

The failure to prevent fraud offence – are you ready?

What is the failure to prevent fraud offence?

Introduction

Guidance recently published by the Home Office ([Here](#)) following updates to the ECCTA (Economic Crime and Corporate Transparency Act) set out enhanced measures firms should take to prevent fraud.

Many firms will be live to potential frauds against them, however the changes extends the requirements to fraudulent activity that is intended to benefit the organisation or its clients, holding businesses accountable for relevant crimes committed by 'associated persons'.

The Act increases corporate responsibility, making it easier to hold organisations criminally liable for fraudulent activity if an 'associated person' commits an offence intending to benefit the organisation, either directly or indirectly, such as through gaining an unfair business advantage.

It does not need to be demonstrated that directors or senior managers ordered or knew about the fraud, therefore it is imperative that firms have a strong anti-fraud culture and implement robust controls to mitigate the risk of fraud occurring anywhere in the business.

The definition of fraud is very broad and consequently these changes will be far-reaching, likely affecting a number of teams as they will need to be comfortable with the robustness of the procedures in their organisation as well as at 'associated persons' such as relevant third parties. Organisations therefore need to consider the full impact on their business.

The only defence would be that the organisation had reasonable fraud prevention procedures in place or could demonstrate that it was reasonable not to have such procedures in place. It is therefore imperative that firms carry out a thorough fraud risk assessment and implement relevant processes and controls.

Timelines and Penalties for Non-compliance

The deadline for firms to implement necessary measures and demonstrate compliance is **1 September 2025**. Given the likely scale of work to be undertaken before the deadline, firms need to review their processes and controls now to give them sufficient time to comply with the requirements.

Penalties

The offence would lead to the firm being prosecuted for failing to prevent the fraud, resulting in financial penalties of a potentially unlimited fine. In addition, this would likely also result in reputational damage, further impacting the firm's business and potentially exclude firms from procurement contracts.

The person who committed the fraud may also be prosecuted individually.

As a result of the punitive nature of these penalties, it is expected that organisations will improve their fraud prevention procedures, driving a major shift in corporate culture.

Who is an 'associated person'?

In accordance with Home Office guidance, an associated person is an employee or an agent of the relevant body, or a person who otherwise performs services for or on behalf of the body, such as a supplier, subcontractor or agency worker. A subsidiary of the relevant body may also be an associated person as can an employee of a subsidiary if they commit a fraud intending to benefit the parent organisation.

Who does it apply to?

Firms across all sectors will be impacted

The updated provisions **apply to businesses in all sectors** who meet **at least two of the following criteria** in the year preceding the base fraud offence:



Given the in-depth requirements, if you are near to breaching these limits, consideration should be given to reviewing your fraud processes, controls and governance arrangements.

Due to the nature of the requirements, the Act will likely also impact subsidiaries and other businesses including:

Smaller organisations who supply larger firms

These firms may be an associated person if they provide services for or on behalf of large organisations who fall within the above criteria (e.g. are suppliers).

In these circumstances, small organisations may be subject to contractual or other requirements imposed by the larger organisation to support their compliance with the Act.

Fast-growing SMEs

These firms must also consider the requirements as they may soon meet the criteria. Furthermore, due to the nature of these organisations, they often do not have mature and established processes, controls and governance arrangements in place which may make compliance more challenging.

What do firms need to do?

Firms should ensure they have relevant arrangements in place to support the following six principles identified in the ECCTA:

Risk assessment: The firm should assess the nature and extent of the risk of associated persons committing fraud. Consideration should be given to their opportunity, motive and rationalisation.

Proportionality of risk-based prevention

procedures: Reasonable procedures that a relevant body should adopt to prevent fraud should be proportionate to the risk the relevant body faces. This will depend on the nature, scale and complexity of the organisation's activities.

Top level commitment: Responsibility ultimately rests with those charged with governance. The Board of directors, partners and senior management should be committed to the prevention of associated persons committing fraud. They should foster a culture within the relevant body in which fraudulent activity is never acceptable.

Due diligence: Organisations should conduct due diligence on associated persons. This should include reviewing contracts with those providing services and the monitoring of the well-being of staff and agents to identify persons who may be more likely to commit fraud. Due diligence should also be performed in respect of mergers and acquisition activity.



Communication (including training): Fraud prevention policies and procedures should be communicated, embedded and understood by all relevant stakeholders through internal and external communication. This should come from senior management and cover staff at all levels in the firm. Training should be given based on the needs of the highest risk roles.

Monitoring and review: The nature of fraud risks faced by an organisation will change and evolve over time. Post implementation monitoring of the effectiveness of fraud prevention measures such as relevant processes and controls should be undertaken. The organisation should monitor and review its prevention procedures and make improvements where necessary.

