



Isle of Man

Ellan Vannin

AT 7 of 2013

BRIBERY ACT 2013



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AN ACT to make provision about offences relating to bribery; and for connected purposes.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – INTRODUCTORY PROVISIONS

1 Short title

The short title of this Act is the Bribery Act 2013.

2 Commencement

- (1) This Act (apart from this section and section 1) comes into operation on such day or days as the Department may by order appoint and different days may be appointed for different purposes of this Act.
- (2) An order under subsection (1) may make such transitional and saving provisions as the Department considers necessary or expedient.

3 Interpretation - general

In this Act –

“**agent**” includes –

- (a) any person employed by or acting for another;
- (b) any person employed by, serving under, appointed by or acting for a public body;

“**business**” includes a trade or profession;

“**Department**” means the Department of Home Affairs;

“**foreign public official**” means an individual who —

- (a) holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the Island (or any subdivision of such a country or territory);
- (b) is an official or agent of a public international organisation; or
- (c) exercises a public function —
 - (i) for or on behalf of a country or territory outside the Island (or any subdivision of such a country or territory); or
 - (ii) for any public agency or public enterprise of that country or territory (or subdivision).

“**partnership**” means a partnership within the *Partnership Act 1909* including any person holding himself or herself out to be a partner under section 16 of that Act;

“**public body**” means any of the following —

- (a) the Crown;
- (b) Tynwald and either of its constituent branches;
- (c) a Department or Statutory Board;
- (d) a body the members, or any of the members, of which are appointed by, or whose appointment requires the approval of Tynwald;
- (e) a local authority;
- (f) any body existing in a country or territory outside the Island that is equivalent to any body specified in paragraphs (a) to (e);
- (g) any other description of public body (including bodies existing in a country or territory outside the Island);

“**public international organisation**” means an organisation whose members are any of the following —

- (a) countries or territories;
- (b) governments of countries or territories;
- (c) other public international organisations;
- (d) a mixture of any of the above.

4 Meaning of “relevant function or activity”

P2010/23/3

- (1) For this Act a function or activity is a relevant function or activity if —
 - (a) it falls within subsection (2); and
 - (b) it meets the condition set out in subsection (3).
- (2) The following functions and activities fall within this subsection —

- (a) any function of a public nature;
 - (b) any activity connected with a business;
 - (c) any activity performed in the course of a person's employment;
 - (d) any activity performed by or on behalf of a body of persons (whether incorporated or unincorporated).
- (3) The condition is that a person performing the function or activity –
- (a) is expected to perform it in good faith or impartially; or
 - (b) is in a position of trust by virtue of performing it.
- (4) A function or activity is a relevant function or activity even if it –
- (a) has no connection with the Island; and
 - (b) is performed in a country or territory outside the Island.
- (5) In this section “employment” includes work for which the person undertaking the work is not entitled to payment.

5 Meaning of “improper performance”

P2010/23/4

- (1) For this Act a relevant function or activity –
- (a) is performed improperly if it is performed in breach of a relevant expectation; and
 - (b) is to be treated as being performed improperly if there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation.
- (2) In subsection (1) “relevant expectation” means –
- (a) in relation to a function or activity that meets section 4(3) by virtue of satisfying the expectation in paragraph (a) of that subsection, that expectation; and
 - (b) in relation to a function or activity that meets section 4(3) by virtue of satisfying paragraph (b) of that subsection, any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of trust mentioned in that paragraph.
- (3) Anything that a person does arising from or in connection with the person's past performance of a relevant function or activity is to be treated for the purposes of this Act as being done by the person in the performance of that function or activity.

6 Meaning of “expectation”

P2010/23/5

- (1) For sections 4 and 5, the test of what is expected is a test of what a reasonable person in the Island would expect in relation to the performance of the type of function or activity concerned.
- (2) In deciding what such a person would expect in relation to the performance of a function or activity where the performance is not subject to the law of the Island, any local custom or practice is to be disregarded unless it is permitted or required by the written law applicable to the country or territory concerned.
- (3) In subsection (2) “written law” means law contained in –
 - (a) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned; or
 - (b) any judicial decision that is so applicable and is evidenced in published written sources.

