GOVERNMENT RESPONSE TO THE PUBLIC ADMINISTRATION SELECT COMMITTEE'S FIRST REPORT OF THE 2004-5 SESSION: "GOVERNMENT BY INQUIRY"

Cm 6481 £7.50

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Presented to Parliament by the
Secretary of State for Constitutional Affairs and Lord Chancellor

by Command of Her Majesty March 2005

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Introduction

The Government welcomes the Public Administration Select Committee's report on the use and effectiveness of independent inquiries into matters of public concern. The Committee has drawn together a highly valuable collection of evidence on this complex and wide-ranging issue, and has put forward some very interesting proposals, which are discussed in detail later in this response.

As the Committee notes, the Government has also been reviewing the current legislation and practices for inquiries. With the Committee's agreement, the Department for Constitutional Affairs (DCA) published its own response to the Committee's questions as part of a public consultation paper on 6th May 2004, entitled "Effective Inquiries"[1], in order to invite wider public debate on the issues. The responses to this paper were shared with the Committee, to help inform its work[2]. The Government published on 28th September 2004 a Summary of Responses to the consultation. The Government is very grateful to the Committee and its staff for their close co-operation during the DCA's consultation exercise last year and the subsequent policy development work.

[1] DCA CP 12/04
[2] Two consultees asked for their responses to be kept confidential and those were not passed on to the Committee.

History and context

The Committee's report demonstrates the complex and detailed nature of the subject. The Committee has very helpfully set out the history of the development and use of the 1921 Act. This, together with the discussion of the more recent legislation on inquiries contained in both the Committee's report and the "Effective Inquiries" consultation paper, provides a backdrop against which to consider the issues.

The table at Annex 1 of the Committee's report, which lists major inquiries since 1900, is very valuable. The table illustrates the wide range of events that have been covered by past inquiries. In most cases, these events have been unforeseen, and have generated considerable public concern. Often, the causes of them will have been unclear, although the subject of much speculation, at the start of an inquiry. We can seek to learn lessons from past inquiries and incorporate those general lessons into the framework for the future. However, we must not forget that at the start of any future inquiry, those establishing it will not have the benefit of knowing how controversial or "political" it will be, what evidence it will uncover and how the public will receive its conclusions.

The Committee's table also demonstrates that some events have needed a very different type of inquiry to others. It is difficult to consider, for example, the Royal Liverpool Children's Hospital Inquiry, the Bloody Sunday Inquiry and the Equitable Life Inquiry and to come up with a single set of rules about inquiries. The events triggering inquiries will, by their nature, be unexpected and unpredictable. We do not know what inquiries may be needed in the future, or what form they need to take. It is important that there is a framework in place that can provide for suitable and effective inquiries, which command public confidence and produce valuable reports.

The Inquiries Bill

The consultation exercise undertaken during 2004 allowed the Government to draft the Inquiries Bill and have it ready for introduction at the start of the current Session of Parliament. It has now completed its proceedings in the Lords and will have its Second Reading in the Commons on 15th March. The Bill in essence reflects the views expressed in the consultation and set out in the Summary of Responses.

The Committee's report is clearly of immediate relevance to current Parliamentary debate on the Inquiries Bill, and indeed the Committee has offered some detailed comments and suggestions on the Bill. Below we set out briefly the aims of the Bill and the policy underlying its provisions.

The Bill has been amended during its passage through the House of Lords, and the following description relates to the Bill in its amended form. The amendments made by the Government have had the effect both of giving Parliament a clear role and of strengthening the involvement of the chairman in key decisions. The amendments respond to concerns on these issues expressed in the House of Lords, and are also relevant to some of the points raised in the Committee's report. Indeed many of the detailed issues raised by the Committee have also come up in debates in the House of Lords, and this response reflects the line the Government has taken there.

The Inquiries Bill is designed to provide a comprehensive statutory framework for inquiries into events that have caused, or have the potential to cause, public concern. It is not intended that every future inquiry will be conducted under the Bill; there are inquiries which operate very effectively on a non-statutory basis, or on the basis of general statutory powers in the health field, for example. However, the Bill provides a suitable basis that can be used, when needed, for the most substantive inquiries. It draws together and replaces much of the existing legislation on inquiries, including the Tribunals of Inquiry (Evidence) Act 1921 and also a great deal of more recent subject-specific legislation which, as the Committee notes, has been used more frequently than the 1921 Act over the last thirty years. The Bill incorporates key aspects of the current legislation, such as powers to compel witnesses, and also clarifies some points that have not, until now, been dealt with in general legislation, such as the publication of reports. It also contains new measures designed to help improve the effectiveness of inquiries and keep costs

under control, including a power to make rules of procedure for inquiries in secondary legislation.

In discussing the Bill, the Committee has drawn some comparisons with the previous legislation. The Government believes that it would be helpful to extend this useful exercise, for illustrative purposes, and the following table sets out the similarities and differences on key points relating to the arrangements for inquiries under the 1921 Act and under subject-specific legislation, for non-statutory inquiries, and for inquiries under the Inquiries Bill as the Government proposes.

Issue	**1921 Act**	**Subject-specific legislation**[3]	**Non-statutory**	**Inquiries Bill**
Who sets up an inquiry?	Secretary of State or Monarch[4]	Appropriate Secretary of State, Minister or Department	Appropriate Secretary of State or Minister	Minister, including Secretary of State and Ministers in devolved administrations
Is Parliament involved in the process?	Yes. By passing resolutions Parliament provides for inquiries to be given the powers in the 1921 Act.	No.	No.	Yes. Ministers must make a statement to Parliament about the establishment of an inquiry, its terms of reference and its membership[5].

[3] Although there are many different pieces of subject-specific legislation, it is possible to draw out some broad similarities between them.

[4] The 1921 Act applies only to inquiries established by a Secretary of State or Monarch after resolutions of Parliament, but it does not oblige the Secretary of State or Monarch to establish such an inquiry if the resolutions have been passed. The discretion as to whether to establish an inquiry remains with the Government or the Monarch. The Monarch's power would, of course, be exercised on advice from the Government. In practice it has only been exercised once, in relation to a Royal Commission set up in 1924.

