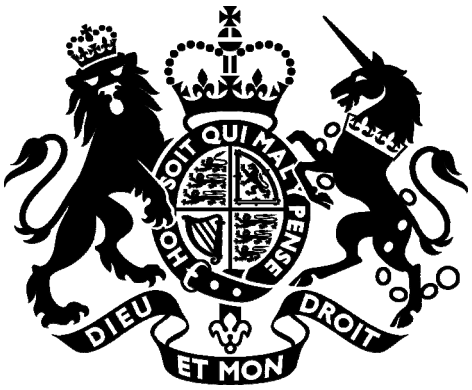
Ministry of Justice

Government Response to the Report of the House of Lords Select Committee on the Inquiries Act 2005

June 2014



Government Response to the Report of the House of Lords Select Committee on the Inquiries Act 2005

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

June 2014

Cm 8903

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at marcia.williams@justice.gsi.gov.uk telephone 0203 334 4289.

Print ISBN 9781474108331
Web ISBN 9781474108348

Printed in the UK by the Williams Lea Group on behalf of
the Controller of Her Majesty's Stationery Office

ID 25061416 07/14

Printed on paper containing 75% recycled fibre content minimum.

Contents

Foreword

Her Majesty's Government welcomes the House of Lords Select Committee's recent report on the Inquiries Act 2005.

Public inquiries are well regarded and valued by the people of this country as a means of holding public bodies to account, investigating matters of concern and maintaining confidence in just and transparent government. They are a means of bringing out into the open, and providing answers to, some of the most troubling events.

A post-legislative scrutiny review of the Act, carried out by this Government in 2010, concluded that the Act itself was generally working well but identified several areas of concern with the practical application of the Inquiry Rules 2006.

Four years on, the Select Committee's timely and thorough report has been a great help in advancing the Government's thinking on such questions as the applicability of the Act, its fitness for purpose, the powers of the inquiry Chair, and how to ensure that best practice is captured and passed on.

Since the post-legislative scrutiny review, eleven inquiries - both under the Act and otherwise - have reported. The Act gives ministers the option of using it or not, and the Government believes it is important to adopt the most suitable approach given the particular circumstances of the matter to be investigated. It is also important that those tasked with running inquiries bear in mind the need to keep them to a reasonable timetable and not to incur unreasonable cost.

The Ministry of Justice works closely with the Cabinet Office in the operation of the Inquiries Act. While the Ministry of Justice is responsible for providing advice to other departments on the application of the Act and the underpinning Rules – and has policy responsibility for the legislation itself – the Cabinet Office has a wider support role, providing guidance on how to establish and conduct public inquiries, liaising between lead departments and the centre of government, and facilitating the interaction between inquiries and Parliament.

The Inquiries Act potentially touches upon every department of state, and the Government has given careful consideration to the Select Committee's 33 recommendations, agreeing with the majority of them. We will implement changes as soon as practicable and, where primary legislation is needed, when parliamentary time allows.

The Select Committee has made a significant contribution to the Government's ongoing efforts to make inquiries more effective and efficient, and the benefits will be seen in the conduct of future inquiries.

Public inquiries which are in the appropriate form, are conducted as speedily as possible, respond to public concerns and investigate the facts thoroughly, are an essential part of an accountable and transparent democracy. Confidence is built by getting to the truth.

Rt Hon Simon Hughes MP
Minister of State for Justice and Civil Liberties

Government response to the Committee's conclusions and recommendations

Introduction

1. The last administration introduced the 2005 Act to give effect to proposals in the consultation paper of the then Department for Constitutional Affairs entitled "*Effective Inquiries*". The consultation arose out of a memorandum submitted to the House of Commons Public Administration Select Committee as part of its "Government by Inquiry" investigation. In summary, the proposals were that the Tribunals of Inquiry (Evidence) Act 1921 was less than ideal for modern inquiries, that subject-specific legislation would not always provide a full and suitable basis for inquiries, and therefore that a new legislative framework was needed.

