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STATUTORY INSTRUMENTS

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**2006 No. 1838**

**INQUIRIES**

**The Inquiry Rules 2006**

<i>Made</i>	- - - -	<i>11th July 2006</i>
<i>Laid before Parliament</i>		<i>11th July 2006</i>
<i>Coming into force</i>	- -	<i>1st August 2006</i>

The Lord Chancellor makes the following rules in exercise of the powers conferred on him by section 41 of the Inquiries Act 2005<sup>(1)</sup>:

**Citation and commencement**

1. These Rules may be cited as the Inquiry Rules 2006 and shall come into force on 1st August 2006.

**Interpretation**

2. In these Rules—

“the Act” means the Inquiries Act 2005;

“award” means an award under section 40(1) of the Act;

“core participant” means a person designated as such under rule 5;

“costs assessor” means—

(a) in England and Wales, a costs judge;

(b) in Scotland, the Auditor of the Court of Session; and

(c) in Northern Ireland, the Master (Taxing Office);

“counsel to the inquiry” means the qualified lawyer or lawyers, if any, appointed by the chairman to act as counsel;

“designated email address” means the email address notified by a person to a member of the inquiry team, in writing, as the email address to be used for email communications;

“designated fax number” means—

- (a) in the case of the inquiry, the fax number notified to witnesses (and their recognised legal representatives, if any) by the secretary to the inquiry, in whatever manner he sees fit, as the number to which faxes should be sent; and
- (b) in the case of any other person, the fax number or numbers notified by that person to a member of the inquiry team, in writing, as the number to be used for communication by fax;

“designated postal address” means—

- (a) in the case of the inquiry, the address notified to witnesses (and their recognised legal representative, if any) by the secretary to the inquiry, in whatever manner he sees fit, as the address to which correspondence should be addressed; and
- (b) in the case of any other person, the address notified by that person to a member of the inquiry team, in writing, as the address to be used for postal communications;

“inquiry” means an inquiry under section 1 of the Act which a United Kingdom Minister causes to be held;

“inquiry record” means all documents given to or created by the inquiry;

“inquiry team” means—

- (a) the inquiry panel;
- (b) the counsel to the inquiry;
- (c) the secretary to the inquiry;
- (d) the solicitor to the inquiry;
- (e) assessors appointed under section 11 of the Act; and
- (f) any other person engaged (whether as an employee or under a contract for services) to provide administrative, legal or managerial assistance to the inquiry or to assist in any investigations which the inquiry may conduct;

“qualified lawyer” means—

- (a) a solicitor or barrister in England and Wales;
- (b) a solicitor or advocate in Scotland; or
- (c) a solicitor or barrister in Northern Ireland;

“recognised legal representative” means a person designated under rule 6 or rule 7;

“relevant part of the United Kingdom” means the part of the United Kingdom in which costs claimant’s applications will be assessed;

“secretary to the inquiry” means a person appointed by the chairman to carry out (with the assistance of any deputies that may be appointed) the administration and management of the inquiry;

“solicitor to the inquiry” means the qualified lawyer (or other person certified by the Head of the Government Legal Service as suitable) appointed by the chairman to act as solicitor;

“warning letter” means a letter sent by the chairman to a person during the course of the inquiry which contains a statement to the effect that it is a warning letter; and

“witness” means any person to whom the inquiry panel has sent a written request for a written statement under rule 9(1).

**3.—(1)** Any requirement under these Rules that a document is given or sent to any person by a member of the inquiry team is satisfied by that document being—

- (a) delivered in person;

- (b) left at the person's designated postal address;
- (c) sent to the person's designated postal address by first class post;
- (d) faxed to the person's designated fax number; or
- (e) subject to paragraph (2), sent by email.

(2) A document may be sent by email to a person's designated email address if the person has informed the secretary to the inquiry in writing that he is willing to accept documents sent email.

**4.—(1)** Any requirement under these Rules that a document is given or sent to the inquiry is satisfied by that document being—

- (a) left at the inquiry's designated postal address;
- (b) sent to the inquiry's designated postal address by first class post;
- (c) faxed from the sender's designated fax number to the inquiry's designated fax number; or
- (d) subject to paragraph (2), sent by email.

(2) A document may be sent by email from a person's designated email address if the secretary to the inquiry has informed the person sending the email in writing—

- (a) that he is willing to accept documents sent by email;
- (b) of the email address to which the document must be sent; and
- (c) if the secretary to the inquiry wishes to so specify, the electronic format in which the document must be sent.

