

## The failure to prevent fraud offence – are you prepared?

### What is the offence of 'failure to prevent fraud' introduced by the Economic Crime & Corporate Transparency Act 2023 ('ECCTA'):

Guidance ([here](#)) published by the Home Office updates the Economic Crime and Corporate Transparency Act (ECCTA) by introducing enhanced measures to prevent fraud. Whilst most firms will be aware of how they may be the victim of fraud and have likely implemented controls to mitigate the risk, the updated Act now extends the requirements to prevent fraudulent activity that is intended to benefit the firm or its clients.

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 will impact a number of departments in the firm, so firms need to consider the full effect on their business.

### Is there any defence?

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. Firms must carry out a thorough fraud risk assessment and implement relevant processes and controls.

### What is an associated person?

An associated person is a party who provides services for or on behalf of the organisation. For example, it can be an employee, agent, subsidiary or supplier.

Penalties:	Timeline:
<ul style="list-style-type: none"> <li>The offence could 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 them from procurement contracts.</li> <li>The person who committed the fraud may also be prosecuted individually.</li> </ul>	<p>A key deadline for businesses to implement the necessary measures and demonstrate compliance is <u>1 September 2025</u>. 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.</p>

### What firms are impacted?

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

- Turnover: £36 million or more.
- Balance Sheet: £18 million or more total assets.
- Employees: 250 or more.

Due to the nature of the requirements, the Act will likely also impact other businesses including Small organisations who supply larger firms and fast-growing SMEs.

### How can we help

The breadth of the requirements means there is no "one-size-fits-all" standard solution. That's why we will adopt a collaborative approach, partnering with your business and key departments to support you develop processes, controls and governance arrangements which address your unique business needs and align with the specific demands of your sector. More details on how we can help can be found [here](#).

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