

Bribery Act 2010 – Charities Working Abroad

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On the 8th April 2010 the Bribery Bill received Royal Assent thereafter becoming the Bribery Act 2010. It is anticipated that the provisions of the act will be brought into full effect later this year with the intention of creating a more effective legal framework to combat bribery. Under the act two new offences have been created which are of particular relevance for charities working abroad.

First, where a person (or charity) bribes a foreign public official with the intention of influencing that person in their capacity as a foreign public official and in doing so they intend to obtain or retain a business advantage they are guilty of the offence of bribing a foreign official. A person can also be guilty of this offence where the bribe has been carried out through a third party.

Second, the act introduces a new offence where a commercial organisation (including a charity) fails to prevent bribery. This is a strict liability offence, meaning there is no need to show any intention on behalf of the organisation, so that where a person associated with a commercial organisation bribes another person, intending to obtain or retain a business advantage, that commercial organisation is guilty of an offence. An associated person in this context can include any employee, agent or subsidiary of the commercial organisation. In relation to this offence there is a defence open to the commercial organisation if it can show that it had "adequate procedures" in place designed to prevent such conduct. Unfortunately there is currently no statutory definition of what is likely to be deemed as "adequate".

Charities working abroad, and specifically those that employ local agents to assist their operations in foreign countries need to be particularly mindful of these offences. The Secretary of State will be producing guidance to assist commercial organisations in preventing bribery, and the Serious Fraud Office will be producing their own guidance following this. Charities would be well advised to review their overseas operations to ensure that they do in fact have "adequate procedures" in place to avoid falling foul of either offence.

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