



Economic Crime and Corporate Transparency Act 2023

2023 CHAPTER 56

PART 5

MISCELLANEOUS

Failure to prevent fraud

199 Failure to prevent fraud

- (1) A relevant body which is a large organisation (see sections 201 and 202) is guilty of an offence if, in a financial year of the body (“the year of the fraud offence”), a person who is associated with the body (“the associate”) commits a fraud offence intending to benefit (whether directly or indirectly)—
 - (a) the relevant body, or
 - (b) any person to whom, or to whose subsidiary undertaking, the associate provides services on behalf of the relevant body.
- (2) A relevant body is also guilty of an offence under subsection (1) if—
 - (a) an employee of the relevant body commits a fraud offence intending to benefit (whether directly or indirectly) the relevant body,
 - (b) the fraud offence is committed in a financial year of a parent undertaking of which the relevant body is a subsidiary undertaking (“the year of the fraud offence”), and
 - (c) the parent undertaking is a relevant body which is a large organisation.
- (3) But the relevant body is not guilty of an offence under subsection (1)(b) if the body itself was, or was intended to be, a victim of the fraud offence.
- (4) It is a defence for the relevant body to prove that, at the time the fraud offence was committed—

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- (a) the body had in place such prevention procedures as it was reasonable in all the circumstances to expect the body to have in place, or
 - (b) it was not reasonable in all the circumstances to expect the body to have any prevention procedures in place.
- (5) In subsection (4) “prevention procedures” means procedures designed to prevent persons associated with the body from committing fraud offences.
- (6) A “fraud offence” is an act which constitutes—
 - (a) an offence listed in Schedule 13 (a “listed offence”), or
 - (b) aiding, abetting, counselling or procuring the commission of a listed offence.
- (7) For the purposes of this section a person is associated with a relevant body if—
 - (a) the person is an employee, agent or subsidiary undertaking of the relevant body, or
 - (b) the person otherwise performs services for or on behalf of the body.
- (8) For the purposes of this section a person is also associated with a relevant body if the person is an employee of a subsidiary undertaking of the relevant body; but for the purpose of determining whether an offence is committed by virtue of this subsection, subsection (1) has effect with the omission of paragraph (b) (and the “or” preceding it).
- (9) Whether or not a particular person performs services for or on behalf of a relevant body is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between that person and the body.
- (10) Where a relevant body is liable to be proceeded against for an offence under subsection (1) in a particular part of the United Kingdom, proceedings against the body for the offence may be taken in any place in the United Kingdom.
- (11) Where by virtue of subsection (10) proceedings against a relevant body for an offence are to be taken in Scotland—
 - (a) the body may be prosecuted, tried and punished in a sheriff court district determined by the Lord Advocate, as if the offence had been committed in that district, and
 - (b) the offence is, for all purposes incidental to or consequential on the trial or punishment, deemed to have been committed in that district.
- (12) A relevant body guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction in England and Wales, to a fine;
 - (c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.
- (13) In this section—
 - “relevant body” means a body corporate or a partnership (wherever incorporated or formed);
 - “sheriff court district” is to be read in accordance with the Criminal Procedure (Scotland) Act 1995 (see section 307(1) of that Act).
- (14) In this section “financial year”—
 - (a) in relation to a UK company, has the meaning given by the Companies Act 2006 (see section 390 of that Act);
 - (b) in relation to a relevant body that is not a UK company means—

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- (i) any period in respect of which a profit and loss account of the relevant body is required to be made up (by its constitution or by the law under which it is established), whether that period is a year or not, or
- (ii) if the body is not required by its constitution or the law under which it is established to draw up a profit and loss account, a calendar year.

