

Compass Chambers



Preparing for a Public Inquiry

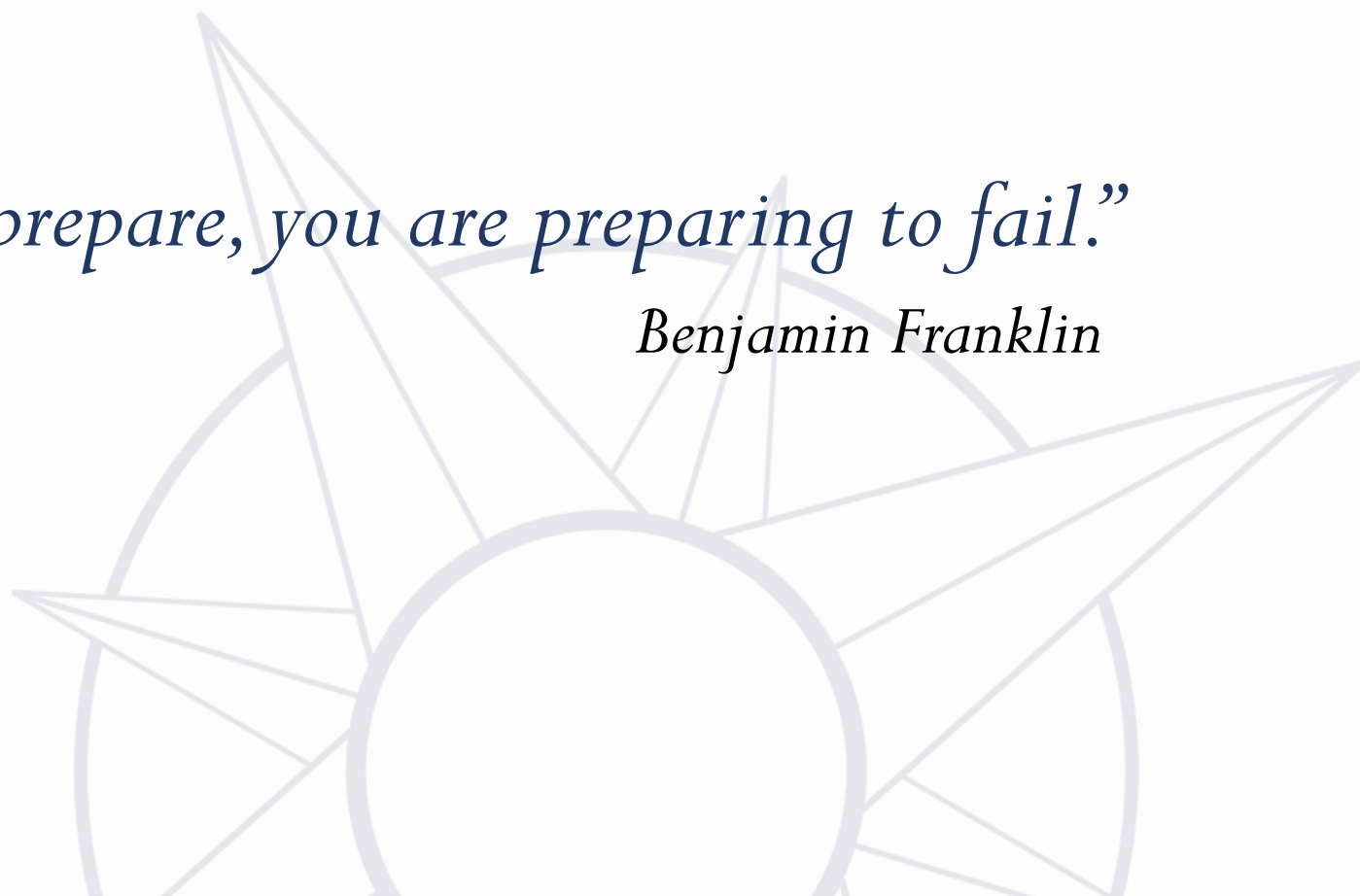
2 November 2020



Introduction

- *“By failing to prepare, you are preparing to fail.”*

Benjamin Franklin





