

*These notes refer to the Inquiries Act 2005 (c.12)  
which received Royal Assent on 7 April 2005*

# **INQUIRIES ACT 2005**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Inquiries Act which received Royal Assent on 7 April 2005. They have been prepared by the Department for Constitutional Affairs in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### **OVERVIEW**

3. The Inquiries Act is intended to provide a comprehensive statutory framework for inquiries set up by Ministers to look into matters of public concern. It gives effect to proposals contained in a Government consultation paper, dated 6 May 2004 entitled “Effective Inquiries”, which itself arose out of a memorandum, submitted to the House of Commons Public Administration Select Committee as part of its “Government by Inquiry” investigation.
4. The explanatory notes are divided into groups of sections reflecting the structure of the Act. In relation to each group of sections, there is a summary, and also some background. Commentary on particular sections is then set out in numerical order, with the commentary on the various Schedules included with the sections to which they relate.
5. The sections are grouped under 10 cross-headings:

#### ***Constitution of inquiry***

These sections make provision for Ministers to set up formal, independent inquiries relating to particular events which have caused or have potential to cause public concern, or where there is public concern that particular events may have occurred. These sections also make provision for Ministers to set the terms of reference, to appoint a chairman to conduct the inquiry, and also additional panel members and assessors where appropriate.

#### ***Conversion of inquiries***

These sections contain provisions that will allow inquiries established otherwise than under this Act to be converted into inquiries under the Act.

#### ***Inquiry proceedings***

These sections make provision about how inquiries held under this Act are to be conducted. They provide for an inquiry chairman to have powers to require the production of evidence and for the establishing Minister or the chairman, or both, to be able to place restrictions on public access to the inquiry where appropriate.

### ***Inquiry reports***

These sections place a duty on the inquiry chairman to deliver a report to the commissioning Minister and set out what the final report may contain. They also contain a provision concerning the publication of the inquiry's report.

### ***Scotland, Wales and Northern Ireland***

These sections deal with the respective powers of United Kingdom Ministers, Scottish Ministers, Northern Ireland Ministers and the National Assembly for Wales to set up inquiries under this Act.

### ***Inquiries for which more than one Minister responsible***

Contains provisions on inquiries established jointly by two or more Ministers, including cross-border inquiries within the United Kingdom.

### ***Supplementary***

These sections create offences and also provide for the enforcement of inquiry orders by the High Court or Court of Session. They also contain provisions which will give members of an inquiry immunity from civil proceedings, place a time limit on bringing an application for judicial review (except in Scotland) and provide for the commissioning Minister to pay the costs of the inquiry panel, any assessors, any counsel and solicitor to the inquiry and anyone engaged to provide assistance to the inquiry. They also contain arrangements for payments of expenses of witnesses, including legal representation, where appropriate.

### ***General***

This group of sections contains definitions of words and expressions used in the Act. It also contains a provision which allows the Lord Chancellor, the Scottish Ministers, the National Assembly for Wales and the First Minister and deputy First Minister in Northern Ireland to make procedural rules.

### ***Amendments etc***

This group of sections contains amendments to the Financial Services and Markets Act 2000 and to section 23 of the Interpretation Act (Northern Ireland) 1954 and also introduces the Schedules of consequential amendments and repeals.

### ***Final provisions***

These include provisions about commencement.

## **TERRITORIAL EXTENT**

This Act applies throughout the United Kingdom (see section 52). Section 28 applies specifically to Scotland, section 29 to Wales and section 30 to Northern Ireland.

## **COMMENTARY ON SECTIONS**

### ***Constitution of Inquiry***

#### ***Section 1: Power to establish inquiry***

6. This section enables any Minister to cause an independent inquiry to be held and sets out the circumstances in which the inquiry may be established. The range of inquiries in the past ten years illustrates that it is not possible to specify more precisely the circumstances when an inquiry may be called. An inquiry could be called into a particular event (e.g. Dunblane inquiry 1996) or a series of events (e.g. BSE inquiry 1997). Although most

past inquiries have been triggered by events, they have also been held where there is a concern that something has failed to happen or that particular systems have not operated properly (for example, the Climbié inquiry 2001). This section allows for an inquiry to be set up when there are concerns of this type too.

7. The Act is UK-wide. Ministers from the Devolved Administrations will have the power to establish inquiries into matters within their remit.

### ***Section 2: No determination of liability***

8. The purpose of this section is to make clear that inquiries under this Act have no power to determine civil or criminal liability and must not purport to do so. There is often a strong feeling, particularly following high profile, controversial events, that an inquiry should determine who is to blame for what has occurred. However, inquiries are not courts and their findings cannot and do not have legal effect. The aim of inquiries is to help to restore public confidence in systems or services by investigating the facts and making recommendations to prevent recurrence, not to establish liability or to punish anyone.
9. However, as subsection (2) is designed to make clear, it is not intended that the inquiry should be hampered in its investigations by a fear that responsibility may be inferred from a determination of a fact.

### ***Section 3: The inquiry panel***

10. The aim of this section is to provide Ministers with the flexibility to appoint an inquiry panel that is appropriate to the circumstances under investigation. The Minister may appoint either a chairman to sit alone (e.g. Lord Cullen sat alone as the chairman to the inquiry into the shootings at Dunblane Primary School, 1996) or with one or more panel members (e.g. Michael Redfern QC chaired a three person panel for the Royal Liverpool Children's Hospital inquiry, 1999). Section 4 ensures that where the chairman will not sit alone the Minister will consult him on the appointment of any other panel members, including any appointed under section 7.

### ***Section 4: Appointment of inquiry panel***

11. This section is self-explanatory.

### ***Section 5: Setting-up date and terms of reference***

12. **Section 5** requires the Minister to specify a setting-up date and terms of reference for the inquiry. The setting-up date given by the Minister is the date the inquiry formally comes into existence as an independent body. This date is purely a formality and need not relate to any other event connected with setting up the inquiry, such as an opening meeting. Before this date an inquiry will not begin considering evidence. It might, however, begin taking some practical steps to find premises and staff.
13. An inquiry is set up to investigate a particular set of circumstances. The remit of the inquiry must be set out by the Minister in the terms of reference before the setting-up date. The Minister must consult with the chairman when either setting or changing the terms of reference. The Act does not contain any specific requirement for the Minister to consult other individuals or organisations, but they can be consulted if the Minister considers it appropriate in the particular circumstances. The period of time leading to the setting-up date could be used for consultation.
14. The type of information contained in the terms of reference will vary from inquiry to inquiry. For example, the terms for the Victoria Climbié and Shipman inquiries were fuller than those used for the Bloody Sunday inquiry. In some cases it might be appropriate to specify a date by which the inquiry is asked to report, or the level of urgency. The definition of terms of reference in this Act is wide in order to allow for

appropriate terms of reference to be set for a wide range of inquiries under this section. Under subsection (6)(c) of section 5, the Minister must specify whether the inquiry is asked to make recommendations. However, section 24(1), which is concerned with inquiry reports, makes it clear that the panel may make recommendations even if this was not a requirement in the terms set by the Minister.

