



RAISING STANDARDS AND UPHOLDING INTEGRITY: THE PREVENTION OF CORRUPTION

published by The Stationery Office

on this site.

on this site.

Foreword



Corruption is like a deadly virus. Left unchecked it weakens economies, creates huge inequalities and undermines the very foundations of democratic government. The international business community is increasingly coming to realise that a culture of corruption is a disincentive to investment and trade.

We are committed to the fight against corruption wherever it is found. Corruption knows no boundaries. And the development of e-commerce makes it increasingly difficult to pin down the physical location at which a corrupt transaction has taken place. The law has to catch up with these realities. So along with a reform of the corruption offences themselves, the Government proposes two key changes in the jurisdiction of UK courts:

- UK citizens to be triable in the UK for corruption offences committed abroad;
- citizens of any country to be triable here even though the offences did not occur wholly within the UK.

Our overriding consideration is to clarify and codify the law in line with developments both in this country and internationally. Our focus is on the raising of standards in both public and private life. Integrity, accountability and honesty are not optional extras; they should underpin the professional and the public life of this country.

Our work on reforming the law of corruption has revealed strong support from a wide cross-section of the public, both here and abroad, for clear and unambiguous laws that promote high standards of propriety in daily life, which say where the boundaries of acceptable behaviour lie and create a shared understanding across government and the broader community that corrupt practices will not be tolerated.

This paper therefore sets out the direction of the Government's proposals for the reform of the law of corruption in England and Wales. Discussions on reform of the law of corruption have involved the Scottish Executive and the Northern Ireland Office and consideration will be given to how legislation in this area will apply to the latter. Criminal law in Scotland is now the responsibility of the Scottish Executive. In presenting our proposals for reform, I wish to acknowledge our gratitude to the Law Commission for England and Wales for their contribution to the proposed reform of the law of corruption.

I look forward to the public debate and comment, which I am sure this important aspect of our work will attract.



Rt. Hon Jack Straw MP
June 2000

1. INTRODUCTION

1.1 In June 1997 the Home Office issued a paper¹ entitled "*The Prevention of Corruption*", partly in response to a recommendation in the first report² of the Committee on Standards in Public Life that "the Government should now take steps to clarify the law relating to the bribery of, or receipt of a bribe by a Member of Parliament". The Committee had also suggested that the clarification of the law might usefully be combined with the consolidation of the statute law on bribery, recommended by the Salmon Commission in 1976 and that the Law Commission in England and Wales might usefully be involved in this work.

1.2 Work on the first of these recommendations was taken forward by the Joint Committee on Parliamentary Privilege, and on the second by the Law Commission for England and Wales, (hereinafter referred to as the Law Commission). The latter issued its consultation paper early in 1997 and made its recommendations in its report of March 1998 (*Legislating the Criminal Code: Corruption, No. 248*). The Joint Committee on Parliamentary Privilege published its report³ on 30 March 1999.

1.3 The Sixth Report of the Committee on Standards in Public Life⁴, now under the chairmanship of Lord Neill, returned to the subject of corruption and recommended that new legislation should be brought forward as soon as possible and make clear the position of members of both Houses of Parliament.

1.4 In April 1998 the Home Office set up an interdepartmental working group to consider the reform of the law of corruption in England and Wales, with particular reference to the report and draft Bill produced by the Law Commission. We are grateful to the Law Commission and to members of the interdepartmental working group for their contribution to this work, as well as to those representatives of outside organisations who have helped with their information and advice. The Law Commission's report, which has been widely welcomed, has provided us with a helpful analysis of the difficulties surrounding the existing law of corruption. Its accompanying draft Bill has been used as a basis for the interdepartmental working group's deliberations. The Law Commission's report and draft Bill can be found on the Internet at <http://www.open.gov.uk/lawcomm/>

1.5 The interdepartmental working group, which comprised officials and lawyers, including a representative from the Law Commission, was set up to consider the Law Commission's proposals in detail. On 31 July 1998 the Government indicated⁵ its acceptance, in principle, of the Law Commission's proposals that there should be a modern statute, with a clear definition of what is meant by acting in a corrupt manner. The Government also indicated its support, in principle, for the Law Commission's proposal that there should be a single offence of corruption to cover both the public and private sectors.