2. The 2005 Act repealed the 1921 Act and other subject-specific legislation on inquiries that had grown up over the last century. It introduced measures to make inquiries speedier, more effective at finding facts and making practical recommendations, and less costly, whilst still meeting the need to satisfy the public expectation for a thorough and wide ranging investigation. The Act's provisions also aimed to restore public confidence in the inquiry process particularly given the concerns and controversies generated by the conduct of inquiries such as the Bloody Sunday Inquiry and other earlier pre-2005 Act inquiries.

3. The Act codifies best practice from previous statutory and other inquiries and for the first time sets out clearly in statute the process of setting up an inquiry, and the respective roles of the inquiry chair and the responsible minister. It contains a specific requirement for the inquiry chair to consider the cost to all those involved in any decision and requires the inquiry to publish final costs to provide a greater level of accountability and transparency. It empowers the inquiry chair to make procedural rules on issues such as legal representation, taking evidence and assessing costs as part of the chair's role in controlling costs. It also puts in place a robust structure for decisions on public access and privacy and stipulates that inquiry proceedings are to be in public unless there are good reasons for restrictions on public access being imposed by either the minister or the chair.

4. In 2008 a process of post-legislative scrutiny was introduced to help make sure that government departments took a more systematic approach to reviewing the operation of their legislation and assessing whether it had achieved the intended objectives. As noted above, the Ministry of Justice carried out a post-legislative scrutiny of the Inquiries Act in 2010.

5. The scrutiny found that the Act was generally working well but that the Inquiry Rules 2006 were not always as helpful as they might be. The Rules were found to be somewhat restrictive, although inquiry chairs invariably found ways to work around them.

6. In 2010, by the time of the scrutiny, thirteen inquiries had either been set up under the 2005 Act or converted to be run under the Act, with four of them having reported. At the time of writing, the figures stand at fourteen and eleven respectively, the most recent inquiry to have been set up under the Act being the Leveson Inquiry and the

most recent to have reported being the Mid Staffordshire inquiry[1]. In addition, since 2010, one inquiry has been established under other legislation[2] and four inquiries that were either established under other legislation or were non statutory have reported.

7. The Select Committee had a number of concerns about the use and operation of the 2005 Act and made 33 recommendations. This section of the Government response looks thematically at some of the ground the Committee covered, setting out the Government's policy, whilst the next section addresses each of the 33 recommendations in detail and whether the Government accepts them or not.

When to hold an inquiry – and whether to do so under the 2005 Act

8. The Select Committee was particularly interested in the circumstances under which the 2005 Act is used and the approach which ministers take in considering whether or not to use it.

9. Written evidence to the Committee provided by Robert Francis QC is a helpful summary of the reasons for holding a public inquiry. He said that:

   "The outcomes required of a public inquiry vary according to the subject matter but they include:

   - establishing the facts leading up to a matter of concern
   - determining the explanations for and causes of things which have gone wrong
   - identifying those responsible for deficiencies or performance failures
   - establishing the lessons to be learned from what has happened
   - making recommendations intended to correct the deficiencies for the future."

10. In addition he talked about the desire for catharsis and the value in giving those affected by an issue the opportunity to be heard.

11. When the Government is of the view that a matter is sufficiently serious to warrant an inquiry there are a number of options available as to the form the inquiry might take, as follows:

    - an inquiry established under the 2005 Act
    - in a very limited number of cases, an inquiry established under other legislation, such as the Financial Services Act 2012 or the Merchant Shipping Act 1995
    - an inquiry established under the 2005 Act which takes the place of an inquest
    - a non-statutory inquiry

---

[1] At the end of the Select Committee's report is an annex, provided by the Ministry of Justice. It sets out all inquiries established under the 2005 Act or converted into 2005 Act inquiries as well as pre-2005 Act inquiries and non statutory inquiries, together with their chairs, terms of reference, duration and cost. In the case of pre-2005 Act statutory inquiries the annex also states the legislation under which they were established.

