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Public Office (Accountability) Bill

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Agenda

- Public Office (Accountability) Bill Overview
- Duty of candour and assistance
- Duty to promote and maintain high standards of ethical conduct

Public Office (Accountability) Bill

- First reading September 2025
- Currently at committee stage in the House of Lords
- A Bill to impose a duty on public authorities and public officials to act with candour, transparency and frankness; to make provision for the enforcement of that duty in their dealings with inquiries and investigations; to require public authorities to promote and take steps to maintain ethical conduct within all parts of the authority; to create an offence in relation to public authorities and public officials who mislead the public; to create further offences in relation to the misconduct of persons who hold public office and to abolish the common law offence of misconduct in public office; to make provision enabling persons to participate at inquiries and investigations where the conduct of public authorities may be in issue and for connected purposes.

Public Office (Accountability)

- Section 1:
- “The purpose of this Act is to ensure that public authorities and public officials at all times perform their functions with candour, transparency and frankness and in the public interest.”



Public Office (Accountability) Bill

- This Act does so by:
  - Imposing a duty on public authorities and public officials to act with candour, transparency and frankness in their dealings with inquiries and investigations and imposing criminal liability for breach
  - Requiring public authorities to promote and take steps to maintain ethical conduct, candour, transparency and frankness within all parts of the authority
  - Imposing criminal liability on public authorities and public officials who mislead the public in seriously improper ways
  - Imposing criminal liability for seriously improper acts by individuals holding public office and breaches of duties to prevent death or serious injury
  - Making provision about parity at inquiries and investigations where a public authority is a participant

Public Office (Accountability) Bill

- Part 1: Implementing duty of candour
- Part 2: Performance of Public Functions
- Part 3: Misconduct in Public Office
- Part 4: Participation of persons at inquiries and investigations
- Part 5: Miscellaneous and Final Provisions

Duty of candour and assistance

- Public authorities and officials must at all times act with candour, transparency and frankness in dealings with inquiries and investigations



Duty of candour and assistance

- Public authorities or officials must notify the person leading an inquiry or investigation where they have grounds to believe their acts may be relevant or they have information that is relevant
- Public authorities or officials must provide all such assistance as they can reasonably give to assist inquiry or investigation to meet objectives
- Public officials in charge of an authority must take all reasonable steps to ensure authority's compliance



Providing assistance to inquiry or investigation

- Includes:
- Provision of relevant information
- Drawing attention to information of particular significance
- Correcting errors and omissions
- Public authority providing position statement
- Providing further requested information



Persons with relevant public responsibilities

- Person who, in connection with an incident:
- Had a health and safety responsibility or
- Carried out activities as a service provider to a public authority and had significant effect on members of the public
- Person with relevant public responsibility must comply with duty of candour and assistance

Failure to comply

- Criminal offence committed if a person:
  - Fails to comply with duty of candour and assistance and:
  - Intends that failure will impede inquiry or investigation achieving objectives or
  - In the case of an obligation under section 2(4) or 2(5) is reckless as to whether failure will impede inquiry or investigation achieving objectives

Protected information

- Information relating to:
  - Security or intelligence
  - Defence produced or held by Defence Intelligence, disclosure of which would be damaging
  - Exercise by National Crime Agency of criminal intelligence function
  - Exercise by police force of counter-terrorism and national security functions
- Relevant public authority:
  - Intelligence service
  - Defence Intelligence
  - National Crime Agency
  - Police force exercising counter-terrorism and national security functions

Protected Information

- Duty to give notification of relevant acts or information does not apply to:
  - Person working for relevant public authority other than the head of the authority
  - Other public officials or public authorities where notification would result in provision of protected information

Information contained in public records

- Information contained in records transferred to relevant authority under public records legislation is not treated as information held by the relevant authority or persons who work for the authority

Duty to promote and maintain high standards of ethical conduct

- Public authority must promote and take steps to maintain high standards of ethical conduct, including:
  - Adopting code of ethical conduct for people working for the authority
  - Making those people aware of the code
  - Ensuring the code is published



