains provisions for its creation in UK law). Section 2 was brought into force, under subs. (5), on May 26, 1999 by the Northern Ireland (Location of Victims' Remains) Act 1999 (Commencement of Section 2) Order 1999 (S.I. 1999 No. 1511 (C.44)). Included was subs. (6), which contains provision for s.2 ceasing to have effect, again by Order of the Secretary of State made by statutory instrument.

ABBREVIATIONS

"the Act"	: Northern Ireland (Location of Victims' Remains) Act 1999 (c. 7)
"the BIA"	: British-Irish Agreement, April 10, 1998, Ireland No. 1 (1999), Cm. 4292 (1999)
"the Bill"	: Northern Ireland (Location of Victims' Remains) Bill
"the International Agreement"	: <i>Independent Commission for the Location of Victims' Remains</i> , April 27, 1999, Ireland No. 7 (1999), Cm. 4344 (1999)
"the Commission"	: the Independent Commission for the Location of Victims' Remains
"the INLA"	: Irish National Liberation Army
"the IRA"	: Irish Republican Army
"the NIO"	: Northern Ireland Office
"the ROI"	: Republic of Ireland
"the RUC"	: Royal Ulster Constabulary
"the Secretary of State"	: Secretary of State for Northern Ireland

Definitions

1.—(1) This section shall have effect for the purpose of this Act.

(2) "The Commission" means the Independent Commission for the Location of Victims' Remains—

- (a) which was established by an agreement, made on 27th April 1999 in connection with the affairs of Northern Ireland, between Her Majesty's Government in the United Kingdom and the Government of Ireland; and
- (b) whose functions include receiving relevant information and disclosing such information for the purpose of facilitating the location of the remains to which the information relates.

(3) "Relevant information" means information as to the whereabouts of the remains of a victim of violence.

(4) "Victim of violence" means a person killed before 10th April 1998 as a result of an unlawful act of violence committed on behalf of, or in connection with, a proscribed organisation.

(5) In subsection (4) "proscribed organisation" means any organisation which at the passing of this Act is proscribed for the purposes of the Northern Ireland (Emergency Provisions) Act 1996.

GENERAL NOTE

Section 1 relates to the International Agreement, from which the definitions are derived.

Subs. (2)(a)

Article 1 of the International Agreement came into force under art. 9, on May 28, 1999. The Agreement was signed by Dr Marjorie Mowlam, the Secretary of State for Northern Ireland, and Mr John O'Donoghue, the Minister for Justice, Equality and Law Reform in the Irish government.

"In connection with the affairs of Northern Ireland." This is not the language of international law. This, or similar phrases, have been used by Parliamentary Counsel at Westminster in statutes dealing with problems relating to terrorism in Northern Ireland. Although it is a UK-wide statute, it is unlikely to have any effect outside Northern Ireland.

"Her Majesty's Government in the United Kingdom." This terminology avoids mentioning Northern Ireland (while referring to the Irish Government as the Government of Ireland). The International Agreement was made by the Government of the United Kingdom of Great Britain and Northern Ireland, a term the Irish Government has been prepared to accept on its versions of treaties from about April 10, 1998.

In domestic law, there is the Parliament of the United Kingdom of Great Britain and Northern Ireland (Royal and Parliamentary Titles Act 1927 (c. 4), s.2(1)); while the sovereign is the Queen *inter alia* of the United Kingdom of Great Britain and Northern Ireland (Royal Titles Act 1953 (c. 9), s.1). The term Her Majesty's Government in the United Kingdom is normally used, in domestic law, alongside "Her Majesty's Government in Northern Ireland" (Crown Proceedings Act 1947 (c. 44), s.53(2)).

The Government of Ireland. Under the Ireland Act 1949 (c. 49), s.1(3), the Republic of Ireland became the statutory name for the neighbouring state (as an alternative to Eire).

