Groupe d'Etats contre la corruption
Group of States against corruption

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

DIRECTORATE GENERAL I – LEGAL AFFAIRS
DEPARTMENT OF CRIME PROBLEMS

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Second Evaluation Round

Evaluation Report on the United Kingdom

Adopted by GRECO
at its 20th Plenary Meeting
(Strasbourg, 27-30 September 2004)

I. INTRODUCTION

1. The United Kingdom was the ninth GRECO member to be examined in the Second Evaluation Round. The GRECO Evaluation Team (hereafter referred to as the "GET") was composed of Mr Eberhard SIEGISMUND, Deputy Director General in the Judicial System, Ministerialdirigent, Federal Ministry of Justice, Berlin (Germany), Mr Ivar TALLO, Chairman of Government Anti-Corruption Committee, Tartu University, Tallinn (Estonia) and Mr Patrick BREHONY, Superintendent, Police (An Garda Síochána), National Bureau of Criminal Investigation, Dublin (Ireland). This GET, accompanied by a member of the Council of Europe Secretariat, visited the United Kingdom from 19 to 23 April 2004. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval II (2003) 9E) as well as copies of relevant legislation.

2. The GET met the Minister for the Criminal Justice System and Law Reform, Baroness Scotland of Asthal, and officials from the following governmental organisations: Home Office, Foreign and Commonwealth Office, Cabinet Office, HM Treasury, Office of the Deputy Prime Minister, Department of Trade and Industry, Financial Services Authority, Inland Revenue, Assets Recovery Agency, Crown Prosecution Service, Serious Fraud Office, National Criminal Intelligence Service, Metropolitan Police, the Standards Board for England and Wales and the Secretariat of the Committee on Standards in Public Life. Moreover, the GET met with members of the following non-governmental institutions: Public Concern at Work, The Law Society, The Institute of Chartered Accountants and Transparency International.

3. It is recalled that GRECO agreed, at its 10th Plenary meeting (July 2002), that the 2nd Evaluation Round would run from 1 January 2003 to 30 June 2005 and that, in accordance with Article 10.3 of its Statute, the evaluation procedure would deal with the following themes:

   - **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 19 paragraph 3, 13 and 23 of the Convention[1];

   - **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);

   - **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the United Kingdom authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report contains a description of the situation, followed by critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to the United Kingdom in order to improve its level of compliance with the provisions under consideration.

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[1] The United Kingdom ratified the Criminal Law Convention on Corruption on 9 December 2003. It entered into force with regard to the United Kingdom on 1 April 2004.

II. THEME I - PROCEEDS OF CORRUPTION

a. Description of the situation

Confiscation and other deprivation of instrumentalities and proceeds of crime

5. Since the adoption of the Proceeds of Crime Act (POCA) in 2002, the United Kingdom has in place four different schemes for confiscation and recovery measures with regard to proceeds of crime (including corruption offences). These are "ordinary confiscation", "civil recovery", "taxation" and "seizure-forfeiture of cash". Only the confiscation regime requires a conviction and therefore the identification of a specific offence. Confiscation is considered as part of the sanction process. The other measures are not dependant on conviction of the perpetrator (*in rem proceedings*), only that criminal conduct in general is the root of the proceeds.

6. Firstly, confiscation is available where a defendant has been convicted of an offence (including corruption) which has resulted in a financial gain or proprietary benefit. A decision to confiscate is an order to a perpetrator to pay a sum of money equal to the value of the benefit from the crime (the proceeds), or a smaller sum where less is available. It does not cover particular proceeds. The use of confiscation is not mandatory, with the exception of "lifestyle confiscation", see below. However, the procedure is mandatory once the confiscation process has been initiated by those entitled to do so, i.e. the prosecutor or the Director of the Assets Recovery Agency (ARA). The court may also *ex officio* decide to order confiscation.

7. As regards "instrumentalities" the courts have power to make an order under section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 (following conviction) to deprive the offender of anything that was used in the commission of the offence.

8. There are two forms of confiscation; the traditional "criminal conduct confiscation", which requires a causal link to be shown "beyond reasonable doubt" (by the prosecutor) between the specific crime and the specific benefit. In this form of confiscation, there is no *de minimis* threshold below which sums cannot be confiscated. The other form, "criminal lifestyle confiscation", allows the court to assume, in the case of corruption and most other offences, that all of the defendant's properties held over the previous six years, are the proceeds of crime (reversed burden of proof; causal link not necessary). The "criminal lifestyle" test would be met if the offence was committed over a period of six months, if the defendant was convicted of four offences leading to a financial gain in the same proceedings or if the defendant has been convicted on two other occasions in the previous six years. In these cases the burden of proof is reversed, i.e. the defendant has to prove - on a balance of probabilities - that a particular asset has a legitimate source. Sums below £5,000 are not confiscated under these particular lifestyle provisions.

9. Secondly, there is a civil recovery scheme, which is run by the Assets Recovery Agency (ARA), established through the POCA in 2002. This scheme empowers the Director of the ARA to sue by way of a civil proceeding to recover the proceeds of unlawful conduct. According to guidance given by the Home Secretary, this scheme shall only be used if there has not been a successful confiscation after a conviction. Cases are then referred to the ARA by the law enforcement authorities. This scheme is a civil law based procedure, the Director of the ARA has to prove on a balance of probabilities that the property derives from crime. Unless the property holder agrees, the Director of the ARA applies to the High Court for an interim receiving order, freezing of assets or at a full hearing for the final civil recovery. Proceedings must be brought within 12 years from

the moment the property was obtained. The financial threshold is set - by the Home Secretary - at £10,000, below which civil recovery is not pursued.

10. Thirdly, the Director of the ARA has the power to tax the proceeds of crime. This measure, which is an alternative to civil recovery, may be used when there are reasonable grounds to suspect that a person has received income or profit from criminal conduct. In such cases, the POCA enables the Director of ARA to exercise the functions of the Inland Revenue (tax authority) to assess a person's income and tax. The scheme for the summary seizure, detention and forfeiture of physical cash which is the proceeds of unlawful conduct would also (in theory) apply to the proceeds of corruption.

11. There is a separate fourth power available to police and customs officers, who can seize, detain and seek the forfeiture of cash of not less than £5,000 which they suspect of being the proceeds of crime or intended for such use. This measure can be applied to the proceeds of corruption but is primarily aimed at situations of criminal conduct, such as drug dealing in the street, where large sums of illegally obtained cash are carried by the perpetrator.

12. The schemes for confiscation/civil recovery are based on assessments of the value of the proceeds. If the defendant wishes to avoid having the value of a particular asset added to the confiscation order, it is for the defendant to show on a balance of probabilities that a particular asset had a legitimate source. This leads to a figure known in POCA as the "recoverable amount", which will be ordered to be paid, unless the defendant shows that s/he has a lower figure available (section 7), i.e. the "available amount", or that s/he has no assets at all, in which case s/he shall be ordered to pay a "nominal amount" (this device allows the court to return to the defendant at a later date should his/her assets subsequently increase). It should be noted that the defendant may deduct the expenses of acquiring assets. The process prevents avoidance by ensuring that certain types of transfer are simply valued back to the defendant, i.e. tainted gifts to relatives or close friends, or other transfers aimed at avoidance. While a confiscation order cannot be diverted to pay damages, the valuation process will take account of a hierarchy of priority claims on the defendant's assets, i.e. a claim for compensation or pending action for damages will be settled before a confiscation order is issued.

