



UNODC

United Nations Office on Drugs and Crime

***COUNTRY REVIEW REPORT OF
THE UNITED KINGDOM***

*Review by Greece and Israel of the
implementation by the United Kingdom of
Chapter III. “Criminalization and law enforcement” and
Chapter IV. “International cooperation” of the United
Nations Convention against Corruption
for the review cycle 2011 - 2012*

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption (hereinafter referred to as UNCAC or the Convention) was established pursuant to Article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with Article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to Article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by the United Kingdom of the Convention is based on the completed response to the comprehensive self-assessment checklist received from the United Kingdom, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Greece, Israel and the United Kingdom, by means of telephone conferences and e-mail exchanges and involving the following experts:

United Kingdom:

- Mr. Craig Robertson, Governance Adviser, Anti-Corruption, Financial Accountability and Anti-Corruption Team, Department for International Development;
- Mr. Justin Williams, Policy Adviser, Anti-Corruption and Organised Crime, Department for International Development;
- Mr. Roderick Macauley, Head of Bribery, Criminal Law and Legal Policy, Ministry of Justice;
- Ms. Alison Moore, Lawyer, UK Central Authority for Mutual Legal Assistance, Home Office;
- Mr. Adrian Nembhard, Economic Adviser, Financial Accountability and Anti-Corruption Team, Department for International Development (East Kilbride).

Greece:

- Dr. Ioannis Androulakis, Special Counsel to the Secretary General of the Hellenic Ministry of Justice, Transparency and Human Rights;
- Mr. Demosthenes Stingas, Presiding Judge at the Court of First Instance of Lesbos.

Israel:

- Mr. Yitzchak Blum, Deputy Director, Department of International Affairs, Office of the State Attorney, Ministry of Justice;
- Ms. Amit Merari, Director, Legislative Department (Criminal Law), Ministry of Justice.

Secretariat:

- Mrs. Brigitte Strobel-Shaw, Chief, Conference Support Section, Corruption and Economic Crime Branch, UNODC;
- Ms. Tanja Santucci, Crime Prevention and Criminal Justice Officer, Corruption and Economic Crime Branch, UNODC.

6. A country visit, agreed to by the United Kingdom, was conducted in London from 26 to 30 March 2012. During the on-site visit, meetings were held with the Ministry of Justice, Home Office, HM Treasury, Financial Services Authority, Cabinet Office, Crown Prosecution Service, Serious Fraud Office, Serious Organised Crime Agency, City of London Police, Metropolitan Police, Southwark Crown Court, National Audit Office, civil society and the private sector. Meetings also included representatives from Scotland and Northern Ireland.

III. Executive summary

1. Introduction

1.1 Legal system of the United Kingdom

7. *The United Kingdom (UK) is a constitutional monarchy. The Parliament at Westminster in England remains the seat of Government for the UK, but Scotland, Wales, and Northern Ireland also have a degree of devolved government. The UK has independent judiciaries.*

8. *Treaties do not, on ratification, automatically become incorporated into UK law. For this reason, the UK only ratifies international conventions once UK law is deemed by the Government to be compliant.*

9. *In the UK 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.*

10. *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 UK’s historical legal traditions 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, differ in some regards.*

1.2 Overview of the anti-corruption legal and institutional framework of the UK

11. *Currently, the Cabinet Office houses the international anti-corruption Champion. The Champion coordinates activities across government, working closely across Departments, devolved administrations, law enforcement, prosecution authorities and regulatory agencies to ensure a coherent and joined-up approach to combat international corruption.*

12. *The Attorney General for England and Wales is the Minister responsible for superintending the main prosecuting authorities, the Crown Prosecution Service (CPS) and the Serious Fraud Office (SFO).*

13. *In Scotland, most serious corruption cases are handled by the Serious and Organised Crime Division contained within the Crown Office.*

14. *The Public Prosecution Service (PPS) is the principal prosecuting authority in Northern Ireland.*

15. *The SFO is responsible for investigating and prosecuting serious or complex fraud cases, and is the lead agency in England and Wales for investigating and prosecuting cases of overseas corruption. Besides that, there are a considerable number of other national, regional and local authorities (such as the Serious Organised Crime Agency (SOCA), the Metropolitan Police, the City of London Police and others) that have competence to deal with corruption related offences, depending on the specific context or place of their emergence.*

2. Implementation of Chapters III and IV

2.1 Criminalization and Law Enforcement (Chapter III)

2.1.1 Observations on the implementation of the articles under review

16. *The review indicates that the UK legal system, despite its complex and multifaceted character, criminalizes corruption related offences in accordance for the most part with the requirements of Chapter III. Equally, UK law enforcement mechanisms are highly adequate and in some ways exemplary for the purposes of the Convention.*

Bribery offences; trading in influence (Articles 15, 16, 18, 21)

17. *Bribery in both the public and private sector, as well as bribery concerning foreign public officials and officials of public international organizations are all comprehensively criminalized in the Bribery Act 2010.*

18. *Although the UK bribery offences do not use the concept of a “public official”, they cover all cases involving persons performing a public function or providing a public service, including members of Parliament, employees of public enterprises, soldiers and public servants serving abroad. As to bribery in the private sector, the Bribery Act applies to any person who “directs or works, in any capacity, for a private sector entity” (as defined in the Convention), even if the person’s function or activity has no connection with, or is performed outside, the UK. Equally, the concept of a “foreign public official” in Section 6 subs. 5 of the Bribery Act reflects all elements of the definitions of Article 2 (b) and (c) of UNCAC.*

19. *Furthermore, despite the unusual and complicated structure of the offences of active and passive bribery, all required objective and subjective elements are contained in the relevant provisions. Regarding trading in influence, the general bribery offences in the Bribery Act 2010 are broad enough to cover most circumstances related with the behaviour in question.*

20. *Sanctions for bribery offences differ depending on whether there is a summary conviction or a conviction on indictment and reflect to some extent the different jurisdictional limits applied in different parts of the UK. In the vast majority of cases, corruption would be triable on indictment, whereby sanctions could reach an unlimited fine and/or imprisonment of up to 10 years.*

Laundering of proceeds of crime; concealment (Articles 23, 24)

21. *UK law criminalizes money laundering and concealment in accordance with the Convention.*

22. *Sections 327 and 334 Proceeds of Crime Act 2002 cover the concealment, disguise, conversion, transfer and removal of criminal property, which constitutes a person's benefit from criminal conduct. Conspiracy and attempts to commit offences, aiding and abetting and counselling the commission of crime are criminalized in Sections 328 and 340 subs. 11(b) and (c).*

23. *The UK takes an "all crimes" approach to money laundering that encompasses conduct which constitutes an offence in any part of the UK or which would constitute an offence in the UK, had the conduct occurred there. The UK has not excluded self-laundering and has even dispensed in some cases with dual criminality as a prerequisite to recognize foreign predicate offences.*

24. *Concealment is also fully covered and includes the rights acquired by someone in relation to the property under judgment. UK law goes even further than the Convention, covering also the mere suspicion that such property constitutes or represents a person's benefit from criminal conduct.*

Embezzlement; abuse of functions; illicit enrichment (Articles 17, 19, 20, 22)

25. *UK law does not differentiate between embezzlement in the public and private sector. Embezzlement, misappropriation or other diversion of property is criminalized in the Theft Act 1968 and the (almost identical) provisions of the Theft Act (Northern Ireland) 1969, and potentially the Fraud Act 2006, which applies in England, Wales and Northern Ireland. The common law offence of misconduct in public office corresponds to the UNCAC offence of abuse of functions.*

26. *In Scotland, embezzlement is covered by a common law offence. As to the abuse of functions, there is a common law offence of breach or neglect of duty by a public official, which is broadly similar to the English offence of misconduct by a public official.*

27. *Regarding the offence of illicit enrichment, its establishment was considered during the development of the legislative proposals that became the Bribery Act 2010, and rejected as contrary to the fundamental principles of the UK legal system and incompatible with the presumption of innocence and Article 6(2) European Convention on Human Rights. In view of this and the non-mandatory nature of the article, the UK statement is deemed satisfactory.*

Obstruction of justice (Article 25)

28. *The UK appears to criminalize obstruction of justice in accordance for the most part with the Convention.*

29. *In England & Wales, the use of physical force, threats or intimidation to interfere with witnesses or potential witnesses (as well as persons assisting the investigation and jurors) is punished under Section 51 of the Criminal Justice and Public Order Act 1994. The conduct in question is also punishable under the common law offence of perverting the course of justice. Further, the use of corrupt means to interfere with witnesses could be punished as incitement under a number of statutes. The implementing laws in Scotland and Northern Ireland are summarized in the report.*

Liability of legal persons (Article 26)

30. *In the UK the liability of legal persons is regulated in accordance with Article 26 of the Convention.*

31. *The underlying legal principles in relation to corporate criminal liability can be found in the Interpretation Act 1978, which notes that subject to the appearance of a contrary intention, the word “person” in a statute is to be construed as including “a body of persons corporate or unincorporated”, and the common law “identification doctrine”. The liability of legal persons is without prejudice to the criminal liability of natural persons.*

32. *In addition to the above, Section 7 of the Bribery Act introduces the strict liability of a “relevant commercial organization” that fails to prevent associated persons from engaging in bribery. This has been identified as a good practice (see below).*

Participation and attempt (Article 27)

33. *The common law of the UK recognizes the commission of offences by principals and secondary parties, the first being persons who most directly perpetrate the offence, and the latter ones who aid, abet, counsel or procure the commission of the offence. Relevant provisions of law cover all possible forms and variations of instigation, preparation and attempt, either as forms of participation in the offence committed by the principal, or as stand-alone offences. The legal provisions (including for Scotland) are summarized in the report.*

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (Articles 30, 37)

34. *The UK appears to regulate prosecution, adjudication and sanctions in accordance for the most part with UNCAC Article 30. The establishment of criminal sanctions is without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants and there are no immunities or jurisdictional privileges accorded to UK public officials, including Members of Parliament as regards investigation, prosecution or adjudication of UNCAC offences.*

35. *With regard to Article 37, Sections 71-75 of the Serious Organised Crime and Police Act 2005 (SOCPA), as amended by Section 113 of the Coroners and Justice Act 2009, appear to regulate the treatment of persons who cooperate with law enforcement authorities in accordance with the Convention. In Scotland there exists nearly identical legislation con-*

cerning privileges of persons who cooperate with the authorities in accordance with its fundamental principles.

36. The protection and safety of persons who cooperate is the same in the UK as for witnesses under Article 32. Additionally, in England & Wales, Section 82 SOCPA makes special provision for the protection of witnesses and certain other persons involved in investigations or legal proceedings. Other implementing laws (including for Scotland and Northern Ireland) are referenced in the report.

Protection of witnesses and reporting persons (Articles 32, 33)

37. UK chief officers of police and heads of law enforcement agencies have access to an extensive range of measures to protect witnesses, based on the provisions of SOCPA, including full witness protection programmes involving witness relocation, a change of identity and a high degree of confidentiality. These measures fully cover the requirements of Article 32.

38. The same can be said about the protection of reporting persons. The Public Interest Disclosure Act 1998 amending the Employment Rights Act 1996 added whistleblowers to others given special protection against dismissal or other detrimental treatment, and Northern Ireland has enacted similar legislation.

Freezing, seizing and confiscation; bank secrecy (Articles 31, 40)

39. The UK has a value-based confiscation system. In the UK legal system, confiscation, as well as the detection, freezing, seizing, and administration of property, are mainly covered, in a comprehensive manner, by the Proceeds of Crime Act 2002 and the Powers of Criminal Courts (Sentencing) Act 2000. The basic regulations in England & Wales, Scotland and Northern Ireland are identical.

40. The UK is also in compliance with UNCAC Article 40. The provision of information by financial institutions is generally governed by old case law (*Tournier v National Provincial and Union Bank of England (1924) 1KB461*), which still holds as good practice addressing how and why confidentiality may be breached.

Statute of limitations; criminal record (Articles 29, 41)

41. There is no statute of limitations in UK criminal law. As to criminal records, in England & Wales and Northern Ireland the courts may admit evidence of previous foreign convictions, provided that the offence would also have been an offence in England & Wales and Northern Ireland, respectively, if it had been committed there. In Scotland, previous convictions are generally not admissible as evidence in criminal proceedings, with very limited exceptions. However, given the optional character of Article 41, the UK is in compliance with its requirements.

Jurisdiction (Article 42)

42. It is a general principle of UK criminal law that there is jurisdiction over offences committed in the territory of the UK. Territorial jurisdiction may also be established by statute, as is the case in a number UNCAC offences. As regards subparagraph 1 (b) of Article

42 (flag principle), jurisdiction in relation to offences committed on board UK ships has been established only under the law of England & Wales and Northern Ireland.

43. The UK does not recognize the passive personality principle nor the state protection principle. With respect to bribery, however, an extended active nationality principle covers all persons who have “a close connection with the United Kingdom”, including not only British citizens, but also individuals ordinarily resident in the UK, bodies incorporated under UK law (including UK subsidiaries of foreign companies) and Scottish partnerships.

44. In view of the above, the UK is deemed to be in compliance, for the most part, with Article 42.

Consequences of acts of corruption; compensation of damage (Articles 34, 35)

45. According to UK regulations, a person (whether individual or corporate) can be excluded from bidding for public sector contracts and/or have their existing public sector contracts terminated in the event of a conviction for specified bribery or corruption offences. In other cases contracting authorities have discretion to exclude a person from bidding for a public sector contract.

46. Furthermore, for individuals who have suffered financial damage as a result of acts of corruption, UK law enables them to pursue compensation from actors involved in such actions when these actors intended or were aware that damage was going to be inflicted, even if a public authority is complicit in a corrupt process.

Specialized authorities and inter-agency coordination (Articles 36, 38, 39)

47. The UK has in place independent and largely effective mechanisms to combat corruption in accordance with Article 36. It also features mechanisms to encourage cooperation between national law enforcement authorities and the private sector, as well as provisions to encourage the public in general to report offences.

2.1.2 Successes and good practices

48. With respect to the liability of legal persons, Section 7 of the Bribery Act introduces the strict liability of a “relevant commercial organization” that fails to prevent associated persons from bribing on its behalf in order to obtain or retain business or an advantage in the conduct of business. In creating an obligation for relevant commercial organizations to prevent bribery, Section 7 is considered to be an effective deterrent measure and has led many commercial entities to adopt comprehensive preventive procedures. Given this consequence, as well as the general positive response of the prosecuting authorities and the business sector to this measure, the evaluators consider the measure a good practice that could be applied not only in countries with a criminal liability regime but also in other countries.

49. Additionally, the UK regulates the protection of witnesses, experts and victims in a manner which could be considered a good practice for the advancement of the goals of the Convention. All provisions of the relevant article, mandatory and non-mandatory, appear to be fully implemented. Accordingly, the competent authorities are in a position to provide effective protective measures ranging from personal/home security measures and non-

disclosure of information to permanent relocation and full identity change. Witnesses (including the victims of the crime) and experts may give testimony by means of communications technology. Finally, protection arrangements are taken in full consultation with the victims, they are exposed in a written form and the victims are updated and assisted by Witness Service.

50. The UK's whistleblower protection system also represents a good practice, though more could perhaps be done to raise awareness about the possible protections and mechanisms for reporting.

2.1.3 Challenges in implementation

51. A general observation regarding the implementation of Chapter III by the UK concerns the issue of statistical data relating to the investigation and prosecution of corruption offences, including sentences or fines imposed. Although some data is collected by individual authorities, there is no consistency in the type of data that is collected and no central mechanism exists through which such data can be accessed. While the creation of a National Criminal Agency could address the issue of the collection and availability of data, measures could also be taken under the current framework to promote the consolidation and accessibility of such data.

52. In view of the fact that the Bribery Act 2010 came into force very recently, it is too early to ascertain the implementation of its provisions in practice. While noting the UK's high level of compliance with UNCAC regarding bribery offences, the reviewers identified some scope for follow-up or improvement:

- UK law does not provide for an aggravated form of bribery nor does it make any distinction, with regard to sentencing, between bribery in the public and in the private sector, bribery of national and foreign officials, or bribery involving a breach or duty, facilitation payments and other forms of gift-giving. This does not run contrary to the standards of the Convention; however, the experts recommend that the UK revisit the issue of sentencing pertaining to acts of bribery in the public and private sectors in light of actual sentences and sanctions under the new law.

53. With regard to embezzlement, abuse of functions and illicit enrichment, the reviewers identified the following scope for improvement:

- As suggested with regard to bribery offences and bearing in mind Article 22 and Article 30 par. 1 of the Convention, the UK could consider differentiating sanctions between public and non-public authorities.
- In order to detect and prove cases of corrupt payments and enhance the ability to monitor private wealth more effectively, consideration might be given to expanding the current system of interest declarations by public officials and parliamentarians to a system of asset declarations.

54. Regarding prosecution, adjudication, sanctions and cooperation with law enforcement authorities, while noting again the UK's high level of compliance, there is room for the following remarks:

- *With regard to UNCAC Article 30, and without prejudice to par. 9 of Article 30, the UK authorities could consider differentiating sanctions between persons carrying out public and non-public function, though the UK position is not incompatible with the standards of the Convention.*
- *Noting the Overarching Principles issued by the UK Sentencing Council (though these do not extend to Scotland) and recognizing the uncertainty surrounding the possible applicable penalties, the UK could consider issuing relevant sentencing guidelines under the Bribery Act. The UK might also consider looking more closely into the matter of out-of-court settlements involving the SFO, in order to ensure adequate transparency and predictability.*
- *The SFO's operations have in recent years been partly funded by monies recovered in criminal confiscation cases and civil settlements. In this regard, it is suggested that all settlements be subject to judicial scrutiny independent from the prosecutor's office and that an independent body could be considered, which would have a formal role in reviewing sensitive cases. Moreover, companies that reach settlements could be asked to commit to compliance programmes and the appointment of an independent expert monitor where remedial action is warranted. The SFO should also consider providing more detail on civil settlements on its website, for example concerning guidance on what factors are taken into account in determining the recoverable amount in civil settlements.*

55. *With respect to jurisdiction, the following shortcoming has been identified:*

- *The flag principle seems to apply only in relation to Convention offences established under the laws of England & Wales and Northern Ireland. In Scotland, even though Section 12 of the Bribery Act may cover some offences committed on flagged ships within territorial waters of other countries, it is suggested that legislative provisions equivalent to section 3A of the Magistrates Courts Act 1980 or section 46A of the Senior Courts Act 1981 are introduced.*

56. *Finally, regarding specialized authorities and inter-agency coordination, the reviewers observe the following:*

- *Much of the focus of the specialized units is on foreign fraud and bribery rather than domestic corruption. Although this is commendable and in many ways unique among other countries, the UK might consider focusing additional resources on domestic measures, in particular the extension of the International Anti-Corruption Champion to the domestic sphere and tasking him to consider developing a national anti-corruption strategy.*
- *Further, the reviewers were of the opinion that the creation of a National Crime Agency (NCA) should not detract from the current momentum of enforcement of bribery and corruption cases in the wake of the Bribery Act, nor lead to further cuts in resources and staffing of the relevant enforcement agencies, in particular the SFO. Funding for the SFO is*

determined on a rolling three-year basis, and the SFO has seen a 30 percent budget cut in the last four years.

2.2 International Cooperation (Chapter IV)

57. *The review indicates that the UK is compliant with the standards and obligations imposed in Chapter IV and possesses a wide and robust array of legislative, treaty, and practical tools to meet the international cooperation requirements of the Convention, as well as broad experience in the use of these tools.*

2.2.1 Observations on the implementation of the articles under review

Extradition (Article 44)

58. *The UK has a complex but comprehensive legislative framework for enabling the extradition of fugitives. The complexity of the framework derives in part from the fact that the procedures and requirements for extradition may vary depending on the legislative category that the requesting State falls into, as well as which region of the UK (England and Wales, Northern Ireland or Scotland) is involved.*

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60. *As the review makes clear, however, the UK is able to extradite to all States, even those which are included in neither Category 1 (EU Member States) nor Category 2 (designated non-EU Member States) of the Extradition Act 2003. Under Section 193 of the Extradition Act 2003, the UK may extradite to States which are its partners to an international convention where a specific designation under that section has been made. No designations have been made under Section 193 regarding UNCAC. Nevertheless, where an extradition request is received by the UK and the person sought is wanted for conduct covered by a convention that the UK has ratified, and the State seeking extradition is not a designated extradition partner, the UK will consider whether to enter into a “special extradition arrangement” under Section 194. In this manner, the UK may comply with the extradition requirements of UNCAC.*

61. *While, under Section 193 of the Extradition Act, the Convention could seemingly be a legal basis for extradition, the UK did not indicate whether the necessary designation under Section 193 has been made with respect to UNCAC and observed that UNCAC has never served as the basis for an extradition from the UK.*

62. *It is nevertheless clear that the UK’s extradition framework satisfies the requirements of the Convention regarding offences subject to extradition and the procedures and requirements governing extradition. The fact that the UK has criminalized as “equivalent conduct offences” UNCAC offences would seem to reduce any concerns on requirements for double criminality, one of the primary issues of concern in Chapter IV. Similarly, the UK’s willingness and ability to extradite its own nationals was favourably noted.*

63. While the UK would appear to require the provision of prima facie evidence to enable extradition to UNCAC partners who would not qualify as Category 1 or Category 2 territories under UK legislation, the review indicates that these evidentiary requirements are applied in a flexible and reasonable manner.

64. Similarly, the review indicates that the differences between extradition procedures in Scotland and other parts of the UK are of more technical than substantive significance and do not affect the review's conclusion that the UK complies with the requirements of the Convention.

Transfer of sentenced persons (Article 45)

65. The Repatriation of Prisoners Act 1984 governs transfer of prisoners into and out of the UK. The Act enables the Secretary of State to order such transfer where there is a relevant international arrangement in place. The UK has prisoner transfer arrangements with over 100 countries and territories, including via the Council of Europe Convention on the Transfer of Sentenced Persons and the Commonwealth Scheme for the Transfer of Convicted Offenders.

66. The review would thus indicate the UK to be in compliance with the discretionary provisions on prisoner transfer in Article 45.

Transfer of criminal proceedings (Article 47)

67. Although the UK authorities indicated that it is possible for the UK to transfer proceedings to other jurisdictions and to accept such transfers, it also appears that the UK does not have any specific legislative or treaty mechanisms to effectuate such transfers. "Transfer of proceedings" under the current UK practice involves simply accepting a foreign file for examination by UK prosecution authorities. If an independent basis for jurisdiction exists within the UK, the prosecution authorities may exercise discretion to undertake prosecution. In such cases, evidence is obtained via traditional mutual legal assistance (MLA) procedures. . Because domestic procedures and guidelines do provide a practical basis under which the UK can and does entertain requests that cases pending in foreign jurisdictions be prosecuted in the UK, the review concludes that the UK complies with Article 47 of the Convention.

Mutual legal assistance (Article 46)

68. The UK possesses a wide capacity to provide the forms of MLA contemplated by the Convention. The UK's legislative framework for MLA is very broad and undefined. Many of the UK's capacities in this area have developed through policy and practice rather than strict legislative requirements or procedures. Nevertheless, the review indicates that the UK, on a regular and effective basis, can and does provide the various forms of assistance contemplated under the Convention.

69. The UK can provide most forms of MLA without the need for an international agreement. The UK is also party to 35 bilateral mutual legal assistance treaties, has ratified

another seven international conventions, and is party to additional EU and Commonwealth treaties.

70. The UK has two designated central authorities for MLA relevant to the Convention: The UK Central Authority, which has jurisdiction for England & Wales and Northern Ireland, and the Crown Office, which has jurisdiction for Scotland.

71. The most important legislation is the Crime (International Co-operation) Act 2003 (CICA), which regulates both MLA to foreign authorities and the UK's authority to request assistance from foreign jurisdictions.

72. The provisions of CICA allow for a wide range of assistance, dependent on relevant criteria being met. Additional types of assistance are available through practice and policy, as outlined in the UK's Mutual Legal Assistance Guidelines. The UK also possesses the ability to trace and freeze the proceeds of crimes covered by the Convention on behalf of foreign jurisdictions. In compliance with UNCAC, the UK does not decline to provide assistance on grounds of bank secrecy.

73. The review made clear that the UK's abilities to provide MLA with respect to offences covered by the Convention is substantially enhanced by the utilization of specialized anti-corruption and fraud units, such as SOCA and the City of London Police and, most particularly, the SFO. Operations of the SFO in providing legal assistance in such cases greatly contribute to effective investigation of fraud and corruption cases.

Law enforcement cooperation (Article 48)

74. UK law enforcement authorities engage in broad, consistent and effective cooperation with international counterparts to combat transnational crime, including UNCAC offences. This cooperation relates, inter alia, to exchanges of information, liaising, law enforcement coordination, and the tracing of offenders and of criminal proceeds. A particularly prominent role in such activities is played by SOCA, and many examples of SOCA's activities were provided during the review. Important roles are also played by the SFO, the City of London Police, the specialized units of the Metropolitan Police and by other law enforcement authorities. The level and effectiveness of these activities indicates effective compliance with UNCAC Article 48.

Joint investigations (Article 49)

75. Investigating authorities in the UK make use of the mechanism of joint investigation teams (JITs), in particular with civil law jurisdictions in Europe, when their use will mitigate problems in receiving intelligence and investigative cooperation from those jurisdictions.

Special investigative techniques (Article 50)

76. The UK has, and utilizes, the ability to cooperate with foreign law enforcement authorities, often through regular MLA procedures, in the utilization of special investigation techniques, including covert surveillance and controlled deliveries.

2.2.2 Successes and good practices

77. *The review indicates that the UK handles a high volume of MLA and international cooperation requests with an impressive level of execution. The efficient operations of the UK in this sphere are carried out both by regular law enforcement authorities, such as the Home Office and the Metropolitan Police, but also through the effective use of specialized agencies, such as the SFO and SOCA, to deal with requests involving particularly complex and serious offences, including offences covered by the Convention. The effective use of this unique organizational structure merits recognition as a success and good practice under the Convention. In addition, the operations of aid-funded police units directed at illicit flows and bribery related to developing countries constitute a good practice in promoting the international cooperation goals of UNCAC. Similarly, the UK's efforts at assisting law enforcement authorities in developing States in capacity building to enable them to investigate and prosecute corruption offences also constitutes a good practice.*

2.2.3 Challenges in implementation

78. *The generally effective organization and performance of the UK in handling international MLA and cooperation requests has already been acknowledged. However, many of the practices and procedures of the UK in complying with Chapter IV of the Convention are undertaken in conformance with customary practice or informal guidelines, rather than pursuant to specific legislation or binding procedures and it is unclear if the Convention itself operates as an independent legal basis for the provision of cooperation under UK law. The reviewers are not incognizant that a culture of efficiency and performance may be even more significant than specific legislative enactments in ensuring substantive compliance with the Convention. Such a situation, however, mandates that consistent care and vigilance be exercised by the UK authorities regarding the actual workings and performance of its agencies in the area of international cooperation. This is particularly the case in light of proposed initiatives to establish a National Crime Agency. Care should be taken that any such reorganization not weaken successful agencies such as the SFO or impede present efficiencies in international cooperation. The reviewers would also recommend a greater effort to maintain statistics regarding compliance with the Convention.*

IV. Implementation of the Convention

A. Ratification of the Convention

79. The United Kingdom (UK) signed the Convention on 9 December 2003 [C.N.1400.2003.TREATIES-15 (Depositary Notification)]. The UK subsequently ratified the Convention on 9 February 2006 [C.N.131.2006.TREATIES-7 (Depositary Notification)]. The Convention came into effect regarding the UK on 11 March 2006.

80. The United Kingdom, which is responsible for the international relations of the British Virgin Islands (BVI), extended the territorial application of the Convention to the BVI on 12 October 2006 [C.N.848.2006.TREATIES-35 (Depositary Notification)]. Furthermore, the United Kingdom, which is responsible for the international relations of the Bailiwick of

Guernsey, the Bailiwick of Jersey and the Isle of Man, extended the territorial application of the Convention to these territories on 9 November 2009.

81. Treaties do not, on ratification, automatically become incorporated into UK law. For this reason, the UK only ratifies international conventions once UK law is deemed by the Government to be compliant. The only primary legislation required to ensure UK compliance before ratification of the Convention was included in the Serious Organised Crime and Police Act 2005. This enabled the UK to comply with subparagraph 1(b) of Article 31, on the instrumentalities of crime. Secondary legislation was passed in December 2005 to ensure that the UK met its remaining obligations [Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005¹ and Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeitures) Order 2005].

B. Political and legal system of the United Kingdom

82. 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. The Parliament at Westminster in England remains the seat of Government for the UK, but Scotland, Wales, and Northern Ireland also have a degree of devolved government. The United Kingdom has independent judiciaries.

83. 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 this review 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.

a) Government departments which play a role in tackling corruption

84. At the time of the country review, the Cabinet Office houses the international anti-corruption Champion. The Prime Minister appointed the Justice Secretary, Kenneth Clarke QC, to become the Government’s international anti-corruption champion in June 2010. The role is a key co-ordination role for Government and demonstrates the Government’s clear commitment to transparency and accountability. The Champion and Secretariat role coordinates activities across government, working closely with colleagues across Departments, devolved Administrations, law enforcement, prosecution authorities and regulatory agencies to ensure a coherent and joined-up approach to combat international corruption. The role is not specific to one particular Department; it has previously been held by the Department of Business, Innovation and Skills and the Department for International Development. The

¹ <http://www.legislation.gov.uk/ukxi/2005/3181/contents>

Ministry of Justice (MoJ) is the UK Government lead for the Council of Europe's Group of States Against Corruption (GRECO).

85. The Department for International Development (DFID) is the UK Government lead for the Convention. It also has a specific interest in preventing UK individuals and companies from contributing to corruption overseas, especially in developing countries. It funds the Metropolitan Police's Proceeds of Corruption Unit and the City of London Police's Overseas Anti-Corruption Unit, as well as a small corruption intelligence cell in the Serious Organised Crime Agency (SOCA) and part of the asset recovery work of the Crown Prosecution Service. DFID also promotes the use of the Convention in developing countries through its aid programmes.

86. The Department for Business, Innovation and Skills (BIS) coordinates UK implementation of the OECD Anti-Bribery Convention. BIS works with other departments, including the Foreign and Commonwealth Office (FCO) and UK Trade and Investment (UKTI) to press for a global level playing field in bribery rules and to provide clear and practical advice on overseas security risks and bribery risk management tools. UK Embassies and other Overseas Posts are regularly instructed to report allegations of UK involvement in foreign bribery and to provide advice and assistance on managing the risks of corruption.

b) Law enforcement agencies which play a role in tackling corruption

87. The Attorney General for England and Wales (with his deputy known as the Solicitor General) is the Minister of the Crown responsible in law for superintending the main prosecuting authorities, the Crown Prosecution Service (CPS), headed by the Director of Public Prosecutions (DPP), and the Serious Fraud Office (SFO), headed by its Director (previously also the Revenue and Customs Prosecutions Office, which has been merged with the CPS since 1 January 2010). A protocol was published in July 2009 which sets out the relationship between Attorney General and the Director of Public Prosecutions and the Director of the Serious Fraud Office. The Attorney General for England and Wales also holds the separate office of Advocate General for Northern Ireland. Northern Ireland has its own Attorney General.

88. In England, Wales and Northern Ireland, prosecutions for offences under the main anti-corruption legislation, The Bribery Act 2010, require the personal consent of the Director of one of the main prosecuting authorities (The Director of Public Prosecutions, the Director of Public Prosecutions for Northern Ireland, the Director of the Serious Fraud Office, or the Director of Revenue and Customs Prosecutions). This replaced a previous requirement for the consent of the Attorney General.

89. In Scotland, the head of prosecutions is the Lord Advocate, who supervises the work of the Crown Office and Procurator Fiscal Service (COPFS or Crown Office), with the other Law Officer, the Solicitor General. In Scotland, most serious corruption cases are handled by the Serious and Organised Crime Division contained within the Crown Office. In appropriate cases Crown Office works closely with UK agencies; protocols are in place between COPFS and CPS and also between COPFS and SOCA. A protocol is also being developed between COPFS and the SFO regarding a number of matters. Some orders (e.g. those under the Proceeds of Crime Act) can be enforced across the UK. Otherwise a procedure is in place for Scottish warrants to be backed by a magistrate in England and Wales before enforcement.

90. The Public Prosecution Service (PPS) is the principal prosecuting authority in Northern Ireland. In addition to taking decisions as to prosecution in cases investigated by the police in Northern Ireland, it also considers cases investigated by other statutory authorities, such as HM Revenue and customs. The PPS is headed by the Director of Public Prosecutions for Northern Ireland.

91. The Serious Fraud Office (SFO) is responsible for investigating and prosecuting serious or complex fraud cases, and is the lead agency in England and Wales for investigating and prosecuting cases of overseas corruption. Approximately 100 investigators work in the SFO's Bribery and Corruption Business Area. This investigates and prosecutes both domestic and foreign corruption cases. The SFO's Proceeds of Crime Unit is responsible for the restraint, freezing and confiscation of assets both in relation to suspected fraud and corruption cases.

92. The UK police service comprises 52 territorial police forces (43 for England and Wales, eight for Scotland - soon to be reduced to one - and one in Northern Ireland), along with four special police forces: the Ministry of Defence Police, the British Transport Police Force, the Civil Nuclear Constabulary, and the Scottish Drug Enforcement Agency. Police in the Crown Dependencies of Jersey and Guernsey are members of the UK Police Service, even though they are outside the UK prosecutorial system. Corruption-related specialised units exist within the Metropolitan Police ("the Met") and the City of London police (CoLP). The City of London Police, based in London's financial centre, is the UK's National Lead Police Force for Fraud. In addition to an Economic Crime Department the CoLP has an Overseas Anti-Corruption Unit, sponsored by DFID, which, alongside the SFO, handles all UK international foreign corruption cases. The Metropolitan Police has a Proceeds of Corruption Unit that investigates foreign Politically Exposed Persons (PEPs) committing theft of state assets. It also has a Fraud Squad that investigates domestic corruption in the public sector.

93. 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. The Police Complaints Commissioner for Scotland and the Police Ombudsman for Northern Ireland are the independent equivalents of the IPCC in Scotland and Northern Ireland respectively.

