



UNITED KINGDOM: PHASE 2

FOLLOW-UP REPORT ON THE IMPLEMENTATION OF THE PHASE 2 RECOMMENDATIONS

**APPLICATION OF THE CONVENTION ON COMBATING
BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL
BUSINESS TRANSACTIONS AND THE 1997 REVISED
RECOMMENDATION ON COMBATING BRIBERY IN
INTERNATIONAL BUSINESS TRANSACTIONS**

This report was approved and adopted by the Working Group on Bribery in International Business Transactions on 21 June 2007.

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SUMMARY AND CONCLUSIONS BY WORKING GROUP ON BRIBERY

Introduction

1. In March 2007, the Working Group on Bribery reviewed the Phase 2 Written Follow-Up Report supplied by the United Kingdom (the "Follow-Up Report"), which reports on actions taken by the United Kingdom in response to the recommendations in the Working Group's March 2005 Phase 2 report (the "Phase 2 Report"). It also considered additional material submitted before the March meeting. In this context, the Working Group further reviewed the discontinuance of a major foreign bribery investigation in the United Kingdom concerning BAE SYSTEMS plc and the Al Yamamah defence contract with the government of Saudi Arabia. The Follow-Up Report and the summary and conclusions of the Working Group on the report and on the BAE matter have been consolidated for publication.

2. This summary first reviews implementation of the Recommendations generally and then addresses certain major issues and concerns for which the Working Group considers that additional on-site review is necessary.

Phase 2 Written Follow-Up Report: General Review of Implementation of Recommendations

3. The United Kingdom has satisfactorily implemented a number of the Working Group's recommendations in the Phase 2 Report. The United Kingdom has engaged in extensive efforts to raise awareness about the need to combat foreign bribery. The Secretary of State for International Development has led the UK government's work on combating overseas corruption since mid-2006; he now chairs quarterly meetings of officials to review progress and the first public progress report was issued on 12 March 2007. (This did not leave time for its consideration by the Working Group at its March 2007 meeting). The UK has also significantly improved its anti-foreign-bribery guidance brochure since the Phase 2 Report. It now addresses more appropriately the potential liability of parent companies relating to foreign bribery by their subsidiaries; it also contains a clear statement of an obligation for Foreign and Commonwealth Office (FCO) and locally-engaged staff in overseas diplomatic posts to report acts of bribery by UK nationals or UK companies to the Serious Fraud Office (SFO) directly or to a London-based team that transmits the reports to the SFO. Standard training for FCO staff preparing to go overseas as economic officers (as well as for other front-line staff from the Department of Trade and Industry (DTI) and Ministry of Defence (MOD) engaged in the promotion of UK exports) now includes information about the risks of corruption and the obligation to report allegations against UK companies and UK nationals to appropriate authorities. The Working Group notes that FCO overseas missions have supplied 25 of the allegations in the Overseas Corruption Register (a list of known foreign bribery allegations maintained by the SFO), which indicates that the UK's efforts in this area have been effective in practice. In its Follow-Up Report, the UK has also described a significant range of awareness-raising efforts targeted at unions and companies, including small and medium-sized enterprises.

4. A Memorandum of Understanding (MOU) between various investigative and other agencies in the UK regulates, inter alia, jurisdiction over foreign bribery investigations. Since the Phase 2 Report, the

MOU has been modified to limit the investigative jurisdiction of the Ministry of Defence Police to foreign bribery cases involving (i) defence contracts where the MOD is a party to the contract; or (ii) MOD employees. While the reference to "MOD employees" is not technically consistent with the Phase 2 recommendation with regard to the jurisdiction of the Ministry of Defence Police, the Working Group was satisfied that compliance with the recommendation had been achieved. The revised MOU has also eliminated requirements of disclosure of specific foreign bribery investigations to non-investigatory government departments (notably the FCO and the MOD) and provides that disclosure is possible only with the consent of the senior investigating officer and where appropriate.

5. With regard to resources for mutual legal assistance (MLA), the UK has indicated that the SFO Mutual Assistance Unit undertakes the majority of incoming requests in cases of serious transnational corruption and fraud. It has recently gained an additional investigator. The UK has also reported that working practices in the UK Central Authority have been streamlined and standardised. The United Kingdom has verified the compliance of Guernsey's legislation with the OECD Convention and Jersey has enacted a foreign bribery statute, but the UK has not yet extended the Convention to either island.

6. The Follow-Up report details a wide variety of measures to encourage confiscation of assets in appropriate foreign bribery cases including the development of specialised expertise and dedicated units, training, incentives, and other measures. The UK is presently processing requests from more than 24 countries.

7. Policies excluding convicted companies from access to public benefits such as export credit or development aid moneys can only be effective if companies can be convicted of bribery in the first place. Conviction of a company for foreign bribery was not a realistic possibility under applicable UK case law at the time of the Phase 2 Report and the law remains unchanged. Accordingly, while the UK has taken action since the Phase 2 Report in implementing an European Union procurement directive regarding sanctions on convicted companies, the Working Group doubts that they will be useful with regard to UK companies that engage in bribery until the law on the liability of legal persons (companies) for foreign bribery is modified (see below).

8. The Working Group further identified certain areas where recommendations have been partially implemented, calling for the United Kingdom to make further progress. The Phase 2 Report found that the very large number of investigative and prosecutorial authorities was hindering effective treatment of the foreign bribery offence. The UK has made substantial progress in giving a central role to the SFO in foreign bribery cases and it is now generally recognised as the key agency with regard to such matters. The revised MOU calls for referral of all foreign bribery allegations to the SFO in the first instance and gives the SFO a role in reviewing ("vetting") each allegation at the outset; this allows it to determine whether it is appropriate for it to take on the case itself or to guide the process of attributing the case to another agency. The SFO has also taken over the maintenance of the Overseas Corruption Register. The SFO is leading a number of significant foreign bribery investigations and has launched six new investigations since March 2005. However, there has been no change to date in the applicable law with regard to jurisdiction over foreign bribery investigations and the rules for how the SFO attributes cases to other agencies remain unclear.

9. The Phase 2 Report noted that the SFO appeared to have inadequate resources to deal with foreign bribery including an absence of dedicated funding or specialised police support. The UK has made significant efforts, especially in recent months, to substantially increase police capacity to investigate allegations of foreign bribery and money laundering. The Department for International Development (DFID) has allocated approximately GBP 6 million (EUR 8.8 million) to a new joint group composed of units from the City of London Police Service and the Metropolitan Police with specific remits, respectively, for foreign bribery investigations and the investigation of laundering of the corrupt assets of

politically exposed persons (PEPS). It is too early to evaluate their efforts, but the City of London Police unit is involved in four foreign bribery investigations with the SFO and made its first arrests in January 2007. Recent progress in money laundering investigations has seen approximately GBP 1 million (EUR 1.47 million) confiscated and returned and GBP 500 000 (EUR 736 095) in the process of being returned to Nigeria.

10. The Working Group recognizes these important efforts with regard to police resources. The SFO itself, however, has not received any additional funding for foreign bribery generally and is expected to deal with foreign bribery matters within its existing budget. The Working Group remains concerned about the adequacy of these resources, particularly in light of the continuing absence of any prosecution for foreign bribery. In January 2007, the UK Treasury approved supplementary funding of GBP 22.8 million (EUR 33.5 million) over five years to the SFO for a large-scale enquiry into part of the matters outlined in the report on the UN Oil-for-Food programme for Iraq. The SFO has indicated, however, that it expects the Oil for Food allegations, if proved, would generally not constitute foreign bribery offences under UK law and would be prosecuted on other grounds. Moreover, the size of the five-year Treasury allocation raises further doubts about the overall annual SFO budget which, as noted in the Phase 2 Report, was only GBP 35 million (EUR 51.4 million) in 2005/2006. The Working Group notes that on 1 February 2007, in a debate in the House of Lords, the Attorney General publicly emphasised the willingness of the UK government to consider providing funds for the investigation of allegations of international corruption. It is noteworthy that the SFO spent approximately GBP 2 million (EUR 2.9 million) on the partial investigation of the Al Yamanah matter. The SFO's use of its resources and activity on corruption cases is subject to monitoring through general documents such as its annual report and through ad hoc monitoring by Parliament, which has included active questioning of the Attorney-General about specific foreign bribery cases.

11. Recommendation 5(b) asked the UK to consider the appropriateness of requiring law officer's consent for prosecution in cases of foreign bribery. Prior to the date of the Phase 2 Report, the UK government had publicly announced its intent to replace the existing statutory requirement for the Attorney General's consent with a requirement for the consent of the Director of Public Prosecutions or a nominated deputy. Since the Phase 2 Report, the UK government has reiterated its intent in this regard and has announced in the context of its bribery law consultation process that it intends that the Director of the SFO should also be empowered to give consents. However, none of these statements have been acted upon to date. The Working Group considers that action has not been sufficiently taken to resolve the underlying concerns of the Working Group that led to this recommendation. In addition, new factual developments since the Phase 2 Report cause the Working Group to continue to focus on this issue. In conclusion, this recommendation is considered as partially implemented.

12. In terms of detection and reporting, the Civil Service Code has been strengthened to some degree with regard to the question of whether UK public officials are obliged to report possible instances of foreign bribery to the relevant authorities. However, the Working Group considers that because the revised Code states only that public officials "should" report suspicions, it is unclear whether disciplinary sanctions would apply. The UK has a comprehensive legislative regime applicable to whistleblowing in both the private and public sector, but the Phase 2 Report found that the protection of persons who report directly to law enforcement authorities could be improved. The UK has indicated that it will consider adding the police as a body to which a relatively broad range of protected disclosures can be made; although the Working Group recognises that this area raises horizontal issues for the Working Group generally, it encourages the UK to further improve protections in this area.

