INQUIRIES ACT 2005*

(2005 c.12)

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An Act to make provision about the holding of inquiries. [7th April 2005]

PROGRESS OF THE BILL

Hansard, HL Vol.667, col.161 (1R); col.984 (2R); col.1091 (MfA); Vol.668, cols GC191, 249 (Comm); Vol.669, col.231 (MfA); cols 615, 692 (Rep); Vol.670, col.13 (3R); Vol.671, col.889 (Commons Amendments); HC Vol.432, col.149 (2R); col.218 (PM); Standing Committee B cols 1, 37, 81; Vol.432, col.1492 (Rep & 3R).

INTRODUCTION AND GENERAL NOTE

Summary

The Inquiries Act 2005 (c.12) ("the Act") repeals the Tribunals of Inquiry (Evidence) Act 1921 (c.7) ("the 1921 Act") and some 30 plus subject-specific statutory provisions. It purports to provide a comprehensive statutory framework for inquiries set up by ministers to look into mat-

ters of public concern, consolidating all "public concern" inquiries. It does not interfere with non-statutory inquiries established by ministers.

The Act extends to the whole of the United Kingdom ("UK").

The Act may appear to be part of new Labour's continuing modernization of the state. The issue was under consideration from 2002 in what became the department for constitutional affairs ("DCA"). However, the Act's cause, and immediate consequence, lies in the Northern Ireland of the early 2000s; it was driven quietly by the needs of the Northern Ireland office ("NIO").

Critics and commentators referred to two important shifts of power as a result of the Act: one, from parliament to the executive; and two, from chairmen to ministers. The latter is undoubtedly more important than the former.

Relevant Documents and Reports

The Act formally arose out of the House of Commons Select Committee on Public Administration's ("PASC") announcement on February 24, 2004, that it would be examining the subject of Government by inquiry. The Select Committee, chaired by Tony Wright MP, published a questionnaire, received written evidence, and took oral evidence during the rest of 2004 and into the following year. The PASC heard from the chairmen and secretaries of a number of recent and not-so-recent inquiries.

However, the Inquiries Bill ("the Bill") was announced, and published, before the conclusion of the Select Committee's work.

The PASC eventually published its report, Government by Inquiry, 2004-05, HC 51 I & II, on February 3, 2005 ("Government by Inquiry"). This was towards the end of the Lords' stage. There was no oral evidence volume. (The Government responded to the report on March 10, 2005 (Cm.6481). ("Government Response")).

On May 6, 2004, the DCA had published a consultation paper, Effective Inquiries ("consultation paper"). (This was the Government's evidence to the PASC.) The Government was clearly minded to legislate, to control the cost and length of public inquiries. Costs and time were its principal concerns. The reference to consolidation obscured the intended repeal of the 1921 Act. Annex C of the consultation paper is a report by Sir Roy Beldam, Review of Inquiries and Overlapping Proceedings, a preliminary report presented to Government in 2002.

On September 28, 2004, the DCA published the response to its consultation. There were 57 written responses: 16 from individuals; 12 from public bodies; 12 from lawyers; and nine from healthcare organisations.

On January 12, 2005, the House of Lords Select Committee on the Constitution reported on the Bill: Inquiries Bill, HL Paper 21. The Chairman, Lord Holme of Cheltenham, complained about the absence of pre-legislative scrutiny, and stressed the constitutional significance of the Bill. The Select Committee later published a ministerial letter by way of response on March 22, 2005: First Progress Report 2004-05, HL Paper 78. The minister reiterated that inquiries were, and had always been, a matter for ministers and not parliament.

On January 24, 2005, the Joint Committee on Human Rights reported on the Bill: Scrutiny: First Progress Report, 2004-05, HL Paper 26/HC 224.

The Tribunals of Inquiry (Evidence) Act 1921

The 1921 Act contains only three sections. As the long title indicates, it deals with "evidence" and also "procedure and powers". Section 1 provides that a tribunal "shall have all such powers, rights, and privileges as are vested in the High Court..." regarding witnesses and documents. Section 2 provides that a tribunal may exclude the public from proceedings "in the public interest", and authorise representation by counsel, solicitor or otherwise.

This Act is to be distinguished from the Tribunals and Inquiries Act 1992 (c.53), which provides for the council on tribunals. This body deals mainly with the system of tribunals, which exists alongside the courts of England and Wales. Section 9 provides for (mainly local) statutory inquiries held by or on behalf of ministers, but these - as defined in s.16 - are a duty imposed by any statutory provision or an order of the lord chancellor and secretary of state designating such an inquiry.

Why the 1921 Act?

When Captain Loseby MP criticised the destruction of documents by the ministry of munitions after the first world war, the coalition Government established an inquiry to be chaired by

Viscount Cave. The 1921 Act was to give the inquiry specific judicial powers. However, members of both houses (in extremely truncated debates) noted that the bill, being general, could apply to all future inquiries. There was also, given the drafting, ambiguity about whether parliament by resolution established inquiries (as the lord chancellor maintained), or ministers simply responded to parliament by exercising their discretion.

Parliament in 1921 was reacting to what had happened before the war. In 1912-13, there was a Select Committee (of the House of Commons) into the Marconi scandal, involving ministers and shares in the company. The Select Committee responded politically, with liberals exonerating their own ministers. Thus began the involvement of judges in public inquiries.

Royal Commission

The 1921 Act was the subject of a royal commission, chaired by Lord Justice Salmon, in 1966: Royal Commission on Tribunals of Inquiry, Cmnd.3121. (In 1969, Lord Justice Salmon also chaired a Committee on contempt, and reported on its application to inquiries: Cmnd.4078.) Salmon LJ found there was no case for replacing the 1921 Act. However, the royal commission recommended a number of reforms: these included improving the rights of witnesses (and the so-called Salmon principles - reproduced in annex D of the DCA's consultation paper - have been applied by all subsequent 1921 Act inquiries).

The Salmon report - only 47 pages long but with 50 recommendations - led to a white paper in 1973, but there was no further action. Ministers discussed neither the royal commission report, nor the white paper, during the parliamentary debates.

Government by Inquiry

The PASC's report of February 3, 2005 criticised the Bill for giving ministers too many powers. It located the legislative proposals in a process of the declining influence of parliament.

The Select Committee urged a return to parliamentary investigation, calling for a parliamentary commission. It would be able to initiate inquiries where ministers were unwilling to launch investigations.

Draft amendments in annex 2 of the report, on inquiries involving ministerial conduct (where parliament would follow the positive resolution procedure), were pressed by the conservatives and liberal democrats, at report in the House of Lords on February 7, 2005, unsuccessfully (see further below).

Other reforms recommended included: parliamentary and public comments on the scope of major inquiries; independent chairs, and reports published in a way that is fair to all; ministers requiring the agreement of the lord chief justice or the senior law lord before the appointment of judges; mechanisms to keep inquiry length and costs under control; better follow up so lessons are learned.

Public Inquiries, 1900 - 2004

The PASC report contains, at annex 1, an analysis of major inquiries (only) into matters of public concern in the twentieth century. Eighty-nine are listed for 1900-2004. There have been 61 since 1945; only 28 in 1900-45. There have been 22 inquiries under the 1921 Act; but only seven since 1972.

The PASC concluded: "The analysis suggests a trend, from the primacy of Parliamentary Committees and Royal Commissions up to the second decade of the century[,] to the dominance of the 1921 Act inquiries until the 1970s, then the predominance of ad hoc or subject specific inquiries subsequently... More significantly from Parliament's point of view, the gradual distancing of Parliament from investigatory mechanisms over the period also being reflected in less rigorous parliamentary procedures following inquiry reports. The practice of having debates on substantive motions following 1921 Act reports gradually gave way to debates on motions for the adjournment, ministerial statements and, on occasion, opposition supply days." (para.22)

Joint Committee on Human Rights Report

The Joint Committee raised, regarding the art.2 duty to investigate deaths: the power of a minister to suspend an inquiry; the power to issue restriction notices (including regarding next of kin); ministerial discretion regarding publication; the power to withdraw funding; the exception regarding interests of panel members; ministerial control of publication; and legal aid for family members.

Northern Ireland

Whatever of policy developments on the mainland, the impetus for the Bill arose in Northern Ireland from 1998. It may be summarised in two words: Saville (which had been set up under the 1921 Act) and Finucane (which the Government seemed determined to circumscribe).

Saville

On 30 January 1972, soldiers in Londonderry killed 13 civilians. This was 13 out of 382 persons killed by the security forces during the Northern Ireland troubles (most of the estimated 3,593 deaths in 1969 to 1998 being the work of republican and loyalist paramilitaries). The 13 were declared innocent by the UK Government eventually, but the army - in the opinion of Irish nationalists and their supporters - had been inadequately criticised in Lord Chief Justice Widgery's report several months after the killings: Report of the Tribunal appointed to inquire into the events on Sunday, 30th January 1972, HL 101/H.C. 220, April 18, 1972.

On January 29, 1998 (the eve of the 26th anniversary of Bloody Sunday), the prime minister, the Rt. Hon. Tony Blair MP, told the House of Commons that he was establishing a second tribunal under the 1921 Act. The chairman was to be Lord Saville of Newdigate, a recently appointed law lord (there would also be two retired commonwealth judges.)

It is believed the new and youthful prime minister acted swiftly, in order to create a public mood among nationalists for what became the Belfast Agreement of April 10, 1998 (see Austen Morgan, The Belfast Agreement: a practical legal analysis, London 2000). Any official advice to number 10 - whether accepted or rejected - will not normally become available until 2028/29.

The Saville, or Bloody Sunday, Tribunal was to break all records in the following years. It was also to be the inspiration for the Bill. The estimated costs remain £155 million (the total figure for the 30 inquiries established since 1990 being approximately £300 million). The Tribunal sat between March 2000 and November 2004. Counsel to the Tribunal, Christopher Clarke QC, took 42 days to open. Closing, he stated that it was not possible to state definitively who had killed whom in ten minutes of shooting 32 years earlier. Answers to parliamentary questions reveal huge sums paid to barristers and solicitors representing the Derry families, and to the soldiers' and others' legal representatives. Lord Saville and his colleagues - in their report optimistically promised for summer 2005 but now also delayed - are unlikely to please anyone: the conspiracy theories of modern Irish catholic folklore will not be endorsed; and particular, detailed actions of the army, confusing people and terrorists, will most likely be criticised.

Finucane

On August 1, 2001, the UK and Irish Governments - following abortive political talks at Weston Park in Staffordshire to do with the suspended assembly in Northern Ireland - published a 22-paragraph set of proposals and a draft statement (which the political parties never agreed). The Weston Park document, under the subheading normalisation, promised that London and Dublin would appoint a judge of international standing to investigate six cases of alleged state collusion in murder where the victims were: Chief Superintendent Harry Breen and Superintendent Bob Buchanan (of the Royal Ulster Constabulary); Pat Finucane; Lord Justice and Lady Gibson; Robert Hamill; Rosemary Nelson; and Billy Wright. The first and third killings (the latter of a Northern Ireland Appeal Court Judge and his wife) took place in the Republic of Ireland, the remaining four in Northern Ireland. Three (the second, fourth and fifth) were deeply felt nationalist grievances; the other three became unionist rejoinders, at least in the minds of the NIO. The two Governments undertook to implement respectively any recommendations for subsequent public inquiries. This was a matter of weeks before 9/11 in the United States.

The UK, but not the Irish, Government may have walked into a Weltanschauung of "collusion" thinking. This was no simple hypothetical concept, to be deployed in an examination of the facts of each killing in Northern Ireland and the Republic of Ireland. Rather, it was part of a nationalist theory about loyalist opposition being an extension of British state power (the unionists, insofar as they had recently joined the call for public inquiries, had no similar theory regarding the Irish state). The Finucane family, which had been campaigning the longest, since 1989, and the most effectively, was never to depart from its objective of an international (not English or Scottish) judicial inquiry. Members of the family effectively opposed the detection and punishment of the actual killers (being supported in this by the Northern Ireland Human Rights Commission). Their goal remained the public indictment of the Royal Ulster Constabulary and army, but ultimately these institutions perceived political masters in London (Michael Finucane, Guardian, February 9, 2005).

Cory

London and Dublin appointed a 76-year-old, retired member of the Canadian Supreme Court, the Hon. Justice Peter Cory, on May 29, 2002. Justice Cory, with no Northern Ireland experience, but presumably with knowledge of criminal law, established his "Collusion Investigation" at an office in London (but not seemingly Dublin); he had the assistance of the Canadian High Commission in the UK. He found *prima facie* evidence of collusion in all cases, except perversely that of Lord Justice and Lady Gibson (seemingly because Sir Maurice had booked hotels in England in his own name); it may be relevant that the Gibson family was not interested in a public inquiry.

Cory reported to the two Governments on October 7, 2003. The Irish Government published its two reports in full on December 18, 2003 (PRN 1450 and 1451), the UK delaying until April 1, 2004 (HC 470-473) - having redacted principally the Patrick Finucane report (in order not to prejudice likely criminal proceedings).

The UK Government, which had envisaged (the unnamed) Cory as simply a tactic in August 2001, was hoist on its own petard in April 2004. "Judge Cory's report", said Mrs Finucane, "confirms that there was a state policy of targeting and assassination. The public should read details in his report." (Irish Times, April 2, 2004) The UK Government admitted that it had had to ask Cory to add forewords to the reports (the two Irish reports have only prefaces), making clear that his "collusion investigation" had not led to full judicial findings of fact. It then produced a devastating critique: "Justice Cory's approach has been to adopt a very wide definition of collusion which covers both inaction as well as actions, and patterns of behaviour as well as individual acts of collusion... The Government have not taken a view on the provisional findings which Justice Cory has reached as a result of his wide definition of collusion...". The secretary of state ended his statement on April 1, 2004: "Northern Ireland needs greater reconciliation between the communities...We should ensure that we do not concentrate on divisive issues from the past at the expense of securing this." (*Hansard*, HC Vol.419 cols 1756-7)

A suspect, Ken Barrett, a Belfast loyalist, had been rearrested and charged with murder. He pleaded guilty on September 13, 2004 to killing Patrick Finucane (presumably expecting early release under the Belfast Agreement). Barrett was formally sentenced to life imprisonment (with a 22-year tariff) several days later.

Hamill, Nelson and Wright

On April 1, 2004, accepting the four Cory reports, the secretary of state for Northern Ireland, the Rt. Hon. Paul Murphy MP, had told parliament there would be three public inquiries (Hamill, Nelson and Wright). He stated that the inquiries would have "the full powers of the High Court to compel witnesses and papers. These are the same powers as inquiries set up under the Tribunals of Inquiry (Evidence) Act 1921, under which the Bloody Sunday Inquiry is operating. In addition, the Police and Prisons Acts enable me... to make provision for certain matters, for example about costs and expenses...We will of course take all reasonable steps to control costs..., including capping legal costs as appropriate. We will ensure that the inquiries have the maximum powers, as well as aiming for better, quicker inquiries." (*Hansard*, HC Vol.419 cols 1756-7)

The secretary of state published a "statement on governing principles" on July 8, 2004 on these three inquiries. This included the information that each inquiry would be headed by a senior judge or retired judge, sitting with a specialist and a lay person - all from outside Northern Ireland.

Finucane

Following the sentencing of Barrett, the secretary of state, in an NIO press release on September 23, 2004 (during the recess of parliament), announced that there would now be a Finucane inquiry: "In order that the inquiry can take place speedily and effectively and in a way that takes into account the public interest, including the requirements of national security, it will be necessary to hold the inquiry on the basis of new legislation which will be introduced shortly." The 1921 Act was not being used for any inquiry. However, the Government would be able to proceed with the other three inquiries using two other statutes. Why could Finucane not be held under one of those acts? Or, better, why did the Government not want an inquiry under the 1921 Act?

The Three Northern Ireland Inquiries

The details of the first three tribunals (Finucane was being held back for this Act) were announced eventually in a written statement on November 16, 2004. The Hamill inquiry was to be

headed by Sir Edwin Jowitt, a retired high court judge in England and Wales. Its legal basis was s.44 of the Police (Northern Ireland) Act 1998 (c.32). The Nelson inquiry (under the same legal basis) was to be chaired by Sir Michael Morland, also a retired high court judge from England and Wales. The Wright inquiry - under s.7 of the Prison (Northern Ireland) Act 1953 (c.18) since Wright was killed in the Maze prison - was to be conducted by Lord MacLean of the court of session in Scotland.

