

Bribery act delayed

The Ministry of Justice has announced that it is delaying the implementation of the Bribery Act by six months to April 2011.

The Bribery Act was created to address issues with the UK's existing bribery laws which have remained largely unchanged for over a century. Those laws were heavily criticised by the Organisation of Economic Co-operation and Development (OECD), particularly in relation to the judicial handling of the bribery allegations against BAE Systems in 2006. The UK's existing laws were also inconsistent with the OECD Bribery Convention which the UK ratified in 1998.

The act sets out several new offences, including the primary offence of bribing another person. Broadly, this will be committed when a person offers or gives a financial advantage to another person with the intention that such advantage will result in the improper performance of a relevant function or activity by that person. In addition, the recipient of the bribe may also be guilty of an offence in certain circumstances.

However, it is the new offence for commercial organisations (including companies and partnerships) of failing to prevent bribery from taking place which has sparked fears in the business community. This offence is a strict liability one that will be committed by an organisation if a person associated with that organisation bribes another person with the intention of obtaining a business advantage for the organisation.

An organisation found guilty of this offence will be subject to an unlimited fine and its directors could face a prison sentence of up to 10 years. In addition, the organisation could find that it is permanently barred from tendering for public sector contracts and significant damage could be done to its reputation as a result of the adverse publicity that would undoubtedly come with a conviction.

Whilst organisations will no longer be able to rely on a defence of being unaware that corrupt practices were taking place, they will have a defence if they can demonstrate there were adequate procedures in place designed to prevent bribery.

However, the act gives no guidance as to what 'adequate procedures' actually are for this purpose giving rise to fears that organisations could unwittingly face a criminal prosecution with the resulting reputational damage and cut in profits that would arise as a consequence.

Following concerted lobbying on behalf of industry, Kenneth Clarke, the justice secretary, has now delayed the implementation of the act in order to allow a public consultation to take place in the Autumn of 2010.

That consultation will result in guidance being published as to the 'adequate procedures' that commercial organisations should put in place to prevent bribery being committed on their behalf.



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The government has said that the guidance will be available in early 2011 so businesses will have around three months to prepare for the implementation of the act.

Companies will need to familiarise themselves with the guidance issued following the consultation in order to ensure that their internal policies and procedures meet the required standards. Steps will need to be taken to ensure compliance with that guidance before the act comes into force in April 2011.

This Alert was published in September 2010 and is intended only as a general guide. It should not be relied upon as a substitute for taking advice in particular circumstances. Before acting on anything contained within this publication, please consult your usual Gateley partner.

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