13. With regard to auditors, the Auditing Practice Board (APB, part of the Financial Reporting Council, the UK's independent regulator for corporate reporting and governance) has proceeded with guidance for the reporting by auditors of suspicions of money laundering, including for foreign bribery as a

predicate offence. However, the guidelines have not yet been approved by the UK Treasury and are limited to money laundering offences; they do not address the reporting of suspicions of foreign bribery as a stand-alone offence. In addition, the reporting by auditors of all suspicions of foreign bribery to management and corporate monitoring bodies has not been addressed.

14. The Phase 2 Report recommended that the UK consider adopting a regime of additional administrative or civil sanctions for legal persons that engage in foreign bribery. The Working Group considers that this recommendation has been partially implemented: while the UK's adoption of the EU procurement directive regarding sanctions on companies convicted of bribery involved consideration of the issue of administrative sanctions, the directive will be of limited or no effect with regard to foreign bribery because of the serious difficulty in convicting legal persons for foreign bribery (see below).

15. The UK has encouraged some of its overseas territories to adopt foreign bribery and related legislation and has provided technical assistance in this regard. However, these jurisdictions have not yet adopted the necessary legislation and the Convention has not yet been extended to any of them. While the Working Group notes that the UK is making good efforts to ensure UNCAC implementation, the Working Group is concerned about progress on extension of the OECD Convention.

16. As noted above, the UK has engaged in a wide variety of awareness-raising activities. The Working Group welcomes the UK's expressed intention to continue its effective work in this area and encourages the UK to address awareness-raising efforts, in an appropriate manner, towards judicial personnel as well as other groups. It noted the UK's general reference to some recent cases that the UK considers to be illustrative of judges' increased awareness about the fight against international corruption.

17. The UK has provided bribery-related training to tax inspectors. However, the Working Group continues to be concerned about whether they have sufficient time to detect bribery in practice given the limited time to re-open tax returns (one year) in the absence of fraudulent or negligent conduct.

18. In addition to the issues addressed below in relation to the supplementary on-site review, the Working Group also found that other recommendations had not been implemented. The UK has not amended the Code for Crown Prosecutors (CCP) to ensure that the investigation and prosecution of bribery of foreign public officials shall not be influenced by considerations prohibited under Article 5 of the Convention (the national economic interest, the potential effect upon relations with another state or the identity of the natural or legal persons involved). It intends instead to amend the publicly-available Online Manual for prosecutors from the Crown Prosecution Service. Particularly in light of intervening events since the Phase 2 Report, the text of the CCP remains of concern; moreover, as of the date of the follow-up, no actual changes had been made to the Online Manual as reviewed by the lead examiners.

19. The Follow-Up report also does not identify or analyse company law provisions which, according to the UK, now satisfy the recommendation to ensure that the fraudulent accounting offence in the UK is in full conformity with Article 8 of the Convention. Accordingly, the Working Group cannot meaningfully evaluate the situation and concluded that this recommendation has not been implemented.

Supplementary Phase 2 bis Review of the United Kingdom

20. In addition to the issues above, the Working Group identified several major Phase 2 Recommendations that have not been implemented. The Phase 2 Report recommended, as did an earlier 2003 Working Group report, that the UK enact modern foreign bribery legislation "at the earliest possible date". The Working Group is seriously concerned that this recommendation, which reflects deficiencies in the law on foreign bribery, remains unimplemented. The slow pace of reform appears to be attributable at least in part to the UK's view, as expressed in the Follow-Up Report (at p. 1), that its current law complies

with the Convention and that change is only a "desirable measure of law reform". The Working Group finds these statements in the Follow-Up report to be surprising and of serious concern, especially in light of recent events and public statements by senior UK law enforcement officials about significant defects in the law that, in their view, could preclude prosecution in important cases. The Working Group urged the UK to accelerate the process of reform of the bribery laws.

21. In addition, the Working Group reiterated that UK law on the liability of legal persons for foreign bribery remains deficient and the Working Group reaffirmed that the law should be modified in accordance with the recommendation in the Phase 2 Report.

22. In 2005, the Working Group recommended that the UK monitor decisions not to open or to close foreign bribery investigations. While the Working Group welcomes recent increases in resources for investigations as described above, the continuing lack of any prosecution as of March 2007 may raise broader issues.

23. The recent discontinuance of a major foreign bribery investigation concerning BAE SYSTEMS plc and the Al Yamamah defence contract with the government of Saudi Arabia has further highlighted some of these concerns. The Working Group welcomed the openness of the UK delegation and the additional explanations from the UK authorities subsequent to the January 2007 meeting of the Working Group. Nonetheless, a number of questions remain unanswered and the Working Group maintains its serious concerns as to whether the decision was consistent with the OECD Anti-Bribery Convention.

24. In light of these outstanding issues, the Working Group has decided to conduct a supplementary review of the United Kingdom ("Phase 2 bis") focused on progress in enacting a new foreign bribery law and in broadening the liability of legal persons for foreign bribery. The Phase 2 bis review will also examine whether systemic problems (including some issues addressed in the general part above) explain the lack of foreign bribery cases brought to prosecution. The review will also address matters raised in the context of the discontinuance of the BAE Al Yamamah investigation. The Phase 2 bis review will include an on-site visit to be conducted within one year, ie., by March 2008.

Conclusion

25. Based on the findings of the Working Group with respect to the United Kingdom's implementation of its Phase 2 Recommendations, the Working Group determines that

- Recommendations 1(b), 1(c), 4(b), 4(c), 4(d), 6(a), 7(b) and 7(c) have been satisfactorily implemented;
- Recommendations 1(a), 2(a), 2(b), 3(b), 3(c), 4(a), 5(b), 6(b), and 7(a) have been partially implemented; and
- the Recommendation in paragraph 3 of the preamble to the Phase 2 Recommendations, and Recommendations 3(a), 5(a) and 5(c) have not been implemented.¹

¹ [Note by the Secretariat] The Recommendations of the Working Group are located at the end of the Phase 2 Report. Due to formatting issues, the paragraph numbering differs from that used in this summary and in the UK's follow-up report. Recommendation 1 (and its subparts) herein corresponds to paragraph 251 (and its subparts) of the Phase 2 Report, Recommendation 2 corresponds to paragraph 252 and so on. The preamble to the Phase 2 Recommendations is found at paragraphs 246-250 of the Phase 2 Report.

26. The Working Group will conduct a Phase 2 bis review of the United Kingdom on the issues identified above. The UK authorities agreed to report orally to the Working Group within one year on the implementation of the Recommendations not fully implemented at this time. The Working Group will continue to monitor the follow-up issues identified in the Phase 2 Report as practice develops.

WRITTEN FOLLOW-UP TO PHASE 2 REPORT

Name of country: United Kingdom

Date of approval of Phase 2 Report: 17 March 2005

Date of information: 20 February 2007

Part I: Recommendations for Action

Text of recommendation:

Enact at the earliest possible date comprehensive legislation whose scope clearly includes the bribery of a foreign public official.

Actions taken as of the date of the follow-up report to implement this recommendation:

The Working Group on Bribery (WGB)'s main concern over the adequacy of our law was dealt with in the Anti-Terrorism, Crime and Security Act 2001 (for England, Wales and Northern Ireland), and in Scotland by sections 68 and 69 of the Criminal Justice (Scotland) Act 2003. These Acts put beyond doubt that bribery of a foreign public official is a criminal offence. And they also gave our courts jurisdiction over crimes of corruption committed overseas by UK nationals and by bodies incorporated under UK law. The WGB's phase 1 bis review concluded: "UK law now addresses the requirements set forth in the Convention." So further legislation on corruption is a desirable measure of law reform rather than an issue of Convention compliance.

Nevertheless, initiatives to reform the UK's bribery laws have been underway for a number of years (predating the OECD's phase 1, phase 1bis and phase 2 reports). In 1997 the Law Commission² published proposals which were generally welcomed and formed the basis of the Government White Paper on Corruption published in 2000, which also elicited a positive public response. However, when the Government published a draft Corruption Bill in 2003 it was subject to severe criticism in pre-legislative scrutiny. The Bill was criticised by the Committee for its complexity. The Committee recommended an entirely different approach to the formulation of the offences.

The Government remains committed to a fundamental reform of our bribery laws and we are considering the full range of structural options. This is not as an easy task. No approach

² The Law Commission is the statutory independent body created by the Law Commission Act 1965 to keep the law under review and to recommend reform where it is needed.

commands wide assent. However, in an attempt to identify a workable approach for a new scheme of offences the Government issued a Consultation Paper in December 2005. The Consultation Paper also sought views on a proposal to amend the operational powers of the Serious Fraud Office to assist investigations into foreign bribery. The consultation closed in March last year and the Government will publish its response shortly.

Text of recommendation:

1. With respect to awareness raising activities to promote the implementation of the Convention and the foreign bribery offence relating to bribery and corruption and amending the Prevention of the Corruption Acts 1889 to 1916, the Working Group recommends that the United Kingdom:

- a) enhance existing efforts to raise awareness of the Convention and the foreign bribery offence among law enforcement authorities including the Police, judicial authorities and UK public officials involved with UK companies operating abroad. [Revised Recommendation, Paragraph I];

Actions taken as of the date of the follow-up report to implement this recommendation:

Our awareness-raising activities for UK officials have two main strands. Firstly, we include information about the risks of corruption and the obligation to report allegations against UK companies and UK nationals in standard training for Foreign and Commonwealth Office (FCO) staff preparing to go overseas as economic officers, as well as those from the Department of Trade and Industry (DTI) and Ministry of Defence (MOD) engaged in the promotion of UK exports and inward investment to the UK. We have also made this information available to staff involved in export licensing processes in the UK.