[2] The Inquiry into Historic Institutional Abuse, which was set up under the Inquiry into Historic Institutional Abuse Act (Northern Ireland) 2013.

- a Parliamentary Inquiry
- an Inquiry of Privy Councillors
- an investigation with a public hearings element overseen by a judge or QC
- an independent review with a public hearings element.

12. In considering which option to use, ministers will be mindful of the likely duration and cost. They will also want to consider:
    - whether there will need to be the power to compel witnesses and the release of documents
    - whether witnesses will need to give evidence on oath
    - whether Ministers will need to exclude documents or hold sessions in private for example for national security reasons
    - the level of formality that is needed
    - whether a particular option is likely to satisfy the family/victims.

13. In December 2013, when the Select Committee took oral evidence from the Parliamentary Under-Secretary of State at the Ministry of Justice, Shailesh Vara, and his officials, the Committee explored whether, in considering what form an inquiry should take, it was ministers' practice to start from a presumption that the 2005 Act should be used.

14. The Government has reflected on this challenge in light of the Committee's report and recommendations. It takes the view that whilst ministers will always want to consider the suitability of the 2005 Act, they may also want to consider whether another option is preferable in the interests of justice and in dealing with the matter in a cost effective and timely way. The fact that section 1(1) gives ministers discretion whether or not to use the Act indicates that Parliament was mindful of the potential suitability of other approaches.

15. It is to be noted that there is also the option of converting an inquiry, investigation or review, after it has begun, into an inquiry under the 2005 Act in the event that powers such as those to compel witnesses are required.

16. The Government will give further thought as to how consideration of the need for an inquiry might be triggered. In most cases the pressure for action will be obvious, but we need for example to consider the growing role in reflecting public concern of 'e-petitions' to individual Government departments or lobbying Parliament direct. Currently, 100,000 signatures on an e-petition may lead to a debate in Parliament on the issue in question. Whilst the same number on a petition seeking an inquiry should not, automatically, lead to an inquiry under the 2005 Act the Government will be sensitive to the issue and will carefully consider whether an inquiry should be established.

17. Often the call from an inquiry will be immediate – something happens and there is a clamour for it to be investigated – but there may be a long delay. It is possible, for example, that documents released under the Thirty Year Rule may cast a significantly new light on a matter, giving rise to calls for an inquiry. Again, the Government would want to look with care at this.

18. Finally, the Government needs to be alert to the possibility that inquiries may need to sequence with other investigations and proceedings, most notably criminal and coroners' investigations, over which the inquiry chair (and the Government) has no control and that this will need to be factored into the overall cost and length of the inquiry. Expectations will need to be managed as to how and when the inquiry will proceed.

Central support for Inquiries

19. The Select Committee believes it would be helpful for a Central Inquiries Unit be set up within Her Majesty's Courts and Tribunals Service to give practical support to the chair and secretary of inquiries. A key benefit of this, the Committee argues, would be to retain knowledge of best practice, lessons learnt and contact details so that they might assist future inquiries.

20. The Government agrees with the spirit of this recommendation. However, in the Government's view, it is not appropriate or necessary to have such a standing unit given the relative infrequency of the establishment of new inquiries and their duration. Rather, it would be more efficient to build on and improve the current system of support.

21. Currently, the Cabinet Office and Ministry of Justice provide support to Departments in establishing inquiries, including through the provision of information and experience from previous inquiries. The two Departments work closely in the course of any inquiry to make sure there is clarity of roles and responsibilities.

22. The Ministry of Justice has a particular role to play where an inquiry is to be headed by a member of the judiciary as the point of liaison with the Lord Chief Justice's office on nominations for potential chairs. As the Department responsible for the 2005 Act and 2006 Rules, the Ministry of Justice also provides advice as requested on the application of the legislation.

