RESEARCH PAPER 01/92
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The *Anti-terrorism, Crime and Security Bill*, Part XII: Anti-Corruption Legislation

Bill no 49 of 2001-2

Part XII of this Bill amends common and statute law relating to bribery and corruption to ensure that the law applies to acts committed by foreign public officials. It also gives courts in England, Wales and Northern Ireland extra-territorial jurisdiction over crimes of bribery committed by UK nationals and UK companies abroad. The provisions will meet concerns expressed by the OECD Working Group on Bribery about the implementation by the UK of the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.*

Comprehensive legislation replacing the existing statute law has been recommended by the Law Commission, with Government support, and is expected to be introduced when parliamentary time allows.

Other Research Papers on major aspects of the Bill will be produced for second reading, expected on Monday 19 November.

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Summary of main points

Part XII of the *Anti-Terrorism, Crime and Security Bill* is designed to ensure that United Kingdom (UK) obligations are met under the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.* There has been some doubt as to whether existing common and statute law on bribery and corruption was sufficient to meet the concerns expressed by the OECD Working Group on Bribery in its Implementation Review of the UK in 2000. Clauses 106 and 107 of the Bill cover acts committed by foreign public officials and give courts in England, Wales and Northern Ireland extra-territorial jurisdiction over acts of bribery committed abroad by UK nationals and UK companies.

A more comprehensive review of the law on bribery and corruption was undertaken by the Law Commission in 1998. A white paper was issued in June 2000, which accepted the main recommendations of the Commission. Legislation is now expected to be introduced when parliamentary time permits. This legislation is expected to cover:

- Replacement of the *Prevention of Corruption Acts 1889-1916*
- Subjecting MPs to the criminal law on bribery and corruption

Consultation continues on a new offence of misuse of public office, as recommended by the Committee on Standards in Public Life.

Other Research Papers will be available before second reading which will cover the major aspects of this Bill.

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I Introduction and Background

A. Existing law

The law on corruption has long been considered overdue for revision.the common law of bribery has built up over time, and the statute law has been subject to some fundamental criticism.[1] Much of the current legislation was passed in response to particular instances of corruption, rather than as a considered development of the law.

Part XII of the *Anti-Terrorism, Crime and Security Bill* is designed to make some immediate amendments to the law to include within its scope foreign officials and offences of bribery and corruption committed by UK nationals and companies outside the United Kingdom.[2] The current statute law is summarised in an extract from a white paper issued in June 2000:[3]

> Principal Statutes on corruption
> 1.6 The principal statutes dealing with corruption are:
> (a) the Public Bodies Corrupt Practices Act 1889
> (b) the Prevention of Corruption Act 1906; and
> (c) the Prevention of Corruption Act 1916
> 1.7 This legislation makes bribery a criminal offence whatever the nationality of those involved, if the offer, acceptance or agreement to accept a bribe takes place within the United Kingdom's jurisdiction. There is also a common law offence of bribery of a public official. This is generally understood to mean "*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" (Russell on Crime).*
> 1.8 Although the combination of the common law and statute law of corruption have provided the United Kingdom with generally effective measures to combat crimes of corruption, there is much to support the Law Commission's recommendations for the common law of bribery and the present statutory offences to be restated in a modern statute, with a clearer indication of what is meant by "*acting in a corrupt manner*."
> 1.9 The main concerns with the existing body of legislation have centred on:
> the scope and overlap of the three principal corruption statutes;
> the lack of a statutory definition of the term "corruptly" - each of the Corruption Acts uses the term but its meaning is open to different interpretations;
> the different approaches taken to a person serving under a public body and a person serving under a non-public body; and
> the need for effective criminal jurisdiction over offences of corruption.

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1 Full background on the development of the law on bribery is given in the Law Commission report *Corruption: Legislating the Criminal Code* no 248 1998. The full text is available from the Commission website at http://www.lawcom.gov.uk/library/lc248/lc248.pdf

2 Bill 49 of 2001-2

3 *Raising Standards and Upholding Integrity: The Prevention of Corruption.* Home Office Cm 4759 available at http://www.official-documents.co.uk/document/cm47/4759/4759-07.htm

The *Prevention of Corruption Acts* apply in Scotland as in the rest of the United Kingdom, with only very minor differences. However, there are major differences between the relevant rules of evidence and procedure in Scotland, and the common law is also rather different.

There are a number of areas of difficulty with the current legislation, set out by the Law Commission:

- The meaning of acting 'corruptly' is unclear. The case law on the interpretation of the term has been described as in a state of 'impressive disarray'[4]
- The current law is drawn from many offences, including overlapping common law offences and at least 11 statutes
- It is dependent on a distinction between public and non-public bodies and there is considerable uncertainty as to what constitutes a public body, following privatisation and contracting out initiatives
- A presumption of corruption under s2 of the 1916 Act may no longer be necessary in the light of s34 and 35 of the *Criminal Justice and Public Order Act 1934* (allowing adverse inferences to be drawn from a defendant's silence) or tenable given the possible incompatibility with Article 6 of the European Convention on Human Rights (right to a fair trial)
- The meaning of the terms 'agent' and 'conferring advantage' is unclear and subject to differing judicial interpretation.

One of the recommendations of the 1976 Salmon Commission, established following the Poulson bribery scandals of the 1970s, was for the consolidation of the law on bribery.[5] Its recommendations for legislation were not implemented. The (Nolan) Committee on Standards in Public Life also recommended that the Government should take steps to clarify the law relating to the bribery of or the receipt of a bribe by an MP, taking up a similar recommendation of Salmon. Some doubt has existed as to whether this is already an offence at common law.[6] This topic is dealt with briefly below in Part IV of the Research Paper, but Part XII of the *Anti-Terrorism, Crime and Security Bill* does not cover this issue.

The Law Commission issued a consultation paper in March 1997 which provisionally proposed a new corruption offence, and an abolition of the legal distinction between bribery of officer holders in public and private bodies.[7] This consultation paper did not deal with the position of MPs.

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4 Law Commission report : *Corruption: Legislating the Criminal Code* no 248 1998, para 5.65

5 Cmnd 6524 1976

6 See evidence by the Attorney General to the Privileges Committee HC 51 1994-5 Appendix 5

7 Law Commission Consultation Paper no 145 *Legislating the Criminal Code: Corruption* 1997

Following the 1997 election the new Home Secretary issued on 9 June 2007 a consultation paper which proposed a new single offence of corruption, extending statutes to cover the misuse of office and strengthening enforcement.[8] It did not specifically address the position of MPs.

