

# **BRIBERY ACT 2010**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the [Bribery Act 2010 \(c. 23\)](#) which received Royal Assent on 8 April 2010. They have been prepared by the Ministry of Justice in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require explanation or comment, none is given.

### **SUMMARY**

3. The purpose of the Act is to reform the criminal law of bribery to provide for a new consolidated scheme of bribery offences to cover bribery both in the United Kingdom (UK) and abroad.
4. The Act replaces the offences at common law and under the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916 (known collectively as the Prevention of Corruption Acts 1889 to 1916 and which will be repealed: see Schedule 2) with two general offences. The first covers the offering, promising or giving of an advantage (broadly, offences of bribing another person). The second deals with the requesting, agreeing to receive or accepting of an advantage (broadly, offences of being bribed). The formulation of these two offences abandons the agent/principal relationship on which the previous law was based in favour of a model based on an intention to induce improper conduct. The Act also creates a discrete offence of bribery of a foreign public official and a new offence where a commercial organisation fails to prevent bribery.
5. The other main provisions of the Act include:
  - replacing the requirement for the Attorney General's consent to prosecute a bribery offence with a requirement that the offences in the Act may only be instituted by, or with the consent of, the Director of the relevant prosecuting authority.
  - a maximum penalty of 10 years imprisonment for all the offences, except the offence relating to commercial organisations, which will carry an unlimited fine;
  - extra-territorial jurisdiction to prosecute bribery committed abroad by persons ordinarily resident in the UK as well as UK nationals and UK corporate bodies;
  - a defence for conduct that would constitute a bribery offence where the conduct was necessary for the proper exercise of any function of the intelligence services or the armed forces engaged on active service.

### **BACKGROUND**

6. The reform of the law on bribery dates back to the Nolan Committee's *Report on Standards in Public Life* in 1995 (Cm 2850I), which was set up in response to concerns

about unethical conduct by those in public office, and its suggestion that the Law Commission might usefully take forward the consolidation of the statute law on bribery. The Law Commission first made proposals for reform of bribery in a 1998 report (*Legislating the Criminal Code: Corruption*, Report No. 248).

7. The Government then set up a working group of stakeholders which met over the period 1998-2000, and this was followed in June 2000 by a Government White Paper on corruption (*Raising Standards and Upholding Integrity: the prevention of Corruption* Cm 4759). This was positively received and led to the publication of a draft Corruption Bill in 2003 (*Corruption Draft Legislation* Cm 5777). That draft Bill was then subjected to pre-legislative scrutiny by a Joint Committee of Parliament which reported in July 2003 (*Joint Committee on the Draft Corruption Bill Session 2002-03 Report and Evidence* HL 157, HC 705). The draft Bill failed to win broad support, in particular the Joint Committee was critical of the retention of the agent/principal relationship as the basis for the offence.
8. The Government responded to the Joint Committee's report in December 2003 (*The Government Reply to the Report from the Joint Committee on the Draft Corruption Bill Session 2002-03* HL 157, HC 705, Cm 6068). In its response, the Government accepted the Report's recommendations in part but expressed reservations about the suggestions made by the Committee in relation to how the offences should be structured given its rejection of the principal/agent model. A Government consultation exercise, *Bribery: Reform of the Prevention of Corruption Acts and SFO powers in cases of bribery of foreign officials*, followed in 2005. The Government concluded that, although there remained support for reform, there was no clear consensus on the form it should take. It was therefore decided to refer the matter back to the Law Commission for a further review.
9. The Law Commission's terms of reference were to consider the full range of options for consolidating and reforming the law on bribery. The Law Commission issued a consultation paper, *Reforming Bribery* (Consultation Paper No. 185), in October 2007. The Law Commission published its report *Reforming Bribery* (Report No. 313) on 20 November 2008.
10. The Government presented a draft Bribery Bill (Cm 7570) to Parliament on 25 March 2009 which built on the proposals in the Law Commission's report. A Joint Committee of Parliament was established to undertake pre-legislative scrutiny of the draft Bill. It reported on 28 July 2009 (*Joint Committee on the Draft Bribery Bill, First Report, Session 2008-09*, HL115, HC430 – I & II). The Government responded to the Joint Committee's report on 20 November 2009 (*Government Response to the conclusions and recommendations of the Joint Committee Report on the Draft Bribery Bill*, Cm7748).