13. As a confiscation order is treated as part of the criminal sentence, the convicted defendant has a right of appeal in the same way as against the judgment, governed by the legislation relating to the appealing of convictions and sentences. The appeal does not necessarily suspend the enforcement of the order, but in practice the courts have awaited the outcome of appeals before commencing their action. The confiscation order may also be appealed separately by the prosecution or by the Director of the ARA. Either the court or the Director of the ARA acts as the enforcement authority to ensure that the confiscation order is carried out, i.e. that money is paid.

14. While there is no automatic procedure for the use of confiscation and interim measures, the GET was told that the Government is committed to these means being used much more widely than is currently the case; The Government has committed itself to doubling the amount of proceeds recovered, from £29.5m in 1999-2000 to £60m by 2004-2005, with further increases in later years. The GET was also told that parts of the recovered money will be added to the criminal justice budget.

Statistics

15. Over the last three years (2000-1 to 2002-3), under pre-existing legislation, 4068 confiscation orders have been made with a total value of £235 million: there are no specific figures for corruption offences.

Interim measures

16. The Proceeds of Crime Act of 2002 (POCA) applies also with regard to interim measures. Restraint orders exist as well as a scheme for summary seizure of cash. These are in principle possible to use in cases of corruption. The POCA has also introduced significant investigation powers enabling the seizure, or compelling the production of material and information which could be used in relation to proceedings for recovering the proceeds of crime (which includes the proceeds of corruption offences). The powers include the ability to compel a bank to produce documents, produce information as to whether a person holds an account and details thereof, and to produce information on transactions through an account over a period of time.

17. A restraint order can be used to prevent the disposal or disappearance of property that may ultimately need to be sold to satisfy a confiscation order. The order is to *restrain* property, rather than to *freeze*, in that the property in question remains in the hands of its owner. These orders are available in the court of trial, as soon as an investigation has begun and at any time thereafter. The prosecutor, the Director of the ARA, or a financial investigator trained and accredited by the ARA may apply for such an order.

18. A restraint order can be made in respect of any 'realisable property' which is defined in section 83 of the POCA as any 'free property' held by the defendant or a recipient of a tainted gift. 'Free property' is any property unless there are certain other legislative provisions which already claim that property, such as a Terrorism Act forfeiture order.

19. Anyone affected by a restraint order may appeal to have the order varied or discharged.

20. Under Section 19 of the Police and Criminal Evidence Act 1984 (PACE), a police constable may, in the course of a search, seize anything if he has reasonable grounds for believing that it has been obtained in consequence of the commission of an offence (this would apply to a bribe) or if it is evidence in relation to an offence that he is investigating. In both cases, s/he must also believe that it is necessary to seize it in order to prevent it from being concealed, lost, destroyed, etc.

Management of seized assets

21. The confiscation scheme in the POCA provides for the appointment of 'management receivers' if an asset is restrained and it requires overseeing and active involvement to prevent its value being diminished, for example a restrained business which has been set up from the proceeds of crime. The receiver is either appointed by the court or by the Director of the ARA. They have the power, with the agreement of the court, to take possession of property under restraint; manage or otherwise deal with the property; start, carry on or defend any legal proceedings in respect of the property; and realise so much of the property as is necessary to meet their remuneration and expenses. Similar arrangements apply in respect of receivers appointed under the earlier legislation.

International co-operation for interim measures and confiscation

22. The United Kingdom Central Authority (UKCA), which is part of the Home Office, acts as the "gatekeeper" for channelling all provisional and confiscation measures in relation to corruption offences, whether the United Kingdom is the requesting or the requested party.

23. The UKCA may allow a restraint order or confiscation order to be made by a court in the United Kingdom and registered and enforced in an overseas State[2]. Sections 74,141 and 222 of the POCA provide the legislative basis for a prosecutor or the Director of ARA to request that a restraint or confiscation order be enforced overseas; such requests must be authorised by the Secretary of State. Information and evidence for confiscation proceedings can be obtained on a government-to-government basis by virtue of the United Kingdom's bilateral confiscation agreements. Beyond this lies the framework of the Criminal Justice (International Co-operation) Act 1990(CJIC) allowing the United Kingdom to co-operate in overseas criminal proceedings and investigations.[3] Both the CJIC and section 376 POCA allow for requests to be made for evidence from overseas in confiscation investigations. A confiscation order may be registered and enforced in an overseas jurisdiction.

24. There is no need for a requesting country to have entered into a convention, treaty or agreement with the United Kingdom to apply for the restraint of assets, or confiscation, but it must have been designated under section 9 of CJIC, proceedings must already have started, and the authority must be in a position to give a comprehensive account of the proceedings. Thus, the state must provide in its request a Commission Rogatoire, the appropriate legislation, details of the property, current holder of the property, the link between the subject and the property, brief details of the property, a certificate by the Central Authority confirming that proceedings have been started, and if the confiscation order has not yet been made, what its value will be, and a confirmation that such an order is expected to be made in the proceedings. Where an order has been made, a similar procedure with supporting documentation can be used by an overseas jurisdiction to enforce a confiscation order. Part 11 of POCA provides that secondary legislation will be made setting down arrangements for the UK to assist overseas jurisdictions in the investigation, freezing and recovery of criminal proceeds at the stage of investigation, rather than that at the stage of having charged the suspect. Moreover, the GET was informed that the need for countries to be designated under section 9 of the CJIC will be removed before the end of 2004.

Money Laundering

25. Corruption offences are predicate offences to money laundering, also when they are committed abroad. It should be noted, however, that trading in influence is not criminalised in the United Kingdom, except in so far as an agency relationship exists between the person who trades his/her influence and the person (or body) s/he influences (in which case an offence is committed under the Prevention of Corruption Act 1906)[4].

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[2] As of 26 April 2004, the Home Office retains responsibility for English and Welsh requests, but Scottish requests may be transmitted via the Lord Advocate and Northern Irish requests via the Secretary of State for Northern Ireland, whose offices will have the same function as the UKCA.

[3] The relevant provisions of that Act will be repealed and replaced by provisions in the Crime (International Co-operation) Act 2003, which come into force on 26th April 2004.

[4] The 1906 Act criminalises the corruption of agents. “Agent” is defined widely to include not only a public servant but “any person employed by or acting for another”.

26. The National Criminal Intelligence Service (NCIS) is the co-ordinating body to receive and process suspicious transaction reports (STR)[5] concerning money laundering. The NCIS works closely together with the Police (ordinary cases) and the Serious Fraud Office (SFO) which is a separate Governmental Agency (investigating and prosecuting), dealing with cases where high values are involved. The GET was informed that the NCIS, which operates with a staff of 80-100 persons, receives some 100.000 suspicious transaction reports (STR) per year, 15 per cent of which lead to investigations by law enforcement authorities.

27. In addition to information from the law enforcement to the NCIS, there are detailed obligations on “the regulated sector”[6], to report suspicious transactions to the NCIS, and as from 1 March 2004 following the full implementation of the Money Laundering Regulation 2003 (bringing into force the European Union Second Directive on Money Laundering), legal professions, etc are required to report suspicious transactions when acting for clients in financial and real estate transactions.