B. The Law Commission draft bill

The Law Commission published its report on corruption law in March 1998 which included a draft bill.[9] An accompanying press release summarised the recommendations.[10]

> **THE NEW OFFENCES**
> Our proposed new offences would involve replacing the existing law of bribery with a modern statute creating four offences, namely:
>
> Corruptly conferring, or offering or agreeing to confer, an advantage;
> Corruptly obtaining, soliciting or agreeing to obtain an advantage;
> Corrupt performance by an agent of his or her functions as an agent; and
> Receipt by an agent of a benefit, which consists of, or is derived from, an advantage, which the agent knows or believes to have been corruptly obtained.
>
> We define "agent" in the very broad sense of anyone who has agreed to perform functions *for another* – it would, therefore, include employees, trustees, company directors, partners and professional persons (such as lawyers and accountants) – *and* anyone who has been entrusted to perform functions *for the public.*
>
> **Defences**
> We recommend that it should not be a defence if the principal of the agent, knowing all the material circumstances, consents to what is done. This defence is not available to agents whose functions are performed on behalf of the public.
>
> **Other matters**
> Although prosecutions under the present statutory law (but not the common law) require the consent of the Attorney-General or the Solicitor-General, we recommend that prosecutions for the new offences should not require the consent of either the Law Officers or the Director of Public prosecutions.
>
> We do not believe that the new offences should have retrospective effect.

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8 *Prevention of Corruption: Consolidation and Amendment of the Prevention of Corruption Acts 1889-16:A Government Statement* 9 June 1998

9 Law Commission report no 248 *Legislating the Criminal Code: Corruption* (1998). This is available from http://www.lawcom.gov.uk/library/lc248/lc248.pdf

10 *Law Commission Press Notice* 28 February 1998 "The Law Commission recommends comprehensive new corruption offences"

An article by Stephen Silber QC, a Law Commissioner, set out some of the defects in the current law and highlighted the difficulty of assessing the precise mental condition which has to be proved before a person can be found guilty of corruption.[11]

The Law Commission report also recommended that there should be no distinction between the treatment of corruption in the public and the private sector. Given privatisation and the contracting out of public services, the Commission felt it was no longer useful to distinguish between the agents involved in public authority settings and those employed in the private sector.

The problem of corporate hospitality was also dealt with in the report. It recommended that a person who confers an advantage should be regarded as doing so corruptly if he or she intends that an agent should do (or omit to do) something and believes that, if the agent so acts, it would probably be primarily in return for the advantage, rather than for some legitimate reason.

The Law Commission noted that the new offences would apply to the corruption of foreign, as well as national officials, and recommended that consideration should be given to including within the scope of the corruption offences those officials who act on behalf of international intergovernmental organisations.

The proposals were welcomed in general by Professor G.R. Sullivan in an article in the *Criminal Law Review*. However, he expressed some concerns about the proposed definition of corrupt conduct, and noted that:[12]

> A disappointing feature of the Report is the Commission's complete lack of sympathy for anything in the nature of a public interest defence. It will remain an offence to offer a bribe in order to expose the presence of corruption.

C. The white paper on corruption

In June 2000 the Home Office issued final proposals to establish a single offence of corruption along the lines of the Law Commission proposals. The proposals are contained in a white paper *Raising Standards and Upholding Integrity: The Prevention of Corruption.*[13] The summary is reproduced below:

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11 'Radical changes proposed to the law of corruption' *Amicus Curiae (Journal of Society of Advanced Legal Studies)* May 1998

12 'Proscribing Corruption-Some Comments on the Law Commission's Report' *Criminal Law Review* 1998

13 Cm 4759 available at http://www.official-documents.co.uk/document/cm47/4759/4759-07.htm

SUMMARY OF THE GOVERNMENT'S PROPOSALS

The Government proposes replacing the existing principal statutes of corruption in England and Wales by a single statute, modelled on that published by the Law Commission. Its provisions will reflect:

- Acceptance of the Law Commission's recommendation that there should be a single offence of corruption to cover both public and private sectors.
- Abolition of the current presumption of corruption for public servants in the Prevention of Corruption Act 1916.
- A statutory definition of what is meant by "acting corruptly", and a definition of the concept of "agent."
- The inclusion in the offence of corruption of "trading in influence" where the decision-making of public officials by intermediaries is targeted.
- That the corruption of, or by, a public official is not confined to the public of the United Kingdom.
- Extending jurisdiction over offences of corruption to cover both offences committed in whole or in part within the jurisdiction and those committed by UK nationals abroad.
- Evidence relating to an offence committed or alleged to have been committed by a Member of either House of Parliament to be admissible notwithstanding Article 9 of the Bill of Rights.
- The Law Commission's recommendations that the new offence of corruption should continue to be triable either in the Magistrates' Court or in the Crown Court, and the Government view that the current maximum penalty of 7 years imprisonment should be unchanged.
- Retention of the requirement for the consent of the Law Officers for prosecution.

In April 2001 the then Home Secretary, Jack Straw, published the Government response to the comments made in consultations on the 2000 white paper.[14] He also announced some changes to the plans:[15]

> **Mr. Pond:** To ask the Secretary of State for the Home Department if he will make a statement on the Government's response to comments on the White Paper, Raising Standards and Upholding Integrity: the Prevention of Corruption (CM 4759).
>
> **Mr. Straw:** The main proposals in the White Paper were to reform the law of corruption in the light of recommendations made by the Law Commission; to put beyond doubt that the crime of corrupting public officials extends to foreign public officials; to introduce a new offence of 'trading in influence'; and to take jurisdiction over United Kingdom nationals who commit bribery offences abroad.
>
> We received six comments on the White Paper, most of which were broadly favourable to our main proposals. The main points made by commentators, and the Government's reaction to them, are contained in a paper which I have today placed in the Library.

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[14] Dep 01/660 April 2001. The full responses have also been deposited in the Library at Dep 01/1074

[15] HC Deb 10 April 2001 c550w

> I have decided to make two changes to the scheme set out in the White Paper in the light of comments received. Firstly, the legislation will include proposals for a new offence of 'trading in influence' which will apply to both the public and the private sectors. As the extension of the offence to the private sector is a new proposal I shall listen most carefully to the arguments on both sides when the Bill comes before the House. Secondly, the legislation will extend not only to England and Wales but to Northern Ireland as well.

The long- awaited legislation on corruption was expected to form part of the *Criminal Justice Bill*, announced in the Queen's Speech for 2001-2. However, due to pressure on the legislative timetable following the events of September 11 2001 , there has been some uncertainty about the timescale of the introduction of this Bill into Parliament. The opportunity has apparently been taken within the *Anti-Terrorism, Crime and Security Bill* to introduce provisions extending the existing legislation to the bribery and corruption of foreign officials and giving courts in England and Wales extra-territorial jurisdiction over bribery and corruption offences committed by UK nationals abroad.

