



Ministry of
JUSTICE

Bribery

Draft Legislation



Bribery

Draft Legislation

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

March 2009

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Foreword

The United Kingdom is recognised as one of the least corrupt countries in the world. We are proud of the high ethical standards we uphold in public and commercial life. But we must not rest on our laurels. Bribery is by its very nature insidious; if it is not kept in check it can have potentially devastating consequences. Hence this draft Bribery Bill is presented to Parliament for pre-legislative scrutiny.

As advances in technology and communication provide ever more sophisticated means of committing and concealing crime and all economies become increasingly more inter-reliant, we must ensure that the law provides our courts and prosecutors with the tools they need to tackle bribery effectively, whether it occurs at home or abroad.

Our current statutory criminal law of bribery is functional: cases are prosecuted successfully. However, it is old and anachronistic – dating back to around the turn of the twentieth century – and it has never been consolidated. Consequently, there are inconsistencies of language and concepts between the various provisions and a small number of potentially significant gaps in the law. Furthermore, the exact scope of the common law offence is unclear. The result is a bribery law which is difficult to understand for the public and difficult to apply for prosecutors and the courts.

From a purely legal perspective, the case for reform is a compelling one. Modernisation of the law is required not only to deal effectively with those who offer or accept bribes in the business or public sectors, but also to bring transparency and accountability to our international business transactions.

The new legislation is modelled on the Bribery Bill the Law Commission published in its November 2008 report, 'Reforming Bribery'. I would like to express my gratitude to the Law Commission for its thorough examination of the current law and its detailed recommendations for reform.

The Bill creates a framework of two general offences; one dealing with the giving, promising, and offering of a bribe and the other with agreeing to receive or accept a bribe. In recognition of the problems experienced in prosecuting public sector bribery overseas, the Bill introduces a new discrete offence of bribery of a foreign public official. It also creates a new corporate liability offence of negligently failing to prevent bribery to underpin the Government's policy of promoting good corporate governance. The detail of these and the other provisions are explained in full in the Explanatory Notes.

In my role as anti-corruption champion, I am also co-ordinating the development of the UK's strategy against foreign bribery. Law reform is one of the key elements of this programme, but so is concerted international action.

The UK is determined to work closely with its international partners to tackle bribery. We are already, for example, providing technical assistance to developing countries to promote better governance and making significant progress on tracing, recovering and repatriating money laundered misappropriated assets. We are also supporting the implementation of the UN Convention against Corruption, the OECD Bribery Convention and the Council of Europe's Criminal Law Convention on Corruption.

I believe that the draft Bribery Bill strikes the right balance between the need for clarity and legal certainty on the one hand, and the need to differentiate between bribery and the legitimate giving and receiving of advantages on the other. It will provide the basis for a modern, clear and consolidated law that complements and supports our international efforts and equips our courts and prosecutors to deal effectively with bribery of all kinds, wherever it occurs.

A handwritten signature in black ink, appearing to read 'Jack Straw'.

The Rt Hon Jack Straw MP
Lord Chancellor and
Secretary of State for Justice

Explanatory Notes

INTRODUCTION

1. These explanatory notes relate to the Bribery Bill as published in draft on 25th March 2009. They have been prepared by the Ministry of Justice in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require explanation, none is given.
3. The main substantive provisions of the Bill extend only to England and Wales and Northern Ireland.

TERRITORIAL APPLICATION: WALES

4. The Bill applies to Wales as it does to the rest of the jurisdiction. It does not change the position as regards the National Assembly for Wales

BACKGROUND

5. The reform of the law on bribery dates back to the Nolan Committee's *Report on Standards in Public Life* in 1995 (Cm 2850 I), which was set up in response to concerns about unethical conduct by those in public office, and its suggestion that the Law Commission might usefully take forward the consolidation of the statute law on bribery. The Law Commission first made proposals for reform of bribery in a 1998 report (*Legislating the Criminal Code: Corruption* 1998 report No. 248).
6. The Government then set up a working group of stakeholders which met over the period 1998-2000, and this was followed in June 2000 by a Government White Paper on corruption (*Raising Standards and Upholding Integrity: the Prevention of Corruption* June 2000 Cm 4759). This was positively received and led to a draft Government Corruption Bill in 2003 (*Corruption Draft Legislation* Cm 5777). A Joint Committee of Parliament considered the Government's draft Corruption Bill in pre-legislative scrutiny (*Joint Committee on the Draft Corruption Bill Session 2002-03 Report and Evidence* HL 157, HC 705). The Bill failed to win broad support, with particular criticism of the retention of the agent/principal relationship as the basis for the offence.

7. The Government responded to the Joint Committee's report in *The Government Reply to the Report from the Joint Committee on the Draft Corruption Bill* (Session 2002–03 HL Paper 157, HC 705, Cm 6068), which accepted the report's recommendations in part but expressed reservations on the Committee's proposals regarding the central issue of the definition of the fundamental concepts pursuant to the Committee's criticism of the agent/principal construct. A Government consultation exercise, *Bribery: Reform of the Prevention of Corruption Acts and SFO powers in cases of bribery of foreign officials*, followed in 2005. The Government concluded that, although there remained support for reform, there was no clear consensus on the form it should take. It was therefore decided to refer the matter back to the Law Commission for a further review.
8. The Law Commission's terms of reference were to consider the full range of options for consolidating and reforming the law on bribery. The Law Commission issued a consultation paper, *Reforming Bribery* (No. 185), in October 2007. The Law Commission published its report *Reforming Bribery* (Law Com No 313) on 20 November 2008. The Government's legislative proposals presented in this draft Bill are built on the proposals in the Law Commission's report.

SUMMARY

9. The purpose of the Bill is to reform the criminal law of bribery to provide for a new consolidated scheme of bribery offences to cover bribery both in this country and abroad.
10. The Bill replaces the offences at common law and under the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916 (known collectively as the Prevention of Corruption Acts 1889 to 1916 and which would be repealed: see Schedule 2) with two general offences covering the offer, promise and giving of an advantage or the request, agreeing to receive or acceptance of an advantage. The formulation of these two offences abandons the agent/principal relationship in favour of a model based on an intention to induce improper conduct. The Bill also creates a discrete offence of bribery of a foreign public official and a new offence of negligent failure of commercial organisations to prevent bribery.
11. The other main provisions of the Bill are:
 - extra-territorial jurisdiction to prosecute bribery committed abroad by persons ordinarily resident in the UK as well as UK nationals, and UK corporate bodies;

- replacing the existing requirement for the Attorney General’s consent to prosecute a bribery offence so that proceedings for the offences in the Bill may only be instituted by, or with the consent of, the Director of the relevant prosecuting authority;
- a maximum penalty of 10 years imprisonment for all new offences, save the corporate offence, which will carry an unlimited fine.
- provision for Secretary of State authorisation of conduct that would constitute a bribery offence by the intelligence agencies;
- setting aside Parliamentary Privilege to make evidence from proceedings in Parliament admissible in the prosecution of a member of either of the Houses of Parliament for a bribery offence or in related proceedings.

COMMENTARY ON CLAUSES

CLAUSE 1: Offences of bribing another person

12. This clause defines the offence of bribery as it applies to the person who offers, promises or gives a financial or other advantage to another. That person is referred to in the clause as P. The meaning of “financial or other advantage” is left to be determined as a matter of common sense by the tribunal of fact. Clause 1 distinguishes two cases; Case 1 (subsection (2)) and Case 2 (subsection (3)).
13. Case 1 concerns cases in which the advantage is intended to bring about an improper performance by another person of a function or activity, or to reward such improper performance. The nature of this function or activity is addressed in clause 3(1) to (5) and “improper performance” is defined in clauses 3(6) and 3(7). It is not necessary that the person to whom the advantage is promised or given be the same person as the person who is to engage in the improper performance of an activity or function, or to be rewarded for having engaged in it. This is made clear in clause 1(4).
14. Case 2 concerns cases in which P knows or believes that the acceptance of the advantage offered, promised or given in itself constitutes the improper performance of a function or activity as defined in clause 3.
15. Subsection (5) makes it clear that, in Cases 1 and 2, the advantage can be offered, promised or given by P himself or herself or by P through someone else.

