

Title: Public Office (Accountability) Bill: Misconduct in Public Office Measures IA No: MoJ025/2025 RPC Reference No: N/A Lead department or agency: Ministry of Justice (MoJ) Other departments or agencies:	Impact Assessment (IA)			
	Date: [16.09.25]			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
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Summary: Intervention and Options				RPC Opinion: Not applicable

Cost of Preferred (or more likely) Option (2024/25 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
-	-	-	Not a regulatory provision

What is the problem under consideration? Why is government action or intervention necessary?

Misconduct in Public Office (MiPO) is a common law offence which has existed for hundreds of years. It is committed by a public office holder who, acting as such, either wilfully neglects to perform their duty or misconducts themselves to such a degree that it amounts to an abuse of the public's trust in that office. Some elements of MiPO are unclear, and there have been concerns raised that it is being overused and used in novel contexts. This imprecision creates the potential for misuse and injustice. The Law Commission reviewed the offence (*Misconduct in Public Office*, 2020) and concluded that: the common law offence should be abolished and replaced by statutory offences that target serious wrongdoing by public officials and set out clearly which conduct, and which public office holders, are caught by the offence. Government intervention, via primary legislation, is necessary to improve the certainty of the law, ensuring that this form of criminal conduct continues to be prosecuted effectively thereby protecting the public.

What are the policy objectives of the action or intervention and the intended effects?

Legislative change is necessary to ensure that: i) the criminal law is capturing harmful behaviour effectively; ii) the maximum penalty for the offence is appropriate; and iii) the criminal law is clear and understood by the public and public office holders. The changes described above are also necessary to protect the public, provide justice to victims and improve trust in the criminal justice system.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: Do nothing. No changes are made to the current common law offence. This does not meet the government's objective.

Option 1: Full implementation of the Misconduct in Public Office measure in the Public Office (Accountability) Bill:

- 1A: Abolition of the current common law MiPO offence
- 1B: Introduce a Breach of duty to prevent death or serious injury Offence
- 1C: Introduce a Seriously Improper Acts Offence
- 1D: Create a definitive statutory list of "public office holders" for the purpose of the offences

The government's preferred approach is Option 1 as it meets the Government's strategic and policy objectives.

Will the policy be reviewed? The MiPO measures in the Bill will be subject to review 12 months after Royal Assent

Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	Micro No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the Minister responsible:

Alex Davies

Date:

15/09/2025

Summary: Analysis & Evidence

Policy Option 1

Description: Full implementation of the Misconduct in Public Office measures in the Public Office (Standards) Bill (see table 1, page 3 for detail).

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	-	N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		0	0

Description and scale of key monetised costs by 'main affected groups'

As there is no intention to widen substantially change the scope of the criminal law, the impact of these changes is expected to be negligible. Ministry of Justice statistics have shown that the number of prosecutions and convictions under the common law offence have remained low in recent years.

Other key non-monetised costs by 'main affected groups'

n/a

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	-	N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		0	0

Description and scale of key monetised benefits by 'main affected groups'

For the reasons given above, the monetisable impact of these changes is expected to be negligible.

Other key non-monetised benefits by 'main affected groups'

The measures in this option will clarify the criminal law, ensuring that it continues to protect the public and provide justice to victims. Creating statutory offence(s) and an accompanying list of public office holders will make clear to both office holders and the public who could be captured by the offences. This could deter individuals from misconducting themselves in the course of their public duties, which in turn should reduce victimisation and increase trust in public office holders and the criminal justice system.

Key assumptions/sensitivities/risks	Discount rate (%)	N/A
<ul style="list-style-type: none"> We estimate that the introduction of the new measures will have a negligible impact on prosecutions and convictions. There is a risk this assumption may not hold if this legislation raises awareness and more prosecutions or, conversely, it may even reduce offending in the future if there is a deterrent effect. Sensitivity analysis has been performed to illustrate the prison impacts if this assumption i.e. if there is a positive or negative change in the number of prosecutions. 		

