

# Fraud Bill

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## CONTENTS

### *Fraud*

- 1 Fraud
- 2 Fraud by false representation
- 3 Fraud by wrongfully failing to disclose information
- 4 Fraud by abuse of position
- 5 “Gain” and “loss”

### *Obtaining services dishonestly*

- 6 Obtaining services dishonestly

### *Supplementary*

- 7 Liability of company officers for offences by company
- 8 Evidence
- 9 Abolition of conspiracy to defraud etc.
- 10 Minor and consequential amendments and repeals
- 11 Short title, commencement and extent

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Schedule 1 — Minor and consequential amendments  
Schedule 2 — Repeals

DRAFT  
OF A  
**B I L L**

TO

Replace conspiracy to defraud and certain offences under the Theft Act 1968 and the Theft Act 1978 with offences of fraud and obtaining services dishonestly; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Fraud*

**1 Fraud**

- (1) A person is guilty of fraud if he is in breach of any of the sections listed in subsection (2) (which provide for different ways of committing the offence).
- (2) The sections are— 5
  - (a) section 2 (fraud by false representation),
  - (b) section 3 (fraud by wrongfully failing to disclose information), and
  - (c) section 4 (fraud by abuse of position).
- (3) A person who is guilty of fraud is liable— 10
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum (or to both);
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).

**2 Fraud by false representation**

- (1) A person is in breach of this section if he— 15
  - (a) dishonestly makes a false representation, and
  - (b) intends, by making the representation—
    - (i) to make a gain for himself or another, or
    - (ii) to cause loss to another or to expose another to a risk of loss.

- (2) A representation is false if—
- (a) it is untrue or misleading, and
  - (b) the person making it—
    - (i) knows that it is untrue or misleading, or
    - (ii) is aware that it might be.
- 5
- (3) “Representation” means any representation by words or conduct as to fact or law, including a representation as to the state of mind of—
- (a) the person making the representation, or
  - (b) any other person.
- 3 Fraud by wrongfully failing to disclose information** 10
- (1) A person is in breach of this section if he—
- (a) wrongfully fails to disclose information to another person,
  - (b) is dishonest in failing to do so, and
  - (c) intends, by failing to do so—
    - (i) to make a gain for himself or another, or
    - (ii) to cause loss to another or to expose another to a risk of loss.
- 15
- (2) A person (D) wrongfully fails to disclose information to another person (P) in two situations.
- (3) The first is where—
- (a) D is under a duty under any enactment, instrument or rule of law to disclose the information to P, and
  - (b) D knows that the circumstances which give rise to the duty to disclose the information to P exist or is aware that they might exist.
- 20
- (4) The second is where—
- (a) the information is the kind of information that P trusts D to disclose to him,
  - (b) D knows that P is trusting him in this way or is aware that he might be, and
  - (c) any reasonable person would expect D to disclose the information to P.
- 25
- 4 Fraud by abuse of position** 30
- (1) A person (D) is in breach of this section if he—
- (a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person (P),
  - (b) dishonestly and secretly abuses that position, and
  - (c) intends, by means of the abuse of that position—
    - (i) to make a gain for himself or another, or
    - (ii) to cause loss to another or to expose another to a risk of loss.
- 35
- (2) D abuses his position secretly only if he believes that P and any person acting on P’s behalf are ignorant of the abuse.
- (3) D may be regarded as abusing his position even though the conduct alleged to amount to the abuse consists of an omission rather than an act. 40

**5 “Gain” and “loss”**

- (1) The references to gain and loss in sections 2 to 4 are to be read in accordance with this section.
- (2) “Gain” and “loss” extend only to gain or loss in money or other property (real or personal), but include any such loss whether temporary or permanent. 5
- (3) “Gain” includes a gain by keeping what one has, as well as a gain by getting what one does not have.
- (4) “Loss” includes a loss by not getting what one might get, as well as a loss by parting with what one has.