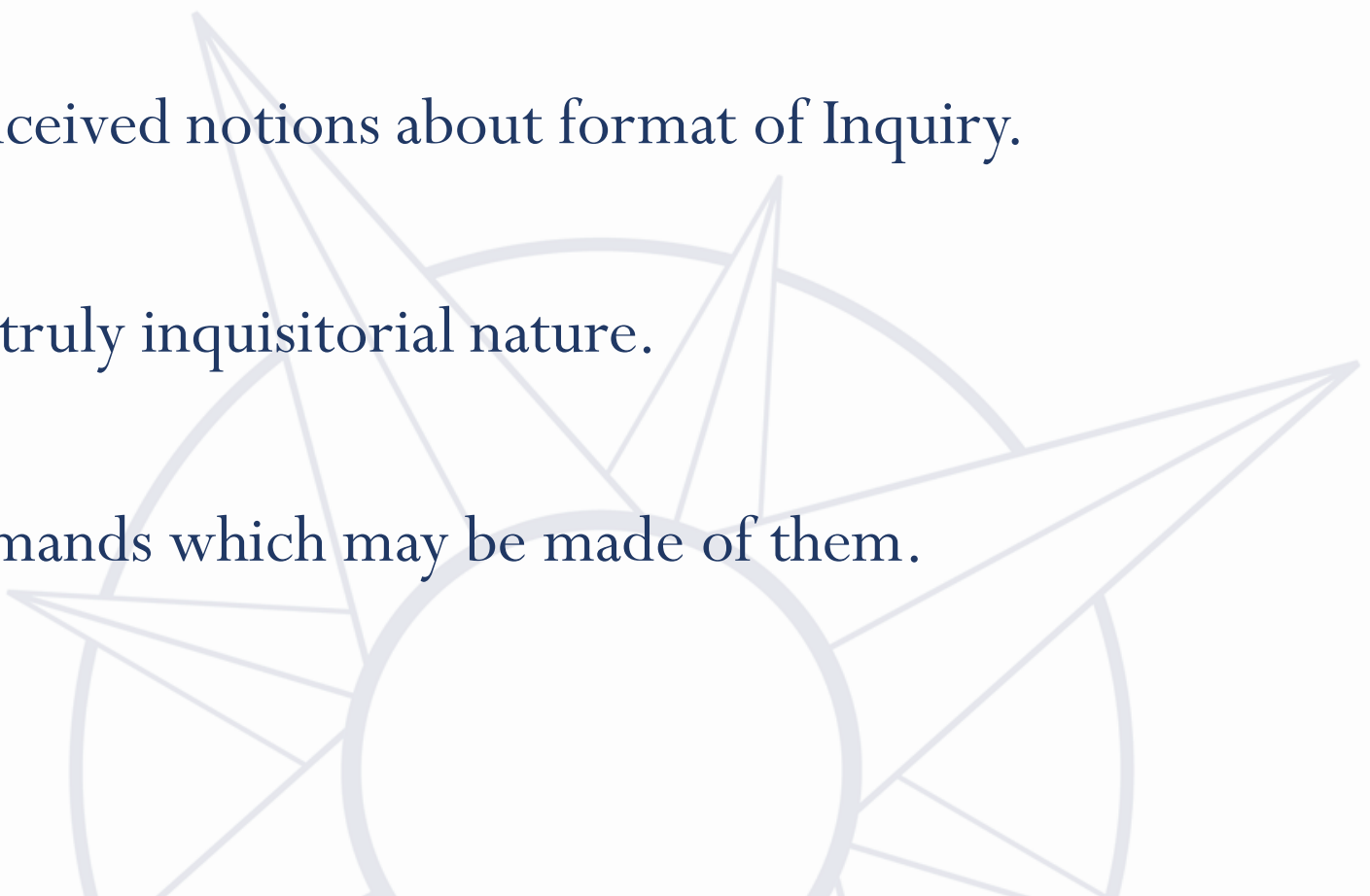
Starting Point for Preparation

- *Inquiries Act 2005*
- *The Inquiry Rules 2006 (SI 2006/ 1838)*
- *The Inquiries (Scotland) Rules 2007 (SSI 2007 No.560)*
- The Terms of Reference of the Inquiry