[5] An opposition amendment passed at Third Reading also provides that, in cases where the events being inquired into related wholly or primarily to alleged Ministerial misconduct, Ministers can ask Parliament to approve the establishment of the inquiry, its terms of reference and its chairman.

Who appoints the inquiry panel?	Secretary of State or Monarch	Appropriate Secretary of State, Minister or Department	Appropriate Secretary of State or Minister	Minister (consulting chairman about other panel members)
Who sets the terms of reference?	Secretary of State or Monarch[6]	Appropriate Secretary of State, Minister or Department	Appropriate Secretary of State or Minister	Minister, after consultation with the chairman
Can the inquiry compel evidence?	Yes. It has the powers of the High Court. If someone refuses to comply, the inquiry chairman can certify a matter to the High Court to be treated as contempt of court.	Yes, in general. Under much of the legislation, it is a criminal offence not to comply, or to distort or suppress evidence.	No. Has to rely on persuasion.	Yes. Inquiry chairman can require witnesses to attend and to produce documents or things under their control. It is a criminal offence not to comply, or to distort or suppress evidence. The chairman can also ask the High Court to enforce an order.
What privileges are there for witnesses?	Witnesses cannot be forced to produce anything they could not be compelled to produce in court.	In many cases, none. In others, witnesses cannot be forced to produce anything they could not be	None but cannot be forced to give evidence	Witnesses cannot be forced to produce anything they could not be compelled to produce in court.

[6] By convention, the terms of reference have often been included in the resolutions of Parliament, but there is no statutory obligation to do so.

		could not be compelled to produce in court.		
Are proceedings public or private?	There is a presumption in favour of public access. The panel can restrict public access in the public interest.	Usually no presumption either way. Some legislation gives explicit discretionary powers for the Minister or chairman to hold inquiries in private.	As determined by Secretary of State or Minister in first instance then by Chair in course of the Inquiry	There is a presumption in favour of public access. The Minister or chairman can restrict public access if it is required by law, in the public interest or conducive to the inquiry fulfilling its terms of reference.
What protections are there for the panel?	None. Panels usually have to be given indemnities by the Government.	None. Panels usually have to be given indemnities by the Government.	None. Panels usually have to be given indemnities by the Government.	Immunity from civil suit.
Does the report have to be published?	No.	Not in general.	No.	Yes.
Does the report have to be laid before Parliament?	No.	No.	No.	Yes.

Response to recommendations

1) We agree with Lord Woolf's concerns over the current provisions in the Inquiries Bill and recommend that decisions about the appointment of judges to undertake inquiries should be taken co-equally by the Government and the Lord Chief Justice or senior law lord.

The Government believes that a Minister must be able to appoint those panel members who possess the most relevant skills and experience and who are most appropriate to undertake a specific inquiry. The Bill recognises this by setting this procedure out in statute, including a requirement for the Minister to consider the need for expertise and impartiality when making an appointment. The Committee sets out, in paragraphs 39 to 58, a detailed analysis of the benefits and drawbacks of using judges to chair inquiries. The Government agrees that there should be no presumption that a judge should chair an inquiry and we envisage that many future inquiries will have non-judicial chairman.

In Lord Woolf's memorandum to the Committee he stated that "The Lord Chief Justice should be entitled to say not only who, but whether, a judge should conduct the inquiry at all." The Government acknowledges that the decision to appoint a judge to an inquiry panel will involve considering the impact upon the judiciary and the administration of justice. Those are of course important factors, and the Government believes that the Lord Chief Justice (or other appropriate senior judicial figure) should be consulted about them. However, they are not the only factors and they have to be weighed against others, including the level of public concern and the suitability of the issue at hand for investigation by someone with judicial training and experience.

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. The Government is therefore unable to accept the Committee's recommendation, which would give the Lord Chief Justice or other senior judge a right of veto over the appointment of any serving judge. Equally, there is no suggestion that either the

Government or the Lord Chief Justice can order an individual judge to carry out an inquiry.

The Lord Chief Justice put this issue in perspective when he gave oral evidence to the Committee last December. He said that, in practice, the Government was highly unlikely to appoint a judge against the wishes of the Lord Chief Justice, going on so say that "If the Lord Chancellor of the day found the Chief Justice was unhappy about a judge taking part in an inquiry, the Lord Chancellor would be hugely influenced by this and would not, I would have thought almost inevitably, pursue his request." The Government fully agrees with this view. It is also the case in practical terms that the work of finding an individual judge who is available and willing to conduct an inquiry will be carried out via the office of the Lord Chief Justice or appropriate colleague. Thus in practice the Committee's recommendation will be followed, but the Government does not accept that there should be a right of veto in the legislation.

2) We agree with and endorse the view that the use of "wing members" brings expertise, reassurance, support and protection to inquiry chairs. We particularly recommend the use of panels in politically sensitive cases as a non-statutory means of enhancing the perception of fairness and impartiality in the inquiry process. We also recommend that where judges are seen as the most appropriate chairs, they should usually be appointed as part of a panel or be assisted by expert assessors or wing members. (paragraph 73)

The Government agrees with the Committee that "wing members" (i.e. members of the inquiry panel other than the chairman) can often bring real benefits to an inquiry. The Government agrees that, when an inquiry is being set up, careful consideration should be given to the form of the inquiry panel.

It is important to bear in mind that different constitutions of panels will be appropriate to different sets of circumstances. In response to some events it may be best to appoint a single chairman, capable of working through the facts and reaching conclusions expeditiously and precisely. In other circumstances, it may be better to appoint a multi-member panel who are able to bring a wide range of experience and specialist expertise to the investigation. The considerations that are set out in clause 8 and clause 9 of the Bill require the Minister to ensure that the panel has the correct balance, expertise and impartiality to undertake the inquiry. The Minister must have regard to these considerations when deciding both how many members to appoint and who those members should be.

