

Local Authority Inquiries Bill

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TO

Enable local authorities to establish inquiries and to confer qualified privilege in respect of reports of certain inquiries involving local authorities.
Date Of Enactment

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

PART 1

SPECIAL INQUIRIES

Establishing an inquiry

1 Special inquiry

- | | | |
|-----|--|----|
| (1) | A local authority may appoint a person to hold an inquiry (a “special inquiry”) if— | 5 |
| | (a) they have reason to believe that there was, or may have been, a serious failure in the exercise of a function of theirs, and | |
| | (b) they consider that a special inquiry into the failure would be appropriate. | 10 |
| (2) | Two or more local authorities may jointly appoint a person to hold a special inquiry on their behalf if— | |
| | (a) the condition in subsection (1)(a) is satisfied as regards each of them, and | |
| | (b) they consider that a jointly-established special inquiry into the failure would be appropriate. | 15 |
| (3) | The condition in subsection (1)(a) may be satisfied as regards a local authority whether or not they have received a complaint about the exercise of the function. | |

- (4) But the authority (or authorities) may not establish a special inquiry if the subject of the inquiry would (but for this subsection) include matters falling within subsection (5).
- (5) A matter falls within this subsection if the authority (or any of the authorities) are expressly authorised or required by an enactment other than this section to establish an inquiry, review or other investigation into the matter (whether on its own or with other matters). 5

2 Serious failure

In determining for the purposes of section 1 whether there was, or may have been, a serious failure in the exercise of a function of theirs, a local authority may take into account, in particular – 10

- (a) whether a person suffered, or is likely to suffer, significant injury, damage or loss as a result of the failure;
- (b) the number of persons who have been, or are likely to be, affected by the failure; 15
- (c) whether the failure has affected, or is likely to affect, the exercise of other functions of the local authority or the exercise of functions of other local authorities.

3 Decision of local authority

- (1) The decision of a local authority to appoint a person to hold a special inquiry must be made – 20
- (a) at a meeting of the local authority, and
- (b) while the meeting is open to the public.
- (2) Subsection (1)(b) does not prevent the exclusion of the public – 25
- (a) under section 100A(2) of the 1972 Act (exclusion to avoid disclosure of information in breach of obligation of confidence), or
- (b) by resolution under section 100A(4) of the 1972 Act (exclusion to avoid disclosure of exempt information),
- during any other part of the proceedings relating to that decision.
- (3) If two or more local authorities jointly appoint a person to hold a special inquiry, subsections (1) and (2) apply in relation to each authority’s decision to make the appointment. 30
- (4) Nothing in section 101 of the 1972 Act (delegation of functions) or in regulations under section 19(2) of the 2000 Act (delegation of functions to executive of another authority) applies to the making of a decision by a local authority to appoint a person to hold a special inquiry. 35
- (5) Nothing in section 13 of the 2000 Act (functions which are responsibility of executive) or in regulations under that section has effect to make the decision of a local authority to appoint a person to hold a special inquiry the responsibility of an executive of the authority under executive arrangements. 40

4 Notice of inquiry

- (1) A local authority must give the Secretary of State notice of their decision to appoint a person to hold a special inquiry.

- (2) If the local authority are a local authority in Wales, they must also give notice of their decision to the National Assembly for Wales.
- (3) The local authority must take reasonable steps to give notice of their decision to any person who complained of the failure (or alleged failure) which is the subject of the inquiry (or to the person who appears to the authority to be acting on behalf of such a person). 5
- (4) If two or more local authorities jointly appoint a person to hold a special inquiry, the requirements in subsections (1) to (3) apply to each authority; but nothing in this subsection prevents one of the authorities satisfying such a requirement on behalf of the other authority or authorities. 10
- (5) Notices under this section must be given in the manner, and within the period, specified by the Secretary of State.

