

# BRIBERY ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Section 7: Failure of commercial organisations to prevent bribery*

47. *Section 7* creates an offence of failing to prevent bribery which can only be committed by a relevant commercial organisation.
48. “Relevant commercial organisation” is defined (at *subsection (5)*) as:
- a body incorporated under the law of any part of the UK and which carries on business whether there or elsewhere,
  - a partnership that is formed under the law of any part of the UK and which carries on business there or elsewhere, or
  - any other body corporate or partnership wherever incorporated or formed which carries on business in any part of the UK.
49. *Subsection (5)* also provides that “business” includes a trade or profession and includes what is done in the course of a trade or profession.
50. The offence is committed where a person (A) who is associated with the commercial organisation (C) bribes another person with the intention of obtaining or retaining business or an advantage in the conduct of business for C. *Subsection (2)* provides that it is a defence for the commercial organisation to show it had adequate procedures in place to prevent persons associated with C from committing bribery offences. Although not explicit on the face of the Act, in accordance with established case law, the standard of proof the defendant would need to discharge in order to prove the defence is the balance of probabilities.
51. *Subsection (3)* provides that “bribery” in the context of this offence relates only to the offering, promising or giving of a bribe contrary to sections 1 and 6 (there is no corresponding offence of failure to prevent the taking of bribes). Applying ordinary principles of criminal law, the reference to offences under section 1 and 6 include being liable for such offences by way of aiding, abetting, counselling or procuring (secondary liability). *Subsection (3)* also makes clear that there is no need for the prosecution to show that the person who committed the bribery offence has already been successfully prosecuted. The prosecution must, however, show that the person would be guilty of the offence were that person prosecuted under this Act. Finally, *subsection (3)(b)* makes clear that there is no need for A to have a close connection to the UK as defined in section 12; rather, so long as C falls within the definition of “relevant commercial organisation” that should be enough to provide courts in the UK with jurisdiction.