

THE FRAUD ACT 2006 (c.35)

The Fraud Act 2006 received royal assent on 8 November 2006, and commencement order SI 2006:3200 brought the Act into full effect on 15 January 2007

Section 1 – Offence of Fraud

A person commits an offence of 'fraud' if he breaches any of the following:

- Section 2 (fraud by false representation)
- Section 3 (fraud by failing to disclose information)
- Section 4 (fraud by abuse of position)

The offence is triable either way with a maximum penalty on indictment of 10 years imprisonment or an unlimited fine or both.

This Section effectively replaces Sections 15, 15A, 16 and 20(2) of the Theft Act 1968

Section 2 – Fraud by false representation

A person breaches this section (and commits an offence by virtue of Section 1 as a result) if:

- a) he dishonestly makes a false representation, and
- b) he intends, by making the representation, to gain for himself or another or causes loss to another/exposes another to a risk of loss

A representation is false if it is untrue or misleading, and, the person making it knows it is/might be untrue or misleading. It is any representation as to fact or law and can include reference to state of mind. The offence, therefore, is one of mens rea to which there is no statutory defence.

Section 3 – Fraud by failing to disclose information

A person breaches this section if he

- a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and
- b) intends, as a result of failing to disclose info, to gain for himself or another or causes loss to another/exposes another to a risk of loss

This is another offence, which requires mens rea with no statutory defence available.

Section 4 – Fraud by abuse of position

A person breaches this section if he:

- a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person, and
- b) dishonestly abuses that position, and
- c) intends, as a result, to make a gain for himself or another, or causes loss to another/exposes another to risk of loss

The 'abuse of position' can be by omission as well as an act. Upon first reading it would appear that fraud offences which stem from this Section are likely to be matters for the Police as it could relate to accountants/bank managers, etc defrauding their clients. It could, however, still be relevant in relation to Trading Standards matters. For example, the trustees of a client trust account (held for the purposes of the Package Travel Regulations) siphon off the money which causes potential loss to both the company and the consumer.

Common Elements in the Various Sections

1. All breaches of Sections 2, 3 and 4 which lead to a commission of offence (by virtue of Section 1), are mens rea offences to which there is no statutory defence.
2. An element of 'gain' or 'loss' must be involved. Gain or loss extends to either money or other property and can either be temporary or permanent. Gain also includes keeping what one already has as well as getting something that one does not have. Property is defined as '*any property whether real or personal (including things in action and other intangible property)*'. It would appear therefore that the definition of 'property' is wide.

Other Criminal Offences

Section 6 – possession of an article for use in fraud. Triable either way. Maximum penalty on indictment is 5 years imprisonment or an unlimited fine or both.

Section 7 – making or supplying articles for use in fraud. Triable either way. Maximum penalty on indictment is 10 years imprisonment or an unlimited fine or both

Section 9 – participating in fraudulent business carried on by sole trader. Triable either way. Maximum penalty on indictment is 10 years imprisonment or an unlimited fine or both. It would appear from the wording of a section that is an employee is knowingly a party to the fraudulent activity of their employer they could also commit the offence.

Section 11 – obtaining services dishonestly (previously dealt with under the Theft Act 1978). Maximum penalty on indictment is 5 years imprisonment or an unlimited fine or both.

Other points of interest

- a) Any offence committed by a body corporate that was done so with the consent or connivance of director, manager, officer of the company....etc, then said officer of company can also be proceeded against by virtue of Section 12(2).
- b) A person is not to be excused from answering any question put to him in proceedings relating to property, or, complying with an order in relation to property on the basis that to do so may incriminate him or his spouse or civil partner either of an offence under the Fraud Act 2006 or a similar offence. Any admission, however, that arises as a result is not admissible in evidence against the person who made it or his spouse or civil partner (except if the 'marriage' took place after the admission). For example, John claims that Sharon was the person who made the fake passport for him that he used to fraudulently obtain a mortgage. Sharon is John's wife at the time, so, the admission cannot be used against either him or her. If John married Sharon after he made the admission, then it cannot be used against him **but** it could be used against her.
- c) Deceptions, which would fall within the scope of the Theft Act 1968 normally, that start before the Fraud Act 2006 comes into effect but continue after it has done so, can be proceeded against under the Theft Act 1968.
- d) For any offence under Sections 1, 6, 7, 9 and 11 of the Fraud Act 2006, the maximum penalty on **summary** conviction is reduced from 12 months to 6 months if the offence was committed before the commencement of Section 154(1) of the Criminal Justice Act 2003
- e) No time limits are stipulated and there are no powers of enforcement. As a result, as we currently do with Theft Act 1968 offences, we may have to consider only investigating Fraud Act 2006 offences where we have others, e.g. Weights and Measures Act 1985, Trade Descriptions Act 1968, Part II of the Consumer Protection Act 1987 etc.
- f) Officer authorisations will require amendment to include the addition of the Fraud Act 2006.