Conduct of inquiry

5 Conduct of inquiry

- (1) The Secretary of State may make rules regulating the procedure to be followed in connection with special inquiries. 15
- (2) But rules that regulate the procedure to be followed in connection with—
 - (a) a special inquiry established by a local authority in Wales, or
 - (b) a special inquiry established jointly by two or more local authorities, one or more of which are local authorities in Wales,are to be made by the Secretary of State and the National Assembly for Wales, acting jointly. 20
- (3) The power to make rules in subsection (1) or (2) is exercisable only after consultation with the Council on Tribunals.
- (4) Subject to rules made under subsection (1) or (2), a special inquiry may regulate its own procedure. 25
- (5) The local authority (or, in the case of a jointly-established inquiry, the local authorities) may—
 - (a) pay the person holding the inquiry such remuneration and expenses as the authority (or authorities) may determine; 30
 - (b) make provision for payment by the authority (or authorities) of allowances or expenses to a person in connection with attending before the inquiry to give evidence or to produce a document or other thing;
 - (c) make provision for payment by the authority (or authorities) of other costs of the inquiry. 35
- (6) Subsection (7) applies if a person attending before a special inquiry to give evidence or to produce a document or other thing is represented before the inquiry by—
 - (a) a person who has a general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41), or 40
 - (b) if the inquiry's procedure so allows, by any other person chosen by the person attending before the inquiry.
- (7) If the person so attending incurs expenses in relation to such representation, the inquiry may determine (regardless of the provision, if any, made under

subsection (5)(b)) that the authority (or, in the case of a jointly-established inquiry, any one or more of the authorities) are to pay the person an amount in respect of his expenses or part of them; and the authority (or authorities) must pay the person accordingly.

- (8) A local authority are not required as a result of subsection (7) to pay a person any amount in respect of expenses unreasonably incurred. 5

6 Orders to secure attendance

- (1) The court may, on the application of the person holding a special inquiry, make such order as it considers necessary to secure the attendance of a person before the inquiry – 10
- (a) to answer questions, or
 - (b) to produce a document or other thing.
- (2) The court may make an order under subsection (1)(a) only if it is satisfied that –
- (a) the person is likely to be able to give material evidence to the inquiry; 15
 - (b) the person has been given adequate notice of the subject-matter of the questions which the inquiry proposes to ask;
 - (c) the person has failed to attend before the inquiry or has failed to answer questions asked by the inquiry;
 - (d) the inquiry is unlikely to be able to obtain the evidence by other means; 20
 - and
 - (e) in all the circumstances, it is just and reasonable to make the order.
- (3) The court may make an order under subsection (1)(b) only if it is satisfied that –
- (a) the person is likely to be able to produce a document or other thing that is likely to be material evidence in relation to the inquiry; 25
 - (b) the person has failed to produce the document or other thing (or, in the case of the document, a suitable copy of it);
 - (c) the inquiry is unlikely to be able to obtain the evidence by other means; 30
 - and
 - (d) in all the circumstances, it is just and reasonable to make the order.
- (4) An order under subsection (1)(a) or (b) may make provision as to –
- (a) the means by which the person may give evidence to the inquiry;
 - (b) the payment of allowances or expenses to the person in connection with attending before the inquiry; 35
 - (c) the payment of the person's expenses in relation to representation before the inquiry;
 - (d) the provision of an interpreter when the person attends before the inquiry;
 - (e) such other matters relating to the attendance of the person before the inquiry as the court thinks fit. 40
- (5) A person may not be compelled as a result of this section to answer a question or produce a document or other thing that he could not be compelled to answer or produce in civil proceedings before the court.

- (6) But a person shall not be excused from answering a question or producing a document or other thing on the ground that doing so might tend to incriminate the person or, if married, the person’s spouse.
- (7) Rules of court may make provision for and in connection with applications under this section. 5
- (8) “Court” means the High Court.

7 Admissibility of statement

- (1) A statement made by a person to a special inquiry is admissible in evidence in any proceedings, so long as it also complies with the requirements governing the admissibility of evidence in the circumstances in question. 10
- (2) But in criminal proceedings in which that person is charged with an offence other than a relevant perjury offence –
 - (a) no evidence relating to the statement may be adduced, and
 - (b) no question relating to it may be asked,by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person. 15
- (3) “Criminal proceedings” includes –
 - (a) proceedings in the United Kingdom or elsewhere before a court-martial constituted under the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53), 20
 - (b) proceedings before the Courts-Martial Appeal Court,
 - (c) proceedings before a summary appeal court established under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, and 25
 - (d) proceedings before a Standing Civilian Court.
- (4) A relevant perjury offence is an offence under section 5 of the Perjury Act 1911 (c. 6) (false statements made otherwise than on oath).

