

CRIMINAL JUSTICE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT THE ACT IS IN 12 PARTS.

Part 9 – Bribery and Corruption

Sections 68 and 69 – Bribery and corruption: foreign officers etc.; Bribery and corruption committed outwith the UK

362. Sections 68 and 69 amend the law on corruption. These provide that it is an offence for UK nationals, Scottish partnerships or bodies incorporated in any part of the UK:

- to bribe or corrupt a foreign officer or a foreign public body; and
- where conduct of a UK national, Scottish partnership or body incorporated in any part of the UK takes place outwith the UK and would, if done in Scotland, constitute an offence of corruption and bribery.

363. Section 1 of the Public Bodies Corrupt Practices Act 1889 states:

“(1) Every person who shall by himself or by or in conjunction with any other person, corruptly solicit or receive, or agree to receive, for himself, or for any other person, any gift, loan, fee, reward, or advantage whatsoever as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body as aforesaid is concerned, shall be guilty of a misdemeanour.

(2) Every person who shall by himself or by or in conjunction with any other person corruptly give, promise, or offer any gift, loan, fee, reward, or advantage whatsoever to any person, whether for the benefit of that person or of another person, as an inducement to or reward for or otherwise on account of any person or of another person, as an inducement to or reward for or otherwise on account of any member, officer, or servant of any public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body as aforesaid is concerned, shall be guilty of a misdemeanour.

364. The 1889 Act provides definitions for a number of key terms used in the Act including:

““public body” means any council of a county or of a city or town, a council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government, or the public health, or to poor law or otherwise to administer money raised by rates in pursuance of any public general Act but does not include any public body as above defined existing elsewhere than in the United Kingdom”;

“public office” means any office or employment of a person as a member, officer, or servant of such public body”;

“person” includes a body of persons, corporate or unincorporated;

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“advantage” includes any office or dignity, and any forbearance to demand any money or money’s worth or valuable thing, and includes any aid, vote, consent, or influence, or pretended aid, vote, consent, or influence, and also includes any promise or procurement of or any gift, loan, fee, reward, or advantage, as before defined”.

365. The Prevention of Corruption Act 1906 extended the law of corruption into the private sector. Section 1 of the 1906 Act creates an offence of corrupt transactions with agents. It states:

“(1) If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal’s affairs or business, or for showing to forbearing to show favour or disfavour to any person in relation to his principal’s affairs or business; or

If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal’s affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal’s affairs or business; or

If any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal;

he shall be guilty of a misdemeanour, and shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both.

366. Sections 1(2) and (3) define “consideration” as including “valuable consideration of any kind”; “agent” as including “any person employed by or acting for another person” and as a “person serving under the Crown or under any corporation or any municipal, borough, county, or district council, or any board of guardians”; and “principal” as including “an employer”. The other sections deal with the level of prosecution of the offences.

367. Section 2 of the Prevention of Corruption Act 1916 concerns the presumption of corruption in certain cases. It states:

“Where in any proceedings against a person for an offence under the Prevention of Corruption Act, 1906, or the Public Bodies Corrupt Practices Act, 1889, it is proved that any money, gift, or other consideration has been paid or given to or received by a person in the employment of His Majesty or any Government Department or a public body by or from a person, or agent of a person, holding or seeking to obtain a contract from His Majesty or any Government Department or public body, the money, gift, or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in such Act unless the contrary is proved.

368. Section 4(2) and (3) defines “public body” as it was designated in the 1889 Act and includes “local and public authorities of all descriptions”; the expressions “agent” and “consideration” are defined by reference to the definition for those terms in the 1906 Act.

369. Section 68(1) ensures that both the common law offence of bribery, and existing corruption legislation, extend to persons holding public office outside the UK, that is,

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foreign officers or a foreign public body. Section 68(2) provides that amendments made by section 108(2) to (4) of the Anti-terrorism, Crime and Security Act 2001 to the Prevention of Corruption Act 1906, the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Act 1916 are to have effect in Scotland.

370. Section 108(2) of the 2001 Act extends section 1 of the 1906 Act (corrupt transactions with agents) to include transactions in which the principal's affairs and business, and the agent's functions have no connection with the UK and are carried on outside the UK. Section 1 of the 1906 states that an "agent" includes any person employed by or acting for another, and that "principal" includes an employer.
371. Section 108(3) of the 2001 Act amends section 7 of the 1889 Act (interpretation relating to corruption in office) by extending the definition of "public body" to include any body which exists outside the UK.
372. Section 108(4) of the 2001 Act amends section 4(2) of the 1916 Act (which defines public bodies to include local and public bodies of all descriptions) by extending it to cover authorities that exist outside the UK.
373. [Section 69](#) of the Act gives Scottish courts the extra-territorial jurisdiction over bribery and corruption offences committed abroad by UK nationals, Scottish partnerships and bodies incorporated under UK law. It enables common law offences and those offences specified in subsection (3), when committed by UK nationals, Scottish partnerships and bodies incorporated under UK law, to be prosecuted in Scotland, wherever those offences take place.
374. Subsection (2)(b) makes express provision that Scottish partnerships may be prosecuted in the Scottish Courts in respect of bribery and corruption offences committed outwith the United Kingdom. In particular the subsection makes provision that where it can be proved that the act occurred with the consent or connivance of, or can be attributed to, a partner or partners, that partner or partners as well as the partnership may be prosecuted.
375. Subsection (2) applies section 11(3) of the 1995 Act to cases to which section 55 of the Act applies. Section 11(3) of the 1995 Act makes provision for certain offences committed outside Scotland to be tried in any sheriff court district in Scotland in which the person is apprehended or in custody or in such sheriff court district as the Lord Advocate may determine.
376. Subsection (3) details the statutory offences to which this section applies (i.e. section 1 of the Public Bodies Corrupt Practices Act 1889 and the first two offences under section 1 of the Prevention of Corruption Act 1906).
377. Subsection (4) provides a definition of a "national of the United Kingdom" for the purposes of subsection (1) and refers to the British Nationality Act 1981 for a number of definitions. The 1981 Act defines a British Citizen as someone born or adopted, descended from or registered or naturalised in the UK; a British dependent Territories citizen as someone born, adopted, descended from or registered or naturalised in a dependent territory of the UK; a British National (Overseas) or a British Overseas citizen as a person who was a citizen of the UK or Colonies before the 1981 Act and does not become a British citizen or a British Dependent Territories citizen on the commencement of the 1981 Act; a British subject as a person who was a citizen of the UK and Colonies under the British Nationality Act 1948, other any other enactment and certain other categories; a British protected person as one of a class of persons defined by Order connected with a territory that is a protectorate or protected state or trust territory under the 1948 Act, and who is not a citizen of a commonwealth country which includes that territory.