

PUBLIC OFFICE (ACCOUNTABILITY) BILL

Memorandum from the Ministry of Justice and the Cabinet Office to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Public Office (Accountability) Bill (“the Bill”). This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation and other instruments. It explains in each case why the power has been taken and the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. The King’s Speech in July 2024 committed to bring forward a “Hillsborough Law” to deliver the Labour Government’s manifesto commitment to place a legal duty of candour on public servants and authorities. The Bill is being brought forward to deliver on that commitment.

3. **Part 1** of the Bill contains a purpose clause which summarises the Bill’s policy objectives.

4. **Part 2, Chapter 1** of the Bill places a duty of candour and assistance on public authorities and public officials, requiring them to act with candour, transparency and frankness in their dealings with inquiries and specified investigations; and to assist inquiries and investigations to achieve their objectives, with criminal sanctions for non-compliance. The duty applies to the inquiries and investigations set out at **Schedule 1**.

5. **Part 2, Chapter 2 of the Bill** places a duty on public authorities to promote and take steps to maintain high standards of ethical behaviour amongst its workforce. This includes an obligation to adopt a code of ethical conduct. A code must set standards of conduct expected of individuals who work for the authority. The Bill sets out various minimum criteria that a code must satisfy.

6. **Part 2, Chapter 3 of the Bill** creates a new criminal offence of misleading the public.

7. **Part 3 of the Bill** abolishes the criminal offence of misconduct in public office as it exists in the common law of England and Wales, and of Northern Ireland, and replaces it with two statutory offences which apply across the UK. This implements the Law Commission’s recommendations in their 2020 report, *Misconduct in Public Office* ([LC 397](#)). Including this measure alongside the duty of candour will contribute to the Government’s intention to improve standards in public life.

8. **Part 4 of the Bill** aims to ensure that affected persons can fully and effectively participate at inquiries and investigations. It does this by requiring public authorities to have regard to guidance and make proportionate use of legal representation, enabling concerns about the conduct of a public authority or their representatives to

be raised, requiring those who run inquests and inquiries to have regard to an overriding objective, and expanding the provision of legal aid in England and Wales for bereaved families at certain inquests. It also amends the Legal Aid (Scotland) Act 1986 to enable regulations to be made to extend legal aid to bereaved family members where a public authority is a participant in an inquiry in Scotland into a fatal accident or sudden death.

9. **Part 5** of the Bill makes the necessary provision for Crown application, consequential repeals and provision, interpretation, commencement, extent, and regulations.

10. **Schedule 1** to the Bill sets out which inquests and inquiries the duty of candour and assistance (**Part 2, Chapter 1**) applies to, and makes the necessary changes to other legislation to achieve that.

11. **Schedule 2** to the Bill sets out the meaning of “public authority” and “public official” for the purposes of **Part 2** of the Bill.

12. **Schedule 3** to the Bill makes further detailed provision about the criminal offences at **clause 5** and **clause 12** of **Part 2** of the Bill.

13. **Schedule 4** to the Bill lists the Holders of Public Office subject to the new statutory offences in **Part 3**.

14. **Schedule 5** to the Bill makes changes to other legislation consequential to the Misconduct in Public Office measure in **Part 3** of the Bill.

15. **Schedule 6** to the Bill makes the detailed changes to other legislation needed to achieve the measures set out in **Part 4** of the Bill, specifically:

- a. Amendments to the Inquiries Act 2005 to:
 - i. allow the Lord Chancellor to issue guidance to core participants that are public authorities, regarding their conduct at an inquiry;
 - ii. set out requirements that core participants that are public authorities must comply with, relating to engaging and instructing legal representatives;
 - iii. allow an Inquiry Chair to report conduct by a public authority or its legal representatives; and
 - iv. insert an overriding objective into the rules.
- b. Applying the new provisions in the Inquiries Act 2005 to non-statutory Ministerial inquiries.
- c. Making amendments to the Coroners and Justice Act 2009 to make similar provision regarding coroners inquests in England and Wales.
- d. Amendments to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to expand the availability of legal aid in inquests under the Coroners and Justice Act 2009.
- e. Amendments to the Legal Aid (Scotland) Act 1986 to enable regulations to be made to extend legal aid to bereaved family members where a public authority is a participant in an inquiry in Scotland into a fatal accident or sudden death.

