UNODC
United Nations Office on Drugs and Crime

PILOT REVIEW PROGRAMME:
UNITED KINGDOM

Review of the Implementation of Articles 5, 15, 16, 17, 25, 46 paragraphs 9 and 13, 52 and 53 of the United Nations Convention against Corruption

Reviewing Countries:
Austria and Greece

A. Introduction

Article 63 of the United Nations Convention against Corruption (UNCAC) establishes a Conference of the States Parties with a mandate to, inter alia, promote and review the implementation of the Convention. In accordance with article 63 paragraph 7, the Conference shall establish, if it deems necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

At its first session, held in Jordan in December 2006, the Conference of the States Parties agreed that it was necessary to establish an appropriate and effective mechanism to assist in the review of the implementation of the Convention (resolution 1/1). The Conference established an open-ended intergovernmental expert group to make recommendations to the Conference on the appropriate mechanism, which should allow the Conference to discharge fully and efficiently its mandates, in particular with respect to taking stock of States' efforts to implement the Convention. The Conference also requested the Secretariat to assist parties in their efforts to collect and provide information on their self-assessment and their analysis of implementation efforts and to report on those efforts to the Conference. In addition, several countries already during the session of the Conference expressed their readiness to support on an interim basis a review mechanism which would combine the self-assessment component with a review process supported by the Secretariat.

The "Pilot Review Programme", of which this report forms part of, was established to offer adequate opportunity to test possible means for implementation review of the Convention, with the overall objective to evaluate efficiency and effectiveness of the tested mechanism(s) and to provide to the Conference of the States Parties information on lessons learnt and experience acquired, thus enabling the Conference to make informed decisions on the establishment of the appropriate mechanism for reviewing the implementation of the Convention. The Pilot Programme is an interim measure to help fine-tune the course of action. It is strictly voluntary and limited in scope and time.

The methodology used under the Pilot Review Programme is to conduct a limited review of the implementation of UNCAC in the participating countries using a combined self-assessment / group / expert review method as possible mechanism(s) for reviewing the implementation of the Convention.

Throughout the review process, members of the Group engage with the individual country in an active dialogue, discussing preliminary findings and requesting additional information. Where requested, country visits are conducted to assist in undertaking the self-assessments and/or preparing the recommendations. The teams conducting the country visits are composed of experts from two prior agreed upon countries from the Group and a member of the Secretariat

The scope of review is articles: 5 (preventive anti-corruption policies and practices); 15 (bribery of national public officials); 16 (bribery of foreign public officials and officials of public international organizations); 17 (embezzlement, misappropriation or other diversion of property by a public official); 25 (obstruction of justice); 46 (mutual legal assistance), particularly paragraphs 9 and 13; 52 (prevention and detection of transfers of proceeds of crime); and 53 (measures for direct recovery of property).

B. Process

The following review of the United Kingdom's implementation of the United Nations Convention against Corruption is based on the self assessment report received from United Kingdom, the outcome of the active dialogue between the United Kingdom and the experts from Austria and Greece, and a review of relevant regional review mechanism reports on the United Kingdom, including the 2007 Third Round FATF report, the 2008 Third Round GRECO report (Theme I: Incriminations), and the 2008 Phase II bis OECD Working Group on Bribery report.

This review is also based on the on-site visit to the United Kingdom conducted in March of 2009. During this country visit, meetings were held between the expert reviewers and officials from the Department for International Development (DFID), the Department for Business, Innovation and Skills (BIS), previously the Department for Business,, Enterprise and Regulatory Reform (DBERR), the Attorney General's Office, the Home Office, the UK Central Authority, the Serious Organized Crime Agency (SOCA), the Metropolitan Police, the City of London Police, the Serious Fraud Office (SFO), the Crown Prosecution Service, the Financial Services Authority (FSA), the Independent Police Complaints Commission (IPCC), the Scottish Crown Office, including both its National Casework Team and International Cooperation Unit, and members of civil society, including the International Chamber of Commerce, Transparency International-UK, Tearfund, Christian Aid, and Islamic Relief Worldwide.

C. Executive summary

The United Kingdom has fully adopted the measures required in accordance with the provisions of Article 17 (embezzlement, misappropriation or other diversion of property by a public official), Article 25 (obstruction of justice), Article 46(9) (dual criminality in mutual legal assistance) and 46(13) (notification of the central authority for mutual legal assistance), Article 52 (prevention and detection of transfers of proceeds of crime) with regard to mandatory measures and Article 53 (measures for direct recovery of property).

The United Kingdom has adopted most of the measures required in accordance with the provisions of UNCAC Articles 5 (preventive anti-corruption policies and practices), 15 (bribery of national public officials) and Article16 (bribery of foreign public officials and officials of public international organizations).

The UK is congratulated for having now extended the convention to cover Jersey, Guernsey and Isle of Man and its work to further extend the convention to the Overseas Territories.

D. Implementation of the United Nations Convention against Corruption

1. Ratification of the Convention

The United Kingdom signed the UNCAC on 9 December 2003. (C.N.1400.2003.TREATIES-15 (Depositary Notification).) They subsequently ratified the Convention on 9 February 2006 (C.N.131.2006.TREATIES-7 (Depositary Notification).)

The United Kingdom, which is responsible for the international affairs of the British Virgin Islands (BVI), extended the territorial application of the UNCAC to the BVI on 12 October 2006. (C.N.848.2006.TREATIES-35 (Depositary Notification).) However, the United Kingdom has declined to extend the territorial application of the UNCAC to any of its other Overseas Territories and Crown Dependencies, until the necessary legislation is in place. This work is currently underway and it is anticipated that UNCAC will gradually be extended to cover the Territories that request such extension and demonstrate compliance.

2. The United Kingdom legal system

The United Kingdom is a constitutional monarchy, whose current head of state is Queen Elizabeth II. The head of the Government is the Prime Minister. The legislative branch is a bicameral Parliament, consisting of a House of Commons and a House of Lords. Although the Parliament at Westminster, England remains the seat of Government for the UK, Scotland, Wales, and Northern Ireland also have a degree of devolved government. The United Kingdom has independent judiciaries.

Under the structure of the United Kingdom legal system, there are both overarching laws that cover the entire UK and laws that cover only England and Wales, Scotland, and/or Northern Ireland. When

different laws relevant to the pilot review programme process cover different areas of the United Kingdom, all applicable laws are cited and distinguished by the scope of their applicability. In addition, while many provisions of law are statutory in nature, some are contained in the "common law" of England, Wales, and Northern Ireland, which consists of the historical legal traditions of the United Kingdom that have been interpreted and made binding through judicial precedent. While closely related, the legal traditions of Scotland, which has a mixed common law/civil law history, and the rest of the United Kingdom differ in some regards, with the relevant divergences also noted in this report.

The Government Minister with responsibility for prosecutions in England, Wales, and Northern Ireland is known as the Attorney General, with her deputy known as the Solicitor General. The Attorney General supervises the work of the various prosecutorial agencies, which include the Crown Prosecution Service (CPS) and the Revenue and Customs Prosecutions Office (RCPO) in England and Wales, the Public Prosecution Service (PPS) in Northern Ireland, and the Serious Fraud Office (SFO) which investigates and prosecutes in England, Wales and Northern Ireland. Prosecutions for offences under the main anti-corruption legislation require the consent of the Attorney General. In 2008, the Attorney General consented to the prosecution of 17 individuals for corruption offences, but denied consent for the prosecution of one individual. This consent provision is under review as part of the overall process of reform, and there are separate proposals to transfer of the function of giving consent for prosecutions for bribery offences to the Directors of the main prosecuting authorities under the draft Bribery Bill. Corruption cases are primarily handled by the Fraud Prosecution Service, which is a division of the CPS.