Secondly, we engage in country- and region-specific efforts. The subject has featured in regional conferences for economic officers, eg for South-East Asian posts and for African posts. Since March 2005, we have also conducted specific awareness-raising sessions for staff in China, Russia, Argentina, Thailand, Singapore, Mexico, Spain and Dubai. To complement this, we issue guidance at least once a year to remind all overseas staff of their reporting obligation, drawing their attention the latest version of the guidance available on the UK legal framework (copy attached and at <http://www.fco.gov.uk/Files/KFile/briberyleaflet.pdf>). We have also produced a DVD on corruption (copy enclosed) and distributed it, along with the revised guidance, to overseas Posts and UK Trade and Investment (UKTI) offices in the UK, as well as to interested civil society organisations.

One example to demonstrate that this policy area is now very much in the mainstream of FCO work concerns the “assessment and development centre” (ADC), which officers must pass to achieve promotion from the grade of first secretary to the FCO’s senior management structure. The ADC is a demanding 2-day mixture of group exercises, individual interviews and written work. One particular role-playing scenario from a recent ADC related to the creation of a unit to cover corruption and transparency, including the handling of foreign bribery allegations.

As of 8 February 2007, 25 of the allegations referred to the Overseas Corruption Register have been from the FCO, of which six have been received since August 2006. The case in which

searches were undertaken on 30 January 2007 was begun as a result of a referral from the relevant embassy.

The Serious Fraud Office (SFO) is an independent specialist body that investigates and prosecutes serious or complex fraud. The activity of the SFO in the area of overseas corruption includes the formation of a small unit to oversee preliminary investigations and vetting.

The UK has increased law enforcement capacity to investigate allegations of bribery and money laundering. DFID has allocated some £6 million over three years to the International Corruption Group which brings together the Proceeds of Crime Team within the Metropolitan Police and the Overseas Anti-Corruption Unit within the City of London Police Service. The Overseas Anti-Corruption Unit consists of A 10-person team and has a specific remit for foreign bribery investigations. Set up in November 2006, it has already taken on 4 investigations and made its first arrests in January 2007. The Proceeds of Crime Team now has 12 officers to combat money laundering. Recent progress in Nigerian money laundering investigations has seen up to £1,200,000 returned and £500,000 in the process of being returned.

The MOD Police Fraud Squad has developed training, which is now being rolled out across the UK Police Service, and the Squad is regularly called upon to advise other forces in relation to corruption matters. In addition to the investigative work, the Mod Police Fraud Squad seeks to educate and prevent corruption and fraud in the workplace. To this end, the Squad is in the process of restructuring to provide for an anti-corruption unit with a specific remit for education, prevention and investigation of these offences. (see also 4a) below)

Seven members of the new City of London Police unit have already attended the National Fraud Course and the remaining three will do so later this year. The entire team will also take the 2-day MOD Police module and will benefit from ad hoc training inputs, including a presentation by the Hong Kong Police Anti-Corruption Unit.

The Crown Prosecution Service (CPS) has revised its Online Guidance to all prosecutors to reflect the requirements of the OECD Convention. It has also provided explicit training materials for its specialist staff within the newly created Fraud Prosecution Service. Discussions in relation to the foreign bribery offence are raised on a regular basis at a number of cross-Government groups attended by law enforcement officials. (See also 4a) below.)

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

1. With respect to awareness raising activities to promote the implementation of the Convention and the foreign bribery offence relating to bribery and corruption and amending the Prevention of the Corruption Acts 1889 to 1916, the Working Group recommends that the United Kingdom:

- b) undertake further public awareness activities for the purpose of increasing the level of awareness of the Convention and the foreign bribery offence among trade unions and small and medium sized enterprises (SMEs) doing business internationally

[Revised Recommendation, Paragraph I];

Actions taken as of the date of the follow-up report to implement this recommendation:

Minister for Trade, Ian McCartney, raised the issue of international bribery and corruption at the FCO-Trades Union Congress Advisory Council in November 2006. He drew trades union leaders' attention to revised FCO guidance and the corruption DVD (see 1a) above). Mr McCartney and Hilary Benn launched the DVD that month with guests at the event from a wide range of organisations, including trades unions, business groups, individual companies, NGOs, Parliament and the media, as well as officials and colleagues from law enforcement. A panel discussion gave participants the opportunity to ask questions about bribery and corruption.

We have continued our programme of specific awareness-raising sessions for UK companies with events in Russia, China, Argentina, Ghana, India and Thailand. As far as SMEs are concerned, we are contributing substantially towards the further development of the Danish anti-corruption information portal. Separately, the FCO funded the development of a website for the UK network of the Global Compact (<http://www.ungc-uk.net/>). This features guidance on implementing all ten Global Compact principles, including the tenth principle on anti-corruption, and has a link to the Government's anti-bribery leaflet. We published an article on bribery in a journal for the accountancy profession and have been discussing further activities with them and the Law Society to use their multiplier effect. An interview on the subject with government and business representatives will feature in a forthcoming edition of a leading construction and engineering journal.

One of the reasons for increasing the range of awareness-raising activities in the UK, especially for UKTI staff and business audiences in the UK regions, is to lengthen our reach to SMEs. Through the network of UKTI's international trade advisers, we know that SMEs will have more opportunities to obtain the necessary information.

More broadly, the Government is working with companies and other stakeholders in a range of sectors to promote transparency in international business transactions. Building on the successful experience of the multi-stakeholder approach applied in the Extractive Industries Transparency Initiative (www.eitransparency.org), we have been looking to help developing countries improve transparency and value for money in procurement through new international initiatives in the construction, health and defence sectors.

The initial consultation phase on the construction transparency initiative (CoST) included a broad range of stakeholders from industry and industry bodies (eg UK Anti-Corruption Forum), civil society (Transparency International, Engineers Against Poverty), World Bank, academia and procurement specialists. A stakeholder focus group has been set up to act as a reference point during the future design of CoST.

There is wide support for the idea of a new initiative on transparency in health sector procurement – across Government, industry, development NGOs, donor country governments and international organisations (notably the WHO).

The development of a defence sector initiative is building on a number of existing industry and NGO efforts to build integrity in the international defence sector. There is now agreement across Government on taking forward dialogue on a defence transparency initiative through a multi-stakeholder group of government, industry and civil society.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

1. With respect to awareness raising activities to promote the implementation of the Convention and the foreign bribery offence relating to bribery and corruption and amending the Prevention of the Corruption Acts 1889 to 1916, the Working Group recommends that the United Kingdom:

- c) take appropriate measures to publicise, including in all explanatory material distributed to UK companies, the conditions under which parent and affiliate companies can be liable in connection with foreign bribery, and encourage UK companies to report to UK authorities, as well as to other appropriate authorities, instances of foreign bribery they come across in the course of their operations [Revised Recommendation, Paragraph I].

Actions taken as of the date of the follow-up report to implement this recommendation:

We issued revised guidance in May 2006 (see 1a) above). In the context of awareness-raising sessions with business, as outlined above, we encourage companies to report allegations to the appropriate authorities.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

2. With respect to the reporting of the offence of bribing a foreign public official to the competent authorities, the Working Group recommends that the United Kingdom:

- a) establish a clear obligation for civil servants to report possible instances of bribery to the relevant authorities [Revised Recommendation, Paragraph I];

Actions taken as of the date of the follow-up report to implement this recommendation:

The Civil Service Code sets out the core values of the Civil Service - integrity, honesty, objectivity and impartiality - and the standards of behaviour expected of all civil servants. A revised Civil Service Code was issued on 6 June 2006. The revised Code forms part of terms and conditions of civil servants, and, for the first time, it has been made clear in the Code that it forms part of the contractual relationship between a civil servant and his/her employer. It also makes clear that civil servants should “report evidence of criminal or unlawful activity to the police or other appropriate authorities”.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

2. With respect to the reporting of the offence of bribing a foreign public official to the competent authorities, the Working Group recommends that the United Kingdom:

- b) in applying its legislation in the field of whistleblowing, improve protection of persons who report directly to law enforcement authorities; and pursue its efforts to make such measures more widely known among companies and the general public [Revised Recommendation, Paragraph I].

Actions taken as of the date of the follow-up report to implement this recommendation:

Government policy on reporting also includes the encouragement of internal whistle-blowing in companies. The Public Interest Disclosure Act 1998 (PIDA) protects workers against victimisation by their employer if they “blow the whistle” on workplace wrongdoing in a responsible way. Its underlying aim of encouraging greater openness in the workplace is reflected in its design, the effect of which is that workers most readily attract protection if they make disclosures to their employer or through procedures authorised by their employer. Disclosures can also be protected if they are made more widely, however, including those to regulatory bodies prescribed by the Secretary of State for Trade and Industry. These include bodies to which bribery can be reported, eg the National Audit Office and the Serious Fraud Office. Given PIDA’s underlying aim, the DTI believes that the current level of protection for those who make disclosures to law enforcement bodies is right, but, in view of the WGB’s recommendation, they will consider, when they next review the list of prescribed persons, whether the police should be added to them.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

3. With respect to the prevention and detection of foreign bribery, the Working Group recommends that the United Kingdom:

- a) proceed diligently with the adoption of reforms clarifying and unifying the UK accounting legislation with the International Accounting Standards, to ensure the fraudulent accounting offence is in full conformity with Article 8 of the Convention [Convention, Article 8; Revised Recommendation, Paragraph V.A.];

Actions taken as of the date of the follow-up report to implement this recommendation:

In response to the Phase 2 report, the DTI assessed UK compliance with Article 8 and is

confident that the requirements are met under UK company law rather than accounting standards.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

3. With respect to the prevention and detection of foreign bribery, the Working Group recommends that the United Kingdom:

- b) proceed with the adoption of guidance for auditors in order to explain and clarify their reporting obligation concerning possible acts of foreign bribery [Revised Recommendation, Paragraphs I, V.B.(iii) and V.B.(iv)];

Actions taken as of the date of the follow-up report to implement this recommendation:

The Auditing Practice Board published Interim Guidance in August 2004 on Money Laundering which covers overseas bribery. Following the WGB's recommendation, the Board issued a revised Practice Note of the Auditing Practice Board Standards and Guidance 2006, taking account of comments received during the consultation process. HMT is working with auditors and other industry parties (in the guidance working party) to ensure that it receives approval.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

3. With respect to the prevention and detection of foreign bribery, the Working Group recommends that the United Kingdom:

- c) ensure sufficient time and resources are available to tax authorities to review tax information and allow for the detection of possible criminal conduct, including foreign bribery offences [Revised Recommendations, Paragraph I and IV].