CLAUSE 2: Offences relating to being bribed

16. This clause defines the offence of bribery as it applies to the recipient or potential recipient of the bribe, who is called R. It distinguishes four “Cases” from 3 to 6.
17. In Cases 3, 4 and 5 there is a requirement that R “requests, agrees to receive or accepts” an advantage, whether or not R actually receives it. This requirement must then be linked with R’s “improper performance” of a function or activity. As with clause 1 the nature of this function or activity is addressed in clause 3(1) to (5), and “improper performance” is defined in clause 3(6) and 3(7).
18. The link between the request, agreement or receipt of an advantage and improper performance may take three forms:
 - (1) R may intend improper performance to follow as a consequence of the request, agreement to receive or acceptance of the advantage (Case 3, in subsection (2)).
 - (2) Receiving, agreeing to receive or accepting the advantage may itself amount to improper performance of the relevant function or activity (Case 4, in subsection (3)).
 - (3) Alternatively, the advantage may be a reward for performing the function or activity improperly (Case 5, in subsection (4)).
19. In Case 6 (subsection (5)) what is required is improper performance by R (or that of another person, where R requests it, assents to or acquiesces in it). This performance must be in anticipation or in consequence of a request, agreement to receive or acceptance of an advantage.
20. In Cases 3 and 5, it does not matter whether the improper performance is by R or by another person. In Case 4 it must be R him or herself who requests, agrees to receive or accepts the advantage, subject to subsection (6).
21. Subsection (6) is concerned with the role of R in requesting, agreeing to receive or accepting advantages, or in benefiting from them, in Cases 3 to 6. First, subsection (6) makes it clear that in Cases 3 to 6 it does not matter whether it is R, or someone else through whom R acts, who requests, agrees to receive or accepts the advantage (paragraph (a)). Secondly, subsection (6) indicates that the advantage can be for the benefit of R, or of another person (paragraph (b)).
22. Subsections (7) and (8), make clear that in Cases 4 to 6, it is immaterial whether R knows or believes that the performance of the function is improper. Additionally, in Case 6, where the function or activity is performed by another person, it is immaterial whether that person knew or believed that the performance of the function is improper.

CLAUSE 3: Function or activity to which bribe relates

23. This clause defines the fields within which bribery can take place, in other words the types of function or activity that can be improperly performed for the purposes of the first two clauses.
24. The purpose of the clause is to ensure that the law of bribery applies equally to public and to selected private functions without discriminating between the two. Accordingly the functions or activities in question include all functions of a public nature and all activities connected with a business, trade or profession. The phrase “functions of a public nature” is the same phrase as is used in the definition of “public authority” in section 6(3)(b) of the Human Rights Act 1998. In addition, the functions or activities include all activities performed either in the course of employment or on behalf of any body of persons: these two categories straddle the public/private divide.
25. Subsection (2) provides that the functions or activities in question may be carried out either in the UK or abroad, and need have no connection with the UK. This preserves the effect of section 108(1) and (2) of the Anti-terrorism, Crime and Security Act 2001.
26. Not every defective performance of one of these functions for reward or in the hope of advantage engages the law of bribery. Subsections (3) to (5) make clear that there must be an expectation that the functions be carried out in good faith, or impartially, or the person performing it must be in a position of trust. Subsections (6) and (7) then define “improper performance” as performance (including non performance) which breaches that expectation or that trust. Subsection (6)(b) states that an omission can in some circumstances amount to improper “performance”.
27. Subsection (8) provides that when deciding what is expected of a person performing a function or activity, the test is what a reasonable person would expect of a person performing the relevant function or activity.
28. Subsection (9) addresses the case where R is no longer engaged in a given function or activity but still carries out acts related to his or her former function or activity. These acts are treated as done in performance of the function or activity in question.

CLAUSE 4: Bribery of foreign public officials

29. This clause creates a separate offence of bribery of a foreign public official. This offence closely follows the requirements of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*.

30. Unlike the general bribery offences, it only covers the offering, promising or giving of bribes, and not the acceptance of them. Also, it requires that the advantage given or offered must be “not legitimately due”, but does not require that the action expected in return must itself be improper. However, the giver of the bribe must intend to influence the recipient in the performance of their functions as a public official, and must intend to obtain or retain business or a business advantage.
31. Foreign public officials are defined in subsection (6) to include both government officials and those working for international organisations. The definition draws on Article 1.4(a) of the *OECD Convention*. Similarly, the definition of “public international organisation” in subsection (7) draws on Commentary 17 to the *OECD Convention*.

The conduct element

32. The conduct element of the offence – what a person must do in order to commit the offence – is set out in subsection (3). The offence may be committed in a number of ways.
33. If a person (P) offers, promises or gives any advantage to a foreign public official (F) which is not legitimately due to that official, with the requisite intention (see below), that person commits the offence.
34. The offence will also be committed if the advantage is offered to someone other than the official, if that happens at the official’s request, or with the official’s assent or acquiescence. In such a case, the advantage will be regarded as “not legitimately due” if that condition would have been satisfied, had it been offered to the official him or herself (subsection (3)(b)).
35. It does not matter whether the offer, promise or gift is made directly to the official or through a third party (subsection (3)(a)).
36. Subsection (4) provides that an advantage will be legitimately due, only if the law applicable to F permits or requires the official to accept the advantage. Therefore, if an advantage is merely customary or apparently officially tolerated, that does not of itself amount to it being required or permitted by law (unless custom or tolerance is recognised by or evidence of the law applicable to F).
37. The language of the *OECD Convention* is mirrored in the phrases “obtain or retain business” and “offers, promises or gives” and in the word “advantage” in subsection (3), and in the words “public function” in subsection (6)(b).

The fault element

38. The fault element of the offence – what a person must intend in order to commit the offence – is specified in subsections (1), (2) and (5).
39. Subsections (1) and (5) have the effect that, in order to commit the offence, a person must intend to influence a foreign public official in the performance of his or her functions as a public official, including any failure to exercise those functions and any use of his or her position, even if he or she does not have authority to use the position in that way.
40. In order to commit the offence a person must also intend to obtain or retain business or an advantage in the conduct of business (subsection (2)).

CLAUSE 5 and CLAUSE 6: Failure of commercial organisations to prevent bribery

41. Clause 5 creates an offence of negligently failing to prevent bribery that can only be committed by a relevant commercial organisation.
42. “Relevant commercial organisation” is defined (at subsection (7)) as:
 - a corporate body incorporated in England and Wales or Northern Ireland and which carries on business whether there or elsewhere;
 - a partnership that is formed under the law of England or Wales or Northern Ireland and which carries on business there or elsewhere; or
 - any other body corporate or partnership wherever incorporated or formed which carries on business in England and Wales or Northern Ireland.
43. The offence consists of a negligent failure to prevent bribery being committed in connection with the commercial organisation’s business. “Bribery” in the context of this offence relates only to the offering, promising or giving of a bribe, contrary to sections 1 and 4 (there is no corresponding offence of failure to prevent the taking of bribes).
44. The offence is committed when (a) a person performing services for the commercial organisation bribes another person, (b) the bribe is in connection with the commercial organisation’s business and (c) another person (or persons) connected with the organisation who has the responsibility of preventing bribery, negligently fails to prevent the bribe. Where there is no person within the organisation whose responsibilities include preventing bribery, the responsibility is deemed to be that of any senior officer of the organisation.
45. Subsection (4) provides that where the negligent failure is that of a person, or persons, who is not a senior officer (as defined in subsection (7)), it is a defence for the commercial organisation to show it had adequate procedures in place

to prevent bribery being committed on its behalf. The defence is not available where the negligence is on the part of a senior officer of the organisation. Such persons include a director, secretary or manager of a body corporate or other similar senior individuals and in relation to partnerships include partners and any person who has control or management of the business of the partnership.