As the Committee recognises in paragraph 62, there will still be cases in which it is appropriate to appoint a single chairman. Experience from past inquiries shows us that in the correct circumstances a single Chairman (supported, as appropriate, by assessors) can run a highly effective inquiry and produce valuable and widely accepted conclusions. The Government does not therefore believe that it would be appropriate to set out any presumptions in legislation about panel membership. Of course, the Committee does not make any such suggestion.

The Committee may also wish to note a relevant amendment to the Inquiries Bill. Sub-section 2 of clause 6 requires the Minister to make a statement to the relevant Parliament or Assembly on how many panel members are to be appointed to an inquiry panel. This will provide Parliament with an opportunity to consider the proposed form of the inquiry panel, and will help ensure to that the highest level of public confidence in the inquiry panel will be achieved.

3) It is essential that the terms of reference enjoy broad consensus and are drawn up in a way which allows full and proper examination of the facts and do not fetter the inquiry in its task. We recommend that the chair of an inquiry should have the ability to negotiate the precise terms of reference before agreeing to undertake the inquiry. We also recommend that the Inquiries Bill should provide specifically for a short period of consultation after any announcement to ensure that the final terms of reference meet the expectations of a particular inquiry. This should include parliamentary involvement.

The Government accepts the general principles that lie behind this recommendation and believes that much of this is now effectively met in the revised Bill through clauses 4, 5 and 6.

The Government believes that in practice an inquiry chairman will always be consulted about the terms of reference, not least because he will not take up the post unless he is happy with them. There was considerable debate both at Grand Committee and at Report stage in the Lords on how the terms of reference should be agreed. Clause 5 of the amended Bill contains a specific requirement to consult the chairman about the terms of reference.

In many cases, the Minister will consult more widely on the terms of reference, for example by seeking the views of those affected by the events being inquired into. The Government proposes that guidance should make clear that this is desirable. During Grand Committee, there was a discussion about whether the Bill should

contain a specific requirement for wider consultation, but it was generally felt that it would be difficult to specify exactly how widely the Minister should be expect to consult. There were concerns that such a requirement would by likely to lead to judicial reviews from any groups who felt that they ought to have been consulted.

The Committee recommends that the Inquiries Bill should provide specifically for a short period of consultation. The Government's position remains as set out in "Effective Inquiries" and the Summary of Responses; such consultation could be valuable but cannot be a universal requirement. The Bill has been drafted to allow for appropriate consultation. The process is as follows: clause 5 requires the Minister to specify a setting-up date within this instrument appointing the chairman, and that before that date, the terms of reference must be set out to the chairman. It follows that there can be a variable period of time allowed for consultation. If there needs to be lengthy consultation, the setting up date can be several months away. If an inquiry is very urgent, or if wider consultation is not needed, it can be set up more quickly. The period of time between appointment to the panel and the setting-up date also allows for the practical steps to be taken of convening the inquiry, such as finding and equipping a venue.

The Committee does not specify what Parliamentary involvement there should be in setting the terms of reference. The Government believes that the Minister, who is setting up the inquiry, should take the final responsibility for the terms of reference. The Minister is accountable to Parliament and can be questioned on any aspect of the inquiry through Parliament's usual processes (parliamentary questions etc). In addition to this, clause 6 of the revised Bill requires the Minister to make a statement to Parliament (or the relevant Assembly) about the inquiry's terms of reference.

4) We recognise that circumstances may sometimes require Inquiries to hold all or part of their proceedings in private. Ensuring the independence of the inquiry will serve to reinforce trust in such circumstances. Although the 1921 Act provides for a presumption of openness we are concerned that the Government's new Inquiries Bill creates wide powers for ministers to restrict access to inquiries, making public accessibility subject to restriction notices. This subverts accepted presumptions of openness and public interest and we recommend it should be reversed.

The Government agrees that the starting point for inquiries under the Inquiries Bill should be full public access. Clause 18 of the amended Bill gives added emphasis to the basic position that members of the public, and the press, should be able to

attend hearings and view all the evidence. However, as the Committee recognises, there will be circumstances in which it is appropriate to hold all or part of an inquiry in private. Clauses 19 and 20 therefore set out the circumstances in which public access can be restricted.

The Government cannot accept the Committee's recommendation, because it does not agree with the Committee's premise in paragraph 88 that in the Bill the obligation of public access is subordinate to the power of restriction. There is a presumption of public access in the Bill. Restriction notices and restriction orders can be issued only when they are justified under the criteria set out in clause 19. The Government therefore believes that the Bill as it stands creates the presumption that the Committee wishes.

The 1921 Act is unusual in that it places public access decisions solely in the hands of the inquiry chairman. Some of the legislation being replaced by the Bill provides for the Minister setting up the inquiry to decide whether it should be held in public or in private[7]. Other legislation[8] is silent on the point but, as the Committee recognises, the courts have upheld Ministerial decisions to hold inquiries in private under it.

Reflecting practice in past inquiries, clause 19 allows either the Minister who set up the inquiry or the chairman to issue restrictions on public access. But it makes use of these powers subject to safeguards and in doing so goes further than much of the current legislation. It does this by setting out strict criteria that must be met before public access can be restricted. Restrictions can be imposed only if they are required by law, conducive to the inquiry fulfilling its terms of reference, or in the public interest. Clauses 19(4) and 19(5) narrow these criteria further, by setting out the matters that must be considered when determining whether a restriction is in the public interest. As the Committee points out, when it quotes the Council on Tribunals in paragraph 86, public hearings can be very important in reassuring the public that a full investigation has taken place. Clause 19 explicitly requires the Minister, or the chairman, to consider the extent to which any restriction will inhibit the allaying of public concern, which will usually be a factor that weighs heavily in favour of public access.

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[7] For example, s.49 of the Police Act 1996 and s.81 of the Children Act 1989.
[8] For example, s.84 of the National Health Service Act 1977

5) The time has clearly come to reformulate the Salmon principles. We recommend that the procedures followed by inquiries in the last ten years should be reviewed. In particular there should be a re-evaluation of how to ensure fairness within the inquisitorial process while minimising the adversarial, legalistic element of inquiries. Good practice in this field could be codified, possibly through the rule making powers contained in the Inquiries Bill (Paragraph 104).

