

## **Public Office (Accountability) Bill - making the most of the opportunity to raise ethical standards and ensure the new misconduct in public office offence achieves its purpose**

Spotlight on Corruption is a UK anti-corruption charity that monitors how the UK enforces its anti-corruption laws, raises ethical standards and implements its international commitments on fighting corruption.

We have closely monitored over the past few years how standards of conduct in public life are regulated, and the enforcement of existing misconduct in public office laws. We have found that significant improvements are needed in relation to both. The Public Office (Accountability) Bill is a unique opportunity to ensure some of these improvements - long recommended by experts - are put into statute.

In this submission we call for the Public Office (Accountability) Bill to be strengthened by:

- Putting relevant standards regulators on a statutory footing and ensuring parity between the ethical codes of public servants and the Ministerial code.
- Addressing significant issues with the drafting of the misconduct in public office offence which are likely to undermine the stated intentions of the Bill, by ensuring that:
  - private contractors, and private instigators of misconduct are clearly covered,
  - the definition of public office holder is not too narrow,
  - the defence is not so broad as to create serious obstacles to prosecution, and
  - a benefit or detriment does not have to have occurred in order for a prosecution to take place, in order to match the Bribery Act.

### **A. Standardising ethical norms and regulation across public service, and futureproofing standards regulation**

1.1. The Public Office (Accountability) Bill (POAB) includes new measures to require public authorities to “*adopt and publish a code of ethical conduct*.” The code must lay out expectations of conduct, practical implementation and disciplinary consequences, as well as how whistleblowers and the public can report on any breaches.

1.2. The Bill stipulates that guidance for what public authority codes should include may be issued by the “*appropriate national authority*” and that public authorities will need to have regard to that guidance.

1.3. The provisions in the Bill have the potential to raise ethical standards across government but notably do not apply to elected officials, including ministers. This is a missed opportunity to ensure that those at all levels of public service abide by the same standards.

1.4. The Committee on Standards in Public Life (CSPL) found in its 2021 review of the standards landscape that urgent reform was needed to the ministerial code, in particular that:

- it should be reconstituted as a specific “*code of conduct of ethical standards for ministers*” based on the seven principles of public life; and
- there should be an obligation in primary legislation for the Prime Minister to publish the Ministerial Code - something that would “*grant the code a more appropriate constitutional status*.”<sup>1</sup>

1.5. In addition, the CSPL found that regulation of ministerial ethics lags far behind that of other public servants and that it needed “*greater independence*.” While other public servants have statutory bodies that provide oversight of codes of conduct, the Independent Advisor on Ministerial Standards remains an advisory role to the Prime Minister that can be abolished in a day, despite recent improvements to its powers.

1.6. CSPL specifically recommended that the Independent Advisor along with the Commissioner on Public Appointments should be put on a statutory footing in primary legislation. This recommendation has been backed by constitutional experts.<sup>2</sup>

1.7. The newly established Ethics and Integrity Commission (EIC) created in October 2025 will play a key role in upholding ethical standards across government. Its terms of reference specifically state that it will “*advise public authorities on the development of clear codes of conduct with effective oversight arrangements, in line with the planned forthcoming obligations of the Public Office (Accountability) Bill [sic]*.”<sup>3</sup>

1.8. Despite this role, the EIC is not envisaged by the POAB to be the appropriate national authority that will issue guidance on what codes of conduct should include. This is due in large part to the fact that the EIC does not have statutory footing. There is a risk that this undermines the authority of the EIC in setting ethical standards. Its lack of statutory footing further leaves it vulnerable to speedy dissolution by a future government. Constitutional experts have called for the EIC to have statutory footing.<sup>4</sup>

#### **Detailed recommendations:**

- 1. Amend the Public Office (Accountability) Bill at section 10 of Part 2 Chapter 2 to state that the “*appropriate national authority*” in England and Wales is the Ethics and Integrity Commission.**

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<sup>1</sup> Committee on Standards in Public Life, [Upholding Standards in Public Life](#), November 2021

<sup>2</sup> Professor Robert Hazell and Sir Peter Riddell, [Evidence to the Public Administration and Constitutional Affairs Committee](#), November 2025

<sup>3</sup> Ethics and Integrity Commission, [Terms of Reference](#)

<sup>4</sup> Public Administration and Constitutional Affairs Committee, [Oral Evidence session](#), Lord Evans and Sir Peter Riddell, November 2025.