In Scotland, the head of prosecutions is the Lord Advocate, who supervises the work of the prosecutorial Crown Office, with the second in command also known as the Solicitor General. In Scotland, most serious corruption cases are handled by the National Casework Team contained within the Crown Office. They work closely with the UK's Crown Prosecution Service, who is willing to enforce Scottish orders in England and Wales. English courts will also honour Scottish court warrants, implementing them through English warrants issued on the basis of the Scottish rulings.

The Serious Fraud Office (SFO) is responsible for investigating and prosecuting serious fraud cases, including major corruption cases. They also participate in a Strategic Corruption Working Group that includes SOCA and other law enforcement agencies and focuses on a strategic, systematic response to overseas corruption cases. The SFO is also part of a tactical inter-agency anti-corruption group that meets once a month, focusing on foreign PEPs, which consists of the Metropolitan Police, Serious Fraud Office, City of London police, and the FSA. The SFO has its own Anti-Corruption Unit that is intended to include up to 100 investigators. This handles both domestic and foreign corruption cases.

Most UK police agencies are components of the UK Police Service, which includes 44 separate police agencies. Corruption-related specialized police agencies with the UK Police Service include the Metropolitan Police ("the Met") and the City of London police. The Met has a separate Overseas Corruption Unit that handles most corruption cases overseas. The also have an Economic and Specialist Crime Control command that includes both a Public Sector Corruption Team and a Proceeds of Corruption Unit. Beyond the Met, there is also the City of London police that handles crimes that occur in London's financial centre. They have their own Overseas Corruption Unit, which handles foreign corruption cases, as well as an Economic Crime Department.

The Independent Police Complaints Commission (IPCC) was established by the Police Reform Act 2002 and began work on 1 April 2004. The IPCC deals with complaints and allegations of misconduct against the police in England and Wales. The IPCC has a Lead Commissioner for corruption and an Operational Lead for corruption at Director Level. There are separate arrangements for police complaints in Scotland.

The SOCA (Serious Organized Crime Agency) operates both as an Organized Crime law enforcement agency in England and Wales and as the UK's Financial Intelligence Unit (FIU). Their FIU follows a

law enforcement model and processes 200,000 SAR reports a year. Domestic corruption cases are generally handled by the relevant police force police and prosecutors, without any UK level coordination. (It should also be noted that the police in the off-shore banking centres of Jersey and Guernsey are members of the UK Police Service, even though they are outside the UK prosecutorial system.)

The Financial Services Authority (FSA) is the primary regulator of financial institutions in the United Kingdom. The reduction of the extent to which it is possible for a financial business to be used for a purpose connected with financial crime is one of the FSA's statutory objectives. Financial crime includes any offence involving money laundering, fraud or dishonesty, or market abuse. The objective interacts with the FSA's three other objectives – protecting consumers; market confidence; and public awareness. However, it should be noted that the FSA has no jurisdiction over the UK's off-shore financial centres in Jersey, Guernsey, and elsewhere. The FSA operates a 'shared intelligence service' on financial service information. The Financial Crime Information Network (Fin-Net), of which the FSA is the service secretariat, includes the UK and several UK off-shore financial centres. Fin-Net is a participant in the shared intelligence service along with 20 other organisations.

The Department for International Development (DFID) is the lead UK agency implementing the UNCAC. However, the Department for Business, Innovation and Skills (BIS) plays the key role in coordinating the response to the issue of bribery of foreign officials, due to its role coordinating implementation of the OECD Bribery Convention.

3. Review of implementation of selected articles

3.1. Article 5

> ***Preventive anti-corruption policies and practices***
>
> "1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.
>
> "2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.
>
> "3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.
>
> "4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption."

a. Summary of the main requirements

In accordance with article 5, States Parties are required: (a) To develop and implement or maintain effective anti-corruption policies that encourage the participation of society, reflect the rule of law and promote sound and transparent administration of public affairs (para. 1); and (b) To collaborate with each other and relevant international and regional bodies for the pursuit of the above goals (para. 4). Article 5 does not introduce specific legislative requirements, but rather mandates the commitment of States Parties to develop and maintain a wide range of measures and policies for the prevention of corruption, in accordance with the fundamental principles of their legal system. Under article 5, paragraph 1, the requirement is to develop, implement and maintain effective, coordinated measures that: (a) promote the participation of the wider society in anti-corruption activities; and (b) reflect the principles of: (i) the rule of law; (ii) proper management of public affairs and public property; (iii)

integrity; (iv) transparency; and (v) accountability. These general aims are to be pursued through a range of mandatory and optional measures outlined in subsequent articles of the Convention. Article 5, paragraph 4, requires that, in the pursuit of these aims, as well as of general prevention and evaluation of implemented anti-corruption measures, States Parties collaborate with each other as well as with relevant international and regional organizations, as appropriate and in accordance with their fundamental principles of law.

b. Findings and observations of the review team concerning article 5

The United Kingdom has developed international anti-corruption action plans to prevent and combat corruption outside the territory of the UK and is currently developing a foreign bribery strategy. . The UK Government also has an "Anti-Corruption Champion," the Secretary of State for Justice and Lord Chancellor, Jack Straw, who heads an Ad Hoc Ministerial Committee to implement this plan to combat overseas corruption. (This system arose out of commitments made during the 2005 G8 Gleneagles summit in Scotland.) BIS serves as the Secretariat to this Ad Hoc Ministerial Committee and guides the work of combating UK corruption overseas. This support is provided through BIS' Anti-Corruption Unit, a part of its Trade Policy Unit.

However, the UK does not have an anti-corruption plan to prevent and combat domestic corruption. Several government stakeholders were of the opinion that such a plan was unnecessary, as there were no significant levels of domestic corruption within the borders of the UK. However, other governmental and civil society stakeholders noted that domestic corruption remained an issue in the UK, particularly in the area of political party funding, issues involving expenses of the members of Parliament, and issues involving the granting of approval by local authorities for development projects. Notwithstanding this lack of a domestic national strategy to address corruption, in the opinion of the United Kingdom, it does have an "umbrella of strategies" that, taken together, could be viewed as a national preventive strategy. These include:

Codes of Conduct

The Civil Service Code sets out the core values of the Civil Service: integrity, honesty, objectivity and impartiality. It also identifies the standards of behaviour expected of all civil servants. The revised Civil Service Code of 2006 forms part of the terms and conditions of civil servants, and was expressly made part of the contractual relationship between a civil servant and his/her employer. It covers the entire United Kingdom, including Scotland. The Director of Public Prosecutions (head of the CPS) has also issued a separate Code for Crown Prosecutors in England and Wales. The Code sets out the general principles CPS prosecutors should follow when they make decisions on criminal cases of all kinds. It is followed by prosecutors in other prosecuting authorities too.

Training

The Ministry of Defense (MOD) Police Fraud Squad has developed a comprehensive anti-corruption training package, which has been used by other agencies throughout the UK Police Service. The MOD Fraud Squad is also regularly called upon to advise other forces in relation to corruption matters, including preventive actions. In addition to the investigative work, the MOD Police Fraud Squad offers preventive education on corruption and fraud in the workplace. To this end, the Squad is in the process of restructuring to provide for an anti-corruption unit with a specific remit for education, prevention and investigation of these offences. The Department for Business, Innovation and Skills (BIS) raises awareness of foreign anti-corruption issues through a general security risk analysis for the country. Furthermore, it follows a train-the-trainers concept for voluntary, mandatory or ad-hoc trainings regarding foreign corruption. The Crown Prosecution Service also provides anti-corruption training materials for its specialist staff within the newly created Fraud Prosecution Service.
However, these trainings primarily focus on overseas corruption, and do not address domestic corruption.