What do firms need to do? (Continued)

Given the far-reaching nature of the ECCTA, firms should start with determining how they are likely to be impacted to ensure they are best placed to comply by 1 September 2025.

Activity that firms should consider undertaking include the following:



*The initial phase involves assessing the potential risks inherent in the firm's operations and evaluating the effectiveness of current controls in managing these risks. Undertaking the risk assessment is not a one-off exercise; it should be reviewed periodically and updated in line with the changing environment.

Some examples of how fraud may occur

The Home Office sets out in the guidance some examples of fraud

It is fundamental that firms undertake a detailed risk assessment to identify all ways that the firm may be subject to fraud.

Below are some examples which demonstrate the far-reaching nature of the regulation and its impact on different teams within an organisation:

Payroll

The Payroll department of company A is supposed to ensure that the company contributes to the employees' pension funds every month. However, the head of the Payroll department arranges for some of these payments to be diverted for other projects within the company but continues to record them as payments to the pension fund.

Finance

A company is seeking external investment. To make it appear more attractive to potential investors, the Finance department deliberately manipulates the accounts to over-state profits.

Sales/ESG

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

Operations

The head of the technical department of a company deliberately falsifies the company's discharge monitoring system. As a result, the company discharges more pollution than it is allowed to under the terms of the environmental permit. The company provides false data to the Environment Agency, with the intention of avoiding the financial penalties that the Environment Agency can impose.

Recruitment

A large healthcare company, A, uses a recruitment company B. There are shortages in the sector, and it is difficult to find suitably qualified staff with appropriate eligibility to work in the UK.

Company B is supposed to conduct right to work checks on candidates, but an employee of Company A colludes with Company B to falsify documents confirming that these checks have been undertaken correctly. As a result, Company B supplies some staff without eligibility to work to Company A. Company A could be liable for the offence.

Sales

A salesperson has been in contact with a potential customer and identified the best product for them based on their requirements. However, the salesperson would not earn as much commission on that item in comparison to another product and therefore convinced the customer to buy the product which did not best suit their needs.

How we can help

Our team is able to support you in several ways with your implementation of the ECCTA including the following:

Fraud Risk assessment, gap analysis, controls testing and ongoing feedback

Fraud Risk Assessment: Review the end-to-end fraud risk assessment undertaken to determine if key risks have been identified.

Gap Analysis: Conduct a fraud controls gap analysis to identify areas of the business where fraud controls may be strengthened. We can also assist in the identification of material fraud controls in line with the new Corporate Governance Code.

Controls Testing: Test the design and operating effectiveness of identified preventative and detective fraud controls to determine if they are robust and fit for purpose.

Ongoing feedback: Provide 'real time' feedback as you build fraud processes and controls to comply with relevant sections of the ECCTA.

Due diligence and departmental fraud reviews

Due diligence: Review the arrangements in place for undertaking due diligence on relevant associated persons and provide feedback.

Specific department reviews: Review relevant processes and controls implemented by specific departments such as HR, Finance and Procurement. This may be useful where senior management would like comfort over the robustness of fraud controls in a particular part of the business.

Communication, governance and ongoing monitoring

Communication: Review of communication undertaken by the firm covering senior management/Board and how it is disseminated through the organisation. This can also consider external messaging, the detail contained in fraud policies and procedures and consideration of the quality of relevant training

Governance arrangements: Assessing governance arrangements to determine if the firm has appropriate senior management oversight to support implementation of the ECCTA. This can also include reviewing the organisation's whistleblowing arrangements.

Supporting ongoing monitoring and review: Undertaking post implementation assurance to support the requirement for ongoing monitoring and review.

Get in touch

Contact our Risk Assurance Team or your usual Johnston Carmichael adviser

Businesses face a host of risks that can impact their profitability and operational efficiency. When crystallised, these risks may have an adverse impact across numerous parts of your business. Whilst total control against every risk is impossible, businesses can strive to proactively identify and implement controls to mitigate against current known and emerging risks.

Our Risk Assurance team offers operational and regulatory assurance services aimed at identifying and maximising opportunities, protecting business reputation, and supporting the design and implementation of an optimised risk and governance framework aligned with your strategy.

The team supports organisations in a number of ways, including through provision of the following:

- **Process and Controls Reviews:** Undertaking 'review and recommend' engagements covering the process and control environment of any department.
- **Providing support with documenting and assessing internal controls, including the creation or review of standard operating procedures and process flows.**
- **Internal Audit:** Conducting evaluation of business areas to identify areas for improvement and deliver actionable recommendations.
- **Technology Assurance Services:** Reviewing risks pertaining to IT systems, access rights and third-party software requirements.
- **Third Party Risk Assurance:** Reviewing existing or new third-party associations to identify and mitigate risks.
- **Corporate Governance:** Helping organisations ensure that they have a strong governance framework.

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Risk Assurance and Internal Audit

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