

# Supplementary Legislative Consent Memorandum

## Public Office (Accountability) Bill

### Background

1. This memorandum has been lodged by Kate Forbes MSP, Deputy First Minister and Cabinet Secretary for Economy and Gaelic, in accordance with Rule 9B.3.1(c) of the Parliament's Standing Orders. It covers [amendments tabled](#) by the UK Government on 12 January 2026 to the Public Office (Accountability) Bill ('the Bill'). It should be read in conjunction with the Scottish Government's previous [Legislative Consent Memorandum](#) ('the first LCM') on the Bill, which was lodged on 31 October 2025.
2. The 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](#). The Bill's Report Stage in the House of Commons has been delayed and the timeframe for the Bill is currently uncertain.

### Content of the Bill

3. The Bill on introduction made a variety of measures relating to public authorities and public officials across the UK, with the aim of rebuilding public trust and ensuring past injustices are not repeated. It is hoped that through introducing a duty of candour and assistance, alongside minimum standards for ethical conduct, this will assist in eliminating divisiveness between public authorities, public officials and the general public through the creation of transparency and accountability.
4. The provisions that triggered the legislative consent process on the Bill's introduction were Part 1, Chapters 1 and 2 of Part 2, which included Schedules 1-3, and Part 5. Subject matter-wise, that can be summarised as provisions regarding:
  - A duty of candour and assistance; and
  - Standards of ethical conduct.
5. The first LCM recommended withholding consent to these provisions until amendments were secured, to ensure that the legislation would work in Scotland.
6. The Scottish Government has since engaged with the UK Government on such amendments, which were tabled by the UK Government on 12 January 2026. In addition, amendments were tabled which extend further parts of the Bill to Scotland. It should be noted, however, that the amendments have not yet been

voted on in the UK Parliament due to Report Stage in the House of Commons being postponed. This supplementary LCM considers amendments which concern all Parts of the Bill.

## Provisions which require the consent of the Scottish Parliament

7. In accordance with Rule 9B.3.1(c) of the Parliament's Standing Orders, many of the provisions that have been tabled for amendment into the Bill at Report Stage apply to Scotland for a purpose within the legislative competence of the Scottish Parliament and, in some cases, alter the executive competence of the Scottish Ministers. Accordingly, they trigger the legislative consent process.

8. More detail as to the content of these provisions and why legislative consent is required is set out below in relation to each respective area.

9. The UK Government agrees that legislative consent is required to extend and amend these Parts of the Bill for Scotland. It was noted in the first LCM that the UK Government had not indicated its view as to whether Part 5 (miscellaneous and final provisions) required consent, but it has since confirmed it agrees that aspects of Part 5 do require the legislative consent of the Scottish Parliament.

### Part 1 – Implementing Duty of Candour etc. (Clause 1) and Part 2, Chapter 1 – Duty of candour and assistance (Clauses 2-8) (including Part 5 and Schedules 1 to 3)

10. Paragraph 6 of the [first LCM](#) sets out that 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), as well as Fatal Accident Inquiries, do not relate to reserved matters in terms of the [Scotland Act 1998](#). Legislative consent is therefore required for Part 1, and Chapter 1 of Part 2 of the Bill, which includes Schedules 1 to 3, and Part 5. Paragraphs 9 to 29 of that LCM set out the content of those provisions in more detail.

11. As set out in that LCM, the Scottish Government was content in principle for the duty of candour and assistance provisions to extend to Scotland. Some points, however, required further scrutiny to ensure the provisions would operate as intended in Scotland. Subject to the relevant amendments being agreed to, the Scottish Government is satisfied that these points have now been addressed. Further detail is set out below but, in summary, the relevant [amendments tabled on 12 January](#) revolve around clarifying the public officials and public authorities to whom the duty of candour and assistance will apply. In particular, amendments have been tabled which would:

- expand the definition of a court (Gov 65) so it includes children's hearings, together with amendments to clarify that an individual is not a public official for the purposes of the duty of candour and assistance solely by

