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## THE INQUIRIES BILL: AN END TO PUBLIC INQUIRIES

British Irish RIGHTS WATCH is an independent non-governmental organisation that monitors the human rights dimension of the conflict and the peace process in Northern Ireland. Our services are available to anyone whose human rights have been affected by the conflict, regardless of religious, political or community affiliations, and we take no position on the eventual constitutional outcome of the peace process.

Our concerns about the Inquiries Bill are specific to our remit, but the implications of this Bill go far beyond the Northern Ireland conflict and peace process. They affect everyone who has the misfortune to get caught up in events that necessitate a public inquiry, whether they are attending a football match where the stadium catches fire, looking for their children's body parts, or their loved one has been murdered by their GP.

On 25<sup>th</sup> November 2004 the government laid the Inquiries Bill before the House of Lords. It is envisaged that it will be passed before the next General Election. If passed, the Bill will make far-reaching changes to public inquiries. We have concerns that the Bill as drafted may spell the end of public inquiries altogether, which is perhaps why the word "public" does not appear in the title of the Bill.

Below we set out our concerns about the Bill. Many of them are compounded by other provisions of the Bill, which is why we say the Bill as a whole should be rejected.

### A FUNDAMENTAL SHIFT IN ACCOUNTABILITY

The power to establish inquiries where there is "public concern" will lie with government Ministers [Clause 1]. The Tribunals of Inquiry (Evidence) Act 1921 is to be repealed [Clause 46(1)]. Inquiries into matters of "urgent public importance"<sup>1</sup> will no longer require a resolution of both Houses of Parliament, and Parliament will no longer have the power to establish a public inquiry<sup>2</sup>. Reports of inquiries under the new Act will be made to the Minister rather than Parliament [Clause 22].

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<sup>1</sup> Tribunals of Inquiry (Evidence) Act, s.1 (1)

<sup>2</sup> Because the Tribunals of Inquiry (Evidence) Act 1921 will be repealed [Schedule 3]

This means that inquiries into major matters will no longer be answerable to Parliament, but to the Executive, i.e. the government of the day. This is a fundamental constitutional shift which is highly undesirable in a democracy.

### **GOVERNMENT CONTROL OVER THE TERMS OF REFERENCE**

The Minister will set the terms of reference for an inquiry [Clause 5(1)]. An inquiry may only act within those terms of reference [Clause 5(3)]. The Chair will have no power to seek any alteration to the terms of reference and the Minister is under no obligation to consult anyone about them.

If an inquiry strays outside the terms of reference, the Minister can refuse to pay the costs of that part of the inquiry [Clause 36(4)].

### **LACK OF INDEPENDENCE IN THE APPOINTMENT PROCESS**

The Minister alone has the power to appoint inquiry Chairs, panel members, and assessors [Clauses 4 and 10]. There is no requirement on the Minister to consult with the Chair about the suitability of other panel members<sup>3</sup> or assessors.

There is a duty on the Minister not to appoint a person who has a direct interest in the subject matter of the inquiry or who is directly associated with an interested party, unless in the Minister's opinion that person's interest or association is unlikely to influence his or her decisions [Clause 8(1)]. It is hard to imagine a better recipe for cronyism.

### **GOVERNMENT CONTROL OVER ACCESS, DISCLOSURE AND PUBLICATION OF EVIDENCE**

While the Chair will have the normal powers to decide whether hearings are held in public, to order disclosure of documents, and to publish material given in evidence, the Minister may also be able to tell the inquiry what to do. The Minister can issue a restriction notice at any time before or during an inquiry [Clause 17(2)(b)] about any of these matters for a variety of reasons including that s/he considers it to be "necessary in the public interest" [Clause 17(3)(b)]. There is a danger that this phrase will be interpreted as meaning sparing the government embarrassment or covering up government wrong-doing.

Restriction notices<sup>4</sup>, unless revoked, will last indefinitely, except in the case of information kept by the Minister after the end of the inquiry, which will be released after thirty years [Clause 18(5) and (6)].

Restrictions that could be imposed on attendance range from the exclusion of the press or general public (allowing those with an interest in the inquiry to attend) to the exclusion of everyone except the panel, the witness and, if appropriate, their legal representatives<sup>5</sup>.

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<sup>3</sup> Although the Minister must consult the Chair if the number of panel members is to be increased [Clause 6]

<sup>4</sup> And restriction orders issued by inquiry Chairs

<sup>5</sup> Explanatory Notes, paragraph 35

## **GOVERNMENT CONTROL OVER THE FINAL REPORT**

Inquiry reports are to be published in full [Clause 23(4)], but the Minister has the power to retain control over the publication process [Clause 23(2)]. Either the Minister or the Chair can withhold from publication anything in the report if it is in the public interest to do so [Clause 23(4)(b)]. The public interest is defined as including, among other things, the need to avoid damage to national security, international relations, the economic interests of the country, and commercially sensitive information [Clause 23(4 – 6)]. Also in the balance is the extent to which the allaying of public concern might be inhibited [Clause 23(5)(a)]. The need to allay public concern is likely to come a poor second to the other issues specified. The implication of these provisions is that the Minister can suppress an inquiry report against the wishes of the inquiry panel.