The Government agrees fully with this recommendation. It acknowledges that the Salmon principles have been refined by recent inquiries and that it is necessary to review how the principles apply to modern inquiries. The Government agrees with the Committee, that the main focus of a re-interpretation of these principles is to consider how to preserve the underlying aim of ensuring fairness, without introducing costly, adversarial elements. A Government amendment was made to the Inquiries Bill at Third Reading in the Lords, which reinforced the common law position that the chairman must act fairly. However, the Government agrees with the Committee that the most appropriate place to handle these matters in detail is in rules of procedure.

The Government published a discussion paper in December 2004 on the areas rules might cover, including legal representation. The Government will consult on rules later this year.

The Government agrees with the evidence given to the Committee that it is for the inquiry chairman to decide on appropriate levels of representation throughout the inquiry. Rules will provide a framework within which these decisions can be taken. Such a framework should promote the overall objective of a fair inquiry but without having a detrimental effect on the cost and length of proceedings. Clause 41 provides for the rules applying to United Kingdom inquiries to be incorporated in a Statutory Instrument approved by Parliament, and such an Instrument will be tabled as soon as possible given the full consultation which is crucial.

6) We welcome the production of guidance by the Cabinet Secretary on record keeping and recommend that that it should be published alongside other FoI material such as the publication scheme, and that the level of compliance with it should be regularly reviewed. (Paragraph 111)

The Government welcomes the Committee's endorsement of the Guidance on Record Keeping in Private Offices issued by the Cabinet Secretary in June 2004. The Guidance is published on the National Archive Website. It has also been

published on the Cabinet Office website. The Cabinet Office will keep the Guidance under review to ensure that it continues to reflect effective working practices and that Departments are operating their systems in accordance with the Guidance.

7) We welcome the powers in the Inquiries Bill enabling chairs to administer an oath and other powers of compulsion. We recommend that, in addition to the appropriate statutory powers, inquiries dealing with public bodies should require the permanent heads of such bodies to certify that rigorous systems have been applied for the discovery of documents and noting any problems. This "certificate" could form part of the "core bundle" of inquiry documents.

The Government agrees that the requirement for "certification" suggested by the Committee could be a useful tool for inquiries. Public bodies should co-operate as fully as possible with inquiries, and a requirement for "certification" could help to provide public reassurance of this. The Government believes that it should be for the inquiry chairman to decide whether or not to impose such a requirement in each case. Guidance to inquiry chairmen or secretaries could cover this point.

It is important to note that gathering evidence for an inquiry will not always be easy, particularly if the events being inquired into occurred some time ago. Sir Brian Bender's evidence, which is quoted by the Committee in paragraph 115, illustrates this point. A "certificate" could not guarantee that all documents have been found, only, as the Committee suggests, that rigorous efforts have been made to find them.

This recommendation would not require any additional provision in the Inquiries Bill.

8) We acknowledge that setting arbitrary deadlines can only be counterproductive in a process which is intended to establish the facts, provide public reassurance and in many cases have a healing and cathartic effect. Nonetheless this is not incompatible with announcing an estimated duration on the model of the BSE or Butler Inquiries. Such a timescale would be non-binding and open to being revisited in light of developments and we so recommend. (Paragraph 123)

The Government considers that to set an estimated completion time at the outset could place unnecessary pressures and expectations on the inquiry, before the chairman has had the opportunity to assess the scale of the task involved. The most serious consequence of such pressure would be if a deadline caused an

inquiry to curtail some its investigations or to act too hastily in assessing evidence. It is the role of the chairman, not the Minister, to plan the inquiry. Public confidence in the inquiry could be undermined if the chairman has to continually return to the Minister seeking an extension, giving the impression of an inquiry proceeding slowly, even though the inquiry quite legitimately requires further time to fulfil the terms of reference.

However, the Government can see value in announcing estimates of duration and cost once the panel has had a chance to carry out some initial work and to develop a clear idea of the task ahead.

The discussion paper on possible areas for rules of procedure suggested that rules could set out key stages of the inquiry and require a provisional timetable. Good inquiries will be doing this in any case alongside constant communication with the public and key participants. The consultation on rules could cover whether there would be benefit in codifying this good practice in secondary legislation.

9) We recommend that Ministers should announce a broad budget figure fairly early on at the start of an inquiry. Any increases over the announced limits would then need to be publicly explained at the end of the inquiry when final costs are published. (Paragraph 127)

The Government considers that it is more important to encourage good budgeting throughout the inquiry, in a close dialogue with the sponsor Department than to provide an estimate for total cost at the outset. As with reservations about setting an estimated length, the Government would be concerned that if the early estimate turned out to be inadequate, public confidence in the inquiry would be damaged even if the excess were for justified reasons. The chairman is responsible for planning the inquiry which includes budgeting for proceedings following an assessment of the work likely to be required. Once again, consideration could be given to whether procedure rules should require budget estimates to be made public.

10) We recommend that while it is compiling central guidance on the calling, use and procedures of inquiries, the Government should consider whether research should be undertaken by an appropriate body, such the National Audit Office, into the value for money which inquiries represent. This should assess their outcomes and evaluate alternatives. (Paragraph 133)

The Government recognises the importance of inquiries providing value for money, and the Inquiries Bill includes measures aimed at managing costs. Ministers only call an inquiry after careful consideration of how much an inquiry is likely to achieve in terms of restoring public confidence and preventing recurrence and after they have assessed the benefits against the potential costs of proceedings. Whatever the cost of an inquiry it cannot be subject purely to a value for money analysis, the reasons for establishing inquiries are complex, they are only called when something beyond normal investigation methods are required and the Minister will always consider all other mechanisms that are suitable before setting up an inquiry. For these reasons the Government have decided not to accept the Committee's recommendation for research. Inquiries are funded out of Departmental budgets, and therefore Departments are accountable for inquiry costs in the same way as for any other expenditure

11) We welcome the requirement in the Inquiries Bill for reports to be published in full. We recommend that the presumption should be for chairs to handle publication. This should be reflected in the Bill. Publication arrangements should ensure fairness to all those concerned and the Government should allow adequate time for Parliamentary consideration and debate. (Paragraph 136)

The Government believes that publication of inquiry reports plays a vital part in reassuring the public that the events causing concern have been investigated fully, and, where appropriate, that measures have been identified to prevent them from happening again.