## **TERRITORIAL EXTENT**

11. **Section 18** sets out the territorial extent of the Act. Its main substantive provisions extend throughout the UK.

### ***Territorial application: Scotland***

12. A legislative consent motion was agreed by the Scottish Parliament on 11 February 2010 under the Sewel Convention. The Convention was triggered as the Act makes provision concerning the criminal law of Scotland in relation to bribery. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament.

***Territorial application: Wales***

13. The Act applies to Wales as it does to the rest of the UK. It does not change the position as regards the National Assembly for Wales nor does it affect the powers of the Welsh Ministers.

***Territorial application: Northern Ireland***

14. The Act applies to Northern Ireland as it does to the rest of the UK. It does not change the position as regards the Northern Ireland Assembly.

**COMMENTARY ON SECTIONS**

***Section 1: Offences of bribing another person***

15. This section defines the offence of bribery as it applies to the person who offers, promises or gives a financial or other advantage to another. That person is referred to in the section as P. The meaning of “financial or other advantage” is left to be determined as a matter of common sense by the tribunal of fact. Section 1 distinguishes two cases: Case 1 (*subsection (2)*) and Case 2 (*subsection (3)*).
16. Case 1 concerns cases in which the advantage is intended to bring about an improper performance by another person of a relevant function or activity, or to reward such improper performance. The nature of a “relevant function or activity” is addressed in section 3. The nature of “improper performance” is defined in section 4.
17. It is sufficient for the purposes of the offence that P intended to induce or reward impropriety in relation to a function or activity falling within section 3(2) to (5). It is not necessary that the person to whom the advantage is offered, promised or given be the same person as the person who is to engage in the improper performance of an activity or function, or who has already done so (*subsection (4)*).
18. Case 2 concerns cases in which P knows or believes that the acceptance of the advantage offered, promised or given in itself constitutes the improper performance of a function or activity as defined in section 3.
19. *Subsection (5)* makes it clear that, in Cases 1 and 2, the advantage can be offered, promised or given by P directly or through someone else.

***Section 2: Offences relating to being bribed***

20. This section defines the offence of bribery as it applies to the recipient or potential recipient of the bribe, who is called R. It distinguishes four cases, namely Case 3 to Case 6.
21. In Cases 3, 4 and 5 there is a requirement that R “requests, agrees to receive or accepts” an advantage, whether or not R actually receives it. This requirement must then be linked with the “improper performance” of a relevant function or activity. As with section 1, the nature of this function or activity is addressed in section 3, and “improper performance” is defined in section 4.
22. The link between the request, agreement to receive or acceptance of an advantage and improper performance may take three forms:
- R may intend improper performance to follow as a consequence of the request, agreement to receive or acceptance of the advantage (Case 3, in *subsection (2)*);
  - requesting, agreeing to receive or accepting the advantage may itself amount to improper performance of the relevant function or activity (Case 4, in *subsection (3)*);

- alternatively, the advantage may be a reward for performing the function or activity improperly (Case 5, in *subsection (4)*).
23. In Cases 3 and 5, it does not matter whether the improper performance is by R or by another person. In Case 4, it must be R's requesting, agreeing to receive or acceptance of the advantage which amounts to improper performance, subject to *subsection (6)*.
  24. In Case 6 (*subsection (5)*) what is required is improper performance by R (or another person, where R requests it, assents to or acquiesces in it). This performance must be in anticipation or in consequence of a request, agreement to receive or acceptance of an advantage.
  25. *Subsection (6)* is concerned with the role of R in requesting, agreeing to receive or accepting advantages, or in benefiting from them, in Cases 3 to 6. First, this subsection makes it clear that in Cases 3 to 6 it does not matter whether it is R, or someone else through whom R acts, who requests, agrees to receive or accepts the advantage (*subsection (6)(a)*). Secondly, *subsection (6)* indicates that the advantage can be for the benefit of R, or of another person (*subsection (6)(b)*).
  26. *Subsection (7)* makes it clear that in Cases 4 to 6, it is immaterial whether R knows or believes that the performance of the function is improper. Additionally, by *subsection (8)*, in Case 6 where the function or activity is performed by another person, it is immaterial whether that person knew or believed that the performance of the function is improper.