BUSINESS ASSESSMENT

Direct impact on business (Equivalent Annual) £m: N/A			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: N/A	Benefits: N/A	Net: N/A	

Evidence Base

A. Background

1. It is important that the criminal law be updated to ensure that it provides sufficient protection and deals effectively with harmful behaviours. The intention of the misconduct in public office provisions in the Public Office (Accountability) Bill is to ensure that public officials can continue to be prosecuted for misconduct committed in connection with their official duties in cases which are serious enough to warrant criminal sanction. The legislation will clarify the criminal law to make clear who the offence applies to and the types of conduct that is criminalised, holding public officials to account and protecting the public. Table 1 summarises the misconduct measures in the Public Office (Accountability) Bill which are considered in this Impact Assessment (IA).

Table 1: Misconduct in Public Office Measures in the Public Office (Standards) Bill

Policy Measure	Policy Description
1A Abolition of the Current Common law offence	<ul style="list-style-type: none">• The current common law MiPO offence will be abolished and replaced by new statutory offences.
1B Breach of Duty to prevent Death or Serious Injury Offence	<ul style="list-style-type: none">• Create a new statutory offence of breach of duty to prevent death or serious injury by a public office holder. The offence will have a reasonable excuse defence. The offence will be indictable only, with a maximum penalty of imprisonment for up to 14 years; and all proceedings brought under it will require the consent of the Director of Public Prosecutions (DPP).
1C Seriously Improper Acts Offence	<ul style="list-style-type: none">• Create a new statutory offence of Seriously Improper acts. The offence will have a reasonable excuse defence. The offence will be indictable only, with a maximum penalty of imprisonment for up to 10 years; and all proceedings brought under it will require the consent of the DPP.
1D Definitive statutory list of “public office holders” for the purpose of the offence(s)	<ul style="list-style-type: none">• Create a statutory list of “public office holders” in scope of the new offences. The Bill includes a power to amend this list by affirmative instrument.

Problem Under Consideration

2. Misconduct in Public Office (MiPO) is a common law offence that has existed for hundreds of years with a maximum penalty of life imprisonment. Until the 21st century the numbers of prosecutions for the offence were relatively low, but as they have increased, so has the pressure to review it. The substantial body of case law has refined and sometimes shifted the terms of the offence – and it has started to be used in novel contexts, generating controversy.

3. Some elements of MiPO are unclear and this imprecision creates the potential for misuse and injustice. In response to these concerns, the Law Commission undertook a review of the law to decide whether the existing MiPO offence should be abolished, retained, restated or amended.
4. The Law Commission's review of the law (published in December 2020) concluded that there was still a need for an offence, so it should not be abolished without replacement. They recommended that it should be replaced with new, clear statutory offences that better targeted serious wrongdoing by public officials. As the current offence criminalises conduct which could be broadly split into two categories (corruption in public office and breach of a duty in public office) this is what was recommended.

Abolition of the Current Common law offence

5. Following the Law Commission's report *Misconduct in Public Office* ((LC397)¹, the government is abolishing the common law offence and replacing it with new statutory offences to ensure the scope and application of the criminal law is clear in future.

The Breach of Duty offence

6. In their report, the Law Commission proposed that one of the new statutory offences to replace the common law offence should be 'breach of duty in a public office'. They considered that this offence corresponded most closely to that part of the common law offence which criminalises cases where a public officer 'wilfully neglects to perform his duty to the extent that it amounts to an abuse of the public's trust in that office holder'.

The Seriously Improper Acts offence

The Law Commission recommended that a second statutory offence of 'corruption in public office' should replace that part of the common law offence which criminalises cases where a public officer 'wilfully misconducts himself...to the extent that it amounts to an abuse of the public's trust in that office holder'. The offence would occur if a public office holder used (or failed to use) their position or power to achieve a benefit or cause a detriment for someone else, and they know that their action is seriously improper. They also recommended that a list of factors that will define serious impropriety should be set out in the legislation; and there should be a defence for where there was a reasonable excuse for their action.