- virtue of being a children's panel member (Gov 96) (see paragraphs 12 to 18 below);
- amend the definition of an NHS body for Scotland so that Healthcare Improvement Scotland is also subject to the duty of candour and assistance (Gov 66)(see paragraphs 19 and 20 below);
- amend paragraph 3 of Schedule 2 to bring senior officials of Scottish local authorities within the scope of the duty of candour and assistance (Gov 97) in order to achieve a similar policy outcome to the rest of the UK (see paragraphs 21 to 24 below); and
- ensure that the public record offices and keepers of public records are not subject to the duty of candour and assistance in relation to their record-keeping duties (NC 8) (see paragraphs 25 to 28 below).

### Children's Hearing panel exemptions – Clause 23(1) and Sch 2, Part 2, para 3(6)

12. The duty of candour and assistance in clause 2 of the Bill applies to relevant public officials as defined in paragraph 3 of Schedule 2 of the Bill. Broadly, these cover anyone who works for a body or office which is established by an enactment, and appointment to the body is made by paragraph 4(c).

13. This therefore covers the children's hearings panel in Scotland, due to the panel being established by the [Children's Hearings \(Scotland\) Act 2011](#). Appointments to the panel are made by the National Convener, who is appointed by the Scottish Ministers.

14. However, as per paragraph 3(6)(a) of Schedule 2, an individual is not to be regarded as a public official for the purpose of these provisions solely by virtue of acting in a judicial capacity.

15. The Scottish Government sought an amendment to this due to the fact that, whilst panel members do not exercise judicial functions in strictly the same way as would be traditionally understood, they are making significant decisions with legal consequences for a child and their family. They can and do, for example, take decisions regarding compulsory measures which interfere with the [Article 8 rights of a child and their family](#). The children's hearings system is often referred to as the largest legal tribunal in Scotland, therefore if other tribunals and judicial office holders are exempt, or are given exemptions, the same should apply to this tribunal.

16. Following further discussions with the UK Government it was agreed that an amendment must be made to the Bill to expressly exclude children's hearing panel members in the same way as others acting in a judicial capacity. This ensures that children's hearings panel members are not regarded as public officials solely by virtue of that appointment.

17. A corresponding amendment was made to the general interpretation provision in the Bill at clause 23(1) to ensure that a children's hearing is caught within the definition of court under clause 23(1).

18. The UK Government tabled amendments Gov 65 and Gov 96 on 12 January 2026.

### Definition of an NHS Body in Scotland (Clause 23(1))

19. Clause 23(1) provides for the definition of an "NHS body". For Scotland, this includes Health Boards, Special Health Boards and the Common Services Agency, such bodies being set out in the [National Health Service \(Scotland\) Act 1978](#). However, the definition does not include Healthcare Improvement Scotland (HIS). HIS was established as a Health Body, under section 10A of the 1978 Act, by an amendment in the [Public Services Reform \(Scotland\) Act 2010](#) and the Scottish Government considers that it is appropriate for HIS to be subject to the duty of candour and assistance. The definition of an NHS body is also relevant for the purposes of the standards of ethical conduct provisions in the Bill.

20. The UK Government therefore tabled amendment Gov 66 on 12 January 2026 which will make this change if the amendment is agreed to.

### Local authority executive arrangements (Schedule 2, Part 2, paragraph 3)

21. The Bill provides that an individual is not to be regarded as a public official for the purposes of the duty of candour and assistance solely by virtue of serving as an elected member of a local authority, unless the local authority operates executive arrangements, and the individual is a member of the authority's executive. This has the effect, in England, Wales and Northern Ireland, of confining the duty of candour and assistance to local authority councillors with executive roles.