### ***Section 3: Function or activity to which bribe relates***

27. This section defines the fields within which bribery can take place, in other words the types of function or activity that can be improperly performed for the purposes of sections 1 and 2. The term "relevant function or activity" is used for this purpose.
28. The purpose of the section is to ensure that the law of bribery applies equally to public and to selected private functions without discriminating between the two. Accordingly the functions or activities in question include all functions of a public nature and all activities connected with a business, trade or profession. The phrase "functions of a public nature" is the same phrase as is used in the definition of "public authority" in section 6(3)(b) of the Human Rights Act 1998 but it is not limited in the way it is in that Act. In addition, the functions or activities include all activities performed either in the course of employment or on behalf of any body of persons: these two categories straddle the public/private divide.
29. Not every defective performance of one of these functions for reward or in the hope of advantage engages the law of bribery. *Subsections (3) to (5)* make clear that there must be an expectation that the functions be carried out in good faith (condition A), or impartially (condition B), or the person performing it must be in a position of trust (condition C).
30. *Subsection (6)* provides that the functions or activities in question may be carried out either in the UK or abroad, and need have no connection with the UK. This preserves the effect of section 108(1) and (2) of the Anti-terrorism, Crime and Security Act 2001 (which is repealed by the Act).

### ***Section 4: Improper performance to which bribe relates***

31. **Section 4** defines "improper performance" as performance which breaches a relevant expectation, as mentioned in condition A or B (*subsections (3) and (4)* of section 3 respectively) or any expectation as to the manner in which, or reasons for which, a function or activity satisfying condition C (*subsection (5)* of section 3) will be performed. *Subsection (1)(b)* states that an omission can in some circumstances amount to improper "performance".

32. *Subsection (3)* addresses the case where R is no longer engaged in a given function or activity but still carries out acts related to his or her former function or activity. These acts are treated as done in performance of the function or activity in question.

### **Section 5: Expectation test**

33. **Section 5** provides that when deciding what is expected of a person performing a function or activity for the purposes of sections 3 and 4, the test is what a reasonable person in the UK would expect of a person performing the relevant function or activity. *Subsection (2)* makes it clear that in deciding what a reasonable person in the UK would expect in relation to functions or activities the performance of which is not subject to UK laws, local practice and custom must not be taken into account unless such practice or custom is permitted or required by written law. *Subsection (3)* defines what is meant by “written law” for the purposes of this section.

### **Section 6: Bribery of foreign public officials**

34. This section creates a separate offence of bribery of a foreign public official. This offence closely follows the requirements of the Organisation for Economic Cooperation and Development (OECD) *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* ([http://www.oecd.org/document/21/0,3343,en\\_2649\\_34859\\_2017813\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/21/0,3343,en_2649_34859_2017813_1_1_1_1,00.html)).
35. Unlike the general bribery offences in sections 1 and 2, the offence of bribery of a foreign public official only covers the offering, promising or giving of bribes, and not the acceptance of them. The person giving the bribe must intend to influence the recipient in the performance of his or her functions as a public official, and must intend to obtain or retain business or a business advantage.
36. Foreign public officials are defined in *subsection (5)* to include both government officials and those working for international organisations. The definition draws on Article 1.4(a) of the OECD Convention. Similarly, the definition of “public international organisation” in *subsection (6)* draws on Commentary 17 to the OECD Convention.

### **The conduct element**

37. The conduct element of the offence – what a person must do in order to commit the offence – is set out in *subsection (3)*. The offence may be committed in a number of ways.
38. If a person (P) offers, promises or gives any advantage to a foreign public official (F) with the requisite intention (see below), and the written law applicable to F neither permits nor requires F to be influenced in his or her capacity as a foreign public official by the offer, promise or gift, then P commits an offence.
39. The “written law” applicable to F is defined in *subsection (7)* as the law of the relevant part of the UK where the performance of F’s functions would be subject to that law. Where the performance of F’s functions would not be subject to the law of a part of the UK, the written law is either the applicable rules of a public international organisation, or the law of the country or territory in relation to which F is a foreign public official as contained in its written constitution, provision made by or under legislation or judicial decisions that are evidenced in writing.
40. The offence will also be committed if the advantage is offered to someone other than the official, if that happens at the official’s request, or with the official’s assent or acquiescence.
41. It does not matter whether the offer, promise or gift is made directly to the official or through a third party (*subsection (3)(a)*).