200 Fraud offences: supplementary

- (1) The Secretary of State may by regulations amend Schedule 13 by—
 - (a) removing an offence from the list in the Schedule, or
 - (b) adding an offence to that list.
- (2) The power in subsection (1) is exercisable by the Scottish Ministers (and not by the Secretary of State) so far as it may be used to make provision that would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament.
- (3) The power in subsection (1) is exercisable by the Department of Justice in Northern Ireland (and not by the Secretary of State) so far as it may be used to make provision that—
 - (a) would be within the legislative competence of the Northern Ireland Assembly if contained in an Act of that Assembly, and
 - (b) would not, if contained in a Bill for an Act of the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State.
- (4) An offence added under subsection (1)(b) must be—
 - (a) an offence of dishonesty,
 - (b) an offence that is otherwise of a similar character to those listed (on the passing of this Act) in paragraphs 1 to 6 of Schedule 13, or
 - (c) a relevant money laundering offence.
- (5) The Secretary of State may from time to time by regulations restate Schedule 13 as amended by virtue of subsections (1) to (3) (without changing the effect of the Schedule).
- (6) For the purposes of section 199(1), where a fraud offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, and that period of days straddles the beginning of a financial year of the relevant body in question, the fraud offence must be taken to have been committed on the last of those days.
- (7) In this section “relevant money laundering offence” means an offence under any of the following sections of the Proceeds of Crime Act 2002—
 - (a) section 327 (concealing etc);
 - (b) section 328 (arrangements);
 - (c) section 329 (acquisition, use and possession).

201 Section 199: large organisations

- (1) For the purposes of section 199(1) and (2) a relevant body is a “large organisation” only if the body satisfied two or more of the following conditions in the financial year of the body (“year P”) that precedes the year of the fraud offence—

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Turnover	More than £36 million
Balance sheet total	More than £18 million
Number of employees	More than 250.

- (2) The reference in subsection (1) to a relevant body does not include a relevant body which is a parent undertaking (as to which see section 202).
- (3) For a period that is a relevant body’s financial year but not in fact a year, the figure for turnover must be proportionately adjusted.
- (4) In subsection (1) the “number of employees” means the average number of persons employed by the relevant body in year P, determined as follows—
- find for each month in year P the number of persons employed under contracts of service by the relevant body in that month (whether throughout the month or not),
 - add together the monthly totals, and
 - divide by the number of months in year P.
- (5) In this section—
- “balance sheet total”, in relation to a relevant body and a financial year—
- means the aggregate of the amounts shown as assets in its balance sheet at the end of the financial year, or
 - where the body has no balance sheet for the financial year, has a corresponding meaning;
- “turnover”—
- in relation to a UK company, has the same meaning as in Part 15 of the Companies Act 2006 (see section 474 of that Act);
 - in relation to any other relevant body, has a corresponding meaning;
- “year of the fraud offence” is to be interpreted in accordance with section 199(1).
- (6) The Secretary of State may by regulations modify this section (other than this subsection and subsections (7) and (9)) and section 202 for the purpose of altering the meaning of “large organisation” in section 199(1) and (2).
- (7) The Secretary of State may (whether or not the power in subsection (6) has been exercised) by regulations—
- omit the words “which is a large organisation” in section 199(1) and (2)(c), and
 - make any modifications of this section (other than this subsection) that the Secretary of State thinks appropriate in consequence of provision made under paragraph (a).
- (8) Before making regulations under subsection (6) or (7) the Secretary of State must consult—
- the Scottish Ministers, and
 - the Department of Justice in Northern Ireland.
- (9) Regulations under subsection (6) or (7) may make consequential amendments of section 205.

202 Large organisations: parent undertakings

- (1) For the purposes of section 199(1) and (2) a relevant body which is a parent undertaking is a “large organisation” only if the group headed by it satisfied two or more of the following conditions in the financial year of the body that precedes the year of the fraud offence—

Aggregate turnover	More than £36 million net (or £43.2 million gross)
Aggregate balance sheet total	More than £18 million net (or £21.6 million gross)
Aggregate number of employees	More than 250.

- (2) The aggregate figures are ascertained by aggregating the relevant figures determined in accordance with section 201 for each member of the group.
- (3) In relation to the aggregate figures for turnover and balance sheet total, “net” and “gross”—
- except where paragraph (b) applies, have the meaning given by subsection (6) of section 466 of the Companies Act 2006;
 - in the case of accounts that are not of a kind specified in the definition of “net” in that subsection, have a corresponding meaning.
- (4) In this section—
- “balance sheet total” (in relation to a relevant body and a financial year) has the same meaning as in section 201;
 - “group” means a parent undertaking and its subsidiary undertakings;
 - “turnover” (in relation to a UK company or other relevant body) has the same meaning as in section 201;
 - “year of the fraud offence” is to be interpreted in accordance with section 199(1) or (2) (as the case requires).
- (5) In this section “balance sheet total” and “turnover”, in relation to a subsidiary undertaking which is not a relevant body, have a meaning corresponding to the meaning given by subsection (4).