28. There are three sets of reporting obligations under the POCA. Firstly, the “regulated sector” is required to report to the NCIS whenever they know, suspect, or have reasonable grounds to know or suspect that activities or transactions involve the laundering of the proceeds of any crime, including corruption, committed anywhere in the world. Secondly, other nominated officers (outside the regulated sector) are under an obligation to report when they have knowledge or suspicion of money laundering. Thirdly, any person (other than a Crown Servant) who knows or suspects that s/he has become, or is about to become, concerned in an arrangement which involves the laundering of the proceeds of any crime, including corruption, must report this to the NCIS or to a police officer or a Customs officer in order to gain access to legal defence for the charge of money laundering. All reports made to meet these legal obligations must be made as soon as is practicable; and if such a report is made before the activity in question takes place, consent to proceed must be sought from the relevant authorities wherever possible. Failure to report is a criminal offence, punishable by up to 5 years in prison. A criminal offence is also committed where consent to proceed with a transaction has not been granted or is not sought.

29. Finally, the HM Treasury chairs the Money Laundering Advisory Committee, a public/private sector forum for key stakeholders, including the Law Society and Consultative Committee of Accountancy Bodies, to coordinate the anti money laundering regime and review its efficiency and effectiveness. It examines industry produced guidance notes and makes recommendations prior to submission for Government approval.

b. Analysis

30. With the introduction of the Proceeds of Crime Act (POCA) in 2002, the United Kingdom has a legal instrument in place with a considerable number of detailed provisions concerning confiscation and other schemes for the recovery of proceeds of crime as well as provisional measures. These provisions are in many aspects far-reaching and they facilitate greatly the use of confiscation and recovery schemes with regard to proceeds of crime. Firstly, POCA provides for a hierarchy of means at the disposal of the law enforcement agencies, starting with the “criminal conduct confiscation”. Alternatively, there is the “criminal lifestyle” confiscation where the burden of proof is reversed and subsequently the civil recovery schemes where the burden of proof is lowered. Moreover, the GET was impressed by the total amount of money recovered by

[5] STRs are (after the visit of the GET) usually referred to as Suspicious Activity Reports (SARs).

[6] The "regulated sector" includes financial institutions, legal professionals - when participating in a financial or real estate transaction, accountants, auditors, tax advisers, insolvency practitioners, casinos, estate agents and dealers in goods (including auctioneers) who accept or are prepared to accept cash payments of €15,000 or over.

the State every year and the authorities have indicated that the use of these schemes will continue to increase in the future. The GET was particularly impressed by the tools of the ARA, which appear to enlarge considerably the possibilities of recovering proceeds of crime in *in-rem* situations. The United Kingdom should be commended for the efficiency of this system, which shows the importance given to the fight against economic crime in general. At the same time the GET noted that the confiscation and recovery schemes were not in all aspects well adjusted to the requirements of the international standards under scrutiny and the particular needs that may occur in cases of corruption.

31. The GET noted that the use of confiscation and the other recovery schemes are not mandatory in the United Kingdom. Moreover, the GET was informed that "criminal lifestyle confiscation' under POCA is not in practice used for values below £ 5,000 and that with regard to civil recovery carried out by the ARA, the threshold is set even higher, at £ 10,000. Accordingly, these measures are not at all applied in cases of for example bribery, when the bribe is less than these amounts. The GET is of the opinion that confiscation or similar measures, for preventive reasons, should be used to the extent possible in all corruption cases, and not only when it is "economically defensible" in an individual case. However, there could be exceptions, where confiscation should not be used. The GET was pleased to learn that civil recovery was used to a large extent with regard to crime concerning high values and that the Government was committed to further increase this recovery. However, it was of the opinion that the confiscation/civil recovery system under the POCA appears to be overlooking crime of less value as these do not "pay off" to the same extent. **The GET therefore recommends to take measures to encourage the wider use of confiscation and civil recovery schemes under the Proceeds of Crime Act (POCA), for instance by reducing the financial thresholds for these schemes.**

32. Turning to interim measures, the GET was pleased that the POCA provides for restraint orders to be obtained at the early stages of a criminal investigation to protect assets. However, such orders are merely to restrain property, except for certain cases where it is possible to seize cash. Restrained property remains in the hands of the suspected offender who has full use of it until a subsequent confiscation takes place. As confiscation is part of the sanction process, a convicted person may also appeal a confiscation order in the same manner as s/he may appeal the conviction/sentence. Furthermore, the GET understood that a confiscation order would never be enforced before a final decision had been reached. Accordingly, restrained property may in practice remain in the hands of an offender over a long period of time. The GET considered the lack of the possibility to deprive a suspected offender of a particular object (for example a bribe which is not paid in cash) is a wrong signal to the offender, as the present system allows him/her to continue using the object. There is also the power of the police to seize property in PACE, but it is not available in all circumstances. This situation is unsatisfactory in the perspective of crime prevention but also for reasons of preserving the value of the assets potentially subject to confiscation. Consequently, **the GET recommends to make wider use of measures which would ensure that the value of property representing the proceeds of crime is conserved at an early stage in order to satisfy a subsequent confiscation order.**

33. The GET took note of the "all crime approach" with regard to predicate offences to money laundering and the wide ranging obligations of the "regulated sector" to report suspicious transactions of money laundering etc. The GET was convinced that the National Criminal Intelligence Service (NCIS) was an able co-ordinating body for suspicious transaction reports. However, the GET could not disregard the high number of reports received and that the figures were likely to increase in the future. During meetings with representatives of the "regulated sector", the GET was told that the reporting obligation was a heavy burden, in particular for the

smaller enterprises, such as accountant firms. Representatives from this sector complained of a generally very poor feedback to submitted reports from the NCIS, which was considered as a particularly discouraging element. Talking with NCIS representatives, the GET was informed that they normally acknowledge the reception of a report and also provide some information as to the outcome. The GET, sensitive to this problem is of the opinion that it is of crucial importance that the NCIS keep the reporting entities aware - to the extent possible - of the result of their reports. This is particularly important with regard to "the regulated sector", as not being part of the law enforcement. A developed communication would facilitate a better understanding for the importance of the reporting obligation and the work of the NCIS. **The GET recommends to consider enhancing the National Criminal Intelligence Service's (NCIS) communication with, and feed back to, the providers of suspicious transaction reports.**

III. THEME II - PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Concept of Public Administration

34. There is no constitutional/legal definition of public administration in the United Kingdom, although some parts of the public sector operate under specific legislation. For the purpose of this Report, public administration covers public officials and public appointees of:

- Central government departments and agencies, including the devolved administrations in Scotland and Wales. The Foreign and Commonwealth Office and Northern Ireland have separate civil services, but arrangements in place in the rest of the United Kingdom are generally mirrored there);
- Other government bodies with a national remit such as executive non-departmental public bodies;
- Health Service bodies; and
- Local government bodies.

1. Anti-corruption policy

Legal system

35. The organisation of Central Government and the Civil Service in the United Kingdom has evolved under Royal Prerogative (which has the force of legislation but does not require consent of Parliament for amendments). The *Civil Service Order in Council* gives the Minister for the Civil Service (the Prime Minister) the power to make regulations and give instructions for the management of the Home Civil Service, including the power to prescribe the conditions of service of civil servants. The GET was informed that the Government is committed to issuing a Civil Service Bill for consultation before Parliament in 2004. If enacted this would put the Civil Service on a statutory footing and subsequent changes would require consent of Parliament.