D. Extra-territorial jurisdiction

The general rule is that criminal courts in the UK are not concerned with the conduct of either United Kingdom or foreign nationals abroad. [16]The function of the criminal courts is to maintain the Queen's peace in her realm.[17] It is possible to use extradition agreements to let UK nationals stand trial in the state where the alleged offence has occurred. Territorial prosecutions are seen as preferable, as the evidence and witnesses are most readily accessible in the country where the alleged offence was committed. However, there have been examples of legislation to extend the jurisdiction of UK courts abroad. These include:

- *Offences against the Person Act 1861*, section 9
- *Civil Aviation Act 1982*,section 92
- *War Crimes Act 1991*, section 1
- *Criminal Justice Act 1993*, sections 1-6
- *Sex Offenders Act 1997*

The Law Commission report recommended that bribery and offences under the *Prevention of Corruption Act*s be classified as a Group A offence under section 1 of the *Criminal Justice Act 1993*. Group A offences are a number of offences of dishonesty. This would avoid the limitations of the jurisdictional rules. The Law Commission noted:

> **The effect of extending the CJA 1993 to corruption**

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[16] For background, see *Archbold* 2001 paras 2.33-2.88

[17] *Board of Trade v Owen* [1957] AC 625

> 7.11 Including our proposed corruption offences in the list of Group A offences would side-step the limitations imposed by the general jurisdictional rules. If A, who is abroad, telephones B in England and offers B a bribe, it is doubtful whether A would at present be committing an offence under English law. It is clear, however, that the matter would be justiciable here if corruption were brought within the list of Group A offences. Section 4(b) of the 1993 Act provides that, in relation to a Group A offence, there is a communication in England and Wales of any information, instruction, request, demand or other matter if it is sent by any means
> (i) from a place in England and Wales to a place elsewhere; or
> (ii) from a place elsewhere to a place in England and Wales.
> 7.12 The offer of the bribe is a relevant event for the purposes of our recommended offence of corruptly offering to confer an advantage. Section 4(b) would treat the offer, though it was made from abroad, as having taken place within the jurisdiction. A relevant event has therefore occurred within the jurisdiction, and A could be indicted here.
> 7.13 The 1993 Act also extends the jurisdiction of the English courts with regard to the inchoate offences of conspiracy, attempt and incitement. If these rules were extended to corruption, it would, for example, be an offence indictable in England and Wales to conspire, outside the jurisdiction, to make a corrupt payment within it. There is authority that this is already the position, irrespective of the 1993 Act; but extending the Act to cases of corruption would put the matter beyond doubt.

The white paper stated:[18]

> **Nationality Jurisdiction**
> 2.20 The United Kingdom's position on jurisdiction differs from that of many other States, particularly our partners in the EU, whose jurisdiction depends on nationality as well as on the place of the offence, and who prosecute their nationals for offences wherever they are committed. Such an approach has been adopted in the United Kingdom for a limited number of very serious crimes. Examples of such crimes are murder and some sex offences, principally those against children.
> 2.21 In 1996 the Home Office published a review of jurisdiction, and recommended that extension of jurisdiction to UK nationals could be considered in certain circumstances where at least one of the following factors was present:
> - where the offence is serious (this might be defined in respect of existing offences, by reference to the length of sentence currently available);
> - where, by virtue of the nature of the offence, the witnesses and evidence necessary for the prosecution are likely to be available in UK territory, even though the offence was committed outside the jurisdiction;
> - where there is international consensus that certain conduct is reprehensible and that concerted action is needed involving the taking of extra-territorial jurisdiction;

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[18] *Raising Standards and Upholding Integrity* Cm 4759 June 2000, para 2.19

- where the vulnerability of the victim makes it particularly important to be able to tackle instances of the offence;
- where it appears to be in the interests of the standing and reputation of the UK in the international community.
- where there is a danger that offences would otherwise not be justiciable.

These guidelines are, of course, not mandatory but seek to describe the kind of offences which may merit consideration for the extension of jurisdiction.

2.22 Jurisdiction is the vital first step towards a successful prosecution; without the assumption of jurisdiction, a State cannot institute proceedings against an alleged offender, but, equally, the mere existence of jurisdiction does not guarantee that a prosecution will take place. Wherever a State wishes to prosecute one of its nationals for an alleged offence committed abroad, it will need to rely on assistance from the State in which the offence occurred. It will also need to ensure that evidence is available in a form that will be admissible in its courts. In the case of corruption, this may include, for example, as well as live oral evidence, documentary banking records obtained from abroad. In the UK now, however, for some offences (murder, manslaughter and serious fraud), it is possible for the witness to give oral evidence by live video link to the court. However, arrangements for taking such evidence by this means are currently only possible where the witnesses co-operate on a voluntary basis. Consideration is also being given to the means by which the UK will implement the requirements of the EU Convention on Mutual Legal Assistance in Criminal Matters on the taking of evidence by live video link. This would involve changes both to primary legislation and working practices.

Nationality jurisdiction for corruption: the issues

2.23 The proposal to adopt jurisdiction over offences of corruption committed in whole or in part would not, however, cover acts of corruption committed by UK nationals or UK companies wholly outside the jurisdiction. Where it is alleged that a UK national has committed an offence abroad it would, of course, be open to the State concerned to institute a prosecution and we would consider the extradition of the alleged offender for prosecution abroad. We have also considered whether we should go further and extend nationality jurisdiction to such an offence, recognising that this could send a strong deterrent message that the UK is determined to act against corruption wherever it occurs. This is a message which would have real persuasive and dissuasive force and which would back up existing codes of conduct. It must not be forgotten that corruption is a major problem in developing and transitional countries, a problem which diverts scarce resources away from development and the eradication of poverty. Combating corruption should be an essential component of the efforts invested in the eradication of poverty and the relief of debt.

The Government has therefore considered the issue in considerable detail and, whilst recognising the practical problems associated with the prosecution of extraterritorial offences, believes that the balance of advantage rests with assuming jurisdiction over its nationals for offences of corruption committed abroad. Such an assumption of jurisdiction would put beyond doubt the UK's commitment to join forces with the international community in the fight against corruption.

II International conventions against corruption

A. The OECD Convention

There has been pressure to take action on international corruption for some time.

On 21 November 1997, OECD Member countries and five non-member countries, Argentina, Brazil, Bulgaria, Chile and the Slovak Republic, adopted a *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. Signature of the Convention took place in Paris on 17 December 1997. The text is reproduced in Appendix 1 to this Paper. The UK deposited its instrument of ratification on 14 December 1998. Appendix 2 sets out the states which have implemented the Convention in their domestic law. The proposed legislation in Part XII of the Bill is intended to put beyond doubt the UK's basic compliance with the Convention.[19]

The International Development Select Committee published a report on corruption in April 2001.[20] It concluded:

> We must continue to help developing countries build an environment that will eliminate corruption. We must not only support developing countries who have made a real commitment to tackle corruption but must also put our own house in order. The Government cannot credibly continue to make improvements in governance a condition for development assistance when it has failed to implement the OECD Convention on the Bribery of Foreign Public Officials. The lack of focus and coordination is hampering efforts to tackle corruption and money laundering in the UK. There is a need for one department or body to take a lead and provide a focus for current activity. We urge the UK Government to act on these issues swiftly.

