

EXPLANATORY MEMORANDUM TO THE INQUIRY RULES 2006

2006 No. 1838

1. This explanatory memorandum has been prepared by the Department of Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 Inquiry Rules will act as a statutory guide for the chairman and provide assistance in managing and conducting the proceedings of an inquiry held under the Inquiries Act 2005 (“the Act”). In particular, the Rules set out procedures for applying for publicly funded legal representation, requiring rates and the extent of work to be agreed in advance. This will help the inquiry control costs and avoid disputes over the payment of bills. The Rules also assist the chairman in controlling oral proceedings and prevent extensive and costly cross-examination procedures.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative background

4.1 The Act received Royal Assent on 7 April 2005 and the provisions were commenced from 7 June 2005. The Inquiries Act provides a new statutory framework for inquiries set up by UK Ministers (as defined by section 43 of the Act) into events that have caused or are capable of causing public concern. The Act covers the setting up of inquiries, the appointment of people to run them, their procedures and powers and the submission and publication of inquiry reports.

4.2 Section 41 of the Act contains provisions for the making of procedural rules to cover three particular areas; matters of evidence and procedure, records management after the end of the inquiry, and awards of expenses to persons involved in an inquiry.

4.3 The application of the rules is subject to the provisions of the Act. Of particular note is Section 17(3) which requires the chairman to act with fairness and with regard to the need to avoid unnecessary costs.

4.4 In overview, the rules cover; the designation of core participants to the inquiry, the appointment of legal representatives, the taking of evidence and procedure for oral proceedings, the disclosure of potentially restricted evidence in certain limited circumstances, the issuing of warning letters, arrangements for publishing reports, records management, and the determination, assessment and payment of awards.

5. Extent

5.1 Once laid, the rules will apply to all inquiries established by UK Ministers. Consequently, they will apply to inquiries set up by UK ministers, even where the inquiry is based in one of the devolved territories, or concerns matters which

happened in a devolved territory. Devolved Administrations have powers to make rules in respect of any inquiries for which they are responsible under the Act. Where an inquiry is set up by a UK Minister and a devolved administration jointly, the commissioning ministers are obliged under the Act to specify which set of rules is to be applied, or whether a combination of rules is to be adopted.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and as it does not amend primary legislation, no statement is required.

7. Policy background

7.1 During the development and subsequent debates of the Inquiries Bill stakeholders and peers questioned how the Government intended to deal with issues such as controlling legal representation, notifying individuals of potential criticism and making estimates for cost and duration of inquiries. It was felt that these issues, amongst others, would be best dealt with in rules rather than on the face of the Bill.

7.2 In December 2004 the Government placed a paper in the library of both Houses outlining the areas that rules might cover. Ministers committed in Parliament to develop policy on rules separately and to consult upon them fully.

7.3 In some recent inquiries chairmen have made clear at the start of the inquiry which individuals or organisations will be granted party status. Rules assist the chairman in defining core participants and sets out what factors should be taken into consideration when making a decision.

7.4 Rules allow all participants to have a recognised legal representative for the purposes of the inquiry. This does not mean that all representation will be paid for out of public funds and the role that a legal representative can play is separate from the issue of whether or not the representation is publicly funded.

7.5 Rules place an obligation on the chairman to ensure that there is a comprehensive and well-ordered record of the inquiry when it has concluded.

7.6 If the chairman considers that an individual may or will be subject to criticism during inquiry proceedings or as part of a report he must send them a warning letter. The letter must outline the potential criticism and refer to the evidence that supports the facts or allegations. In this way the rules ensure that the principles of fairness are upheld.

7.7 Rules set out a procedure for applying to the chairman for an award, and for the assessment of such awards, once the expenditure has been made. In most cases the assessment of the amount of the award will be resolved through negotiations between the solicitor to the inquiry and the applicant. However, the rules also set out the procedure to follow in detail where such agreement cannot be reached. Current practice has led to such disputes being referred to a costs judge (or their equivalent in the devolved administrations). The Rules place this on a statutory footing.

7.8 The Rules were subject to a full twelve week public consultation. A total of 48 responses to the consultation paper were received. Most took the form of discussion papers that addressed specific proposals in the draft rules. The responses came from individuals, including academics, former inquiry chairmen and others with experience of inquiries. In addition to these responses the Government also sought opinion on the draft rules at several public seminars concerning inquiries. Where possible we have attempted to incorporate relevant feedback from these events into this response.

8. Impact

8.1 The Inquiries Act was accompanied by a full regulatory impact assessment. It concluded that none of the policy options would directly impact upon business, charities or the voluntary sector; although, ultimately an inquiry and its recommendations could affect any business, organisation or individual.

9. Contact

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