

= Bribery Act 2010 =

The Bribery Act 2010 (c.23) is an Act of the Parliament of the United Kingdom that covers the criminal law relating to bribery . Introduced to Parliament in the Queen 's Speech in 2009 after several decades of reports and draft bills , the Act received the Royal Assent on 8 April 2010 following cross @-@ party support . Initially scheduled to enter into force in April 2010 , this was changed to 1 July 2011 . The Act repeals all previous statutory and common law provisions in relation to bribery , instead replacing them with the crimes of bribery , being bribed , the bribery of foreign public officials , and the failure of a commercial organisation to prevent bribery on its behalf .

The penalties for committing a crime under the Act are a maximum of 10 years ' imprisonment , along with an unlimited fine , and the potential for the confiscation of property under the Proceeds of Crime Act 2002 , as well as the disqualification of directors under the Company Directors Disqualification Act 1986 . The Act has a near @-@ universal jurisdiction , allowing for the prosecution of an individual or company with links to the United Kingdom , regardless of where the crime occurred . Described as " the toughest anti @-@ corruption legislation in the world " , concerns have been raised that the Act 's provisions criminalise behaviour that is acceptable in the global market , and puts British business at a competitive disadvantage .

= = Background = =

Prior to the Act , British anti @-@ bribery law was based on the Public Bodies Corrupt Practices Act 1889 , the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916 , a body of law described as " inconsistent , anachronistic and inadequate " . Following the Poulson affair in 1972 , the Salmon Committee on Standards in Public Life recommended updating and codifying these statutes , but the government of the time took no action . Similar suggestions were brought up in the first report of the Committee on Standards in Public Life established by John Major in 1994 , and the Home Office published a draft consultation paper in 1997 , discussing extending anti @-@ bribery and anti @-@ corruption law . This was followed by the Law Commission 's report Legislating the Criminal Code : Corruption in 1998 . The consultation paper and report coincided with mounting criticism from the Organisation for Economic Co @-@ operation and Development , who felt that , despite the United Kingdom 's ratification of the OECD Anti @-@ Bribery Convention , its bribery laws were inadequate .

A draft Bribery Bill was announced in the 2002 Queen 's Speech , but was rejected by the joint committee examining it . A second consultation paper was issued in 2005 examining the committee 's concerns , before the government announced in March that " there was broad support for reform of the current law , but there was no consensus as to how this could be achieved " . Following a white paper in March 2009 , the Bribery Bill , based on the Law Commission 's 2008 report Reforming Bribery , was announced in the Queen 's Speech . Initially given all @-@ party support after its introduction by Jack Straw in 2009 , the Bill was , according to The Guardian , subject to an attempted filibuster by Members of Parliament from the Conservative Party . This followed pressure from the Confederation of British Industry , who worried that the Bill in its original form would hamper the competitiveness of British industry .

The Bill was given Royal Assent on 8 April 2010 , becoming the Bribery Act 2010 , and was expected to come into force immediately . The government instead chose to hold several rounds of public consultations before announcing that it would come into force in April 2011 . Following the publication of guidance by the Ministry of Justice , the act came into effect on 1 July 2011 . The Ministry of Justice also released a Quick Start Guide , which highlights some key points of the Act . The Quick Start Guide also suggests companies to consult relevant bodies for advice , including the UK Trade and Investment , and the government sponsored Business Anti @-@ Corruption Portal . In October 2011 Munir Patel , a clerk at Redbridge Magistrates Court , became the first person to be convicted under the Bribery Act , along with misconduct in a public office .

= = Act = =

== General bribery offences ==

Sections 1 to 5 of the Act cover " general bribery offences ". The crime of bribery is described in Section 1 as occurring when a person offers , gives or promises to give a " financial or other advantage " to another individual in exchange for " improperly " performing a " relevant function or activity ". Section 2 covers the offence of being bribed , which is defined as requesting , accepting or agreeing to accept such an advantage , in exchange for improperly performing such a function or activity . " Financial or other advantage " is not defined in the Act , but , according to Aisha Anwar and Gavin Deepprose in the Scots Law Times , " could potentially encompass items such as contracts , non @-@ monetary gifts and offers of employment " . The " relevant function or activity " element is explained in Section 3 ? it covers " any function of a public nature ; any activity connected with a business , trade or profession ; any activity performed in the course of a person 's employment ; or any activity performed by or on behalf of a body of persons whether corporate or unincorporated " . This applies to both private and public industry , and encompasses activities performed outside the UK , even activities with no link to the country . The conditions attached are that the person performing the function could be expected to be performing it in good faith or with impartiality , or that an element of trust attaches to that person 's role .

Under Section 4 , the activity will be considered to be " improperly " performed when the expectation of good faith or impartiality has been breached , or when the function has been performed in a way not expected of a person in a position of trust . Section 5 provides that the standard in deciding what would be expected is what a reasonable person in the UK might expect of a person in such a position . Where the breach has occurred in a jurisdiction outside the UK , local practises or customs should be disregarded when deciding this , unless they form part of the " written law " of the jurisdiction ; " written law " is given to mean any constitution , statute or judicial opinion set down in writing . The general offences also cover situations where the mere acceptance of such an advantage would constitute improperly performing relevant functions or activities .