16. The Bill contains twelve delegated powers:
- a. **Clause 11:** power to issue guidance to public authorities about standards of ethical behaviour
 - b. **Clause 16:** power to amend list of holders of public office
 - c. **Clause 23:** power to make consequential provision
 - d. **Clause 27:** commencement powers
 - e. **Paragraph 8 of Schedule 1:** power to extend the duty of candour and assistance to other investigations
 - f. **Paragraph 4(4) of Schedule 2:** power to specify “public functions”
 - g. **Paragraph 1(2) of Schedule 6:** power to issue guidance to public authorities about conduct (statutory inquiries)
 - h. **Paragraph 1(3) of Schedule 6:** amendments to the power in the Inquiries Act 2005 to make rules regarding statutory inquiries
 - i. **Paragraph 3(3) of Schedule 6:** power to issue guidance to public authorities about conduct (coronial inquests)
 - j. **Paragraph 3(5) of Schedule 6:** amendments to the power in the Coroners and Justice Act 2009 to make Coroners Regulations
 - k. **Paragraph 3(6) of Schedule 6:** amendments to the power in the Coroners and Justice Act 2009 to make Coroners Rules.
 - l. **Paragraph 7 of Schedule 6:** amendments to the power in the Legal Aid (Scotland) Act 1986 to make regulations which modify the provisions of the Act as necessary to meet special circumstances.

C. DELEGATED POWERS

Clause 11: Guidance

Power conferred on: The Secretary of State, Scottish Ministers, Welsh Ministers, a Northern Ireland department

Power exercised by: Guidance

Parliamentary Procedure: None

Context and Purpose

17. Clause 11 provides that the appropriate national authority may issue guidance for the purposes of clause 10, and that public authorities must have regard to that guidance. Clause 10 requires public authorities to promote and take steps to maintain high standards of ethical behaviour at all times by those who work for the authority, including in particular by adopting a code of ethical conduct.

18. “Appropriate national authority” is defined for the purposes of making regulations under the Bill at clause 24(1) as:

- a. The Secretary of State;
- b. The Scottish Ministers (in relation to Scottish devolved matters)
- c. The Welsh Ministers (in relation to Welsh devolved matters)
- d. A Northern Ireland department (in relation to Northern Ireland devolved matters)

Justification for taking the power

19. This provision will enable the appropriate national authority to issue guidance to assist public authorities in complying with their duties under clause 10, in particular drafting and adopting a code of ethical conduct. It is intended that the guidance will provide clear and accessible advice on how a code can be best structured and promoted to workers. This will require detailed practical guidance which it would not be appropriate to include in legislation.

20. A public authority must have regard to any such guidance that applies to it. The duties under clause 10 apply to a broad range of public authorities discharging a variety of functions, therefore it necessarily allows authorities a degree of flexibility. Authorities will be different sizes and have different functions; some will have existing relevant policies or procedures. Nonetheless, consistency in some aspects of implementation is desirable. We think that guidance is an appropriate and important way of ensuring that there is consistency in the approach that public authorities take when considering how to comply with their duties under clause 10.

Justification for the procedure

21. The Department considers that parliamentary oversight is not required in connection with this guidance. The guidance will primarily contain technical and operational details, assisting authorities in the implementation of the legal duty.

Clause 16: Holders of public office

Power conferred on: The Secretary of State, Scottish Ministers, the Welsh Ministers, a Northern Ireland department

Power exercised by: Regulations made by statutory instrument / order

Parliamentary Procedure: Draft affirmative resolution procedure

Context and Purpose

22. Clause 16 defines who “holds public office” for the purposes of the two new statutory offences in Part 3, by reference to the list in Schedule 4 to the Bill.

23. Clause 16(3) provides a power for the appropriate national authority to amend the list in the Schedule by regulations, to specify further holders of public office, or to omit, or modify the description of, a holder of public office in the Schedule.

