

Corruption Bill

ARRANGEMENT OF CLAUSES

Main offences

Clause

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SCHEDULE:—

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DRAFT

OF A

B I L L

INTITLED

An Act to make provision about corruption.

A.D. 1998.

BE 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:—

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Main offences

1. A person commits an offence if—

- (a) he corruptly confers an advantage, or
- (b) he corruptly offers or agrees to confer an advantage.

Corruptly
conferring an
advantage.

2. A person commits an offence if—

- 10
- (a) he corruptly obtains an advantage, or
 - (b) he corruptly solicits or agrees to obtain an advantage.

Corruptly
obtaining an
advantage.

3. A person commits an offence if he performs his functions as an agent corruptly.

Performing
functions
corruptly.

Conferring and obtaining

15 4.—(1) A person confers an advantage if—

- (a) he does something or he omits to do something which he has a right to do, and
 - (b) the act or omission is done or made in consequence of another's request (express or implied) or with the result (direct or indirect) that another benefits.
- 20

Meaning of
conferring an
advantage.

(2) An act or omission may be done or made in consequence of a person's request even if the nature of the act or omission, and the time it is intended to be done or made, are not known at the time of the request.

Meaning of obtaining an advantage.

5.—(1) A person obtains an advantage if—

- (a) another does something or he omits to do something which he has a right to do, and
- (b) the act or omission is done or made in consequence of the first person's request (express or implied) or with the result (direct or indirect) that the first person benefits.

(2) An act or omission may be done or made in consequence of a person's request even if the nature of the act or omission, and the time it is intended to be done or made, are not known at the time of the request.

Acting corruptly

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Conferring an advantage: meaning of corruptly.

6.—(1) A person who confers an advantage, or offers or agrees to confer an advantage, does so corruptly if—

- (a) he intends a person in performing his functions as an agent to do an act or make an omission, and
- (b) he believes that if the person did so it would probably be primarily in return for the conferring of the advantage (or the advantage when conferred), whoever obtains it.

(2) A person who confers an advantage, or offers or agrees to confer an advantage, does so corruptly if—

- (a) he knows or believes that in performing his functions as an agent a person has done an act or made an omission,
- (b) he knows or believes that the person has done the act or made the omission primarily in order to secure that a person confers an advantage (whoever obtains it), and
- (c) he intends the person known or believed to have done the act or made the omission to regard the advantage (or the advantage when conferred) as conferred primarily in return for the act or omission.

(3) For the purposes of subsection (1) the nature of the intended act or omission, and the time it is intended to be done or made, need not be known when the advantage is conferred or the offer or agreement is made.

(4) This section has effect subject to sections 10 and 11.

Obtaining an advantage: meaning of corruptly.

7.—(1) A person who obtains an advantage obtains it corruptly if—

- (a) he knows or believes that the person conferring it confers it corruptly, and
- (b) he gives his express or implied consent to obtaining it (in a case where he does not request it).

(2) A person who agrees to obtain an advantage agrees to obtain it corruptly if he knows or believes that the person agreeing to confer it agrees corruptly.

(3) A person who solicits an advantage solicits it corruptly if—

- (a) he intends a person to confer it or agree to confer it, and
- (b) he believes that if the person did so he would probably do so corruptly.

8.—(1) A person who performs his functions as an agent performs them corruptly if—

- (a) he does an act or makes an omission primarily in order to secure that a person confers an advantage (whoever obtains it), and
- 5 (b) he believes that if the person did so he would probably do so corruptly.

Performing functions: meaning of corruptly.

(2) A person who performs his functions as an agent performs them corruptly if—

- 10 (a) he does an act or makes an omission when he knows or believes that a person has corruptly conferred an advantage (whoever obtained it), and
- (b) he regards the act or omission as done or made primarily in return for the conferring of the advantage.

Agents and principals

15 9.—(1) A person is an agent, and another is his principal for whom he performs functions, if—

Meaning of agent and principal.

- (a) the first is a trustee and the second is a beneficiary under the same trust;
- (b) the first is a director of a company and the second is the company;
- 20 (c) each is a partner in the same partnership;
- (d) the first is a professional person (such as a lawyer or accountant) and the second is his client;
- (e) the first is an agent and the second is his principal (taking agent and principal in the sense normally understood by lawyers);
- 25 (f) the first is the employee of the second.

(2) If subsection (1) does not apply a person is an agent, and another is his principal for whom he performs functions, if there is an agreement or understanding between them (express or implied) that the first is to perform the functions for the second.

30 (3) A person is an agent performing functions for the public if the functions he performs are of a public nature.

(4) Subsection (3) has effect even if the person has no connection with the United Kingdom, and “public” is not confined to the public of the United Kingdom or of any part of it.

35 (5) A person may be an agent performing some functions for a principal and others for the public.

(6) As regards a given function, a person may be an agent performing it for a principal and the public.

Exceptions from offences

40 10.—(1) If—

- (a) an advantage is conferred or an offer or agreement to confer an advantage is made, and
 - (b) any of the following three conditions is satisfied,
- the advantage is not conferred corruptly or (as the case may be) the offer or
- 45 agreement is not made corruptly.

Remuneration or reimbursement: no corruption.