36. All civil servants are bound by rules set out in the Civil Service Code and the Civil Service Management Code. The provisions of these Codes form part of the conditions of service of all civil servants and are enforceable under employment law. Ministers' responsibilities in relation to the Civil Service are set out in the Ministerial Code, which, *inter alia*, makes clear that Ministers must uphold the political impartiality of the Civil Service and not ask civil servants to act in any

way which would conflict with the Civil Service Code. Ministers' responsibilities are restated in the Civil Service Code

37. Local authorities are governed by the Local Government Act 2000 and the Model Code of Conduct, the implementation of which is overseen by the Standards Board.

Anti-corruption strategy

38. There is no over-arching anti-corruption body or strategy in public administration. However, the Civil Service Code states that civil servants should comply with the law, including international law and treaty obligations and uphold the administration of justice. The Code also states that civil servants should not misuse their official position or information acquired in the course of their official duties to further their private interests or those of others. They should not receive benefits of any kind from a third party which might reasonably be seen to compromise their personal judgment or integrity. The Code is part of civil servants' terms and conditions of employment. Specific measures for tackling corruption are separately implemented at the various levels that make up the public sector. Overall, the emphasis is on establishing a positive ethical culture within public sector organisations alongside robust financial and management systems that incorporate open and transparent lines of accountability, to ensure that there is appropriate regulation and enforcement. The House of Commons Select Committee on Public Administration has made a substantial contribution in this area.

39. Moreover, the Committee on Standards in Public Life (CSPL) has contributed substantially to this process. The Committee was set up in 1994 by the Prime Minister with terms of reference *"to examine current concerns about the standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life"*. Since its establishment, the Committee has examined arrangements in most areas of the public sector at national and local level, and the majority of its findings and recommendations have been accepted by the Government, for example, the establishment of a Parliamentary Commissioner for Standards, codes of conduct for MPs, Peers and Special Advisers; a Standards Board for Local Government, an independent Electoral Commission to oversee rules on donations to political parties and on election funding. Moreover, all public bodes have codes of conduct incorporating the Committee's Seven Principles of Public Life (see below under "codes of ethics/conduct"). The GET was also informed, however, that some recommendations contained in the Ninth Report[7] of the CSPL concerning the status of "special advisers" appointed by Ministers had not been accepted by the Government.

2. Transparency in Public Administration

40. At the time of the GET's visit, the non-statutory Code of Practice on Access to Government Information was still in force. However, the Freedom of Information Act 2000 (FOIA), which comes into force in January 2005 will provide a legislative framework for the right of access to information held by public authorities. The FOIA is being implemented through the rolling out of publication schemes by type of public authority and the bringing into force of the individual right of access provisions for all public authorities. Publication schemes must specify the classes of information to be published, manner of publication, and any charging regime applicable. The GET was informed that in the interim, the Government was committed to being as open as

[7] The Ninth Report on Defining the Boundaries within the Executive: Ministers, Special Advisers, and the Permanent Civil Service of the Committee on Standards in Public Life, November 2002 – December 2003.

possible with the public, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with the relevant statutes and the Code of Practice on Access to Government Information. Under the current system, where an individual is unhappy with the response received to a request for information, s/he can take the matter to the Parliamentary Ombudsman who makes regular reports to Parliament on the operation of the Openness Code. On the introduction of the FOI Act, the role currently undertaken by the Parliamentary Ombudsman will be undertaken by the Information Commissioner.

41. On the practical side, a great deal of information is available via Government websites. This allows access to a wide range of data. Information is also routinely published as written documents e.g. annual reports, statistical publications etc. In addition, public sector organisations make certain key information available free of charge, for example facts about pensions and benefit entitlements, often as leaflets and pamphlets that are widely available in local public places such as post offices and public libraries. Such information is also made available in minority language and Braille formats. Most public sector organisations have published telephone enquiry and helpline numbers. Increasingly, designated government contact centres are considered to be an accessible and effective way for customers to get in touch with government. Major public information campaigns may be undertaken through the press and on television and radio.

Public Consultation

42. There is a statutory requirement to undertake public consultation in some areas of public administration, for example on certain planning issues. However, the views of users are playing an increasingly important role in decision-making across the board, and it is expected that formal public consultation should generally form part of the process of major policy development and change.

43. Consultation may take a variety of forms. At local government level, public meetings form an important part of the consultation process alongside written consultation. Consultation on major national policy development and decision-making is generally written. This generally involves the publication of a consultation document setting out clearly and concisely who is being consulted, about what questions, in what timescale, and for what purpose. The Government has published a Code of Practice on Written Consultation, available on Internet. It contains the criteria that have applied to all National public consultations since 1 January 2001.

3. Control of the public administration

44. The organisation and management of public sector organisations is subject to external scrutiny from independent regulators including external financial and value for money audit by the National Audit Office and the Audit Commission. The National Audit Office conducts financial audits of all government departments, and many other public bodies, and reports to Parliament. The Audit Commission oversees similar functions for local government and National Health Service bodies.

45. In addition, the work, management and conduct of public sector organisations is closely scrutinised by various influential and respected independent committees and advisory bodies at national and local level. This includes the various Select Committees of the House of Commons, and the Committee on Standards in Public Life referred to above.

46. Most public authorities are obliged to publish procedures setting out how members of the public can question decisions or complain about the service provided. The procedures should clearly explain each stage of the process, and the options available to complainants should they remain unhappy with the outcome at each stage.

47. The procedures generally emphasise the desirability of informal resolution. Initially, cases are likely to be reviewed internally within the area of the public authority concerned where the initial decision was made. Where complainants remain dissatisfied with the outcome, there will be set procedures in place for the case to be considered separately within the organisation, including by the senior officer.

48. If, having exhausted all internal avenues, complainants remain dissatisfied, they should be advised of external options available to them. Depending on the nature of the case, this may include a right of appeal to one of the independent tribunal non-departmental public bodies established in statute to have jurisdiction in a specialised field of law, for example on cases relating to decisions on benefit entitlements, tax assessments etc, or referring the case to one of the independent public sector Ombudsmen for investigation.

49. There are separate public sector Ombudsmen covering central government, local government, and health service bodies, established primarily to investigate complaints from individuals alleging injustice as a result of maladministration in the bodies within their jurisdictions. The Ombudsmen operate independently of government under powers defined in statute. These include extensive access to papers and individuals in the bodies within their jurisdiction, to enable the thorough investigation of specific complaints. Suspicions that corrupt activity had caused or contributed to a case of maladministration would form part of the investigation, and if founded would be dealt with through the disciplinary procedures in the body concerned. The GET was informed that recommendations from the public sector Ombudsmen are taken extremely seriously by the bodies within jurisdiction, and that any system and procedure found to be susceptible to corrupt activity would be changed or modified as a result.

50. Ultimately, there is also recourse to the Courts.

4. Recruitment, career and preventive measures

Selection and recruitment

51. In most cases, selection for posts in the public sector is based on merit and recruitment is carried out through fair and open competition. There are rules regarding fair and open competition in the Civil Service Commissioners' Recruitment Code and in the Code of Practice of the Commissioner for Public Appointments, which are expected to be followed by public authorities. Openness implies that all prospective candidates have a reasonable opportunity to find out about the vacancy - i.e. usually by an advertisement in the national media. Standard recruitment procedures generally involve the verification of identity, character references, written references from previous employers and a declaration about any criminal convictions they have. The Commissioners publish annual reports to Parliament on how the Codes on fair and open competition are applied in practice. Furthermore, for sensitive posts which are subject to national security vetting the employing organisation is required to carry out a full criminal record check.

