Impact Assessment, The Home Office

Title: Introducing a failure to prevent fraud offence covering all large organisations **IA No:** HO0435 **RPC Reference No:** Not known **Other departments or agencies:** Business and Trade, Ministry of Justice, HM Revenue and Customs, HM Treasury, Serious Fraud Office, Crown Prosecution Service and Attorney General's Office.	**Date**: 23 November 2022 **Stage:** FINAL **Intervention:** Domestic **Measure:** Primary Legislation **Enquiries:** Amelia.smith37@homeoffice.gov.uk Emma.Merry@homeoffice.gov.uk
RPC Opinion: Awaiting Scrutiny	**Business Impact Target:** Qualifying Regulatory Provision

Cost of Preferred (or more likely) Option (in 2020 prices)

Net Present Social Value NPSV (£m)	Business Net Present Value BNPV (£m)	Net cost to business per year EANDCB (£m)
-847.7	-847.7	98.5

What is the problem under consideration? Why is government intervention necessary ?

Criminal activity can be enabled and perpetuated by organisations. The limited ability to hold organisations criminally responsible in recent years has raised concern that parts of the law that hold organisations liable are not fit for purpose. The Government has to legislate to ensure there is successful prosecution of organisations for crime, particularly fraud.

What is the strategic objective? What are the main policy objectives and intended effects?

The strategic objective is to reduce crime, specifically fraud. The failure to prevent fraud offence should build an anti-fraud culture within organisations, following the failure to prevent bribery offence in driving change in corporate culture. The Government expects a reduction in fraud committed by people within organisations.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: (Do-nothing) this does not meet the Governments objectives

Option 2: Introduce failure to prevent fraud (FTPF) offence covering all large organisations employing staff.

Option 2 is the Government's preferred option and meets government objectives.

Main assumptions/sensitivities and economic/analytical risks	Discount rate (%)	3.5

The main uncertainties relate to: a) the scale of the potential quantified benefits, which are only qualitatively described due to limitations in available evidence and b) the amount of effort that organisations would invest in compliance and the resulting compliance costs. Where possible, the Home Office has worked with prosecutors and other government departments (OGDs) to draw on evidence from experience of other failure to prevent offences to inform cost estimates.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** October 2026

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: ______________________ Date: ______________

Summary: Analysis & Evidence — Option 2

Description: Introducing a failure to prevent fraud offence covering all large organisations

FULL ECONOMIC ASSESSMENT

Year(s):	Price Base	2019	PV Base	2020	Appraisal	10	Transition	1

Estimate of Net Present Social Value NPSV (£m)						Estimate of BNPV (£m)	
Low:	-680.8	**High:**	-869.9	**Best:**	-847.7	**Best BNPV**	**847.7**

COSTS, £m	Transition Constant Price	Ongoing Present Value	Total Present Value	Average/year Constant Price	To Business Present Value
Low	357.6	323.1	**680.8**	68.0	680.8
High	451.8	418.5	**869.9**	87.0	869.9
Best Estimate	**439.1**	**408.2**	**847.7**	**84.8**	**847.7**

Description and scale of key monetised costs by 'main affected groups'

Set-up costs are estimated to be **£357.6 to £451.8 million,** with a central estimate of **£439.1** (2020 prices) in year 1 only. Estimated ongoing costs are **£47.1 to £61.0 million**, with a central estimate of **£59.5 million** (2020 prices) every year from years 2-10. The main affected are large corporations and partnerships. All costs fall to business and relate to compliance and familiarisation.

Other key non-monetised costs by 'main affected groups'

Increased criminal justice system (CJS) costs may arise. After consultation with the Crown Prosecution Service (CPS) and Serious Fraud Office (SFO), additional court cases are expected to be low. Any additional costs are expected to be modest.

BENEFITS, £m	Transition Constant Price	Ongoing Present Value	Total Present Value	Average/year Constant Price	To Business Present Value
Low	N/A	N/A	**N/A**	N/A	N/A
High	N/A	N/A	**N/A**	N/A	N/A
Best Estimate	**N/A**	**N/A**	**N/A**	**N/A**	**N/A**

Description and scale of key monetised benefits by 'main affected groups'

None. For the purpose of the EANDCB calculation, monetised benefit is given as zero.

Other key non-monetised benefits by 'main affected groups'

The **FTPF offence may reduce fraud** by increasing consumer confidence and ensuring more money is directed towards legitimate businesses. There is also a wider socio-economic benefit as a reduction in fraud could result in lower emotional harms, victim support costs and law enforcement and CJS costs.

BUSINESS ASSESSMENT (Preferred option)

Direct impact on business (Equivalent Annual) £m: (benefit – cost)					
Cost, £m	98.5	**Benefit, £m**	0.0	**Net, £m**	**98.5**
Score for Business Impact Target (qualifying provisions only) £m:					**492.4**

Is this measure likely to impact on trade and investment?				N			
Are any of these organisations in scope?	**Micro** N	**Small** N		**Medium**	N	**Large**	Y
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)	Traded:	N/A		Non-Traded:	N/A		

PEOPLE AND SPECIFIC IMPACTS ASSESSMENT (Preferred option)

Are all relevant Specific Impacts included?	Y	**Are there any impacts on particular groups?**	N

Evidence Base (for summary sheets)

A. Strategic objective and overview

A.1 Strategic objective

1. The strategic objective is to reduce crime, specifically fraud. Criminal activity can be enabled and perpetuated by organisations. The limited ability to hold organisations criminally responsible in recent years has raised concern that parts of the law are not fit for purpose. This has created challenges in the successful prosecution of organisations for crime, particularly economic crimes.
2. Reform of corporate liability is required to protect the integrity of the UK as a safe place to conduct business. This means strengthening the ability for prosecutors to hold to account, and appropriately deal with, organisations who have employees perpetuating and facilitating crime. This includes clamping down on organisations without sufficient procedures in place to prevent the most common crime – fraud[1].

A.2 Background

3. Under the law, an organisation is considered to have a distinct legal entity from its owners or officers and is considered a separate "legal person" in itself. As such, organisations can be subject to criminal and civil liability. In the year to September 2020, there were over 5,000 convictions of non-natural persons, representing around 0.6 per cent of all convictions[2]. This primarily relates to strict liability offences such as environmental, trading or health and safety offences. The Government recognised that the law must be improved where the employees of organisations commit criminal offences, particularly economic crimes.
4. In November 2020, the Government recognised the need to introduce reform to corporate liability and commissioned the Law Commission to undertake a thorough examination of the issue. In June 2022, the Law Commission published their options paper on Corporate Criminal Liability[2] setting out 10 options ranging from civil penalties to criminal prosecutions.
5. The Government has considered the options and is introducing the following measure as the strongest options for reform that meets the objectives (see Options, section D):

   The creation of a new criminal offence of corporate criminal liability for fraud committed by its agents for the organisation's benefit – "failure to prevent fraud".