94. The Serious Organised Crime Agency (SOCA) was established by the Serious Organised Crime and Police Act 2005 (SOCAP). Its functions are set out in that Act and (in relation to civil recovery functions) in the Serious Crime Act 2007. The functions are to prevent and detect serious organised crime; to contribute to its reduction in other ways and the mitigation of its consequences; and to gather, store, analyse and disseminate information on organised crime. SOCA works in close collaboration with UK intelligence and law enforcement partners, the private and third sectors, and equivalent bodies internationally. In Scotland, the SCDEA has a primary role in preventing and detecting serious organised crime. SOCA houses the UK's Financial Intelligence Unit (UKFIU). The unit has national responsibility for receiving analysing and disseminating financial intelligence submitted through the Suspicious Activity Reports (SARs) regime, and receives over 200,000 SARs a year. These are used to help investigate all levels and types of criminal activity, from benefit fraud

to international drug smuggling, and from human trafficking to terrorist financing. SOCA also has an Anti-Corruption Unit which supports UK partners (police and/or prosecutors) in tackling corruption that enables organised crime and works to increase knowledge of the use of corruption in support of organised crime. The unit also tackles corruption directed against SOCA, or public sector corruption impacting on SOCA.

95. The Financial Services Authority (FSA) regulates most of the UK's financial services sector. It has a wide range of rule-making, investigatory and enforcement powers in order to meet its statutory objectives, which include the reduction of the extent to which it is possible for a financial business to be used for a purpose connected with financial crime. Financial crime includes fraud and dishonesty, money-laundering and corruption.

96. The FSA does not enforce the Bribery Act. However, authorised firms are under a separate, regulatory obligation to identify and assess corruption risk and to put in place and maintain policies and processes to mitigate corruption risk. The FSA can take regulatory action against firms who fail adequately to address corruption risk; for example, the FSA has fined two firms for inadequate anti-corruption systems and controls. The FSA does not have to obtain evidence of corruption to take action against a firm.

97. Plans were published in June 2011 which set out in more detail plans to create in 2013 a new National Crime Agency (NCA) to enhance the UK law enforcement response to serious and organised criminality. The NCA will be UK-wide and will respect the devolution of powers to Scotland and Northern Ireland. Building on the capabilities of SOCA, the NCA will comprise of distinct operational Commands including an 'Economic Crime Command' (ECC) dealing with economic crimes (defined as including fraud, bribery and corruption). The ECC is planned to provide a national strategic and coordinating role with respect to the collective response to fraud, bribery and corruption across the UK organisations tackling these areas, which includes police forces, SFO, CPS, FSA, the Office of Fair Trading, Department for Business, Innovation and Skills, Her Majesty's Revenue and Customs and the Department for Work and Pensions. It will also have operational investigative capabilities focused on fraud, bribery and corruption linked to the areas of criminality which are the focus of the NCA's other Commands - organised crime, border policing and the child exploitation and online protection centre (CEOP).

98. There are a number of coordination groups which bring together the different agencies working on international corruption issues. The Politically Exposed Persons (PEPs) Strategic Group, which meets quarterly, provides a strategic lead and co-ordinates government departments and agencies to tackle money laundering by corrupt PEPs. With the planned creation of the NCA in 2013, a new group was established in 2012 to interface between the NCA build on economic crime and the DFID-funded cross-agency work on international anti-corruption. This is the International Corruption Intervention Group which co-ordinates activity between the DFID funded overseas corruption units (the Metropolitan Police Service Proceeds of Corruption Unit; the City of London Police Overseas Anti-Corruption Unit and the Serious Organised Crime Agency International Corruption Intelligence Cell).

C. Previous assessments of anti-corruption measures

99. The UK has been assessed in four evaluation rounds by the Council of Europe's Group of States Against Corruption (GRECO). GRECO evaluation procedures involve the collection of information through questionnaire(s), on-site country visits enabling evaluation teams to solicit further information during high-level discussions with domestic key players, and drafting of evaluation reports. These reports, which are examined and adopted by GRECO, contain recommendations to the evaluated countries. Measures taken to implement recommendations are subsequently assessed by GRECO under a separate compliance procedure.

100. The adoption of the UK's second compliance report in June 2012 terminated the third round compliance procedure. The third round evaluation assessed the UK's progress in: a) incriminations and b) corruption in the funding of political parties and electoral campaigns. The fourth round evaluation report of the UK was adopted by the GRECO plenary in October 2012. The fourth round evaluation assesses the UK's progress in: a) members of Parliament; b) judiciary and c) the prosecution services.

101. All of GRECO's reports on the UK are published on the GRECO website: http://www.coe.int/t/dghl/monitoring/greco/evaluations/index_en.asp.

102. The UK last Mutual Evaluation (ME) under the Financial Action Task Force (FATF) was published in June 2007, ahead of the coming into force of the current Money Laundering Regulations (2007) which transposed the third EU Money Laundering Directive in the UK. The 2007 ME highlighted several deficiencies with respect to core FATF recommendation 5 on customer due diligence (R5) and noncompliance on a series of other recommendations. The implementation of the Money Laundering Regulations in 2007 largely remedied these. As a result – and following the 2009 follow up report - the UK was removed from the regular follow up process. Beyond addressing shortcomings with respect to R5, the follow up stressed significant progress on measures with the introduction of enforceable obligations with regards to PEPs (R6) and correspondent banking (R7) and addressing requirements for Designated Non-Financial Businesses and Professions or DNFBPs (R12 & R24). The UK also addressed FATF concerns regarding R33 by introducing new requirements to identify the beneficial owners with respect to financial institutions and other DNFBPs.

103. The UK provided updated information on the state of the anti-money laundering and counter terrorism financing regime in the context of the FATF biennial update to the plenary meeting in October 2011.

104. The 2007 evaluation is available on the FATF website: http://www.fatf-gafi.org/document/9/0,3746,en_32250379_32236963_38917001_1_1_1_1,00.html

105. The OECD Bribery Convention establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions. The UK has been reviewed by its OECD peers three times at Phase 1 and twice at Phase 2. The Phase 3 process began in July 2011 and concluded in March 2012.

106. Reports on the UK by the OECD Working Group Bribery are available online: http://www.oecd.org/document/28/0,3746,en_2649_34859_44583772_1_1_1_1,00.html.

107. The UK self-assessment was issued for public consultation by the government at

<http://www.dfid.gov.uk/Work-with-us/Consultations/UK-implementation-of-the-UN-Convention-against-Corruption>. The government also agreed to have it posted on the UNODC website at <http://www.unodc.org/unodc/en/treaties/CAC/country-pairings-year-1-of-the-review-cycle.html>.

D. Implementation of selected articles of the Convention

CHAPTER III. CRIMINALIZATION AND LAW ENFORCEMENT

A general observation regarding the implementation of Chapter III by the UK concerns the issue of statistical data relating to the investigation and prosecution of corruption offences, including sentences or fines imposed. Although some data is collected by individual authorities, there is no consistency in the type of data that is collected and no central mechanisms exists through which such data can be accessed. While it is noted that the creation of a National Criminal Agency could address the issue of the collection and availability of data, measures could also be taken under the current framework to promote the consolidation and accessibility of such data.

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 information relevant to reviewing the implementation of the article

108. The State under review has provided the text of Sections 1 to 5 of the Bribery Act 2010, which came into force on 1 July 2011 and applies to all parts of the UK. It also provided parts of Section 1 of the Public Bodies Corrupt Practices Act 1889 and of Section 1 of the Prevention of Corruption Act 1906, which were repealed on 1 July 2011, as well as information on the non-statutory common law offences of bribery in England & Wales, Northern Ireland and Scotland, which were equally abolished on 1 July 2011 (Section 19 subsection 1 Bribery Act 2010).

109. Some examples of cases, and statistical data on the application of Section 1(1) and (2) of the 1889 Act and Section 1 of the 1906 Act in England & Wales, from 2008 until 2010, have also been provided.

110. The relevant Sections of the **Bribery Act 2010** read as follows:

“1 Offences of bribing another person

(1) A person (“P”) is guilty of an offence if either of the following cases applies.

(2) Case 1 is where-

(a) P offers, promises or gives a financial or other advantage to another person, and

(b) P intends the advantage-

(i) to induce a person to perform improperly a relevant function or activity, or

(ii) to reward a person for the improper performance of such a function or activity.

(3) Case 2 is where-

(a) P offers, promises or gives a financial or other advantage to another person, and

(b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

(4) In case 1 it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned.

(5) In cases 1 and 2 it does not matter whether the advantage is offered, promised or given by P directly or through a third party.

2 Offences relating to being bribed

(1) A person (“R”) is guilty of an offence if any of the following cases applies.

(2) Case 3 is where R requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by R or another person).

(3) Case 4 is where-

(a) R requests, agrees to receive or accepts a financial or other advantage, and

(b) the request, agreement or acceptance itself constitutes the improper performance by R of a relevant function or activity.

(4) Case 5 is where R requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by R or another person) of a relevant function or activity.

(5) Case 6 is where, in anticipation of or in consequence of R requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly-

(a) by R, or

(b) by another person at R's request or with R's assent or acquiescence.

(6) In cases 3 to 6 it does not matter-

(a) whether R requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or through a third party,

(b) whether the advantage is (or is to be) for the benefit of R or another person.

(7) In cases 4 to 6 it does not matter whether R knows or believes that the performance of the function or activity is improper.

(8) In case 6, where a person other than R is performing the function or activity, it also does not matter whether that person knows or believes that the performance of the function or activity is improper.

3 Function or activity to which bribe relates

(1) For the purposes of this Act a function or activity is a relevant function or activity if-

(a) it falls within subsection (2), and

(b) meets one or more of conditions A to C.

(2) The following functions and activities fall within this subsection-

(a) any function of a public nature,

(b) any activity connected with a business,

(c) any activity performed in the course of a person's employment,

(d) any activity performed by or on behalf of a body of persons (whether corporate or unincorporate).

(3) Condition A is that a person performing the function or activity is expected to perform it in good faith.

(4) Condition B is that a person performing the function or activity is expected to perform it impartially.

(5) Condition C is that a person performing the function or activity is in a position of trust by virtue of performing it.

(6) A function or activity is a relevant function or activity even if it-

(a) has no connection with the United Kingdom, and

(b) is performed in a country or territory outside the United Kingdom.

(7) In this section “business” includes trade or profession.

4 Improper performance to which bribe relates

(1) For the purposes of this Act a relevant function or activity-

(a) is performed improperly if it is performed in breach of a relevant expectation, and

(b) is to be treated as being performed improperly if there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation.

(2) In subsection (1) “relevant expectation”-

(a) in relation to a function or activity which meets condition A or B, means the expectation mentioned in the condition concerned, and

(b) in relation to a function or activity which meets condition C, means any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of trust mentioned in that condition.

(3) Anything that a person does (or omits to do) arising from or in connection with that person's past performance of a relevant function or activity is to be treated for the purposes of this Act as being done (or omitted) by that person in the performance of that function or activity.

5 Expectation test

(1) For the purposes of sections 3 and 4, the test of what is expected is a test of what a reasonable person in the United Kingdom would expect in relation to the performance of the type of function or activity concerned.

(2) In deciding what such a person would expect in relation to the performance of a function or activity where the performance is not subject to the law of any part of the United Kingdom, any local custom or practice is to be disregarded unless it is permitted or required by the written law applicable to the country or territory concerned.

(3) In subsection (2) “written law” means law contained in-

(a) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned, or

(b) any judicial decision which is so applicable and is evidenced in published written sources.

(...)

11 Penalties

(1) An individual guilty of an offence under section 1, 2 or 6 is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 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 10 years, or to a fine, or to both.

(2) Any other person guilty of an offence under section 1, 2 or 6 is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, (b) on conviction on indictment, to a fine.

(3) A person guilty of an offence under section 7 is liable on conviction on indictment to a fine.”

The UK provided the following statistics on prosecutions of corruption offences, noting that offences involving bribery could not be disaggregated from the total number of misconduct offences. The authorities indicated that initial charges are counted in the magistrates’ court and cannot easily be linked to outcomes in the Crown Court. They further indicated that charges may change before trial or plea.

Offences Charged and Reaching a First Hearing In Magistrates' Courts

	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Common Law - Embracery	0	0	0	0	0
Common Law - Misconduct in a Public Office *	70	42	84	118	90
Prevention of Corruption Act 1906 { 1(1) }	3	2	6	16	6
Public Bodies Corrupt Practices Act 1889 { 1(1) and 2 }	2	3	5	1	0
Public Bodies Corrupt Practices Act 1889 { 1(2) and 2 }	0	1	1	5	0

Footnotes:

* Offences involving bribery can not be disaggregated from the total number of misconduct offences.

1. Offences recorded in the Management Information System Offences Universe are those which reached a hearing. There is no indication of final outcome or if the charged offence was the substantive charge at finalisation.

2. Data relates to the number of offences recorded in magistrates' courts, in which a prosecution commenced, as recorded on the CMS.

3. Offences data are not held by defendant or outcome.

4. Offences recorded in the Offences Universe of the MIS are those which were charged at any time and reached at least one hearing. This offence will remain recorded whether or not that offence was proceeded with and there is no indication of final outcome or if the offence charged was the substantive offence at finalisation.

(A) CPS data are available through its Case Management System (CMS) and associated Management Information System (MIS). The CPS collects data to assist in the effective management of its prosecution functions. The CPS does not collect data which constitutes official statistics as defined in the Statistics and Registration

Service Act 2007. These data have been drawn from the CPS's administrative IT system, which, as with any large scale recording system, is subject to possible errors with data entry and processing. The figures are provisional and subject to change as more information is recorded by the CPS.

(B) The official statistics relating to crime and policing are maintained by the Home Office and the official statistics relating to sentencing, criminal court proceedings, offenders brought to justice, the courts and the judiciary are maintained by the Ministry of Justice.

(b) Observations on the implementation of the article

111. The provisions of the Bribery Act 2010 cited appear to criminalize active and passive bribery of national public officials in accordance, for the most part, with Article 15 of the Convention.

- The UK bribery offences do not use the concept of a “public official” to describe the recipient of the unlawful advantage, dispensing thus with the need for a definition corresponding to the one in Article 2 (a) of the Convention. They refer to any person receiving such an advantage, no matter if in the public or in the private sector, focusing instead on the “function or activity” to which the bribe relates. According to Section 3 of the Bribery Act the functions or activities relevant for the application of the offences include the ones being “of a public nature”, “connected with a business”, “performed in the course of a person’s employment” or “by or on behalf of a body of persons”, insofar as the person performing the function or activity “is expected to perform it in good faith”, “is expected to perform it impartially”, or “is in a position of trust by virtue of performing it”. These generic descriptions of the criteria that need to be fulfilled in order to meet the functional standard for the “prohibited” recipient of the bribe, although unusual, should be deemed to cover all cases involving persons holding an executive, administrative and judicial office, elected officials and other persons performing a public function or providing a public service, including employees of public enterprises and soldiers. Moreover, Section 3 subs. 6 makes clear that a function or activity is relevant for the application of the Act even if it is performed outside the UK, covering thus all public servants (such as military or diplomatic staff) serving abroad.
- The required elements of the offences of active and passive bribery (promise, offering or giving / solicitation or acceptance of an advantage) are expressly contained in the relevant criminal law provisions. The UK offences cover instances where no gift or other benefit is actually given or received. Performing improperly an official function or activity in anticipation or as a consequence of a bribe constitutes a separate offence (Section 2 subs. 5). This, however, does not impede punishment in cases where the intended breach of duty has not taken place.
- The law speaks of “a financial or other advantage”, covering thus instances where intangible items or non-pecuniary advantages are offered. Furthermore, it is explicitly specified in the provisions provided (Section 1 subs. 5, Section 2 subs. 6(a) Bribery Act) that cases of indirect active or passive bribery, i.e. cases involving intermediaries, are included.

- The UK has introduced an interesting, albeit complicated structure for the bribery offences, differentiating the various cases that come into consideration, according mostly to the mens rea of the offender. The Bribery Act refers first of all to bribes intended to induce a person to perform “improperly” a function or activity (Section 1 subs. 2(b)(i), Section 2 subs. 2), covering thus bribes offered or accepted in order that a public official acts or refrains from acting (fails to perform) in breach of his official duties (acts of bribery *stricto sensu*). Bribes offered not as an inducement to a (future) improper act or omission, but as a reward for an already performed improper function or activity (ex post facto bribes) are also included, going thus in this point further than the Convention. Section 4 of the Bribery Act provides a detailed definition of functions performed “improperly”, focusing on the breaching of expectations of good faith, impartiality and trust.

With respect to advantages linked to “proper” functions or activities, the Bribery Act provides for the punishment of all offers, promises, requests etc. of an advantage, when the acceptance of the advantage “would itself constitute the improper performance of a relevant function or activity” (Section 1 subs. 3 (b) and Section 2 subs. 3 (b)), covering thus facilitation or even solicitation-related payments for the performance of lawful official duties. What is more, the law goes here again beyond what is required by the Convention, even covering the solicitation or acceptance of a benefit that does not involve as a consequence the official acting or refraining from acting in the exercise of his or her official duties. It is sufficient if the officials’ gift-taking behaviour goes against the rules of his office and has the potential to weaken public confidence in the impartiality of the actions of the authorities involved. Some examples as to the situations to which Section 1(3) and Section 2(3) would apply were provided.

With respect to the element of an “undue” advantage, the UK provisions concerning active and passive bribery do not specify that the advantage must be “undue”. However, this is surmised from the prerequisite that it is either intended to induce a breach of duty or it runs itself against the proper performance of the official’s function or activity. It can be assumed, that socially adequate gifts and donations remain well outside the scope of the law. This seems to be confirmed by the “expectation test” of Section 5 of the Bribery Act, whereby the test of what is expected from a British public official in relation to the proper performance of his or her duties is a test of what “a reasonable person in the United Kingdom would expect” based on national law, customs and practices.

- Actions committed intentionally are covered in principle. In cases of active bribery involving the breach of the official’s duties, the perpetrator should act with a clear intent to bring about the “improper” performance of the relevant function or activity. In all other cases, it suffices if the perpetrator knows or believes that the request or acceptance of the advantage itself constitutes improper performance. In cases of passive bribery the subjective requirements are even less, as in most cases it doesn’t even matter if the perpetrator knows or believes that the performance of the relevant func-

tion or activity is improper (Section 2 subs. 7 Bribery Act). Although this might appear excessive (especially with relation to Case 4) the UK takes the view that a civil servant should know what is expected from him/her. In any case, the UK law satisfies the minimum requirements of the Convention.

112. The following points were noted:

- It was confirmed that the Act also covers cases where the recipient is a member of Parliament, in view of the fact that the function of MPs could be classified as “of a public nature” and is expected to be performed “in good faith”. This includes cases where the bribe is intended to cause the member of Parliament to act or refrain from acting in ways that might breach the duties of his/her mandate that do not involve a parliamentary vote, e.g. during considerations of whether to raise an issue in Parliament, during work in Parliamentary committees etc.
- The law explicitly mentions in relation to passive bribery, that it does not matter whether the advantage is (or is to be) for the benefit of the official or another person (Section 2 subs. 6 (b) Bribery Act). Such a provision also exists in Section 6, sub. 3 (a) (ii) regarding the active bribery of foreign public officials. It does not exist in Section 1 of the law in relation to active bribery of domestic persons, although the Act specifies in Section 1(4) that “it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned”. However, the officials confirmed that the third party benefit in relation to Section 1 is most likely covered and provided an explanatory note, which describes the significance of payments to third party beneficiaries in the formulation of sections 1, 2 and 6 of the Bribery Act 2010. Accordingly, the reviewers were satisfied that third party benefits are sufficiently covered.
- The UK advised that the expected test that will be applied under conditions A and B in Subsection 3 is set out in Section 4 (2)(a) and Section 5. Condition A covers circumstances where a person is subject to an expectation that they perform a function with integrity and in accordance with ethical principles in circumstances where they are not under an expectation to act impartially. An example would be where a person is providing a character reference for a job applicant. It is accepted that such a person will be partial to a degree but they would also be expected not to fabricate an entirely inaccurate character reference. The circumstances in condition B will apply where the person is expected to make an objective judgement, for example in most tendering processes.
- Sanctions for the bribery offences range, according to Section 11 subs. 1 and 4 of the Bribery Act, from a fine not exceeding the statutory maximum and/or imprisonment of up to 12 months (6 months in Northern Ireland), on summary convictions, to an unlimited fine and/or imprisonment of up to 10 years, on conviction on indictment. Regarding fines, the UK reported that the statutory maximum in England & Wales

and Northern Ireland is £5,000 on summary conviction and £10,000 in Scotland. At first glance, this may appear odd, as it suggests different maximum penalties will apply in different parts of the UK. However, actually the overall maximum penalties will be the same across the UK (i.e., an unlimited fine), and instead different summary maximum penalties will apply in Scotland than in England and Wales. This simply reflects the different, higher jurisdictional limits Scottish summary courts have in comparison to England and Wales.

Regarding the distinction between a summary conviction and an indictment, it was explained that the primary criterion for the determination of the applicable procedure is the anticipated sentence. In the vast majority of cases, corruption would be triable on indictment before the Crown Court and not tried summarily, although this possibility cannot be excluded.

The UK further clarified that Section 11(2) refers to an offence committed by a person other than an individual, and that the reference needs to be to “other person” so as not to limit the scope of bodies covered.

Finally, consideration was given to the proportionality of the sanctions, given the fact that according to Article 30 par. 1 of the Convention, “each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.” The law does not provide for an aggravated form of bribery nor does it make any distinction between bribery in the public and bribery in the private sector, between bribery of national and bribery of foreign officials, or between bribery involving a breach or duty, facilitation payments and other forms of gift-giving. The experts suggested that the UK authorities could consider differentiating sanctions between public and non-public authorities. The UK indicated that it considers the broad scope of each of the offences in the Act, which is in keeping with its legislative tradition, to be one of the strengths of the legislation and reported that the penalties available to the courts are sufficient to deal with the most serious forms of bribery, including that on the part of custodians of public trust like MPs. The UK authorities also explained that they consider the spectrum of possible sanctions wide enough to take into account the circumstances of each case, including the position of the person who accepted the bribe. However, they acknowledged that distinctions between public and private sector bribery are justified and noted, for example, that many people in the private sector now perform functions of a public nature. It seems that UK position is not incompatible with the standards of the Convention, but experts recommend that the UK revisit the issue in light of any future experience regarding sentences and sanctions actually handed down in bribery cases under the new law

- In view of the fact that the Bribery Act 2010 came into force very recently, it is too early to be able to ascertain the implementation of its provisions in practice. The only additional statistic provided by the UK on the application of Section 1 of the 1906 Act in Scotland, as well as of the Scottish common law offence, is that there was one

conviction under the Prevention of Corruption Act 1906 in Scotland for the year 2009/10.

- Thus far, there has been only one prosecution under the Bribery Act. However, the Serious Fraud Office (SFO) has publicly stated that it takes fraud seriously and intends to enforce the Act. The only prosecution (and conviction) under the Bribery Act since it came into force was of an individual, Munir Patel, a public official and a former Magistrates' Court administrative officer. He was sentenced to six years in prison after pleading guilty to the Section 2 offence of requesting or receiving a bribe with the intention of improperly performing his functions, together with committing the common law offence of misconduct in public office. Mr. Patel admitted to taking a £500 bribe from an individual in exchange for keeping details of a traffic summons off the court database.

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 information relevant to reviewing the implementation of the article

113. The State under review has provided the text of Sections 1 to 6 of the Bribery Act 2010, which came into force on 1 July 2011 and applies to all parts of the UK. It also provided parts of Section 1 of the Public Bodies Corrupt Practices Act 1889 and of Section 1 of the Prevention of Corruption Act 1906, and the text of Sections 108(1) and 109 of the Anti-Terrorism Crime and Security Act 2001, which were all repealed on 1 July 2011, as well as information on the non-statutory common law offences of bribery in England & Wales, Northern Ireland and Scotland, which were equally abolished on 1 July 2011 (Section 19 subsection 1 Bribery Act 2010).

114. Some examples of recent cases, and statistical data on the application of Section 1(1) and (2) of the 1889 Act and Section 1 of the 1906 Act in England & Wales, from 2008 until 2010, have also been provided.

115. Sections 1 to 5 of the **Bribery Act 2010** can be found above under the previous Article. Section 6 reads as follows:

“6 Bribery of foreign public officials

(1) A person (“P”) who bribes a foreign public official (“F”) is guilty of an offence if P’s intention is to influence F in F’s capacity as a foreign public official.

(2) P must also intend to obtain or retain-

(a) business, or

(b) an advantage in the conduct of business.

(3) P bribes F if, and only if-

(a) directly or through a third party, P offers, promises or gives any financial or other advantage-

(i) to F, or

(ii) to another person at F’s request or with F’s assent or acquiescence, and

(b) F is neither permitted nor required by the written law applicable to F to be influenced in F’s capacity as a foreign public official by the offer, promise or gift.

(4) References in this section to influencing F in F’s capacity as a foreign public official mean influencing F in the performance of F’s functions as such an official, which includes-

(a) any omission to exercise those functions, and

(b) any use of F’s position as such an official, even if not within F’s authority.

(5) “Foreign public official” means an individual who-

(a) holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the United Kingdom (or any subdivision of such a country or territory),

(b) exercises a public function-

(i) for or on behalf of a country or territory outside the United Kingdom (or any subdivision of such a country or territory), or

(ii) for any public agency or public enterprise of that country or territory (or subdivision), or

(c) is an official or agent of a public international organisation.

(6) “Public international organisation” means an organisation whose members are any of the following-

- (a) countries or territories,
- (b) governments of countries or territories,
- (c) other public international organisations,
- (d) a mixture of any of the above.

(7) For the purposes of subsection (3)(b), the written law applicable to F is-

(a) where the performance of the functions of F which P intends to influence would be subject to the law of any part of the United Kingdom, the law of that part of the United Kingdom,

(b) where paragraph (a) does not apply and F is an official or agent of a public international organisation, the applicable written rules of that organisation,

(c) where paragraphs (a) and (b) do not apply, the law of the country or territory in relation to which F is a foreign public official so far as that law is contained in-

(i) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned, or

(ii) any judicial decision which is so applicable and is evidenced in published written sources.

(8) For the purposes of this section, a trade or profession is a business.”

(b) Observations on the implementation of the article

116. The provisions of the Bribery Act 2010 cited concerning the bribery of foreign public officials and officials of public international organizations appear to be in accordance for the most part with Article 16 of the Convention.

- The required elements of the offence of active bribery (promise, offering or giving of an advantage) are expressly contained in the relevant criminal law provision (Section 6 subs. 3 (a) Bribery Act). The offence covers instances where no gift or other benefit is actually given or received. Furthermore, as with the offences concerning national public officials, the law covers instances where intangible items or non-pecuniary advantages are offered, as well as cases involving intermediaries.
- In contrast to the situation in the previous Article, Section 6 subs. 3 (a) (ii) also mentions offerings to another person at the foreign public official’s “request” or with his or hers “assent or acquiescence”. This should encompass all instances where the advantage is offered for the benefit of a third (physical or legal) person.

- The concept of a “foreign public official” is defined in Section 6 subs. 5 of the Bribery Act in a manner that reflects all elements of the definition of Article 2 (b) of the Convention, including officials of countries that are not State parties, members of foreign parliaments, and individuals exercising a public function for a public agency or public enterprise of a foreign country. The definition also includes officials and “agents” of public international organisations, in a way which should be deemed to be in accordance with the definition of Article 2 (c) of the Convention (“international civil servants or any person who is authorized by such organization to act on behalf of that organization”). Section 6 subs. 6 of the Bribery Act contains a wide definition of “public international organisations). The UK clarified that the term “agent” is interpreted to include not only a person hired directly by the organization, but also someone authorized to act on its behalf.
- The comprehensive UK active bribery offence refers to benefits given with the intent to “influence” the recipient in the performance of his/hers functions as a foreign public official, including any omission to exercise those functions and any use of the recipient’s position even if not within his/hers authority. This satisfies the requirements of Article 16 par. 1 of the Convention. Punishment is not impeded, in cases where a breach of duty has not taken place. In contrast to what happens with national public officials, rewards for already performed official functions or activities (ex post facto bribes) are not included.
- As with the rest of the bribery offences, the UK provisions regarding foreign bribery do not specify that the advantage offered must be “undue”. Section 6 subs. 3 (b) of the Bribery Act introduces only a test to determine if the written law applicable to the recipient permits or requires him/her to be “influenced” in his or her capacity by the offer, promise or gift. As a result, UK citizens and businesses giving or receiving gifts or hospitality abroad need to consider carefully whether these are expressly required or permitted by the law of the country where they are made. There is no test directly equivalent to the “expectation test” of Section 5, which would involve a broader enquiry on what is expected from a foreign public official in relation to the proper discharge of his/her duties. Nevertheless, socially adequate gifts and offerings could still remain outside the scope of the law, if it is determined that they were not intended to influence their recipient.
- The UK offence requires that the perpetrator must also intend to obtain or retain “business or an advantage in the conduct of business”. This goes further than Article 16 par. 1 of the Convention, since the business or other advantage do not need to be “undue”. Facilitation or solicitation-related payments are also included, insofar as they involve influencing the official conduct of the recipient.
- The sanctions described under bribery of domestic officials apply also to the bribery of foreign public officials and officials of public international organisations. Finally, UK law does not require that bribery of foreign public officials constitutes an offence under the domestic law of the concerned foreign country.

117. In view of the above, Article 16 par. 1 of the Convention is almost fully implemented. The following points were clarified, particularly with regard to the implementation of Article 16 par. 2:

- The State under review has cited Section 1 of the Bribery Act 2010 as relevant to reviewing the implementation of Article 16 par. 1. The UK clarified that the conduct embraced by Section 6 will usually also constitute the commission of an offence under Section 1. Section 6, however, does not require proof of intention to induce an improper performance of a relevant function.
- The State under review has also stated that it has adopted and implemented the measures described in Article 16 par. 2 and cited Section 2 of the Bribery Act as relevant to reviewing implementation. The UK clarified that passive bribery of foreign public officials is covered by Section 2, which covers passive bribery on the part of any person, including foreign public officials.
- As with the previous Article, it is too early to be able to ascertain the implementation of the relevant provisions in practice, given that the Bribery Act 2010 came into force only a few months ago. During the country visit, the City of London Police indicated that on average they handle 25 foreign bribery cases at one time but had considered over 115 since 2007. The Innotec case was provided as an illustration of the application of the UK bribery offences in cases of passive bribery under the previously existing law.

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 information relevant to reviewing the implementation of the article

118. The State under review has provided internet links to the text of Sections 2, 3, and 4 of the Fraud Act 2006, and of Sections 1, 17 (1) (a) and (b) of the Theft Act 1968, as well as information on jurisdiction to prosecute (which is relevant to Article 42 of the Convention). It has also provided some information of the common law offences of conspiracy to defraud and misconduct in public office and on the Scottish common law offence of embezzlement.

119. Sections 1-5 of the **Fraud Act 2006** read as follows:

“1 Fraud

(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).

(2) The sections are—

(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).

(3) A person who is guilty of fraud is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 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 10 years or to a fine (or to both).

(4) Subsection (3)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.

2 Fraud by false representation

(1) A person is in breach of this section if he—

(a) dishonestly makes a false representation, and

(b) intends, by making the representation—

(i) to make a gain for himself or another, or

(ii) to cause loss to another or to expose another to a risk of loss.

(2) A representation is false if—

(a) it is untrue or misleading, and

(b) the person making it knows that it is, or might be, untrue or misleading.

(3) “Representation” means any representation as to fact or law, including a representation as to the state of mind of—

(a) the person making the representation, or

(b) any other person.

(4) A representation may be express or implied.

(5) For the purposes of this section a representation may be regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

3 Fraud by failing to disclose information

A person is in breach of this section if he—

(a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and

(b) intends, by failing to disclose the information—

(i) to make a gain for himself or another, or

(ii) to cause loss to another or to expose another to a risk of loss.

4 Fraud by abuse of position

(1) A person is in breach of this section if he—

(a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,

(b) dishonestly abuses that position, and

(c) intends, by means of the abuse of that position—

(i) to make a gain for himself or another, or

(ii) to cause loss to another or to expose another to a risk of loss.

(2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

5 “Gain” and “loss”

(1) The references to gain and loss in sections 2 to 4 are to be read in accordance with this section.

(2) “Gain” and “loss”—

(a) extend only to gain or loss in money or other property;

(b) include any such gain or loss whether temporary or permanent;

and “property” means any property whether real or personal (including things in action and other intangible property).

(3) “Gain” includes a gain by keeping what one has, as well as a gain by getting what one does not have.

(4) “Loss” includes a loss by not getting what one might get, as well as a loss by parting with what one has.”

120. Sections 1-7 of the **Theft Act 1968** read as follows:

“1 Basic definition of theft.

(1) A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and “thief” and “steal” shall be construed accordingly.

(2) It is immaterial whether the appropriation is made with a view to gain, or is made for the thief’s own benefit.

(3) The five following sections of this Act shall have effect as regards the interpretation and operation of this section (and, except as otherwise provided by this Act, shall apply only for purposes of this section).

2“Dishonestly”

(1) A person’s appropriation of property belonging to another is not to be regarded as dishonest—

(a) if he appropriates the property in the belief that he has in law the right to deprive the other of it, on behalf of himself or of a third person; or

(b) if he appropriates the property in the belief that he would have the other’s consent if the other knew of the appropriation and the circumstances of it; or

(c) (except where the property came to him as trustee or personal representative) if he appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

(2) A person’s appropriation of property belonging to another may be dishonest notwithstanding that he is willing to pay for the property.

3 “Appropriates”.

(1) Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.

(2) Where property or a right or interest in property is or purports to be transferred for value to a person acting in good faith, no later assumption by him of rights which he believed himself to be acquiring shall, by reason of any defect in the transferor’s title, amount to theft of the property.

4 “Property”.

(1) “Property” includes money and all other property, real or personal, including things in action and other intangible property.

(2) A person cannot steal land, or things forming part of land and severed from it by him or by his directions, except in the following cases, that is to say—

(a) when he is a trustee or personal representative, or is authorised by power of attorney, or as liquidator of a company, or otherwise, to sell or dispose of land belonging to another, and he appropriates the land or anything forming part of it by dealing with it in breach of the confidence reposed in him; or

(b) when he is not in possession of the land and appropriates anything forming part of the land by severing it or causing it to be severed, or after it has been severed; or

(c) when, being in possession of the land under a tenancy, he appropriates the whole or part of any fixture or structure let to be used with the land.

For purposes of this subsection “land” does not include incorporeal hereditaments; “tenancy” means a tenancy for years or any less period and includes an agreement for such a tenancy, but a person who after the end of a tenancy remains in possession as statutory tenant or otherwise is to be treated as having possession under the tenancy, and “let” shall be construed accordingly.

(3) A person who picks mushrooms growing wild on any land, or who picks flowers, fruit or foliage from a plant growing wild on any land, does not (although not in possession of the land) steal what he picks, unless he does it for reward or for sale or other commercial purpose.

For purposes of this subsection “mushroom” includes any fungus, and “plant” includes any shrub or tree.

(4) Wild creatures, tamed or untamed, shall be regarded as property; but a person cannot steal a wild creature not tamed nor ordinarily kept in captivity, or the carcase of any such creature, unless either it has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or another person is in course of reducing it into possession.