It took evidence from a number of interested parties about the difficulties of implementing the OECD Convention:

> **The OECD Peer Review Process**
> 116. The OECD has a peer-review process that looks, in Phase 1, at conformity of the implementing legislation with the articles of the Convention and in Phase 2 at the application of the laws in practice. DFID has provided funding to the OECD Secretariat to support the work of the peer review process.[The Phase 1 OECD peer review of the UK was critical of the UK Government for failing to address all aspects of the Convention. The peer review group was unable to determine

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[19] See *Steps Taken and Planned Future Actions* from OECD website www.oecd.org//daf/nocorruption/annex2.htm . For press comment see *Guardian* 6 April 2001 'Too easy on sleaze'

[20] *Corruption* HC 39 2000-2001. Executive Summary The full text is available on line from http://pubs1.tso.parliament.uk/pa/cm200001/cmselect/cmintdev/39/3904.htm

whether the UK laws were in compliance with the standards of the Convention and urged the UK to enact appropriate legislation. The review was concerned that:

there was no explicit provision criminalising bribery of foreign public officials;

there was a lack of legislation specifically prohibiting bribery of foreign officials;

the UK relied on common law which does not expressly mention bribery of foreign officials;

there was insufficient case law to support the UK's interpretation of the 1906 Prevention of Corruption Act and that there was potential for this Act to clash with the European Convention on Human Rights.[267]

117. The Phase 1 review of the UK will be repeated until the OECD is satisfied that appropriate legislation is in place. Transparency International were critical of the Government's attitude saying that having failed the first Phase 1 review, it actively proposed to fail the second Phase 1 review as no new legislation would be introduced in time for the second Phase 1 review.

118. Monty Raphael, Peters and Peters, said "...it is regrettable that we appear to have ratified the OECD Convention on the basis that we could conform to its requirements; quite clearly, we have not been able to. Also I find it rather surprising and rather sad that we are not going to be told when a Bill will be introduced".[268] Laurence Cockcroft, Transparency International (UK), was more forthright saying "the UK is currently gravely at fault, to an extent which can be described as a national disgrace".[269] Elaine Drage, Department of Trade and Industry, conceded that "It is clear that the United Kingdom law is not sufficiently clear...".[270]

Damage to the Reputation of the UK

119. Transparency International said "There is real concern within the OECD at the UK's apparent lack of commitment to the implementation of the Convention. Bribery of foreign public officials (FPOs), is a serious international economic crime. To delay enacting this offence could severely damage the future success of the Convention, which rests on the basic assumption that the same rules will apply to all major exporters".[271] Jeremy Carver, Clifford Chance, was similarly unimpressed saying that the OECD peer review's judgement of the performance of the UK had been lamentable and humiliating.[272] Mark Pieth, Chairman of the OECD Working Group on Bribery in International Business Transactions, told Transparency International (UK) that the OECD bracketed the UK with Turkey, Brazil, Argentina and Chile on the basis that it had been found not to have implemented the Convention.[273] Elaine Drage, Department of Trade and Industry said of the peer review process "I am informed that all countries were criticised, but to varying degrees. We were criticised the most severely".[274] Mark Pieth said that the UK might be not be permitted to be an evaluator in the Phase 2 peer reviews.[275]

A leading pressure group, Transparency International, has highlighted the problems caused by corruption and has campaigned for effective anti-corruption legislation on a

world-wide basis.[21] It has published a Global Corruption Report, which contains an assessment of the implementation of the OECD Convention.[22]

Tony Colman, a member of the International Development Select Committee, introduced a ten minute rule bill on 14 March 2001[23] designed to introduce an immediate new offence of bribing foreign public officials into the existing statute law on corruption, in order to meet OECD concerns. He said:[24]

> This matter is urgent. The OECD working group on corruption, in an evaluation issued in June 2000, concluded that UK laws were not in compliance with the convention and urged the enactment of appropriate legislation by the end of 2000. The Government accept the need for this legislation, but apparently they would prefer it to be part of a comprehensive measure reforming the general law of corruption, including the bribery of parliamentarians and other potentially controversial reforms. That measure will come before the House when parliamentary time allows.
>
> Meanwhile, other leading G7 nations and most of the signatory states have taken steps to bring their laws into line with the convention. Some of them now view the UK's inaction with increasing frustration and irritation. While there is no clear offence of bribing foreign officials, offshore bribes, incredibly, remain tax deductible, as is confirmed by the Treasury's guidance to inspectors of taxes.
>
> There is no compelling reason for this limited but vital reform of our criminal law to await a much wider Bill at some indeterminate future date. The offence stands alone. It needs to be dealt with urgently for the UK to maintain credibility in its determination to deal with international economic crime.
>
> My Bill reads the offence into existing legislation. It therefore in no way prejudices a future comprehensive Bill which I am sure will come forward in due course. Also, at a single stroke, it cures the scandal of UK tax deductibility of foreign bribes. Mercifully, domestic corruption in this country is not too serious; when it is discovered, our existing legislation, although unchanged since 1916, has proved to be an adequate basis for prosecution

The Bill would also have added bribery to the list of Group A offences in s1 of the *Criminal Justice Act 1993*, in order to extend jurisdiction on an extra-territorial basis. The Bill made no further progress.

Canada has played a leading role in implementing the Convention, as illustrated by an extract from its government website:

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21 See Transparency International's website at http://www.transparency.org

22 October 2001, available from http://www.globalcorruptionreport.org

23 *Bribery of Foreign Public Officials Bill* Bill 64 of 2000-2001

24 HC Deb 14 March 2001 c1040

Corruption of Foreign Public Officials Act Comes Into Force

Ottawa, February 12, 1999 — Foreign Affairs Minister Lloyd Axworthy, Minister of Justice and Attorney General of Canada Anne McLellan and International Trade Minister Sergio Marchi announced that a new law, the Corruption of Foreign Public Officials Act, has been adopted by Parliament and will come into force on February 14, 1999.

The new law makes it a criminal offence to bribe a foreign public official in the course of business. Businesses convicted under the Corruption of Foreign Public Officials Act would face heavy fines, and individuals could be sentenced to a maximum of five years in jail.

The legislation reinforces Canada's leadership role in fighting corruption and promoting good business practices at an international level and confirms the Government's commitment to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The involvement of the Canadian business community has also been important in creating a strong and effective Convention that will help to level the playing field in international commercial transactions.[25]

Canada has not legislated to extend the jurisdiction of its courts, as this is not a part of its legal tradition.

As noted above, the United Kingdom, along with France and Japan, has been criticised for failing to implement the Convention. In June 2001 the chairman of the OECD's Working Group on Bribery was reported as warning that the UK could face economic sanctions if it refused to act.[26] The OECD had particular concerns about what is saw as the failure of the UK Government to legislate to extend existing law on corruption to foreign officials.

Information about the progress in implementing the Convention can be found at the OECD website.[27] The OECD issued an implementation report on the UK in 2000, which is available from the website.[28]

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25 Source: http://canada.justice.gc.ca/en/news/nr/1999/corlaw.html.

