

The Economic Crime and Corporate Transparency Act (the Act) new failure to prevent fraud offence



What is the new offence?

When the Act received Royal Assent in November 2023, a new corporate offence was introduced: the failure to prevent fraud (s199).

Under this legislation, an organisation can be prosecuted for its failure to prevent a fraud offence (as defined in the Act) being committed by the organisation against others. It must be the intention that the organisation, or a person to whom services are provided on behalf of the organisation, will benefit from the fraud for the offence to be triggered.

Crucially, the Act exposes organisations to liability for the actions of a wide range of potential fraud perpetrators associated with the organisation, including employees, agents, subsidiary undertakings, and any person who otherwise performs services for or on behalf of the organisation.

The intention in introducing the new offence is to protect victims and drive improvements in corporate culture in relation to the prevention of fraud. The penalty on a guilty conviction for the new offence could be an unlimited fine, as well as serious reputational damage.

No offence under the Act will have been committed if the organisation itself was, or was intended to be, a victim of the fraud offence.

What are the defined fraud offences?

The list of fraud offences is set out in Schedule 13 to the Act and includes, amongst others: an offence of dishonesty, false accounting, false statements by company directors, fraudulent trading and relevant money laundering offences. An organisation may also be guilty of an offence for aiding, abetting, counselling or procuring the commission of a listed offence. It does not need to be demonstrated that the directors knew about or ordered the offence.

Who does this apply to?

The offence applies to relevant bodies, defined in the legislation as 'large organisations' meeting two or more of the following conditions in the year that preceded the year of the fraud offence:

- turnover of more than £36m;
- a balance sheet total of more than £18m; and/or
- more than 250 employees.

Partnerships and certain parent undertakings will also be caught under the legislation, as well as smaller entities which may be considered an 'associated person' of a larger organisation.

Is there a defence?

Yes, s199(4) of the Act includes a defence of 'reasonable procedures' to prevent fraud. Guidance is awaited from the Secretary of State on exactly what 'reasonable' prevention procedures organisations will be able to rely on as a defence and only when this guidance has been issued will the offence officially come into force. However, now is still a good time for boards to act to ensure they are well prepared.

What do directors need to do now?

As a minimum, risk registers should be refreshed, policies updated and a programme of employee training and awareness put into place. Consideration should be given to whether current fraud risk frameworks cover fraud perpetrated to benefit the organisation – many will just focus on inward fraud attacks at the moment, which are not relevant in this context.

Directors should have a thorough understanding of the fraud risks that are relevant to their business and should expect to be supported by management, including the provision of reports at board and committee meetings that set out the organisation's fraud risks and mitigations, including anti-fraud policies, processes and controls. The board's annual training programme could also be reviewed, with opportunities for further training on fraud risks scheduled into the diary for 2024.

If you would like Indigo's support and additional resource to help you and your board with these next steps, please contact one of our directors, [Bernadette Young](#) or [David Gracie](#)