5 “Belonging to another”.

(1) Property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest).

(2) Where property is subject to a trust, the persons to whom it belongs shall be regarded as including any person having a right to enforce the trust, and an intention to defeat the trust shall be regarded accordingly as an intention to deprive of the property any person having that right.

(3) Where a person receives property from or on account of another, and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property or proceeds shall be regarded (as against him) as belonging to the other.

(4) Where a person gets property by another’s mistake, and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then

to the extent of that obligation the property or proceeds shall be regarded (as against him) as belonging to the person entitled to restoration, and an intention not to make restoration shall be regarded accordingly as an intention to deprive that person of the property or proceeds.

(5) Property of a corporation sole shall be regarded as belonging to the corporation notwithstanding a vacancy in the corporation.

6 “With the intention of permanently depriving the other of it”.

(1) A person appropriating property belonging to another without meaning the other permanently to lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other of it if his intention is to treat the thing as his own to dispose of regardless of the other’s rights; and a borrowing or lending of it may amount to so treating it if, but only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(2) Without prejudice to the generality of subsection (1) above, where a person, having possession or control (lawfully or not) of property belonging to another, parts with the property under a condition as to its return which he may not be able to perform, this (if done for purposes of his own and without the other’s authority) amounts to treating the property as his own to dispose of regardless of the other’s rights.

7 Theft.

A person guilty of theft shall on conviction on indictment be liable to imprisonment for a term not exceeding [seven years].

121. Sections 1-7 of the **Theft Act (Northern Ireland 1969)** read as follows:

“1 Basic definition of theft.

(1) A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and “thief” and “steal” shall be construed accordingly.

(2) It is immaterial whether the appropriation is made with a view to gain, or is made for the thief’s own benefit.

(3) The five following sections shall have effect as regards the interpretation and operation of this section (and, except as otherwise provided by this Act, shall apply only for purposes of this section).

2 “Dishonestly”.

(1) A person’s appropriation of property belonging to another is not to be regarded as dishonest—

(a) if he appropriates the property in the belief that he has in law the right to deprive the other of it, on behalf of himself or of a third person; or

(b) if he appropriates the property in the belief that he would have the other's consent if the other knew of the appropriation and the circumstances of it; or

(c) (except where the property came to him as trustee or personal representative) if he appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

(2) A person's appropriation of property belonging to another may be dishonest notwithstanding that he is willing to pay for the property.

3 “Appropriates”.

(1) Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.

(2) Where property or a right or interest in property is or purports to be transferred for value to a person acting in good faith, no later assumption by him of rights which he believed himself to be acquiring shall, by reason of any defect in the transferor's title, amount to theft of the property.

4 “Property”.

(1) “Property” includes money and all other property, real or personal, including things in action and other intangible property.

(2) A person cannot steal land, or things forming part of land and severed from it by him or by his directions, except in the following cases, that is to say—

(a) when he is a trustee or personal representative, or is authorised by power of attorney, or as liquidator of a company, or otherwise, to sell or dispose of land belonging to another, and he appropriates the land or anything forming part of it by dealing with it in breach of the confidence reposed in him; or

(b) when he is not in possession of the land and appropriates anything forming part of the land by severing it or causing it to be severed, or after it has been severed; or

(c) when, being in possession of the land under a tenancy, he appropriates the whole or part of any fixture or structure let to be used with the land.

For purposes of this subsection, “land” does not include incorporeal hereditaments; “tenancy” means a tenancy for years or any less period and includes an agreement for such a tenancy, but a person who, after the end of a tenancy, remains in possession as statutory tenant or otherwise is to be treated as having possession under the tenancy, and “let” shall be construed accordingly.

(3) A person who picks mushrooms growing wild on any land, or who picks flowers, fruit or foliage from a plant growing wild on any land, does not (although not in possession of the land) steal what he picks, unless he does it for reward or for sale or other commercial purpose.

For purposes of this subsection, “mushroom” includes any fungus, and “plant” includes any shrub or tree.

(4) Wild creatures, tamed or untamed, shall be regarded as property; but a person cannot steal a wild creature not tamed nor ordinarily kept in captivity, or the carcass of any such creature, unless either it has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or another person is in course of reducing it into possession.

5 “Belonging to another”.

(1) Property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest).

(2) Where property is subject to a trust, the persons to whom it belongs shall be regarded as including any person having a right to enforce the trust, and an intention to defeat the trust shall be regarded accordingly as an intention to deprive of the property any person having that right.

(3) Where a person receives property from or on account of another, and is under an obligation to the other to retain and deal with that property or its proceeds in a particular way, the property or proceeds shall be regarded (as against him) as belonging to the other.

(4) Where a person gets property by another's mistake, and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then, to the extent of that obligation, the property or proceeds shall be regarded (as against him) as belonging to the person entitled to restoration and an intention not to make restoration shall be regarded accordingly as an intention to deprive that person of the property or proceeds.

(5) Property of a corporation sole shall be regarded as belonging to the corporation notwithstanding a vacancy in the corporation.

6 “With the intention of permanently depriving the other of it”.

(1) A person appropriating property belonging to another without meaning the other permanently to lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other of it if his intention is to treat the thing as his own to dispose of regardless of the other's rights; and a borrowing or lending of it may amount to so treating it if, but only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(2) *Without prejudice to the generality of subsection (1), where a person, having possession or control (lawfully or not) of property belonging to another, parts with the property under a condition as to its return which he may not be able to perform, this (if done for purposes of his own and without the other's authority) amounts to treating the property as his own to dispose of regardless of the other's rights.*

7 Theft.

A person guilty of theft shall, on conviction on indictment, be liable to imprisonment for a term not exceeding ten years.

122. In England & Wales and Northern Ireland the **common law offence of misconduct in public office** is committed when an office holder acts (or fails to act) in a way that constitutes a breach of the duties of his/her office and carries a maximum sentence of life imprisonment.

123. In Scotland the **common law offence of embezzlement** is defined as the dishonest appropriation of money, goods or the proceeds thereof, by a person who holds them on behalf of another person to whom he owes a duty to account, and on whose behalf he is in the process of carrying out a course of dealing with the money, goods or proceeds.

(b) Observations on the implementation of the article

124. In England & Wales and Northern Ireland the provisions of the Theft Act 1968 and the (almost identical) provisions of the Theft Act (Northern Ireland) 1969 cited appear to criminalize the embezzlement, misappropriation or other diversion of property by a domestic public official in accordance with Article 17 of the Convention.

125. More specifically:

- Embezzlement/misappropriation under Article 17 is criminalized as a form of “theft” by Section 1 of the respective Theft Acts. The term “diversion”, also used in the Convention, can be understood as covered by or synonymous with the terms “embezzlement and misappropriation” (see A/58/422/Add.1, para. 30). Section 1, in combination with the broad provisions of Sections 3-5 of the Theft Acts, encompasses the standard factual elements of the relevant offence (appropriation of property, assets or other things of value, which are or have come in any way in the possession of the offender) including cases where the property was entrusted to a public official by virtue of his or her position. According to Section 3 subs. 1 of the Acts, “appropriation” is understood as “any assumption by a person of the rights of an owner, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping dealing with it as owner”.
- The concept of “property” used in the offence under review encompasses, according to Section 4 of the Theft Acts, money and all other property, real or personal, including things in action and other intangible property, and even land and immovable property, in cases, among others, where the offender is a trustee or authorized to sell

or dispose of land belonging to another. This corresponds to the concept of “any property, public or private funds or securities or any other thing of value” used in Article 17 of the Convention, given that according to Article 2 (d) of the latter, for the purposes of the Convention “property” means “assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets.

- It is not explicitly stated that the offence of “theft” covers also instances where the relevant acts are for the benefit not of the public official but of another person or entity. However, it is likewise not required that the act is committed to benefit only the offender, while subs. 2 of Section 1 of the Theft Acts states that “it is immaterial whether the appropriation is made with a view to gain, or is made for the thief’s own benefit”.
- With regard to the mental element of the offence, the basic definition of “theft” requires that the perpetrator acts “dishonestly” and with the intention of permanently depriving the person to whom the appropriated property belongs from it. Section 6 of the Theft Acts specifies, however, that this does not exclude instances where the perpetrator intends to treat a thing as his own to dispose of, without meaning the owner permanently to lose the thing itself, as well as instances where the offender borrows or lends a thing for a period and in circumstances that make the borrowing or lending “equivalent to an outright taking or disposal”.

126. A number of issues were clarified.

- The reviewing experts noted that Sections 2 and 3 of the Fraud Act 2006 (which extends to England & Wales and Northern Ireland), although cited in the self-assessment report as relevant for the application of the present Article, seem in fact not directly relevant, since they involve different requirements on the factual elements of the act. The UK explained that the reference to the Fraud Act was included because it is part of the prosecutors’ armoury that may be applicable in these types of circumstances. Prosecutors will decide which is the appropriate charge. Section 4 could be relevant, based on the wide notion of “dishonest abuse of position” by persons occupying a position in which they are expected to safeguard or not to act against the financial interests of another person. The UK clarified that the phrase “financial interests of another person” in Section 4 means the interests of any person, including legal persons. It is likely that the phrase catches those who safeguard public funds, but in such circumstances it is also likely that the more appropriate charge is a Theft Act charge or misconduct in public office. The use of the concept of “abuse of position” specifically for the punishment of the conduct in question was confirmed by the State under review. In any case, given also the existence of Article 19 of the Convention, which refers to the offence of “abuse of functions”, it is the reviewers’ opinion that the national legislation should provide for a separate offence containing all elements of Article 17 in an adequate wording – in the case of England & Wales and Northern Ireland this requirement is adequately fulfilled by the two Theft Acts.

- Regarding the common law offence of conspiracy to defraud (applicable in England & Wales and Northern Ireland), the UK clarified that conspiracy to defraud is a very broad offence usually employed in complex multi-handed cases involving different forms of dishonest gain or loss. UK officials explained that embezzlement cases with an element of conspiracy to defraud which involves public officials in general always contain an element of misconduct in public office due to the involvement of public officials, and such cases are more likely to be prosecuted against the offence of misconduct in public office. The Complex Casework Units in the Crown Prosecution Service reported only one related case of conspiracy to defraud with an embezzlement aspect involving public officials, which was a Merseyside Police case involving corruption on the part of Merseyside Police civilian employees who were allocating contracts for favours.
- With regard to the common law offence of misconduct in public office (which is again applicable in England & Wales and Northern Ireland), the UK clarified that this is also very broad in scope, and that the courts have interpreted a breach of duty very widely. A scenario on the use of the Bribery Act in cases of diversion was provided in the self-assessment, and a search for relevant cases under the offence of misconduct in public office revealed two relevant cases: *Speechley [2004]* (a Lincolnshire county councillor who was convicted on the basis of failing to disclose his interest in land that was affected by bypass proposals and therefore likely to increase in value); and *R v W [2010]* (a police officer using a police credit card for personal purchases); the latter was ordered to be re-tried on the basis it was necessary to prove dishonesty. The cases also illustrate that the breach does not have to be linked to the exercise of the specific service activities of the official but can relate to his/her general obligations as an official. More generally, the most recent draft of the UK legal guidance on misconduct stresses that statutory offences must take precedence over common law offences, where it is possible and appropriate to prosecute a statutory offence. This is based on comments in the House of Lords in the case of *R v Rimmington, R v Goldstein [2005] UKHL63* and elsewhere: "...good practice and respect for the primacy of statute...require that conduct falling within the terms of a specific statutory provision should be prosecuted under that provision unless there is good reason for doing otherwise." The fact that the person is a public officer is an aggravating factor for sentence (and may also influence the jury's view as to whether the defendant was dishonest). Given the concept of embezzlement under the Convention it was suggested that such cases should normally be prosecuted under the Fraud Act 2006. Misconduct would be reserved for those types of behaviour that do not already fit a clear statutory offence, but should nevertheless be treated as criminal because of a gross abuse of the powers of public office.
- Penalties for theft – on conviction on indictment – are imprisonment of up to seven years in England & Wales, and imprisonment of up to ten years in Northern Ireland. The possibility of summary conviction exists and the maximum imprisonment in England and Wales is 6 months and a maximum penalty of £5,000 (the same is true

for Northern Ireland). As noted above with the offence of bribery of domestic public officials and bearing in mind Article 30 par. 1 of the Convention, the experts suggested that the UK authorities could consider differentiating sanctions between public and non-public authorities. The need for such an offence, explicitly covering public officials may also be surmised by the existence of Article 22 of the Convention, which regulates separately embezzlement of property in the private sector.

127. In Scotland, the main offence relevant to the implementation of Article 17 is the common law offence of embezzlement. Although this offence encompasses some of the required elements, it remains lacking in other respects: The object of the appropriation (“money, goods or the proceeds thereof”) does not correspond to the concept of “property” used in the Convention, excluding among others incorporeal and immovable assets; and the offender must hold the object of the appropriation “on behalf of another person to whom he owes a duty to account, and on whose behalf he is in the process of carrying out a course of dealing with” it – a restrictive precondition in comparison with the definition of the Article under review. The Scottish authorities clarified that charges of theft, reset and fraud can also be brought in Scotland. As with theft, embezzlement relates to corporeal (moveable) property, though it was explained that the appropriation of physical property usually falls under the common law theft offence. It was also explained that an act of appropriating property without any “course of dealing” would amount to theft and not embezzlement, although it was not necessary to show a course of dealing in proving that embezzlement had occurred. More generally the crime of embezzlement is constituted by a “failure to account for goods or funds entrusted to the accused” and covers not only acts of appropriation but also omissions. It is possible to bring a charge of embezzlement even if the profit from the accused person’s actions go to someone else. However, it is necessary that the accused has possession of property in trust for someone else. The element of breach of trust will be taken into account by the Court when it decides upon the appropriate sentence.

Article 18. Trading in influence

Each State Party shall consider adopting 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 or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

128. The State under review has provided information on how the measures described in Article 18 were considered and to what extent they were implemented, with reference to Sections 1 and 2 of the Bribery Act (which can be found above under Article 15).

(b) Observations on the implementation of the article

129. As regards private individuals, UK law does not criminalise the offering, promising, giving, solicitation or acceptance of advantages in relation to the exercise of influence generally, as this would catch legitimate lobbying and marketing.

130. However, the general bribery offences in the Bribery Act 2010 address circumstances in which an advantage is offered, promised etc. to someone (or requested etc. by someone) claiming to have influence with the intention that a person in public administration or public authority be induced to perform the function improperly as a result of the advantage given to / received by the person exerting the influence. In particular, Section 1 subs. 4 of the Act concerning active bribery specifies, that it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the official function or activity. There are similar clauses regarding passive bribery, in Section 2 subs. 2 and 4 of the Act.

131. The circumstances may or may not involve the transfer of the advantage or part of the advantage to the decision maker in the public administration or public authority or to someone with whom the decision maker has a close personal relationship (e.g. money given to a family member), providing that the intention is that the decision maker is induced to perform a relevant function improperly. The scope of the offences is broad enough to cover circumstances in which no impropriety could be associated with the conduct of the decision maker but the person exerting the influence him or herself is induced by an advantage to perform his or her functions or activities improperly as defined by the Act, such as an activity connected to a business or a function of a public nature, and the person offering, promising or giving, or soliciting or accepting the advantage intends this.

132. In view of the above and given the non-mandatory nature of the present Article, the reviewers are satisfied that the UK is in compliance with its requirements.

Article 19. Abuse of functions

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 abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

133. The State under review has provided references to Section 1 of the Theft Act 1976, to the Fraud Act 2006, and to Section 2 of the Bribery Act – these provisions can be found above under Articles 15 and 17. It has also provided more information on the common law offence of misconduct in public office (see above under Article 17), the text of Attorney-General’s Reference (No 3 of 2003) [2004] 2 Cr.App.R. 23 CA, and some examples of misconduct.

(b) Observations on the implementation of the article

134. The offence of misconduct in public office corresponds to the offence of “abuse of functions” by a domestic public official, in accordance for the most part with Article 19 of the Convention.

- The offence contains all the necessary elements of the offence according to the requirements of the Convention, namely the violation of laws by a public official in the discharge of his/her functions (“acting as such”) and the purpose of obtaining an undue advantage for himself/herself or for another party. The law appears to go even further than that, covering all cases where the official wilfully acts (or fails to act) in a way that “amounts to an abuse of the public’s trust in the office holder”, as well as cases where the official does not seek to secure an “undue” advantage or any advantage at all, e.g. where the purpose is only to cause detriment or loss to another. Whether the misconduct was of a sufficiently serious nature depends on the responsibilities of the office and the office holder, the importance of the public objects which they serve, the nature and extent of the departure from those responsibilities and the seriousness of the consequences which might follow.

135. In view of the above the following points were clarified.

- The offence concerns the misconduct of “public officials”. In this regard, the UK clarified that the term “public official” is interpreted broadly. For example, reference is made to the cases *R v. Currie and ors* (1992), unreported Central Criminal Court (cited in *Corruption and Misuse of Public Office* – Nicholls QC et al, Oxford University Press 2nd edition 2011) and *R v. Boston* (1923), 33 CLR 386, in which Higgins J. concluded that “the application and the principle is not confined to public servants in the narrow sense, under the direct orders of the Crown”. It was confirmed that for purposes of the abuse of functions by members of parliament, MPs would be considered public officials/office holders for the application of this law, as suggested by case law.
- According to the information provided, the offence of misconduct in public office carries a maximum sentence of life imprisonment. Bearing in mind Article 30 par. 1 of the Convention, the UK clarified that the sentencing court will take all relevant factors into consideration. A general offending, such as that described by the offence

of misconduct in public office, that involves as a rule a breach of trust would raise a presumption of imprisonment of at least 12 months.

136. Furthermore, according to the information provided (with regard to Article 17), the common law offence of misconduct in public office is only applicable in England & Wales and Northern Ireland. In Scotland there is a common law offence of breach or neglect of duty by a public official, which is broadly similar to the English offence of misconduct by a public official. As confirmed in Gordon's Criminal Law, it is a crime at common law in Scotland for a public official, a person entrusted with an official situation of trust, wilfully to neglect his duty, even where no question of danger to the public or to any person is involved. For example, there have been a number of cases in which postal officials were charged at common law with breach of duty by opening or detaining letters entrusted to them, and one charge has been reported against a post office superintendent for absenting himself from duty. Although prosecutions are rare (and generally such conduct can be dealt with under statute governing the duties of the public officials, e.g. Postal Services Act 2000), the common law offence is still available if required. As a common law offence, the maximum penalties would be life imprisonment and an unlimited fine.

Article 20. Illicit enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

137. The State under review has provided information on the reasons why the measure described in Article 20 was not adopted. It has also provided information on the obligations of civil servants in the United Kingdom under the Civil Service Code.

(b) Observations on the implementation of the article

138. According to the State under review, the establishment of a criminal offence as set out in the present Article was considered during the development of the legislative proposals that became the Bribery Act 2010. The authorities indicated that it would be contrary to the fundamental principles of its legal system. The presumption of innocence is a general principle of the criminal law of the United Kingdom in keeping with Article 6 of the European Convention on Human Rights. In UK jurisdictions the prosecution is ordinarily required to prove all elements of an offence to the criminal standard before an individual may be found guilty. In rare instances the burden of proving certain matters can shift to the defence. This is usually where having established a prima facie case it would be impossible for the prosecution to establish matters peculiarly

within the knowledge of the defendant. The UK considers that creating an offence as suggested by Article 20 would lead to a significant risk of convicting innocent individuals where their explanation was simply not believed. That is not considered a sufficient basis on which to impose criminal liability and would unjustifiably infringe the presumption of innocence.

139. In addition, the UK believes that the introduction of an offence in accordance with Article 20 is unnecessary. Quite apart from the difficulties of monitoring the private wealth of public officials, public officials are already subject to a number of criminal offences such as bribery, fraud, theft or money laundering (which have no de minimis thresholds) as well as the offence of misconduct in public office/breach or neglect of duty in Scotland. The State under review does not consider an additional offence of illicit enrichment would add to those offences. Were a public official to be in possession of wealth disproportionate to his salary this could give rise to suspicion sufficient to justify a criminal investigation and evidence of this kind may be relevant to any charges preferred as a result of such an investigation.
140. Finally, civil servants in the United Kingdom are subject to the rules set out in the Civil Service Code, including their obligation to comply with the law, uphold the administration of justice and not accept gifts or hospitality or receive other benefits from anyone which might reasonably be seen to compromise their personal judgement or integrity. Under the Constitutional Reform and Governance Act 2010, UK civil servants are bound by these rules, which form part of their contractual terms and conditions of employment. With regard to the prohibition under the Civil Service Code to accept gifts or hospitality or receive other benefits from anyone which might reasonably be seen to compromise their personal judgment or integrity, the UK explained that departments set specific rules for their officials on acceptance of gifts and hospitality under the principle that nothing should be accepted that could reasonably be seen to compromise civil servants' personal judgement or integrity. This can vary depending on the individual's role, who is offering the benefit, the business advantage to the department and other factors, but an example of what would not be appropriate might be if an official who is responsible for deciding on awarding a contract accepts significant hospitality from a company that is eventually awarded the contract. This would be seen to compromise their personal judgement. Information on hospitality received by the most senior civil servants is published on departmental websites on a quarterly basis.
141. In view of the above explanations and given the non-mandatory nature of the Article and the broad discretion that the member States enjoy regarding its application, the UK statement should be deemed satisfactory.
142. In order to detect and prove cases of corrupt payments and enhance the ability to monitor private wealth more effectively, it was suggested that consideration might be given to expanding the current system of interest declarations by public officials and parliamentarians to a system of asset declarations.

Article 21. Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

143. The State under review has provided the text of Sections 1 to 5 of the Bribery Act 2010, which can be found above under Article 15. It has also provided parts of Section 1 of the Prevention of Corruption Act 1906, which were repealed on 1 July 2011.

144. Some examples of cases, and statistical data on the application of Section 1 of the 1906 Act in England & Wales, from 2008 until 2010, have also been provided.

(b) Observations on the implementation of the article

145. The provisions of the Bribery Act cited appear to criminalize bribery in the private sector in accordance with Article 21 of the Convention.

- As mentioned before, the “general bribery offences” of the Bribery Act cover simultaneously corruption in the public and in the private sector. Indeed, the UK has a long tradition (much longer than in most member states) of holding “agents” accountable for damaging their obligations and breaching the relation of trust between themselves and their “principals”. The elements of the offences of active and passive bribery of private employees coincide with the ones examined under Article 15. The offences cover tangible and intangible advantages, whether pecuniary or non-pecuniary, as well as cases involving intermediaries and instances where no gift or other benefit actually changes hands. Moreover, the UK provisions go further than the requirements of Article 21, in that they refer not only to bribes intended to induce an employee to act or refrain from acting in breach of his/her duties, but also to ex post fact bribes, and in general to benefits offered or requested “improperly”.
- According to the functional concept of the Bribery Act (Section 3), all functions and activities that are “connected with a business” (including a trade or profession), “performed in the course of a person’s employment” or “by or on behalf of a body of per-

sons”, are relevant for the application of the bribery offences, insofar as the person performing the function “is expected to perform it in good faith”, “is expected to perform it impartially”, or “is in a position of trust by virtue of performing it”. The UK provisions appear thus in compliance with the Convention, which applies to any person who “directs or works, in any capacity, for a private sector entity”, independent of his/her position.

- Additionally, Section 3 subs. 6 makes clear that a function or activity is relevant for the application of the Act even if it has no connection or is performed outside the UK, covering thus seemingly all private employees irrespective of their country of employment, the nationality of their employer and the effects of their acts for competition or the national economy.
- As with bribery in the public sector, it can be assumed, that socially adequate gifts and donations remain outside the scope of the law. However, according to Section 5 of the Bribery Act, applying the “expectation test” in cases where the performance of the employee is not subject to the laws of the UK involves disregarding any local custom or practice “unless it is permitted or required by the written law applicable to the country or territory concerned. Thus the law appears more stringent in cases where the functions and activities of the employee are not governed by UK law.
- As explained in the section referring to bribery offences in the public sector, actions committed intentionally are covered in principle by the UK provisions.
- The sanctions are the same as the ones foreseen for the bribery of national or foreign public officials.

146. In view of the above only the following points (much the same ones as the points mentioned under Article 15) still need some clarification:

- In relation to passive bribery, the UK clarified that cases of bribe offerings for the benefit of third persons or entities fall under the scope of Section 2(6)(b).
- Reference is made to the observations in articles 15 and 16 concerning applicable fines and the proportionality of the applicable sanctions.
- Regarding the reviewers’ observation that the UK general bribery offences seem applicable also in cases involving foreign public officials and are indeed broader than the special offence of Section 6 of the Bribery Act, the UK referred to its previous comments under Article 16 of the Convention.

Article 22. Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of

economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

147. The State under review has provided the same information as in respect of Article 17.

(b) Observations on the implementation of the article

148. The UK provisions do not differentiate between embezzlement in the public and embezzlement in the private sector. Therefore, the same observations made under Article 17 are appropriate here, with the exception of the ones referring to the common law offence of misconduct in public office, for self-evident reasons. Nonetheless, while the implementation of article 17 is mandatory, the reviewed States enjoy discretion concerning the implementation of article 22. The UK referred to its previous response to the comments on Article 17 in respect of Scotland.

Article 23. Laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

149. The State under review has provided internet links to Sections 327-329, 334(1), 340(11)(b)(c) of the Proceeds of Crime Act 2002. It has also provided some examples of cases and statistics for calendar year 2009.

150. Some supplementary information is contained in the FATF Third Mutual Evaluation Report of the UK (2007).

151. The relevant Sections of the **Proceeds of Crime Act** read as follows:

“327 Concealing etc

(1) A person commits an offence if he—

(a) conceals criminal property;

(b) disguises criminal property;

(c) converts criminal property;

(d) transfers criminal property;

(e) removes criminal property from England and Wales or from Scotland or from Northern Ireland.

(2) But a person does not commit such an offence if—

(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;

(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

328 Arrangements

(1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

(2) But a person does not commit such an offence if—

(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;

(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

329 Acquisition, use and possession

(1) A person commits an offence if he—

(a) acquires criminal property;

(b) uses criminal property;

(c) has possession of criminal property.

(2) But a person does not commit such an offence if—

(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;

(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) he acquired or used or had possession of the property for adequate consideration;

(d) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) For the purposes of this section—

(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;

(b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession;

(c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.”(...)

“334 Penalties

(1) A person guilty of an offence under section 327, 328 or 329 is liable—

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

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both.” (...)

“340 Interpretation

(1) This section applies for the purposes of this Part.

(2) Criminal conduct is conduct which—

(a) constitutes an offence in any part of the United Kingdom, or

(b) would constitute an offence in any part of the United Kingdom if it occurred there.

(3) Property is criminal property if—

(a) it constitutes a person’s benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and

(b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

(4) It is immaterial—

(a) who carried out the conduct;

(b) who benefited from it;

(c) whether the conduct occurred before or after the passing of this Act.

(5) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.

(6) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.

(7) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.

(8) If a person benefits from conduct his benefit is the property obtained as a result of or in connection with the conduct.

(9) Property is all property wherever situated and includes—

(a) money;

(b) all forms of property, real or personal, heritable or moveable;

(c) things in action and other intangible or incorporeal property.

(10) The following rules apply in relation to property—

(a) property is obtained by a person if he obtains an interest in it;

(b) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;

(c) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;

(d) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

(11) Money laundering is an act which—

(a) constitutes an offence under section 327, 328 or 329,

(b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),

(c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or

(d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the United Kingdom. (...)"

(b) Observations on the implementation of the article

152. The provisions of the UK law cited appear to criminalize the laundering of proceeds of crime mostly in accordance with Article 23 of the Convention.

153. More specifically:

- Article 23 par. 1 (a)(i) of the Convention requires that State parties criminalize the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action. Article 23 par. 1 (a)(ii) of the Convention requires the establishment of a second, broader offence, namely the conceal-

ment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime. The above requirements are adequately covered by Sections 327, 334 of the Proceeds of Crime Act 2002 which refer to the concealment, disguise, conversion, transfer and removal of criminal property, which constitutes a person's benefit from criminal conduct and the alleged offender knows or suspects that it constitutes or represents such a benefit. The meaning and scope of the term "criminal property" is central to the coverage of the three offences of Sections 327-329 of Proceeds of Crime Act 2002. Section 340 (3)(a) specifies that property is considered as "criminal" property if "it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly)", extending to any type of property or pecuniary advantage, regardless of value, that directly or indirectly represented the proceeds of crime, and taking into account Article 2(e) of the Convention, according to which the term "proceeds of crime" means "any property derived from or obtained, directly or indirectly, through the commission of an offence".

- Article 23 par. 1(b)(i) of the Convention contains as a mandatory, subject to the basic concepts of the legal system of the State party, offence, the acquisition, possession or use of proceeds of crime, knowing, at the time of receipt, that such property is the proceeds of crime. Article 23 par. 1(b)(ii) requires further the criminalization, subject to the basic concepts of the legal system of the State party, of participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences mandated by the Article. UK law adequately covers the acquisition, use and possession of criminal property (Section 329 of Proceeds of Crime Act 2002). Conspiracy and attempts to commit offences, aiding and abetting the commission of an offence and counselling the commission of crime exist as substantive offences under Sections 328 and 340 subs. 11(b) and (c) of Proceeds of Crime Act 2002.
- Article 23 par. 2(a) and (b) of the Convention requires that the list of predicate offences include the widest possible range and at a minimum the offences established in accordance with the Convention. The UK takes an "all crimes" approach to money laundering, which means that there is no list of crimes that constitute predicate offences. The criminal conduct, to which the concept of "criminal property" applies, includes conduct which constitutes an offence in any part of the UK. It also includes conduct which would constitute an offence in the UK had the conduct occurred there (Section 340 par. 2 Proceeds of Crime Act 2002). It is not necessary for the authorities to distinguish between predicate offences upon the evidence at their disposal in order to prosecute money laundering offences. The property in question must in fact be criminal property as defined in section 340 par. 3 of Proceeds of Crime Act 2002. This objective fact may be proven by means of circumstantial evidence. It is not necessary to obtain a prior conviction for a predicate offence in order to prove that property is "criminal property".

- Article 23 par. 2(e) allows a State to provide that the offence set forth in the Article shall not apply to the persons who committed the predicate offence, if required by fundamental principles of the domestic law. The UK has not made use of this clause to exclude self-laundering. According to Section 340 subs. 4 of the Proceeds of Crime Act, for the purpose of applying the three money laundering offences it is immaterial who carried out the criminal conduct and who benefited from it.
- According to the State under review, it has furnished copies of its laws that gave effect to Article 23 and of all subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations.

154. In view of the above the following points were clarified.

- Under Article 23 par. 2 (c) of the Convention, dual criminality is necessary for offences committed in a different national jurisdiction to be considered as predicate offences. The UK clarified that Section 102 of the Serious Crime and Police Act 2005 amended the money laundering provisions in the Proceeds of Crime Act 2002 to create defences where overseas conduct is legal under local law. A person does not commit an offence if the conduct occurred outside of the UK and was not, at the time it occurred, unlawful under the criminal law then applicable in that country or territory, even if it would have been unlawful had it occurred in the UK. However, the UK has dispensed with dual criminality under the Proceeds of Crime Act 2002 (Money Laundering: Exceptions to Overseas Conduct Defence) Order 2006; this relates to gaming, lotteries and amusements legislation and those engaged in financial brokerage (investments) are not caught by these provisions.
- The UK penal provisions threaten money laundering violations with imprisonment of up to six months and/or a fine not exceeding the statutory maximum, on summary conviction, and with imprisonment of up to 14 years and/or a fine, on conviction on indictment (Section 334 Proceeds of Crime Act). On conviction the fine that the court can impose is unlimited. Further, the proceeds of a money laundering offence are liable to full confiscation.
- According to Section 329(2)(c) of the Proceeds of Crime Act, a person who acquires, uses or has possession of property, knowing or suspecting that it is criminal property, does not commit an offence if he acted for “adequate consideration”. The UK clarified that “adequate consideration” covers persons, such as tradesmen, who are paid for ordinary consumable goods and services in money that may come from crime and, due to their position, are not placed under any obligation to question the source of the money. An example is an art collector who purchases a painting, knowing that it is stolen property and pays the going rate. This person will be accused of the offence of handling and not money laundering.
- The UK reported the following statistics on confiscation and restraint orders related to bribery and corruption: one restraint order made before 31.03.2010 and 9 confisca-

tion orders granted between 01.04.2010 and 31.12.2011. Further detail is included under Article 31 below.

- The following statistics on money laundering charges from 2008-2011 were provided by the Scottish authorities:

Marking Decisions:

Federation	FY First Status	No Action	Prosecute	Not separately prosecuted	Not Marked Yet	Warning	Grand Total
East	2008-09	6	32	7	-	-	45
	2009-10	3	26	14	-	-	43
	2010-11	2	12	21	5	-	40
East Total		11	70	42	5	-	128
National	2008-09	22	9	4	19	-	54
	2009-10	80	20	26	3	-	129
	2010-11	124	-	12	15	-	151
National Total		226	29	42	37	-	334
North	2008-09	-	-	4	-	-	4
	2009-10	-	2	-	-	-	2
	2010-11	-	4	4	-	-	8
North Total		-	6	8	-	-	14
West	2008-09	24	14	13	-	-	51
	2009-10	7	10	4	8	1	30

	2010-11	34	23	3	15	-	75
West Total		65	47	20	23	1	156
Grand Total		302	152	112	65	1	632

Prosecution Outcomes:

Federation	FY First Status	No Conviction	Ongoing	No Further Action	Conviction	Charge No Further Action	Grand Total
East	2008-09	20	1	5	5	1	32
	2009-10	5	-	19	2	-	26
	2010-11	1	9	1	1	-	12
East Total		26	10	25	8	1	70
National	2008-09	6	-	-	3	-	9
	2009-10	11	8	-	1	-	20
National Total		17	8	-	4	-	29
North	2009-10	2	-	-	-	-	2
	2010-11	-	4	-	-	-	4
North Total		2	4	-	-	-	6
West	2008-09	2	-	4	8	-	14
	2009-10	-	4	5	1	-	10
	2010-11	2	18	2	1	-	23

West Total	4	22	11	10	-	47
Grand Total	49	44	36	22	1	152

Article 24. Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

155. The State under review suggests that the conduct involved is covered by Sections 327 (concealment) and 329 (retention) of the Proceeds of Crime Act 2002, cited above.

(b) Observations on the implementation of the article

156. Concealment appears to be fully covered by the provisions cited. The concept of concealment includes also the rights acquired by someone in relation to the property under judgment (e.g. through its further disposal). Moreover, the concept of continued retention of property is fully covered by Section 329 of the Proceeds of Crime Act (acquires, uses, has possession). Regarding the awareness by the person involved that the property he possesses is the product of corruption crimes, UK law goes even further than the Convention, covering also the mere suspicion that such property constitutes or represents a person's benefit from criminal conduct.

