

# **BRIBERY ACT 2010**

---

## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 6: Bribery of foreign public officials***

##### **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.
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)(b)*.