*Obtaining services dishonestly* 10

**6 Obtaining services dishonestly**

- (1) A person is guilty of an offence under this section if he obtains services for himself or another—
  - (a) by a dishonest act, and
  - (b) in breach of subsection (2). 15
- (2) A person obtains services in breach of this subsection if—
  - (a) they are made available on the basis that payment has been, is being or will be made for or in respect of them,
  - (b) he obtains them without any payment having been made for or in respect of them or without payment having been made in full, and 20
  - (c) when he obtains them, he—
    - (i) knows that they are made available on the basis described in paragraph (a), or
    - (ii) is aware that they might be, but intends that payment will not be made, or will not be made in full. 25
- (3) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum (or to both);
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine (or to both). 30

*Supplementary*

**7 Liability of company officers for offences by company**

- (1) Subsection (2) applies if an offence under this Act is committed by a body corporate.
- (2) If the offence is proved to have been committed with the consent or connivance of—
  - (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) a person who was purporting to act in any such capacity, he (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly. 40

- (3) If the affairs of a body corporate are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

## 8 Evidence

- (1) A person is not to be excused from— 5
- (a) answering any question put to him in proceedings relating to property, or
- (b) complying with any order made in proceedings relating to property, on the ground that doing so may incriminate him or his spouse of an offence under this Act. 10
- (2) But, in proceedings for an offence under this Act, a statement or admission made by the person in—
- (a) answering such a question, or
- (b) complying with such an order,
- is not admissible in evidence against him or (unless they married after the making of the statement or admission) his spouse. 15
- (3) “Proceedings relating to property” means any proceedings for—
- (a) the recovery or administration of any property,
- (b) the execution of a trust, or
- (c) an account of any property or dealings with property, 20
- and “property” includes money and all other property (real or personal).

## 9 Abolition of conspiracy to defraud etc.

- (1) The offences referred to in subsection (2) are abolished for all purposes not relating to offences wholly or partly committed before the commencement of this Act. 25
- (2) The offences are—
- (a) the common law offence of conspiracy to defraud;
- (b) the offences under the following provisions of the Theft Act 1968 (c. 60)— 30
- (i) section 15 (obtaining property by deception);
- (ii) section 15A (obtaining a money transfer by deception);
- (iii) section 16 (obtaining pecuniary advantage by deception);
- (iv) section 20(2) (procuring the execution of a valuable security by deception);
- (c) the offences under the following provisions of the Theft Act 1978 (c. 31)— 35
- (i) section 1 (obtaining services by deception);
- (ii) section 2 (evasion of liability by deception).
- (3) An offence is partly committed before the commencement of this Act if— 40
- (a) a relevant event occurs before its commencement, and
- (b) another relevant event occurs on or after its commencement.
- (4) “Relevant event”, in relation to an offence, means any act, omission or other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence.

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**10 Minor and consequential amendments and repeals**

- (1) Schedule 1 contains minor and consequential amendments.
- (2) Schedule 2 contains repeals.

**11 Short title, commencement and extent**

- (1) This Act may be cited as the Fraud Act 2002. 5
- (2) This Act (except this section) comes into force on such day as the Secretary of State may appoint by an order made by statutory instrument.
- (3) Subject to subsection (4), this Act extends to England and Wales only.
- (4) Any amendment or repeal in Schedule 1 or 2 of a provision which extends outside England and Wales extends to any place to which the provision extends. 10

## SCHEDULES

### SCHEDULE 1

Section 10(1).

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *Visiting Forces Act 1952 (c. 67)*

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|---|--|---|
| 1 | In the Schedule (offences referred to in section 3 of the 1952 Act), in paragraph 3 (meaning of “offence against property”), after sub-paragraph (l) insert— | 5 |
|   | “(m) the Fraud Act 2002.”  |   |