Implement a definitive statutory list of "public office holders" for the purpose of the offences

7. One of the main criticisms of the common law offence is that it is not obvious who is a public officer, or when they are 'acting as such'. This is particularly true where private contractors are used to deliver public services.
8. The Law Commission therefore recommended that a list of positions should underpin the two new offences to set out the 'outer limit' of the positions that are in scope. This would be an exhaustive list of broadly defined categories but could be added to by Parliament, by way of affirmative resolution.

The Misconduct in Public Office Measure in the Public Office (Accountability) Bill

¹ Misconduct in Public Office – Law Commission

9. In response to the Law Commission report, the Government is introducing the Misconduct in Public Office Measure in the Public Office (Accountability) Bill. This Impact Assessment (IA) provides an assessment of the impacts of the measure.
10. The measure draws largely on the Commission's recommendations, but we have made small changes or refinements where necessary, following extensive engagement with stakeholders. There is no intention to significantly change the scope of the criminal law. The maximum penalties for the new misconduct offences will, however, be changed from the current maximum of life imprisonment so they better reflect maximum penalties of other comparable statutory offences.
11. The legislative changes in the Bill will extend to England and Wales only at introduction.

B. Rationale and Policy Objectives

Rationale

12. The conventional economic approaches to government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules) where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to more vulnerable groups in society).
13. The rationale for intervention in this instance relates to both efficiency and equity: Government intervention is necessary to ensure that the criminal law continues to cover this harmful behaviour; that it remains up to date as public service provision evolves; is well understood by those who will be subject to it; and that it adequately delivers justice to victims and protects the public.

Policy Objectives

14. The overall policy objective is to improve the clarity of the criminal law, by making clear who the offence applies to and the types of conduct that are criminalised. There is no intention to significantly change the scope of the criminal law as it currently exists.
15. The associated overall policy objectives are that i) the criminal law is clear who the offence applies to and in what circumstances; ii) that the maximum penalty for the criminal offence is appropriate; and iii) the criminal law is clear and understood by those who can commit the offence as well as the wider public. The measures assessed in this IA are also necessary to protect the public, provide justice to victims and improve trust in the criminal justice system.

C. Affected Stakeholder groups, organisations and sectors

16. The following groups would be affected by the options considered in this IA:

All public office holders subject to the offence and included in the schedule to the offence, including private contractors providing public services for any of the public bodies listed.

D. Description of options considered

17. To meet the policy objectives, the following options are assessed in this IA:

- **Option 0:** Do nothing: No changes are made to the current common law offence of Misconduct in Public Office. This does not meet the government's objective.
- **Option 1:** Full implementation of the Misconduct in Public Office criminal law measure in the Public Office (Accountability) Bill:
 - 1A: Abolition of the current common law MiPO offence
 - 1B: Introduce a statutory breach of duty to prevent death or serious injury in public office offence
 - 1C: Introduce a statutory seriously improper acts in public office offence
 - 1D: Create a definitive statutory list of "public office holders" for the purpose of the offences

18. The Government's preferred option is Option 1 as it meets the strategic and policy objectives.

Option 0

19. Under this Option, no changes would be made to the current common law misconduct in public office offence. This would mean that the law would not be updated or clarified, risking it not being well understood or capable of being used effectively to protect the public.

Option 1

20. Option 1 comprises of the following elements.

Measure 1A: Abolition of the Current Common Law Offence

21. The current common law offence requires that: a public officer acting as such; wilfully neglects to perform his or her duty and/or wilfully misconducts themselves; to such a degree as to amount to an abuse of the public's trust in the office holder; without reasonable excuse or justification. It carries a maximum sentence of life imprisonment. The common law offence will be abolished and replaced with two new statutory offences of breach of duty to prevent death or serious injury and an offence of seriously improper acts.

