



Strasbourg, 15 February 2007

**Public**  
**Greco Eval III Rep (2007) 3E**  
**Theme I**

## **Third Evaluation Round**

### **Evaluation Report on the United Kingdom on Incriminations (ETS 173 and 191, GPC 2)** (Theme I)

Adopted by GRECO  
at its 36<sup>th</sup> Plenary Meeting  
(Strasbourg, 11-15 February 2008)

## I. INTRODUCTION

1. The United Kingdom joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2001) 8E) in respect of the United Kingdom at its 6<sup>th</sup> Plenary Meeting (10-14 September 2001) and the Second Round Evaluation Report (Greco Eval II Rep (2004) 2E) at its 20<sup>th</sup> Plenary Meeting (27-30 September 2004). The afore-mentioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
  - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
  - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme I (hereafter referred to as the "GET"), which carried out an on-site visit to the United Kingdom on 1 and 2 October 2007, was composed of Mr Richard M. ROGERS, Senior Counsel, Criminal Division, US Department of Justice, the United States of America and Mr Georgi RUPCHEV, Director of International Cooperation and European Integration, Ministry of Justice, Bulgaria. The GET was supported by Mr Wolfgang RAU, Executive Secretary of GRECO and Mr Björn JANSON, Deputy to the Executive Secretary. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2007) 6E, Theme I) as well as copies of relevant legislation.
4. The GET met with officials from the following Government Departments, police and prosecuting bodies: Ministry of Justice, Serious Fraud Office, Ministry of Defence Police, Crown Prosecution Service, Scottish Crown Office and the City of London Police. The GET also met with representatives from the judiciary: Council of Her Majesty's Circuit Judges. Moreover, the GET met with members of the following non-governmental institutions: Transparency International, Confederation of British Industry, International Chamber of Commerce and the Law Society.
5. The report on Theme II – "Transparency of party funding", is set out in Greco Eval III Rep (2007) 3E, Theme II.
6. The present report on Theme I of GRECO's Third Evaluation Round - Incriminations - 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 measures adopted by the United Kingdom authorities in order to comply with the requirements deriving from the relevant provisions indicated in paragraph 2. The report contains a description of the situation and a 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.

## II. INCRIMINATIONS

### Description of the situation

7. The United Kingdom ratified the Criminal Law Convention on Corruption (ETS 173) on 9 December 2003 and the Convention entered into force in respect of the United Kingdom on 1 April 2004. The United Kingdom has made reservations in respect of ETS 173, see Annex B. The Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) was ratified on 9 December 2003 and entered into force in respect of the United Kingdom on 1 February 2005 without any reservation.

### Bribery of domestic public officials (Articles 1-3 and 19 of ETS 173)

8. Active bribery of domestic public officials is criminalised by virtue of:
- (i) the common law (in England, Wales and Northern Ireland (“English common law”) there is a common law offence of bribery – this is an offence in both parties; in Scotland there are separate common law offences of bribery and accepting a bribe – see below)
  - (ii) section 1 (2) of the Public Bodies Corrupt Practices Act 1889 and
  - (iii) section 1 of the Prevention of Corruption Act 1906.
9. Passive bribery of domestic public officials is criminalised by virtue of:
- (i) the common law (in England, Wales and Northern Ireland there is a common law offence of bribery – this is an offence in both parties; in Scotland there are separate common law offences of bribery and accepting a bribe – see below)
  - (ii) section 1 (1) of the Public Bodies Corrupt Practices Act 1889 and
  - (iii) section 1 of the Prevention of Corruption Act 1906;
  - (iv) section 2 of the Prevention of Corruption Act 1916 (as it adds gravitas to the existing statutory offences by introducing a “presumption of corruption” where it is proved that any money, gift or other consideration has been given to or received by a public official from a person or agent of a person holding or seeking a contract from that public body).
10. The common law of Scotland makes it a crime to bribe a judicial officer, which includes judges, sheriffs, magistrates and justices as well as clerks and procurators fiscal. It may also be criminal at Scots common law to bribe a non-judicial officer, such as a public official or a councillor, but such cases are always prosecuted today under statute. There are also a number of specific offences relating to bribery in Scotland, such as section 68 of the Local Government (Scotland) Act 1973 which prohibits an officer of a local authority from accepting any fee or reward other than his proper remuneration, and requires such officers to declare interest in contracts.
11. The description of the common law offence and the texts of statutory provisions are contained in Annex A.

### Elements/concepts of the offence

#### *“Domestic public official”*

12. The United Kingdom authorities have stated that all the specific categories of persons listed in Article 1(a) and (b) of the Criminal Law Convention on Corruption are covered by the UK bribery law.

13. The offences in section 1 (1) and (2) of the 1889 Act apply to active or passive bribery intended to influence or reward the conduct of “*any member, officer, or servant of a public body*”. The term “*public body*” is defined at section 7 of that Act as “*any council of a county of a city or town, any council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government, money raised by rates in pursuance of any public general Act, and includes any body which exists in a country or territory outside the United Kingdom and is equivalent to any body described above.*”
14. Section 4(2) of the Prevention of Corruption Act 1916 provides that “*in this Act and in the Public Bodies Corrupt Practices Act 1889, the expression “public body” includes in addition to the bodies mentioned in the last-mentioned Act, local and public authorities of all descriptions ...*”.
15. In cases where the status of a body might be in doubt, specific provision has been made for the body to be a public body for the purposes of the Prevention of Corruption Acts of 1889 to 1916. Such provision was made for the Scottish Parliament by virtue of section 43 of the Scotland Act 1998, for Scottish Enterprise and Highlands & Islands Enterprise by paragraph 2 of Schedule 1 to the Enterprise and New Towns (Scotland) Act 1990, and for the Civil Aviation Authority by section 19 of the Civil Aviation Act 1982.
16. The offence in section 1 of the 1906 Act applies to any agent – this is defined in section 1 as including “*any person employed by or acting for another*”. Section 1(3) makes explicit that “*a person serving under the Crown or under any corporation or any borough, county, or district council, or any board of guardians, is an agent within the meaning of this Act*”.
17. Section 4(3) of the Prevention of Corruption Act 1916 provides that a person serving under any public body as defined in section 4(2) “*is an agent within the meaning of the Prevention of Corruption Act 1906...*”.
18. The English common law concerns active and passive bribery of a person “*in the position of trustee to perform a public duty*”. It has been described as follows in Russell on Crime: “*Bribery is the receiving or offering [of] any undue reward by or to any person whatsoever, in a public office, in order to influence his behaviour in office, and incline him to act contrary to the known rules of honesty and integrity*” (Sir William Russell, ‘Russell on Crime’, 12<sup>th</sup> edition 1964).
19. The Scots common law embraces “*judicial officer*”, which includes judges, sheriffs, magistrates and justices as well as clerks and procurators fiscal. Provision in respect of a number of specific officers exists under Scots statutes (e.g. section 68 of the Local Government (Scotland) Act 1973 dealing with officers of local authorities).

*“Promising, offering or giving” (active bribery)*

20. Under the English common law offence the taking of a bribe is an offence in both parties; the offering of a bribe is also a bribery offence under the common law (see R v Vaughan (1769)). Scots common law recognises offences of bribery and accepting a bribe. Section 294 of the Criminal Procedure (Scotland) Act 1995 provides that attempt to commit any offence is in itself an offence.
21. Under section 1(2) of the Public Bodies Corrupt Practices Act 1889 any person who gives, promises or offers a bribe commits an offence.

22. Under section 1(1) of the Prevention of Corruption Act 1906 any person who gives or agrees to give or offers a bribe commits an offence.

*“Request or receipt, acceptance of an offer or promise” (passive bribery)*

23. As mentioned above, under the English common law offence the taking of a bribe is an offence in both parties; the soliciting of a bribe is also a bribery offence under the common law. Scots common law recognises offences of bribery and accepting a bribe. Section 294 of the Criminal Procedure (Scotland) Act 1995 provides that attempt to commit any offence is itself an offence.
24. Under section 1(1) of the Public Bodies Corrupt Practices Act 1889 any person who solicits or receives, or agrees to receive commits an offence.
25. Under section 1(1) of the Prevention of Corruption Act 1906 any agent who accepts or obtains, or agrees to accept or attempts to obtain a bribe is guilty of an offence.