6. The reforms closely mirror the Law Commission's proposals with some amendments to make the powers more usable over a wider set of cases. This includes amending the list of fraud offences proposed by the Law Commission.

Failure to Prevent Fraud

7. The failure to prevent fraud offence is intended to mirror the existing failure to prevent offences contained in sections 7, 8, and 9 of the Bribery Act 2010 (BA 2010) and Part 3 of the Criminal Finances Act 2017 (CFA 2017).

---

[1] Per the Crime Survey for England and Wales, Appendix ,Table 3, fraud constitutes 40 per cent of estimated crime against individuals.
https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/crimeinenglandandwalesappendixtables

[2] https://www.lawcom.gov.uk/project/corporate-criminal-liability/ page 1 - Ministry of Justice, Criminal Justice system statistics quarterly, September 2020, Table Q5.1. The need for cautioned arises because, according to the Ministry of Justice, ambiguity in the status of small business owners can lead to individual defendants being recorded as corporations, and, by implication, vice versa (for instance, some corporations were recorded as having received sentences only available to natural persons, such as community or custodial sentences. Figures up to September 2020, as opposed to more recent figures, have been used because of the disruption caused to prosecutions due to COVID-19.

8. It would cover a set of core fraud offences:

   a. Fraud by false representation (section 2. Fraud Act 2006, FA 2006)).

   b. Fraud by failing to disclose information (section 3. FA 2006).

   c. Fraud by abuse of position (section 4. FA 2006).

   d. Obtaining services dishonestly (section 11. FA 2006).

   e. Cheating public revenue (common law).

   f. False accounting (section 17. Theft Act 1968, TA 1968).

   g. Fraudulent trading (section 993. Companies Act 2006, CA 2006).

   h. Participation in a fraudulent business (section 9, FA 2006).

   i. False statements by company directors (section 19, TA 1968).

9. The offence would be made out where the fraud is committed by an employee or associate of the organisation with a view to benefiting the organisation[3].

10. A defence would be available where 'reasonable procedures' for the prevention of fraud have been implemented by the organisation (thus mirroring the approach taken in the CFA 2017 for failure to prevent the facilitation of tax evasion), with provision that in some circumstances it may be reasonable for no such procedures to be in place. The statutory defence in the Bribery Act 2010 (BA 2010) (failure to prevent bribery) is 'adequate procedures'; 'reasonable procedures' has been determined to place a lesser burden on organisations than 'adequate'.

11. The offence will not have extra-territorial reach beyond the United Kingdom, beyond that of the base offences, unlike the 'failure to prevent bribery' offence. Both this point and the point above reduce the burden on organisations.

12. The burden of proving that the organisation had put in place reasonable prevention procedures, or that it was reasonable not to have any such procedures, should lay with the defence (that is, the organisation).

13. The sanction available for this offence would be an unlimited fine (mirroring the approach taken in the existing failure to prevent offences, both facilitation of tax evasion and bribery).

14. The Government will be required to publish guidance on the procedures organisations can put in place to prevent fraud. As an organisation's defence depends on demonstrating that it has reasonable procedures, where applicable under the circumstances, it is likely that whether an organisation is compliant with guidance will be a benchmark for determining reasonableness. This guidance was not available when estimating the regulatory impacts on organisation. However, to estimate compliance costs it is assumed that the guidance would be broadly like guidance setting out procedures to avoid commissioning the existing offences of failure to prevent bribery and failure to prevent tax evasion.

A.3 Groups affected

15. The main groups affected by the measure are:

   - Large[4] organisations and partnerships whose employees may be perpetrators of fraud.
   - The victims of corporate fraud, including the Government - who may be a victim of cheating the public revenue - and other businesses, including small businesses.

[3] Therefore, if the entity were a victim of fraud, consideration of fault would not arise.

[4] Where large is defined as following the Companies Act 2006 definition - that is they meet two out of three of the following criteria: more than 250 employees, more than £36 million turnover and more than £18 million in total assets.

- Organisations and workers who would be required to change processes or undergo training to demonstrate that they have reasonable procedures to prevent fraud.
- Prosecution agencies, such as the CPS and the SFO, who would have additional powers to pursue corporate prosecutions.
- The court system which may have to try additional cases of failure to prevent fraud.

A.4 Consultation

Consultation within government

16. The following government departments and agencies were consulted during the development of this policy:
    - Department for Business and Trade (DBT).
    - HM Revenue and Customs (HMRC).
    - HM Treasury (HMT).
    - Ministry of Justice (MoJ).
    - Serious Fraud Office (SFO).
    - Crown Prosecution Service (CPS).
    - Attorney General's Office (AGO).
    - Cabinet Office (CO).
    - Department for Education (DfE).
    - Department for Health and Social Care (DHSC).
    - The Charity Commission.
    - Department for Levelling Up Housing and Communities (DLUHC).

Targeted consultation

17. In June 2021, the Law Commission published a discussion paper considering the present law relating to corporate criminal liability and options for reform[5]. The discussion paper set out the law relating to several areas of corporate criminal liability. Separately, the Law Commission also assessed the existing "failure to prevent" offences, for bribery and the facilitation of tax evasion, and the possibility of expanding this regime. The Law Commission's consultation received 45 responses alongside direct engagement with a number of additional stakeholders during the consultation period. The results of the targeted consultation were not made public but some of the findings were included in the Law Commission's options paper. The Law Commission concluded that introducing failure to prevent offences should be considered.

B. Rationale for intervention

18. This policy aims to reduce the amount of fraud conducted by organisations or their employees. In 2021, there were just 36 proceedings for false accounting and 497 for fraud by abuse of position, most of which would be fraud by employees for corporate gain. The rationale for this policy is that:

[5] https://www.lawcom.gov.uk/law-commission-seek-views-on-corporate-criminal-liability/

- There is a principal-agent problem which arises due to asymmetric information and is evident at several levels: the principal [shareholders] are unable to observe and monitor the actions of agents [managers] responsible for daily business activities. Managers may make decisions or pursue fraudulent actions for their own self-interest. By extension senior leadership may line manage staff who may also not act in keeping with corporate policy or engage in otherwise fraudulent conduct.
- This is likely to be exacerbated where the principle faces no adverse consequences or may even benefit as a result of the fraud. Here there will be a temptation to ignore something they know is wrong". Failure to prevent fraud is designed to deal with cases where the business itself is a beneficiary of the fraud.
- Fraud is one of those activities that undermines the efficient operation of economies as it undermines the framework of contract law and reduces trust, raising transaction costs meaning that otherwise economically efficient trades are deterred.
- Requiring organisations to develop procedures to prevent fraud would encourage them to reduce opportunities for fraud to occur which would not only benefit wider society but would also benefit them where they might be the targets of fraud.

