

INQUIRIES ACT 2005

EXPLANATORY NOTES

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.