These notes refer to the Inquiries Act 2005 (c.12)
which received Royal Assent on 7 April 2005

INQUIRIES ACT 2005

EXPLANATORY NOTES

INQUIRY PROCEEDINGS

Sections 19 & 20: Restrictions on public access etc; Further provisions about restriction notices and orders

37. These two sections set out the extent to which inquiry proceedings can be held in private and evidence can be withheld from the public domain.

38. There may be circumstances in which part or all of an inquiry must be held in private, and over a third of the notable inquiries held in the past fifteen years have had some sort of restrictions on public access. These range from wholly private inquiries, such as the Penrose inquiry into the collapse of Equitable Life and the "Lessons Learned" (Foot and Mouth) Inquiry, to mainly public inquiries such as the Bloody Sunday inquiry and the Hutton inquiry, in which a small amount of highly sensitive material was withheld from the public domain.

39. In some past inquiries, it has been the Minister who has specified restrictions, whereas in others the chairman has set the restrictions. Section 19 allows for both. It replaces a range of statutory provisions on public access in the legislation that is repealed by Schedule 2 including, for example, section 81 of the Children Act 1989, which states:

"(2) Before an inquiry is begun, the Secretary of State may direct that it shall be held in private.

(3) *When no direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.*

40. Public access to past inquiries has been restricted for a variety of reasons. Section 19(4) sets out a number of matters that must be taken into account when determining whether it is in the public interest to issue a restriction notice or order. Most of these factors are self-explanatory.

41. Section 19(4)(c) is intended, among other things, to cover cases in which a person has received information that he would usually be prevented by law from disclosing. For example, the Financial Services Authority receives sensitive information about firms in its role as a regulator, but is prevented from disclosing that information generally by Part 23 of the Financial Services and Markets Act 2000. Inquiries' powers of compulsion would override those restrictions, but it might be appropriate for the chairman or Minister to consider preventing the information from being disclosed more widely.

42. Section 19(4)(d) recognises that some inquiries might be conducted more efficiently or effectively with restrictions on public access. Several recent inquiries under section 84 of the NHS Act 1977 have been held partially in private, with relatives and participants admitted but not the general public.

43. Restrictions that could be imposed on attendance under subsection (1)(a) of section 19 might range from the exclusion of the press or general public (allowing those with an interest in the inquiry to attend, as was the case in the Ayling and Neale inquiries) to

the exclusion of everyone except the panel, the witness and, if appropriate, their legal representatives (as happened in the Penrose inquiry into the collapse of Equitable Life). They might be imposed on all hearings, or only where a particular witness was giving evidence or where evidence was heard on a specified topic. The nature of the restriction would depend upon the reasons for it. Similarly, a range of different restrictions might be imposed on the disclosure or publication of evidence or documents.

44. Nothing in section 19 is intended to prevent a witness from passing on evidence that he himself has given to an inquiry either whilst inquiry proceedings are ongoing or after the inquiry has ended. However, there might be situations in which restrictions under section 19 could prevent a person from passing on information that he has learnt as a result of his attendance at, or involvement in, the inquiry. If the powers in this section are exercised in any way that engages Article 10 of the European Convention on Human Rights then of course that exercise must be done in a way which complies with Article 10(2) of the Convention.

45. Section 20 allows the Minister and chairman to issue further restrictions and to vary or revoke their own restrictions at any time before the end of the inquiry. The Minister cannot vary or revoke the chairman's restrictions and vice versa. There is, however, nothing to stop the chairman from asking the Minister to consider exercising his discretion to vary a notice. The power to vary notices and orders will allow for situations in which it becomes apparent that more information can be made public than was originally envisaged, or that more people can be given access to information than allowed by the original notice, as well as any situations in which it becomes apparent that further restrictions are necessary.

46. Section 20 provides that, except in relation to inquiry records, restriction notices and orders continue indefinitely unless otherwise specified or unless they are revoked. Orders restricting attendance will only be relevant during the course of the inquiry, but some orders restricting disclosure or publication of evidence might need to continue beyond the end of the inquiry. For example, if an inquiry chairman issued an order that the identity of a particular witness was to be kept confidential, because the witness could be at risk if his identity were disclosed, that order would need to continue to protect that witness after the inquiry had ended.

47. Subsection (6) of section 20 is designed to ensure that restrictions do not create a barrier to disclosure of information from inquiry records under the FOI Acts. In addition to this, subsection (7) allows the Minister to relax or revoke restrictions after the end of an inquiry. This is to ensure that any restrictions still in place (which apply to information other than in inquiry records) can be removed if they become unnecessary.

48. Disclosure restrictions would not prevent a person not involved in the inquiry from disclosing or publishing information that had come into his possession through means unconnected with the inquiry, even if some of that information might be included in documents or hearings that were covered by a restriction order or notice.

49. For example, suppose that an inquiry were set up into the death of a hospital patient, and that a restriction notice were issued to exclude the general public from the proceedings and to prevent the publication of transcripts of evidence, because it was considered that an inquiry held partly in private would be more effective. The inquiry might consider information already in the public domain, such as papers from the inquest, or statements of hospital policy. The fact that a restriction notice was in place for the inquiry would not prevent a member of staff at the hospital from providing a patient with a copy of the hospital policy.

50. To take another example, suppose that a Government department provided information to an inquiry held in private and that, after the end of the inquiry, a request were made under the Freedom of Information Act 2000 for some of that information. The Department could not refuse to provide the information purely because it happened to have been covered by the restriction notice, because the Department would have held

that information even if the inquiry had never happened. The purpose of a restriction notice is just to restrict disclosure of information in the context of the inquiry or to restrict disclosure by those who have received the information only by virtue of it being given to the inquiry.