

Getting The Lowdown On The New UK Bribery Act

The UK Bribery Act has been introduced to reform UK bribery and corruption law, as the current law is out-of-date. The law on bribery should be simplified, whilst allowing a more effective response to offences that occur in the UK or abroad. The Act is expected to come into force in stages between June – October.

Offences covered are:

- Bribing another person ('active offence') – where a person offers, promises or gives a financial or other advantage to another person to perform improperly a relevant function or activity, or to reward a person for the improper performance of such a function or activity. It doesn't matter whether the person given the bribe is the same who will perform the function or activity concerned.
- Being bribed ('passive offence') – where a person receives or accepts a financial or other advantage to perform a function or activity improperly. It doesn't matter whether the recipient of the bribe receives it directly through a third party, or whether it's for the recipient's benefit or not.
- Corporate offence: failure to prevent bribery – a commercial organisation could be guilty of bribery where a person associated with the organisation bribes another person intending to obtain or retain business for the organisation, or to obtain or retain an advantage in the conduct of business for the organisation. Persons 'associated' with the organisation could potentially include employees, agents, and sub-contractors amongst others.

Offences of bribing another person, being bribed and bribing an FPO are punishable either by an unlimited fine, up to 10 years imprisonment, or both.

The new corporate offence of failure to prevent bribery is punishable by an unlimited fine and the only likely defence is to show that the organisation had adequate procedures in place to prevent employees or agents committing bribery.

The defence cannot apply where it has been successfully proved that a senior officer of the organisation has consented to the offence, and both the company and senior officer will be guilty of the offence. Government guidance is expected on what constitutes adequate procedures – however, a full set of principles is anticipated, rather than in-depth guidance material. The only other defences to any other bribery offence is where a person charged can prove that the conduct was necessary for the proper exercise of any intelligence service function or the armed forces when engaged in active service; or where the bribery was specifically authorised by some written law. Companies must prepare now and consider reviewing existing compliance procedures – including reviewing their policies relating to hospitality and political contributions, and conducting training and a review of contractual arrangements with employees, agents and joint-venture arrangements.

Procedures for disciplinary action; selection of agents or business associates and reporting of suspected bribery activities should be reviewed.

Where such policies, procedures and training are not already in place, this should be done as a matter of some urgency.

Implementation of such policies and procedures will be important to any organisation's compliance, as will on-going training. Policies required to ensure compliance with the Act will depend on each organisation's structure, so seeking early guidance is encouraged.

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