*“Any undue advantage”*

26. Under the common law a bribe is defined as “any undue reward”.
27. The statutory offences do not qualify the nature of the advantage but focus instead on the intention with which the advantage was conferred, the offences being constituted by the offer or acceptance of the bribe. Sections 1(1) and 1(2) of the Public Bodies Corrupt Practices Act 1889 embrace the following: “any gift, loan, fee, reward, or advantage whatever as an inducement to, or reward for, or otherwise on account of”. Section 1(1) of the Prevention of Corruption Act 1906 provides for “any gift or consideration as inducement or reward for doing or forbearing to do ...any act in relation to his principal’s affairs or business ...”. Section 1 (2) provides that “consideration” includes valuable consideration of any kind.
28. The authorities provided case law indicating that common law and statutory offences cover immaterial as well as material advantages. (“R v. Braithwaite”, 77 Cr. App. R 34, CA and Woodward v. Maltby, 1959 VR 794)

*“Directly or indirectly”, “himself or herself or for anyone else”*

29. In law (common law and statutory law) the manner (directly / indirectly) in which the advantage is conferred from the donor to the recipient is immaterial. The only relevant issue is whether, as regards passive corruption, the public official has solicited, obtained or agreed to obtain an advantage, in whatever form that may be, and as regards active corruption, whether an advantage is promised, offered or given, in whatever form that may be, to the public official. The advantage can be for the official himself or for another person.
30. Section 1(1) of the Public Bodies Corrupt Practices Act 1889 provides for passive bribery in respect of “*himself or for any other person*”. Section 1(2) provides for active bribery in respect of “*any person, whether for the benefit of that person or of another person*”.
31. Section 1 of the 1906 Act provides for passive bribery in respect of an agent who accepts etc a bribe for “*himself or any other person*”.

*"To act or refrain from acting in the exercise of his or her functions"*

32. The English common law offence of bribery is broad as it has been defined by Russell (see above). The GET understood that a breach of duty is not required as such and there is no need to prove any breach of duty in a prosecution. Instead, the offence is based on the intention of the briber/bribee of offering/receiving any undue reward in order to influence in one way or the other, whether it constitutes a breach of duty or not.
33. Section 1(1) and 1(2) of the Public Bodies Corrupt Practices Act 1889 deal with "doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which" the public body "is concerned".
34. Section 1 of the Prevention of Corruption Act 1906 deals with "doing or forbearing to do ...any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business."

*"Committed intentionally"*

35. The mental element of the common law offence has been settled as an intention "to influence the behaviour of a public officer and to incline him to act contrary to the known rules of honesty and integrity" (Sir William Russell, 'Russell on Crime', 12<sup>th</sup> edition 1964). The statutory offences described above require the advantage to have been either accepted or proffered "corruptly" (see case law below).

#### Sanctions in respect of bribery of domestic public officials

36. The penalties for an offence under the Public Bodies Corrupt Practices Act 1889 include:
  - imprisonment (not exceeding 7 years) and / or a fine (unlimited) following prosecution on indictment (lower penalties apply in summary proceedings)
  - requirement to pay to the "public body" the amount or value (or part thereof) of any gift, loan, fee or reward received
  - forfeiture of office and five-year ban on being elected or appointed to any public office
  - lifetime ban (on second conviction for a like offence) on being elected or appointed to any public office and five-year ban on being registered as a voter or voting at an election
  - forfeiture of right and claim to any compensation or pension
37. The penalties for an offence under the Prevention of Corruption Act 1906 include imprisonment (not exceeding 7 years) and / or a fine (unlimited) following prosecution on indictment (lower penalties apply in summary proceedings).
38. The penalty in respect of common law offences, (including the corruption related offences of misconduct in public office, breach of duty and the offence of perverting the course of justice) are not provided for by statute. When a prosecution is brought on indictment, the maximum penalty is an unlimited fine or life imprisonment. However, principles of sentencing in the United Kingdom would require the sentence passed to reflect and be proportionate to the seriousness of the offence and to reflect relevant mitigating circumstances. A variety of non-custodial penalties will also be available – such as, community penalties and disqualification from company directorship.
39. The following cases illustrate the use of sanctions: In the case R. v. Bush [2003] 2 Cr. App. R. (S.) 117 the defendant was an officer in a local authority (local government). He was convicted of accepting payments and other services over a period of six years in return for putting company

names on the authorities contracts list so that they could tender for large contracts with the authority. A sentence of four years' imprisonment was reduced to two and a half years on appeal. In the case of R. v. Donald [1997] 2 Cr. App. R. (S.) 272 – the defendant was a detective constable who accepted various sums (totally £18,500) from a man who was the subject of criminal proceedings in return for the disclosure of confidential information about the inquiry and for destroying surveillance logs. He received a sentence of 11 years' imprisonment.

40. As way of comparison, in England the offence of fraud (section 1 of the Fraud Act 2006) carries a maximum penalty of 10 years' imprisonment and / or an unlimited fine. In Scotland, fraud is a common law offence and may result in an unlimited fine or imprisonment.

#### Court decisions/case law

41. In respect of the scope of the common law: The formulation of the common law offence is broad. In England, the scope of the offence is best summarised in the case of R v. Whitaker [1914] 3 K.B. 1283 where it was stated that the common law offence of bribery is committed when a bribe is given or offered to induce a public official to “shew favour or abstain from shewing disfavour...”. Other relevant cases include: R. v. Gurney (1867) 10 Cox 550; R. v. Harrison (1800) 1 East P.C.382; R. v. Vaughan (1769) 4 Burr 2494; R. v. Pollman (1809) 2 Camp 229n.
42. In respect of the mental element of the common law offence: In the case of R v. Gurney ((1867) 10 Cox CC 550) the mental element was held to include an intention to produce any effect at all on the decision of a public officer.
43. Concerning the meaning of a public body for the purposes of the 1889 Act (as extended by the 1916 Act): This definition is not restricted to local authorities but refers to any body which has public or statutory duties to perform and which performs those duties and carries out its transactions for the benefit of the public and not for private profit. (See DPP v. Holly and Manners, House of Lords). However, because section 2 of the 1916 Act distinguishes between the Crown or any government department on the one hand and “a public body” on the other, the reference to “public bodies of all descriptions” in the definition of “public bodies” cannot be construed as including either the Crown or a government department. (See R v. Natji, Court of Appeal, 2002). The Crown and Government departments are covered under section 1(3) of the 1906 Act.
44. In respect of the term “corruptly”: In the case of Cooper V. Slade ((1858) 6 HL Cas 746,773), concerning bribery at an election under the Corrupt Practices Prevention Act 1854 (now repealed), Willes J advised the House of Lords that the word “corruptly” should be interpreted as purposely doing an act which the law forbids as tending to corrupt. In R v. Smith (John) ([1960]2 QB 423) the Court of Appeal endorsed the dictum of Willes J, and approved a trial judge's direction that “corruptly” meant with intention to corrupt.

#### **Bribery of members of domestic public assemblies (Article 4 of ETS 4)**

45. Despite the fact that no explicit reference is made to “members of domestic public assemblies”, active and passive bribery of members of domestic public assemblies are criminal offences under domestic law. The common law offence of bribery criminalises bribery of members of both Houses of the United Kingdom Parliament. This is because Members of Parliament are considered to hold “a public office” and therefore are subject to the common law offence. Members of local and regional assemblies are likewise covered by the common law offence. However active and passive bribery of members of these assemblies is also criminalised by

section 1 of the Public Bodies Corrupt Practices Act 1889, as local and regional public assemblies are considered to be public bodies.

46. Section 43 of the Scotland Act 1998 specifically provides for the Scottish Parliament to be a public body for the purposes of the Prevention of Corruption Act 1889 to 1916. There is similar provision in the Government of Wales Acts 1998 and 2006 and the Northern Ireland Act 1998.
47. The elements/concepts described under bribery of domestic officials (above) also apply to bribery of members of domestic public assemblies.
48. The sanctions described under bribery of domestic officials (above) also apply to bribery of members of domestic public assemblies.

