

Legislative Consent Memorandum

Public Office (Accountability) Bill

Background

1. This memorandum has been lodged by Kate Forbes, Deputy First Minister and Cabinet Secretary for Economy and Gaelic in accordance with Rule 9B.3.1(a) of the Parliament's Standing Orders.

2. The Public Office (Accountability) Bill was introduced by the UK Government in the House of Commons on 16 September 2025. The Bill is available on the UK Parliament website via this link: [Public Office \(Accountability\) Bill - Parliamentary Bills - UK Parliament](#).

Content of the Bill

3. The Bill makes provision for a variety of measures relating to public authorities and public officials across the UK. As it stands (subject to legislative consent), two aspects of the proposals extend to Scotland:

- A **duty of candour and assistance**, which will require public authorities and public officials at all times to act with candour, transparency and frankness in their dealings with inquiries and investigations. This includes a duty to proactively notify the lead of an inquiry or investigation if they consider they have information which may be relevant, as well as a duty to give all reasonable assistance when directed to do so (with criminal sanctions for the most serious breaches). This duty will apply to "public authorities" and "public officials" which are defined under Part 2 of Schedule 2 of the Bill. Further details are noted below; and
- A requirement on public authorities to promote and take steps to maintain high standards of ethical conduct at all times by those who work for them. This includes a requirement on a public authority to adopt a **code of ethical conduct** which sets out standards of behaviour expected of staff. Public authorities will be required to publish the code and promote it to staff, as well as to have regard to guidance which may be issued to them by the UK Government (or the Scottish Ministers in relation to devolved matters). This duty will apply to "public authorities" defined under Part 3 of Schedule 2. Further details are set out below.

4. The Bill also includes the following provisions which do not currently extend to Scotland:

- A new offence of **misleading the public** which seeks to capture public authorities and public officials who intentionally mislead the public or are reckless as to whether their act will do so, where the person knows, or should know that their act is seriously improper;

- New provisions regarding **misconduct in public office** which follows a [report](#) by the Law Commission of England and Wales. This would replace the existing common-law offence in England and Wales of [misconduct in public office](#) with two new statutory offences of ‘seriously improper acts’ and ‘a breach of duty to prevent death or serious injury’. The Scottish Government understands that the intention behind these provisions is to provide greater certainty as to how the existing common-law offence applies, with a view to ensuring that those who abuse or neglect their position in public office, or fall short of the behaviour expected, continue to face serious sanctions; and
- Changes in relation to **legal aid and parity of arms**, which include:
 - i. Expanding non-means-tested legal aid to bereaved family members in relation to coroner’s inquests where a public authority is an interested person; and,
 - ii. Requiring public authorities to have regard to guidance about conduct and behaviour at inquiries, as well as to only engage legal representation insofar as necessary and proportionate.

Provisions which require the consent of the Scottish Parliament

5. The Bill is a relevant Bill within Rule 9B.1.1 of Standing Orders, as it makes provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament, and alters the executive competence of the Scottish Ministers.

6. In particular, legislative consent is required for Part 1 and chapters 1 and 2 of Part 2, which includes Schedules 1-3, and Part 5. More detail as to the content of these provisions is set out below, but in terms of the devolution position, matters relating to propriety and ethics and the procedures which apply in the context of public inquiries (where the subject of the inquiry is not reserved), including Fatal Accident Inquiries, do not relate to reserved matters in terms of Schedule 5 of the [Scotland Act 1998](#). Similarly, there is no reservation in that Act for codes of conduct. The UK Government agrees that legislative consent is required for Part 1 and chapters 1 and 2 of Part 2, which includes Schedules 1-3, however has not given an indication for Part 5 (miscellaneous and final provisions).