Public Awareness Campaigns

The FCO funded the development of a website for the UK network of the UN Global Compact (http://www.ungc-uk.net/). This features guidance on implementing all ten Global Compact principles, including the tenth principle on anti-corruption, and has a link to the UK's anti-bribery leaflet. The United Kingdom has also contributed substantially towards the development of the Danish international anti-corruption information portal. The United Kingdom is also working with companies and other stakeholders in a range of sectors to promote transparency in international business transactions. The initial consultation phase on the construction transparency initiative (CoST) included a broad range of stakeholders from industry and industry bodies (e.g. UK Anti-Corruption Forum), civil society (Transparency International, Engineers Against Poverty), World Bank, academia and procurement specialists. A Multi-Stakeholder Group has been set up to act as a reference point during the future design of CoST and oversee UK pilot projects. The UK has led the development of an European-wide defence sector initiative, building on a number of existing industry and NGO efforts to build integrity in the international defence sector. However, these UK public awareness campaigns are limited to overseas corruption, and do not address the issue of domestic corruption.

Recognition of the importance of corruption in the country is quite variable. The on-site discussions have shown that there are some interesting anti-corruption initiatives in the UK. However, at this point in time there doesn't seem to be regular monitoring regarding the effectiveness of these measures.

Apart from initiatives in the field of prevention, there is no typology of corruption available, or any analysis and evaluation of the situation in the UK. This lacuna is all the more important given the diverging views about the extent of these specific offences and the fact that current preventive efforts have no means to fine-tune or target their approach on specific problems or sectors of society.

Furthermore, there is currently no specific governmental anti-corruption programme, nor is there any specialised agency which is responsible for a centralised coordination of nation-wide anti-corruption work. There is an independent police unit that specifically investigates corrupt practices relating to UK business and those that work within them

The United Kingdom has adopted most of the measures required in accordance with UNCAC Article 5

3.2 Article 15

Bribery of national public officials

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

"(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

"(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties."

a. Summary of the main requirements

In accordance with article 15, States Parties must establish two offences: active and passive bribery of national public officials:

States Parties must establish as a criminal offence, when committed intentionally, the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official

himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties (art. 15, subparagraph (a))[1]. The required elements of this offence are those of promising, offering or actually giving something to a public official. The offence must cover instances where no gift or other tangible item is offered. Thus, an undue advantage may be something tangible or intangible, whether pecuniary or non-pecuniary. The undue advantage does not have to be given immediately or directly to a public official of the State. It may be promised, offered or given directly or indirectly. A gift, concession or other advantage may be given to some other person, such as a relative or political organization. Some national legislation might cover the promise and offer under provisions regarding the attempt to commit bribery. When this is not the case, it will be necessary to specifically cover promising (which implies an agreement between the bribe giver and the bribe taker) and offering (which does not imply the agreement of the prospective bribe taker). The undue advantage or bribe must be linked to the official's duties.

States Parties must establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties (art.15, subpara. *(b)*). This offence is the passive version of the first offence. The required elements are soliciting or accepting the bribe. The link with the influence on official conduct must also be established. As with the previous offence, the undue advantage may be for the official or some other person or entity. The solicitation or acceptance must be by the public official or through an intermediary, that is, directly or indirectly. The mental or subjective element is only that of intending to solicit or accept the undue advantage for the purpose of altering one's conduct in the course of official duties[2].

b. Findings and observations of the review team concerning article 15

Active Bribery

England, Wales, and Northern Ireland

This requirement is covered by the Public Bodies Corrupt Practices Act 1889. In particular, section 1(2) mandates that:

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

In addition, section 1 of the Prevention of Corruption Act 1906 mandates that:

"If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business . . . he shall be guilty of a misdemeanour."

[1] It is reiterated that for the purposes of the Convention, with the exception of some measures under chapter II, "public official" is defined in article 2, subparagraph *(a)*. An interpretative note indicates that, for the purpose of defining "public official", each State party shall determine who is a member of the categories mentioned in subparagraph (a) (i) of article 2 and how each of those categories is applied (A/58/422/Add.1, para. 4).

[2] See art. 28, which provides that "Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances"

This is also covered under the common law. *Russell on Crime* provides a general definition of the common law offence of bribery:

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

There are additional specialist bribery offences, covering particular types of officials, including:

- Customs and Excise Management Act 1979 - section 15 (this criminalises the bribery of customs officers);
- Sale of Offices Act 1551 - this concerns bribery involving the sale of offices;
- Sale of Offices Act 1809 - sections 3 and 4 (this concerns bribery involving the sale of offices);
- Honours (Prevention of Abuses) Act of 1925 - section 1(2) (this concerns bribery involving the honours system).

Scotland

All of the statutory laws described above also apply to Scotland. In addition, under Scottish common law, the offence of bribery, including active bribery, is defined by *Stairs Encyclopaedia* as:

"It is a crime at common law to bribe a judicial officer, to attempt to do so, and for the officer himself to take a bribe. Hume describes the crime, when committed by a judge, as: '… the selling of his judgment for good deed or reward: Meaning by this, not only his taking a bribe to decide against his conscience, but in general his taking to show favour in his office…'The term 'judicial officer' extends beyond judges, sheriffs, magistrates and justices on the one hand to other officers of court such as clerks, procurator fiscals and macers, all of whom are punishable if they take a reward for showing favour in their office. Bribery of non-judicial officers, such as public officials, councillors and the like, may be criminal at common law but it is always prosecuted nowadays under statute, as are all other aspects of corrupt behaviour."

Draft Bribery Bill

Some commentators have noted that this legal system is complicated and may not fully cover all possible aspects of bribery. According to the UK government, any such gaps can be dealt with by using other catch-all forms of criminal law such as common law 'conspiracy to defraud' prosecutions and similar legal stratagems. Nevertheless recognizing these concerns, the Law Commission for England and Wales has proposed a new draft bill on bribery that will repeal the provisions of law discussed above, and replace them with one new consolidated offense. The Government published a draft Bribery Bill for pre-legislative scrutiny in March 2009 based on the Law Commission's proposals. The Scottish Executive is also consulting on reform of the bribery laws in Scotland based on the Law Commission's proposals. Under this proposed draft bill, active bribery will be defined as: "P (payer) will be guilty if, directly or indirectly, he offers, promises or gives advantage to another, intending it to induce another person to do something improper (defined below), or to reward someone for behaving improperly (defined below)."

Passive Bribery

England, Wales, and Northern Ireland

This requirement is covered by the Public Bodies Corrupt Practices Act 1889. In particular, section 1(1) mandates that:

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

In addition, section 1 of the Prevention of Corruption Act 1906 mandates that:

"If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business . . . he shall be guilty of a misdemeanour."

As noted above, *Russell on Crime* provides a general definition of the common law offence, including passive bribery, which holds that:

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

As with active bribery, there are additional specialist bribery offences, covering particular types of officials, including:

- Customs and Excise Management Act 1979 - section 15 (this criminalises the bribery of customs officers);
- Sale of Offices Act 1551 - this concerns bribery involving the sale of offices;
- Sale of Offices Act 1809 - sections 3 and 4 (this concerns bribery involving the sale of offices);
- Honours (Prevention of Abuses) Act 1925 - section 1(1) (this concerns bribery involving the honours system).