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 information relevant to reviewing the implementation of the article

157. **1.** As regards **England & Wales**, the State under review has provided information on a) Section 51 of the Criminal Justice and Public Order Act 1994 providing for witness intimidation offences in England and Wales, b) the common law offence of perverting the course of justice, c) other offences including perjury (Section 1 of Perjury Act 1911) and offences of making a false statement (Section 106 of the Magistrates Courts Act 1980 and Section 89 of the Criminal Justice Act 1967).

158. In addition, with respect in particular to subparagraph (b) of Article 25 of the Convention, the State under review has provided information on the following offences: a) Assault on Constable in the execution of his/her duty, contrary to section 89(1) Police Act 1996, b) Assault with intent to resist arrest, contrary to section 38 Offences Against the Person Act 1861, c) Obstruction of designated persons, contrary to Section 51 of the Serious Organised Crime and Police Act 2005.

159. The witness intimidation offences, contained in Section 51 of the **Criminal Justice and Public Order Act 1994** are the following:

“51 Intimidation, etc., of witnesses, jurors and others.

[(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 [otherwise than in circumstances where the proceedings are continued without a jury], 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.”

160. The **common law offence of perverting the course of justice** is committed when an accused: does an act or series of acts; which has or have a tendency to pervert; and which is or are intended to pervert; the course of public justice. The course of justice must be in existence at the time of the act(s). The course of justice starts when: an event has occurred, from which it can reasonably be expected that an investigation will follow; or investigations which could/might bring proceedings have actually started; or proceedings have started or are about to start. The offence is triable only on indictment and carries a maximum penalty of life imprisonment and/or a fine.

161. Sections 1-1A of the **Perjury Act 1911** read as follows:

“1 Perjury.

(1) If any person lawfully sworn as a witness or as an interpreter in a judicial proceeding wilfully makes a statement material in that proceeding, which he knows to be false or does not believe to be true, he shall be guilty of perjury, and shall, on conviction thereof on indictment, be liable to penal servitude for a term not exceeding seven years, or to imprisonment . . . for a term not exceeding two years, or to a fine or to both such penal servitude or imprisonment and fine.

(2) The expression “judicial proceeding” includes a proceeding before any court, tribunal, or person having by law power to hear, receive, and examine evidence on oath.

(3) Where a statement made for the purposes of a judicial proceeding is not made before the tribunal itself, but is made on oath before a person authorised by law to administer an oath to the person who makes the statement, and to record or authenticate the statement, it shall, for the purposes of this section, be treated as having been made in a judicial proceeding.

(4) A statement made by a person lawfully sworn in England for the purposes of a judicial proceeding—

(a) in another part of His Majesty’s dominions; or

(b) in a British tribunal lawfully constituted in any place by sea or land outside His Majesty’s dominions; or

(c) in a tribunal of any foreign state,

shall, for the purposes of this section, be treated as a statement made in a judicial proceeding in England.

(5) Where, for the purposes of a judicial proceeding in England, a person is lawfully sworn under the authority of an Act of Parliament—

(a) in any other part of His Majesty’s dominions; or

(b) before a British tribunal or a British officer in a foreign country, or within the jurisdiction of the Admiralty of England;

a statement made by such person so sworn as aforesaid (unless the Act of Parliament under which it was made otherwise specifically provides) shall be treated for the purposes of this section as having been made in the judicial proceeding in England for the purposes whereof it was made.

(6) The question whether a statement on which perjury is assigned was material is a question of law to be determined by the court of trial.

[1A False unsworn statement under Evidence (Proceedings in Other Jurisdictions) Act 1975.

If any person, in giving any testimony (either orally or in writing) otherwise than on oath, where required to do so by an order under section 2 of the Evidence (Proceedings in Other Jurisdictions) Act 1975, makes a statement

(a) which he knows to be false in a material particular, or

(b) which is false in a material particular and which he does not believe to be true,

he shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.]”

Section 106 of the **Magistrates Courts Act 1980** reads as follows:

“106 False written statements tendered in evidence.

(1) If any person in a written statement [admitted] in evidence in criminal proceedings by virtue of [section 5B] above wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, he shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or both.

(2) The Perjury Act 1911 shall have effect as if this section were contained in that Act.”

162. Section 89 of the **Criminal Justice Act 1967** reads as follows:

“89 False written statements tendered in evidence.

(1) If any person in a written statement tendered in evidence in criminal proceedings by virtue of section. . . 9 of this Act [or in proceedings before a court-martial by virtue of the said section 9 as extended by section 12 above or by section 99A of the Army Act 1955 or section 99A of the Air Force Act 1955] wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.

(2) The Perjury Act 1911 shall have effect as if this section were contained in that Act.”

163. The **offence of assault on Constable** in the execution of his/her duty, contrary to Section 89(1) Police Act 1996, is committed when a person assaults either: a constable acting in the execution of his or her duty; or a person assisting a constable in the execution

of his or her duty. It is a summary only offence, which carries a maximum penalty of six months' imprisonment and/or a fine not exceeding the statutory maximum. If an assault on a constable results in an injury, a prosecution under Section 89(1) Police Act 1996 will be appropriate, provided that the officer is acting in the execution of his or her duty. Where the evidence that the officer was acting in execution of his or her duty is insufficient, but proceedings for an assault are nevertheless warranted, the appropriate charge will be common assault (Section 39 Criminal Justice Act 1988). The fact that the victim is a police officer is not, in itself, an exceptional reason for charging an offence contrary to Section 47 of the Offences Against the Person Act 1861, assault occasioning actual bodily harm, when the injuries are minor. When the injuries are such that an offence contrary to Section 47 would be charged in relation to an assault on a member of the public, Section 47 will be the appropriate charge for an assault on a constable.

164. The **offence of assault with intent to resist arrest**, contrary to Section 38 Offences Against the Person Act 1861, is an offence to prevent the lawful apprehension/detention of himself/herself or another, for any offence. It is an either way offence, which carries a maximum penalty on indictment of two years' imprisonment and/or an unlimited fine. Summarily, the maximum penalty is six months' imprisonment and/or a fine not exceeding the statutory maximum. A charge contrary to Section 38 may properly be used for assaults on persons other than police officers, for example store detectives, who may be trying to apprehend or detain an offender. When a police officer is assaulted, a charge under Section 89(1) Police Act 1996 will be more appropriate unless there is clear evidence of an intent to resist apprehension or prevent detention and the sentencing powers available under Section 89(1) or for common assault are inadequate. This will rarely be the case when injuries are minor and inflicted in the context of a struggle.
165. The **offence of obstruction of designated persons**, contrary to Section 51 of the Serious Organised Crime and Police Act 2005 concerns members of staff of the Serious Organised Crime Agency (SOCA) designated with the powers of a constable (customs officer and/or an immigration officer). Section 51 sets out various offences relating to assaulting, obstructing or impersonating designated members of SOCA's staff. Subsection (1) makes it an offence to assault a designated person acting in the exercise of his powers or to assault a person assisting a designated person who is so acting. Subsection (2) makes it an offence to resist or wilfully obstruct a designated person in the exercise of his powers or to resist or wilfully obstruct a person assisting a designated person. Subsection (3) makes it an offence, provided there is intent to deceive, to impersonate or pose as a designated person. It is also an offence for a designated person to make any statement or act in a way that falsely suggests that he has powers above and beyond those he in fact has. In the case of the offences in subsections (1) and (3) the maximum penalty is a term of imprisonment of 51 weeks or a fine at level 5 on the standard scale (currently £5000) or both, while in the case of a subsection (2) offence the maxi-

imum penalty is a term of imprisonment of for 51 weeks or a fine at level 3 on the standard scale (currently £1000) or both.

166. **2.** As regards **Scotland**, the State under review has provided information on the most relevant (all common law) offences which are attempting to pervert the course of justice and perjury.
167. The **common law offence of attempting to pervert the course of justice or attempting to defeat the course of justice** may consist of any conduct which tends to obstruct or hinder the course of justice. It can be tried separately from the original criminal offence, either summarily (maximum 12 months imprisonment) or on indictment (which would carry a potential maximum sentence of life imprisonment and/or an unlimited fine).
168. The **common law offence of perjury** occurs where a person wilfully and unequivocally makes a false statement on oath or by affirmation in any judicial proceedings, (both civil and criminal). The mens rea of this offence is knowingly giving a false statement, or having an indifferent attitude as to the truth of the statement. Where a person induces another to give perjured evidence at a trial, this is the offence of subornation of perjury. The inducement must have been successful in that the person must have given the false evidence as a result of the inducement. Any means of inducement will do to amount to subornation, whether involving violence, threats of violence, bribery or persuasion. The main point is that the witness must have been induced to give false evidence. If the inducement is unsuccessful and the false evidence is not given, then subornation of perjury is not completed, but a charge of attempted subornation of perjury may be made. It does not matter whether the inducements failed because the intended witness agreed but later lost their nerve, or because he/she resisted all threats and inducements. The subornation may be unsuccessful because the witness tells the truth at trial or, it seems, because no trial takes place. Therefore, attempted subornation may be charged in relation to inducement to give false evidence in a process which is only intended to be brought but has not started, including where no indictment has been served, and where the person on whom the inducements are practised has not been cited as a witness.
169. The following statistics on charges relating to offences against the course of justice were provided by the Scottish authorities.

Charges reported

Prosecution Decision	FY			Grand Total
	2008-09	2009-10	2010-11	
Prosecute	3,151	2,772	2,448	8,371
Not separately prosecuted	808	668	554	2,030
Compensation Offer	2	1	2	5
Fiscal Fine & Compensation Offer	2	1	2	5
Fiscal Fine	184	137	98	419
Work Scheme Offer	2	2	2	6

Diversion from Prosecution Scheme	6	6	2	14
Scottish Children's Reporter Administration	48	47	8	103
Warning	159	146	120	425
No Action	643	531	487	1,661
Not Marked Yet	1	1	6	8
Total of Charges Reported	5,006	4,312	3,729	13,047

Charges Prosecuted – Outcomes

Outcome	FY			Grand Total
	2008-09	2009-10	2010-11	
Conviction	1,175	1,120	910	3,205
Accused No Further Action	382	344	256	982
Charge No Further Action	22	20	17	59
Ongoing	16	33	167	216
Grand Total	3,151	2,772	2,448	8,371

170. **3.** As regards **Northern Ireland**, the State under review has provided information on a) Article 47 of the Criminal Justice (NI) Order 1996, Northern Ireland's equivalent to section 51 of the Criminal Justice and Public Order Act 1994, b) The Justice (Northern Ireland) Act 2004, which amends the Justice (Northern Ireland) Act 2002, (specifically section 7 which inserts a new section 32A into the 2002 Act).

171. Article 47 of the **Criminal Justice (NI) Order 1996** reads as follows:

“Intimidation, etc., of witnesses, jurors and others

47. — (1) A person who does to another person—

(a) an act which intimidates, and is intended to intimidate, that other person;

(b) knowing or believing that the other person 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) intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with,

shall be guilty of an offence.

(2) A person who does or threatens to do to another person—

(a) an act which harms or would harm, and is intended to harm, that other person;

(b) knowing or believing that the other person, 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) does or threatens to do the act because of what (within sub-paragraph (b)) he knows or believes, shall be guilty of an offence.

(3) A person does an act “to” another person with the intention of intimidating, or (as the case may be) harming, that other person not only where the act is done in the presence of that other and directed at him directly but also where the act is done to a third person and is intended, in the circumstances, to intimidate or (as the case may be) harm the person at whom the act is directed.

(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 paragraph (1)(c) and the motive required by paragraph (2)(c) need not be the only or the predominating intention or motive with which the act is done or, in the case of paragraph (2), threatened.

(6) A person guilty of an offence under this Article shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both;

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

(7) If, in proceedings against a person for an offence under paragraph (1), it is proved that he did an act falling within sub-paragraph (a) with the knowledge or belief required by sub-paragraph (b), he shall be presumed, unless the contrary is proved, to have done the act with the intention required by sub-paragraph (c) of that paragraph.

(8) If, in proceedings against a person for an offence under paragraph (2), it is proved that he did or threatened to do an act falling within sub-paragraph (a) within the relevant period with the knowledge or belief required by sub-paragraph (b), he shall be presumed, unless the contrary is proved, to have done the act with the motive required by sub-paragraph (c) of that paragraph.

(9) In this Article—

“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 reference under section 10 or 12 of the [1995 c. 35] 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 sub-paragraph (a).*

(10) *For the purposes of the definition of the relevant period in paragraph (9)—*

(a) *proceedings for an offence are instituted at the earliest of the following times—*

(i) *when a summons or warrant is issued under Article 20 of the [1981 NI 26.] Magistrates' Courts (Northern Ireland) Order 1981 in respect of the offence;*

(ii) *when a person is charged with the offence after being taken into custody without a warrant;*

(iii) *when an indictment is presented under section 2(2)(c), (e) or (f) of the [1969 c. 15 (N.I.)] Grand Jury (Abolition) Act (Northern Ireland) 1969;*

and where the application of this sub-paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times;

(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 Article is in addition to, and not in derogation of, any offence subsisting at common law.”*

172. Section 7 of the **Justice (Northern Ireland) Act 2004**, inserting a new Section 32A into the Justice (Northern Ireland) Act 2002, reads as follows:

“Influencing a prosecutor

After section 32 of the 2002 Act,

“Influencing a prosecutor

(1) A person commits an offence if, with the intention of perverting the course of justice, he seeks to influence the Director, the Deputy Director or a Public Prosecutor in any decision as to whether to institute or continue criminal proceedings.

(2) A person commits an offence if, with the intention of perverting the course of justice, he seeks to influence a barrister or solicitor to whom the Director has under section 36(2) assigned the institution or conduct of any criminal proceedings in any decision as to whether to institute or continue those proceedings.

(3) A person guilty of an offence under this section is liable-

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

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.

(4) Proceedings for an offence under this section shall not be instituted without the consent of the Director.”

173. **4.** Finally, the State under review has provided information on the possible application of the UK Bribery Act 2010 (see Article 15) to the offences under question. It has also provided extensive information on case law for most of the above mentioned offences and statistics on the number of defendants proceeded against at magistrates’ court, found guilty and acquitted at all courts for the offences of witness intimidation, and perverting the cause of justice in England and Wales from 2006 to 2010.

(b) Observations on the implementation of the article

174. According to the information provided, the State under review appears to criminalise obstruction of justice in accordance for the most part with Article 25 of the Convention.

a) Under Article 25 (a) States must criminalise efforts to influence potential witnesses and others in a position to provide the authorities with relevant evidence, in proceedings in relation to the commission of offences established in accordance with the Convention. The obligation is to criminalize the use both of corrupt means, such as bribery, and of coercive means, such as the use of physical force, threats or intimidation.

- In England and Wales, the use of physical force, threats or intimidation to interfere with witnesses or potential witnesses (as well as persons assisting the investigation and jurors) is punished under Section 51 of the Criminal Justice and Public Order Act 1994. The witness intimidation offences contained in this legislation cover threats against a person, or against a person’s finances or property. It is irrelevant whether the act of intimidation is carried out in the presence of the victim, or whether it is

done to the victim, or through a third party. The offences seem to include cases where the use of intimidation or threats is meant to interfere not with the testimony of witnesses but with the production of non-oral evidence by persons involved in (“assisting the investigation of”) criminal proceedings. Offences of witness intimidation can be prosecuted and sentenced separately to the original offence regardless of what the finding of that case subsequently is. No aggravated provisions apply when the witnesses are justice or law enforcement officials, but the establishment of particular criminal offences in this respect is not required by the Convention.

The conduct in question is also punishable under the common law offence of perverting the course of justice, which is committed when acts tending and intended to pervert a course of justice are done, regardless of whether or not the acts actually achieved the intended result. In particular, perverting the course of justice covers a wide range of conduct, such as persuading, or attempting to persuade, by intimidation, harm or otherwise (including by the use of corrupt means, see *R. v Hurrell* [2004] 2 Cr.App.R.(S.) 23; *R. v Jones* [2008] 2 Cr.App.R.(S.) 75), a witness not to give evidence, to alter his evidence or to give false evidence; false alibis and interference with evidence or exhibits, for example blood and DNA samples; providing false details of identity to the police or courts with a view to avoiding the consequences of a police investigation or prosecution; giving false information, or agreeing to give false information, to the police with a view to frustrating a police inquiry; agreeing to give false evidence; concealing or destroying evidence concerning a police investigation to avoid arrest; assisting others to evade arrest for a significant period of time; and making a false allegation which wrongfully exposes another person to the risk of arrest, imprisonment pending trial, and possible wrongful conviction and sentence.

A person guilty of witness intimidation under Section 51 of the Criminal Justice and Public Order Act 1994 shall be liable on conviction on indictment, to imprisonment for a term not exceeding five years and/or a fine, and on summary conviction, to imprisonment for a term not exceeding six months and/or a fine not exceeding the statutory maximum. The common law offence of perverting the course of justice carries a maximum penalty of life imprisonment and/or a fine.

- In Scotland, the use of physical force, threats, intimidation or corruption to interfere with witnesses, is punishable under the common law offences of attempting to pervert the course of justice, subornation of perjury and attempted subornation of perjury. There is also an overlap with other categories of crime in that, other offences such as assault or extortion may be committed with an intention to interfere with the course of justice.

The offence of attempting to pervert the course of justice covers a wide spectrum of offences and would include interfering through the use of force, violence or intimidation with witness testimony or any other evidence in criminal proceedings. The crime may consist of any conduct which tends to obstruct or hinder the course of justice. Therefore, this offence can be committed when a person: a) Intimidates a witness, b)

Runs a witness down, c) Threatens a witness with violence, d) Induces others to threaten the complainer, e) Instructs a witness to give false evidence at trial, f) Escapes from lawful custody, g) Knowingly makes a false statement to the police.

The use of corrupt means is covered by the offences of subornation of perjury and attempted subornation of perjury: Any means of inducement will do to amount to subornation, whether involving violence, threats of violence, bribery or persuasion. The main point is that the witness must have been induced to give false evidence.

The offence of attempting to pervert the course of justice or attempting to defeat the course of justice can be tried summarily (maximum 12 months imprisonment) or on indictment (which would carry a potential maximum sentence of life imprisonment and/or an unlimited fine).

- In Northern Ireland, the use of physical force, threats or intimidation to interfere with witnesses (as well as persons assisting the investigation and jurors) is punished under Article 47 of the Criminal Justice (NI) Order 1996, which is equivalent to Section 51 of the Criminal Justice and Public Order Act 1994 mentioned above.

A person guilty of witness intimidation under Article 47 of the Criminal Justice (NI) Order 1996 or of influencing a prosecutor shall be liable on conviction on indictment, to imprisonment for a term not exceeding 5 years and/or to a fine, and on summary conviction, to imprisonment for a term not exceeding 6 months and/or to a fine not exceeding the statutory maximum.

- There is also a possibility, in all of the above jurisdictions, that the UK Bribery Act 2010 might have a limited application to the types of offences under review. It is stated that it may be covered by the Act to offer or pay money to a judge or clerk of court to perform their function improperly, by losing a file or deciding a case other than they should and that it might be possible that offering an inducement to a policeman to give false evidence or tamper with productions may be covered, as they would thus be performing an important part of their job in an improper manner.
- b) Under Article 25 (b) States must criminalize interference with the actions of judicial or law enforcement officials, namely the use of physical force, threats or intimidation to interfere with the exercise of their official duties in relation to the commission of offences established in accordance with the Convention.
- In England & Wales, the common law offence of perverting the course of justice and the special statutory offences of assault on Constable in the execution of his/her duty (Section 89(1) Police Act 1996), assault with intent to resist arrest (Section 38 Offences Against the Person Act 1861), and obstruction of designated persons (Section 51 of the Serious Organised Crime and Police Act 2005), appear to adequately cover the requirements of the Convention.

- In Scotland, the common law offence of attempting to pervert the course of justice should be deemed equally capable of addressing the conduct in question.

175. Several issues were clarified during the course of the review.

- While in England & Wales it is clear (as results also from the available case law) that the common law offence of perverting the course of justice is also committed where the use of corrupt means is meant to interfere with the production of *non-oral* evidence by persons involved in a proceeding in relation to a corruption offence, the same is not the case in Scotland, where the common law offence of attempting to pervert the course of justice (Scotland) applies to the unlawful “manufacture” of evidence. However, it was confirmed during the course of the review that this includes all cases where unlawful means were used for the non-production or suppression of evidence, oral or non-oral. It was also confirmed that the use of corrupt means is included. The UK explained that it is clear from page 720, paragraph 47.03 of Gordon’s Criminal Law that the evidence must be given in judicial proceedings and these include proceedings before any court of law and before any tribunal which is empowered to take evidence on oath. Gordon also goes on to say that “judicial proceedings” includes matters preliminary or incidental to proceedings in court and includes affidavits. Therefore, the UK believes that this covers any legal document, such as non-oral evidence, containing a written promise that something is true.

Additionally, Sections 44 and 45 of the Criminal Law (Consolidation) (Scotland) Act 1995 state:

44. False statements and declarations.

(1) Any person who

(a) is required or authorised by law to make a statement on oath for any purpose; and
 (b) being lawfully sworn, wilfully makes a statement which is material for that purpose and which he knows to be false or does not believe to be true,
 shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding five years or to a fine or to both such fine and imprisonment.

(2) Any person who knowingly and wilfully makes, otherwise than on oath, a statement false in a material particular, and the statement is made—

(a) in a statutory declaration; or

(b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return or other document which he is authorised or required to make, attest or verify by, under or in pursuance of any public general Act of Parliament for the time being in force; or

(c) in any oral declaration or oral answer which he is authorised or required to make by, under or in pursuance of any public general Act of Parliament for the time being in force; or

(d) in any declaration not falling within paragraph (a), (b), or (c) above which he is required to make by an order under section 2 of the Evidence (Proceedings in Other Jurisdictions) Act 1975,

shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years or to a fine or to both such fine and imprisonment.

(3) Any person who

(a) procures or attempts to procure himself to be registered on any register or roll kept under or in pursuance of any Act of Parliament for the time being in force of persons qualified by law to practice any vocation or calling; or

(b) procures or attempts to procure a certificate of the registration of any person on any such register or roll,

by wilfully making or producing or causing to be made or produced either verbally or in writing, any declaration, certificate or representation which he knows to be false or fraudulent, shall be guilty of an offence and be liable on conviction to imprisonment for a term not exceeding 12 months or to a fine or to both such fine and imprisonment.

(4) Subsection (2) above applies to any oral statement made for the purpose of any entry in a register kept in pursuance of any Act of Parliament as it applies to the statements mentioned in that subsection.

Section 45 of the same Act states that anyone who aids, abets, counsels, procures or suborns another person to commit such an offence or incites or attempts to procure or suborn another person to commit an offence, will also be guilty of an offence.

With regard to the use of physical force, threats or intimidation to interfere with the exercise of official duties by a law enforcement official, under Section 41(1)(a) of the Police (Scotland) Act 1967, any person who assaults, resists, obstructs, molests or hinders a constable or police custody and security officer in the execution of his duty or a person assisting a constable or any such officer in the execution of his duty is guilty of an offence. This offence can be prosecuted at Summary level only and the maximum sentence is 12 months imprisonment and/or a fine up to the prescribed sum.

- In Scotland, as mentioned before, the use of corrupt means to interfere with witnesses is covered by the offences of subornation of perjury and attempted subornation of perjury. No statistical data on the use of the common law offences of attempting to pervert the course of justice or attempting to defeat the course of justice in Scotland was available. The UK explained that the offence of subornation of perjury is covered in England and Wales by the common law offence of attempting to pervert the course of justice. The conduct in question could also be punished as incitement in England & Wales under Section 1 of the Perjury Act 1911, Section 106 of the Magistrates Courts Act 1980, and Section 89 of the Criminal Justice Act 1967.
- In Northern Ireland, the common law offences to (attempt to) pervert the course of justice or prejudice the administration of justice also apply as in England and Wales. In addition the following statutory offences would apply:

The Perjury (Northern Ireland) Order 1979 provides as follows:

Perjury

3.—(1) Any person lawfully sworn as a witness or as an interpreter in a judicial proceeding who wilfully makes a statement material in that proceeding, which he knows to be false, or does not believe to be true, shall be guilty of perjury, and shall, on

conviction on indictment, be liable to imprisonment for a term not exceeding seven years, or to a fine, or to both.

(2) The expression “judicial proceeding” includes a proceeding before any court, tribunal, or person having by law power to hear, receive, and examine evidence on oath.

(3) Where a statement made for the purposes of a judicial proceeding is not made before the tribunal itself, but is made on oath before a person authorised by law to administer an oath to the person who makes the statement, and to record or authenticate the statement, it shall, for the purposes of this Article, be treated as having been made in a judicial proceeding.

(4) A statement made by a person lawfully sworn in Northern Ireland for the purposes of a judicial proceeding—

(a) in another part of Her Majesty's dominions; or

(b) in a British tribunal lawfully constituted in any place by sea or land outside Her Majesty's dominions; or

(c) in a tribunal of any foreign state;

shall, for the purposes of this Article, be treated as a statement made in a judicial proceeding in Northern Ireland.

(5) The question whether a statement on which perjury is assigned was material is a question of law to be determined by the court at the trial.

False written statements tendered in evidence

4.—(1) Any person who in a written statement tendered in evidence in criminal proceedings by virtue of—

(a) section 1 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 [1968 c.28] , or

[F1(b)Article 33 of the Magistrates' Courts (Northern Ireland) Order 1981]

wilfully makes a statement material in those proceedings which he knows to be false, or does not believe to be true, shall be guilty of an offence.

(2) Any person who in a written statement made in Northern Ireland and tendered in evidence in the Republic of Ireland in any criminal proceedings wilfully makes a statement material in those proceedings which he knows to be false, or does not believe to be true, shall be guilty of an offence.

(3) A person guilty of an offence under paragraph (1) or (2) shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine, or to both.

(4) This Article is without prejudice to Article 3, and paragraph (1) applies whether the written statement is made in Northern Ireland, Great Britain or the Republic of Ireland.

False written statements tendered in evidence in courts-martial

5.—(1) Any person who in a written statement tendered in evidence in proceedings before a court-martial by virtue of section 9 of the Criminal Justice Act 1967 [1967 c.80] as extended by section 12 of that Act or by section 99A of the Army Act 1955 [1955 c.18 (3&4 Eliz.2)] or section 99A of the Air Force Act 1955 [1955 c.19 (3&4 Eliz.2)] wilfully makes a statement material in those proceedings which he knows to be false, or does not believe to be true, shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine, or to both.

(3) Paragraph (1) is without prejudice to Article 3, and applies whether the written statement is made in Northern Ireland or elsewhere.

False unsworn statements under the Evidence (Proceedings in Other Jurisdictions) Act 1975

6. Any person who, in giving any testimony (either orally or in writing) otherwise than on oath, where required to do so by an order under section 2 of the Evidence (Proceedings in Other Jurisdictions) Act 1975 [1975 c.34], makes a statement—
(a) which he knows to be false in a material particular, or
(b) which is false in a material particular and which he does not believe to be true, 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.

Article 126 (4) of the Magistrates Courts (NI) Order 1981 provides as follows:

Proof by affidavit of service of summons, handwriting, etc.

126 (4) Without prejudice to Article 10 of the Perjury (Northern Ireland) Order 1979, if, in a document purporting to be given as a document prescribed under paragraph (1), a person—

(a) makes a statement that he knows to be false in a material particular, or
(b) recklessly makes any statement that is false in a material particular, he shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 3 on the standard scale, or both.]

The Police (NI) Order 1998

66 Assaults on, and obstruction of, constables, etc. N.I.

(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.

(3) Any person may arrest without a warrant anyone who is, or whom he with reasonable cause suspects to be, committing an offence under subsection (1).

(4) This section also applies to a constable who is a member of a police force in Great Britain when he is executing a warrant, or otherwise acting in Northern Ireland, by virtue of any statutory provision conferring powers on him in Northern Ireland.

[F1(5) In this section references to a person assisting a constable in the execution of his duty include references to any person who is neither a constable nor in the company of a constable but who—

(a) is a member of an international joint investigation team that is led by a member of the Police Service of Northern Ireland; and

(b) is carrying out his functions as a member of that team.

(6) In this section “international joint investigation team” means any investigation team formed in accordance with—

(a) any framework decision on joint investigation teams adopted under Article 34 of the Treaty on European Union;

- (b) the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, and the Protocol to that Convention, established in accordance with that Article of that Treaty; or
- (c) any international agreement to which the United Kingdom is a party and which is specified for the purposes of this section in an order made by the Secretary of State.

Both section 38 of the Offences Against the Person Act 1861 (assault with intent with intent to resist arrest) and section 51 of the Serious Organised Crime and Police Act 2005 (obstruction of designated persons) extend to Northern Ireland also.

- With regard to the application of subparagraph (b) of the present Article in Northern Ireland, Section 32A of the Justice (Northern Ireland) Act 2002 covers only attempts, with the intention of perverting the course of justice, to influence a prosecutor or equivalent person in a decision as to whether to institute or continue criminal proceedings.
- Reference is made to the previous observations in respect of the proportionality of the penalties provided for (especially on summary convictions). The applicable penalties for the (“Scottish”) offences of subornation of perjury and attempted subornation of perjury are life imprisonment and a maximum unlimited fine on indictment. Penalties on summary conviction are £10,000.

176. The UK provided the following statistics on prosecutions of offences for perjury and obstructing justice (as of 29 February 2012).

Number of defendants proceeded against at magistrates' court, found guilty at all courts and acquitted at all courts for various offences in England and Wales, 2006 to 2010 ^{(1) (2)}					
	Year				
	2006	2007	2008 ⁽³⁾	2009 ^(R)	2010
<i>Assault with intent to resist apprehension or assault a person assisting a constable⁽⁴⁾</i>					
Prosecuted	664	504	375	332	343
Convicted	357	271	221	187	194
Acquitted ⁽⁵⁾	98	51	49	32	28
<i>Perjury and false statements⁽⁶⁾</i>					
Prosecuted	41	42	29	47	37
Convicted	33	25	41	45	24
Acquitted ⁽⁵⁾	7	9	8	9	12
<i>Perjury and false statements (under Perjury Act 1911 except section 1)</i>					

Prosecuted	68	80	54	60	57
Convicted	58	66	41	51	54
Aquitted ⁽⁵⁾	8	8	12	12	8
<i>Assaulting a constable</i> ⁽⁷⁾					
Prosecuted	11,751	11,766	11,218	10,681	10,351
Convicted	9,654	9,921	9,640	9,189	8,695
Aquitted ⁽⁵⁾	595	547	457	418	439
<i>Resisting or wilfully obstructing a designated person or his assistant in exercise of such power</i> ⁽⁸⁾					
Prosecuted	2	5	2	1	-
Convicted	2	2	2	1	-
Aquitted ⁽⁵⁾	-	-	-	-	-

'-' = Nil

(1) The figures given in the table on court proceedings relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

(2) Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

(3) Excludes data for Cardiff magistrates' court for April, July, and August 2008.

(4) S.38 Offences against the Person Act 1861.

(5) Acquitted includes Discharged Section 6 and Dismissed at magistrates courts, and acquitted at crown court.

(6) Includes offences under the following acts: Making false statement in statement tendered in evidence (89(1) Criminal Justice Act 1967 and 106 Magistrates Courts Act 1980) and Perjury by witness (1(1) Perjury Act 1911) and Perjury by witness; Perjury by interpreter; Wilful making by a sworn witness or interpreter of a false or untrue statement (1(1) Perjury Act 1911) these cannot be separately identified.

(7) Police Act 1996 Section 89(1).

(8) S.51 (2)&(5) Serious Organised Crime and Police Act 2005.

(R) Post publication revisions have been made to 2009 figures to account for the late receipt of a small number of court records.

Source: Justice Statistics Analytical Services in the Ministry of Justice

177. For Northern Ireland, the following statistics on obstruction of justice offences were provided (as of 29 February 2012).

