

SAFEGUARDS

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UK DRAFT ANTI-BRIBERY BILL PROGRESSES THROUGH PARLIAMENT

The UK draft Anti-Bribery bill, published on 25th March, has moved closer towards becoming legislation with the publication of the Parliamentary Joint Committee Report on the bill.

The Bill has been described by Nicola Bonnuchi, Legal Director of the OECD, as “an important improvement (which) will enhance the credibility of the UK legal framework”. It is primarily intended to bring together existing law in a better-defined framework. Among its provisions are:

- the creation of general offences of bribery and being bribed (currently addressed through other legislation) (clauses 1 and 2);
- the introduction of a new specific offence of bribing foreign public officials (clause 4);
- creates a new specific offence for companies and partnerships that fail to prevent bribery by persons performing services on their behalf (clause 5 and 6);
- includes other provisions relating to issues such as jurisdiction (clause 7), the role of the Attorney General (clause 10) and the powers of the Security Services (clauses 13 to 14);
- specific penalties including up to ten years’ imprisonment and unlimited fines.

The Joint Committee reported that it “strongly support(s) the Bill” and described it as “an important, indeed overdue step, in reforming the United Kingdom’s bribery laws, which have been a source of criticism at home and abroad for more than thirty years”. However, it has proposed some changes particularly with respect to:

- the provision of more specific “due diligence” defences to allow companies to show the steps they have taken to prevent bribery. It wants the emphasis to be placed on the “collective failure” of the company rather than shift the focus to any one responsible individual. This is likely to see

companies paying much more attention to the implementation of the policies and systems they put in place to prevent bribery;

- the “injustice” of “automatic and perpetual” debarment of companies from entering public contracts – the Committee’s view is that the current strict application of this could undermine the Serious Fraud Offices (SFO)’s attempts to encourage self-reporting of offences by companies;
- the provision of “official guidance” on the Bill and subsequent legislation to assist compliance. The Committee is concerned with the phrase “adequate procedures” for managing bribery risk and wishes to see this better defined.



Whilst the role of the Attorney General in the UK judicial process has been the subject of criticism by the OECD and others following his role in the BAe Al-Yamamah decision, the Committee agrees that this Bill is not the correct route through which to address this. It also expresses concerns regarding using this Bill to extend the Security Services' exemption from the law, stating that "we heard no persuasive evidence that the domestic intelligence agencies needed an authorisation to bribe, and we also question whether the proposals are compliant with the UK's international obligations".

The Joint Committee's report concludes that "while the draft Bill is not a cure for the many challenges contributing to corruption both within the United Kingdom and in relation to international business, we believe that it is an essential step forward. It should create an improved platform for the Government and the business community to build upon the increasing global commitment to tackle bribery. But the Government must focus on the need for rigorous enforcement, including the resources this will require. We believe it is an investment that is well worth making".



The Joint Committee, comprising members of both Chambers and representing all parties, is the first stage in gaining parliamentary approval and is described as providing pre-legislative scrutiny. Whilst its Report is not binding on government, its recommendations are likely to be addressed when the finalised Bill is put before Parliament. The main question now is when this will actually be. Although this is essentially a non-partisan issue with cross-party support, it is possible that any Bill introduced in this parliamentary session will not complete its passage through Parliament before the election due next spring. If this happens, it remains to be seen when any new government will re-introduce new legislation and what precise form that will take.

SGS will report on the progress of the Bill in future Safeguards. In addition, those interested in finding out more may wish to join a series of [free webinars](#) looking at current developments in approaches to managing anti-bribery programmes. To see the full report of the Joint Committee, please click [here](#).

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