



Bribery Bill second reading House of Commons

**TRANSPARENCY INTERNATIONAL UK URGES PARLIAMENT TO
ENACT THE GOVERNMENT'S BRIBERY BILL BEFORE THE
GENERAL ELECTION.**

SUMMARY

The second reading of the Bribery Bill will take place in the House of Commons on 3rd March.

- The Bill has received widespread support throughout its passage through the House of Lords. It is the product of lengthy and conscientious deliberation. It follows closely the 2008 recommendations of the Law Commission and the excellent report and recommendations of the all-party Joint Scrutiny Committee (JSC).
- The Bill represents the best possible consensus that can be attained among a wide range of stakeholders on a modern, effective legal framework to prosecute bribery and make the United Kingdom (UK) compliant with the 1997 OECD Anti-Bribery Convention.
- The House of Lords did not accept amendments that would have weakened those provisions of the Bill that define bribery offences and make companies liable for failure to prevent bribery (strict corporate liability). An amendment that sought to make so-called facilitation payments exempt from the bribery offence was also rejected. Calls to re-open issues that have already been the subject of extensive consultation and carefully crafted compromise would undermine consensus and are likely to prevent the Bill's passage, with undesirable consequences for UK business and the UK's international reputation.
- There appears to be only one issue that threatens to prevent the Bill's enactment before Easter. This concerns Section 13 of the Bill (Defence for certain bribery offences: legitimate purposes) and the related question of prior authorisation for the security services and military to act in ways that would otherwise constitute offences under the new law. This issue should not be allowed to derail the Bill's enactment.

TI-UK urges the swift enactment of the Bribery Bill before Easter.

BACKGROUND AND JUSTIFICATION

Transparency International UK, along with many others, has been urging for a dozen years the enactment of new, effective anti-bribery legislation. TI-UK believes the Government's Bribery Bill must now be enacted swiftly because:

- Current anti-bribery laws are ineffective and out-of-date. The laws date from 1889, 1906 and 1916. UK law enforcement needs a law that is fit for purpose in order to do its job properly.
- It will finally make the UK compliant with the OECD Anti-Bribery Convention.
- In the absence of a strong legal framework against bribery, UK businesses are more vulnerable to requests for bribes, adherence to high corporate standards is more difficult, and, according to the OECD Working Group on Bribery, they may suffer from increased due diligence costs incurred by business partners.
- The business community, extensively consulted by TI-UK and others, is strongly in favour of a new anti-bribery law. Bribery adds up to 10% to the cost of business transactions overseas. Effective anti-bribery legislation will create a level playing field for clean businesses. This is crucial if the UK is to remain competitive in the current economic climate.
- The UK's international business reputation was severely harmed by the termination of the SFO's investigation of the Al Yamamah Saudi defence deal. In the 2009 TI Corruption Perceptions Index, the UK's score remained at an all-time low of 7.7 for the second year running. In 2006 it was 8.4.
- Bribery should not be tolerated either at home or abroad. It has real victims. It disproportionately affects the poor and is a persistent threat to development and democracy.
- By putting its own house in order, the UK is in a better position to encourage good governance in countries that receive UK aid. The UK will also be able to use its influence to encourage major emerging economies to stop their own companies paying bribes.

Defence for certain bribery offences: legitimate purposes (Clause 13)

The JSC opposed a provision in the Government's original draft Bill (March 2009) that contained an express authorisation to the security services to pay bribes in connection with 'national security'. The Constitutional Law Committee also expressed strong reservations on this provision.

As introduced in the House of Lords in December 2009, the Government's Bill instead proposed (in Clause 12) a statutory defence for the security services involved in conduct that would otherwise constitute offences under the Bill. However, it expanded the scope of this exemption to include law enforcement agencies and the armed forces. In the debate in the House of Lords, critics of Clause 12 either pressed for its deletion, or for excluding the availability of such a defence other than in relation to national security. It was also proposed that the statutory defence should only be available if formally authorised by the Secretary of State.

In response, the Government has now narrowed the scope of the defence to the security services and armed forces but the issue of prior authorisation by the Secretary of State remains unresolved.

TI-UK shares the view of others that the authorisation should be required - as it is in other cases where a balance has to be struck between necessity and legality. That balance cannot be left to the individual public servant, particularly in this area where the UK's recent record has been so tarnished. However, this issue should not be allowed to derail the Bill. TI-UK cannot emphasise too strongly the necessity for the Bribery Bill to be enacted before the General Election.

The recent SFO settlement with BAES has already revealed the yawning gaps between the powers available to US and UK law enforcement authorities in relation to the prosecution of foreign bribery. The Bribery Bill would help to narrow this gap. Failure to enact it would perpetuate the handicaps faced by UK law enforcement.