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.

The territorial scope of this paper

1.10 The proposals in this paper relate to the law in England and Wales. The criminal law in Scotland is devolved and is now the responsibility of the Scottish Executive. References to territorial jurisdiction in Chapter 2 do not include the jurisdiction of the courts in Scotland, unless this is specifically stated. However, in the context of international obligations, the term "United Kingdom" is used because such obligations are entered into on behalf of the whole United Kingdom.

The aim of this Paper

1.11 The Government accepts in principle the proposals made by the Law Commission in its report on the reform of the law of corruption. This paper does not therefore seek to cover in detail all the areas covered in that report. Where we have not commented on specific aspects of the Law Commission's proposals, it should be assumed that the Government agrees with their conclusions. The purpose of this paper is to set out how the Government intends to meet its objectives of clarifying and updating the law so as to put beyond doubt its ability and commitment to fulfil its domestic and international commitments to combating corruption in both the public and private sectors.

Comments

Since the Law Commission has already carried out an extensive consultation exercise leading to its recommendations for the reform of the criminal law of corruption, the majority of which have been accepted by the Government, this paper does not specifically request comments on the direction of the Government's proposals. However, if anyone wishes to provide comments on any aspect of the proposals within they should direct them to:

Mrs Trudy Payne
Sentencing and Offences Unit
Home Office
Room 319
50 Queen Anne's Gate
London SW1H 9AT

to reach her by the end of July

Unless confidentiality is requested, it will be assumed that responses can be made available to others.

¹ The Prevention of Corruption: Consolidation and Amendment of the Prevention of Corruption Acts 1889 1906: A Government Statement.

² Standards in Public Life: the first report of the Nolan Committee (1995) CM 2850

³ Joint Committee on Parliamentary Privilege Report 30 March 1999 (HL Paper 43-1, HC 214-1)

⁴ Cm 4557 1 January 2000

⁵ Hansard 849 31 July 1998

2. SCOPE OF THE GOVERNMENT'S PROPOSALS

THE PROPOSALS

Summary

2.1 The Government is grateful to the Law Commission for its report No 248, on the need for the reform of the criminal law of corruption. Although the existing Prevention of Corruption statutes have largely stood the test of time the Government accepts that there are difficulties of interpreting the language and concepts used in the statutes and largely accepts the recommendations made by the Law Commission. They and others have identified the following as key elements in any modern statute on corruption:

- a definition of the term "corruptly";
- the concept of corruption as the suborning of an agent against his principal;
- the application of this concept to both the public and the private sector; and
- an extension of the United Kingdom's criminal jurisdiction over offences of corruption.

2.2 The Law Commission have recommended that the common law offence of bribery and the statutory offences of corruption should be replaced by a modern statute creating four new corruption 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.

2.3 The Law Commission recommended that the new offences should have broad effect, with the concept of "agent" being defined both as those who have an identifiable principal and also those charged with public duties.

The Government accepts the Law Commission's recommendations and proposes to bring forward legislation, when Parliamentary time allows, modelled on the draft Bill published by the Law Commission.

Acting corruptly

2.4 Each of the principal Corruption Acts 1889-1916 uses the term "corruptly" without providing a statutory definition of what this means. It is vital for individuals and organisations to know exactly what the law requires. The Law Commission's draft Bill, published with their report, offers a definition of acting "corruptly". The essential concept in the Law Commission's proposed definition is that of influencing an agent to act, in the belief that he or she will probably do so *primarily* in return for the conferring of an advantage (offering a bribe) on the agent or a third party. Thus a person who confers an advantage should be regarded as doing so corruptly if he or she intends a person, in performing his or her functions as an agent, to do an act or an omission, and he or she believes that if the person did so, it would probably be *primarily in return for the conferring of the advantage*.

2.5 Similarly, "acting corruptly" is also accepting an advantage, believing that it was offered corruptly (accepting a bribe), or acting as the result of such an advantage (acting on a bribe). In every case, it is immaterial whether it is the person being bribed, or a third party, who receives the advantage. It is also immaterial whether or not the person accepting the bribe actually acts, or fails to act, as required; the accepting in itself is corrupt.