Actions taken as of the date of the follow-up report to implement this recommendation:

Her Majesty's Revenue and Customs (HMRC) has produced a compliance strategy setting out the resources available to the UK's tax authorities to review tax information and allow for the detection of possible criminal conduct, including foreign bribery offences. The strategy includes dedicated staff training, including specifically on how to identify expenses entries that might be used to disguise bribes. Detailed guidance available via the HMRC intranet sets out how Tax Inspectors should handle their review of any deductions in the accounts that either are or might be bribes, whether paid within the UK or abroad. It recommends that the advice of Head Office be sought at an early stage. The standard procedure is for staff to challenge payments that give rise to suspicion and require evidence to back up the alleged purpose. If it turns out the expense was a

bribe it is disallowed and a disclosure may be made to the appropriate law enforcement agency.

The 2002 Finance Act provided that no deduction is to be given for the payment of bribes made outside the UK where "the making of a corresponding payment in any part of the United Kingdom would constitute a criminal offence there." Guidance was issued to staff in October 2003 and will be revised again as necessary to take account of any developments in interpretation of the legislation. In normal circumstances an enquiry must be opened within one year of a tax return being submitted. However, where there has been fraudulent or negligent conduct which is likely in cases involving the payment of a bribe, the time limits for conducting an enquiry are extended to 20 years. There is no restriction on the length of time that an enquiry can continue once it has been opened. Separately, HMRC is in the process of updating guidance on reporting suspicious transactions - including those suspected of being a bribe - to law enforcement authorities.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

4. With respect to investigation, the Working Group recommends that the United Kingdom:

- a) ensure that the role of the Serious Fraud Office (SFO) in foreign bribery investigations is confirmed and that appropriate human and financial resources are provided, and consider monitoring and evaluating the performance of the SFO and other relevant agencies with regard to foreign bribery allegations on an on-going basis, including in particular with regard to decisions not to open or to discontinue an investigation [Convention, Article 5; Revised Recommendation, Paragraph I];

Actions taken as of the date of the follow-up report to implement this recommendation:

In order to assist effective investigation, the SFO took over the maintenance of the register of corruption allegations in 2005. The SFO assesses all cases where an allegation of overseas corruption is made. The possible investigation of such cases where an element of fraud is present was already part of its remit. In practice there will remain some cases, particularly those investigated by the MOD Police, which would tend to be treated as a domestic corruption case with an overseas element, eg cases involving Crown staff deployed abroad. These may remain with the CPS for prosecution.

The SFO already has scope within its existing budget to allocate resources to the investigation of corruption allegations. When the need arises, eg in a substantial search operation, the team investigating such allegations can be supplemented from the greater body of lawyers and investigators within the office. The effective use of this resource is subject to ongoing monitoring in a number of ways. The SFO presents to Parliament an annual report which includes strategic performance information on progress including with corruption cases. This reporting is supplemented by more ad hoc monitoring. The Attorney General frequently answers parliamentary questions about the SFO's work on corruption. On 1 February 2007 in a debate in the House of Lords, the Attorney General publicly emphasised the willingness of the UK

government to consider providing funds for the investigation of allegations of international corruption.

On 31 January 2007 the Treasury approved supplementary funding of £22.8 million to the SFO for a large-scale enquiry into part of the matters outlined in the Volcker Report of 23 October 2005 into suspected corrupt and fraudulent activity under the UN Oil-for-Food programme for Iraq. This will enable the SFO to establish an enquiry team to be supported, where necessary, by the City of London Police overseas corruption team.

As a small specialist unit, the SFO takes decisions on whether to begin an investigation, to lay charges against an individual or a company or not to do so at a high level— usually the Director himself. The SFO is an investigatory body as well as a prosecution authority and, accordingly, the Director has to take into account a wider range factors at different stages in the life of a case. He is guided by the Code for Crown Prosecutors at appropriate times. In the one case in which an investigation was discontinued in December 2006, the Director was not influenced by any improper considerations. He had regard at all times to Article 5 of the OECD Convention and made his decision on the basis of national and international security. In doing so he complied with Article 5.

The MOD Police exists to provide a bespoke policing service, predominantly to the MOD. The Fraud Squad is a specialised department within the Force's Criminal Investigation Department. It is one of the largest Fraud Squads in the UK. The Squad investigates cases of fraud and corruption in relation to MOD contracts. These offences are the highest priority for the Force – in contrast to most other sections of the UK Police Service, which does not prioritise economic crime so highly. The Force has naturally built up considerable expertise in the investigation of public sector corruption, particularly in relation to procurement.

The CPS has restructured how it prosecutes organised crime, essentially in response to the creation of the Serious and Organised Crime Agency (SOCA). This restructuring has also led to the creation of the new Fraud Prosecution Service, staffed by specialist prosecutors who are likely to be in charge of future files involving overseas bribery and corruption. The CPS has already created a new fraud course for specialists and has available to it a number of modules that centre on the UK's obligations under the OECD Convention and also UNCAC. The CPS is also due to create a specialist module on investigating overseas corruption which it is currently planning with the MOD Police and the SFO. (See also 5a) below.)

The Crown Office keeps a register of corruption allegations in Scotland. The Financial Crime Unit, part of the National Casework Division, would lead on such cases in Scotland, though cases may be investigated by the relevant Area Procurator Fiscal.

Separately, the UK has taken an important role in the International Association of Anti-corruption Authorities (IAACA) which was established in 2006. Sir Alasdair Fraser, Director of Public Prosecutions for Northern Ireland, is a Vice -President and Robert Wardle, Director of the SFO, is a member of the executive committee.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

4. With respect to investigation, the Working Group recommends that the United Kingdom:

- b) amend the Memorandum of Understanding to clarify that the Ministry of Defence Police's investigative jurisdiction is limited to cases where the Ministry of Defence is a party to the contract [Convention, Article 5; Revised Recommendation, Paragraph I];

Actions taken as of the date of the follow-up report to implement this recommendation:

The Memorandum of Understanding (MoU) setting out how Government Departments and agencies should handle cases of overseas bribery has been revised to take account of the UK's Phase 2 report. The new version was published on 1 December 2005 (copy attached). It clarifies that the MOD Police's investigative jurisdiction is limited to cases involving MOD employees or defence contracts where the MOD is a party to the contract.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

4. With respect to investigation, the Working Group recommends that the United Kingdom:

- c) reconsider obligations in the Memorandum of Understanding specific to foreign bribery investigations requiring disclosure of information about the investigation to non-investigatory government departments (notably the Foreign and Commonwealth Office and the Ministry of Defence) [Convention, Article 5; Revised Recommendation, Paragraph I];

Actions taken as of the date of the follow-up report to implement this recommendation:

The revised MoU puts beyond doubt that the disclosure of information on specific foreign bribery investigations to non-investigatory Government Departments (notably the FCO and MOD) is possible only where this is appropriate and with the consent of the senior investigating officer.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

4. With respect to investigation, the Working Group recommends that the United

Kingdom:

- d) increase resources for the prompt and effective handling of mutual legal assistance requests [Convention, Articles 9 and 10; Revised Recommendation, Paragraphs II.vii and VII].

Actions taken as of the date of the follow-up report to implement this recommendation:

All mutual legal assistance requests are actioned as soon as possible within the resources available. Within the UK Central Authority (UKCA) a number of measures have been taken to enhance procedures and to ensure resources are targeted to provide for prompt and effective handling of requests. Recent cases include requests from Nigeria, Italy, Belgium, India and Pakistan.

The Crime (International Cooperation) Act 2003 set up two additional central authorities for the UK – Crown Office (Scotland) and the Northern Ireland Office – which are competent to receive requests from EU Member States where the evidence is located within their jurisdiction. The central authority for Scotland works effectively and efficiently. However, the UK is party to bilateral treaties with 32 countries which require transmission of requests via UKCA.

Nevertheless, the Act also allows for outgoing mutual legal assistance requests to be directly transmitted by prosecutors to the judicial authorities in EU Member States, therefore bypassing UKCA. And HMRC has been given the power to act as a central authority for mutual legal assistance requests related to indirect taxation but not in respect of direct taxation matters. These provisions offer the potential of establishing more effective and streamlined mutual legal assistance procedures that can promptly handle the increasing number of mutual legal assistance requests.

Between April and September 2006 a review of working practices in UKCA was conducted. As a result of this review, a new system of working has been introduced to streamline and standardise working practices across the unit. This should improve the efficiency of UKCA. The new system is being carefully monitored. Following the organisational improvements within UKCA discussions will take place with stakeholders to see how further response times can be improved.

The Mutual Assistance Unit of the Serious Fraud Office undertakes the majority of incoming requests in cases of serious transnational corruption and fraud. That unit has recently gained an additional investigator. There is flexibility within the Serious Fraud Office such that, if the need arises, eg in a substantial search operation, the Mutual Legal Assistance Unit can be supplemented from the greater body of lawyers and investigators within the office.