PART 2 – BRIBERY OFFENCES

7 Offences of bribing another person

P2010/23/1

- (1) A person is guilty of an offence if the person –
 - (a) offers, promises or gives a financial or other advantage to another person; and
 - (b) intends the advantage –
 - (i) to induce a person to perform improperly a relevant function or activity; or
 - (ii) to reward a person for the improper performance of such a function or activity.
- (2) A person is guilty of an offence if the person –
 - (a) offers, promises or gives a financial or other advantage to another person; and
 - (b) knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.
- (3) For the offence in subsection (1) it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned.
- (4) For both offences it does not matter whether the advantage is offered, promised or given by the person directly or through a third party.

8 Offences relating to being bribed

P2010/23/2

- (1) A person is guilty of an offence if the person –
 - (a) requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by himself or herself or another person);
 - (b) requests, agrees to receive or accepts a financial or other advantage, and the request, agreement or acceptance itself constitutes the improper performance by the person of a relevant function or activity;
 - (c) requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by himself or herself or another person) of a relevant function or activity;
 - (d) in anticipation, or in consequence, of the person's requesting, agreeing to receive or accepting a financial or other advantage, improperly performs a relevant function or activity or requests, assents to or acquiesces in, such performance by another person.
- (2) For an offence in this section it does not matter –
 - (a) whether the person requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or through a third party;
 - (b) whether the advantage is (or is to be) for the benefit of the person or another person.
- (3) For the offences in subsection (1)(b) to (d) it does not matter whether the person knows or believes that the performance of the function or activity is improper.
- (4) For the offence in subsection (1)(d), if another person is performing the function or activity, it also does not matter whether that person knows or believes that the performance of the function or activity is improper.

9 Bribery of foreign public officials

P2010/23/6

- (1) A person ("P") who bribes a foreign public official ("F") is guilty of an offence if P's intention is to influence F in F's capacity as a foreign public official.
- (2) P must also intend to obtain or retain –
 - (a) business; or
 - (b) an advantage in the conduct of business.
- (3) P bribes F if, and only if –

- (a) directly or through a third party, P offers, promises or gives any financial or other advantage —
 - (i) to F; or
 - (ii) to another person at F's request or with F's assent or acquiescence; and
 - (b) F is neither permitted nor required by the written law applicable to F to be influenced in F's capacity as a foreign public official by the offer, promise or gift.
- (4) References in this section to influencing F in F's capacity as a foreign public official mean influencing F in the performance of F's functions as such an official, which includes —
- (a) any omission to exercise those functions; and
 - (b) any use of F's position as such an official, even if not within F's authority.
- (5) For subsection (3)(b), the written law applicable to F is —
- (a) where the performance of the functions of F which P intends to influence would be subject to the law of the Island, that law;
 - (b) where paragraph (a) does not apply and F is an official or agent of a public international organisation, the applicable written rules of that organisation;
 - (c) where paragraphs (a) and (b) do not apply, the law of the country or territory in relation to which F is a foreign public official so far as that law is contained in —
 - (i) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned; or
 - (ii) any judicial decision which is so applicable and is evidenced in published written sources.

10 Failure of commercial organisations to prevent bribery

P2010/23/7

- (1) A relevant commercial organisation ("C") is guilty of an offence under this section if a person ("A") associated with C bribes another person intending —
 - (a) to obtain or retain business for C; or
 - (b) to obtain or retain an advantage in the conduct of business for C.
- (2) But it is a defence for C to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.

- (3) For the purposes of this section, A bribes another person if, and only if, A is, or would be, guilty of an offence under section 7 or 9 (whether or not A has been prosecuted for such an offence).
- (4) In this section —
“partnership” includes a firm or entity of a similar character to a partnership that is formed under the law of a country or territory outside the Island;
“relevant commercial organisation” means —
 - (a) a body incorporated under the law of the Island that carries on a business (whether there or elsewhere);
 - (b) any other body corporate (wherever incorporated) that carries on a business, or part of a business, in the Island;
 - (c) a partnership formed under the law of the Island that carries on a business (whether there or elsewhere); or
 - (d) any other partnership (wherever formed) that carries on a business, or part of a business, in the Island.

