

Public Authority (Accountability) Bill

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Schedule – Amendment of the Legal Aid, Sentencing and Punishment of Offenders Act 2012

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TO

Set a requirement on public institutions, public servants and officials and on those carrying out functions on their behalf to act in the public interest and with candour and frankness; to define the public law duty on them to assist courts, official inquiries and investigations; to enable victims to enforce such duties; to create offences for the breach of certain duties; to provide funding for victims and their relatives in certain proceedings before the courts and at official inquiries and investigations; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Duties on public authorities, public servants and officials and others

- (1) Public authorities and public servants and officials have a duty at all times to act within their powers—
- (a) in the public interest, and
 - (b) with transparency, candour and frankness. 5
- (2) Public authorities and public servants and officials have a duty to assist court proceedings, official inquiries and investigations—
- (a) relating to their own activities, or
 - (b) where their acts or omissions are or may be relevant.
- (3) In discharging the duty under subsection (2), public authorities and public servants and officials shall—
- (a) act with proper expedition,
 - (b) act with transparency, candour and frankness,
 - (c) act without favour to their own position,
 - (d) make full disclosure of relevant documents, material and facts, 15
 - (e) set out their position on the relevant matters at the outset of the proceedings, inquiry or investigation, and
 - (f) provide further information and clarification as ordered by a court or inquiry.

- (4) In discharging their duty under subsection (2), public authorities and public servants and officials shall have regard to the pleadings, allegations, terms of reference and parameters of the relevant proceedings, inquiry or investigation but shall not be limited by them, in particular where they hold information which might change the ambit of the said proceedings, inquiry or investigation. 5
- (5) The duties in subsections (1) and (2) shall –
- (a) be read subject to existing laws relating to privacy, data protection and national security,
 - (b) apply in a qualified way with respect to private law and non-public functions as set out in subsection (6), and 10
 - (c) not be limited by any issue of insurance indemnity.
- (6) Where a public authority, public servant or official acts in a private law matter or non-public function the duties in subsections (1) and (2) will apply except where to do so might significantly and disproportionately damage the public interest. 15
- (7) Where the exception at subsection (6) is applied, including where the justification is to limit the disclosure of commercially sensitive information and contracts, the Chief Officer or Chief Executive of the public authority must give express reasons in writing to the relevant court, inquiry, investigation or individual. 20
- (8) The duties in subsections (1) and (2) shall apply to a private entity or individual as they apply to a public authority, public servant or official where the relevant activity –
- (a) is delegated or contracted from a public authority which would otherwise be subject to this Act, or 25
 - (b) is one where the private entity or individual owes a health and safety responsibility to the public or a section of it, including but not limited to sporting, leisure and entertainment events and premises, public transport systems and the provision of utilities and retail facilities. 30
- (9) The duties in subsections (1) and (2) shall be enforceable by application to the relevant court or inquiry chairperson by any person affected by the alleged breach, or the court or inquiry may act of its own motion. Where there are no extant court or inquiry proceedings, the duties may be enforced by judicial review proceedings in the High Court. 35

2 Code of Ethics

All public authorities shall have and publish a “Code of Ethics” which –

- (a) promotes ethical behaviour, transparency and candour within all areas of the organisation and its departments,
- (b) takes express account of “The Seven Principles of Public Life” promulgated by the 1995 Committee on Standards in Public Life, 40
- (c) provides reasonable protection for whistleblowers, and
- (d) provides a complaints procedure accessible to members of the public.

3 Offences and penalties

- (1) The Chief Officer or Chief Executive of a public authority commits an offence if he or she intentionally or recklessly fails to discharge his or her duty under section 1(2).
- (2) A public servant or official commits an offence if he or she intentionally or recklessly –
- (a) misleads the general public or media,
 - (b) misleads court proceedings or any inquiry or investigation to which the duty in section 1(2) applies, or
 - (c) impedes the discharge of the section 1(2) duty, by any act or omission, or failure to provide information by witness statement, report or otherwise.
- (3) A person who has previously been a public servant or official commits an offence if he or she refuses to provide, or unreasonably avoids providing –
- (a) a witness statement, or
 - (b) other relevant material which he or she holds
- to a court, inquiry or investigation to which section 1(2) applies, relating to his or her conduct or knowledge during the period when in such employment or office.
- (4) The duties provided for in sections 1(2), 3(1), 3(2)(c) and (3) do not apply to an individual who is a suspect in a criminal investigation so far as matters related to that investigation are concerned.
- (5) Where the Chief Officer or Chief Executive of a public authority is a suspect in a criminal investigation he or she must delegate the section 1(2) duty to a deputy so far as matters relating to that investigation are concerned and the provisions of this Act shall apply to the said deputy as if he or she was the Chief Officer or Chief Executive.
- (6) No offence pursuant to subsection (1), (2) and (3) of this section is committed by an individual to the extent that he or she reasonably asserts the privilege against self-incrimination.
- (7) A person guilty of an offence under subsection (1), (2) and (3) of this section shall be liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or both; and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or both.