Between 2001 and 2006 the Serious Fraud Office received 15 requests for assistance in cases classified as bribery or corruption by the requesting state (6 including bribery, the balance alleging corruption). Since March 2005, these have included requests from Costa Rica, Zambia and the USA. Where the Director of the Serious Fraud Office is requested to use his coercive powers there is a requirement that he be satisfied that there is evidence that a serious or complex fraud has occurred. In no case has a request been turned down on the ground of not meeting the evidential threshold. There has been a case in assistance was given but there was a refusal of a request to undertake a search of domestic premises.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

5. With respect to prosecution, the Working Group recommends that the United Kingdom:
- a) amend where appropriate the Code for Crown Prosecutors, the Crown Prosecution Service Manual and other relevant documents to ensure that the investigation and prosecution of bribery of foreign public officials shall not be influenced by considerations of national economic interest, the potential effect upon relations with another state or the identity of the natural or legal persons involved [Convention, Article 5];

Actions taken as of the date of the follow-up report to implement this recommendation:

The Attorney General and the Director of Public Prosecutions have carefully considered whether it would be appropriate to amend the Code for Crown Prosecutors in response to the UK's phase 2 review. They have decided against this course of action as the Code sets out general and public principles which apply to all prosecuting agencies in England and Wales, not just the CPS, and to all offences.

The CPS has instead amended the Online Manual for Prosecutors which all CPS prosecutors, staff and the public can access via the CPS web-site. The Manual advises that, when making a decision in relation to the prosecution of a defendant for the offence of bribery of a foreign public official, the prosecutor will not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved."

See also 4a) above.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

5. With respect to prosecution, the Working Group recommends that the United Kingdom:
- b) in light of the longstanding absence of any consent requirement for the common law bribery offence, consider the appropriateness of Law Officers' consent for cases of foreign bribery [Convention, Article 5; Revised Recommendation, Paragraph I];

Actions taken as of the date of the follow-up report to implement this recommendation:

The Government made clear in its response to the Joint Committee on the draft Corruption Bill that it will replace the existing statutory requirement for the Attorney General's consent with a requirement for the consent of the Director of Public Prosecutions or a nominated deputy. In the Consultation Paper issued on 8 December 2005, the Government announced that they intended that the Director of the SFO should also be empowered to give consents, given its lead role in foreign bribery cases. These changes will be taken forward in future legislation.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

5. With respect to prosecution, the Working Group recommends that the United Kingdom:
- c) broaden the level of persons engaging the criminal liability of legal persons for foreign bribery offences [Convention, Article 2].

Actions taken as of the date of the follow-up report to implement this recommendation:

The UK is in compliance with Article 2 as legal persons are liable under UK law for the bribery of a foreign public official according to the same principles as they are liable for other *mens rea* offences. Article 2 of the Convention requires only that each party should establish the liability of legal persons for the bribery of a foreign public official "in accordance with its legal principles". This is already achieved. In our view, the same principles should apply equally to all *mens rea* offences: it would not be justifiable to alter the basic principles of corporate liability in our law solely in relation to bribery. Reform of our law of corporate liability for *mens rea* offences would be a substantial undertaking requiring inputs from the majority of Government Departments and widespread consultation with industry and the commercial sector. However, a review of the legal basis of corporate liability forms a part of the Law Commission's major long-term project to codify the criminal law.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

6. With respect to Crown Dependencies and Overseas Territories, the Working Group recommends that the United Kingdom, within the rules governing their relationship:
- a) verify compliance of Guernsey's new legislation with the OECD Convention, invite the Jersey authorities to enact a comprehensive anti-corruption statute at the earliest possible date in order to extend the OECD Convention to the islands [Convention,

Article 1];

Actions taken as of the date of the follow-up report to implement this recommendation:

The Government extended its ratification of the OECD Convention to the Isle of Man in 2001. Guernsey now has legislation in place which will support the UK's extension of the OECD Convention and we are awaiting a formal request to pursue this. Jersey is expecting its Corruption (Jersey) Law 2006 to come into force on 6 March 2007. It is expected that once in force, Jersey will have legislation sufficient to support convention extension. The UK is in the process of confirming this and will advise Jersey accordingly.

The UK's Department for Constitutional Affairs (DCA) continues to discuss with the Crown Dependencies (CDs) the need to publicise their commitment to the anti-corruption agenda. All have expressed an interest in having UNCAC extended to them and have give an indicative timetable of the end of 2007. DCA continues to work with the administrations of the CDs to assist where necessary in meeting this deadline.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

6. With respect to Crown Dependencies and Overseas Territories, the Working Group recommends that the United Kingdom, within the rules governing their relationship:

- b) continue to encourage the Overseas Territories to adopt the necessary legislation in line with the principles of the Convention and Revised Recommendation, and support them in their efforts [Convention, Article 1].

Actions taken as of the date of the follow-up report to implement this recommendation:

The Government raises the fight against bribery and corruption with the Overseas Territories (OTs) at appropriate opportunities, eg with OT Governors in May 2005 and in a session chaired by Hilary Benn at the Overseas Territories Consultative Council in November 2006. In addition, we invited the Attorneys General of the Cayman Islands, British Virgin Islands and Turks and Caicos Islands (TCI) to participate in the UK's delegation to the inaugural Conference of States Parties to the UN Convention against Corruption (UNCAC).

The UK extended ratification of UNCAC to the British Virgin Islands in 2006. The TCI Government has tabled an Integrity Bill, which should enable us to extend the OECD Bribery Convention and UNCAC to them later this year. We funded the drafting of a revised Proceeds of Crime Ordinance, together with a new set of Anti-Money Laundering Regulations, drawing on best practice internationally. The drafts were presented to TCI financial services industry representatives on 30 January for a one-month consultation period, following which any necessary amendments will be incorporated and the Bill taken to Cabinet and thence to the House of Assembly. The Cayman Islands Government will bring forward draft legislation shortly which, once enacted, will enable the UK to extend our ratification of both the UN and OECD

Conventions to the Islands.

Thanks to various activities, awareness in Bermuda that corruption will lead to prosecution whenever there is sufficient evidence has greatly increased. The Government of Bermuda has in the past year successfully seized corrupt assets, in one case totalling \$2.25m from one individual. Bermuda has been actively involved in the post-Volcker investigation into companies based in the Bermuda jurisdiction in relation to the Oil-for-Food programme.

The Overseas Territories are also likely to benefit from the outputs of a major Commonwealth Secretariat anti-corruption programme to produce tools to support UNCAC implementation, such as model legislative provisions. The FCO is providing some £0.5 million to this programme over 3 years.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

7. With respect to sanctions, the Working Group recommends that the United Kingdom:
 - a) consider adopting a regime of additional administrative or civil sanctions for legal persons that engage in foreign bribery [Convention, Article 3];

Actions taken as of the date of the follow-up report to implement this recommendation:

On sanctions, any action concerning the liability of legal persons would be driven by considerations about the underlying legal principles that go beyond their application to the offence of overseas bribery.

There has been progress on the anti-bribery policies of key Government Departments and agencies whose activities directly impact on business transactions overseas. The Office of Government Commerce (OGC) has been conducting a consultation with industry and Transparency International on the UK's implementation of EU public procurement directives, in particular Article 45 on exclusions. The OGC is also sharing its experience with the European Commission and other Member States. UK guidelines on the mandatory exclusion of economic operators for, amongst other things, corruption and bribery, were published at the end of January 2006 (http://www.ogc.gov.uk/documents/guide_mandatory_exclusion.pdf).

In response to the OGC guidelines, DFID has reviewed its instructions to tenderers and other contracting documentation (copy attached). The main changes chiefly relate to Invitation to Tender (ITT) instructions (CB1C). The new instructions specifically refer to a range of offences and to UK Public Contracts Regulations. The changes to DFID ITT documents go further than that required by the Directives since they require tenderers to revert to DFID even if they are only being accused of offences rather than only if they have been convicted (as required by Directives/Regulations).

The Export Credits Guarantee Department (ECGD) conducted a consultation exercise on revisions to its anti-bribery procedures. The outcome was published in March 2006 and drew

praise from The Corner House for its position on the identification of agents. New anti-bribery rules were then introduced from 1 July 2006 (see http://www.ecgd.gov.uk/index/pi_home/policy_on_bribery_and_corruption.htm). In particular, these required the disclosure of agents' names.

Civil seizure proceedings are available against persons suspected of but not charged with corruption offences – by the Assets Recovery Agency for England, Wales and Northern Ireland and by the Civil Recovery Unit for Scotland.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

7. With respect to sanctions, the Working Group recommends that the United Kingdom:
 - b) considers revisiting the policies of agencies such as Department for International Development and Export Credit and Guarantees Department on dealing with applicants convicted of foreign bribery, to determine whether these policies are a sufficient deterrence [Revised Recommendation, Paragraph I and Paragraph VI (iii)];

Actions taken as of the date of the follow-up report to implement this recommendation:

Before implementation of EU Procurement Directives/UK Public Procurement Directives on 31 January 2006, DFID treated each potential company convicted of corrupt/improper practices, on a case-by-case basis. Since this date, DFID has complied with the broad exclusion approach of companies convicted or corrupt/improper practices required by both EU public procurement directives, in particular Article 45 on exclusions, and UK Public Contracts Regulations, in particular article 23 on exclusions. However, neither the EU Public Procurement Directives nor UK Public Contracts Regulations specifically set out detailed sanction processes, penalties or rights of appeal. As a result, DFID is currently in discussion with interested parties, such as the OGC, the World Bank and others, with the aim of establishing/adopting a formal sanctions process to address related issues, such as: range/severity of penalties, treatment of "spent" convictions and potential processes for appeal and mitigation. The OGC is also in discussions with the European Commission to clarify these type of issues

ECGD introduced new procedures from July 2006 following a public consultation. ECGD has fully implemented the OECD Council Recommendation on Combating Bribery and Officially Supported Export Credit Transactions. As a result, the UK Government believes that, as an export credit agency, ECGD has done all that it reasonably can to avoid UK taxpayers' money being used to support transactions with bribery and corruption.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

7. With respect to sanctions, the Working Group recommends that the United Kingdom:
- c) encourage prosecutors to actively pursue the necessary procedures for confiscation in all appropriate foreign bribery cases [Convention, Article 3].

Actions taken as of the date of the follow-up report to implement this recommendation:

The UK is presently executing requests from more than 24 countries.