Subs. (2)(b)

The Commission has two main functions: to receive information relating to the location of remains (defined as relevant information in s. 1(3)); to disclose this information for the purpose of facilitating the location of remains (art. 3.2(a) and (b) of the International Agreement).

The Commission exists only to receive and disclose information. The location of remains, impliedly the work of the RUC, overlaps with the searching for and the recovery of remains. This, again the work of the RUC, takes place under the normal law on the discovery of bodies.

Subs. (4)

This is a modification of art. 3.3(a) of the International Agreement. The date of April 10, 1998 referred to in this subsection derives from the Belfast Agreement.

Subs. (5)

This is a modification of art. 3.3(b) of the International Agreement. Both the Irish National Liberation Army and Irish Republican Army are "proscribed organisations" under the Northern Ireland (Emergency Provisions) Act 1996 (c. 22).

Subsections (3) to (5) place the following two restrictions (as a result of the International Agreement) on the functioning of the Commission in Northern Ireland (as part of the UK):

- (a) the victim of violence must have been killed before April 10, 1998; and
- (b) he must have been killed by a proscribed organisation.

The Commission is entirely dependant upon the word of the proscribed organisations as regards these two conditions precedent. Only relevant information attracts the effective immunity provided by the Act.

The Commission

2.—(1) The Secretary of State may by order—

- (a) confer on the Commission the legal capacities of a body corporate;

- (b) confer on the Commission, in such cases, to such extent and with such modifications as the order may specify, any of the privileges and immunities set out in Part I of Schedule 1 to the International Organisations Act 1968;
- (c) confer on members and servants of the Commission and members of their families who form part of their households, in such cases, to such extent and with such modifications as the order may specify, any of the privileges and immunities set out in Part II, III and V of that Schedule;
- (d) make provision about the waiver of privileges and immunities.
- In this subsection "servants of the Commission" includes agents of, and persons carrying out work for or giving advice to, the Commission.
- (2) An order under subsection (1)—
- (a) may make a different provision for different cases (including different provision for different persons);
- (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) The Secretary of State may—
- (a) make payments to the Commission or to members of the Commission;
- (b) provide for the Commission such premises and facilities, and the services of such staff, as he thinks appropriate.
- (4) Any expenses incurred by the Secretary of State under subsection (3) shall be paid out of money provided by Parliament.
- (5) This section shall come into force on such day as the Secretary of State, after consulting the Minister for Justice, Equality and Law Reform of the Government of Ireland, may by order made by statutory instrument appoint.
- (6) This section shall cease to have effect at the end of such day as the Secretary of State, after consulting the Minister for Justice, Equality and Law Reform of the Government of Ireland, may by order made by statutory instrument appoint; and an order under this subsection may include such transitional provisions as appear to the Secretary of State to be expedient.

DEFINITIONS

"the Commission": s.1(2).

GENERAL NOTE

This creates in UK law, the Commission established by the International Agreement.

Subs. (1)

The Secretary of State is the Secretary of State for Northern Ireland. However, "Secretary of State" is defined in the Interpretation Act 1978 (c. 30), s.5 and Sched. 1 as "One of Her Majesty's Principal Secretaries of State".

Paragraphs (a) to (d) are in similar terms to those in s.7(2) of the Northern Ireland Arms Decommissioning Act 1997 (c. 7). This is the standard way in which an international organisation is allowed to operate in UK law. It becomes a legal person under para. (a). Privileges and immunities in paras. (b) to (d) are not extensive. They were conferred by the Northern Ireland (Location of Victims' Remains) Act 1999 (Immunities and Privileges) Order 1999 (S.I. 1999 No. 1437). However, the definition "servants of the Commission" is widely drawn. This follows from art. 5 of the International Agreement. The Minister of State at the NIO, Mr Ingram, responding to criticism, said of Sched. 1 to the International Organisations Act 1968:

"It is possible that not all of that will be required. We do not envisage an international aspect to the commission." (*Hansard*, H.C. Vol. 331, col. 347).

