

## The Bribery Bill

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**CATEGORY:**  
ARTICLE

On 25 March 2009 the UK Government published a draft Bribery Bill. The Bill proposes broad changes to the law on bribery and if enacted, would make significant impact on the way incorporated charities based or doing business in the UK operate.

Irrespective of whether or not a new Bribery Bill comes into force this year, it is important for potentially affected charities to ensure that adequate compliance procedures and anti-corruption systems are in place to help in limiting the scope of sanctions which might be imposed on a charity should evidence of bribery be uncovered.

What is an offence?

The Bill targets both those who pay and those who receive bribes. It opens up the possibility of prosecution of UK companies (potentially including charitable companies and corporations) which have used bribery as a means to securing business overseas by introducing a separate offence for bribing foreign officials. Charities working in developing countries will no doubt be pleased to learn of the Bill's introduction of an offence which makes companies liable for foreign bribery as such corruption has previously gone unprosecuted and is a hindrance to the development of the countries affected. The Bill also introduces a new corporate offence of failure to prevent bribery within your organisation. This latter offence is only applicable to 'relevant commercial organisations' which include domestic or foreign corporate bodies working in England & Wales. The Bill defines relevant commercial organisations as those that carry on 'business' and 'business' is then defined as including a relevant 'trade or profession'. The offence is committed if:

- one of the organisation's employees or agents commits an offence of bribery;
- the bribery was in connection with the organisation's business; and
- members of the organisation whose responsibilities included preventing employees or relevant persons from committing bribery were negligent in failing to prevent the bribe.

Is there a defence?

An organisation will not be guilty of the offence if it can show that it had adequate procedures in place designed to prevent the commission of bribery on its behalf. However the defence will not apply if the person whose responsibility it was to prevent the bribery was a director, manager, or equivalent person within the organisation who negligently failed to prevent the bribe.

Who can be caught?

The offences of giving and receiving bribes and bribing foreign public officials will apply to UK companies (and therefore many charities), UK citizens and individuals ordinarily resident in the UK irrespective of where the relevant act occurs. The offences will apply to non-UK nationals or companies whenever an act or omission forming part of the offence takes place in England and Wales or Northern Ireland.

One omission to the Bill of particular concern to charities working overseas is that although many known cases of bribery have involved foreign subsidiaries of UK companies under the current draft Bill these would remain very difficult to prosecute.

What are the penalties?

In the most serious cases, the Bill proposes penalties on conviction for any of the proposed offences of up to ten years imprisonment and an unlimited fine for the organisation.

What can be done to mitigate the risk of corruption within a charity?

- Ensure that a charity has a Code of Compliance in place, which is regularly communicated to staff at all levels as part of training sessions;
- Designate a responsible person to oversee compliance matters;
- Ensure that monitoring systems are in place;
- Evaluate dealings with agents, intermediaries or other business partners such as bonus arrangements, sponsorship packages and connected deals.