42. The language of the OECD Convention is mirrored in the phrases “obtain or retain business” in *subsection (2)* and “offers, promises or gives” and “advantage” in *subsection (3)*, and in the words “public function” in *subsection (5)(b)*.

### **The fault element**

43. The fault element of the offence – what a person must intend in order to commit the offence – is specified in *subsections (1), (2) and (4)*.
44. *Subsections (1) and (4)* have the effect that, in order to commit the offence, a person must intend to influence a foreign public official in the performance of his or her functions as a public official, including any failure to exercise those functions and any use of his or her position, even if he or she does not have authority to use the position in that way.
45. In order to commit the offence a person must also intend to obtain or retain business or an advantage in the conduct of business (*subsection (2)*).
46. The effect of *subsection (8)* is that “business” includes what is done in the course of a trade or profession.

### **Section 7: Failure of commercial organisations to prevent bribery**

47. *Section 7* creates an offence of failing to prevent bribery which can only be committed by a relevant commercial organisation.
48. “Relevant commercial organisation” is defined (at *subsection (5)*) as:
- a body incorporated under the law of any part of the UK and which carries on business whether there or elsewhere,
  - a partnership that is formed under the law of any part of the UK and which carries on business there or elsewhere, or
  - any other body corporate or partnership wherever incorporated or formed which carries on business in any part of the UK.
49. *Subsection (5)* also provides that “business” includes a trade or profession and includes what is done in the course of a trade or profession.
50. The offence is committed where a person (A) who is associated with the commercial organisation (C) bribes another person with the intention of obtaining or retaining business or an advantage in the conduct of business for C. *Subsection (2)* provides that it is a defence for the commercial organisation to show it had adequate procedures in place to prevent persons associated with C from committing bribery offences. Although not explicit on the face of the Act, in accordance with established case law, the standard of proof the defendant would need to discharge in order to prove the defence is the balance of probabilities.
51. *Subsection (3)* provides that “bribery” in the context of this offence relates only to the offering, promising or giving of a bribe contrary to sections 1 and 6 (there is no corresponding offence of failure to prevent the taking of bribes). Applying ordinary principles of criminal law, the reference to offences under section 1 and 6 include being liable for such offences by way of aiding, abetting, counselling or procuring (secondary liability). *Subsection (3)* also makes clear that there is no need for the prosecution to show that the person who committed the bribery offence has already been successfully prosecuted. The prosecution must, however, show that the person would be guilty of the offence were that person prosecuted under this Act. Finally, *subsection (3)(b)* makes clear that there is no need for A to have a close connection to the UK as defined in section 12; rather, so long as C falls within the definition of “relevant commercial organisation” that should be enough to provide courts in the UK with jurisdiction.

### **Section 8: Meaning of associated person**

52. Section 8 provides that A is associated with C for the purposes of section 7, if A performs services for, or on behalf of C. It also ensures that section 7 relates to the actual activities being undertaken by A at the time rather than A's general position. The section expressly states that A may be the commercial organisation's employee, agent or subsidiary. But where A is an employee it is to be presumed that A is performing services for or on behalf of C unless the contrary is shown.

### **Section 9: Guidance about commercial organisations preventing bribery**

53. This section requires the Secretary of State to publish guidance on procedures that relevant commercial organisations can put in place to prevent bribery by persons associated with them (*subsection (1)*). The Secretary of State may revise such guidance or publish revised guidance from time to time (*subsection (2)*). The Scottish Ministers must be consulted before publication (*subsection (3)*). The guidance may be published in such a manner as the Secretary of State considers appropriate (*subsection (4)*). The Government has indicated its intention to publish guidance ahead of the commencement of section 7 of the Act (Hansard, House of Lords, 2 February 2010, Vol. 717, col.143).