##### *Theft Act 1968 (c. 60)*

- |     |   |    |
|-----|---|----|
| 2   | In section 18(1) (liability of company officers for offences by company under sections 15, 16 or 17), omit “15, 16 or”.   | 10 |
| 3   | In section 20(3) (suppression etc. of documents—interpretation), omit ““deception” has the same meaning as in section 15 of this Act, and”.   |    |
| 4   | (1) In section 24(4) (meaning of “stolen goods”) for “in the circumstances described in section 15(1) of this Act” substitute “, subject to subsection (5) below, by fraud (within the meaning of the Fraud Act 2002)”. | 15 |
|     | (2) After section 24(4) insert—   |    |
|     | “(5) Subsection (1) above applies in relation to goods obtained by fraud as if—   |    |
|     | (a) the reference to the commencement of this Act were a reference to the commencement of the Fraud Act 2002, and   | 20 |
|     | (b) the reference to an offence under this Act were a reference to an offence under section 1 of that Act.”   |    |
| (3) | Nothing in this Act affects the operation of section 24 of the Theft Act 1968 in relation to goods obtained in the circumstances described in section 15(1) of that Act where the obtaining—                            | 25 |
|     | (a) occurred before the commencement of this Act, or  |    |
|     | (b) is the result of a deception made before the commencement of this Act.  |    |
| 5   | (1) In section 24A (dishonestly retaining a wrongful credit), omit subsections (3) and (4) and after subsection (2) insert—   | 30 |
|     | “(2A) A credit to an account is wrongful to the extent that it derives from—  |    |
|     | (a) theft;  |    |
|     | (b) blackmail;  |    |
|     | (c) fraud (contrary to section 1 of the Fraud Act 2002); or   | 35 |
|     | (d) stolen goods.”  |    |

- 
- (2) In subsection (7), for “subsection (4)” substitute “subsection (2A)”.
- (3) Nothing in this Act affects the operation of section 24A(7) and (8) of the Theft Act 1968 in relation to credits falling within section 24A(3) or (4) of that Act and made before the commencement of this Act.
- (4) For subsection (9) substitute— 5
- (9) “Account” means an account kept with—
- (a) a bank; or
- (b) a person carrying on a business which falls within subsection (10) below.
- (10) A business falls within this subsection if— 10
- (a) in the course of the business money received by way of deposit is lent to others; or
- (b) any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit; 15
- and “deposit” here has the same meaning as in section 35 of the Banking Act 1987 (fraudulent inducement to make a deposit).
- (11) For the purposes of subsection (10) above—
- (a) all the activities which a person carries on by way of business shall be regarded as a single business carried on by him; and 20
- (b) “money” includes money expressed in a currency other than sterling or in the European currency unit (as defined in Council Regulation No. 3320/94/EC or any Community instrument replacing it).”
- 6 In section 25 (going equipped for burglary, theft or cheat)— 25
- (a) in subsections (1) and (3) for “cheat” substitute “fraud”, and
- (b) in subsection (5) for “and “cheat” means an offence under section 15(1) of this Act” substitute “and “fraud” means fraud contrary to section 1 of the Fraud Act 2002”.
- Criminal Law Act 1977 (c. 45)* 30
- 7 Omit section 5(2) (saving for conspiracy to defraud).
- Theft Act 1978 (c. 31)*
- 8 In section 4 (punishments), omit subsection (2)(a).
- 9 In section 5 (supplementary), omit subsection (1).
- Limitation Act 1980 (c. 58)* 35
- 10 (1) In section 4 (special time limit in case of theft), for subsection (5)(b) substitute—
- “(b) obtaining any chattel (in England and Wales or elsewhere) by—
- (i) blackmail (within the meaning of section 21 of the Theft Act 1968), or 40
- (ii) fraud (within the meaning of the Fraud Act 2002);”.

- (2) Nothing in this Act affects the operation of section 4 of the Limitation Act 1980 in relation to chattels obtained in the circumstances described in section 15(1) of the Theft Act 1968 where the obtaining—
- (a) occurred before the commencement of this Act, or
  - (b) is a result of a deception made before the commencement of this Act. 5

*Finance Act 1982 (c. 39)*

- 11 In section 11(1) (powers of Commissioners with respect to agricultural levies) after “the Theft Act 1978,” insert “the Fraud Act 2002,”.

*Nuclear Material (Offences) Act 1983 (c. 18)*

- 12 In section 1 (extended scope of certain offences), in subsection (1)(d) omit “15 or” (in the first place where it occurs). 10

*Police and Criminal Evidence Act 1984 (c. 60)*

- 13 In section 1 (power of constable to stop and search persons, vehicles etc.), in subsection (8) for paragraph (d) substitute—
- “(d) fraud (contrary to section 1 of the Fraud Act 2002).” 15

*Criminal Justice Act 1987 (c. 38)*

- 14 Omit section 12 (charges of and penalty for conspiracy to defraud).