### **Core participants**

**5.—(1)** The chairman may designate a person as a core participant at any time during the course of the inquiry, provided that person consents to being so designated.

(2) In deciding whether to designate a person as a core participant, the chairman must in particular consider whether—

- (a) the person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;
- (b) the person has a significant interest in an important aspect of the matters to which the inquiry relates; or
- (c) the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.

(3) A person ceases to be a core participant on—

- (a) the date specified by the chairman in writing; or
- (b) the end of the inquiry.

### **Recognised legal representative**

**6.—(1)** Where—

- (a) a core participant, other than a core participant referred to in rule 7; or
- (b) any other person required or permitted to give evidence or produce documents during the course of the inquiry,

has appointed a qualified lawyer to act on that person's behalf, the chairman must designate that lawyer as that person's recognised legal representative in respect of the inquiry proceedings.

7.—(1) This rule applies where there are two or more core participants, each of whom seeks to be legally represented, and the chairman considers that—

- (a) their interests in the outcome of the inquiry are similar;
- (b) the facts they are likely to rely on in the course of the inquiry are similar; and
- (c) it is fair and proper for them to be jointly represented.

(2) The chairman must direct that those core participants shall be represented by a single recognised legal representative, and the chairman may designate a qualified lawyer for that purpose.

(3) Subject to paragraph (4), any designation must be agreed by the core participants in question.

(4) If no agreement on a designation is forthcoming within a reasonable period, the chairman may designate an appropriate lawyer who, in his opinion, has sufficient knowledge and experience to act in this capacity.

8. Nothing in rules 6 or 7 prohibit a person referred to in rule 6(1) from appointing a legal team to assist his recognised legal representative in the discharge of the recognised legal representative's functions.

### **Evidence**

9.—(1) The inquiry panel must send a written request for a written statement to any person from whom the inquiry panel proposes to take evidence.

(2) The inquiry panel must send a written request to any person that it wishes to produce any document or any other thing.

(3) The inquiry panel may make a written request for further evidence, being either a written statement or oral evidence.

(4) Any request for a written statement must include a description of the matters or issues to be covered in the statement.

### **Oral evidence**

10.—(1) Subject to paragraphs (2) to (5), where a witness is giving oral evidence at an inquiry hearing, only counsel to the inquiry (or, if counsel has not been appointed, the solicitor to the inquiry) and the inquiry panel may ask questions of that witness.

(2) Where a witness, whether a core participant or otherwise, has been questioned orally in the course of an inquiry hearing pursuant to paragraph (1), the chairman may direct that the recognised legal representative of that witness may ask the witness questions.

(3) Where—

- (a) a witness other than a core participant has been questioned orally in the course of an inquiry hearing by counsel to the inquiry, or by the inquiry panel; and
- (b) that witness's evidence directly relates to the evidence of another witness,

the recognised legal representative of the witness to whom the evidence relates may apply to the chairman for permission to question the witness who has given oral evidence.

(4) The recognised legal representative of a core participant may apply to the chairman for permission to ask questions of a witness giving oral evidence.

(5) When making an application under paragraphs (3) or (4), the recognised legal representative must state—

- (a) the issues in respect of which a witness is to be questioned; and
- (b) whether the questioning will raise new issues or, if not, why the questioning should be permitted.

### **Opening and closing statements**

11.—(1) The recognised legal representative of a core participant may—

- (a) make an opening statement to the inquiry panel at the commencement of the first of any oral hearings, and
- (b) make a closing statement to the inquiry panel.

(2) A core participant who does not have a recognised legal representative may make the opening and closing statements referred to in paragraph (1).

### **Disclosure of potentially restricted evidence**

12.—(1) In this rule—

- (a) “potentially restricted evidence” means any evidence which is in the possession of the inquiry panel, or any member of the inquiry panel, and which is the subject of a relevant application which has not been determined or withdrawn;
- (b) “relevant application” means an application which is
  - (i) made by any person that evidence or documents are the subject of a restriction notice made by the Minister pursuant to section 19(2)(a) of the Act;
  - (ii) made by any person that the chairman exercise his discretion under section 19(2)(b) of the Act; or
  - (iii) made by any person that evidence or documents be withheld on grounds of public interest immunity,

and which entails the withholding of evidence from the public.

(2) Subject to paragraph (3), potentially restricted evidence is subject to the same restrictions as it would be subject to if the order sought in the relevant application had been made.

(3) Where the conditions in paragraph (4) are satisfied, the chairman may disclose the potentially restricted evidence to a person who would not otherwise be permitted to see it.