#### Court decisions/case law

49. The case of Greenway and others (Central Criminal Court June 1992): At trial the defence argued that although bribery was an offence recognised by common law, an MP did not hold a public office and was therefore not covered by the offence. The trial judge, Mr. Justice Buckley, reviewed a number of cases, many dating back to the 18th century. In particular, the trial judge referred to Pitt and Mead (1767), which concerned the bribery of a voter at a Parliamentary election; the Canadian case of Bunting (1885), which dealt with similar issues; and the Australian appeal case of Boston (1923), which concerned the attempted bribery of an MP in New South Wales. In the view of the trial judge, all of these cases showed that a wide meaning should be given to the concept of "office" for the purpose of the bribery offence. In this context, the judge concluded "I am satisfied that undoubted common law offence of bribery is not artificially limited by reference to any particular shade of meaning of the word 'office'."
50. The GET was informed that the case of Greenway and others did not progress to a full trial and was never considered by the Court of Appeal, but that it has some persuasive effect in English law as it was heard in the High Court and as such is a recent and authoritative pronouncement of the law.

#### **Bribery of foreign public officials (Article 5 of ETS 173)**

51. Active and passive bribery of foreign public officials is a criminal offence under domestic law. For England and Wales and Northern Ireland, section 108 of the Anti-Terrorism, Crime and Security Act 2001 made explicit that the common law of bribery, the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Act 1906 applied to such officials although even prior to this change case law demonstrated that such officials were indeed subject to the law (see R v. Raud case, below). Similar provision for Scotland was made by section 68 of the Criminal Justice (Scotland) Act 2003. The text of the relevant sections of the legislation is attached at Annex A.
52. The concept "foreign public official" is not used in law. Instead the legislation is premised on making explicit that it is immaterial if the affairs, business or functions of those concerned have no connection with the United Kingdom and are carried out in a country or territory outside the United Kingdom.
53. The elements/concepts described under bribery of domestic officials (above) also apply to bribery of foreign public officials.

54. The sanctions described under bribery of domestic officials (above) also apply to bribery of foreign public officials.

#### Court decisions/case law

55. The case of R v. Raud [1989] Crim. L.R. 809 (C.A.). (under the law before the commencement of sections 108 and 109 Anti-Terrorism Crime and Security Act 2001): The Court of Appeal upheld a decision in which the accused, Raud, was convicted of conspiring, contrary to the Criminal Law Act 1977, with an agent of the Government of Ireland and other persons to promote the activities of the agent, which were to corruptly agree to obtain money in exchange for providing Irish passports, contrary to section 1 of the Prevention of Corruption Act 1906.

#### **Bribery of members of foreign public assemblies (Article 6 of ETS 173)**

56. As mentioned above, the common law offence of bribery criminalises active and passive bribery of members of national public assemblies (both Houses of Parliament). Bribery of members of local and regional assemblies is criminalised by section 1 of the Public Bodies Corrupt Practices Act 1889 and by the common law offence of bribery.
57. For England and Wales and Northern Ireland, section 108 of the Anti-Terrorism Crime and Security Act 2001 ensures that for the purposes of any common law offence of bribery it is immaterial if the functions of the person who receives or is offered a reward have no connection with the United Kingdom and are carried out in a country or territory outside the United Kingdom. Section 108 also amends the Public Bodies Corrupt Practices Act 1889 such that it explicitly applies also to members, officers or servants of public bodies existing in a country or territory outside the United Kingdom. Similar provision for Scotland is made by section 68 of the Criminal Justice (Scotland) Act 2003. The 2001 Act and the 2003 Act ensure bribery of members of foreign public assemblies is criminalised in the UK.
58. The elements/concepts described under bribery of domestic officials (above) also apply to bribery of members of foreign public assemblies.
59. The sanctions described under bribery of domestic officials (above) also apply to bribery of members of foreign public assemblies.
60. The authorities did not provide the GET with any case law in respect of this offence.

#### **Bribery in the private sector (Articles 7 and 8 of ETS 173)**

61. Active and passive bribery in the private sector are criminal offences by virtue of section 1 of the Prevention of Corruption Act 1906, which applies across the whole of the United Kingdom, including Scotland. The text of section 1 of the 1906 Act is set out at Annex A.
62. The existing active bribery offence in the 1906 Act does not expressly refer to the situation where the undue advantage is not given directly to the agent but is given to a third party. The GET was informed that where a briber offered an agent, or entered into an agreement with an agent, for an undue advantage to be given to a third party as an inducement or reward for the agent performing a certain act, the briber will be considered to have offered or given the agent a valuable consideration. However, the United Kingdom authorities accept that this element of the offence is not as clear as in the existing passive bribery offence in the 1906 Act. They informed the GET that this aspect of the law will be subject to revision within the framework of ongoing

work to reform the bribery laws. In the meantime the United Kingdom has lodged a reservation in this respect, see Annex B.

#### Elements/concepts of the offence

63. The elements/concepts described under bribery of domestic officials (above) also apply to bribery in the private sector, as complemented by the following particular elements:

*“Persons who direct or work for, in any capacity, private sector entities”*

64. The offences in the 1906 Act are premised on the corruption of the relationship of an “agent” to his “principal”. Section 1(2) of the 1906 Act sets out that “the expression ‘agent’ includes any person employed by or acting for another; and the expression ‘principal’ includes an employer”.

*“In the course of business activity”; “...in breach of [their<sup>1</sup>] duties”*

65. The offences in the 1906 Act are not restricted to a breach of duty or, directly, business activity. Instead the impact of the bribe can be the doing or forbearing (abstention from doing, postponing) to do “any act in relation to his principal’s affairs or business, or for showing any favour or disfavour to any person in relation to his principal’s affairs or business”.

#### Sanctions

66. The sanctions described under bribery of domestic officials (above) also apply to bribery in the private sector.

#### Court decisions/case law

67. In R v. Harvey ([1998] Crim LR 810, CA) the Court of Appeal held that dishonesty was not an element of the offence and that the word “corruption” for the purposes of the section 1 of the 1906 Act is to be construed as deliberately offering money or favours with the intention that it should operate on the mind of the offeree so as to encourage him to enter into a corrupt bargain.
68. In R v. Godden-Wood ([2001] Crim LR 810, CA) it was held that the test was the same whether it was in the public or private sector.
69. In respect of the term “consideration” it was held in the case R v. Braithwaite (reference above), that “a valuable consideration, in the sense of the law, may consist either in some right, interest, profit or benefit accruing to the party, or some forbearance, detriment, loss or responsibility, given, suffered or undertaken by the other ...”

#### **Bribery of officials of international organisations (Article 9 of ETS 173)**

70. The term “official of an international organisation” is not explicitly provided for in law. However, the common law offence of bribery criminalises active and passive bribery of officials of organisations which perform a public duty.
71. The offences in section 1 (1) and (2) of the Public Bodies Corrupt Practices Act 1889 apply to active or passive bribery intended to influence or reward the conduct of “any member, officer, or

---

<sup>1</sup> By the persons who direct or work for, in any capacity, private sector entities.

servant of a public body”. Section 4(2) of the Prevention of Corruption Act 1916 provides that “in this Act and in the Public Bodies Corrupt Practices Act 1889, the expression “public body” includes in addition to the bodies mentioned in the last-mentioned Act, local and public authorities of all descriptions...”.

72. The offence in section 1 of the Prevention of Corruption Act 1906 applies to any agent – this is defined in section 1 as including “any person employed by or acting for another”. Section 1(3) makes explicit that “a person serving under the Crown or under any corporation or any borough, county, or district council, or any board of guardians, is an agent within the meaning of this Act”.
73. Section 4(3) of the Prevention of Corruption Act 1916 provides that a person serving under any public body as defined in section 4(2) of that Act “is an agent within the meaning of the Prevention of Corruption Act 1906...”.
74. Section 108 of the Anti-terrorism, Crime and Security Act 2001 and section 68 of the Criminal Justice (Scotland) Act 2003 (Annex A) put beyond doubt that for the purposes of the common law offence of bribery it is immaterial if the functions of the person who receives or is offered a reward have no connection with the United Kingdom and are carried out in a country or territory outside the United Kingdom. Sections 108 and 68 also amend the Public Bodies Corrupt Practices Act 1889 such that it explicitly applies also to members, officers or servants of public bodies existing in a country or territory outside the United Kingdom. Furthermore they amend the Prevention of Corruption Act 1906 such that it is explicitly immaterial if the principal’s affairs or business, or the agent’s functions, have no connection with the United Kingdom or are carried out in a country or territory outside the United Kingdom. Bribery of officials of international organisations is therefore criminalised in the United Kingdom.
75. The elements/concepts described under bribery of domestic officials (above) also apply to bribery of officials of international organisations.
76. The sanctions described under bribery of domestic officials (above) also apply to bribery of officials of international organisations.
77. The authorities did not provide the GET with any case law in respect of this offence.