Scotland

All of the statutory laws described above also apply to Scotland. In addition, under Scottish common law, the offence of bribery, including active bribery, is defined by *Stairs Encyclopaedia* as:

"It is a crime at common law to bribe a judicial officer, to attempt to do so, and for the officer himself to take a bribe. Hume describes the crime, when committed by a judge, as: "'the selling of his judgment for good deed or reward: Meaning by this, not only his taking a bribe to decide against his conscience, but in general his taking to show favour in his office . . . 'The term 'judicial officer' extends beyond judges, sheriffs, magistrates and justices on the one hand to other officers of court such as clerks, procurator fiscals and macers, all of whom are punishable if they take a reward for showing favour in their office. Bribery of non-judicial officers, such as public officials, councillors and the like, may be criminal at common law but it is always prosecuted nowadays under statute, as are all other aspects of corrupt behaviour."

Draft Bribery Bill

Under the Government's new draft bill on bribery, based on the England and Wales Law Commission's proposals, the passive bribery provisions discussed above will be repealed and replaced with one new consolidated offence. Under this proposed draft bill, passive bribery will be defined as: "R (recipient) will be guilty:

(a) if he requests or accepts an advantage, intending that he, or another, should in consequence behave improperly, defined below,
(b) if he requests or accepts an advantage and the request or acceptance itself constitutes improper behaviour, defined below,
(c) if he requests or accepts for a reward for improper behaviour, defined below, or (d) if he behaves improperly, defined below, in anticipation or in consequence of requesting or accepting an advantage."

Current law on bribery is complex and the language is in parts vague. The Prevention of Corruption Act 1906, the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Act 1916 apply to the entire UK. The common law of England and Wales as well as that of Scotland contains public-official bribery offences, which are not necessarily of the same scope.

Statutory law and common law use different formulations for bribery, which could cause considerable uncertainty over the appropriate application of the said law. Both the 1889 and the 1906 Acts use the term "corruptly" to describe the offence, but neither provides a definition.
Furthermore, whereas the offence under the 1906 Act relates to any agent acting *"in relation to his principal's affairs or business"* and, as such applies to both the public and the private sector, none of the statutes seems to apply to judges. Moreover, it is unclear whether "quasi public bodies" are covered by the 1889 Act.

In addition, the bribery of a member of parliament (the House of Commons or the House of Lords) or the acceptance of a bribe by a member, is not covered by statutory law. It seems that the common law bribery offence in England and Wales applies to MPs unlike the one in Scotland which does not (although the Prevention of Corruption Acts 1889 to 1916 has been specifically applied to members of the Scottish Parliament, Welsh, and NI Assemblies).

Additionally, the differentiation between public and private sector bribery within the statutory laws may cause problems in practice, especially in context of presumption laid down in the 1916 Act, section 2.

Finally, when it comes to the effective application of the law, uncertainties and problems can occur. This also was remarked upon by various representatives from different institutions during the visit.

The experts noted with satisfaction that the UK has recently taken various initiatives aiming at or expected to have an impact on combating corruption.

The United Kingdom has adopted most of the measures required in accordance with UNCAC Article 15

3.3 Article 16

Bribery of foreign public officials and officials of public international organizations
"1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
"2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public

international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties."

a. Summary of the main requirements

Under article 16, paragraph 1, States must establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business. Article 16 does not require that bribery of foreign public officials constitute an offence under the domestic law of the concerned foreign country.[3]

Article 16, paragraph 2, requires that States Parties consider establishing as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties. This is the mirror provision of article 15, subparagraph *(b),* which mandates the criminalization of passive bribery of national public officials.

b. Findings and observations of the review team concerning article 16

Active Bribery

England, Wales, and Northern Ireland

According to the United Kingdom, the active bribery offences discussed under UNCAC Article 15 have been interpreted by UK courts to equally apply to the bribery of foreign public officials or officials of public international organisations.

Moreover, the application of these offences to bribery of such officials was made explicit by section 108 of the Anti-Terrorism, Crime and Security Act 2001, which mandates that:

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

In addition, section 1(4) of the Prevention of Corruption Act 1906 has been amended to hold that:

"For the purposes of this Act it is immaterial if- (a) the principal's affairs or business have no connection with the United Kingdom and are conducted in a country or territory outside the United Kingdom; (b) the agent's functions have no connection with the United Kingdom and are carried out in a country or territory outside the United Kingdom."

Similarly, section 7 of the Public Bodies Corrupt Practices Act 1889 (interpretation relating to corruption in office) was amended to define a "public body" as including "any body which exists in a

[3] As noted in chapter I of the Convention against Corruption, "foreign public official" is defined as "any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise" (art. 2, subpara. *(b)*). The "foreign country" can be any other country, that is, it does not have to be a State party. State parties' domestic legislation must cover the definition of "foreign public official" given in article 2, subparagraph *(b)* of the Convention, as it would not be adequate to consider that foreign public officials are public officials as defined under the legislation of the foreign country concerned. An official of a public international organization is defined as "an international civil servant or any person who is authorized by such an organization to act on behalf of that organization" (art. 2, subpara. *(c)*).

country or territory outside the United Kingdom and is equivalent to any body described above." Likewise, section 4(2) of the Prevention of Corruption Act 1916 was amended to define local and public authorities to include "authorities existing in a country or territory outside the United Kingdom)."

Scotland

The relevant active bribery provisions of the Public Bodies Corrupt Practices Act 1889, Prevention of Corruption Act 1906, and Anti-terrorism, Crime and Security Act 2001 (applied by the Criminal Justice (Scotland) Act 2003) are applicable to Scotland.

In addition, section 68 of Criminal Justice (Scotland) Act of 2003 mandates that: "(1) In determining whether actings which consist of offering or accepting a bribe constitute a crime at common law, it is immaterial that the functions of the person who receives or is offered the bribe-(a) have no connection with;(b) are carried out in a country or territory outside the United Kingdom."

Draft Bribery Bill

Under the Government's draft bribery bill active bribery of foreign public officials will be criminalized wherever a person "offers or gives any advantage not legitimately due to a FPO [foreign public official], or to another person with the FPO's assent. P must offer or give the advantage, (a) intending to influence the FPO in his or her capacity as a FPO, and (b) intending to obtain or retain business."
(The definition of FPO includes both foreign public officials and officials of international public organizations.)

Passive Bribery

England, Wales, and Northern Ireland

As with passive bribery of national officials, this requirement is covered by the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Act 1906, which, according to the United Kingdom, do not limit their coverage to domestic officials.

In particular, section 1(1) of the Public Bodies Corrupt Practices Act 1889 mandates that: "Every person who shall by himself or by or in conjunction with any other person, corruptly solicit or receive, or agree to receive, for himself, or for any other person, any gift, loan, fee, reward, or advantage whatever as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the said public body is concerned, shall be guilty of a misdemeanour." Section 7 goes on to hold that a "public body" includes "any body which exists in a country or territory outside the United Kingdom and is equivalent to any body described above."

Section 1 of the Prevention of Corruption Act 1906 mandates that: "If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business...he shall be guilty of a misdemeanour." Section (4) also holds that for "the purposes of this Act it is immaterial if- (a) the principal's affairs or business have no connection with the United Kingdom and are conducted in a country or territory outside the United Kingdom; (b) the agent's functions have no connection with the United Kingdom and are carried out in a country or territory outside the United Kingdom." Section 4(2) also defines public authorities to include "authorities existing in a country or territory outside the United Kingdom)."