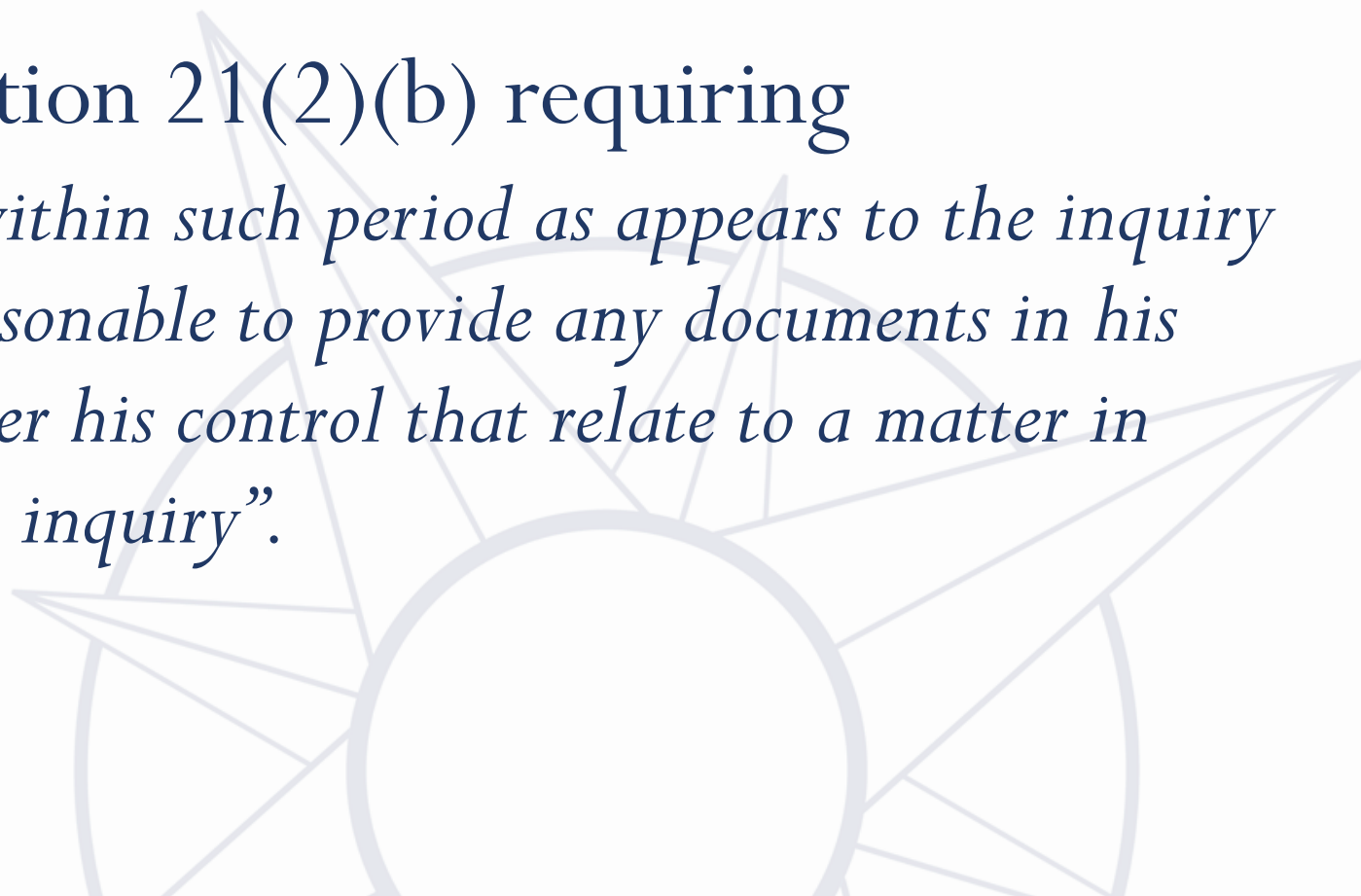
Preparing the Client: Managing Expectations