46. Clause 6 ensures that the question as to whether a person is performing services for or on behalf of the commercial organisation, as set out in clause 5(1)(a), relates to the actual activities being undertaken at the time rather than the person's general position. The clause expressly states that a person may be the commercial organisation's employee, agent or subsidiary. But where the person is an employee it is to be presumed that the person is performing services for or on behalf of the commercial organisation unless the contrary is shown.

CLAUSE 7: Territorial application of the offences under this Bill

47. Subsection (1) provides that the offences in clauses 1, 2 and 4 are committed in England and Wales or Northern Ireland if any part of the conduct element takes place there. (If a part of the conduct element takes place in Scotland but none of it in England and Wales or Northern Ireland, no offence under this Bill is committed. There may or may not be an offence under the law of Scotland).
48. The effect of subsections (2) to (4) is that, even though the actions in question take place abroad, they still constitute the offence if the person performing them is a British national or resident, a national of a British overseas territory or a body incorporated in the United Kingdom.
49. Subsection (5) makes it clear that for the purposes of the offence in clause 5 (failure of commercial organisation to prevent bribery) it is immaterial where the conduct element of the offence occurs.

CLAUSE 8: Offences under sections 1, 2 and 4 by bodies corporate

50. Clause 8 is aimed at individuals who consent or connive at bribery, contrary to clause 1, 2 or 4, committed by a body corporate (of any kind). It does not apply to the offence in clause 5.
51. The first step is to ascertain that the body corporate has indeed been guilty of an offence under clause 1, 2 or 4. That established, the clause provides that a director, partner or similar senior manager of the body is guilty of the same offence if he or she has consented to or connived at the commission of the offence. In a body corporate managed by its members, the same applies to members.

52. It should be noted that in this situation, the body corporate and the senior manager are both guilty of the main bribery offence. This clause does not create a separate offence of “consent or connivance”.

CLAUSE 9: Offences under section 5 by partnerships

53. Clause 9 deals with proceedings for an offence against partnerships. Such proceedings must be brought in the name of the partnership (and not the partners) (subsection (1)); certain rules of court and statutory provisions which apply to bodies corporate are deemed to apply to partnerships (subsection (2)); and any fine imposed on the partnership on conviction must be paid out of the partnership assets (subsection (3)).

CLAUSE 10: Consent to prosecution

54. A prosecution under the Bill in England and Wales can only be brought with the consent of one of the three senior prosecuting authorities, that is to say the Director of Public Prosecutions, the Director of the Serious Fraud Office and the Director of Revenue and Customs Prosecutions. A prosecution in Northern Ireland can only be brought with the consent of the Director of Public Prosecutions for Northern Ireland or the Director of the Serious Fraud Office.

CLAUSE 11: Penalties

55. Any offence under the Bill committed by an individual is punishable either by a fine or imprisonment for up to 10 years (12 months on summary conviction in England and Wales or 6 months in Northern Ireland), or both. An offence committed by a body is punishable by a fine. In either case, the fine may be up to the statutory maximum (£5000) if the conviction is summary, and unlimited if it is on indictment. The clause 5 offence can only be tried upon indictment.
56. Section 154 of the Criminal Justice Act 2003, which is not yet in force, sets the maximum sentence that can be imposed by a magistrates’ court in England and Wales at 12 months. Where an offence under this Bill is committed before section 154 comes into force, the magistrates’ court’s power is restricted to 6 months.

CLAUSE 12: Crown application

57. Clause 12 applies the Bill to individuals in the public service of the Crown. Such individuals will therefore be liable to prosecution if their conduct in the discharge of their duties constitutes an offence under the Bill.

CLAUSES 13 and 14: Authorisations for intelligence services

58. The effect of these two clauses is that acts or omissions carried out by persons on behalf of the Security Service, the Secret Intelligence Service or GCHQ do not constitute a bribery offence under the Bill if they are authorised by the Secretary of State. This authorisation scheme is closely modelled on section 7 of the Intelligence Services Act 1994.
59. Clause 13 allows the Secretary of State to authorise conduct which would otherwise amount to an offence under clause 1 or 2 (the general offences), although an authorisation may not relate to a clause 1 offence which would also amount to an offence of bribery of a foreign public official under clause 4. This addresses concerns raised by the Joint Committee on the 2003 draft Corruption Bill in relation to, in particular, compliance with the UK's obligations under the *OECD Convention* (see HL paper 157 and HC 705, 31 July 2003, Part 6).
60. Subsections (4) to (6) of clause 13 set out the conditions that must be satisfied before the Secretary of State may issue an authorisation: the Secretary of State must be satisfied that any act or omission which is to be authorised will be necessary for the proper discharge of the relevant functions of the intelligence agencies. The Secretary of State must also be satisfied that the nature and likely consequences of the act or omission which is to be authorised will be reasonable, having regard to the purposes for which it is done. Subsection (7) gives the Secretary of State power to grant different types of authorisations, including class authorisations.
61. Clause 14 makes supplementary provision regarding authorisations. For example, only the Secretary of State, or a senior official in urgent circumstances and with the consent of the Secretary of State, may make an authorisation. Authorisations last for 6 months when made by the Secretary of State and 2 full days if made by a senior official. The Secretary of State may renew any authorisation. An authorisation must be cancelled if the Secretary of State considers it is no longer necessary.
62. A consequential amendment in paragraph 3 of Schedule 1 will amend section 7 of the Intelligence Services Act 1994 to ensure that a bribery offence may be authorised only under this Bill. In addition paragraph 4 of Schedule 1 will amend the Regulation of Investigatory Powers Act 2000 to ensure that the exercise of this scheme will be kept under review by the Intelligence Services Commissioner.

CLAUSE 15: Proceedings in Parliament

63. This clause implements recommendations made by the Joint Committee on Parliamentary privilege (HL Paper 43 and HC 214, March 1999, paragraph 167)

and the Joint Committee on the draft Corruption Bill (HL paper 157 and HC 705, 31 July 2003, paragraph 134). Its effect is to make the words or conduct of an MP or peer admissible in proceedings for a bribery offence under the Bill where the MP or peer is a defendant or co-defendant notwithstanding any enactment or rule of law (including Article 9 of the Bill of Rights 1689) which would prevent those words or conduct from being admissible.

CLAUSE 16: Consequential provision

64. This clause abolishes the common law offences of bribery and embracery (bribery of jurors), and refers to the two Schedules, which contain amendments and repeals.
65. Subsections (4) to (8) of this clause create a power for the Secretary of State to make supplementary, incidental or consequential provision by order, subject to the approval of both Houses of Parliament in the case of amendments to public general Acts.

CLAUSE 17: Extent

66. This clause provides that the Bill is generally confined to England and Wales and Northern Ireland except that certain of the miscellaneous, supplementary and final provisions extend to the whole of the UK and generally any amendments or repeals of an enactment or of a provision of an enactment have the same extent as that enactment or provision (although certain repeals and revocations do not extend to Scotland).