The Inquiries Bill provides that the Minister, to whom the report is submitted, will have responsibility for publishing the report unless alternative arrangements are made with the chairman. This reflects the practice in most past inquiries. Ministers published the reports, for example, of the Dunblane Inquiry, the Stephen Lawrence Inquiry, the Royal Liverpool Children's Hospital Inquiry, and also the Bristol Royal Infirmary Inquiry, whose chairman, Sir Ian Kennedy, is quoted in paragraph 134 of the Committee's report. It makes sense for Ministers to deal with publication if there needs to be a certain level of Parliamentary involvement. In the past, for example, reports have often been published by Ministers as Command Papers, or, sometimes, as a Return to an Address, and presented to Parliament. It can also be easier in practical terms for a sponsoring Department to take responsibility for publication, since it will have arrangements already in place for the printing and publication of reports.

Under the Bill, an inquiry is set up by a Minister to investigate events that have caused public concern and to report back to the Minister. Once that report has been submitted, the Government believes that any further steps to be taken with it, such as publication or laying it before Parliament, should logically be the duty of the Minister. However, the Government does recognise that there may be circumstances in which it is more appropriate for the inquiry chairman to make arrangements for publication at the time of submitting the report, and the Bill has been designed to allow for this. What is appropriate will depend on the circumstances. For example, Lord Hutton made the arrangements for publication and printing of his report, although the Department for Constitutional Affairs laid the report before Parliament. Dame Janet Smith arranged for the publication of the first and sixth volumes of the Shipman Report, but the Department of Health published the other four volumes as Command Papers, because they contained recommendations.

The Government agrees with the Committee that it is important that Parliament is able to consider inquiry reports. A new clause, Clause 26, has been added to the Inquiries Bill at Report in the Lords. This requires the Minister to lay the published inquiry report before the UK Parliament or, in the case of inquiries set up by the devolved administrations, before the relevant Parliament or Assembly.

12) We recommend that departments should have a duty to report on the implementation of recommendations at regular intervals, and in any case within the first two years of the end of an inquiry. These reports should cover the extent to which recommendations have been met and describe the wider cultural changes which have been brought about as a result. Select committees are well placed to undertake this kind of assessment on the outcome of an inquiry on the basis of such departmental reports as part of their core tasks, and we recommend that the Liaison Committee should support the inclusion of such work in select committee work programmes. (Paragraph 147)

The Government agrees that it is important for Departments to maintain a focus on the implementation of recommendations on the conclusion of inquiries, in order to ensure that recommendations which have been accepted are implemented. Depending on the range of issues in question it may be appropriate for departments to manage this through a specially constituted project board. Alternatively, and possibly after initial actions and assessment by such a board, recommendations may be integrated within the departmental planning process to

ensure effective oversight alongside the overall objectives of the department. The Government agrees that departments should be encouraged to publicise how they have dealt with Inquiry recommendations at suitable intervals. The Government notes the final part of this recommendation which is for the Liaison Committee to consider, but the Government would have no objection to such a procedure.

13) If they are to be successful, recommendations need to be workable in practice. We recommend that inquiries should be expected and enabled to test out potential recommendations and proposals prior to finalising their reports, although nevertheless, chairs of inquiries should not allow this process to undermine their independence in any way. (Paragraph 152)

The Government agrees that it is very important that recommendations are workable. We welcome the suggestion put forward by the Chief Medical Officer, Sir Liam Donaldson, in his oral evidence to the Committee, that inquiry panels should take steps to test out the practical value of their potential recommendations, providing as the Committee point outs, the independence of the inquiry is not undermined. We would support the idea that inquiry panels should be encouraged to consult experts and practitioners before finalising their recommendations, when such consultation would be helpful and more likely to secure recommendations that are more practical. It seems likely, from the nature of the evidence quoted in paragraphs 148 to 152 of the Committee's report, that the Committee is proposing something more akin to consultation than practical testing.

No legislation would be needed to implement this recommendation; it could be included in guidance to inquiry panels. The Government believes that it should be for individual inquiry panels to decide whether to undertake consultation on proposed recommendations, and what form any consultation should take. There may well be cases in which the most appropriate people to consult are those with close links to the subject matter of the inquiry, and the panel will have to consider very carefully whether consultation is appropriate and how it should be done. It is important that this process is for the benefit of the inquiry panel in better framing the its recommendations; the panel must be sure that consultation on these issues does not undermine public confidence in its independence.

The Government can see considerable difficulties with a system that would require inquiry panels to "pilot" their potential recommendations and to carry out practical tests.

14) We should not keep reinventing the inquiry wheel. We welcome the concept of a support unit but recommend the Unit's size and role should be limited and proportional to the relative infrequency of large inquiries and to the degree of guidance and advice which can be made available through other means. The accumulated experience of past inquiries, such as the procedural elements of inquiry reports, subsequent lectures, presentations and internal notes as well as official guidance should be consolidated and made available on a publicly accessible website. Given its small size we further recommend that such a support unit should be co-located with a central government department such as the Cabinet Office or the Department for Constitutional Affairs. However, in recognition of the need for independence for inquiries the unit should operate independently of its host department and should include secondees from bodies versed in investigatory processes such as the NAO, the Ombudsmen community and Select Committee staff. (Paragraph 161)

The Government agrees with the Committee that we should not keep reinventing the inquiry wheel. To that end, the Cabinet Office is currently consulting departments on guidance for inquiries; this will be placed on the Cabinet Office website shortly. Other internal guidance will be issued as necessary to assist sponsor departments in their role. Work on guidance will continue in parallel with the development of Rules of Procedure as provided for in the Inquiries Bill.