52. The GET was informed that special (political) advisors to Ministers are exempt from the general requirements of open and fair recruitment procedures as their appointment is a personal one

linked to the duration of the appointment of the Minister, or the lifetime of the Administration in which they are appointed. They are not expected to serve a different Administration of a different political party and therefore they do not need to demonstrate impartiality. They are also governed by a Code of Conduct for Special Advisers and the Civil Service Code, except for the requirements of impartiality and objectivity.

Training and education

53. New public servants undergo induction training on entry, which will cover the principles and values they are expected to uphold, and highlight their duties, responsibilities and rights as public servants. These are set out for them in codes of conduct, adherence to which forms part of the individual's terms and conditions of service.

54. The GET was informed that it is recognised in the United Kingdom that public organisations need to make codes a day-to-day working reality for their staff, and that more work needs to be done in this area. For example, for the Civil Service in its response to the ninth report of the Committee on Standards in Public Life, the Government is working with the Civil Service Commissioners in advising departments on the promotion of the Civil Service Code in their induction and training activities. It also plans to carry out regional road shows and seminars aimed at increasing awareness of the Code and the procedures for raising concerns.

55. Certain university and higher education courses cover public service ethics issues as part of their courses. However, for the majority of new public servants, the information and training they receive on joining the public service is likely to be their first real exposure to these issues and what they mean for them in practice. This will be continuously reinforced through a civil servant's career. For senior appointments, a copy of the Civil Service Code is sent to all applicants and those invited to interview will be expected to discuss the values enshrined in the Code and how it would work in practice.

Rotation of staff

56. There is no general provision about systematic rotation of staff in public administration. Rotation may only be applied if there is a need in a particular case; the Civil Service Management Code, for example, states that departments must ensure that civil servants who are insolvent are not employed on duties which might permit the misappropriation of public funds. There is also a staff policy that senior civil servants are expected to move post every four years. All areas of the civil service are guided by checks and balances, including ensuring there is a clear separation of duties where staff are involved in finance and procurement activities so that no single person would be responsible for procuring an item and then paying for it.

Conflicts of interest

57. The *Civil Service Management Code* makes clear that civil servants must not be involved in taking any decision which could affect the value of their private investments, or the value of those on which they give advice to others, or use information acquired in the course of their work to advance their private financial interests or the interests of others. Where an individual is working for example in an area which has access to market sensitive information it is likely to be a requirement that they may not have shares in any company and they will be required to complete a declaration of interest.

58. All civil servants must therefore declare to their department any business interests (including directorships) or holdings of shares or other securities which they or members of their immediate family hold, to the extent that they are aware of them, which they would be able to further as a result of their official position. They must comply with subsequent instructions from their department regarding the retention, disposal or management of such interests. In certain areas, for example, where civil servants have access to market sensitive information there is a mandatory requirement to declare all shares and financial interests and disposal of shares or the setting up of a blind trust is likely to be required. The GET was informed that these rules also applied to special (political) advisors at the ministries.

59. As to the issue on public officials moving to the private sector, the Business Appointment Rules provide for the scrutiny of appointments which former Crown Servants propose to take up in the first two years after leaving office. To provide an independent element in the process, the Advisory Committee on Business Appointments gives advice on applications at the most senior levels, and conducts regular reviews of other applications to ensure consistency in the application of the rules. The Committee publishes an annual report to Parliament providing details of applications considered and waiting periods imposed.

60. Furthermore, civil servants are required to report any approach from an outside employer offering employment for which approval would be required under these rules. Staff in areas of work concerned with procurement or contract work are required to report any such approach in accordance with the rules set out in the Civil Service Management Code, particularly where it emanates from an outside employer with whom they or their staff have had official dealings.

Gifts

61. The *Civil Service Management Code* states that civil servants must not receive gifts, hospitality or benefits of any kind from a third party which might be seen to compromise their personal judgement or integrity. The Committee on Standards in Public Life has highlighted that this is a particularly sensitive area, where public criticism may focus as much on the nature and the extent of the benefits as on the strict test of whether some form of obligation has been created.

62. The *Civil Service Management Code* requires Departments to have detailed rules in place regarding reporting and recording of offers of gifts, hospitality, awards, decorations and other benefits and setting out the circumstances in which staff need to seek permission before accepting them. A breach of these rules is a disciplinary matter. The Government publishes an annual list of gifts received by Ministers valued at more than £140. They are also required to declare in the Register of Members' interests (or in the Register of Peers' Interests in the case of Ministers in the House of Lords) hospitality received which might reasonably be thought likely to influence Ministerial action.

5. Codes of ethics/conduct

63. There is an overall objective on establishing/maintaining an ethical culture within the public sector organisations. A significant influence in this process has been the work of the Committee on Standards in Public Life (CSPL), which has established, *inter alia*, seven principles of public life: selflessness; integrity; objectivity, accountability; openness; honesty; and leadership. These principles form the basis of the content of codes of ethics, training and awareness raising across the various public sector. For example there is a model Code of Conduct for Non-Departmental Public Bodies (published by Cabinet Office), a Code of Conduct for National Health Service Staff,

(published by the NHS Executive) and a local government Code of Conduct (published by the Office of the Deputy Prime Minister).

64. Moreover, departments are required to have in place mechanisms for dealing with violations of the Codes (disciplinary action) as well as appeal mechanisms. The procedures, which are contained in the Civil Service Management Code, ensure that the decision maker will not be involved in the appeal process and will be senior (and possibly outside the management line) to the original decision maker. If dismissal occurs then there is a right to an appeal mechanism independent of the Department, e.g. an independent Employment Tribunal.

6. Reporting on corruption

65. Section 11 of the *Civil Service Code* states that where a civil servant believes that he or she is being required to act in a way which is illegal, improper or unethical; is in breach of constitutional convention or a professional code; may involve possible maladministration; etc, s/he should report the matter in accordance with procedures laid down in the appropriate guidance or rules of conduct of his/her Department. It is also stated that s/he should report to the appropriate authorities (which may include the police, the Inland Revenue, or other appropriate body) evidence of criminal or unlawful activity by others. It also enables a civil servant to report in accordance with the relevant procedures if s/he becomes aware of other breaches of the Code or is required to act in a way which, for him/her, raises a fundamental issue of conscience.

66. Where a civil servant has reported a matter covered in section 11 in accordance with the relevant procedures and believes that the response does not represent a reasonable response to the grounds of his/her concern, s/he may report the matter in writing to the Civil Service Commissioners. Civil servants who feel unable to raise a concern through the management line can raise the concern with nominated officers within their department or report directly to the Civil Service Commissioners.

67. In addition, the Public Interest Disclosure Act 1998 requires all public sector organisations to have a whistle blowing procedure in place and provides for disclosure to a number of prescribed bodies in circumstances set out in the Act. Arrangements for the Civil Service and other areas of the public sector operate alongside these statutory provisions. Detailed guidance on raising matters under this Act and the Civil Service Code is set out in the Directory of Civil Service Guidance.