Relations between the UK and the ROI are international.

Subs. (2)

Paragraphs (a) and (b) are drafted, in similar terms, to similar provisions in s.7(3) of the Northern Ireland Arms Decommissioning Act 1997. Subsection (2) relates to subs. (1). The powers and immunities were conferred by the Northern Ireland (Location of Victims' Remains) Act 1999 (Immunities and Privileges) Order 1999 (S.I. 1999 No. 1437).

Subss. (3) and (4)

These subsections apply to Northern Ireland. Article 6 of the International Agreement states that the UK Government and the Government of Ireland will provide moneys etc. on a basis to be determined by them. Similar provisions exist in ROI legislation.

Subss. (5) and (6)

Subsections (5) and (6) refer to the creation, and winding up, in UK law, of the Commission, by Order of the Secretary of State made by statutory instrument. Subsection (5) brings s.2, including subs. (6), into force. Subsection (6) provides that s.2 shall cease to have effect. They are in similar terms to s.7(5) and (6) of the Northern Ireland Arms Decommissioning Act 1997.

The Commission is established in international law under art. 1, at the point at which the International Agreement entered into force under art. 9. This happened on May 28, 1999. Subsection (5) allows the Secretary of State to co-ordinate the creation in UK law with the establishment of the Commission in international law. This was achieved by means of the Northern Ireland (Location of Victims' Remains) Act 1999 (Commencement of Section 2) Order 1999 (S.I. 1999 No. 1511) (c. 44). Consultation with the Minister of Justice, Equality and Law Reform in the Irish Government relates to similar provisions in ROI law.

Under art. 10 of the International Agreement, the Commission can be wound up. Subsection (6) is not strictly necessary, other than for transitional provisions. Arguably, these could be provided for in the statutory instrument under subs. (5). Consultation with the Minister of Justice, Equality and Law Reform in the Irish Government has nothing to do with UK subordinate legislation.

No life span is specified for the work of the Commission. Article 3.2(c) of the International Agreement provides for annual reports to be prepared for the two Governments. An amendment in the House of Lords, by Viscount Cranborne, to time limit the Commission to June 30, 1999 (a date given by the Prime Minister for the formation of an executive committee including two Sinn Féin members was defeated by 129 votes to 121 (*Hansard*, H.L. Vol. 601, cols. 662 to 663).

Admissibility of evidence in criminal proceedings

3.—(1) The following shall not be admissible in evidence in any criminal proceedings—

- (a) any relevant information provided to the Commission; and
- (b) any evidence obtained (directly or indirectly) as a result of such information being so provided.

(2) Subsection (1) shall not apply to the admission of evidence adduced in criminal proceedings on behalf of the accused.

DEFINITIONS

"the Commission": s.1(2).

"relevant information": s.1(3).

GENERAL NOTE

This section, together with ss.4 and 5, constitute the principal provision of the Act. These three sections extend protection to relevant information provided to the Commission or evidence arising consequently. Section 3 is the critical provision; practical immunity stems from the non-admissibility of evidence by the prosecution in criminal proceedings. The use of the word "any" in s.3(1)(a) and (b) covers private prosecutions.

Subs. (1)

This subsection excludes evidence by operation of law. It is a modification of the provisions in s.5(1) and (2) of the Northern Ireland Arms Decommissioning Act 1997. Paragraph (a), read with s.1(3), means: any information provided to the Commission, as to the whereabouts of the remains of a "victim of violence" (as defined in s.1(4) and (5)). Paragraph (b) broadens the exclusion considerably; any evidence obtained directly or indirectly as a result of para. (a) is not admissible. This includes any evidence resulting from the operation of ss.4 and 5.