24. “Appropriate national authority” is defined for the purposes of making regulations under the Bill at clause 24(1) as:

- a. The Secretary of State;
- b. The Scottish Ministers (in relation to Scottish devolved matters)
- c. The Welsh Ministers (in relation to Welsh devolved matters)
- d. A Northern Ireland department (in relation to Northern Ireland devolved matters)

Justification for taking the power

25. This power is considered necessary because the list in the Schedule provides the exhaustive definition of what will constitute a “public office” for the purpose of the offences. This addresses the key criticism of the common-law offence, which is that it is insufficiently clear as to who comes within the offence’s scope. But an exhaustive definition is inflexible, and will likely require amendment in the future to reflect changes in the roles and functions of public office.

26. The content of the Schedule is also very detailed and technical. It is likely to be impractical to require every such change to wait for an appropriate primary legislative vehicle, and taking that approach would not be an efficient use of Parliament’s time.

27. We consider that the scope of the power is appropriately limited. It only extends to additions to, modifications to, or removals from, the list at Schedule 4. The nature of the offence, and the specific reference in the power as drafted to “holders of public office”, means that the delegated power cannot be used to add *any* category of individual to the Schedule, and therefore bring them within scope of the offences. They may only be added if they are “holders of public office”.

28. Changes to the core elements of the offences, their defences, penalties, and other definitions, are not within the vires of the proposed power. The scope of the offences is settled and set out on the face of the Bill. Further, it is for future changes

that the power is being taken – there is no power for such regulations to have retrospective effect.

29. The approach is also not without precedent in the criminal law of England and Wales. A similar power exists at section 22A(4) of the Sexual Offences Act 2003, which allows for the “positions of trust” to which the offence applies to be amended by regulations subject to the affirmative procedure. An arguably much broader power can also be seen in various provisions of the Public Order Act 1986, where the conduct element of those offences (what constitutes “serious disruption”) is itself subject to change by regulations subject to the affirmative procedure.

Justification for the procedure

30. As this is a delegated power to amend primary legislation, regulations will be subject to the affirmative resolution procedure. Parliament should have the opportunity to debate and approve any changes to the offences which fall within scope of the new offences before they take effect, given the impact that this could have on those who hold such offices. We therefore consider that the affirmative procedure is appropriate for this power.

Clause 23: Power to make consequential provision

Power conferred on: Secretary of State, Scottish Ministers, Welsh Ministers, a Northern Ireland Department

Power exercised by: Regulations made by statutory instrument / order

Parliamentary Procedure: Draft affirmative resolution procedure if amending, repealing or revoking any provision of primary legislation; otherwise subject to the negative procedure

Context and Purpose

31. This clause confers a power to make provision which is consequential upon other provisions of the Bill. This may include repealing, revoking or otherwise amending primary and secondary legislation passed or made before the end of the Session in which the Bill becomes law.

32. This power is conferred on the Secretary of State, the Scottish Ministers (in relation to Scottish devolved matters), Welsh Ministers (in relation to Welsh devolved matters) and a Northern Ireland Department (in relation to Northern Ireland devolved matters).

Justification for taking the power

33. This power will enable the relevant authority to make any minor or technical changes which are necessary in consequence of the Bill’s provisions. It allows for efficient implementation of the Bill measures.

Justification for the procedure

34. Regulations made under this power which do not amend or repeal primary legislation will be subject to the negative resolution procedure. If regulations amend or repeal provision in primary legislation, they will be subject the affirmative resolution procedure. This is the standard approach for Henry VIII powers of this type We consider that this provides the appropriate level of parliamentary scrutiny.

35. The power is appropriately limited in scope. It can only be used to make changes that are consequential on the Bill or on regulations made under it. It cannot be used to expand or change duties or obligations. By virtue of subsection (5) the power can only be used to amend primary legislation passed or made before the end of the Session in which this Bill is passed.

Clause 27: Commencement

Power conferred on: Secretary of State, Scottish Ministers, Department of Justice in Northern Ireland

Power exercised by: Regulations made by statutory instrument / order

Parliamentary Procedure: none

Context and purpose

36. Clause 27(2)(b) contains a standard power for the “appropriate authority” to bring certain provisions of the Bill into force by commencement regulations (or, in Northern Ireland, by order). Such instruments may appoint different days for different purposes or areas (subsection (2)(b)).

