

BRIBERY ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 13: Defence for certain bribery offences etc.

62. **Section 13** deals with the legitimate functions of the intelligence services or the armed forces which may require the use of a financial or other advantage to accomplish the relevant function. The section provides a defence where a person charged with a relevant bribery offence can prove that it was necessary for:

- the proper exercise of any function of one of the intelligence services; or
- the proper exercise of any function of the armed forces when engaged on active service.

Although not explicit on the face of the Act, in accordance with established case law, the standard of proof the defendant would need to discharge in order to prove the defence is the balance of probabilities.

63. The head of each intelligence service is required under *subsection (2)* to ensure that each service has in place arrangements designed to ensure that the conduct of a member of the service that would otherwise amount to a relevant bribery offence is necessary for a purpose set out in *subsection (1)(a)*. A similar requirement is placed on the Defence Council under *subsection (3)* to ensure that the armed forces have arrangements in place designed to ensure that the conduct of any member of the armed forces engaged on active service or a civilian subject to service discipline working in support of military personnel so engaged is necessary for a purpose set out in *subsection (1)(b)*. Under *subsection (4)*, the arrangements must be ones that the relevant Secretary of State considers to be satisfactory.

64. *Subsection (5)* provides that a person's conduct is to be treated as necessary for the purposes of *subsection (1)(a) or (b)* in circumstances where the person's conduct would otherwise be an offence under section 2 and involves conduct on the part of another person which would amount to an offence under section 1 but for the defence in *subsection (1)*. In other words, *subsection (5)* has the effect that a recipient of a bribe paid by a member of the intelligence services or armed forces is covered by the defence in any case where the person offering or paying the bribe is able to rely on the section 13 defence.

65. As well as providing definitions for other terms used in the section, *subsection (6)* makes it clear that a "relevant bribery offence" means an offence under section 1 or 2, including one committed by aiding, abetting, counselling or procuring such an offence, and related inchoate offences. "Relevant bribery offence" does not include a section 1 offence which would also amount to an offence of bribing a foreign public official under section 6. This addresses concerns raised by the Joint Committee on the 2003 draft Corruption Bill in relation to, in particular, compliance with the UK's obligations under the OECD Convention (see paragraph 152, HL 157 and HC 705, 31 July 2003).