

# Litigation Law Alert: British Authorities Delay Implementation of UK Bribery Act

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On January 31, 2011, the British government confirmed that the U.K. Bribery Act—perhaps the most comprehensive anti-bribery statute in the world—will not go into effect on April 1, 2011 as expected. The delay is the result of an additional delay in release of the Ministry of Justice's ("MoJ") final guidance on the implementation of the Act, which was expected in late January. It is now expected that the final guidance will issue in the coming weeks, and that the Act will go into effect three months after the release of the final guidance.

The U.K. Bribery Act (available [here](#)) was passed in April 2010. Like the U.S. Foreign Corrupt Practices Act ("FCPA"), the Bribery Act criminalizes bribes paid to foreign officials. Unlike the FCPA, the Bribery Act does not permit or provide a defense for small facilitating payments (*i.e.*, payments to secure the performance of ministerial and routine government action) or hospitality expenditures (*i.e.*, expenses relating to the promotion and explanation of a product, such as travel and lodging). While the MoJ and Serious Fraud Office (the office designated for enforcement of the Act) have each indicated that insufficiently serious facilitating payments, or reasonable and proportionate hospitality expenditures, would not likely be the subject of prosecution, the Bribery Act vests total discretion in the prosecutor's office to decide whether to pursue such payments as illegal bribes.

In addition to bribery of foreign officials, the Bribery Act also covers private- and public-sector bribery, and introduces the new corporate offense of failing to prevent bribery. Under the corporate offense, a corporation that carries on any part of its business in the U.K. is criminally liable for any bribe paid anywhere in the world by any company employee, agent, or subsidiary, or any person who performs services for or on behalf of the company. The bribe itself can be wholly unconnected to any U.K. activity. The only defense to the new corporate offense is to prove that the company employed "adequate procedures" to prevent bribery.

Exactly what constitutes "adequate procedures" has been the subject of ongoing debate. The Bribery Act required the MoJ to publish guidance for companies to follow in molding compliance programs. The draft guidance (available [here](#)) was issued in November 2010, and the final guidance was expected in January 2011, in advance of the April 1, 2011 effective date of the Act. The draft guidance sets forth six general principles that make up the hallmark of "adequate procedures" under the Act: (1) risk assessment, (2) top-level commitment to anti-bribery measures, (3) due diligence regarding business partners, (4) clear, practical, and accessible policies and procedures, (5) effective implementation, and (6) monitoring and review.

On January 31, 2011, the MoJ delayed the release of its final guidance, citing the need to ensure the guidance was "practical and comprehensive for business." Despite the delay, companies that conduct any part of their business in the U.K. should continue to review current anti-bribery compliance programs to make sure they will pass muster under the Bribery Act. At this point it is unlikely the delay will result in any major changes to the legislation itself. Rather, it is likely that the delay will allow the MoJ to refine its "adequate procedures" guidance, providing a more comprehensive and practical set of factors companies can employ to ensure compliance.

For additional information on this or any related topic, please contact:

Per A. Ramfjord at (503) 294-9257 or [paramfjord@stoel.com](mailto:paramfjord@stoel.com)  
Jamie S. Kilberg at (503) 294-9274 or [jskilberg@stoel.com](mailto:jskilberg@stoel.com)