22. In Scotland, there is no statutory provision for "executive arrangements", and instead executive arrangements are a matter for Scottish local authorities to put in place through their Standing Orders as per [the Local Government \(Scotland\) 1973 Act](#). Paragraph 8 of Schedule 7 empowers authorities to adopt Standing Orders regulating their proceedings, through which each council determines its own governance arrangements. Councils may, for example, delegate matters to an Executive or Chief Executive, reserving only specified decisions to the full council.

23. The Bill, therefore, could provide no neat exception for an individual, who is not to be regarded as a public official for the purposes of the duty, solely by virtue of serving as an elected member of a local authority where they are involved in executive arrangements.

24. The Scottish Government, with agreement from COSLA, discussed this with the UK Government who agreed that an amendment should be made to the Bill for this purpose. As such, the UK Government tabled amendment Gov 97 on 12 January 2026 to schedule 2, which, if agreed to, will provide that an individual is not to be

regarded as a public official for the purposes of the duty of candour and assistance and the offence of misleading the public solely by virtue of serving as an elected member of a local authority. Instead, the relevant duties will only apply if the individual is a convener, depute-convener, leader of the council, civic head or a senior councillor.

## National Records of Scotland/Keeper of Records exclusion

25. The Scottish Government and National Records of Scotland (“NRS”) had concerns that the duty of candour, in particular clause 2(3) of the Bill as introduced, places responsibility on the Keeper when performing her archival functions: the Keeper, rather than the depositing authority, could be considered to “have information likely to be relevant to the inquiry or investigation” and would therefore be required to notify the inquiry chair of that likelihood. This concern was shared by officials from the National Archives (“TNA”), the National Archive for England and Wales, and the Public Records Office of Northern Ireland (“PRONI”).

26. Current arrangements are for depositing authorities to take responsibility for identifying relevant information at NRS and providing this to inquiries. NRS’s role as archival custodian does not include the capacity or capability to perform this function on behalf of multiple public authority depositors. An amendment was therefore requested to ensure that unintended obligations were not placed on the Keeper as the holder of archived material held on behalf of a depositor.

27. Following a whole-UK approach involving NRS, TNA and PRONI, the Scottish Government and NRS felt it imperative to remove the duty of candour from any person with responsibility for the care and preservation of records held on behalf of the Keeper of the Records of Scotland under arrangements known as charge and superintendence agreements (“CSA”). The amendment, if agreed to, will make clear that any person with responsibility for records under such arrangements is not to be treated as holding that information for the purposes of the duty of candour provisions.

28. The UK Government tabled the amendment NC 8 on 12 January 2026.

## Definition of a ‘school’

29. Paragraph 41 of the first LCM noted that an amendment was also needed for the definition of a school. The definition of a ‘school’ in Scotland in section 23(1) of the Bill is drafted to cover only grant-aided schools, excluding local authority schools, which raised questions of consistency with the definition of ‘schools’ for England and Wales.

30. Following discussion with the UK Government, however, it was agreed that, although public schools are not included in the definition of a “school” for Scotland, such schools will nevertheless be captured by the duty of candour and assistance by virtue of the reference to local authorities under paragraph 2 of schedule 2. This is because public schools in Scotland are managed by local authorities, and whilst no amendment is required, the UK Government has agreed to make clear in the

Explanatory Notes for the Bill that public schools in Scotland are caught by the duty of candour and assistance.

31. For completeness, it is also noted that the Bill was amended at Committee Stage to extend the application of the duty of candour and assistance to local authority inquiries in England. In addition, amendments were tabled at Report Stage to clause 6 (security and intelligence information) and schedule 1 (application of duty of candour and assistance) to clarify and change how the duty of candour and assistance applies to intelligence services and sensitive information. The Scottish Government understands that the amendments regarding the intelligence services are subject to further consideration due to ongoing concerns from stakeholders.

## Extension of the Duty of Candour and Assistance to Scotland

32. To conclude, the Scottish Government is content that the Duty of Candour and Assistance provisions, as due to be amended (subject to agreement at Report Stage), will work as intended for Scotland.