The terms of inquiry also belatedly tried to challenge the now widespread assumption of collusion. The tribunals were required to inquire into: wrongful acts or omissions by state agencies, including attempts; and "whether any such act or omission was intentional or negligent." (inviting the conclusion that public bodies may have been negligent but could never have colluded in the absence of intention).

The Government failed disastrously to get over the message: neither the Hamill, Nelson nor Wright inquiries would be held under the 1921 Act; the Finucane family and their supporters had no good argument about different treatment, on the basis that their inquiry would be under this Act.

Prison Act (Northern Ireland) 1953

Section 7 of this measure ("the Prison Act") provides:

1 The Minister may cause an inquiry to be held where it appears to him advisable to do so in connection with any matter arising under this Act or otherwise in relation to any prison.
2 For the purposes of such inquiry the provisions of section sixty-five of and the Seventh Schedule to the Health Services Act (Northern Ireland) 1948... shall have effect [replaced by art.54 and Sch.8 of the Health and Personal Social Services (Northern Ireland) Order 1972 (SI 1972/1265)]...

Section 7 of the Prisons Act is due to be repealed, under ss.48(1) and 49(2) and Sch.2 and Sch.3 of this Act. The Government has not indicated when there will be a commencement order.

Police (Northern Ireland) Act 1998

Section 44 of this statute ("the Police Act") provides:

1 The Secretary of State may cause an inquiry to be held by a person appointed by him into any matter connected with policing.
2 An inquiry under this section shall be held in public or in private as the Secretary of State may direct.
3 Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972... shall apply...
4 Where the report of the person holding an inquiry under this section is not published, a summary of his findings and conclusions shall be made known by the Secretary of State so far as appears to him consistent with the public interest.

Section 44 of the Police Act is due to be repealed, under ss.48(1) and 49(2) and Sch.2 and Sch.3 of this Act. The Government has not indicated when there will be a commencement order.

The Intervention of the Irish Government

The Irish and UK Governments made the Weston Park agreement of August 1, 2001. It was, and remains, a political agreement only. While the UK was to be required to hold four inquiries, following Cory, the Republic of Ireland ("ROI") had only one: Breen/Buchanan. In March 2005, it was reported that the president of the district court, Justice Peter Smithwick, would be appointed. The Irish Government had acknowledged that it would be relying upon the 1921 Act, still part of the law of the ROI.

Irish and UK ministers met in Dublin on March 2, 2005, in the British-Irish intergovernmental conference. The communique records regarding Cory: "The Irish Government requested that the Finucane Inquiry be set up in line with the Weston Park commitments. The British Government stated that it would be."

The Irish Government, much given to pan-nationalism, and following a meeting between the Irish taoiseach, Bertie Ahern TD, and the Finucane family, sent officials to London to negoti-

ate on the Bill on March 11, 2005 (at a point when it had passed through the House of Lords relatively intact and was about to have its second reading in the House of Commons).

Reverting to the 1921 Act would have meant abandoning the Bill weeks before a likely UK general election. Amending what became s.19 (restrictions on public access etc) would have been seen as allowing the Irish Government to dictate to the UK parliament. The Irish officials cannot have believed they could succeed; unusually, they did not.

The View of Lord Saville

In early 2005, Lord Saville was working on his Bloody Sunday report in Westminster. Because of his inquiry experience, he sought to give advice to the DCA. (Lord Saville was not entirely constrained by the self-denying ordinance of the law lords regarding legislation, though he seems to have encouraged Lord Ackner to speak on his behalf in the House of Lords.)

Lord Saville exchanged five letters regarding the Bill with the minister, Baroness Ashton of Upholland, in January to March 2005. Initially, they were private, though copied to the lord chief justice and the senior law lord. With the third letter on February 23, 2005, Lord Saville decided to go public, placing the correspondence (with the help of Lord Ackner) in the library of the House of Lords. There was a report in The Times of February 25, 2005, and a leader the following day. Lord Ackner referred to the correspondence during third reading in the House of Lords on February 28, 2005. He also quoted a letter from the LCJ supporting Lord Saville's view. The labour MP, Kevin McNamara, a long time supporter of Irish nationalism, mentioned the Saville letters at second reading in the House of Commons on March 15, 2005. Saville was appropriated by the Finucane campaign (though the Belfast Telegraph had to apologise to the law lord the following day [March 16, 2005], having allowed itself to be misled about the content of the correspondence in the House of Lords' library).

On January 26, 2005, Lord Saville (invoking the support of his Canadian and Australian colleagues) wrote regarding what became s.19: "I take the view that this provision makes a very serious inroad into the independence of any Inquiry; and is likely to damage or destroy public confidence in the inquiry and its findings, especially in any case where the conduct of the authorities may be in question. As a judge, I must tell you that I would not be prepared to be appointed as a member of an inquiry that was subject to a provision of this kind... To allow a Minister to impose restrictions on the conduct of an inquiry is to my mind to interfere unjustifiably with the ability of a judge conducting an inquiry to act impartially and independently of Government, as his judicial oath requires him to do." Referring undoubtedly to his own inquiry - where he had been challenged successfully in the courts - , and answering a question about inquiry consent, he wrote: "public confidence would be further undermined in cases where the inquiry panel agreed that the restrictions proposed by the Minister should be accepted, for whether or not the panel had in fact exercised its own independent judgment on the matter, it is likely that its independence and impartiality would appear to many to be impugned. Any inquiry must be and be seen to be acting independently and impartially."

The law lord and the minister reached no agreement. Indeed, the former opened up a second front: opposing her idea that, following the completion of an inquiry, records might be released under the Freedom of Information Act 2000 (c.36).

Lord Saville was accused of being "alarmist" by Lord Goodhart of the liberal democrats, at third reading in the House of Lords on February 28, 2005 (*Hansard*, Vol.670, col.43). Quoting his party colleague, Lord Lester of Herne Hill, he argued that article 10 of the human rights convention would constrain an interfering minister.

Lord Ackner, speaking on behalf of Lord Saville on the same occasion, concluded his speech: "I submit that [the clause] typifies the Executive's relentless drive to impose and extend their control over Parliament and the judiciary. The amendments... are an important but relatively modest way to rein in the Executive." (*Hansard*, Vol.670, cols 41-2) The amendment - drafted according to the minister by the solicitor to the Saville inquiry - was negatived due to the absence of tellers.

The View of Justice Cory

Justice Cory, who had worked on his reports in 2002-03, and returned to Canada, watched the slow progress in Northern Ireland. On March 14, 2005, on the eve of the debate in the House of Commons, he was quoted in the Irish Times as opposing the Bill: "I don't know how any self-respecting Canadian judge would be part of it in light of the restrictions on independence it would impose."

Judge Cory was quoted as stating that, at Weston Park 2001, the only act was the 1921 Act. The Canadian judge was wrong. And the Hamill, Nelson and Wright inquiries were already being established under two other pieces of legislation (referring back to a 1972 order in council).

Judge Cory, in a letter of March 15, 2005 to a congressional inquiry in Washington DC chaired by congressman Chris Smith, reiterated his opposition: "It seems to me that the proposed new Act would make a meaningful inquiry impossible. The commissions would be working in an impossible situation. For example, the minister, the actions of whose ministry was to be reviewed by the public inquiry, would have the authority to thwart the efforts of the inquiry at every step." (Irish Times, 28 March 2005)

Queen's Speech

In the last Queen's speech of the 2001 Parliament, on November 23, 2004, it was announced, under constitutional modernization: "Legislation will be brought forward to provide a modern and comprehensive framework for statutory inquiries into matters of public concern."

New Labour and the Judiciary

The Act came at the end of a struggle between the executive and judiciary, one of the most momentous in the history of the two branches of Government. The legislative milestones were: the Criminal Justice Act 2003 (c.44) (Pt 12); the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) (the failed ouster clause); the Prevention of Terrorism Act 2005 (c.2); and the Constitutional Reform Act 2005 (c.4).

On April 26, 2005 (during the general election), the Guardian carried a story by its legal editor: "Judges reveal anger over curbs on power". It was based on interviews with five unidentified high court and court of appeal judges. Lord Donaldson was quoted on the record. "Several, including Lord Donaldson, say the country came close to a constitutional crisis, with some senior judges tempted to defy the will of parliament...". The judicial interviewees referred inter alia to this Act (with the journalist quoting Lord Saville's correspondence with the minister).

The Bill

The Bill was introduced immediately in the House of Lords on November 25, 2004 (showing how dependant the Government was upon the upper house for constitutional legislation). It had 50 clauses and three schedules. Second reading followed on December 12, 2004. It was sent to the House of Commons on March 1, 2005. Second reading followed on March 15, 2005. The lords considered Commons' amendments on April 7, 2005. Royal assent was the same day (just before the prorogation of the 2001 parliament). The Act had 53 sections and three Schedules.

The Bill was caught in the wake of the tightly fought Constitutional Reform Act 2005: Royal Assent, March 24, 2005.

At third reading of the Bill in the House of Lords on February 28, 2005, the Government had been defeated twice: by 137 votes to 130, on a conservative and liberal democrat amendment to retain a role for parliament where ministerial misconduct was in issue; and by 149 votes to 131, on a liberal democrat amendment (to which the LCJ and the lord president had spoken at report) requiring their consent when a judge was to be appointed. The House of Commons removed both amendments. Back in the House of Lords on April 7, 2005 (with prorogation beckoning), the amendments to restore were defeated respectively by 142 votes to 89 and by 135 votes to 87. The Government got its bill on the last sitting day of parliament.

The Structure of the Act

The Act is not formally divided into numbered parts or chapters. However, the 53 sections are divided by ten cross-headings. The long title simply reads: "An Act to make provision about the holding of inquiries."

COMMENCEMENT

Sections 51-53 came into force at royal assent on April 7, 2005. Sections 1-52, plus Schs 1-3 introduced by ss.47-49, are to come into force by order of the lord chancellor made by statutory instrument. However, he must consult the Scottish ministers, the national assembly for Wales and the first minister and deputy first minister in Northern Ireland (whose powers are transferred to the secretary of state during suspension of devolution: Northern Ireland Act 2000 (c.1), Sch., para.4(1)(a)).

ABBREVIATIONS

"consultation paper":	DCA, Effective Inquiries, CP 12/04
"DCA":	Department for Constitutional Affairs
"Government by Inquiry":	Government by Inquiry, 2004-05, HC 51-I & II
"Government Response":	Government Response to the Public Administration Select Committee's First Report of the 2004-5 Session, 2004-05, Cm 6481
"NIO":	Northern Ireland Office
"PASC":	Public Administration Select Committee
"ROI":	Republic of Ireland
"the 1921 Act":	Tribunals of Inquiry (Evidence) Act 1921 (c.7)
"the Act":	Inquiries Act 2005 (c.12)
"the Bill":	Inquiries Bill (HL Bill 7, 26, 70, 54; Bill 70, 100)
"the Police Act":	Police (Northern Ireland) Act 1998 (c.32)
"the Prison Act":	Prison Act (Northern Ireland) 1953 (c.18)
"UK":	United Kingdom

Constitution of inquiry

1. Power to establish inquiry

(1) A Minister may cause an inquiry to be held under this Act in relation to a case where it appears to him that-

(a) particular events have caused, or are capable of causing, public concern, or

(b) there is public concern that particular events may have occurred.

(2) In this Act "Minister" means-

(a) a United Kingdom Minister;

(b) the Scottish Ministers;

(c) a Northern Ireland Minister;

and references to a Minister also include references to the National Assembly for Wales.

(3) References in this Act to an inquiry, except where the context requires otherwise, are to an inquiry under this Act.

GENERAL NOTE

This is the first of 14 sections in the first part of the Act: constitution of inquiry. This section first appeared in HL Bill 7. It was not amended.

The 1921 Act

The 1921 Act, which is repealed by s.49(1) of this Act, allowed for parliament and ministers to have roles in the establishing of inquiries: "1(1) Where it has been resolved... by both Houses of Parliament that it is expedient that a tribunal be established for inquiring into a definite matter described in the Resolution as of urgent public importance, and in pursuance of the Resolution a tribunal is appointed for the purpose either by His Majesty or a Secretary for State, the instrument by which the tribunal is appointed or any instrument supplemental thereto may provide that this Act shall apply...".

At second reading in the House of Lords, the lord chancellor, Viscount Birkenhead, had said: "After all, these Tribunals are not to be set up except in pursuance of a Resolution passed by either House... I am not sure that Clause 1 is a model of concise and intelligible English. One knows how these clauses are sometimes compiled, but as I read it at present I do not think it is open to the charge or the complaint made by [Lord Stuart of Wortley]. As I read it, either House of Parliament has passed a Resolution setting up the Tribunal, the instrument by which the Tribunal is appointed shall be the instrument which proceeds from the House of Parliament which has by

Resolution set up the Tribunal; otherwise the whole thing would be futile and meaningless." (*Hansard*, Vol.44, cols 578-9, March 15, 1921) Lord Stuart was more correct than the lord chancellor.

The 1921 Act was mythologised in both houses of parliament. "Frankly", the minister, Baroness Ashton of Upholland, said during Grand Committee on January 18, 2005: "the provision does not oblige the Secretary of State to do anything other than... in moral pressure, which is right and proper in times of great concern." (*Hansard*, Vol.668, col.GC202)

This Section

This section makes no reference to either house of parliament. Inquiries are a matter of ministerial discretion alone. The test under the 1921 Act was: "urgent public importance". Here, it is: "public concern". "event" is defined in s.43. Minister is defined widely in subs.(2). "United Kingdom minister" is defined in s.43. So also is "Northern Ireland Minister".

The minister, Baroness Ashton, said during Grand Committee on January 18, 2005: "there is no constitutional difference between the provisions. The wording in the 1921 Act is, 'inquiring into a definite matter', while the wording of this Bill is, ‹utf8.lsquot›inquiring into events'. There is no constitutional change." (*Hansard*, Vol.668, col.GC208)

2. No determination of liability

(1) An inquiry panel is not to rule on, and has no power to determine, any person's civil or criminal liability.

(2) But an inquiry panel is not to be inhibited in the discharge of its functions by any likelihood of liability being inferred from facts that it determines or recommendations that it makes.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended.

This Section

Subsection (1) excludes civil or criminal liability. However, subs.(2) permits inferences in civil or criminal jurisdiction.

3. The inquiry panel

(1) An inquiry is to be undertaken either-

(a) by a chairman alone, or

(b) by a chairman with one or more other members.

(2) References in this Act to an inquiry panel are to the chairman and any other member or members.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended. It is definitional. "inquiry" is defined in s.1(3) (see also s.43(1)). This section defines "inquiry panel" (see also s.43(1)). Inquiry panel and inquiry are alternatives, where no reference is being made as to whether the chairman is joined by any other members.

4. Appointment of inquiry panel

(1) Each member of an inquiry panel is to be appointed by the Minister by an instrument in writing.

(2) The instrument appointing the chairman must state that the inquiry is to be held under this Act.

(3) Before appointing a member to the inquiry panel (otherwise than as chairman) the Minister must consult the person he has appointed, or proposes to appoint, as chairman.

GENERAL NOTE

This section first appeared in HL Bill 7. However, the Government amended it at report in the House of Lords on February 7, 2005.

This Section

The inquiry panel is entirely a matter for a minister. However, he is required to consult the chairman, or proposed chairman, on the appointment of the other members of the inquiry panel.

5. Setting-up date and terms of reference

(1) In the instrument under section 4 appointing the chairman, or by a notice given to him within a reasonable time afterwards, the Minister must-
  (a) specify the date that is to be the setting-up date for the purposes of this Act; and
  (b) before that date-
    (i) set out the terms of reference of the inquiry;
    (ii) state whether or not the Minister proposes to appoint other members to the inquiry panel, and if so how many.

(2) An inquiry must not begin considering evidence before the setting-up date.

(3) The Minister may at any time after setting out the terms of reference under this section amend them if he considers that the public interest so requires.

(4) Before setting out or amending the terms of reference the Minister must consult the person he proposes to appoint, or has appointed, as chairman.

(5) Functions conferred by this Act on an inquiry panel, or a member of an inquiry panel, are exercisable only within the inquiry's terms of reference.

