

INQUIRIES ACT 2005

EXPLANATORY NOTES

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.