## Part 2, Chapter 2: Standards of ethical conduct (Clause 9-10) (including Schedule 2 and Part 5)

33. As per paragraph 6 of the first LCM, legislative consent is also required for Chapter 2 of Part 2 of the Bill, which includes schedule 2, and Part 5. Similar to the reasoning set out above, matters relating to propriety and ethics and codes of conduct do not relate to reserved matters in terms of the [Scotland Act 1998](#). Paragraphs 30 to 36 of that LCM set out the content of these provisions in more detail, but further amendments have subsequently been tabled at Report Stage as noted below.

### Codes of conduct already in other legislation caveat (Clause 9)

34. Requirements for standards of ethical conduct are already in place in some areas, including in policing legislation. Police constables must hold and vacate their office as constables under legislation in Scotland, as required by the Police and Fire Reform (Scotland) Act 2012, therefore constables' disciplinary consequences must sit in legislation. Further standards were put in place in the [Police \(Ethics, Conduct and Scrutiny\) \(Scotland\) Act 2025](#). The Scottish Government considered that technical amendments were required to ensure that this part of the Bill could work in practice in Scotland, to ensure that it was clear that disciplinary consequences for constables could be set out in legislation as is required.

35. Given requirements for standards of ethical conduct being in place in some areas, an amendment has been tabled which makes clear that the code of ethical conduct must set out the disciplinary consequences of failing to act in accordance with expected standards of conduct. This includes where such consequences may be given effect elsewhere than in the Code, such as in legislation. For example, misconduct proceedings may only be taken in accordance with the police conduct regulations. The amendments, if agreed to, will provide additional clarity and avoid legal uncertainty and ensure that this part of the Bill works in a Scottish context.

36. The UK Government tabled amendment Gov 37 on 12 January 2026 on this basis.

### **Junior Scottish Ministers and elected official (Clause 9)**

37. A technical amendment has been tabled to clause 9 to make clear that the standards of ethics provisions do not apply in relation to Ministers, including Junior Scottish Ministers or elected councillors. The policy intention is, for example, that codes of ethics should apply to employees, agency staff and contractors of public authorities. Ministers and elected councillors, however, are accountable to the electorate rather than their respective authorities and therefore it is not considered appropriate to set the standards of conduct for them in the same manner as staff. There are different arrangements in place for governing the behaviour of elected officials, including the Ministerial code.

38. The UK Government therefore tabled amendment Gov 39 on 12 January 2026.

### **Extension of Standards of Ethical Conduct provisions to Scotland**

39. To conclude, the Scottish Government is content that the provisions on Standards of Ethical Conduct, as due to be amended (subject to agreement at Report Stage), will work as intended for Scotland, and recommends consent to Chapter 2 of Part 2 and the associated provisions in Part 5 and Schedule 2.

## **Part 2, Chapter 3 – Misleading the Public (Clause 11)**

40. The Bill on its introduction included a new offence in England and Wales of 'misleading the public'. The offence seeks to capture the most serious instances of public authorities and public officials misleading the public. Following an amendment (Gov70) tabled on 12 January (subject to that amendment being agreed to), these provisions will also extend to Scotland and trigger the legislative consent process on the basis that criminal law is not a reserved matter, nor is the conduct of public office holders.

41. The offence can be committed by a public authority or a public official as defined in Part 2 of Schedule 2 (i.e. the same group of bodies and public officials to whom the proposed duty of candour applies). It is not intended that individual interactions are captured, i.e. it must be an act that seeks to mislead the public or a section of the public, not an individual.

42. The offence requires that an authority or official must have (i) acted with the intention to mislead the public or have been reckless as to whether their actions would do so and (ii) known or ought to have known that their act is seriously improper.

43. There is a reasonableness test in what constitutes a "seriously improper act". An act will only be seriously improper if it meets the conditions set out in clause 11(3)

and if a reasonable person would consider it to be seriously improper in the circumstances. The conditions in clause 11(3) are:

- The act involved dishonesty that was significant or repeated in respect of matters of significant concern to the public;
- The act caused, or contributed to causing, harm to one or more people, or had the potential to do so; and
- The act departed significantly from what is to be expected of the proper exercise of the person's functions as a public authority or public official.