Prosecutors are encouraged to pursue confiscation in *all* appropriate cases to seek to remove the profit from crime. SFO and CPS both have dedicated confiscation expertise. The Crown Office has a dedicated financial crime unit for Scotland. The Revenue and Customs Prosecutions Office (RCPO) also has dedicated confiscation expertise in its Asset Forfeiture Division. Further. Powers to take civil recovery action to seize assets are being devolved to the CPS and RCPO as well as the SFO.

A combination of training and incentivisation should ensure that confiscation will be pursued wherever appropriate. Police forces and prosecutors have shown a commitment to obtaining confiscation orders by appointing “champions” to pursue actively opportunities to seize criminal assets and disrupt criminality. An asset recovery incentive scheme (not operational in Scotland) means that police, prosecutors, and the courts will have a share of the money collected as an encouragement to pursue confiscation. Prosecutors have been entering into local agreements with individual police forces to ensure that potential confiscation cases are recognised and taken forward in the courts. Measures have been put in place to ensure that, once confiscation orders have been made, they are paid.

Since the beginning of 2006 the Serious Fraud Office Restraint and Confiscation Unit has also been empowered to take restraint and confiscation action on behalf of overseas authorities where the request for assistance includes serious or complex fraud.

The powers of the Office will be further increased to include taking civil action to seize assets in appropriate cases in which it is not possible to obtain convictions. This will occur when the Assets Recovery Agency is amalgamated with the Serious Organised Crime Agency, and power to take civil action is devolved to prosecution agencies. Scotland’s Civil Recovery Unit will remain independent.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Part II: Issues for Follow-up by the Working Group

Text of issue for follow-up:

8. The Working Group will follow-up on the issues below, as practice develops, in order to assess:

- a) the application of sanctions with a view to determining whether they are sufficiently effective, proportionate and dissuasive to prevent and punish the offence of transnational bribery, in particular, the practice of the courts with regard to the criminal liability of legal persons for the offence of active bribery of foreign public officials [Convention, Articles 2 and 3];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Although there is no example yet of sentences imposed after conviction of an offence of overseas corruption, there are two cases which are perhaps relevant. The first is the recent case of corruption of employees of a commercial undertaking and the consequent fraud upon their employer, *Mars - R v Simpson, Harper, and Welcher*, each of whom were convicted in December 2005 and sentenced in May 2006, and Gray, who was convicted in July 2006 and sentenced in August

Count 1 - Conspiracy to corrupt between January 1991 and June 2001

Count 2 - Conspiracy to defraud between the same dates

Verdicts and sentencing: Barry Simpson, Roger Harper and Anthony Welcher were found guilty on both counts and Georgina Welcher guilty on count 1 and not guilty on count 2. Terms of imprisonment, to run concurrently, were imposed as follows:

Count 1

Barry Simpson - 4 years

Roger Harper - 4 years

Tony Welcher - 3 years

Georgina Welcher - 15 months

Robert Gray - 4 years

Count 2

Barry Simpson - 6 ½ years

Roger Harper - 6 ½ years

Tony Welcher - 4 ½ years

Robert Gray - 4 years

The second case is *R v Raud*, who bought a passport from an Irish consular official. She was sentenced to 11 months on conviction of conspiracy to corrupt

Text of issue for follow-up:

8. The Working Group will follow-up on the issues below, as practice develops, in order

to assess:

- b) the effectiveness of the investigations carried out by the Ministry of Defence Police in relation to foreign bribery offences in defence contracts [Convention, Article 5 ; Revised Recommendation, Paragraph I];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The MOD Police Fraud Squad caseload comprises major fraud and corruption investigations. The current caseload is 26 cases of which 10 are corruption investigations. Of those 10, four are cases with an overseas element (in addition to the BAE matter). Cases are at different stages of investigation. Two cases of corruption have passed through the Attorney General's consent process and are now in the early stages of the court process. One of these has an overseas element (UK civil servant receiving bribes from US contractor). Whilst the cases investigated by the Fraud Squad are not particularly numerous, they are all defined as major or serious.

Text of issue for follow-up:

8. The Working Group will follow-up on the issues below, as practice develops, in order to assess:

- c) with respect to money laundering, the application of the new provisions under the Proceeds of Crime Act 2002, particularly with respect to the application of offences of failure to report, the levels of sanctions in practice, and the efforts made to raise awareness and elaborate guidelines/typologies covering foreign bribery offences [Convention, Article 7; Revised Recommendation, Paragraphs II.(i) and III];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The following table is a summary of prosecutions brought for money laundering offences in 2003-05. A more detailed breakdown can be found in the attached spreadsheet (electronic version only).

Year	Proceeded against	Found guilty	Sentenced
2003	300	123	119
2004	552	207	205
2005	1327	595	575

One particular case is useful to illustrate the failure to report interest. A solicitor was prosecuted for negligently failing to report suspicions in relation to a conveyance. This resulted in a 15-month custodial sentence, reduced to 6 months on appeal. An estate agent in the same case had his sentence reduced from 36 months to 27 months on appeal.

There is no experience in the SFO of the prosecution of persons within the United Kingdom for laundering the proceeds of an international bribery offence. This may fall for consideration within

two of the cases currently under investigation.

The 2006 'Lander' review of the Suspicious Activity Reports (SARs) regime made 24 recommendations on improving aspects of the regime. Of particular relevance is the implementation by SOCA of a structured feedback programme tailored to specific sectors of the SAR reporters. This programme is designed to raise awareness and deliver typologies in order to increase the quality of SAR reporting. This programme now includes topics on overseas corruption and corrupt politically exposed persons (PEPs). SOCA UKFIU has increased the resources analysing SARs to identify potential overseas corruption/PEPs and is working with the Metropolitan police, City of London police, SFO and other stakeholders to translate SAR intelligence into investigation.

Text of issue for follow-up:

8. The Working Group will follow-up on the issues below, as practice develops, in order to assess:

- d) the application in practice of the territorial and nationality jurisdiction for foreign bribery offences, given the absence of cases to date regarding the establishment of jurisdiction over offences that have taken place wholly or substantially abroad [Convention, Article 4];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

There is no experience yet of the practice likely to be adopted by the Courts in the United Kingdom. The Register of foreign bribery allegations maintained by the Serious Fraud Office currently shows 99 entries from 2002 to date. A number of the entries relate to incomplete allegations which it was not possible to verify, to repeats of earlier allegations or allegations which, on closer examination are not international bribery or corruption.

In a number of cases the Serious Fraud Office has received allegations of corrupt behaviour where enquiries have already begun in another jurisdiction. Cases which might be prosecuted in both the UK and the USA are governed by an accord reached by the two governments on 25 January 07. This allows for the exchange of information at an early stage in enquiries in order to assist determination of which country is best placed to bring a prosecution.

There are fourteen enquiries underway. Ten of these are being carried out by the SFO. One is situated in Scotland and is being carried out by the Crown Office Procurator Fiscal Service with Strathclyde Police. The MOD Police are investigating three cases in addition to the cases in which it is working with the SFO.

Of the cases being investigated by the SFO eight involve allegations of bribery, one of money laundering and one of more general corrupt activity. In thirty instances no separate action has been taken. (see above comments)

In a further twenty-three cases a vetting file has been opened and preliminary consideration is underway. In a number of cases it has not been possible to obtain evidence from the jurisdiction

in which the alleged activity occurred, despite repeated contact. In other cases closer examination has revealed that due to the age of the allegation it was felt that it would not be possible to establish jurisdiction. It is still common for the SFO to receive allegations relating to dates prior to the implementation or even the ratification of the Convention. In addition to jurisdictional problems these cases inevitably suffer due to destruction or loss of evidence.

The balance of the cases are subject to preliminary consideration.

Text of issue for follow-up:

8. The Working Group will follow-up on the issues below, as practice develops, in order to assess:

- e) the possible effect of the tendency to simplify cases and to use alternative charges on the implementation of the Convention in the UK [Convention, Article 5; Revised Recommendation, Paragraph I];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

In the United Kingdom cases of serious or complex fraud and/or corruption are tried at the Crown Court (England & Wales and in Northern Ireland) and in the High Court (Scotland) before a judge or judges and a jury. Prosecutors in England and Wales are required by the Protocol “Control and Management of Heavy Fraud and other Complex Criminal Cases” issued by the Lord Chief Justice of England and Wales on 22 March 2005 to simplify cases brought for trial wherever possible and to limit their length. United Kingdom prosecution authorities will continue to seek to bring simple cases before the courts. Experience shows that doing so will ensure a higher rate of convictions. In those circumstances if a simpler charge eg of fraud is the more likely to secure a conviction than one of corruption then that charge may be brought. In the event that trial by single judge is implemented in a small number of complex fraud cases it may be possible to review that practice.

In certain circumstances it may be possible to bring a simple charge of fraud where the evidence of corruption is incomplete eg because of the failure of an overseas authority to assist. In the case arising from the prosecution of an official employed at the UK Royal Mint it was not possible to obtain sufficient evidence from another jurisdiction(s) to allege corruption but a charge of dishonesty was tried.

Text of issue for follow-up:

8. The Working Group will follow up on the issues below, as practice develops, in order to assess:

- f) the application of the evidentiary threshold for providing mutual legal assistance and extradition. In this respect the UK should compile quantitative information to assist the Working Group in its follow-up assessment [Convention, Article 9];

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Mutual Legal Assistance in the UK is provided for by the Crime International Cooperation Act 2003 (CICA). There is no evidential requirement under CICA. All that is required is that a criminal investigation is underway or imminent and that the request is by a Court, prosecutor or other body competent to make requests in criminal matters. Sections 13 and 14 of CICA permits assistance not only on criminal matters but also in Administrative and Clemency Proceedings which involve the imposition of a criminal sanction in addition to criminal proceedings.

In addition, a request can be made for searches concerning the whereabouts of criminal proceeds. These are dealt with by a police constable or customs officer. The SFO can help overseas authorities concerning the proceeds of crime in respect of any request received after 31 December 2005. The enabling legislation is contained in SI's 3181 & 3182 of 2005.