### ***Section 6: Minister's duty to inform Parliament or Assembly***

15. This section requires the Minister to inform “the relevant Parliament or Assembly” that he intends to hold an inquiry and to give certain details about it. As the definition of this expression in section 43 makes clear, the relevant Parliament or Assembly will depend upon whether the Minister is a UK Minister or a Minister in a devolved administration. If the inquiry is being set up jointly by Ministers from more than one administration, this section requires statements to be made to each relevant Parliament or Assembly. The Act requires statements to be made “as soon as is reasonably practical”, which allows for periods of recess, for example.

### ***Section 7: Further appointments to inquiry panel***

16. This section is self-explanatory.

### ***Section 8: Suitability of inquiry panel***

17. The Minister is required to consider the factors in subsection (1)(a) and (b) of section 8 every time he makes an appointment, including any further appointments during the inquiry. He must consider the need for balance in relation to issues that are likely to be relevant to the terms of reference. So, for example, this requirement would not usually mean that the Minister needs to consider appointing an equal number of men and women to the panel, unless the subject matter of the inquiry means that the sex of the panel members is particularly relevant. What it does mean is that he should consider balance in terms of the relevant experience that the panel members bring. So, for example, the panel of the Bristol Royal Infirmary inquiry consisted of a professor of health law, ethics and policy, a professor at the Imperial College School of Medicine and practising GP, an academic specialising in family law and an executive director of nursing with 20 years' experience. That panel had a range of experience, which was balanced between different subject areas and between academic and practical experience. The requirement does not mean that the panel must contain people who would be seen as representing all the groups with an interest in the inquiry. It does mean, however, that the Minister should avoid appointing a set of panel members who, in the light of their combined experience and backgrounds, are likely to tend towards a particular viewpoint.
18. Under subsection (2) the Minister may bear in mind the contribution of assessors to the expertise of the panel for the purposes of subsection (1)(a). The purpose of subsection (1)(a) is to ensure that the panel has the ability to conduct an informed analysis of the evidence and produce a full and useful report. Assessors may provide expert assistance to the panel members, enabling them to do this. However subsection (1)(b), which provides for the need for balance in the context of the terms of reference, does not take into account the contribution of any assessors. This is because it is the panel, and the panel alone, who have responsibility for the contents of the report, and the requirement for balance is designed to ensure that this report is fair and reasoned. The panel may ask for the assistance of those working for the inquiry, including the assessors, in writing the report, but it is the panel who have the final word on what goes into the report.

### ***Section 9: Requirement of impartiality***

19. A person might be said to have an “interest” in the events which gave rise to the inquiry where the matters raised impinge on issues which he is concerned about, either personally or professionally. Therefore a “direct interest” would be present where

the individual's concern with the events is particularly strong. In contrast, "close association" focuses not so much on the interests of the individual, but on the links (whether personal or professional) that the individual has. For example, were an inquiry panel member to have ties with a witness, there might be concerns about the weight which that inquiry panel member would give to the evidence.

20. The section does not prevent the appointment of individuals with expertise in a specific subject area, as section 8 makes clear. For example, if an inquiry were set up to look into the circumstances surrounding allegations of misconduct by a doctor this section would not prevent the appointment to the panel of individuals with expertise in NHS monitoring practices who had not been involved in the case of that particular doctor. That experience in itself would probably not be regarded as constituting a "direct interest" or "close association".
21. There might be cases in which it would be beneficial to the inquiry to appoint a person with more direct experience of the area under investigation. In some specialised subject areas, it could be difficult to find panel members who did not have some sort of association with those involved, or a general interest in the subject matter. Even if a prospective panel member did have a "direct interest" or "close association", the section allows the Minister to appoint the individual, provided that the interest or association could not reasonably be regarded as affecting the impartiality of the panel as a whole.

### ***Section 10: Appointment of judge as a panel member***

22. This section deals with the circumstances in which a Minister proposes to appoint a (serving) judge as a panel member (including chairman) to an inquiry. The section sets out whom the Minister is required to consult before making such an appointment. In practice, it is likely that consultation for judges in England, Wales and Northern Ireland will be done through the Lord Chancellor.

### ***Section 11: Assessors***

23. The role of assessors will vary from inquiry to inquiry, but in essence they are experts in their own particular field whose knowledge, where necessary, can provide the panel with the expertise it needs in order to fulfil an inquiry's terms of reference. For example in the Victoria Climbié inquiry, four expert assessors, including a consultant paediatrician and a detective superintendent, joined the chairman, Lord Laming. Assessors do not have any of the inquiry panel's powers and are not responsible for the inquiry report or findings. An assessor could be appointed for the duration of the inquiry, but it would also be possible to appoint an assessor only for part of the inquiry, to assist when evidence on a particular subject was being considered.

### ***Section 12: Duration of appointment of members of inquiry panel***

24. In practice, if a panel member needs to leave the panel before the end of an inquiry, it is likely that he will resign. The circumstances covered in subsection (3), in which the Minister would be able to terminate the appointment of a panel member, are expected to arise very rarely.

### ***Section 13: Power to suspend inquiry***

25. An inquiry may be one of a number of investigations into a particular matter. Often, the respective timing of these is very important; for example, to ensure that an inquiry does not prejudice a criminal prosecution. The results of other investigations may also inform the inquiry and help prevent duplication.
26. In the event that new investigations or proceedings come to light or are commenced after the inquiry has started, it may be necessary to halt the inquiry temporarily. This section sets out the circumstances in which a Minister may, after consulting the chairman, suspend an inquiry to allow other proceedings to be completed.

### ***Section 14: End of inquiry***

27. This section sets out how an inquiry comes to an end. An inquiry is not permanent. It only exists between the setting-up date and the date on which it ends under this section. In most cases an inquiry will end when the chairman has submitted a report to the Minister and has done any further work necessary to wind up the inquiry, such as a costs assessment. However, there might be situations before the submission of the report in which it is no longer necessary or possible for the inquiry to continue. Evidence may emerge that obviates the need to hold an inquiry or demonstrates that the inquiry has the wrong focus, for example, if it emerged during an inquiry that the event being investigated was an act of sabotage rather than failings of a particular system, and ought to be dealt with by the police rather than an inquiry. Other events might occur which also need to be investigated, and it may be more appropriate to set up a single, wider-ranging inquiry, perhaps with a different panel. Something might happen, such as a fire or the death of a witness, which means that an inquiry will no longer have access to the evidence it needs to conduct an effective investigation, and it may no longer be in the public interest for it to continue. Such scenarios are unlikely, but possible. In such cases, and other unforeseen circumstances, the Minister, after consulting the chairman, is able to bring the inquiry to a close.
28. Subsection (2) provides that the Minister may not end the inquiry retrospectively. Any proceedings up to the date the Minister notifies the chairman an inquiry is ending would be valid.