4 Assistance for bereaved persons and core participants at inquests and public inquiries

- (1) *With respect to inquests and public inquiries relating to deaths or serious injuries, and where one or more public authority, or private entity whose relevant activity falls within section 1(8) above, are designated as “interested persons” (IPs) or “core participants” (CPs), bereaved IPs and CPs shall be entitled to publicly-funded legal assistance and representation at the same level or in proportion to the resources provided to the public authority or private entity, as set out in the Schedule to this Act.*

- (2) *Where a Coroner or Chair of a public inquiry determines that there has been a breach of the duty in section 1(2) by a public authority or private entity within section 1(8), he or she may order the relevant authority or entity to pay any costs occasioned by such breach.*

5 Definitions 5

- (1) In this Act –

“court proceeding” means all proceedings in criminal, civil or coronial courts, or tribunals set up pursuant to statute, with jurisdiction anywhere in the United Kingdom, or international courts or tribunals to which the United Kingdom government has given effect by statute or treaty; 10

“inquiry” means an inquiry under the Inquiries Act 2005 or an ad hoc inquiry set up by national or local government or any public authority;

“investigation” means any police or other investigation set up by a public authority or regulatory body to – 15

- (a) detect and prosecute criminal and disciplinary offences,
- (b) ensure compliance with professional standards, or
- (c) the adequacy of the provision and delivery of public services and exercise of public functions,

and it also includes investigations under the Coroners and Justice Act 2009; 20

“private entity” means any corporation, partnership, business, or professional, or sole practitioner, or voluntary or charitable organization;

“public authority” means any national or local government department, or other organization, institution or agency engaged in functions of a public nature and the definition includes entities with a private structure but which are majority owned by public funds; and “public authority” is to be given an inclusive meaning where any dispute arises before a court; 25

“public servants and officials” means all those who work for or hold office under a public authority; and “public servants and officials” is to be given an inclusive meaning where any dispute arises before a court; and 30

“whistleblower” means a person who makes a disclosure of information which, if made by a worker, would be a qualifying disclosure pursuant to section 43B of the Employment Rights Act 1996. 35

- (2) Where any court or inquiry considers proportionality with regard to any part of this Act it must give high importance to the duties set out within sections 1(1) and 1(2). 40

6 Short title, commencement and extent

- (1) This Act may be cited as the Public Authority (Accountability) Act 2017.
- (2) The provisions of this Act come into force on Royal Assent, except for sections 2 and 4 and the Schedule, which come into force 6 months after Royal Assent.
- (3) The provisions of this Act apply with respect to any court proceedings, inquiry or investigation which commences or continues after the Act comes into force. 45

- (4) This Act extends to England and Wales, Scotland and Northern Ireland.

SCHEDULE

Section 4(1)

AMENDMENT OF THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT
2012

- 1 The Legal Aid, Sentencing and Punishment of Offenders Act 2012 shall be amended as follows. 5
- 2 After section 9 insert –
- “9A Inquest and public inquiry into an incident or failure leading to death or serious injury**
- (1) Where an inquest is opened or a public inquiry announced into any incident or failure leading to the death or serious injury of a person or persons, and where one or more public authority or private entity whose relevant activity falls within section 1(8) of the Public Authority (Accountability) Act 2017, are designated as “interested persons” (IPs) pursuant to section 47 of the Coroners and Justice Act 2009, or “core participants” (CPs) pursuant to Rule 5 of the Inquiry Rules 2006, the bereaved or injured IPs and CPs shall be entitled to publicly-funded legal advice and representation. 10
- (2) The provision shall be at rates previously applied to CPs under section 40(4) of the Inquiries Act 2005, to be reviewed from time to time. 15
- (3) In cases falling within this section, public authority rates shall be capped at the rates referred to in subsection (2). 20
- (4) The number, grades and seniority of legal advisers and advocates, and the number of remunerated hours allowed shall be the same or in proportion to provision made for the relevant public authority. 25
- (5) Where such provision is not the same, it may be more or less than that provided for the public authority, dependent upon the respective roles and burden of work and where provision is not the same the Director must provide a formal written determination setting out the basis for the disparity and certifying that in his or her view the level of funding is proportionate. 30
- (6) As soon as practicable after instruction by a bereaved IP or CP where subsection (1) applies, the solicitor shall notify the Director of an intention to apply for funding and within four weeks of such notification the solicitor shall make a provisional application for funding based upon instructions and disclosures made at that date. 35
- (7) Within seven days of receipt of a notification under subsection (6), the Director shall notify any relevant public authority that it must provide the funding information detailed in subsection (8), below, within four weeks. 40

- (8) On receipt of a notification under subsection (7) the public authority shall, within four weeks, furnish the Director with a funding plan setting out the provision it is to make for the said proceedings, to include –
- (a) the number, 5
 - (b) grades,
 - (c) seniority of legal advisers, advocates and support staff (to include investigators and administrators), and
 - (d) the estimated number of remunerated hours that will be expended by each relevant person in the proper and reasonable preparation and representation of the case. 10
- (9) The funding plan at subsection (8) shall –
- (a) make clear where provision for legal advice and representation has been made by the public authority in connected proceedings, and the details of such provision, and 15
 - (b) be certified as being complete and that it includes all proper and reasonable provision made by the Chief Officer or Chief Executive of the public authority in relation to the case.
- (10) In a case of complexity the solicitor for the bereaved applicant or the solicitor for the public authority may agree with the Director that funding plans can be provided periodically or in stages and any such agreement shall be at the discretion of the Director and as directed by him or her. 20
- (11) Where any funding plan is amended or finalized the Director must be notified and provided with the amended plan within seven days. 25
- (12) Where a bereaved IP or CP is entitled to public funding under subsection (1), but there is no public authority IP or CP then the Director shall have regard to the funding plan of the solicitor for the bereaved applicant and the general circumstances of the case, including the level of representation by other IPs or CPs, in assessing the relevant provision under this section. 30
- (13) Where a bereaved IP or CP is entitled to public funding under subsection (1), it shall not be means-tested.
- 9B Application of section 9A in the interests of justice 35**
- The Director may apply the provisions in section 9A to other inquiries and investigations insofar as is in the interests of justice.”

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*Ordered to be brought in by Andy Burnham,
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