CLAUSE 18: Commencement and Savings

67. This clause covers commencement. Clauses 16(4) to (8), 17, 18 and 19 come into force on the day the Bill is passed. The remainder of the clauses come into force by order of the Secretary of State; this order may appoint different days for different purposes and may contain transitory, transitional or saving provisions. The clause also contains express saving provisions so that any offence committed or partly committed before the operative provisions of the Bill come into force must be dealt with under the old law.

CLAUSE 19: Short title

68. This clause deals with citation.

SCHEDULE 1

69. This Schedule contains amendments to other legislation. These are as follows.

Ministry of Defence Police Act 1987

70. Section 2 of that Act gives the Ministry of Defence Police the same powers as civilian police, in relation to services property or personnel, including offences involving the bribery of such persons. At present these offences are those under the Prevention of Corruption Acts 1889 to 1916. The amendment adds the present Bill to the list. (As the 1987 Act extends to the whole of the United Kingdom, and the Prevention of Corruption Acts remain in force in Scotland, it was necessary to leave the references to these Acts in being.)

Criminal Justice Act 1987

71. Section 2A of that Act gives the Director of the Serious Fraud Office power to investigate corruption offences. Again the section extends to the whole of the United Kingdom. The amendment substitutes offences under this Bill as the offences which the Director may investigate. The offences in question are the bribery of foreign officials (clause 4), and the general bribery offence (clauses 1 and 2) where the functions in question are performed outside or unconnected with the United Kingdom.

Intelligence Services Act 1994

72. Section 7 of the Intelligence Services Act 1994 provides for Secretary of State authorisation of acts outside the British Islands that are necessary for the proper discharge of a function of the Intelligence Service. The amendment ensures that a bribery offence may be authorised only under clauses 13 and 14 of this Bill.

Regulation of Investigatory Powers Act 2000

73. Section 59(2) of the Regulation of Investigatory Powers Act 2000 sets out the matters to be kept under review by the Intelligence Services Commissioner. The amendment ensures that authorisations made under this Bill are to be included among such matters.

Serious Organised Crime and Police Act 2005

74. Chapter 1 of Part 2 of that Act gives investigatory powers to the Director of Public Prosecutions and other prosecuting authorities in relation to offences listed in section 61. This list was amended by SI 2006/1629 to include common law bribery and offences under the Prevention of Corruption Acts: this amendment extends only to England and Wales. Accordingly it is amended by substituting the offences under the Bill, again only in England and Wales.

75. A similar amendment applies to section 76, which gives the court power to make a financial reporting order in dealing with a person convicted of (among other offences) corruption offences.

Armed Forces Act 2006

76. Schedule 2 creates a number of military offences with world-wide application, by reference to civilian offences existing in the law of England and Wales. The list of civilian offences is amended to include the offences under the Bill; but as this has the effect of creating new military offences, the application of the amendment is also world-wide.

Serious Crime Act 2007

77. This Act gives power to make a “serious crime prevention order” in relation to offences listed in Schedule 1 of the Act. Part 1 of that Schedule, relating to offences in England and Wales, and Part 2, relating to offences in Northern Ireland, include offences under the Prevention of Corruption Acts. The present amendments replace these references with offences under clauses 1, 2 and 4 of the Bill. The amendments extend to England and Wales and Northern Ireland, as a court in Northern Ireland may make a serious crime prevention order in relation to offences in England and Wales.

SCHEDULE 2

78. This Schedule contains repeals.
79. The three Prevention of Corruption Acts are repealed in their entirety. These offences are wholly replaced by the offences under the Bill. The repeal extends only to England and Wales and Northern Ireland: in Scotland the Acts remain in force.
80. Section 22 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) amends section 4 of the Public Bodies Corrupt Practices Act 1889 and section 2(1) of the Prevention of Corruption Act 1906 to provide for proceedings to be taken in Northern Ireland only with the consent of the Attorney General for Northern Ireland. Given the 1889 and 1906 Acts will be repealed, the section will become redundant.
81. Section 112 (3) of the Electoral Law Act (Northern Ireland) 1962 (c.14 (N.I.)) amended paragraphs (c) and (d) of section 2 of the 1889 Act and will be redundant following the repeal of the 1889 Act.
82. The entry in the table in Schedule 2 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (c. 28 (N.I.)) relating to the Prevention of Corruption Act 1906 increased the penalty in Northern Ireland for the offence under section 1(1) of the 1906 Act from 4 months imprisonment to 6

months imprisonment. That entry will become redundant upon repeal of the 1906 Act.

83. Paragraphs 1 and 3 of Schedule 8 of Local Government Act (Northern Ireland) 1972 (c.9 (N.I.)) amended the 1889 Act and the 1906 Act respectively and will be redundant following the repeal of these Acts.
84. Section 1(8)(a) and (b) of the Increase in Fines Act (Northern Ireland) 1967 (c. 29)(N.I.) provide that a court may impose a fine whether greater or less than the amount limited by section 2 of the Public Bodies Corrupt Practices Act 1889 or section 1(1) of the Prevention of Corruption Act 1906 respectively. These references will become redundant once those two Acts are repealed.
85. Section 19(1) of the Civil Aviation Act 1982 (c.16) designates the Civil Aviation Authority as a public authority for the purposes of the Prevention of Corruption Acts 1889-1916 and will be redundant once they are repealed.
86. Section 47 of the Criminal Justice Act 1988, which inserts provisions about penalties into the three Prevention of Corruption Acts, is also repealed.
87. Article 14(1) of the Criminal Justice (Evidence etc.) (Northern Ireland) Order 1988 (S.I. 1988/1847 (N.I.17) amended paragraph (a) of section 2 of the 1889 Act and will be redundant following the repeal of the 1889 Act.
88. Section 43 of the Scotland Act 1998 (c. 46) provides that the Scottish Parliament shall be a public body for the purposes of the Prevention of Corruption Acts 1889-1916. This section will be redundant once those Acts are repealed
89. Sections 108 to 110 of the Anti-terrorism, Crime and Security Act 2001, which extend the geographical scope of the offences under those three Acts, are also repealed.
90. Section 44 of the Government of Wales Act 2006 (c. 32) provides that the Welsh Assembly and the Assembly Commission shall be public bodies for the purposes of the Prevention of Corruption Acts 1889-1916. This section will be redundant once those Acts are repealed.
91. In the Armed Forces Act 2006, those paragraphs in the list in Schedule 2 which refer to offences under the Prevention of Corruption Acts are repealed. This repeal is a corollary of the amendment to that list in Schedule 1 to this Bill.
92. Section 217(1)(a) of the Local Government and Public Involvement in Health Act 2007 gives the Secretary of State power to define an "entity under the control of a local authority" for the purposes of section 4(2) of the Prevention of Corruption Act 1916. This is now repealed. Paragraph 1 of Schedule 14 to the 2007 Act, which contains amendments to the 1916 Act, is also repealed.

93. Paragraph 16 of Schedule 1 of the Housing and Regeneration Act 2008 (c.17) provides that the Home and Communities Agency shall be a public body for the purposes of the Prevention of Corruption Acts 1889-1916. This section will be redundant once those Acts are repealed.

FINANCIAL EFFECTS OF THE BILL

94. The Bill's provisions would result in a net annual increase in costs for the Criminal Justice System of £2.18m. This is based on an estimate of a small number of additional prosecutions a year arising from the introduction of the new corporate offence.