Ethical conduct

- Conduct consistent with principles of:
  - Selflessness
  - Integrity
  - Objectivity
  - Accountability
  - Openness
  - Honesty
  - Leadership



Code of Ethical conduct

- Must contain information on:
  - Steps a person working for the authority may take if they believe another person working for the authority has failed to comply
  - The making of protected disclosures
  - How persons who do not work for the authority may complain about the conduct of the authority or persons who work for it

Guidance

- Appropriate national authority may issue guidance on the duty to promote and maintain high standards of ethical conduct
- Public authorities must have regard to guidance

Offence of misleading the public

- Criminal offence committed if a public authority or public official:
  - Acts with the intention of misleading the public or are reckless as to whether their act will do so and
  - Knows or ought to know that their act is seriously improper

Seriously improper act

- An act is seriously improper if it:
  - Involves significant or repeated dishonesty in respect of matters of significant concern to the public
  - Caused or contributed to causing or had potential to cause harm to other persons
  - Departed significantly from what is to be expected in the proper exercise of a public authority or public official's functions and
- A reasonable person would consider it to be seriously improper, taking account of circumstances

Defence

- Defence to charge of offence of misleading the public if a person proves:
  - The act was necessary for the proper exercise of function of intelligence service or armed forces or
  - They otherwise had a reasonable excuse for their act

Offence of Misconduct in Public Office

- Criminal offence committed if a person who holds public office:
  - Uses office to obtain a benefit or cause another person to suffer detriment and:
  - Knows or ought to know that doing so is a seriously improper act

Seriously improper act

- An act is seriously improper if a reasonable person would consider it to be seriously improper
- When determining whether an act is seriously improper, a jury must be directed to have regard to:
  - Extent to which act involved intention to mislead or other dishonesty:
  - Extent to which act involved conflict of interest or breach of trust, particularly in relation to vulnerable individuals
  - Nature and degree of benefit obtained by the person
  - Nature and degree of any detriment suffered by another person
  - Extent to which act had potential to undermine public confidence

Defence

- Defence to charge of offence of misconduct in public office if a person proves they had a reasonable excuse for their act.



Offence of breach of duty to prevent death or serious injury

- Criminal offence committed if a person who holds public office:
  - Is under a duty to prevent or prevent a risk of another person suffering critical harm
  - Knows or ought to know they are under the duty
  - In breach of the duty intentionally or recklessly causes or creates a significant risk of causing another person to suffer critical harm and
  - The act falls far below what could reasonably be expected of the person in the circumstances

Defence

- Defence to charge of offence of breach of duty to prevent death or serious injury if a person proves that they had a reasonable excuse for their act



Abolition of common law offences

- Abolition of offence of misconduct in public office under the common law of England and Wales
- Abolition of offence of misconduct in public office under the common law of Northern Ireland
- Does not affect acts done before commencement of relevant section
- Does not affect liability for any other offence
- Does not affect civil liability for tort of misfeasance in public office

Parity at inquiries and investigations

- Amendment of legislation relating to inquiries and investigations
- Public authorities required to have regard to guidance setting out principles promoting need to:
  - Act with candour, transparency and frankness in dealings with UK inquiries and investigations
  - Support inquisitorial nature of UK inquiries and investigations
  - Assist UK inquiries and investigations to meet objectives
  - Help UK inquiries and investigations to facilitate participation of affected persons

Parity at inquiries and investigations

- Public authorities to engage legal representatives to act for them at UK inquiries and investigations only so far as necessary and proportionate, having regard to:
  - Comparative position of affected persons in respect of their means to engage legal representatives
  - Nature and extent of obligations to assist in respect of disclosure and other matters
  - Importance of the issues under investigation and the need for issues to be investigated fairly, proportionately, expeditiously and cost-effectively

Parity at inquiries and investigations

- Provision for concerns to be raised over conduct of public authority or its legal representatives
- Persons conducting or participating in UK inquiries and inquest must have regard to overriding objective of ensuring that affected persons are able to participate fully and effectively in proceedings
- Provision for legal aid to be made available without a means test for bereaved family members where a public authority is represented at an inquest or Scottish inquiry

Any Questions?

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Thank You

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