44. Clause 11(4)(b) provides an exemption relating to journalism. This was reframed slightly by a UK Government amendment at Committee Stage to deliver the policy intention of exempting activity carried out by public service broadcasters (who exercise public functions in certain circumstances and could therefore be captured by the Bill) in their journalistic capacity. This ensures that the offence does not impinge on press freedom or existing regimes for media regulation. An exemption for acts done in the exercise of functions relating to Scottish devolved matters will be removed (subject to amendments tabled at Report Stage being agreed to), further to Scottish Ministers giving support in principle to extension of the offence to Scotland.

45. The offence is triable either way – if amendments tabled at Report Stage to extend the offence to Scotland are agreed to, clause 11(5) will provide that a person guilty of the offence is liable on summary conviction to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum (or both); and on indictment to imprisonment for a term not exceeding 2 years or a fine (or both). This reflects the sentencing powers of the sheriff court in summary cases in Scotland.

46. Clause 11(6) provides for two defences to the offence. Firstly, it is a defence for a person to prove that the act was necessary for the proper exercise of any function of an intelligence service or the armed forces when engaged in active service. Secondly, it is a defence for a person to show that they had a reasonable excuse for their act. In terms of the reasonable excuse defence, there is a requirement for the accused to adduce sufficient evidence to raise an issue with respect to it and it is then for the prosecution to disprove this beyond reasonable doubt.

## Extension of the offence to Scotland

47. The Scottish Government considers that the offence of misleading the public should be extended to Scotland. The offence is also being extended to Northern Ireland which means that, subject to the relevant amendments being agreed and to the consent of the respective legislatures, a common approach to the offence would be in place across the UK.

48. The UK Government tabled amendments Gov 40, Gov 41, Gov 42, Gov 70, Gov 98, Gov 99, Gov 100 and Gov 101 on 12 January 2026.

## Part 3 – Misconduct in public office (Clauses 12 – 17, Schedules 4 and 5)

49. Part 3 of the Bill creates two statutory offences on misconduct in public office. Clause 12 is an offence of seriously improper acts; clause 13 is an offence of breach of duty to prevent death or serious injury. Both are prosecuted on indictment and carry a maximum penalty of 10 and 14 years' imprisonment respectively. The offences apply to 'persons who hold public office', with such persons set out in Schedule 4 of the Bill. An enabling power at clause 15 provides that the Schedule can be amended by regulations, subject to the affirmative procedure.

50. On introduction, the offences extended to England and Wales only but, following an amendment tabled on 12 January, they will extend to Scotland subject to agreement at Report Stage. The amendments trigger the legislative consent process on the basis that criminal law is not a reserved matter, nor is the conduct of public office holders. In addition, the power at clause 15 has been extended so as to be available to the Scottish Ministers, and therefore alters the executive competence of the Scottish Ministers.

51. The offences are informed by the work of the Law Commission, which reviewed the existing common law offence of misconduct in public office in England and Wales and made recommendations that the existing law should be repealed and replaced by statutory offences. The aim in doing so is to provide clarity and certainty about the behaviours captured and those liable.

### Offence of seriously improper acts

52. This offence is committed when a person who holds public office uses their office to obtain a benefit (for themselves or another person) or to cause another person to suffer a detriment, and they know, or ought to know, that doing so is a seriously improper act. A reasonable excuse defence is provided at clause 12(5).

### Offence of breach of duty to prevent death or serious injury

53. A person who holds public office commits this offence if:

- a) By virtue of their office they are under a duty to prevent, or to prevent a risk of, another person suffering critical harm;
- b) The person knows, or ought to know, that they are under the duty;
- c) In breach of the duty, the person intentionally or recklessly causes, or creates a significant risk of causing, another person to suffer critical harm; and
- d) The act constituting the breach falls far below what could reasonably be expected of a person in the circumstances.

