

Public Advocate (No. 2) Bill

[AS INTRODUCED]

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Establish a public advocate to provide advice to, and act as data controller for, representatives of the deceased after major incidents.

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

1 Establishment

- (1) *The Lord Chancellor must appoint a person (“the Advocate”) to undertake the functions set out in this Act.*
- (2) *The Lord Chancellor must, out of money provided by Parliament, pay the expenses of the Advocate and may also pay them such allowances as the Secretary of State determines.* 5
- (3) *The Lord Chancellor must ensure that there is an efficient and effective system to support the carrying on of the business of the Advocate.*

2 Role

- (1) The Advocate may undertake the functions set out in section 3 for a particular event when— 10
 - (a) invited to do so by the Lord Chancellor, or
 - (b) for that event both requirements one and two have been met.
- (2) Requirement one is that, in the Advocate’s opinion, an event has occurred which has led to large scale loss of life and involved— 15
 - (a) serious health and safety issues,
 - (b) a failure in regulation, or
 - (c) other events of serious concern.
- (3) In reaching an opinion under subsection (2), the Advocate must have regard to previous decisions of the Advocate. 20
- (4) Requirement two is that the Advocate has been asked to undertake their functions by fifty per cent plus one or more of the total of—
 - (a) representatives of those deceased due to the event, and
 - (b) any injured survivors of the event.

- (5) For the purposes of subsection (4)(a), each person who is deceased due to the event shall have one representative who will be the first qualifying person of legal age from—
- (a) a husband, wife or civil partner from a marriage or partnership that was in existence at the time of the event; 5
 - (b) a child;
 - (c) a grandchild;
 - (d) a parent;
 - (e) a sibling;
 - (f) a half-sibling; 10
 - (g) a grandparent;
 - (h) a niece or nephew;
 - (i) a half-aunt or half-uncle;
 - (j) a cohabitant with the deceased;
 - (k) the executor of the deceased’s last will and testament; or 15
 - (l) in the event that no qualifying person higher in this list can be traced and the deceased has died intestate, the Advocate themselves or any person with a verifiable relationship with the deceased that the Advocate may appoint on application for them to do so.
- (6) In subsection (5)— 20
- (a) if there is more than one qualifying person in any of categories (5)(a), (b), (c) or (e) then the elder person of legal age within that category will be the first qualifying person; and
 - (b) if a parent is the first qualifying person and is legally separated from the other parent of the deceased, both may choose jointly to represent the deceased. 25
- (7) The first qualifying person under subsection (5) may assign another qualifying person as their representative.
- (8) For the purposes of subsection (2), the large scale loss of life need not occur due to one single incident and the Advocate may choose to classify a series of deaths over a period of time as a large scale loss of life. 30
- (9) For the purposes of subsection (4)(b), an injured person is one who has been admitted to hospital as a result of the event.

3 Functions

- (1) The functions of the Advocate are as follows. 35
- (2) The Advocate must report to the representatives under section 2(5) during any police or other authority’s investigation into the disaster regarding the progress of the investigation, and how the representatives can assist with it, including, if there are no lawyers representing the families, the implications of engaging lawyers at that stage. 40
- (3) Should any person listed in section 2(5) request it, the Advocate must make any reports they have provided under subsection (2) to the representatives

or legal representatives available to all qualifying persons listed in section 2(5).

- (4) Following a further request to the Advocate by fifty percent plus one or more of the representatives of those deceased due to the event, the Advocate must set up a panel (the “Advocate’s Panel”) which must register as a data controller under the Data Protection Act 1998 and review all documentation relating to the event, the deceased and the representatives and report thereon. 5
- (5) In establishing the Advocate’s Panel under subsection (4), the Advocate must consult the representatives of those deceased due to the event about the composition of the Panel. 10
- (6) Subject to section 4, all relevant public authorities and other relevant organisations must provide documentation under subsection (4) to an Advocate’s Panel on request from the Panel.
- (7) An Advocate’s Panel must publish a report into its review of the documentation. 15
- (8) The Advocate may not chair an Advocate’s Panel but will be a member, along with further members and a person whom the Advocate sees fit to appoint to chair the panel.
- (9) In this section, any reference to a representative shall mean all persons meeting the requirements of section 2(4), including those who have not asked the Advocate to undertake these functions. 20

4 Disclosure of information to an Advocate’s Panel

- (1) Nothing in this section detracts from the duty upon relevant public authorities to provide relevant information to an Advocate’s Panel on request from the Panel. 25
- (2) In this Act—
 - “relevant information” includes all information which may reasonably be considered to be related to the cause of the event, the event, and actions taken after the event due to it;
 - “public authority” has the same meaning as in the Freedom of Information Act 2000. 30
- (3) A public authority may only decline to provide information to the Advocate’s Panel if disclosure of that information to the Panel—
 - (a) is not possible for reasons of safeguarding national security;
 - (b) would, or would be likely to, prejudice the defence of the United Kingdom or of any Crown dependency or overseas territory, or the capability, effectiveness or security of the armed forces of the Crown; 35
 - (c) is prohibited by or under any enactment, is incompatible with any EU obligation, or would constitute or be punishable as a contempt of court; or 40
 - (d) would, or would be likely to, prejudice a police investigation as to whether any person has failed to comply with the law.

- (4) A public authority may request that the Advocate’s Panel provides an assurance that information provided to the Panel will be secured to the same data security standard as used by that authority, and the Panel may provide such assurance and use its best endeavours to maintain that standard.
- (5) If information is withheld from the Advocate’s Panel under subsection (3), the Panel must be informed of the subject of the matter being withheld and the reason for that exemption. 5
- (6) Upon receiving a notification that information is being withheld, the Panel may apply to the Information Commissioner for a decision whether the public authority has assessed correctly that disclosure is not possible under subsection (3). 10
- (7) Upon receiving an application from an Advocate’s Panel under subsection (6), the Information Commissioner must consider the application and issue a decision notice to the Panel and to the relevant public authority stating either – 15
- (a) that the public authority has correctly assessed that the information should be withheld; or
 - (b) that all or some of the information should not be withheld, the steps that the public authority must take to provide the information and the period within which they must be taken. 20
- (8) A decision notice issued by the Information Commissioner under subsection (7) may be appealed by the Advocate’s Panel or the relevant public authority to the Tribunal.
- (9) If on an appeal under subsection (8) the Tribunal considers – 25
- (a) that the notice against which the appeal is brought is not in accordance with the law, or
 - (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he or she ought to have exercised his or her discretion differently,
- the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal. 30
- (10) On such an appeal, the Tribunal – 35
- (a) may review any finding of fact on which the notice in question was based; and
 - (b) shall notify the Lord Chancellor of its decision.
- (11) An Advocate’s Panel and any office or officials supporting the work of the Advocate are not a public authority for the purpose of the Freedom of Information Act 2000.
- (12) In this section, “Tribunal” has the meaning given by section 84 of the Freedom of Information Act 2000. 40

5 Report

The Advocate shall send to the Lord Chancellor a report—

- (a) on an annual basis, summarising their work;
- (b) at the conclusion of support relating to a particular event; and
- (c) at any other time they identify a need so to do;

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and the Lord Chancellor must lay before Parliament a copy of any reports received from the Advocate within 15 days of their receipt.

6 Extent, commencement and short title

- (1) This Act extends to England and Wales only.
- (2) This Act comes into force on the day on which it is passed and applies to events occurring on that day and thereafter.
- (3) This Act may be cited as the Public Advocate Act 2022.

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*Presented by Maria Eagle
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