These notes refer to the Bribery Act 2010 (c.23) which received Royal Assent on 8 April 2010

BRIBERY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 6: Bribery of foreign public officials

34. This section creates a separate offence of bribery of a foreign public official. This offence closely follows the requirements of the Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (http://www.oecd.org/document/21/0,3343,en_2649_34859_2017813_1_1_1_1,00.html).

35. Unlike the general bribery offences in sections 1 and 2, the offence of bribery of a foreign public official only covers the offering, promising or giving of bribes, and not the acceptance of them. The person giving the bribe must intend to influence the recipient in the performance of his or her functions as a public official, and must intend to obtain or retain business or a business advantage.

36. Foreign public officials are defined in subsection (5) 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 (6) draws on Commentary 17 to the OECD Convention.

The conduct element

37. 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.

38. If a person (P) offers, promises or gives any advantage to a foreign public official (F) with the requisite intention (see below), and the written law applicable to F neither permits nor requires F to be influenced in his or her capacity as a foreign public official by the offer, promise or gift, then P commits an offence.

39. The “written law” applicable to F is defined in subsection (7) as the law of the relevant part of the UK where the performance of F’s functions would be subject to that law. Where the performance of F’s functions would not be subject to the law of a part of the UK, the written law is either the applicable rules of a public international organisation, or the law of the country or territory in relation to which F is a foreign public official as contained in its written constitution, provision made by or under legislation or judicial decisions that are evidenced in writing.
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40. 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.

41. It does not matter whether the offer, promise or gift is made directly to the official or through a third party (subsection (3)(a)).

42. The language of the OECD Convention is mirrored in the phrases “obtain or retain business” in subsection (2) and “offers, promises or gives” and “advantage” in subsection (3), and in the words “public function” in subsection (5).

The fault element

43. The fault element of the offence – what a person must intend in order to commit the offence – is specified in subsections (1), (2) and (4).

44. Subsections (1) and (4) 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.

45. 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)).

46. The effect of subsection (8) is that “business” includes what is done in the course of a trade or profession.