## **CONVERSION OF INQUIRIES**

### ***Section 15: Power to convert other inquiry into inquiry under this Act***

29. This section enables the Minister to convert an inquiry that is not being held under the Inquiries Act into an inquiry held under the Inquiries Act. In recent non-statutory inquiries, including Hutton and Bichard, the chairmen have stated that if formal powers were required, these would be made available to them by effectively converting to a statutory inquiry. Three recent health inquiries (Ayling, Neale, Kerr/Haslam) were converted from being held under a general power to do anything which related to the discharge of a Minister's duties (section 2 National Health Service Act 1977) into inquiries established under section 84 of the same Act which is a specific inquiry power with powers of compulsion.
30. The Minister may convert a non-statutory or statutory inquiry provided that he is satisfied that the matter the original inquiry was investigating fell within the scope of the circumstances in subsection (2), which are the same as those set out in section 1 of the Act. It is not intended that this power should be used to convert other types of inquiries, such as planning inquiries.
31. The Minister may, after consulting the chairman, change the terms of reference when converting the inquiry. This means that he can ensure that they fulfil the conditions set out in section 5. It may also be appropriate to alter the terms of reference if, for example, the inquiry is being converted because it has become clear that the scope of the original inquiry was too narrow, and a broader inquiry power is needed. The requirement to keep the relevant Parliament or Assembly advised (under section 6) applies also to converted inquiries.

### ***Section 16: Inquiries converted under section 15***

32. This section makes provision for inquiries converted under section 15. Orders made under the original inquiry may only be enforced using powers that the inquiry had at the time of making the order. For example, if the chairman of a converted inquiry had made a request for evidence prior to conversion, he could not prosecute an individual under section 35 for failure to comply. He would have to issue a notice under section 21, using the inquiry's new powers of compulsion first. Once an inquiry has been converted, the



appointment of the original panel members continues as if made under this Act and is subject to the provisions of section 12.

## **INQUIRY PROCEEDINGS**

### ***Section 17: Evidence and procedure***

33. Subsection (3) requires the chairman to act fairly throughout the inquiry. This serves to underline the duty that already exists in the common law. In applying this duty the chairman may consider, for example, if certain participants require some form of legal advice or representation. Subsection (3) also ensures that the need to control cost is a valid consideration for the chairman when conducting and planning proceedings. The cost of inquiries will vary according to the complexity of the matters being investigated. The Minister is required, by section 39(3), to meet expenses incurred in holding the inquiry. Each decision to admit evidence, to hold oral hearings, or to allow legal representation adds to the cost of the inquiry. The requirement to have regard to cost will strengthen the chairman's ability to defend decisions in which the need to limit costly elements of an inquiry was a factor.

### ***Section 18: Public access to inquiry proceedings and information***

34. This section makes clear that, subject to any restrictions issued under the following section, the chairman is required to do what he considers reasonable to ensure public access to evidence in the ways set out in subsection (1)(a) and (b). The chairman is able to judge what is reasonable so, for example, if the panel has been sent documents that it considers to be irrelevant then the chairman may decide not to make those available with the rest of the evidence.
35. Broadcasting of inquiry proceedings is at the chairman's discretion. In the past, some inquiry chairmen have allowed broadcasting of particular stages, such as the opening statements. In deciding whether to allow broadcasting, the chairman will need to consider whether it would interfere with witnesses' human rights and, in particular, with the right to respect for a private and family life (Article 8 of the European Convention on Human Rights). Unlike inquiries under the Tribunals of Inquiry (Evidence) Act 1921, inquiries under the Inquiries Act will not be covered by section 9 of the Contempt of Court Act 1981, which places restrictions on sound recording.
36. Subsections (3) and (4) of this section provide that, in relation to the records of inquiries held under this Act, the general exemptions for the records of statutory inquiries in the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002 ("the FOI Acts") will not apply. During the course of an inquiry held under the Inquiries Act, that inquiry is not a public authority for the purposes of those Acts. However, once an inquiry is over, its records are generally held by a public authority, such as a Government Department or the National Archives. Section 41 enables procedure rules to be made, which could provide for the passing of documents given to or created by an inquiry to a public authority. The exemptions in section 32(2) of the FOI Act 2000 and section 37(1)(b) of the FOI Act 2002 will not apply to information contained in those documents. This section does not affect the application of the FOI Acts to inquiries held otherwise than under this Act. Nor does it prevent any other exemption in the FOI Acts from applying to any information in inquiry records.

### ***Sections 19 & 20: Restrictions on public access etc; Further provisions about restriction notices and orders***

37. These two sections set out the extent to which inquiry proceedings can be held in private and evidence can be withheld from the public domain.
38. There may be circumstances in which part or all of an inquiry must be held in private, and over a third of the notable inquiries held in the past fifteen years have had some sort of restrictions on public access. These range from wholly private inquiries, such as

the Penrose inquiry into the collapse of Equitable Life and the “Lessons Learned” (Foot and Mouth) Inquiry, to mainly public inquiries such as the Bloody Sunday inquiry and the Hutton inquiry, in which a small amount of highly sensitive material was withheld from the public domain.