37. Subsection (3) allows the appropriate authority to make transitional or saving provision in connection with the commencement of any of the Bill’s provisions, and subsection (4) makes clear that this includes the power to make different provision for different purposes or areas.

38. “Appropriate authority” is defined for the purposes of this provision at subsection (5) as:

- a. The Secretary of State (including the Chancellor of the Duchy of Lancaster);
- b. The Scottish Ministers (in relation to the bringing into force of Part 5 of Schedule 1 or Part 5 of Schedule 6);
- c. The Department of Justice in Northern Ireland (in relation to the bringing into force of Part 6 of Schedule 1).

Justification for the power

39. Allowing provisions in the Bill to be brought into force by regulations will afford the necessary flexibility to commence the provisions of the Bill at the appropriate time, having regard to the need to make any necessary secondary legislation, issue guidance, undertake appropriate training and put the necessary systems and procedures in place, as the case may be.

Justification for the procedure

40. As is usual with commencement powers, and as set out at clause 24(14) of the Bill, regulations made under clause 27 are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at a convenient time.

Paragraph 7 of Schedule 1: power to extend the duty of candour and assistance to other investigations

Power conferred on: Secretary of State, Scottish Ministers, Welsh Ministers, a Northern Ireland Department

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Draft affirmative resolution procedure, unless making regulations under paragraph 8(1)(a) in urgent cases.

Context and Purpose

41. This power enables the duty of candour and assistance to be applied to a public authority or public official in respect of certain sorts of investigation (defined to include any form of examination, inquiry or inquest) that are specified or meet a specified description. An investigation of the following kinds may be specified in regulations made by an appropriate national authority: a criminal investigation, a regulatory or supervisory investigation, or an investigation into the provision or exercise of public functions.

42. Any regulations must include provision to secure the restrictions and protections as applied in the context of an inquiry or inquest e.g. legal professional privilege, public interest immunity etc. and contain provision to protect information subject to the Official Secrets Act 1989. The power also enables regulations to be made applying the duty to a person who is not a public authority or public official but who had a health and safety responsibility in connection with an incident – this mirrors the provision in clause 4 of the Bill.

43. The regulations may amend, repeal or revoke an enactment (i.e. it is a Henry VIII power).

44. Regulations made under this power are subject to the draft affirmative resolution procedure, unless the conditions in paragraph 8(1) are satisfied in which case the made affirmative procedure applies. Paragraph 8(1) applies to regulations specifying a particular investigation which contain a statement by the authority that by reason of urgency it is necessary to make the regulations without a draft of the regulations first being laid and approved. The regulations must be approved by the relevant legislature within 40 days of being made.

45. “Appropriate national authority” is defined for the purposes of making regulations under the Bill at clause 24(1) as:

- a. The Secretary of State;
- b. The Scottish Ministers (in relation to Scottish devolved matters)

- c. The Welsh Ministers (in relation to Welsh devolved matters)
- d. A Northern Ireland department (in relation to Northern Ireland devolved matters).

Justification for taking the power

46. This power is considered necessary as there may be investigations other than inquiries and inquests in respect of which it is appropriate to enable the duty of assistance to be applied. There are many different types of investigation conducted by a wide range of actors. The relevant legislation and law varies from investigation to investigation. Taking this power enables Ministers to make bespoke provision for different types of investigation to ensure that the duty of assistance can be applied effectively.

47. The power is subject to appropriate limitations. It can only be exercised in respect of investigations which fall within one of the categories set out in Schedule 1, paragraph 7(2); broadly, these are investigations that are likely to be concerned with matters that involve the public or are of public interest. The Bill also requires that regulations made under this power provide certain protections, such as not requiring someone to do anything which could not be required of them in civil proceedings.

Justification for the procedure

48. The power is by default subject to the draft affirmative procedure. This is considered to be appropriate because: (i) this is a Henry VIII power; and (ii) the power will enable the duty to be applied to persons where failure to comply is punishable by criminal prosecution. Parliament should therefore have the opportunity to scrutinise the application of the duty.