23. The Cabinet Office has a wider range of roles during the course of an inquiry:

- it has cross-Government responsibility for providing guidance on working with public inquiries consistent with the requirement in the Ministerial Code that the Prime Minister must be consulted in good time about any proposal to set up an inquiry under the Act
- it acts as a point of liaison between lead departments and 'the centre' – particularly when an inquiry is being considered and where No 10/the Deputy Prime Minister and/or the Cabinet Secretary need to be sighted
- it offers advice and acts as a conduit for any interaction between the inquiry and Parliament particularly at the report publication stage
- it has a role in advising departments on the nature of the relationship between them and the Inquiry over the course of its life – and where lines should be drawn to guarantee independence
- it can provide advice to departments on establishing an inquiry, and in finding necessary resourcing solutions either for the secretariat – e.g. identifying and drawing on individuals with previous inquiry, judicial or sector/issue specific experience – or for any legal support required.

24. The Cabinet Office intends to publish its guidance on inquiries shortly and the Government will work to make sure that inquiry chairs fulfil their responsibility to provide a 'lessons learnt' report to the Cabinet Office at the conclusion of their inquiries.

Powers and accountability of Government Ministers

25. The Select Committee makes a number of recommendations to increase the accountability of Government ministers and limit their powers to act without the consent of the inquiry chair.

26. We accept that inquiry chairs need the assurance that they can act without Government interference in the conduct of their investigations and deliberations.

27. However, we do not believe that it is desirable for the Act to be amended to require Ministers to obtain the consent of the chair rather than consulting the chair before taking certain actions such as amending the terms of reference or appointing members to the inquiry panel. In our experience, inquiry chairs and ministers have worked well together in agreeing the details of how an inquiry is to be established.

28. The Government also believes that ministers must retain the power to issue restriction notices to prevent the disclosure of sensitive material. Ministers are best placed to understand the full significance of considerations such as national security and international relations and they make decisions accordingly in a way which cannot be expected of the inquiry chair.

29. The Government response now turns to look at the Select Committee's recommendations in detail.

Detailed responses to the Committee's recommendations

When should there be a public inquiry?

What type of inquiry? Statutory or non-statutory?

30. The Committee recommends that inquiries into issues of public concern should normally be held under the 2005 Act. They consider this essential where Article 2 of the ECHR is engaged. In their view, no inquiry should be set up without the power to compel the attendance of witnesses unless ministers are confident that all potential witnesses will attend. (Recommendation 1)

31. Once the Government decides that an inquiry appears desirable, the 2005 Act represents an important starting point when considering how best to deal with an issue which is causing public concern. However, Ministers should not feel constrained from considering other options which may be better suited to the circumstances. The Government therefore rejects this recommendation. As noted above, section 1(1) of the Act provides flexibility to choose whether to use the Act or not. Further, section 15 allows for conversion into a 2005 Act inquiry if organisations/individuals refuse to co-operate with a non-statutory inquiry.

32. The inquest process is the main way in which the Government fulfils its responsibilities under Article 2 of the ECHR, but where an inquest is converted into a 2005 Act inquiry the powers available to inquiry chairs will also ensure that the inquiry meets its Article 2 responsibilities.

Giving reasons for not ordering inquiries

33. The Committee recommends that ministers should give reasons to Parliament for a decision not to hold an inquiry particularly in the following circumstances: when invited to hold an inquiry by the Independent Police Complaints Commission, Ofsted, the Information Commissioner, Parliamentary Commissioners for Administration and Health, the Commission for Local Administration, or a body of similar standing; and when an investigation by a regulatory body has been widely criticised. (Recommendation 2)

34. The Committee also recommends that a decision on a request by a coroner for an inquest to be converted into an inquiry should always be the subject of reasons. (Recommendation 3)

35. On recommendation 2, we accept that there should be some explanation of the consideration given to investigating an issue and why ministers have decided against using a statutory inquiry. Nevertheless, this should only be in the circumstances identified and should be limited to domestic bodies of similar standing; it should not extend to international bodies such as the United Nations. We do not consider that ministers should be required to give their reasons to Parliament in all cases as there may be unmeritorious calls for inquiries.