39. In some past inquiries, it has been the Minister who has specified restrictions, whereas in others the chairman has set the restrictions. Section 19 allows for both. It replaces a range of statutory provisions on public access in the legislation that is repealed by Schedule 2 including, for example, section 81 of the Children Act 1989, which states:
- “(2) Before an inquiry is begun, the Secretary of State may direct that it shall be held in private.
- (3) *When no direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.*
40. Public access to past inquiries has been restricted for a variety of reasons. Section 19(4) sets out a number of matters that must be taken into account when determining whether it is in the public interest to issue a restriction notice or order. Most of these factors are self-explanatory.
41. [Section 19\(4\)\(c\)](#) is intended, among other things, to cover cases in which a person has received information that he would usually be prevented by law from disclosing. For example, the Financial Services Authority receives sensitive information about firms in its role as a regulator, but is prevented from disclosing that information generally by Part 23 of the Financial Services and Markets Act 2000. Inquiries’ powers of compulsion would override those restrictions, but it might be appropriate for the chairman or Minister to consider preventing the information from being disclosed more widely.
42. [Section 19\(4\)\(d\)](#) recognises that some inquiries might be conducted more efficiently or effectively with restrictions on public access. Several recent inquiries under section 84 of the NHS Act 1977 have been held partially in private, with relatives and participants admitted but not the general public.
43. Restrictions that could be imposed on attendance under subsection (1)(a) of section 19 might range from the exclusion of the press or general public (allowing those with an interest in the inquiry to attend, as was the case in the Ayling and Neale inquiries) to the exclusion of everyone except the panel, the witness and, if appropriate, their legal representatives (as happened in the Penrose inquiry into the collapse of Equitable Life). They might be imposed on all hearings, or only where a particular witness was giving evidence or where evidence was heard on a specified topic. The nature of the restriction would depend upon the reasons for it. Similarly, a range of different restrictions might be imposed on the disclosure or publication of evidence or documents.
44. Nothing in section 19 is intended to prevent a witness from passing on evidence that he himself has given to an inquiry either whilst inquiry proceedings are ongoing or after the inquiry has ended. However, there might be situations in which restrictions under section 19 could prevent a person from passing on information that he has learnt as a result of his attendance at, or involvement in, the inquiry. If the powers in this section are exercised in any way that engages Article 10 of the European Convention on Human Rights then of course that exercise must be done in a way which complies with Article 10(2) of the Convention.
45. [Section 20](#) allows the Minister and chairman to issue further restrictions and to vary or revoke their own restrictions at any time before the end of the inquiry. The Minister cannot vary or revoke the chairman’s restrictions and vice versa. There is, however, nothing to stop the chairman from asking the Minister to consider exercising his discretion to vary a notice. The power to vary notices and orders will allow for situations in which it becomes apparent that more information can be made public than was originally envisaged, or that more people can be given access to information than



allowed by the original notice, as well as any situations in which it becomes apparent that further restrictions are necessary.

46. **Section 20** provides that, except in relation to inquiry records, restriction notices and orders continue indefinitely unless otherwise specified or unless they are revoked. Orders restricting attendance will only be relevant during the course of the inquiry, but some orders restricting disclosure or publication of evidence might need to continue beyond the end of the inquiry. For example, if an inquiry chairman issued an order that the identity of a particular witness was to be kept confidential, because the witness could be at risk if his identity were disclosed, that order would need to continue to protect that witness after the inquiry had ended.
47. Subsection (6) of section 20 is designed to ensure that restrictions do not create a barrier to disclosure of information from inquiry records under the FOI Acts. In addition to this, subsection (7) allows the Minister to relax or revoke restrictions after the end of an inquiry. This is to ensure that any restrictions still in place (which apply to information other than in inquiry records) can be removed if they become unnecessary.
48. Disclosure restrictions would not prevent a person not involved in the inquiry from disclosing or publishing information that had come into his possession through means unconnected with the inquiry, even if some of that information might be included in documents or hearings that were covered by a restriction order or notice.
49. For example, suppose that an inquiry were set up into the death of a hospital patient, and that a restriction notice were issued to exclude the general public from the proceedings and to prevent the publication of transcripts of evidence, because it was considered that an inquiry held partly in private would be more effective. The inquiry might consider information already in the public domain, such as papers from the inquest, or statements of hospital policy. The fact that a restriction notice was in place for the inquiry would not prevent a member of staff at the hospital from providing a patient with a copy of the hospital policy.
50. To take another example, suppose that a Government department provided information to an inquiry held in private and that, after the end of the inquiry, a request were made under the Freedom of Information Act 2000 for some of that information. The Department could not refuse to provide the information purely because it happened to have been covered by the restriction notice, because the Department would have held that information even if the inquiry had never happened. The purpose of a restriction notice is just to restrict disclosure of information in the context of the inquiry or to restrict disclosure by those who have received the information only by virtue of it being given to the inquiry.

### ***Section 21: Powers of chairman to require production of evidence etc***

51. This section provides inquiries with statutory powers to compel evidence. The powers are exercisable by the chairman, but in a multi-member inquiry he will be exercising them on behalf of the panel. It is envisaged that most requests for information from an inquiry panel will not be made under section 21. An inquiry panel will usually ask for information informally first, and experience from past inquiries has shown that the vast majority of informal requests will be complied with. There are three main scenarios in which powers of compulsion are likely to be used:
  - (i) a person is unwilling to comply with an informal request for information;
  - (ii) a person is willing to comply with an informal request, but is worried about the possible consequences of disclosure (for example, if disclosure were to break confidentiality agreements) and therefore asks the chairman to issue a formal notice; or
  - (iii) a person is unable to provide the information without a formal notice because there is a statutory bar on disclosure.

52. **Section 21(4)** covers two reasons for which a person might refuse to comply with a notice issued under powers of compulsion. Subsection (4)(a) would cover circumstances when the person was unable to comply, for example, if he did not have the information being requested. Subsection (4)(b) is designed to cover situations in it would be unreasonable to expect a person to comply. This might be because the difficulty, time or expense involved in providing the information would be so great that a person could not reasonably be expected to do so. For example, if an inquiry chairman gave a notice requesting that an organisation produce every document it had on a particular topic within two weeks, and the organisation would have to search through thousands of files to comply, the organisation might make a claim under section 21(4)(b). The chairman would then consider, under section 21(5), whether the public interest in obtaining the information within that timeframe outweighed the cost, bearing in mind how important the information was likely to be. He might choose to vary his notice by extending the deadline, narrowing the categories of information being asked for, or by specifying that the organisation only need to search certain sites for the information. Section 21(4)(b) could also cover situations in which it would not be reasonable to expect a person to provide evidence because the evidence is unlikely to be of material assistance to an inquiry.
53. On occasion, it is possible that the evidence being requested will be an intercepted communication. To ensure that such material can be disclosed to the inquiry, there is an amendment in paragraph 21 of Schedule 2 to the Act to ensure that this is permissible under section 18 of the Regulation of Investigatory Powers Act 2000.

## **Section 22: Privileged information etc**

54. **Section 22(1)** ensures that witnesses before inquiries will have the same privileges, in relation to requests for information, as witnesses in civil proceedings. In particular, this means that a witness will be able to refuse to provide evidence:
- (i) because it is covered by legal professional privilege;
  - (ii) because it might incriminate him or his spouse or civil partner (by virtue of section 84 the Civil Partnerships Act 2004); or
  - (iii) because it relates to what has taken place in Parliament.
55. In some recent inquiries, the Attorney General has given undertakings along the following lines:
- ““To undertake in respect of any person who provides evidence to the inquiry that no evidence he or she may give before the inquiry, whether orally or by written statement, nor any written statement made preparatory to giving evidence nor any document produced by that person to the inquiry will be used in evidence against him or her in any criminal proceedings, except in proceedings where he or she is charged with having given false evidence in the course of this inquiry or having conspired with or procured others to do so.”
56. If such an undertaking was given, it would be difficult for an individual to refuse to answer certain questions by claiming the privilege against self-incrimination. As for subsection (1)(b), in certain circumstances European Community law may prevent a person from disclosing information to others. An example of this is article 30 of the Directive of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, which is commonly known as the Banking Consolidation Directive.
57. **Section 22(2)** provides expressly that it will be possible to make in an inquiry, as it is in civil proceedings, an assertion that documents or information should be withheld from the inquiry (or from public disclosure) on the grounds that they are immune from disclosure in the public interest (“public interest immunity” or PII). Such applications have been made to inquiries in the past, including the Bloody Sunday Inquiry, for