According to the United Kingdom, UK case law has also decisively demonstrated that these provisions cover the bribery of foreign public officials or officials of public international organisations.

Scotland

The relevant active bribery provisions of the Public Bodies Corrupt Practices Act 1889, Prevention of Corruption Act 1906, and Anti-terrorism, Crime and Security Act of 2001 (as applied by the Criminal Justice (Scotland) Act 2003) are applicable to Scotland.

In addition, section 68 of Criminal Justice (Scotland) Act of 2003 mandates that:

"(1) In determining whether actings which consist of offering or accepting a bribe constitute a crime at common law, it is immaterial that the functions of the person who receives or is offered the bribe-(a) have no connection with; (b) are carried out in a country or territory outside the United Kingdom."

Draft Bribery Bill

Under the Government's draft Bribery Bill, the passive bribery of foreign and international public officials would be covered by the general passive bribery offence.

The deficiencies of the current law on bribery were mentioned above. The lack of clarity is also considered to impact upon the effectiveness of the law on bribery of foreign public officials. For example, current legal framework does not provide a separate definition of "*foreign public official"*. Thus, inconsistency between definitions may be an obstacle to prosecute cases because of the difficulties of interpretation. Furthermore, the *"principal/agent"* model is considered to weaken the effective application of the law in practice. The discussions held on-site showed that further steps need to be taken in order to improve the effective application of the law on bribery.

To conclude, the legislative proposal pending at the time of the visit is to be viewed positively.

The United Kingdom has adopted most of the measures required in accordance with UNCAC Article 16

3.4 Article 17

Embezzlement, misappropriation or other diversion of property by a public official

"Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position."

a. Summary of the main requirements

States Parties must establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position. The required elements of the offence are the embezzlement, misappropriation or other diversion4 by public officials of items of

4 The term "diversion" is understood in some States to be distinct from "embezzlement" and "misappropriation", while in others "diversion" is intended to be covered by or is synonymous with those

value entrusted to them by virtue of their position. The offence must cover instances where these acts are for the benefit of the public officials or another person or entity. The items of value include any property, public or private funds or securities or any other thing of value. This article does not "require the prosecution of de minimis offences" (A/58/422/Add.1, para. 29).

b. Findings and observations of the review team concerning article 17

England and Wales

According to the United Kingdom, there are several different laws that, taken together, adopt the measures required in accordance with UNCAC Article 17. Embezzlement as a separate crime itself does not exist as a practical matter, at least in England and Wales. Instead, the common law offence of misconduct in public office, as defined in the Att-Gen's Reference (No 3 of 2003) 2 Cr.App.R. 23, CA, holds that "the offence of misfeasance [misconduct] in a public office is committed by a public officer acting as such who wilfully neglects to perform his duty and / or wilfully conducts himself to such a degree as to amount to an abuse of the public's trust in the office holder, without reasonable excuse or justification." This law is broadly enough written that, according to the UK, it covers all forms of embezzlement as defined in UNCAC Article 17.

In addition, Sections 1 and 4 of the Fraud Act 2006 generally defines fraud as "(1) A person is guilty of fraud if he is in breach of any of the sections listed in subsection (2)" (which provide for different ways of committing the offence). Subsection 2, in turn, lists them as "(a) section 2 (fraud by false representation); (b) section 3 (fraud by failing to disclose information); and (c) section 4 (fraud *by abuse of position*)."

Similar, section 1 of the Theft Act 1968 mandates that a "person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it."

Other specialist offences for postal and election official embezzlement include:

- Postal Services Act 2000 - section 83 (this criminalises postal operators opening the mail, though it is not specifically linked to embezzlement per se).
- Representation of the People Act 1983 - section 65 (this criminalises misappropriation, of ballot papers by returning officers and election officials, though it is not specifically relevant to embezzlement, generally).

Northern Ireland

As with England and Wales, the common law offence of misconduct in public office, sections 1 and 4 of the Fraud Act 2006, and the specialized offences for postal and election officials, would also apply to Northern Ireland. In addition, the United Kingdom also noted that the Theft Act (Northern Ireland) would also apply.

Scotland

Unlike England and Wales, Scotland does have a separate embezzlement offence under the Scottish common law that they still use. There are also several other offences available to punish embezzlement. Specifically, the following Scottish common law offences would comply with the measures required in accordance with UNCAC Article 17:

- Common law offence of misconduct in public office.

terms (A/58/422/Add.1, para. 30).

- Common law offence of embezzlement
- Common law offence of breach of trust.
- Common law offence of breach of duty.
- Common law offence of fraud.
- Common law offence of theft.

As with England, Wales and Northern Ireland, specialist offences for postal and election official embezzlement in Scotland would also be applicable. (See, e.g., Section 83, Postal Services Act 2000; Section 65, Representation of the People Act 1983.)

Due to the information provided, various legal acts are in place. According to the additional information it seems that case law covers with regard to the public officials also Members of Parliament. Its states that anybody is a public official "*who is an officer who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund provided by the public*". Pursuant to this law it seems to the examiners that judges are also covered by the definition of a public official.

In conclusion one can safely say that the UK is moving in the right direction in regards to implementing UNCAC.

The United Kingdom has adopted the measures required in accordance with UNCAC Article 17

3.5 Article 25

> ***Obstruction of justice***
>
> "Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
>
> "(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;
>
> "(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official."

a. Summary of the main requirements

Under article 25, States must criminalize the use of inducement, threats or force in order to interfere with witnesses and officials whose role would be to produce accurate evidence and testimony. The first offence relates to efforts to influence potential witnesses and others in a position to provide the authorities with relevant evidence. States Parties are required to criminalize the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in proceedings in relation to the commission of offences established in accordance with the Convention (art. 25(a)). The obligation is to criminalize the use both of corrupt means, such as bribery, and of coercive means, such as the use or threat of violence.

b. Findings and observations of the review team concerning article 25(a) and (b)

Use of inducement, threats or force to interfere with witnesses

England and Wales

There are several related offences that, taken together, would appear to cover this UNCAC requirement.

Specifically, Section 51 of the Criminal Justice and Public Order Act 1994 comprehensively covers this requirement and mandates that:

"(1) A person commits an offence if— (a) he does an act which intimidates, and is intended to intimidate, another person ("the victim"),(b) he does the act knowing or believing that the victim is assisting in the investigation of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence, and(c) he does it intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with.
(2) A person commits an offence if— (a) he does an act which harms, and is intended to harm, another person or, intending to cause another person to fear harm, he threatens to do an act which would harm that other person,(b) he does or threatens to do the act knowing or believing that the person harmed or threatened to be harmed ("the victim"), or some other person, has assisted in an investigation into an offence or has given evidence or particular evidence in proceedings for an offence, or has acted as a juror or concurred in a particular verdict in proceedings for an offence, and(c) he does or threatens to do it because of that knowledge or belief.
(3) For the purposes of subsections (1) and (2) it is immaterial that the act is or would be done, or that the threat is made— (a) otherwise than in the presence of the victim, or (b) to a person other than the victim.
(4) The harm that may be done or threatened may be financial as well as physical (whether to the person or a person's property) and similarly as respects an intimidatory act which consists of threats.
(5) The intention required by subsection (1)(c) and the motive required by subsection (2)(c) above need not be the only or the predominating intention or motive with which the act is done or, in the case of subsection (2), threatened.
(6) A person guilty of an offence under this section shall be liable— (a) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both;(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
(7) If, in proceedings against a person for an offence under subsection (1) above, it is proved that he did an act falling within paragraph (a) with the knowledge or belief required by paragraph (b), he shall be presumed, unless the contrary is proved, to have done the act with the intention required by paragraph (c) of that subsection.
(8) If, in proceedings against a person for an offence under subsection (2) above, it is proved that within the relevant period— (a) he did an act which harmed, and was intended to harm, another person, or(b) intending to cause another person fear of harm, he threatened to do an act which would harm that other person, and that he did the act, or (as the case may be) threatened to do the act,] with the knowledge or belief required by paragraph (b), he shall be presumed, unless the contrary is proved, to have done the act [or (as the case may be) threatened to do the act] with the motive required by paragraph (c) of that subsection.
(9) In this section— "investigation into an offence" means such an investigation by the police or other person charged with the duty of investigating offences or charging offenders; "offence" includes an alleged or suspected offence; "potential", in relation to a juror, means a person who has been summoned for jury service at the court at which proceedings for the offence are pending; and "the relevant period"— (a) in relation to a witness or juror in any proceedings for an offence, means the period beginning with the institution of the proceedings and ending with the first anniversary of the conclusion of the trial or, if there is an appeal or a reference under section 9 or 11 of the Criminal Appeal Act 1995, of the conclusion of the appeal; (b) in relation to a person who has, or is believed by the accused to have, assisted in an investigation into an offence, but was not also a witness in proceedings for an offence, means the period of one year beginning with any act of his, or any act

believed by the accused to be an act of his, assisting in the investigation; and (c) in relation to a person who both has, or is believed by the accused to have, assisted in the investigation into an offence and was a witness in proceedings for the offence, means the period beginning with any act of his, or any act believed by the accused to be an act of his, assisting in the investigation and ending with the anniversary mentioned in paragraph (a) above.
(10) For the purposes of the definition of the relevant period in subsection (9) above— (a) proceedings for an offence are instituted at the earliest of the following times— (i) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 in respect of the offence; (ii) when a person is charged with the offence after being taken into custody without a warrant; (iii) when a bill of indictment is preferred by virtue of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933;(b) proceedings at a trial of an offence are concluded with the occurrence of any of the following, the discontinuance of the prosecution, the discharge of the jury without a finding, the acquittal of the accused or the sentencing of or other dealing with the accused for the offence of which he was convicted; and(c) proceedings on an appeal are concluded on the determination of the appeal or the abandonment of the appeal.
(11) This section is in addition to, and not in derogation of, any offence subsisting at common law."

There are also several common law offences that, taken together, would cover this activity, including:

- Common law offence of bribery
- Common law offence of perverting or attempting to pervert the course of justice.
- Common law offence of contempt of court.

Archbold's Commentary on common law definitions notes that this contempt offence mandates that it "is contempt to knowingly to interfere with those who have duties to discharge in a court of justice. Likewise it is contempt to seek to influence the outcome of a pending case by interfering with those involved in it, including the judge."

In addition, section 7 of the Perjury Act of 1911 mandates that "(1) Every person who aids, abets, counsels, procures, or suborns another person to commit an offence against this Act shall be liable to be proceeded against, indicted, tried and punished as if he were a principles offender. (2) Every person who incites another person to commit an offence against this Act shall be guilty of a misdemeanour, and, on conviction thereof on indictment, shall be liable to imprisonment, or to a fine, or to both such imprisonment and fine."

Northern Ireland

As in England and Wales, Northern Ireland also applies the common law offences of:

- Common law offence of perverting or attempting to pervert the course of justice.
- Common law offence of bribery[5]

Article 12 of the Perjury Act (Northern Ireland) Order 1979 is also very similar to Article 7 of the Perjury Act of England and Wales. Specifically, it mandates that: "(1) Any person who aids, abets, counsels, procures, or suborns another person to commit an offence against this Order shall be liable to be proceeded against, indicted, tried and punished as if he were a principal offender. (2) Any person who incites . . . another person to commit an offence against this Order shall be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine, or to both."

[5] See previous footnote.

Scotland

The following Scottish common law offences would cover this conduct:

- Common law offence of perverting or attempting to pervert the course of justice.
- Common law offence of contempt of court.
- Common law offences of perjury and subornation of perjury.
- Common law offence of inducing persons to give false information to the police.
- Common law offence of extortion.

Such actions could also be punished under the aiding and abetting the offence under section 44 of the Criminal Law (Consolidation) (Scotland) Act 1995 (wilful making of false statements and declarations on oath).

Use of threats or force to interfere with officials

England and Wales

The United Kingdom reports that Section 89 of the Police Act 1996 would cover this offence. Specifically, this law mandates that: "(1) Any person who assaults a constable in the execution of his duty, or a person assisting a constable in the execution of his duty, shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both. (2) Any person who resists or willfully obstructs a constable in the execution of his duty, or a person assisting a constable in the execution of his duty, shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding one month or to a fine not exceeding level 3 on the standard scale, or to both."

The following common law offences would also apply:

- Common law offence of perverting or attempting to pervert the course of justice.
- Common law offence of contempt of court.

As noted under the discussion of UNCAC Article 25(a), *Archbold's Commentary* on common law definitions mandates that "it is contempt to seek to influence the outcome of a pending case by interfering with those involved in it, including the judge."

Northern Ireland

Article 66 of the Police (Northern Ireland) Act of 1998 mandates that:

"(1) Any person who assaults, resists, obstructs or impedes a constable in the execution of his duty, or a person assisting a constable in the execution of his duty, shall be guilty of an offence. (2) A person guilty of an offence under subsection (1) shall be liable— (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both;(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both."

This obligation would also be covered by the common law offence of perverting or attempting to pervert the course of justice.

Scotland

Section 41 of the Police (Scotland) Act 1967 mandates that "(1) Any person who— (a) assaults, resists, obstructs, molests or hinders a constable in the execution of his duty or a person assisting a constable in the execution of his duty...shall be guilty of an offence."

In addition, the following Scottish common law offences would also apply:

- Common law offence of violent obstruction of officers of law.
- Common law offence of slandering judges.
- Common law offence of perverting or attempting to pervert the course of justice.
- Common law offence of contempt of court.

The United Kingdom has adopted the measures required in accordance with UNCAC Article 25

3.6 Article 46

Mutual legal assistance

"1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

"…"

"9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

"(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

"(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

"…".

"13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central Authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

"…"

a. Summary of the main requirements

The Convention against Corruption requires States Parties: (a) To ensure the widest measure of mutual legal assistance for the purposes listed in article 46, paragraph 3, in investigations, prosecutions, judicial proceedings and asset confiscation and recovery in relation to corruption offences (art. 46, para. 1); (b) To provide for mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to offences for which a legal entity may be held liable under article 26 (art. 46, para. 2); (c) To ensure that mutual legal assistance is not refused by it on the grounds of bank secrecy (art. 46, para. 8); (d) To apply paragraphs 9 to 29 of article 46 to govern the modalities of mutual legal assistance in the absence of a mutual legal assistance treaty with another State party (art. 46, para. 7)

Article 46, paragraph 9, allows for the extension of mutual legal assistance in the absence of dual criminality, in pursuit of the goals of the Convention, including asset recovery. An important novelty is that States Parties are required to render assistance if non-coercive measures are involved, even when dual criminality is absent, where consistent with the basic concepts of their legal system (art. 46, para. 9 *(b)*). An example of such a measure even in the absence of dual criminality is the exchange of information regarding the offence of bribery of foreign officials or officials of international organizations, when such cooperation is essential to bring corrupt officials to justice (see the interpretative note contained in document A/58/422/Add.1, para. 26, relating to art. 16, para. 2, of the Convention). Further, the Convention invites States Parties to consider adopting measures as necessary to enable them to provide a wider scope of assistance pursuant to article 46 even in the absence of dual criminality (art. 46, para. 9 *(c*)). States Parties need to review carefully existing laws, requirements and practice regarding dual criminality in mutual assistance. In some instances, new legislation may be required.