68. Under the Civil Service Code, all departments must have internal procedures in place to ensure that civil servants can raise concerns without fear of victimisation or unfair treatment. Where a civil servant raises a concern with the Civil Service Commissioners, the Commissioners will investigate and report the outcome in their annual report. In doing so, they will protect the identity of the individual who made the complaint. They will also ensure that the department has put in place measures to prevent a reoccurrence and to ensure that there has been no victimisation or disadvantage to the individual who made the complaint.

7. Disciplinary proceedings

69. In terms of enforcement and regulation, public sector employees are subject to strict and transparent rules on conduct that form part of their terms and conditions of service (for example, the Civil Service Code, governing the conduct of civil servants). Breaches are subject to disciplinary action including dismissal. Not all disciplinary cases will involve criminal activity. In

circumstances where public servants commit a criminal offence, law enforcement agencies are brought in.

70. The general rule is that the most grave procedure should take precedence: so if criminal proceedings are contemplated they should normally be completed first and any decision on disciplinary proceedings can be made in the light of the outcome. Criminal proceedings do not preclude the possibility of subsequent disciplinary proceedings according to established case-law.

b. Analysis

71. The authorities of the United Kingdom have stated that instances of corrupt behaviour by public officials are comparatively rare and generally isolated problems in public administration. Some information gathered by the GET suggests that problems of corruption are more of a concern at local level (in relation to land planning and procurement) than at central level. In any event, no information indicates that corruption would be of any significance in public administration. This rather positive description of the situation is supported by international surveys.

72. With the introduction of the Freedom of Information Act 2000, which is coming into force in 2005, the United Kingdom has made a significant step in the area of transparency in the public sector. For the first time the public has been given statutory rights to access information from public administrations. Moreover, this legislation makes access to information the main rule, and such access can only be refused for reasons stated in the law ("the public interest test"). There is also a pro-active element added in that public officials are required to assist the public in finding the information. The Act covers central and local administrations as well as private entities when performing public functions. The GET considered that the full implementation of this legislation would require tremendous efforts throughout public administration and noted that this appeared to be fully acknowledged - guidelines were being drafted and training of staff under way, etc. In this respect, the GET also noted that other regulations, for example, the Civil Service Code (paragraph 10) on civil servants' disclosure of information may need changes.

73. There is no established overarching anti-corruption strategy and there is no special body exclusively in charge of anti-corruption measures in the United Kingdom. At the same time the GET learned about the variety of anti-corruption measures which are in place at different levels of the administration. Moreover, the GET was pleased that the legislative framework of public administration was improving and that legislation and regulations were supplemented with codes of conduct/ethics to a very large extent, at central as well as at local level. It appeared to be a continuously ongoing process of improving the ethics of public administration.

74. The Committee on Standards in Public Life (CSPL), which is charged with the task of examining concerns about standards of conduct of all types of public officials, has contributed greatly to this process. The GET found the "Seven Principles of Public Life" to be of significant importance as they provide a common solid – although fairly general - basis for all public officials upon which various departments have developed their own specific codes, training, etc. The United Kingdom should be commended for this system, which contributes to a common ethos of public administration and targeted codes of ethics/conduct in a large number of departments.

75. Notwithstanding these positive elements, the GET was of the opinion that a somewhat better overview of the rather complex and decentralised administration and a stronger overriding approach to the prevention of corruption, would benefit implementation of uniform measures in this respect throughout the public sector. This would be particularly important in times of

managerial changes of public administration, for example privatisation of public functions, outsourcing, a more open civil service to lateral entry from the private sector, public transparency, etc. These areas require common approaches but are currently addressed mainly at departmental level. Consequently, **the GET recommends to keep anti-corruption standards and their implementation under review, taking into account, in particular, new emerging threats to the integrity of public administrations as well as developments in related policy areas.**

76. Moreover, the GET understood that there was a need for raising awareness of certain aspects contained in various regulations and codes of conduct, for example, reporting of corruption in order to make the codes a "day-to-day working reality" among public employees. This is particularly important when considerable changes are underway. The GET considers that institutionalised induction training is not sufficient in this respect. **The GET recommends to enhance, through in-service training programmes at regular intervals, awareness among public officials concerning corruption prevention and their obligations to report corruption.**

77. It is the view of the GET that the functions and powers of civil servants, including special advisers, should have a clear statutory basis. The GET welcomes the Government's intention of submitting a Civil Service Bill to Parliament, in order to make the civil service functions regulated by law. The status and functions of special advisers were included in the Ninth Report of the CSPL, however, some of the recommendations by the CSPL concerning special advisers were not accepted by the Government. **The GET recommends to pursue the discussion concerning the status and functions of special advisers at the Ministries as part of the consultation process on the forthcoming Civil Service Bill.**

IV. THEME III - LEGAL PERSONS AND CORRUPTION

a. Description of the situation

78. The legal system of the United Kingdom recognises six different forms of legal persons. The principal ones are incorporated and registered under the Companies Act 1985, and fall into the following four main categories:

- Public companies limited by shares;
- Public companies limited by guarantee having a share capital;
- Private companies limited by shares; and
- Private companies limited by guarantee having a share capital.

79. The two further forms of legal persons are:

- Limited Liability Partnerships (LLPs), which are a form of legal business entity with limited liability of members. The main difference between an LLP and a company is that an LLP has the organisational flexibility of a partnership and is taxed as a partnership. LLPs, which are governed by the Limited Liability Partnerships Act 2000 and the Limited Liability Partnerships Regulations 2001, must have at least two members; and
- European Economic Interest Groupings (EEIGs), are a form of association between companies or other legal bodies or individuals from different EU countries which need to co-operate together across national frontiers. Their aim is to facilitate the economic activities of their members. EEIGs are governed by Council Regulation (EEC) NO 2137/85

and statutory instrument 1989/638 (the European Economic Interest Grouping Regulations 1989). EEIGs have unlimited liability status.

Establishment

80. Private limited companies registered under the Companies Act 1985 need only have one director and a company secretary (who may be the same person) by way of formally appointed company officers. They need have no more than one shareholder with no minimum capital requirement. Public companies limited by shares must have at least two shareholders and a minimum capital of £50,000 of which one quarter must be fully paid up. A new company comes into existence when it is registered. There are no restrictions related to, for instance, nationality or qualifications for those seeking to become members or officers of companies registered under the Companies Act 1985.

Registration

81. All companies incorporated under the Companies Act 1985 are registered by the Registrar of Companies House, which is an executive agency under the Department of Trade and Industry (in Cardiff for English and Welsh companies and in Edinburgh for Scottish companies), who maintains a public file of certain basic statutory information (such as details of company officers, annual accounts, place of company registered office, etc.). A new company must give details to the Registrar of Companies of its constitution, give details of its directors, company secretary and members. The duties of the Registrar of Companies are set out in the Companies Act 1985 and full details of the functions of the Registrar and the public search services of the Companies House are contained on its website. There were approximately 1.5 million limited companies registered (April 2004), the vast majority of these (around 99%) being private companies limited by shares. EEIGs are also registered at the Companies House.