Measure 1B: Breach of Duty to prevent death or serious injury

22. Under Measure 1B, a new offence of breach of duty to prevent death or serious injury will be introduced. This new offence will apply where a public office holder is subject to (and is aware) that they have a duty to prevent death or serious injury (as a function of their role); they breach that duty by intentionally or recklessly causing critical harm, or a significant risk of the same; and their action falls far below the standards reasonably expected of them in the circumstances. There will be a defence under this offence if the public office holder can show that they had a reasonable excuse for their conduct. Honest mistakes or finely balanced operational decisions will not be caught by this offence.

23. To reflect the serious nature of the conduct itself and the breach of public trust inherent in this offence, this offence will be triable on indictment only and will have a maximum penalty of 14 years imprisonment upon conviction. This penalty is commensurate with other offences involving a breach of duty leading to a risk of serious injury or death.

24. Due to the knowledge of the public sector required to assess a) whether a duty exists and b) whether it arises in the relevant role, these issues will be matters of law for the judge (rather than the jury) to determine.
25. To prevent vexatious litigation all prosecutions under this offence will need the consent of the Director of Public Prosecutions.

Measure 1C: Seriously improper acts

26. Under this measure a public office holder will commit an offence if they use their office to obtain a benefit (for themselves or another) or to cause a detriment to someone else; when they know (or should have known) that their conduct was seriously improper. This can be any benefit or detriment, whether temporary or permanent including financial gain or loss; protection or enhancement of (or damage to) a person's reputation; or a benefit or detriment of a physical or sexual nature. There is a non-exhaustive list of factors for the jury to consider when determining whether an act was seriously improper, such as whether there was an intention to mislead or other dishonesty; whether it involved a conflict of interest or breach of trust; the nature and degree of any benefit or detriment; and the extent the act had the potential to undermine public confidence in their office, or wider public offices and functions. There will be a defence under this offence if the public office holder can show that they had a reasonable excuse for their conduct.
27. To reflect the high criminal threshold of this offence it will be triable on indictment only and will have a maximum penalty of 10 years' imprisonment for committing it. This penalty is commensurate with other comparable 'corruption' offences such as bribery and fraud. Proceedings under this offence will require the consent of the Director of Public Prosecutions.

Measure 1D: The definitive statutory list of "public office holders" for the purpose of the offence(s)

28. The Law Commission recommended that a two-stage process should be applied to determine whether a person is in "public office" for the purposes of the proposed statutory replacement offences.
29. The first stage is that a list of positions capable of constituting "public office" should be set out in a schedule of the legislation. The second stage is that this should be backed up by a 'functional' test within each offence to determine when a person is 'acting' in public office. Both stages will provide greater clarity and certainty about when a person is in "public office" and capable of committing the offence.
30. As set out above all public office holders listed in Schedule 4 of the Public Office (Accountability) Bill will be subject to the new offences. In some cases this will include private contractors providing public services for the public bodies listed.

E. Cost Benefit Analysis

31. This IA follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with His Majesty's Treasury Green Book guidance.

32. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.
33. The costs and benefits of the options are compared to Option 0, the counterfactual or 'do nothing' option. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).
34. This legislation is not anticipated to significantly change the number of prosecutions, convictions or average custodial sentence lengths of these offences; therefore no monetised costs or benefits have been included in this impact assessment.
35. As is the convention in Ministry of Justice IAs, we do not estimate the direct impact of the options considered on offenders where these are necessary to uphold the sentence of the court.

Option 1: Full implementation of the Misconduct in Public Office measures in the Public Office (Accountability) Bill.