Subs. (2)

This is similar to s.5(3) of the Northern Ireland Arms Decommissioning Act 1997 (evidence obtained from a decommissioned article). Evidence is admissible on behalf of the defence. However, only the prosecution are constrained by this section. The theoretical possibility, however unlikely, of a prosecution (with evidence excluded), and a defence (where evidence is admissible) distinguishes this Act from the amnesty provision in s.4 and the Schedule to the Northern Ireland Arms Decommissioning Act 1997 (no proceedings for offences in which decommissioned articles were used).

The reason given by the NIO in the Explanatory Notes to the Bill for s.6 (powers of entry), is that the existing Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989 No. 1341) only applies to criminal investigations; no such investigations appear to be intended.

Restrictions on forensic testing

4.—(1) A person who has received any human remains or other items obtained (directly or indirectly) as a result of relevant information being provided to the Commission shall not carry out, or cause or permit anyone else to carry out, a test or procedure in relation to the item the purpose of which is—

- (a) to discover information about anything done to any person, or with or in relation to any item;
- (b) to discover who has been in contact with, or near to, any person or item;
- (c) to discover where any person or item was at any time (including the conditions under which he or it was kept);
- (d) to discover when any person or item was in contact with, or near to, a particular person or when he or it was in a particular place or kept under particular conditions;
- (e) to discover when or where any item was made; or
- (f) to discover the composition of any item.

(2) Subsection (1) does not prohibit a test or procedure 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 died.

(3) Subsection (1)(f) 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.

DEFINITIONS

- "the Commission": s.1(2).
 "relevant information": s.1(3).

GENERAL NOTE

This is the second means by which protection is extended to relevant information provided to the Commission or evidence arising consequently. Section 4 restricts the forensic testing of human remains or other items, with two narrowly drawn exceptions (inquests and removal). Any evidence so gleaned is excluded in criminal proceedings, from the point of view of the prosecution by s.3(1)(b).

Subs. (1)

This excludes forensic testing. Human remains, and other items obtained directly or indirectly, are excluded (human remains are items). A person is excluded from carrying out, or causing or permitting anyone else to carry out tests or procedures, and paras. (a) to (f) provide for the exclusion of six possible purposes of forensic testing. This is a finite list but is broadly drafted.

Subs. (2)

This subsection provides the first exception to the prohibition on forensic testing in subs. (1). It permits a test or procedure (on an item, including human remains) where the purpose is: to discover information in relation to an item; where this information is sought to establish the identity, or how, when and where the deceased died, to be determined at an inquest. The term "item" corresponds to that in subs. (1).

Subs. (3)

This provides the second exception, to the subs. (2) exception. Subsection (1) prohibits forensic testing. Subsection (2) permits such testing in connection with inquests. This subsection states that subs. 1(f) does not prohibit a test or procedure the purpose of which is to determine when an item (including human remains) may be moved safely, or otherwise dealt with.

Restrictions on disclosure of information

5.—(1) No relevant information provided to the Commission shall be disclosed to any person except for the purpose of facilitating the location of the remains to which the information relates.

(2) Subsection (1) does not prohibit the disclosure to members of a victim's family of—

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

DEFINITIONS

- "relevant information": s.1(3).
 "the Commission": s.1(2).

GENERAL NOTE

This is the third means by which protection is extended to relevant information provided to the Commission or evidence arising consequently. Section 5 restricts the disclosure of relevant information provided to the Commission to any person, with two exceptions (to facilitate the location of remains and to the victim's family). Any evidence so gleaned is excluded in criminal proceedings, from the point of view of the prosecution, by s.3(1)(b).

Subs. (1)

This subsection contains a prohibition on the disclosure of relevant information (on the whereabouts of the remains of a victim of violence) to any person. This follows from art. 7 of the International Agreement. Relevant information provided to the Commission is therefore confidential. Under art. 2.1 of the International Agreement, the Commission is independent in the performance of its functions. However, the Parliamentary Under-Secretary of State in the NIO, Mr McFall, told Parliament that the Commissioners would be required to pass information on crimes committed to the police (*Hansard*, H.C. Vol. 331, col. 354).

