



Developments in Fraud and Business Crime 2024

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The Economic Crime and Corporate Transparency Act 2023

- The Economic Crime and Corporate Transparency Act 2023 received Royal Assent on 26 October 2023 and brings significant developments to business crime in the UK, including:
- (Finally) The introduction of a failure to prevent fraud offence, imposing a criminal liability on a large organisation that fails to prevent fraud intended to benefit the organisation, with a defence of adequate procedures in place to prevent fraud.
- Limited to large organisations, using the Companies Act 2006 definition - organisations meeting two out of three of the following criteria: more than 250 employees, more than £36 million turnover and more than £18 million in total assets.

ECCTA 2023

- A change to corporate criminal liability by expanding the class of persons whose conduct can be attributed to the company. An organisation will be guilty of an offence where a "senior manager ... acting within the actual or apparent scope of their authority" commits a relevant offence.
- Reforms to Companies House, including new identity verification requirements for all new and existing registered company directors, People with Significant Control and those delivering documents to the Registrar, and increased investigation and enforcement powers for the Registrar, including Companies Act offences.

ECCTA 2023

- The publication of guidance on the adequate procedures defence is expected in early 2024. This is unlikely to be far removed from the Bribery Act guidance, although will hopefully be more concise and precise.
- All companies be required to engage in the various ID requirements with Companies House and be subject to an enhanced regulator.
- The extent to which Companies House supervise and enforce the Act will be something to keep an eye on. Supervision and enforcement guidance is awaited.
- All changes in the Act are likely to come into force in 2024.

The Procurement Act 2023

- The Procurement Act 2023 provides another potential tool to tackle fraud. The Act provides a framework for supplier exclusion, including a central debarment list, which presents significant risk for suppliers bidding for Government contracts.
- Under *schedule 6*, a mandatory exclusion ground applies to a supplier if they or a connected person has been convicted of an offence referred to in the schedule. The offences include fraud, theft, bribery and money laundering.
- Includes an offence under the law of a country or territory outside the UK which would be an offence “if the conduct constituting that offence was carried out in any part of the UK”.
- Other mandatory and discretionary (schedule 7) grounds exist for conduct that falls short of criminal conviction, but could potentially result after a criminal or regulatory investigation.

The Online Safety Act

- The Online Safety Bill received Royal Assent on 26 October 2023 and will come into force during 2024. Ofcom will publish codes of practice and guidance setting out the detail on how providers should best comply with the OSA, and considerable secondary legislation (for example, on how services are to be categorised) will be created.
- In addition to several requirements on age verification, the OSA creates additional offences for companies, senior executives and employees, for example, where they fail in their obligations to provide information to Ofcom, and enable the regulator to issue fines of £18 million or 10% of global annual turnover, whichever is higher, for breaches of the Act.
- Practitioners will take a keen interest in both the codes and guidance emerging from Ofcom, and their subsequent enforcement priorities and action.

A review of Fraud and Disclosure

- On 12 October 2023, the Home Office announced an independent review of criminal disclosure and fraud. The last independent review of fraud in the UK occurred in 1986 which led to, among other things, the creation of the Serious Fraud Office. Since, the nature and scale of fraud has evolved considerably and now constitutes over 40% of all offences in England and Wales, with a particular growth in online-enabled fraud.
- The review will be chaired by Jonathan Fisher KC and will investigate the application of the disclosure regime and the challenges arising for the investigation of all crime types, including fraud, that handle large volumes of digital material. The review will report in two parts.
- This review is long overdue. The changing nature of both fraud and information stored digitally are dramatically different from the mid-1980s, and a reconsideration is necessary.

Two reports

- Disclosure Regime to assess the operation of the criminal disclosure regime, as set out in the *Criminal Procedure and Investigations Act 1996*. There will be a focus on disclosure application for crime types with a large volume of digital material. The review will also assess the Attorney General's Guidelines on Disclosure and consider legislative and non-legislative modifications that could improve the regime. This will report in **summer 2024**.
- Fraud Offences to explore if certain fraud offences should be summary only rather than triable either way. This phase will also consider making it easier for individuals to inform on associates in criminal fraud networks and investigate the scope of existing civil powers, and whether they go far enough, to tackle fraud, including exploring a fraud-specific order. This part will report in **summer 2025**.

New sheriffs in town

- CPS - Stephen Parkinson became the Director of Public Prosecutions, succeeding Max Hill KC on 1 November for an initial term of five years.
- SFO - Nick Ephgrave QPM became Director of the SFO on 25 September. He was previously Chief Constable of Surrey Police and an Assistant Commissioner of the Metropolitan Police.
- The SFO has seen a difficult few years, with the collapse of multiple cases, negative reviews and a return to the periodic calls for its integration into the NCA. The direction taken by Mr Ephgrave will be interesting. It is worth noting that his first significant decisions were to open an investigation into suspected fraud at a pre-paid funeral plans company where customers paid instalments so that funds would be available towards the costs of funerals, and the arrest and searches in relation to an alleged fraud at a law firm.

In brief

- HMRC published draft legislation for the Finance Bill 2024 to create new strict liability criminal offences for promoters that fail to comply with certain stop notice obligations, to empower HMRC to initiate director disqualification proceedings of directors of companies involved in promoting tax avoidance and to double the maximum sentence for certain forms of tax fraud. This legislation is likely to come into force in late 2024.
- The King's Speech on 7 November 2023 proposed three additional Bills to bring forward changes to criminal law, including Sentencing Bill to "ensure tougher sentences for the most serious offenders and increase the confidence of victims", a Criminal Justice Bill "to empower police forces and the criminal justice system to prevent new or complex crimes, such as digital-enabled crime" and a Victims and Prisoner's Bill, which seeks to include powers to compel those facing sentencing to appear in the dock.
- Artificial intelligence will continue to be the focus of many, in particular the extent to which it can be used for fraud and other business crimes, and how it can be tackled.