7. There are also several provisions in the Bill which alter the executive competence of the Scottish Ministers, namely:

- clause 10(1) (power to issue guidance to assist public authorities, in particular in relation to drafting and adopting a code of ethical conduct);
- clause 21 (power to make consequential provision);
- clause 25 (commencement power);
- paragraph 7 of Schedule 1 (power to extend duty of candour and assistance to other investigations); and

- paragraph 4(4) of Schedule 2 (power to specify public functions for the purposes of extending the list of public authorities who must adopt a code of practice).

8. The provisions that apply to Scotland on introduction and trigger the legislative consent process are set out in more detail below.

Part 1 – Purpose of Act: Implementing Duty of Candour etc.

9. Part 1 of the Bill sets out the purpose of the Act: to ensure that public authorities and public officials at all times perform their functions with candour, transparency and frankness, and in the public interest. Clause 1 details that this is achieved by the following relevant chapters and parts.

Part 2, Chapter 1: Inquiries and Investigations

Clauses 2-8 (including Schedules 1 and 2, Parts 1 and 2 and Schedule 3)

10. Chapter 1 of Part 2 details that a 'duty of candour and assistance' applies at all times to public officials and public authorities, in that they are required to act with candour, transparency and frankness in their dealings with inquiries and investigations. There are two aspects to the duty:

- a) The obligation on public officials and public authorities to proactively notify the lead of an inquiry/investigation if they consider their acts may be relevant or that they may have relevant information (this aspect of the duty is always 'switched on') (Clause 2(3)); and
- b) The duty to provide any information or assistance they can reasonably give to assist an inquiry/investigation (this aspect of the duty is only triggered when the lead of an inquiry/investigation sends a 'compliance direction' to a public authority or official) (Clause 2(4)).

11. In fulfilling the above duties, public authorities and officials are required to act expeditiously and without favour to their own, or another person's, position.

12. The second aspect of the duty includes requiring a public authority or public official to:

- a) Provide any information they have which they consider is likely to be relevant to the inquiry or investigation;
- b) Draw attention to significant information, including any errors discovered in information previously provided;
- c) Provide, where reasonably practical, any information requested by the person leading an inquiry/investigation; and
- d) (in the case of a public authority only), provide a position statement.

13. As reflected above, the second aspect of the duty is triggered when the chair of an inquiry or investigation issues a compliance direction (whereby, for example, a public authority or public official may be asked to provide particular information). This could include oral or written information. Further details as to the process are set out under clause 3 and Schedule 1 of the Bill.

Where does the duty apply?

14. As made clear by the interpretation provision at clause 8 in the Bill, in Scotland, the duty of candour and assistance would apply in relation to:

- a) Statutory inquiries established under the [Inquiries Act 2005](#);
- b) Non-statutory inquiries established by Ministers;
- c) Fatal Accident Inquiries (in England and Wales and NI, the duty will also apply at coroners' investigations, including inquests); and
- d) Any investigation specified in regulations under Schedule 1, Part 6 of the Bill.

15. Accordingly, Part 1 of Schedule 1 of the Bill amends the [Inquiries Act 2005](#), adding a new section which requires the chair of an inquiry to give a compliance direction to a public authority or public official as soon as reasonably practicable after the start of an inquiry, if it appears to the chair that the person's acts are or may be relevant to the inquiry, or that they otherwise have information likely to be relevant. The duty to give such a direction does not limit any future discretion to issue a direction at another stage of the inquiry.

16. Equivalent provision is made in relation to non-statutory inquiries under Part 2 of Schedule 1 in order to establish a framework to enable the duty of candour and assistance to also work in that context.

17. Similarly, the [Inquiries into Fatal Accidents and Sudden Deaths etc. \(Scotland\) Act 2016](#) is amended by Part 4 of Schedule 1 of the Bill, whereby the Procurator Fiscal is required to give a compliance direction to a public authority or official where they are satisfied that the person's acts may be relevant, or the person has information which is likely to be relevant to the inquiry. The amendments also provide that a sheriff may require a Procurator Fiscal to give a compliance direction in other circumstances. These amendments are broadly comparable to amendments which are made to the [Coroners and Justice Act 2009](#) and the [Coroners Act \(Northern Ireland\) 1959](#).