2.6 As well as clarifying the law, the Law Commission's proposal would strengthen it. For example, under the present statute law, an agent commits an offence by accepting a bribe or a corrupt reward but not by acting in return for the bribe or attempting to earn a reward. Under the Law Commission's proposals for the new offence of *performing functions corruptly* it would be sufficient to prove that the agent's conduct was motivated by the *hope* of a corrupt reward, whether or not there was any agreement to that effect. Clearly, as the Law Commission highlighted in its report, in defining corruptly it will be essential to ensure that activities which are not corrupt are not criminalised. Thus, for example, an employee carrying out his work in anticipation of payment does not fall within the definition of corruption.

The Government accepts the Law Commission's recommendations that there should be an express exception in new legislation criminalising bribery to the effect that remuneration, tips and gratuities are not included.

Legitimate business activities such as advertising, marketing, direct marketing and corporate hospitality clearly do not come within the proposed definition. They all aim to influence behaviour by offering advantages, but their activity, by its very nature, is public and is not designed to induce someone to act corruptly.

Principal's Consent

2.7 There is another set of circumstances in which an offence of corruption may be shown not to have taken place, and which would therefore fall outside the proposed definition. This is where a person can show that he acted with the *consent* of his principal. If, for example, it is the practice within a company to offer better, or faster, service to any client who will pay extra for this, the employee accepting the extra payment in these circumstances will not be guilty of corruption. The Law Commission's proposed definition of corruption covers situations where an agent is induced to act against his principal; this is not possible where the principal consents to what might otherwise appear to be corrupt behaviour. This exception can only apply in situations where an identified principal exists, whether this is an individual, a group of individuals or the shareholders of a company. It would not be relevant to situations where someone was acting for the public because the public at large would not be in a position to give their consent in the way this paragraph describes.

The Government agrees with the Law Commission's conclusion that where the conferment or acceptance of an advantage has been properly authorised, there is no breach of trust by the agent and therefore no offence of corruption arises. This will be reflected in the Government's draft Bill on corruption.

Corruption in the public and private sectors

2.8 The principal corruption statutes (to which reference is made in paragraph 1.6 above), differentiate between "a member, officer or servant of a public body" (in the 1889 Act) and an agent acting "in relation to his principal's affairs or business" (in the 1906 Act). This distinction is relevant for several reasons. The most important is in relation to the case of public bodies where there is a "presumption" of corruption. The 1916 Act introduced a presumption of corruption in certain cases prosecuted under the 1889 and 1906 Acts. *"If 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 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 is mentioned in the Act in question, unless the contrary is proved."*

2.9 **The Government proposes two changes to this regime, as recommended by the Law Commission. The first is to introduce a single definition of "acting corruptly" which will concentrate on the relationship between agent and principal, which we believe is the key ingredient in an offence of corruption, rather than on the status of the person concerned.** This change reflects more accurately the way in which this distinction has become less clear in reality as an increasing number of public sector functions have been privatised or contracted out in recent years. **The second, and consequential, change is the abolition of the presumption of corruption which applies to public servants in the Prevention of Corruption Act 1916 which is rendered unnecessary given that the distinction between the public and the private sectors is to be removed.** The Government accepts that there is no longer any need for a presumption of corruption in the circumstances covered by the 1916 Act, and that the prosecuting authorities should be required to prove corruption beyond reasonable doubt.

Agents and Principals

2.10 The relationship between agent and principal is central to the concept of corruption as the suborning of an agent. The most obvious relationship is probably that of employee and employer; others are directors and a company, and professional adviser and client. There are others. In many cases the agent is acting for, or on behalf of, the public. In this context it is important to note both that this relationship includes persons having no connection with the United Kingdom and that the public in question can mean the public of another country such as, for example, a foreign public official of any other State, a judge of a court in the United Kingdom or in any other State or a member of a foreign public Assembly. The position of Members of Parliament in the United Kingdom is considered separately at Chapter 3.