#### **Bribery of members of international parliamentary assemblies (Article 10 of ETS 173)**

78. Although the law does not explicitly refer to “members of an international public assembly”, the common law offence of bribery criminalises active and passive bribery of members of parliamentary assemblies.
79. Section 108 of the Anti-Terrorism Crime and Security Act 2001 and section 68 of the Criminal Justice (Scotland) Act 2003 provide that for the purposes of any common law offence of bribery it is immaterial if the functions of the person who receives or is offered a reward have no connection with the United Kingdom and are carried out in a country or territory outside the United Kingdom. Therefore bribery of members of international parliamentary assemblies is criminalised in the United Kingdom.
80. The elements/concepts described under bribery of domestic officials (above) also apply to bribery of members of international parliamentary assemblies.

81. The sanctions described under bribery of domestic officials (above) also apply to bribery of officials of international parliamentary assemblies.
82. The authorities did not provide the GET with any case law in respect of this offence.

### **Bribery of judges and officials of international courts (Article 11 of ETS 173)**

83. The law does not explicitly refer to “holders of judicial office or officials of any international court”. However, the common law of bribery criminalises active and passive bribery of officials of organisations which perform a public duty.
84. The offences in section 1 (1) and (2) of the 1889 Act apply to active or passive bribery intended to influence or reward the conduct of “any member, officer, or servant of a public body”. Section 4(2) of the Prevention of Corruption Act 1916 provides that “in this Act and in the Public Bodies Corrupt Practices Act 1889, the expression “public body” includes in addition to the bodies mentioned in the last-mentioned Act , local and public authorities of all descriptions...”.
85. The offence in section 1 of the 1906 Act applies to any agent – this is defined in section 1 as including “any person employed by or acting for another”.
86. Section 4(3) of the Prevention of Corruption Act 1916 provides that a person serving under any public body as defined in section 4(2) (above) “is an agent within the meaning of the Prevention of Corruption Act 1906...”
87. Section 108 of the Anti-terrorism, Crime and Security Act 2001 and section 68 of the Criminal Justice (Scotland) Act 2003 put beyond doubt that for the purposes of the common law offence of bribery it is immaterial if the functions of the person who receives or is offered a reward have no connection with the United Kingdom and are carried out in a country or territory outside the United Kingdom. Sections 108 and 68 also amend the Public Bodies Corrupt Practices Act 1889 such that it explicitly applies also to members, officers or servants of public bodies existing in a country or territory outside the United Kingdom. Furthermore these provisions amend the Prevention of Corruption Act 1906 such that it is explicitly immaterial if the principal’s affairs or business, or the agent’s functions, have no connection with the United Kingdom or are carried out in a country or territory outside the United Kingdom. Bribery of judges and officials of international courts is therefore criminalised in the United Kingdom.
88. The elements/concepts described under bribery of domestic officials (above) also apply to bribery of judges and officials of international courts.
89. The sanctions described under bribery of domestic officials (above) also apply to bribery of judges and officials of international courts.
90. The authorities did not provide the GET with any case law in respect of this offence.

### **Trading in influence (Article 12 of the ETS 173)**

91. “Trading in influence” is not explicitly covered by the law and the United Kingdom has made a reservation in respect of this provision (Annex B). Nevertheless, the authorities have argued that trading in influence is covered by section 1 of the Prevention of Corruption Act 1906 where an agency relationship exists between the person who trades his influence and the person whom he

influences. They have furthermore stated that not all behaviour which falls under the definition of “trading in influence” is criminalised in the United Kingdom, nor is it foreseen to be.

#### **Bribery of domestic arbitrators (Article 1, sections 1 and 2 and Articles 2 and 3 of ETS 191)**

92. The term of domestic arbitrator is not explicitly referred to in the bribery offences. Nevertheless, active and passive bribery of a domestic arbitrator falls within the ambit of section 1 of the Prevention of Corruption Act 1906, as an arbitrator is an agent (i.e. ‘acting for or employed by’ another person). Bribery of an arbitrator working for a public arbitration body is covered by the Public Bodies and Corrupt Practices Act 1889 and the common law offence of bribery.
93. The elements/concepts described under bribery of domestic officials (above) also apply to bribery of domestic arbitrators.
94. The sanctions described under bribery of domestic officials (above) also apply to bribery of domestic arbitrators.
95. The authorities did not provide the GET with any case law in respect of this offence.

#### **Bribery of foreign arbitrators (Article 4 of ETS 191)**

96. The law does not explicitly use the term “foreign arbitrator”. Nevertheless, bribery of an arbitrator falls within the ambit of section 1 of the Prevention of Corruption Act 1906, as an arbitrator is an agent i.e. ‘acting for or employed by’ another person. Bribery of an arbitrator working for a public arbitration body is covered by the Public Bodies and Corrupt Practices Act 1889 and the common law offence of bribery.
97. Section 108 of the Anti-Terrorism Crime and Security Act 2001 and section 68 of the Criminal Justice (Scotland) Act 2003 ensure that foreign arbitrators are covered by putting beyond doubt that for the purposes of the common law offence of bribery it is immaterial if the functions of the person who receives or is offered a reward have no connection with the United Kingdom and are carried out in a country or territory outside the United Kingdom. Sections 108 and 68 also amend the Public Bodies Corrupt Practices Act 1889 such that it explicitly applies also to members, officers or servants of public bodies existing in a country or territory outside the United Kingdom. Furthermore these provisions amend the Prevention of Corruption Act 1906 such that it is explicitly immaterial if the principal’s affairs or business, or the agent’s functions, have no connection with the United Kingdom or are carried out in a country or territory outside the United Kingdom.
98. The elements/concepts described under bribery of domestic officials (above) also apply to bribery of foreign arbitrators.
99. The sanctions described under bribery of domestic officials (above) also apply to bribery of foreign arbitrators.
100. The authorities did not provide the GET with any case law in respect of this offence.

#### **Bribery of domestic jurors (Article 1, section 3 and Article 5 of ETS 191)**

101. Although there is no explicit reference in law to the term domestic jurors, bribery of domestic jurors can be charged under the common law offence of bribery or under the common law

offences of perverting or defeating the course of justice. The case of R v. Young (1801) 2 East 14, 1 is cited as an authority for the common law extending to jurors.

102. The elements/concepts described under bribery of domestic officials (above) also apply to bribery of domestic jurors.
103. The sanctions described under bribery of domestic officials (above) also apply to bribery of domestic jurors.

#### **Bribery of foreign jurors (Article 6 of ETS 191)**

104. Although there is no explicit reference in law to the term foreign jurors, active and passive bribery of a foreign juror is provided for by the common law offence of bribery as amended by section 108 of the Anti-Terrorism Crime and Security Act 2001 and section 68 of the Criminal Justice (Scotland) Act 2003.
105. The elements/concepts described under bribery of domestic officials (above) also apply to bribery of foreign jurors.
106. The sanctions described under bribery of domestic officials (above) also apply to bribery of foreign jurors.
107. The authorities did not provide the GET with any case law in respect of this offence.

#### **Participatory acts (Article 15 of ETS 173)**

108. The general common law in England, Wales and Northern Ireland provides that those who contribute to bringing a crime about should be liable as secondary parties to the crime. Drawing on case law Parliament adopted the phrase “aid, abet, counsel or procure” in a deeming provision as to how secondary parties should be dealt with at trial (section 8 of the Accessories and Abettors Act 1861 – “Whosoever shall aid, abet, counsel or procure the commission of any indictable offence, whether the same be an offence at common law or by virtue of any Act passed or to be passed, shall be tried, indicted and punished as a principal offender”.)
109. In Scotland, section 293 of the Criminal Procedure (Scotland) Act 1995 provides that “A person may be convicted of, and punished for, a contravention of any enactment, notwithstanding that he was guilty of such contravention as art and part only”, and that any person who “aids, abets, counsels, procures or incites any other person to commit an offence” is guilty of an offence, and at common law all persons who are concerned in the commission of a crime are equally guilty, whatever his own part in the criminal conduct
110. All the offences under the Prevention of Corruption Acts 1889 to 1916 and the common law offence of bribery are indictable offences (i.e. can be tried by a judge and jury, rather than only in the lower Magistrates Courts in England and Wales; in Scotland they can be tried in the High Court or by a sheriff and jury or by a sheriff on summary procedure).