36. We also accept recommendation 3 although these cases will be very rare (to date just the inquest into the death of Azelle Rodney). Schedule 1 to the Coroners and Justice Act 2009 provides the mechanism for converting a coroner's investigation into an

inquiry under the 2005 Act where the cause of death is likely to be adequately investigated by an inquiry. The Government would then make every effort to make sure that there was no undue delay and that there was a seamless move from one investigation to the other.

Setting up inquiries: the formalities

Constitution of the inquiry

37. The Committee believes that the fact of the inquiry and the name of the chair should not necessarily be the subject of the same statement, and recommends that section 6(2) of the Act should be amended accordingly. (Recommendation 4)

38. The Committee also recommends that section 10(1) of the Act should be amended so that a minister who wishes to appoint a serving judge as a chair or panel member of an inquiry should first obtain the consent of the appropriate senior member of the judiciary. (Recommendation 5)

39. We accept these two recommendations. Recommendation 4 is a practical suggestion as a minister may decide to announce his/her intention to establish an inquiry before being in a position to announce who should chair it (as with the Home Secretary's recent announcement of a further inquiry into the way the Metropolitan Police handled the investigation into Stephen Lawrence's murder).

40. On recommendation 5, the consent of the Lord Chief Justice is always sought for the nomination of a judge to conduct an inquiry so this would merely put current practice onto a statutory footing. The Lord Chief Justice thinks this would be helpful.

41. Primary legislation will be required to give effect to recommendations 4 and 5 (and to recommendation 22, below, which the Government also accepts). The Government will legislate when parliamentary time allows, but this is unlikely to be before the end of the current Parliament.

42. The Committee recommends that Section 4(3) of the Act, which requires the minister to consult the chair before appointing a further member to the inquiry panel, should be amended to provide that the minister can appoint a member to the inquiry panel only with the consent of the chair. (Recommendation 6)

43. The Government rejects this recommendation because ministers invariably work with the inquiry chair to agree such details. We would wish to retain the current position as there may be occasions when the minister and chair have different views on who should support the chair. Nevertheless, the Government is clear that every effort will be made to make the relationship between minister and chair work, and there are no recent examples of where it did not.

44. The Committee recommends that an inquiry panel should consist of a single member unless there are strong arguments to the contrary. (Recommendation 7)

45. We accept this recommendation: this is invariably the case and an important consideration in controlling the overall costs of inquiries

46. The Committee also recommends that section 11(3) should be amended so that the minister can appoint assessors only with the consent of the chair. (Recommendation 8)

47. The Government rejects this recommendation because ministers will invariably work with the inquiry chair to agree such details. Whilst, again, the Government is clear that every effort will be made to make the relationship work, and that there are no recent examples where it did not, ministers will wish to retain the flexibility of the current position.

Terms of reference

48. The Committee recommends that section 5(4) of the Act should be amended so that the consent of the chair is needed before the minister can set or amend the terms of reference. (Recommendation 9)

49. It also recommends that section 6(2) should be further amended to allow a minister, in announcing an inquiry, to set out only draft terms of reference, and that the final terms of reference should, when agreed with the chair, be the subject of a further statement.

50. This, the Committee anticipates, would normally be a written statement, as permitted by section 6(4). (Recommendation 10)

51. The Government rejects these recommendations.

52. On recommendation 9, terms of reference, and any amendments to them, are invariably discussed and agreed with the chair, but ministers will wish to retain control of the details, in particular those that relate to the budget and length of the inquiry.

53. Recommendation 10 is rejected because it is neither practical nor sensible for there to be two sets of terms of reference in the public domain. On announcing an inquiry, ministers will invariably set out the broad scope of the inquiry which will then be finessed for the formal announcement of the terms of reference.