26 *Financial Times* November 10 'Terrorism bill to include anti-bribery measure'

27 http://www.oecd.org/oecd/pages/home/displaygeneral/0,3380,EN-home-31-nodirectorate-no-no-no-31,FF.html

28 See http://www.oecd.org/pdf/M00013000/M00013351.pdf

B. Other international conventions

In June 2000 the Lord Chancellor signed the Council of Europe Convention on civil law remedies for the victims of corruption. The Criminal Law Convention was signed by the UK in January 1999.[29] Both texts are available from the Council of Europe website.[30]

The Council of the European Union adopted the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union on 26 May 1997. The Government published the Convention on 16 April 1999 and it has since been ratified.[31] The white paper published in June 2000 listed in an annex the key international instruments in this area.[32]

III Part XII of the Anti-Terrorism, Crime and Security Bill

A. Foreign officials

As noted above, the OECD Working Group on Bribery report on the UK expressed concern about the uncertainty as to whether the bribery of foreign officials was covered by existing common and statute law. The evaluation report on the UK noted that if there were not an offence of bribing a foreign public official under UK law, the UK would not be able to implement some of the other obligations under the Convention, such as money laundering offences.[33]

Clause 106 is intended to apply both the existing common law offence of bribery and the statute law to foreign officials, to meet the OECD concerns.

The *Explanatory Notes* to the Bill state:

> 289. Clause 106 ensures that the common law offence of bribery extends to persons holding public office outside the UK (*subsection (1)*). It also amends the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916 to ensure that those Acts cover the bribery and corruption of foreign public officials, as well as those in the private sector, whether or not the offences are committed in the United Kingdom (*subsections (2) - (4)*).

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29 HC Deb 6 June 2000 c355w

30 www.coe.fr/index.asp

31 Cm 4266 April 1999

32 *Raising Standards and upholding integrity* Cm 4759 June 2000, Annex, available at http://www.official-documents.co.uk/document/cm47/4759/4759-02.htm

33 *UnitedKingdom: Review of Implementation of the Convention and 1997 Recommendation*, Evaluation para 1.2 http://www.oecd.org/pdf/M00013000/M00013351.pdf

The clause does not deal with the inadequacies in both the common and statute law in terms of establishing what is meant by acting in a corrupt manner. Nor does it introduce the new statutory offences of corruption recommended by the Law Commission or assist with the other problems outlined by the Commission and explained in Part I of this Paper.

Paragraph 32 of the *Explanatory Notes* refers to the clauses in Part XII putting beyond doubt ' that the law of bribery applies to acts involving foreign public officials, Ministers, MPs and judges'. This should be construed as referring to foreign ministers, MPs and judges. Under clause 106 these groups would presumably be covered by the extension of the common law, rather than the statute law, due to the uncertainty about the definitions of agent in statute law. The OECD Evaluation Report on the UK summarised the position of the UK Government follows: [34]

> Application of the Offences in Legislation and the Common Law to the Bribery of Foreign Public Officials
> Subsection 1(3) of the 1906 Act clarifies that the definition of "agent" includes persons serving under certain domestic public bodies (i.e. "persons serving under the Crown or under any corporation or any borough, county, or district council, or any board of guardians"), but does not contain any clarification that the term "agent" includes foreign public officials. However, it is the view of the U.K. authorities that the language used in the 1906 Act is wide by design and covers foreign public officials. In support of their position they cite the Law Commission Report on the law on corruption, and the decision of Rv. Raud [1989] Crim. L.R. 809 (C.A.). In Raud 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 1906 Act.

The OECD Evaluation Report recommended that the UK should ensure that any new law on corruption was clearly applicable to foreign MPs and foreign judges.[35]

The pressure group Transparency International has commented:[36]

> It is unsafe and inappropriate to rely on an extension of the common law offences of bribery which are numerous, obscure and seldom used by prosecutors (*see paras 2.1 through 2.13 of the Law Commission Consultation Paper No 145*). The range of foreign public officials covered by the Convention is much wider than would be covered by clause 106 which would by no means certainly cover those holding legislative or judicial office of a foreign country; nor would the clause

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34 *United Kingdom: Review of Implementation of the Convention and 1997 Recommendation*, Evaluation Part A Implementation of the Convention http://www.oecd.org/pdf/M00013000/M00013351.pdf

35 *United Kingdom: Review of Implementation of the Convention and 1997 Recommendation*, Evaluation para 2 http://www.oecd.org/pdf/M00013000/M00013351.pdf

36 *Transparency International (UK)* Comments on Part XII of the Anti-Terrorism, Crime and Security Bill, 15 November 2001

> clearly cover officials or agents of public international organisations as required by the Convention. The proposal in clause 106(3) to extend the section 7 definition of "public body" in the 1889 Act to "equivalent" bodies overseas is particularly restrictive, referring as it does to municipal boroughs, select vestries and poor law bodies.
>
> The Convention requires additionally that bribery of foreign officials should be criminalised, whether the conduct is carried out directly or through intermediaries.
>
> For these reasons, TI(UK) would commend for urgent consideration a legislative approach more along the lines of clause 1 of the Bribery of Foreign Public Officials Bill 2001 [Bill 64 of 14 March 2001]. This attempted to widen the existing statutory offences to align them and the categories of those bribed with the Convention.

B. Extra-territorial jurisdiction

Part I, D of this Paper explains the background to the decision to give the courts in England and Wales extra-territorial jurisdiction over common and statute law offences of bribery and corruption committed by UK nationals. The OECD Working Group on Bribery Evaluation Report on the UK encouraged the UK Government to consider extending extra-territorial jurisdiction over its nationals in respect of bribery offences.[37]

The *Explanatory Notes* to the Bill state:

> **Clause 107 Bribery and corruption committed outside the UK**
> 290. This clause gives the courts extra-territorial jurisdiction over bribery and corruption offences committed abroad by UK nationals and bodies incorporated under UK law. It enables the offences specified in subsection (3), when committed by UK nationals and bodies incorporated under UK law, to be prosecuted here, wherever those offences take place.
> 291. "UK national" is defined in *subsection (4)* in the same way as in section 67 of the International Criminal Court Act 2001.
> 292. As regards legal persons, the clause applies to any body incorporated under the law of any part of the UK (*subsection (1)*). It thus applies not only to companies but also, for example, to limited liability partnerships

The clause does not attempt to add bribery to the list of Category A offences under s1 of the *Criminal Justice Act 1993*. This was the approach favoured by the Law Commission as part of a comprehensive reform of the law on bribery and corruption. The Home Office

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[37] *UnitedKingdom: Review of Implementation of the Convention and 1997 Recommendation*, Evaluation para 4 http://www.oecd.org/pdf/M00013000/M00013351.pdf

seems to have concluded that clause 107 would allow offences committed wholly abroad to be covered more comprehensively than by using Category A.

