

US Department of Justice on Evaluation of Corporate Compliance : how does it compare to UK Bribery Act 2010?

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The US Department of Justice (DoJ) recently published a useful document on the Evaluation of Corporate Compliance Programs. The document sets out the things that the DoJ would be looking for in a corporate compliance program under 11 helpful headings.

In some respects the document is similar to the Guidance that the UK Ministry of Justice issued under the Bribery Act 2010 in March 2011. That is not a coincidence as the US authorities cooperated in producing the MoJ Guidance. We give more background to the MoJ Guidance and the Bribery Act 2010 in our Bribery Act 2010 FAQs [here](#). Whilst the MoJ Guidance has just six principles it can be seen that a lot of the same ground is covered. As an illustration the table below shows some comparisons between the two documents:

	US DoJ	UK MoJ
1.	Analysis & remediation	Covered in Principle 1 – see e.g. 1.2, 1.3
2.	Senior & middle management	Covered in Principle 2 although Bribery Act 2010 Guidance concentrates more on top-level commitment rather than middle management.
3.	Autonomy & resources	No specific Principle as such but resourcing is dealt with elsewhere e.g. 3.3 “ <i>Appropriate resourcing – this should reflect the scale of the organisation’s business and the need to identify and prioritise all relevant risks</i> ”.
4.	Policies & procedures	Covered in Principle 1 – see e.g. 1.2, 1.6, 1.7, 3.3
5.	Risk Assessment	Covered in Principle 3 – Risk Assessment
6.	Training & communication	Covered in Principle 4 : Communication (including training) See also e.g. 2.3 regarding a statement
7.	Confidential reporting of investigations	Covered in Principle 6 : Monitoring and review
8.	Incentives & disciplinary measures	No specific Principle as such. Some aspects are referred in other Principles – for example 1.7 looks at “ <i>Direct and indirect employment, including recruitment, terms and conditions, disciplinary action and remuneration</i> ”.
9.	Continuous improvement, periodic testing & review	Covered in Principle 6 : Monitoring and review.
10.	Third party management	No specific Principle as such but covered in Principle 4 : Due Diligence.
11.	M&A	No specific Principle as such but covered in Principle 4 : Due Diligence.

Data Protection

We have looked at the possible conflicts between data protection law in the EU and investigations into possible wrong doing in our Bribery Act FAQs. It is likely that these issues will be magnified with the Evaluation’s renewed focus on issues like information gathering and analysis, the increasing use of Big Data in investigations and regulatory enforcement and forthcoming changes to EU Data Protection Law including the General Data Protection Regulation (GDPR). We have written on the SFO’s use of Big Data [here](#) and our GDPR FAQs are [here](#).

The heightened penalties under the GDPR in particular are likely to cause increased conflicts. Under GDPR the possible fine for breach of data protection law is 4% of global annual revenue or €20m whichever is greater. As an example much has been made of the perceived high level of fine in the Rolls-Royce Deferred Prosecution Agreement under the Bribery Act 2010 in January. Our alert on that is [here](#). The UK element of the Rolls-Royce fine was around £497million. As an illustration of the higher fines under GDPR currently were Rolls-Royce to breach data protection law the maximum fine in the UK is £500,000. After 25 May 2018 when GDPR comes in Rolls-Royce would be subject to a potential fine for data protection breaches of £549million.

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