(4) The conditions are that—

- (a) the chairman considers that disclosure to an individual is necessary for the determination of the application; and
- (b) the chairman has afforded the opportunity to—
  - (i) the person providing or producing the evidence to the inquiry panel; or
  - (ii) any other person making the relevant application,

to make representations regarding whether disclosure to that individual should be permitted.

(5) Any person who is shown potentially restricted evidence pursuant to paragraph (3) shall owe an obligation of confidence to the person who provided or produced the evidence to the inquiry.

(6) A breach of the obligation referred to in paragraph (5) is actionable at the suit of the person to whom the obligation is owed, subject to the defences applying to actions for breach of confidence.

### **Warning letters**

13.—(1) The chairman may send a warning letter to any person—

- (a) he considers may be, or who has been, subject to criticism in the inquiry proceedings; or
- (b) about whom criticism may be inferred from evidence that has been given during the inquiry proceedings; or

- (c) who may be subject to criticism in the report, or any interim report.
- (2) The recipient of a warning letter may disclose it to his recognised legal representative.
- (3) The inquiry panel must not include any explicit or significant criticism of a person in the report, or in any interim report, unless—
  - (a) the chairman has sent that person a warning letter; and
  - (b) the person has been given a reasonable opportunity to respond to the warning letter.

**14.**—(1) Subject to paragraphs (2), (3), and (4) the contents of a warning letter are to be treated as subject to an obligation of confidence owed—

- (a) separately by each member of the inquiry team to the recipient of the warning letter;
  - (b) by the recipient to the chairman; and
  - (c) by the recipient’s recognised legal representative to the chairman (where the recipient has disclosed the letter under rule 13(2)).
- (2) The obligation of confidence may be waived in writing at any time by the chairman or, as the case may be, by the recipient of the warning letter.
- (3) The inquiry panel’s obligation of confidence arising under this rule ends when the inquiry report is signed in accordance with section 24(4) of the Act.
- (4) All other obligations of confidence arising under this rule end when the inquiry report is published.
- (5) A breach of the obligation referred to in paragraph (1) is actionable at the suit of the person to whom the obligation is owed, subject to the defences applying to actions for breach of confidence.

**15.**—(1) Subject to paragraphs (3) and (4), the warning letter must—

- (a) state what the criticism or proposed criticism is;
  - (b) contain a statement of the facts that the chairman considers substantiate the criticism or proposed criticism; and
  - (c) refer to any evidence which supports those facts.
- (2) The chairman may provide copies of the evidence referred to with the warning letter, if he considers it appropriate to do so.
- (3) Where the warning letter is sent to a person under rule 13(1)(b)—
  - (a) the requirements of paragraph (1) do not apply, but
  - (b) subject to paragraph (4), the letter must refer to the evidence from which criticism could be inferred.
- (4) Paragraphs (1) to (3) are subject to any restrictions on the disclosure of evidence, documents or information pursuant to sections 19 and 23 of the Act, or resulting from a determination of public interest immunity.

**16.** In determining the weight to be accorded to any evidence, the inquiry panel must disregard the fact that a warning letter was, or was not, sent to any person before the determination is made.

## **Reports**

- 17.**—(1) Following delivery of the report (or any interim report) to the Minister, but prior to publication, the chairman must give a copy of the version of the report which is to be published, to—
  - (a) each core participant; and
  - (b) to their recognised legal representative, if any.

(2) The contents of the report, and any interim report are to be treated, until the report, or interim report, has been published by the chairman, as subject to an obligation of confidence owed by each person, who pursuant to paragraph (1) has received a copy of the report, to the chairman.

(3) A breach of the obligation referred to in paragraph (2) is actionable at the suit of the chairman, subject to the defences applying to actions for breach of confidence.

### **Records management**

**18.**—(1) Subject to the legal rights of any person—

- (a) during the course of the inquiry, the chairman must have regard to the need to ensure that the record of the inquiry is comprehensive and well-ordered; and
- (b) at the end of the inquiry, the chairman must transfer custody of the inquiry record to a department of Her Majesty's Government in the United Kingdom or to the appropriate public record office, as the Minister directs.

(2) In this rule, the “appropriate public records office” means the National Archives, the Keeper of the Records of Scotland or the Public Record Office of Northern Ireland.

### **Relevant part of the United Kingdom for the purposes of assessment of an award**

**19.** The chairman must specify whether the relevant part of the United Kingdom for the purposes of costs assessment is—

- (a) England and Wales;
- (b) Scotland; or
- (c) Northern Ireland,

as soon as reasonably practicable following the setting-up date.