11 Meaning of “associated” person

P/2010/23/8

- (1) For the purposes of section 10, a person (“A”) is associated with C if (disregarding any bribe under consideration) A is a person who performs services for or on behalf of C.
- (2) The capacity in which A performs services for or on behalf of C does not matter.
- (3) Accordingly A may (for example) be C’s employee, agent or subsidiary.
- (4) Whether or not A is a person who performs services for or on behalf of C is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between A and C.
- (5) But if A is an employee of C, it is to be presumed unless the contrary is shown that A is a person who performs services for or on behalf of C.

12 Guidance about commercial organisations preventing bribery

P2010/23/9

- (1) The Department must publish guidance about procedures that relevant commercial organisations can put in place to prevent persons associated with them from bribing as mentioned in section 10(1).
- (2) The Department may, from time to time, publish revisions to guidance under this section or revised guidance.
- (3) Publication under this section is to be in such manner as the Department considers appropriate.

- (4) Expressions used in this section have the same meaning as in section 10.

PART 3 – REPORTING BRIBERY

13 Duty of certain public officials to report bribery

2008/10/5

- (1) A person exercising a function on behalf of a public body who is offered or receives an advantage in circumstances which may constitute an offence under this Act must disclose as soon as reasonably practicable and in the prescribed manner –
- (a) the existence and nature of the advantage, or the offer of it; and
 - (b) the name, if known, of the person by whom it was given or procured or offered or who agreed to give or procure it.
- (2) A person exercising a function on behalf of a public body who knows or reasonably suspects, or ought reasonably to have known or reasonably to have suspected, that a person has committed, is committing or is about to commit an offence under this Act must disclose, as soon as reasonably practicable and in the prescribed manner, that knowledge or suspicion, and the information on which it is based, or cause such knowledge or suspicion to be so disclosed.
- (3) For subsections (1) and (2) –
- (a) a “person exercising a function on behalf of a public body” excludes a foreign public official;
 - (b) the “prescribed manner” means –
 - (i) to a constable; or
 - (ii) where the employer of the person exercising the function on behalf of a public body has established a procedure for that person to make disclosures of the kind mentioned in subsections (1) or (2), in accordance with that procedure, and to a constable.
- (4) Any provision of an agreement between a worker and the worker’s employer (whether or not a worker’s contract), including an agreement to refrain from instituting or continuing any proceedings under the *Employment Act 2006* or any proceedings for breach of contract is void in so far as it purports to preclude any worker from a protected disclosure.
- (5) For subsection (4) –
- (a) the expression “protected disclosure” has the same meaning as in section 49 of the *Employment Act 2006*; and
 - (b) the expressions “worker”, “employer” and “worker’s contract” have the same meaning as in section 58 of that Act.

14 Failure to report bribery

2008/10/6

- (1) A person who fails to comply with section 13 commits an offence.
- (2) It is a defence for a person charged with an offence under subsection (1) to prove that the person reasonably believed that if the required disclosure had been made, serious physical harm would be done to that person, to another person or to the property of either such person.

15 Interfering with duty to report bribery

2008/10/7

A person who intentionally takes action harmful to any person, including interference with a person's lawful employment or occupation, on the ground that a person has made or may make a disclosure in accordance with section 13 commits an offence.

PART 4 - PENALTIES AND OTHER PROVISIONS ABOUT OFFENCES

16 Consent to prosecution

A prosecution for an offence under this Act may be brought only by, or with the consent of, the Attorney General.

17 Penalties

P2010/23/11

- (1) A person guilty of an offence under section 7, 8 or 9 is liable —
 - (a) on summary conviction, to custody for a term not exceeding 12 months, or to a fine not exceeding £10,000, or to both;
 - (b) on conviction on information, to custody for a term not exceeding 10 years, or to a fine, or to both.
- (2) A person guilty of an offence under section 10 is liable on conviction on information to a fine.
- (3) A person guilty of an offence under section 14 or 15 is liable —
 - (a) on summary conviction, to custody for a term not exceeding 6 months or a fine not exceeding £5,000 or to both;
 - (b) on conviction on information, to custody for a term not exceeding 2 years, or to a fine, or to both.

