

THE BRIBERY ACT GUIDELINES

The Bribery Act 2010 is now a year old and has already claimed some high profile scalps. It was introduced to replace an existing law and targets overseas corruption by organisations with a connection to the UK, applying to both UK and international organisations and to UK individuals.

The Act sets out two general offences of bribing and being bribed, which may be committed when someone

- Offers, promises or gives another person a bribe
- Requests, agrees to receive or accepts a bribe
- Gives a financial or other advantage connected to a person performing a function “improperly”.

These offences are not new but are restated more clearly than was previously the case.

New corporate liabilities

In section seven of the Act, a new corporate offence has been introduced. An organisation will be liable if

- A person associated with it bribes another person who intends to obtain or retain business
- There is an advantage for the organisation in conducting business
- There are no “adequate procedures” in place designed to prevent bribery.

An associated person could be an employee, agent, contractor, sub-contractor or supplier acting on behalf of the organisation.

A commercial organisation will be able to put up a full defence if it can demonstrate that adequate procedures were in place to prevent bribery. What constitutes an adequate procedure will depend on the nature of each individual organisation.

Government Guidance

Guidance issued by the Government sets out six principles that an employer must consider when introducing adequate procedures:

Proportionate Procedures

Procedures that are proportionate to the bribery risks that the organisation faces as well as to the nature, scale and complexity of its business activities.

Top Level Commitment

Top level managers should be committed to preventing bribery by persons associated with it and must adopt a culture in which bribery is unacceptable.

Risk Assessment

A risk assessment should be carried out to evaluate the nature and extent of the organisation's exposure to potential external and internal bribery risks on its behalf by all persons associated with it. This assessment should be carried out on a regular basis and be well-documented.

Due Diligence

Due diligence procedures should be applied in relation to people who perform or will perform services for or on behalf of the organisation in order to mitigate identified bribery risks. This due diligence activity should be centred on a risk-based approach and be proportionate.

Communication (Including Training)

All bribery prevention policies and procedures should be understood throughout the organisation. Training should also be carried out if the organisation operates in a high risk industry.

Monitoring and Review

The organisation should monitor and review procedures on a regular basis and make improvements where necessary.

What is apparent from these principles is that a 'one size fits all' approach is unlikely to give employers a strong defence for any offence that is committed under the Act.

Penalties

The penalties for breaching the provisions of the Act will be far more severe than those imposed under the previous regime. The potential damage to an organisation's reputation cannot be quantified, however, and businesses also face the additional risk of being excluded from bidding for public or utilities contracts.