example, on the grounds that disclosure of the information would be prejudicial to national security. The Government's policy on claiming PII is that Ministers will claim PII only when it is believed that disclosure would cause real damage or harm to the public interest and that this outweighs the public interest in open justice. A claim for PII should be made by the person whose duty it is to protect the information (which need not necessarily be the Crown) supported by evidence (usually in the form of a witness statement or ministerial certificate) that disclosure would cause real damage or harm to the public interest. It is then the responsibility of the inquiry panel, having viewed the documents or information, to balance the public interest in disclosure against the public interest in maintaining confidentiality. Having carried out that "balancing exercise", the inquiry must decide whether to uphold the claim for immunity and, if so, on what terms. The inquiry panel may decide that the information may be withheld, or that it be disclosed in whole or in part (after "redaction").

58. [Section 35\(4\)](#) makes clear that a person who does not produce evidence to an inquiry because it is covered by section 22 is not committing any of the offences created in section 35 relating to distortion, suppression or destruction of evidence. In the case of a refusal to comply with an order of the inquiry on the ground that the evidence was covered by section 22, this could also be relied on as a "reasonable excuse" under section 35(1) for failure to comply with an order of the inquiry.
59. The House of Lords has recently made it clear in its decision in *Three Rivers v Bank of England* [2004] UKHL 48 that legal advice privilege applies in relation to advice given to witnesses in the context of an inquiry. Such privilege extends to advice given about the presentation of evidence, since it is given within a relevant legal context. There is therefore no need for an express provision relating to the application of legal professional privilege to inquiries in the legislation.

### ***Section 23: Risk of damage to the economy***

60. Although an application under section 23 can be made only by those acting on behalf of the bodies specified (the Crown, Financial Services Authority or Bank of England), it can be made in respect of information held by any person. The inquiry panel will carry out a balancing exercise between the public interest in the information being revealed to the public and to other participants and the public interest in avoiding a risk of damage to the economy. If the inquiry panel considers that the public interest in avoiding the risk of damage to the economy outweighs the public interest in disclosure, it will be able to take this material into account in its deliberations but will not be able to refer to the material (or its existence) publicly. Section 23 does not impact upon the general principles of public interest immunity, but exists in addition to them.

## **INQUIRY REPORTS**

### ***Section 24: Submission of reports***

61. [Section 24](#) places a duty on the chairman of an inquiry to report its conclusions to the Minister. If an inquiry has been brought to an end early under section 14(1)(b), the chairman does not have to produce a report but he can do so if he wishes. In the unlikely event that a member of the inquiry panel disagrees with the general conclusions to such a great extent that no amount of modification under section 24(5) will produce a report that he is content to sign, he can release himself from the obligation, under subsection (4), to sign it by resigning from the panel.

### ***Section 25: Publication of reports***

62. Subsection (4)(a) would allow, for example, the person publishing the report to redact personal information (such as medical reports) as required by the Data Protection Act 1998. The factors that the person publishing the report must take into account, when considering whether any redaction is in the public interest under subsection (4)(b), are

equivalent to those for restriction notices and restriction orders (see section 19(4)), except for the references to cost, effectiveness and efficiency of the inquiry, which are no longer relevant in the context of reports.

### ***Section 26: Laying of reports before Parliament or Assembly***

63. The report published under section 25 will be the same version required to be laid before the relevant Parliament or Assembly.

## **SCOTLAND, WALES AND NORTHERN IRELAND**

64. This group of sections deals with the respective powers of United Kingdom Ministers, of Scottish Ministers, of the National Assembly for Wales and of Northern Ireland Ministers to set up inquiries under this Act. The Act allows Ministers in each administration to set up inquiries in their administration's own areas of responsibility but contains limitations, set out in sections 27 to 30, which reflect the terms of each devolution settlement.

### ***Section 27: United Kingdom inquiries***

65. This section provides that a Minister setting up a United Kingdom inquiry cannot include anything in the terms of reference that would require the inquiry to receive any evidence or make any recommendations that are wholly or primarily concerned with a Scottish, Welsh or Northern Ireland matter without consulting the devolved administration first. It is envisaged that UK Ministers will not usually set up inquiries into devolved matters without the agreement of the relevant devolved administration and that Ministers will consider whether a joint inquiry between the two administrations would be appropriate instead.
66. The section also places similar constraints on the use of powers of compulsion into devolved matters. If the terms of reference covered devolved areas (and the Minister had therefore already consulted the devolved administration under subsection (2)), the Minister might also need to give the inquiry permission to use its powers of compulsion in all the devolved areas that would be covered by the terms of reference.
67. Even if the terms of reference mentioned only reserved areas (and no consultation had been necessary under subsection (2)), the panel might consider it necessary to take evidence on certain devolved matters in order to fulfil them. For example, suppose that a United Kingdom inquiry had been established to investigate an incident relating to gun control. The inquiry might need to take medical evidence from a Scottish hospital in relation to injuries caused. If the panel believes the evidence is relevant to its terms of reference, it is entitled to consider it, provided that the hospital is willing to provide it. Similarly (see sections 28, 29 and 30 below) devolved inquiries are entitled to take evidence on reserved and excepted areas (except as prohibited by section 30(7)) provided it is relevant to the terms of reference and is willingly given. However, there might be occasions when a person is unable or unwilling to provide evidence without a notice under section 21, compelling him to do so. For United Kingdom inquiries, this is dealt with by section 27(3). (A different approach is taken for the devolved administrations, and is described in the notes on section 28.) The inquiry can apply to the Minister for permission to use its powers of compulsion in devolved areas. Before granting permission, the Minister would have to consult the devolved administration. It is envisaged that UK Ministers will not usually grant permission without the agreement of the relevant devolved administration.
68. Subsection (6) is needed to prevent a possible gap in coverage between the powers of inquiries set up by UK Ministers and by Northern Ireland Ministers, which arises out of the way in which "Northern Ireland matter" has been defined. This is explained in the notes on section 30.