#### **Jurisdiction (Article 17 of ETS 173)**

111. By virtue of general principles of criminal law the United Kingdom has established jurisdiction over bribery offences when committed – in whole or in part – within its territory in accordance with the Criminal Law Convention. Section 109 of the Anti-Terrorism, Crime and Security Act

2001 and section 69 of the Criminal Justice (Scotland) Act 2003 establish extra-territorial jurisdiction over bribery offences committed by United Kingdom nationals and companies registered in the United Kingdom (the text of the legislation is attached at Annex A).

112. As set out in a letter of 9 December 2003 (Annex B) addressed to the Secretary General of the Council of Europe, the United Kingdom has made a declaration under Article 17.2 that it reserves the right to apply the jurisdictional rule laid down in paragraph 1.b only where the offender is a national of the United Kingdom.
113. Moreover, as set out in the above mentioned letter of 9 December 2003, the United Kingdom has made a declaration under Article 17.2 that it reserves the right not to apply the jurisdictional rule laid down in paragraph 1.c at all.

### **Statute of limitations**

114. There is no statutory limit on the passage of time between the commission of any of the statutory offences or the common law offence and the institution of criminal proceedings.

### **Defences**

115. There are no special defences available for the offences covered by this theme.

### **Data**

116. Between 2001 and 2005 there were 45 convictions in England, Wales and Northern Ireland for offences under section 1 of the Public Bodies Corrupt Practices Act 1889 and section 1 of the Prevention of Corruption Act 1906. Between 2001-02 and 2005-06 there were 3 convictions for these offences in Scotland. Data for the number of convictions under the common law offence of bribery is not stored in such a way as to be retrievable.

### **Legislative amendments**

117. The current law on corruption has long been subject to debate and criticism in the United Kingdom. The debate was re-opened in 1995 and the Law Commission was given the task of examining this area of law. The criticism of the current corruption law was – and still is – that it is drawn from a number of different sources, that the statutes are old and not always consistent in the use of terms and that there is an overlap between the various offences. The Law Commission published a consultation paper in 1997 and a Report in 1998 in which it described the current law as “obscure, complex, inconsistent and insufficiently comprehensive”. These documents formed the basis of the subsequent Government White paper on Corruption published in 2000 and the draft Corruption Bill of 2003. The latter was an attempt to bring together all offences of corruption in a single statute and address existing lacunae. However, the draft Corruption Bill 2003 was subject to severe criticism by a majority of stakeholders in the pre-legislative scrutiny undertaken by a Joint Parliamentary Committee. That Committee recommended an entirely different approach to the formulation of the law.
118. It should also be mentioned that the Working Group on Bribery of the OECD in its monitoring process in 1999 expressed serious concerns about the applicability of the United Kingdom law to bribery of foreign public officials and urged the authorities to enact appropriate legislation (Phase 1 report). The response to the concerns raised by the OECD in respect of foreign bribery came with the adoption of the Anti-Terrorism Crime and Security Act 2001 (England, Wales and

Northern Ireland) and the Criminal Justice (Scotland) Act 2003, which establish that the existing corruption law covers bribery of foreign public officials and foreign office-holders and agents. These Acts also established extra-territorial jurisdiction over UK nationals and incorporated bodies committing bribery offences outside of the United Kingdom. This was endorsed by the OECD, although it retained its general position in respect of the desirability for new general legislation on corruption.

119. 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 asked for views on the issues that were raised in the pre-legislative scrutiny of the draft 2003 Bill. The Government published a response to the Consultation exercise on 5 March 2007 in which it was concluded that, while there was broad support for reform of the Prevention of Corruption Acts, the 2003 Bill was not suitable for being sent to Parliament. The Government furthermore concluded that the consultation process did not produce any consensus as to what the scheme of new offences should look like as there was fundamental disagreement among the various stakeholders taking part in the consultation process. Therefore, the Government – still committed to a fundamental reform of the bribery legislation - requested the Law Commission to undertake a fresh, thorough review of the bribery laws in England and Wales with a view to fundamental reform and in doing so to look at the full range of structural options for the scheme of bribery offences. The Law Commission issued a Consultation Paper on 29 November 2007 and, informed by the outcome of their consultation, is expected to issue a report and a draft Bill in the autumn of 2008.

### III. ANALYSIS

120. The basis for criminalising corruption (i.e. various forms of bribery) in the United Kingdom (England, Wales, Northern Ireland and Scotland) is a blend of the common law (unwritten law, based on custom and precedent) offence of active and passive bribery and statutory (parliamentary) legislation. The hard core of the latter consists of three rather old statutes; the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916 (“the Prevention of Corruption Acts 1889 to 1916) as complemented by a number of other statutes, *inter alia*, the more recent Anti-Terrorism Crime and Security Act 2001 (England, Wales and Northern Ireland) and the Criminal Justice (Scotland) Act 2003, which make the existing corruption law applicable also to foreign bribery.
121. The common law being broad and general is all encompassing whereas the statutes are intended to fill in gaps not covered by the common law. In England and Wales the issue of whether to prosecute and which offence with which to charge falls under the discretion of the prosecutor, who, however, is guided by the evidential and the public interest tests provided for in the Code for Crown Prosecutors. Bribery under the common law and the statutory provisions are “triable either way”, i.e. on indictment (before a judge and jury) or summarily (where there is no jury). It was the understanding of the GET that the charging decision (common law or statutes) would be made on the basis of evidence available, that priority would be given to statutes and that the common law should be used when there are reasons to believe that prosecution under common law would be a safer road to success.
122. Moving to the substantive elements of the current legislation, the GET noted that the terminology and language differ not only between the common law offence and the provisions provided in the statutes, but there is also inconsistent language between the statutes, the oldest of which was adopted more than a century ago. For example, the advantage which constitutes a bribe is defined in different terms. In the common law it is defined as “any undue reward” (Russell on Crime). Under the Public Bodies Corrupt Practices Act 1889 the bribe can be “any gift, loan, fee,

reward, or advantage whatever” related to a particular “matter or transaction”. In the Prevention of Corruption Act 1906, it is described as “any gift or consideration” which includes “valuable consideration of any kind”. The GET is of the opinion that these disparities could present difficulties for those not well versed in the bribery law of the United Kingdom. Practitioners met by the GET did not, however, see any obstacles to prosecution in the current law or its interpretation.

123. Although the wording used in the general definition of bribery under the Russell on Crime ... *“in order to ... incline (the public official) to act contrary to the known rules of honesty and integrity”* focuses on the purpose of the bribe it could be misleadingly interpreted as if a breach of duty is always required for such an offence. However, the vast majority of the officials met by the GET stated that the common law offence of bribery is based on an “influence model” rather than on a breach of duty concept and that a breach of duty is not a requirement as such for this offence. The GET accepts this explanation, and noted that some practitioners, however, suggested that a bribery offence is easier to prove when there is a breach of duty, which is a different matter. The GET recalls that, according to the Criminal Law Convention on Corruption, it is immaterial whether there has been a breach of duty or not in respect of public sector corruption.
124. The common law definition of bribery does not refer to situations where the beneficiary of the advantage is a third party. No reported cases relating to the common law offence deal with this issue either but the GET gathered from its talks with professionals that the scope of the offence is wide enough to embrace circumstances in which an undue advantage is conferred upon someone other than the person who is to act corruptly.
125. Concerning the categories of persons covered by bribery offences, the GET notes that, overall, the various categories enumerated in the Criminal Law Convention appear to be covered by the broad definitions available under the statute and common law. Bribery of members of Parliament, for example, is only covered by the common law offence and not by the statutory law as Parliament is not considered a public body (1889 Act) and MPs are not covered by the notion of “agent” as defined in the 1906 Act. However, under the Scotland Act 1998 the Scottish Parliament is considered a public body for the purposes of the Prevention of Corruption Acts 1889 to 1916.
126. In respect of bribery in the private sector, where the common law offence is not applicable, the authorities recognised that the active bribery definition of the 1906 Act, which is applied to both bribery in the public and private sectors, does not expressly cover a case where the undue advantage “is not given directly to the agent but is given to a third party”. The United Kingdom has made a reservation in this respect. However, it appears that the passive bribery definition in the 1906 Act refers expressly to a bribe received by a third person thus making the briber also liable for giving a bribe to a third party. The GET recalls that the United Kingdom will ensure that this aspect of the law is subject to revision within the framework of the ongoing reform of the corruption law.
127. The current legislation on bribery in the United Kingdom has been subject to criticism and reform efforts for more than a decade. Ever since the debate was re-opened in 1995 by a recommendation from the “Nolan Committee”, there have been several attempts to reform the corruption laws which have been considered outmoded, uncertain and inconsistent. Criticism has not only been expressed from within the United Kingdom. The OECD Working Group on Bribery in International Business Transactions has stated that “it was widely recognised that the current substantive law governing bribery in the United Kingdom is characterised by complexity and

