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**AN BILLE UM BINSÍ FIOSRÚCHÁIN (FIANAISE)  
(LEASÚ), 2002  
TRIBUNALS OF INQUIRY (EVIDENCE) (AMENDMENT)  
BILL, 2002**

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**EXPLANATORY MEMORANDUM**

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*General*

The Government have decided in principle that a tribunal of inquiry will be established to investigate matters arising from allegations made against Gardai in Donegal. This Bill has two main purposes. Firstly, it will facilitate the work of this tribunal by ensuring that a risk of prejudice to any pending criminal trial will not arise from the tribunal's proceedings. Secondly, it will provide a clear legal basis for the appointment of additional and reserve members of tribunals as requested by the Tribunal of Inquiry into Certain Planning Matters and Payments. The Bill also provides that a tribunal may appoint investigators to assist it in carrying out its functions.

*Provisions of the Bill*

*Section 1* is a standard interpretation provision. *Section 2(a)* of the Tribunals of Inquiry (Evidence) Act, 1921, provides that a tribunal can exclude the public from its proceedings where in its opinion it is in the public interest expedient to do so for reasons connected with the subject matter of the inquiry or the nature of the evidence to be given. *Section 2* of the Bill amends this by adding a provision that a tribunal can, in particular, avail of its power to exclude the public if there is a risk of prejudice to criminal proceedings. It should be noted that this provision applies to proceedings which are in existence at the time the tribunal is hearing the relevant evidence, not possible future proceedings.

*Section 3* deals with the situation which would arise if a tribunal reports at a time when criminal proceedings in respect of a matter mentioned in the report are pending. The section provides that the person to whom the tribunal reports, for example a Minister or the Clerk of the Dáil, may apply to the High Court for directions regarding the publication of the report if s/he considers that publication might prejudice the criminal proceedings. Before determining the application, the Court may hear the Attorney General (whose duties include representing the public interest before courts and tribunals), the Director of Public Prosecutions and the defendants in the criminal proceedings. The Court may direct that the report or any part of it be not published for a specified period of time or until the Court so directs. The Court may, if it considers it appropriate, hear an application under this section otherwise than in public.

*Section 4* provides for the appointment of additional members to tribunals and for the appointment of a member to replace the chairperson if s/he is unable to continue to act. Such appointments shall be effected by amendment of the instrument establishing the tribunal in accordance with the Tribunals of Inquiry (Evidence) (Amendment) (No. 2) Act, 1998, except that consent of the tribunal to the identity of the appointee will not be required. A tribunal may continue to act notwithstanding one or more vacancies if it is satisfied that the legal rights of any person affected would not be unduly prejudiced. The section also provides that, in a tribunal of more than one member, decisions and determinations shall be taken unanimously or by a majority and, if there is an equal division, the chairperson shall decide.

*Section 5* provides for the appointment of reserve members of tribunals and for the appointment of a reserve member as a full member, essentially in accordance with the same procedure as for appointments under *section 4*. The appointment of a reserve member as a full member may be deemed to be operative from a prior date which shall not, however, be earlier than the date on which s/he became a reserve member. The role of a reserve member will be to sit with the tribunal and consider evidence, examine documents and be present at deliberations of the tribunal but s/he may not otherwise participate in deliberations or proceedings or seek to influence the tribunal's decisions. The principle on which this provision is based is that the reserve member, though not a member of the tribunal, will be fully *au fait* with its work and will be in a position to replace a full member if that becomes necessary.

*Section 6* provides for the appointment of investigators, with the approval of and subject to terms and conditions approved by the Minister (with the consent of the Minister for Finance) who appointed the tribunal, or the Government if the Government appointed it. The role of investigators will be to assist the tribunal in the performance of its functions by carrying out preliminary investigations into matters relevant to the inquiry. To this end they will have power to require persons to give information, produce documents and answer questions. If a person refuses to comply with the requirement of an investigator, the latter may, with the consent of the tribunal, apply to the High Court which may order the person to comply with the requirement, thus making further non-compliance a contempt of court. A person who is required by an investigator to give information, produce documents or answer questions shall be entitled to the same privileges and immunities as a witness before the High Court.

*Section 7* makes it a summary offence for a person not to comply with the requirement of an investigator or to obstruct or hinder him/her. The penalty for such an offence will be a fine not exceeding €3,000 and/or imprisonment for a maximum of 12 months.

*Section 8* provides that a statement or admission made to an investigator cannot be used as evidence against the person making it in any criminal proceedings.

*Section 9* increases the maximum fines for offences relating to non-cooperation with or obstruction of a tribunal from £500 to €3,000 on summary conviction and from £10,000 to €300,000 in the case of conviction on indictment. This section applies in respect of offences committed after the passing of the Act irrespective of whether the tribunal concerned was appointed before or after such passing. The maximum fines which are being increased by this section were set by the Tribunals of Inquiry (Evidence) (Amendment) Act, 1979.

*Section 10* provides that the Act (except for *sections 4, 5 and 9*) shall apply to tribunals established after its passing. However, this is subject to *subsection (3)* which states that the provisions on investigators shall not apply to a tribunal, already established at the time of its passing, unless the instrument by which it was appointed is amended to provide for this.

*Section 11* is a standard provision stating that any expenses incurred by Ministers of the Government in the administration of the Act shall be paid out of moneys provided by the Oireachtas.

*Section 12* is a standard provision dealing with the short title and collective citation.

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí, Márta, 2002.*