8 Penalties for contempt

- (1) This section applies where the court exercises its jurisdiction in relation to contempt of court arising out of a failure to comply with an order made under section 6(1)(a) or (b). 30
- (2) Section 14(1) of the Contempt of Court Act 1981 (c. 49) (power to commit person to prison for fixed term not to exceed two years on any one occasion) has effect as if for the words “two years” there were substituted “six months”. 35
- (3) The amount of the fine which the court may impose on any one occasion is an amount not exceeding level 3 on the standard scale.
- (4) “Court” means the High Court.

*Stopping an inquiry***9 Powers of Secretary of State**

- (1) This section applies if, in the view of the Secretary of State, all or substantially all of the matters which are (or will be) the subject of a special inquiry are (or will be) the subject of – 5
- (a) an inquiry by a tribunal established under the Tribunals of Inquiry (Evidence) Act 1921 (c. 7);
 - (b) an inquiry established by a Minister of the Crown in accordance with a power conferred by an enactment or otherwise;
 - (c) an inquiry established by the Health and Safety Commission in accordance with section 14(2)(b) of the Health and Safety at Work etc. Act 1974 (c. 37); 10
 - (d) an inquiry established by the National Assembly for Wales in accordance with a power conferred by an enactment.
- (2) The Secretary of State may direct the local authority (or, in the case of a jointly-established inquiry, the local authorities) that established the special inquiry to stop the inquiry; and the authority (or authorities) must cause the inquiry to stop without delay. 15
- (3) If the inquiry is – 20
- (a) a special inquiry established by a local authority in Wales, or
 - (b) a special inquiry established jointly by two or more local authorities, one or more of which are local authorities in Wales,
- the Secretary of State must consult the National Assembly for Wales before giving a direction.
- (4) A direction may be given at any time before the person holding the inquiry submits a final report to the local authority (or local authorities) that established the inquiry. 25
- (5) If a local authority stop an inquiry because of a direction, they must take reasonable steps to give notice of the stopping of the inquiry to the persons (if any) who were entitled to receive notices under section 4(3). 30
- (6) If two or more local authorities jointly appoint a person to hold a special inquiry, the requirement in subsection (5) applies to each authority; but nothing in this subsection prevents one of the authorities satisfying the requirement on behalf of the other authority or authorities.
- (7) Notices under this section must be given in the manner, and within the period, specified by the Secretary of State. 35

*Miscellaneous***10 Chairing an inquiry**

A local authority (or, in the case of a jointly-established inquiry, the local authorities) may decide that a special inquiry is to be held by two or more persons; and in such a case the authority (or authorities) may designate one of them to chair the inquiry. 40

PART 2

QUALIFIED PRIVILEGE FOR REPORTS

11 Introductory

- (1) Sections 12 and 13 apply if—
 - (a) a local authority or authorities establish a special inquiry or a one-off inquiry, 5
 - (b) a local authority and one or more other public bodies establish a joint inquiry, or
 - (c) an overview and scrutiny committee of a local authority conducts a review or scrutiny falling within section 16, 10and the person holding the inquiry or the committee produces a report all or part of which (or a summary of all or part of which) is published to the public, or a section of the public, by the responsible authority.
- (2) For the purposes of sections 12 and 13, a document is not to be treated as such a report to the extent that it relates to matters that have no connection with the subject of—
 - (a) the special, one-off or joint inquiry, or
 - (b) the review or scrutiny. 15
- (3) The responsible authority is—
 - (a) in relation to a special or one-off inquiry, the local authority or any of the local authorities that established the inquiry; 20
 - (b) in relation to a joint inquiry, the local authority or any of the local authorities that established the inquiry jointly with one or more other public bodies;
 - (c) in relation to a review or scrutiny conducted by an overview and scrutiny committee, the local authority of which the committee is part. 25
- (4) References to an overview and scrutiny committee include references to a sub-committee of such a committee.