203 Offences under section 199 committed by partnerships

- (1) Proceedings for an offence under section 199 alleged to have been committed by a partnership must be brought in the name of the partnership (and not in that of any of the partners).
- (2) For the purposes of such proceedings—
- rules of court relating to the service of documents have effect as if the partnership were a body corporate, and
 - the following provisions apply as they apply in relation to a body corporate—
 - section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates’ Courts Act 1980;
 - section 18 of the [Criminal Justice Act \(Northern Ireland\) 1945 \(c. 15 \(N.I.\)\)](#) and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981 ([S.I. 1981/1675 \(N.I. 26\)](#));

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(iii) sections 34(2), 66(6AA) and 72D(2) of the Criminal Procedure (Scotland) Act 1995.

- (3) A fine imposed on the partnership on its conviction for an offence under section 199 is to be paid out of the partnership assets.

204 Guidance about preventing fraud offences

- (1) The Secretary of State must issue guidance about procedures that relevant bodies can put in place to prevent persons associated with them from committing fraud offences as mentioned in section 199(1).
- (2) The Secretary of State may from time to time revise the whole or any part of the guidance issued under this section.
- (3) The Secretary of State must publish—
- (a) any guidance issued under this section;
 - (b) any revision of that guidance.
- (4) Before issuing or revising guidance under this section the Secretary of State must consult—
- (a) the Scottish Ministers, and
 - (b) the Department of Justice in Northern Ireland.
- (5) The requirement to consult those persons may be satisfied by consultation carried out before this section comes into force.

205 Failure to prevent fraud: minor definitions

- (1) This section applies for the purposes of sections 199 to 204.
- (2) References to a person “associated with” a relevant body are to be interpreted in accordance with section 199(7).
- (3) “Financial year” has the meaning given by section 199(14).
- (4) “Fraud offence” has the meaning given by section 199(6).
- (5) “Modify” includes amend or repeal (and references to modifications are to be interpreted accordingly).
- (6) “Parent undertaking” has the same meaning as in the Companies Acts (see section 1162 of the Companies Act 2006).
- (7) “Partnership” means—
- (a) a partnership within the meaning of the Partnership Act 1890;
 - (b) a limited partnership registered under the Limited Partnerships Act 1907;
 - (c) a firm or other entity of a similar character to one within paragraph (a) or (b) formed under the law of a country or territory outside the United Kingdom.
- (8) “Relevant body” has the meaning given by section 199(13).
- (9) “Subsidiary undertaking” has the same meaning as in the Companies Acts (see section 1162 of the Companies Act 2006).

- (10) “UK company” means a company formed and registered under the Companies Act 2006.

206 Failure to prevent fraud: miscellaneous

- (1) In section 61(1) of the Serious Organised Crime and Police Act 2005 (offences to which certain investigatory powers apply), at the end insert—
- “(k) an offence under section 199 of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud offences).”
- (2) In Schedule 1 to the Serious Crime Act 2007 (offences which are serious offences for purposes of serious crime prevention orders)—
- (a) in Part 1 (serious offences in England and Wales), in paragraph 7, after subparagraph (2) insert—
- “(2A) An offence under section 199 of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud offences).”;
- (b) in Part 1A (serious offences in Scotland), in paragraph 16J, after subparagraph (1) insert—
- “(1A) An offence under section 199 of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud offences).”;
- (c) in Part 2 (serious offences in Northern Ireland), in paragraph 23, after subparagraph (2) insert—
- “(2A) An offence under section 199 of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud offences).”
- (3) In Part 2 of Schedule 17 to the Crime and Courts Act 2013 (offences in relation to which a deferred prosecution agreement may be entered into), after paragraph 27A insert—
- “27B An offence under section 199 of the Economic Crime and Corporate Transparency Act 2023 (failure to prevent fraud offences).”