uncertainty”<sup>2</sup>. The OECD position has been further supported by the United Kingdom Chapter of Transparency International which has suggested that the current law is not only inconsistent and not broad enough, but that it is the reason for the relatively low level of corruption reported, prosecuted and adjudicated in the United Kingdom. Others would take issue with that assessment, explaining the low level of convictions for bribery by the fact that many of the offences involving corrupt behaviour are prosecuted under labels other than bribery, for example misfeasance in public office, and are therefore not recorded as corruption offences.

128. The GET noted that many of the professionals met did not find the current legislation particularly difficult to apply, despite the fact that the bribery law has to be drawn from a number of various statutes with inconsistent terminology. Some interlocutors even questioned the advisability of legislating at all, pointing at the advantage of the common law as a dynamic form of law, able to develop as society evolves. The issue raised by them was related to the selection of the offence with which to charge, however, this matter was rather linked to the state of the evidence and how to dovetail it with the appropriate offence.
129. The GET reviewed the current corruption law in the light of the Criminal Law Convention on Corruption and - with the exception of the areas where reservations have been made by the United Kingdom - found no substantiated evidence that the current legislation - comprising the common law offence as well as complementary statutes - would not be in conformity with the provisions of the Convention. In respect of the reservation made concerning Article 7 of the Convention, the GET was pleased to learn that the authorities plan to put beyond doubt that the criminal offence which captures *active bribery in the private sector* covers bribes paid to third parties.
130. Leaving aside the areas where reservations have been made, the law seems broad enough to cover the different forms of bribery offences contained in the Convention and the sanctions provided for in the Prevention of Corruption Acts 1889 to 1916 (up to 7 years' imprisonment) and in respect of the common law offence (unlimited imprisonment) appear to be in line with the requirements established by Article 19(1) of the Convention. That said, the GET shares the view that there is a need to modernise the law in this area. The number of different sources of the law, the inconsistency in respect of the language and the terminology would make a law reform advantageous not only for practitioners. However, the reform process has proved to be very difficult and cumbersome; the slow pace of the ongoing reform as well as the failed attempt to bring together all corruption offences in a single statute through the draft Bill on Corruption 2003, is evidence of that. The current task of the Law Commission, to consult on proposals towards the end of 2007 and to deliver their report and draft Bill in autumn 2008, is an important step in this process and a quick reaction by the Government appears to be of the utmost importance. The GET **recommends to proceed with the efforts to revise existing criminal law in order to provide for comprehensive, consistent and clearer definitions of bribery offences.**
131. The United Kingdom has made a reservation in respect of trading in influence, which it does not intend to establish as an offence in accordance with the Criminal Law Convention as it was believed that such a criminalisation could affect acknowledged lobbying activities. The GET recalls that it is stressed in the Explanatory report to the Convention (paragraph 65) that “*the acknowledged forms of lobbying do not fall under the notion of “improper” influence which must contain a corrupt intent by the influence peddler*”. The GET also recalls that the establishment of trading in influence as a criminal offence permits the authorities to reach the close circle of officials, or the political party to which they belong, and to tackle so-called “background

---

<sup>2</sup> OECD, Phase 2 Report on the United Kingdom (2005).

corruption”, which undermines the trust of citizens in the fairness of public administration (paragraph 64 of the Explanatory Report). A possible incrimination of the conduct of trading in influence appears to be a policy issue. In view of this, the GET **recommends to consider criminalising trading in influence in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173) and thus withdrawing or not renewing the reservation relating to this Article of the Convention.**

132. As regards the reservation made in respect of jurisdiction, the United Kingdom authorities have explained that as a general rule national courts deal with offences committed in whole or in part in the United Kingdom because, *inter alia*, criminal offences are seen to be best prosecuted where they occur and the legal presumption that a statute creates offences of territorial extent unless it contains express language to the contrary reflects this. This general principle may, however, with respect to certain offences be subject to qualification in order to effectively address particular problems; for example, those in respect of which the international community has recognised the need for a concerted multi-national response. In the case of bribery the United Kingdom considers that the appropriate response, as an extension of the principle of national sovereignty, is to assume jurisdiction over offences committed abroad by United Kingdom nationals and companies registered in the United Kingdom. The GET is of the opinion that the authorities have provided acceptable justification for the reservation in respect of Article 17 of the Convention.

#### **IV. CONCLUSIONS**

133. Overall, the criminal law – common law and statutory legislation – of the United Kingdom in respect of bribery complies with the relevant provisions of the Criminal Law Convention on Corruption. Nevertheless, it appears that the current legislation, which is drawn from a number of sources, would benefit from reform in order to provide a fully coherent and consistent terminology and legal framework for corruption offences. This would no doubt be beneficial for legal practitioners as well as for the wider public. The on-going reform process is therefore supported and the authorities are asked, in particular, to review - in the context of this process - their position concerning two of its reservations on Articles 7 and 12 made in respect of the Criminal Law Convention on Corruption.
134. In the view of the above, GRECO addresses the following recommendations to the United Kingdom:
- i. **to proceed with the efforts to revise existing criminal law in order to provide for comprehensive, consistent and clearer definitions of bribery offences** (paragraph 130);
  - ii. **to consider criminalising trading in influence in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173) and thus withdrawing or not renewing the reservation relating to this Article of the Convention** (paragraph 131).
135. 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 August 2009.
136. Finally, GRECO invites the authorities of the United Kingdom to authorise, as soon as possible, the publication of the report.

## ANNEX A

### RELEVANT LEGISLATION ON BRIBERY / CORRUPTION

#### THE COMMON LAW IN ENGLAND, WALES AND NORTHERN IRELAND

Russell on Crime provides a general definition of the common law:

“Bribery is the receiving or offering [of] any undue reward by or to any person whatsoever, in a public office, in order to influence his behaviour in office, and incline him to act contrary to the known rules of honesty and integrity.”

Note: As regards its international extension, see Section 108 of the 2001 Act below.

#### THE COMMON LAW IN SCOTLAND

Stairs Encyclopaedia provides a description of the position in Scotland:

"It is a crime at common law to bribe a judicial officer, to attempt to do so, and for the officer himself to take a bribe<sup>3</sup>.

Hume describes the crime, when committed by a judge, as: '... the selling of his judgment for good deed or reward: Meaning by this, not only his taking a bribe to decide against his conscience, but in general his taking to show favour in his office...'<sup>4</sup>.

The term 'judicial officer' extends beyond judges, sheriffs, magistrates and justices on the one hand to other officers of court such as clerks, procurator fiscals and macers, all of whom are punishable if they take a reward for showing favour in their office. Bribery of non-judicial officers, such as public officials, councillors and the like, may be criminal at common law<sup>5</sup> but it is always prosecuted nowadays under statute, as are all other aspects of corrupt behaviour”.

#### PUBLIC BODIES CORRUPT PRACTICES ACT 1889<sup>6</sup>

##### 1 Corruption in office a misdemeanour

- (1) Every person who shall by himself or by or in conjunction with any other person, corruptly solicit or receive, or agree to receive, for himself, or for any other person, any gift, loan, fee, reward, or advantage whatever as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the said public body is concerned, shall be guilty of a misdemeanour.
- (2) Every person who shall by himself or by or in conjunction with any other person corruptly give, promise, or offer any gift, loan, fee, reward, or advantage whatsoever to any person, whether for the benefit of that person or of another person, as an inducement to or reward for or otherwise on account of any member, officer, or servant of any public body as in this Act

---

<sup>3</sup> Hume Commentaries I,407, 408.