C. Policy objective

19. The intended outcome of these measures is to ensure fair and proportionate liability is placed on corporates for fraudulent wrongdoing, committed by senior management and other employees. These measures will:
    - Make it possible to prosecute organisations that commit crimes or enable a poor corporate culture where regulatory requirements are ignored, thereby providing greater disincentive to engage in fraud.
    - Increase fraud detection and prevention methods in organisations and create an anti-fraud culture in business.

D. Options considered and implementation

20. The Government has two options:
    - **Option 1**: (Do-nothing), this does not meet the Government's objectives.
    - **Option 2**: Create a new offence of failure to prevent fraud. The organisations in scope are corporations, partnerships and unincorporated associations. The two measures in this option are explained in more detail below.
21. **Option 2** covers all large bodies corporate and partnerships, where large is defined as following the CA 2006 definition – that is they meet two out of three of the following criteria:
    - More than 250 employees.
    - More than £36 million turnover.
    - More than £18 million in total assets.
22. The organisations in scope for **Option 2** are the same as those defined by the Failure to Prevent Facilitation of Tax Evasion offence, under Part 3 of the CFA 2017, which applies to bodies corporate and partnerships. However, organisations within this remit that do not meet the CA 2006 definition of large would be exempt from the failure to prevent fraud offence

Preferred option and implementation date

23. **Option 2 is the Government's preferred option** as it should generate benefits relative to **Option 1** (do-nothing). It focuses on the largest entities, which employ nearly half of all workers. By excluding Small and Medium Businesses (SMBs), it also ensures that small and medium sized organisations are not burdened and significantly reduces the overall cost to business of considering the impact of the offence. The definition of "large" will be taken from the CA 2006.

24. The measures are expected to be implemented within a year of Royal Assent.

E. Appraisal

Entities in scope

25. The entities in scope of **Option 2: the Government's preferred option**, that are appraised (compared to **Option 1** (Do-nothing), in this section are any large 'relevant body' which is a body corporate or partnership (wherever incorporated or formed). Relevant organisations include UK incorporated bodies, taken to be companies and Limited Liability Partnerships (LLP), UK partnerships and foreign domiciled companies and partnerships with UK operations. It also includes non-commercial organisations including charities.

26. Incorporated bodies in this section include public and private companies and LLPs, ordinary partnerships, other commercial organisations and non-commercial organisations. Two estimates are provided depending on how organisations comply with the failure to prevent fraud measure.

27. Different organisation number estimates were used to create a range of costs for **Option 2**, as set out below:

    a. In the *low scenario* the group-based definition has been used. This equates to subsidiaries undertaking the relevant training but relying on the policy developed by the group. This is not the most likely scenario though as Director's responsibilities are to the corporate not the group. Directors of subsidiaries are most likely to want to ensure that they have considered the risks associated with their own entity.

    b. In the *high scenario* the entity-based definition has been used. Every large organisation therefore carries out their own risk assessment and undertakes suitable prevention measures.

    c. In the *best scenario*, the entity-based definition has been used. All large organisations have to familiarise and undertake a risk assessment as per the HMRC guidance on failure to prevent the facilitation of tax evasion[6]. Therefore, the best scenario equates to the high scenario.

28. Non-commercial organisations are in-scope of the failure to prevent fraud offence. Those which fall under the Better Regulation Framework[7] are included in estimates of organisations in scope and the costs. However, local authorities, NHS trusts and other public bodies which do not fall under the Better Regulation Framework are not included in the estimates of organisations in scope or the costs.

29. A detailed explanation of how the organisations in scope were estimated is presented in **Annex 1**.

Table 1: Organisations in scope by definition, 2022.

Definition used	Organisations in scope
Group based definition	8,900
Entity based definition	24,900

Source: DBT internal analysis

[6] https://www.gov.uk/government/publications/corporate-offences-for-failing-to-prevent-criminal-facilitation-of-tax-evasion
[7] Better regulation framework - GOV.UK: https://www.gov.uk/government/publications/better-regulation-framework

General assumptions and data

30. The analysis is based on the following general assumptions:

- 2023 – 2032: The analysis assumes that the measures come into force in 2023 and costs and benefits arise from that point onwards.
- 2019 price base year (PBY) and 2020 present value base year (PVBY).
- A 3.5 per cent discount rate per the Green Book (2022)[8] compliance.
- A reading speed of 400 words per minute with 80 per cent comprehension[9].
- All in-scope companies will take steps to ensure full compliance with the failure to prevent fraud offence. It is possible this will mean that costs are overestimated.

31. The main data sources used for this analysis:

- Business Population Estimates 2022[10] used to inform numbers of organisations in scope and their employment.
- Annual Survey of Hours and Earnings 2019[11] used to inform wage costs.

COSTS

Set-up costs

32. The set-up costs are based on the two approaches to costing organisations in scope – the group based definition and the entity based definition. The upper and lower bounds of these ranges are based on these definitions. The entity based approach is deemed the best estimate as it is assumed each individual subsidiary would want to tailor their own individual company policies.

33. Although the offence places no specific requirement on an organisation, it would be a defence, if prosecuted, for organisations to demonstrate that reasonable procedures were in place to prevent employees committing fraud. In some circumstances it could be considered reasonable for there to be no procedures in place. However, it is assumed that organisations would follow guidance, set up systems and carry out training to ensure that they had a defence if prosecuted.

34. The guidance would be like the guidance published for the failure to prevent bribery or failure to prevent tax evasion offences[12] and that the cost of developing reasonable procedures consistent with the guidance, or considering whether there is a need to are the compliance costs.

35. The costing assumes that organisations need to undertake the following actions:

   a. **Familiarisation**: Which includes activities such as reading guidance; planning and mobilising resources; defining stakeholders and the scope of the project; identifying information sources and allocating responsibilities. It also includes setting control objectives and risk approach.

   b. **Risk assessment**: This includes developing and populating a risk register. It also includes prioritising risks and testing risks against the companies control framework. It is assumed that after the risk assessment in the first year the risk assessment is refreshed annually but the costs of the refresh are much less than a full assessment[13] as the initial required groundwork has already been done.

---

[8] The Green Book (publishing.service.gov.uk): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1063330/Green_Book_2022.pdf

[9] Internal DBT assumption

[10] Business population estimates for the UK and regions 2022: statistical release (HTML) - GOV.UK: https://www.gov.uk/government/statistics/business-population-estimates-2022/business-population-estimates-for-the-uk-and-regions-2022-statistical-release-html

[11] https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2019

[12] https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf

[13] It is assumed the refresh costs will be 10 per cent of the cost of the original assessment. Source: DBT

c. **Communications**: These include set-up costs from a statement to external audiences via company websites and costs every year where the management and Board set out their anti-fraud policies to staff.

d. **Training**: It is assumed that all staff receive on-line training from a commercial training provider. Existing guidance for similar offences requires companies to undertake training of staff and this has created significant demand for on-line training provision.

36. The analysis assumes that the complexity of compliance scales with the organisation's size. Larger organisations will require more labour and total time inputs to complete a task. This is reflected in larger project teams for larger organisations. The assumptions on project team size are given in Table 2.