The Government also agrees that a central Inquiries Unit should be small, bearing in mind the relative infrequency of large inquiries. The main task of the Unit will be to maintain the guidance in an accessible form, to serve as a contact point for queries, and to help those involved with inquiries to contact people with previous experience when they would find this helpful. This work can be properly carried out by a Government Department, without compromising the independence of any inquiry. The Government does not believe that it would be practical to maintain a unit outside any Department to do this work, or to require a staff of secondees, given that the unit's level of work will vary depending on the number of inquiries. The Government believes that it is most appropriate for the work to continue to be carried out by designated staff in the Propriety and Ethics Team in the Cabinet Office, which is the central contact point across government for guidance on inquiries.

15) Drawing on the foregoing and in the light of the experience now available of the inquiry process, we believe it should be possible to draw up a set of principles defining good practice for an inquiry (Paragraph 166)

16) We recommend the following principles as a basis for discussion and an exercise.

Principles of good inquiry practice
Inquiries should:
• **Adopt panels as the preferable form as they ensure expertise, provide public reassurance and reinforce independence;** • **Have terms of reference which enjoy the widest possible consensus and are subject to a period of appropriate deliberation and discussion;** • **Have a presumption of openness;** • **Set budget limits, publish costs and explain overruns;** • **Set time limits in the original announcement and justify extensions publicly;** • **Build in procedural lesson – learning and evaluation of the inquiry process;** • **Have rigorous, perhaps parliamentary, audit of recommendations and lessons;** • **Test emerging findings and proposals for feasibility and practicality;** • **Ensure fairness but minimise the use of Counsel for the parties; and** • **Ensure access to papers and people by legal/subpoena powers or other informal assurance systems.**

The development of Rules of Procedure under clause 41 of the Inquiries Bill, and the revision of the Cabinet Office's guidance to those conducting inquiries, will cover many of these principles. However, this is subject to the Government's views expressed above in response to earlier recommendations covering several of the principles. We see no need for the principles to be set out in a further document, and to do so would run against the aim of having coherent and compact rules and guidance which those involved in inquiries can use. Clause 41 provides for the rules applying to United Kingdom inquiries to be incorporated in a Statutory

Instrument approved by Parliament, and such an Instrument will be tabled as soon as possible given the need for full consultation.

17) We recommend that Clause 1 of the Inquiries Bill should be amended to provide for parliamentary resolutions where the events causing public concern which may have occurred involve the conduct of ministers. We further recommend that the procedural framework for an inquiry called under this new sub-clause which we have described should be the subject of a Parliamentary Resolution once the Bill has passed into law. (Paragraph 178)

The Government does not accept this recommendation, which it believes would lead to confusion and delay in the setting up of inquiries, and the prejudging of their conclusions. The Government has accepted the need for a greater role for Parliament in the inquiry process, and has amended the Inquiries Bill to ensure that statements are made to Parliament about the establishment, suspension or ending of inquiries, and that reports are laid before Parliament. The Government believes that this provides for appropriate Parliamentary scrutiny for the types of inquiry that are likely to be established under the Inquiries Bill.

As reflected in the Inquiries Bill, the purpose of an inquiry is to investigate events which have caused, or may cause, public concern, with the aim, among others, of identifying the causes of these events. The Government does not believe that it would be helpful at the commencement of this process to attempt to second-guess the inquiry by identifying whether the conduct of a Minister was likely to be a cause of the relevant events.

The Government notes that the Committee's amendment would require some further definition of the "conduct" of a Minister. It is not entirely clear what aspects of behaviour, responsibility etc. should be included in this term. Many interpretations of "Ministerial conduct" would in fact be subject to the Ministerial Code. As the report itself notes, breaches of the Ministerial Code should be dealt with differently from other issues and we note the suggestion (recommendation 22) that these should fall within the remit of "an independent parliamentary mechanism" such as the Parliamentary Ombudsman. It is likely that the reference to "conduct of Ministers" in the Committee's proposed amendment would therefore have to be given a broader definition, encompassing Ministerial decisions (and omissions) in the course of setting Government policy.

It is not clear from the Committee's recommendation when, or by whom, the decision should be taken that the events in question "involve the conduct of

Ministers". If the intention is to give Parliament power to compel the Government to establish an inquiry, it should be borne in mind that an Order in Council is normally passed on the advice of a Minister of the Government, not by any process separate from Government. In practice, it would fall to the Government to decide whether any inquiry should be established under the Committee's proposed procedure, or under the procedure set out in the Bill. The amendment would therefore mean that when a Minister is setting up an inquiry, he or she must decide whether it is likely to consider the conduct of Ministers, and use the appropriate procedure.

The Government is concerned that, in practice, it would prove very difficult to predict whether an inquiry will consider Ministerial conduct. Many substantial inquiries into public services may need to consider the impact on events of Ministerial decisions, even though those decisions may be several steps removed from the events under investigation, because Ministers have responsibility for the overall running of those services. In some past inquiries, such as the Foot and Mouth Inquiry, this will have been reasonably clear from the start. In others, it may not be apparent until the inquiry is underway. The North Wales Child Abuse Inquiry, for example, had nothing in its terms of reference about the actions of Ministers, but made a number of criticisms of decisions taken in the Welsh Office.

It is not presently clear what would happen if an inquiry set up under the normal procedure in the Bill subsequently identified a need to examine the conduct of a Minister. The Government believes that it would be wrong to exclude such matters from the scope of any inquiry, but is concerned that the legal basis of an inquiry to consider such matters would be undermined if it had not been established via the procedure in the Committee's amendment. There would be scope for anyone who does not wish to comply with a request for evidence made using the inquiry's powers, or who otherwise wishes to obstruct the inquiry, to adduce the importance of Ministerial decisions as a factor in what happened as a means of challenging its legal basis. It could also provide a basis for challenging the individual decisions or conclusions of such an inquiry.

The Government therefore believes that, were the amendment to be made, most substantial statutory inquiries would have to be set up under the procedure in the proposed amendment, just in case, because it would be impossible to say with any certainty at the start that they would not consider the actions of Ministers. The amendment would thus require most substantial statutory inquiries to be set up through draft legislation (Orders in Council) to be laid before and approved by both Houses of Parliament. The wording of the amendment suggests that the affirmative resolution procedure would be required.

