

KSAM Briefing Note

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KEEPING YOUR TRADE ASSOCIATION LEGAL

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The introduction of a myriad of new legislation in 2011 will bring many challenges to your organisation. These changes will impact on the way your trade association is run and will also put your organisation at risk of facing punitive action if it does not comply with the new legislation.

Bribery Act

The new Bribery Act 2010 was due to come into force in April 2011, though the UK Government announced that it is reviewing the Act's likely impact on business and economic growth so detailed guidance will be available in September. However, there is some doubt that the Government review will result in any material change and so all organisations should ensure they have practical procedures in place to comply with the act as soon as possible.

"Corrupt" transactions, defined as "bribery", include the payment in money or in kind that is given or taken in a corrupt relationship. It can also involve "the abuse of entrusted power for private gain", "an inducement to show favour", "the perversion or destruction of integrity in the discharge of public duties by bribery of favour" and "the use or existence of corrupt practices especially in a state or public corporation".

The most controversial provision in the Act is the strict liability obligation placed on businesses for failing to prevent bribery. This means that organisations can be held liable for the actions of employees and agents who offer bribes to obtain a commercial advantage, even if the organisation is oblivious to the fact that this is taking place.

A failure to have anti-bribery processes is "a failure at board level" and the penalties can be severe. The maximum penalty will be ten years' imprisonment and/or a fine. However the fine is unlimited for a corporate body and can lead to director disqualifications, not being allowed to tender for public contracts and the confiscation of assets.

How can your organisation prepare?

The Act allows for the defence of failure to "prevent a bribe being paid" by way of demonstrating that adequate procedures are in place. However, "adequate procedures" have not been defined in the Act and so it is left to organisations to draft these using the guidance to be published by the Secretary of State early this year.

Any organisation doing business in the UK should start considering now what procedures they must have in place. This should include:

- Communication of the commitment to the prevention of bribery from the most senior level of management.
- Undertaking a comprehensive assessment of the bribery risks faced.

- Monitoring and reviewing the effectiveness and compliance with policies and procedures.
- Updating contracts of employment and staff handbooks to ensure these contain clear rules regarding the giving of gifts or corporate hospitality as well as expenses.
- A comprehensive compliance and ethics training programme to ensure that your staff are better trained to recognise bribery.
- Clear disciplinary procedures and sanctions for employees who breach the rules.

Ultimately, it will be up to the judicial process to determine whether an entity's procedures are both effective and adequate. Producing "adequate procedures" will also take time to create and refine, and implement.

Organisations have a few short months to ensure that their policies to prevent corruption within their organisation meet the strict standards of corporate ethics imposed by the new Bribery Act 2010. Ignorance of the law will not be a defence!

Contact us if you are concerned about the new Bribery Act 2010 and its implications for your organisation.