(6) In this Act "terms of reference", in relation to an inquiry under this Act, means-
  (a) the matters to which the inquiry relates;
  (b) any particular matters as to which the inquiry panel is to determine the facts;
  (c) whether the inquiry panel is to make recommendations;
  (d) any other matters relating to the scope of the inquiry that the Minister may specify.

GENERAL NOTE

This section first appeared in HL Bill 7. However, the Government amended it at report in the House of Lords on February 7, 2005. The section follows from s.4.

This Section

Subsections (1)-(2)

Subsection (1) provides for a sequence of events leading up to what is called the setting-up date: a s.4 instrument or subsequent notice; specification of the setting-up date; terms of reference; notice of any other inquiry members. See also s.43(1).

Subsections (3)-(4)

The Government added these. They permit the minister to amend the terms of reference. The test is: "the public interest so requires". The chairman, or proposed chairman, may only be consulted on the terms of reference.

Subsections (5)-(6)

The terms of reference are effectively the law of the inquiry. The definition in subs.(6) is wide. "terms of reference" in subs.(1)(b) suggests a written document, though there is no prohibition on oral terms. Paragraphs (a)-(d) here are to be read disjunctively. Paragraph (a) is widely drawn. Paragraphs (b) and (c) are more evidently from notional written terms of reference by a minister. Paragraph (d) introduces a new concept of "scope of the inquiry". "specify" suggests written but may be oral. See also s.43(1).

6. Minister's duty to inform Parliament or Assembly

(1) A Minister who proposes to cause an inquiry to be held, or who has already done so without making a statement under this section, must as soon as is reasonably practicable make a statement to that effect to the relevant Parliament or Assembly.

(2) A statement under subsection (1) must state-

(a) who is to be, or has been, appointed as chairman of the inquiry;

(b) whether the Minister has appointed, or proposes to appoint, any other members to the inquiry panel, and if so how many;

(c) what are to be, or are, the inquiry's terms of reference.

(3) Where the terms of reference of an inquiry are amended under section 5(3), the Minister must, as soon as is reasonably practicable, make a statement to the relevant Parliament or Assembly setting out the amended terms of reference.

(4) A statement under this section may be oral or written.

GENERAL NOTE

This section first appeared in HL Bill 26, having been added by the Government at report in the House of Lords on February 7, 2005.

This Section

Subsections (1) and (4)

"Minister" is defined in s.43(1). This is all that remains of a role for parliament or one of the devolved assemblies. "relevant Parliament or Assembly" is defined in s.43(1).

Subsections (2) and (3)

The minister is required to state, in writing or orally: who the chairman is or will be; whether there are, or will be, any other members; and the actual or proposed terms of reference. This makes it more likely than not that the terms of reference will be in writing. Subsection (3) requires an additional statement if the terms of reference are amended. However, it is not specified whether this must take the same form under subs.(4). Conceivably, a written statement could be followed by an oral one or *vice versa*.

7. Further appointments to inquiry panel

(1) The Minister may at any time (whether before the setting-up date or during the course of the inquiry) appoint a member to the inquiry panel-

(a) to fill a vacancy that has arisen in the panel (including a vacancy in the position of chairman), or

(b) to increase the number of members of the panel.

(2) The power to appoint a member under subsection (1)(b) is exercisable only-

(a) in accordance with a proposal under section 5(1)(b)(ii), or

(b) with the consent of the chairman.

(3) The power to appoint a replacement chairman may be exercised by appointing a person who is already a member of the inquiry panel.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended.

This Section

This gives the minister further powers. "setting-up date" is defined in s.5. The minister may appoint to fill a vacancy or to increase the number of members or to replace the chairman. The second option is limited by consent of the chairman. The third option does not require an internal appointment. Query whether the power to replace the chairman is wider than a vacancy occurring? The answer is no.

8. Suitability of inquiry panel

(1) In appointing a member of the inquiry panel, the Minister must have regard-

(a) to the need to ensure that the inquiry panel (considered as a whole) has the necessary expertise to undertake the inquiry;

(b) in the case of an inquiry panel consisting of a chairman and one or more other members, to the need for balance (considered against the background of the terms of reference) in the composition of the panel.

(2) For the purposes of subsection (1)(a) the Minister may have regard to the assistance that may be provided to the inquiry panel by any assessor whom the Minister proposes to appoint, or has appointed, under section 11.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended. It purports to limit the discretion of the minister by imposing a test of "suitability".

This Section

Subsection (1)

This introduces two concepts: "necessary expertise"; and "balance". Neither is defined. They are most likely factual matters.

Subsection (2)

This refers forward to s.11: assessors. The subsection permits the minister to include any assessors in the assessments he has to perform under subs.(1).

9. Requirement of impartiality

(1) The Minister must not appoint a person as a member of the inquiry panel if it appears to the Minister that the person has-

(a) a direct interest in the matters to which the inquiry relates, or

(b) a close association with an interested party,

unless, despite the person's interest or association, his appointment could not reasonably be regarded as affecting the impartiality of the inquiry panel.

(2) Before a person is appointed as a member of an inquiry panel he must notify the Minister of any matters that, having regard to subsection (1), could affect his eligibility for appointment.

(3) If at any time (whether before the setting-up date or during the course of the inquiry) a member of the inquiry panel becomes aware that he has an interest or association falling within paragraph (a) or (b) of subsection (1), he must notify the Minister.

(4) A member of the inquiry panel must not, during the course of the inquiry, undertake any activity that could reasonably be regarded as affecting his suitability to serve as such.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended.

This Section

Subsection (1)

This subsection prohibits the minister from appointing, if there is a "direct interest" or a "close association". "interested party" is defined in s.43(1). The test for the minister ignoring this prohibition is: "could not reasonably be regarded as affecting the impartiality of the inquiry panel".

Subss. (2) - (4)

These subsections impose obligations on the members of inquiry panels. They introduce the concepts of "eligibility" and "suitability". However, subss.(2) and (3) refer back to subs.(1). Subsection (4) is arguably more widely drawn.

10. Appointment of judge as panel member

(1) If the Minister proposes to appoint as a member of an inquiry panel a particular person who is a judge of a description specified in the first column of the following table, he must first consult the person specified in the second column.

Description of judge	*Person to be consulted*
Lord of Appeal of Ordinary	The senior Lord of Appeal in Ordinary
Judge of the Supreme Court of England and Wales, or Circuit judge	The Lord Chief Justice of England and Wales
Judge of the Court of Session, sheriff principal or sheriff	The Lord President of the Court of Session
Judge of the Supreme Court of Northern Ireland, or county court judge in Northern Ireland	The Lord Chief Justice of Northern Ireland

(2) In this section "sheriff principal" and "sheriff" have the same meaning as in the Sheriff Courts (Scotland) Act 1971 (c. 58).

GENERAL NOTE

This section first appeared in HL Bill 7. It was enacted in the same terms, but only after Lords' amendments were overturned in the House of Commons.

The Government's View

In its response to the PASC report, which had endorsed the view of Lord Woolf on consent and not just consultation, the Government stated: "The Government believes that in order to remain truly independent a judge must be free to decide whether to accept an appointment for himself or herself. Judicial independence should mean independence from Government and from everybody else, including other judges. Ultimately, it is for the individual judge, not the Minister or the Lord Chief Justice, to decide whether to accept the appointment." (p.9)

This Section

Judges have been appointed frequently, but not universally, to chair inquiries. This section requires a senior judge to be consulted initially.

Lord Woolf, the lord chief justice of England and Wales, and Lord Cullen of Whitekirk, the lord president of the court of session in Scotland, spoke at report in the House of Lords on February 2, 2005. Lord Cullen wanted the consent of the senior judge. Lord Woolf, endorsing this, accused the Government of inconsistency with the concordat (which he and the lord chancellor had announced on January 26, 2005, during the debate on the constitutional reform bill). He argued that the lord chief justice's control of judicial posting included inquiries.

The Government refused to back down in the face of these senior judges. "To be blunt," the minister in the House of Commons, Christopher Leslie MP, said on March 22, 2005, "public inquiries can be more important than the judicial business demands that apply from time to time in the courts." (*Hansard*, Standing Committee B, col.62)

11. Assessors

(1) One or more persons may be appointed to act as assessors to assist the inquiry panel.

(2) The power to appoint assessors is exercisable-

(a) before the setting-up date, by the Minister;

(b) during the course of the inquiry, by the chairman (whether or not the Minister has appointed assessors).

(3) Before exercising his powers under subsection (2)(a) the Minister must consult the person he proposes to appoint, or has appointed, as chairman.

(4) A person may be appointed as an assessor only if it appears to the Minister or the chairman (as the case requires) that he has expertise that makes him a suitable person to provide assistance to the inquiry panel.

(5) The chairman may at any time terminate the appointment of an assessor, but only with the consent of the Minister in the case of an assessor appointed by the Minister.

GENERAL NOTE

This section first appeared in HL Bill 7. It was amended on report in the House of Lords on February 7, 2005. This section is referred to in s.8(2). However, that is only a reference to assessors appointed by the minister.

This Section

Subsections (1) and (4)

An assessor is not a member of the inquiry panel. He assists. The test is: "expertise that makes him a suitable person".

Subsections (2), (3) and (5)

The Government always envisaged the power of appointment being held by the minister and then the chairman. However, it changed the emphasis. Clause 10(4) was originally: "In deciding whether to exercise his power under subs.(2)(b) the chairman must consider whether it is in the public interest to appoint an assessor, having regard in particular to the cost." The Government removed this. It also introduced what is now subs.(3), a considerable shift of power from minister to chairman. Subsection (5) is as originally drafted. Query whether this limits the power of the chairman? If the assessor is an expert who provides assistance, then surely the chairman should be competent to decide whether his services continue to be required.

12. Duration of appointment of members of inquiry panel

(1) Subject to the following provisions of this section, a member of an inquiry panel remains a member until the inquiry comes to an end (or until his death if he dies before then).

(2) A member of an inquiry panel may at any time resign his appointment by notice to the Minister.

(3) The Minister may at any time by notice terminate the appointment of a member of an inquiry panel-

(a) on the ground that, by reason of physical or mental illness or for any other reason, the member is unable to carry out the duties of a member of the inquiry panel;

(b) on the ground that the member has failed to comply with any duty imposed on him by this Act;

(c) on the ground that the member has-

(i) a direct interest in the matters to which the inquiry relates, or

(ii) a close association with an interested party,

such that his membership of the inquiry panel could reasonably be regarded as affecting its impartiality;

(d) on the ground that the member has, since his appointment, been guilty of any misconduct that makes him unsuited to membership of the inquiry panel.

(4) In determining whether subsection (3)(a) applies in a case where the inability to carry out the duties is likely to be temporary, the Minister may have regard to the likely duration of the inquiry.

(5) The Minister may not terminate a member's appointment under subsection (3)(c) if the Minister was aware of the interest or association in question when appointing him.

(6) Before exercising his powers under subsection (3) in relation to a member other than the chairman, the Minister must consult the chairman.

(7) Before exercising his powers under subsection (3) in relation to any member of the inquiry panel, the Minister must-

(a) inform the member of the proposed decision and of the reasons for it, and take into account any representations made by the member in response, and

(b) if the member so requests, consult the other members of the inquiry panel (to the extent that no obligation to consult them arises under subsection (6)).

GENERAL NOTE

This section first appeared in HL Bill 7. It was amended slightly at report in the House of Lords on February 7, 2005.

This Section

Subsection (1) and (2)

Subsection (1) gives members of inquiry panels a formal security of tenure. The minister receives the notice of resignation, not the chairman.

Subsections (3)-(7)

These subsections provide for termination of appointments. Section 9 (requirement of impartiality) is relevant.

Subsection (3) contains the extent of the minister's powers to terminate. Paragraph (a) is widely drawn. "for any other reason" is not a subset of "physical or mental illness". It permits the minister to terminate for almost any reason. However, the minister, Baroness Ashton, at report in the House of Lords on January 18, 2005, said: "‹utf8.lsquot›any other reason'... refers to ‹utf8.lsquot›physical or mental illness'... We are not trying to suggest anything other than reasons of physical or mental illness." *Hansard*, Vol.668, col.GC256) Paragraph (b) refers widely to the rest of the Act. Paragraph (c) refers back to s.9: requirement of impartiality. The reason given was originally: "in the Minister's opinion the member's interest or association is likely to influence his decisions as a member of an inquiry panel". The Government replaced this. Paragraph (d) is also widely drawn. The concept is "misconduct". "guilty" does not imply criminal conviction. However, it does require the minister to have reached a conclusion on the matter rationally. At report in the House of Lords on January 18, 2005, the minister, Baroness Ashton, said of misconduct: "possible actions that would bring the panel into disrepute... someone might commit a criminal offence not related to the inquiry". (*Hansard*, Vol.668, col.GC256)

Subsection (5) refers back to s.9, preventing the minister having second thoughts if he was aware at the time of appointment.

Subsections (6) and (7) require the minister to: consult the chairman regarding any other members; and gives any member the power to make representations and request that the minister consults his colleagues (if not required to so do).

13. Power to suspend inquiry

(1) The Minister may at any time, by notice to the chairman, suspend an inquiry for such period as appears to him to be necessary to allow for-

(a) the completion of any other investigation relating to any of the matters to which the inquiry relates, or

(b) the determination of any civil or criminal proceedings (including proceedings before a disciplinary tribunal) arising out of any of those matters.

(2) The power conferred by subsection (1) may be exercised whether or not the investigation or proceedings have begun.

(3) Before exercising that power the Minister must consult the chairman.

(4) A notice under subsection (1) may suspend the inquiry until a specified day, until the happening of a specified event or until the giving by the Minister of a further notice to the chairman.

(5) Where the Minister gives a notice under subsection (1) he must-

(a) set out in the notice his reasons for suspending the inquiry;

(b) lay a copy of the notice, as soon as is reasonably practicable, before the relevant Parliament or Assembly.

(6) A member of an inquiry panel may not exercise the powers conferred by this Act during any period of suspension; but the duties imposed on a member of an inquiry panel by section 9(3) and (4) continue during any such period.

(7) In this section "period of suspension" means the period beginning with the receipt by the chairman of the notice under subsection (1) and ending with whichever of the following is applicable-
(a) the day referred to in subsection (4);
(b) the happening of the event referred to in that subsection;
(c) the receipt by the chairman of the further notice under that subsection.

GENERAL NOTE

This section first appeared in HL Bill 7. It was amended on report in the House of Lords on February 8, 2005.

Subsections (1), (2), (4) and (7)

The power to suspend is not a power to abolish. However, it may be an indefinite suspension. The reasons for suspension are broadly defined in subs.(1). Subsection (4) has to be read with subs.(7). There are only three permitted options in subss.(4) and (7). Query whether the "further notice" must be a notice ending the period of suspension? The answer would appear to be yes.

Subsections (3) and (5)

These subsections were added to the section by the Government. The minister is required to: consult; give reasons; and lay a copy of the notice. "relevant Parliament or Assembly", which is used in s.6, is defined in s.43(1).

Subsection (6)

This subsection states that, during suspension, a member may exercise no powers, but he continues to be bound by the duties in s.9(3)-(4).

14. End of inquiry

(1) For the purposes of this Act an inquiry comes to an end-
(a) on the date, after the delivery of the report of the inquiry, on which the chairman notifies the Minister that the inquiry has fulfilled its terms of reference, or
(b) on any earlier date specified in a notice given to the chairman by the Minister.
(2) The date specified in a notice under subsection (1)(b) may not be earlier than the date on which the notice is sent.
(3) Before exercising his power under subsection (1)(b) the Minister must consult the chairman.
(4) Where the Minister gives a notice under subsection (1)(b) he must-
(a) set out in the notice his reasons for bringing the inquiry to an end;
(b) lay a copy of the notice, as soon as is reasonably practicable, before the relevant Parliament or Assembly.

GENERAL NOTE

This section first appeared in HL Bill 7. It was amended during report in the House of Lords on February 8, 2005. The section provides for two eventualities: the inquiry leading to the delivery of its report; and the minister intervening to end the inquiry.

This Section

Subsections (1)-(2)

Subsection (1)(a) refers to the delivery of the report, followed by the date on which the chairman notifies the minister. Subsection (1)(b) is unadorned, involving the minister giving the chairman notice of the end of the inquiry. Subsection (2) permits the inquiry to be ended

immediately by the minister. At report in the House of Lords on February 8, 2005, the minister, Lord Evans of Temple Guiting (who had wandered from his brief earlier), said: "That power is included in the Bill so that there is a way in which the inquiry can be brought to a close when it is clear that it is no longer needed. There could be all sorts of reasons for that; our problem is predicting them all." (*Hansard*, Vol.669, cols 696-7)

Subsections (3)-(4)

These are in similar terms to s.13(3) and (5).