12 Qualified privilege

- (1) The publication by the responsible authority of defamatory matter contained in the report is privileged if—
 - (a) before publication the authority took all reasonable steps to satisfy themselves that the inquiry was conducted fairly, or
 - (b) even though they did not, the inquiry was conducted fairly. 30
- (2) If part only of the report is published, the publication by the responsible authority of defamatory matter contained in that part is privileged if—
 - (a) before publication the authority took all reasonable steps to satisfy themselves that so much of the inquiry as is reported in that part was conducted fairly, or
 - (b) even though they did not, so much of the inquiry as is reported in that part was conducted fairly. 35 40
- (3) If a summary of all (or part) of the report is published, the publication by the responsible authority of defamatory matter contained in the summary is privileged if—

-
- (a) the condition in subsection (1) (or (2)) is satisfied, and
 - (b) the summary was prepared or approved by the person holding the inquiry.
- (4) An inquiry is not to be treated as conducted fairly unless –
- (a) the person holding the inquiry bases his conclusions upon findings of fact; 5
 - (b) the person holding the inquiry has, so far as practicable, given every person criticised in the report the opportunity to respond to any criticism;
 - (c) any response of a person criticised in the report (or in the part or the summary that is published) is fairly represented in the report (or that part or summary). 10
- (5) If in defamation proceedings a local authority seek to rely on a defence conferred by subsection (1), (2) or (3), the question whether the condition in subsection (1), (2) or (3)(a) is satisfied shall be determined by the judge alone. 15
- (6) Where this section applies in relation to the report of an overview and scrutiny committee (or a sub-committee of such a committee) –
- (a) references to an inquiry are to be read as references to the review or scrutiny conducted by the committee (or sub-committee), and
 - (b) the references in subsection (4) to the person holding the inquiry are to be read as references to the committee (or sub-committee). 20
- (7) A publication is not privileged because of subsection (1), (2) or (3) if the publication is proved to be made with malice.
- (8) This section does not –
- (a) protect publication of matter the publication of which is prohibited by law, or
 - (b) limit or restrict a privilege that exists apart from this section. 25
- 13 Loss of other qualified privilege**
- (1) If the responsible authority publish the report of an inquiry in the first or second set of circumstances, they may not rely on the defences in subsection (4) as regards the publication. 30
- (2) The first set of circumstances is that –
- (a) the report (or part of it) is published to the public, or a section of the public, by the authority, but
 - (b) the condition in section 12(1) (or section 12(2)) is not satisfied in respect of that publication. 35
- (3) The second set of circumstances is that –
- (a) the summary of all or part of the report is published to the public, or a section of the public, by the authority, but
 - (b) the conditions in section 12(3) are not satisfied in respect of that publication. 40
- (4) The defences are –
- (a) the qualified privilege conferred by section 100H(5) of the 1972 Act;
 - (b) any qualified privilege conferred by regulations under section 22 of the 2000 Act; 45

- (c) any defence, conferred otherwise than by or under an enactment, under which publication of the report to the public, or a section of the public, by the responsible authority is privileged unless the publication is shown to be made with malice.
- (5) If the responsible authority may not rely on the defences in subsection (4) with respect to the publication of a report of a review or scrutiny conducted by their overview and scrutiny committee, those defences are not available to the committee with respect to publication of the report to the public, or a section of the public, by the committee. 5
- (6) Where this section applies in relation to the report of an overview and scrutiny committee, references to an inquiry are to be read as references to the review or scrutiny conducted by the committee. 10
- (7) In this section (except in subsections (2) and (3)) a reference to a report is a reference to the report or part, or a summary of all or part, of it.
- (8) References to an overview and scrutiny committee include references to a sub-committee of such a committee. 15
- 14 One-off inquiry**
- (1) A one-off inquiry is an inquiry established by a local authority because they have reason to believe that there was, or may have been, a failure in the exercise of a function of theirs. 20
- (2) An inquiry is also a one-off inquiry if—
- (a) it is jointly established by two or more local authorities, and
- (b) it satisfies the conditions in subsection (3).
- (3) The conditions are—
- (a) that the inquiry is established because each of the authorities have reason to believe that there was, or may have been, a failure in the exercise of a function of theirs, and 25
- (b) that they consider that a jointly-established inquiry into the failures would be appropriate.
- (4) For the purposes of this section, an inquiry, review or other investigation established by a local authority (or two or more local authorities) is not a one-off inquiry if the matters which are the subject of the inquiry, review or other investigation include matters falling within subsection (5). 30
- (5) A matter falls within this subsection if an enactment other than section 1 expressly authorises or requires the local authority (or one or more of the local authorities) to establish an inquiry, review or other investigation into the matter (whether on its own or with other matters). 35
- 15 Joint inquiry**
- (1) A joint inquiry is an inquiry jointly established by a local authority and one or more other public bodies that satisfies three conditions. 40
- (2) The first is that—
- (a) the local authority have reason to believe that there was, or may have been, a failure in the exercise of a function of theirs, and