54. The matters set out at (a) above are to be determined as questions of law and the judge must make any findings of fact necessary to decide those questions.

55. A reasonable excuse defence is provided at clause 13(2). Clause 13(7) provides the meaning of critical harm for the purposes of the section.

## Holders of public office

56. Clause 15 provides that a person 'holds public office' for the purposes of Part 3 of the Bill if they fall within Schedule 4. The Schedule contains a number of categories, including Ministers, civil servants, legislatures, policing and law enforcement, fire and rescue, state detention, judiciary, armed forces, local government, and other public bodies and offices. The coverage of public officials is based on those currently liable for the common law offence in England and Wales. There is a catch all provision in paragraph 21 to draw in those otherwise not mentioned in the Schedule. In broad terms, frontline health and education providers are not captured unless they exercise in addition to their role additional functions of a public nature. The schedule applies to both offences.

## Extension to Scotland

57. Scotland does not have an existing offence of misconduct in public office. The common law offence of 'wilful neglect of duty by a public official' is the closest comparator. There is limited modern authority and academic treatment for the Scots common law offence and it is infrequently prosecuted.

58. The Scottish Ministers consider that there are strong benefits to having statutory misconduct in public offices in Scotland. Clarity and certainty in the law holding public officials to account is a key driver for extension, and it is considered that the offences can play a valuable role in tackling corruption and serious wrongdoing in public office, and in improving accountability. Subject to relevant amendments being agreed, the offences will be extended to Northern Ireland, meaning that, subject to legislative consent of the respective legislatures, a common approach to misconduct in public office would be in place across the UK.

59. Considerable engagement has taken place with the UK Government to develop the suite of amendments required to extend the offences to Scotland.

60. The Scottish Ministers consider that the misconduct in public office offences should be extended to Scotland, namely Part 3, the associated provisions in Part 5 and Schedules 4 and 5. Doing so can be expected to strengthen public confidence and provide clarity to the law around serious misconduct. Unlike in England and Wales, the proposed offences are not, for Scotland, a codification of the existing common law. For this reason, the Scottish Government considers that the common law offence of wilful neglect of duty by a public official should be retained in Scots law (as reflected by the amendments tabled at Report Stage which, if agreed to, will not provide for the abolition of the common law offence in Scotland).

61. The UK Government tabled amendments Gov 43, 48, 49, 50, 51, 52, 53, 54, 70, 102, 104, 105, 106, 108, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 123, 124, 125, 126, 127, 128, 130, 131 and 132 on 12 January 2026.

## Part 4 – Parity of arms provisions (Clause 18, Schedule 6, Parts 1 to 3)

62. The ‘parity of arms’ provisions apply in relation to inquiries for which UK Ministers are responsible and introduce measures such as requiring public authorities to have regard to guidance about conduct and behaviour at inquiries and to only engage legal representation insofar as necessary and proportionate. These provisions did not extend to Scotland on introduction, and the Scottish Government has therefore been exploring with the UK Government the intended effect of the provisions for Scottish public authorities (including the Scottish Ministers) insofar as they might participate in a UK inquiry.

63. An amendment has since been tabled at Report Stage to extend Part 4 of the Bill to Scotland. This is a technical fix to the Bill which puts beyond doubt that the provisions are intended to apply to Scottish public authorities insofar as they are participating in a UK inquiry. Inquiries for which Scottish Ministers are responsible will remain unaffected. This amendment confirms that the provisions require legislative consent on the basis that they alter the executive competence of the Scottish Ministers, and have a devolved purpose where the provisions apply in relation to an inquiry which relates to Scotland and is not reserved. The Scottish Government understands that the UK Government agrees that the provisions require legislative consent.

