new bribery regime will ask more of businesses

Corporate failure to prevent bribery has been made an offence under UK law, putting the onus on businesses to deal with dishonesty rather than turn a blind eye.

The Bribery Act, which received royal assent last month, aims to prevent any enterprise from making payments to overseas officials to gain business – and requires companies to have 'adequate processes' to prevent such dealings.

The new law could come into effect as early as October, although announcement of an implementation date has been postponed due to the general election. Detailed guidance will have to be issued before it comes into force, and the law firm Linklaters has speculated that full implementation might be delayed until next April.

Unlike previous legislation, the Act applies to the whole of the UK, including Scotland. It also covers offences committed by UK nationals and residents worldwide. Offending businesses would face an unlimited fine, and individuals up to ten years' imprisonment.

Michael Littlechild, director of the responsible business auditing firm GoodCorporation, said: 'The good news for businesses is that if a rogue individual is caught engaging in corruption a company will be protected if adequate procedures were in place to prevent it.

'The worry comes for businesses that face prosecution but have failed to put adequate procedures in place. The new legislation will make clarity, traceability and strength of process essential if companies are to protect both their reputation and their directors from prosecution under this more robust legal regime.'

GoodCorporation says 'adequate procedures' on preventing bribery should, among other things, include:

- a code of ethics
- guidance for employees on accepting gifts and entertainment and on potential conflicts of interest
- systems to allow employees to blow the whistle on corruption to senior management
- 'robust procurement processes' under which suppliers would need to corrupt not one but many employees
- a clear message to suppliers that misconduct will be met with sanctions
- detailed policy on the use of sales intermediaries so that they do not exceed their remit.

Linklaters said initial draft guidance prepared by the Justice Ministry in March suggests companies would also have to prove they have adequate procedures by showing they have top-level people appointed to be responsible for bribery prevention, a risk assessment and management process, clear and practical policies and procedures, appropriate implementation of those procedures, due diligence of relationships with business partners, and a proper system of monitoring and review.

However, the UK-based Ethical Investment Research Service (Eiris) warned that many UK companies fall well short of these requirements. A recent Eiris survey found 56 per cent lack adequate anti-bribery policies and 78 per cent have no proper systems to tackle bribery.

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