Probable Offences				
Code	Description	Legislation	2007	2008
4109001SB	ASSAULT WITH INTENT TO RESIST ARREST	Section 7(1)(b) of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968.	0	1

4110001SB	THREATS TO KILL	Section 16 of the Offences Against the Person Act 1861.	98	72
4110001AT	ATTEMPTED THREATS TO KILL	Section 16 of the Offences Against the Person Act 1861.	0	2
4702030SB	FAILING TO COMPLY WITH REQUIREMENT DURING SEARCH (1991)	Section 21(5) of the Northern Ireland (Emergency Provisions) Act 1996.	0	0
4702031SB	WILFULLY OBSTRUCT SECURITY FORCES DURING SEARCH (1991)	Section 19(12) of the Northern Ireland (Emergency Provisions) Act 1991.	0	0
4702032SB	SEEKING TO FRUSTRATE SEARCH BY SECURITY FORCES (1991)	Section 19(12) of the Northern Ireland (Emergency Provisions) Act 1991.	0	0
4702033SB	WILFULLY OBSTRUCT SECURITY FORCES EXAMINING DOCUMENTS (1991)	Section 22(11) of the Northern Ireland (Emergency Provisions) Act 1991.	0	0
4702034SB	FAILING TO STOP FOR MEMBER OF SECURITY FORCES	Section 25(2)(a) of the Northern Ireland (Emergency Provisions) Act 1996.	0	0
4702035SB	REFUSING TO ANSWER QUESTIONS OF SECURITY FORCES	Section 25(2)(b) of the Northern Ireland (Emergency Provisions) Act 1996.	0	0
4702036SB	FAILING TO ANSWER QUESTIONS OF SECURITY FORCES (1991)	Section 25(2)(b) of the Northern Ireland (Emergency Provisions) Act 1996.	0	0
4702101SB	FAILING TO RETURN TO DETENTION (NIEP) (1991)	Paragraph 13(c) of Schedule 3 of the Northern Ireland (Emergency Provisions) Act 1991.	0	0
4702102SB	HARBOURING ESCAPED DETAINEE (NIEP)	Paragraph 9(1) of Schedule 4 to the Northern Ireland (Emergency Provisions) Act 1991.	0	0
4702107SB	FAILING TO COMPLY WITH REQUIREMENT DURING SEARCH (1996)	Section 21(5) of the Northern Ireland (Emergency Provision) Act 1996.	0	0
4702108SB	WILFULLY OBSTRUCT SECURITY FORCES DURING SEARCH (1996)	Section 21(5) of the Northern Ireland (Emergency Provision) Act 1996.	0	0
4702109SB	SEEKING TO FRUSTRATE SEARCH BY SECURITY FORCES (1996)	Section 21(5) of the Northern Ireland (Emergency Provision) Act 1996.	0	0
4702202SB	FAILING TO STOP FOR SECURITY FORCES	Section 89(2)(a) Terrorism Act 2000	0	0
4702203SB	REFUSING TO ANSWER QUESTIONS	Section 89(2)(b) Terrorism Act 2002	0	0
4702214SB	ASSISTING IN THE RETENTION OR CONTROL OF TERRORIST FUNDS	Section 11 of the Prevention of Terrorism (Temporary Provisions) Act 1989.	0	0
4702215SB	FAILING TO ANSWER QUESTIONS TO BEST OF KNOWLEDGE AND ABILITY	Section 89(2)(c) Terrorism Act 2002	0	0
4708001AT	ATTEMPTED INTIMIDATION - RESIDENCE/OCCUPATION	Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Section 1(a) of the Protection of the Person and Property Act (Northern Ireland) 1969.	0	3
4708001CN	CONSPIRACY TO INTIMIDATE - RESIDENCE/OCCUPATION	NULL	0	0

4708001SB	INTIMIDATION - CAUSING PERSON TO LEAVE RESIDENCE/OCCUPATION	Section 1(a) of the Protection of the Person and Property Act (Northern Ireland) 1969.	0	1
4708002AT	ATTEMPTED INTIMIDATION - PERSON LEAVE EMPLOYMENT	Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Section 1(b) of the Protection of the Person and Property Act (Northern Ireland) 1969 .	0	0
4708002SB	INTIMIDATION - CAUSING PERSON TO LEAVE EMPLOYMENT	Section 1(b) of the Protection of the Person and Property Act (Northern Ireland) 1969.	1	0
4708003AT	ATTEMPTED INTIMIDATION - TERMINATE SERVICE/EMPLOYMENT OF PERSON	3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Section 1(c) of the Protection of the Person and Property Act (Northern Ireland) 1969.	0	0
4708003SB	INTIMIDATION - CAUSING TERMINATION SERVICE/EMPLOYMENT	Section 1(c) of the Protection of the Person and Property Act (Northern Ireland) 1969.	0	0
4708004AA	AIDING AND ABETTING INTIMIDATION - TO DO/REFRAIN FROM DOING ANY ACT	Section 1 of the Protection of the Person and Property Act (Northern Ireland) 1969	0	0
4708004AT	ATTEMPTED INTIMIDATION - TO DO/REFRAIN FROM DOING ANY ACT	Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Section 1(d) of the Protection of the Person and Property Act (Northern Ireland) 1969.	0	0
4708004CN	CONSPIRACY TO INTIMIDATE - TO DO/REFRAIN FROM DOING ANY ACT	Article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Section 1 of the Protection of the Person and Property Act (Northern Ireland) 1969	0	0
4708004IN	INCITEMENT TO COMMIT INTIMIDATION - TO DO/REFRAIN FROM DOING ANY ACT	NULL	0	0
4708004SB	INTIMIDATION - TO DO/REFRAIN FROM DOING ANY ACT	Section 1(d) of the Protection of the Person and Property Act (Northern Ireland) 1969.	1	1
4708005AT	ATTEMPTED INTIMIDATION - WITNESS	Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Article 47(1) of the Criminal Justice (Northern Ireland) Order 1996.	0	1
4708005CN	Conspiracy to Intimidate - Witness	Article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Article 47(1) of the Criminal Justice (Northern Ireland) Order 1996	0	0
4708005SB	INTIMIDATION - WITNESS	Article 47(1) of the Criminal Justice (Northern Ireland) Order 1996.	3	6
4708006AT	ATTEMPTED INTIMIDATION - JUROR	NULL	0	0
4708006SB	INTIMIDATION - JUROR	NULL	0	0
4708007SB	THREATS TO HARM	Article 47(2) of the Criminal Justice (Northern Ireland) Order 1996.	1	1
4708008SB	INTIMIDATING A WITNESS	Section 39(1) Criminal Justice and Police Act 2001	0	0
4708009SB	HARMING WITNESSES	Section 40(1)(a)of the Criminal Justice and	0	0

		Police Act 2001		
4708010SB	THREATENING TO HARM A WITNESS	NULL	0	0
4708011SB	INTIMIDATION OF WITNESSES, JURORS AND OTHERS	Article 47(2) of the Criminal Justice (Northern Ireland) Order 1996.	0	0
4718002SB	FURNISHING FALSE STATEMENT IN A STATUTORY DECLARATION	Article 10(a) of the Perjury (Northern Ireland) Order 1979	0	1
4718003CN	CONSPIRE TO COMMIT PERJURY BY WITNESS	NULL	0	0
4718003IN	INCITEMENT TO COMMIT PERJURY	Article 3(1) of the Perjury (Northern Ireland) Order 1979.	0	0
4718003SB	PERJURY BY WITNESS	Article 3 of the Perjury (Northern Ireland) Order 1979	1	0
4718004SB	PERJURY BY INTERPRETER	NULL	0	0
4718005SB	MAKING FALSE UNSWORN STATEMENT	NULL	0	0
4718010SB	MAKING FALSE STATEMENT ON MATTER REQUIRED BY STATUTE	Article 10(b) of the Perjury (Northern Ireland) Order 1979.	0	0
4718012AT	ATTEMPT TO PERVERT THE COURSE OF JUSTICE	NULL	1	0
4718012CN	CONSPIRACY TO PERVERT THE COURSE OF JUSTICE	NULL	0	0
4718012SB	PERVERTING THE COURSE OF JUSTICE	Common Law.	8	10
4718013AA	AIDING & ABETTING AN ACT WITH INTENT TO PERVERT THE COURSE OF JUSTICE	Common Law	0	0
4718013AT	ATTEMPTING TO DO AN ACT WITH INTENT TO PERVERT THE COURSE OF JUSTICE	Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Common Law	0	0
4718013CN	CONSPIRACY TO DO AN ACT WITH INTENT TO PERVERT THE COURSE OF JUSTICE	Article 9 (1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Common Law	0	0
4718013SB	DOING AN ACT WITH INTENT TO PERVERT THE COURSE OF JUSTICE	Common Law	12	1
4718014AA	AIDING AND ABETTING MISCONDUCT IN A PUBLIC OFFICE	Common Law		1
4718014SB	MISCONDUCT IN A PUBLIC OFFICE	Common Law	0	2
4718015SB	MAKING A FALSE UNSWORN STATEMENT IN A DOCUMENT	Article 10(b) of the Perjury (Northern Ireland) Order 1979	0	0
4723005SB	WASTING POLICE TIME BY FALSE REPORT OF HAVING INFORMATION	section 5(3) of the Criminal Law Act (Northern Ireland) 1967	0	0
4724001SB	PERSONATING POLICE OFFICER	Section 20(2) of the Criminal Justice Act (Northern Ireland) 1953.	1	1

4725007AT	ATTEMPTED OBSTRUCTING POLICE	Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Section 66(1) of the Police (Northern Ireland) Act 1998.	0	2
4725007SB	OBSTRUCTING POLICE	Section 66(1) of the Police (Northern Ireland) Act 1998.	151	115
4725008SB	IMPEDING POLICE	Section 66(1) of the Police (Northern Ireland) Act 1998.	0	1
4725009SB	RESISTING POLICE	Section 66(1) of the Police (Northern Ireland) Act 1998.	206	195
4725010SB	OBSTRUCTING PERSON AIDING POLICE	Section 66(1) of the Police (Northern Ireland) Act 1998.	0	0
4725011SB	Resisting a Designated Person	Section 66(1A) of the Police (Northern Ireland) Act 1998	0	0
4727001CN	CONSPIRE TO ESCAPE FROM LAWFUL CUSTODY	NULL	0	0
4727001SB	ESCAPING FROM LAWFUL CUSTODY	section 26(c) of the Prison Act(Northern Ireland)1953	1	1
4727002SB	RESCUING FROM LAWFUL CUSTODY	NULL	0	0
4727003SB	ASSISTING ESCAPE FROM LAWFUL CUSTODY	Section 29(1) of the Prison Act (Northern Ireland) 1953	0	0
4727004SB	ASSISTING ESCAPE FROM MENTAL INSTITUTION	NULL	0	0
4727021SB	ESCAPING FROM TRAINING SCHOOL	Section 140 of the Children and Young Persons Act (Northern Ireland) 1968.	0	0
4727022AA	AIDING AND ABETTING ESCAPING FROM LAWFUL CUSTODY AFTER CONVICTION	Section 26(a) of the Prison Act (Northern Ireland) 1953	0	0
4727022AT	ATTEMPTED ESCAPE FROM LAWFUL CUSTODY AFTER CONVICTION	Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Section 26(a) of the Prison Act (Northern Ireland) 1953	0	0
4727029SB	ESCAPING FROM LAWFUL CUSTODY	Section 26(b) of the Prison Act (Northern Ireland) 1953	0	0
4727030AA	AIDING AND ABETTING A PERSON TO BE UNLAWFULLY AT LARGE WHILE UNDER SENTENCE	Section 25 of the Prison Act (Northern Ireland) 1953	0	0
4727030SB	BEING UNLAWFULLY AT LARGE WHILE UNDER SENTENCE	Section 25 of the Prison Act (Northern Ireland) 1953	3	6
4727033SB	PERMITTING ESCAPE BY NEGLECT OF DUTY	NULL	0	0
4727034CN	CONSPIRACY TO COMMIT PRISON BREACH	NULL	0	0
4727035SB	ESCAPING FROM LAWFUL CUSTODY	section 26(b) of the Prison Act (Northern Ireland) 1953	0	0

4727036SB	FACILITATING ESCAPE BY CONVEYING THINGS INTO PRISON	Section 33(1)(a) of the Prison Act (Northern Ireland) 1953	0	0
4727041SB	FACILITATING ESCAPE BY CAUSING ANOTHER TO CONVEY THINGS INTO PRISON	Section 33(1)(b) of the Prison Act (Northern Ireland) 1953	0	0
4727042SB	FACILITATING ESCAPE BY GIVING THINGS TO A PRISONER	Section 33(1)(c) of the Prison Act (Northern Ireland) 1953	0	0
4901030AT	ATTEMPTING TO MAKING USE OF A FIREARM TO RESIST ARREST	Article 18(1) Firearms (Northern Ireland) Order 1981 and Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983	0	0
4901030SB	MAKING USE OF A FIREARM TO RESIST ARREST	NULL	0	0
4901033SB	USE OF FIREARM TO RESIST ARREST	Article 59 Firearms (Northern Ireland) Order 2004	0	0
4902106SB	MAKING USE OF A FIREARM TO RESIST ARREST	Article 59(1) of The Firearms (Northern Ireland) Order 2004	0	0
5002019SB	PERSISTENTLY USING TELECOMMUNICATION SYSTEM TO SEND FALSE MESSAGES TO CAUSE ANNOYANCE, INCONVENIENCE OR ANXIETY	Section 43(1)(b) of the Telecommunications Act 1984	1	0
5002021SB	SENDING ARTICLE CONVEYING A THREAT	Article 3(1)(a)(ii) of the Malicious Communications (Northern Ireland) Order 1988.	0	0
5002022SB	SENDING ARTICLE CONVEYING FALSE INFORMATION	Article 3(1)(a)(iii) of the Malicious Communications (Northern Ireland) Order 1988.	0	1
5002023SB	SENDING ARTICLE OF INDECENT OR OFFENSIVE NATURE	Article 3(1)(b) of the Malicious Communications (Northern Ireland) Order 1988.	0	0
5002053SB	FAIL TO COMPLY WITH NOTICE-REGULATION OF INVESTIGATORY POWERS ACT 2000	Section 53 of the Regulation of Investigatory Powers Act 2000.	0	0
5002072SB	CAUSING IMPROPER USE OF PUBLIC ELECTRONIC COMMUNICATIONS TO CAUSE ANXIETY	Section 127(2)(b) of the Communications Act 2003	0	0
5002073SB	PERSISTENT IMPROPER USE OF ELECTRONIC COMMUNICATIONS TO CAUSE ANXIETY	Section 127(2)(c) of the Communications Act 2003	3	6
4110001AA	AIDING AND ABETTING THREATS TO KILL	Section 16 of the Offences Against the Person Act 1861	0	0
4110001AT	ATTEMPTED THREATS TO KILL	Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Section 16 of the Offences Against the Person Act 1861.	0	0
4110001CN	CONSPIRACY TO THREATEN TO KILL	Article 9(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Section 16 of the Offences Against the Person Act 1861	0	0
4718001SB	TENDERING FALSE STATEMENT IN EVIDENCE	Article 4(1) of the Perjury (Northern Ireland) Order 1979.	0	0

4702098SB	ESCAPING FROM LAWFUL CUSTODY (NIEP) (1991)	Paragraph 13(a) of Schedule 3 to the Northern Ireland (Emergency Provisions) Act 1991.	0	0
4702100SB	RESCUING OR ASSISTING ESCAPEE (NIEP) (1991)	Paragraph 13(b) of Schedule 3 to the Northern Ireland (Emergency Provisions) Act 1991.	0	0
4702110SB	WILFULLY OBSTRUCT SECURITY FORCES EXAMINING DOCUMENTS (1996)	Section 24(11) of the Northern Ireland(Emergency Provision) Act 1996.	0	0
4702111SB	FAILING TO STOP FOR MEMBER OF SECURITY FORCES	Section 21(6) of the Northern Ireland(Emergency Provision) Act 1996.	0	0
4702112SB	REFUSING TO ANSWER QUESTIONS OF SECURITY FORCES	Section 25(2) of the Northern Ireland(Emergency Provision) Act 1996.	0	0
4702113SB	FAILING TO ANSWER QUESTIONS OF SECURITY FORCES (1996)	Section 25(2) of the Northern Ireland(Emergency Provision) Act 1996.	0	0
4722004SB	ASSAULT ON COURT SECURITY OFFICER	Section 81(1) Justice (Northern Ireland) Act 2002	0	0
4722005SB	ASSAULTING PRISON CUSTODY OFFICER	Section 123 Criminal Justice and Public Order Act 1994	0	0
4722006SB	ASSAULT ON A DESIGNATED PERSON	section 66(1A) of the Police (Northern Ireland) Act 1998	0	0
4723001SB	WASTEFUL EMPLOYMENT OF POLICE TIME - FALSE REPORT OF COMMISSION OF OFFENCE	Section 5(3) of the Criminal Law Act (Northern Ireland) 1967.	5	1
4723002AA	AIDING AND ABETTING WASTING POLICE TIME BY FALSE REPORT CONCERNING OFFENCE	section 5(3) of the Criminal Law Act (Northern Ireland) 1967	1	0
4723002SB	WASTING POLICE TIME BY FALSE REPORT CONCERNING OFFENCE	section 5(3) of the Criminal Law Act (Northern Ireland) 1967	3	1
4723003SB	WASTING POLICE TIME BY FALSE REPORT OF PERSONS SAFETY	section 5(3) of the Criminal Law Act (Northern Ireland) 1967	1	0
4723004SB	WASTING POLICE TIME BY FALSE REPORT RE. SAFETY OF PROPERTY	Section 5(3) of the Criminal Law Act (Northern Ireland) 1967.	0	0
4727022SB	ESCAPING FROM LAWFUL CUSTODY AFTER CONVICTION	Section 26(a) of the Prison Act (Northern Ireland) 1953.	0	0
4727023AT	ATTEMPTED ESCAPE FROM PRISON OR LOCK-UP WHERE LAWFULLY CONFINED	NULL	0	0
4727023CN	CONSPIRACY TO ESCAPE FROM PRISON OR LOCK-UP WHERE LAWFULLY CONFINED	NULL	0	0
4727023SB	ESCAPING FROM PRISON OR LOCKUP WHERE LAWFULLY CONFINED	Section 26(b) of the Prisons Act 1953.	0	0
4727024AT	ATTEMPTED ESCAPE FROM LAWFUL CUSTODY ELSEWHERE	Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Section 26(c) of the Prison Act (Northern Ireland) 1953	0	1

4727024SB	ESCAPING FROM LAWFUL CUSTODY ELSEWHERE	Section 26(c) of the Prison Act 1953.	2	2
4902068SB	OBSTRUCTING POLICE IN EXERCISE OF SEARCH POWERS	NULL	0	0
4719001SB	WITHHOLDING INFORMATION CONCERNING ARRESTABLE OFFENCE	Section 5(1) of the Criminal Law Act (Northern Ireland) 1967.	2	3

Possible Offences

Code	Description	Legislation		
4722002SB	ASSAULT ON PERSON ASSISTING POLICE	NULL	0	0
4722003AT	ATTEMPTED ASSAULT ON POLICE	Article 3(1) Criminal Attempts and Conspiracy (NI) Order 1983 and Section 66(1) of the Police (NI) Act 1998	0	6
4722003SB	ASSAULT ON POLICE	section 66(1) of the Police (Northern Ireland) Act 1998	653	620
4502009SB	CUSTOMS OFFICER SOLICITING BRIBE	NULL	0	0
4502010SB	CUSTOMS OFFICER RECEIVING BRIBE	NULL	0	0
4502011SB	OFFERING BRIBE TO CUSTOMS OFFICER	NULL	0	0
4502012SB	GIVING BRIBE TO CUSTOMS OFFICER	NULL	0	0
4502013SB	GIVING BRIBE	NULL	0	0
4502014SB	OFFERING A BRIBE	NULL	0	0
4502015SB	OFFERING A BRIBE TO A PUBLIC OFFICIAL	Section 1(2) of the Public Bodies Corrupt Practices Act 1889.	0	0
4502016SB	BRIBERY TO INDUCE OR REWARD IMPROPER PERFORMANCE (offences after 1 July 2011)	section 1(1) of the Bribery Act 2011	0	0
4502001SB	SOLICITING BRIBE	NULL	0	0
4502002AT	ATTEMPTING TO RECEIVE BRIBE	NULL	0	0
4502002SB	RECEIVING BRIBE	NULL	0	0
4502003AA	AIDING AND ABETTING AN AGENT TO ACCEPT BRIBE	NULL	0	0
4502003SB	CORRUPTION OF AGENT BY ACCEPTANCE OF GIFT	Section 1(1) of the Prevention of Corruption Act 1906	0	1
4502004SB	AGENT AGREEING TO ACCEPT BRIBE	NULL	0	0

4502005SB	OFFERING BRIBE TO AGENT	Section 1 of the Prevention of Corruption Act 1906.	0	0
4502006SB	CORRUPTION OF AGENT BY OFFER OF GIFT	section 1(1) of the Prevention of Corruption Act 1906	0	1

Article 26. Liability of legal persons

1. *Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.*

2. *Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.*

3. *Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.*

4. *Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.*

(a) Summary of information relevant to reviewing the implementation of the article

178. The State under review has provided information on the Interpretation Act 1978, and on the common law principles that govern the liability of legal persons. It has also provided the text of Sections 7 and 14 of the Bribery Act 2010 and examples of case law.

179. Sections 7-8 and 14 of the **Bribery Act 2010** read as follows:

“7 Failure of commercial organisations to prevent bribery

(1) A relevant commercial organisation (“C”) is guilty of an offence under this section if a person (“A”) associated with C bribes another person intending-

(a) to obtain or retain business for C, or

(b) to obtain or retain an advantage in the conduct of business for C.

(2) But it is a defence for C to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.

(3) For the purposes of this section, A bribes another person if, and only if, A

(a) is, or would be, guilty of an offence under section 1 or 6 (whether or not A has been prosecuted for such an offence), or

(b) would be guilty of such an offence if section 12(2)(c) and (4) were omitted.

(4) See section 8 for the meaning of a person associated with C and see section 9 for a duty on the Secretary of State to publish guidance.

(5) In this section-

• “partnership” means-

(a) a partnership within the Partnership Act 1890, or

(b) a limited partnership registered under the Limited Partnerships Act 1907, or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom,

• “relevant commercial organisation” means-

(a) a body which is incorporated under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere),

(b) any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom,

(c) a partnership which is formed under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere), or

(d) any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom, and, for the purposes of this section, a trade or profession is a business.

8 Meaning of associated person

(1) For the purposes of section 7, a person (“A”) is associated with C if (disregarding any bribe under consideration) A is a person who performs services for or on behalf of C.

(2) The capacity in which A performs services for or on behalf of C does not matter.

(3) Accordingly A may (for example) be C’s employee, agent or subsidiary.

(4) Whether or not A is a person who performs services for or on behalf of C is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between A and C.

(5) But if A is an employee of C, it is to be presumed unless the contrary is shown that A is a person who performs services for or on behalf of C.”

“14 Offences under sections 1, 2 and 6 by bodies corporate etc.

(1) This section applies if an offence under section 1, 2 or 6 is committed by a body corporate or a Scottish partnership.

(2) If the offence is proved to have been committed with the consent or connivance of-

(a) a senior officer of the body corporate or Scottish partnership, or

(b) a person purporting to act in such a capacity, the senior officer or person (as well as the body corporate or partnership) is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) But subsection (2) does not apply, in the case of an offence which is committed under section 1, 2 or 6 by virtue of section 12(2) to (4), to a senior officer or person purporting to act in such a capacity unless the senior officer or person has a close connection with the United Kingdom (within the meaning given by section 12(4)).

(4) In this section-

“director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate,

“senior officer” means-

(a) in relation to a body corporate, a director, manager, secretary or other similar officer of the body corporate, and

(b) in relation to a Scottish partnership, a partner in the partnership.”

(b) Observations on the implementation of the article

180. In the UK the liability of legal persons is regulated in accordance with Article 26 of the Convention.

- Article 26 par. 1 requires States parties to take the necessary steps, consistent with their fundamental principles, to provide for corporate liability for the offences established in accordance with the Convention. This liability may be criminal, civil or administrative (Article 26 par. 2). Although there is no obligation to establish criminal liability, the UK has traditionally followed this course, making no distinction between natural and legal persons in as far as the application of criminal liability is concerned. The underlying provision in relation to corporate criminal liability can be found in the Interpretation Act 1978, which notes that subject to the appearance of a contrary intention, the word “person” in a statute is to be construed as including “a body of persons corporate or unincorporated”. “Legal persons” are therefore under the law of the different parts of the UK prima facie included within the scope of liability of all UK laws affording compliance with the offences established in accordance with this Convention. This includes Sections 1, 2 and 6 of the Bribery Act 2010 by virtue of the use of the word “person”. It also includes the offences in the Fraud Act 2006, the Theft Act 1976 (Articles 17, 22), Money Laundering offences (Articles 23-24) and offences dealing with the obstruction of justice (Article 25).

The liability of a legal person for an offence for which it can be convicted is governed by the common law legal principle sometimes referred to as the “identification doctrine”. Under this principle a legal person will have imputed to it the acts and

state of mind of those of its directors and managers who represent its “directing mind and will” (Lennard’s Carrying Co. v. Asiatic Petroleum Co. [1915] A.C. 705; Bolton (engineering) Co. v. Graham [1957] 1 Q.B. 159; Tesco Supermarkets Ltd v. Nattrass [1972] A.C. 153 HL. In the case of an offence involving proof of mens rea, such as many bribery offences, it is possible to combine proof of the actus reus on the part of an employee or representative of the legal person who would not form part of the controlling mind with proof of mens rea on the part of a person who does form part of the controlling mind. The scope of attribution of acts to a company was further elaborated in the case of Meridian Global Funds Management Asia Ltd v. Securities Commission [1995] 2 A.C. 500, PC. In that case it was said that a company’s rights and obligations are determined by rules whereby the acts of natural persons are attributed to the company; such rules are normally to be determined by reference to the primary rules of attribution generally contained in the company’s constitution and implied by company law, and to general rules of agency. The company will appoint servants and agents whose acts, by a combination of the general principles of agency and the company’s primary rules of attribution, count as the acts of the company. The UK clarified that the identification doctrine requires only mens rea on the part of a ‘directing mind’ of the legal person.

In addition to the above, Section 7 of the Bribery Act provides an alternative to the application of the identification doctrine. More specifically with respect to bribery offences, Section 7 of the Bribery Act provides for the strict liability of a “relevant commercial organization” that fails to prevent persons associated with it from bribing on its behalf in order to obtain or retain business or an advantage in the conduct of business. Section 7 of the Bribery Act 2010 applies to all “relevant commercial organisations”. This could include a company that was partially or wholly State-owned. It was noted that this Section addresses the difficulties in establishing the liability of legal persons based on the traditional “identification doctrine”. In creating an obligation for relevant commercial organizations to prevent bribery, Section 7 is considered to be an effective deterrent measure and has led many commercial entities to put into place adequate preventive procedures. Given this consequence, as well as the general positive response of the prosecuting authorities and the business sector to this measure, the evaluators consider the measure a good practice that could be applied not only in countries with a criminal liability regime but also in other countries.

Section 7 applies to all UK incorporated organizations and partnerships formed in the UK. It also applies to all organizations incorporated in a foreign country or partnerships formed in a foreign country that carry on a business in the UK. Section 7 does not apply to unincorporated bodies. Guidance on section 7 was published in March 2011.

- Article 26 par. 3 provides that the liability of legal persons must be established without prejudice to the criminal liability of the natural persons who have committed the offences. The State under review points out, that in the law of the parts of the UK natural and legal person responsibility is treated as two entirely separate bases of lia-

bility. A prosecution of a legal person is often accompanied with a separate prosecution for the individuals involved. It appears that a legal person can be found liable independently of the natural persons involved. Equally, it appears that the punishment of the individual offender does not automatically exclude a sanction for the corporation.

In addition to the above, Section 14 of the Bribery Act provides separately for the individual liability of senior officers who consent or connive in the commission of an offence by a body corporate. A similar offence exists in Section 18 of the Theft Act.

- Article 26 par. 4 of the Convention requires States parties to ensure that legal persons held liable are subject to effective, proportionate and dissuasive sanctions, including monetary sanctions. As results from the statements of the State under review and the analysis of previous Articles, the maximum penalty for a legal person convicted of any bribery, money laundering, or witness intimidation offence, or of perverting the course of justice, attempting to pervert the course of justice or attempting to defeat the course of justice is an unlimited fine – which is reasonable, taking into account the seriousness of the offences, the often significant profits involved and the economic strength of the entities in question.

In addition, the Proceeds of Crime Act 2002 provides for the confiscation of financial benefit from all crimes, including bribery. Proceeds can be recovered following a criminal conviction and also where there has been no conviction; i.e. in civil proceedings. It is important to note that the UK does not consider confiscation to be a sanction; rather it places the offender in the financial position they would have been if they had not committed their criminality.

Prosecutors in England and Wales will look for an asset recovery outcome in every criminal case. This will usually take the form of an application for criminal confiscation following conviction, but may also take the form of orders made for compensation, forfeiture, deprivation and costs (See Article 30).

181. The following points were noted:

- The UK clarified that penalties for legal persons are financial (fines). There may also be confiscation and compensation orders.
- The State under review has made clear that available statistical data for England and Wales recording the number of defendants prosecuted for the offences established in accordance with the Convention do not differentiate between legal and natural persons. The UK indicated that the available statistical data for Scotland recording the number of defendants prosecuted for the offences established in accordance with the Convention also does not differentiate between legal and natural persons.

Article 27. Participation and attempt

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

182. The State under review explains that the Common Law of the different parts of the UK recognizes the commission of offences by principals and by secondary parties, the first being the persons who most directly perpetrate the offence, and the latter the ones who aid, abet, counsel or procure the commission of the offence. It is possible for more than one principal to perpetrate the same crime. With regard to secondary participants, the State under review has provided the text of the relevant provisions of the 1861 Accessories and Abettors Act, of Section 44 of the Magistrates' Courts Act and also of Sections 44-46 of the 2007 Serious Crime Act.

183. With regard to attempt and preparation, the State under review has provided the provisions of Section 1 of the 1981 Criminal Attempts Act and Section 1 of the 1977 Criminal Law Act.

184. The above provisions read as follows:

Section 8 of the **Accessories and Abettors Act 1861**

“Abettors in misdemeanors.

Whosoever shall aid, abet, counsel, or procure the commission of any indictable offence, whether the same be an offence at common law or by virtue of any Act passed or to be passed, shall be liable to be tried, indicted, and punished as a principal offender.”

185. Section 44 of the **Magistrates' Courts Act 1980**

“Aiders and abettors.

(1) A person who aids, abets, counsels or procures the commission by another person of a summary offence shall be guilty of the like offence and may be tried (whether or not he is charged as a principal) either by a court having jurisdiction to try that other person or by a court having by virtue of his own offence jurisdiction to try him.”

186. Part 2 of the **Serious Crime Act 2007** introduced new offences, relating to encouraging and assisting crime. These are inchoate offences, which criminalize preparatory acts that are meant to encourage or assist the commission of an offence:

“44 Intentionally encouraging or assisting an offence

(1) A person commits an offence if—

- (a) he does an act capable of encouraging or assisting the commission of an offence; and*
- (b) he intends to encourage or assist its commission.*

(2) But he is not to be taken to have intended to encourage or assist the commission of an offence merely because such encouragement or assistance was a foreseeable consequence of his act.

45 Encouraging or assisting an offence believing it will be committed

A person commits an offence if—

- (a) he does an act capable of encouraging or assisting the commission of an offence; and*
- (b) he believes—*
 - (i) that the offence will be committed; and*
 - (ii) that his act will encourage or assist its commission.*

46 Encouraging or assisting offences believing one or more will be committed

(1) A person commits an offence if—

- (a) he does an act capable of encouraging or assisting the commission of one or more of a number of offences; and*
- (b) he believes—*
 - (i) that one or more of those offences will be committed (but has no belief as to which); and*
 - (ii) that his act will encourage or assist the commission of one or more of them.*

(2) It is immaterial for the purposes of subsection (1)(b)(ii) whether the person has any belief as to which offence will be encouraged or assisted.

(3) If a person is charged with an offence under subsection (1)—

- (a) the indictment must specify the offences alleged to be the “number of offences” mentioned in paragraph (a) of that subsection; but*
- (b) nothing in paragraph (a) requires all the offences potentially comprised in that number to be specified.*

(4) In relation to an offence under this section, reference in this Part to the offences specified in the indictment is to the offences specified by virtue of subsection (3)(a)."

187. Criminal Attempts Act 1981

"1 Attempting to commit an offence.

(1) If, with intent to commit an offence to which this section applies, a person does an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence.

(1A) Subject to section 8 of the Computer Misuse Act 1990 (relevance of external law), if this subsection applies to an act, what the person doing it had in view shall be treated as an offence to which this section applies.

(1B) Subsection (1A) above applies to an act if-

(a) it is done in England and Wales; and

(b) it would fall within subsection (1) above as more than merely preparatory to the commission of an offence under section 3 of the Computer Misuse Act 1990 but for the fact that the offence, if completed, would not be an offence triable in England and Wales.

(2) A person may be guilty of attempting to commit an offence to which this section applies even though the facts are such that the commission of the offence is impossible.

(3) In any case where-

(a) apart from this subsection a person's intention would not be regarded as having amounted to an intent to commit an offence; but

(b) if the facts of the case had been as he believed them to be, his intention would be so regarded, then, for the purposes of subsection (1) above, he shall be regarded as having had an intent to commit that offence.

(4) This section applies to any offence which, if it were completed, would be triable in England and Wales as an indictable offence, other than-

(a) conspiracy (at common law or under section 1 of the Criminal Law Act 1977 or any other enactment);

(b) aiding, abetting, counselling, procuring or suborning the commission of an offence;

(c) offences under section 4(1) (assisting offenders) or 5(1) (accepting or agreeing to accept consideration for not disclosing information about an arrestable offence) of the Criminal Law Act 1967."

188. The Criminal Law Act 1977

"1 The offence of conspiracy.

(1) Subject to the following provisions of this Part of this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either

(a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or

(b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible, he is guilty of conspiracy to commit the offence or offences in question.

(2) Where liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of the offence, a person shall nevertheless not be guilty of conspiracy to commit that offence by virtue of subsection (1) above unless he and at least one other party to the agreement intend or know that that fact or circumstance shall or will exist at the time when the conduct constituting the offence is to take place.

(4) In this Part of this Act “offence” means an offence triable in England and Wales”

(b) Observations on the implementation of the article

189. The provisions cited seem to extensively cover all possible forms and variations of instigation, preparation and attempt, either as forms of participation to the offence committed by the principal, or as stand-alone offences.

190. The provisions of the Accessories and Abettors Act, the Magistrates’ Courts Act and of the Serious Crime Act, seem to fully comply with the requirements of Art. 27 par. 1 of the Convention. Instigation could be an offence under Part 2 of the Serious Crimes Act if it amounts to what was formerly known as ‘incitement’ or as secondary participation if regarded as ‘counselling’.

191. With regard to Art. 27 par. 2, the UK indicated that it is very important to note that no nexus of any kind is required between the active and passive actors under Sections 1 and 2 of the Bribery Act. Hence the offer or promise of a bribe that is declined is a complete offence under Section 1 and the requesting of a bribe that is refused or withheld is a complete offence under Section 2. It is therefore difficult to conceive of circumstances that amounted to an attempted bribery offence. One such circumstance may be an offer in a letter that is posted but never received by the intended recipient. If any facts emerged that were more than merely preparatory to bribery that did not amount to an offence under Section 1 or 2, then the 1981 Act would be available.

192. The provisions of the Criminal Law Act, the Accessories and Abettors Act, the Magistrates’ Courts Act and the Serious Crime Act, also comply with the optional requirement of Art. 27 par. 3 of the Convention, since amongst the elements of the offences described in these provisions are, i.e. the planning and the intent to encourage the commission of an offence established in accordance with the Convention.

193. In regard to attempt and instigation, the UK indicated that it would be for the prosecuting authorities to decide the appropriate charge. The UK reported that it regards a degree of overlap in offences as a useful feature of the criminal law. As regards the options of secondary participation or offences under Part 2 of the Serious Crime Act 2007, it should be noted that a charge based on secondary participation in a crime requires the commission of an offence by others; the offences relating to encouraging and assisting crime in Part 2 of the 2007 Act are inchoate offence and do not require the commission of an offence, although a charge would still lie in those circumstances.

The position regarding attempt, aiding and abetting, instigation and dissociation in Scotland can be summarised as follows:

Attempt

For Scotland the relevant provisions are sections 293 (statutory offences: art and part and aiding and abetting) and 294 (Attempt at Crime) of the Criminal Procedure (Scotland) Act 1995 which state the following;

Section 293

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

(2) Without prejudice to subsection (1) above or to any express provision in any enactment having the like effect to this subsection, any person who aids, abets, counsels, procures or incites any other person to commit an offence against the provisions of any enactment shall be guilty of an offence and shall be liable on conviction, unless the enactment otherwise requires, to the same punishment as might be imposed on conviction of the first-mentioned offence.

Section 294

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

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

Instigation

In Scotland there is a common law offence of instigation where A hires or induces B to commit a crime, even if A and B are not involved in any plot or pre-formed group at the time of the instigation, and even though there is no detailed discussion between them about the commission of a crime.