### **Section 10: Consent to prosecution**

54. A prosecution under the Act in England and Wales can only be brought with the consent of the Director of one of the three senior prosecuting authorities, that is to say the Director of Public Prosecutions, the Director of the Serious Fraud Office and the Director of Revenue and Customs Prosecutions (*subsections (1) and (3)*). Under *subsection (4)*, the relevant Director must exercise the consent function personally. However, where the Director is unavailable (for example where he or she is out of the country or is incapacitated) another person who has been designated in writing by the Director to exercise any such function may do so, but must do so personally (*subsections (5) and (6)*). Provisions of other legislation which would allow another person to exercise the functions of one of the Directors do not apply to the Directors' consent functions under section 10 (*subsection (7)*).
55. A prosecution in Northern Ireland can only be brought with the consent of the Director of Public Prosecutions for Northern Ireland or the Director of the Serious Fraud Office (*subsections (2), (3) and (8)*). Under *subsection (9)* the Director of Public Prosecutions for Northern Ireland must exercise the consent function personally unless the consent function is exercised by the Deputy Director (again personally) by virtue of section 30(4) and (7) of the Justice (Northern Ireland) Act 2002. Under *subsection (10)*, section 36 of the 2002 Act, which provides for the delegation of the Director's functions, does not apply in relation to the Director's functions of giving consent to prosecutions under the Act.

### **Section 11: Penalties**

56. Any offence under the Act committed by an individual under sections 1, 2 or 6 is punishable either by a fine or imprisonment for up to 10 years (12 months on summary conviction in England and Wales or Scotland or 6 months in Northern Ireland), or both. An offence committed by a person other than an individual is punishable by a fine. In either case, the fine may be up to the statutory maximum (currently £5000 in England and Wales or Northern Ireland, £10000 in Scotland) if the conviction is summary, and unlimited if it is on indictment. The section 7 offence can only be tried upon indictment.
57. Section 154 of the Criminal Justice Act 2003, which is not yet in force, sets the maximum sentence that can be imposed by a Magistrates' Court in England and Wales at 12 months. Where an offence under this Act is committed before section 154 comes into force, the Magistrates' Court's power is limited to 6 months (*subsection (4)(a)*).

### **Section 12: Offences under this Act: territorial application**

58. *Subsection (1)* provides that the offences in sections 1, 2 or 6 are committed in any part of the UK if any part of the conduct element takes place in that part of the UK.
59. The effect of *subsections (2) to (4)* is that, even though all the actions in question take place abroad, they still constitute the offence if the person performing them is a British national or ordinarily resident in the UK, a body incorporated in the UK or a Scottish partnership.
60. *Subsection (5)* makes it clear that for the purposes of the offence in section 7 (failure of commercial organisation to prevent bribery) it is immaterial where the conduct element of the offence occurs.
61. *Subsections (7) to (9)* provide that where proceedings are to be taken in Scotland against a person, such proceedings may be taken in any sheriff court district in which the person is apprehended or in custody, or in such sheriff district as the Lord Advocate may determine.

### **Section 13: Defence for certain bribery offences etc.**

62. **Section 13** deals with the legitimate functions of the intelligence services or the armed forces which may require the use of a financial or other advantage to accomplish the relevant function. The section provides a defence where a person charged with a relevant bribery offence can prove that it was necessary for:
- the proper exercise of any function of one of the intelligence services; or
  - the proper exercise of any function of the armed forces when engaged on active service.

Although not explicit on the face of the Act, in accordance with established case law, the standard of proof the defendant would need to discharge in order to prove the defence is the balance of probabilities.

63. The head of each intelligence service is required under *subsection (2)* to ensure that each service has in place arrangements designed to ensure that the conduct of a member of the service that would otherwise amount to a relevant bribery offence is necessary for a purpose set out in *subsection (1)(a)*. A similar requirement is placed on the Defence Council under *subsection (3)* to ensure that the armed forces have arrangements in place designed to ensure that the conduct of any member of the armed forces engaged on active service or a civilian subject to service discipline working in support of military personnel so engaged is necessary for a purpose set out in *subsection (1)(b)*. Under *subsection (4)*, the arrangements must be ones that the relevant Secretary of State considers to be satisfactory.
64. *Subsection (5)* provides that a person's conduct is to be treated as necessary for the purposes of *subsection (1)(a) or (b)* in circumstances where the person's conduct would otherwise be an offence under section 2 and involves conduct on the part of another person which would amount to an offence under section 1 but for the defence in *subsection (1)*. In other words, *subsection (5)* has the effect that a recipient of a bribe paid by a member of the intelligence services or armed forces is covered by the defence in any case where the person offering or paying the bribe is able to rely on the section 13 defence.
65. As well as providing definitions for other terms used in the section, *subsection (6)* makes it clear that a "relevant bribery offence" means an offence under section 1 or 2, including one committed by aiding, abetting, counselling or procuring such an offence, and related inchoate offences. "Relevant bribery offence" does not include a section 1 offence which would also amount to an offence of bribing a foreign public official under section 6. This addresses concerns raised by the Joint Committee on the 2003



draft Corruption Bill in relation to, in particular, compliance with the UK's obligations under the OECD Convention (see paragraph 152, HL 157 and HC 705, 31 July 2003).

