

CHAPTER 32

THE COMMISSIONS OF INQUIRY ACT

[PRINCIPAL LEGISLATION]

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SCHEDULE

CHAPTER 32

THE COMMISSIONS OF INQUIRY ACT

An Act to make provision for holding Commissions of Inquiry.

[28th December, 1928]

Ord. No. 27 of 1928

G.N. No. 403 of 1960

Act No. 27 of 1994

[PCh32s1]1. Short title

This Act may be cited as the Commissions of Inquiry Act.

[PCh32s2]2. Interpretation Act No. 27 of 1994

In this Act unless the context requires otherwise—

"Commission" means a Commission issued under section 2;

"Commissioner" means any of the Commissioners appointed under section 2;

"inquiry" means an inquiry carried out in pursuance of the provisions of this Act;

"Minister" means the Minister for the time being responsible for legal affairs.

[s. 1A]

[PCh32s3]3. Power to issue Commissions of Inquiry into matters of public nature Act
No. 27 of 1994 s. 3

(1) Where the President on his own motion, upon advice by the Minister or after considering information furnished upon an affidavit of any person is satisfied that it is desirable or necessary, or that an inquiry would be for the public welfare, the President may issue a Commission appointing one or more Commissioners and authorising those Commissioners or any quorum of the Commissioners specified in the Commission, to inquire into any of the following—

- (a) the conduct of any person in the public service of the United Republic;
- (b) the conduct of any local authority;
- (c) the conduct or management of any department of the public service or of institution of the public service or of a local authority;
- (d) massive or repeated evasions of any taxes or any other acts subversive of the smooth collection of public revenue;

- (e) allegations of grave irregularities in the public revenue;
- (f) allegations of large scale trafficking in trophies;
- (g) allegations of conspiracies to damage the natural resources of the United Republic;
- (h) allegations of theft or embezzlement of public property in public corporations;
- (i) serious allegations of occurrences of corruption;
- (j) any other matter the inquiry into which would, in the opinion of the President, be in the public interest.

(2) Each such Commission shall specify the subject of inquiry and may, in the discretion of the President, if there is more than one Commissioner, direct which Commissioner shall be Chairman, and direct where and when such inquiry and the report on it shall be made, and prescribe how such Commission shall be executed, and may direct whether the inquiry shall or shall not be held in public.

(3) In the absence of a direction to the contrary in the Commission concerned, an inquiry shall be held in public, but the Commissioners shall be entitled to exclude the representatives of the press, any or all other persons if they consider it necessary, for the preservation of order, for the due conduct of the inquiry or for any other reason.

[s. 2]

[PCh32s4]4. Power to cause investigation to be made before issuing a Commission Act
No. 27 of 1994 s. 4

(1) For the purposes of obtaining information to decide whether or not to issue a commission under section 2, the President may on advice by the Minister or on his own motion, direct the Attorney-General to cause an investigation to be made into such matters as the President may specify and to convey to the President result of the investigation.

(2) The Attorney-General may, for the purposes of carrying out any investigation directed by the President under subsection (1), in writing under his hand require any public officer, in this section referred to as an "authorised officer", to carry out such investigation as the Attorney General may direct.

(3) For the purposes of carrying out any investigation directed by the Attorney-General an authorised officer shall have all the powers of a police officer conducting a criminal investigation and may in particular:

(a) require, in writing, from any person the production at a specified time and place of any book, plan or document in the possession or custody or under the control of such person or the employee of that person.

(b) examine and make extracts from, and copies of, any books, plans or documents and require from any person an explanation of any entry in or marking on them,

except that no person shall be bound to incriminate himself and every person shall, in respect of any explanation required, be entitled to the same privileges to which that person would be entitled if giving evidence before the High Court.

(4) Where the Attorney-General is satisfied that the inspection of any banker's book is necessary or desirable for the purpose of any investigation directed by the President under subsection (1), the Attorney-General may, by order, authorise any authorised officer named in such order to investigate the account of any specified person in any bank, such order shall be sufficient authority for the production of any such banker's book as may be required for scrutiny by the authorised officer named in the order, and such authorised officer may take copies of any relevant entry or matter in such banker's book.

(5) The provisions of the Evidence Act in respect of evidence of banker's books shall apply in relation to the production and proof in any proceedings under this Act of a copy of any entry in a banker's book obtained under subsection (4).

(6) Any person who fails to produce a banker's book to an authorised officer acting in pursuance of an order made by the Attorney-General under this section or to permit such authorised officer to scrutinise or to take copies of the relevant entries in a banker's book shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a period not exceeding twelve months, or to both.

(7) For the purposes of this section, "banker's book" shall have the meaning ascribed to it by the provisions of the Evidence Act.