Table 2, Project team sizes for non-training tasks, 2022.

Corporate body size	Size employees	Core team size	Project Director	Director time per team member	Core team rate	Project director rate	Blended rate /hr of input	Non-wage labour cost	Blended opportunity cost of time
					£	£	£	£	£
Largest	>500	5	1	0.2	21.9	30.06	22.21	0.19	26.35
Largest	>250<500	4	1	0.2	21.9	30.06	22.29	0.19	26.43

Source: ASHE 2019[14], DBT internal calculations

37. For the largest organisations it is assumed that the core team consists of five personnel[15] working full-time who are managed by a project director[16] who dedicates 20 per cent of their time to the project. For the smallest companies it is assumed that only one person carries out the work and that is likely to be the owner or chief executive. The substantial input from senior staff is based on the current BA 2010 guidance which states that processes should show "top level commitment".

Table 3, Total hours by stage of non-training phase, 2022.

Set-up time by stage (hours)		
	Large	**Largest**
Familiarisation	36	44
Risk assessment	104	128
Internal communications	12	15
External communications	13	16

Source: Internal DBT calculations

Familiarisation costs

38. Using the assumptions outlined above, it is assumed that the time required for initial familiarisation will be 36 hours in a large organisation and 44 hours[17] in the largest organisations.

39. Multiplying the hours taken by the blended opportunity cost of time gives a unit familiarisation set-up cost of £958 for large and £1,163 for the largest organisations.

40. Multiplying these costs by the number of organisations gives a familiarisation set-up cost estimate of **£8.5 to £23.8 million**, with a best estimate of **£23.8 million** (2020 prices) in year 1 only.

[14] Employee earnings in the UK - Office for National Statistics: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2019/relateddata

[15] Median hourly pay rates from ASHE for all employees in SOC 242: Business, Research and Administrative Professionals.

[16] Median hourly pay rates from ASHE for all employees in SOC 113: Functional managers and directors.

[17] Where total hours = number of staff multiplied by hours to perform task

Risk assessment

41. The risk assessment stage consists of time taken to gather information, evaluate and prioritise risks, test these risks and then agree the assessment at a senior level. This is estimated to take 104 hours or 128 hours for large and the largest organisations respectively.

42. The estimated time taken is multiplied by the blended wage cost to give an estimate of £2,740 per large organisation and £3,370 per largest organisation.

43. Multiplying these costs by the number of organisations gives a risk assessment set-up cost estimate of **£24.4 to £68.5 million**, with a best estimate of **£68.5 million** (2020 prices) in year 1 only.

Communications

44. These costs include set-up costs from a statement to external audiences via company websites and costs where the management and Board set out their anti-fraud policies to staff.

45. Assuming this takes 25 hours for large and 31 hours for largest organisations, this cost is estimated to be £333 for large and £411 for largest organisations.

46. Multiplying these costs by the number of organisations in scope estimates communications set-up costs of **£6.0 to £16.7 million**, with a best estimate of **£16.7 million** (2020 prices) in year 1 only.

Training

47. The training costs are a function of UK employment as well as the number of organisations as organisations will incur a cost per employee trained.

48. Business Population Estimate (BPE) employment data[18] has been used to estimate the number of employees trained. All employees are expected to receive training in the first year.

49. Estimates of unit costs are based on:

    a. A base fee of £25 per trainee with a discount of up to 40 per cent for the largest organisations. The business model of providers is to charge a fee per trainee, though the fee varies by volume[19]. In practice larger organisations might develop the training in house, assuming that the costs of the in-house option would be similar to the costs of external provision.

    b. An opportunity cost of time based on the median hourly pay of all employees and a course length of one hour[20]

    c. Total employment of 10.6 million people, stated by the BPE. This is flexed to 11.0 million and 10.2 million in the high and low scenarios respectively. Current employment, as stated by the BPE is taken as the best scenario.

    d. High and low scenarios have been estimated at plus and minus 4 per cent of current employment levels. These are based on changes in the level of employement in large and largest organisations over the last five years.

    e. The cost of training time is calculated by adding the hourly fee for the training to the opportunity cost of one hour of an employee's time. This is then multiplied by the number of employees.

---

[18] https://www.gov.uk/government/collections/business-population-estimates, published Oct 2022

[19] It is assumed that companies with less than 10 employees receive no discount, but the discount is as high as 40 per cent for the largest companies. This is consistent with fee schedules on websites offering anti-bribery training, see: https://www.virtual-college.co.uk/courses/compliance/the-bribery-act-2010

[20] Opportunity cost is defined as the wage rate multiplied by 1.186 to account for non-wage labour costs..

50. Multiplying by the number of people employed by organisations in scope gives estimates set-up training costs of **£318.7 to 342.8 million**, with a best estimate of **£330.1 million**[21] (2020 prices) in year 1 only.

Total set-up costs

51. Total set-up costs (familiarisation, risk assessment, communications and training) are estimated in a range of **£357.6 to £451.8 million**, with a best estimate of **£439.1 million** (2020 prices) in year 1.

Table 4, All FTPF set-up costs, £ million (2020 prices), year 1 only, 2022.

	Low	High	Best
Familiarisation	8.5	23.8	23.8
Risk assessment	24.4	68.5	68.5
Communications	6.0	16.7	16.7
Training	318.7	342.8	330.1
Total	**357.6**	**451.8**	**439.1**

Source: DBT internal calculations, 2022.

Ongoing costs

52. The upper and lower bounds of these ranges are based on the two approaches to costing organisations in scope – the group based definition and the entity based definition. The entity based approach is deemed the best estimate as it is assumed each individual subsidiary would want to tailor their own individual company policies.

53. The methodology for assessing the ongoing cost of FTPF is the same as that described in the set-up costs.

Risk assessment

54. Ongoing risk assessment costs are calculated in the same way as they were for set-up. It is assumed that the risk assessment is refreshed annually but the costs of the refresh are much lower at 10 per cent of the set-up cost. The cost is estimated to be £274 for large and £337 for largest organisations.

55. Total ongoing risk assessment costs are estimated to be **£2.7 to £7.6 million (PV)**,with a best estimate of **£7.6 million (PV)** over years 2 to 10.

Communications

56. Ongoing communications costs are incurred every year where the management and Board set out their anti-fraud policies to staff. It is assumed to be the same as the set-up costs, calculated to be £333 for large and £411 for largest organisations.

57. Total ongoing communications costs are estimated to be **£3.3 to £9.3 million (PV)**, with a best estimate of **£9.3 million (PV)** over years 2 to 10.

[21] Note: A range is not presented for training costs as these costs are dependent on the number of employees, rather than the number of organisations in scope. Cost ranges are driven by different estimates of in-scope organisations (where the entity based approach is deemed best. The number of employees is the same under either estimate.

