

## News

### New 'failure to prevent fraud' offence

03 April 2025

A new 'failure to prevent fraud' offence comes into force in September 2025. It is being introduced under the Economic Crime and Corporate Transparency Act 2023 (Act).

The new offence targets 'large organisations' and aims to encourage a proactive corporate-cultural shift around fraud prevention.

The new offence will make it easier to fine and prosecute large corporates for fraud offences by closing loopholes that have allowed organisations to avoid prosecution in the past.

#### **Do you work in a large organisation?**

The offence applies to all organisations that meet two of the following:

- have more than 250 employees
- have more than £36 million turnover
- have more than £18 million in total assets.

The criteria apply to each organisation, including its subsidiaries.

The offence applies not only to UK-based organisations, but also those based abroad, provided there are UK touchpoints. Therefore, employees of subsidiaries or a parent company that is a large organisation can bring the parent company within the scope of the offence.

Even if your firm does not currently meet these criteria, you should consider whether it might do in the future (for example, as a result of a merger, restructure or acquisition).

#### **What is the new failure to prevent fraud offence?**

There are three elements to the new offence. An organisation can be held criminally liable where a specified fraud offence is:

- committed by an employee, agent, subsidiary or person associated with the company
- on behalf of the organisation
- with the intention of benefiting the organisation or its clients.

The specified fraud offences are contained in Schedule 13 of the Economic Crime and Corporate Transparency Act 2023 (the Act). They include:



- fraud by false representation (section 2 Fraud Act 2006)
- fraud by failing to disclose information (section 3 Fraud Act 2006)
- fraud by abuse of position (section 4 Fraud Act 2006)
- obtaining services dishonestly (section 11 Fraud Act 2006)
- participation in a fraudulent business (section 9, Fraud Act 2006)
- false statements by company directors (Section 19, Theft Act 1968)
- false accounting (section 17 Theft Act 1968)
- fraudulent trading (section 993 Companies Act 2006)
- cheating the public revenue (common law)
- aiding, abetting, counselling or procuring the commission of any of the above

## **Key points to note**

The government's published guidance makes it clear that:

- The benefit in question does not need to be financial.
- The organisation or its clients do not need to receive any actual benefit for the offence to have occurred. The intention is sufficient.
- The intention to benefit the organisation or its clients does not need to be the sole or dominant motivation for the fraud. It can be a secondary motive.
- Senior management do not need to know about the fraud for the organisation to be liable. Previously corporate liability for fraud would have required evidence of wrongdoing at a senior level.

Organisations found liable of this new offence can be subject to an unlimited fine. For more information go to

<https://www.gov.uk/government/news/new-failure-to-prevent-fraud-guidance-published> [<https://www.gov.uk/government/news/new-failure-to-prevent-fraud-guidance-published>]