Dissociation

There is no defence of dissociation in Scots law. The fact that one conspirator withdraws from the enterprise at some stage after the perpetration of the crime has begun

does not relieve him of responsibility for the completed offence, unless, perhaps, he takes steps to prevent its completion.

Article 28. Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

(a) Summary of information relevant to reviewing the implementation of the article

194. The State under review has cited the provision of Section 8 of the Criminal Justice Act 1967 and a quotation regarding the Scots Law.

195. Section 8 **Criminal Justice Act 1967** provides:

“A court or jury, in determining whether a person has committed an offence,

(a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reason only of its being a natural and probable result of those actions; but

(b) shall decide whether he did intend or foresee that result by reference to all the evidence drawing such inferences from the evidence as appear proper in the circumstances.”

196. Regarding the Scots Law, Lord Justice-Clerk Cooper stated in *HM Advocate v Rutherford* that “... no one can see inside any person’s mind, and intent must always be a matter of inference - inference mainly from what the person does, but partly also from the whole surrounding circumstances of the case”.

(b) Observations on the implementation of the article

197. The wording of the texts provided coincides with that of the Convention and it appears to enable the consideration of all objective and subjective circumstances of the case in order to decide the perpetrator’s state of mind, without any restriction in respect to the evidence upon which such a judgment shall be grounded. Implementation of Art. 28 should therefore be deemed satisfactory.

Article 29. Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

198. The State under review has stated that there is no statute of limitations in criminal law in the UK.

(b) Observations on the implementation of the article

199. The aforementioned statement fully meets the requirements of Art. 29 of the Convention.

Article 30. Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(b) Holding office in an enterprise owned in whole or in part by the State.

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

200. The State under review has offered comprehensive information in regard to the sanctions provided for the offences established in accordance with the Convention, the recovery of the proceeds, interim measures for defendants under arrest, parole, on the suspension of persons from engaging in business and on issuing warnings and admonitions against public officials who violate their office, and all the different topics to which Art. 30 pertains.

1. Paragraph 1 of Article 30

201. Among the legislative texts provided, are Section 11 of the Bribery Act 2010 (see under Article 15), Section 1(3)(4) of the Fraud Act 2006 and the relevant provisions of the Theft Act 1968 and the Theft Act (NI)1969 (see under Article 17), the relevant provisions of the Proceeds of Crime Act 2002 (see under Article 23), the relevant provisions of Section 51 of the Criminal Justice and Public Order Act 1994 (see under Article 25) and Section 143 of the Criminal Justice Act 2003, which reads as follows:

Criminal Justice Act 2003

“143 Determining the seriousness of an offence

(1) In considering the seriousness of any offence, the court must consider the offender’s culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeable have caused.

(2) In considering the seriousness of an offence (“the current offence”) committed by an offender who has one or more previous convictions, the court must treat each previous conviction as an aggravating factor if (in the case of that conviction) the court considers that it can reasonably be so treated having regard, in particular, to-

(a) the nature of the offence to which the conviction relates and its relevance to the current offence, and

(b) the time that has elapsed since the conviction.

(3) In considering the seriousness of any offence committed while the offender was on bail, the court must treat the fact that it was committed in those circumstances as an aggravating factor.

(4) Any reference in subsection (2) to a previous conviction is to be read as a reference to-

(a) a previous conviction by a court in the United Kingdom, or

(b) a previous conviction of a service offence within the meaning of the Armed Forces Act 2006 (“conviction” here including anything that under section 376(1) and (2) of that Act is to be treated as a conviction).]

(5) Subsections (2) and (4) do not prevent the court from treating a previous conviction by a court outside the United Kingdom as an aggravating factor in any case where the court considers it appropriate to do so.”

- In Scotland, following conviction, courts have full discretion in deciding what the appropriate sentence is for an offence and will take into account a range of factors, including the gravity of the offence.

- In Northern Ireland, the Criminal Justice (NI) Order 2008 introduced new prison sentences from 1 April 2009 where all offenders serving determinate custodial sentences of 12 months or more serve the first half of the sentence in custody followed by a licence period at the end of the sentence. Under article 7(3) of the 2008 Order the sentence is for such a term as in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

202. Under article 9 of the 2008 Order a court shall take into account all such information as is available to it about the circumstances of the offence or (as the case may be) of the offence and the offence or offences associated with it (including any aggravating or mitigating circumstances).

203. Article 9(2) provides that a court shall obtain and consider a pre-sentence report before forming any opinion. Pre-sentence reports prepared by the Probation Board for Northern Ireland provides the courts with an assessment of the nature and causes of a defendant’s offending, the likelihood of re-offending, the risk of harm to the public, information on the range of appropriate disposals, areas to be addressed and additional measures.

204. Article 37 of the Criminal Justice (NI) Order 1996 also provides that in considering the seriousness of any offence the court may take into account any previous conviction of the offender or any failure of his to respond to previous sentences. In considering the seriousness of any offence committed while the offender was on bail, the court shall treat the fact that it was committed in those circumstances as an aggravating factor.

2. Paragraph 2 of Article 30

205. The State under review reports that there are no immunities or jurisdictional privileges accorded to UK public officials as regards investigation, prosecution or adjudication of the offences established in accordance with this convention.

3. Paragraph 3 of Article 30

206. The State under review has cited links to the Code of Crown Prosecutors and the Guidance on Corporate Prosecutions, as examples of the principles governing the exercise of prosecutorial discretion. Reference is also made to the recovery of proceeds of crimes established in accordance with the Convention.

4. Paragraph 4 of Article 30

- In England & Wales bail for accused persons and others is regulated by Section 4 of the Bail Act 1976, set forth below.

“4 General right to bail of accused persons and others.

(1) A person to whom this section applies shall be granted bail except as provided in Schedule 1 to this Act.

(2) This section applies to a person who is accused of an offence when-

(a) he appears or is brought before a magistrates’ court or the Crown Court in the course of or in connection with proceedings for the offence, or

(b) he applies to a court for bail [or for a variation of the conditions of bail] in connection with the proceedings.

This subsection does not apply as respects proceedings on or after a person’s conviction of the offence or proceedings against a fugitive offender for the offence.

(3) This section also applies to a person who, having been convicted of an offence, appears or is brought before a magistrates’ court to be dealt with under Part II of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000 (breach of certain community orders).

(4) This section also applies to a person who has been convicted of an offence and whose case is adjourned by the court for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence.

(5) Schedule 1 to this Act also has effect as respects conditions of bail for (5) Schedule 1 to this Act also has effect as respects conditions of bail for a person to whom this section applies.

(6) In Schedule 1 to this Act “the defendant” means a person to whom this section applies and any reference to a defendant whose case is adjourned for inquiries or a report is a reference to a person to whom this section applies by virtue of subsection (4) above.

(7) This section is subject to section 41 of the Magistrates' Courts Act 1980 (restriction of bail by magistrates' court in cases of treason).

(8) This section is subject to section 25 of the Criminal Justice and Public Order Act 1994 (exclusion of bail in cases of homicide and rape).

(9) In taking any decisions required by Part I or II of Schedule 1 to this Act, the considerations to which the court is to have regard include, so far as relevant, any misuse of controlled drugs by the defendant ("controlled drugs" and "misuse" having the same meanings as in the Misuse of Drugs Act 1971)."

Schedule 1 to the Bail Act.

"Part 1

Defendants to whom Part I applies

1 Where the offence or one of the offences of which the defendant is accused or convicted in the proceedings is punishable with imprisonment the following provisions of this Part of this Schedule apply.

Exceptions to right to bail

2 The defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would-

(a) fail to surrender to custody, or

(b) commit an offence while on bail, or

(c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

2A The defendant need not be granted bail if-

(a) the offence is an indictable offence or an offence triable either way; and

(b) it appears to the court that he was on bail in criminal proceedings on the date of the offence.

3 The defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a child or young person, for his own welfare.

4 The defendant need not be granted bail if he is in custody in pursuance of the sentence of a court or of any authority acting under any of the Services Acts.

5 The defendant need not be granted bail where the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required

by this Part of this Schedule for want of time since the institution of the proceedings against him.

6 The defendant need not be granted bail if, having been released on bail in or in connection with the proceedings for the offence, he has been arrested in pursuance of section 7 of this Act.”

- In Scotland, the bail legislative framework is provided by Part III of the Criminal Procedure (Scotland) Act 1995. In general, bail is to be granted except where it is not in the public interest to do so. In deciding whether it is in the public interest that an accused should be refused bail, the court can take into account a range of factors, including:

- any substantial risk that the person might if granted bail abscond; or fail to appear at a date of the court as required;
- any substantial risk of the person committing further offences if granted bail;
- any substantial risk that the person might if granted bail-
 - (i) interfere with witnesses; or
 - (ii) otherwise obstruct the course of justice, in relation to himself or any other person;
- any other substantial factor which appears to the court to justify keeping the person in custody.

If an accused is granted bail, standard bail conditions are set which include:

- the accused appears at the appointed time at every diet relating to the offence with which he is charged of which he is given due notice; or at which he is required by this Act to appear;
- the accused does not commit an offence while on bail;
- the accused does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person;
- the accused does not behave in a manner which causes, or is likely to cause, alarm or distress to witnesses;
- the accused makes himself available for the purpose of enabling enquiries or a report to be made to assist the court in dealing with him for the offence with which he is charged.

- In Northern Ireland, the authority of the magistrates' court to release a person on bail is laid down in the Magistrates Courts (NI) Order 1981. Article 47 (1) provides that when a person appears before a magistrates court for a criminal offence, the court in adjourning the proceedings, may remand the accused in custody or on bail and take from him a recognizance conditioned for his subsequent appearance before such court. The court has a power to vary

the order on future appearances and to order an accused person to be brought before it at any time before the expiration of the remand period.

Section 51 of the Judicature (Northern Ireland) Act 1978 sets out the process whereby the Crown Court may compel appearance. Section 51 (3) provides that where any person charged with or convicted of an offence has entered into a recognizance conditioned for his appearance before the Crown Court and in breach of that recognizance fails to appear, the Crown Court may without prejudice to the enforcement of the recognizance issue a warrant for his arrest.

The jurisdiction of the High Court to grant bail falls within the inherent jurisdiction of the Court and the procedures to be followed are found in Order 79 of the Rules of the Court of Judicature (NI) 1980.

The Criminal Justice (NI) Order 2003 introduced general provision regarding the enforcement of court and police bail. This legislation provides a general duty to surrender to the police or into the custody of a court or a prison governor at an appointed time. A distinction is drawn between the powers of arrest pertaining to persons released under a duty to surrender into the custody of a court and other persons on bail. Persons charged with offences and those on trial will usually be under a duty to surrender to the custody of a court. Persons released on pre charge bail will usually be placed under a duty to attend a police station and those on compassionate bail may be under a duty to surrender into the custody of a prison governor.

If a person released under a duty to surrender into the custody of the court fails to surrender at the appointed time or upon surrendering absents himself from the court without permission the court may issue a warrant for his arrest. Further the police may arrest without warrant a person under a duty to surrender into the custody of the court if the police officer has reasonable grounds for believing that he or she is unlikely to surrender to custody or if a surety notifies the police in writing that the person is unlikely to surrender to custody and the surety wishes to be relieved of their duties.

A lay magistrate may issue a warrant authorising a police officer to enter and search premises if there are reasonable grounds for believing that a person liable to arrest for an anticipated failure to surrender is present.

Article 5 of the 2003 Order created two new offences relating to breach of bail - failing to surrender to custody in answer to bail without reasonable cause and failing to surrender to custody in answer to bail as soon as reasonably practicable after a failure to surrender with reasonable cause.

Finally, in addition to the possibility of a criminal charge if a person is on court bail, any recognizance entered into by him may be estreated by the court bail, any recognizance entered into by him may be estreated by the court. If a person on bail fails to appear before a magistrates court contrary to a condition of their recognizance, the court must order the estreat of the recognizance and direct the issue of a summons to any surety requiring the surety to ap-

pear to show cause why they should not pay the amount by which they are bound. The power to order estreat of a recognizance is also mandatory in the Crown Court but discretionary in the High Court.

5. Paragraph 5 of Article 30

207. All offenders serving determinate custodial sentences of 12 months or more are subject to automatic release at the half-way point of their sentence (under section 244 of the Criminal Justice Act 2003) and serve the second half of their sentence on licence in the community. Release earlier than required may be made under arrangements for Home Detention Curfew (HDC). HDC is designed to assist the resettlement of low-risk prisoners serving short sentences.

208. Any offender sentenced to serve 4 years or more because of the gravity of the offending is either excluded by law or must be presumed unsuitable for HDC depending on the date of sentence (the Government has recently introduced draft legislation which will outlaw HDC for all prisoners serving 4 years or more regardless of date of sentence.) All eligible offenders who are not presumed unsuitable for HDC must pass a risk assessment, which tests the likelihood of serious harm, re-offending or lack of curfew compliance on release (section 34A of the Criminal Justice Act 1991 (as amended by sections 99-100 of the Crime & Disorder Act 1998).

- In Scotland, prisoners serving a sentence of less than four years are released automatically and unconditionally after serving half their sentence in custody. Prisoners serving a sentence of less than four years may be released on home detention curfew up to four months early. Prisoners released on home detention curfew will need to meet certain conditions, which will be monitored by an electronic tag.

Prisoners serving a sentence of four years or more are considered by the parole board for parole after serving half their sentence. If the Parole Board grants parole, the prisoner will be released on licence. If parole is not granted at this point, they are automatically released on licence after serving two thirds of their sentence. In some cases there may be a further parole hearing. Prisoners remains on licence and can be recalled to custody at any point until the expiry of their sentence. Prisoners can be released on parole if the Parole Board decides that they will not present an unacceptable risk to public safety if released.

When prisoners are released on parole, the release will be on licence with certain conditions attached to it. If prisoners break any of the conditions they can have parole denied and be returned to prison. The parole eligibility date is the earliest date that a prisoner could be released on parole.

- In Northern Ireland, under the Criminal Justice (NI) Order 2008 all offenders serving determinate custodial sentences of 12 months or more are subject to automatic release at the half way point of their sentence and serve the second half on licence in the community. Prisoners given these sentences will not receive remission on their custody part. (There is provision in the 2008 Order for the Justice Minister to release a fixed term prisoner on licence be-

fore they serve the requisite custodial period however to date this has not been commenced). For offences and sentences of less than 12 months under the Criminal Justice (NI) Order 1996 offenders automatically receive 50% remission and there are no supervision or licence arrangements.

6. Paragraph 6 of Article 30

209. The management of the UK Civil Service is set in statute under the Constitutional Reform and Governance Act 2010. Civil servants are bound by the Civil Service Code (<http://www.civilservice.gov.uk/about/values>), which sets out the standards of conduct and behaviour required of civil servants and forms part of their contractual terms and conditions of employment. The Civil Service Code includes the requirements for civil servants to:

- comply with the law and uphold the administration of justice;
- always act in a way that is professional and that deserves and retains the confidence of all those with whom they have dealings;
- carry out their fiduciary obligations responsibly (that is make sure public money and other resources are used properly and efficiently);

and sets out that civil servants must not:

- misuse their official position, for example by using information acquired in the course of their official duties to further their private interests or those of others;
- accept gifts or hospitality or receive other benefits from anyone which might reasonably be seen to compromise their personal judgement or integrity;

210. The Civil Service Code also requires civil servants to report evidence of criminal or unlawful activity to the police or other appropriate regulatory authorities.

211. Any breach of the Civil Service Code or other terms and conditions of employment would be dealt with under departmental disciplinary arrangements, which could include dismissal.

212. The Civil Service Code is enshrined in the central terms and conditions framework, the Civil Service Management Code (CSMC) (<http://www.civilservice.gov.uk/about/resources/civil-service-management-code>), and thus becomes part of a civil servant's terms and conditions of service. It must therefore be adhered to, with any breaches constituting a disciplinary offence. The CSMC delegates responsibility for disciplinary matters to departments, so any breaches are dealt with by individual departments under their own departmental disciplinary procedures. Departmental procedures also include standards of behaviour expected within each department dependant on their business. There are regular meetings of departmental Human Resources Directors to provide

feedback on departmental issues including disciplinary procedures, where any issues of concern which have wider or more systemic implications will be highlighted, and this is fed into the further development of central and local policies.

213. Individual internal disciplinary matters and outcomes are confidential. Employment Tribunals are generally public.
214. In terms of identifying whether applicants for jobs might have previous disciplinary or criminal convictions, departments carry out pre-employment checks on staff, which include reference and security checks. In addition, civil servants must let their department or agency know if they are arrested and refused bail, or if they are convicted of any criminal offence; this does not apply to traffic offences unless an official car was involved or the penalty included imprisonment or disqualification from driving. Civil servants who become bankrupt or insolvent must also report the fact to their department or agency.
215. Civil servants are further required to declare to their department or agency any business interests (including directorships) or holdings of shares or other securities which they or members of their immediate family hold, to the extent that they are aware of them, which they would be able to further as a result of their official position, and must comply with any subsequent instructions from their department or agency regarding the retention, disposal or management of such interests.
145. Serving civil servants must also seek permission before accepting any outside employment which might affect their work either directly or indirectly, and are covered by Business Appointment Rules (http://acoba.independent.gov.uk/former_crown_servants/rules_and_guidance_civil_servants.aspx), which apply to civil servants who intend to take up an outside appointment or employment after leaving the Civil Service. The Business Appointment Rules continue to apply for two years after the last day of paid Civil Service employment. The aim of the Rules is to avoid any reasonable concerns that:
 - a. a civil servant might be influenced in carrying out his or her official duties by the hope or expectation of future employment with a particular firm or organisation, or in a specific sector; or
 - b. on leaving the Civil Service, a former civil servant might improperly exploit privileged access to contacts in Government or sensitive information; or
 - c. a particular firm or organisation might gain an improper advantage by employing someone who, in the course of their official duties, has had access to:
 - i. information relating to unannounced or proposed developments in Government policy, knowledge of which may affect the prospective employer or any competitors; or
 - ii. commercially valuable or sensitive information about any competitors.

The independent Advisory Committee on Business Appointments advises on applications from the most senior civil servants (as well as from former Ministers and special advisers).

For the most senior civil servants (Director General and above) there is generally a 2-year ban on lobbying Government on behalf of their new employer after they leave the Civil Service, unless waived by the Advisory Committee if, in its judgement, no questions of propriety or public concern arise from the appointment or employment being taken up earlier. All Permanent Secretaries and Second Permanent Secretaries are also subject to a minimum 3 month waiting period unless waived by the Advisory Committee if they consider this to be justified by the particular circumstances of an individual application.

7. Paragraph 7 of Article 30

216. In respect of positions of elected office, section 1 of the Representation of the People Act 1981 disqualifies any person from becoming a Member of the House of Commons who has been imprisoned either i) indefinitely or ii) for more than one year, following conviction for any offence. This therefore typically encompasses anyone convicted of offences established in accordance with the Convention. UK officials explained that there is the possibility that a person may be convicted of an offence under the Convention and sentenced for less than one year, because the courts have discretion to impose a lesser sentence than the prescribed maximum sentence, depending on the facts of the case, the seriousness of the offence and any mitigating or aggravating factors. However, the officials have not had experience of this in recent years. Any person so disqualified from becoming a Member of the House of Commons is also disqualified from becoming i) a Member of the European Parliament (as per Section 10(1)(a) of the European Parliamentary Elections Act 2002); ii) a Member of the Scottish Parliament (Section 15(1)(b) of the Scotland Act 1998); iii) a Member of the Welsh Assembly (Section 16(2) of the Government of Wales Act 2006); or iv) a Member of the Legislative Assembly of Northern Ireland (Section 36(4) of the Northern Ireland Act 1998). A person is disqualified from being a member of a Local Government Authority if, within five years before the day of their election or since their election, he has been sentenced to imprisonment for more than three months for any offence.

217. Where an MP receives a prison sentence for 12 months or more, he or she is automatically disqualified from the House of Commons. This same disqualification does not apply to any sentence of less than 12 months, but the UK Government has published proposals that would address this issue. The Government published the Recall of MPs draft bill in December 2011, which was being considered by a Parliamentary Select Committee at the time of the review. The proposals contained in the White Paper set out the process by which an MP could lose his or her seat in the House of Commons as a result of a successful recall petition triggered by being found guilty in the UK of an offence and receiving a custodial sentence of no more than 12 months or where the House of Commons resolves that a Member should be the subject of a recall petition. It

was explained that in practice, the public outcry around an MP being convicted of a corruption offence would likely be such that the MP would stand down. A list of case studies of MPs who had been recalled was provided to the reviewers.

218. There are additionally statutory provisions that relate to specific public offices; for instance, it is a standard provision in legislation that an office-holder may be removed if he is convicted of an offence. There are also statutory provisions concerning the suspension of Judges who are the subject of criminal proceedings or who have been convicted of an offence.
219. Any Judge who accepts a bribe loses his office. Before appointing civil servants, departments will make a number of employment checks, including vetting. Previous offences would form part of the consideration. Procedures will vary depending on the gravity of any offence.

8. Paragraph 8 of Article 30

220. Under the Constitutional Reform and Governance Act 2010, civil servants are bound by the Civil Service Code which forms part of their contractual terms and conditions of employment, as it has already been described in response to paragraph 6.

9. Paragraph 10 of Article 30

221. All offenders serving determinate custodial sentences of 12 months or more are subject to automatic release at the half-way point of their sentence (under section 244 of the Criminal Justice Act 2003) and serve the second half of their sentence on licence in the community. The release licence has standard conditions plus any additional conditions specific to the offender, and all conditions must have regard to the protection of the public, the prevention of re-offending, and securing the successful re-integration of the prisoner into the community (as set out in section 250 of the Criminal Justice Act 2003).

222. Section 250 of the Criminal Justice Act 2003

“8) In exercising his powers to prescribe standard conditions or the other conditions referred to in subsection (4)(b)(ii), the Secretary of State must have regard to the following purposes of the supervision of offenders while on licence under this Chapter-

(a) the protection of the public,

(b) the prevention of re-offending, and

(c) securing the successful re-integration of the prisoner into the community.”

- In Scotland, Part I of the Prisoners and Criminal Proceedings (Scotland) Act 1993 provides how the system of the release of offenders operates, including at what point offenders can be released prior to the end of their sentence.

The system is designed to, amongst matters, facilitate the re-integration of the offender into the community.

The Rehabilitation of Offenders Act 1974 applies in Scotland (as it does across the UK) and provides that anyone who has been convicted of a criminal offence and sentenced to less than two and a half years in prison can be regarded as rehabilitated after a specified period with no further convictions. After the specified period the original conviction is considered to be spent. The specified period varies between 6 months and 10 years depending on the length of sentence. Convictions involving sentences of over 2.5 years are never spent. The general rule is that, once a conviction is spent the convicted person does not have to reveal it and cannot be prejudiced by it. This means that if an ex-offender whose convictions are all spent is asked on a job application form, or at a job interview, whether they have a criminal record they do not have to reveal or admit its existence. Moreover, an employer cannot refuse to employ someone or dismiss someone because of a "spent" conviction.

- In Northern Ireland, there is similar provision in the Criminal Justice (NI) Order 2008 for offenders serving determinate custodial sentences of 12 months or more, where Article 24 (8) provides that when proscribing licence conditions the Justice Minister shall have regard to the protection of the public, the prevention of re-offending and the rehabilitation of the offender.

For those who are convicted and given a custodial disposal, rehabilitation legislation exists to allow many offenders to put the past behind them when it comes to seeking employment and starting afresh. The length of time during which an offender must declare his/her conviction is based on the seriousness of the offence. But in recognition of the fact that their offending may have been due to their inexperience and lack of maturity, for young offenders in particular rehabilitation periods are shorter than those for adults.

For those in custody, Government provides programmes and services to assist with successful return to the community. The Northern Ireland Prison Service provides a range of prisoner programmes; trains its staff to deliver such programmes; and employs a range of professionals including psychologists to help offenders prepare for successful return to the community. The Probation Service works with and in prisons to deliver pre and post release programmes and services. On return to the community, a number of voluntary sector bodies, with financial assistance from Government, provide services for the care and resettlement of offenders.

(b) Observations on the implementation of the article

223. The UK appears to regulate prosecution, adjudication and sanctions in accordance for the most part with Article 30 of the Convention.

- Article 30 par. 1 of the Convention requires that States parties make the commission of an offence established in accordance with the Convention liable to sanctions that take into account the gravity of that offence. Some reservations regarding the implementation of this provision are expressed below. These reservations have been made

without prejudice to par. 9 of Article 30, which affirms the primacy of national law in respect of the determination of the severity of the punishment. In particular, the experts suggested that the UK authorities could consider differentiating sanctions between persons carrying out public and non-public function, though the UK position is not incompatible with the standards of the Convention and the UK legal tradition.

Noting the Overarching Principles issued by the UK Sentencing Council (though these do not extend to Scotland) and recognizing the uncertainty surrounding the possible applicable penalties, the reviewing experts observed that the UK could consider issuing relevant sentencing guidelines under the Bribery Act in the near future.

According to par. 8 of Article 30, the establishment of proportionate sanctions shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants. This seems to be the case in the UK.

The UK might also consider looking more closely into the matter of out-of-court settlements involving the Serious Fraud Office, in order to ensure adequate transparency and predictability. In this regard, it was noted that a consultation paper on the judicial scrutiny of such arrangements and the possibility of adopting deferred prosecution agreements had been issued, which would also enhance the process of out-of-court settlements. While the criteria for self-reporting is published on the SFO website in the form of a self-reporting protocol, it was explained that settlement terms generally determine how much of the settlement will be made public. Self-reporting can but does not always lead to civil recovery, and in one case in particular, a company (Mabey & Johnson) that self-reported nonetheless faced criminal charges.

It was noted during the review that the SFO's operations have in recent years been partly funded by monies recovered in criminal confiscation cases and civil settlements. In this regard, the experts were of the view that all settlements should be subject to judicial scrutiny independent from the prosecutor's office and that an independent body could be considered, which would have a formal role in reviewing sensitive cases. Moreover, companies that reach settlements could be asked to commit to compliance programmes and the appointment of an independent expert monitors where remedial action is warranted. The SFO should also consider providing more detail on civil settlements on its website, for example concerning guidance on what factors are taken into account in determining the recoverable amount in civil settlements, to enhance the transparency of published information.

It was further noted that Scotland recently introduced a self-reporting scheme for businesses, which is being tested in a one-year trial phase and is modelled after the CPS/SFO practice. Pursuant to the scheme, the authorities may consider non-prosecution and civil recovery in cases where companies which self-report terminate and prevent the unlawful activity. 3-4 cases of self-reporting had been received at the time of the country visit, and the outcomes are public. It is still too early to assess the impact and functioning of the programme.

- Article 30 par. 2 requires States parties to establish or maintain, in accordance with their legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to their public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with the Convention. The State under review has declared that “there are no immunities or jurisdictional privileges accorded to UK public officials as regards investigation, prosecution or adjudication of the offences established in accordance with this Convention”.

It was confirmed that this declaration also concerns Members of Parliament, i.e. that MPs are not accorded any immunities or jurisdictional privileges for the performance of their functions which might impair the application of the offences established in accordance with the Convention.

- Article 30 par. 3 requires that State parties endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences established in accordance with the Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences. Since prosecution of offences in the State under review is not mandatory but subject to prosecutorial discretion, the single most important discretionary legal power relevant to the offences established in accordance with the Convention, is the discretion to prosecute or to abstain from prosecution.

The State under review has provided links to the Code for Crown Prosecutors and specific guidance regarding bribery, which has been issued by the Director of Public Prosecutions and the Director of the Serious Fraud Office. These stipulate that “Prosecutors must only start or continue a prosecution when the case has passed both stages of the Full Code Test” (section 3 par.4 of the Code), which comprises of two stages, namely the evidential stage and the public interest stage (section 4 par.1). In the first stage “prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be (section 4 par.5). In regard to the public interest stage, a statement is quoted, made by Sir Hartley Shawcross, who was then Attorney General: “[i]t has never been the rule in this country - I hope it never will be - that suspected criminal offences must automatically be the subject of prosecution”. He added that there should be a prosecution: “wherever it appears that the offence or the circumstances of its commission is or are of such a character that a prosecution in respect thereof is required in the public interest” (House of Commons Debates, Volume 483, 29 January 1951). It is also pointed out that “a prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour, or unless the prosecutor

is satisfied that the public interest may be properly served, in the first instance, by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal (see section 7). The more serious the offence or the offender's record of criminal behaviour, the more likely it is that a prosecution will be required in the public interest" (section 4 par.12) and in paragraphs 16 - 20 there is an enumeration of factors for and against prosecuting. It thus seems that there is a fairly comprehensive system of factors which regulate prosecution in an advisory manner, and that appears to comply with the Convention's requirement that States must endeavour to assure that discretionary powers will be used in the most efficient manner. However, given the short period of existence of the Bribery Act, the application of this system in practice cannot be evaluated and should be revisited in future reviews.

- Under paragraph 4 of Article 30, States parties must take appropriate measures, in accordance with their domestic law and with due regard to the rights of the defence, to seek to ensure that, in the case of offences established in accordance with the Convention, conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings. In effect, parties are required to take appropriate measures to ensure that the defendants do not abscond. In the legislation provided, the eventuality that the defendant will fail to surrender to custody, to appear in a diet of the court, or that he/she will abscond, is explicitly mentioned as an issue of consideration, and therefore the UK should be deemed to be in compliance with the provision in question.
- Article 30 par. 5 requires States parties to take into account the gravity of the offences concerned considering the eventuality of early release or parole of persons convicted of offences established in accordance with the Convention. As explained by the State under review, convicts with custodial sentences up to 4 years, will be released on parole after they have served half their sentence. Prisoners with sentences longer than this, are eligible for parole after serving half their sentence. In Scotland, prisoners with sentences exceeding 4 years are entitled to automatic parole after they have served 2/3 of their sentence. Although no distinction is made regarding the offences established in accordance with the Convention, the minimum eligibility period is considered high enough and should be deemed to take sufficiently into account the gravity of the offences concerned.
- To the extent consistent with the fundamental principles of their legal system, States parties must consider establishing procedures through which a public official accused of an offence established in accordance with the Convention may, where appropriate, be removed, suspended or reassigned by the competent authority, bearing in mind respect for the principle of the presumption of innocence (Article 30, par. 6).

As the State under review notes, any breach of the Civil Service Code or other terms and conditions of employment would be dealt with under departmental disciplinary arrangements, which could include dismissal. The existence of disciplinary proce-

dures in general meets the Convention's requirement for a procedure that can lead to removal or suspension of a public official who is a suspect for corruption. A criminal conviction can be obtained only in accordance with the criminal law (either common law or statute). The standard of proof is that the tribunal must be satisfied of guilt 'beyond reasonable doubt' so that they are sure. Disciplinary proceedings usually arise out of employment or professional obligations and are governed by civil law. The standard of proof required will usually be the lower one of "on the balance of probabilities". The sentencing exercise that follows a criminal conviction is entirely separate from any disciplinary proceedings arising from employment law or professional regulation. Furthermore, sections 6 and 7 of the cited Civil Service Code specifically deal with issues of integrity that correspond to the offences established in accordance with the Convention. The UK is thus in compliance with the provision in question.

- According to Article 30 par. 7, where warranted by the gravity of the offence and to the extent consistent with the fundamental principles of their legal system, States parties are required to consider establishing procedures for the disqualification by court order or other appropriate means of persons convicted of an offence established in accordance with the Convention from public office or office in an enterprise owned in whole or in part by the State. The duration of the disqualification is left to the discretion of the States parties, consistent with their domestic law.

The State under review lists a number of provisions regarding disqualifications from various offices, both elected and appointed, that seem to cover all levels of governmental bodies. In respect to removal of already elected or appointed officials, it states that it is a standard provision in legislation that an office-holder may be removed if he is convicted of an offence.

- Finally, Article 30 par. 10 recognizes that, just as with persons found guilty and punished for other kinds of misconduct, reintegration into the society is an important goal of control systems. Consequently, States parties must endeavour to promote the reintegration into society of persons convicted of offences established in accordance with the Convention. The State under review quotes several pieces of legislation, both national and regional, that include re-integration of convicted offenders among the goals of the UK criminal justice system and thus it should be deemed to be in compliance with the provision of Art. 30 par. 10.

Article 31. Freezing, seizure and confiscation

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

(a) Summary of information relevant to reviewing the implementation of the article

1. Article 31 par. 1a UNCAC.

224. The country under evaluation referred to Section 6 of the Proceeds of Crime Act 2002 for England and Wales. Section 92 of the aforementioned law refers to the correspond-

ing rule that applies in Scotland and Section 156 to the rule that applies to Northern Ireland. The basic regulations in England and Wales, Scotland and Northern Ireland are identical. The State under review has also provided examples of implementation.

Proceeds of Crime Act 2002

“6 Making of order (England and Wales)

(1) The Crown Court must proceed under this section if the following two conditions are satisfied.

(2) The first condition is that a defendant falls within any of the following paragraphs—

(a) he is convicted of an offence or offences in proceedings before the Crown Court;

(b) he is committed to the Crown Court for sentence in respect of an offence or offences under section 3, 4 or 6 of the Sentencing Act;

(c) he is committed to the Crown Court in respect of an offence or offences under section 70 below (committal with a view to a confiscation order being considered).

(3) The second condition is that—

(a) the prosecutor or the Director asks the court to proceed under this section, or

(b) the court believes it is appropriate for it to do so.

(4) The court must proceed as follows—

(a) it must decide whether the defendant has a criminal lifestyle;

(b) if it decides that he has a criminal lifestyle it must decide whether he has benefited from his general criminal conduct;

(c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct.

(5) If the court decides under subsection (4)(b) or (c) that the defendant has benefited from the conduct referred to it must—

(a) decide the recoverable amount, and

(b) make an order (a confiscation order) requiring him to pay that amount.

(6) But the court must treat the duty in subsection (5) as a power if it believes that any victim of the conduct has at any time started or intends to start proceedings against the defendant in respect of loss, injury or damage sustained in connection with the conduct.

(7) The court must decide any question arising under subsection (4) or (5) on a balance of probabilities.

(8) *The first condition is not satisfied if the defendant absconds (but section 27 may apply).*

(9) *References in this Part to the offence (or offences) concerned are to the offence (or offences) mentioned in subsection (2)."*

"75 Criminal lifestyle

(1) *A defendant has a criminal lifestyle if (and only if) the following condition is satisfied.*

(2) *The condition is that the offence (or any of the offences) concerned satisfies any of these tests—*

(a) *it is specified in Schedule 2;*

(b) *it constitutes conduct forming part of a course of criminal activity;*

(c) *it is an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence.*

(4) *But an offence does not satisfy the test in subsection (2)(b) or (c) unless the defendant obtains relevant benefit of not less than £5000."*

2. Article 31 par.1b UNCAC

Powers of Criminal Courts (Sentencing) Act 2000

"143 Powers to deprive offender of property used etc. for purposes of crime.