<sup>4</sup> Hume I,407.

<sup>5</sup> Hume I,408. See also Logue v HM Advocate 1932 JC 1, 1931 SLT 589. Hume refers to bribery of such officials as a species of falsehood and breach of trust.

<sup>6</sup> This Act applies across the whole of the United Kingdom including Scotland.

defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body as aforesaid is concerned, shall be guilty of a misdemeanor.

## 2 Penalty for offences

(1) Any person on conviction for offending as aforesaid shall, at the discretion of the court before which he is convicted,-

(a) be liable

(i) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; and

(ii) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both; and

(b) in addition be liable to be ordered to pay to such body, and in such manner as the court directs, the amount or value of any gift, loan, fee, or reward received by him or any part of thereof; and

(c) be liable to be adjudged incapable of being elected or appointed to any public office for five years from the date of his conviction, and to forfeit any such office held by him at the time of his conviction; and

(d) in the event of a second conviction for a like offence he shall, in addition to the foregoing penalties, be liable to be adjudged to be for ever incapable of holding any public office, and to be incapable for five years of being registered as an elector, or voting at an election either of members to serve in Parliament or of members of any public body, and the enactments for preventing the voting and registration of persons declared by reason of corrupt practices to be incapable of voting shall apply to a person adjudged in pursuance of this section to be incapable of voting; and

(e) if such person is an officer or servant in the employ of any public body upon such conviction he shall, at the discretion of the court, be liable to forfeit his right and claim to any compensation or pension to which he would otherwise have been entitled.

## 3 Savings

(1) [repealed]

(2) A person shall not be exempt from punishment under this Act by reason of the invalidity of the appointment or election of a person to a public office.

## 4 Restriction on prosecution

(1) A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney-General.

- (2) In this section the expression “Attorney General” means the Attorney General for England, and as respects Scotland means the Lord Advocate.

## 7 Interpretation

In this Act –

The expression “public body” means any council of a county or county of a city or town, any council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government, or the public health, or to poor law or otherwise to administer money raised by rates in pursuance of any public general Act, and includes any body which exists in a country or territory outside the United Kingdom and is equivalent to any body described above.

The expression “public office” means any office or employment of a person as member, officer, or servant of such public body:

The expression “person” includes a body of persons, corporate or unincorporate:

The expression “advantage” includes any office or dignity, and any forbearance to demand any money or money’s worth or valuable thing, and includes any aid, vote, consent, or influence, or pretended aid, vote, consent, or influence, and also includes any promise or procurement of or agreement or endeavour to procure, or the holding out of any expectation of any gift, loan, fee, reward, or advantage, as before defined.

## PREVENTION OF CORRUPTION ACT 1906<sup>7</sup>

### 1 Punishment of corrupt transactions with agents

- (1) If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal’s affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal’s affairs or business; or

If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal’s affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal’s affairs or business; or

If any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal;

he shall be guilty of a misdemeanour, and shall be liable –

---

<sup>7</sup> This Act applies across the whole of the United Kingdom including Scotland.

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both.
- (2) For the purposes of this Act the expression “consideration” includes valuable consideration of any kind; the expression “agent” includes any person employed by or acting for another; and the expression “principal” includes an employer.
- (3) A person serving under the Crown or under any corporation or any ... borough, county, or district council, or any board of guardians, is an agent within the meaning of this Act.
- (4) For the purposes of this Act it is immaterial if -
- (a) the principal’s affairs or business have no connection with the United Kingdom and are conducted in a country or territory outside the United Kingdom;
  - (b) the agent’s functions have no connection with the United Kingdom and are carried out in a country or territory outside the United Kingdom.

2 Prosecution of offences

- (1) A prosecution for an offence under this Act shall not be instituted without the consent, in England of the Attorney-General.
- (2) [repealed]
- (3) Every information for an offence under this Act shall be on oath.
- (4) and (5) [repealed]
- (6) Any person aggrieved by a summary conviction under this Act may appeal to the Crown Court.

PREVENTION OF CORRUPTION ACT 1916<sup>8</sup>

2 Presumption of corruption in certain cases

Where in any proceedings against a person for an offence under the Prevention of Corruption Act 1906, or the Public Bodies Corrupt Practices Act 1889, it is proved that any money, gift, or other consideration has been paid or given to or received by a person in the employment of [Her] Majesty or any Government Department or a public body by or from a person, or agent of a person, holding or seeking to obtain a contract from [Her] Majesty or any Government Department or public body, the money, gift, or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in such Act unless the contrary is proved.

---

<sup>8</sup> This Act applies across the whole of the United Kingdom including Scotland.

#### 4 Short title and interpretation

- (1) This Act may be cited as the Prevention of Corruption Act 1916, and the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906, and this Act may be cited together as the Prevention of Corruption Acts 1889 to 1916.
- (2) In this Act and in the Public Bodies Corrupt Practices Act 1889, the expression “public body” includes, in addition to the bodies mentioned in the last-mentioned Act, local and public authorities of all descriptions (including authorities existing in a country or territory outside the United Kingdom).
- (3) A person serving under any such public body is an agent within the meaning of the Prevention of Corruption Act 1906, and the expressions “agent” and “consideration” in this Act have the same meaning as in the Prevention of Corruption Act 1906, as amended by this Act.

#### **LOCAL GOVERNMENT (SCOTLAND) ACT 1973**

68-(1) If it comes to the knowledge of an officer employed whether under this Act or any other enactment, by a local authority that a contract in which he has any pecuniary interest, whether direct or indirect (not being a contract to which he is himself a party), has been, or is proposed to be, entered into by the authority or any committee thereof, he shall, as soon as practicable, give notice in writing to the authority of the fact that he is interested therein.

For the purposes of this section, an officer shall be treated as having indirectly a pecuniary interest in a contract or proposed contract if he would have been so treated by virtue of section 39 of this Act had he been a member of the authority.

(2) An officer of a local authority shall not, under colour of his office or employment, accept any fee or reward whatsoever other than his proper remuneration.

(3) Any person who contravenes the provisions of subsection (1) or (2) above shall be liable on summary conviction to a fine not exceeding [F<sup>1</sup>level 4 on the standard scale].

(3) References in this section to a local authority shall include references to a joint committee appointed under section 57 of this Act or any other enactment.

#### **REPRESENTATION OF THE PEOPLE ACT 1983**

113- (1) A person shall be guilty of a corrupt practice if he is guilty of bribery.

(2) A person shall be guilty of bribery if he, directly or indirectly, by himself or by any other person on his behalf— (a) gives any money or procures any office to or for any voter or to or for any other person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting, or (b) corruptly does any such act as mentioned above on account of any voter having voted or refrained from voting, or (c) makes any such gift or procurement as mentioned above to or for any person in order to induce that person to procure, or endeavour to procure, the return of any person at an election or the vote of any voter, or if upon or in consequence of any such gift or procurement as mentioned above he procures or engages, promises or endeavours to procure the return of any person at an election or the vote of any voter. For the purposes of this subsection—(i) references to giving money include references to giving, lending, agreeing to give or lend, offering, promising, or promising to procure or endeavour to procure any money or valuable consideration; and (ii) references to procuring any office include references to giving, procuring, agreeing to give or procure, offering, promising, or promising to procure or to endeavour to procure any office, place or employment [F<sup>1</sup>and (iii) references to procuring the return of any person at an election include, in the case of an election of the London members of the London Assembly at an ordinary election, references to procuring the

return of candidates on a list of candidates submitted by a registered political party for the purposes of that election]

(3) A person shall be guilty of bribery if he advances or pays or causes to be paid any money to or for the use of any other person with the intent that that money or any part of it shall be expended in bribery at any election or knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election.

(4) The foregoing provisions of this section shall not extend or be construed to extend to any money paid or agreed to be paid or on account of any legal expenses incurred in good faith at or concerning an election.

(5) A voter shall be guilty of bribery if before or during an election he directly or indirectly by himself or by any other person on his behalf receives, agrees, or contracts for any money, gift, loan or valuable consideration, office, place or employment for himself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting.

(6) A person shall be guilty of bribery if after an election he directly or indirectly by himself or by any other person on his behalf receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting.

(7) In this section the expression "voter" includes any person who has or claims to have a right to vote.