2.11 **The Government proposes to bring forward legislation, when Parliamentary time allows, along the lines of that proposed by the Law Commission to the effect that "public official" is not confined to the public of the United Kingdom. It will also provide a statutory definition of the agent and principal relationship.** This should also assuage concerns expressed about whether certain categories of public officials working in the United Kingdom or abroad fall within

the definition of an agent in the context of the law of corruption.

2.12 In December 1999 the Home Secretary signed the Council of Europe Criminal Law Convention on Corruption see Chapter 4 and Annex below. The United Kingdom has not yet formally ratified the Convention. There is a requirement in the Convention to criminalise "trading in influence", which is not covered in existing legislation.

2.13 "Trading in influence" is defined as: "*intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of [domestic public officials, members of domestic public assemblies, foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies, and judges and officials of international courts] in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.*"

2.14 The Government proposes to make clear in its draft legislation on corruption that where a person with real, or purported, "influence" over any public agent trades this influence for advantage it should be covered by the definition of acting corruptly.

2.15 This would apply to both offering and seeking advantage. The offence would cover the actions of the intermediary or the person offering the bribe, but not the agent whose decision-making it is sought to influence. If the latter, of course, did act on a bribe this would in turn be corruption, but it would be a separate offence. It is immaterial whether the agent's decision-making is in fact affected, or indeed whether he or she is even approached. It is also immaterial whether the intermediary's influence is real or pretended, and whether he or she is also a public official. The Council of Europe Criminal Law Convention on Corruption requires the offence to relate to the decision-making of public officials. The Government accepts the need for such an offence and to apply it only where the decision-making of public officials is targeted.

2.16. The proposed offence is somewhat different from the other corruption offences referred to in this paper, though the protected interests are the same; transparency and impartiality in the decision-making process of public administrations. The difference between this offence and bribery is that the influence peddler is not required "to act or refrain from acting" as would a public official, nor is he the agent of an identified principal. Improper "influence" must contain a corrupt intent by the influence peddler: acknowledged forms of lobbying do not fall under this notion. What is important to note is the position of the influence peddler: he cannot take decisions himself, but misuses his real or alleged influence on other persons.

JURISDICTION

Territorial Jurisdiction

2.17 Criminal jurisdiction in the United Kingdom generally is territorially based, in other words conduct constituting the commission of an offence must have some connection with the territory of the UK. For example, if an offence, or at least the last element necessary for its completion, takes place within the UK then the offence will be triable in the UK. The view has been taken that offences committed by UK nationals abroad are not normally prosecutable in the UK, unless they fall within a limited range of statutory exceptions. This is based on the view that territorial prosecutions are preferable because crimes are best investigated and prosecuted in the country where they were committed, since that is where the evidence and witnesses are most readily accessible.

2.18 Where it is alleged that a UK national has committed an offence abroad we would consider the extradition of the alleged offender for prosecution abroad. In the case of corruption, the offence consists of more than one element; thus if the act of *offering, accepting or agreeing to accept a bribe* takes place within the United Kingdom then the courts here will have jurisdiction. In practice the courts have tended to take the view that where any action which contributed to the offence of corruption took place within the United Kingdom, the United Kingdom courts could take jurisdiction over the offence. A recent example of this is the case of *R v- Van Der Horst* where the court ruled that because a substantial measure of the activities constituting the crime took place within the UK it could be prosecuted here. In addition where the involvement of a UK national or a UK-based company amounts to conspiracy it is possible that a prosecution might arise under the provisions of the Criminal Justice (Terrorism and Conspiracy) Act 1998. The conspiracy provisions in sections 5-7 of this Act apply to England and Wales, Scotland and Northern Ireland.

2.19 There are of course exceptions to this territorial principle. Part I of the Criminal Justice Act 1993, the provisions of which came into force on 1 June 1999, deals with various offences of dishonesty, and extends the jurisdiction of the courts to those offences where any *relevant event* occurs within England and Wales. (There are separate parallel provisions for Northern Ireland under the Criminal Justice (Northern Ireland) Order 1996.) In Scotland, the common law provides appropriate

jurisdiction. A relevant event is "any act or omission or any other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence".