The "strict liability" corporate offence (Clause 7 - Failure of commercial organisations to prevent bribery)

The Law Commission considered carefully whether to recommend a new offence applying to companies as the OECD Anti-Bribery Convention requires, or to wait until it has completed its next major review of corporate criminal liability, now underway. It concluded that such an offence was appropriate, and pitched it at a relatively uncontroversial level whereby a company could be guilty of 'negligently failing to prevent' bribe-paying. The Government's earlier draft Bribery Bill followed the Law Commission's recommendation. Before the JSC, some argued in favour of a prosecutor having to meet a higher threshold by proving "gross negligence". A wide range of experts and prosecutors considered negligence as irrelevant to the proposed defence, which should turn on whether a company had in place "adequate procedures" to prevent bribes being paid. The Government has accepted the JSC's strong recommendation that strict liability, subject to an "adequate procedures" defence, is the correct starting point, because of the difficulties prosecutors might face in having to prove negligence. If, following the Law Commission's general review of corporate criminal liability, a better solution has emerged; the law can then be changed. Meanwhile, it would be a mistake to weaken this provision of the Bill. In the deliberations of the House of Lords, an amendment was proposed that would have stripped Clause 7 of any substance. Instead of an *offence* of failing to prevent bribery, companies would merely have a positive *duty* to prevent bribery. But the 'duty' is without sanction and a failure to perform it carries no penalty. Any attempt to revive this proposal should be resisted strongly.

BACKGROUND TO THE BRIBERY BILL: EVENTS OF THE LAST DECADE

- In December 1997, the UK signed the OECD Anti-Bribery Convention, committing all parties to criminalise the payment of bribes to foreign public officials. The Government claimed that existing UK laws were compliant with the Convention; but has consistently failed each official review of compliance by the OECD peer review process.
- In 1998, the Law Commission submitted its first review on the law of corruption, recommending that existing law was out of date, confusing and required wholesale reform and replacement with a new Bill, which it annexed to its report.
- In June 2000, Jack Straw MP, as Home Secretary, promised to introduce a law to criminalise foreign bribery in order to comply with the 1997 OECD Convention.
- In November 2001, a new section was added to the Anti-Terrorism, Crime and Security Act whereby existing law on bribery was expressly extended to foreign public officials.
- The Government introduced an anti-corruption Bill in 2003. This was strongly criticised by the Joint Parliamentary Committee that scrutinized the Bill. The Government rejected the Committee's recommendations; but no further action was taken on the Bill.
- In 2005, the Home Office embarked on a further public consultation on corruption law and only published its response in 2007.
- In March 2007, following strong criticism by the OECD Working Group on Bribery, the Government asked the Law Commission to undertake a further review and make proposals for a new law.
- In 2006, a private members bill drafted by TI-UK was introduced and passed in the House of Lords. This was to demonstrate that it was possible to draft a simple but effective anti-corruption Bill.
- In October 2008, the OECD Working Group on Bribery issued a report that was strongly critical of the UK's continued failure to adopt modern anti-bribery legislation that would make it fully compliant with the OECD Convention.
- The Law Commission's proposals, including a new draft Bribery Bill, were published on 20 November 2008.
- On 25 March 2009, the Ministry of Justice published a draft Bribery Bill for joint scrutiny. A Joint Committee of Parliament took extensive evidence on the draft Bill and published its report on 28 July 2009.
- On 19 November 2009, the Government's revised Bribery Bill was introduced in the House of Lords by Lord Bach; and on 20 November 2009, the Government published its response to the Joint Committee's report.
- The Bribery Bill passed the House of Lords on 8 February 2010 and had its First Reading (no debate) in the House of Commons on 9 February 2010.

ABOUT TRANSPARENCY INTERNATIONAL UK

We define corruption as 'the abuse of entrusted power for private gain'. Corruption hurts everyone whose life, livelihood or happiness depends on the integrity of people in a position of authority.

Transparency International UK is the UK Chapter of the world's leading non-governmental anti-corruption organisation, Transparency International (TI). With more than 90 Chapters worldwide, and an international secretariat in Berlin, TI has unparalleled global understanding and influence. TI-UK:

- Raises awareness about corruption
- Advocates legal and regulatory reform at national and international levels
- Designs practical tools for institutions, individuals and companies wishing to combat corruption
- Acts as a leading centre of anti-corruption expertise in the UK.

For more information or to meet with Transparency International please contact emma.smith@transparency.org.uk or robert.barrington@transparency.org.uk or call 0207 785 6356. Website www.transparency.org.uk