Conversion of inquiries

15. Power to convert other inquiry into inquiry under this Act

(1) Where-

(a) an inquiry ("the original inquiry") is being held, or is due to be held, by one or more persons appointed otherwise than under this Act,

(b) a Minister gives a notice under this section to those persons, and

(c) the person who caused the original inquiry to be held consents,

the original inquiry becomes an inquiry under this Act as from the date of the notice or such later date as may be specified in the notice (the "date of conversion").

(2) The power conferred by this section is exercisable only if the original inquiry relates to a case where it appears to the Minister that-

(a) particular events have caused, or are capable of causing, public concern, or

(b) there is public concern that particular events may have occurred.

(3) Before exercising that power the Minister must consult the chairman.

(4) A notice under this section must-

(a) state that, as from the date of conversion, the inquiry is to be held under this Act;

(b) in the case of an inquiry panel consisting of more than one member, identify who is to be chairman of the panel;

(c) set out what are to be the terms of reference of the inquiry.

(5) The terms of reference set out under subsection (4) may be different from those of the original inquiry.

(6) The Minister may at any time after setting out the terms of reference under this section amend them if he considers that the public interest so requires.

(7) The Minister must consult the chairman before-

(a) setting out terms of reference that are different from those of the original inquiry, or

(b) amending the terms of reference under subsection (6).

(8) Section 6 applies, with any necessary modifications, in relation to-

(a) converting an inquiry under this section, or

(b) amending an inquiry's terms of reference under subsection (6),

as it applies in relation to causing an inquiry to be held, or amending an inquiry's terms of reference under section 5(3).

GENERAL NOTE

This is first of two sections in the second part of the Act: conversion of inquiries. This section first appeared in HL Bill 7. It was amended on report in the House of Lords on February 8, 2005. This section has to be read with the following one.

Ministers made no reference to existing inquiries requiring conversion, because of repeals under s.49: but see s.44(5). At Grand Committee in the House of Lords on January 19, 2005, the minister, Baroness Ashton, said: "With regard to inquiries currently under way, we have no plans to convert an existing statutory inquiry, and sponsor departments have notified chairmen of inquiries to reassure them that that is not the case at present. We feel that this is a valuable option for non-statutory inquiries. Therefore, there is no question that we intend to move any statutory inquiry that is under way to this system." (*Hansard*, Vol.668, col.GC265)

Later, she said of the Northern Ireland inquiries: "the Nelson, Wright and Hamill inquiries are already set up and there are no plans to convert them." (*Hansard*, Vol.668, col.GC288)

This Section

Subsections (1)-(3)

Subsection (1) requires the earlier person who established the inquiry to consent. At Grand Committee in the House of Lords on January 19, 2005, the minister, Baroness Ashton, stated that she read person as "office"; she would write to all members of the Committee. "minister" is defined in s.43(1) and (4). Subsection (2) is in similar terms to s.1(1). Subsection (3) (consent of the chairman) was added as a result of debate in Grand Committee in the House of Lords.

Subsections (4)-(8)

Subsections (4) and (5) were in HL Bill 7. Subsections (6)-(8) were added following debate in Grand Committee in the House of Lords. Subsection (4) permits the minister to change the chairman (by switching) and amend the terms of reference. Subsection (6) permits further amendment, in similar terms to s.5(3). Subsection (7) requires the consent of the chairman. Subsection (8) applies s.6 to the conversion of an inquiry.

16. Inquiries converted under section 15

(1) This section applies where an inquiry (the "original inquiry") is converted under section 15 into an inquiry under this Act.

(2) The appointment of a person who at the date of conversion is-

(a) one of the persons holding, or due to hold, the original inquiry (an "original member"),

(b) an assessor, counsel or solicitor to the inquiry, or

(c) a person engaged to provide assistance to the inquiry,

continues as if made under this Act, and for the purposes of section 12(5) is treated as made by the Minister on the date of conversion.

(3) Any obligation arising under an order of the original inquiry, or otherwise in connection with that inquiry, is enforceable only as it would be if the original inquiry had not been converted.

(4) No rights or obligations arise under or by virtue of this Act before the date of conversion.

GENERAL NOTE

This section first appeared in HL Bill 7. It was amended on report in the House of Lords on February 8, 2005.

This Section

Subsection (2)

This is a converting provision. "and for the purposes of s.12(5) [minister aware of interest or association when appointing] is treated as made by the Minister on the date of conversion" was added as an amendment. This permits the minister, on conversion, to terminate an appointment of an original member.

Subsections (3)-(4)

These clarify the question of powers. The original inquiry's enforcement powers continue after conversion. Subsection (4) means this Act has no retrospective effect in the case of conversions.

Inquiry proceedings

17. Evidence and procedure

(1) Subject to any provision of this Act or of rules under section 41, the procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct.

(2) In particular, the chairman may take evidence on oath, and for that purpose may administer oaths.

(3) In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).

GENERAL NOTE

This is the first of seven sections in the third part of the Act: inquiry proceedings. This section first appeared in HL Bill 7. It was amended at third reading in the House of Lords on February 28, 2005 (largely as a result of the persistence of Lord Howe of Aberavon with his personal experience of the Scott inquiry into arms to Iraq). This section, and the following six, replaces the provisions of the 1921 Act.

The 1921 Act

Section 1 provides: "(1) ...the tribunal shall have all such powers, rights, and privileges as are vested in the High Court, or in Scotland the Court of Session, or a judge of either such court...".

This Section

Subsection (1)

Section 41 provides for rules in the UK, Wales, Scotland and Northern Ireland, dealing inter alia with "matters of evidence and procedure in relation to inquiries". The discretion of the chairman, therefore, is likely to be limited.

Subsection (2)

Oath includes affirmation. Evidence may be unsworn.

Subsection (3)

"fairness" was only added when the section was amended. "regard... to the need to avoid any unnecessary cost..." may be stated to be a purpose of the Act. This is a major provision. It remains to be seen whether judges and others will stress fairness, or whether ministers and officials will be able to impose financial limits. "also" was added by the amendment. Query whether a chairman is to have regard to fairness (on the one hand) and avoiding unnecessary cost (on the other)? This is likely to be problematic. "conduct of the inquiry" is widely drawn.

18. Public access to inquiry proceedings and information

(1) Subject to any restrictions imposed by a notice or order under section 19, the chairman must take such steps as he considers reasonable to secure that members of the public (including reporters) are able-

(a) to attend the inquiry or to see and hear a simultaneous transmission of proceedings at the inquiry;
(b) to obtain or to view a record of evidence and documents given, produced or provided to the inquiry or inquiry panel.

(2) No recording or broadcast of proceedings at an inquiry may be made except-
(a) at the request of the chairman, or
(b) with the permission of the chairman and in accordance with any terms on which permission is given.

Any such request or permission must be framed so as not to enable a person to see or hear by means of a recording or broadcast anything that he is prohibited by a notice under section 19 from seeing or hearing.

(3) Section 32(2) of the Freedom of Information Act 2000 (c. 36) (certain inquiry records etc exempt from obligations under that Act) does not apply in relation to information contained in documents that, in pursuance of rules under section 41(1)(b) below, have been passed to and are held by a public authority.

(4) Section 37(1)(b) of the Freedom of Information (Scotland) Act 2002 (asp 13) (certain inquiry records etc exempt from obligations under that Act) does not apply in relation to information contained in documents that, in pursuance of rules under section 41(1)(b) below, have been passed to and are held by a Scottish public authority.

GENERAL NOTE

This section was not in HL Bill 7 (but the following section was). The Government introduced it at report in the House of Lords on February 8, 2005 introduced it. However, what became subss.(1) and (2) had originated as clause 17(6)-(7) (clause 17 being the origin of s.19).

The 1921 Act

Section 2 provides: "A tribunal to which this Act is so applied... (a) shall not refuse to allow the public or any portion of the public to be present at any of the proceedings of the tribunal unless in the opinion of the tribunal it is in the public interest expedient so to do for reasons connected with the subject matter of the inquiry or the nature of the evidence to be given...".

This Section

Subsection (1)

This replaces s.2 of the 1921 Act. However, this section is made subject to s.19. The duty on the chairman sounds mandatory but it is dependent upon a (subjective) reasonableness test. This subsection contains the principle of public access to proceedings and information.

Subsection (2)

This subsection is expressly subject to s.19. There is no general prohibition on recording or broadcasting. It is entirely a matter for the chairman.

Subsections (3)-(4)

These make the law in England and Wales and in Northern Ireland the same as in Scotland. Freedom of information does not apply to inquiries when they are sitting. It only applies after inquiry records have been passed to a public authority. Section 41(1)(b) refers to "the return or keeping, after the end of an enquiry, of documents given to or created by the inquiry". These subsections disapply a provision in the respective freedom of information laws. The right to freedom of information is prevented from biting earlier because of the reference to s.41(1)(b).

19. Restrictions on public access etc

(1) Restrictions may, in accordance with this section, be imposed on-
  (a) attendance at an inquiry, or at any particular part of an inquiry;
  (b) disclosure or publication of any evidence or documents given, produced or provided to an inquiry.

(2) Restrictions may be imposed in either or both of the following ways-
  (a) by being specified in a notice (a "restriction notice") given by the Minister to the chairman at any time before the end of the inquiry;
  (b) by being specified in an order (a "restriction order") made by the chairman during the course of the inquiry.

(3) A restriction notice or restriction order must specify only such restrictions-
  (a) as are required by any statutory provision, enforceable Community obligation or rule of law, or
  (b) as the Minister or chairman considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).

(4) Those matters are-
  (a) the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;
  (b) any risk of harm or damage that could be avoided or reduced by any such restriction;
  (c) any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the inquiry;
  (d) the extent to which not imposing any particular restriction would be likely-
    (i) to cause delay or to impair the efficiency or effectiveness of the inquiry, or
    (ii) otherwise to result in additional cost (whether to public funds or to witnesses or others).

(5) In subsection (4)(b) "harm or damage" includes in particular-
  (a) death or injury;
  (b) damage to national security or international relations;
  (c) damage to the economic interests of the United Kingdom or of any part of the United Kingdom;
  (d) damage caused by disclosure of commercially sensitive information.

GENERAL NOTE

This section appeared first in HL Bill 7. The five subsections were not subsequently amended. However, what had originally been clause 17(6)-(7) was removed to form the basis of s.18 above. This section has to be read with the following one.

The 1921 Act

Section 2 provides: "A tribunal to which this Act is so applied... (a) shall not refuse to allow the public or any portion of the public to be present at any of the proceedings of the tribunal unless in the opinion of the tribunal it is in the public interest expedient so to do for reasons connected with the subject matter of the inquiry or the nature of the evidence to be given...".

This Section

Subsection (1)

Section 18(1) imposes a duty on the chairman to grant public access. However, that duty is subject to this section. This subsection is similar to s.18(1). However, there are differences. The first restriction here is upon "attendance at an inquiry". The presumption must be that a restriction on attendance under this subsection also bites on "simultaneous transmission" in s.18(1)(a). The second restriction here is upon "evidence or documents". The drafting more closely resembles s.18(1)(b).

Subsections (2)-(3)

Ministers give restriction notices while chairman make restriction orders. The tests are the same. "fulfilling its terms of reference" is a new legal concept. However, the idea of the minister having the power to restrict public access is completely new.

Subsections (4)-(5)

The 1921 Act provided for a public interest test. This is taken up in subs.(3). Subsection (4) is only "in particular". It does not narrow the extend of subs.(3). Paragraph (a) is a major inhibitor. The point was argued strongly by Lord Saville in his correspondence with the minister. "harm or damage" in para.(b) is widely defined in subs.(5). Moreover, it only has to be "reduced" by a restriction notice or order. Paragraph (d) is along the lines of s.17(3).

20. Further provisions about restriction notices and orders

(1) Restrictions specified in a restriction notice have effect in addition to any already specified, whether in an earlier restriction notice or in a restriction order.

(2) Restrictions specified in a restriction order have effect in addition to any already specified, whether in an earlier restriction order or in a restriction notice.

(3) The Minister may vary or revoke a restriction notice by giving a further notice to the chairman at any time before the end of the inquiry.

(4) The chairman may vary or revoke a restriction order by making a further order during the course of the inquiry.

(5) Restrictions imposed under section 19 on disclosure or publication of evidence or documents ("disclosure restrictions") continue in force indefinitely, unless-

(a) under the terms of the relevant notice or order the restrictions expire at the end of the inquiry, or at some other time, or

(b) the relevant notice or order is varied or revoked under subsection (3), (4) or (7).

This is subject to subsection (6).

(6) After the end of the inquiry, disclosure restrictions do not apply to a public authority, or a Scottish public authority, in relation to information held by the authority otherwise than as a result of the breach of any such restrictions.

(7) After the end of an inquiry the Minister may, by a notice published in a way that he considers suitable-

(a) revoke a restriction order or restriction notice containing disclosure restrictions that are still in force, or

(b) vary it so as to remove or relax any of the restrictions.

(8) In this section "restriction notice" and "restriction order" have the meaning given by section 19(2).

GENERAL NOTE

This section first appeared in HL Bill 7. Subsection (6), however, was substituted at report in the House of Lords on February 8, 2005.

This Section

Subsection (1), (3) and (7)

These provide further for the minister to give a restriction notice, defined in subs.(8). The minister has considerable powers. Subsection (7) permits him to revoke or vary a restriction order of a chairman after the end of an inquiry.

Subsections (2) and (4)

These give the chairman some of the powers of the minister, restriction order being defined in subs.(8).

Subsections (5) and (6)

Subsection (5) refers to s.19(1)(b). Subsection (6) was substituted following the introduction of s.18(3)-(4).

21. Powers of chairman to require production of evidence etc

(1) The chairman of an inquiry may by notice require a person to attend at a time and place stated in the notice-
  (a) to give evidence;
  (b) to produce any documents in his custody or under his control that relate to a matter in question at the inquiry;
  (c) to produce any other thing in his custody or under his control for inspection, examination or testing by or on behalf of the inquiry panel.

(2) The chairman may by notice require a person, within such period as appears to the inquiry panel to be reasonable-
  (a) to provide evidence to the inquiry panel in the form of a written statement;
  (b) to provide any documents in his custody or under his control that relate to a matter in question at the inquiry;
  (c) to produce any other thing in his custody or under his control for inspection, examination or testing by or on behalf of the inquiry panel.

(3) A notice under subsection (1) or (2) must-
  (a) explain the possible consequences of not complying with the notice;
  (b) indicate what the recipient of the notice should do if he wishes to make a claim within subsection (4).

(4) A claim by a person that-
  (a) he is unable to comply with a notice under this section, or
  (b) it is not reasonable in all the circumstances to require him to comply with such a notice,

is to be determined by the chairman of the inquiry, who may revoke or vary the notice on that ground.

(5) In deciding whether to revoke or vary a notice on the ground mentioned in subsection (4)(b), the chairman must consider the public interest in the information in question being obtained by the inquiry, having regard to the likely importance of the information.

(6) For the purposes of this section a thing is under a person's control if it is in his possession or if he has a right to possession of it.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended.

The 1921 Act

Section 1 provides: "(1)... on the occasion of an action in respect of the following matters: (a) The enforcing the attendance of witnesses and examining them on oath, affirmation, or otherwise; (b) The compelling the production of documents; (c) Subject to rules of court, the issuing of a commission or request to examine witnesses abroad... (2) If any person - (a) on being duly summoned as a witness before a tribunal makes default in attending; or (b) being in attendance as a witness refuses to take an oath legally required by the tribunal to be taken, or to produce any document in his power or control legally required by the tribunal to be produced by him, or to answer any question to which the tribunal may legally require an answer; or (c) does any other thing which would, if the tribunal had been a court of law having power to commit for contempt, have been contempt of that court; the chairman of the tribunal may certify the offence of that person under his hand to the High Court, or in Scotland the Court of Session, and the court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court."

This Section

The draftsman refers to evidence and not to witnesses and documents.

Subsections (1) - (3)

Subsections (1) and (2) distinguish: evidence; documents; and things (defined in subs.(6)). The difference between subs.(1) and subs.(2) is oral versus written evidence. Subs.(2) contains the concept of a reasonable period. Normally, the witness statement comes before the oral evidence in a court.