The Government proposes to accept the Law Commission's recommendations to include a similar provision for territorial jurisdiction in its reform of the law of corruption . This will put beyond doubt the United Kingdom's ability to prosecute offences that do not occur wholly within the United Kingdom's jurisdiction. Such an approach is also compatible with the requirements of many international instruments that require signatory States to take jurisdiction where an offence is committed "in whole or in part" within their territory.

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;
- 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.

3. Bribery of Members of Parliament

3.1 The law of corruption as it relates to Members of Parliament⁶ is an important element of the current review. In December 1996 the Home Office published a discussion paper, entitled "*Clarification of the law relating to the Bribery of Members of Parliament*". The paper, which was addressed to the Select Committee on Standards and Privileges in the House of Commons and the Committee for Privileges in the House of Lords, set out a number of options for developing the criminal law to cover the bribery of Members of Parliament. The matter was later taken up by the Joint Committee on Parliamentary Privilege.

3.2 The question of the law relating to Members of Parliament touches upon constitutional issues involving parliamentary rights and immunities. These rights and immunities are known as parliamentary privilege. The touchstone applied by the Joint Committee on Parliamentary Privilege during its recent investigation into parliamentary privilege was that Parliament should be vigilant to retain necessary rights and immunities, and equally rigorous in discarding all others. The Joint Committee concluded that corruption, as a serious and insidious offence, could only be dealt with effectively by using the police and the courts. The Committee accepted that this would involve an encroachment upon the freedom of speech guaranteed by Article 9 of the Bill of Rights 1689. Article 9 stipulates that "*freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament*". It thus affords legal immunity to members for what they say or do in proceedings in Parliament. The immunity applies in "any court or place out of Parliament". The Committee recommended that "Members of both Houses should be brought within the criminal law of bribery by legislation containing a provision to the effect that evidence relating to an offence committed or alleged to be committed under the relevant sections shall be admissible notwithstanding Article 9".

3.3 The basis of Members' privilege is to ensure that they may speak freely without fear of the consequences. This is a necessary parliamentary protection in a democratic society. However, it should not be used to protect dishonest Members, nor should its waiver in cases of corruption inhibit the honest Member of Parliament's ability to speak or act in Parliament. The honest Member has nothing to fear from being subject to the criminal law of bribery. The Government therefore accepts the recommendation of the Joint Committee in this regard and believes that it is essential that any new statute should make it clear that Members and Peers are subject to the criminal law of corruption. The intention is not to catch, for example, those Members who receive payments or benefits which are entirely legitimate and open and in accordance with the rules of the House. These rules, like codes of conduct in other professions, give guidelines as to what is or is not acceptable.

3.4 The Sixth Report of the Neill Committee, to which reference is made in the Introduction to this paper, also recommended that the position of members of both Houses of Parliament in relation to the offence of bribery should be clarified. The Government's proposals in this area have taken account of this recommendation, and are intended to make the position clear.

3.5 Another relevant issue in this context is the sponsorship of Members of Parliament. The Government believes that sponsorship of Members of Parliament should continue to be acceptable provided that the Members of Parliament in question do not accept money or other considerations in respect of specific acts designed to favour the organisation sponsoring them. This mirrors the position under the rules of the House. It also takes account of Recommendations 9 and 10 of the Sixth Report of the Neill Committee which relate to the guidelines on paid advocacy and proposed amendment to them. Recommendation 9 supports the retention of the ban on paid advocacy, and Recommendation 10 proposes to amend the guidelines to make it possible for an MP who has a personal interest to initiate proceedings which relate in a general way (and not exclusively) to that interest, subject to the following safeguards:

- the MP is prohibited from engaging in "paid advocacy" on behalf of that interest;
- he or she is required to register and declare the interest in accordance with the guidelines;
- he or she must identify his or her interest on the Order Paper (or Notice Paper) by way of an agreed symbol when initiating a debate.

The Government proposes to refer specifically to Members of both Houses in a future Bill on corruption and to proceed to amend the criminal law of corruption, when Parliamentary time allows, in the way recommended by the Joint Committee on Parliamentary Privilege.