As with clause 106, the new power in **clause 107** will apply to the existing statute and common law on bribery and corruption, rather than the new offences recommended by the Law Commission

Tite and Lewis, the law firm connected to accountants Ernst and Young was quoted as stating that while the Government was correct in outlawing corruption, it was 'wrong to introduce legislation in the way it has: a hurried piecemeal approach that causes nothing but confusion'.[38]

C. Presumption of corruption

Currently, if an agent associated with a public body accepts or agrees to accept a benefit from someone other than his or her principal there is a presumption that the agent has acted corruptly.[39] The Law Commission draft bill proposed to remove this presumption and make the burden of proof fall on the prosecution for all cases. Arguably corruption should be no more difficult to prove than fraud, where no such presumption applies. There is concern that 'presumption' might breach Article 6 (Right to a fair trial) of the European Convention on Human Rights. The Law Commission also considered that s34 and s35 of the *Criminal Justice and Public Order Act 1934* (allowing adverse inferences to be drawn from a defendant's silence) had rendered 'presumption' unnecessary.[40]

The *Explanatory Notes* to Clause 108 state:

> **Clause 108 Presumption of corruption not to apply**
> 293. The purpose of this clause is to ensure that the existing presumption of corruption contained in the Prevention of Corruption Act 1916 does not apply any more widely as a result of the two previous clauses. Following a recommendation of the Law Commission ("Legislating the Criminal Code: Corruption (No. 248)), accepted by the Government in its White Paper on Corruption, the intention is to abolish the presumption in the longer term, as part of a wider reform of corruption law. This clause therefore allows it to continue to apply only in those cases where it applies at present.

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38 *Financial Times* 10 November 2001 'Terrorism bill to include anti-bribery measure'

39 *Prevention of Corruption Act 1916* , section 2

40 For a full discussion, see chapter 4 of the Law Commission report, no 248 1998 at http://www.lawcom.gov.uk/library/lc248/lc248.pdf

D. Extent and Commencement

Part XII extends to England, Wales and Northern Ireland, and will, if passed, be brought into force through a commencement order procedure. The Part will not be retrospective in effect. The criminal law in Scotland is devolved and is now the responsibility of the Scottish Executive. Separate legislation on similar lines to Part XII is expected to be introduced in the Scottish Parliament early in 2002 as part of projected criminal justice legislation. A Sewel motion on the *Anti-Terrorism, Crime and Security Bill* is due to be debated in the Scottish Parliament on Thursday 15 November 2001.[41] UK nationals prosecuted under clause 107 would presumably be tried in courts in England and Wales.

IV Other proposals to reform the law on corruption

Part XII of the Bill does not attempt to include within its scope the wider reform of the law of corruption and bribery expected for some years.. These include:

- Reform of the law on corruption, with a new statute to replace the *Prevention of Corruption Acts*
- Introducing a new offence of misuse of public office
- Clarifying the law on bribery relating to the bribery, or the acceptance of a bribe, by a Member of Parliament

General background on the reform of the law on corruption is covered in Part I of this Paper. Part IV gives a brief introduction to the other two issues.

A. Misuse of public office

The Committee on Standards in Public Life welcomed the Government initiatives on the reform of the law on corruption and issued a document *Misuse of Public Office: A New Offence*? in July 1997, which examined issues to be considered in formulating legislation to deal with misuse of public office not including include bribery or corruption.[42] It recommended that the offence apply to ministers, civil servants, councillors, local government officers and NDPBs, and that the Law Commission be asked to develop further proposals in this area. As part of its report on local government[43], which was issued simultaneously, the Nolan committee recommended the abolition of surcharge in local government in favour of this new offence. The *Local Government Act 2000* has now abolished surcharge.

These are Executive motions seeking approval that the UK Parliament should legislate on reserved or devolved matters, instead of the Scottish Parliament. For background, see Scottish Parliament Information Centre Source Sheet no 16 *Sewel Motions*

[42] http://www.official-documents.co.uk/document/parlment/nolan3/misuse.htm

[43] *Committee on Standards in Public Life Third Report Standards of Conduct in Local Government in England Scotland and Wales* July 1997 Cm 3702

The Law Commission report and draft bill of March 1998 did not deal with the proposed offence of misuse of public office and to date the Law Commission has not published proposals in this area. The white paper in June 2000 also did not refer to the proposed offence. However the DETR consultation paper *Modernising Local Government: a new ethical framework*[44] stated that the department had been consulting on the Nolan proposal for a new statutory offence with broad support for its introduction. See below for comments by the Joint Committee on Parliamentary Privilege on the potential application of the offence to Members and ministers.

B. Bribery and members of parliament

The First Report of the Committee on Standards in Public Life (the Nolan Committee) recommended that the Government should take steps to clarify the law relating to the bribery of or the receipt of a bribe by an MP, taking up a similar recommendation of Salmon . This recommendation was also repeated by the Sixth Report, which assessed progress on the First Report's recommendations.[45] Some doubt has existed as to whether this is already an offence at common law.[46]

The then Leader of the House, Ann Taylor, announced a full review of parliamentary privilege, to include a consideration of the merits of subjecting MPs to the criminal law on bribery and corruption.[47] This announcement was made at the same time as the 1997 Home Office consultation paper on corruption was issued. The Joint Committee on Parliamentary Privilege summarised the current position as follows:[48]

> **The present position**
> 135. Bribery of a member of either House, or the acceptance of a bribe by a member, is a contempt of Parliament and can be punished by the House. It is generally believed, however, that such conduct is not a statutory offence under the Prevention of Corruption Acts 1889-1916. This is because neither House is a 'public body' for the purposes of the Public Bodies Corrupt Practices Act 1889, and a member of Parliament is not an 'agent' for the purposes of the Prevention of Corruption Act 1906.
> 136. There is some uncertainty on whether the common law offence of bribery of a person holding a public office extends to members of Parliament. The 1975 Royal Commission on standards in public life, presided over by Lord Salmon, expressed the view that membership of Parliament did not constitute public office for the purposes of the common law. Doubt has been cast on this pronouncement by the prosecution of Mr Harry Greenway, a member of the House of Commons, for this offence in 1992 (he was subsequently acquitted).[191] The trial judge ruled that members were subject to the common law offence, but his ruling was

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[44] April 1998
[45] *Reinforcing Standards* Cm 4557 January 2000, Chapter 3
[46] See evidence by the Attorney General to the Privileges Committee HC 51 1994-5 Appendix 5
[47] *Leader of the House Press Release* 9 June 1997 'Parliamentary Privilege'
[48] HL Paper 43,/HC Paper 214 1998-9

> not tested before the court of appeal. Although there are some Commonwealth cases, no other member of the United Kingdom Parliament has been charged with bribery in connection with his parliamentary duties. It seems there is no equivalent common law offence in Scotland applicable to members of Parliament. 137. Even if the common law offence of misuse of public office does apply to members, a trial could encounter insuperable difficulty should either side wish to call evidence falling within article 9 of the Bill of Rights. Article 9 prevents evidence being given in court which questions proceedings in Parliament. In consequence the prosecution might lack evidence necessary for a successful prosecution, or the defendant might be unable to call evidence needed for his defence. Either way, if that were to happen, a proper trial of the member might not be possible. For the same reason a person who offers a bribe may also be beyond the reach of the courts.

