

Business as usual

with caution

Most UK businesses are unaware of the new Bribery Act despite the view that this is considered one of the most significant pieces of business legislation of the last decade. The FT recently commented that “The new UK bribery bill brought into law in April is considered to have set a new benchmark for toughness. It has made the chance of an inspector knocking at the door of UK companies more likely than any other piece of regulation because it casts its net so wide.”

The main provisions of the Act are scheduled to come into force this Summer with a new strict liability corporate offence due to follow in October. Described as the most wide ranging piece of anti-corruption legislation ever to be put in place, it will affect every business and Public Sector organisation in the UK.

Recent headlines have seen British Aerospace, Mabey and Johnson and most recently Macmillan Publishing, all being faced with significant financial orders,

As part of the “wash up” before the recent election a little known, but very important, new bill achieved Royal Assent on April 8, – the Bribery Act 2010, comments **Stuart Melhuish**

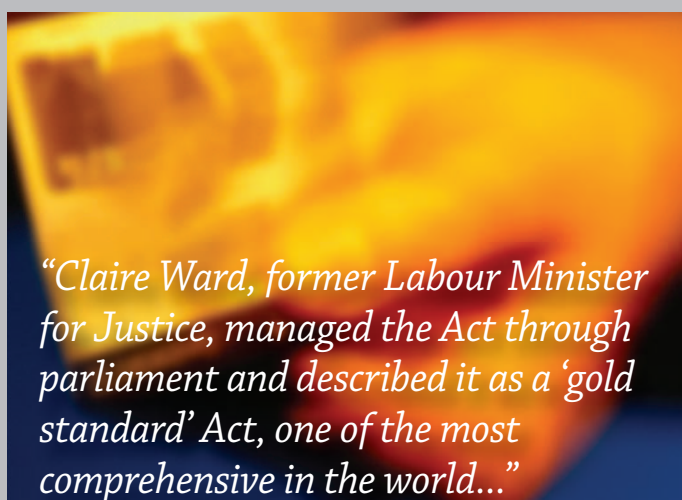
penalties and bans witnessing firsthand the hardening of government and law enforcement attitudes toward corruption in UK companies. But this isn't just about big business; all businesses and public organisations in the UK will have to think differently and act with caution in a number of areas:

- Do you receive gifts from suppliers or give them to customers? If so you will need to understand when a gift becomes an inducement.
- Do you engage sub contractors, and do they sub contract to others on your behalf? If so you will need to understand the implications of the act

and your responsibilities and liabilities for the unethical actions of others.

- Do you engage third parties, agents and consultants and how are they contracted? You may need to review your procedures to take account of the vicarious liability placed on your organisation when they are acting on your behalf.
- Do your employees fully understand what they can and can't do under the new legislative regime? If not, your organisation and even individual directors can be criminally responsible.
- Is your business involved in International Trade? You need to be aware of the specific offence concerning the bribery of a foreign official, and if you are represented by agents overseas or you have subsidiaries overseas you will need to ensure your procedures are compliant with the new UK standards.

To watch The Bribery Act video, please go to:
www.ukbusiness-today.co.uk



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Claire Ward, the former Labour Minister for Justice, who managed the Act through parliament has described it as a ‘gold standard’ Act, one of the most comprehensive in the world, leading the way for more ethical business. She, and the ‘cross party’ team, who passed the bill through both houses see the Act as setting a standard for UK PLC to lead the way in ethical business.

Put simply the situation for all businesses has changed and it can't be business as usual. No longer can you plead ignorance “I didn't know it was happening they did that on their own behalf” or “They did that without my authority”. If you are a Director of a



Stuart Melhuish is a director of Venalitas. www.venalitas.co.uk Venalitas is working in partnership with Ten Alps Publishing to create the Bribery Centre, a new online resource centre specially designed to prepare your business to meet legislative anti-bribery requirements and mitigate the risk to your business posed by employees, agents and customers.

Bribery Act 2010:

- replaces old and fragmented legislation with a modern and consolidated bribery law, based on the recommendations of the Law Commission
- creates offences of offering, promising or giving of a bribe and requesting, agreeing to receive or accepting of a bribe either in the UK or abroad, in the public or private sectors
- creates a discrete offence of bribery of a foreign public official in order to obtain or retain business
- creates a new offence in relation to commercial organisations which fail to prevent a bribe being paid by those who perform services for or on behalf of the organisation. It will, however, be a defence if an organisation has adequate procedures in place to prevent bribery
- introduces financial penalties and up to 10 years imprisonment.

business and you don't have proper processes and procedures in place to prevent bribery taking place then the sobering thought is that you could be liable to up to a maximum sentence of ten years in prison.

So as Directors what will this mean practically for your business and what will you have to do?

This will be driven by the guidance that will be published by the government in the Autumn via the new Justice Secretary Ken Clarke MP and the Government has committed to implementing the guidance quickly. Lord Bach stated at the time of Royal Assent that "given the consensual nature of the Bill any Government would want to have the guidance published as soon as possible".

Pre election the Conservative party favoured an advisory agency to assist businesses. What finally emerges from the current coalition government is open to question but the Act is in place and

they have to take it forward. Whatever the final situation you should:

- Act now as the law will soon be enacted and enforceable.
- Undertake a risk analysis. Is your business considered to be in any of the "at risk" sectors or involved in the "at risk" activities.
- Look at your policies and procedures with regard to ethical business – are they adequate? Will they safeguard you against corporate and individual liability?
- Think about your employees – how will you train them to ensure they understand their responsibilities and how will you manage your responsibilities toward them?
- Work with your Board to create an action plan towards compliance.
- Review information from your trade association and business association to get their advice on your next steps.
- Talk to your auditors or legal advisers.

The Bribery Act is an ethical challenge in itself, we all know as business people that running our business' ethically is right from every angle, but legislators don't often run businesses so they don't easily understand the day to day pressures and challenges. The Bribery Act can be seen as another piece of red tape, or could be viewed as a responsibility for any company. On balance, the more UK PLC can be viewed positively as a professional, quality ethical partner worldwide, that must be better for reputation, for export and for growth. Export is our biggest driver out of recession and we must use this piece of legislation as a way to assist that process.

Visit www.link2portal.com/business and learn more about why the act exists and what it may mean for your business.