

# Bribery Act 2010

## the impact for you and your business

### What is Bribery?

Bribery is, in essence, the “offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal or a breach of trust”.

It is easy to see how, with the increasing financial pressures facing businesses in the current economic climate, employees could feel pressurised to push the boundaries in inducing customers to enter into contracts.

The implications of falling foul of the Bribery Act 2010 (the Act) are potentially severe with individuals and businesses alike being liable.

### Why has the Act been introduced?

UK law has, for some time, been heavily criticised as being ineffective when it comes to dealing with bribery and corruption, particularly when compared with more robust regimes such as those in the USA. The Organisation of Economic Co-operation and Development was particularly critical of the UK’s handling of bribery allegations against BAE Systems. As a result of this criticism, the Act will come into force later this year, although the precise date has yet to be determined.

### What are the offences?

The Act applies to the whole of the UK and repeals the existing law on bribery. It sets out the two existing offences but also creates two further offences, namely:

- Bribing another person
- Being bribed
- Bribing a foreign public official
- Commercial organisations failing to prevent bribery.

Violations of the Act will, therefore, derive

from offering, receiving or failing to prevent bribery and the types of conduct which will fall foul of the Act will include things such as facilitation payments made during tendering processes and excessive corporate hospitality, although it is not yet clear what level will constitute “excessive”.

### The corporate offence

Under the Act a commercial organisation will be guilty of an offence if a person associated with that organisation (which will likely include employees, agents, subsidiary companies or even joint venture partners) bribes another person. An offence can be committed in the UK or overseas and it will be sufficient to prove that the bribe was paid or received and not that it had any particular effect.

### Consequences of non-compliance

The penalties for offences under the Act include unlimited fines and up to 10 years imprisonment for individuals. Businesses operating overseas are at particular risk. In addition to this, a company may find itself permanently de-barred from tendering for public sector contracts – a disastrous consequence for those businesses dependent on such work. Of course, businesses also need to factor in the damage that the adverse publicity of prosecution under the Act could cause.

### Statutory defence

The Act provides a defence to a business which can show that it has in place “adequate procedures” which are designed to prevent bribery. Government guidance on what will constitute “adequate procedures” is expected before the Act comes into force later this year. Businesses of any size will run

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a considerable risk of prosecution if they fail to put in place formal anti-bribery policies.

Even before the Governmental guidance is given, there are a number of straight forward measures which you and your business should take to avoid falling foul of the new legislation once it is in force.

### What measures should businesses take?

So, what can you and your business do to avoid potentially severe consequences of falling foul of the Act?

### Director level and senior management training

It is vital to ensure that all directors and senior managers are aware of the Act and that they may be personally liable under it. You should seek to instil a culture of anti-bribery practices and ensure these provisions are reflected in your employment and service contracts; particularly if you wish to rely on the adequate procedures defence

### Risk assessment

At an early stage you should assess the potential risks your business faces. In particular, you should consider:

- Which industry sectors and countries you operate in, as bribery can be more commonplace in certain areas
- Which types of transaction your business is engaged in; with whom; and how they are carried out
- Reviewing how you entertain your customers and clients. Areas of particular risk include Governmental bodies, State owned enterprises and charitable organisations
- Checking local laws if your business operates in areas outside of the UK
- Reviewing your relationships with suppliers, business partners and customers. You and your business can be liable if, for example, an agent makes a bribe to procure business on your behalf.

### Internal policies

You should conduct a review of your existing policies on preventing bribery and corruption. If you do not have any such policies you should, as a matter of urgency, put some in place.

You should consider whether your employees require any particular training. This is particularly so if your business (or any part of your business) operates in a high risk industry sector or country.

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