2. **Insert new section 11 in Chapter 2 that establishes The Ethics and Integrity Commission and refers to a new Schedule which lays out**
  - a. **The statutory basis of the EIC**
  - b. **That regulations on the constitution, powers and appointment process for the EIC will be laid before Parliament within 12 months of the passing of the Bill, following consultation.**
3. **Insert a new section 12 that lays out**
  - a. **the obligation on the Prime Minister to publish a Ministerial Code based on the seven principles of public life in consultation with the Independent Advisor on Ministerial Standards, and in line with national guidance**
  - b. **The statutory basis of the Independent Advisor on Ministerial Standards.**

## **B. Addressing drafting shortcomings in the Bill with regard to the Misconduct in Public Office offence**

The new Public Office (Accountability) Bill is a very welcome step towards implementing recommendations from the Law Commission to put the misconduct in public office in statute. The Law Commission found widespread criticism of the common law offence that has been used to date to prosecute wrongdoing in the public sector, and recommended specific statutory provisions to update the offence.<sup>5</sup>

However, careful review with legal experts and comparison with the Law Commission recommendations has revealed some potential drafting flaws with the current Bill which risk undermining the purpose of the new provisions. These include:

### **1. Lack of clear coverage of private contractors**

1.1. The Law Commission specifically recommended that contractors who exercise functions or perform work for the government should be covered by the offence. With private goods and services representing 30% (or £326 billion) of government spending,<sup>6</sup> it is critical that private contractors are covered to ensure meaningful accountability where misconduct occurs while performing public services.

1.2. The Law Commission recommended that to achieve this the list of public office holders should clearly include “*contractors who exercise functions or perform work for the government.*” This language is not included in Schedule 4 of the Bill. This is despite the government’s impact assessment specifically stating that the definition of public office holders includes “*private contractors providing public services for any of the public bodies listed.*”<sup>7</sup> The current formulation

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<sup>5</sup> Law Commission, [Misconduct in Public Office](#), December 2020

<sup>6</sup> House of Commons Library, [Outsourcing by Government Departments](#), January 2025

<sup>7</sup> Government [Impact Assessment](#) of the Public Office (Accountability) Bill, September 2025

of section 21 risks introducing too narrow a formula and lacks legal clarity as to when private contractors and subcontractors are included.

1.3. In addition, the language in the Bill is directed clearly at individuals and there is no explicit corporate liability provision within it. If private contractors are to be clearly caught by the Bill, it should be beyond doubt that the offence at section 12 can be committed corporately, with accompanying consent and connivance liability for company officers as in the Bribery Act.

## **2. Too narrow a definition of public official**

2.1. The Bill adopts the Law Commission's recommendation to define who is a public office holder to create certainty given that current case law lacks clarity. However, the Law Commission's proposed approach to provide a statutory list of officials risked putting the UK at odds with the UN Convention Against Corruption without a 'catch-all' definition to accompany it.

2.2. The Bill contains a version of a 'catch-all' definition at section 21, Schedule 4 of the Bill. However, it is constructed in a convoluted manner which risks making it narrower than existing case law. It is not clear that it would include positions that have been considered to be in public office in the past, for instance a nurse (employed as a public or private contractor), working in a prison, or any employee of a private entity employed by the state to deliver public services.

## **3. The use of "to obtain" in s12(1)(a) may limit prosecutions to where a benefit or detriment has actually occurred, at odds with Law Commission recommendations and the Bribery Act.**

3.1. Legal experts have highlighted that use of the words 'to obtain' in s12(1)(a) as currently drafted could give rise to legal argument as to whether a benefit must have been obtained for the offence to be committed. This would be at odds with what the Law Commission recommended. The Law Commission recommended the phrase "*for the purpose of achieving*" which targets purpose, not result. The use of the words 'to obtain' risks importing the concept that a benefit or detriment must have resulted. Using the wording '*intending to achieve*' would make it even clearer.

3.2. Furthermore, under the Bribery Act, a prosecutor must prove that a person has requested, agreed to receive or accepted an advantage intending to improperly perform a function or activity as a result.<sup>8</sup> The Act is clear that they do not need to prove that the person has actually obtained the advantage or that the function or activity was actually improperly performed. This broad definition of bribery, with its focus on purpose, not outcome, has helped shape the Bribery Act, which has been praised internationally as well as by Parliament for being an exceptional piece of legislation.<sup>9</sup> The failure to make the misconduct offence reflect similar principles may limit its effective use.