54. The Committee recommends that interested parties, particularly victims and victims' families, should be given an opportunity to make representations about the final terms of reference. (Recommendation 11)

55. This recommendation is accepted to the extent that it may be helpful in certain instances where engagement with interested parties is felt more likely to lead to an acceptable set of conclusions for those concerned. But this proposal would not be helpful in cases where the Government wished to respond swiftly to an issue or issues of public concern and it would potentially be problematic in cases where there are multiple victims.

Setting up an inquiry: the practicalities

A Central Inquiries Unit

56. The Committee recommends that the Government should make resources available to create a unit within Her Majesty's Courts and Tribunals Service (HMCTS) which would be responsible for all the practical details of setting up an inquiry, whether statutory or non-statutory, including but not limited to assistance with premises, infrastructure, IT, procurement and staffing. The unit should work to the chair and secretary of the inquiry. (Recommendation 12)

57. The Government rejects this recommendation. If there were to be such a unit it would sit within a policy team, rather than within the operational HMCTS, and it would report to the department concerned, not the inquiry chair. We consider however that the issues the Committee have identified can be addressed without such a unit. It makes more sense for Cabinet Office processes to be strengthened (as at our response to recommendation 13 below) and for a practitioners' forum to meet on a regular basis to share best practice from current inquiries, than to devote resources to establishing and maintaining a team that would have a limited role after an inquiry had been established.

58. The Committee further recommends that the inquiries unit should:

- ensure that on the conclusion of an inquiry the secretary delivers a full lessons learned paper from which best practice can be distilled and continuously updated (Recommendation 13)
- review and amend the Cabinet Office Guidance in the light of the Committee's recommendations and the experiences of inquiry secretaries, and should publish it on the Ministry of Justice website (Recommendation 14)
- retain the contact details of previous secretaries and solicitors, and be prepared to put them in touch with staff of new inquiries (Recommendation 15)
- collate Procedures Protocols and other protocols issued by inquiries and make them available to subsequent inquiries. (Recommendation 16)

59. Recommendation 13 is accepted to the extent that it is Government policy that inquiries should produce a lessons learned document. However, we do not believe that an inquiries unit should be responsible for ensuring that these documents are produced. As the Cabinet Secretary said in his written evidence to the Committee, the Cabinet Office will take a more proactive stance on this in future, making clear to inquiry secretaries that a lessons learned paper must be produced and sent to its Propriety and Ethics Team at the conclusion of the inquiry to ensure that any lessons to be learned can be picked up and best practice shared. The Propriety and Ethics team, which reports directly to the Cabinet Secretary, will be responsible for retaining and acting on these reports.

60. Recommendation 14 is accepted to the extent that the Government agrees that the Cabinet Office should complete its Inquiries Guidance and it will be published on the 'gov.uk' website. This Guidance has been produced with considerable input from experienced inquiry teams. The Cabinet Office continues to provide effective advice and guidance on best practice before and following the announcement of an inquiry, to assist inquiry teams as much as possible, but also in a way that takes into account the

small number of inquiries that are underway at any time. The Cabinet Office will continue to play a central role in providing such guidance.

61. Recommendation 15 is accepted as we agree that such contact details should be retained but this need not be done by an inquiries unit. The Cabinet Office and the Ministry of Justice hold much of this information and regularly share it when providing advice to departments considering establishing an inquiry. We consider that this function should be undertaken by the Cabinet Office's Propriety and Ethics Team.

62. We accept that Recommendation 16 is a sensible suggestion but do not think that it need be carried out by an inquiries unit. We consider that this function should also be undertaken by the Propriety and Ethics Team.

Cost of inquiries

63. The Committee recommends that the chair, solicitor and secretary of an inquiry should consult the central inquiries unit and the Treasury Solicitor to ensure that counsel are appointed on terms which give the best value for money. (Recommendation 17)

64. The Government accepts this recommendation but not that it is in any way dependant upon there being an inquiries unit. We consider that this function should be undertaken by the Propriety and Ethics Team.