Subsections (4) - (5)

Subsection (3) distinguishes complying with a notice from making a claim under subs.(4). There are two bases to such a claim. The chairman determines the claim, subject to subs.(5). This has a similar effect to a judicial review challenge

22. Privileged information etc

(1) A person may not under section 21 be required to give, produce or provide any evidence or document if-

(a) he could not be required to do so if the proceedings of the inquiry were civil proceedings in a court in the relevant part of the United Kingdom, or

(b) the requirement would be incompatible with a Community obligation.

(2) The rules of law under which evidence or documents are permitted or required to be withheld on grounds of public interest immunity apply in relation to an inquiry as they apply in relation to civil proceedings in a court in the relevant part of the United Kingdom.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended.

The 1921 Act

Section 1 provides: "(3) A witness before any such tribunal shall be entitled to the same immunities and privileges as if he were a witness before the High Court or the Court of Session."

The Section

This section effectively updates s.1(3) of the 1921 Act. Privilege refers to evidence and document, not thing as defined in s.21(6). However, subs.(2) goes on to provide for public interest immunity.

23. Risk of damage to the economy

(1) This section applies where it is submitted to an inquiry panel, on behalf of the Crown, the Financial Services Authority or the Bank of England, that there is information held by any person which, in order to avoid a risk of damage to the economy, ought not to be revealed.

(2) The panel must not permit or require the information to be revealed, or cause it to be revealed, unless satisfied that the public interest in the information being revealed outweighs the public interest in avoiding a risk of damage to the economy.

(3) In making a decision under this section the panel must take account of any restriction notice given under section 19 or any restriction order that the chairman has made or proposes to make under that section.

(4) In this section-

"damage to the economy" means damage to the economic interests of the United Kingdom or of any part of the United Kingdom;

"revealed" means revealed to anyone who is not a member of the inquiry panel.

(5) This section does not prevent the inquiry panel from communicating any information in confidence to the Minister.

(6) This section does not affect the rules of law referred to in section 22(2).

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended. Under European law, financial regulators are prohibited from sharing certain information.

This Section

Subsections (1) and (4)

Subsection (1) requires simply a submission. "on behalf of the Crown" means by any minister of the crown. Subsection (4) contains definitions, widely drawn.

Subsections (2)-(3)

The inquiry panel has to weigh two public interests: in the information being revealed; avoiding a risk of damage to the economy. Subsection (3) refers back to restriction notices and orders in s.19. The minister, Christopher Leslie MP, told Standing Committee B in the House of Commons on March 22, 2005: "the balancing test in [this] clause... needs to be more favourable to restricting disclosure. The inquiry panel would often be assessing the public interest while unaware of the true extent of the likely damage to the economy. Therefore, it is right that information should be released by the inquiry panel only when the public interest in disclosure clearly outweighs public interest in avoiding the risk of damaging the economy." (*Hansard*, col.79)

24. Submission of reports

(1) The chairman of an inquiry must deliver a report to the Minister setting out-
  (a) the facts determined by the inquiry panel;
  (b) the recommendations of the panel (where the terms of reference required it to make recommendations).

The report may also contain anything else that the panel considers to be relevant to the terms of reference (including any recommendations the panel sees fit to make despite not being required to do so by the terms of reference).

(2) In relation to an inquiry that is brought to an end under section 14(1)(b), the duty imposed by subsection (1) to deliver a report is to be read as a power to do so.

(3) Before making a report under subsection (1) the chairman may deliver to the Minister a report under this subsection (an "interim report") containing anything that a report under subsection (1) may contain.

(4) A report of an inquiry must be signed by each member of the inquiry panel.

(5) If the inquiry panel is unable to produce a unanimous report, the report must reasonably reflect the points of disagreement.

(6) In subsections (4) and (5) "report" includes an interim report.

GENERAL NOTE

This is the first of three sections in the fourth part of the Act: inquiry reports. This section first appeared in HL Bill 7. It was not amended.

There is no statutory requirement to publish reports. However, almost all inquiries, including those held completely in private, have published full reports.

This Section

Subsection (3) permits an interim report. There is a duty to produce a report under subs.(1). However, where a minister gives the chairman notice of the end of an inquiry, it becomes a power. Subsections (4) and (5) require each member of a panel to sign the report. They appear to preclude signed minority and dissenting reports. Query whether a minority may withhold its signatures until the report reasonably reflects points of disagreement?

25. Publication of reports

(1) It is the duty of the Minister, or the chairman if subsection (2) applies, to arrange for reports of an inquiry to be published.

(2) This subsection applies if-
  (a) the Minister notifies the chairman before the setting-up date that the chairman is to have responsibility for arranging publication, or
  (b) at any time after that date the chairman, on being invited to do so by the Minister, accepts responsibility for arranging publication.

(3) Subject to subsection (4), a report of an inquiry must be published in full.

(4) The person whose duty it is to arrange for a report to be published may withhold material in the report from publication to such extent-

(a) as is required by any statutory provision, enforceable Community obligation or rule of law, or

(b) as the person considers to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (5).

(5) Those matters are-

(a) the extent to which withholding material might inhibit the allaying of public concern;

(b) any risk of harm or damage that could be avoided or reduced by withholding any material;

(c) any conditions as to confidentiality subject to which a person acquired information that he has given to the inquiry.

(6) In subsection (5)(b) "harm or damage" includes in particular-

(a) death or injury;

(b) damage to national security or international relations;

(c) damage to the economic interests of the United Kingdom or of any part of the United Kingdom;

(d) damage caused by disclosure of commercially sensitive information.

(7) Subsection (4)(b) does not affect any obligation of the Minister, or any other public authority or Scottish public authority, that may arise under the Freedom of Information Act 2000 (c. 36) or the Freedom of Information (Scotland) Act 2002 (asp 13).

(8) In this section "report" includes an interim report.

GENERAL NOTE

This section first appeared in HL Bill 7. Subsection (7) was added by amendment at report in the House of Lords on February 8, 2005.

This Section

Subsections (1)-(2)

These subsections make either the chairman or minister responsible for publication of the report. It is in keeping with the tenor of the Act that the minister takes the lead.

Subsections (3)-(6)

The principle in subs.(3) is "publication in full". However, this is subject to subs.(4), which brings in subss.(5) and (6). Subsection (4) is in similar terms to s.19(3). Subsection (5) is in similar terms to s.19(4), less para.(d). And subs.(6) is in similar terms to s.19(5).

Subsection (7)

This was added as a consequence of s.18(3)-(4).

26. Laying of reports before Parliament or Assembly

Whatever is required to be published under section 25 must be laid by the Minister, either at the time of publication or as soon afterwards as is reasonably practicable, before the relevant Parliament or Assembly.

GENERAL NOTE

This section was not in HL Bill 7. It was added at report in the House of Lords on February 8, 2005.

This Section

This section is consequential upon s.6 (minister's duty to inform parliament or assembly).

27. United Kingdom inquiries

(1) This section applies to an inquiry for which a United Kingdom Minister is responsible.

(2) The Minister may not, without first consulting the relevant administration, include in the terms of reference anything that would require the inquiry-

(a) to determine any fact that is wholly or primarily concerned with a Scottish matter or a Welsh matter;

(b) to determine any fact that is wholly or primarily concerned with a matter which is, and was at the relevant time, a transferred Northern Ireland matter;

(c) to make any recommendation that is wholly or primarily concerned with a Scottish matter, a Welsh matter or a transferred Northern Ireland matter.

(3) Unless the Minister gives written permission to the chairman, the powers conferred by section 21 are not exercisable-

(a) in respect of evidence, documents or other things that are wholly or primarily concerned with-

(i) a Scottish matter or a Welsh matter, or

(ii) a matter which is, and was at the relevant time, a Northern Ireland matter;

(b) so as to require any evidence, document or other thing to be given, produced or provided by or on behalf of the Scottish Ministers, the National Assembly for Wales or a Northern Ireland Minister.

(4) Before granting permission under subsection (3) the Minister must consult the relevant administration.

(5) Permission under subsection (3) may be granted subject to such conditions or qualifications as the Minister may specify.

(6) Permission under subsection (3) is not required for the exercise of powers in circumstances in which subsection (6) of section 30 would prevent the powers from being exercised in the case of an inquiry to which that section applies.

(7) In this section-

"Northern Ireland matter" means-

(a) a transferred Northern Ireland matter, or

(b) a matter falling within section 44(2)(b) of the Northern Ireland Act 1998 (c. 47) (matters in relation to which statutory functions are exercisable by Northern Ireland Ministers etc);

"the relevant administration" means whichever of the following the case requires-

(a) the Scottish Ministers;

(b) the National Assembly for Wales;

(c) such one or more Northern Ireland Ministers as appear to the Minister to be appropriate;

"the relevant time" means the time when the fact or event in question occurred (or is alleged to have occurred);

"Scottish matter" means a matter that relates to Scotland and is not a reserved matter within the meaning of the Scotland Act 1998 (c. 46);
"transferred Northern Ireland matter" means a matter that relates to Northern Ireland and is a transferred matter within the meaning of the Northern Ireland Act 1998 (c. 47) (or, in relation to any time when Part 1 of the Northern Ireland Constitution Act 1973 (c. 36) was in force, within the meaning of that Act);
"Welsh matter" means a matter in relation to which the National Assembly for Wales has functions.

GENERAL NOTE

This is first of five sections in the fifth part of the Act: Scotland, Wales and Northern Ireland. These five sections contain the most difficult drafting in the Act. This section first appeared in HL Bill 7. It was not amended.

This Section

Subsection (1)

"United Kingdom minister" is defined in s.43(1).

Subsection (2)-(6)

Subsection (2) requires the UK minister to consult the relevant administration, defined in subs.(7). Devolved powers in Scotland, Wales and Northern Ireland mean that a UK minister cannot include certain issues in terms of reference. Subsections (3)-(5) relate to a chairman's powers under s.21 to require production of evidence etc. He needs the written permission of a UK minister, who must consult the relevant administration. An exception - subs.(6) - occurs under s.30(6), following from the definition of Northern Ireland matter in subs.(7) as including a matter falling within s.44(2)(b) of the Northern Ireland Act 1998 (c.47). That section deals with the power of the Northern Ireland assembly to call for witness and documents. Section 44(2)(b) reads: "other matters in relation to which statutory functions are exercisable by Ministers or the Northern Ireland departments."

28. Scottish inquiries

(1) This section applies to an inquiry for which the Scottish Ministers are responsible.
(2) The terms of reference of the inquiry must not require it to determine any fact or to make any recommendation that is not wholly or primarily concerned with a Scottish matter.
(3) The powers conferred by section 21 are exercisable only-
  (a) in respect of evidence, documents or other things that are wholly or primarily concerned with a Scottish matter, or
  (b) for the purpose of inquiring into something that is wholly or primarily a Scottish matter.
(4) Those powers are not exercisable so as to require any evidence, document or other thing to be given, produced or provided by or on behalf of Her Majesty's Government in the United Kingdom, the National Assembly for Wales or a Northern Ireland Minister.
(5) In this section "Scottish matter" means a matter that relates to Scotland and is not a reserved matter (within the meaning of the Scotland Act 1998).

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended. This section has to be read with the two following ones.

This Section

Subsection (1) complements s.27(1). Subsection (2) complements s.27(2). Subsection (3) is in similar terms to s.27(3). Subsection (4) repeats the definition in s.27(7).

29. Welsh inquiries

(1) This section applies to an inquiry for which the National Assembly for Wales is responsible.

(2) The terms of reference of the inquiry must not require it to determine any fact or to make any recommendation that is not wholly or primarily concerned with a Welsh matter.

(3) The powers conferred by section 21 are exercisable only-

(a) in respect of evidence, documents or other things that are wholly or primarily concerned with a Welsh matter, or

(b) for the purpose of inquiring into something that is wholly or primarily a Welsh matter.

(4) Those powers are not exercisable so as to require any evidence, document or other thing to be given, produced or provided by or on behalf of Her Majesty's Government in the United Kingdom, the Scottish Ministers or a Northern Ireland Minister.

(5) In this section "Welsh matter" means a matter in relation to which the National Assembly for Wales has functions.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended. This section is in similar terms to s.28.

30. Northern Ireland inquiries

(1) This section applies to an inquiry for which a Northern Ireland Minister is responsible.

(2) The terms of reference of the inquiry must not require it-

(a) to determine any fact that is not wholly or primarily concerned with a matter which is, and was at the relevant time, a Northern Ireland matter, or

(b) to make any recommendation that is not wholly or primarily concerned with a Northern Ireland matter.

(3) The Minister may not, without the consent of the Secretary of State, include in the terms of reference anything that would require the inquiry to inquire into events occurring-

(a) before 2nd December 1999 (the "appointed day" for the purposes of the Northern Ireland Act 1998 (c. 47)), or

(b) during a period when section 1 of the Northern Ireland Act 2000 (c. 1) is in force (suspension of devolved government in Northern Ireland).

(4) The powers conferred by section 21 are exercisable only-

(a) in respect of evidence, documents or other things that are wholly or primarily concerned with a matter which is, and was at the relevant time, a Northern Ireland matter, or

(b) for the purpose of inquiring into something that is, and was at the relevant time, wholly or primarily a Northern Ireland matter.

(5) Those powers are not exercisable so as to require any evidence, document or other thing to be given, produced or provided by or on behalf of Her Majesty's Government in the United Kingdom, the Scottish Ministers or the National Assembly for Wales.

(6) Powers conferred by section 21 that would not be exercisable but for subsection (8)(b) below are not exercisable in circumstances in which subsection (3), (4) or (5) of section 44 of the Northern Ireland Act 1998 (power of Assembly to call for witnesses and documents) would prevent the power in subsection (1) of that section from being exercised.

(7) The inquiry must not consider evidence or make recommendations about any matter falling within paragraph 17 of Schedule 2 to the Northern Ireland Act 1998 (excepted matters: national security etc).

(8) In this section "Northern Ireland matter" means-

(a) a matter that relates to Northern Ireland and is a transferred matter within the meaning of the Northern Ireland Act 1998 (or, in relation to any time when Part 1 of the Northern Ireland Constitution Act 1973 (c. 36) was in force, within the meaning of that Act), or

(b) a matter falling within section 44(2)(b) of the Northern Ireland Act 1998 (matters in relation to which statutory functions are exercisable by Northern Ireland Ministers etc).

(9) In this section "the relevant time" means the time when the fact or event in question occurred (or is alleged to have occurred).

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended. This section is in similar terms to s.30. However, subss.(3), (6), (7) and (9) are additions. This is principally because of suspensions in Northern Ireland devolution.

This Section

Subsections (3) and (9)

During devolution, the minister has the power under subs.(1). This subsection requires the minister to seek the consent of the secretary of state for Northern Ireland, if the inquiry is to examine events before devolution (December 2, 1999) or during periods of suspension since then. The phrase "relevant time" in subs.(2) is defined in subs.(9).

Subsection (6)

Section 21 is powers of chairman to require production of evidence etc. This subsection refers to reserved and excepted matters, and to the fact that Northern Ireland matter is defined (initially in s.27(7)) as taking account of s.44(2)(b) of the Northern Ireland act 1998. This subsection provides that the relevant powers are not exercisable if s.44(3), (4) and (5) prevent the Northern Ireland assembly calling for witnesses and documents.

Subsection (7)

This section restricts Northern Ireland inquiries to Northern Ireland matters, as defined again (and more extensively) in subs.(8). Subsection (6) prevents such inquiries straying into reserved and excepted matters. This subsection is for the avoidance of doubt.

At Grand Committee in the House of Lords on January 19, 2005, the minister, Baroness Ashton, explained: "The subsection is included in the clause relating to Northern Ireland and not to

Scotland and Wales because of the particular history of Northern Ireland and the greater likelihood, perhaps, of such vexatious testimony being offered. It is intended to exclude the risk that an inquiry legitimately set up to look into a specific matter of concern might be overtaken or, indeed, hijacked by an individual wishing to use it to do damage." (*Hansard*, Vol.668, col.GC301)

31. The relevant part of the United Kingdom and the applicable rules

(1) The Minister responsible for an inquiry must specify whether the relevant part of the United Kingdom in relation to the inquiry is-
  (a) England and Wales,
  (b) Scotland, or
  (c) Northern Ireland.