***Section 14: Offences under sections 1, 2 and 6 by bodies corporate etc.***

66. Section 14 is aimed at individuals who consent or connive at bribery, contrary to section 1, 2 or 6, committed by a body corporate (of any kind) or Scottish partnership. It does not apply to the offence in section 7.
67. The first step is to ascertain that the body corporate or Scottish partnership has indeed been guilty of an offence under section 1, 2 or 6. That established, the section provides that a director, partner or similar senior manager of the body is guilty of the same offence if he or she has consented to or connived in the commission of the offence. In a body corporate managed by its members, the same applies to members. In relation to a Scottish partnership, the provision applies to partners.
68. It should be noted that in this situation, the body corporate or Scottish partnership and the senior manager are both guilty of the main bribery offence. This section does not create a separate offence of "consent or connivance".
69. Subsection (3) makes clear that for a "senior officer" or similar person to be guilty he or she must have a close connection to the UK as defined in section 12(4).

***Section 15: Offences under section 7 by partnerships***

70. Section 15 deals with proceedings for an offence under section 7 against partnerships. Such proceedings must be brought in the name of the partnership (and not the partners) (*subsection (1)*); certain rules of court and statutory provisions which apply to bodies corporate are deemed to apply to partnerships (*subsection (2)*); and any fine imposed on the partnership on conviction must be paid out of the partnership assets (*subsection (3)*).

***Section 16: Application to Crown***

71. Section 16 applies the Act to individuals in the public service of the Crown. Such individuals will therefore be liable to prosecution if their conduct in the discharge of their duties constitutes an offence under the Act.

***Section 17: Consequential provision***

72. This section abolishes the common law offences of bribery and embracery (bribery etc of jurors), as well as the common law offence in Scotland of accepting a bribe, and gives effect to Schedules 1 and 2, which contain consequential amendments and repeals.
73. Subsections (4) to (10) of this section create a power for the Secretary of State (or, as the case may be, Scottish Ministers) to make supplementary, incidental or consequential provision by order. The order making power is subject to the affirmative resolution procedure where it amends a public general Act or devolved legislation, otherwise the negative resolution procedure applies.

***Section 18: Extent***

74. This section provides that the Act extends to the whole of the UK and that any amendments or repeals of a provision of an enactment have the same extent as that provision. However the amendment of and repeals in the Armed Forces Act 2006 do not extend to the Channel Islands and the amendments of the International Criminal Court Act 2001 and the repeal in the Civil Aviation Act 1982 do not extend to the Channel Islands, Isle of Man or the British overseas territories

***Section 19: Commencement and transitional provision etc.***

75. This section provides for commencement. Details are in paragraph 107 below. A commencement order made under this section may appoint different days for different purposes and may contain transitory, transitional or saving provisions. The section also contains express saving provisions so that any offence committed or partly committed before the operative provisions of the Act come into force must be dealt with under the old law.

***Section 20: Short title***

76. This section deals with citation.

***Schedule 1***

77. This Schedule contains consequential amendments to other legislation. These are as follows.

**Ministry of Defence Police Act 1987**

78. Section 2 of that Act gives the Ministry of Defence Police the same powers as normal police, in relation to services property or personnel, including with regard to offences involving the bribery of such persons. That Act is amended to refer to offences under this Act rather than those under the Prevention of Corruption Acts 1889 to 1916.

**Criminal Justice Act 1987**

79. Section 2A of that Act gives the Director of the Serious Fraud Office power to investigate corruption offences. The amendment replaces the references to the Prevention of Corruption Acts with references to offences under this Act. The offences in question are the bribery of foreign officials (section 6), and the general bribery offence (sections 1 and 2) where the functions in question are performed outside or unconnected with the UK.

**International Criminal Court Act 2001**

80. Sections 54 and 61 of that Act set out the relevant domestic offences in relation to the International Criminal Court in the law of England and Wales, and Northern Ireland respectively. The amendments make clear that offences under this Act are also relevant domestic offences.