The Home Office had issued a consultation paper in December 1996[49] which outlined four options for the future treatment of MPs under corruption legislation.

The Joint Committee reviewed the four options contained in the 1996 Home Office paper. These were:

> 1. To rely solely on parliamentary privilege to deal with accusations of bribery of members of Parliament.
> 2. To subject members of Parliament to the same corruption statutes as other people.
> 3. To distinguish between conduct which should be dealt with by the criminal law and that which should be left to Parliament itself.
> 4. To make criminal proceedings subject to the approval of the relevant House of Parliament

It concluded that self regulation by Parliament had serious disadvantages in relation to bribery. The Joint Committee recommmended that the principle of bringing members within the statute law on bribery should be accepted.[50]The Joint Committee was however concerned to provide safeguards against vexatious prosecutions, and therefore rejected the Law Commission proposal that the approval of the law officers should no longer be sought for the institution of proceedings in relation to its new offence. It was also concerned that members should not be subject to uncertainty in respect of the registration and declaration of interests.

The June 2000 white paper recommended the new offence of corruption extend to Members and that evidence relating to an offence alleged to have been committed by a Member would be admissible, notwithstanding Article 9 of the Bill of Rights.[51] It agreed

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[49] *Clarification of the Law Relating to the Bribery of Members of Parliament: a Discussion Paper* December 1996

[50] paras 166-169

[51] Cm 4759 available at http://www.official-documents.co.uk/document/cm47/4759/4759-07.htm

with the Joint Committee that the requirement for the consent of the Law Officers for prosecution should be retained. It also commented on the interaction with the 'Nolan' parliamentary standards regime.[52]

The Joint Committee on Parliamentary Privilege also expressed some concern about the relationship between the proposed offence of misuse of public office and Article 9. It also pointed to potentially serious implications for ministers.[53]

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[52] This subject will be examined more fully in a forthcoming Library Research Paper on Parliamentary Standards

[53] HL Paper 43/HC 214 1998-9 paras 185-7

Appendix 1 The text of the OECD Convention

Preamble

The Parties,

Considering that bribery is a widespread phenomenon in international business transactions, including trade and investment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions;

Considering that all countries share a responsibility to combat bribery in international business transactions;

Having regard to the Revised Recommendation on Combating Bribery in International Business Transactions, adopted by the Council of the Organisation for Economic Co-operation and Development (OECD) on 23 May 1997, C(97)123/FINAL, which, inter alia, called for effective measures to deter, prevent and combat the bribery of foreign public officials in connection with international business transactions, in particular the prompt criminalisation of such bribery in an effective and co-ordinated manner and in conformity with the agreed common elements set out in that Recommendation and with the jurisdictional and other basic legal principles of each country;

Welcoming other recent developments which further advance international understanding and co-operation in combating bribery of public officials, including actions of the United Nations, the World Bank, the International Monetary Fund, the World Trade Organisation, the Organisation of American States, the Council of Europe and the European Union;

Welcoming the efforts of companies, business organisations and trade unions as well as other non-governmental organisations to combat bribery;

Recognising the role of governments in the prevention of solicitation of bribes from individuals and enterprises in international business transactions;

Recognising that achieving progress in this field requires not only efforts on a national level but also multilateral co-operation, monitoring and follow-up;

Recognising that achieving equivalence among the measures to be taken by the Parties is an essential object and purpose of the Convention, which requires that the Convention be ratified without derogations affecting this equivalence;

Have agreed as follows:

Article 1 - The Offence of Bribery of Foreign Public Officials

1. Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or

give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

2. Each Party shall take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official shall be a criminal offence. Attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that Party.

3. The offences set out in paragraphs 1 and 2 above are hereinafter referred to as "bribery of a foreign public official".

4. For the purpose of this Convention:

a. "foreign public official" means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation;

b. "foreign country" includes all levels and subdivisions of government, from national to local;

c. "act or refrain from acting in relation to the performance of official duties" includes any use of the public official's position, whether or not within the official's authorised competence.

Article 2 - Responsibility of Legal Persons

Each Party shall take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official.

Article 3 - Sanctions

1. The bribery of a foreign public official shall be punishable by effective, proportionate and dissuasive criminal penalties. The range of penalties shall be comparable to that applicable to the bribery of the Party's own public officials and shall, in the case of natural persons, include deprivation of liberty sufficient to enable effective mutual legal assistance and extradition.

2. In the event that, under the legal system of a Party, criminal responsibility is not applicable to legal persons, that Party shall ensure that legal persons shall be subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions, for bribery of foreign public officials.

3. Each Party shall take such measures as may be necessary to provide that the bribe and the proceeds of the bribery of a foreign public official, or property the value of which corresponds to that of such proceeds, are subject to seizure and confiscation or that monetary sanctions of comparable effect are applicable.

4. Each Party shall consider the imposition of additional civil or administrative sanctions upon a person subject to sanctions for the bribery of a foreign public official.

Article 4 - Jurisdiction

1. Each Party shall take such measures as may be necessary to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory.

2. Each Party which has jurisdiction to prosecute its nationals for offences committed abroad shall take such measures as may be necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official, according to the same principles.

3. When more than one Party has jurisdiction over an alleged offence described in this Convention, the Parties involved shall, at the request of one of them, consult with a view to determining the most appropriate jurisdiction for prosecution.

4. Each Party shall review whether its current basis for jurisdiction is effective in the fight against the bribery of foreign public officials and, if it is not, shall take remedial steps.

Article 5 - Enforcement

Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.

Article 6 - Statute of Limitations

Any statute of limitations applicable to the offence of bribery of a foreign public official shall allow an adequate period of time for the investigation and prosecution of this offence.

Article 7 - Money Laundering

Each Party which has made bribery of its own public official a predicate offence for the purpose of the application of its money laundering legislation shall do so on the same terms for the bribery of a foreign public official, without regard to the place where the bribery occurred.

Article 8 - Accounting

1. In order to combat bribery of foreign public officials effectively, each Party shall take such measures as may be necessary, within the framework of its laws and regulations regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of bribing foreign public officials or of hiding such bribery.

2. Each Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions and falsifications in respect of the books, records, accounts and financial statements of such companies.

Article 9 - Mutual Legal Assistance

1. Each Party shall, to the fullest extent possible under its laws and relevant treaties and arrangements, provide prompt and effective legal assistance to another Party for the purpose of criminal investigations and proceedings brought by a Party concerning offences within the scope of this Convention and for non-criminal proceedings within the scope of this Convention brought by a Party against a legal person. The requested Party shall inform the requesting Party, without delay, of any additional information or documents needed to support the request for assistance and, where requested, of the status and outcome of the request for assistance.

2. Where a Party makes mutual legal assistance conditional upon the existence of dual criminality, dual criminality shall be deemed to exist if the offence for which the assistance is sought is within the scope of this Convention.

3. A Party shall not decline to render mutual legal assistance for criminal matters within the scope of this Convention on the ground of bank secrecy.