### ***Section 28: Scottish inquiries***

69. As explained above, a Scottish inquiry may take evidence on reserved matters, if the panel considers that it is relevant to the terms of reference. However, it cannot compel that evidence, except in so far as it is allowed by subsection (3). Subsection (3)(b) has the effect of allowing Scottish inquiries to compel evidence on reserved matters if this is for the purpose of inquiring into something that is wholly or primarily a Scottish matter. The reasons for this power are best illustrated by an example. Suppose that the Scottish Ministers were to establish an inquiry into the environmental effects of flooding in Scotland and that one of the causes of flooding in Scotland is the leakage of polluted water from coal mines. The inquiry might wish to compel the production of documents held by a coal mining company relating to the operation of the water pump in its coal mine. However, coal mining is a reserved matter (section D3 of Part 2 of Schedule 5 to the Scotland Act 1998) and the documents are therefore concerned with a reserved matter. It would be difficult to say that a document prepared by a coal mine operator into the routine maintenance of its water pumps, which most likely would have been prepared long before the events giving rise to public concern occurred and without any anticipation of the events that occurred, were wholly or primarily concerned with the devolved matter of environment.
70. However, it would not be possible for a Scottish inquiry to compel evidence under subsection (3)(b) from any member of the United Kingdom Government (including Government Ministers and the Departments acting on their behalf), or of the other administrations, because of the prohibition in subsection (4).

### ***Section 29: Welsh inquiries***

71. The provisions on Welsh inquiries mirror those on Scottish inquiries as explained above.

### ***Section 30: Northern Ireland inquiries***

72. The provisions on Northern Ireland inquiries are similar to those on Scottish inquiries described above, but reflect the differing circumstances of Northern Ireland and its devolution settlement.
73. The definition of “Northern Ireland matter” in section 30(8) covers some reserved matters in relation to which Northern Ireland Ministers have functions (see paragraph (b)), as well as transferred matters. However, section 30(6) creates some exceptions to the circumstances in which Northern Ireland inquiries can exercise their powers of compulsion in relation to those matters, in order to make the scope of inquiries’ powers equivalent to the scope of the Northern Ireland Assembly’s powers to summon witnesses and compel evidence. Since those exceptions are in section 30(6), rather than in the definition of “Northern Ireland matter”, section 27(6) is needed to ensure that they are not also excluded from the scope of inquiries established by United Kingdom Ministers.
74. In addition to the general restrictions on terms of reference and powers of compulsion, subsection (7) provides that an inquiry established by a Northern Ireland Minister must not receive evidence or make any recommendations on matters falling within paragraph 17 of Schedule 2 to the Northern Ireland Act 1998, which deals with national security.
75. Whilst there is a suspension of devolved government in Northern Ireland, functions conferred on a Northern Ireland Minister may be discharged by the Secretary of State for Northern Ireland, by virtue of section 45.

### ***Section 31: The relevant part of the United Kingdom and the applicable rules***

76. Subsection (1) provides that when an inquiry is set up, the Minister or Ministers who established it must specify what is “the relevant part of the United Kingdom” for the



purposes of those provisions of the Act that use this expression. This will determine, for example, which law on privilege will apply and which court should have the powers to enforce orders of the inquiry (see sections 22(2) and 36(3)). It will not necessarily correspond to the administration setting up the inquiry. For example, if a United Kingdom Ministers were to establish an inquiry into a reserved matter in Scotland, which conducted its hearings mainly in Scotland, it would make sense for the relevant part of the United Kingdom to be Scotland. The relevant part of the United Kingdom will usually be the part in which the inquiry is being held, but it is possible that an inquiry may have several venues so for clarity it is important that the Minister or Ministers specify which part it is to be.

77. Subsection (2) applies (typically) where there is an inquiry involving two administrations each of which has made rules under the power conferred by section 41. It requires the Ministers responsible for the inquiry to specify which set of rules is to apply. For example, in the case of a joint inquiry set up by a United Kingdom Minister and the Scottish Ministers, the Ministers might specify the rules made by the Lord Chancellor or the rules made by the Scottish Ministers, or some of each. Subsection (4), on the other hand, gives power to a United Kingdom Minister setting up an inquiry into non-devolved matters in, say, Scotland to specify not only that the relevant part of the United Kingdom is Scotland but also that some or all of the rules applicable to the inquiry are to be rules made by the Scottish Ministers.

## **INQUIRIES FOR WHICH MORE THAN ONE MINISTER RESPONSIBLE**

### ***Section 32: Joint inquiries***

78. In practice, this section would probably be used in situations where the subject matter of the inquiry fell within the responsibilities of more than one Minister. For example, the Victoria Climbié inquiry was established by the Home Secretary and the Secretary of State for Health. Sometimes, a joint inquiry might involve Ministers from more than one administration. For example, if devolution had been in place at the time of the Dunblane inquiry, which related both to firearms (a reserved issue) and safety in schools (a devolved one), the Scottish and UK Ministers might have chosen to set up a joint inquiry. Inquiries involving more than one administration are dealt with in more detail in the next section.

### ***Section 33: Inquiries involving more than one jurisdiction***

79. This section applies specifically to joint inquiries for which the responsibility is shared between two (or more) administrations – for example a joint inquiry set up by a United Kingdom Minister and the Welsh Assembly, or even a joint inquiry set up by the Scottish Ministers and the Northern Ireland Assembly. (The wording of subsection (1) reflects the fact that there are several United Kingdom Ministers and several Northern Ireland Ministers, whereas the Scottish Ministers and the National Assembly for Wales are each a single legal entity.)
80. This section sets out how the restrictions on terms of reference and powers of compulsion will work. Subsection (2) means that the terms of reference of the joint inquiry can cover matters that any one of the relevant Ministers would be able to establish an inquiry into. For example, the terms of reference of a joint inquiry established by Scottish Ministers and the National Assembly for Wales could require the inquiry to receive evidence or make recommendations that are wholly a primarily concerned with a Welsh or Scottish matter, but not on anything else. The terms of reference of a joint inquiry established by United Kingdom Ministers and Scottish Ministers could require the inquiry to receive evidence or make recommendations about anything not wholly concerned with a Welsh or Northern Ireland matter, and could extend to Welsh and Northern Ireland matters only if the UK Minister had first consulted the relevant administrations. The restrictions on powers of compulsion will operate in the same way.



### ***Section 34: Change of responsibility for inquiry***

81. This section might be used if it became clear, during the course of the inquiry, that its focus was more properly within the responsibilities of a Minister other than the commissioning Minister. For example, if a United Kingdom Minister had established an inquiry into events in Scotland that was expected to examine primarily reserved matters, and it subsequently became clear that there were significant implications for devolved matters, the establishing Minister might agree with the Scottish Ministers to share responsibility for the inquiry, making it an inquiry to which section 33 applied. This section might also be used to pass responsibility for an inquiry from one Minister to another within the same administration.