SI 1986 of 2005 and SI 1987 of 2005 permit the courts to register and enforce an overseas order for confiscation. Again there is no evidential requirement beyond a statement that the confiscation order is final.

Between 2001 and 2006 the Serious Fraud Office received 15 requests for assistance in cases classified as bribery or corruption by the requesting state (6 including bribery, the balance alleging corruption). Where the Director of the Serious Fraud Office is requested to use his coercive powers there is a requirement that he be satisfied that there is evidence that a serious or complex fraud has occurred. In no case has a request been turned down on the ground of not meeting the evidential threshold. There has been a case in assistance was given but there was a refusal of a request to undertake a search of domestic premises.

Text of issue for follow-up:

8. The Working Group will follow-up on the issues below, as practice develops, in order to assess:

- g) the recent changes of the ECGD procedures to combat bribery and corruption with regard to any weakening of the rules that could reduce the ability of the ECGD to detect and prevent foreign bribery [Revised Recommendation, Paragraph I and Paragraph VI (iii)].

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

New procedures, implemented from July 2006, are more stringent than those that previously existed and fully comply with the OECD Council Recommendation on Bribery and Officially Supported Export Credits.

Annex 1: Public Sector Procurement - Guidance Note 16g: Mandatory Exclusion

Introduction

1.1 The new EU Public Sector Procurement Directive as implemented by the UK's Public Contracts Regulations 2006 include a new mandatory requirement for contracting authorities to exclude economic operators (suppliers, contractors and services providers) from public contracts where they have been convicted of certain offences. In the past, the exclusion for these and other offences was optional. This note sets out what this requirement means for DFID, and provides advice on the steps that PrG should take to ensure compliance with this new provision.

Background

2.1 Regulation 23(1) of the UK Public Contracts Regulations 2006 states:

“Subject to paragraph (2), a contracting authority shall treat as ineligible and shall not select an economic operator in accordance with these Regulations if the contracting authority has actual knowledge that the economic operator or its directors or any other person who has powers of representation, decision or control of the economic operator has been convicted of any of the following offences:

(a) Conspiracy within the meaning of section 1 of the Criminal Law Act 1977 where that conspiracy relates to participation in a criminal organisation as defined in Article 2(1) of

Council Joint Action 98/733/JHA;

(b) Corruption within the meaning of section 1 of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;

(c) The offence of bribery;

(d) Fraud, where the offence relates to fraud affecting the financial interests of the European

Communities as defined by Article 1 of the Convention relating to the protection of the financial interests of the European Union, within the meaning of –

The offence of cheating the Revenue;

The offence of conspiracy to defraud;

Fraud or theft within the meaning of the Theft Act 1968 and the Theft Act 1978;

(iv) Fraudulent trading within the meaning of section 458 of the Companies Act 1985;

(v) Defrauding the Customs within the meaning of the Customs and Excise Management Act 1979 and the Value Added Tax Act 1994;

(vi) An offence in connection with taxation in the European Community within the meaning of section 71 of the Criminal Justice Act 1993;

Or

(vii) Destroying, defacing or concealing of documents or procuring the extension of a valuable security within the meaning of section 20 of the Theft Act 1968;

(e) Money laundering within the meaning of the Money Laundering Regulations 2003; or

(f) *Any other offence within the meaning of Article 45(1) of the Public Sector Directive as defined by the national law of any relevant State.*”

2.2 Paragraph 23 (2) states:

“In any case where an economic operator or its directors or any person who has powers of representation, decision or control has been convicted of an offence described in paragraph

(1), a contracting authority may disregard the prohibition described there if it is satisfied that there are overriding requirements in the general interest which justify doing so in relation to that economic operator.”

2.3 Paragraph 23 (3) states:

“A contracting authority may apply to the relevant competent authority to obtain further information regarding the economic operator and in particular details of convictions listed in paragraph (1) if it considers it needs such information to reach its decision referred to in that paragraph.”

Definition of “Actual Knowledge” of an Offence

3.1 Subject to the derogation in regulation 23(2) DFID must exclude an economic operator if it has “actual knowledge” that an offence, listed within the Regulations, has been committed. You should note that although there is at present no requirement within the Public Contracts Regulations for contracting authorities such as PrG to proactively seek “actual knowledge”, it is important to ask any bidder to provide information about relevant convictions in, for example, a pre-qualification or selection questionnaire given that such a questionnaire seeks information on a whole range of issues related to suitability to tender for public contracts. DFID should exclude any economic operator for whom they have “actual knowledge” of a conviction for a relevant offence listed in paragraph 2.1.

Questions to be Asked to Establish “Actual Knowledge”

4.1 The objective, of any question that PrG may use on this matter, is to obtain details of all relevant convictions a bidder may have or a declaration that the bidder has no such convictions. The term “bidder” here refers only to the consultant, supplier or services provider applying to tender for a contract – not parent companies, subsidiaries or sub-contractors which are separate entities. However, in the case of sub-contractors, it would be appropriate to ask bidders to avoid using sub-contractors for the performance of the contract where there is actual knowledge that such subcontractors have relevant convictions. The phrasing of any question used can affect, under certain circumstances, any additional information that DFID might wish to request from a competent authority. This will however be covered in the section of the guidance for applying to a relevant competent authority. However a basic question may be worded as follows:

“Does your [organisation] or any of your [organisation’s] directors (of a company), partners (of a firm) or anyone in an equivalent position e.g. any other senior managers “who (have) powers of representation, decision or control” have any convictions relating to any of the offences listed under regulation 23(1), of “the Public Contracts Regulations 2006” [regulation 26(1) of “the Utilities Contracts Regulations 2006”] ? If so, please list each conviction with full details.”

4.2 Where you have reason to doubt a response from an economic operator, there is provision within the Regulations to “apply to the relevant competent authority to obtain further information”. OGC have advised that there are steps which a PrG could take before making such an application. If there is reason to doubt information provided by a bidder it would be reasonable, as a first step, to request further information, from the bidder in case there is a genuine misunderstanding of what is required. If the response from the bidder proves satisfactory it would avoid the need to apply to the competent authority.

However, should the information prove unsatisfactory, you should contact PrG’s PTMS team who will advise you on further action that DFID needs to take.

Exceptions to the Mandatory Exclusion

5.1 The Public Procurement Regulations make provision for an exception (regulation 23(2)) if the contracting authority “is satisfied that there are overriding requirements in the general interest” which would justify such an exception. These exceptions should only be used in the most serious of circumstances, for example in the case of a national emergency. In such cases the Accounting Officer or Secretary of State, as appropriate, should be satisfied that the circumstances are such that they will justify the exception to ensure that DFID remains in compliance with the Regulations.

Annex 2: Revised Memorandum of Understanding on Implementing Part 12 of the Anti-Terrorism, Crime and Security Act 2001

Summary

1. This MoU, which has been agreed between all the agencies concerned (see para 22), outlines revised arrangements for implementing Part 12 of the Anti-terrorism, Crime and Security Act 2001 ('the 2001 Act'). It replaces the MoU issued in July 2004.
2. The National Policing Plan 2005-2008, published in November 2004, states:

'The period covered by the Plan should see the first investigations involving the use of the new powers on international corruption in Part 12 of the Anti-terrorism, Crime and Security Act 2001. **Forces are asked to support the Serious Fraud Office in such investigations and encouraged to take on those investigations not falling within the Serious Fraud Office's remit.** (para 3.55).

Background

3. Part 12 of the 2001 Act, which came into force on 14 February 2002, made 2 main changes to the law:

Section 108 put beyond doubt that the existing offences of bribery and corruption apply to the bribery of foreign public office holders, including foreign MPs, judges, ministers and 'agents' (as defined by the Prevention of Corruption Act 1906). This change mainly clarified existing law and no changes in procedure resulted from it.

Section 109 was the significant change: it gave our courts jurisdiction over certain offences of bribery and corruption when they are committed overseas by UK nationals or by bodies incorporated under UK law. The relevant offences are (a) the common law offence of bribery; (b) the offences under section 2 of the Public Bodies Corrupt Practices Act 1889; and (c) the first two offences under section 1 of the Prevention of Corruption Act 1906.

Implementation system

4. This MoU covers any case where it appears that a relevant offence (as described in para 3) has been committed and there is an overseas dimension, whether from the functions carried out by any of the offenders or the location of the offence. Cases where all the action takes place overseas can only be prosecuted in the UK if a relevant event took place after 14 February 2002. If all the action took place before that date, a prosecution can still be considered, provided: (a) that some part of the crime took place in the UK; OR (b) that the offender was a UK national in the service of the Crown (see section 31 of the Criminal Justice Act 1948). Clearly at the time of the allegation it will not be possible to say with certainty what the charge will be and - depending on the content and the locus of the offence - it may be appropriate to bring charges other than those mentioned in para 3.

5. **The Serious Fraud Office (SFO)** will act as the focal point for receiving any allegations (including those coming to the attention of the agencies party to this MoU) about offences of bribery by UK nationals or UK incorporated bodies which take place overseas. Where agreed, SFO will meet agencies party to this MOU to review the status of allegations on file. SFO will maintain the register on allegations covered by this MOU.
6. The existence of a new UK jurisdiction over these offences does not mean that it will always be appropriate for the UK to exercise it in any given case. The decision as to which jurisdiction is the best placed to pursue each case will depend on where the main evidence and witnesses are likely to be located. Also, a bribery case is likely to involve at least 2 parties, one of whom at least may not be prosecutable in the UK.
7. Therefore it is good practice for **SFO** to report any allegations worthy of investigation to the authorities in the jurisdiction concerned. SFO should give FCO an opportunity to comment beforehand, to ensure they have all relevant information (clearly FCO will already be aware of the cases that have come through them but they should also be informed of any case that reaches SFO by another channel). Before reporting to foreign authorities SFO will also need to be satisfied that none of the following exceptions apply:

It is clear in advance that this avenue will be fruitless;

The jurisdiction imposes the death penalty for these offences. (In line with established practice that prevents the passing of information to foreign authorities in cases of offences for which the death penalty could be applied. This is unusual for these offences but not unknown.);

Such a report might lead to the destruction of evidence or endanger anyone involved in the case (in particular witnesses).