Training

58. Ongoing training costs are calculated in the same way as the set-up costs. However, it is assumed that only new employees receive training. Assuming an average job duration of 8.6 years[22] implies that 11.6 per cent of employees change their employer every year.

59. Total ongoing training costs are estimated to be **£41.10 to £44.1 million**, with a best estimate of **£42.6 million (PV)** over years 2 to 10.[23]

Total ongoing costs

60. The total ongoing cost is estimated by summing the estimates for risk assessment, communications, and training costs.

61. Total ongoing costs are estimated in a range of **£47.1 to £61.0 million (PV)**, with a best estimate of **£59.5 million (PV)** over the years 2 to 10.

Table 5, Total ongoing costs, £ million (PV) 2020 prices, years 2 to 10, 2022.

	Low	High	Best
Risk assessment	18.5	52.1	52.1
Communications	22.6	63.8	63.8
Training	282.0	302.6	292.3
Total ongoing cost	**323.1**	**418.5**	**408.2**

Source: DBT internal calculations, 2022.

Total costs

62. Total set-up costs are estimated in a range of **£357.6 to £451.8 million**, with a best estimate of **£439.1 million** (2020 prices) in year 1. Total ongoing cost is estimated in a range of **£47.1 to £60.0 million (PV)**, with a best estimate of **£59.5 million (PV)** over the years 2 to 10.

63. Total cost is estimated in a range of **£680.8 to £869.9 million (PV)**, with a best estimate of **£847.7 million (PV)** over 10 years.

Benefits

64. There is a lack of data on the incidence and associated losses of corporate fraud, which makes it difficult to quantify benefits for the measures. As a consequence, this IA only provides a qualitative assessment of benefits.

65. This legislation aims to reduce the incidence of corporate criminality through behavioural and cultural changes.

Non-monetised benefits

66. Assessment of benefits show that the main benefit of the failure to prevent fraud measure is this legislation will only apply to large companies, employing just under half of all employees employed in organisations.

[22] Based on Organisation for Economic Co-operation and Development (OECD) data: https://stats.oecd.org/Index.aspx?DataSetCode=TENURE_AVE#

[23] Note: A range is not presented for training costs as these costs are dependent on the number of employees, rather than the number of organisations in scope. Cost ranges are driven by different estimates of in-scope organisations. The number of employees is the same under either estimate.

67. The exclusion of small and medium-business will reduce the possible benefits and the potential for cultural change. However, it is possible that small and medium-businesses may adopt some of these practices resulting in spill-over benefits.

Non-monetised benefits

68. The main benefit of this legislation is the cultural change it is intended to create. This change is expected to result in a deterrent effect where increased awareness and corporate liability may deter would-be fraudsters. The threat of criminal liability will encourage organisations to put fraud-prevention measures in place which can reduce fraud as:

- The new offence allows for an organisation to be responsible for failing to prevent fraud carried out by any employee: Historically only senior management would have been in scope of corporate liability under the identification doctrine. In large organisations, where junior management may historically have committed offences to inflate their teams' performance to senior management, the scale of offences and subsequent losses may be considerable. A new failure to prevent fraud offence aims to incentivise organisations to stop these offences taking place and therefore is likely to reduce the level of fraud and associated losses.
- It can enable increased detection of fraudulent conduct. Staff awareness of fraud will increase their ability to detect fraud by others and reduce the temptation to conduct fraudulent activity themselves. The benefits rely somewhat on the cultural changes that are expected when most large organisations are in scope.

69. Having greater fraud prevention procedures in place could improve confidence in doing business in the UK. Widespread organisational cultural change would demonstrate that organisations in this country are committed to preventing fraud and could enhance the global economic reputation of the UK, increasing international confidence in conducting business here.

70. As the main benefit is deterrence, a significant increase in prosecutions is not expected: The SFO have used the failure to prevent bribery offence twice in the last 12 years. It is likely there will be more fraud prosecutions due to relative scale of fraud compared to that of bribery. The Government do anticipate the use of a Deferred Prosecution Agreement (DPA) which have been used nine times since the introduction of the Bribery Offence (2010), which encourages organisations to change their behaviour and carry out changes prescribed to them as part of the DPA.

Table 6, Summary of monetised costs and benefits, £ million (PV) 2020 prices, over 10 years 2022.

Description	Low	High	Best
Set-up cost			
Familiarisation	8.5	23.8	23.8
Risk Assessment	24.4	68.5	68.5
Communication	6.0	16.7	16.7
Training	318.7	342.8	330.1
Total set-up cost	**357.6**	**451.8**	**439.1**
Ongoing cost			
Risk Assessment	18.5	52.1	52.1
Communication	22.6	63.8	63.8
Training	282.0	302.6	292.3
Total ongoing cost	**323.1**	**418.5**	**408.2**
Total cost	**680.8**	**869.9**	**847.7**
Benefit			
Total benefit	**N/A**	**N/A**	**N/A**
NPSV	**680.8**	**869.9**	**847.7**
BNPV	**680.8**	**869.9**	**847.7**
EANDCB	**79.1**	**101.1**	**98.5**

Source: Home Office and DBT, own estimates, 2022.

Summary of non-monetised benefits

71. This captures large organisations, where challenges prosecuting corporate fraud are currently greatest.

72. With all large organisations in scope, an increase in positive corporate culture is expected. This is intended to reduce the level of fraudulent activity, benefitting potential victims of fraud (including the public sector).

73. This is evidenced by the House of Lords post-legislative scrutiny of the BA 2010 (which created the failure to prevent bribery offence), which noted that organisations have seen improved corporate anti-bribery culture.

74. Though the exclusion of small and medium sized organisations will limit the scale of a cultural shift, there is potentially a spill-over effect where some SMEs may adopt similar measures.

Place based analysis

75. As the obligations fall on large organisations, the spatial impacts will follow the distribution of entities and their economic activities.

Impact on small and micro-businesses

76. There will be no direct impact on small, medium and micro-businesses as the offence will apply to large organisations only. There will be 1.3 million small, medium and micro-businesses which will be

exempt[24], along with medium-sized enterprises. This is to reduce the compliance burden on smaller organisations, who will have fewer resources to enable them to understand and deliver reasonable fraud prevention procedures.

F. Proportionality

77. Given the potential impacts, this IA follows a high-evidence approach as set out in Regulatory Policy Committee (RPC) guidance[25]. This IA :
    a. Clearly sets out the policy, the rationale for it and its objectives.
    b. Sets out how organisations would be affected and monetised these where possible and fully set out how these were modelled with assumptions used.
    c. Drawn on existing data sources, for example, Companies House through Fame[26] and BPE.
    d. Given the circumstances of the measure's introduction it has not been possible to test assumptions with stakeholders. However, costs have been tested against the costs of comparable measures and scenario analysis has been used to show the impacts of changing assumptions.
    e. Clearly states where impacts are direct or indirect and whether they fall within scope of the EANDCB (see table below).
    f. Sets out how the Home Office envisages the benefits will be realised. Given the lack of data, quantification of the benefits was not possible.