82. There is a possibility to disqualify a natural person found guilty of an offence (including corruption) from acting in a leading position in legal persons. Under the Company Directors Disqualification Act 1986, courts have powers to make, on conviction of any indictable offence connected with a company, a disqualification order which prevents a person from being a company director, a receiver, or from taking part in the management etc. of a company for up to 15 years. The GET was informed that court registrars are required to send to the Companies House details of criminal convictions and orders made to disqualify a person from taking part in the management of a company, pursuant to the Companies Regulations 2001 no 967, no later than 14 days after the court order was made. The Companies House database automatically checks details of all directors newly appointed against the list of disqualified directors.

Liability of legal persons

83. The general provision for criminal liability is contained in the Interpretation Act 1978 (schedule 1), which provides that unless the contrary is stated, the word ‘person’ in a statute is to be construed as including a ‘body of persons, corporate or incorporate’.

84. A legal person may under common law principles be liable for a tort (civil liability). Moreover, a legal person may also be liable for a crime, including corruption offences (except trading in influence, which is not as such criminalised in the United Kingdom).

85. Criminal liability for bribery or money laundering will depend on whether the natural person who performed the prohibited act with the requisite state of mind was part of "the controlling mind or will" of the legal person. No intention to benefit the legal person would need to be shown in relation to the legal person or to any of its leading persons. A legal person's rights and obligations are determined by rules whereby the acts of natural persons are attributed to the legal person. The acts of servants and agents appointed by the company will in this way count as the acts of the company itself.

86. The legal person will also make itself subject to the general rules by which liability for the acts of others can be attributed to natural persons. Under the civil law of negligence, a plaintiff could sue a legal person on the basis that the legal person owed him a duty of care, had failed to fulfil it, and that this had resulted in damage to the plaintiff. If s/he could show these things, the court would award damages to him/her, which the legal person would have to pay.

87. It is in theory possible to assign liability to a legal person even when no natural person has been convicted or identified and there need not necessarily be any proceedings against a physical perpetrator if there are proceedings against a legal person. The liability of legal persons does not exclude criminal proceedings against natural persons who are perpetrators.

88. The Proceeds of Crime Act (POCA, see Theme 1) may also provide remedies: where a benefit from corruption can be shown to have resulted for a legal person, it can be confiscated.

Sanctions and measures for legal persons

89. It follows from the Interpretation Act (paragraph 84) that the same penalties (except deprivation of liberty) apply to legal persons as to natural persons. In the case of bribery and money laundering a legal person may be sentenced to an unlimited fine. However, the GET was told that it was rare for legal persons to be prosecuted for *mens rea* offences, such as corruption given that, in general, officials of the legal person concerned were prosecuted for their individual criminal acts.

90. Details of convictions of legal persons are recorded on the Police National Computer and the Court Proceedings Database. However, the GET was informed that no special statistics on legal persons' convictions or sanctions were currently available. Records with regard to orders under the Company Directors Disqualification Act 1986 are maintained at the Companies House.

91. There is a wide range of sanctions and investigation powers available under company and insolvency law to ensure that companies and their officers cannot evade penalties through restructuring and reformation. These include:

a) Specific investigation powers under Part XIV of the Companies Act 1985, which allow for mandatory production of documents, etc. to enable the Secretary of State to undertake investigation/inspection of a company's affairs in certain circumstances;
b) Specific powers under Insolvency Act 1986 (section 132) for mandatory investigation of a company's affairs where it is being wound up by the court. Such investigation is carried out by the Official Receiver (an officer of the Department of Trade and Industry);
c) Restriction on re-use of company names - Section 216 and 217 of the Insolvency Act 1986 restrict officers of a company which has been liquidated from continuing to be officers of a company with a similar name (there are time limits, some exceptions to this rule and permission of a court may be granted to allow officers to re-use the name);

d) Antecedent transactions provisions – under the Insolvency Act 1986 (sections 236-246 and 423-425) assets which have been transferred from an insolvent company may be recovered by the liquidator of the company in certain circumstances (such as where they have been deliberately transferred at an undervalue or to pay certain creditors in preference to others); and
e) Company Directors Disqualification Provisions – under the Company Directors Disqualification Act 1986 (see "Registration").

Tax deductibility and fiscal authorities

92. The Income and Corporation Taxes Act 1988 (ICTA, section 557A) denies tax relief for any payment the making of which constitutes the commission of a criminal offence under the law. The Finance Act 2002 (Section 68 on Expenditure Involving Crime in Part 3, Chapter 2) extended section 577A to payments that take place wholly outside the United Kingdom "where the making of a corresponding payment in any part of the Country would constitute a criminal offence there" (section 577A, (1)(b), ICTA88). This sub-section applies in relation to expenditure incurred as from 1 April 2002.

93. Tax authorities are involved in the detection and reporting of offences criminalised under penal law, such as corruption and money laundering. The law on the disclosure of information by the tax authorities was changed by section 19 of the 2001 Anti-terrorism Crime and Security Act. This provision gives very wide powers of disclosure to the tax authorities in relation to all criminal investigations and proceedings. It applies throughout the United Kingdom. It allows Inland Revenue (or HM Customs and Excise) to disclose information, including information obtained before the Act came into force (which would otherwise be confidential), if the disclosure is made:

(a) for the purposes of facilitating the carrying out by any of the intelligence services of any of that service's functions ("intelligence services" here means "the Security Service, the Secret Intelligence Service, or GCHQ", as defined in the Regulation of Investigatory Powers Act 2000);
(b) for the purposes of any criminal investigation which is being or may be carried out, whether in the UK or elsewhere;
(c) for the purposes of any criminal proceedings which have been or may be initiated, whether in the UK or elsewhere;
(d) for the purposes of the initiation or bringing to an end of any such investigation or proceedings; or
(e) for the purpose of facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end.

94. Information obtained from the revenue departments must not be further disclosed except for the purposes described above, and then only with the consent of the department that initially disclosed it.

95. The Act lifts, in specified circumstances, restrictions on disclosure imposed by law, but disclosure is permitted rather than required. This imposes an important responsibility on the Inland Revenue or HM Customs and Excise, as the case may be, to decide whether disclosure is justified. In deciding whether it is appropriate to disclose information to the law enforcement agencies and intelligence services, Inland Revenue and HM Customs and Excise officials will have to consider the terms of the Data Protection Act 1998, and their duties under the Human Rights Act 1998. All disclosures will have to be subjected to the proportionality test, which means that the person

making a disclosure must be satisfied that disclosure is proportionate to the end sought to be achieved by the disclosure. This will involve consideration of the nature of the information in question (whether it is of a personal nature etc.), the importance of the information to the criminal investigation/proceedings, and the seriousness of the offence in question.

Account offences

96. Under sections 221-223 of the Companies Act 1985, companies are required to keep accounting records. There are no exceptions to the requirement to keep and preserve proper accounting records for companies registered under the Companies Acts. For a private company this requirement is for a period of three years and for a public company six years. The accounting records must be sufficient to show and explain the company's transactions, including entries from day to day of all sums of money received and expended and a record of the assets and liabilities of the company.

97. Company officers may be subject to criminal proceedings (penalty of fine or imprisonment) where a company fails to comply with its obligations under these sections.

98. In England and Wales the keeping of false accounts is an offence under the Theft Act 1968 (section 17), which also covers omissions. Moreover, there is an offence in the Companies Act 1985 (section 450) for officers fraudulently making omissions in documents. Such behaviour might also fall within the scope of the Common Law offence of Conspiracy to Defraud and there are penalties under the Companies Act 1985 for, *inter alia*, officers failing to keep accounting records and for approving defective accounts (punishable by a fine). The intention to conceal an offence of corruption is not specified as a separate offence but would be covered.

