



Bulletin 171

June 2010

THE BRIBERY BILL

The Bribery Bill received Royal Assent on 8 April 2010 and has now been published as the Bribery Act 2010. The Bill creates a suite of new corruption offences which replace the UK's current patchwork of anti-corruption legislation and common law anti-bribery restrictions.

The Act introduces the following new offences:

- **Promising or offering a bribe, or requesting, agreeing to receive or accepting a bribe**

A bribe is defined as a "financial or other advantage" made with the intention to both:

- (a) Obtain or retain "business" or "an advantage in the conduct of business"; and
- (b) Induce or reward improper conduct (such as breach of an expectation that the recipient will act in good faith or impartially).

The basic offence applies both at home and abroad, and to both the private and the public sector.

- **Bribing a foreign public official (section 3)**

The key difference from the basic offence is that liability under the FPO offence turns on whether the written law of the relevant jurisdiction permitted the FPO to be "influenced" by the financial or other advantage.

- **A corporate offence of "failure to prevent bribery" by persons associated with a business**

A commercial organisation will be guilty of an offence under this section if it fails to prevent bribery by a person associated with the business. A person is associated with the business if he performs services for it or on its behalf. Employees, workers and agents are therefore included in this definition.

Even if the actions in question take place abroad, it will still constitute an offence under the Act if the person is ordinarily resident in the UK or the commercial organisation itself is either a UK commercial organisation or carries on part of its business in the UK.

A commercial organisation has a defence if it can demonstrate that it had "adequate procedures" in place to prevent bribery. The government has indicated it will publish guidance on the meaning of "adequate procedures" but the date of this is unknown at present.

Penalties

The maximum penalty for the basic offence and for the FPO offence is ten years imprisonment, plus an unlimited fine. The maximum penalty for the corporate offence is an unlimited fine. Employees and directors may also be held personally liable where a company commits either the basic offence or the FPO offence (where they consent to, or "connive" in, the commission of the offence).

Timing

The offences will come into force at a date specified by the Secretary of State in a statutory instrument, however it is expected that the general offences will come into force in June 2010 and the corporate offence of failing to prevent bribery will come into force in October 2010.

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The Coalition Government

Prior to the Bill receiving Royal Assent, and following pressure from the employers group the CBI, the Conservative Party suggested that several amendments be made before the new law came into force, although the majority of these were not actually moved. Although substantively in favour of the draft Bill, the Conservative spokesman, Mr Jonathan Djanogly, commented that it should only be implemented after full consultation with business and after guidance on the "adequate procedures" defence had been produced by the government. He also indicated that a Conservative government would explore the possibility of setting up a government advisory service that could be consulted on questions regarding the activities of businesses and whether their procedures were adequate.

Following the introduction of the new coalition government, the business community may be expected to lobby for a delayed implementation of the legislation on the corporate offence and for the creation of an advisory service. However, at the time of going to press, no statement had yet been made as to the new government's approach to the Act going forwards.

Practical Tips

It is recommended that businesses revisit their compliance programmes to ensure they have in place adequate systems in relation to business ethics, including, for example, the following courses of action:

- Prohibit bribery in any form
- Review and implement anti-bribery procedures in the workplace e.g. introducing a statement of values and code of conduct; updating policies on acceptance of gifts/hospitality and on whistleblowing
- Communicate policies and procedures to staff and implement training on the same
- Ensure you have effective procedures for vetting third parties you deal with e.g. agents, suppliers and contractors
- Monitor compliance
- Consider updating contracts of employment/staff handbooks to ensure bribery is listed as a specific example of gross misconduct, and setting out the potential consequences in the case of a breach e.g. termination of employment or engagement.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to helen.calvert@brabnerscs.com

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