

THE ABOLITION OF MISCONDUCT IN PUBLIC OFFICE AND THE OFFENCES THAT REPLACE IT

1. On 15 April 1989 a crush at a football match played at Hillsborough killed 97 innocent fans.
2. On 16 September 2025 the Public Office (Accountability) Bill (widely referred to as “Hillsborough Law”) was introduced in the House of Commons.
3. It is principally designed to dismantle a “cover-up culture” in public institutions.
4. At the heart of the proposals is the imposition of a statutory duty of candour and assistance for public authorities and officials when engaging with inquiries, inquests and similar investigations; in short a legal obligation to act transparently. Offences are created.
5. However, and understandably, less publicity has been given to the bill’s abolition of the common-law offence of Misconduct in Public Office and its replacement with two new statutory offences.
6. The change follows the Law Commission’s 22 recommendations in its 2020 report “Misconduct in Public Office” (LC 397)
7. In line with those recommendations the bill creates statutory offences which operate together to cover the two broad types of offending caught by the common-law offence and in doing so replace what has long been regarded as an out-dated and vague common-law offence criticised for being difficult to define and prosecute.

THE NEW OFFENCES

8. Part 3 of the Bill is titled “Misconduct in Public Office” and by Cl.17(1) abolishes that common law offence.
9. It does not do so retrospectively and thus the old common law offence will still apply to completed acts before and acts before and continuing after the section comes into force. **(Cl. 17(2))**
10. Nor does it affect any offence at common law other than the abolished offence nor civil liability for the tort of misfeasance in public office. **(Cl.17(3))**

THE FIRST OFFENCE

11. Cl.13 is titled “Serious improper acts” and creates a new offence by the holder of a public office who uses their office to obtain a benefit whether for themselves or another or uses it to cause another person to suffer a detriment and in either case knows or ought to know that doing so is a seriously improper act. **(Cl.13(1)(a)(b))**
12. The “use” of the office can be by commission or omission in respect of a position they have or purport to have by virtue of that office. **(Cl.13(2)(a)).**

13. “Benefit” and “Detriment” is of any kind whether permanent or temporary and includes a financial gain or loss as well as protection or enhancement of or damage to a person’s reputation including where it is of a physical or sexual nature.
(Cl.13(2)(a)(b))
14. The act in question is “seriously improper” if a reasonable person would consider it to be so. (Cl.13(2)(c))
15. The offence is indictable only and its prosecution requires the consent of the DPP. The maximum sentence is 10 years.
16. If a jury is sworn then they must be given certain non-exhaustive directions to determine whether an act is “seriously improper”.
17. The jury must therefore have regard to the following matters:-
 - (a) the extent to which the act involved an intention to mislead or other dishonesty;
 - (b) the extent to which the act involved a conflict of interest or breach of trust, particularly in relation to vulnerable individuals;
 - (c) the nature and degree of any benefit obtained by the person (whether for themselves or another person) as a result of the act;
 - (d) the nature and degree of any detriment suffered by another person as a result of the act;
 - (e) the extent to which the act had the potential to undermine public confidence in the person’s office, another person exercising public functions or the exercise of public functions in general. (Cl.13(3)(a-e))
18. There is a defence which imposes an evidential burden on the person charged with the offence to show that they had a reasonable excuse for their act. (Cl.13(5))
19. A person is taken to have shown that requirement if:-
 - (a) sufficient evidence of the fact is adduced to raise an issue with respect to it, and
 - (b) the contrary is not proved beyond reasonable doubt. **(Cl.13(6))**

THE SECOND OFFENCE

20. This is a “**Breach of duty to prevent death or serious injury**”; the title to Cl.14 which creates it.
21. This offence is committed by the holder of the public office if:-
 - (a) by virtue of their office the person is under a duty to prevent or to prevent a risk of another person suffering critical harm,
 - (b) the person knows or ought to know that they are under the duty,
 - (c) in breach of the duty, the person intentionally or recklessly causes or creates a significant risk of causing another person to suffer critical harm, and

- (d) the act constituting the breach falls far below what could reasonably be expected of the person in the circumstances. **(Cl.14(1))**
- 22. Note that whether such a duty exists under Cl.14(1)(a) is a question of law and the judge “must” make any findings of fact necessary to determine this issue. **(Cl.14(6))**
- 23. “Critical harm” means death or serious injury and “serious injury” is grievous bodily harm within the meaning of the Offences against the Person Act 1861. **(Cl.14(7))**
- 24. This offence is indictable only and the consent of the DPP to prosecute is required. Conviction carries a maximum sentence of 14 years.
- 25. The same defence is available to a defendant charged with this offence and operates in the same manner as that for the first offence. **(CL.14(2)(3))**
- 26. If the relevant person holding a public office is a UK national or is habitually resident in the UK and an offence is committed outside the UK, proceedings for the offence can be taken in any place in the UK and that offence may for all incidental purposes be treated as having been committed at any such place. **(CL.15(1)(2))**

DEFINING THE HOLDER OF PUBLIC OFFICE

- 27. A person “holds public office” if they fall within Schedule 4 and in determining whether the person falls within the Schedule it irrelevant whether they receive remuneration or not in respect of the office held. **(CL.16(1)(2))**
- 28. Regulations can amend Schedule 4 to provide for the specification of further descriptions of holders of public office or to omit or modify an existing description. **(CL.16(1)(2)(3))**
- 29. The full list of holders of public office is not repeated here. However, the categories (and employees are included where specified) are:
 - (a) Ministers
 - (b) Civil Servants
 - (c) Legislatures
 - (d) Policing and law enforcement
 - (e) Fire and rescue
 - (f) State detention
 - (g) The judiciary
 - (h) Armed forces
 - (i) Local government, and
 - (j) Other public bodies and offices if specific conditions as defined are met. Note in this context that in determining whether a function is of a public nature is a question of law.
- 30. On 14 July 2026 the bill received its final reading in the Commons and it has already had its first reading in the Lords.
- 31. As this reform was outlined in the government’s manifesto, by convention it will not be opposed in the Lords given it has a public mandate.

32. It is therefore set to become law ahead of the 38th Anniversary of the Hillsborough disaster.

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