The process could take up significant time, both in terms of following the procedures necessary to lay legislation before parliament and in relation to parliamentary time. By comparison, the process proposed by the Government in the Inquiries Bill is quick, straightforward and transparent. Aside from the potential for delays to the establishment of inquiries, the Committee's proposed procedure would also introduce elements that the Government does not believe would be appropriate for the majority of inquiries. For example, it would expose the panel membership of inquiries to Parliamentary ratification – a prospect which could deter people from allowing their names to go forward and which does not feature in any existing legislation; it was explicitly rejected by the Salmon Royal Commission. It would also enable Parliament to amend the terms of reference after they had been agreed with the inquiry chairman.

It is not clear whether the Committee intends that inquiries set up under the proposed amendment should always be carried out by Parliamentary Commissions, as referred to in recommendation 20 below, or whether that recommendation relates to a separate category of inquiries. The Government believes that whilst the setting up of a Parliamentary Commission might be appropriate in some cases, subject to the points made under recommendation 20, Parliamentary Commissions would not be appropriate for the majority of recent substantial inquiries of the kind which in future could be set up under the Inquiries Bill.

Finally, it is unclear how the proposed amendment would fit with the rest of the Inquiries Bill. The proposed new clause itself provides inquiries with powers of compulsion, so the Government assumes that the Committee does not intend clause 21 of the Inquiries Bill, or other related provisions, to apply. The recommendation (though not the draft amendment) suggests that, once the Inquiries Bill has passed into law, there should be a Parliamentary "Framework Resolution" regarding the procedural framework for this type of inquiry. This seems to be an unnecessarily "belt and braces" approach, if the rest of the Inquiries Bill is to apply, since Clause 41 relates to the making of rules to deal with matters of evidence and procedure in relation to inquiries. The Government therefore concludes that the procedure is intended to be entirely separate from the rest of the Inquiries Bill. It is not entirely clear why this procedure should therefore be included in an amendment to the Bill. After all, as the Committee points out in paragraphs 210-215 of its Report, Parliament already has the power to establish commissions of inquiry and to furnish those commissions through resolutions with powers equivalent to those of Select Committees.

The Government agrees that any amendment of this kind would need parallel amendments concerning inquiries conducted for devolved administrations, including those involving more than one administration. These could be of some complexity but given the above comments this has not been considered further.

An Opposition amendment carried at Third Reading in the Lords seeks to provide a facility for inquiries under the Bill relating wholly or mainly to allegations of ministerial misconduct to be capable of having their terms of reference and chairmanship confirmed by Parliamentary resolution, though this would not be a mandatory requirement.

18) We recommend that Ministers should justify their decisions whether to hold an inquiry or not on the basis of a published set of criteria and propose the following as a possible basis for this (Paragraph 184)

- **Can the nature of the problem be clearly described (e.g. a serious financial or economic loss, a major accident possibly involving fatalities, serious physical harm or death to one or more persons; a serious and demonstrable failure of public policy)?**
- **Was it likely that political, administrative or managerial failing were a factor?**
- **Are there clear implications for public policy including new or poorly understood issues?**
- **Is there a high and continuing level of public concern over the problem?**
- **Is there likely to be an adverse impact on public confidence in this area which cannot otherwise be satisfactorily resolved?**
- **Are any established alternatives available (e.g. the legal system; the complaint and redress system; internal and external regulatory systems)?**
- **Have these alternatives been exhausted or are they considered insufficient or inappropriate to meet the level of public concern?**
- **Do the potential benefits outweigh the estimated costs (financial and other) of an inquiry?**

The table above lists factors which are certainly likely to be weighed in any decision to call an inquiry and may affect the form of the inquiry. Basically, inquiries are not set up unless there is a clear perceived need, and an expectation that the conclusions and recommendations reached will be worthwhile and can lead to effective follow-up action. Also, inquiries are unlikely to be set up if there are suitable alternative or preliminary means of addressing the questions, which have not yet been employed.

These factors are very likely to have been considered in all decisions to set up recent inquiries. However, the Government does not believe that the factors are generally capable of being quantified into a set of criteria with definite thresholds for action. Inquiries result from a huge variety of events, as Annex 1 to the Committee's Report demonstrates. Each decision as to whether or not to set up an inquiry needs to be taken on its merits.

Some inquiries are called only when application of a range of investigative and regulatory procedures have not led to a final conclusion (for example, in the subject area of medical malpractice). The question of whether or not to call such an inquiry will be dictated by procedures relating to the subject area and more capable of definition than is the case in regard to some comparatively unprecedented event.

Clause 6 of the Inquiries Bill, as amended, requires a statement to be made to the relevant Parliament or Assembly when an inquiry is set up. This will enhance the opportunity for the Parliament to discuss the reasons for setting it up, and if necessary to question whether it is necessary.

It is not clear from the Committee's recommendation how, and in what circumstances, it is envisaged that the Government should have to justify a decision not to hold an inquiry. Ministers often receive requests from interested persons or groups to set up inquiries on a wide variety of subjects, and will no doubt continue to receive such requests in the future. In each case the protagonists will adduce reasons including most or all of the above factors. If a Minister decides not to set up an inquiry, that reflects a view that the reasons though existent are not sufficiently strong. Since the above factors are not quantifiable, that too has to be a matter of judgement. Of course, Parliament can call upon Ministers to justify any particular decision, including one not to set up an inquiry on a particular matter, through procedures such as Parliamentary Questions, Early Day Motions, and Adjournment Debates.

19) We recommend the development of clear criteria for calling inquiries and straightforward categorisation establishing a distinction between those which are politically sensitive and those which are not, on the basis of our exemplars, to ensure that calls for judicial public inquiries and the appropriate involvement of Parliament can be properly assessed and decisions on form can be taken on that basis. (Paragraph 193)

Paragraph 192 of the Report lists some inquiries which the Committee suggests had a strong political element. However many more, indeed most, substantial inquiries consider at some stage the question of whether decisions or inactions by Government, perhaps some time in the past, contributed in some way to the unfortunate events giving rise to the inquiry. For example, the North Wales Child Abuse inquiry concluded that too many changes were imposed in the organisation of local government in Wales and of social services in too short a time span and this increased the scope for abuse to continue undetected. The Government agrees with the idea put forward by Sir Michael Bichard, that inquiries fall along a continuum. We can see considerable scope for debate as to where a line should be drawn between politically sensitive inquiries and other inquiries.