**International Criminal Court (Scotland) Act 2001**

81. Section 4 of that Act sets out the relevant domestic offences under Scots law in relation to the International Criminal Court. The amendment updates the references to the Prevention of Corruption Act 1906 and to the common law by substituting a reference to the offences under the Act.

**Serious Organised Crime and Police Act 2005**

82. Chapter 1 of Part 2 of that Act gives investigatory powers to the Director of Public Prosecutions and other prosecuting authorities in relation to offences listed in section 61. This list was amended by [SI 2006/1629](#) to include common law bribery and offences under the Prevention of Corruption Acts. These offences are now replaced by the offences under this Act.
83. A similar amendment applies to section 76 (and section 77 in respect of Scotland), which gives the court power to make a financial reporting order in dealing with a person convicted of (among other offences) corruption offences.

## **Armed Forces Act 2006**

84. Schedule 2 of that Act lists serious civilian offences the possible commission of which, if suspected, must be referred to a service police force. The list of civilian offences is amended to include the offences under this Act.

## **Serious Crime Act 2007**

85. Section 53 of that Act requires the Attorney General's consent prior to commencing proceedings where there is an international element to an offence of encouraging or assisting crime under the 2007 Act. This amendment ensures that the requirement for the Attorney General's consent will not apply in the case of encouraging or assisting bribery by excluding from section 53 any offence to which section 10 (consent to prosecution) of this Act applies.
86. The Serious Crime Act also creates a power to make a "serious crime prevention order" in relation to offences listed in Schedule 1 of the Act. Part 1 of that Schedule, relating to offences in England and Wales, includes offences under the Prevention of Corruption Acts. Those offences are replaced with offences under sections 1, 2 and 6 of this Act. A corresponding amendment is made in Part 2 of the same Schedule in relation to Northern Ireland.

## **Schedule 2**

87. This Schedule contains repeals and revocations.
88. The three Prevention of Corruption Acts are repealed in their entirety. These offences are wholly replaced by the offences under this Act.
89. [Criminal Justice Act \(Northern Ireland\) 1945 \(c. 15 \(N.I.\)\)](#) – section 22 amended section 4 of the Public Bodies Corrupt Practices Act 1889 and section 2(1) of the Prevention of Corruption Act 1906 to provide for proceedings to be taken in Northern Ireland only with the consent of the Attorney General for Northern Ireland. Given the 1889 and 1906 Acts will be repealed the section will become redundant.
90. [Electoral Law Act \(Northern Ireland\) 1962 \(c.14 \(N.I.\)\)](#) – section 112(3) amended paragraphs (c) and (d) of section 2 of the 1889 Act and will be redundant following the repeal of the 1889 Act.
91. [Increase of Fines Act \(Northern Ireland\) 1967 \(c. 29 \(N.I.\)\)](#) – section 1(8)(a) and (b) provide that a court may impose a fine whether greater or less than the amount limited by section 2 of the Public Bodies Corrupt Practices Act 1889 or section 1(1) of the Prevention of Corruption Act 1906 respectively. These references will become redundant once those two Acts are repealed.
92. [Criminal Justice \(Miscellaneous Provisions\) Act \(Northern Ireland\) 1968 \(c. 28 \(N.I.\)\)](#) – the entry in the table in Schedule 2 relating to the Prevention of Corruption Act 1906 increased the penalty in Northern Ireland for the offence under section 1(1) of the 1906 Act from 4 months imprisonment to 6 months imprisonment. That entry will become redundant upon repeal of the 1906 Act.
93. [Local Government Act \(Northern Ireland\) 1972 \(c.9 \(N.I.\)\)](#) – paragraph 1 of Schedule 8 amended the 1889 Act and will be redundant following the repeal of the 1889 Act.
94. [Civil Aviation Act 1982 \(c. 16\)](#) – section 19(1) designates the Civil Aviation Authority as a public authority for the purposes of the Prevention of Corruption Acts 1889-1916 and will be redundant once they are repealed.
95. [Representation of the People Act 1983 \(c. 2\)](#) – section 165(1) makes certain provision where a candidate at a Parliamentary or local election engages as agent or canvasser an individual who has been convicted and disenfranchised, including under the Public