Costs of Option 1

Non-Monetised Costs

36. As there is no intention to significantly change the scope of the criminal law, the impact of these changes is expected to be negligible. Ministry of Justice statistics, detailed in table 2, have shown that the number of prosecutions and convictions under the common law offence vary year on year, but have remained low over the last 10-years.
37. The act of legislating may draw attention to the offence, encouraging an increase in complaints and prosecutions. On balance, although there may be an initial uptick in cases, it is thought that this will level off as it will be clear who and what is in scope of the new offences. In addition, the risk of malicious or unfounded accusations will likely be reduced due to the requirement for DPP consent to prosecute. In addition, convictions might decrease due to the deterrent effect of bringing the offence into statute.

Table 2: Number of convictions, prosecutions and Average Custodial Sentence Length (ASCL) under the common law offence²

	2015	2016	2017	2018	2019	2020	2021	2022 ³	2023	2024
Prosecutions	65	58	50	36	56	40	60	36	50	67
Convictions	38	45	34	26	35	29	45	37	34	58
ACSL (months)	21.5	19.8	17.7	17.4	21.8	13.5	16.8	21.8	25.8	24.4

Benefits of Option 1

Non-Monetised Benefits

² Criminal justice statistics quarterly - GOV.UK: Outcomes by Offence Tool

³ Convictions may exceed prosecutions in any given year due to time lags or cases moving from the magistrates' to the Crown Court.

38. The elements of this option will strengthen the criminal law, protect the public and provide justice to victims. Creating statutory offence(s) and an accompanying list of public office holders will make clear to both public office holders and the public who could be captured by the offence. This could deter individuals from misconducting themselves in the course of their public duties, which in turn should reduce victimisation and increase trust in public office holders and the criminal justice system.
39. The maximum penalties for the new misconduct offences will be reduced from the current maximum of life imprisonment to up to 14 years for the new breach of duty offence (Measure 1B) and up to 10 years for the serious improper acts offence (Measure 1C). This will ensure that they better reflect maximum penalties of other comparable statutory offences. We assume this will not affect average custodial sentence lengths which are currently far below both the current maximum, and the proposed new maximum penalties.

F. Risks and Assumptions

40. The key assumption underpinning the impacts presented above is that they are expected to be negligible, since the scope of the criminal law as it currently exists will remain substantially the same under the implementation of these new measures. Therefore, the volume of prosecutions is assumed to remain the same.

Sensitivity Analysis

41. As noted in section E, we have assumed there will be no changes in the volume of prosecutions. There is, however, a risk that this assumption may not hold. Due to prison capacity pressures, we have considered this risk for sensitivity analysis and presented an illustrative example of the impacts of changes to the volume of prosecutions on the criminal justice system.
42. Table 3 illustrates the prison impacts of a positive or negative change in prosecutions, from a baseline of 51 prosecutions per annum (the average over the last 5 years).

Table 3: Illustrative impacts on prison places of changes in prosecutions per year

% Change in prosecutions	-30%	-20%	-10%	+10%	+20%	+30%
Prison Places	- 6	- 4	- 2	+ 2	+ 4	+ 6
Prison Build Costs	- £3.1m	- £2.0m	-£1m	+ £1.0m	+ £2.0m	+£3.1m

G. Wider Impacts

Equalities

43. An equalities impact assessment has been carried out.

Better Regulation

44. These proposals are out of scope of the Government's Better Regulation Framework.

Environmental Impact Assessment

45. We expect there to be no environmental impacts as a result of the options within this IA.

International Trade

46. There are no international trade implications from the options considered in this IA.

H. Monitoring and Evaluation

47. The Public Office (Accountability) Bill will be subject to post-legislative review three to five years after Royal Assent. The Government has committed to undertake a limited review of the impact of the misconduct measures on the public office holders subject to them 12 months after they come into force. The Government will also keep these measures under review to ensure that the new statutory offences continue to capture this type of offending efficiently and effectively. This will include engagement with stakeholders such as the Police, Crown Prosecution Service and the Serious Fraud Office.