

# New offence of failure to prevent bribery – Guernsey

Update prepared by Christopher Edwards and Iona Mitchell (Guernsey)

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The Prevention of Corruption (Bailiwick of Guernsey) (Amendment) Law, 2023 came into force on 26 April 2024. It was part of a wider set of reforms to Guernsey's financial and economic crime legislation in preparation for MONEYVAL's Spring 2024 visit.

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## Introduction

In a previous Update, [Changes to the criminal justice framework in Guernsey](#), we wrote about proposals to introduce 'failure to prevent' offences in Guernsey.

The background to this was that one of the difficulties in holding corporate entities to account when they committed tax evasion, bribery and corruption was that a corporate entity would only be liable for a criminal act if an individual that committed the offence could be identified. This approach had come under criticism because it ignored the reality of modern corporate decision making (which often relies on the application of policies and procedures rather than specific decisions) and it discriminated against small businesses in favour of large organisations with much more diffused and devolved decision-making processes. The Committee for Home Affairs identified this issue in a consultation paper that preceded the proposals in 2021 and a [Policy Letter](#) dated 25 July 2022.

To remedy this, Guernsey has now introduced offences of failure by corporate entities to prevent **bribery** and **facilitation of tax evasion**, in line with corresponding offences already provided for by UK legislation, and created offences of failure to **prevent money laundering** and **terrorist financing** modelled on new offences in Jersey. These changes came into effect on 26 April 2024.

This Update focuses on the new offence of failure to prevent bribery.

## Failure to prevent bribery

The provisions capture a 'commercial organisation', which is defined as covering Bailiwick companies and partnerships carrying on business anywhere and foreign companies and partnerships carrying on business in the Bailiwick.

A commercial organisation (C) is guilty of an offence if an agent or other person associated with C bribes another person intending:

- to obtain business for C, or
- to obtain or retain an advantage in the conduct of business for C.

It is a defence for C to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct and the Law empowers the Committee to publish guidance about these prevention measures.

A person is 'associated' with C if they perform services for or on behalf of C. The Law expressly states that this is not limited to employees, although they are presumed to be captured unless the contrary is shown.

The Committee for Home Affairs has issued guidance on the new offence [here](#). It is based on the guidance on the equivalent provisions in the UK, in order to make the regulatory burden easier for commercial organisations operating in both jurisdictions.

### Comment

Because of its extra-territorial nature, Guernsey-based organisations carrying out business in the UK were already covered by the UK legislation. Accordingly, they will be familiar with the framework and should already have procedures in place.

However, given the nature of corruption and the many forms which it can take, compliance with the new provisions, including any amendments to policies and procedures, may require some thought. In particular, consideration should be given to the types of person providing services to the organisation who may be treated as 'associated' with it, particularly since this expressly extends beyond employees.

### Contacts

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