The UNCAC requires the designation of a central authority with the power to receive and execute or transmit mutual legal assistance requests to the competent authorities to handle it in each State party. The competent authorities may be different at different stages of the proceedings for which mutual legal assistance is requested. Article 46, paras. 13 and 14 requires States Parties to notify the Secretary-General of the United Nations of their central authority designated for the purpose of article 46, as well as of the language(s) acceptable to them in this regard.

b. Findings and observations of the review team concerning article 46

UNCAC Article 46(9)

According to the 2007 FATF review of the UK, dual criminality is only required for certain coercive measures such as search warrants. Relevant UK governmental stakeholders confirmed this during the country visit, noting they could share information even without dual criminality, but could not execute coercive actions such as the seizure of assets or the execution of search warrants.

UNCAC Article 46(13)

The United Kingdom provided official notice to the Secretary-General of the central authority for requests for mutual legal assistance under the UNCAC, which is the United Kingdom Central Authority for Mutual Legal Assistance (UKCA), on 2 June 2010.

The United Kingdom has adopted the measures required in accordance with UNCAC Article 46 (9) and (13).

3.7 Article 52

Prevention and detection of transfers of proceeds of crime

"1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

"2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

"(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

"(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

"3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

"4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

"5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

"6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance."

a. Summary of the main requirements

Without prejudice to article 14, States Parties are required to take necessary measures, in accordance with their domestic law, to oblige financial institutions within their jurisdiction: (a) To verify the identity of customers; (b) To take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts; and (c) To conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. These provisions must be seen in the context of the more general regulatory and supervisory regime they must establish against money-laundering, in which customer identification, record-keeping and reporting requirements feature prominently

In order to facilitate implementation of these measures, States Parties, in accordance with their domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, are required: (a) To issue advisories regarding the types of natural or legal person to whose accounts financial institutions within their jurisdiction will be expected to apply enhanced scrutiny; the types of accounts and transactions to which particular attention should be paid; and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; (b) Where appropriate, to notify financial institutions within their jurisdiction, at the request of another State party or on their own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify; *(c)* Ensure that financial institutions maintain adequate records of accounts and transactions involving the persons mentioned in paragraph 1 of article 52, including information on the identity of the customer and the beneficial owner; and *(d)* Prevent the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group.

States Parties are also required to consider: *(a)* Establishing financial disclosure systems for appropriate public officials and appropriate sanctions for non-compliance; *(b)* Permitting their competent authorities to share that information with authorities in other States parties when necessary to investigate, claim and recover proceeds of corruption offences; *(c)* Requiring appropriate public officials with an interest in or control over a financial account in a foreign country: (i) To report that relationship to appropriate authorities; (ii) To maintain appropriate records related to such accounts; (iii) To provide for sanctions for non-compliance.

States Parties may also wish to consider requiring financial institutions to: *(a)* To refuse to enter into or continue a correspondent banking relationship with banks that have no physical presence and that are not affiliated with a regulated financial group; and *(b)* To guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

b. Findings and observations of the review team concerning article 52

Paragraph 1: Customer Verification

The United Kingdom has a comprehensive anti-money laundering (AML) framework in place, of which Customer Due Diligence (CDD) measures form an important part. The legal regulatory requirements for CDD are laid out in Regulations 5-9, and 14 of the Money Laundering Regulations of 2007. The FSA requires authorised firms to put in place and maintain effective systems and controls for countering the risk that the firm might be used to further financial crime.

The legal and regulatory AML measures are complemented by detailed guidance written by the financial services industry itself, the Joint Money Laundering Steering Group (JMLSG) Guidance. This guidance is formally approved by the Government through provisions in relevant legislation. This

means that a court must take it into account in determining whether a person or institution within the regulated sector has complied with any of the relevant legal requirements The FSA Handbook also confirms that the FSA will have regard to whether a firm has followed relevant provisions of approved guidance when considering whether to take action against an FSA-regulated firm in respect of a breach of the relevant regulatory AML provisions and when considering whether to prosecute a breach of the Money Laundering Regulations 2007.

It is worth noting that sectors outside the financial services industry have also issued specific AML guidance which was approved by Treasury and lay out detailed procedures for CDD. . With respect to enhanced due diligence, Regulation 14 of the Money Laundering Regulations of 2007 requires enhanced due diligence in specific high-risk situations, including where the client is a politically exposed person. In relation to this requirement, Schedule 2(4) sets out further information on who can be considered a politically exposed person, immediate family member or close associate. In line with the UK's risk based approach, Regulation 14 also requires that enhanced due diligence be undertaken in "any other situations which by its nature can present a higher risk of money laundering or terrorist financing".

Although there is no explicit requirement in UK legislation for UK institutions to undertake enhanced due diligence on all domestic politically exposed persons, Regulation 14 and the FSA's rules on anti-money laundering effectively require firms in the financial services industry to consider, on a risk-sensitive basis, whether enhanced due diligence measures on their domestic PEP customers would be appropriate.

This is, in line with the UK's risk-based approach to anti-money laundering and with FATF and EU requirements.

Paragraph 2: Advisories

As noted above, the Money Laundering Regulations of 2007 set out the circumstances where enhanced due diligence is required. JMSLG and other sector-specific guidance (both approved by Treasury) provide detailed good practice advice on complying with these requirements. In addition, the United Kingdom has powers to issue advisories on high-risk jurisdictions.

Paragraph 3: Record-Keeping

The United Kingdom has detailed financial record-keeping regulations. , Regulation 19 of the Money Laundering Regulations of 2007 sets out the record-keeping requirements, including a "five-year" record retention rule.

Paragraph 4: Shell Banks

Regulation 16 (Shell banks, etc.) of the 2007 Money Laundering Regulations bars shell banks from operating in the United Kingdom, as well as barring banks to engage in business transactions with shell banks.

Paragraphs 5 and 6: Financial Disclosure Systems

The United Kingdom does not have a financial disclosure system for public officials. In particular, there is no system for having public officials file declarations listing their assets and income.

The United Kingdom has adopted the mandatory measures required in accordance with UNCAC Article 52.

3.8 Article 53

> ***"Measures for direct recovery of property***
>
> "Each State Party shall, in accordance with its domestic law:
>
> "(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;
>
> "(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and
>
> "(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention."

a. Summary of the main requirements

Article 53 requires States Parties: *(a)* To permit another State party to initiate civil action in its courts to establish title to or ownership of property acquired through corruption offences (subpara. *(a)*); *(b)* To permit their courts to order corruption offenders to pay compensation or damages to another State party that has been harmed by such offences (subpara. *(b)*); *(c)* To permit their courts or competent authorities, when having to decide on confiscation, to recognize another State party's claim as a legitimate owner of property acquired through the commission of a corruption offence (subpara. *(c)*). The implementation of these provisions may require legislation or amendments to civil procedures, or jurisdictional and administrative rules to ensure that there are no obstacles to these measures. Article 53 focuses on States Parties having a legal regime allowing another State party to initiate civil litigation for asset recovery or to intervene or appear in domestic proceedings to enforce their claim for compensation.

b. Findings and observations of the review team concerning article 53

Under Civil Procedure Rules in England and Wales, any party – including a States party to the UN Convention Against Corruption – can bring such private civil litigation. In particular, both Iran and Nigeria have previously filed such actions to recover assets.