(2) The Ministers responsible for an inquiry that-
  (a) is one to which section 33 applies, and
  (b) would (but for this subsection) be subject to more than one set of rules,

must specify which of those sets, or what combination of rules from more than one of those sets, is to apply.

(3) In subsection (2) "set of rules" means the rules made by virtue of a particular paragraph of section 41(3).

(4) If in the case of an inquiry (other than one to which section 33 applies) for which a United Kingdom Minister is responsible-
  (a) the Minister specifies that the relevant part of the United Kingdom is Scotland,
  (b) the Minister specifies that the relevant part of the United Kingdom is England and Wales, and the inquiry is expected to be held wholly or partly in Wales, or
  (c) the Minister specifies that the relevant part of the United Kingdom is Northern Ireland,

he may if he thinks fit specify that some or all of the rules that are to apply are rules made by virtue of paragraph (b), (c) or (d) (as appropriate) of section 41(3).

(5) The relevant part of the United Kingdom and, where subsection (2) or (4) applies, the applicable rules must be specified no later than the setting-up date or, as the case may be, the date of conversion.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended. It relates to ss.28-30.

Subsection (1)

"the relevant part of the United Kingdom" is defined in s.43(1). However, that brings us back to this subsection. This is a reference to the three legal jurisdictions of the UK. It is not the same as the three devolved administrations of the UK, because Wales is not a separate legal jurisdiction.

Subsections (2)-(4)

Rules are provided for in s.41. They are first referred to in s.17(1). These subsections provide for one set of rules where s.33 (inquiries involving more than one administration) applies. The ministers have the discretion to specify one set of (the applicable) rules or a combination of rules from more than one set. A UK minister, in contrast, under subs.(4), may, when it comes to Scotland, England and Wales or Northern Ireland, exercise a discretion and apply only some of the relevant rules.

32. Joint inquiries

(1) The power under section 1 to cause an inquiry to be held, or to convert an inquiry under section 15, is exercisable by two or more Ministers acting jointly.
(2) In this Act "joint inquiry" means an inquiry for which by virtue of this section, or section 34, two or more Ministers are responsible.
(3) In the case of a joint inquiry-
  (a) powers conferred on a Minister by any provision of this Act (except section 41) are exercisable by the Ministers in question acting jointly;
  (b) duties imposed by this Act on a Minister are joint duties of those Ministers.
(4) Subsection (3)(b), so far as relating to obligations under section 39, is subject to any different arrangements that may be agreed by the Ministers in question.

GENERAL NOTE

This is the first of three sections in the sixth part of the Act: inquiries for which more than one minister responsible. This section first appeared in HL Bill 7. It was not amended.

This Section

"joint inquiries" is defined in subs.(2). In subs.(1), joint is two or more. This section embodies the idea of joint duties and powers (compare the first minister and deputy first minister in Northern Ireland). However, subs.(4) permits two ministers to agree different arrangements regarding payment of inquiry expenses under s.39.

Joint inquiries are not simply under this section and s.34, and distinct from inquiries involving more than one administration. This is because s.33(1) refers also to joint inquiries.

33. Inquiries involving more than one administration

(1) This section applies to a joint inquiry for which the Ministers responsible ("the relevant Ministers") are not all United Kingdom Ministers and are not all Northern Ireland Ministers.
(2) A limitation imposed by section 27(2), 28(2), 29(2) or 30(2) or (3) on the terms of reference of an inquiry for which a particular Minister is responsible has effect only to the extent that it applies in relation to all of the relevant Ministers.
(3) A limitation imposed by section 27(3), 28(3) or (4), 29(3) or (4) or 30(4) or (5) on the powers conferred on the chairman of an inquiry for which a particular Minister is responsible has effect only to the extent that it applies in relation to all of the relevant Ministers.
(4) Subsections (6) and (7) of section 30 do not apply if at least one of the relevant Ministers is a United Kingdom Minister.

GENERAL NOTE

This section appeared first in HL Bill 7. It was not amended.

This Section

This section applies to all joint enquiries, involving two or more ministers, from one or more administrations, other than joint UK inquiries or joint Northern Ireland inquiries: subs.(1).

Query why Northern Ireland is included? Subsections (2) and (3) provide for common denominators. A limitation regarding terms of reference will apply only if it applies to all ministers. Similarly, for powers. Subsection (4) provides for the exclusion of s.30(6)-(7) if there is at least one UK minister. A Northern Ireland minister could, therefore, be involved in a national security inquiry if a UK minister was also involved.

34. Change of responsibility for inquiry

(1) Each of the Ministers concerned may agree in writing that, as from a date specified in the agreement ("the specified date"), one or more Ministers should become, or cease to be, responsible for an inquiry.
(2) Where an agreement is made under this section-
  (a) in relation to any time on or after the specified date, references in this Act to the Minister responsible for the inquiry are to be read in accordance with the agreement;
  (b) each of the Ministers concerned has obligations under section 39 only in relation to the period when that Minister was or is responsible for the inquiry.
(3) Subsection (2)(b) is subject to any different arrangements that may be specified in the agreement under this section.
(4) Where as a result of an agreement under this section the terms of reference of the inquiry fail to comply with an applicable limitation imposed by section 27(2), 28(2), 29(2) or 30(2) or (3), they are to be read subject to such modifications as are necessary to make them comply with the limitation.
(5) In this section "the Ministers concerned" means the Ministers responsible for the inquiry before the specified date together with any who, under the agreement, are to become responsible for it as from that date.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended.

This Section

This section develops the principle in s.32(4), namely that ministers may agree not to act jointly. It permits ministers to assume, or give up, responsibility for a joint inquiry: subs.(1). The ministers concerned in subs.(1) is defined in subs.(4). Subsection 2(b) and subs.(3) refer again to s.39 (payment of inquiry expenses). Subsection (4) permits terms of reference to be read in order to comply with ss.27(2), 28(2), 29(2) and 30(2) or (3).

Supplementary

35. Offences

(1) A person is guilty of an offence if he fails without reasonable excuse to do anything that he is required to do by a notice under section 21.
(2) A person is guilty of an offence if during the course of an inquiry he does anything that is intended to have the effect of-
  (a) distorting or otherwise altering any evidence, document or other thing that is given, produced or provided to the inquiry panel, or
  (b) preventing any evidence, document or other thing from being given, produced or provided to the inquiry panel,

or anything that he knows or believes is likely to have that effect.

(3) A person is guilty of an offence if during the course of an inquiry-

(a) he intentionally suppresses or conceals a document that is, and that he knows or believes to be, a relevant document, or

(b) he intentionally alters or destroys any such document.

For the purposes of this subsection a document is a "relevant document" if it is likely that the inquiry panel would (if aware of its existence) wish to be provided with it.

(4) A person does not commit an offence under subsection (2) or (3) by doing anything that he is authorised or required to do-

(a) by the inquiry panel, or

(b) by virtue of section 22 or any privilege that applies.

(5) Proceedings in England and Wales or in Northern Ireland for an offence under subsection (1) may be instituted only by the chairman.

(6) Proceedings for an offence under subsection (2) or (3) may be instituted-

(a) in England and Wales, only by or with the consent of the Director of Public Prosecutions;

(b) in Northern Ireland, only by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(7) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level three on the standard scale or to imprisonment for a term not exceeding the relevant maximum, or to both.

(8) "The relevant maximum" is-

(a) in England and Wales, 51 weeks;

(b) in Scotland and Northern Ireland, six months.

GENERAL NOTE

This is the first of six sections in the seventh part of the Act: supplementary. This section first appeared in HL Bill 7. It was amended slightly at report in the House of Lords on February 8, 2005 and at third reading on February 28, 2005. It has to be read with the following section.

The 1921 Act

Section 1 provides: "(1)... on the occasion on an action in respect of the following matters: (a) The enforcing the attendance of witnesses and examining them on oath, affirmation, or otherwise; (b) The compelling the production of documents; (c) Subject to rules of court, the issuing of a commission or request to examine witnesses abroad... (2) If any person - (a) on being duly summoned as a witness before a tribunal makes default in attending; or (b) being in attendance as a witness refuses to take an oath legally required by the tribunal to be taken, or to produce any document in his power or control legally required by the tribunal to be produced by him, or to answer any question to which the tribunal may legally require an answer; or (c) does any other thing which would, if the tribunal had been a court of law having power to commit for contempt, have been contempt of that court; the chairman of the tribunal may certify the offence of that person under his hand to the High Court, or in Scotland the Court of Session, and the court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court."

This Section

This section creates new criminal offences to replace the contempt of court jurisdiction of the 1921 Act.

Subsections (1)-(3)

These create three new offences. The first is failing to comply with a s.21 notice. There is a defence of reasonable excuse. There is no express mental element. The second offence relates to the course of an inquiry. The mental element is intention. The third also relates to the course of an inquiry. The conduct here is more serious: suppressing, concealing, altering, destroying a relevant document. The mental element is intention.

Subsection (4)

This provides two defences to the subss.(2) and (3) offences: authorised by the inquiry panel; s.22 privilege (which, of course, includes public interest immunity).

Subsections (5)-(6)

Proceedings for subs.(1) offences must be instituted by the chairman (but not in Scotland). It is a power, not a duty. Proceedings for subss.(2) and (3) offences require the consent of the relevant director of public prosecutions (not in Scotland). This is to prevent private prosecutions. Scotland is being provided for separately by the Scottish parliament.

Subsections (7)-(8)

The penalty on summary conviction varies between Scotland and Northern Ireland, on the one hand, and England and Wales on the other.

At Standing Committee B in the House of Commons on March 24, 2005, the minister, Christopher Leslie MP, explained that the offences were modelled on those in s.250 of the Local Government Act 1972 (c.70).

36. Enforcement by High Court or Court of Session

(1) Where a person-

(a) fails to comply with, or acts in breach of, a notice under section 19 or 21 or an order made by an inquiry, or

(b) threatens to do so,

the chairman of the inquiry, or after the end of the inquiry the Minister, may certify the matter to the appropriate court.

(2) The court, after hearing any evidence or representations on a matter certified to it under subsection (1), may make such order by way of enforcement or otherwise as it could make if the matter had arisen in proceedings before the court.

(3) In this section "the appropriate court" means the High Court or, in the case of an inquiry in relation to which the relevant part of the United Kingdom is Scotland, the Court of Session.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended. It provides for civil remedies. It may be compared with the contempt of court jurisdiction in the 1921 Act. There are no criminal penalties.

This Section

There are three bases for a chairman's certificate. One, a s.19 notice (restrictions on public access etc). Two, a s.21 notice (power of chairman to require production of evidence etc.). And three, failure to comply with an order of an inquiry. The jurisdiction of the high court and the court of session is defined as: "[to] make such order by way of enforcement or otherwise".

37. Immunity from suit

(1) No action lies against-

(a) a member of an inquiry panel,
(b) an assessor, counsel or solicitor to an inquiry, or
(c) a person engaged to provide assistance to an inquiry,

in respect of any act done or omission made in the execution of his duty as such, or any act done or omission made in good faith in the purported execution of his duty as such.

(2) Subsection (1) applies only to acts done or omissions made during the course of the inquiry, otherwise than during any period of suspension (within the meaning of section 13).

(3) For the purposes of the law of defamation, the same privilege attaches to-

(a) any statement made in or for the purposes of proceedings before an inquiry (including the report and any interim report of the inquiry), and
(b) reports of proceedings before an inquiry,

as would be the case if those proceedings were proceedings before a court in the relevant part of the United Kingdom.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended. It expressly extends the immunities of the 1921 Act.

The 1921 Act

Section 1 provides: "(3) A witness before any such tribunal shall be entitled to the same immunities and privileges as if he were a witness before the High Court or the Court of Session."

This Section

Subsection (1) extends the immunity from the witness to all involved with the inquiry. It is not absolute immunity. It applies to an act/omission "in the execution of his duty", and an act/omission "made in good faith in the purported execution of his duty". Subsection (3) approaches the problem from the law on defamation. The same privilege as applies in a court applies to an inquiry. It is not absolute privilege.

38. Time limit for applying for judicial review

(1) An application for judicial review of a decision made-

(a) by the Minister in relation to an inquiry, or
(b) by a member of an inquiry panel,

must be brought within 14 days after the day on which the applicant became aware of the decision, unless that time limit is extended by the court.

(2) Subsection (1) does not apply where an earlier time limit applies by virtue of Civil Procedure Rules or rules made under section 55 of the Judicature (Northern Ireland) Act 1978 (c. 23).

(3) Subsection (1) does not apply to-

(a) a decision as to the contents of the report of the inquiry;
(b) a decision of which the applicant could not have become aware until the publication of the report.

In this subsection "report" includes any interim report.

(4) This section does not extend to Scotland.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended.

This Section

Subss. (2) and (4)

This section applies in England and Wales and in Northern Ireland. Scotland presumably will be provided for by the Scottish parliament.

Subsection (1)

The normal time limit in judicial review is: "(a) promptly; and (b) in any event not later than 3 months after the grounds to make the claim first arose." (CPR rule 54.5) (in England and Wales). This subsection shortens it to 14 days "after the day on which the applicant became aware of the decision".

Subsection (2) and (3)

These subsections limit the effect of subs.(1). "earlier" presumably means shorter. Subsection (3) suggests that the 14-day rule is to apply only during the inquiry. Anything to do with the report will come under the normal promptly and not later than three months rule.

39. Payment of inquiry expenses by Minister

(1) The Minister may agree to pay to-
  (a) the members of the inquiry panel,
  (b) any assessor, counsel or solicitor to the inquiry, and
  (c) any person engaged to provide assistance to the inquiry,

such remuneration and expenses as the Minister may determine.

(2) The Minister must pay any amounts awarded under section 40.

(3) The Minister must meet any other expenses incurred in holding the inquiry, including the cost of publication of the report and any interim report of the inquiry (whether or not the chairman has responsibility for arranging publication).

(4) Subsection (5) applies where the Minister-
  (a) believes that there are matters in respect of which an inquiry panel is acting outside the inquiry's terms of reference, or is likely to do, and
  (b) gives a notice to the chairman specifying those matters and the reasons for his belief.

(5) Subject to provision made by rules under section 41, the Minister is not obliged under this section or otherwise to pay any amounts or to meet any expenses in so far as they are referable-
  (a) to any matters certified by the Minister, in accordance with such provision, to be outside the inquiry's terms of reference, and
  (b) to any period falling after the date on which the notice under subsection (4) was given.

(6) Within a reasonable time after the end of the inquiry the Minister must publish the total amount of what he has paid (or remains liable to pay) under this section.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended. This section is referred to in ss.32(4) and 34(2)(b). It should be read with the following section.

This Section

Subsections (1)-(3)

These subsections empower the minister to pay remuneration and expenses, and require him to pay the expenses of witnesses and other expenses incurred in holding the inquiry.

Subsections (4)-(5)

These subsections permit the minister not to pay any of the above (including witnesses' expenses) if, in his opinion, the inquiry has acted outside its terms of reference. He is required to give notice of his belief to the chairman. However, he may only decline to pay expenses incurred after the date of notice.

40. Expenses of witnesses etc

(1) The chairman may award reasonable amounts to a person-

(a) by way of compensation for loss of time, or

(b) in respect of expenses properly incurred, or to be incurred,

in attending, or otherwise in relation to, the inquiry.

(2) The power to make an award under this section includes power, where the chairman considers it appropriate, to award amounts in respect of legal representation.

(3) A person is eligible for an award under this section only if he is-

(a) a person attending the inquiry to give evidence or to produce any document or other thing, or

(b) a person who, in the opinion of the chairman, has such a particular interest in the proceedings or outcome of the inquiry as to justify such an award.

(4) The power to make an award under this section is subject to such conditions or qualifications as may be determined by the Minister and notified by him to the chairman.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended.

This Section

Subsections (1), (2) and (4)

The chairman is empowered to award reasonable amounts to a person, plus amounts in respect of legal representation. There is no reasonableness test regarding the latter. However, the chairman has to consider whether it is appropriate to make such an award. This would appear not to refer to the amount. Subsection (4) refers back to s.38(4)-(5).

Subsection (3)

This purports to limit the range of persons who may be paid expenses. Paragraph (a) is witnesses. Paragraph (b) must therefore include any legal representation. A "particular interest in the proceedings or outcome" would include the families of the killed and injured who have been made awards by Lord Saville in Bloody Sunday.