G. Risks

Economic and analytical risks, and uncertainties

78. The biggest risk is the inability to quantify the benefits of introducing a failure to prevent fraud offence.
79. The CJS costs: Due to a lack of evidence on potential volumes, this has not been estimated. The Home Office expects case volumes and therefore CJS costs to be low.
80. The fact that companies may well already have these, or similar, fraud prevention measures in place. If companies already have measures, both the costs and benefits will be reduced.
81. Without enforcement a partial adoption of these measures is possible. The analysis assumes that all companies will put measures in place and thus carry costs of doing so. However, it is possible some organisations may choose not to put precautions and checks in place. This would reduce both the cost to business and the benefits from a cultural shift outlined in the benefits.
82. For companies that do adopt these measures, there is uncertainty around the extent of the time and labour commitment involved in each task. The costing methodology used for the non-training elements assumes that compliance requires a set-up investment of up to over four FTE weeks for the largest companies. The training cost estimates are based on market costs and durations for comparable training courses.

[24] From the BPE, under the entity based definition
[25] RPC proportionality in regulatory submissions – Guidance: https://www.gov.uk/government/publications/proportionality-in-regulatory-submissions-guidance
[26] Fame - Digital Marketplace – Fame is a source of company information in the UK and reland: https://www.digitalmarketplace.service.gov.uk/g-cloud/services/279752966611539

83. Non-commercial organisations not covered by the Better Regulation Framework[27], for example Local Authorities are not included in the estimates of organisations in scope. This means that the costs to these are no included.

Main assumptions in the analysis

84. In-scope organisations fully comply with the failure to prevent fraud legislation.

85. The guidance issued for failure to prevent fraud and the actions taken by organisations to comply will be similar to previous failure to prevent offences.

Table 7, Failure to prevent fraud: EANDCB and NPSV, £ million (PV) 2020 prices, 2022.

Option 2	Best		High		Low	
	EANDCB	NPSV	EANDCB	NPSV	EANDCB	NPSV
Large entities only	98.5	-847.7	101.1	-869.9	79.1	-680.8

Source: Home Office and DBT own estimates, 2022.

H. Direct costs and benefits to business calculations

Table 8, FTPF, direct costs and benefits to business £ million (2020 prices), over 10 years, 2022.

Best scenario	BIT scope	Direct / Indirect	Option 2
Set-up cost		Direct	439.1
On-going cost		Direct	408.2
Total cost		**Direct**	**847.7**
Benefits[1]		Indirect	0.0
NPSV		**Indirect**	**-847.7**
BNPV		**Direct**	**-847.7**
EANDCB	Y	**Direct**	**98.5**

Source: Home Office, own estimates, 2022.
Note: Option 2 applies to all large organisations. 1. Qualitative assessment only for benefits. Estimates of NPSV and EANDCB assume that the measure comes into force in 2023 and the costs arise from that point on.

I. Wider impacts

Statutory Equality Duty

86. The Equality Act 2010 protects against unlawful discrimination based on the following protected characteristics:

   a. Age.
   b. Disability.
   c. Gender reassignment.
   d. Marriage and civil partnership.
   e. Pregnancy and maternity.

[27] https://www.gov.uk/government/publications/better-regulation-framework

f. Race.

g. Religion or belief.

h. Sex and sexual orientation.

87. The Government is subject to the Public Sector Equality Duty 2011 (PSED 2011) set out in the Equality Act 2010 (EA 2010). It requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the EA 2010.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

88. An equality analysis is an important mechanism for ensuring that data has been gathered to enable identification of the likely positive and negative impacts that policy proposals may have on certain groups and to estimate whether such impacts disproportionately affect such groups. The Home Office will continue to regard the aims of the public sector equality duties and, at this stage, make the following assessment of the proposals against each of the three aims.

Background

89. This Equalities Impact Assessment (EIA) relates to the prospective government amendments to the Economic Crime and Corporate Transparency Bill to reform corporate criminal liability, including creating an offence for failure to prevent fraud.

90. Due regard to the need to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010 can be demonstrated in the following ways:

91. The failure to prevent fraud proposal relates to a criminal offence that would be placed upon relevant commercial organisations. Businesses may be liable under this offence where they have failed to prevent fraud committed by an employee within their organisation and the base offence was intended to confer a business advantage on the organisation.

92. Although this offence may increase the burden on businesses, guidance will be published alongside the offence which will state that any preventative measures must be reasonable. There will be a defence available which states there may be circumstances where it is reasonable to not have any preventative measures in place. This will further reduce any burden that may have been placed on individuals through this offence.

93. Any burden is placed on the corporate entity and not directly on individuals. Individuals may be impacted indirectly in a professional capacity due to their role in the company, but any impacts are likely to be minimal at an individual level.

94. If the offence applies to all organisations there may a disproportionate burden on smaller businesses to consider the guidance and implement fraud prevention measures. Something which disproportionally affects small businesses is likely to disproportionally impact black-owned businesses because these tend to be smaller firms.

95. It is intended that the offence will create a cultural change within organisations and increase preventative measures against fraud. This is likely to have a positive impact on individuals who may have been vulnerable to fraud as businesses will implement measures to decrease the risk of fraud.

96. Any prosecution would have to pass the two CPS tests. Prosecutors would have to be satisfied there is sufficient evidence to provide a realistic prospect of conviction and that it is in the public interest to prosecute. This further safeguards against action which could disproportionately impact vulnerable groups.

Table 9, Protected characteristic group and mitigating actions, 2022.

Group	Explanation	Action to address negative impact
Age	N/A	N/A
Disability	N/A	N/A
Gender Reassignment	N/A	N/A
Marriage and civil partnership	N/A	N/A
Pregnancy and maternity	N/A	N/A
Race	N/A	N/A
Religion or belief	N/A	N/A
Gender	N/A	N/A
Sexual orientation	N/A	N/A

97. On this basis, seeking further evidence to support this assessment, or to recommend any changes to the existing plans should be considered unnecessary or disproportionate. The Government does not intend to monitor in relation to Public Sector Equality Duty specifically, but the Home Office is required to carry out a Post-Implementation Review of the measure four years after implementation.

Competition and Innovation Test

98. The proposed reforms affect all companies across sectors, and we thus have not identified any specific competition and innovation impacts. The proposals will help strengthen the position and protect consumers and businesses who are the target of fraud from those who aim to abuse the current corporate framework.

Justice Impact Test

99. **Failure to prevent fraud:** Since the Failure to Prevent Bribery Act was introduced in 2010, the SFO has prosecuted two corporations and so we do not expect many proceedings for the introduction of the failure to prevent fraud offence. Instead, it is more likely cases would result in a DPA, as has been more common since the failure to prevent bribery offence was introduced. Since 2014, 12 SFO cases resulted in DPAs, 9 of which were for the BA 2010, with three being for corruption.