18. As noted at paragraph 14(d) above, a power is in place under Part 6 of Schedule 1 which allows for the duty of candour to also be applied in the context of other investigations through secondary legislation. The power may only be used in relation to:

- a) A criminal investigation;
- b) A regulatory or supervisory investigation;
- c) An investigation into the provision of public services;

d) An investigation into the exercise of public functions.

19. The Regulations would generally be subject to the affirmative procedure, although there is scope to use an emergency procedure (i.e. where the Regulations would be made before being laid in Parliament), where the appropriate national authority makes a statement that this is necessary for reasons of urgency.

20. In accordance with clause 22 of the Bill, the power under Part 6 of Schedule 1 is available to the Scottish Ministers where the regulations contain only provision which relates to Scottish devolved matters. Accordingly, the provision alters the executive competence of the Scottish Ministers. Clause 22 also makes clear that, where the Secretary of State makes regulations containing provision which relates to a Scottish devolved matter, they must have the consent of the Scottish Ministers.

Application of the duty

21. The duty of candour and assistance will apply to “public authorities” and “public officials” which are defined under Part 2 of Schedule 2 of the Bill. The general interpretation provision at clause 23 is also relevant. For this purpose, public authorities include:

- a) All core public bodies (including government departments, devolved Governments, NHS bodies, police, schools and local authorities), with the exception of parliaments, courts and tribunals;
- b) Bodies whose functions are of a public nature, for example where public services have been outsourced; and
- c) A body which is no longer an authority but previously was, such as the recent amendment of Scottish Qualifications Authority to become Qualifications Scotland.

22. Public officials subject to the duty include:

- a) Current and former ministers (including ministers of devolved governments/executives);
- b) Elected officials in local government (where executive arrangements are operated it is only members who serve on the authority’s executive, but local authority executive arrangements have not been provided for in Scotland); and
- c) Anyone who is employed by a public authority or otherwise holds office under a public authority (including those who have retired but hold relevant evidence).

23. Backbench MPs and non-executive members of devolved legislatures are out of scope of the duty.

24. Clause 4 of the Bill also applies the duty of candour and assistance to any private entity or individual who:

- a) had a health and safety responsibility in connection with an incident; or

- b) carried out activities as a service provider to a public authority which had a significant impact on members of the public, in connection with an incident which is the subject of an inquiry or investigation.

25. Clause 6 of the Bill sets out that a compliance direction may not be given to a person if it would require the official to provide information relating to security or intelligence (and similarly, a public official is not required to provide any such information in response to a direction). The 'always switched on' duty to notify under clause 2(3) also does not apply to a person who works for an intelligence service or when compliance with the duty would result in providing information relating to security or intelligence.

26. Clause 7 makes clear that the duty of candour and assistance applies to all inquiries and investigations regardless of whether they started before and are ongoing on the date the Act is passed or are started after the date the Act is passed.

Sanctions – Criminal Offence

27. Breaching the duty of candour and assistance could result in criminal sanctions in accordance with clause 5. This would apply in relation to the most serious cases where the person intends that their failure to comply with the duty 'will impede the inquiry or investigation achieving its objectives' or, in the case of failing to comply with clause 2(4) or (5), they are reckless as to whether their failure will impede the inquiry or investigation. The 'recklessness' element of the offence will not apply in relation to the duty to notify under clause 2(3) unless there has been a failing by the public official in charge of a public authority to take all reasonable steps to secure that the authority complies with that obligation (as per clause 2(5)).

28. In Scotland, a person guilty of this offence would be liable, on summary conviction, to imprisonment not exceeding 12 months or a fine up to £10,000, or on indictment, to imprisonment not exceeding 2 years or a fine (or both). Further details are set out under schedule 3 of the Bill. Paragraph 3 of that schedule sets out that where an offence is committed by a body with consent or connivance of a relevant individual within the body (i.e. a person who has a particular position of control within the body), both the body and the individual are liable.