The nature of the events giving rise to inquiries means that many of the participants will have strong views. These views will inevitably vary as to whether the role of Ministers has been central in giving rise to the events, or relatively peripheral. They will vary as to whether it is thought that Ministers have exercised responsibility through their Departments or were or should have been personally involved. Views will also vary as to whether the relevant Ministerial decisions and inactions were justified at the time as part of the normal process of Government; or whether they were taken for reasons of party political advantage rather than in the public interest, were negligent, or even constituted "misconduct".

The Committee have referred to various past inquiries as being "political". However, the Government believes that in many cases such classification is a matter of hindsight. It has depended on knowing which witnesses were called, what issues were explored in detail and how the public, the media and Parliament viewed the progress and outcome of the inquiry. It is far more difficult to classify an inquiry before it has begun, or to establish criteria for a separate category of inquiries which are "political". The Government has already pointed out, in response to recommendation 17, that many inquiries may well consider the actions of Ministers to some extent.

We do not believe that it is possible to set out, in the objective legal drafting required of an Act of Parliament, criteria for setting up inquiries in different ways

according to the possible extent of Ministerial involvement. Any procedure would be subject to the same difficulties as outlined in the response to recommendation 17 in regard to the Committee's proposed amendment.

When allegations concerning Ministerial decisions are made, they receive very full coverage in the media. There are plenty of ways in which concerns about the allegations can be expressed in Parliament, and Ministers pressed to act in ways which reflect the concerns.

The Government has made amendments to the Inquiries Bill that require Ministers to make a statement to Parliament about any proposal to establish an inquiry, the appointment of the chairman, the terms of reference and the proposed panel. This will provide an opportunity for Parliament to consider, and raise questions about, any inquiries that it considers to be of a political nature. The Government considers these amendments are sufficient for this purpose.

20) The similarity in form of the Franks and Butler Committees with that of a Joint Committee is striking but, as Committees of Privy Counsellors, their nature is fundamentally different and, from a constitutional point of view, less satisfactory. We recommend that in future inquiries into the conduct and actions of government should exercise their authority through the legitimacy of Parliament in the form of a Parliamentary Commission of Inquiry composed of parliamentarians and others, rather than by the exercise of the prerogative power of the Executive. (Paragraph 215)

The Government agrees with Sir Ian Kennedy's comment quoted in paragraph 206 of the Committee's report that "it is open to Parliament to take a much greater role" in inquiries and shares the Committee's belief that members, and Parliament as a whole, have a great deal to offer inquiries. The Franks and Butler Committees are excellent examples of the value of parliamentarians and Privy Councillors to inquiry into sensitive matters and the scrutiny of government. A committee comprised of Privy Councillors, members of both Houses and experts provided the necessary independence and prior experience handling intelligence information. As a result, both these committees were able to investigate effectively issues which were highly controversial but involved matters of national security which needed to be discussed in private, though in each case a report was published.

Therefore, the Government disagrees with the Committee's view that it is constitutionally "less satisfactory" for the Prime Minster to establish a Committee of Privy Councillors to address particular situations that may arise. Parliamentarians

retain the traditional avenues to question Government Ministers. As the Ministerial Code makes clear, Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their departments. This accountability remains.

There is no reason why the good work done by members through the present Select Committee system cannot be translated into a commission equipped to conduct a public inquiry. However, any Parliamentary Commission of Inquiry is ultimately a matter for the House to decide and to appoint and the government would welcome any progress on this issue. Nothing in the Inquiries Bill would prevent an inquiry being set up in a similar way to the Committee's example of the Rhodesian Oil Sanctions Special Commission if it were decided that this was the best way to proceed and the most appropriate way to get to the truth.

However, it is to be noted that the proposal by Government to set up such a Commission in that case proved highly controversial; the Commons Resolution was passed only after a full day's debate, whilst the Lords Resolution was defeated after two hours' debate. Apart from the subject matter of the inquiry, many points similar to those considered in connection with the Committee's inquiry and the Inquiries Bill were raised.

21) We recommend that Standing Order No.145 should be amended to enable the Liaison Committee to consider the value of a proposal that a specific matter of public concern should be the subject of a formal inquiry and, if so, to report a Resolution to the House for its consideration. The House would then come to a final decision. (Paragraph 222)

This recommendation is for Parliament to consider. The Government can see some merit in a formal channel for considering representations made via Members of either House of Parliament concerning whether an inquiry should be set up on a particular issue. The question of finding time for debate of any resulting Resolutions would no doubt be considered within the normal procedures for managing Parliamentary business. A final decision as to whether or not to hold any inquiry under the Inquiries Bill would however have to remain with Ministers, who are accountable to Parliament for the execution of policies and for the expenditure of voted funds.

22) In light of recent events we believe that the time is now right for the Government to reconsider its view that it would be undesirable to fetter the Prime Minister's freedom to decide how individual cases should be handled. Accordingly we recommend that the Parliamentary Ombudsman should be empowered to investigate alleged breaches of the Ministerial Code and other allegations about the conduct of individual Ministers. (Paragraph 228)

The Government does not agree that it would be practical to accept this recommendation. The Ministerial Code acknowledges that Ministers only remain in office for so long as they retain the confidence of the Prime Minister. He is the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards, although he will not expect to comment on every allegation that is brought to his attention. It therefore follows that it is for the Prime Minister to decide whether a specific allegation needs to be investigated and the means by which any such investigation should be conducted.

The Government believes that the Prime Minister needs to retain the right to decide whether an investigation is needed, to act swiftly in serious cases, and take quick decisions. The Prime Minister does not rule out the possibility of asking individuals outside Government to conduct an investigation into allegations of ministerial misconduct but the Government does not support the extension of the role of the Parliamentary Ombudsman for such purposes for the reasons given above.

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