18 Offences committed outside the Island

2008/10/8

- (1) This section applies if –

- (a) a resident of the Island does anything in a country or territory outside the Island; and
 - (b) the act would, if it took place in the Island, constitute an offence under this Act (other than an offence under section 10 (failure of commercial organisations to prevent bribery)).
- (2) In such a case –
- (a) the act constitutes the offence concerned;
 - (b) proceedings for the offence may be taken in the Island;
 - (c) the offence may be treated for incidental purposes as having been committed in the Island.
- (3) An offence is committed under section 10 irrespective of whether the acts which form part of the offence take place in the Island or elsewhere.
- (4) In this section –
- (a) a reference to an offence includes –
 - (i) an attempt, conspiracy or incitement to commit an offence;
 - (ii) aiding, abetting, counselling or procuring the commission of an offence;
 - (b) a resident of the Island means –
 - (i) an individual who is ordinarily resident in the Island; or
 - (ii) a body corporate or partnership that is incorporated or formed under the laws of the Island.

19 Defence for certain bribery offences etc

P2010/23/13

- (1) It is a defence for a person charged with a relevant bribery offence to prove that the person's conduct was necessary for –
- (a) the proper exercise of any function of an intelligence service; or
 - (b) the proper exercise of any function of the armed forces when engaged on active service.
- (2) For this section, the circumstances in which a person's conduct is necessary for a purpose falling within subsection (1)(a) or (b) are to be treated as including any circumstances in which the person's conduct –
- (a) would otherwise be an offence under section 8 (offence of being bribed); and
 - (b) involves conduct by another person which, but for subsection (1)(a) or (b), would be an offence under section 7 (bribing another person).
- (3) In this section –
- “active service” means service in –

- (a) an action or operation against an enemy;
- (b) an operation outside the British Islands for the protection of life or property; or
- (c) the military occupation of a foreign country or territory;

“armed forces” means Her Majesty’s forces (within the meaning of the Armed Forces Act 2006 (of Parliament));

“GCHQ” has the meaning given by section 3(3) of the Intelligence Services Act 1994 (of Parliament);

“intelligence service” means the Security Service, the Secret Intelligence Service or GCHQ;

“relevant bribery offence” means—

- (a) an offence under section 7 that would not also be an offence under section 9;
- (b) an offence under section 8;
- (c) an offence committed by aiding, abetting, counselling or procuring the commission of an offence falling within paragraph (a) or (b); or
- (d) an offence of attempting or conspiring to commit, or of inciting the commission of, an offence falling within paragraph (a) or (b).

20 Offences by bodies corporate

P2010/23/14

- (1) If an offence (other than an offence under section 10) committed by a body corporate is shown –
 - (a) to have been committed with the consent or connivance of an officer of the body corporate; or
 - (b) to be attributable to any neglect on the part of any such officer, the officer as well as the body corporate commits the offence and is liable to the penalty provided for the offence.
- (2) In this section, “officer”, of the body corporate, means any or all of the following of or for the body corporate –
 - (a) a director, manager or secretary or other similar officer;
 - (b) anyone purporting to act as its director, manager or secretary;
 - (c) if its affairs are being managed by its members, a member; and
 - (d) if it has a registered agent under the legislation under which it is incorporated, the registered agent or anyone purporting to act as its registered agent.

21 Offences under section 10 by partnerships

P2010/23/15

- (1) Proceedings for an offence under section 10 (failure of commercial organisations to prevent bribery) alleged to have been committed by a partnership must be brought in the name of the partnership (and not in that of its partners).
- (2) In proceedings for such an offence brought against a partnership –
 - (a) section 10 of the *Criminal Jurisdiction Act 1993* (plea by corporation); and
 - (b) section 32 of the *Summary Jurisdiction Act 1989* (corporations),
apply as they do in relation to a body corporate.
- (3) Rules of court relating to the service of documents have effect in relation to proceedings for an offence under this Part as if the partnership were a body corporate.
- (4) A fine imposed on the partnership on its conviction of such an offence is to be paid out of the assets of the partnership.