PUBLIC SERVICE MANPOWER EFFECTS OF THE BILL

95. There are no significant implications for public service manpower.

SUMMARY OF IMPACT ASSESSMENT

96. A draft implementation stage impact assessment for the draft Bill has been prepared. This can be found on the Ministry of Justice website (www.justice.gov.uk). As regards the impact of the Bill on public sector resources the assessment is complete. For the most part, the provisions in the draft Bill represent a reformulation of existing bribery offences. Due to low levels of offending, the increase in the maximum sentence of imprisonment for these offences should have a negligible impact in terms of prison places.
97. The new corporate offence of negligently failing to prevent bribery is likely to involve a small additional cost to the criminal justice system (as outlined above). There are no implications for prison places or the legal aid budget arising from the corporate offence.
98. The impact assessment will, however, be developed further following publication of the Bill, as a result of collaboration with business organisations at all levels to assess the potential impact on the business sector of the proposed new form of corporate liability. We believe that the draft Bill will not impose any significant additional administrative burden on business. The corporate offence is not regulatory in nature and there will be no monitoring of compliance. The intention here is that the offence will have a beneficial effect for corporate governance by encouraging those companies which have not already done so to adopt adequate systems to prevent bribery. But this is not a one size fits all approach. It is not intended to prescribe the anti-bribery measures to be taken.
99. The benefits of the new corporate offence include enhanced ability on the part of business organisations to assess the suitability of their systems due to increased clarity in the law and efficiency savings through, for example, reducing the cost of risk assessment. In addition, the enhancement of the UK's reputation

as a consequence of our reforms should allow UK business to compete more successfully in international markets.

100. An equality impact assessment initial screening has been completed and concluded that a full equality impact assessment is not required as the provisions in the draft Bill would not impact differently on any particular sections of society.

EUROPEAN CONVENTION ON HUMAN RIGHTS

101. The Government considers that the provisions of the draft Bill are fully compatible with the European Convention on Human Rights.

Failing to prevent bribery – defence of adequate procedures

102. Clause 5 creates an offence in respect of a relevant commercial organisation if a person performing services for or on behalf of the organisation bribes another person in connection with the organisation's business and a responsible person, or a number of such persons taken together, was negligent in failing to prevent the bribery. It is a defence to a charge under the section (except where the negligence was on the part of a senior officer of the organisation) to prove that the defendant organisation had in place adequate procedures to prevent persons performing services for or on behalf of the organisation from committing bribery offences.
103. Under the defence in subsection (4) of clause 5, it will fall to the defendant organisation to establish that the defence applies on the balance of probabilities. The legal burden in respect of the defence therefore will fall on the defendant.
104. Article 6(2) of the Convention requires that every person charged with a criminal offence shall be presumed innocent until proved guilty according to law. The Government considers that placing the legal burden on the defendant to establish the defence is compatible with Article 6(2).
105. The Government considers that the reverse burden pursues a legitimate aim – namely ensuring that an organisation whose responsible person (or persons) has failed to prevent bribery being employed on its behalf should be guilty of an offence unless the organisation had adequate procedures in place to prevent bribery being employed on its behalf – and is proportionate to achieve that aim. The Government notes that the procedures that an organisation had in place to prevent bribery being employed on its behalf is a matter that is particularly within the knowledge of the defendant organisation. The organisation will have ready access to the information needed to establish the existence of the defence. In the light of this, it would be very difficult to place the legal burden on the prosecution to establish the contrary. The defence was recommended by the Law Commission, who also concluded that the legal burden ought properly to be placed on the defendant organisation.

Repeal of the existing law

106. Section 2 of the Prevention of Corruption Act 1906 introduced a presumption of corruption in certain cases involving corruption within the public sector. It applies where it is proved in any prosecution under the Public Bodies Corrupt Practices 1889 or the Prevention of Corruption 1906 Act that any consideration was paid to, given or received by an employee of the Crown, any Government Department or public body by another person (or their agent) seeking to obtain a contract from the Crown. The effect of section 2 is to place the burden of proof onto the defendant to prove, on the balance of probabilities, that the relevant payment was not given or received corruptly. This means that the defendant bears the legal burden for disproving the 'corruptly' element of the offence in the specific circumstances covered by section 2.
107. The Government is aware that concerns have been raised in the past over whether the presumption in section 2 is compatible with Article 6(2) of ECHR. The Law Commission expressed concern around this issue in 1998 (albeit they did not reach a firm conclusion that the provision was not compatible). The proposals in the draft Bill will repeal the presumption in section 2 and therefore any risk in respect of compatibility of the existing law will be removed.

COMMENCEMENT

108. As provided by clause 18, clauses 16(4) to (8), 17, 18 and 19 come into force on the day the Bill is passed. The remainder of the clauses come into force by order of the Secretary of State.

PRE-LEGISLATIVE SCRUTINY

109. The Bill will now be subject to pre-legislative scrutiny. Contact details for the relevant Scrutiny Committee will be posted on the Ministry of Justice website once the arrangements for pre-legislative scrutiny are confirmed.

110. You may wish to address general enquiries to:

The Bribery Bill Team
The Ministry of Justice
Rm10.54, 102 Petty France
London SW1H 9AJ

Tel: 020 3334 5011/23
Fax: 020 3334 5051

Or by email to:

BriberyBillTeam@justice.gsi.gov.uk

Bribery Bill

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A
B I L L

TO

Make provision about offences relating to bribery; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

General bribery offences

1 Offences of bribing another person

- (1) A person (“P”) is guilty of an offence if either of the following cases applies.
- (2) Case 1 is where—
 - (a) P offers, promises or gives a financial or other advantage to another person, and 5
 - (b) P intends the advantage—
 - (i) to induce a person to perform improperly a function or activity to which section 3 applies, or
 - (ii) to reward a person for the improper performance of such a function or activity. 10
- (3) Case 2 is where—
 - (a) P offers, promises or gives a financial or other advantage to another person, and
 - (b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a function or activity to which section 3 applies. 15
- (4) In case 1 it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned. 20
- (5) In cases 1 and 2 it does not matter whether the advantage is offered, promised or given by P directly or through a third party.

-
- 2 Offences relating to being bribed**
- (1) A person (“R”) is guilty of an offence if any of the following cases applies.
- (2) Case 3 is where R requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a function or activity to which section 3 applies should be performed improperly (whether by R or another person). 5
- (3) Case 4 is where –
- (a) R requests, agrees to receive or accepts a financial or other advantage, and
 - (b) the request, agreement or acceptance itself constitutes the improper performance by R of a function or activity to which section 3 applies. 10
- (4) Case 5 is where R requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by R or another person) of a function or activity to which section 3 applies.
- (5) Case 6 is where, in anticipation of or in consequence of R requesting, agreeing to receive or accepting a financial or other advantage, a function or activity to which section 3 applies is performed improperly – 15
- (a) by R, or
 - (b) by another person at R’s request or with R’s assent or acquiescence.
- (6) In cases 3 to 6 it does not matter – 20
- (a) whether R requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or through a third party,
 - (b) whether the advantage is (or is to be) for the benefit of R or another person.
- (7) In cases 4 to 6 it does not matter whether R knows or believes that the performance of the function or activity is improper. 25
- (8) In case 6, where a person other than R is performing the function or activity, it also does not matter whether that person knows or believes that the performance of the function or activity is improper.
- 3 Function or activity to which bribe relates** 30
- (1) This section applies to those of the following functions and activities which meet one or more of conditions A to C –
- (a) any function of a public nature,
 - (b) any activity connected with a business, trade or profession,
 - (c) any activity performed in the course of a person’s employment, and 35
 - (d) any activity performed by or on behalf of a body of persons (whether corporate or unincorporate).
- (2) It applies even if the function or activity –
- (a) has no connection with the United Kingdom, and
 - (b) is carried out in a country or territory outside the United Kingdom. 40
- (3) Condition A is that a person performing the function or activity is expected to perform it in good faith.
- (4) Condition B is that a person performing the function or activity is expected to perform it impartially.