(1) *Where a person is convicted of an offence and the court by or before which he is convicted is satisfied that any property which has been lawfully seized from him, or which was in his possession or under his control at the time when he was apprehended for the offence or when a summons in respect of it was issued—*

(a) *has been used for the purpose of committing, or facilitating the commission of, any offence, or*

(b) *was intended by him to be used for that purpose, the court may (subject to subsection (5) below) make an order under this section in respect of that property.*

(2) *Where a person is convicted of an offence and the offence, or an offence which the court has taken into consideration in determining his sentence, consists of unlawful possession of property which—*

(a) *has been lawfully seized from him, or*

(b) *was in his possession or under his control at the time when he was apprehended for the offence of which he has been convicted or when a summons in respect of that offence was issued, the court may (subject to subsection (5) below) make an order under this section in respect of that property.*

(3) An order under this section shall operate to deprive the offender of his rights, if any, in the property to which it relates, and the property shall (if not already in their possession) be taken into the possession of the police.

(4) Any power conferred on a court by subsection (1) or (2) above may be exercised—

(a) whether or not the court also deals with the offender in any other way in respect of the offence of which he has been convicted; and

(b) without regard to any restrictions on forfeiture in any enactment contained in an Act passed before 29th July 1988.

(5) In considering whether to make an order under this section in respect of any property, a court shall have regard—

(a) to the value of the property; and

(b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

(6) Where a person commits an offence to which this subsection applies by—

(a) driving, attempting to drive, or being in charge of a vehicle, or

(b) failing to comply with a requirement made under section 7 of the Road Traffic Act 1988 (failure to provide specimen for analysis or laboratory test or to give permission for such a test) in the course of an investigation into whether the offender had committed an offence while driving, attempting to drive or being in charge of a vehicle, or

(c) failing, as the driver of a vehicle, to comply with subsection (2) or (3) of section 170 of the Road Traffic Act 1988 (duty to stop and give information or report accident), the vehicle shall be regarded for the purposes of subsection (1) above (and section 144(1)(b) below) as used for the purpose of committing the offence (and for the purpose of committing any offence of aiding, abetting, counselling or procuring the commission of the offence).

(7) Subsection (6) above applies to—

(a) an offence under the Road Traffic Act 1988 which is punishable with imprisonment;

(b) an offence of manslaughter; and

(c) an offence under section 35 of the Offences Against the Person Act 1861 (wanton and furious driving).

(8) Facilitating the commission of an offence shall be taken for the purposes of subsection (1) above to include the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.”

Section 21 of the Criminal Law (Consolidation) (Scotland) Act 1995 provides similar powers in Scotland.

3. Article 31 par. 2 UNCAC

1) Proceeds of Crime Act 2002

Restraint orders

“40 Conditions for exercise of powers

(1) The Crown Court may exercise the powers conferred by section 41 if any of the following conditions is satisfied.

(2) The first condition is that—

(a) a criminal investigation has been started in England and Wales with regard to an offence, and

(b) there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct.

(3) The second condition is that—

(a) proceedings for an offence have been started in England and Wales and not concluded, and

(b) there is reasonable cause to believe that the defendant has benefited from his criminal conduct.

(4) The third condition is that—

(a) an application by the prosecutor or the Director has been made under section 19, 20, 27 or 28 and not concluded, or the court believes that such an application is to be made, and

(b) there is reasonable cause to believe that the defendant has benefited from his criminal conduct.

(5) The fourth condition is that—

(a) an application by the prosecutor or the Director has been made under section 21 and not concluded, or the court believes that such an application is to be made, and

(b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the defendant’s benefit exceeds the relevant amount (as defined in that section).

(6) The fifth condition is that—

(a) an application by the prosecutor or the Director has been made under section 22 and not concluded, or the court believes that such an application is to be made, and

(b) there is reasonable cause to believe that the court will decide under that section that the amount found under the new calculation of the available amount exceeds the relevant amount (as defined in that section).

(7) The second condition is not satisfied if the court believes that—

(a) there has been undue delay in continuing the proceedings, or

(b) the prosecutor does not intend to proceed.

(8) If an application mentioned in the third, fourth or fifth condition has been made the condition is not satisfied if the court believes that—

(a) there has been undue delay in continuing the application, or

(b) the prosecutor or the Director (as the case may be) does not intend to proceed.

(9) If the first condition is satisfied—

(a) references in this Part to the defendant are to the alleged offender;

(b) references in this Part to the prosecutor are to the person the court believes is to have conduct of any proceedings for the offence;

(c) section 77(9) has effect as if proceedings for the offence had been started against the defendant when the investigation was started.

41 Restraint orders

(1) If any condition set out in section 40 is satisfied the Crown Court may make an order (a restraint order) prohibiting any specified person from dealing with any realisable property held by him.

(2) A restraint order may provide that it applies—

(a) to all realisable property held by the specified person whether or not the property is described in the order;

(b) to realisable property transferred to the specified person after the order is made.

(3) A restraint order may be made subject to exceptions, and an exception may in particular—

(a) make provision for reasonable living expenses and reasonable legal expenses;

(b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation;

(c) be made subject to conditions.

(4) But an exception to a restraint order must not make provision for any legal expenses which—

(a) relate to an offence which falls within subsection (5), and

(b) are incurred by the defendant or by a recipient of a tainted gift.

(5) These offences fall within this subsection—

(a) the offence mentioned in section 40(2) or (3), if the first or second condition (as the case may be) is satisfied;

(b) the offence (or any of the offences) concerned, if the third, fourth or fifth condition is satisfied.

(6) Subsection (7) applies if—

(a) a court makes a restraint order, and

(b) the applicant for the order applies to the court to proceed under subsection (7) (whether as part of the application for the restraint order or at any time afterwards).

(7) The court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.

(8) A restraint order does not affect property for the time being subject to a charge under any of these provisions—

(a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);

(b) section 78 of the Criminal Justice Act 1988 (c. 33);

(c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));

(d) section 27 of the Drug Trafficking Act 1994 (c. 37);

(e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

(9) Dealing with property includes removing it from England and Wales.

45 Seizure (the same provision for England and Wales, Scotland and Northern Ireland)

(1) If a restraint order is in force a constable or a customs officer may seize any realisable property to which it applies to prevent its removal from England and Wales.

(2) Property seized under subsection (1) must be dealt with in accordance with the directions of the court which made the order.”

Temporary freezing / moratorium period (Part 7, Proceeds of Crime Act 2002)

335 Appropriate consent (the same provision for England, Wales, Scotland and Northern Ireland)

(1) *The appropriate consent is—*

(a) *the consent of a nominated officer to do a prohibited act if an authorised disclosure is made to the nominated officer;*

(b) *the consent of a constable to do a prohibited act if an authorised disclosure is made to a constable;*

(c) *the consent of a customs officer to do a prohibited act if an authorised disclosure is made to a customs officer.*

(2) *A person must be treated as having the appropriate consent if—*

(a) *he makes an authorised disclosure to a constable or a customs officer, and*

(b) *the condition in subsection (3) or the condition in subsection (4) is satisfied.*

(3) *The condition is that before the end of the notice period he does not receive notice from a constable or customs officer that consent to the doing of the act is refused.*

(4) *The condition is that—*

(a) *before the end of the notice period he receives notice from a constable or customs officer that consent to the doing of the act is refused, and*

(b) *the moratorium period has expired.*

(5) *The notice period is the period of seven working days starting with the first working day after the person makes the disclosure.*

(6) *The moratorium period is the period of 31 days starting with the day on which the person receives notice that consent to the doing of the act is refused.*

(7) *A working day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom in which the person is when he makes the disclosure.*

(8) *References to a prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).*

(9) *A nominated officer is a person nominated to receive disclosures under section 338.*

(10) *Subsections (1) to (4) apply for the purposes of this Part.*

2) Police and Criminal Evidence Act 1984

“19 General Power of seizure

(1) The powers conferred by subsections (2), (3) and (4) below are exercisable by a constable who is lawfully on any premises.

(2) The constable may seize anything which is on the premises if he has reasonable grounds for believing—

(a) that it has been obtained in consequence of the commission of an offence; and

(b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) The constable may seize anything which is on the premises if he has reasonable grounds for believing—

(a) that it is evidence in relation to an offence which he is investigating or any other offence; and

(b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.

(4) The constable may require any information which is stored in any electronic form and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form if he has reasonable grounds for believing—

(a) that— (i) it is evidence in relation to an offence which he is investigating or any other offence; or

(ii) it has been obtained in consequence of the commission of an offence; and

(b) that it is necessary to do so in order to prevent it being concealed, lost, tampered with or destroyed.

(5) The powers conferred by this section are in addition to any power otherwise conferred.

(6) No power of seizure conferred on a constable under any enactment (including an enactment contained in an Act passed after this Act) is to be taken to authorise the seizure of an item which the constable exercising the power has reasonable grounds for believing to be subject to legal privilege.”

4. Article 31 par. 3 UNCAC

Proceeds of Crime Act 2002-ENFORCEMENT

Receiver's powers

The receiver gets his authority to act from the court. This is set out in the order appointing him (section 51 POCA). It is extremely important that the order appointing an enforcement

receiver is drafted so as to give the receiver the powers that he needs to operate to manage the assets. An *ex parte* application to appoint an enforcement receiver the Court cannot give the receiver power to manage the assets as in order to grant the receiver this power an opportunity to be heard must be given to all parties likely to be affected by the enforcement receiver order.

On an *ex parte* order the receiver may be given the:

- Power to take possession of property;
- Power to start, carry on or defend legal proceedings in respect of the property;
- Power to enter premises in England and Wales;
- To search for or inspect anything authorised by the Court;
- To make or obtain a copy or photograph or other record as authorised by the Court;
- To remove any property as authorised in the receivership order

After an *inter partes* hearing he may be given the powers set out above and also the:

- Power to realise so much of the property as is necessary to meet the receivers remuneration and expenses; and
- Power to realise so much of the property as is necessary to meet the receivers remuneration and expenses.

5. Article 31 par. 4, 5 and 6 UNCAC

Proceeds of Crime Act 2002

“8 Defendant’s benefit

(1) If the court is proceeding under section 6 this section applies for the purpose of—

(a) deciding whether the defendant has benefited from conduct, and

(b) deciding his benefit from the conduct.

(2) The court must—

(a) take account of conduct occurring up to the time it makes its decision;

(b) take account of property obtained up to that time.

(3) Subsection (4) applies if—

(a) the conduct concerned is general criminal conduct,

(b) a confiscation order mentioned in subsection (5) has at an earlier time been made against the defendant, and

- (c) his benefit for the purposes of that order was benefit from his general criminal conduct.
- (4) His benefit found at the time the last confiscation order mentioned in subsection (3)(c) was made against him must be taken for the purposes of this section to be his benefit from his general criminal conduct at that time.
- (5) If the conduct concerned is general criminal conduct the court must deduct the aggregate of the following amounts—
- (a) the amount ordered to be paid under each confiscation order previously made against the defendant;
- (b) the amount ordered to be paid under each confiscation order previously made against him under any of the provisions listed in subsection (7).
- (6) But subsection (5) does not apply to an amount which has been taken into account for the purposes of a deduction under that subsection on any earlier occasion.
- (7) These are the provisions—
- (a) the Drug Trafficking Offences Act 1986 (c. 32);
- (b) Part 1 of the Criminal Justice (Scotland) Act 1987 (c. 41);
- (c) Part 6 of the Criminal Justice Act 1988 (c. 33);
- (d) the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));
- (e) Part 1 of the Drug Trafficking Act 1994 (c. 37);
- (f) Part 1 of the Proceeds of Crime (Scotland) Act 1995 (c. 43);
- (g) the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9));
- (h) Part 3 or 4 of this Act.
- (8) The reference to general criminal conduct in the case of a confiscation order made under any of the provisions listed in subsection (7) is a reference to conduct in respect of which a court is required or entitled to make one or more assumptions for the purpose of assessing a person's benefit from the conduct.”

6. Article 31 par. 7 UNCAC

Proceeds of Crime Act 2002

“348 par.4 Further provisions

...(4) A production order has effect in spite of any restriction on the disclosure of information (however imposed).”

“368 Disclosure of information

A customer information order has effect in spite of any restriction on the disclosure of information (however imposed).”

“370. Account monitoring orders

(1) A judge may, on an application made to him by an appropriate officer, make an account monitoring order if he is satisfied that each of the requirements for the making of the order is fulfilled.

(2) The application for an account monitoring order must state that—

(a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation, or

(b) property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property.

(3) The application must also state that—

(a) the order is sought for the purposes of the investigation;

(b) the order is sought against the financial institution specified in the application in relation to account information of the description so specified.

(4) Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another).

(5) The application for an account monitoring order may specify information relating to—

(a) all accounts held by the person specified in the application for the order at the financial institution so specified,

(b) a particular description, or particular descriptions, of accounts so held, or

(c) a particular account, or particular accounts, so held.

(6) An account monitoring order is an order that the financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to an appropriate officer in the manner, and at or by the time or times, stated in the order.

(7) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.”

“374 Disclosure of information

An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).”

7. Article 31 par. 8 UNCAC (Same provision for England and Wales, Scotland and Northern Ireland)

Proceeds of Crime Act 2002

“10 Assumptions to be made in case of criminal lifestyle

(1) If the court decides under section 6 that the defendant has a criminal lifestyle it must make the following four assumptions for the purpose of—

(a) deciding whether he has benefited from his general criminal conduct, and

(b) deciding his benefit from the conduct.

(2) The first assumption is that any property transferred to the defendant at any time after the relevant day was obtained by him—

(a) as a result of his general criminal conduct, and

(b) at the earliest time he appears to have held it.

(3) The second assumption is that any property held by the defendant at any time after the date of conviction was obtained by him—

(a) as a result of his general criminal conduct, and

(b) at the earliest time he appears to have held it.

(4) The third assumption is that any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct.

(5) The fourth assumption is that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the defendant, he obtained it free of any other interests in it.

(6) But the court must not make a required assumption in relation to particular property or expenditure if—

(a) the assumption is shown to be incorrect, or

(b) there would be a serious risk of injustice if the assumption were made.

(7) If the court does not make one or more of the required assumptions it must state its reasons.

(8) The relevant day is the first day of the period of six years ending with—

(a) the day when proceedings for the offence concerned were started against the defendant, or

(b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days.

(9) But if a confiscation order mentioned in section 8(3)(c) has been made against the defendant at any time during the period mentioned in subsection (8)—

(a) the relevant day is the day when the defendant's benefit was calculated for the purposes of the last such confiscation order;

(b) the second assumption does not apply to any property which was held by him on or before the relevant day.

(10) The date of conviction is—

(a) the date on which the defendant was convicted of the offence concerned, or

(b) if there are two or more offences and the convictions were on different dates, the date of the latest."

8. Article 31 par. 9 UNCAC

Proceeds of Crime Act 2002-ENFORCEMENT

The role of third parties

Third parties have no right to be heard on a criminal confiscation hearing. The Crown Court will determine the defendant's interest in property held by third parties, whether this property is held jointly, is a tainted gift, or is property otherwise held in the names of third parties. The Court at the confiscation stage is only tasked with determining the amount of the defendant's free property, in order to calculate the recoverable or available amount in which to make an order for a sum of money and is not concerned with the property itself. Any determinations as to the defendant's interest at that stage cannot be binding on third parties, as they are not parties to the proceedings (see *Re Norris* [2001] UKHL 34). Third party assets may be restrained and/or at the enforcement stage, action may be taken by a receiver to realise property, in which third parties may be claiming an interest. Third parties are entitled to have their claims determined by a court, although not as a part of the confiscation proceedings. Unlike previous legislation, POCA provides that the appropriate court will be the Crown Court.

Resolution of third party interests

The court may order anyone who has possession of realisable property to give it to the receiver and may order anyone who holds an interest in realisable property to pay the receiver the amount of any interest held in the property by the defendant or the recipient of a tainted gift. Once that payment is made, the interest of the defendant or the recipient of the tainted

gift in the property is extinguished. Before such orders are made, Rule 60.1 (6) of the Criminal Procedure Rules 2010 require that the defendant or the recipient of the gift must be given notice of the hearing and will, therefore, be able to make representations to the court.

The defendant, or the recipient of a tainted gift, may apply to the court for an order that any property that cannot be replaced should not be sold. Such an order made under section 69(4) POCA may be revoked or varied.

Section 62(3) POCA provides that any person affected by the action or proposed action of a receiver may apply to the Crown Court for an order giving directions as to the exercise of the receivership powers. The court may make such order as it believes appropriate. Any person affected by an order appointing or giving powers to a receiver may also apply to the Crown Court to vary or discharge the order by virtue of section 63(1)(c) POCA.

Section 69(3) POCA provides that in exercising the powers given to the court and/or to a receiver, the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him. In the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift.

In a case where a confiscation order has not been made against the defendant, property must not be sold if the court so orders under subsection (4).

The UK provided the following statistics on confiscation orders in relation to Article 31. All cases were classified as confiscation cases.

Case Start Date	Case Status	Lead Agency	Order Type	Decision	Decision Date	Original Order Amount	Amount Remitted	Total Amount Outstanding	Order Type	Legislation	Estimate Value	Decision Date
30/07/2009	Open	SFO	Confiscation Order			£0.00	£0.00	£0.00	Restraint Order	CJA 1988 (As Amended)	750,000.00	28/07/2009
18/06/2010	Closed	Metropolitan Police Service	Confiscation Order	Granted	11/11/2011	£1,100.00	£1,100.00	£0.00				
22/07/2010	Open	SFO										
31/05/2011	Open	SFO	Confiscation Order	Granted	11/07/2011	£1,000,000.00	£100,000.00	£900,000.00				
31/05/2011	Open	SFO	Confiscation Order	Granted	04/07/2011	£500,000.00	£200,000.00	£300,000.00				

07/06/2011	Closed	Hertfordshire Constabulary	Confiscation Order	Granted	07/06/2011	£230.00	£230.00	£0.00				
13/06/2011	Open	SFO										
13/06/2011	Open	SFO										
17/06/2011	Open	Devon & Cornwall Constabulary										
05/07/2011	Open	Greater Manchester Police										
07/07/2011	Open	Greater Manchester Police										
03/08/2011	Open	City of London Police										
10/08/2011	Open	Greater Manchester Police										
10/08/2011	Closed	SOCA	Confiscation Order	Granted	14/07/2011	£10,000.00	£10,000.00	£0.00				
11/08/2011	Closed	Greater Manchester Police										
11/08/2011	Closed	Greater Manchester Police										
19/08/2011	Open	Metropolitan Police Service	Confiscation Order	Granted	11/03/2011	£2,000.00	£2,015.51	£30.08				
07/10/2011	Open	Metropolitan Police Service										
13/10/2011	Open	Greater Manchester Police										
13/10/2011	Closed	Greater Manchester Police										
18/10/2011	Open	Metropolitan Police Service	Confiscation Order	Granted	14/10/2011	£225.00	£0.00	£230.18				

20/10/2011	Closed	Staffordshire Police	Confiscation Order	Granted	17/10/2011	£100.00	£100.00	£0.00				
03/11/2011	Open	Metropolitan Police Service										
15/11/2011	Open	Metropolitan Police Service	Confiscation Order	Granted	11/11/2011	£1.00	£1.00	£0.00				
12/12/2011	Open	South Wales Police										
12/12/2011	Open	South Wales Police										

The following statistics on restraint orders in relation to proceeds of crime and asset recovery were provided by Scotland's National Casework Division.

	Statistics	1 April 2010 to 31 March 2011	1 April 2009 to 31 March 2010	1 April 2008 to 31 March 2009
1.	Number of restraint orders (criminal investigation stage) under POCA 2002 Drugs.	1	4	11
a.	Number of restraint orders (criminal investigation stage) under POCA 2002 Other.	9	6	7
2.	Number of restraint orders (proceedings instituted stage) under POCA 2002 Drugs	25	43	61
a.	Number of restraint orders (proceedings instituted stage) under POCA 2002 Other	13	21	26
3.	Total estimated value of assets restrained (POCA 2002)	£9,775,998	£11,844,627.57	£27,330,601 (incl funds restrained of £555,000 from other jurisdiction)
4.	Number of restraint orders	0	1	0

	POC (Sc) Act 1995 Drugs			
5.	Number of restraint orders POC (Sc) Act 1995 Crime	3	6	11
6.	Total estimated value of assets restrained (POC (Sc) Act 1995)	£247,509	£363,247	£2,426,634
7.	Number of confiscation orders under POCA 2002 drugs	47	48	49
a.	Number of confiscation orders under POCA 2002 other	6	21	23
8.	Number of confiscation orders under POC (Sc) Act 1995. Drugs.	2	0	0
9.	Number of confiscation orders under POC (Sc) Act 1995 Crime	4	1	6
10.	Total amount of confisca- tion orders	£16,542,256	£2,285,011.26	£3,508,548

(b) Observations on the implementation of the article

- Article 31 par. 1 of the Convention requires States parties to adopt measures, to the greatest extent possible within their legal system, to enable the confiscation of proceeds or equivalent value of proceeds and of instrumentalities of offences established according to the Convention. According to Article 2 (g), “confiscation”, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority.

In the UK legal system, confiscation is mainly covered by the following two acts: the Proceeds of Crime Act 2002 and the Powers of Criminal Courts (Sentencing) Act 2000; the basic regulations in England & Wales, Scotland and Northern Ireland are identical.

The manner and the procedure of the confiscation order regarding proceeds of crime are determined by Section 6 of the Proceeds of Crime Act 2002. The State under evaluation reports that specific property is not subject to confiscation. One calculates the value of the proceeds of a person’s crime and sets that as a confiscation.

When considering confiscation the court must decide whether the defendant has a “criminal lifestyle”. A defendant will be deemed to have a “criminal lifestyle” if one

of the three conditions in section 75 par. 2 of Proceeds of Crime Act 2002 is satisfied. There has to be a minimum total benefit of 5.000 pounds Sterling for the second two of the three conditions below to be satisfied. The three conditions are: 1) it is a “lifestyle offence” specified in schedule 2 of Proceeds of Crime Act 2002 for England and Wales, schedule 4 for Scotland and schedule 5 for Northern Ireland, 2) it is part of a “course of criminal conduct” and 3) it is an offence committed over a period of at least 6 months and the defendant has benefited from it. For that reason the court must decide the recoverable amount and make an order for that amount. The recoverable amount is equal to the defendant’s benefit from the conduct concerned. If the defendant shows that the available amount is less than that benefit the recoverable amount is either the available amount or a nominal amount, if the available amount is nil.

The State under evaluation mentions a case according to which a lawyer was sentenced to 16 months’ imprisonment in June 2011 because of his involvement in drug trafficking. After a plea bargaining it was agreed that the amount gained from this offence amounts to 196,198 pounds Sterling and therefore a confiscation order was made in respect to this amount payable within 9 months after the date on which the order was made. In case he fails to pay the amount within the designated time period, he will be additionally sentenced to 2 years’ imprisonment and he will remain liable for the full amount. Regarding the question of how the competent authorities safeguard that the amount agreed and for which a confiscation order was made is the precise amount that the defendant actually gained from his illegal act, the UK clarified that this is a matter for prosecution independence and discretion. However, Section 16 of POCA requires the court to be provided with a statement of information detailing the defendant’s benefit from criminal conduct to assist the court in determining the level of the confiscation order. Section 6 of POCA sets out that the court must make a confiscation order for the recoverable amount. Section 7 specifies how the amount recoverable under a confiscation order must be calculated. The recoverable amount is the defendants’ benefit from their criminal conduct or the available amount they have to pay if lower.

In respect of the instrumentalities of crime, according to article 143 of the Powers of Criminal Courts (Sentencing) Act 2000 the property of a person convicted of any criminal offence, either seized or remaining in his possession, is confiscated if used for the purpose of committing or facilitating the commission of any offence or was intended by him to be used for that purpose. Confiscation means to deprive the offender of his rights, if any, in the property which it relates. Property confiscation is optional for the court (the court may make an order) and the court shall consider 1) the value of the property of the person convicted and 2) the potential economic impact of this deprivation on the said person.

The UK explained that it is not aware of cases of deprivation of equipment or means which were used for the offences included in the Convention; however, the policy for instrumentalities sits with Ministry of Justice. Property confiscation is also possible

for instrumentalities in respect to the offences mentioned by the Convention on a balance of probabilities test.

- Article 31 par. 2 of the Convention obligates States parties to enable the identification, tracing, freezing and seizing of items for the purpose of confiscation and recovery.

The basic regulations in England & Wales, Scotland and Northern Ireland are identical as regards the possibility of detection, freezing and seizure of property when a criminal investigation is conducted for an offence.

According to articles 40 to 41 of the Proceeds of Crime Act 2002 the Crown Court (for England and Wales), the Court (for Scotland) and the High Court (for Northern Ireland) may make a restraint order prohibiting any specified person from dealing with any realisable property held by him. The restraint orders apply where a criminal investigation has started or criminal proceedings are on-going (meaning that the investigation is not concluded yet) and there is reasonable cause to believe that the defendant has benefited from his criminal conduct. A “restraint order” can be made in respect of any “realisable property” which is defined as any “free property” held by the defendant or a recipient of a tainted gift (section 83 of Proceeds of Crime Act 2002). A restraint order prevents the specified person from dealing with any realisable property (section 41 of Proceeds of Crime Act 2002). A police officer or customs officer may seize property subject to a restraint order to prevent removal from England and Wales.

Temporary freezing is possible only by judicial process and under a 31-day moratorium period (Part 7 of Proceeds of Crime Act 2002). It was observed that any longer or extended period could have a negative impact on banks’ reporting or cooperating with law enforcement authorities. The moratorium period is not applicable to financial institutions in the overseas territories (Jersey, Guernsey).

Regarding the ability to seize instrumentalities used or destined for use under the Police and Criminal Evidence Act (section 19(3)), the UK indicated that there are number of seizure powers under UK law, none of which apply specifically to instrumentalities. However, the object seized, for whatever reason, may also be an instrumentality. The most obvious example of this is seizure of evidence under the Police and Criminal Evidence Act.

According to the relevant articles (40-41 for England and Wales, 120 for Scotland and 190 for Northern Ireland) this option of the Court is not compulsory (the court may make the order). The UK does not hold records of applications for restraint orders that were refused. In relation to seizure, not related to corruption, the UK reported one drug trafficking case involving a speed boat.

- Article 31 par. 3 of the Convention introduces an obligation for States parties to regulate the administration of frozen, seized or confiscated property.

In the UK, following the making of a restraint order, a management “receiver” (in Scotland: “administrator”) can be appointed to manage that property. In respect of England and Wales, his powers flow from section 49 of the Proceeds of Crime Act 2002:

49 Powers

(1) If the court appoints a receiver under section 48 it may act under this section on the application of the person who applied for the restraint order.

(2) The court may by order confer on the receiver the following powers in relation to any realisable property to which the restraint order applies—

(a) power to take possession of the property;

(b) power to manage or otherwise deal with the property;

(c) power to start, carry on or defend any legal proceedings in respect of the property;

(d) power to realise so much of the property as is necessary to meet the receiver’s remuneration and expenses.

(3) The court may by order confer on the receiver power to enter any premises in England and Wales and to do any of the following—

(a) search for or inspect anything authorised by the court;

(b) make or obtain a copy, photograph or other record of anything so authorised;

(c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.

(4) The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions—

(a) hold property;

(b) enter into contracts;

(c) sue and be sued;

(d) employ agents;

(e) execute powers of attorney, deeds or other instruments;

(f) take any other steps the court thinks appropriate.

(5) The court may order any person who has possession of realisable property to which the restraint order applies to give possession of it to the receiver.

(6) The court—

(a) may order a person holding an interest in realisable property to which the restraint order applies to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;

(b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions—

(a) section 9 of the Drug Trafficking Offences Act 1986 (c. 32);

(b) section 78 of the Criminal Justice Act 1988 (c. 33);

(c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17));

(d) section 27 of the Drug Trafficking Act 1994 (c. 37);

(e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

(8) The court must not—

(a) confer the power mentioned in subsection (2)(b) or (d) in respect of property, or

(b) exercise the power conferred on it by subsection (6) in respect of property, unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(9) The court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

(10) Managing or otherwise dealing with property includes—

(a) selling the property or any part of it or interest in it;

(b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;

(c) incurring capital expenditure in respect of the property.

Section 69 of the Proceeds of Crime Act² requires the receiver's powers to be exercised with a view to maintaining the value of the amount available for confiscation.

² <http://www.legislation.gov.uk/ukpga/2002/29/notes/division/5/2/17/1>

The UK has a value-based confiscation system rather than one relating to actual property. Consequently, the value of an offender's proceeds of crime is calculated and that amount is set out in a confiscation order requiring the offender to pay it. Actual property is not confiscated, although an enforcement receiver may be appointed in connection with the confiscation order to administer restrained assets. The powers of enforcement receivers are provided by section 51 of the Proceeds of Crime Act and are broadly similar to those of management receivers.

- Paragraphs 4 and 5 of Article 31 cover situations in which the source of proceeds or instrumentalities may not be immediately apparent, because the offenders have made their detection more difficult by mingling them with legitimate proceeds or by converting them into different forms. These paragraphs require States parties to enable the confiscation of property into which such proceeds have been converted, as well as intermingled proceeds of crime up to their assessed value. Paragraph 6 of Article 31 further provides that income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in the article, in the same manner and to the same extent as proceeds of crime.

UK confiscation is value based. Therefore, no regulation is mentioned in UK legislation according to which proceeds of crime have been transformed or converted or have been intermingled with property acquired from legitimate sources.

- Article 31 paragraph 7, sets forth procedural law requirements to facilitate the operation of the other provisions of Article 31 and of Article 55 (International cooperation for purposes of confiscation). It requires States parties to ensure that bank records, financial records (such as those of other financial services companies) and commercial records (such as of real estate transactions, shipping lines, freight forwarders and insurers) are subject to compulsory production, for example through production orders and search and seizure or similar means that ensure their availability to law enforcement officials for purposes of carrying out the measures called for in Articles 31 and 55. The same paragraph establishes the principle that bank secrecy cannot be raised by States as grounds for not implementing that paragraph.

The State under evaluation mentions three orders, the production order, the customer information order and the account monitoring order under sections 348 par. 4, 368 and 374 of Proceeds of Crime Act 2002 that have effect in spite of any restriction on the disclosure of information (however imposed). It is not compulsory for a judge to have to make an account monitoring order. As part of his consideration, the judge will need to be satisfied that the order is proportionate and necessary for the purposes of the investigation. It should be noted that account monitoring orders were specifically designed for bank accounts, but prosecutors and courts can take a wider interpretation if they so wish.

- Article 31 par. 8 suggests that States parties may wish to consider shifting the burden of proof to the defendant to show that alleged proceeds of crime were actually from legitimate sources. Because States may have constitutional or other constraints on such shifting of the burden of proof, States parties are only required to consider implementing this measure to the extent that it is consistent with the fundamental principles of their law.

The UK answers “yes in part” to the question if it has implemented the above measure. A fundamental principle of UK law is “he who accuses must prove”. According to article 10 of the Proceeds of Crime Act 2002, in order for the court to determine whether the property (proceeds of crime) acquired by the defendant has been derived from the general criminal conduct it must make the following four (4) assumptions: It must decide that any property 1) transferred to the defendant from after a date six years prior to the commencement of the criminal proceedings was obtained as a result of his general criminal conduct, 2) any property held by him at any time after the date of conviction was obtained as a result of criminal conduct, 3) any expenditure over the 6 year period mentioned above was met by property obtained as a result of criminal conduct and 4) any property obtained by the defendant was obtained free of any other interests in it. If the court does not make one or more of the required assumptions it must state its reasons. The legal test is set forth in Section 10(6) of POCA (Section 96 for Scotland), which requires a court to make certain assumptions to establish whether the criminal has benefited from general criminal conduct and, if so, by how much. The court is not, however, permitted to make an assumption in relation to property or expenditure if it is shown to be incorrect or there would be a serious risk of injustice if it were made.

- Article 31 par. 9 requires that the seizure and forfeiture requirements be interpreted as not prejudicing the rights of bona fide third parties, which would at a minimum exclude those with no knowledge of the offence or connection with the offender(s).

The State under evaluation answers “yes” to the question if it has implemented the above measure. It also adds that in enforcement hearings, third parties have a right to join as interested parties to make representations [Rule 60 par. 1 (6) of the Criminal Procedure Rules 2010]. In the Proceeds of Crime Act 2002-ENFORCEMENT titled “The role of third parties” it is mentioned that third parties have no right to be heard on a criminal confiscation hearing. A confiscation hearing is to calculate the value of the confiscation order. Third parties have the right to make representations at the enforcement hearing stage. Enforcement is about disposal of specific property and assets and it is at this stage that third parties can be heard.

Article 32. Protection of witnesses, experts and victims

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or in-

timidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

225. The State under review has provided a plethora of information regarding its very comprehensive provisions on the protection of witnesses, victims and other persons, as well as useful statistical data.

226. The relevant provisions of the Serious Organised Crime and Police Act 2005, of Part II Chapter 1 of the Youth Justice and Criminal Evidence Act 1999, and of Chapter 25 Part 3 Chapter 2 of the Coroners and Justice Act 2009 are the following:

Serious Organised Crime and Police Act 2005

“82. Protection of persons involved in investigations or proceedings

(1) A protection provider may make such arrangements as he considers appropriate for the purpose of protecting a person of a description specified in Schedule 5 if—

(a) the protection provider considers that the person's safety is at risk by virtue of his being a person of a description so specified, and

(b) the person is ordinarily resident in the United Kingdom.

(2) A protection provider may vary or cancel any arrangements made by him under subsection (1) if he considers it appropriate to do so.

(3) *If a protection provider makes arrangements under subsection (1) or cancels arrangements made under that subsection, he must record that he has done so.*

(4) *In determining whether to make arrangements under subsection (1), or to vary or cancel arrangements made under that subsection, a protection provider must, in particular, have regard to—*

(a) *the nature and extent of the risk to the person's safety,*

(b) *the cost of the arrangements,*

(c) *the likelihood that the person, and any person associated with him, will be able to adjust to any change in their circumstances which may arise from the making of the arrangements or from their variation or cancellation (as the case may be), and*

(d) *if the person is or might be a witness in legal proceedings (whether or not in the United Kingdom), the nature of the proceedings and the importance of his being a witness in those proceedings.*

(5) *A protection provider is—*

(a) *a chief officer of a police force in England and Wales;*

(b) *a chief constable of a police force in Scotland;*

(c) *the Chief Constable of the Police Service of Northern Ireland;*

(d) *the Director General of SOCA;*

(e) *any of the Commissioners for Her Majesty's Revenue and Customs;*

(f) *the Director of the Scottish Drug Enforcement Agency;*

(g) *a person designated by a person mentioned in any of the preceding paragraphs to exercise his functions under this section.*

(6) *The Secretary of State may, after consulting the Scottish Ministers, by order amend Schedule 5 so as to add, modify or omit any entry.*

(7) *Nothing in this section affects any power which a person has (otherwise than by virtue of this section) to make arrangements for the protection of another person."*

"SCHEDULE 5 PERSONS SPECIFIED FOR THE PURPOSES OF SECTION 82

1 A person who is or might be, or who has been, a witness in legal proceedings (whether or not in the United Kingdom).

2 A person who has complied with a disclosure notice given to him by virtue of section 62(1).

3(1) A person who has been given an immunity notice under section 71(1) if the notice continues to have effect in relation to him.