[s. 2A]

[PCh32s5]5. Power to appoint fresh Commissioners and to alter and revoke Commissions

Where any Commissioner is unable or is unwilling to act or dies, the President may appoint another Commissioner in his place; and any Commission issued under this Act may be altered as the President may deem fit by any subsequent Commission issued by the President, or may be revoked by a notification to that effect published in the Gazette.

[s. 3]

[PCh32s6]6. Commissions not affected by change of President

No Commission issued under this Act shall lapse by reason of, or be otherwise affected by the death, absence or removal of the President issuing the Commission

[s. 4]

[PCh32s7]7. Oath of office by Commissioners G.N. No. 403 of 1960

It shall be the duty of each Commissioner appointed under this Act to make and subscribe to an oath or affirmation in the form prescribed in the Schedule to this Act, which oath or affirmation may be taken before the President, or before such other person as the President may appoint, and shall be deposited by the Commissioner with the Chief Secretary, office of the President.

[s. 5]

[PCh32s8]8. Power to appoint and duties of Secretary

The President may appoint a secretary to attend the sittings of the Commission, to record their proceedings, to keep their papers, summon and record the testimony of witnesses, and generally to perform such duties connected with such inquiry as the Commissioners shall prescribe.

[s. 6]

[PCh32s9]9. Duties of Commissioners defined

It shall be the duty of the Commissioners, after taking such oath or making such affirmation, to make a full, faithful, and impartial inquiry into the matter specified in such Commission, and to conduct such inquiry in accordance with the direction, if any, in the Commission; and, in due course, to report to the President in writing the result of such inquiry; and also, when required, to furnish to the President a full statement of the proceedings of such Commission, and of the reasons leading to the conclusions arrived at or reported.

[s. 7]

[PCh32s10]10. Division of opinion of Commissioners

If the Commissioners shall, in any case, be equally divided on any question that arises during the proceedings of the Commission, the Chairman of the Commission shall have a second or casting vote.

[s. 8]

[PCh32s11]11. Commissioners' power for regulating proceedings

The Commissioners acting under this Act may make such rules for their own guidance, and for the conduct and management of proceedings before them, and the hours and times and places for their sittings, not inconsistent with their Commission, as they may from time to time think fit, and may from time to time adjourn for such time and to such place as they may think fit, subject only to the terms of their Commission.

[s. 9]

[PCh32s12]12. Power to summon and examine witnesses

(1) Commissioners acting under this Act shall have the powers of the High Court to summon witnesses, and to call for the production of books, plans and documents, and to examine witnesses and parties concerned on oath.

(2) Where the Commissioners consider it desirable for the purpose of avoiding expense or delay or for any other special reason, they may receive evidence by affidavit or administer interrogatories and require the person to whom the interrogatories are administered to make a full and true reply to such interrogatories.

(3) Summonses for attendance of witnesses, or other persons, or the production of documents, may be in the form given in the Schedule to this Act, and shall be signed by one of the Commissioners or by their secretary, and oaths and affirmations may be administered by one of the Commissioners or by their secretary.

[s. 10]

[PCh32s13]13. Consequences of issue of Commission Act No. 27 of 1994 s. 5

Notwithstanding the provisions of any other law to the contrary, where the President issues a commission instituting an inquiry into any matter in pursuance of this Act:

(a) the President may require that any ongoing investigation or inquiry by the organs of the Government shall cease, and any evidence already obtained shall be furnished to the Commissioners;

(b) all organs of the Government and all other local or public authorities connected, related or otherwise involved in the field or fields of activity under

investigation, shall do all such acts and things as they deem necessary for assisting the smooth or speedy work of the Commissioners.

[s. 10A]

[PCh32s14]14. Employment of experts

(1) A Commissioner may, with the prior approval of the Minister, engage the services of such accountants, engineers, technical advisers or other experts as it deems necessary to aid and assist in the inquiry.

[s. 10B]

[PCh32s15]15. Application of the Penal Code and immunity of Commissioner

(1) An inquiry under this Act shall be deemed to be a judicial proceeding within the meaning and for for the purposes of Chapter XI of the Penal Code.

(2) Any Commissioner or other person acting under the provisions of this Act shall be entitled to the same protection as that enjoyed by magistrates acting judicially and officers executing warrants and orders under the Magistrates' Courts Act * or any other law for the time being substituted for that Act.

[s. 11]

[PCh32s16]16. Obligations and rights of witnesses

(1) All persons summoned to attend and give evidence, or to produce books, plans, or documents at any sitting of any Commission, shall be bound to obey the summons served upon them in all respects as witnesses are bound to obey a summons issued from the High Court, and shall be entitled to the same expenses as witnesses summoned to attend at such court in a criminal trial, or to such other expenses as the

Commissioner, orders for the payment of such witnesses shall be made as nearly as possible as orders for the payment of witnesses in the High Court, and shall be paid in such manner as the President may direct.

