

# INQUIRIES ACT 2005

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## EXPLANATORY NOTES

### INQUIRY PROCEEDINGS

#### *Section 21: Powers of chairman to require production of evidence etc*

51. This section provides inquiries with statutory powers to compel evidence. The powers are exercisable by the chairman, but in a multi-member inquiry he will be exercising them on behalf of the panel. It is envisaged that most requests for information from an inquiry panel will not be made under section 21. An inquiry panel will usually ask for information informally first, and experience from past inquiries has shown that the vast majority of informal requests will be complied with. There are three main scenarios in which powers of compulsion are likely to be used:
- (i) a person is unwilling to comply with an informal request for information;
  - (ii) a person is willing to comply with an informal request, but is worried about the possible consequences of disclosure (for example, if disclosure were to break confidentiality agreements) and therefore asks the chairman to issue a formal notice; or
  - (iii) a person is unable to provide the information without a formal notice because there is a statutory bar on disclosure.
52. **Section 21(4)** covers two reasons for which a person might refuse to comply with a notice issued under powers of compulsion. Subsection (4)(a) would cover circumstances when the person was unable to comply, for example, if he did not have the information being requested. Subsection (4)(b) is designed to cover situations in which it would be unreasonable to expect a person to comply. This might be because the difficulty, time or expense involved in providing the information would be so great that a person could not reasonably be expected to do so. For example, if an inquiry chairman gave a notice requesting that an organisation produce every document it had on a particular topic within two weeks, and the organisation would have to search through thousands of files to comply, the organisation might make a claim under section 21(4)(b). The chairman would then consider, under section 21(5), whether the public interest in obtaining the information within that timeframe outweighed the cost, bearing in mind how important the information was likely to be. He might choose to vary his notice by extending the deadline, narrowing the categories of information being asked for, or by specifying that the organisation only need to search certain sites for the information. Section 21(4)(b) could also cover situations in which it would not be reasonable to expect a person to provide evidence because the evidence is unlikely to be of material assistance to an inquiry.
53. On occasion, it is possible that the evidence being requested will be an intercepted communication. To ensure that such material can be disclosed to the inquiry, there is an amendment in paragraph 21 of Schedule 2 to the Act to ensure that this is permissible under section 18 of the Regulation of Investigatory Powers Act 2000.