

CRIMINAL JUSTICE AND COURTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Criminal Justice

Offences involving police or prison officers

Section 26: Corrupt or other improper exercise of police powers and privileges

266. *Section 26* makes it an offence for a police officer and certain other persons to exercise improperly the powers and privileges of a constable. It supplements the existing common law offence of misconduct in public office.
267. *Subsection (1)* provides that a police constable (defined in *subsection (3)*) commits an offence if he or she exercises the powers and privileges of a constable improperly and the officer knows or ought to know that it is improper.
268. *Subsection (2)* provides that a person guilty of the offence is liable on conviction on indictment to a sentence imprisonment of 14 years or a fine, or both.
269. *Subsection (3)* sets out the categories of officer who are a police constable for the purpose of *subsection (1)*. These include a constable of a police force in England and Wales and certain other forces (for example, the British Transport Police Force), a special constable of a police force or the British Transport Police Force, and National Crime Agency officers designated with the powers and privileges of a constable.
270. *Subsection (4)* provides that a police constable exercises the powers and privileges of a constable improperly if the exercise of a power or privilege is for the purpose of achieving a benefit to the officer, or a benefit or detriment for another person, and that a reasonable person would not expect the power or privilege to be exercised for the purpose of achieving that benefit or detriment. *Subsection (9)* defines “benefit” or “detriment” as meaning any benefit or detriment, whether or not in money and whether or not permanent.
271. *Subsections (5) to (7)* define further what is meant by the improper exercise of a power or privilege for the purpose of the offence. They refer to cases in which there is a failure to exercise a power or privilege, or there is a threat to exercise a power or privilege or to fail to do so, in each case for the purpose of achieving a benefit or detriment (defined in *subsection (9)*) and in any of these cases a reasonable person would not expect the power or privilege to be exercised for the purpose of achieving that benefit or detriment.
272. *Subsection (8)* provides that the offence relates to acts or omissions anywhere in the United Kingdom or in UK waters (defined in *subsection (9)* as meaning the sea and other waters within the seaward limits of the United Kingdom’s territorial sea). *Subsection (10)* provides that references for the purpose of this offence to exercising or not exercising the powers and privileges of a constable include performing or not performing the duties of a constable. *Subsection (11)* provides that this offence does

*These notes refer to the Criminal Justice and Courts Act 2015
(c.2) which received Royal Assent on 12 February 2015*

not affect what constitutes the common law offence of misconduct in public office in England and Wales or Northern Ireland.

Section 27: Term of imprisonment for murder of police or prison officer

273. **Section 27** amends Schedule 21 to the Criminal Justice Act 2003, which sets out the principles to which section 269 of that Act requires the court to have regard when assessing the seriousness of all cases of murder, in order to determine the appropriate minimum term to be imposed in relation to mandatory life sentences. Paragraph 4 of Schedule 21 deals with the exceptionally serious cases in which the court should normally start by considering a whole life term, and provides a number of examples of cases that should normally fall into this category. This section puts the murder of a police or prison officer in the course of his or her duty into this category; previously it was dealt with in paragraph 5 of Schedule 21 as the type of case where the normal starting point would be a minimum term of 30 years.
274. **Subsection (4)** applies the amendment to those cases where the offence was committed on or after the date of commencement.