*Criminal Justice Act 1993 (c. 36)*

- 15 (1) In section 1(2) (Group A offences), omit the entries in paragraph (a) relating to sections 15, 15A and 16 of the Theft Act 1968. 20
- (2) Omit section 1(2)(b).
- (3) After section 1(2)(c) insert—
- “(cc) an offence under either of the following provisions of the Fraud Act 2002—
- (i) section 1 (fraud); 25
  - (ii) section 6 (obtaining services dishonestly);”.
- (4) In subsection (3) (Group B offences), omit paragraph (b) (conspiracy to defraud).
- 16 In section 3(2) (questions immaterial to jurisdiction in the case of certain offences), omit “, or on a charge of conspiracy to defraud in England and Wales”. 30
- 17 (1) Omit section 5(3) (extended jurisdiction in relation to conspiracy to defraud).
- (2) In section 5(5), for “Subsections (3) and (4) are” substitute “Subsection (4) is”.
- 18 (1) Omit section 6(1) (relevance of external law to certain charges of conspiracy).
- (2) In section 6(4)— 35
- (a) for “a condition specified in subsection (1) or (2)” substitute “the condition specified in subsection (2)”, and
  - (b) in paragraph (a) for “the relevant conduct” substitute “what the defendant had in view”.

- (3) Omit section 6(5).

*Powers of Criminal Courts (Sentencing) Act 2000 (c. 60)*

- 19 (1) In section 130 (compensation orders) in subsection (5) for “an offence under the Theft Act 1968” substitute “a relevant offence against property”.  
 (2) After section 130(5) insert— 5  
 “(5A) “Relevant offence against property” means—  
 (a) an offence under the Theft Act 1968, or  
 (b) an offence under section 1 of the Fraud Act 2002 which involves the obtaining of any property.”  
 (3) In section 130(6)(a) for “an offence under the Theft Act 1968” substitute “a relevant offence against property”. 10

*Criminal Justice and Court Services Act 2000 (c. 43)*

- 20 (1) In Schedule 6 (trigger offences), in paragraph 1, omit the entry relating to section 15 of the Theft Act 1968.  
 (2) After paragraph 2 of Schedule 6 insert— 15  
 “3 Fraud (contrary to section 1 of the Fraud Act 2002) is a trigger offence.”

*Armed Forces Act 2001 (c. 19)*

- 21 In section 2(9) (definition of prohibited articles for purposes of powers to stop and search) for paragraph (d) substitute— 20  
 “(d) fraud (contrary to section 1 of the Fraud Act 2002).”

SCHEDULE 2

Section 10(2)

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Theft Act 1968 (c. 60)	Sections 15, 15A, 15B and 16. In section 18(1) “15, 16 or”. Section 20(2). In section 20(3), ““deception” has the same meaning as in section 15 of this Act, and”. Section 24A(3) and (4).	25    30
Criminal Law Act 1977 (c. 45)	Section 5(2).	
Theft Act 1978 (c. 31)	Sections 1 and 2. Section 4(2)(a). Section 5(1).	
Nuclear Material (Offences) Act 1983 (c. 18)	In section 1(1)(d) “15 or” (in the first place where it occurs).	35
Criminal Justice Act 1987 (c. 38)	Section 12.	

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Criminal Justice Act 1993 (c. 36)	In section 1(2), the entries in paragraph (a) relating to sections 15, 15A and 16 of the Theft Act 1968. Section 1(2)(b) and (3)(b). In section 3(2), “, or on a charge of conspiracy to defraud in England and Wales”. Section 5(3). Section 6(1) and (5).	5
Theft (Amendment) Act 1996 (c. 62)	Sections 1, 3(2) and 4.	10
Criminal Justice and Court Services Act 2000 (c. 43)	In Schedule 6, in paragraph 1, the entry relating to section 15 of the Theft Act 1968.	