

# The Bribery Act 2010

## What is the Bribery Act?

The Bribery Act is a combination of legislation. It brings together a number of existing offences concerning bribery and the consent to an act of bribery. The act took effect from 1<sup>st</sup> July 2011.

The Act creates the following four offences:

- **‘Giving’ offences**  
(i.e. promising, offering or giving bribes whether directly or indirectly)
- **‘Receiving’ offences**  
(i.e. requesting, receiving or agreeing to receive a bribe)
- **Bribery of a foreign public official**  
(includes foreign government officials and individuals working for international organisations)
- **A corporate offence of failing to prevent bribery.**  
(where a commercial organisation may be guilty if someone who is acting on its behalf commits an offence of bribery)

## Who does it apply to?

The actual interpretation of the Act and who it applies to ultimately comes down to being a matter for the courts. The term “a relevant commercial organisation” is used in the Act for those who may be liable and there is a definition of what that may be set out in section 7(5) of the Act.

The Ministry of Justice, however, states the intention is that only incorporated organisations and partnerships carrying on a business in the UK would be subject to the offence, regardless of whether its aims are charitable. This means that alongside general Companies and Partnerships the act could potentially apply to other groups or organisations such as incorporated charities and Community Interest Companies. Although, it seems unlikely this will affect small unincorporated community groups.

If deemed as being “a relevant commercial organisation” a charity could potentially be held liable for each of the first three offences if it can be proved that a bribe was given or accepted with the consent or support of a senior person within the organisation or a person claiming to act in such a capacity. However, it seems that only incorporated charities can be held liable for the corporate offence.

## What are the penalties?

Under the Act, there are unlimited fines for breaches and trustees/directors could receive up to 10 years in prison for failing to have “adequate procedures” to prevent bribery.

Companies will not be able to rely on the defence that they were unaware of corrupt practices taking place.

## Areas of concern for charities

The Bribery Act has been a source of concern for many charities. The two areas which seem to be the most concerning are the range of the Act and the extent it applies to charities as well as the possible impact on a charity’s activities, particularly

in relation to corporate hospitality and charities operating overseas with a higher risk of being implicated in bribery

Charities are worried about the corporate offence of failing to prevent a bribe and the idea of “an associated person” as the term could be so wide, covering anyone who performs services for the charity, including employees, contractors and independent commercial partners.

With regard to the corporate offence of failing to prevent a bribe, there is a clear defence if a charity has put adequate procedures in place designed to prevent bribery. The measures which a charity must put in place will depend on its size and the nature of the risks it encounters.

Furthermore, although it is unlikely that corporate hospitality (e.g. event tickets, gifts, etc) provided for the purpose of obtaining charity funding or donations would be for an improper purpose, organisations working in such a way should consider adopting an anti-bribery policy which would include reference to this. Otherwise, they could be penalised if it was shown they were for an improper purpose such as to encourage or reward someone in connection with a breach of trust or other act of bad faith.

### **What should organisations do?**

The Bribery Act puts considerable responsibility on trustees/directors to show that their organisations have adequate procedures in place to prevent fraudulent business practices.

Trustees/directors should consider whether they are at risk of bribery by carrying out a risk assessment on their organisation.

If it is then identified via the risk assessment as needed they should then consider some basic policies and procedures to guard against any associated person to the business committing the offences on behalf of the organisation by:

- introducing a strong anti-bribery policy which covers the handling of gifts and hospitality
- keeping full financial records and processes
- providing relevant training to staff and volunteers.

The activities of many charities will be subject to the Act, and charities must be aware of the potential risks.

The Ministry of Justice has produced some guidance on policies and procedures which can be found via [www.justice.gov.uk/guidance/making-and-reviewing-the-law/bribery.htm](http://www.justice.gov.uk/guidance/making-and-reviewing-the-law/bribery.htm). Although it is designed for commercial organisations some of the information may be useful.