J. Trade Impact

100. No impact. This measure will only apply to UK registered corporates and will apply equally to UK residents and non-UK residents who own UK companies. Foreign domiciled corporates would only be impacted to the extent that they operate a UK branch or operate a UK subsidiary and does not

discriminate between country of domiciliation. This measure is therefore consistent with the UK's international trade obligations.

K. Monitoring and evaluation plan

101. As this measure is significant the Home Office will take a high evidence approach to evaluating this measure and any subsequent secondary legislation. The RPC guidance[50] and both the Green Book and Magenta Book sets out best practice and what a high evidence approach requires. This includes:

- A clear statement as to whether the measure has met the obligation.
- A thorough approach to consultation and research, normally including formal and wide-ranging consultation of the affected agents and analysis of published data sources, and commissioning of bespoke research if necessary. A comprehensive survey with high response rates to capture outcomes for business should be employed, as should an empirical impact evaluation with well-designed counterfactual.
- A thorough explanation for the recommendation to renew, revise, remove or replace.
- A rigorous scrutiny of all key assumptions underpinning the original assessment and a detailed analysis of the counterfactual, aimed at identifying methodological errors which might have influenced original impact estimates.
- Detailed considerations of the scope for the amending regulations, especially if the original measure was costly to business, and a discussion of the feasibility and purpose of the proposed amendments.
- Conclusions with reference to evidence from a wide range of stakeholders, including industry groups, civil society organisations and independent experts.
- Evidence from a wide variety of data sources, for example, survey/desk research/academic literature/studies etc.
- Considerations and discussion of unintended consequences and the wider effects of the policy.
- A discussion of the limitations and uncertainties related to analysis identified in the original IA.
- For implementing EU requirements, a discussion of other nations' experiences, and evidence sought in relation to this.
- A discussion of the level of compliance with regulations under review.
- A consideration of lessons for future IAs and, if considered necessary, a re-calculation of the estimates of benefits to business.

102. To address this, the Home Office will:

- Use a mix of primary and secondary data sources to assess the impact of the measure on businesses.
- Seek feedback from law enforcement on the impact from the regulatory change on fraud investigations and prosecutions.
- Carry out a survey of stakeholders exploring, inter alia, whether there have been any unintended consequences from the measure.

L. Annexes

Annex 1: Detailed methodology for estimating organisations in scope of failure to prevent fraud

Approach 1, Group-based definition

For group-based estimates DBT uses the Business Population Estimates (BPE) data which provides UK employment data and enables matching company size based on one of the three criteria which determines company size in the CA 2006[28]. The BPE aggregates companies that are related to each other. For example, a property developer might be recorded by Companies House as having hundreds of subsidiaries where a subsidiary represents one property development. In this example, under the BPE all the subsidiaries would be attributed to one company. This means that the number of companies reported by the BPE is substantially below the number of companies reported by Companies House.

There are, according to the BPE, over 1,000,000 companies that employ people. Most of these companies are micro-businesses with less than 10 employees. Narrowing the scope to large companies, reduces the number of companies to 7,610.

Table A.1, Number of companies by size – group based definition (Nearest 100)

Corporate Body Size	Size Employees	Company Size
Large	250-499	3,900
Largest	500 or more	3,800

Source: Business Population Estimates, Table 3, 2021[29]

Whilst some costs scale with the number of entities, the guidance for other similar measures (such as failure to prevent bribery) recommends training staff and training costs scale with the number of employees, not the number of companies. Although large companies account for less than 1 per cent of companies, they account for over 45 per cent of all employment. Hence, they will incur larger training costs compared to smaller companies.

Table A.2, Employment by company size (Nearest 100)

Corporate Body Size	Company Size	Size Employees
Large	250-499	10,600
Largest	500 or more	9,300

Source: Business Population Estimates, Table 3, 2021[30]

Approach 2, Entity-based definition

To estimate the number of companies in scope, including subsidiaries of other companies, the number of active UK companies that were above the VAT threshold was estimated in the following categories:

- Micro-entities: they meet two out of three of the following: less than 10 employees, less than £632,000 turnover and less than £316,000 in total assets.

[28] The Companies Act 2006 criteria for company size relate to total assets, employment and turnover. The only size variable available in the published BPE estimates is employment.
[29] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1019905/BPE__2021_detailed_tables.ods
[30] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1019905/BPE__2021_detailed_tables.ods

- Small entities: not micro-, and meet two out of three of the following: less than 50 employees, less than £10.2 million turnover and less than £5.1 million in total assets.
- Medium entities: not small or micro-, and meet two out of three of the following: less than 250 employees, less than £36 million turnover and less than £18 million in total assets.
- Large entities and largest entities: meet two out of three of the following: more than 250 employees, more than £36 million turnover and more than £18 million in total assets.

For the purposes of the costing, the large entity count was equally split between large and largest categories. A breakdown of all companies by employment in FAME[31] indicated that the number of companies with global employees in the 250-499 employee size and was broadly similar to the number with more than 500 global employees.

In total, there are around 2.2 million companies above the VAT threshold, with a size breakdown given in Table A.3.

Table A.3, Number of companies and LLPs by size, entity based definition (nearest 100)

Corporate Body Size	Company & LLPs Size
Large	11,000
Largest	11,000

Source: FAME download, accessed 2 August, 2022

Total number of companies in scope

This means that, under a group-based definition, the number of large companies in scope is 7,610, employing 10.6 million people.

Under **Option 2**, the total number of large companies in scope using an entity-based definition is 22,340, employing 10.6 million people.

Partnerships

The BPE was used to estimate the number of partnerships in scope and their total employment as it is the one source that provides entity numbers and UK employment data. The same number of partnerships has been used for both group and entity definitions. This means that the number of partnerships in scope is less than 50 partnerships, employing 34,000 people.

Table A.4, Number of UK partnerships

Corporate Body Size	Size Employees	Partnership Size
Large	250-499	30
Largest	500 or more	10

Source: Business Population Estimates, Table 3, 2021[32]

Table A.5, Employment by partnership size

Corporate Body Size	Size Employees	Partnership Size
Large	250-499	34
Largest	500 or more	24

Source: Business Population Estimates, Table 3, 2021 (see footnote 34).
Note some size categories had to be estimated as some published figures were suppressed to avoid disclosure.

[31] Fame - Digital Marketplace – Fame is a source of company information in the UK and Ireland: https://www.digitalmarketplace.service.gov.uk/g-cloud/services/279752966611539

[32] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1019905/BPE__2021_detailed_tables.ods

Other commercial organisations and UK activities of overseas incorporated companies

Other commercial organisations

There are several other types of commercial entities that would be defined as organisations. These include:

- Unlimited companies, that is incorporated companies where shareholders have unlimited liability for any losses.
- Companies established by Royal Charter.
- Industrial and Provident Companies and Registered Societies.
- Non-CA 2006 companies.