## **SUPPLEMENTARY**

### ***Section 35: Offences***

82. This section provides sanctions for non-compliance with an inquiry, or for actions that are likely to hinder the inquiry. The offences created are similar to some of those created by section 250 of the Local Government Act 1972, which have been applied to a number of different types of inquiry in the past, including some under powers being repealed by this Act.
83. The offences created in this section are summary offences and would be dealt with by magistrates (or, in Scotland, in the Sheriff or District Court). The maximum penalty given is the maximum for summary offences. Level three on the standard scale is currently £1000. The maximum term of imprisonment for summary offences is currently six months, but it will be extended to 51 weeks in England and Wales once section 281(5) of the Criminal Justice Act 2003 is commenced. Section 44(3) ensures that the maximum term will be read as six months before that section is commenced.
84. In particular section 35(1) makes it an offence to fail, without a reasonable excuse, to comply with a formal notice requiring attendance at the inquiry or the production of evidence. Subsections (2) and (3) go wider, making it an offence to deliberately distort or conceal relevant evidence. These sections are drafted in such a way that it should not be possible for a person to commit an offence unwittingly (for example, by destroying a document that he does not realise is relevant). Subsection (4) ensures that a person does not commit an offence under subsection (2) or (3) if he is withholding evidence because he is allowed to do so by section 22 or, for example, if the evidence is covered by legal professional privilege. Subsection (4) also ensures that offences of suppressing or distorting evidence do not cover actions authorised by the panel (for example conducting a forensic test on a piece of evidence). The fact that the evidence was covered by section 22 or a privilege could also be relied on as a “reasonable excuse” under subsection (1).
85. In England and Wales and Northern Ireland, only the chairman can institute a prosecution for non-compliance with a notice issued under powers of compulsion. This is because it is for the chairman to decide whether to enforce notices issued under his powers of compulsion, and how best to do this. He has two possible options: prosecution for an offence under section 35 or enforcement of the notice by the appropriate court under section 36. It is considered to be undesirable for someone else to be able to begin a prosecution under section 35 when the chairman has decided instead to certify the matter to the High Court (or equivalent) under section 36.
86. Prosecutions for offences under subsection (2) or (3) may be brought only by or with the consent of the Director of Public Prosecutions in England, Wales and Northern Ireland. This serves to ensure that it is not open to those with an interest in the outcome of the inquiry to bring private prosecutions against witnesses with whose evidence they disagree. It also ensures that prosecutions can be brought after the inquiry has ended (which would not be possible if the chairman had to bring them). Some offences of this

nature might come to light only after the end of an inquiry. In Scotland, prosecution of any offence is the responsibility of the Crown Office and Procurator Fiscal Service.

### ***Section 36: Enforcement by High Court or Court of Session***

87. This section provides for an appropriate court (the High Court or Court of Session) to enforce notices issued under powers of compulsion, restriction notices and any orders of the inquiry, including restriction orders. Where a person breaches a notice or order, or threatens to do so, the chairman of the inquiry (or the Minister, after the end of the inquiry) can certify the matter to the court, which can then take steps to enforce the order. This is similar to the mechanism that would have been used to enforce orders issued under the Tribunals of Inquiry (Evidence) Act 1921.
88. In the case of notices issued under powers of compulsion in section 21, enforcement by the appropriate court is an alternative mechanism to prosecution, and could be used in cases where a prosecution might not be the best method of obtaining the relevant evidence. However, the court could also be asked to enforce a wider range of orders, for example, to prevent someone revealing the name of a witness whose identity was covered by a restriction order. This example could occur after the end of an inquiry, when the chairman is no longer in a position to certify the matter to the court, so section 36 provides for the Minister to certify matters to the court after the end of the inquiry.

### ***Section 37: Immunity from suit***

89. This section provides immunity for the inquiry panel, the inquiry's legal advisers and assessors, and other people engaged to assist it, from any civil action for anything done or said in the course of carrying out their duty to the inquiry. Subsection (1) will change the current practice whereby sponsor Departments usually have to provide indemnities to the inquiry, which can cause delays at the beginning of an inquiry. The lack of such protection was identified as an undesirable omission in the Tribunals of Inquiry (Evidence) Act 1921 in the report of the Royal Commission on Tribunals of Inquiry in 1966 (the "Salmon Report").
90. This section also provides that witness statements and inquiry reports will be covered by the same privilege, for the purposes of defamation law, as proceedings before a court. This privilege was already afforded to witnesses under the Tribunals of Inquiry (Evidence) Act 1921 but not under some subject-specific legislation.

### ***Section 38: Time limit for applying for judicial review***

91. The aim of this section is to reduce the time limit for judicial reviews of decisions that could delay an inquiry. This is because the prospect of a challenge to a procedural decision can halt the inquiry until it has been resolved by a court. For example, a challenge regarding a decision as to whether a witness could give evidence anonymously (perhaps to ensure his right to life was protected) would mean that the inquiry could not require evidence from that individual until the court had decided the matter. This time limit does not extend to challenges about the contents of reports or interim reports.
92. Unlike that in the Civil Procedure Rules, the time limit set by this section runs from the date on which an applicant became aware of the decision, not from the date on which the decision was made. Subsection (2) ensures that this change cannot serve to increase the time limit beyond the standard time limit in the Civil Procedure Rules or the Northern Ireland equivalent.

### ***Section 39: Payment of inquiry expenses by Minister***

93. This section sets out what the establishing Minister is obliged to fund and what he has discretion to fund.

- 94. Under subsections (4) and (5), the Minister is not obliged to fund activities that he has certified to the panel as being outside the inquiry's terms of reference.
- 95. The withdrawal of funding may be temporary and the Minister will resume funding if he is satisfied the inquiry is working back within the terms of reference. It is envisaged that any withdrawal of funding would only occur in exceptional circumstances. The Minister would be expected to notify the chairman if he had any concerns that the inquiry was working outside terms of reference, giving the inquiry an opportunity to address those concerns and avoid the need to remove funding.
- 96. Under subsection (6), the Minister is required to publish the total amount that he has paid for the inquiry under section 38. This requirement to publish costs would not cover all those costs to which the chairman must have regard under section 17(3), such as costs borne by witnesses themselves.

#### ***Section 40: Expenses of witnesses etc***

- 97. Legal costs of participants often constitute the most significant part of the total cost of an inquiry. The non-statutory position adopted in recent inquiries has been for the Minister to decide, in consultation with the chairman, to fund those participating in the inquiry who are considered to have such a direct interest in the inquiry that they require representation but who may be unable to pay for representation themselves. The Government would not normally meet the costs of large organisations. This section enables this practice to continue. The chairman automatically has the power to pay costs, but the Minister can place qualifications on that power. The Minister will generally set out any broad conditions under which payment may be granted, and the chairman will then take the individual decisions.
- 98. The legal costs of Government witnesses might be met by the sponsoring department under the mechanism set out in this section, but not necessarily. If the witnesses were from a different department, their own department might pay for their representation, putting them in the same position as any other large organisation, to whom the inquiry would not usually grant funding.