49. The only exception to this is where the regulations specify a particular investigation and the appropriate national authority considers due to urgency it is necessary to make the regulations without waiting for a draft to be approved. This faster route may be needed where an investigation is set up immediately after a major incident. It is important that the duty of candour can be applied in respect of that investigation immediately after it is established. We consider that in these circumstances it is reasonable to use the made affirmative procedure, under which the regulations will lapse after 40 days if not approved.

Paragraph 4(4) of Schedule 2: Power to specify public functions

Power conferred on: Secretary of State, Scottish Ministers, Welsh Ministers, a Northern Ireland Department

Power exercised by: Regulations

Parliamentary Procedure: Draft affirmative resolution procedure

Context and Purpose

50. Chapter 2 of Part 2 of the Bill places an obligation on public authorities to promote and uphold ethical conduct amongst all those who work for the authority.

This requires public authorities in particular to adopt a code of ethics setting out the standards of conduct expected of those who work for the authority. The Bill sets out various requirements that a code must meet, and requires the publication of the code (subject to limited exceptions).

51. Schedule 2, para 4(1)(j) defines ‘public authority’ as including any body that meets the condition specified in subparagraph (2) or (3). Subparagraph (3) provides that the condition is where a body exercises “specified public functions”. Subparagraph (4) provides that “specified public functions” means functions of a description specified in regulations.

52. The power to make regulations is conferred on the “appropriate national authority”. This is defined for the purposes of making regulations under the Bill at clause 24(1) as:

- a. The Secretary of State;
- b. The Scottish Ministers (in relation to Scottish devolved matters)
- c. The Welsh Ministers (in relation to Welsh devolved matters)
- d. A Northern Ireland department (in relation to Northern Ireland devolved matters).

Justification for taking the power

53. Functions of a public nature may sometimes be discharged by private bodies on behalf of a public authority, for example under a contract. Functions of this nature can vary widely, both in terms of the content of the function and also the sector where they arise (for example, a private company may operate a prison). It would not be proportionate to subject all such bodies to the duty to adopt a code of ethical conduct nor to list individually private bodies on the face of the legislation. The power allows the appropriate national authority to target sectors where it is appropriate to apply the duty. These will change over time, and the power allows for the list of relevant functions to be amended as needed. The power is limited in that it can only be used to specify functions of a public nature - wholly commercial functions cannot be specified. This ensures that the duty to adopt a code can only be imposed on bodies which perform public acts.

Justification for the procedure

54. The power to make regulations is subject to the affirmative procedure. As the regulations will impose a requirement on bodies that would not otherwise be considered to be a public authority, this procedure is considered appropriate to ensure that the imposition of the duty is appropriately scrutinised.

Paragraph 1(2) of Schedule 6: power to issue guidance to public authorities about public conduct (statutory inquiries)

Power conferred on: Lord Chancellor

Power exercised by: Guidance

Parliamentary Procedure: None

Context and Purpose

55. Paragraph 1(2) of Schedule 6 inserts new section 34A into the Inquiries Act 2005, which gives the Lord Chancellor the power to issue guidance to public authorities who are core participants in UK inquiries (inquiries for which UK Ministers are responsible). The purpose of the provision is to provide guidance to such core participants on what they should (or should not) do to support the inquiry panel and to assist affected persons to participate in the proceedings.

56. This statutory guidance is intended to address the concerns we have heard from bereaved persons at inquiries and look to ensure all public authorities adhere to best practice and are committed to supporting the inquisitorial nature of these investigations, and are supporting the inquiry to establish the facts of what happened and are sensitive to the needs of any affected persons.

57. Public authorities must have regard to the guidance.

Justification for taking the power

58. It is important that public authorities conduct themselves appropriately and sensitively in the context of these investigations. The power to issue guidance will enable the Lord Chancellor to set out principles and practices for public authorities to follow when they interact with an investigation. Providing for the guidance in statute ensures that public authorities will be under an obligation to take it into account. This will help ensure a consistency of approach across the public sector when interacting with these investigations. I

Justification for the procedure

59. The Department considers that parliamentary oversight is not required in connection with this guidance. The guidance will support and inform public authorities with regard to their interaction with an inquiry. It will not specify mandatory standards of behaviour. The Lord Chancellor will consult with public authorities and devolved administrations before issuing the guidance; this will ensure that the guidance is practicable and help ensure consistency of approach.