General

41. Rules

(1) The appropriate authority may make rules dealing with-

(a) matters of evidence and procedure in relation to inquiries;
(b) the return or keeping, after the end of an inquiry, of documents given to or created by the inquiry;
(c) awards under section 40.

(2) Rules under subsection (1)(c) may in particular-
(a) make provision as to how and by whom the amount of awards is to be assessed, including provision allowing the assessment to be undertaken by the inquiry panel or by such other person as the panel may nominate;
(b) make provision for review of an assessment at the instance of a person dissatisfied with it.

(3) The appropriate authority is-
(a) the Lord Chancellor, as regards inquiries for which a United Kingdom Minister is responsible;
(b) the Scottish Ministers, as regards inquiries for which they are responsible;
(c) the National Assembly for Wales, as regards inquiries for which that Assembly is responsible;
(d) the First Minister and deputy First Minister acting jointly, as regards inquiries for which a Northern Ireland Minister is responsible.

(4) The power to make rules under this section is exercisable-
(a) in the case of rules made by the Lord Chancellor, the National Assembly for Wales or the Scottish Ministers, by statutory instrument;
(b) in the case of rules made by the First Minister and deputy First Minister, by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

(5) A statutory instrument made under this section is subject to annulment-
(a) if made by the Lord Chancellor, in pursuance of a resolution of either House of Parliament;
(b) if made by the Scottish Ministers, in pursuance of a resolution of the Scottish Parliament.

(6) A statutory rule made under this section is subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

GENERAL NOTE

This is the first of five sections in the eighth part of the Act: general. This section first appeared in HL Bill 7. It was amended at report in the House of Lords on February 8, 2005.

Note on Rules of Procedure

On December 20, 2004, the DCA placed a 12-page paper in the library of the House of Lords entitled "Inquiries Bill - Rules of Procedure". It was referred to subsequently by ministers in parliament.

The paper purports to deal with evidence and procedure, but it also refers to records and costs. The note contains an annex on examples of statutory rules for inquiries.

Among the ideas hinted at, showing the tenor of official thinking, are: using draft rules, or rules as a guide, in the transition between commencement and the statutory rules being made; UK rules being drafted to apply to the three devolved administrations; guidance on inquires from the cabinet office; the setting of an overriding objective (such as possibly that in the Civil Procedure Rules 1998); controlling evidence (again possibly as in the civil procedure rules); "rules could include a presumption that, except where the chairman has agreed limited cross-questioning will be permitted, all questioning will be conducted by inquiry counsel."; "rules could assist the chair-

man in managing legal involvement throughout the inquiry so that representation contributes to the overall objective of a fair inquiry but does not adversely impact on the costs and length of proceedings."; "rules could assist the chairman in defining ‹utf8.lsquot›interested parties' and set out what factors the chairman should take into consideration... there could be a presumption against legal representation"; "rules could assist the chairman and inquiry Solicitor in controlling and managing legal expenses"; "rules could place assessment of costs by a Costs Judge on a statutory footing"; "rules could set out the procedures to be followed where criticisms are to be made"; "Timetabling could... assist with planning a budget for the inquiry"; "rules could help define the roles of the counsel, solicitor, secretary and assessors to the inquiry"; "rules could clarify questions of ownership of records and the right to take copies, and set procedures for dealing with records at the end of the inquiry."

This Section

Subsections (1)-(2)

The rules are to cover: evidence and procedure; the fate of documents after an inquiry; and awards under s.40. The second was added by way of amendment. Evidence and procedure is dealt with in s.17. Documents after the inquiry arises from s.18(3)-(4). Subsection (2) provides for s.40 rules. The absence of a reasonableness test regarding legal representation may be dealt with here, but the subsection refers generally to s.40 awards. The inquiry panel could itself assess awards for legal representation. There is provision for review by the person making the original decision.

Subsections (1) and (3)-(6)

The person making the rules is described as "the appropriate authority". There are to be UK rules plus rules for each of the devolved administrations. The mechanism is statutory instrument or statutory rule, by annulment or the negative resolution procedure.

42. Notices etc

A notice or notification under this Act must be given in writing.

43. Interpretation

(1) In this Act-

"assessor" means an assessor appointed under section 11;

"chairman", in relation to an inquiry, means the chairman of the inquiry;

"the course of the inquiry" and similar expressions are to be read in accordance with subsection (2);

"date of conversion" has the meaning given by section 15(1);

"document" includes information recorded in any form (and see subsection (3));

"event", except in sections 13 and 46, includes any conduct or omission;

"inquiry", except where the context requires otherwise, means an inquiry under this Act;

"inquiry panel" is to be read in accordance with section 3(2);

"interested party", in relation to an inquiry, means a person with a particularly significant interest in the proceedings or outcome of the inquiry;

"interim report" means a report under section 24(3);

"joint inquiry" has the meaning given by section 32(2);

"member", in relation to an inquiry panel, includes the chairman;

"Minister" is to be read in accordance with section 1(2) (and see subsection (4) below);

"Northern Ireland Minister" includes the First Minister and the deputy First Minister acting jointly;

"public authority" has the same meaning as in the Freedom of Information Act 2000 (c. 36);

"the relevant Parliament or Assembly" means whichever of the following is or are applicable-

(a) in the case of an inquiry for which the Treasury is responsible, the House of Commons;

(b) in the case of an inquiry for which any other United Kingdom Minister is responsible, or one for which the Secretary of State exercising functions by virtue of section 45(2) is responsible, the House of Parliament of which that minister is a member;

(c) in the case of an inquiry for which the Scottish Ministers are responsible, the Scottish Parliament;

(d) in the case of an inquiry for which the National Assembly for Wales is responsible, that Assembly;

(e) in the case of an inquiry for which a Northern Ireland Minister is responsible, the Northern Ireland Assembly;

"the relevant part of the United Kingdom", in relation to an inquiry, means the part specified under section 31(1);

"report" means a report under section 24(1);

"responsible", in relation to an inquiry, is to be read in accordance with subsection (5);

"Scottish public authority" has the same meaning as in the Freedom of Information (Scotland) Act 2002 (asp 13);

"setting-up date" means the date specified under section 5(1)(a);

"statutory provision" means a provision contained in, or having effect under, any enactment, Act of the Scottish Parliament or Northern Ireland legislation;

"terms of reference", in relation to an inquiry under this Act, has the meaning given by section 5(6);

"United Kingdom Minister"-

(a) means the holder of a Ministerial office specified in Part 1, 2 or 3 of Schedule 1 to the Ministerial and other Salaries Act 1975 (c. 27) or a Parliamentary Secretary;

(b) also includes the Treasury.

But a reference to a United Kingdom Minister does not include a reference to the Secretary of State discharging functions by virtue of section 45(2).

(2) References in this Act to the course of an inquiry are to the period beginning with the setting-up date, or (in the case of an inquiry converted under section 15) the date of conversion, and ending with the date on which the inquiry comes to an end (which is given by section 14).

(3) References in this Act to producing or providing a document, in relation to information recorded otherwise than in legible form, are to be read as references to producing or providing a copy of the information in a legible form.

(4) References in this Act to "the Minister", in relation to an inquiry, are to the Minister or Ministers responsible for the inquiry.

(5) For the purposes of this Act a Minister is "responsible" for an inquiry if he is the Minister, or one of the Ministers, by whom it was caused to be held under section 1 or converted under section 15.

This is subject to section 34(2)(a).

GENERAL NOTE

This section first appeared in HL Bill 7. Some additional definitions were added by amendment.

This Section

Subsection (1)

This contains 24 definitions, many of them specifying the relevant section above.

Subsections (2)-(5)

These subsections are used to elaborate four particular definitions.

44. Transitory, transitional and saving provisions

(1) Section 15 applies whether the original inquiry was caused to be held before or after the commencement of that section.

(2) For the purposes of that section, an inquiry appointed otherwise than under this Act includes a tribunal of inquiry appointed in pursuance of resolutions of both Houses of Parliament under section 1 of the Tribunals of Inquiry (Evidence) Act 1921 (c. 7).

(3) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), the reference in section 35(8)(a) above to 51 weeks is to be read as a reference to six months.

(4) This Act does not affect-

(a) any power of Her Majesty to establish a Royal Commission, or

(b) except as provided by section 15 or by sections 46 to 49 (and Schedules 1 to 3), any power of a Minister or other person (whether under a statutory provision or otherwise) to cause an inquiry to be held otherwise than under this Act.

(5) The repeal by this Act of any statutory provision under which an inquiry has been caused to be held does not affect any power or duty conferred or imposed in respect of the inquiry, and accordingly-

(a) the inquiry may continue,

(b) any report may be submitted and published, and

(c) any proceedings arising out of the inquiry may be taken or continued,

as if the enactment had not been repealed.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended. It includes three different types of provisions.

This Section

Subsections (1)-(2)

This is a transitory provision. Section 15 is power to convert other inquiry into inquiry under this Act. Subsection (1) repeats the provision in s.15(1)(a). Subsection (2) means that the s.15 power to convert applies also to 1921 Act inquiries.

Subsection (3)

Section 281(5) of the Criminal Justice Act 2003 contains the maximum 51 weeks sentence for summary conviction. However, art.7(1) of the human rights convention provides: "...Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed." This subsection - a transitional provision - ensures that the six months' sentence applies to offences committed before the law was changed to 51 weeks.

Subsection (4)

This is a saving provision. It saves the power of her majesty to establish a royal commission using the royal prerogative. It also saves ministerial statutory powers to cause inquiries to be held, insofar as existing statutes are not amended by this Act (in particular by ss.15 and 46-49 plus Schs 1-3).

Subsection (5)

This is also a saving provision. Though other statutory provisions are repealed by this Act, any existing enquiries may continue to exercise their powers - unless converted under s.15 of this Act.

45. Suspension of devolved government in Northern Ireland

(1) This section applies in relation to any time when section 1 of the Northern Ireland Act 2000 (c. 1) (suspension of devolved government in Northern Ireland) is in force.

(2) Functions conferred by this Act on a Northern Ireland Minister may be discharged by the Secretary of State (and a reference to an inquiry for which a Northern Ireland Minister is responsible is to be read accordingly).

In relation to such functions, this subsection applies in place of paragraph 4(1)(a) to (c) of the Schedule to the Northern Ireland Act 2000.

(3) A requirement under this Act to consult any Northern Ireland Minister is to be read as a requirement to consult the Secretary of State.

(4) In the case of rules under section 41 made by the Secretary of State by virtue of subsection (3)(d) of that section and subsection (2) above, subsections (4)(a) and (5)(a) of that section apply in relation to the Secretary of State as they apply in relation to the Lord Chancellor.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended.

This Section

The UK Government persists with the policy of devolution in Northern Ireland (even though the assembly has been suspended since October 2002). The legislative measure is: the Northern Ireland Act 2000. Section 1(1) suspends the assembly. The schedule makes provisions for suspension, including legislative and executive power. Paragraph 4 transfers powers from the Northern Ireland ministers to the secretary of state for Northern Ireland (or to departments under his direction and control). Placing this section in this part of the Act, in the absence of providing for direct rule for the foreseeable future, is in accord with the Government's Northern Ireland policy.

Subsection (2)

This subsection could mean that only the secretary of state, and not a Northern Ireland department under the direction and control of the secretary of state, may cause an inquiry to be held. However, it only disapplies para.4(1)(a)-(c) of the Schedule to the Northern Ireland Act 2000. Paragraph 4(1)(f) is left untouched. However, that refers to the functions of a Northern Ireland de-

partment. Only the secretary of state has the power to cause an inquiry to be held. Nevertheless, s.47 - inserting a new s.23 in the Interpretation Act (Northern Ireland) 1954 (c.33) - indicates that a Northern Ireland department (under the direction and control of the secretary of state) may cause an inquiry to be held.

Subsection (4)

Section 41(2) of this Act is rules concerning s.40 awards, and s.41(3)(d) is rules made by the first minister and deputy first minister as regards inquiries for which a Northern Ireland minister is responsible. This subsection envisages the rules being made during suspension by the secretary of state. Section 41(4)(a) of this Act refers to statutory instruments, as does s.41(5)(a) - which provides for annulment by either house of parliament. This subsection provides that the secretary of state shall use statutory instruments rather than statutory rules when making his s.41 rules.

Amendments etc

46. Inquiries under the Financial Services and Markets Act 2000

(1) Section 14 of the Financial Services and Markets Act 2000 (c. 8) (cases in which the Treasury may arrange independent inquiries) is amended as follows.

(2) In subsection (2)(b)(i), after "by this Act" there is inserted ", or by any previous statutory provision,".

(3) In subsection (3)(b), for the words after "but for a serious failure" there is substituted

"in-

(i) the regulatory system established by Part 6 or by any previous statutory provision concerned with the official listing of securities; or

(ii) the operation of that system."

(4) After subsection (5) there is inserted-

"(5A) "Event" does not include any event occurring before 1st December 2001 (but no such limitation applies to the reference in subsection (4) to surrounding circumstances)."

GENERAL NOTE

This is the first of four sections in the ninth part of the Act: amendments etc. This section first appeared in HL Bill 7. It was not amended.

This Section

This section makes three amendments to s.14 of the Financial Services and Markets Act 2000 (c.8). That act is kept alive. Sections 48 and 49 of this Act have no effect on that act.

47. Inquiries etc under Northern Ireland legislation

(1) For section 23 of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) (inquiries and investigations) there is substituted-

23. "Inquiries and investigations

The provisions of Schedule A1 to this Act shall have effect in relation to any local or other inquiry or any investigation which a Minister or Northern Ireland department causes to be held or made under any enactment passed or made-

(a) after the commencement of this Act, and

(b) before the commencement of section 47 of the Inquiries Act 2005."

(2) The Schedule set out in Schedule 1 to this Act is inserted into that Act as Schedule A1.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended.

This Section

This section inserts a new s.23 in the Interpretation Act (Northern Ireland) 1954. It also introduces Sch.1 (provisions applicable to inquiries under Northern Ireland legislation), which is inserted as Sch.A1 in that act.

This section does not apply to the Prison Act (Northern Ireland) 1953, under which the Wright inquiry in Northern Ireland is to be held. It does apply to the Police (Northern Ireland) Act 1998, under which the Hamill and Nelson inquiries will be held.

48. Minor and consequential amendments

(1) Schedule 2 (minor and consequential amendments) has effect.

(2) In Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) a reference to an Act that is amended by Schedule 2 to this Act is to be read as referring to that Act as so amended.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended. It introduces Sch.2: minor and consequential amendments.

49. Repeals and revocations

(1) The Tribunals of Inquiry (Evidence) Act 1921 (c. 7) is repealed.

(2) The provisions set out in Schedule 3 are repealed or revoked to the extent specified.

GENERAL NOTE

This section first appeared in HL Bill 7. It was not amended. It repeals the 1921 Act. It also introduces Sch.3: repeals and revocations.

Final provisions

50. Crown application

This Act and any provisions made under it bind the Crown (but do not affect Her Majesty in her personal capacity or in right of Her Duchy of Lancaster or the Duke of Cornwall).

51. Commencement

(1) The preceding provisions of this Act come into force on such day as the Lord Chancellor may appoint by order made by statutory instrument.

(2) Before making an order under this section the Lord Chancellor must consult the Scottish Ministers, the National Assembly for Wales and the First Minister and deputy First Minister.

(3) An order under this section-

(a) may include any transitory, transitional or saving provision that the Secretary of State considers necessary or expedient;

(b) may appoint different days for different purposes.

52. Extent

This Act extends to the whole of the United Kingdom.

53. Short title

This Act may be cited as the Inquiries Act 2005.

SCHEDULES

SCHEDULE 1 Section 47

Provisions Applicable to Inquiries Etc under Northern Ireland Legislation

The following is the Schedule inserted into the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.))-

SCHEDULE A1

"Provisions Applicable to Inquiries and Investigations

Introductory

1. In this Schedule-

"the inquiry" means any inquiry or investigation in relation to which, by virtue of section 23 of this Act, the provisions of this Schedule apply;

"the Department" means the Minister or Northern Ireland department causing the inquiry to be held.

Appointment of person to hold inquiry

2. The Department shall appoint a person to hold the inquiry and to report thereon to the Department.

Notification of time and place of inquiry

3. Notification shall be sent to any persons appearing to the Department or the person appointed to hold the inquiry to be interested of the time when, and the place where, the inquiry is to be held.