99. The Insolvency Act 1986 (Part IV, chapter X, sections 206-212) includes various offences related to misleading creditors and others, falsification of entries in accounting records, etc – but these are all restricted to circumstances where the company is being wound up.

100. Under section 222 of the Companies Act 1985, company officers are guilty of a crime if they fail to take all reasonable steps to ensure compliance with a company's requirement under that section to keep accounting records. There are also specific offences prescribed in circumstances where a company is being wound up under the Insolvency Act 1986 (Part IV, Chapter X, sections 206-212) in relation to the making of false entries, destruction or mutilation of a company's accounting records.

101. In Scotland the keeping of false accounts would normally be prosecuted as the common law crime of fraud or under provisions of the Companies and Insolvency Acts aforementioned.

Role of accountants, auditors and legal professions

102. On 1 March 2004, new Money Laundering Regulations came into force, completing the implementation of the EU Second Money Laundering Directive. The new regulations expanded the regulated sector to include, *inter alia*, tax advisers, accountants, auditors and legal professionals (when participating in a financial or real estate transaction). They are required to have systems and controls in place to forestall and prevent money laundering, including identifying their customers, record keeping, appointing a money laundering reporting officer, training for staff in recognising money laundering, and internal reporting systems to ensure that

reports are made to the National Criminal Intelligence Service (NCIS). The requirement to report suspicious transactions applies to all offences (including corruption).

c. Analysis

103. The notion of legal persons is well defined in legislation. Private and public limited companies are covered by the Companies Act 1985 and the other forms of legal persons – partnerships and European interest groupings - through special legislation. All limited companies are subject to registration at the public company register (Companies House), which examines and stores information delivered by the companies under the Companies Act and other legislation and makes it available to the public, *inter alia*, on the Internet; the Companies House has a well developed and user-friendly website.

104. The GET understood that new companies are often incorporated with the assistance of private sector company formation agents, who work under no regulatory framework or control. Moreover, the company registration, which may be completed within a period of one to five days, is limited to formally checking that all relevant information is submitted by the applicant company. The correctness of the information as such is not verified. However, the provision of false information to the registry constitutes a crime with a severe penalty. Moreover, a large majority of company registrations are carried out electronically. Considering the number of applications (approximately 400 000 annually) there is clearly a balance to be struck between an efficient registration system and important public interest protection to avoid that companies become vehicles for criminal activity, such as corruption.

105. According to common law principles a legal person may always be liable for tort. Moreover, the penal legislation provides for criminal liability of legal persons (Interpretation Act 1978). A legal person may be held criminally liable for bribery and money laundering provided that the act is committed by a natural person who represents the legal person's "controlling mind or will", e.g. managers and directors. It appears that lack of supervision (18.2 of the Convention) cannot make a legal person criminally liable, however, liability under civil law principles is always possible. Corporate liability is not dependent on a natural person being identified or convicted. Moreover, liability of legal persons does not exclude liability of the natural person, the perpetrator. The GET concluded compliance with Article 18 of the Criminal Law Convention.

106. Legal persons are subject to an unlimited fine upon conviction for bribery and money laundering. The GET was pleased to learn about several measures in place to ensure that legal persons do not evade penalties through restructuring. The sanctions provided in the law therefore appear to be effective, proportionate and dissuasive. However, the GET was told that there were no statistics available on legal person's sanctions. Consequently, the GET could not assess whether the sanctions applied were effective, proportionate and dissuasive (Article 19 of the Criminal Law Convention on Corruption). **The GET recommends to make statistics available on the use of corporate sanctions.**

107. The tax legislation does expressly prohibit deductibility for any payment, the making of which constitutes the commission of a criminal offence under the United Kingdom legislation, even if it was made abroad. Moreover, the Inland Revenue (tax authority) has wide powers, since the introduction of the Anti-terrorism Crime and Security Act 2001, to disclose information to other law enforcement bodies on any crime (including corruption). In cases of tax offences and money laundering, the Inland Revenue has its own powers to investigate, confiscate and prosecute the cases. Moreover, it was reported to the GET that the Inland Revenue has very well developed co-

operation with, and provides much assistance to other law enforcement bodies, including the ARA (see Theme 1). The GET concluded that the United Kingdom was in compliance with Guiding Principle 8.

108. The GET finds that infringements of the accounting obligations – intentionally creating or using false documents or omitting to record payments - are established as criminal offences liable to criminal sanctions (fine or imprisonment). This is in compliance with Article 14 of the Criminal Law Convention on Corruption.

109. With the implementation of the EU Second Money Laundering Directive in the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003, accountants, auditors and legal professions have been included in the "regulated sector" with obligations to report suspicions of money laundering transactions with regard to all crimes, including corruption. Moreover, these professions participate in the Money Laundering Advisory Committee, which is a public/private sector forum, chaired by the HM Treasury. These commendable efforts are more developed under Theme 1. *The GET observes that STRs can be important sources of information leading to the detection of corruption and encourages continued efforts in the training of these professions to enhance awareness of this possibility.*

V. CONCLUSIONS

110. The United Kingdom has a complex and multifaceted legal system where the statutory regulations are gaining ground in the areas under scrutiny. The Proceeds of Crime Act in the field of confiscation and the Freedom of Information Act in the field of public administration are two completely different examples of far-reaching modern legislation in important areas; the former providing for law enforcement efficiency and the latter for transparency of public administration. This trend is positive and it is hoped that the regulation of the civil service will also continue to develop towards statutory basis for its employees. Even if recent legal reforms in the United Kingdom have focused on issues other than corruption, several reforms have had a considerable impact also in this field. The present report highlights a few concerns with respect to a generally well developed system.

111. In view of the above, GRECO addresses the following recommendations to the United Kingdom:

i. **take measures to encourage the wider use of confiscation and civil recovery schemes under the Proceeds of Crime Act (POCA), for instance by reducing the financial thresholds for these schemes (paragraph 31);**

ii. **to make wider use of measures which would ensure that the value of property representing the proceeds of crime is conserved at an early stage in order to satisfy a subsequent confiscation order (paragraph 32);**

iii. **to consider enhancing the National Criminal Intelligence Service's (NCIS) communication with, and feed back to, the providers of suspicious transaction reports (paragraph 33);**

iv. **to keep anti-corruption standards and their implementation under review, taking into account, in particular, new emerging threats to the integrity of public administrations as well as developments in related policy areas (paragraph 75);**

v. **to enhance, through in-service training programmes at regular intervals, awareness among public officials concerning corruption prevention and their obligations to report corruption (paragraph 76);**

vi. **to pursue the discussion concerning the status and functions of special advisers at the Ministries as part of the consultation process on the forthcoming Civil Service Bill (paragraph 77);**

vii. **to make statistics available on the use of corporate sanctions (paragraph 106).**

112. Moreover, GRECO invites the authorities of the United Kingdom to take account of the observations made in the analytical part of this report.

113. Finally, in conformity with Rule 30.2 of the Rules of procedure, GRECO invites the authorities of the United Kingdom to present a report on the implementation of the above-mentioned recommendations by 31 March 2006.