(2) Any person who, without sufficient cause, refuses or fails to attend at the time and place mentioned in the summons served on him, and every person who attends but leaves the Commission without the permission of the Commissioners, or refuses without sufficient cause to answer, or to answer fully, satisfactorily, or to the best of his knowledge and belief, all questions put to him by or with the concurrence of the Commissioners or refuses without sufficient cause or fails to produce any books, plans or documents in his possession or under his control, and mentioned or referred to in the summons served on him, and every person who at any sitting of the Commission, wilfully insults any Commissioner, or the secretary or wilfully and improperly interrupts the proceedings of the Commission, shall be liable to a fine not exceeding one thousand and five hundred shillings:

Provided that no person giving evidence before the Commission shall be compellable to incriminate himself, and every such person shall, in respect of any evidence given by him before the Commission, be entitled to all the privileges to which a witness giving evidence before the High Court is entitled.

[s. 12]

[PCh32s17]17. Appearance by advocate Act. No. 27 of 1994 s. 6

Any person whose conduct is the subject of inquiry under this Act, or who is in any way implicated or concerned in the matter under inquiry, shall be entitled to be

represented by an advocate at the whole of the inquiry, and any other person who may consider it desirable that he should be so represented may, by leave of the Commission, be represented in the same manner.

[s. 13]

[PCh32s18]18. Power to direct police officers to attend Commissioners

The President may direct the Inspector General of Police to detail police officers to attend upon any Commissioners, to preserve order during the proceedings of the Commission, and to serve summonses on on witnesses, and to perform such other duties as the Commissioners shall direct.

[s. 14]

[PCh32s19]19. Remuneration of Commissioners, etc. G.N. No. 403 of 1960

Commissioners appointed under this Act shall not be entitled to any remuneration, unless such remuneration shall be specially granted by the President, beyond the actual expenses incurred in holding the inquiry, but the President may direct what remuneration, if any shall be paid to the secretary, and to any other person employed in or by any such Commission, and may direct payment of any other expenses attendant upon the carrying out of any such Commission, or upon any proceedings for any penalty under this Act and such sums, so directed to be paid, shall be paid out of the Consolidated Fund, on the warrant of the Principal Secretary to the Treasury.

[s. 15]

[PCh32s20]20. Commissions to be published in Gazette

All Commissions under this Act, and all revocations of any such Commission, shall be published in the Gazette, and shall take effect from the date of such publication.

[s. 16]

[PCh32s21]21. Action on report

(1) Upon receipt of a report of a Commissioner at the end of an inquiry, the President may—

(a) if the President is satisfied that further investigations ought to be carried out or prosecutions undertaken, instruct the Director of Public Prosecutions to advise the police what investigations should be done or direct the institution of the appropriate criminal prosecution:

(b) if the President is of the opinion that any other measures ought to be taken against any person or persons, order that such measures be taken.

(2) Where any loss is revealed by the inquiry as having been caused by the conduct of any person, the President may order that the person concerned be required to pay compensation of such amount as the Minister shall certify to be the appropriate amount.

(3) The President may direct that any report of a Commissioner be withheld from publication or be withheld for such time as the President may specify.

[s. 16A]

[PCh32s22]22. Protection of person publishing true account

No person shall be liable to any action, suit, indictment or proceeding by reason of publishing a true account of any evidence taken in public in pursuance of the powers

conferred by this Act or of any report of the Commissioners made public by the authority of the President.

[s. 16B]

[PCh32s23]23. Conditions as to proceedings for penalties

No proceedings shall be commenced for any penalty under this Act except by direction of the Attorney-General.

[s. 17]

[PCh32s24]24. Regulations Act No. 27 of 1994 s. 8

(1) The Minister may, with the consent of the President make regulations for the better and more efficient carrying out of the purposes and provisions of this Act.

(2) Regulations made under this Act shall be published in the Gazette.

[s. 17A]

SCHEDULE

FORM OF OATH OR AFFIRMATION TO BE TAKEN BY A COMMISSIONER

THE COMMISSIONS OF INQUIRY ACT

(Section 5)

I,, having been appointed under a Commission issued by the President and dated the day of 20..... to be a Commissioner to inquire into the matters specified in the Commission, do swear (or do solemnly and sincerely affirm) that I will faithfully, fully, impartially, and to the best of my

ability, discharge the trust, and perform the duties devolving upon me by virtue of the Commission.

(In the case of an oath, add)

So help me God.

.....

Commissioner

SUMMONS TO A WITNESS

THE COMMISSIONS OF INQUIRY ACT

(Section 10(3))

To A.B. (name of person summoned, and his calling and residence, if known). You are hereby summoned to appear before the Commissioners appointed by the President to inquire (state briefly the subject of inquiry) at (place) upon the day of 20..... at o'clock, and to give evidence respecting such inquiry, (If the person summoned is to produce any documents, add (And you are required to bring with you (.....) specify the books, plans and documents required).

Given under my hand this day of 20.....

.....

Commissioner

or

Secretary to the Commissioner