Initial planning

65. The Committee recommends that a scoping exercise should be carried out by the staff involved in planning a new inquiry to examine all the key issues, in particular to address matters of timescale and cost. (Recommendation 18)

66. The Government accepts this recommendation. It is particularly important in the current financial environment and should be a key piece of work when establishing an inquiry so it can be the basis of the work plan throughout the lifetime of the inquiry.

Independence of inquiries

67. The Committee recommends that the power of the minister to issue a restriction notice under section 19, restricting public access to an inquiry, should be abrogated. It considers that the chair's power to issue a restriction order is sufficient. (Recommendation 19)

68. The Committee also recommends that, whoever is responsible for publication of the inquiry report, section 25(4) of the Act should be amended so that, save in matters of national security, only the chair has the power to withhold material from publication. (Recommendation 20)

69. The Government rejects recommendation 19. Ministers must have the power to issue notices imposing restrictions on attendance at an inquiry and/or on the disclosure or publication of any evidence or documents provided to an inquiry. They will understand the nature of national security and other sensitive material. It is not appropriate that this power is ceded to the inquiry chair alone.

70. Recommendation 20 is also rejected because the Government does not consider that the inquiry chair should be responsible for judging any risks to national security or international relations. The executive is best placed to assess that risk and the potential damage that might be caused. Further, section 19(1)(b) gives ministers the power to impose restrictions at any time on the disclosure and publication of any evidence or documents provided to an inquiry.

71. The Committee recommends that where the minister wishes to terminate the appointment of a panel member other than the chair, section 12(6) should be amended to require the chair's consent. (Recommendation 21)

72. This recommendation is rejected as ministers will invariably work with the inquiry chair to agree such a termination. As noted above, every effort will be made to make the relationship between minister and inquiry chair work – and there are no recent examples where it did not – but ministers would wish to retain the flexibility the current position gives.

73. The Committee recommends that section 12 of the Act should be amended to provide that where the minister wishes to terminate the appointment of the chair of an inquiry, he should be required to lay before Parliament a notice of his intention, with the reasons. (Recommendation 22)

74. This recommendation is accepted but will require primary legislation.

Inquiry procedure

Counsel to the inquiry

75. The Committee recommends that a provision should be added to the Act stating that the chair, and only the chair, may appoint one or more barristers or advocates in private practice to act as counsel to the inquiry. (Recommendation 23)

76. The Government rejects this recommendation because ministers will want to retain control of such issues which affect departmental budgets and the terms of reference of an inquiry.

Core participants and witnesses

77. The Committee takes the view that the fourth and sixth Salmon principles, which allow a person the opportunity of being examined by his own solicitor or counsel, and of testing by cross-examination any evidence which may affect him, are over-prescriptive and have the effect of imposing an adversarial procedure on proceedings which should be inquisitorial. It recommends that they should no longer be followed. Reliance should be placed on the chair who has a duty to ensure that the inquiry is conducted fairly. (Recommendation 24)

78. The Government rejects this recommendation because it is unnecessary: the fourth and sixth Salmon principles are effectively already excluded in relation to 2005 Act inquiries by Rule 10 of the Inquiry Rules 2006. This Rule sets out the limited scope for allowing a person involved with an inquiry the opportunity to be asked questions by his or her own legal representative, and to test by cross-examination evidence which may affect that person. Rule 10 also provides the chair with wide discretion to ensure that an inquiry is conducted fairly.

Amendments to the Inquiry Rules 2006

79. The Committee recommends that rules 13-15 of the Inquiry Rules 2006 should be revoked and a rule to the following effect substituted: "If the chair is considering including in the report significant criticism of a person, and he believes that that person should have an opportunity to make a submission or further submission, he should send that person a warning letter and give him a reasonable opportunity to respond." (Recommendation 25)

80. The Government rejects this recommendation because rule 13 encapsulates what was the practice of most pre-2005 Act inquiries (and is still the practice of many non-statutory investigations) in (i) sending a 'Salmon letter' giving notice of potential criticism to a person before he or she is called to give evidence, and (ii) giving a participant who is to be criticised in an interim or final report the opportunity to comment on a proposed criticism before publication. The power to send a warning letter contained in rule 13(1) is discretionary, although in the Treasury Solicitor's Department's experience is almost universally adopted by inquiry chairs; only the requirement to give an opportunity to respond to criticism contained in rule 13(3) is mandatory. The Treasury Solicitor's Department has advised that the drafting of rule 13 is not defective.