These should already be included in the group-based definition, and employment estimates, sourced from the BPE provided the corporate is above the VAT threshold. For the entity-based definition, it is estimated that around 14,500 entities fall within these categories. The sizing data is sparse so in the absence of more specific data it is assumed that the size distribution of these companies follows that of the wider company population with employees.

UK activities of overseas incorporated companies

2. Foreign entities can carry out business in the UK either via the creation of a UK company; or it can establish a branch[33]. In terms of how they affect the estimates:

- Any foreign owned but UK domiciled companies will be included in the company number estimates, provided the company is trading above the VAT threshold.
- There are, according to Companies House statistics[34], around 13,600 overseas companies in the UK which are branches of foreign domiciled companies with a physical presence in the UK.
- If these branches exceed the VAT threshold then they will be included in the Inter-Departmental Business Register (IDBR) (a comprehensive list of UK businesses used by government for statistical purposes) counts upon which the BPE estimates are derived that is they should be included in the *group-based estimate* for numbers of companies and total employment.
- However, they are not included in the count of companies in the *entity-based estimate* for numbers of companies. This means that overseas companies are excluded from the company count.

There is no size data for UK branches of foreign domiciled companies. In the absence of more specific data it is assumed that the size distribution of these organisations follows that of the wider UK company population which employs staff. As the employment estimate derived from the BPE was used, employment in UK branches of foreign registered companies should be caught (provided the branch is above the VAT threshold).

Non-commercial organisations

The failure to prevent fraud measure will cover all large incorporated bodies whether they are commercial or not. The estimates in the previous sections only included commercial incorporated bodies. This section costs the impacts of non-commercial incorporated bodies. Only costs to entities

[33] The difference between the two is that in the case of the former the foreign entity benefits from limited liability for any losses incurred by its UK subsidiary. If the foreign entity establishes a branch then any losses related to the branch are the responsibility of the foreign entity.

[34] Companies register activities: 2021 to 2022 spreadsheet, table C1: https://www.gov.uk/government/statistics/companies-register-activities-statistical-release-2021-to-2022

that are covered by the **Better Regulation framework**[35] and are described under section 27 (5) of the Small Business, Enterprise and Employment Act 2015[36] (SBEE 2015) are considered. **Annex 2** of this IA sets out the range of entities covered by the measure and of those which are covered by the framework.

The FAME sizing data was sparse for the entity count so, the same approach was applied to size other organisations, that is to assume it follows the distribution of companies with staff. This is a reasonable assumption as data from the National Council for Voluntary Organisations (NCVO) shows that the size distribution of general charities is skewed in a similar way to companies[37].

- This means that using a group-based definition the number of large non-commercial bodies in scope is 1,210, employing 1.3 million people.
- Using an of using an entity-based definition are, the number of large non-commercial bodies in scope is 2,550, employing 1.3 million people.
- The total number of organisations in-scope was estimated by summing the number of large companies, partnerships and non-commercial bodies estimated above. This yields:
    - Under the group-based definition: 8,900.
    - Under the entity based definition: 24,900.

35 https://www.gov.uk/government/publications/better-regulation-framework
36 Small Business, Enterprise and Employment Act 2015: https://www.legislation.gov.uk/ukpga/2015/26/section/27
37 https://www.ncvo.org.uk/news-and-insights/news-index/uk-civil-society-almanac-2021/profile/voluntary-sector-definition/#/. For example, only 0.04 per cent of general charities had income exceeding £100 million and over 44 per cent had an income of less than £10,000.Voluntary organisation size categories in the NCVO data did not map readily to Companies Act 2006 thresholds hence the need for assumption was important.

Annex 2: Organisations covered by failure to prevent fraud offence and whether in scope of better regulation framework BRF)

Table A.6, Organisations covered by FTPF and whether in scope of BRF, 2022.

Entity	Incorporated and therefore within scope of FTP Fraud?	In scope BRF
Companies limited by shares, LLPs, ordinary partnerships	Yes, CA 2006 or other	Yes
Companies limited by guarantee (CLG)	Yes, CA 2006	Yes
Community Interest Companies (CIC)	Yes, CICs are companies for community causes and are incorporated as other companies[38]	Yes
Registered Societies	Yes[39]	Yes
Industrial and Provident Societies	Yes[40]	Yes
Charitable Incorporated Organisation, including Scottish Charitable Incorporated Organisation	Yes, but non-CA 2006.	Yes
Local Authorities	Yes	No
Trade Unions	No, unincorporated associations of individuals[41].	Yes
NHS Trusts	Yes	No
Police forces	No	No
Government departments	No	
Schools –LA maintained	Yes	No
Unincorporated business, for example . sole traders	No	Yes

[38] https://www.informdirect.co.uk/company-formation/community-interest-company-cic-advantages-disadvantanges/
[39] https://www.mrassociates.org/knowledge-base/specified-accommodation/cat-1-exempt-accommodation/tell-me-more-about-registered-societies
[40] https://www.accountancywales.com/social-clubs/faqs/constitutional/registered-societies-formally-industrial-and-provident-societies/
[41] https://www.inbrief.co.uk/employees/trade-unions/

Specific Impact Test Checklist

Mandatory specific impact test Statutory Equalities Duties	**Complete**
Statutory Equalities Duties These measures create an offence for failure to prevent fraud to create a culture change to increase fraud prevention and detection. Any burden is placed on the corporate entity and not directly on individuals. Individuals may be impacted indirectly in a professional capacity due to their role in the company and may be prosecuted separately to the measures. The failure to prevent fraud offence is intended to create a cultural change within organisations and increase preventative measures against fraud. This is likely to have a positive impact on individuals who may have been vulnerable to fraud and will implement measures to decrease the risk of fraud. Safeguards exist in relation to the prosecution of a company that governs the use of both measures for all business-types. Prosecutors must act in accordance with the Code for Crown Prosecutors – prosecutors can only start prosecutions if satisfied that the case meets both stages of the two-code test: 1. The prosecutor is satisfied that there is sufficient evidence to provide a realistic prospect of conviction. Factors that could be considered include identifying the correct corporate from the outset that is accurately named; the employer/employee relationship is outlined; the directing mind must be clearly identified and their status and functions established. 2. The prosecutor is satisfied that the prosecution is required in the public interest. Factors that could be considered include: a history of similar conduct by the corporation; the alleged conduct is part of the practices of the company; failing to report the conduct; or, against prosecution: a positive approach to remedial action; the existence of a proactive and effective compliance programme; the offending represents the isolated actions by one individual. **The SRO has agreed these summary findings from the Equality Impact Assessment.**	**Yes**

Any test not applied can be deleted except **the Equality Statement**, where the policy lead must provide a paragraph of summary information on this, which must be agreed by the SRO.

The Home Office requires the **Specific Impact Test on the Equality Statement** to have a summary paragraph, stating the main points. **You cannot delete this and it MUST be completed**.