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<sup>8</sup> Bribery Act 2010, [Section 2](#) – and also see section 6 which applies to foreign public officials, but for which there is not an equivalent for UK public officials

<sup>9</sup> House of Lords, [The Bribery Act 2010: Post-Legislative Scrutiny](#), March 2019

#### **4. The “reasonable excuse” defence is too broad and risks undermining the purpose of the Bill**

4.1. The Law Commission recommended that there should be a defence for the public office holder “*to prove that the conduct was, in all the circumstances, in the public interest.*” This was the result of extensive consultation to ensure that whistleblowers would also be protected in the Bill. This defence has been considerably broadened in the Bill to “*show that they had a reasonable excuse.*”

4.2. In addition, the Law Commission recommended the burden to prove that the conduct was in the public interest should rest solely with the defence. The Bill has replaced this with a partial reverse burden. Under the Bill, the defendant can bring forward “*sufficient evidence*” of their reasonable excuse sufficient “*to raise an issue with respect to it.*” The prosecution must then prove beyond reasonable doubt that this very broad and somewhat ambiguous defence does not apply.

4.3. As drafted, the reasonable excuse defence is not an essential element of the offence, and therefore in line with case law on reverse burden provisions,<sup>10</sup> the burden should shift to the defence to prove a reasonable excuse to the civil standard. Otherwise the current formulation of the Bill risks creating an exceptionally high burden for the prosecution and may result in few prosecutions.

#### **5. The Bill does not clearly cover private actors who encourage a public officer holder to commit an offence.**

5.1. Legal experts have identified a gap in UK law that private instigators of those who commit trading in influence as required by the UN Convention Against Corruption are not fully covered. Under the current common law, it is unusual for those who intentionally encourage or assist in the commission of a misconduct in public office offence to be prosecuted.<sup>11</sup> The Bill is an opportunity to address this gap.

#### **Detailed Recommendations:**

##### **1. To ensure that private contractors are clearly covered:**

- **Schedule 4 should clearly state that “*contractors who exercise functions or perform services for the government, and their subcontractors*” are covered by the definition of ‘holders of public office.’**

<sup>10</sup> See Lord Hope, DPP, ex Kebilene (2000) 2 AC 326 HL

<sup>11</sup> Drystone Law, [Love Struck Prison Officer and Prisoner Prosecuted for Misconduct](#), March 2025. The article notes that this case was unusual and notable due to the prosecution of a prisoner for encouraging misconduct, due to the extensive evidence that emerged.

- A new provision in section 12 should make specific provision for the commission of the offence by a body corporate and related consent and connivance liability for officers (much like s14 Bribery Act 2010).
  - The definition of ‘working for’ in s23(3) Bill should be amended to read “For the purposes of this Act, a person “works for” another (A) if—....“the person works under a contract to do work ~~personally~~ with A”...or “the person otherwise exercises functions or provides services on behalf of A”.
2. To ensure the definition of a public office holder is comprehensive:
    - Section 21 should be replaced with the following language: “*A public office holder for the purposes of this offence includes any other person in a position involving a public function in which the public has a significant interest in the discharge of that duty and which the office holder is obliged to exercise in good faith, impartially or as a public trust.*”
  3. To ensure that the Bill aligns with the Bribery Act and does not require a benefit to have been obtained:
    - The phrase “*to obtain a benefit*” in the Bill should be replaced with “*intending to achieve a benefit.*”
  4. To ensure that the defence is clearer and does not establish an exceptionally high bar to prosecution:
    - The original language proposed by the Law Commission should be used, that: “*It is a defence if the public office holder can prove that the conduct was, in all the circumstances, in the public interest.*”
  5. To ensure that private instigators of misconduct can be clearly covered:
    - A new offence should be introduced into section 12 that addresses this legislative gap with the following language: “(3) *It is an offence for a person to encourage, directly or via a third party, a public office holder to commit an offence under section (1)*”

[This briefing about drafting shortcomings of the misconduct in public office offence was developed by Spotlight on Corruption drawing on legal research and input from A&OShearman]