Article 10 - Extradition

1. Bribery of a foreign public official shall be deemed to be included as an extraditable offence under the laws of the Parties and the extradition treaties between them.

2. If a Party which makes extradition conditional on the existence of an extradition treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention to be the legal basis for extradition in respect of the offence of bribery of a foreign public official.

3. Each Party shall take any measures necessary to assure either that it can extradite its nationals or that it can prosecute its nationals for the offence of bribery of a foreign public official. A Party which declines a request to extradite a person for bribery of a foreign public official solely on the ground that the person

is its national shall submit the case to its competent authorities for the purpose of prosecution.

4. Extradition for bribery of a foreign public official is subject to the conditions set out in the domestic law and applicable treaties and arrangements of each Party. Where a Party makes extradition conditional upon the existence of dual criminality, that condition shall be deemed to be fulfilled if the offence for which extradition is sought is within the scope of Article 1 of this Convention.

Article 11 - Responsible Authorities

For the purposes of Article 4, paragraph 3, on consultation, Article 9, on mutual legal assistance and Article 10, on extradition, each Party shall notify to the Secretary-General of the OECD an authority or authorities responsible for making and receiving requests, which shall serve as channel of communication for these matters for that Party, without prejudice to other arrangements between Parties.

Article 12 - Monitoring and Follow-up

The Parties shall co-operate in carrying out a programme of systematic follow-up to monitor and promote the full implementation of this Convention. Unless otherwise decided by consensus of the Parties, this shall be done in the framework of the OECD Working Group on Bribery in International Business Transactions and according to its terms of reference, or within the framework and terms of reference of any successor to its functions, and Parties shall bear the costs of the programme in accordance with the rules applicable to that body.

Article 13 - Signature and Accession

1. Until its entry into force, this Convention shall be open for signature by OECD members and by non-members which have been invited to become full participants in its Working Group on Bribery in International Business Transactions.

2. Subsequent to its entry into force, this Convention shall be open to accession by any non-signatory which is a member of the OECD or has become a full participant in the Working Group on Bribery in International Business Transactions or any successor to its functions. For each such non-signatory, the Convention shall enter into force on the sixtieth day following the date of deposit of its instrument of accession.

Article 14 - Ratification and Depositary

1. This Convention is subject to acceptance, approval or ratification by the Signatories, in accordance with their respective laws.

2. Instruments of acceptance, approval, ratification or accession shall be deposited with the Secretary-General of the OECD, who shall serve as Depositary of this Convention.

Article 15 - Entry into Force

1. This Convention shall enter into force on the sixtieth day following the date upon which five of the ten countries which have the ten largest export shares (see annex), and which represent by themselves at least sixty per cent of the combined total exports of those ten countries, have deposited their instruments of acceptance, approval, or ratification. For each signatory depositing its instrument after such entry into force, the Convention shall enter into force on the sixtieth day after deposit of its instrument.

2. If, after 31 December 1998, the Convention has not entered into force under paragraph 1 above, any signatory which has deposited its instrument of acceptance, approval or ratification may declare in writing to the Depositary its readiness to accept entry into force of this Convention under this paragraph 2. The Convention shall enter into force for such a signatory on the sixtieth day following the date upon which such declarations have been deposited by at least two signatories. For each signatory depositing its declaration after such entry into force, the Convention shall enter into force on the sixtieth day following the date of deposit.

Article 16 - Amendment

Any Party may propose the amendment of this Convention. A proposed amendment shall be submitted to the Depositary which shall communicate it to the other Parties at least sixty days before convening a meeting of the Parties to consider the proposed amendment. An amendment adopted by consensus of the Parties, or by such other means as the Parties may determine by consensus, shall enter into force sixty days after the deposit of an instrument of ratification, acceptance or approval by all of the Parties, or in such other circumstances as may be specified by the Parties at the time of adoption of the amendment.

Article 17 - Withdrawal

A Party may withdraw from this Convention by submitting written notification to the Depositary. Such withdrawal shall be effective one year after the date of the receipt of the notification. After withdrawal, co-operation shall continue between the Parties and the Party which has withdrawn on all requests for assistance or extradition made before the effective date of withdrawal which remain pending.

Appendix 2 Ratification of the OECD Convention[54]

Information as of 25 June 2001

Country	Deposit of instrument of ratification/ acceptance	Entry into force of the Convention	Enactment of implementing legislation	Entry into force of implementing legislation
Argentina	8 February 2001	9 April 2001	1 November 1999	10 November 1999
Australia	18 October 1999	17 December 1999	17 June 1999	17 December 1999
Austria	20 May 1999	19 July 1999	17 July 1998	1 October 1998
Belgium	27 July 1999	25 September 1999	3 April 1999 and 3 August 1999	3 April 1999
Brazil (*)	24 August 2000	23 October 2000	--	--
Bulgaria	22 December 1998	20 February 1999	15 January 1999	29 January 1999
Canada	17 December 1998	15 February 1999	10 December 1998	14 February 1999
Chile (*)	18 April 2001	--	--	--
Czech Republic	21 January 2000	21 March 2000	29 April 1999	9 June 1999
Denmark	5 September 2000	4 November 2000	30 March 2000	1 May 2000
Finland	10 December 1998	15 February 1999	November 1998	1 January 1999
France	31 July 2000	29 September 2000		29 September 2000
Germany	10 November 1998	15 February 1999	10 September 1998	15 February 1999
Greece	5 February 1999	6 April 1999	5 November 1998	1 December 1998
Hungary	4 December 1998	15 February 1999	22 December 1998	1 March 1999
Iceland	17 August 1998	15 February 1999	22 December 1998	30 December 1998
Ireland	--	--	--	--
Italy	15 December 2000	13 February 2001	29 September 2000	26 October 2000
Japan	13 October 1998	15 February 1999	8 September 1998	15 February 1999
Korea	4 January 1999	5 March 1999	28 December 1998	15 February 1999
Luxembourg	21 March 2001	20 May 2001		11 February 2001
Mexico	27 May 1999	26 July 1999	17 May 1999	18 May 1999
Netherlands	12 January 2001	13 March 2001		1 February 2001
New Zealand	25 June 2001	24 August 2001	2 May 2001	3 May 2001
Norway	18 December 1998	16 February 1999	27 October 1998	1 January 1999
Poland	8 September 2000	7 November 2000	9 September 2000	4 February 2001
Portugal	23 November 2000	22 January 2001	23 May 2001	--
Slovak Republic	24 September 1999	23 November 1999	6 July and 16 September 1999	1 November 1999
Spain	4 January 2000	4 March 2000	2 February 2000	2 February 2000
Sweden	8 June 1999	7 August 1999	25 March 1999	1 July 1999
Switzerland	31 May 2000	30 July 2000	22 December 1999	1 May 2000
Turkey (*)	26 July 2000	24 September 2000	--	--
United Kingdom	14 December 1998	15 February 1999	--	--

* These countries have not yet adopted implementing legislation

[54] From http://www1.oecd.org/daf/nocorruption/annex2.htm