- (5) Condition C is that a person performing the function or activity is in a position of trust by virtue of performing it.
- (6) For the purposes of sections 1 and 2 a function or activity to which this section applies –
- (a) is performed improperly if it is performed in breach of a relevant expectation, and
 - (b) is to be treated as being performed improperly if there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation.
- (7) In subsection (6) “relevant expectation” –
- (a) in relation to a function or activity which meets condition A or B, means the expectation mentioned in the condition concerned, and
 - (b) in relation to a function or activity which meets condition C, means any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of trust mentioned in that condition.
- (8) For the purposes of this section, the test of what is expected is a test of what a reasonable person would expect.
- (9) Anything that a person does (or omits to do) arising from or in connection with that person’s past performance of a function or activity mentioned in subsection (1) is to be treated for the purposes of this Act as being done (or omitted) by that person in the performance of that function or activity.

Bribery of foreign public officials

4 Bribery of foreign public officials

- (1) A person (“P”) who bribes a foreign public official (“F”) is guilty of an offence if P’s intention is to influence F in F’s capacity as a foreign public official.
- (2) P must also intend to obtain or retain –
- (a) business, or
 - (b) an advantage in the conduct of business.
- (3) P bribes F if, and only if –
- (a) directly or through a third party, P offers, promises or gives any financial or other advantage –
 - (i) to F, or
 - (ii) to another person at F’s request or with F’s assent or acquiescence, and
 - (b) the advantage is not legitimately due to F, or (if offered, promised or given to another person as mentioned in paragraph (a)) it would not be legitimately due if offered, promised or given to F.
- (4) A particular financial or other advantage is legitimately due to F if, and only if, the law applicable to F permits or requires F to accept it.
- (5) References in this section to influencing F in F’s capacity as a foreign public official mean influencing F in the performance of F’s functions as such an official, which includes –
- (a) any omission to exercise those functions, and

- (b) any use of F’s position as such an official, even if not within F’s authority.
- (6) “Foreign public official” means an individual who –
- (a) holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the United Kingdom (or any subdivision of such a country or territory),
- (b) exercises a public function –
- (i) for or on behalf of a country or territory outside the United Kingdom (or any subdivision of such a country or territory), or
- (ii) for any public agency or public enterprise of that country or territory (or subdivision), or
- (c) is an official or agent of a public international organisation.
- (7) In subsection (6)(c), “public international organisation” means an organisation whose members are any of the following –
- (a) countries or territories,
- (b) governments of countries or territories,
- (c) other public international organisations,
- (d) a mixture of any of the above.
- (8) For the purposes of subsection (4), the law applicable to F is –
- (a) the law of the country or territory in relation to which F is a foreign public official, or
- (b) if F is an official or agent of a public international organisation, the applicable rules of that organisation.

Failure of commercial organisations to prevent bribery

- 5 Failure of commercial organisations to prevent bribery**
- (1) A relevant commercial organisation (“C”) is guilty of an offence under this section if –
- (a) a person (“A”) performing services for or on behalf of C bribes another person,
- (b) the bribe was in connection with C’s business, and
- (c) a responsible person, or a number of such persons taken together, was negligent in failing to prevent the bribe.
- (2) For the purposes of subsection (1), A bribes another person if, and only if, A is, or would be, guilty of an offence under section 1 or 4 (whether or not A has been prosecuted for such an offence).
- (3) In subsection (1) “responsible person” means –
- (a) any person (other than A) connected with, or employed by, C whose functions at the time of the bribe included preventing persons such as A from committing offences under section 1 or 4 in connection with C’s business, or
- (b) if there is no such person with such a function, any senior officer of C.
- (4) It is a defence to a charge under this section to prove that C had in place adequate procedures designed to prevent persons performing services for or on behalf of C from committing offences under section 1 or 4 in connection with C’s business.

- (5) But the defence is not available if the negligence referred to in subsection (1)(c) was wholly or partly that of a senior officer of C or a person purporting to act in such a capacity.
- (6) See section 6 for provision about the meaning for the purposes of subsection (1)(a) above of A performing services for or on behalf of C. 5
- (7) In this section –
- “business” includes trade or profession,
- “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate,
- “partnership” means – 10
- (a) a partnership within the Partnership Act 1890 (c. 39), or
- (b) a limited partnership registered under the Limited Partnerships Act 1907 (c. 24),
- or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom, 15
- “relevant commercial organisation” means –
- (a) a body which is incorporated under the law of England and Wales or Northern Ireland and which carries on a business (whether there or elsewhere),
- (b) any other body corporate (wherever incorporated) which carries on a business, or part of a business, in England, Wales or Northern Ireland, 20
- (c) a partnership which is formed under the law of England and Wales or Northern Ireland and which carries on a business (whether there or elsewhere), or 25
- (d) any other partnership (wherever formed) which carries on a business, or part of a business, in England, Wales or Northern Ireland,
- “senior officer” –
- (a) in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate, and 30
- (b) in relation to a partnership, means a partner or any person who has control or management of the business of the partnership.

6 Section 5: supplementary provision

- (1) This section applies for the purposes of interpreting the reference in section 5(1)(a) to A performing services for or on behalf of C. 35
- (2) The capacity in which A was performing services for or on behalf of C does not matter.
- (3) Accordingly A may (for example) be C’s employee, agent or subsidiary.
- (4) Whether or not A was performing services for or on behalf of C at the time when A bribed the other person is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between A and C. 40
- (5) But if A was an employee of C, it is to be presumed unless the contrary is shown that A was performing services for or on behalf of C. 45

*General provisions about offences***7 Offences under this Act: territorial application**

- (1) An offence is committed under section 1, 2 or 4 in England and Wales or Northern Ireland if any act or omission which forms part of the offence takes place in England and Wales or (as the case may be) Northern Ireland. 5
- (2) Subsection (3) applies if—
- (a) no act or omission which forms part of an offence under section 1, 2 or 4 takes place in England and Wales or Northern Ireland,
 - (b) a person’s acts or omissions done or made outside the United Kingdom would form part of such an offence if done or made in England and Wales or Northern Ireland, and 10
 - (c) that person has a close connection with the United Kingdom.
- (3) In such a case—
- (a) the acts or omissions form part of the offence referred to in subsection (2)(a), and 15
 - (b) proceedings for the offence may be taken in England and Wales or Northern Ireland.
- (4) For the purposes of subsection (2)(c) a person has a close connection with the United Kingdom if, and only if, the person was one of the following at the time the acts or omissions concerned were done or made— 20
- (a) a British citizen,
 - (b) a British overseas territories citizen,
 - (c) a British National (Overseas),
 - (d) a British Overseas citizen,
 - (e) a person who under the British Nationality Act 1981 (c. 61) was a British subject, 25
 - (f) a British protected person within the meaning of that Act,
 - (g) an individual ordinarily resident in any part of the United Kingdom,
 - (h) a body incorporated under the law of any part of the United Kingdom.
- (5) An offence is committed under section 5 irrespective of whether the acts or omissions which form part of the offence take place in England and Wales, Northern Ireland or elsewhere. 30

8 Offences under sections 1, 2 and 4 by bodies corporate

- (1) Subsection (2) applies if an offence under section 1, 2 or 4 is committed by a body corporate. 35
- (2) If the offence is proved to have been committed with the consent or connivance of a senior officer of the body corporate or a person purporting to act in such a capacity, that person (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In this section— 40
- “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate,
 - “senior officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate.

