

Inquiry into the Retirement of the Former Commissioner of Police

Fact sheet on the Inquiries Act 2024

This fact sheet has been prepared by the Inquiry Team to aid public understanding of the Inquiries Bill 2024, which was passed in Gibraltar Parliament on Monday 25 March 2024, and received Royal Assent from the Governor Sir David Steel today (26 March 2024). As the Bill has now passed and has received Assent, it is cited as the Inquiries Act 2024 (“**the Act**”) and comes into operation on the 28 March 2024. The Legal Notice in the Gibraltar Gazette as to commencement of the Act is available [here](#). The text of the Act is available [here](#).

The Inquiries Bill was first published on 7 March 2024, and a copy of the initial draft Bill is available [here](#). Various amendments were made to the Bill during the Parliamentary process. As the Inquiry has previously confirmed in response to a media question, it was not consulted in relation to the Inquiries Bill.

When will the new Act come into effect?

The Government published a notice in the Gazette stating that the Act will come into operation on 28 March 2024 (section 1(1)).

Does the new Act apply to the Inquiry?

The Act contains “transitory and transitional” provisions (section 35). These include provisions for the Act “*to apply to an existing inquiry with effect from the date that those provisions of this Act including for the avoidance of doubt the Commissions of Inquiry Act*”. The Government has stated that these provisions “*make it entirely clear that ... the McGrail inquiry is governed by [the Act].*”

The Act also repeals the Commissions of Inquiry Act 1888 (section 36) but makes it clear that neither the repeal of this Act or anything in the Act affects the “validity of any act or decision of the Commissioner under an existing inquiry” (section 35(5)). The Act does not therefore affect the validity of any act or decision that the Commissioner has taken to date.

The Inquiry will invite submissions from any Core Participant as to whether they disagree with the Government’s position that the Act automatically applies to the Inquiry.

What has changed?

The Inquiry was called under the Commissions of Inquiry Act 1888.

Under the 1888 Act:

1. The Commissioner had a broad discretion to control the procedure of the Inquiry “*by all such lawful means as to [him] appear best*” (Section 6), including whether hearings take place in private or public. He had powers to summons witnesses, request evidence and examine witnesses under oath.
2. Witnesses could not refuse to answer questions because it would tend to incriminate them (section 10). On the other hand, any answers to questions could not be admitted as evidence against them in civil or criminal proceedings, and witnesses cannot be liable to any civil or criminal proceedings in respect of any statement made or disclosure given in connection with the Inquiry (sections 8 and 10).
3. The Commissioner could “certify” offences to the Supreme Court, for example failing to attend upon being summoned, refusing to take an oath, answer questions or produce a document required by the Commissioner, or doing any other thing that was equivalent to a contempt of court, so that the Supreme Court could investigate them.

There are several differences between the 1888 Act and new Act. Four significant changes are:

1. The “Commissioner” will now be known as “the Chairman of the Inquiry” or the “Chairman”.
2. Under section 19, the Government can serve a “restriction notice” on the Inquiry at any time before the end of the Inquiry, to either restrict public attendance at the Inquiry (or part of it) or restrict the Inquiry from disclosing or publishing any evidence or documents. The Government may serve a restriction notice if it considers this “necessary in the public interest”. Under the procedure previously established in this inquiry under the 1888 Act, only the Commissioner could determine whether evidence should be restricted in this way.
3. Under section 22, the Inquiry cannot require a person to give evidence or disclosure which could not be required by a civil court. This changes the position on self-incrimination from the 1888 Act as explained above.
4. Under section 27, the proceedings may be instituted for offences in the context of the Inquiry (for example, if a witness refuses to answer a question), with the consent of the Attorney-General.

Will the Act impact the Inquiry’s procedures and policies?

The Inquiry will need to amend its ‘Protocol for Receipt and Handling of Documents, Redaction and Records Management’. For example, this Protocol addresses matters such as hearings in private, restriction orders and privilege, which will need to be updated.

The Inquiry will also need to update its Protocol on the Livestreaming of the Inquiry, which has not yet been published. The new Act does not impact the Commissioner's intention to live stream the Inquiry on GBC and radio.

The Inquiry's other policy documents will need to be reviewed but are unlikely to be affected.

Will the Inquiry be suspended, ended or delayed?

The Main Inquiry Hearing is due to commence on 8 April 2024, and the Inquiry continues to proceed on the basis of that start date. At present the Inquiry knows of no reason why that start date should not be kept.

Although the Act contains a provision giving the Government power to suspend or end Inquiries, that power cannot be exercised in relation to the current Inquiry (section 35(6)).

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26 March 2024
(updated on 28 March 2024)