

TRANSPORT FOR LONDON

AUDIT COMMITTEE

SUBJECT: THE BRIBERY ACT 2010

DATE: 15 JUNE 2011

1 PURPOSE AND DECISION REQUIRED

1.1 The purpose of this paper is to advise the Committee on TfL's response to the Bribery Act 2010 ("the Act"). The Committee is asked to note the paper.

2 THE BRIBERY ACT 2010

2.1 The Act, which was originally due to come into law earlier this year, will come into force on 1 July 2011, following the Government's review of the Act and the publication of guidance on the new requirements.

2.2 There will be a new offence under Section 7 of the Act whereby a commercial organisation will be liable to prosecution if a person associated with it bribes another person intending to obtain or retain business or an advantage in the conduct of business for that organisation. An "associated person" is defined as a person who "performs services for or on behalf of an organisation". For TfL, this would include delivery partners and contractors.

2.3 The commercial organisation will have a full defence if it can show that, despite a particular case of bribery having taken place, it nevertheless had adequate procedures in place to prevent persons associated with it from bribing.

2.4 There are six principles in the Ministry of Justice Guidance Notes to the Act which are:

- (1) Proportionate procedures. Procedures to prevent bribery should be proportionate to the bribery risks a commercial organisation faces and to the nature, scale and complexity of the organisation's activities.
- (2) Top level commitment. There should be a commitment by top level management to prevent bribery by persons associated with the commercial organisation.
- (3) Risk assessment. Commercial organisations should assess the nature and extent of their exposure to potential external and internal risks of bribery.
- (4) Due diligence. Commercial organisations should apply due diligence procedures, taking a proportionate and risk based approach, in respect of

persons who perform or will perform services for or on behalf of the organisation in order to mitigate identified bribery risks.

- (5) Communication. Commercial organisations should seek to embed bribery prevention in their policies and procedures and these should be understood throughout the organisation through internal and external communication.
- (6) Monitoring and review. Commercial organisations should monitor and review their procedures designed to prevent bribery.

3 TfL's RESPONSE

3.1 TfL already has a number of measures in place relating to standards of conduct, transparency in decision-making and fraud and security which would include the matters covered by the new legislation and guidance. TfL's procurement processes will have an important role to play in providing due diligence on TfL's contractual counterparties envisaged in Principle 4 of the Ministry of Justice's guidance. The Ministry of Justice's guidance does not require any specific action in relation to contract terms in use by TfL. TfL does already have recourse against suppliers in breach of the Act through provisions included in TfL's standard forms of contract requiring suppliers to comply with the law and TfL's policies, together with audit rights that permit wide review of the supplier's business practices and finances. Overall, therefore, we consider that the impact on TfL of this legislation will be minimal.

3.2 Nevertheless, some actions will be required to ensure compliance with the Act, including the following:

- (a) Code of Conduct. TfL already has in place a Code of Conduct that emphasises the requirement for all staff to maintain high standards of conduct in their work and in particular to ensure that TfL's business is conducted according to ethical values, to the highest standards of integrity, behaviour and business practice. The Code of Conduct is widely available to staff and regularly publicised. These arrangements are considered more than adequate to meet the requirements of the new legislation and guidance.
- (b) HR TfL's HR policies already cover the key principles of the Act, particularly in relation to conflicts of interest. However, where appropriate, relevant policies will be amended to make specific reference to the Act when they are next reviewed.
- (c) The standard service agreements for senior employees joining TfL will be revised. Other standard service agreements will be revised to include explicit statements confirming that the policies/contracts have been revised in accordance with the Act.
- (d) Procurement processes. A basic compliance question will be included in TfL's pre-qualification questionnaires. A risk based approach will then be adopted so that TfL can determine where more detailed due diligence is necessary. This may be necessary in areas where insufficient or inadequate

information is supplied in response to basic compliance questions and in areas of potential higher risk such as suppliers from particular industries or jurisdictions. Where due diligence is considered necessary, it will generally be undertaken through a standard questionnaire (at pre-qualification stage of a competitive procurement process) and, depending on the responses given, further, proportionate investigations may be undertaken.

- (e) Contract terms. While TfL's standard forms of contract already adequately cover the new requirements, to reinforce the importance of the issue, it is considered beneficial to ensure TfL's standard contracts include an express requirement of compliance with the Act, with a right of termination for failure to comply.
- (f) Communications. Communications will be issued to all staff to ensure that there is awareness of the Act prior to the legislation coming into force. This will also make clear the commitment of senior staff to an anti-bribery culture and high standards of conduct more generally. The Act is already included as part of the Fraud Awareness training programme.
- (g) Gifts and Hospitality. TfL has in place a strict gifts and hospitality policy. A centralised register for the most senior staff and those engaged in procurement activities is maintained.
- (h) Monitoring and review. As required by the Act, a process will be developed for regular monitoring and review both of compliance with the Act and of policies and procedures to ensure they continue to be fit for purpose. The process developed will be proportionate to the level of risk to TfL.

4 RECOMMENDATION

- 4.1 The Committee is asked to NOTE the paper.

5 CONTACT

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