9 Offences under section 5 by partnerships

- (1) Proceedings for an offence under section 5 alleged to have been committed by a partnership must be brought in the name of the partnership (and not in that of any of the partners).
- (2) For the purposes of such proceedings – 5
- (a) rules of court relating to the service of documents have effect as if the partnership were a body corporate, and
- (b) the following provisions apply as they apply in relation to a body corporate –
- (i) section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates’ Courts Act 1980 (c. 43), and 10
- (ii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26)).
- (3) A fine imposed on the partnership on its conviction for an offence under section 5 is to be paid out of the partnership assets. 15
- (4) In this section “partnership” has the same meaning as in section 5.

10 Consent to prosecution

- (1) No proceedings for an offence under this Act may be instituted against any person except by or with the consent of – 20
- (a) in relation to England and Wales –
- (i) the Director of Public Prosecutions,
- (ii) the Director of the Serious Fraud Office, or
- (iii) the Director of Revenue and Customs Prosecutions, and
- (b) in relation to Northern Ireland – 25
- (i) the Director of Public Prosecutions for Northern Ireland, or
- (ii) the Director of the Serious Fraud Office.
- (2) The function of the Director of the Serious Fraud Office under subsection (1) of giving consent may be exercised by a member of the Director’s staff who is authorised by the Director. 30
- (3) An authorisation under subsection (2) –
- (a) may relate to a specified person or to persons of a specified description, and
- (b) may relate to specified circumstances.
- (4) Subsections (2) and (3) do not affect other powers of a Director to authorise a person to exercise functions under subsection (1). 35

11 Penalties

- (1) An individual guilty of an offence under section 1, 2 or 4 is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both, 40
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years, or to a fine, or to both.
- (2) Any other person guilty of an offence under section 1, 2 or 4 is liable –

- (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.
- (3) A person guilty of an offence under section 5 is liable on conviction on indictment to a fine. 5
- (4) The reference in subsection (1)(a) to 12 months is to be read –
- (a) in its application to England and Wales in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), and
 - (b) in its application to Northern Ireland, 10
as a reference to 6 months.

Miscellaneous

12 Crown application

This Act applies to individuals in the public service of the Crown as it applies to other individuals. 15

13 Authorisations for intelligence services

- (1) Subsection (2) applies if, apart from that subsection, a person would commit a relevant bribery offence in doing an act or making an omission.
- (2) The person does not commit a relevant bribery offence if the act or omission done or made is authorised to be done or made by an authorisation of the Secretary of State. 20
- (3) The Secretary of State may give an authorisation under subsection (2) if, and only if, the Secretary of State is satisfied that conditions D to F are met.
- (4) Condition D is that –
- (a) any acts or omissions which may be done or made in reliance on the authorisation will be necessary for the proper discharge of a function of the Security Service, the Secret Intelligence Service or GCHQ, or 25
 - (b) the operation in the course of which any such acts or omissions may be done or made will be necessary for the proper discharge of such a function. 30
- (5) Condition E is that there are satisfactory arrangements in force to secure –
- (a) that no act or omission will be done or made in reliance on the authorisation beyond what is necessary for the proper discharge of a function of the Security Service, the Secret Intelligence Service or GCHQ, and 35
 - (b) that, in so far as any acts or omissions may be done or made in reliance on the authorisation, their nature and likely consequences will be reasonable, having regard to the purposes for which they are done or made.
- (6) Condition F is that – 40
- (a) there are satisfactory arrangements in force under section 2(2)(a) of the Security Service Act 1989 (c. 5) and sections 2(2)(a) and 4(2)(a) of the

- Intelligence Services Act 1994 (c. 13) with respect to the disclosure of information obtained by virtue of this section, and
- (b) any information obtained by virtue of an act or omission done or made in reliance on the authorisation will be subject to those arrangements.
- (7) An authorisation under subsection (2) may in particular – 5
- (a) relate to one or more specified acts or omissions, to acts or omissions of a specified description or to acts or omissions done or made in the course of a specified operation,
- (b) be limited to one or more specified persons or to persons of a specified description, 10
- (c) be subject to specified conditions.
- (8) In this section –
- “GCHQ” has the meaning given by section 3(3) of the Intelligence Services Act 1994 (c. 13),
- “relevant bribery offence” means – 15
- (a) an offence under section 1 which would not also be an offence under section 4,
- (b) an offence under section 2,
- (c) attempting or conspiring to commit an offence falling within paragraph (a) or (b), 20
- (d) an offence under Part 2 of the Serious Crime Act 2007 (c. 27) (encouraging or assisting crime) in relation to an offence falling within paragraph (a) or (b), or
- (e) aiding, abetting, counselling or procuring the commission of an offence falling within paragraph (a) or (b), 25
- “specified”, in relation to an authorisation, means specified in the authorisation.

14 Authorisations: supplementary

- (1) This section applies to an authorisation under section 13(2).
- (2) An authorisation may be given only under the hand of – 30
- (a) the Secretary of State, or
- (b) a senior official.
- (3) But an authorisation may be given under the hand of a senior official only if –
- (a) the case is urgent,
- (b) the Secretary of State has expressly authorised the giving of the authorisation, and 35
- (c) a statement of that fact is endorsed on the authorisation.
- (4) An authorisation ceases to have effect –
- (a) at the end of the period of 6 months starting with the day on which it was given, if it was given under the hand of the Secretary of State, and 40
- (b) at the end of the second working day after the day on which it was given, if it was given under the hand of a senior official.
- (5) Subsection (4) does not apply if the authorisation is renewed under subsection (6) before the day on which it would otherwise cease to have effect.

- (6) The Secretary of State may renew an authorisation for a period of 6 months starting on the day on which it would otherwise cease to have effect if, at any time before that day, the Secretary of State considers it necessary for the authorisation to continue to have effect for the purpose for which it was given.
- (7) Subsection (6) may apply more than once. 5
- (8) A renewal under subsection (6) must be made under the hand of the Secretary of State.
- (9) The Secretary of State must cancel an authorisation if the Secretary of State is satisfied that an act or omission authorised by virtue of it is no longer necessary. 10
- (10) In this section –
 “senior official” has the meaning given by section 81 of the Regulation of Investigatory Powers Act 2000 (c. 23),
 “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in any part of the United Kingdom. 15

15 Proceedings in Parliament

- (1) No enactment or rule of law preventing proceedings in Parliament being impeached or questioned in any court or place out of Parliament is to prevent any evidence of – 20
 (a) words spoken by a member of either House of Parliament in proceedings in Parliament, or
 (b) any other conduct of such a member in such proceedings,
 from being admissible in proceedings against the member for a bribery offence or in related proceedings. 25
- (2) In subsection (1) “related proceedings”, in relation to proceedings against a member of either House of Parliament for a bribery offence, means proceedings against any other person for a bribery offence which arise out of the same facts as the proceedings against the member. 30
- (3) In this section “bribery offence” means –
 (a) an offence under this Act,
 (b) attempting or conspiring to commit an offence under this Act,
 (c) an offence under Part 2 of the Serious Crime Act 2007 (c. 27) (encouraging or assisting crime) in relation to an offence under this Act, or
 (d) aiding, abetting, counselling or procuring the commission of an offence under this Act. 35

Supplementary and final provisions

- ## 16 Consequential provision 40
- (1) The common law offences of bribery and embracery are abolished.
- (2) Schedule 1 (which contains consequential amendments) has effect.