### **Application for an award under section 40(1) of the Act**

**20.**—(1) A person may apply to the chairman at any time for an award to be made under section 40(1) of the Act (award of compensation and expenses by the chairman) in writing.

(2) Where the application relates to amounts to be incurred in respect of legal representation, the application must state—

- (a) the nature and estimated duration of the work for which the award is sought;
- (b) the proposed hourly rates; and
- (c) any other amounts which the person anticipates claiming in relation to legal representation.

### **Determination of whether an award should be made**

**21.**—(1) Subject to section 40(4) of the Act (conditions or qualifications notified by the Minister), the chairman must take into account the general criteria set out in paragraph (2) when determining whether an award should be made.

(2) The general criteria are—

- (a) the financial resources of the applicant; and
- (b) whether making an award is in the public interest.

**Determination conditions in respect of awards for amounts to be incurred in respect of legal representation**

22. Where the chairman has determined an award for amounts to be incurred in respect of legal representation should be made, the determination of the application must set conditions, including but not limited to—

- (a) the nature and scope of the work to be funded;
- (b) the hourly rates which will be paid;
- (c) any upper limit or limits on the sums or number of hours which will be paid;
- (d) the frequency with which bills must be submitted to the chairman; and
- (e) the form in which bills must be submitted to the chairman.

**Determination conditions in respect of awards for amounts to be incurred in respect of compensation for loss of time**

23. Where the chairman has determined an award for amounts to be incurred in respect of compensation for loss of time, the determination must set conditions, including but not limited to—

- (a) an upper limit or limits on the sums which will be paid;
- (b) the form in which bills must be submitted to the chairman; and
- (c) the supply of such documentary evidence as the chairman considers necessary.

**Determination conditions in respect of awards for other amounts to be incurred**

24. Where the chairman has determined an award for amounts to be incurred other than under rules 22 or 23, the determination must set conditions, including but not limited to—

- (a) an upper limit or limits on the sums which will be paid;
- (b) a requirement that the applicant provide evidence that the expenditure has been incurred; and
- (c) the form in which bills must be submitted to the chairman.

**Notification or referral following determination of whether an award should be made**

25. Where—

- (a) the chairman has determined that an award should be made; and
- (b) the application relates to amounts which are to be incurred,

the chairman must send the determination to the applicant and his legal representative, if he has one.

26. Where—

- (a) the chairman has determined that an award should be made; and
- (b) the application relates to amounts which have been incurred,

the chairman must refer the application to the solicitor to the inquiry for an assessment of the amount of the award as soon as practicable.

**Assessment of an award by the solicitor to the inquiry**

27.—(1) The solicitor to the inquiry must make an initial assessment of the award within twenty-one days of the referral by the chairman.

(2) Where the solicitor to the inquiry determines that the full amount applied for by the applicant should be paid, the initial assessment of the amount of the award is also the final assessment.

(3) If the applicant disagrees with the initial assessment of the amount of the award, or a part of it, he must notify the solicitor to the inquiry of this as soon as reasonably practicable, and in any event within twenty-one days of the date on which the initial assessment of the amount of the award is sent to the applicant.

(4) Where the applicant has not responded within twenty-one days of the date the initial assessment of the award being sent to the applicant, the solicitor to the inquiry must issue the final assessment.

(5) An initial or final assessment made by the solicitor to the inquiry must be in writing and sent to the applicant and his recognised legal representative, if he has one.

### **Criteria for assessing amount of initial assessment**

**28.**—(1) When assessing the amount pursuant to an application in respect of compensation for loss of time, the solicitor to the inquiry must have regard to—

- (a) actual sums lost by the applicant as a result of attending the inquiry; or
- (b) if no such sums can be identified, such other amount as the solicitor to the inquiry considers proportionate and reasonable.

(2) When assessing the amount to be awarded pursuant to an application in respect of expenses, the solicitor to the inquiry must have regard to all the circumstances and to whether the expenses—

- (a) were proportionately and reasonably incurred; and
- (b) are proportionate and reasonable in amount.

(3) The solicitor to the inquiry must exclude amounts from the initial assessment which do not comply with conditions notified pursuant to rules 22, 23 and 24, as appropriate.

### **Procedure where initial assessment is not agreed in relation to an award for legal representation**

**29.**—(1) Where—

- (a) notification has been given under rule 27(3); and
- (b) the application relates to amounts incurred in respect of legal representation,

the solicitor to the inquiry must send the applicant, in writing, the points of dispute within twenty-one days of receipt of the notification.