Powers to require persons to give evidence etc

4. (1) Subject to sub-paragraphs (2) and (3), the person appointed to hold the inquiry may by notice require any person-

(a) to attend at the time and place set forth in the notice to give evidence or to produce any books or documents in his custody or under his control which relate to any matter in question at the inquiry; or

(b) to furnish, within such reasonable period as is specified in the notice, such information relating to any matter in question at the inquiry as the person appointed to hold the inquiry may think fit, and as the person so required is able to furnish.

(2) A person shall not to be required, in obedience to such a notice, to attend at any place which is more than 16 kilometres from the place where he resides unless the necessary expenses are paid or tendered to him.

(3) Nothing in this paragraph shall empower the person appointed to hold the inquiry to require any person to produce any book or document, or to answer any question, which he would be entitled, on the ground of privilege or otherwise, to refuse to produce or to answer if the inquiry were a proceeding in a court of law.

Oaths and statements

5. The person appointed to hold the inquiry may administer oaths and examine witnesses on oath, and may accept, in lieu of evidence on oath by any person, a statement in writing by that person.

Offences

6. Any person who-

(a) refuses or wilfully neglects to attend in obedience to a notice under paragraph 4, or to give evidence; or

(b) wilfully alters, suppresses, conceals or destroys or refuses to produce any book or document which he may be required to produce by any such notice; or

(c) refuses or deliberately neglects to furnish any information which he is required to furnish under paragraph 4(1)(b);

shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 2 on the standard scale.

Expenses

7. (1) The expenses incurred by the Department in relation to the inquiry (including such sum as the Department may, with the approval of the Department of Finance and Personnel, determine in respect of the services of any officer engaged in the inquiry) shall be paid by such of the parties to the inquiry in such proportions as the Department may order.

(2) The Department may make orders as to the expenses incurred by the parties appearing at the inquiry and as to the parties by whom such expenses shall be paid.

(3) Any order made by the Department under sub-paragraph (1) or (2) may, on the application of any party to the inquiry, be made a rule of the High Court."

GENERAL NOTE

This Schedule is introduced by s.47. Section 47(2) inserts a new Sch.A1 in the Interpretation Act (Northern Ireland) 1954. Department is defined in para.1 of the new Sch.A1 as "the Minister or Northern Ireland department".

SCHEDULE 2 Section 48

Minor and Consequential Amendments

Part 1

Acts of Parliament

1. Section 7 of the Regulation of Railways Act 1871 (inquiry into accidents and formal investigation in serious cases) is omitted.

2. Section 20 of the Ministry of Transport Act 1919 (power to hold inquiries) is omitted.

3. Section 47 of the Road and Rail Traffic Act 1933 (inquiries by Minister) is omitted.

4. In section 26 of the Agricultural Marketing Act 1958 (constitution and functions of Agricultural Marketing Reorganisation Commissions) subsections (6) to (8) are omitted.

5. Section 143 of the Mental Health Act 1959 (inquiries) is omitted.

6. Section 90 of the Transport Act 1962 (inquiries) is omitted.

7. Section 84 of the National Health Service Act 1977 (inquiries) is omitted.

8. In the Public Passenger Vehicles Act 1981, sections 76 (general power to hold inquiries) and 77 (general provisions as to inquiries) are omitted.

9. Section 125 of the Mental Health Act 1983 (inquiries) is omitted.

10. In the Road Traffic Regulation Act 1984, sections 128 (power to hold inquiries) and 129 (general provisions as to inquiries) are omitted.

11. Section 179 of the Road Traffic Act 1988 (general power to hold inquiries) is omitted.

12. Section 81 of the Children Act 1989 (inquiries) is omitted.

13. In section 57 of the Further and Higher Education Act 1992 (intervention) subsection (9) is omitted.

14. Section 49 of the Police Act 1996 (local inquiries) is omitted.

15. Section 507 of the Education Act 1996 (power to direct local inquiries) is omitted.

16. In the Police Act 1997, sections 34 (National Criminal Intelligence Service: inquiries) and 79 (National Crime Squad: inquiries) are omitted.

17. Section 44 of the Police (Northern Ireland) Act 1998 (inquiries) is omitted.

18. In section 2B of the Protection of Children Act 1999 (individuals named in the findings of certain inquiries), in subsection (7)(a), after "held" there is inserted "under the Inquiries Act 2005 or".

19. In section 85 of the Care Standards Act 2000 (individuals named in the findings of certain inquiries), in subsection (7)(a), after "held" there is inserted "under the Inquiries Act 2005 or".

20.

(1) Section 17 of the Regulation of Investigatory Powers Act 2000 (exclusion of matters from legal proceedings) is amended as follows.

(2) In subsection (1), after "legal proceedings" there is inserted "or Inquiries Act proceedings".

(3) In subsection (4), for "In this section "intercepted communications" means" there is substituted

"In this section-

"Inquiries Act proceedings" means proceedings of an inquiry under the Inquiries Act 2005;

"intercepted communications" means".

21.

(1) Section 18 of that Act (exceptions to section 17) is amended as follows.

(2) In subsection (5) the word "legal" is omitted.

(3) In subsection (7), after paragraph (b) there is inserted

"; or

(c) a disclosure to the panel of an inquiry held under the Inquiries Act 2005 in the course of which the panel has ordered the disclosure to be made to the panel alone."

(4) After subsection (8) there is inserted-

"(8A) The panel of an inquiry shall not order a disclosure under subsection (7)(c) except where it is satisfied that the exceptional circumstances of the case make the disclosure essential to enable the inquiry to fulfil its terms of reference."

22. In section 60 of the Police (Northern Ireland) Act 2000 (inquiry by Board following report by Chief Constable), for subsection (14) there is substituted-

"(14) "Paragraphs 3 to 6 of Schedule A1 to the Interpretation Act (Northern Ireland) 1954 (provisions applicable to inquiries etc. under Northern Ireland legislation) shall apply to an inquiry under this section with the substitution for references to the Department of references to the person conducting the inquiry."

23. Section 17 of the Adoption and Children Act 2002 (inquiries) is omitted.

24. Section 27 of the Fire and Rescue Services Act 2004 (inquiries) is omitted.

PART 2

ACTS OF THE SCOTTISH PARLIAMENT

Protection of Children (Scotland) Act 2003 (asp 5)

25. In section 6 of the Protection of Children (Scotland) Act 2003 (individuals named in the findings of certain inquiries), in subsection (6), after paragraph (a) there is inserted-

"(aa) an inquiry held under the Inquiries Act 2005;".

PART 3

NORTHERN IRELAND LEGISLATION

Local Government Act (Northern Ireland) 1923 (c. 31 (N.I.))

26. Section 6 of the Local Government Act (Northern Ireland) 1923 (fees for holding inquiries) is omitted.

Petroleum (Consolidation) Act (Northern Ireland) 1929 (c. 13 (N.I.))

27. Section 14 of the Petroleum (Consolidation) Act (Northern Ireland) 1929 (inquiry into accidents connected with petroleum spirit) is omitted.

Prison Act (Northern Ireland) 1953 (c. 18 (N.I))

28. Section 7 of the Prison Act (Northern Ireland) 1953 (sworn inquiries) is omitted.

Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14))

29. In the Health and Personal Social Services (Northern Ireland) Order 1972, Article 54 (inquiries) and Schedule 8 (provisions as to inquiries) are omitted.

Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9))

30. In Article 16 of the Health and Safety at Work (Northern Ireland) Order 1978 (investigations and inquiries) the following words are omitted-

(a) in paragraph (1), "the Department concerned or";

(b) in paragraph (2), "The Department concerned or";

(c) in paragraph (5), "the Department concerned or, as the case may be," and "that Department or" (in both places);

(d) in paragraph (6) "The Department concerned or, as the case may be,";

(e) in paragraph (6)(a), (b) and (c), "that Department or".

Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1))

31. In Schedule 5 to the Road Traffic (Northern Ireland) Order 1981 (provisions as to inquiries and applications), in paragraph 5, for "Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972" there is substituted "Schedule A1 to the Interpretation Act (Northern Ireland) 1954".

Agricultural Marketing (Northern Ireland) Order 1982 (S.I. 1982/1080 (N.I. 12))

32. In Article 4 of the Agricultural Marketing (Northern Ireland) Order 1982 (approval of schemes), in paragraph (10), for the words from "Article 54" to "1954," there is substituted "Schedule A1 to the Interpretation Act (Northern Ireland) 1954 shall, in its application to any such inquiry by virtue of section 23 of that Act,".

Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

33. Article 108 of the Education and Libraries (Northern Ireland) Order 1986 (inquiries and investigations) is omitted.

Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22))

34. Article 69 of the Adoption (Northern Ireland) Order 1987 (inquiries) is omitted.

Roads (Northern Ireland) Order 1993 (S.I. 1993/3160 (N.I. 15))

35. In Article 130 of the Roads (Northern Ireland) Order 1993 (inquiries), in paragraph (2)-
(a) for "Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972" there is substituted "Schedule A1 to the Interpretation Act (Northern Ireland) 1954";
(b) for "the Interpretation Act (Northern Ireland) 1954" there is substituted "that Act";
(c) for "paragraph 6" there is substituted "paragraph 7(1)".

Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2))

36. Article 152 of the Children (Northern Ireland) Order 1995 (inquiries) is omitted.

Commissioner for Complaints (Northern Ireland) Order 1996 (S.I. 1996/1297 (N.I. 7))

37. In Article 9 of the Commissioner for Complaints (Northern Ireland) Order 1996 (matters not subject to investigation), in paragraph (5), for the words from "the subject of" to the end there is substituted
"the subject of-
(a) an inquiry under the Inquiries Act 2005, or
(b) any such inquiry as is referred to in section 23 of the Interpretation Act (Northern Ireland) 1954 (inquiries and investigations)".

Road Traffic Regulation (Northern Ireland) Order 1997 (S.I. 1997/276 (N.I. 2))

38. In Article 65 of the Road Traffic Regulation (Northern Ireland) Order 1997 (inquiries), in paragraph (2)-
(a) for "Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972" there is substituted "Schedule A1 to the Interpretation Act (Northern Ireland) 1954";
(b) for "the Interpretation Act (Northern Ireland) 1954" there is substituted "that Act";
(c) for "paragraph 6" there is substituted "paragraph 7(1)".

Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9))

39. Article 58 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (inquiries and investigations) is omitted.

Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (S.I. 2003/417 (N.I. 4))

40. In Articles 7 and 39 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (individuals named in the findings of certain inquiries), in paragraph (7)(a), after "held" there is inserted "under the Inquiries Act 2005 or".

Commissioner for Children and Young People (Northern Ireland) Order 2003 (S.I. 2003/439 (N.I. 11))

41. In Article 13 of the Commissioner for Children and Young People (Northern Ireland) Order 2003 (actions which may be investigated: restrictions and exclusions), in paragraph (3), for "the subject of a local or public inquiry" there is substituted
""the subject of-
(a) an inquiry under the Inquiries Act 2005, or
(b) any such inquiry as is referred to in section 23 of the Interpretation Act (Northern Ireland) 1954 (inquiries and investigations)".

GENERAL NOTE

This Schedule is introduced by s.48(1). It is divided into three parts: acts of the Westminster parliament; acts of the Scottish parliament; and Northern Ireland legislation, comprising acts of the Northern Ireland parliament and orders in council enacted at Westminster. These minor and consequential amendments effectively repeal many of the statutory inquiry provisions. Included is s.44 of the Police (Northern Ireland) Act 1998. Also included is: s.7 of the Prisons Act (Northern Ireland) 1953.

SCHEDULE 3 Section 49

REPEALS AND REVOCATIONS

Reference	*Extent of repeal or revocation*
Regulation of Railways Act 1871 (c. 78)	Section 7.
Ministry of Transport Act 1919 (c. 50)	Section 20.
Tribunals of Inquiry (Evidence) Act 1921 (c. 7)	The whole Act.
Local Government Act (Northern Ireland) 1923 (c. 31 (N.I.))	Section 6.
Petroleum (Consolidation) Act (Northern Ireland) 1929 (c. 13 (N.I.))	Section 14.
Road and Rail Traffic Act 1933 (c. 53)	Section 47.
Prison Act (Northern Ireland) 1953 (c. 18 (N.I.))	Section 7.
Agricultural Marketing Act 1958 (c. 47)	Section 26(6) to (8).
Mental Health Act 1959 (c. 72)	Section 143.
Transport Act 1962 (c. 46)	Section 90.
Fees for Inquiries (Variation) Order 1968 (S.I. 1968/656)	In the Schedule, the entries relating to the Road and Rail Traffic Act 1933 and the Road Traffic Act 1960.
Civil Evidence Act 1968 (c. 64)	Section 17(1)(a).
Civil Evidence Act (Northern Ireland) 1971 (c. 36 (N.I.))	In section 13(1), the words from the beginning to "; and" and the word "other".
Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14))	Article 54. Schedule 8. In Schedule 16, paragraph 17.
Local Government (Modifications and Repeals) Order (Northern Ireland) 1973 (S.R. & O. 1973 No. 285)	In the Schedule, the entry relating to section 6 of the Local Government Act (Northern Ireland) 1923.
National Health Service Act 1977 (c. 49)	Section 84.
Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9))	In Article 16- (a) in paragraph (1) the words "the Department concerned or"; (b) in paragraph (2) the words "The Department concerned or"; (c) in paragraph (5) the words "the Department concerned or, as the case may be," and the words "that Department or" (in both places); (d) in paragraph (6) the words "The Department concerned or, as the case may be,"; (e) in paragraph (6)(a), (b) and (c) the words "that Department or".
Public Passenger Vehicles Act 1981 (c. 14)	Sections 76 and 77.
Mental Health Act 1983 (c. 20)	Section 125.

Reference	*Extent of repeal or revocation*
Road Traffic Regulation Act 1984 (c. 27)	Sections 128 and 129.
Fees (Increase) Order (Northern Ireland) 1984 (S.R. (N.I.) 1984 No. 369)	In the Schedule, the entry relating to the Local Government Act (Northern Ireland) 1923.
Local Government Act 1985 (c. 51)	In Schedule 5, paragraph 4(36).
Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))	Article 108.
Channel Tunnel Act 1987 (c. 53)	In Schedule 6, in paragraph 3 the words "and 7 (inquiries into railway accidents)".
Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22))	Article 69.
Road Traffic Act 1988 (c. 52)	Section 179.
Children Act 1989 (c. 41)	Section 81.
National Health Service and Community Care Act 1990 (c. 19)	In Schedule 9, paragraph 18(6).
Courts and Legal Services Act 1990 (c. 41)	In Schedule 16, paragraph 21.
Further and Higher Education Act 1992 (c. 13)	Section 57(9).
Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2))	Article 152. In Schedule 9, paragraph 80.
Police Act 1996 (c. 16)	Section 49.
Education Act 1996 (c. 56)	Section 507.
Police Act 1997 (c. 50)	Sections 34 and 79.
Police (Northern Ireland) Act 1998 (c. 32)	Section 44.
Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9))	Article 58.
Access to Justice Act 1999 (c. 22)	In Schedule 11, paragraph 9.
Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc.) Order 1999 (S.I. 1999/1747)	In Schedule 18, paragraph 2(20).
Health Act 1999 (Supplementary and Consequential Provisions) Order 1999 (S.I. 1999/2795)	Article 2(2).
Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)	In Schedule 9, paragraph 128. In Schedule 4, paragraph 14(17).
Local Government Act 2000 (c. 22)	In Schedule 5, paragraph 21.
Regulation of Investigatory Powers Act 2000 (c. 23)	In section 18, the word "legal" in subsection (5) and the word "or" preceding paragraph (b) of subsection (7).
Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc.) (No. 2) Order 2000 (S.I. 2000/3251)	In Schedule 2, paragraph 2(27) to (29).
Adoption and Children Act 2002 (c. 38)	Section 17.
Railway Safety Act (Northern Ireland) 2002 (c. 8 (N.I.))	Section 7(1).
Health and Social Care (Community Health and Standards) Act 2003 (c. 43)	In Schedule 4, paragraph 33.

Reference	*Extent of repeal or revocation*
Fire and Rescue Services Act 2004 (c. 21)	Section 27.

GENERAL NOTE

This Schedule is introduced by s.49(2). It simply lists repeals and revocations by date order, most of the minor and consequential amendments in Sch.2 having been omissions of sections and articles.

INDEX

References are to sections and Schedules