== Bribery of foreign public officials ==

Bribery of foreign public officials is a distinct crime under Section 6 , in line with the OECD Anti @-@ Bribery Convention . A person will be guilty of this offence if they promise , offer or give a financial or other advantage to a foreign public official , either directly or through a third party , where such an advantage is not legitimately due . A foreign public official is defined , under Section 6 (4) , as " an individual holding legislative , administrative or judicial posts or anyone carrying out a public function for a foreign country or the country 's public agencies or an official or agent of a public international organisation " . The inclusion of " through a third party " is intended to prevent the use of go @-@ between to avoid committing a crime , although if the written law of the country of the foreign public official allows or requires the official to accept the advantage offered , no crime will be committed . Unlike with general bribery offences , there is no requirement to show that the public official acted improperly as a result ; this is a distinction between the Act and the Anti @-@ Bribery Convention . The offence under Section 6 only applies to the briber , and not to the official who receives or agrees to receive such a bribe .

== Failure of commercial organisations to prevent bribery ==

Section 7 creates the " broad and innovatory offence " of the failure of commercial organisations to prevent bribery on their behalf . This applies to all commercial organisations which have business in the UK . Unlike corporate manslaughter , this does not only apply to the organisation itself ; individuals and employees may also be found guilty . The offence is one of strict liability , with no need to prove any kind of intention or positive action . It is also one of vicarious liability ; a commercial organisation can be guilty of the offence if the bribery is carried out by an employee , an

agent , a subsidiary , or another third @-@ party , as found in Section 8 . The location of the third @-@ party is irrelevant to the prosecution ? according to David Aaronberg and Nichola Higgins in the Archbold Review , " therefore , a German business with retail outlets in the UK which pays a bribe in Spain could , in theory at least , face prosecution in the UK " . Under Section 7 (2) , the commercial organisation has a defence if it can show that , while bribery did take place , the commercial organisation had in place " adequate procedures designed to prevent persons associated with [the organisation] from undertaking such conduct " . Under the Act 's explanatory notes , the burden of proof in this situation is on the organisation , with the standard of proof being " on the balance of probabilities " .

Guidance was published by the Secretary of State three months before the Act came into force . The Guidance sets out 6 principles to be followed by business . They cover such topics as Proportionate Procedures , Top @-@ level Commitment , Risk Assessment , Due Diligence , Communication (including training) and Monitoring & Review . The one firm conclusion to be drawn from the Guidance is that every commercial organisation that might be subject to the rigours of the Act needs to have a code of conduct in place that appropriately reflects the Guidance and to ensure its personnel are fully conversant with the risks and adequately trained . If it is then charged with the offence of failing to prevent bribery , it would be able to show evidence of the ? adequate procedures ? which it will need in order to defend itself .

= = = Prosecution and penalties = = =

Section 10 requires the authorisation of any prosecution by the director of the appropriate prosecution agency before a case can go ahead ; this is a shift from the old regime , which required the consent of the Attorney General for England and Wales . Section 11 explains the penalties for individuals and companies found guilty of committing a crime . If an individual is found guilty of a bribery offence , tried as a summary offence , they may be imprisoned for up to 12 months and fined up to £ 5 @,@ 000 . Someone found guilty on indictment , however , faces up to 10 years ' imprisonment and an unlimited fine . The crime of a commercial organisation failing to prevent bribery is punishable by an unlimited fine . In addition , a convicted individual or organisation may be subject to a confiscation order under the Proceeds of Crime Act 2002 , while a company director who is convicted may be disqualified under the Company Directors Disqualification Act 1986 .

= = = Other provisions = = =

The scope of the Act 's provisions is set out in Section 12 . For someone to fall within the Act 's purview , they must have either committed a crime inside the United Kingdom , or acted outside of the United Kingdom in a way which would have constituted a crime had it happened in the UK . For a prosecution in the latter case , the person must have a " close connection " to the UK , which includes being a British citizen , resident or protected person , a company incorporated in the UK , or a Scottish partnership . Section 13 provides the only defence available with the general bribery offences ? that the conduct was necessary for the proper functioning of the intelligence services or , when engaged in active service , the armed forces . Under Section 14 , senior officers or directors in a company which commits a general bribery offence will also be liable for the purposes of the Act . In the case of an offence committed by a partnership , Section 15 provides that the prosecution must be brought in the name of the partnership and not in the name of any of the partners .

Under Section 16 , the Act applies to servants of the crown , while Section 17 repeals all previous common law and statutory offences relating to bribery , replacing them with provisions of the Act . Section 18 provides that the Act applies to England and Wales , Scotland and Northern Ireland ; while the separate consent of the Scottish Parliament is usually required in such cases , as is made clear in Section 19 , a Legislative Consent Motion was passed on 11 February 2010 , allowing for the application of the Act within Scotland .

= = Assessment = =

The Act has been described as " the toughest anti @-@ corruption legislation in the world " , raising the bar above the standard set by the United States Foreign Corrupt Practices Act . Despite being " widely drafted and far @-@ reaching in scope [and] in many ways an improvement on earlier corruption legislation " , significant concerns have been raised , mainly around the fact that the Act may harm British industry 's competitiveness in the global market . David Aaronberg and Nichola Higgins , writing in the Archbold Review , argue that section 6 particularly has the potential to include actions which are ethically problematic but seen as legally permissible . Aisha Anwar and Gavin Deeprose in the Scots Law Times take a similar line , highlighting as particularly problematic areas corporate hospitality and facilitation payments , described as " essentially a form of extortion on the payer and , although not a common feature in the UK , they are commonplace in many international jurisdictions " , which may fall under the scope of the Act despite being permissible in the commercial world .