81. The Committee recommends that:

- rules 2 and 18 be amended to give the inquiry secretariat some discretion as to which documents created by the inquiry should be part of the permanently archived inquiry record (Recommendation 26)
- rule 9 should be amended to allow the inquiry's own legal team to take written statements from witnesses (Recommendation 27)
- the procedure for awarding costs should be simplified because rules 20 to 34 are over-prescriptive. (Recommendation 28)

82. The Government accepts these three recommendations. In its written evidence to the Committee the Government took a similar view to that of recommendations 27 and 28. However, in relation to recommendation 28, we take the view that any change in the costs regime should be considered on the basis of whether it increases or reduces costs.

Freedom of Information Act 2000

83. The Committee recommends that section 18(3) and (4) of the Inquiries Act 2005 be repealed, and section 20(6) amended, so that after the inquiry is concluded the inquiry record continues to have the same exemption from disclosure under the Freedom of Information Act 2000 (FOIA) as previously, and disclosure restrictions continue to apply. (Recommendation 29)

84. The Government rejects this recommendation. Repealing these provisions would create an anomaly because the papers of non-statutory inquiries do not have the protection of section 32 of the FOIA. We consider that there should be transparency with regard to the papers of a 2005 Act inquiry after it has concluded, subject to the usual protections provided by the FOIA on sensitive information.

85. The Committee notes that in the case of many inquiries, publication of the formal Government response is accompanied by a statement to both Houses. It recommends

that this should be the invariable practice. If a second, more detailed, written response is produced, as is often the case, the Committee recommends that it should also be published and that it should say exactly which recommendations are accepted. (Recommendation 30)

86. The Government accepts this recommendation insofar as a formal Government response can be agreed. However, there are cases where this will conflict with other security related legislation and where, therefore, the Government will be unable to meet the requirements of this recommendation.

Implementation of recommendations

87. The Committee recommends that if the inquiry specifies that particular recommendations are for implementation by particular public bodies, those bodies should have a statutory duty to say within a specified time whether they accept the recommendations, and if so, what plans they have for implementation. (Recommendation 31)

88. The Committee also recommends that, in all cases, the response should be published not more than three months after receipt of an inquiry report. It takes the view that reasons should be given for not accepting recommendations and that for those which are accepted, details of when and how they will be implemented are essential. The Committee recommends that the report should include an implementation plan, and a commitment to issue further reports to Parliament at 12-monthly intervals. (Recommendation 32)

89. The Government accepts recommendation 31 but does not consider that there needs to be a statutory duty.

90. The Government also accepts Recommendation 32 in principle but with a more realistic timeframe given the clearances that will be required and the need to cost fully those recommendations it is considering accepting. We consider that a six month timeframe for publication of the Government's response would be more achievable.

Overview of the Act

91. The Committee observes that ministers have at their disposal on the statute book an Act and Rules which, subject to the reservations the Committee has set out, constitute a good framework for inquiries. The Committee recommends that ministers should be ready to make better use of these powers, and should set up inquiries under the Inquiries Act unless there are overriding reasons of security or sensitivity for doing otherwise. (Recommendation 33)

92. The Government agrees that the Act and Rules provide ministers with an important framework and point of departure when determining how to hold an inquiry. However, in line with our response to recommendation 1,ministers will want to make sure, at all times, that the most suitable approach is adopted in light of the circumstances of the issue under consideration, and that there may be a variety of reasons why an alternative approach is preferable to holding an inquiry under the Act. As such the Government rejects this recommendation.

ISBN 978-1-4741-0833-1