⁶This includes Members of both Houses

4. INTERNATIONAL INITIATIVES TO COMBAT CORRUPTION

4.1 The United Kingdom is active in addressing corruption internationally as well as domestically through its participation in international instruments both within the EU and more widely. Since the Law Commission published its proposals the UK has become party to a number of international instruments designed to tackle corruption including the OECD Convention on the Bribery of Foreign Public Officials in International Business Transactions (the OECD Convention) and the Council of Europe Criminal Law Convention on Corruption. (The UK is now playing an active role as a member of the Group of States against Corruption (GRECO) set up to monitor the implementation of this Convention). The UK has also ratified the EU Corruption Convention and the Corruption Protocol to the EU Fraud Convention, and is involved in work in the G8 (the group of eight leading industrialised countries) and the UN. In considering the reforms suggested by the Law Commission, the working group took full account of these agreements. The proposals set out in this paper are intended to take due account of the UK's international obligations under these agreements.

The Government believes that its proposals to amend the law of corruption meet in full its obligations under the international agreements on tackling corruption to which it is a party.

A summary of the key international instruments in this area is annexed.

5. OTHER ISSUES

Penalties

5.1 The Government agrees with the Law Commission that the new offence should continue to be triable either in the Magistrates' Courts or in the Crown Court. It also believes that the current maximum penalty of 7 years imprisonment should be unchanged. There has been no evidence that the Courts are finding this maximum inappropriate.

Consent to prosecution

5.2 There is currently a requirement under corruption statutes for the consent of a Law Officer to prosecution. Such a requirement may be seen to be justified on public policy grounds, and should reduce the risk of prosecutions being initiated for frivolous or malicious reasons. The Law Commission has published a report on consents to prosecution (Law Com No 255 October 1998) in which it recommended that consent should only be required in certain defined categories of offences. One of these categories is, we believe, relevant to the offence of corruption: "offences which create a high risk that the right of private prosecutions will be abused and the institution of proceedings will cause the defendant irreparable harm".

5.3 After discussion with the Law Officers the Government has come to the conclusion that there is no compelling argument for change, and indeed that a consent provision remains necessary for the reasons referred to above, and proposes not to adopt the Law Commission's recommendation in their report on the reform of the law of corruption, to dispense with the requirement for the consent of the Law Officers.

6. 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.
-
-

Annex:

INTERNATIONAL CORRUPTION INSTRUMENTS

1. EU INSTRUMENTS

Convention on the fight against corruption involving officials of the European Communities or Officials of Member States of the European Union (The Corruption Convention)

The UK has ratified the Corruption Convention. Its main features are:

- corruption involving national or Community officials;
- establishment of common minimum standards in the EU;
- criminalisation of active and passive bribery;
- strengthening of judicial cooperation;
- ensuring free and fair competition in the award of contracts.

First (Corruption) Protocol to the Convention on the Protection of the European Communities' Financial Interests (The Fraud Convention)

Ratification of the Convention and all its (three) associated Protocols was carried out at the same time as for the Corruption Convention. Its main features are:

- corruption involving national or Community officials and affecting the European Communities' financial interests;
- criminalisation of active and passive bribery;
- establishment of common minimum standards in the EU.

Joint Action on Private Sector Corruption

This was agreed at the Justice and Home Affairs Council on 3 December 1998; unlike a Convention a Joint Action does not require ratification. Its main features are:

- establishment of corruption in the private sector as a criminal offence;
- provision of appropriate penalties;
- establishment of liability of legal persons.

2. OTHER INSTRUMENTS

Council of Europe Criminal Law Corruption Convention

The UK signed the Convention in January 1999. Its main features are:

- active and passive corruption of public officials;
- corruption of elected representatives of domestic bodies;
- corruption of foreign public officials, foreign elected representatives and members of international courts;
- criminalisation of corruption in the private sector;
- establishment of a monitoring body GRECO to assess compliance.

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

The UK ratified the Convention in December 1998. Its main features are:

- criminalisation, with appropriate penalties, of active bribery of foreign public officials in international business transactions;
- establishment of liability of legal persons for such bribery;
- requirement for measures to tighten up accounting and record keeping practices, with sanctions for breaches;

- in-built evaluation procedure for monitoring implementation.
-
-