This subsection also contains a widely drawn exception which facilitates the location of the remains to which the information relates. This is a matter within the complete discretion of the Commission. There is no restriction as to whom disclosure may be made. It includes the police if the purpose is to facilitate location (leading to the searching for and recovery of victims' remains).

Subs. (2)

This subsection contains a further exception to the prohibition set out in subs. (1). It permits disclosure of relevant information to the members of a victim's family. This follows from art. 3 of the International Agreement. The term "family" has been used rather than "relatives", presumably to avoid a person involved directly or indirectly with the victim being excluded on grounds of birth or marriage. However, not all relevant information may be disclosed to the members of a victim's family. This is restricted to:

- (a) the fact that relevant information pertaining to a particular victim of violence has been provided; and
- (b) the place where the remains may be found.

Powers of entry

6.—(1) If on an application made by a constable a resident magistrate or, in Great Britain, a justice of the peace is satisfied—

- (a) that the Commission has certified that the remains of a victim of violence are likely to be found at any premises; and
- (b) that there are reasonable grounds for believing that either of the conditions specified in subsection (2) below is fulfilled,

he may issue a warrant authorising a constable to enter and search the premises.

(2) The conditions mentioned in subsection (1)(b) above are—

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) that entry to the premises will not be granted unless a warrant is produced.

(3) The power to issue a warrant conferred by this section is in addition to any such power otherwise conferred.

(4) In this section "premises" includes any place.

(5) In this section "resident magistrate" has the meaning given by Article 2 of the Magistrates' Courts (Northern Ireland) Order 1981.

DEFINITIONS

"the Commission": s.1(2).
 "victim of violence": s.1(4).

GENERAL NOTE

This is the third main provision of the Act and relates to s.2 (the Commission). Section 6 allows the police to enter and search premises (defined as including any place) with a warrant in order to facilitate the location of a victim's remains (under s.1(2)(b) and art. 3 of the International Agreement). This power is not given to the Commission.

Subs. (1)

The Act applies to Northern Ireland and Great Britain. Normally, the police, when conducting criminal investigations, seek warrants under the Police and Criminal Evidence (Northern Ireland) Order 1989 (or equivalent legislation in Great Britain). Participation in the location of a victim's remains is seen by the Government as not being part of a criminal investigation.

A constable may apply to a resident magistrate in Northern Ireland (defined in subs. (5)), or a justice of the peace in Great Britain, for an additional power of entry and search (subs. (3)) of premises (defined in subs. (4)). The resident magistrate or justice of the peace has to satisfy himself that:

- (a) the Commission has certified that the remains of a victim of violence are likely to be found at specified premises (para. (a));
- (b) there are reasonable grounds for believing that either of the conditions in subs. (2) is fulfilled (para. (b)).

It appears that the resident magistrate/justice of the peace has to accept the Commission's certificate as to likelihood in para. (a), even if there is evidence that relevant information has proved unsound on other occasions. The test of reasonableness in para. (b) as regards subs. (2) is for the resident magistrate/justice of the peace, based upon evidence put before him by the constable.

Subs. (2)

This subsection relates to subs. (1)(b). The resident magistrate/justice of the peace has to determine that there are reasonable grounds for either:

- (a) one, that it is not practicable to communicate with a person entitled to grant entry; or
- (b) that entry will not be granted unless a warrant is produced.

Short title

7. This Act may be cited as the Northern Ireland (Location of Victims' Remains) Act 1999.

INDEX

References are to sections

COMMISSION, 2	INFORMATION, disclosure of, restrictions, 5
DEFINITIONS, 1	
EVIDENCE, criminal proceedings, admissibility, 3	POWERS OF ENTRY, 6
FORENSIC TESTING, restrictions on, 4	SHORT TITLE, 7