(2) The points of dispute referred to in paragraph (1) must—

- (a) identify each item to which the solicitor to the inquiry objects;
- (b) state the nature of the objection for each item; and
- (c) propose an amount to be allowed for each item in respect of which a reduction is sought.

(3) The applicant must provide a written response to the points of dispute to the solicitor to the inquiry within twenty-one days of the points of dispute having been sent to the applicant.

(4) The solicitor to the inquiry and the applicant may agree to extend the deadlines set out in paragraphs (1) and (3).

### **Procedure where initial assessment not agreed in relation to an award for sums other than for legal representation**

**30.**—(1) Where—

- (a) notification has been given under rule 27(3); and
  - (b) the application does not relate to amounts incurred in respect of legal representation,
- the solicitor to the inquiry must reconsider the initial assessment of the amount of the award.
- (2) Having reconsidered the initial assessment of the amount of the award pursuant to paragraph (1), the solicitor to the inquiry must issue the final assessment of the amount of the award to the applicant within a reasonable time.

### **Review by costs assessor of the amount of an award for legal representation**

**31.**—(1) Where the applicant has provided a response in accordance with rule 29(3) and there remains a disagreement, the chairman must either—

- (a) engage the assistance of the costs assessor in the relevant part of the United Kingdom, refer the assessment to that costs assessor and supply all relevant evidence and documentation; or
- (b) require the solicitor to the inquiry to issue a final assessment of the amount of the award.

(2) Where the assessment of an award has been referred under paragraph (1)(a), the costs assessor must hold a review hearing within a reasonable time following referral.

(3) The costs assessor shall notify the solicitor to the inquiry and the applicant for the award of the date and location of the review hearing in writing as soon as practicable, and in any event not later than fourteen days before the date of the hearing.

- (4) A person other than—
- (a) the applicant;
  - (b) the solicitor to the inquiry; and
  - (c) their qualified lawyers or costs draftsman,

may be heard at the review hearing only if the costs assessor gives permission for that person to be heard.

- 32.** The costs assessor must send—
- (a) the applicant for the award; and
  - (b) the chairman,

his assessment of the amount of the award as soon as reasonably practicable following the review hearing.

### **Agreement prior to a review hearing**

**33.**—(1) The chairman must withdraw the referral of the review of the assessment of the award where paragraph (2) applies.

(2) This paragraph applies where the solicitor to the inquiry and the applicant for the award have agreed on the amount of the assessment at any time after the date of the chairman's referral of the application to the costs assessor until the date of the review hearing.

(3) The solicitor to the inquiry must issue the final assessment as soon as practicable following an agreement being reached under paragraph (2).

### **Making an award**

**34.**—(1) Where the award is not to be reviewed, the chairman must make an award and arrange for payment of the final assessment within twenty-eight days of the final assessment being sent to the applicant.

(2) Where the amount of the award has been reviewed, the chairman must make an award of the amount of the costs assessor's assessment and arrange for payment within twenty-eight days of the assessment being sent under rule 32.

Dated 11th July 2006

*Falconer of Thoroton, C*

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## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules, made under section 41(1) of the Inquiries Act 2005, deal with matters of evidence and procedure in relation to inquiries, the return or keeping, after the end of an inquiry, of documents given to or created by the inquiry and awards made by the chairman under section 40 of the Act.

Rule 5 deals with the designation of core participants by the chairman.

Rules 6, 7 and 8 deal with the designation of a lawyer appointed by a core participant or a witness as a recognised legal representative. Rule 7 sets out the circumstances in which one recognised legal representative should be appointed to represent two or more core participants.

Rules 9 and 10 are concerned with the collection of evidence by the inquiry panel and the conduct of any oral hearings that are held.

Rule 11 permits the recognised legal representative of a core participant to make opening and closing statements.

Rule 12 provides that where there is an application that evidence should be withheld from the public domain (by virtue of a restriction order, restriction notice or on grounds of public interest immunity), that evidence must be subject to the same restrictions as it would be subject to if the order sought had been granted. However, the chairman may show the evidence to another individual where he considers that disclosure is necessary for the determination of the application.

Rules 13, 14, 15 and 16 deal with the sending of letters of warning to those who may be, or have been, criticised during the inquiry proceedings or in the inquiry report, or any interim report.

Rule 17 provides for the delivery of copies of the report which is to be published to core participants following delivery to the minister.

Rule 18 sets out the chairman's records management obligations during the inquiry and provides for the transfer of custody of the inquiry record at the end of the inquiry.

Rules 19 to 34 set out the rules regarding the making and assessment of awards.