29. The offence is exempt from acts committed outside the United Kingdom, unless the individual at the time of the offence is a UK national, habitually resident in the UK or a body incorporated or formed under the law of any part of the UK.

Part 2, Chapter 2: Standards of Ethical Conduct

Clauses 9-10

30. Clause 9 of Chapter 2 of Part 2 requires public authorities to promote and take steps to maintain high standards of ethical behaviour at all times by those working for the authority. Behind this overarching duty, public authorities are required to hold, promote and publish a code of ethical conduct which sets out standards of behaviour expected of the people who work for them.

31. It will be up to public authorities to make their staff aware of the new codes and the associated consequences in failing to comply with them, which will be at the discretion of the public authority to establish. The code can be adapted from codes of conduct currently in place, if they include certain minimum standards, including:

- a) Setting out expectations that staff should adhere to in accordance with a duty of candour and how they are to be met;
- b) Setting out disciplinary consequences for non-compliance;
- c) Promotion of ethical behaviour, candour, transparency and frankness;
- d) Information about how staff can raise concerns about compliance with the code, including through whistleblowing procedures; and
- e) Information about how members of the public can make complaints about the conduct of the authority or its staff.

32. The intention behind such codes of ethics is that they seek to apply minimum standards to staff conduct in their day-to-day duties, based on the [Seven Principles of Public Life](#), which are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

33. The code must be publicly available and can be revised by the public authority. As noted above, currently held codes can be adapted, or a Code can be established by an umbrella body and adopted by the relevant public authority. Clause 10(1) of the Bill includes a power for the appropriate national authority (which includes the Scottish Ministers in relation to Scottish devolved matters) to issue guidance for the purposes of chapter 2. Relevant public authorities are required to have regard to the guidance.

34. The requirement to adopt a code of ethical conduct will apply to “public authorities” defined under Part 3, Schedule 2 of the Bill. For this purpose, public authorities include:

- a) A government department;
- b) The Scottish Ministers and Ministers of devolved administrations /authorities;
- c) The armed forces, a police force or policing body, local authority, NHS body, school or further education provider; and
- d) Any other non-excluded body (parliaments and courts are excluded) which either:
 - i. exercises functions of a public nature (to be specified in regulations); or
 - ii. is created by Royal prerogative, through an enactment or government department, including by any devolved Minister or authority.

35. In the absence of Regulations which specify functions of a public nature, no body will be caught by the reference under (d)(i) above. However, there is a power under paragraph 4(4) of schedule 2 which enables the appropriate national authority

(which includes the Scottish Ministers in relation to Scottish devolved matters) to specify ‘functions of a public nature’. Functions of a public nature may sometimes be discharged by private bodies on behalf of a public authority, for example under contract. The Scottish Government understands that the thinking behind this regulation making power is that, whilst it would not be proportionate to subject all such private bodies to the duty to adopt a code of ethical conduct, there is merit in allowing the appropriate national authority to target sectors where it is appropriate for the duty to apply.

36. The power is subject to the affirmative procedure and, since it is available to the Scottish Ministers in relation to Scottish devolved matters, it will alter the executive competence of the Scottish Ministers. In accordance with clause 22, where the Secretary of State makes regulations containing provision which relates to a Scottish devolved matter, they must have the consent of the Scottish Ministers.

Reasons for recommending withholding legislative consent

37. The Scottish Ministers are in principle supportive of the commendable aims of this Bill and believe it will significantly contribute to improving accountability and full evidence disclosure at relevant inquiries and investigations.

38. The Scottish Government recognises that there is a strong public and parliamentary interest in the integrity and openness of public servants and Ministers. Very recently, the [Infected Blood Inquiry Report](#), published in May 2024, criticised governments across the UK for failings over the previous five decades and made several recommendations aimed at ending “a defensive culture in the Civil Service and government”, including the introduction of a statutory duty of accountability and candour for senior civil servants.

