

Economic Crime and Corporate Transparency Act 2023:

New Failure to Prevent Fraud offence

Is your organisation compliant?

On 6 November 2024 guidance was published by UK Government providing organisations with important advice on the new corporate criminal offence of Failure to Prevent Fraud (FTPF).

Organisations caught by these new changes had until 1 September 2025 to develop and implement reasonable fraud prevention measures required for compliance.

For those who get it wrong, there are potentially huge financial risks.

What is the new offence of Failure to Prevent Fraud?

With the aim of combatting fraud in organisations, the new offence makes it easier to hold organisations accountable for fraud, driving a major shift in corporate culture to help prevent fraud.

Under the Economic Crime and Corporate Transparency Act (ECCTA) an organisation and its subsidiaries can be criminally liable where any employees or associated persons (such as agents and others that provide services for or on their behalf) commit fraud intending to benefit the organisation, and where reasonable fraud prevention procedures are not in place.

The FTPF offence applies to large organisations incorporated in the UK or those which have a UK connection where “a person associated” with the organisation commits fraud intending to benefit the organisation. It does not matter whether the Directors or Senior Managers of the organisation were aware of the conduct for the offence to apply.

Are all organisations liable?

No. The offence only applies to large incorporated bodies and partnerships across all sectors and industries that meet two out of the three following criteria:

- 250+ staff
- £36 million annual turnover
- £18 million held assets.

International impact

A key feature of the ECCTA is its wide extraterritorial effect. Corporate entities may be held criminally liable for an offence that took place outside the UK, if the offence would constitute a criminal offence in the location where it took place.

International example

A manufacturing company has a UK headquarters and a subsidiary in France. The Head of Finance is based in Marseille and is also a member of the management board of the French subsidiary. He overstates the revenue of the subsidiary when submitting the annual accounts to cover the subsidiary's poor financial performance. As a result, the Group accounts are significantly inflated.

This would likely constitute an offence under the French Penal Code. In the UK, this conduct could constitute false accounting under the Theft Act 1968 which is a base offence listed in the ECCTA. This means that both the French subsidiary and the UK parent company could face prosecution in the UK.

What types of fraud are covered by the offence?

The offence of FTPF applies to a number of specific fraud offences committed by a 'person associated with the relevant body'. 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)
- Participation in a fraudulent business (section 9 Fraud Act 2006)
- Obtaining services dishonestly (section 11 Fraud Act 2006)
- Cheating the public revenue (common law)
- Fraudulent trading (section 993 Companies Act 2006).

Example – Fraud by false representation (section 2 Fraud Act 2006)

An investment fund provider promotes investment in a 'sustainable' timber company. Knowing that this company's environmental credentials are fabricated, and the timber is harvested from protected forest:

- Investors are deceived into placing funds with the investment fund provider
- The base fraud is fraud by false representation
- The intent is to benefit the fund provider
- The associated person is the relevant member of staff at the investment fund provider who knowingly used the false information in the investment fund's brochures for clients
- The investment fund provider could be liable.

Again, the offence applies even if investment is not actually secured – it is enough that the fraud was intended to benefit the investment fund provider.

Example – Associated person

Bank C uses Bank D to provide clearing services. In the course of these services, Bank D (as a corporate entity, with the knowledge and involvement of its senior management) commits a fraud that benefits Bank C's clients. For the purpose of this offence, Bank D is an associated person of Bank C. Bank C is the relevant body that could be liable for the offence under clause 199(1)(b) unless a court decides that it had reasonable procedures in place to prevent the fraud.

What are the implications?

Organisations could face investigation and prosecution if found not to have taken reasonable steps to prevent fraud.

Previously, employees at risk were limited to the Directors and Officers of the organisation. Now all employees/associated persons are at risk if involved.

- Organisations who commit an offence are criminally liable
- The employees/associated persons involved can also be prosecuted
- Unlimited fines may be imposed.

As a result of this new offence, it is highly likely that Investigations and potential prosecutions will increase.

Is there a defence?

Yes. Organisations will have a defence if they can establish that they have reasonable procedures in place to prevent fraud, or if they can demonstrate that it was not reasonable for the organisation to have any prevention procedures in place.

The onus will be on the organisation to prove that it had reasonable procedures in place at the time that the fraud was committed.

How to ensure compliance

As an organisation you will need to have developed and implemented the necessary anti-fraud procedures within your organisation.

An organisation's fraud prevention framework should be informed by the following six principles:

- Top level commitment
- Risk assessment
- Proportionate prevention procedures
- Due diligence
- Communication
- Monitoring and review.

Why Weightmans

You're in safe hands – our business and financial crime team is ready and able to help

Our economic and business crime team are experts in defending both businesses and individuals on matters involving fraud and corporate crime, bribery and corruption, money laundering, and data protection breaches.

We regularly provide preventative compliance advice to businesses which helps limit the risk and exposure to criminal and regulatory sanctions. We offer training and e-learning packages that augment this service.

How we can help

We have produced a package of services to support clients and ensure they are compliant with the changes – from policy and procedure reviews and risk assessments, through to stress-testing policies and training.

- Existing Economic Crime and Fraud policies and procedures review and recommendations
- Training on ECCTA, including Board level training and insights
- Economic Crime risk assessments
- Stress-testing existing anti-fraud policies
- Legally privileged internal investigations where a business has suspected wrongdoing or criminality
- Full support in criminal/regulatory investigation and defending prosecution.

We have also developed an online tool to identify areas of risk within an organisation.

For further information on the ECCTA and how we can help, please reach out to our team below or send your enquiry to ECCTA@weightmans.com and someone from the ECCTA team will be in touch.



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