- (3) Schedule 2 (which contains repeals and revocations) has effect.
- (4) The Secretary of State may by order make such supplementary, incidental or consequential provision as the Secretary of State considers appropriate for the purposes of this Act or in consequence of this Act.
- (5) The power to make an order under this section – 5
- (a) is exercisable by statutory instrument,
 - (b) includes power to make transitional, transitory or saving provision,
 - (c) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an enactment (including any Act passed in the same Session as this Act). 10
- (6) Subject to subsection (7), an instrument containing an order under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) An instrument containing an order under this section which does not amend or repeal a provision of a public general Act is subject to annulment in pursuance of a resolution of either House of Parliament. 15
- (8) In this section “enactment” includes Northern Ireland legislation.
- 17 Extent**
- (1) Sections 1 to 11 and 16(1) extend to England and Wales and Northern Ireland only. 20
- (2) An amendment, repeal or revocation made by Schedule 1 or 2 has the same extent as the provision amended, repealed or revoked, subject as follows.
- (3) The repeals and revocations made by Schedule 2 (other than the repeal relating to the Armed Forces Act 2006 (c. 52)) do not extend to Scotland.
- 18 Commencement and savings** 25
- (1) Subject to subsection (2), this Act comes into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (2) Section 16(4) to (8), 17, this section and section 19 come into force on the day on which this Act is passed.
- (3) An order under subsection (1) may – 30
- (a) appoint different days for different purposes,
 - (b) make such provision as the Secretary of State considers appropriate for transitory, transitional or saving purposes in connection with the coming into force of any provision of this Act.
- (4) This Act does not affect any liability, investigation, legal proceeding or penalty for or in respect of – 35
- (a) a common law offence of bribery or embracery committed wholly or partly before the coming into force of section 16(1) of this Act, or
 - (b) an offence under the Public Bodies Corrupt Practices Act 1889 (c. 69) or the Prevention of Corruption Act 1906 (c. 34) committed wholly or partly before the coming into force of the repeal of the Act by Schedule 2 to this Act. 40

- (5) For the purposes of subsection (4) an offence is partly committed before a particular time if any act or omission which forms part of the offence takes place before that time.
- (6) Subsections (4) and (5) are without prejudice to section 16 of the Interpretation Act 1978 (c. 30) (general savings on repeal).

5

19 Short title

This Act may be cited as the Bribery Act 2009.

SCHEDULES

SCHEDULE 1

Section 16(2)

CONSEQUENTIAL AMENDMENTS

Ministry of Defence Police Act 1987 (c. 4)

- 1 In section 2 of the Ministry of Defence Police Act 1987 (jurisdiction of members of Ministry of Defence Police Force), in subsection (3)(ba), after “1916” insert “and under the Bribery Act 2009”. 5

Criminal Justice Act 1987 (c. 38)

- 2 In section 2A of the Criminal Justice Act 1987 (Director of SFO’s pre-investigation powers in relation to bribery and corruption: foreign officers etc.) for subsections (5) and (6) substitute— 10
- “(5) This section applies to any conduct—
- (a) which, as a result of section 3(2) of the Bribery Act 2009, constitutes an offence under section 1 or 2 of that Act, or
- (b) which constitutes an offence under section 4 of that Act.” 15

Intelligence Services Act 1994 (c. 13)

- 3 In section 7(2) of the Intelligence Services Act 1994 (authorisation for acts outside the British Islands for which there is liability in criminal or civil law of the United Kingdom) after “Kingdom”, where it appears for the second time, insert “other than the Bribery Act 2009”. 20

Regulation of Investigatory Powers Act 2000 (c. 23)

- 4 In section 59(2) of the Regulation of Investigatory Powers Act 2000 (matters to be kept under review by Intelligence Services Commissioner) after paragraph (a) insert— 25
- “(aa) the exercise by the Secretary of State of powers of the Secretary of State under sections 13 and 14 of the Bribery Act 2009 (authorisations for intelligence services);”.

Serious Organised Crime and Police Act 2005 (c. 15)

- 5 The Serious Organised Crime and Police Act 2005 is amended as follows.
- 6 In section 61 (offences in respect of which investigatory powers apply) for subsection (1)(h) substitute— 30
- “(h) in England and Wales, any offence under the Bribery Act 2009.”

- 7 In section 76 (financial reporting orders), in subsection (3), for paragraphs (d) to (f) substitute—
- “(da) an offence under any of the following provisions of the Bribery Act 2009—
- section 1 (offences of bribing another person), 5
- section 2 (offences relating to being bribed),
- section 4 (bribery of foreign public officials).”

Armed Forces Act 2006 (c. 52)

- 8 In Schedule 2 to the Armed Forces Act 2006 (which lists serious offences the possible commission of which, if suspected, must be referred to a service police force), in paragraph 12, at the end insert—
- “(av) an offence under section 1, 2 or 4 of the Bribery Act 2009.” 10

Serious Crime Act 2007 (c. 27)

- 9 (1) Schedule 1 to the Serious Crime Act 2007 (list of serious offences) is amended as follows. 15
- (2) For paragraph 9 and the heading before it (corruption and bribery: England and Wales) substitute—

“Bribery

- 9 An offence under any of the following provisions of the Bribery Act 2009— 20
- (a) section 1 (offences of bribing another person);
- (b) section 2 (offences relating to being bribed);
- (c) section 4 (bribery of foreign public officials).”
- (3) For paragraph 25 and the heading before it (corruption and bribery: Northern Ireland) substitute— 25

“Bribery

- 25 An offence under any of the following provisions of the Bribery Act 2009— 30
- (a) section 1 (offences of bribing another person);
- (b) section 2 (offences relating to being bribed);
- (c) section 4 (bribery of foreign public officials).”

SCHEDULE 2

Section 16(3)

REPEALS AND REVOCATIONS

<i>Short title and chapter</i>	<i>Extent of repeal or revocation</i>	35
Public Bodies Corrupt Practices Act 1889 (c. 69)	The whole Act.	

<i>Short title and chapter</i>	<i>Extent of repeal or revocation</i>	
Prevention of Corruption Act 1906 (c. 34)	The whole Act.	
Prevention of Corruption Act 1916 (c. 64)	The whole Act.	5
Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.))	Section 22.	
Electoral Law Act (Northern Ireland) 1962 (c. 14 (N.I.))	Section 112(3).	
Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (c. 28 (N.I.))	In Schedule 2, the entry in the table relating to the Prevention of Corruption Act 1906.	10
Local Government Act (Northern Ireland) 1972 (c. 9 (N.I.))	In Schedule 8, paragraphs 1 and 3.	15
Increase of Fines Act (Northern Ireland) 1967 (c. 29) (N.I.)	Section 1(8)(a) and (b).	
Civil Aviation Act 1982 (c. 16)	Section 19(1).	
Criminal Justice Act 1988 (c. 33)	Section 47.	
Criminal Justice (Evidence etc.) (Northern Ireland) Order 1988 (S.I. 1988/1847 (N.I.17))	Article 14.	20
Scotland Act 1998 (c. 46)	Section 43.	
Anti-terrorism, Crime and Security Act 2001 (c. 24)	Sections 108 to 110.	25
Government of Wales Act 2006 (c. 32)	Section 44.	
Armed Forces Act 2006 (c. 52)	In Schedule 2, paragraph 12(l) and (m).	
Local Government and Public Involvement in Health Act 2007 (c. 28)	Section 217(1)(a). In Schedule 14, paragraph 1(2)(a) and (3).	30
Housing and Regeneration Act 2008 (c. 17)	In Schedule 1, paragraph 16.	



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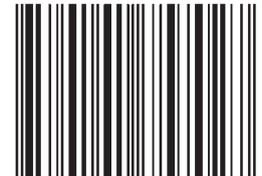
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