64. The provisions will apply in relation to inquiries under the Inquiries Act 2005, non-statutory inquiries (in both cases only where the inquiry has been called by a UK Minister) and investigations under the Coroners and Justice Act 2009. The Scottish Government recognises the principle behind the provisions for UK inquiries and considers that the proposed technical amendment regarding extent provides clarity in terms of the effect of the provision on Scottish public authorities participating in UK inquiries.

65. The UK Government tabled amendment Gov 71 on 12 January 2026.

## Part 4 - Legal Aid at inquests (Clause 18, Schedule 6, Part 5)

66. Part 4 of Schedule 6 amends three pieces of English and Welsh legislation in order to expand non-means-tested legal aid to bereaved family members in relation to coroner’s inquests where a public authority is an interested person.

67. This provision was not extended to Scotland on introduction due to the timing of it being included, the differences in both legal aid and inquests in Scotland (with Fatal Accident Inquiries (FAIs) being the equivalent inquest type).

### Extension of legal aid provisions to Scotland

68. The Cabinet Secretary for Justice and Home Affairs committed to the Scottish Parliament in April 2025 to introduce legislation that would provide non-means tested legal aid for families participating in death in custody FAIs.

69. In line with requested amendments to the Bill, the UK Government tabled amendment Gov 142 on 12 January 2026 in relation to this, which would insert a new Part 5 into Schedule 6. This Part would amend section 36 of the Legal Aid (Scotland) Act 1986 to the effect that the Scottish Ministers may make regulations to modify that Act in respect of persons participating in FAIs. This would enable the existing means tests to be disapplied, thereby aligning legal aid provision in Scotland for FAIs in terms of financial eligibility with that in England and Wales for coroner's inquests. The amendment requires legislative consent on the basis that it alters the executive competence of the Scottish Ministers as well as making provision for devolved purposes; the provision of legal aid in Scotland is not a reserved matter under the Scotland Act 1998.

70. The UK Government tabled amendments Gov 58, 59, 60, 71, 72 and 142 on 12 January 2026.

## Part 5 – Miscellaneous and final provisions (Clauses 19, 21 – 25)

71. Clauses 19, 23, 24 and 25 require legislative consent to the extent that they relate to provisions elsewhere in the Bill which themselves engage the LCM process. In addition, clause 25 confers a power on Scottish Ministers to bring into force Part 4 of Schedule 1 (inquiries into fatal accidents and sudden deaths) and, subject to relevant amendments being agreed at Report Stage, Part 5 of Schedule 6 (legal aid), and thereby alters the executive competence of the Scottish Ministers. Further consideration is provided below on clauses 21 and 22.

### Power to make consequential provisions (Clause 21)

72. Clause 21(2) engages the LCM process because it alters the executive competence of the Scottish Ministers by delegating to them a power to make regulations consequential to Part 4 of Schedule 1 (relating to the application of the duty of candour and assistance in the context of Fatal Accident Inquiries in Scotland), or consequential to regulations made by the Scottish Ministers under the Bill. The more general power available to the Secretary of State at clause 21(1) to make provision that is consequential on this Act or on regulations made under it also engages the legislative consent process on the basis that this power also applies to Scotland for a purpose within the legislative competence of the Scottish Parliament.

73. In its report on the delegated powers exercisable within devolved competence in the Public Office (Accountability) Bill, the Delegated Powers and Law Reform Committee ('the DPLRC'), asked the Scottish Government to raise, in its discussion with the UK Government, the lack of a consent or consultation provision if the Secretary of State were to exercise this power within devolved competence; and to report back on this discussion in its forthcoming supplementary LCM.

74. As part of those discussions, the UK Government has noted that the powers to make consequential provisions are technical powers and it does not consider it necessary to include a consent provision on minor and technical changes to UK law which may be needed.

75. Whilst it might be preferable for the power under clause 21(1) to be subject to at least a consultation requirement, given the limited scope of the power and that a consequential amendment power is available to the Scottish Ministers (albeit not as wide as the power available to the Secretary of State) in clause 21(2), the Scottish Government does not consider that legislative consent should be withheld for the lack of consent or consultation. The Scottish Government is reassured by non-statutory commitments which the UK Government has given in this regard.