- Clients may well have preconceived notions about format of Inquiry.
 - Essential they understand its truly inquisitorial nature.
 - Essential they understand demands which may be made of them.
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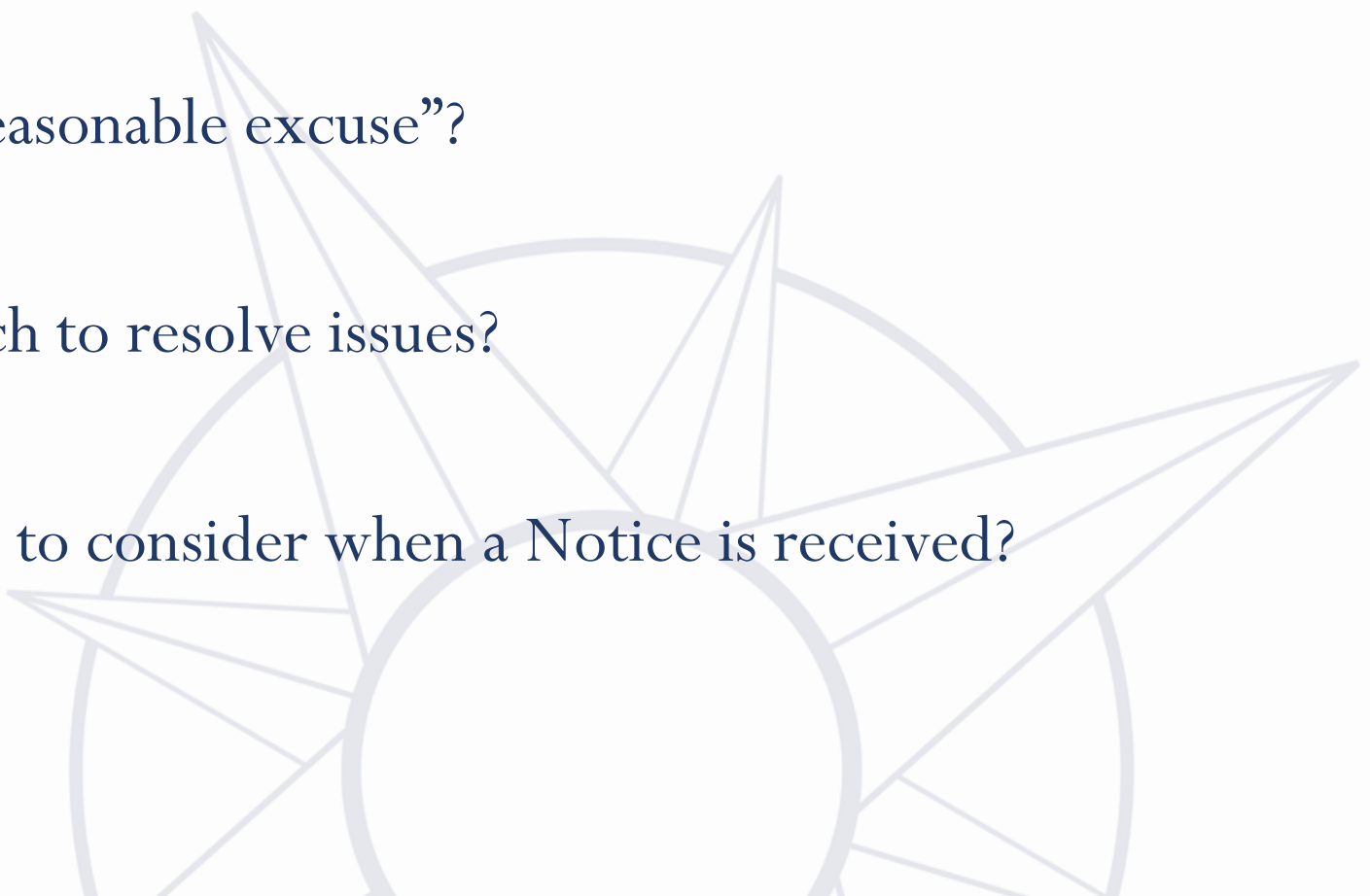
Section 21 Notices

- Focus on Section 21(2)(b) requiring
“...a person, within such period as appears to the inquiry panel to be reasonable to provide any documents in his custody or under his control that relate to a matter in question at the inquiry”.



