

**REPORT FOR: GOVERNANCE, AUDIT
AND RISK MANAGEMENT
COMMITTEE**

Date of Meeting:	21 September 2011
Subject:	Bribery Act 2010
Responsible Officer:	Hugh Peart, Director of Legal and Governance Services
Exempt:	No
Enclosures:	Appendix 1- Guidance note issued by the Ministry of Justice about procedures commercial organisations can put in place to prevent bribing. Appendix 2 – Guidance note also issued by Ministry of Justice entitled The Bribery Act 2010: ‘Quick start guide’.

Section 1 – Summary

The report outlines the main provisions of the Bribery Act 2010 and the steps that officers have identified as necessary for its implementation.

FOR INFORMATION

Section 2 – Report

1. On 30 March, the Ministry of Justice announced that the Bribery Act 2010 would come into force on 1 July 2011. On the same day the Ministry also published guidance related to the Act. The Act replaces, updates and extends the existing law against corruption which dates back to 1889.
2. In April officers took a report to the Standards Committee outlining the steps that officers were taking to prepare for the Act.
3. The Act creates four new offences:

Offences of bribing another person (Section 1)

It is an offence to offer, promise or give a financial or other advantage with the intention of inducing that person to perform improperly a 'relevant function or activity' or to reward that person for doing so.

It is also an offence to offer, promise or give a financial or other advantage where the person doing so 'knows or believes' that the acceptance of the advantage would itself constitute the improper performance of a 'relevant function or activity'.

In both cases it does not matter whether the advantage is offered, promised or given directly or through a third party.

In the local authority context, if the 'relevant function or activity' is of a public nature requiring the person performing it to either act (a) in good faith, (b) impartially or (c) in a position of trust, then it will be 'improperly performed' if there is a breach of a 'relevant expectation'. This 'expectation' is an objective test of what a reasonable person in the UK would expect in relation to the function or activity.

Offences relating to being bribed (Section 2)

This offence is relevant to a number of prescribed cases but in essence it will be an offence to agree to request, receive or accept a financial or other advantage with the intention that a 'relevant function or activity' should be performed improperly and it does not matter whether the advantage is received directly or through a third party.

This will be of particular relevance to the Council.

Bribery of a foreign official (Section 6)

This offence is applicable in situations where the intention of influencing a public official is in his/her foreign capacity.

It is unlikely this offence will be relevant to the Council.

Failure of commercial organisation to prevent bribery (Section 7)

The Act creates a new offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf. For the purposes of the Act a relevant commercial organisation means a body corporate or partnership which carries on a business or part of a business. Business is defined as a trade or profession. It is a defence if the organisation has adequate procedures in place to prevent bribery (Section 9).

In general, a public body would not be a commercial organisation for the purposes of the Act, however the Council may have subsidiaries which would come under the scope of the Act or it may carry out activities which are akin to running a private business. In any event it is prudent for the Council to review its policies and procedures in light of the Act to ensure that they are adequate in relation to those offences that could affect the Council, and to minimise risk.

The Act means that if the bribery offence is committed with the consent/connivance of a senior officer of the local authority, then that person is also personally guilty of an offence. This will potentially catch all those working at manager level and upwards. Penalties under the Act include fines and/or imprisonment for up to ten years (for the more serious offences).

Guidance

4. On 30 March, the Ministry of Justice published the final version of guidance about anti-bribery procedures in respect of the offence under Section 7.
5. The guidance explains the policy behind Section 7 and sets out six principles that are intended to help commercial organisations of all sizes and sectors understand what sorts of procedures they can put in place to prevent bribery. The guidance also offers case study examples that help illustrate the application of the Act.
6. Separately, the Ministry of Justice has also published a 'Quick start guide' to the Act.

Risk Management Implications

7. Officers have agreed the appropriate departmental leads take responsibility for reviewing and amending relevant documents (for

example, Employees Code of Conduct, Gifts and Hospitality Protocol, Corporate Anti-Fraud Policy, Whistleblowing Policy, Financial Regulations and Contract Procedure Rules). If changes are required then the necessary steps will be taken. At the time of writing all of the policies have been reviewed except for the Financial Regulations, Contract Procedure Rules and the Corporate Anti Fraud Policy as they are part of a wider review. Officers are satisfied that these policies are adequate for current purposes but that amendments will be made as part of the wider reviews.

Corporate Priorities

8. These changes support the corporate priorities of - United and involved communities: a Council that listens and leads.

Financial Implications

9. There are no financial implications associated with this report.

Section 3 - Statutory Officer Clearance

Name: Jennifer Hydari	<input checked="" type="checkbox"/>	on behalf of the* Chief Financial Officer
Date: 15 August 2011		
Name: Matthew Adams	<input checked="" type="checkbox"/>	on behalf of the* Monitoring Officer
Date: 8 September 2011		

Section 4 - Contact Details and Background Papers

Contact: Jessica Farmer, Head of Legal Services – Legal Services, 0208 420 9889

Background Papers: None