Paragraph 1(3) of Schedule 6: amendments to the power in the Inquiries Act 2005 to make rules regarding statutory inquiries

Power conferred on: Lord Chancellor

Power exercised by: Rules made by Statutory Instrument

Parliamentary Procedure: Made negative resolution procedure

Context and Purpose

60. Paragraph 1(3) of Schedule 6 inserts new subsections 41(A1) and (A2) into the Inquiries Act 2005, which allows the Lord Chancellor to make rules to provide for an overriding obligation in the conduct of and participation in UK inquiries. The overriding objective may include provision relating to ensuring that affected persons

are able to participate fully in proceedings, maintaining the inquisitorial nature of inquiry proceedings, and ensuring that affected persons are given sufficient information about the process of the proceedings. The purpose of the provision is to provide a firm, clear set of objectives dealing with the conduct of, and participation in, inquiry proceedings.

Justification for taking the power

61. The overriding objective seeks to provide firm and clear objectives for the above purpose, which will apply to the inquiry panel as well as core participants in the inquiry. It is appropriate that the objective is included in the Inquiry Rules made under the 2005 Act.

Justification for the procedure

62. The existing procedure for the Inquiry Rules is made negative procedure and it is therefore appropriate that the inclusion in the Rules of the overriding objective follows the same procedure.

Paragraph 3(3) of Schedule 6: power to issue guidance to public authorities about conduct (coronial inquests)

Power conferred on: Lord Chancellor

Power exercised by: Guidance

Parliamentary Procedure: None

Context and Purpose

63. Paragraph 3(3) of Schedule 6 confers a power on the Lord Chancellor to issue guidance to public authorities who hold interested person status in relation to an investigation under Part 1 of the Coroners and Justice Act 2009 (which includes an inquest hearing). The guidance will set out the principles by which public authorities should conduct themselves at or in connection with the investigation. Public authorities will be under a duty to have regard to the guidance. The Lord Chancellor will be required to consult with the Chief Coroner before issuing the guidance.

64. This statutory guidance is intended to address the concerns raised by bereaved persons at inquests and ensure all public authorities adhere to best practice and commit to supporting the inquisitorial nature of coronial investigations, whilst assisting the coroner to establish the facts of what happened and being sensitive to the needs of bereaved families.

65. The government has previously issued a non-statutory protocol for UK government departments based on Dame Elish Angiolini's report of her review of deaths and serious incidents in police custody, and Bishop James Jones' report of his review of the experiences of the Hillsborough families (see Annex A of the Ministry of Justice's Guide to Coroner Services for Bereaved People)¹ and we are looking to

¹ <https://assets.publishing.service.gov.uk/media/5e258ec240f0b62c52248094/guide-to-coroner-services-bereaved-people-jan-2020.pdf>.

strengthen these guidelines and make them applicable to all public authorities who are Interested Persons at inquests to ensure consistency of approach.

Justification for taking the power

66. It is important that public authorities conduct themselves appropriately and sensitively in the context of a coroner's investigation. Bereaved friends and families will often be involved in these investigations. The power to issue guidance will enable the Lord Chancellor to set out principles and practices for public authorities to follow when they interact with an investigation. Providing for the guidance in statute ensures that public authorities will be under an obligation to take it into account. This will help ensure a consistency of approach across the public sector when interacting with coroner investigations.

Justification for the procedure

67. The Department considers that parliamentary oversight is not required in connection with this guidance. The guidance will support and inform public authorities with regard to their interaction with a coroner investigation. It will not specify mandatory standards of behaviour. The Lord Chancellor is under an obligation to consult with the Chief Coroner before issuing the guidance; this will ensure that the guidance is practicable.

Paragraph 3(5) of Schedule 6: amendments to the power in the Coroners and Justice Act 2009 to make Coroners Regulations.