114-(1) A person shall be guilty of a corrupt practice if he is guilty of treating.

(2) A person shall be guilty of treating if he corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing, any meat, drink, entertainment or provision to or for any person— (a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting; or (b) on account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting.

(3) Every elector or his proxy who corruptly accepts or takes any such meat, drink, entertainment or provision shall also be guilty of treating.

115-(1) A person shall be guilty of a corrupt practice if he is guilty of undue influence. (2) A person shall be guilty of undue influence— (a) if he, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting; or (b) if, by abduction, duress or any fraudulent device or contrivance, he impedes or prevents the free exercise of the franchise of an elector or proxy for an elector, or so compels, induces or prevails upon an elector or proxy for an elector either to vote or to refrain from voting.

## **ENTERPRISE AND NEW TOWNS (SCOTLAND) ACT 1990**

CONSTITUTION AND PROCEEDINGS ETC. OF SCOTTISH ENTERPRISE AND HIGHLANDS AND ISLANDS ENTERPRISE

2. Each of the two bodies shall be a public body for the purposes of the Prevention of Corruption Acts 1889 to 1916.

## **CRIMINAL PROCEDURE (SCOTLAND) ACT 1995**

293-(1) A person may be convicted of, and punished for, a contravention of any enactment, notwithstanding that he was guilty of such contravention as art and part only.

(2) Without prejudice to subsection (1) above or to any express provision in any enactment having the like effect to this subsection, any person who aids, abets, counsels, procures or incites any other

person to commit an offence against the provisions of any enactment shall be guilty of an offence and shall be liable on conviction, unless the enactment otherwise requires, to the same punishment as might be imposed on conviction of the first-mentioned offence.

294-(1) Attempt to commit any indictable crime is itself an indictable crime.

(2) Attempt to commit any offence punishable on complaint shall itself be an offence punishable on complaint.

### **SCOTLAND ACT 1998**

**43-** The Parliament shall be a public body for the purposes of the Prevention of Corruption Acts 1889 to 1916.

### **ANTI-TERRORISM, CRIME AND SECURITY ACT 2001<sup>9</sup>**

108 Bribery and corruption: foreign officers etc

(1) For the purposes of any common law offence of bribery it is immaterial if the functions of the person who receives or is offered a reward have no connection with the United Kingdom and are carried out in a country or territory outside the United Kingdom.

Note: sections 108 (2) to (4) of the 2001 Act amend the Prevention of Corruption Acts 1889-1916 as shown above in bold.

109 Bribery and corruption committed outside the UK

(1) This section applies if –

- (a) a national of the United Kingdom or a body incorporated under the law of any part of the United Kingdom does anything in a country or territory outside the United Kingdom, and
- (b) the act would, if done in the United Kingdom, constitute a corruption offence (as defined below).

(2) In such a case -

- (a) the act constitutes the offence concerned, and
- (b) proceedings for the offence may be taken in the United Kingdom.

(3) These are corruption offences -

- (a) any common law offence of bribery;
- (b) the offences under section 1 of the Public Bodies Corrupt Practices Act 1889 (c. 69) (corruption in office);
- (c) the first two offences under section 1 of the Prevention of Corruption Act 1906 (c. 34) (bribes obtained by or given to agents).

(4) A national of the United Kingdom is an individual who is -

- (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen,
- (b) a person who under the British Nationality Act 1981 (c. 61) is a British subject, or

---

<sup>9</sup> Section 108 and 109 of the Act apply to England, Wales and Northern Ireland (but not Scotland).

(c) a British protected person within the meaning of that Act

110 Presumption of corruption not to apply

Section 2 of the Prevention of Corruption Act 1916 (c. 64) (presumption of corruption in certain cases) is not to apply in relation to anything which would not be an offence apart from section 108 or section 109.

CRIMINAL JUSTICE (SCOTLAND) ACT 2003<sup>10</sup>

68 Bribery and corruption: foreign officers etc

(1) In determining whether actings which consist of offering or accepting a bribe constitute a crime at common law, it is immaterial that the functions of the person who receives or is offered the bribe-

- (a) have no connection with;
- (b) are carried out in a country or territory outwith,

the United Kingdom.

(2) The enactments mentioned in subsections (2) to (4) of section 108 of the Anti-terrorism, Crime and Security Act 2001 (c.24) (bribery and corruption: foreign officers etc.) are respectively amended as provided for in those subsections.

69 Bribery and corruption committed outwith UK

(1) This section applies in a case where a national of the United Kingdom, a Scottish partnership or a body incorporated under the law of any part of the United Kingdom, does anything in a country or territory outwith the United Kingdom which, if done in Scotland, would constitute-

- (a) as a crime at common law, bribery or accepting a bribe; or
- (b) an offence mentioned in subsection (3).

(2) In such a case-

- (a) the thing done constitutes the crime or offence in question;
- (b) where the thing done is done by a Scottish partnership and is proved to have been done with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the crime or offence so constituted and is liable to be proceeded against and punished accordingly; and
- (c) subsection (3) of section 11 of the 1995 Act (jurisdiction in relation to certain offences committed outwith Scotland) is to apply in respect of that national, partnership, partner or body as if the crime or offence were an offence to which that section applies.

---

<sup>10</sup> This Act applies solely to Scotland. Sections 68 and 69 replicate in Scotland the effect of sections 108 and 109 of the 2001 Act in England, Wales and Northern Ireland.

- (3) The offences are-
- (a) those under section 1 of the Public Bodies Corrupt Practices Act 1889 (c.69) (corruption in office); and
  - (b) the first two offences under section 1 of the Prevention of Corruption Act 1906 (c.34) (bribes obtained by or given to agents).
- (4) In subsection (1), "national of the United Kingdom" means an individual who is-
- (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen;
  - (b) a person who under the British Nationality Act 1981 (c.61) is a British subject; or
  - (c) a British protected person within the meaning of that Act.

## ANNEX B

### Reservation by the United Kingdom in respect of ETS 173 (Extract)

**Reservation contained in a Note verbale handed over by the Permanent Representative of the United Kingdom to the Secretary General at the time of deposit of the instrument of ratification, on 9 December 2003 - Or. Engl.**

Section 109 of the Anti-terrorism, Crime and Security Act 2001 (and section 69 of the Criminal Justice (Scotland) Act 2003) extend the normal jurisdiction of the United Kingdom courts over any offence of bribery at common law or under the Public Bodies Corrupt Practices Act 1889 or the Prevention of Corruption Act 1906 ("the 1906 Act") to cover offences by United Kingdom nationals which take place outside the United Kingdom. The United Kingdom therefore applies the jurisdictional rule laid down in Article 17, paragraph 1 (b), except that United Kingdom jurisdiction is limited to United Kingdom nationals, and accordingly does not cover public officials or members of domestic public assemblies except where they are United Kingdom nationals. The United Kingdom therefore makes a declaration under Article 17, paragraph 2, that it reserves the right to apply the jurisdictional rule laid down in paragraph 1.b only where the offender is a United Kingdom national. In addition, the United Kingdom makes a declaration under Article 17, paragraph 2 that it reserves the right not to apply the jurisdictional rule laid down in paragraph 1.c at all. Since United Kingdom law places no bar on the extradition of United Kingdom nationals, the United Kingdom does not need to change the law to meet the requirements of Article 17, paragraph 3.

The conduct referred to in Article 7 is largely covered by section 1 of the 1906 Act. The 1906 Act does not however cover the case where the undue advantage is not given directly to the agent but is given to a third party. The United Kingdom accepts this aspect of the law is in need of amendment and the draft Corruption Bill published in 2003 would make this change in respect of England, Wales and Northern Ireland. However for the present a reservation is necessary. Accordingly, in accordance with Article 37, paragraph 1, the United Kingdom reserves the right not to establish as a criminal offence all of the conduct referred to in Article 7.

The conduct referred to in Article 12 is covered by United Kingdom law in so far as an agency relationship exists between the person who trades his influence and the person he influences. However not all of the conduct referred to in Article 12 is criminal under United Kingdom law. Accordingly, in accordance with Article 37, paragraph 1, the United Kingdom reserves the right not to establish as a criminal offence all of the conduct referred to in Article 12.

**Period covered: 1/4/2004 -**

The preceding statement concerns Article(s) : 12, 17, 37, 7