39. The Scottish Government is determined to learn from past mistakes and agrees with the principles of this Bill which introduces a duty of candour and assistance and requirements in relation to standards of ethical conduct.

40. In Scotland, requirements for standards of ethical conduct are already in place in some areas, including the Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025 and for councillors in local authorities and members of certain public bodies who are covered by the ethical standards framework (Ethical Standards in Public Life etc. (Scotland) Act 2000). Statutory professional obligations on registered health professionals to comply with investigations and inquiries into their practice already apply across the UK, though sanctions for failure are professional rather than criminal. However, the Scottish Government is not complacent and recognises the need for further, more consistent, action to apply across the public sector.

41. At present, however, there are some points of detail – many of them technical – which the Scottish Government considers still need to be tidied up to ensure that this Bill will work in practice as intended for Scotland. The Scottish Government is

therefore engaging with the UK Government on amendments to the Bill, which it considers are needed to address these points. These include: the appropriate definition of a school and of an NHS body, appropriate local authorities' executive arrangements and explanation of the role of NRS as a public body.

42. At this stage, therefore, the Scottish Government cannot recommend that the Scottish Parliament consents to the relevant provisions in the Bill, as reflected in the draft motion on legislative consent set out below. It does, however, anticipate that it will be in position to recommend consent once these points are resolved, at which stage the Scottish Government will lodge a supplementary Legislative Consent Memorandum (LCM) and update the Scottish Parliament on the outcome of discussions with the UK Government.

43. The Scottish Ministers are fully committed to integrity and transparency, as well as positive joint working with the UK Government on an area of mutual interest, and look forward to ensuring that the Bill will work effectively in Scotland.

Financial implications

44. There are no financial implications that arise directly from these provisions. There may, however, be financial implications that arise from the exercise of the provisions. The UK Government has provided impact assessments for some of the provisions in the Bill, including that, in the first instance, the Bill's code of ethics provisions apply only to public sector bodies, so impose no cost on businesses. However, there is limited evidence provided on any further financial implications.

Other relevant considerations

45. There are likely to be both UK Government and non-Government amendments to this Bill as it progresses through the UK Parliament, as there is keen interest in this area of policy. A supplementary LCM will be required where any amendments trigger the requirement for legislative consent, and it is anticipated that this is likely to arise in relation to amendments which the Scottish Ministers have identified are needed to ensure that Parts 1 and 2 of the Bill work for Scotland. Further supplementary LCMs may also be required should any of the other parts of the Bill be extended to Scotland at a later stage.

Post EU scrutiny

46. The Scottish Government has not identified any assimilated law which would be impacted by the Bill.

Conclusion

47. At present, it is the recommendation of the Scottish Government that the Scottish Parliament withholds consent to Part 1, Part 2 (chapters 1 and 2), Schedules 1-3 and Part 5 of the Public Office (Accountability) Bill as introduced.

48. As noted, supplementary LCMs are expected to be submitted in relation to the amendments discussed in paragraph 41, i.e. the appropriate definition of a school and of an NHS body, appropriate local authorities' executive arrangements and explanation of the role of NRS as a public body.

Draft motion on legislative consent

49. The draft motion, which will be lodged by the Deputy First Minister and Cabinet Secretary for Economy and Gaelic, is:

“That the Parliament agrees that consent is withheld in relation to the relevant provisions of the Public Office (Accountability) Bill, introduced in the House of Commons on 16 September 2025, in relation to Part 1, Part 2 (chapters 1 and 2), Schedules 1-3 and Part 5, so far as these matters fall within the competence of the Scottish Parliament, or alter that legislative competence or the executive competence of the Scottish Ministers, being considered by the UK Parliament.”

Scottish Government
October 2025

This Legislative Consent Memorandum relates to the Public Office (Accountability) Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 31 October 2025

Public Office (Accountability) Bill – Legislative Consent Memorandum

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