- Bodies Corrupt Practices Act 1889. That entry becomes redundant upon repeal of the 1889 Act.
96. [Housing Associations Act 1985 \(c. 69\)](#) – paragraph 1(2) of Schedule 6 provides that the Housing Corporation is a public body for the purposes of the Prevention of Corruption Acts 1889 to 1916. That paragraph becomes redundant upon repeal of those Acts.
  97. [Criminal Justice Act 1988 \(c. 33\)](#) – section 47 inserts provisions about penalties into the three Prevention of Corruption Acts, and becomes redundant upon repeal of those Acts.
  98. [Criminal Justice \(Evidence etc.\) \(Northern Ireland\) Order 1988 \(S.I. 1988/1847 \(N.I.17\)\)](#) – article 14(1) amended paragraph (a) of section 2 of the 1889 Act and will be redundant following the repeal of the 1889 Act.
  99. [Enterprise and New Towns \(Scotland\) Act 1990 \(c. 35\)](#) – paragraph 2 of Schedule 1 provides that Scottish Enterprise and Highlands and Islands Enterprise are public bodies for the purposes of the Prevention of Corruption Acts 1889 to 1916. That paragraph becomes redundant upon repeal of those Acts.
  100. [Scotland Act 1998 \(c. 46\)](#) – section 43 provides that the Scottish Parliament shall be a public body for the purposes of the Prevention of Corruption Acts 1889 to 1916. This section will be redundant once those Acts are repealed.
  101. [Anti-terrorism, Crime and Security Act 2001 \(c. 24\)](#) – sections 108 to 110, which extend the geographical scope of the offences under the Prevention of Corruption Acts 1889 to 1916, will be redundant once those Acts are repealed.
  102. [Criminal Justice \(Scotland\) Act 2003 \(asp7\)](#) – sections 68 and 69, which extend the geographical scope of the offences under the Prevention of Corruption Acts 1889 to 1916, will be redundant once those Acts are repealed.
  103. [Government of Wales Act 2006 \(c.32\)](#) – section 44 provides that the Welsh Assembly and the Assembly Commission shall be public bodies for the purposes of the Prevention of Corruption Acts 1889 to 1916. This section will be redundant once those Acts are repealed.
  104. [Armed Forces Act 2006 \(c. 52\)](#) – those paragraphs in the list in Schedule 2 which refer to offences under the Prevention of Corruption Acts are repealed. This repeal is a corollary of the amendment to that list in Schedule 1 to this Act.
  105. [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#) – section 217(1)(a) gives the Secretary of State power to define an “entity under the control of a local authority” and an “entity jointly controlled by bodies that include a local authority” for the purposes of section 4(2) of the Prevention of Corruption Act 1916. Section 217(1)(a) becomes redundant upon the repeal of the 1916 Act. Paragraph 1 of Schedule 14 to the 2007 Act, which contains amendments to the 1916 Act and section 244(4) which makes provision as to the extent of a repeal contained in that paragraph, are also repealed.
  106. [Housing and Regeneration Act 2008 \(c.17\)](#) – paragraph 16 of Schedule 1 provides that the Home and Communities Agency is a public body for the purposes of the Prevention of Corruption Acts 1889 to 1916. This section will be redundant once those Acts are repealed.

## **COMMENCEMENT**

107. Sections 16, 17(4) to (10), 18, 19(1) to (4) and 20 of the Act came into force on Royal Assent. The remainder of the Act will be brought into force by one or more commencement orders.

## HANSARD REFERENCES

108. The following table sets out the dates and Hansard references for each stage of the Bribery Bill's passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard Reference</i>
<b>House of Lords</b>		
Introduction	19 November 2009	Vol 715 Col 27
Second Reading	9 December 2009	Vol 715 Col 1085-1126
Committee	7 January 2010	Vol 716 GC21-GC72
	13 January 2010	Vol 716 GC83 – GC118
Report	2 February 2010	Vol 717 Col 117-187
Third Reading	8 February 2010	Vol 717 Col 481-502
<b>House of Commons</b>		
First Reading	9 February 2010	No debate
Second Reading	3 March 2010	Vol 506 Col 945-983
Committee	16 March 2010	Hansard Public Bill Committee
	18 March 2010	
	23 March 2010	
Report	7 April 2010	Vol 508 Col 1005-1009
Third Reading	7 April 2010	Vol 508 Col 1009-1015
<b>Consideration of Amendments</b>		
Lords consideration of Commons amendments	8 April 2010	Vol 718 Col 1704-1713
Royal Assent	8 April 2010	Lords: Vol 718 Col 1738
		Commons: Vol 508 Col 1256