Under Section 130 of the Powers of Criminal Courts (Sentencing) Act 2000, a court by or before which a person is convicted of an offence, instead of or in addition to dealing with him in any other way, may make an order (referred to as a "compensation order") requiring him—

(a) to pay compensation for any personal injury, loss or damage resulting from that offence or any other offence which is taken into consideration by the court in determining sentence. More specifically, the Criminal Justice (International Co-operation Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005 provides detailed procedures for UK courts enforcing foreign confiscation orders within the meaning of UNCAC Article 53(b).

The United Kingdom has adopted the measures required in accordance with UNCAC Article 53

4. Overall findings of the review team concerning the implementation of the relevant Convention articles by United Kingdom

1. How have the selected articles mentioned above been implemented in the legislation?

The United Kingdom has fully adopted the measures required in accordance with the provisions of UNCAC Article 17 (embezzlement, misappropriation or other diversion of property by a public official), Article 25 (obstruction of justice), Article 46(9) (dual criminality in mutual legal assistance) and article 46(13) (notification on the central authority for mutual legal assistance), Article 52 (prevention and detection of transfers of proceeds of crime) with regard to the mandatory measures and Article 53 (measures for direct recovery of property).

The United Kingdom has also adopted most of the measures required in accordance with the provisions of UNCAC Articles 5 (preventive anti-corruption policies and practices), 15 (bribery of national public officials), and 16 (bribery of foreign public officials and officials of public international organizations). The UK's anti-corruption plan does not address domestic corruption, instead only addressing foreign corruption. The current legislative regime for both domestic and foreign bribery would benefit from adopting measures consistent with those proposed in the current draft bribery bill prepared by the UK Law Commission.

With regard to article 52 (prevention and detection of transfers of proceeds of crime), the UK legislative and regulatory scheme does not currently provide for the automatic issuance of advisories regarding domestic politically exposed persons (PEPs), pursuant to Article 52(2). Although there is no automatic requirement in the UK anti-money laundering regime for UK institutions to undertake enhanced due diligence on all domestic politically exposed persons, there are provisions for enhanced due diligence when institutions determine a high risk, in line with FATF and EU requirements. The UK has also not implemented the non-mandatory provisions of Article 52(5) and (6) that suggest consideration of a financial disclosure system for public officials.

2. How have the articles mentioned above been implemented in practice?

It was noted that some were of the opinion that the current bribery structure both domestic bribery under UNCAC Article 15 and foreign and international bribery under UNCAC Article 16, was overly complicated and difficult to implement. To address this implementation issue, the UK Law Commission has prepared a new draft law on bribery that is hoped to be considered by the UK Parliament later this year.

There is a general perception with some stakeholders within the UK that the requirement of receiving the consent of the Attorney General prior to engaging in corruption prosecutions is an unnecessary barrier. This is an issue that was considered by the Law Commission in its reform of the bribery laws and the draft Bill currently before Parliament proposes to replace the current AG consent with consent by the relevant heads of the prosecution services. The Financial Services Agency further noted that many police agencies had neither the resources nor the inclination to follow up on many of the complex economic crimes related cases that it referred out.

In both Scotland and the rest of the United Kingdom, it was noted that the mutual legal assistance requirements of UNCAC Article 46 were very well implemented, with a rich history of international cooperation in corruption cases. Both the UKCA and the SOCA FIU routinely assist other countries in a broad range of mutual legal assistance matters and are willing to use the UNCAC as the basis for such assistance.

The UK has a well-developed system for prevention and detection of the transfer of proceeds of corruption-related crimes generally. In particular, they have a robust implementation of a broad range of regulatory systems, with the exceptions of the legislative gaps noted in section 4.1, above. While direct recovery actions by foreign States parties pursuant to UNCAC Article 53 were well-implemented in England and Wales, it was noted that such actions had never been implemented in Scotland, though no legal barriers to such direct recovery were in existence.

4. Possible recommendations on the basis of the findings of the review process in United Kingdom

1. In order to more fully adopt the measures required in accordance with UNCAC Article 5, the United Kingdom might consider adopting a domestic anti-corruption action plan to address the prevention of corruption occurring within the UK;
   a. To enhance the effectiveness of such a domestic anti-corruption action plan, the UK might consider collecting statistics on domestic corruption cases in order to establish benchmarks to measure the effectiveness of preventive measures imposed.
   b. The UK might also consider engaging in anti-corruption public awareness campaigns that cover domestic corruption, rather than limiting such efforts to overseas bribery.
   c. The UK might consider carrying out regular monitoring of training programmes with a view to determining their adequacy and effectiveness to prevent and fight corruption.

2. In order to more fully adopt the measures required in accordance with UNCAC Articles 15 and 16, the United Kingdom Parliament might considering adopting the draft bill on bribery prepared by the Law Commission of England and Wales;

3. In order to fully adopt the measures required in accordance with UNCAC Articles 15 and 16, the Scottish Parliament might consider adopting a new bribery law that is consistent with the provisions of the draft bill on bribery prepared by the Law Commission of England and Wales;

4. In order to adopt the non-mandatory measures required in accordance with UNCAC Article 52(2), the United Kingdom might consider issuing advisories on enhanced scrutiny measures for domestic PEPs;

5. In order to adopt the optional measures proffered for consideration in accordance with UNCAC Article 52(5) and (6), the United Kingdom might consider adopting a financial disclosure system for UK public officials; and

6. To enhance implementation of all UNCAC measures under review, especially UNCAC Articles 52 and 53, the UK might consider extending the territorial application of the UNCAC to its off-shore banking centres, such as Guernsey, Jersey, Isle of Man, the Cayman Islands, and others.[6]

6. Possible Action Plan formulated in cooperation with United Kingdom on the basis of the recommendations

- The UK will take forward extension of UN Convention against Corruption to the Overseas Territories;
- The UK will consider how to enhance existing action plans to cover domestic corruption and possible monitoring mechanisms.

7. Lessons Learned

[6] The expert reviewers commend the UK for extending the UNCAC's territorial application to their offshore banking centre in the British Virgin Islands. As of November 2009, UN Convention against Corruption has in fact also been extended to Jersey, Guernsey and Isle of Man.

Beyond these substantive issues, the expert reviewers also noted the following administrative and logistical factors that might be considered in order to maximize the effectiveness of any Review of Implementation Mechanism created pursuant to the UNCAC.

1. The country under review should provide, in advance of the country visit, information on the structure and organization of the legal system in place in their country. In the context of the UK country review, for example, the full implications of the historical characteristics of the UK's legal system, including its common law heritage and devolved governance system, were not always easy to track by the expert reviewers. Appropriate contact needs to be made with the devolved governments to facilitate this.
2. The country under review should provide an Organigram showing how its various agencies involved in the fight against corruption relate to each other. In particular, this should be done in advance for all agencies to be visited by the expert reviewers.
3. The country under review should focus on the practical logistics of the country visit, including in-country travel plans and other necessary administrative and logistical requirements.
4. The expert reviewers noted the crucial nature of getting full and complete answers to all questions proffered during the structured dialogue process, prior to the beginning of the country visit.