Power conferred on: Lord Chancellor with the agreement of the Lord Chief Justice

Power exercised by: Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

68. Paragraph 3(5) of Schedule 6 amends the power in section 43(3)(j) of the Coroners and Justice Act 2009 as to the matters about which can be included in the Coroners Regulations. This amendment enables the Coroners Regulations to make provision for reports in respect of the conduct of public authorities under the new para 7A of Schedule 5 of the Coroners and Justice Act 2009 (inserted by paragraph 7 of Schedule 6). This would mirror the provision already in section 43(3) of that Act in respect of reports produced under paragraph 7 of Schedule 5 of the Coroners and Justice Act 2009 (prevention of future death reports).

69. The purpose is ensure that the Coroners Regulations can make provision for any reports about an authority's conduct that a coroner may make under the new power this Bill inserts into Schedule 5 of the Coroners and Justice Act 2009.

Justification for taking the power

70. This is not a new power, rather it is an amendment to an existing power. It is important that Coroners Regulations can make provision for reports in respect of the conduct of public authorities, as they already do for any prevention of future deaths reports that a coroner may issue.

Justification for the procedure

71. This is an amendment to an existing power. As such the procedure is determined by the existing procedure for the power as set out in section 43 of the Coroners and Justice Act 2009.

Paragraph 3(6) of Schedule 6: Amendment to power in the Coroners and Justice Act 2009 to make Coroners Rules

Power conferred on: Lord Chief Justice with the agreement of the Lord Chancellor

Power exercisable by: Statutory Instrument

Parliamentary procedure: Negative resolution

Context and Purpose

72. Paragraph 3(6) of Schedule 6 amends the power in section 45(2) of the Coroners and Justice Act 2009 as to the matters about which can be included in the Coroners Rules. This amendment enables the Coroners Rules to include provision for an overriding objective of such description as the rules may specify. The overriding objective may in particular include objectives for or in connection with:

- a. Ensuring that affected persons are able to participate fully and effectively in the proceedings;
- b. Maintaining the inquisitorial nature of proceedings;
- c. Ensuring affected persons are given sufficient information about the process of proceedings

73. The purpose of the overriding objective is to place a duty on the court to ensure that affected persons can fully participate in proceedings. This is achieved by ensuring adequate opportunities for engagement, maintaining the inquisitorial nature of the process throughout, and providing clarity to all interested persons—particularly around procedural steps and deadlines for submitting information which must be adhered to.

Justification for taking the power

74. This is not a new power, rather it is an amendment to an existing power. It is important that coroners and the court ensure that bereaved families are able to participate in proceedings, support the inquisitorial nature of these investigations and provide clarity around procedural steps and the information they require and by when to support the court establish the facts of what happened.

Justification for the procedure

75. This is an amendment to an existing power. As such the procedure is determined by the existing procedure for the power as set out in Schedule 1 to the Constitutional Reform Act 2005.

Paragraph 7 of Schedule 6: Amendment to power in the Legal Aid (Scotland) Act 1986 to make regulations which modify the provisions of the Act as necessary to meet special circumstances

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Negative resolution

Context and Purpose

76. Paragraph 7 of Schedule 6 amends section 36 of the Legal Aid (Scotland) Act 1986, which deals with Regulations made under that Act. Legal Aid is devolved to Scotland, and this power allows the Scottish Government to make the necessary legislative changes to Scottish legislation to provide for an extension of legal aid to bereaved family members where a public authority is a participant in an inquiry into a fatal accident or sudden death. This will ensure that the equivalent provision the Bill makes for legal aid for inquests in England and Wales can be achieved in Scotland.

Justification for taking the power

77. This is not a new power, rather it is an amendment to an existing power. It is important that the Scottish Government have the time to consider the necessary amendments to their own legislation to achieve the policy objective, in what is a complex and technical legislative and policy area.

Justification for the procedure

78. This is an amendment to an existing power. As such, the procedure is determined by the existing procedure for the power as set out in section 37 of the Legal Aid (Scotland) Act 1986.

**Ministry of Justice
Cabinet Office**

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