

Additional memorandum submitted by Ministry of Justice (BB 42)

Summary of changes from Draft Corruption Bill 2003 to Draft Bribery Bill 2009

Provision	Draft Bribery Bill 2009	Law Commission Draft Bribery Bill 2008	Draft Corruption Bill 2003	Comment on change(s)
Offences of bribing another person	Clause 1 makes it an offence for P to offer, promise or give an advantage to another in one of two cases. Case 1 applies where P intends the advantage either: to induce a person to perform improperly a function or activity; or to reward a person for such improper performance. Case 2 applies where P knows or believes that the acceptance of the advantage in itself constitutes the improper performance of a function or activity.	Clause 2 is substantially the same [the 2009 Draft Bill changes the order of offences to place the 'active' offence first].	Clause 1 made it an offence to corruptly confer, offer or agree to confer an advantage. Clauses 4-7 further defined this offence, based on the agent-principal model under existing bribery law. Clause 11 defined the meaning of agent and principal.	The current 2009 Bill and the Law Commission Bill are based on an improper conduct model, instead of the agent/principal model of the 2003 Bill.
Offences relating to being bribed	Clause 2 makes it an offence to request, agree to receive or accept an advantage in any of four cases relating to the improper performance of a function or activity.	Clause 1 is almost identical. Cl 2(7)-(8) of the 2009 Draft Bill makes explicit the LC's intention relating to the mental element.	Clause 2 made it an offence to corruptly obtain, solicit, or agree to obtain an advantage, further defined in clauses 8-9. Clause 3 made it an offence to perform functions as an agent corruptly, further defined in clause 10.	
Function or activity to which bribery relates	Clause 3 defines the types of function or activity that can be improperly performed for the purposes of cls 1-2. It makes clear that the expectations of	Clause 3 is almost identical. It does not refer to the expectations of a reasonable person.	No such provision [see above for references to clauses defining and limiting the offence].	

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	how a person performs are those of a reasonable person.			
Bribery of foreign public officials	<p>Clause 4 creates a separate offence where P offers, promises or gives an advantage to F (or to another with F's acquiescence) that is not legitimately due, with the intention to influence F in F's capacity as an FPO; P must also intend to obtain or retain (an advantage in the conduct of) business.</p> <p>No specific defence.</p>	<p>Clause 4 is almost identical.</p> <p>Clause 5 creates a specific defence to the FPO offence where P reasonably believed that his actions were required or permitted under the law applicable to F.</p>	No separate offence.	Ensures international obligations are met, covering advantages given to third parties.
Failure of commercial organisations to prevent bribery	<p>Clause 5 creates an offence where a relevant commercial organisation (C) is negligent in failing to prevent bribery being committed in connection with C's business. The definition of C includes all corporations and partnerships carrying on (part of) a business in England, Wales or N Ireland, wherever incorporated or formed.</p> <p>Clause 6 contains supplementary provisions.</p>	<p>Clause 7 is substantially the same as the 2009 Bill, although it refers only to companies or limited liability partnerships whose registered office is situated in England or Wales.</p> <p>It also includes supplementary provisions which are found in the separate Clause 6 of the 2009 Draft Bill.</p>	No corporate offence of failure to prevent bribery.	
Territorial application	<p>Clause 7 provides that an offence is committed under cl 1, 2 or 4 if any act or omission which forms part of the offence takes place in E & W or NI, or is performed by a person with a close connection to the UK (as defined). It makes clear that under cl 5 it does</p>	<p>Clause 6 is substantially the same as cl 7 of the 2009 draft Bill.</p> <p>This clause does not refer to the corporate failure offence but note cl 7(5), which states that it</p>	<p>Clause 13 would have had largely the same effect as cl 7 of the 2009 Draft Bill.</p> <p>There was no corporate failure offence in the 2003 Bill.</p>	

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	not matter where the acts or omissions take place.	does not matter where the acts or omissions take place.		
Offences by bodies corporate	Clause 8 provides that, where a body corporate is guilty of an offence under clause 1,2 or 4, a senior manager of the body is guilty of the same offence if he or she has consented or connived at the commission of the offence.	Clause 8 is almost identical.	No such provision.	
Offences under section 5 by partnerships	Clause 9 covers proceedings for an offence under section 5 alleged to have been committed by a partnership.	There is no such provision in the LC Bill as partnerships are not liable for the equivalent offence [cl 7].	No such provision.	
Consent to prosecution	Clause 10 provides that a prosecution in E & W can only be brought with the consent of the DPP, the Director of the Serious Fraud Office or the Director of Revenue and Customs Prosecutions. In NI it can only be brought with the consent of the DPP for NI or the Director of the SFO.	Clause 9 is substantially the same as the 2009 draft Bill insofar as it relates to England and Wales. It does not refer to NI.	Clause 17 provided that the Attorney General must consent to a prosecution under the 2003 Bill.	
Penalties	Clause 11 sets out a maximum penalty of 10 years imprisonment and/or an unlimited fine, specifying that the corporate failure offence is triable on indictment only.	Clause 10 is substantially the same, but does not exclude summary conviction for the corporate failure offence.	Clause 18 provided for a maximum penalty of 7 years imprisonment and/or an unlimited fine.	
Crown application	Clause 12 makes clear that the Act applies to individuals in the public service of the Crown as it applies to other individuals.	The LC Bill makes no provision regarding application to the Crown.	Clause 32 made similar provision. It also allowed the High Court to declare acts or omissions of the Crown unlawful under the Bill, whilst	

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			excluding criminal liability.	
Authorisations for intelligence services	<p>Clause 13 provides that acts or omissions carried out by persons on behalf of the intelligence services do not constitute an offence under the Bill if they are authorised by the Secretary of State. The scheme excludes an offence of bribery of a FPO for a business purpose under Clause 4 and an authorisation may not relate to a cl 1 offence which would also amount to an offence under cl 4.</p> <p>Clause 14 covers time limits and renewal of authorisations.</p>	The LC Bill makes no reference to authorisations.	<p>Clause 15 was substantially the same as cl 13 of the 2009 Draft Bill, but did not exclude bribery of foreign public officials for a business purpose.</p> <p>Clause 16 is almost identical to cl 14 of the current Draft Bill.</p>	The exclusion of cl 4 offences addresses concerns raised by the JC on the 2003 Bill relating to compliance with the UK international obligations including the OECD Convention.
Proceedings in Parliament	Clause 15 makes the words or conduct of an MP or Peer admissible in proceedings for an offence under the Bill where the MP is a defendant or co-defendant notwithstanding any enactment or rule of law which would prevent those words or conduct from being admissible.	The LC Bill makes no reference to proceedings in Parliament.	Clause 12 was drawn more widely, lifting Parliamentary privilege in its entirety in relation to proceedings for a corruption offence.	Change implemented following recommendation of the JC on the 2003 Bill.
Consequential provision	Clause 16 abolishes the common law offences of bribery and embracery, and refers to the two Schedules, which contain consequential amendments and repeals. It also creates a power for the Secretary of State to make supplementary,	Clause 11 is the same except that it does not refer to powers of the Secretary of State.	<p>Clause 19 abolishes the common law offence of bribery and other statutory provisions.</p> <p>There is no reference to embracery or to a power of</p>	

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	incidental or consequential provision by order.		the Secretary of State.	
Other provisions	The 2009 Draft Bill makes no reference to civil law.	The LC Bill makes no reference to civil law.	Clauses 22-28 refer to limitation periods and actions in respect of trust property under civil law.	

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