8. Unless the allegation concerns a Scottish case (see para 10) the SFO will undertake a vetting exercise to establish who is best placed to lead the investigation. Where criminal investigations are concerned the relevant agencies are:

SFO for any case that falls within its remit to work in conjunction with;

MoD police for any case involving MoD employees or defence contracts where MoD is a party to the contract;

The local police force concerned for any other criminal case. That means:

Where the allegation involves a UK incorporated body, the force where its registered office is located. Companies House can advise on the location of registered offices of GB bodies. Northern Ireland has a separate Registrar of Companies in Belfast.

Where the allegation is against a UK national (and no incorporated body is involved), the force where his last known UK address is located.

ACPO will provide advice on how to proceed to other police forces on request.

The **National Crime Squad (NCS)** for any case where there is clearly a need for their pro-active

policing techniques. NCS will also work to support local police forces on request.

Where individuals or businesses in the UK have benefited from knowingly participating in the bribery or corruption of overseas public officials, enforcement authorities will make use of the Proceeds of Crime Act (POCA) to recover any criminal benefit. The **Assets Recovery Agency (ARA)** should always be consulted where a criminal prosecution is either not feasible or failed, and where applicable and practicable ARA will use civil recovery powers against the offenders.

Scotland

9. Part 12 of the 2001 Act applies only to England and Wales and Northern Ireland. Similar provision was made for Scotland by sections 68 and 69 of the Criminal Justice (Scotland) Act 2003, which were commenced on 28 June 2003. If the person's last address or the incorporated body's office is in Scotland, then the case should be referred to the Crown Office's Financial Crime Unit who will oversee the investigation and prosecution of all such cases.

Prosecutions

10. **CPS** will prosecute any case linked with England and Wales not falling within SFO's remit.
11. Cases linked with Northern Ireland not falling within SFO's remit will be prosecuted by the DPP for Northern Ireland or the Police Service for Northern Ireland.

DTI investigations

12. **DTI's Companies Investigations Branch** (whose remit is GB-wide) are best placed to explore situations where there is good reason to suspect wrong doing by a company incorporated in GB but where the evidence is not sufficiently strong to warrant a criminal investigation.

Police investigations

13. It will be normal in these cases that evidence may need to be obtained from abroad: the existing Mutual Legal Assistance mechanisms should be used.

Cases in developing countries

DFID (and FCO) will be able to provide advice where a case arises implying corruption offences in a developing country and DFID may, on a case by case basis, be able to provide practical assistance to an investigation where it is engaging with the local justice system.

Ongoing information needs

14. For operational reasons, the FCO, or MOD in any case involving contracts to which it is a party, may ask for an update from investigating agencies on the stage reached of an investigation where this is appropriate and with the consent of the senior investigating officer.

Distribution

15. This MoU will be circulated to Chief Constables in England and Wales by Home Office and to the Police Service of Northern Ireland by NIO. Home Office will also circulate it to the contacts named in Annexes 1 (central contacts) and 2 (local police force contacts). Any necessary further

circulation within agencies will be arranged by the contacts named in Annexes 1 and 2. (Both Annexes are restricted).

Further information

16. A circular (No 2/2002) on the content of the legislation has been issued to police and courts by the **Home Office**.
17. Under the Civil Service Code, officials should report evidence of criminal or unlawful activity. This applies to allegations of foreign bribery. The FCO has issued specific guidance to overseas posts on the reporting of such allegations, for onward transmission to the SFO.

Parties to this MoU

18. This MoU was agreed by a steering group chaired by the ACPO lead and comprising representatives of the Police, the Crown Prosecution Service, Serious Fraud Office, National Criminal Intelligence Service, National Crime Squad, MoD, MoD Police, Department of Trade and Industry, UK Trade and Investment, Foreign and Commonwealth Office, Export Credits Guarantee Department, the Department for International Development and the Home Office. The names of those from each organisation who have approved this MoU are attached at Annex 3.
19. The MoU is reviewed at least annually and updated as necessary.

Issued 1 December 2005

Annex 3: Number of Defendants Proceeded Against at Magistrates' Courts, Found Guilty and Sentenced at all Courts for Money Laundering Offences, by Type Of Offence

1. Drug Money Laundering Offences

	Statute	Proceeded Against	Found Guilty	Sentenced	Absolute / Conditional Discharge	Fine	Community Service Sentence	Fully Suspended Sentence	Immediate Custody	Average custodial Sentence length (months)
93/49	Concealing or transferring the proceeds of drug trafficking	Drug Trafficking Act 1994, Sec 49 (previously Criminal Justice (International Co-operation) Act 1990, Sec 14)	12	8	-	-	4	1	3	10
93/50	Assisting another person to retain the benefit of drug trafficking	Drug Trafficking Act 1994, Sec 50 (previously Drug Trafficking Offences Act 1986, Sec 24)	3	11	-	-	1	1	9	31
93/51	Acquisition, possession of use of other proceeds of drug trafficking	Drug Trafficking Act 1994, Sec 51, (previously S23A Drug Trafficking Offences Act 1986 as inserted by S16 Criminal Justice Act 1993)	3	1	-	-	-	-	1	36
93/52	Failure to disclose knowledge or suspicion of money laundering	Drug Trafficking Act 1994, Sec 52	1	3	-	1	2	-	-	-
93/53	Disclosure of information likely to prejudice an investigation ("Tipping off")	Drug Trafficking Act 1994, Sec 53	1	1	-	-	1	-	-	-
Total Drug Money Laundering Offences		20	24	24	0	1	8	2	13	26.5

2. Offence of Laundering Proceeds of Other Crime

	Statute	Proceeded Against	Found Guilty	Sentenced	Absolute / Conditional Discharge	Fine	Community Service Sentence	Fully Suspended Sentence	Immediate Custody	Average custodial Sentence length (months)
53/26	Assisting another to retain the benefit of criminal conduct Criminal Justice Act 1988, Sec 93A as inserted by S29 Criminal Justice Act 1993	2	3	3	-	-	1	2	-	-
53/27	Acquisition, possession or use of proceeds of criminal conduct Criminal Justice Act 1988, Sec 93B as inserted by S30 Criminal Justice Act 1993	-	-	-	-	-	-	-	-	-
53/28	Concealing or transferring proceeds of criminal conduct Criminal Justice Act 1988, Sec 93C as inserted by S31 Criminal Justice Act 1993	3	2	2	-	-	-	-	2	31
53/29	Disclose of information likely to prejudice an investigation ("Tipping off") Criminal Justice Act 1988, Sec 93D as inserted by S32 Criminal Justice Act 1993	-	-	-	-	-	-	-	-	-
Total for offences of Laundering Proceeds of Other Crime		5	5	5	0	0	1	2	2	31

3. Proceeds of Crime Act offences

	Statute	Proceeded Against	Found Guilty	Sentenced	Absolute / Conditional Discharge	Fine	Community Service Sentence	Fully Suspended Sentence	Immediate Custody	Average custodial Sentence length (months)
38/01	Proceeds of Crime Act 2002, Secs 327 and 334(1)	392	154	150	8	5	55	7	74	21
38/02	Proceeds of Crime Act 2002, Secs 328 and 334(1)	229	69	69	5	3	26	2	31	22.2
38/03	Proceeds of Crime Act 2002, Secs 329 and 334(1)	674	343	326	41	44	150	16	73	17.1
38/04	Failure to disclose; another person involved in money laundering - regulated sector	4	-	-	-	-	-	-	-	-
38/05	Failure to disclose; another person involved in money laundering - nominated officer in the regulated field	1	-	-	-	-	-	-	-	-
38/06	Failure to disclose; another person involved in money laundering - other nominated officer	-	-	-	-	-	-	-	-	-
38/07	Tipping off - suspecting a disclosure has been made; making a disclosure likely to prejudice an investigation	1	-	-	-	-	-	-	-	-
38/08	Nominated officer; must not give consent to the doing of a prohibited act	1	-	-	-	-	-	-	-	-
95/06	Offences of prejudicing an investigation - disclosure likely to prejudice investigation; Falsifying, concealing, destroying or otherwise disposing of documents relevant to investigation	-	-	-	-	-	-	-	-	-
95/07	In purported compliance with requirement imposed under a disclosure order, making or recklessly making a false or misleading statement	-	-	-	-	-	-	-	-	-
195/48	Failing to comply with the requirement imposed under a disclosure order, making or recklessly making a false disclosure order	-	-	1	-	-	-	-	1	6
	Financial institution failing to comply with requirement imposed under Customer Information Order									

3. Proceeds of Crime Act offences (continued)

95/12	Financial Institution: In purported compliance with requirement imposed under a disclosure order, making or recklessly making a false or misleading statement	Proceeds of Crime Act 2002, Sec 366(3) and (4)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total for offences under Proceeds of Crime Act			1302	566	546	54	53	240	231	25	179	19.5								
Total for all offences			1327	595	575	54	53	240	231	29	194	20.1								

(1) A count of all defendants dealt with by the Magistrates' Courts, including Youth Courts, in England and Wales for criminal offences. Where a case involves more than one defendant, each defendant is counted separately. Where a defendant is dealt with on separate occasions by the Magistrates' Court each occasion is counted. The count excludes prosecutions for breaches of court orders. Defendants are classified according to their principal offence, so that a defendant prosecuted on one occasion for more than one offence will count only once. The defendants are counted at the end of the proceedings in the Magistrates' Court and therefore include acquittals, convictions and committals to the Crown Court.

(2) Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the police forces and courts. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.