- (b) the other public body (or each of the other public bodies) has reason to believe that there was, or may have been, a failure in the exercise of a function of the body.
- (3) The second is that the local authority and the other public body or bodies consider that a jointly-established inquiry into the failures would be appropriate. 5
- (4) The third is that one or more of the other public bodies is not a local authority.
- (5) For the purposes of this section, an inquiry, review or other investigation established by a local authority and one or more other public bodies is not a joint inquiry if the matters which are the subject of the inquiry, review or other investigation include matters falling within subsection (6). 10
- (6) A matter falls within this subsection if an enactment other than section 1 expressly authorises or requires the local authority or any of the other public bodies to establish an inquiry, review or other investigation into the matter (whether on its own or with other matters). 15
- 16 Overview and scrutiny committee**
- (1) A review or scrutiny conducted by an overview and scrutiny committee of a local authority falls within this section if—
- (a) the review or scrutiny is undertaken because the committee has reason to believe that there was, or may have been, a failure in the exercise of a function of the authority, 20
- (b) the committee reviews or scrutinises decisions made, or other action taken, as regards the failure, and
- (c) the committee makes a report to the authority on the matter.
- (2) References to an overview and scrutiny committee include references to a sub-committee of such a committee. 25
- 17 Consequential amendment**
- After section 100H(6) of the 1972 Act insert—
- “(6A) Subsection (5) is subject to section 13 of the Local Authority Inquiries Act 2004.”. 30

PART 3

SUPPLEMENTAL

- 18 “Local authority”**
- (1) In relation to England “local authority” means—
- (a) a county council; 35
- (b) a district council;
- (c) a London borough council;
- (d) the Common Council of the City of London in its capacity as a local authority;
- (e) the Council of the Isles of Scilly. 40
- (2) In relation to Wales “local authority” means—

- (a) a county council;
- (b) a county borough council.

19 Other defined terms

- (1) In this Act –
 - “the 1972 Act” means the Local Government Act 1972 (c. 70); 5
 - “the 2000 Act” means the Local Government Act 2000 (c. 22);
 - “enactment” includes subordinate legislation;
 - “joint inquiry” has the meaning given by section 15;
 - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26); 10
 - “one-off inquiry” has the meaning given by section 14;
 - “responsible authority” has the meaning given by section 11;
 - “special inquiry” has the meaning given by section 1.
- (2) In this Act “documents” includes information recorded in any form; and, in relation to information recorded otherwise than in legible form, references to its production include references to production of a copy of the information in legible form. 15

20 Inquiry held by two or more persons

Where two or more persons are appointed to hold an inquiry, references in this Act to a person appointed to hold such an inquiry are to be read as references to all of the persons so appointed. 20

21 Rules

Any power under this Act to make rules is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. 25

22 Commencement

- (1) This Act comes into force on such date as the Secretary of State may by order appoint.
- (2) Different dates may be appointed for different provisions and for different purposes. 30
- (3) The power to make an order under subsection (1) is exercisable by statutory instrument subject to annulment by a resolution of either House of Parliament.

23 Short title and extent

- (1) This Act may be cited as the Local Authority Inquiries Act 2004.
- (2) This Act extends only to England and Wales. 35