22 Limitation of time

Proceedings for an offence under this Act must be instituted within 21 years of the alleged commission of the offence.

PART 5 – SUPPLEMENTARY AND FINAL PROVISIONS

23 Application to the Crown

P2010/23/16

This Act applies to individuals in the public service of the Crown as it applies to other individuals.

24 Transitional provision

P2010/23/19(5)-(7)

- (1) This Act does not affect any liability, investigation, legal proceeding or penalty for or in respect of an offence under the *Corruption Act 2008* committed wholly or partly before the coming into operation of the repeal of that Act by Schedule 2.
- (2) For the purposes of subsection (1) an offence is partly committed before a particular time if any act or omission which forms part of the offence takes place before that time.
- (3) Subsections (1) and (2) do not limit section 15 of the *Interpretation Act 1976* (effect of repeal, etc).

25 Consequential provision

P2010/23/17(2)-(6)

- (1) Schedule 1 (which contains consequential amendments) has effect.
- (2) Schedule 2 (which contains repeals) has effect.
- (3) The Department may by order make such supplementary, incidental, transitional or consequential provision as it considers appropriate for the purposes of this Act or in consequence of this Act, and such power shall include the amendment of any enactment.
- (4) An order under this section shall not have effect unless it is approved by Tynwald.

26 Expiry Provision

- (1) This section, section 25(1) and (2) and Schedules 1 and 2 expire —
 - (a) if they are all in operation on the day of this Act's promulgation, on the day after its promulgation; or
 - (b) otherwise, on the day after the last of those provisions is brought into operation.
- (2) The expiry does not —
 - (a) revive any Act amended as the Act operated before the amendment commenced;
 - (b) revive anything not in operation or existing when the amendment took effect; or
 - (c) affect the continuing operation of the amendment.

t

SCHEDULE 1

[Section 25(1)]

CONSEQUENTIAL AMENDMENTS

1 Income Tax Act 1970

In Section 106(5)(f) of the *Income Tax Act 1970* for “section 5 of the Corruption Act 2008” substitute **the** section 13 of the *Bribery Act 2013* **and**.

2 Limitation Act 1984

- (1) The *Limitation Act 1984* is amended as follows.
- (2) In section 21(1)(a) for “fraud, fraudulent breach of trust or corrupt conduct” substitute **the** fraud or fraudulent breach of trust **and**.
- (3) In section 30 –
 - (a) delete subsection (1)(aa);
 - (b) in the marginal note and wherever occurring in subsections (1), (3) and (4), delete “corrupt conduct”.
- (4) In section 36(1) delete the definition of “corrupt conduct”.

3 Criminal Justice Act 1990

In section 24(1)(a) and (15)(a) of the *Criminal Justice Act 1990* for “serious or complex corruption” substitute **the** a serious or complex offence under the *Bribery Act 2013* **and**.

4 Police Act 1993

In paragraph 5(1)(b)(i) of Schedule 1 to the *Police Act 1993* for “Corruption Act 2008” substitute **the** *Bribery Act 2013* **and**.

5 Criminal Justice Act 2001

In paragraph 4(1)(a) of Schedule 4 to the *Criminal Justice Act 2001* for “Corruption Act 2008” substitute **the** *Bribery Act 2013* **and**.

6 Employment Act 2006

In section 49 of the *Employment Act 2006* for “section 5(1) or 5(2) of the Corruption Act 2008” substitute **the** section 13(1) and (2) of the *Bribery Act 2013* **and**.

7 Proceeds of Crime Act 2008

In Paragraph 10 of Schedule 3 to the *Proceeds of Crime Act 2008* for “Corruption Act 2008” substitute **Part 2** of the *Bribery Act 2013*.

SCHEDULE 2

[Section 25(2)]

REPEALS

<i>Short Title</i>	<i>Extent of repeal</i>
Criminal Code 1872	Section 323
Income Tax Act 1970	Section 105B
Customs and Excise Management Act 1986	Section 9
Criminal Justice Act 1990	Section 24(19)
Anti-Terrorism and Crime Act 2003	Heading to Part XI
Corruption Act 2008	The whole Act

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