Although reports must reasonably reflect the points of disagreement [Clause 22(5)], if a member of an inquiry panel disagrees with the final report, his or her only option is to resign<sup>6</sup>. It will not be possible for him or her to produce a minority report.

## **AN INCREASE IN IMPUNITY**

Inquiries will no longer have the power to attribute civil or criminal liability [Clause 2]. This is cause for concern because inquiries are often the last port of call for issues that have not been resolved in other courts. There is a danger that those who are responsible for wrong-doing, having escaped justice elsewhere, will not even be named and shamed in an inquiry.

## **GOVERNMENT CONTROL OVER THE TIMETABLE**

The Minister decides when an inquiry should begin [Clause 5(1)(a)], and end [Clause 13]. The Minister can stop an inquiry before it has delivered his report [Clause 13(1)(b)], without having to give any reason for doing so.

The Minister can also suspend an inquiry to accommodate other investigations or proceedings<sup>7</sup> [Clause 12], even if those investigations/proceedings have not yet commenced, without reference to the Chair and without having to take the inquiry's views into account.

## **FINANCIAL CONTROLS ON INQUIRIES**

There cannot be any objection in principle to measures which control the amount of public money on inquiries, but where an individual or a disadvantaged group find themselves facing the might of the state, it is important that equal resources are made available to all concerned. There are three measures in this Bill which are of particular concern.

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<sup>6</sup> Explanatory Notes, paragraph 54

<sup>7</sup> Whether civil or criminal, and including disciplinary proceedings

The first is the proposal that it should be possible to withhold evidence from anyone outside the inquiry panel [Clause 21(4)] in order to avoid a risk of damage to the economy [Clause 21]. The only counterbalance the inquiry may apply is the public interest in revealing the information. Damage to the economy should not be permitted to outweigh important human rights, such as the right to life, the right to liberty, and the right to freedom from torture.

The second is the proposition that the Minister can withhold expenses incurred by an inquiry if it has acted outside the terms of reference or is likely to do so [Clause 36(4)]. This is another way of ensuring that the government retains the tightest possible control over what inquiries enquire into.

Thirdly, the Minister, rather than the Chair, decides whether the legal and other costs of interested parties and witnesses should be met [Clause 37(4)].

### **LIMITATIONS ON INQUIRIES IN SCOTLAND AND WALES**

Inquiries which are the responsibility of the Scottish Ministers may not determine any fact or make any recommendation that is not wholly or primarily concerned with a Scottish matter [Clause 25(2)]. There are identical provisions in respect of an inquiry that is the responsibility of the National Assembly for Wales [Clause 26(2)]. The Chair's powers to compel witnesses and disclosure of documents [Clause 19] apply only to Scottish or Welsh matters [Clauses 25(3) and (4) and 26(3) and (4)].

### **LIMITATIONS ON INQUIRIES IN NORTHERN IRELAND**

Similar provisions apply in Northern Ireland where a Northern Ireland Minister is responsible for the inquiry [Clause 27(2), (4) and (5)]. Additionally, a Northern Ireland Minister may not order an inquiry into any event occurring prior to 2<sup>nd</sup> December 1999, when devolution took place in Northern Ireland, or during any period when the Northern Ireland Assembly was suspended [Clause 27(3)]. Northern Ireland inquiries may only deal with matters that have been transferred to Northern Ireland under devolution; they cannot look into excepted matters such as national security [Clause 27(7)].

### **DANGER TO EXISTING INQUIRIES**

The Minister will have the power to convert any existing inquiry involving public concern to one governed by the Inquiries Act [Clause 14], and to alter the terms of reference [Clause 14(3) and (4)]. The Minister can also sack any member of the inquiry panel on a number of grounds, including that s/he has failed to comply with any duty imposed on members by the Act [Clauses 15(3) and 11(3)(b)]. Thus, if a Minister does not like the way in which an inquiry is developing or a member is acting, s/he can change it, even applying the Act retrospectively.

### **CONCLUSION**

The Inquiries Bill removes in one fell swoop the notion of independent scrutiny over the actions of government and government departments and agencies. Without the independent scrutiny provided by a public inquiry, accountability is also lost.

Such developments can only erode public confidence in government and ultimately undermine democracy. We urge you to vote against this Bill.