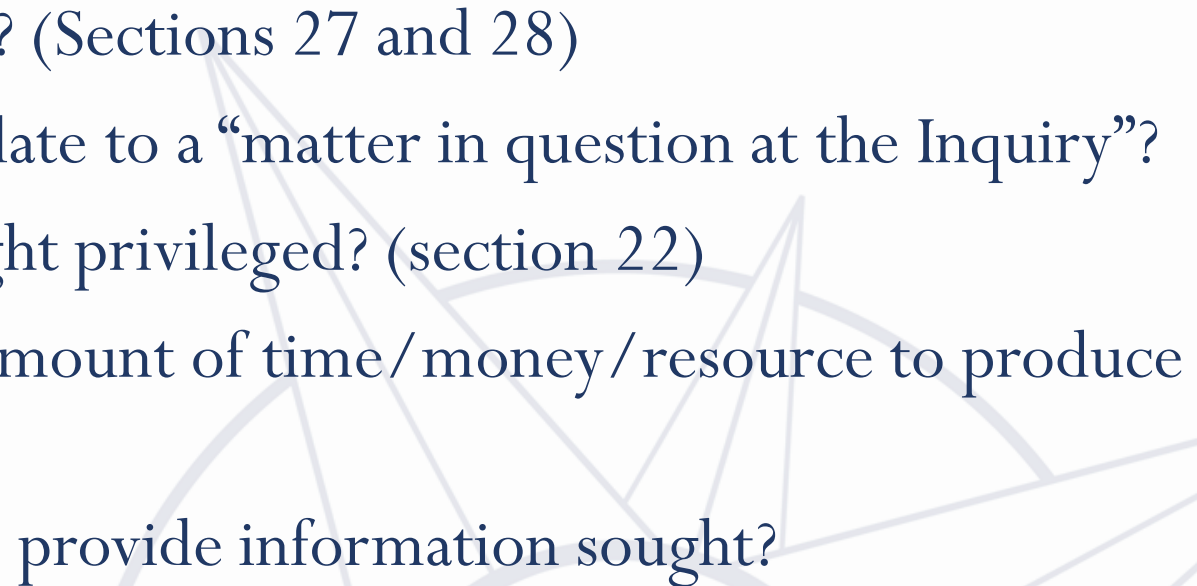


Section 35: Failure to Comply Offence

- Offence committed unless a reasonable excuse for failing to comply.
 - So, what may amount to a “reasonable excuse”?
 - Is there a mechanism by which to resolve issues?
 - What are the issues you need to consider when a Notice is received?
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Key Issues to Consider under Section 21

- Is it a UK or Scottish Inquiry? (Sections 27 and 28)
 - Does what is being sought relate to a “matter in question at the Inquiry”?
 - Is the information being sought privileged? (section 22)
 - Would it take unreasonable amount of time/money/resource to produce information sought?
 - Is there a less onerous way to provide information sought?
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How to resolve disputes relating to Section 21 Notices