- (2) The first condition is that—
- (a) the functions concerned are performed only for a principal (and not the public), and
 - (b) the advantage is conferred (or to be conferred) by or on behalf of the principal as remuneration or reimbursement in respect of the performance of the functions. 5
- (3) The second condition is that—
- (a) the functions concerned are performed only for the public (and not a principal), and
 - (b) the advantage is conferred (or to be conferred) on behalf of the public as remuneration or reimbursement in respect of the performance of the functions. 10
- (4) The third condition is that—
- (a) some of the functions concerned are performed for a principal and others are performed for the public, or a given function is performed for a principal and the public, and 15
 - (b) each element of the advantage is conferred (or to be conferred) by or on behalf of the principal, or on behalf of the public, as remuneration or reimbursement in respect of the performance of the functions. 20
- (5) The functions concerned are the functions relating to the act or omission which is intended to be done or made, or is known or believed to have been done or made.
- (6) References to the public are not confined to the public of the United Kingdom or of any part of it. 25

Principal's
consent: no
corruption.

11.—(1) If—

- (a) an advantage is conferred or an offer or agreement to confer an advantage is made, and
 - (b) the following condition is satisfied,
- the advantage is not conferred corruptly or (as the case may be) the offer or agreement is not made corruptly. 30
- (2) The condition is that—
- (a) the functions concerned are performed only for a principal (and not the public), and
 - (b) the principal, or each of them if more than one, is aware of all the material circumstances and consents to the conferring of the advantage or the making of the offer or agreement. 35
- (3) A person is to be treated as if he were aware of all the material circumstances, and consented to the conferring of the advantage or the making of the offer or agreement, if the defendant believes that— 40
- (a) he is aware of those circumstances and so consents, or
 - (b) he would so consent if aware of those circumstances.
- (4) For the purposes of subsections (2) and (3) consent may be given on a principal's behalf by any agent of the principal, but it does not count if in giving it the agent performs his functions as an agent corruptly. 45

(5) The functions concerned are the functions relating to the act or omission which is intended to be done or made, or is known or believed to have been done or made.

Miscellaneous

- 5 **12.**—(1) If—
- Receiving benefit
from corruption.
- (a) an advantage is obtained corruptly by a person other than the agent concerned,
- (b) the agent receives a benefit which consists of or is derived from all or part of the advantage,
- 10 (c) the agent knows or believes that the advantage was obtained corruptly and that the benefit consists of or is derived from all or part of the advantage, and
- (d) the agent gives his express or implied consent to receiving the benefit,
- 15 the agent commits an offence.
- (2) The benefit may take any form and may be directly or indirectly derived.
- 13.** A person guilty of an offence under this Act is liable—
- Penalties.
- 20 (a) on conviction on indictment, to imprisonment for a term not exceeding [] years;
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.
- 14.** In section 1(2) of the Criminal Justice Act 1993 (group A offences for purposes of provisions about jurisdiction) the following paragraph is inserted
- Jurisdiction.
1993 c. 36.
- 25 after paragraph (c)—
- “(cc) an offence under the Corruption Act 1998;”.
- 15.**—(1) The common law offence of bribery is abolished.
- Abolition of
existing offences.
- (2) The Public Bodies Corrupt Practices Act 1889 shall cease to have effect.
- 1889 c. 69.
- 30 (3) In section 1(1) of the Prevention of Corruption Act 1906 (offences relating to corrupt transactions with agents) the words from “If” to “business; or” (in the second place where the latter words occur) are omitted.
- 1906 c. 34.
- (4) Section 2 of the Prevention of Corruption Act 1916 (presumption of corruption for certain offences) is omitted.
- 1916 c. 64.
- 35
- General*
- 16.** The enactments mentioned in the Schedule are repealed to the extent specified.
- Repeals.
- 17.**—(1) Sections 1 to 16 and the Schedule apply in relation to acts or omissions done or made on or after the appointed day.
- Commencement.

(2) If an act or omission is alleged to have been done or made over a period of two or more days, or at some time in a period of two or more days, it must be taken for the purposes of this section to have been done or made on the last of those days.

(3) The appointed day is such day as the Secretary of State appoints by order made by statutory instrument. 5

Extent. **18.** This Act extends to England and Wales only.

Citation. **19.** This Act may be cited as the Corruption Act 1998.

SCHEDULE

Section 16.

REPEALS

Chapter	Short title	Extent of repeal
5	1889 c. 69. Public Bodies Corrupt Practices Act 1889.	The whole Act.
10	1906 c. 34. Prevention of Corruption Act 1906.	In section 1(1) the words from "If" to "business; or" (in the second place where the latter words occur). In section 1(2) the words " e x p r e s s i o n "consideration" includes valuable consideration of any kind; the".
15	1916 c. 64. Prevention of Corruption Act 1916.	Section 2. In section 4(3) the words from "and the" to the end.
	1948 c. 65. Representation of the People Act 1948.	Section 52(7).
20	1988 c. 33. Criminal Justice Act 1988.	Section 47(1).
	1995 c. x. London Local Authorities Act 1995.	In Part I of the Schedule, the entry relating to the Public Bodies Corrupt Practices Act 1889.