### **GENERAL**

#### ***Section 41: Rules***

- 99. It is envisaged that the Lord Chancellor will make procedural rules for United Kingdom inquiries under this section. There is however no requirement for such rules to have been made before an inquiry may be established under the Act.
- 100. Subsection (2) enables rules to make provision for assessment of costs by a Costs Judge, among other things.
- 101. It is for the devolved administrations to make rules for their own inquiries. The rules will generally be subject to annulment by the relevant legislative body, as explained in subsections (5) and (6). However, there is no need for subsection (5) to make provision for Wales, because sections 66(2) and 67(3) of the Government of Wales Act 1998 set out the procedures for all general subordinate legislation made by the National Assembly for Wales.

#### ***Section 42: Notices***

#### ***Section 43: Interpretation***

- 102. These sections are self-explanatory.

***Section 44: Transitory, transitional and saving provisions***

103. **Section 44** contains provisions for inquiries that have been set up under legislation that is being repealed by the Act. It will ensure, for example, that inquiries set up before this Act was introduced will not be affected by the provisions contained in this Act and will be able to continue as if the old legislation were still in place. It also provides that a Minister may still in the future set up an inquiry in ways other than under this Act, whether on a statutory basis or otherwise.

***Section 45: Suspension of devolved government in Northern Ireland***

104. This section ensures that during suspension of devolved government, the Secretary of State for Northern Ireland can exercise the powers of Northern Ireland Ministers to establish Northern Ireland Inquiries under section 30 and to make rules of procedure under section 41. The Secretary of State will be consulted, in place of the Northern Ireland Ministers, when consultation is required under section 27 or section 51.

**AMENDMENTS ETC**

***Section 46: Inquiries under the Financial Services and Markets Act 2000***

105. This section amends section 14 of the Financial Services and Markets Act 2000 (“FSMA”) which provides a mechanism for the Treasury to appoint a person to hold an independent inquiry in various circumstances relating to the regulatory framework for the financial services industry. The amendment is intended to extend the possible scope of inquiries under FSMA to cover failings in the previous regulatory system (albeit only where the events triggering the inquiry have occurred after December 2001). References to *subsections* below are to those of section 14 of FSMA.
106. An inquiry may be held in two types of cases. The first case, set out in *subsection (2)*, relates to events concerning persons carrying on regulated activities or collective investment schemes. To trigger the power, it must appear to the Treasury that two conditions are met. The first of these is that the events posed, or could have posed, a grave risk to the financial system, or that they caused, or could have caused, significant damage to the interests of consumers. The second condition is that a serious failure in the regulatory system, or in the operation of that system, might have caused or exacerbated the risk or damage, or potential risk or damage.
107. The second case, set out in *subsection (3)*, relates to events concerning the listing function under Part VI FSMA and significant damage to holders of listed securities. Here the Treasury must be concerned with the damage, or potential damage, that might have been caused by a serious failure in the listing regime or its operation.
108. In both cases, the power to arrange an inquiry relates to serious failure in the regulatory system established by FSMA. Subsections (2) and (3) of the section expand the scope of *subsections (2)* and *(3)* to include serious failure in the regulatory system under predecessor legislation, albeit that the event triggering an inquiry (e.g. grave risk to the financial system or significant damage to consumers) is subject to a separate requirement (see below)
109. Subsection (4) of this section inserts a new *subsection (5A)*. This provides that an inquiry cannot be triggered where events described in *subsection (2)* and (3) occurred before 1 December 2001. An inquiry into similar events after 1 December 2001 could though consider circumstances surrounding these events, regardless of when these circumstances occurred.

***Section 47: Inquiries etc under Northern Ireland legislation***

110. This section amends the Interpretation Act (Northern Ireland) 1954 which applies the powers set out in Schedule 8 to the Health and Personal Social Services (Northern

Ireland) Order 1972 (referred to below) to inquiries and investigations set up by Ministers. Schedule 8 is being repealed by this Act. Subsection (2), which introduces Schedule 1 to the Act, ensures that any legislation under which these powers have been implicitly given to inquiries by virtue of the Interpretation Act (Northern Ireland) 1954 will be unaffected.

#### ***Section 48: Minor and consequential amendments***

111. **Schedule 2** to this Act contains minor and consequential amendments to other legislation. Many of the amendments are to pieces of legislation relating to other types of inquiry that explicitly incorporate the powers in Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972, which is being repealed by this Act. The relevant provisions of that order are reproduced in a new schedule to the Interpretation Act (Northern Ireland) 1954 which is inserted by Schedule 1 to the Act, so that they can continue to apply to the legislation that will remain in force.

#### ***Section 49: Repeals and revocations***

112. This section repeals the Tribunals of Inquiry (Evidence) Act 1921 and also introduces Schedule 3. The provisions being repealed in Schedule 3 are mainly ministerial powers to hold inquiries that could, in future, be established under the Inquiries Act.

### **FINAL PROVISIONS**

#### ***Section 50: Crown application***

113. This section ensures that the Act binds the Crown, so that the powers conferred on inquiries by this Act can be exercised in relation to Government Departments.

#### ***Section 51: Commencement***

#### ***Section 52: Extent***

#### ***Section 53: Short title***

114. These sections are self-explanatory.

### **COMMENCEMENT**

115. The provisions in the Act will come into force on a day appointed by the Lord Chancellor by order, after consultation with the devolved administrations (see section 51).

### **HANSARD REFERENCES**

116. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
<b>House of Lords</b>		
Introduction and First Reading	25 November 2004	Vol.667 Column 161
Second Reading	9 December 2004	Vol.667 Column 984-1017
Grand Committee First Day	18 January 2005	Vol.668 Column GC 191-248
Grand Committee Second Day	19 January 2005	Vol.668 Column GC 249-306
Report First Day	7 February 2005	Vol.669 Column 615-654

*These notes refer to the Inquiries Act 2005 (c.12)  
which received Royal Assent on 7 April 2005*

<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
Report Second Day	8 February 2005	Vol.669 Column 692-734
Third Reading	28 February 2005	Vol.670 Column 13-48
<b>House of Commons</b>		
First Reading	1 March 2005	House of Commons Votes and Proceedings
Second Reading	15 March 2005	Vol.432 Column 149-218
Standing Committee 1 <sup>st</sup> sitting	22 March 2005	Standing Committee B Column 1-36
Standing Committee 2 <sup>nd</sup> sitting	22 March 2005	Standing Committee B Column 37-80
Standing Committee 3 <sup>rd</sup> sitting	24 March 2005	Standing Committee B Column 81-106
Third Reading	6 April 2005	Vol.432 Column 1492-1499
<b>House of Lords</b>		
Consideration of Commons Amendments	7 April 2005	Vol.671 Column 889-911
<b>Royal Assent</b>		
House of Lords	7 April 2005	Vol.671 Column 950
House of Commons	7 April 2005	Vol.432 Column 1641