## Regulations (Clause 22)

76. Clause 22 outlines the procedures for making regulations under the Bill. Similar to clause 21, clause 22 engages the legislative consent process on the basis that it alters the executive competence of the Scottish Ministers and applies for a purpose within the legislative competence of the Scottish Parliament.

77. Under clause 22(2), when exercising their power to make regulations and guidance under this Act in relation to devolved matters, the Secretary of State must first obtain the consent of the Scottish Ministers. Clause 22(2) is relevant in respect of the following clauses in the Bill:

- Part 2, chapter 2, clause 10 (guidance);
- Part 3, clause 15 (holders of public office);
- Schedule 1, Part 7, paragraph 7 (extension to other investigations); and
- Schedule 2, Part 3, paragraph 4(4) (power to specify public functions).

78. The DPLRC report has asked the Scottish Government to set out how it will facilitate scrutiny by the Scottish Parliament of any proposals by the Secretary of State to make guidance under the power in devolved areas. In response to this, the Scottish Government notes that it is in discussion with the UK Government about the process for obtaining the Scottish Ministers' consent to any guidance containing provision which relates to a devolved matter.

79. In terms of how the Scottish Government will facilitate scrutiny by the Scottish Parliament of any proposals by the Secretary of State to make regulations under the powers noted above, the Scottish Government commits to keeping the lead committee informed of any decisions regarding future regulations, and to engage with the committee should it have any questions on those regulations which contain devolved provision.

## Reasons for seeking or not seeking legislative consent

80. 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.

81. The Scottish Government has worked with the UK Government on this area of mutual interest, in order to progress further amendments to the Bill to ensure the

legislation will work in the Scottish landscape, which commits to integrity and transparency in the public sector.

82. As the Report Stage in the House of Commons has been postponed, the Scottish Ministers are not able to recommend or withhold consent until timings are clarified, and whether the UK Government will table further relevant amendments. This therefore means that the Bill is likely to overlap Parliamentary sessions in both the Scottish and UK Parliaments, with the process for legislative consent unlikely to conclude prior to the Scottish Parliament's dissolution. For this reason, a motion on legislative consent has not been included for the Committee's consideration.

## Consultation

83. There has been no formal consultation on these amendments due to the speed at which they have been introduced, and at which the Bill has progressed.

84. The Scottish Government has engaged and worked closely with the UK Government in order for these amendments to be made so that the provisions work in Scots law.

## Financial implications

85. 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 applies 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

86. As noted in the first LCM, there are likely to be both UK Government and non-Government amendments to this Bill as it progresses through the UK Parliament due to the wide scope it reaches. A further LCM will be required when the Scottish Government reaches a position on consent.

## Post EU scrutiny

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

## Conclusion

88. The Scottish Government has concluded that, in relation to Part 1, Chapters 1, 2 and 3 of Part 2, Part 3, Part 4, Part 5 and includes Schedules 1-3, amendments tabled by the UK Government on 12 January 2026 require consent from the Scottish Parliament.

89. On the basis of Report Stage in the House of Commons being postponed until further notice, a motion on legislative consent has not been included for the time being. As noted, the Scottish Ministers are not able to recommend or withhold consent until timings are clarified. The Bill is likely to overlap Parliamentary sessions in both the Scottish and UK Parliaments, with the process for legislative consent unlikely to conclude prior to the Scottish Parliament's dissolution.

Scottish Government  
February 2026

This Supplementary Legislative Consent Memorandum relates to the Public Office (Accountability) Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 4 February 2026

# Public Office (Accountability) Bill – Supplementary Legislative Consent Memorandum

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - [www.parliament.scot](http://www.parliament.scot)

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:  
[www.parliament.scot/documents](http://www.parliament.scot/documents)