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FAQs

Failure to Prevent Fraud - Guidance for Organisations



FAQ: Failure to Prevent Fraud - Guidance for Organisations

What is the offense of failure to prevent fraud?

The Economic Crime and Corporate Transparency Act 2023 introduces a new corporate criminal offence of "failure to prevent fraud." This offence holds large organisations accountable if an associated person (such as an employee, agent, or subsidiary) commits fraud intending to benefit the organisation or its clients. The offence applies even if the intended benefit is not ultimately realised.

Which organisations are in scope of this offence?

The offence applies to "large organisations," defined as incorporated bodies or partnerships meeting specific criteria:

UK incorporated bodies or partnerships with a global turnover of £750 million or more in their financial year, AND at least 250 employees on their last day of that financial year.

Partnerships that are not bodies corporate (including Scottish partnerships and limited partnerships formed under the Limited Partnerships Act 1907) meeting the same turnover and employee criteria.

Bodies incorporated or partnerships formed outside the UK but with a UK nexus (meaning part of the fraud took place in the UK or the gain/loss from the fraud occurred in the UK).

Subsidiaries can be liable in their own right if they meet the criteria. Additionally, a subsidiary of a large organisation, even if not a large organisation itself, can be prosecuted instead of the parent company if its employee commits fraud intending to benefit the subsidiary.

What types of fraud are covered?

The offence covers a range of specific fraud offences, referred to as "base fraud" offences, listed in Schedule 13 of the Act. These include (but are not limited to):

England, Wales, and Northern Ireland: Fraud Act 2006 offences (fraud by false representation, failing to disclose information, abuse of position), participation in a fraudulent business, obtaining services dishonestly, cheating the public revenue, false accounting, false statements by company directors, and fraudulent trading. Scotland: Fraudulent trading, common law fraud, uttering, and embezzlement.

What are "reasonable fraud prevention procedures"?

Organisations have a defence against the offence if they can prove they had "reasonable procedures" in place to prevent fraud. What constitutes "reasonable" depends on the organisation's size, nature, and complexity, as well as the specific fraud risks it faces. Chapter 3 of the guidance outlines key considerations for developing these procedures, including:

- ⦿ Top-level commitment to fraud prevention
- ⦿ Comprehensive risk assessment
- ⦿ Proportionate and risk-based prevention measures
- ⦿ Due diligence procedures
- ⦿ Clear communication and training
- ⦿ Robust monitoring and review mechanisms

How does the offence interact with other regulations?

The guidance clarifies the interaction with existing legislation, particularly the offence of failure to prevent the facilitation of tax evasion. While some overlap exists between the two offences, the focus of the new offence is broader and covers a wider range of fraudulent activities. The guidance also highlights the importance of considering the offence in the context of auditing requirements and the UK Corporate Governance Code.

What are the penalties for the offence?

If convicted, an organisation can face an unlimited fine. The courts will determine the appropriate penalty based on the specific circumstances of the case.

How can organisations demonstrate top-level commitment to preventing fraud?

Organisations should establish a clear and demonstrable commitment to fraud prevention from the board of directors, partners, and senior management. This can be achieved through:

- 🕒 Formal statements rejecting fraudulent activities and outlining the business benefits of ethical conduct.
- 🕒 Articulation and endorsement of comprehensive fraud prevention policies and procedures.
- 🕒 Regular communication and training to embed a culture of anti-fraud throughout the organisation.
- 🕒 Providing resources and support for fraud prevention initiatives.

Where can organisations find more information and support?

Organisations can refer to the full guidance document for detailed information and practical examples. Additionally, sector-specific guidance may be available from relevant industry bodies. Public sector organisations can access resources from the Public Sector Fraud Authority and the Government Counter Fraud Profession. For whistleblowing procedures, consult the UK Government's Whistleblowing Guidance for Employers and Code of Practice.

For added convenience, we offer the option to acquire template policies directly from us. Notably, we have a readily available [Failure to Prevent Fraud Policy Template](#) which can be appended or annexed into your existing Anti-Fraud Policy.

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