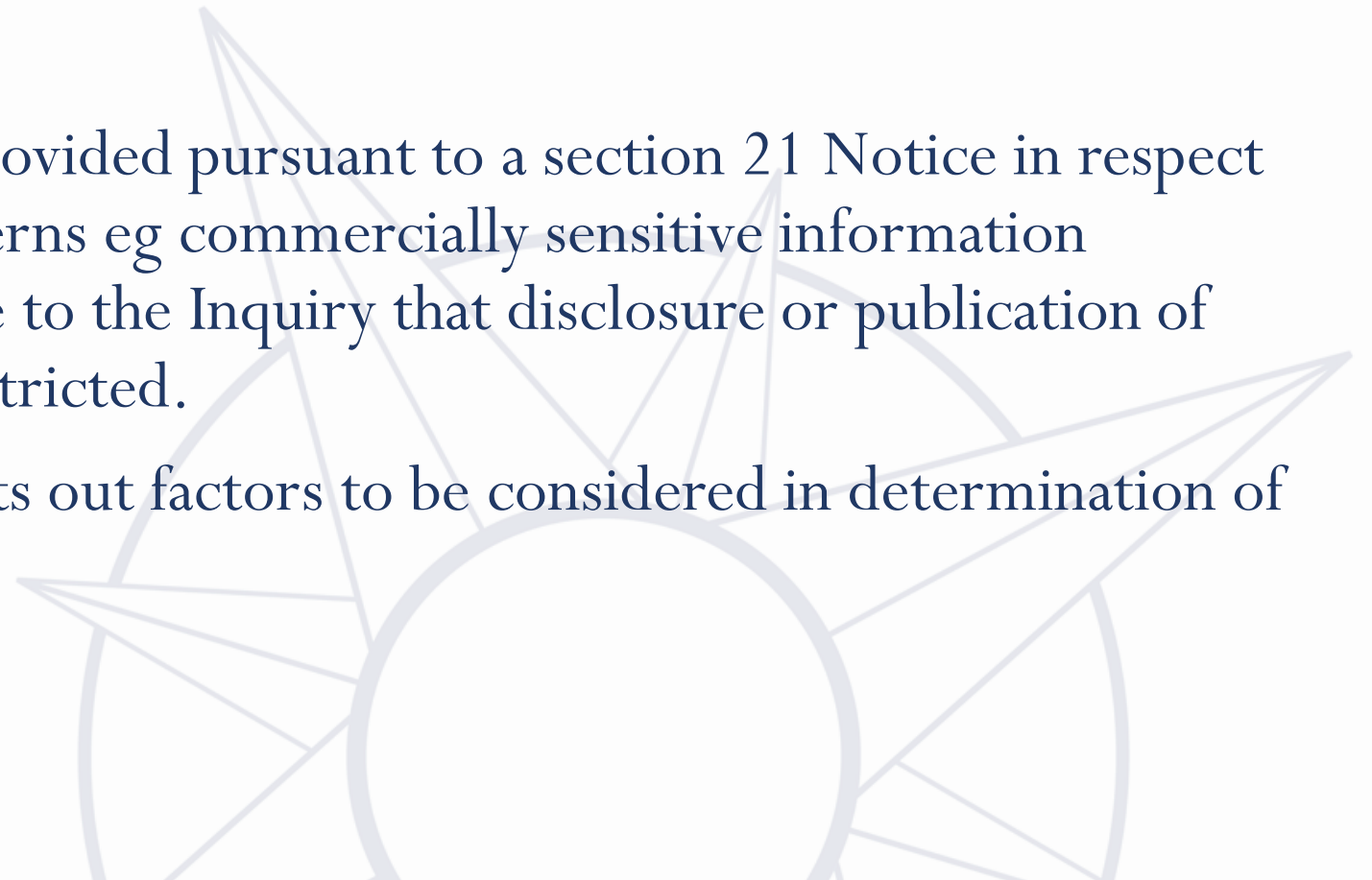
- Formal Route:
- Section 21(4) provides procedure where person considers unable to comply, or not reasonable in all the circumstances to be expected to comply.
- Is determined by Inquiry Chairman who may vary or revoke notice.

- Informal Route:
- By engagement with the Inquiry Team with whom early engagement should be made in any event to develop positive and constructive working relationship.



Restriction Orders

- Where information is provided pursuant to a section 21 Notice in respect of which there are concerns eg commercially sensitive information application may be made to the Inquiry that disclosure or publication of material provided be restricted.
- Section 19(3) and (4) sets out factors to be considered in determination of any application.



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