(2) A person who has been given a restricted use undertaking under section 72(1) if the undertaking continues to have effect in relation to him.

4 A person who is or has been a member of a jury.

5 A person who holds or has held judicial office (whether or not in the United Kingdom).

6 A person who is or has been a justice of the peace or who holds or has held a position comparable to that of a justice of the peace in a place outside the United Kingdom.

7 A person who is or has been a member of an international tribunal which has jurisdiction in criminal matters.

8 A person who conducts or has conducted criminal prosecutions (whether or not in the United Kingdom).

9(1) A person who is or has been the Director of Public Prosecutions for England and Wales.

(2) A person who is or has been a member of staff of the Crown Prosecution Service for England and Wales.

10(1) A person who is or has been the Director or deputy Director of Public Prosecutions for Northern Ireland.

(2) A person who is or has been a person appointed under Article 4(3) of the Prosecution of Offences (Northern Ireland) Order 1972 (S.I. 1972/538 (N.I.1)) to assist the Director of Public Prosecutions for Northern Ireland.

11 A person who is or has been under the direction and control of the Lord Advocate in the Lord Advocate's capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland.

12(1) A person who is or has been the Director of Revenue and Customs Prosecutions.

(2) A person who is or has been a member of staff of the Revenue and Customs Prosecutions Office.

13 A person who is or has been a constable.

14 A person who is or has been designated under—

(a) section 38(1) of the Police Reform Act 2002 (c. 30) (police powers for police authority employees);

(b) section 30(1) of the Police (Northern Ireland) Act 2003 (c. 6) (police powers for designated police support staff).

15 A person who is a police custody and security officer (within the meaning of section 9(1A) of the Police (Scotland) Act 1967 (c. 77)) of a police authority in Scotland.

16 A person who—

(a) is or has been an officer of Revenue and Customs;

(b) is or has been a member of staff of Her Majesty's Customs and Excise.

17 A person who is or has been a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971 (c. 77).

18 A person who is or has been a member of staff of SOCA.

19 (1) A person who is or has been the Director General of the National Criminal Intelligence Service or the Director General of the National Crime Squad.

(2) A person who is or has been under the direction and control of the Director General of the National Criminal Intelligence Service or the Director General of the National Crime Squad.

20(1) A person who is or has been the Director of the Scottish Drug Enforcement Agency.

(2) A person who is or has been under the direction and control of the Director of the Scottish Drug Enforcement Agency.

21(1) A person who is or has been the Director of the Assets Recovery Agency.

(2) A person who is or has been a member of staff of the Assets Recovery Agency or a person with whom the Director of that Agency has made arrangements for the provision of services under section 1(4) of the Proceeds of Crime Act 2002 (c. 29).

22(1) A person who is or has been the head of the Civil Recovery Unit, that is to say of the organisation known by that name which acts on behalf of the Scottish Ministers in proceedings under Part 5 of the Proceeds of Crime Act 2002 (civil recovery of the proceeds etc. of unlawful conduct).

(2) A person who is or has been a member of staff of the Civil Recovery Unit.

23(1) A person who is or has been a person appointed by virtue of section 246(1) of the Proceeds of Crime Act 2002 (c. 29) as an interim receiver.

(2) A person who assists or has assisted an interim receiver so appointed in the exercise of such functions as are mentioned in section 247 of that Act.

24(1) A person who is or has been a person appointed by virtue of section 256(1) of the Proceeds of Crime Act 2002 as an interim administrator.

(2) A person who assists or has assisted an interim administrator so appointed in the exercise of such functions as are mentioned in section 257 of that Act.

25(1) *A person who is or has been the head of the Financial Crime Unit, that is to say of the organisation known by that name which, among other activities, acts on behalf of the Lord Advocate in proceedings under Part 3 of the Proceeds of Crime Act 2002 (confiscation: Scotland).*

(2) *A person who is or has been a member of staff of the Financial Crime Unit.*

26 *A person who is or has been a prison officer.*

27 *A person who is or has been a covert human intelligence source (within the meaning of section 26(8) of the Regulation of Investigatory Powers Act 2000 (c. 23) or of section 1(7) of the Regulation of Investigatory Powers (Scotland) Act 2000 (asp 11)).*

28 *A person—*

(a) *who is a member of the family of a person specified in any of the preceding paragraphs;*

(b) *who lives or has lived in the same household as a person so specified;*

(c) *who has or has had a close personal relationship with a person so specified.”*

Youth Justice and Criminal Evidence Act 1999 (this is the original version -as it was originally made)

“17 Witnesses eligible for assistance on grounds of fear or distress about testifying.

(1) *For the purposes of this Chapter a witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this subsection if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.*

(2) *In determining whether a witness falls within subsection (1) the court must take into account, in particular—*

(a) *the nature and alleged circumstances of the offence to which the proceedings relate;*

(b) *the age of the witness;*

(c) *such of the following matters as appear to the court to be relevant, namely—*

(i) *the social and cultural background and ethnic origins of the witness,*

(ii) *the domestic and employment circumstances of the witness, and*

(iii) *any religious beliefs or political opinions of the witness;*

(d) *any behaviour towards the witness on the part of—*

(i) *the accused,*

(ii) *members of the family or associates of the accused, or*

(iii) any other person who is likely to be an accused or a witness in the proceedings.

(3) In determining that question the court must in addition consider any views expressed by the witness.

(4) Where the complainant in respect of a sexual offence is a witness in proceedings relating to that offence (or to that offence and any other offences), the witness is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the court of the witness' wish not to be so eligible by virtue of this subsection.

18 Special measures available to eligible witnesses.

(1) For the purposes of this Chapter—

(a) the provision which may be made by a special measures direction by virtue of each of sections 23 to 30 is a special measure available in relation to a witness eligible for assistance by virtue of section 16; and

(b) the provision which may be made by such a direction by virtue of each of sections 23 to 28 is a special measure available in relation to a witness eligible for assistance by virtue of section 17;

but this subsection has effect subject to subsection (2).

(2) Where (apart from this subsection) a special measure would, in accordance with subsection (1)(a) or (b), be available in relation to a witness in any proceedings, it shall not be taken by a court to be available in relation to the witness unless—

(a) the court has been notified by the Secretary of State that relevant arrangements may be made available in the area in which it appears to the court that the proceedings will take place, and

(b) the notice has not been withdrawn.

(3) In subsection (2) “relevant arrangements” means arrangements for implementing the measure in question which cover the witness and the proceedings in question.

(4) The withdrawal of a notice under that subsection relating to a special measure shall not affect the availability of that measure in relation to a witness if a special measures direction providing for that measure to apply to the witness's evidence has been made by the court before the notice is withdrawn.

(5) The Secretary of State may by order make such amendments of this Chapter as he considers appropriate for altering the special measures which, in accordance with subsection (1)(a) or (b), are available in relation to a witness eligible for assistance by virtue of section 16 or (as the case may be) section 17, whether—

(a) by modifying the provisions relating to any measure for the time being available in relation to such a witness,

(b) by the addition—

(i) (with or without modifications) of any measure which is for the time being available in relation to a witness eligible for assistance by virtue of the other of those sections, or

(ii) of any new measure, or

(c) by the removal of any measure.

19 Special measures direction relating to eligible witness.

(1) This section applies where in any criminal proceedings—

(a) a party to the proceedings makes an application for the court to give a direction under this section in relation to a witness in the proceedings other than the accused, or

(b) the court of its own motion raises the issue whether such a direction should be given.

(2) Where the court determines that the witness is eligible for assistance by virtue of section 16 or 17, the court must then—

(a) determine whether any of the special measures available in relation to the witness (or any combination of them) would, in its opinion, be likely to improve the quality of evidence given by the witness; and

(b) if so—

(i) determine which of those measures (or combination of them) would, in its opinion, be likely to maximise so far as practicable the quality of such evidence; and

(ii) give a direction under this section providing for the measure or measures so determined to apply to evidence given by the witness.

(3) In determining for the purposes of this Chapter whether any special measure or measures would or would not be likely to improve, or to maximise so far as practicable, the quality of evidence given by the witness, the court must consider all the circumstances of the case, including in particular—

(a) any views expressed by the witness; and

(b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.

(4) A special measures direction must specify particulars of the provision made by the direction in respect of each special measure which is to apply to the witness's evidence.

(5) In this Chapter "special measures direction" means a direction under this section.

(6) *Nothing in this Chapter is to be regarded as affecting any power of a court to make an order or give leave of any description (in the exercise of its inherent jurisdiction or otherwise)—*

(a) *in relation to a witness who is not an eligible witness, or*

(b) *in relation to an eligible witness where (as, for example, in a case where a foreign language interpreter is to be provided) the order is made or the leave is given otherwise than by reason of the fact that the witness is an eligible witness.*

20 Further provisions about directions: general.

(1) *Subject to subsection (221.) and section 21(8), a special measures direction has binding effect from the time it is made until the proceedings for the purposes of which it is made are either—*

(a) *determined (by acquittal, conviction or otherwise), or*

(b) *abandoned,*

in relation to the accused or (if there is more than one) in relation to each of the accused.

(2) *The court may discharge or vary (or further vary) a special measures direction if it appears to the court to be in the interests of justice to do so, and may do so either—*

(a) *on an application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time, or*

(b) *of its own motion.*

(3) *In subsection (2) “the relevant time” means—*

(a) *the time when the direction was given, or*

(b) *if a previous application has been made under that subsection, the time when the application (or last application) was made.*

(4) *Nothing in section 24(2) and (3), 27(4) to (7) or 28(4) to (6) is to be regarded as affecting the power of the court to vary or discharge a special measures direction under subsection (2).*

(5) *The court must state in open court its reasons for—*

(a) *giving or varying,*

(b) *refusing an application for, or for the variation or discharge of, or*

(c) *discharging, a special measures direction and, if it is a magistrates’ court, must cause them to be entered in the register of its proceedings.*

(6) *Rules of court may make provision—*

- (a) for uncontested applications to be determined by the court without a hearing;*
- (b) for preventing the renewal of an unsuccessful application for a special measures direction except where there has been a material change of circumstances;*
- (c) for expert evidence to be given in connection with an application for, or for varying or discharging, such a direction;*

21 Special provisions relating to child witnesses.

(1) For the purposes of this section—

(a) a witness in criminal proceedings is a “child witness” if he is an eligible witness by reason of section 16(1)(a) (whether or not he is an eligible witness by reason of any other provision of section 16 or 17);

(b) a child witness is “in need of special protection” if the offence (or any of the offences) to which the proceedings relate is—

(i) an offence falling within section 35(3)(a) (sexual offences etc.), or

(ii) an offence falling within section 35(3)(b), (c) or (d) (kidnapping, assaults etc.); and

(c) a “relevant recording”, in relation to a child witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.

(2) Where the court, in making a determination for the purposes of section 19(2), determines that a witness in criminal proceedings is a child witness, the court must—

(a) first have regard to subsections (3) to (7) below; and

(b) then have regard to section 19(2);

and for the purposes of section 19(2), as it then applies to the witness, any special measures required to be applied in relation to him by virtue of this section shall be treated as if they were measures determined by the court, pursuant to section 19(2)(a) and (b)(i), to be ones that (whether on their own or with any other special measures) would be likely to maximise, so far as practicable, the quality of his evidence.

(3) The primary rule in the case of a child witness is that the court must give a special measures direction in relation to the witness which complies with the following requirements—

(a) it must provide for any relevant recording to be admitted under section 27 (video recorded evidence in chief); and

(b) it must provide for any evidence given by the witness in the proceedings which is not given by means of a video recording (whether in chief or otherwise) to be given by means of a live link in accordance with section 24.

(4) The primary rule is subject to the following limitations—

(a) the requirement contained in subsection (3)(a) or (b) has effect subject to the availability (within the meaning of section 18(2)) of the special measure in question in relation to the witness;

(b) the requirement contained in subsection (3)(a) also has effect subject to section 27(2); and

(c) the rule does not apply to the extent that the court is satisfied that compliance with it would not be likely to maximise the quality of the witness's evidence so far as practicable (whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason).

(5) However, subsection (4)(c) does not apply in relation to a child witness in need of special protection.

(6) Where a child witness is in need of special protection by virtue of subsection (1)(b)(i), any special measures direction given by the court which complies with the requirement contained in subsection (3)(a) must in addition provide for the special measure available under section 28 (video recorded cross-examination or re-examination) to apply in relation to—

(a) any cross-examination of the witness otherwise than by the accused in person, and

(b) any subsequent re-examination.

(7) The requirement contained in subsection (6) has effect subject to the following limitations—

(a) it has effect subject to the availability (within the meaning of section 18(2)) of that special measure in relation to the witness; and

(b) it does not apply if the witness has informed the court that he does not want that special measure to apply in relation to him.

(8) Where a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 16(1)(a), then—

(a) subject to subsection (9) below, and

(b) except where the witness has already begun to give evidence in the proceedings,

the direction shall cease to have effect at the time when the witness attains the age of 17.

(9) Where a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 16(1)(a) and—

(a) the direction provides—

(i) for any relevant recording to be admitted under section 27 as evidence in chief of the witness, or

(ii) for the special measure available under section 28 to apply in relation to the witness, and

(b) if it provides for that special measure to so apply, the witness is still under the age of 17 when the video recording is made for the purposes of section 28,

then, so far as it provides as mentioned in paragraph (a)(i) or (ii) above, the direction shall continue to have effect in accordance with section 20(1) even though the witness subsequently attains that age.

22 Extension of provisions of section 21 to certain witnesses over 17.

(1) For the purposes of this section—

(a) a witness in criminal proceedings (other than the accused) is a “qualifying witness” if he—

(i) is not an eligible witness at the time of the hearing (as defined by section 16(3)), but

(ii) was under the age of 17 when a relevant recording was made;

(b) a qualifying witness is “in need of special protection” if the offence (or any of the offences) to which the proceedings relate is—

(i) an offence falling within section 35(3)(a) (sexual offences etc.), or

(ii) an offence falling within section 35(3)(b), (c) or (d) (kidnapping, assaults etc.); and

(c) a “relevant recording”, in relation to a witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.

(2) Subsections (2) to (7) of section 21 shall apply as follows in relation to a qualifying witness—

(a) subsections (2) to (4), so far as relating to the giving of a direction complying with the requirement contained in subsection (3)(a), shall apply to a qualifying witness in respect of the relevant recording as they apply to a child witness (within the meaning of that section);

(b) subsection (5), so far as relating to the giving of such a direction, shall apply to a qualifying witness in need of special protection as it applies to a child witness in need of special protection (within the meaning of that section); and

(c) subsections (6) and (7) shall apply to a qualifying witness in need of special protection by virtue of subsection (1)(b)(i) above as they apply to such a child witness as is mentioned in subsection (6).

23 Screening witness from accused.

(1) A special measures direction may provide for the witness, while giving testimony or being sworn in court, to be prevented by means of a screen or other arrangement from seeing the accused.

(2) But the screen or other arrangement must not prevent the witness from being able to see, and to be seen by—

(a) the judge or justices (or both) and the jury (if there is one);

(b) legal representatives acting in the proceedings; and

(c) any interpreter or other person appointed (in pursuance of the direction or otherwise) to assist the witness.

(3) Where two or more legal representatives are acting for a party to the proceedings, subsection (2)(b) is to be regarded as satisfied in relation to those representatives if the witness is able at all material times to see and be seen by at least one of them.

24 Evidence by live link.

(1) A special measures direction may provide for the witness to give evidence by means of a live link.

(2) Where a direction provides for the witness to give evidence by means of a live link, the witness may not give evidence in any other way without the permission of the court.

(3) The court may give permission for the purposes of subsection (2) if it appears to the court to be in the interests of justice to do so, and may do so either—

(a) on an application by a party to the proceedings, if there has been a material change of circumstances since the relevant time, or

(b) of its own motion.

(4) In subsection (3) “the relevant time” means—

(a) the time when the direction was given, or

(b) if a previous application has been made under that subsection, the time when the application (or last application) was made.

(5) Where in proceedings before a magistrates’ court—

(a) evidence is to be given by means of a live link in accordance with a special measures direction, but

(b) suitable facilities for receiving such evidence are not available at any petty-sessional court-house in which that court can (apart from this subsection) lawfully sit, the court may sit for the purposes of the whole or any part of those proceedings at a place where such fa-

ilities are available and which has been appointed for the purposes of this subsection by the justices acting for the petty sessions area for which the court acts.

*(6) A place appointed under subsection (5) may be outside the petty sessions area for which it is appointed; but (if so) it is to be regarded as being in that area for the purpose of the jurisdiction of the justices acting for that area. *

(7) In this section “petty-sessional court-house” has the same meaning as in the Magistrates’ Courts Act 1980 and “petty sessions area” has the same meaning as in the Justices of the Peace Act 1997.

(8) In this Chapter “live link” means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there and to be seen and heard by the persons specified in section 23(2)(a) to (c).

25 Evidence given in private.

(1) A special measures direction may provide for the exclusion from the court, during the giving of the witness’s evidence, of persons of any description specified in the direction.

(2) The persons who may be so excluded do not include—

(a) the accused,

(b) legal representatives acting in the proceedings, or

(c) any interpreter or other person appointed (in pursuance of the direction or otherwise) to assist the witness.

(3) A special measures direction providing for representatives of news gathering or reporting organisations to be so excluded shall be expressed not to apply to one named person who—

(a) is a representative of such an organisation, and

(b) has been nominated for the purpose by one or more such organisations,

unless it appears to the court that no such nomination has been made.

(4) A special measures direction may only provide for the exclusion of persons under this section where—

(a) the proceedings relate to a sexual offence; or

(b) it appears to the court that there are reasonable grounds for believing that any person other than the accused has sought, or will seek, to intimidate the witness in connection with testifying in the proceedings.

(5) Any proceedings from which persons are excluded under this section (whether or not those persons include representatives of news gathering or reporting organisations) shall nevertheless be taken to be held in public for the purposes of any privilege or exemption.

26 Removal of wigs and gowns.

A special measures direction may provide for the wearing of wigs or gowns to be dispensed with during the giving of the witness's evidence.

27 Video recorded evidence in chief.

(1) A special measures direction may provide for a video recording of an interview of the witness to be admitted as evidence in chief of the witness.

(2) A special measures direction may, however, not provide for a video recording, or a part of such a recording, to be admitted under this section if the court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording, or that part of it, should not be so admitted.

(3) In considering for the purposes of subsection (2) whether any part of a recording should not be admitted under this section, the court must consider whether any prejudice to the accused which might result from that part being so admitted is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.

(4) Where a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if—

(a) it appears to the court that—

(i) the witness will not be available for cross-examination (whether conducted in the ordinary way or in accordance with any such direction), and

(ii) the parties to the proceedings have not agreed that there is no need for the witness to be so available; or

(b) any rules of court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court.

(5) Where a recording is admitted under this section—

(a) the witness must be called by the party tendering it in evidence, unless—

(i) a special measures direction provides for the witness's evidence on cross-examination to be given otherwise than by testimony in court, or

(ii) the parties to the proceedings have agreed as mentioned in subsection (4)(a)(ii); and

(b) the witness may not give evidence in chief otherwise than by means of the recording—

(i) as to any matter which, in the opinion of the court, has been dealt with adequately in the witness's recorded testimony, or

(ii) without the permission of the court, as to any other matter which, in the opinion of the court, is dealt with in that testimony.

(6) Where in accordance with subsection (2) a special measures direction provides for part only of a recording to be admitted under this section, references in subsections (4) and (5) to the recording or to the witness's recorded testimony are references to the part of the recording or testimony which is to be so admitted.

(7) The court may give permission for the purposes of subsection (5)(b)(ii) if it appears to the court to be in the interests of justice to do so, and may do so either—

(a) on an application by a party to the proceedings, if there has been a material change of circumstances since the relevant time, or

(b) of its own motion.

(8) In subsection (7) "the relevant time" means—

(a) the time when the direction was given, or

(b) if a previous application has been made under that subsection, the time when the application (or last application) was made.

(9) The court may, in giving permission for the purposes of subsection (5)(b)(ii), direct that the evidence in question is to be given by the witness by means of a live link; and, if the court so directs, subsections (5) to (7) of section 24 shall apply in relation to that evidence as they apply in relation to evidence which is to be given in accordance with a special measures direction.

(10) A magistrates' court inquiring into an offence as examining justices under section 6 of the M1Magistrates' Courts Act 1980 may consider any video recording in relation to which it is proposed to apply for a special measures direction providing for it to be admitted at the trial in accordance with this section.

(11) Nothing in this section affects the admissibility of any video recording which would be admissible apart from this section.

28 Video recorded cross-examination or re-examination.

(1) Where a special measures direction provides for a video recording to be admitted under section 27 as evidence in chief of the witness, the direction may also provide—

(a) for any cross-examination of the witness, and any re-examination, to be recorded by means of a video recording; and

(b) for such a recording to be admitted, so far as it relates to any such cross-examination or re-examination, as evidence of the witness under cross-examination or on re-examination, as the case may be.

(2) Such a recording must be made in the presence of such persons as rules of court or the direction may provide and in the absence of the accused, but in circumstances in which—

(a) the judge or justices (or both) and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the persons in whose presence the recording is being made, and

(b) the accused is able to see and hear any such examination and to communicate with any legal representative acting for him.

(3) Where two or more legal representatives are acting for a party to the proceedings, subsection (2)(a) and (b) are to be regarded as satisfied in relation to those representatives if at all material times they are satisfied in relation to at least one of them.

(4) Where a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if any requirement of subsection (2) or rules of court or the direction has not been complied with to the satisfaction of the court.

(5) Where in pursuance of subsection (1) a recording has been made of any examination of the witness, the witness may not be subsequently cross-examined or re-examined in respect of any evidence given by the witness in the proceedings (whether in any recording admissible under section 27 or this section or otherwise than in such a recording) unless the court gives a further special measures direction making such provision as is mentioned in subsection (1)(a) and (b) in relation to any subsequent cross-examination, and re-examination, of the witness.

(6) The court may only give such a further direction if it appears to the court—

(a) that the proposed cross-examination is sought by a party to the proceedings as a result of that party having become aware, since the time when the original recording was made in pursuance of subsection (1), of a matter which that party could not with reasonable diligence have ascertained by then, or

(b) that for any other reason it is in the interests of justice to give the further direction.

(7) Nothing in this section shall be read as applying in relation to any cross-examination of the witness by the accused in person (in a case where the accused is to be able to conduct any such cross-examination).

29 Examination of witness through intermediary.

(1) A special measures direction may provide for any examination of the witness (however and wherever conducted) to be conducted through an interpreter or other person approved by the court for the purposes of this section (“an intermediary”).

(2) The function of an intermediary is to communicate—

(a) to the witness, questions put to the witness, and

(b) to any person asking such questions, the answers given by the witness in reply to them, and to explain such questions or answers so far as necessary to enable them to be understood by the witness or person in question.

(3) Any examination of the witness in pursuance of subsection (1) must take place in the presence of such persons as rules of court or the direction may provide, but in circumstances in which—

(a) the judge or justices (or both) and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the intermediary, and

(b) (except in the case of a video recorded examination) the jury (if there is one) are able to see and hear the examination of the witness.

(4) Where two or more legal representatives are acting for a party to the proceedings, subsection (3)(a) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(5) A person may not act as an intermediary in a particular case except after making a declaration, in such form as may be prescribed by rules of court, that he will faithfully perform his function as intermediary.

(6) Subsection (1) does not apply to an interview of the witness which is recorded by means of a video recording with a view to its admission as evidence in chief of the witness; but a special measures direction may provide for such a recording to be admitted under section 27 if the interview was conducted through an intermediary and—

(a) that person complied with subsection (5) before the interview began, and

(b) the court’s approval for the purposes of this section is given before the direction is given.

(7) Section 1 of the Perjury Act 1911 (perjury) shall apply in relation to a person acting as an intermediary as it applies in relation to a person lawfully sworn as an interpreter in a judicial proceeding; and for this purpose, where a person acts as an intermediary in any proceeding which is not a judicial proceeding for the purposes of that section, that proceeding shall be taken to be part of the judicial proceeding in which the witness’s evidence is given.”

“86. Witness anonymity orders

(1) In this Chapter a “witness anonymity order” is an order made by a court that requires such specified measures to be taken in relation to a witness in criminal proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.

(2) The kinds of measures that may be required to be taken in relation to a witness include measures for securing one or more of the following—

(a) that the witness's name and other identifying details may be—

(i) withheld;

(ii) removed from materials disclosed to any party to the proceedings;

(b) that the witness may use a pseudonym;

(c) that the witness is not asked questions of any specified description that might lead to the identification of the witness;

(d) that the witness is screened to any specified extent;

(e) that the witness's voice is subjected to modulation to any specified extent.

(3) Subsection (2) does not affect the generality of subsection (1).

(4) Nothing in this section authorises the court to require—

(a) the witness to be screened to such an extent that the witness cannot be seen by—

(i) the judge or other members of the court (if any), or

(ii) the jury (if there is one);

(b) the witness's voice to be modulated to such an extent that the witness's natural voice cannot be heard by any persons within paragraph (a)(i) or (ii).

(5) In this section “specified” means specified in the witness anonymity order concerned.

87. Applications

(1) An application for a witness anonymity order to be made in relation to a witness in criminal proceedings may be made to the court by the prosecutor or the defendant.

(2) Where an application is made by the prosecutor, the prosecutor—

(a) must (unless the court directs otherwise) inform the court of the identity of the witness, but

(b) is not required to disclose in connection with the application—

(i) the identity of the witness, or

(ii) any information that might enable the witness to be identified,

to any other party to the proceedings or his or her legal representatives.

(3) Where an application is made by the defendant, the defendant—

(a) must inform the court and the prosecutor of the identity of the witness, but

(b) (if there is more than one defendant) is not required to disclose in connection with the application—

(i) the identity of the witness, or

(ii) any information that might enable the witness to be identified,

to any other defendant or his or her legal representatives.

(4) Accordingly, where the prosecutor or the defendant proposes to make an application under this section in respect of a witness, any relevant material which is disclosed by or on behalf of that party before the determination of the application may be disclosed in such a way as to prevent—

(a) the identity of the witness, or

(b) any information that might enable the witness to be identified,

from being disclosed except as required by subsection (2)(a) or (3)(a).

(5) “Relevant material” means any document or other material which falls to be disclosed, or is sought to be relied on, by or on behalf of the party concerned in connection with the proceedings or proceedings preliminary to them.

(6) The court must give every party to the proceedings the opportunity to be heard on an application under this section.

(7) But subsection (6) does not prevent the court from hearing one or more parties in the absence of a defendant and his or her legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

(8) Nothing in this section is to be taken as restricting any power to make rules of court.

88. Conditions for making order

(1) This section applies where an application is made for a witness anonymity order to be made in relation to a witness in criminal proceedings.

(2) The court may make such an order only if it is satisfied that Conditions A to C below are met.

(3) Condition A is that the proposed order is necessary—

(a) in order to protect the safety of the witness or another person or to prevent any serious damage to property, or

(b) in order to prevent real harm to the public interest (whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities, or otherwise).

(4) Condition B is that, having regard to all the circumstances, the effect of the proposed order would be consistent with the defendant receiving a fair trial.

(5) Condition C is that the importance of the witness's testimony is such that in the interests of justice the witness ought to testify and—

(a) the witness would not testify if the proposed order were not made, or

(b) there would be real harm to the public interest if the witness were to testify without the proposed order being made.

(6) In determining whether the proposed order is necessary for the purpose mentioned in subsection (3)(a), the court must have regard (in particular) to any reasonable fear on the part of the witness—

(a) that the witness or another person would suffer death or injury, or

(b) that there would be serious damage to property,

if the witness were to be identified.

89. Relevant considerations

(1) When deciding whether Conditions A to C in section 88 are met in the case of an application for a witness anonymity order, the court must have regard to—

(a) the considerations mentioned in subsection (2) below, and

(b) such other matters as the court considers relevant.

(2) The considerations are—

(a) the general right of a defendant in criminal proceedings to know the identity of a witness in the proceedings;

(b) the extent to which the credibility of the witness concerned would be a relevant factor when the weight of his or her evidence comes to be assessed;

(c) whether evidence given by the witness might be the sole or decisive evidence implicating the defendant;

(d) whether the witness's evidence could be properly tested (whether on grounds of credibility or otherwise) without his or her identity being disclosed;

(e) whether there is any reason to believe that the witness—

(i) has a tendency to be dishonest, or

(ii) has any motive to be dishonest in the circumstances of the case,

having regard (in particular) to any previous convictions of the witness and to any relationship between the witness and the defendant or any associates of the defendant;

(f) whether it would be reasonably practicable to protect the witness by any means other than by making a witness anonymity order specifying the measures that are under consideration by the

90. Warning to jury

(1) Subsection (2) applies where, on a trial on indictment with a jury, any evidence has been given by a witness at a time when a witness anonymity order applied to the witness.

(2) The judge must give the jury such warning as the judge considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the defendant.”

(b) Observations on the implementation of the article

- UK chief officers of police and heads of law enforcement agencies have access to a range of measures to protect witnesses ranging from personal and home security measures, such as panic alarms, mobile phones, additional locks, sensors, fireproof letterboxes and CCTV to full witness protection programmes. Such programmes typically involve witness relocation and (in some circumstances) a change of identity.

The decision as to who will be accepted on to a witness protection programme will be made by chief Officers of the relevant force area or the Director-General of the law enforcement agency involved in the case. The powers to provide “protected persons status” are defined in law under Section 82 of the Serious Organised Crime and Police Act 2005 and granted to chief officers of police and heads of law enforcement agencies.

The Act requires that such “protection providers” should consider certain factors when deciding whether a person can be protected under the legislation. This includes: (i) the extent and risk to their safety; (ii) the cost of the arrangements; (iii) the importance of their testimony; and (iv) the likelihood that they will cope with relocation and/or a change in identity.

Those eligible for protection under the Act are defined in Schedule 5 of the Act. This includes: (i) witnesses in the proceedings; (ii) informants and other assisting offenders; (iii) criminal justice practitioners including police, prison and other law enforcement officers, judges, magistrates and prosecutors; (iv) jurors; (v) family members of

those who have lived or are living in the same household or who have a close personal relationship with the person specified above.

Protection providers also receive support from a central services unit within the National Policing Improvement Agency - the Central Witness Bureau – which provides the following services: • A national training programme for protection officers and managers. • A good practice guide to promote national standards of service. • The National Witness Mobility Service (NWMS) which arranges the relocation of witnesses living in social housing to safer areas. • Identity Changes. • Client Support Services providing specialist advice and support to witness protection officers aimed at developing speedier and more effective witness protection arrangements. This includes providing better access to sustainable welfare packages, education, training and employment opportunities, medical care, psychological and emotional support and drug treatment. Memoranda of understanding and service level agreements are being developed, where appropriate.

Witness protection is typically achieved by relocating the witness and (in some circumstances) changing his or her identity, both of which are supported by a high degree of confidentiality to prevent the disclosure of the whereabouts of the witness. Part 2, Chapter 4 of the Serious Organised Crime and Police Act 2005 contains offences for disclosing information relating to protection arrangements. Section 86 creates the offence of disclosing information about a person's protection arrangements. Section 88 creates the offence of disclosing information about a protected person's new identity. The purpose of these provisions is to deter individuals and organisations from disclosing information which could be harmful to protected persons. They also apply to protected persons themselves in cases where they reveal their true identities in order to cause harm to another protected person, such as an ex-partner.

In most cases protection is provided for life. In 2009/10 forces across the UK managed a total of 763 protected person cases (192 of which were new cases and the remainder ongoing) involving 1500 individuals. There are currently around 1500 individuals being protected in national protection programmes at a cost of around £20 million. Forces take on between 150-200 new cases per year, most of which will involve permanent relocation and around a quarter of which will involve a full identity change. The average cost per case is around £25,000.

- With regard to par. 2(b) of Article 32, in England & Wales Chapter 23 Part II Chapter 1 of the Youth Justice and Criminal Evidence Act 1999 provides for a number of 'Special Measures' to assist vulnerable or intimidated witnesses give their best evidence in court. This includes: • Live links which enable the witness to give evidence during the trial from outside the courtroom through a televised link. The witness may be either accommodated within the court building or in a suitable location outside the court. This is particularly helpful in cases where intimidated witnesses have been relocated for their own safety and would not wish to return to the area. • Screens may be made available to shield the witness from the defendant. • Evidence given in pri-

vate excludes from the Court of members of the public and the press (except for one named person to represent the press).

Similar provisions apply in Scotland. The Vulnerable Witnesses (Scotland) Act 2004 amended the Criminal Procedure (Scotland) Act 1995 to provide for a number of "special measures" which are designed to make it easier for vulnerable adult witnesses to give their evidence in court. It applies to all hearings in criminal courts (except Justice of the Peace Courts) and not just the trial. Similar to the position in England and Wales, the types of special measures that can be used include: -use of a live television link - use of a screen - use of a supporter - giving evidence in chief in the form of a prior statement - taking evidence by a commissioner. Clearing the court is not a special measure in Scotland but, while done at the discretion of the court, it is routinely agreed when child witnesses or victims of sexual offences are giving evidence. Additionally, the court can, at common law, make or authorise any special arrangements for the taking of evidence by any person. Over 450 notices/applications are currently submitted per annum for special measures involving the use of videoconference technology. The UK can relocate witnesses to Scotland in appropriate circumstances.

The Northern Ireland equivalent to Part II of the Youth Justice and Criminal Evidence Act 1999 is Part II of the Criminal Evidence (NI) Order 1999. Various categories of witness are eligible to avail of special measures in criminal proceedings in Northern Ireland at present under the provisions of this Act. These categories include witnesses whose evidence is likely to be diminished by reason of fear and distress in connection with giving evidence. The types of special measure are as follows: The use of screens; Giving evidence by way of live television link; Giving evidence in private; The removal of wigs and gowns; Video-recorded evidence-in-chief; Video-recorded cross-examination or re-examination; Examination of a witness through the use of an intermediary and the use of aids to communication. Witnesses who are eligible for special measures on the basis that the quality of their evidence is likely to be diminished by reason of fear or distress in connection with giving evidence are allowed to apply for any special measure apart from the ones which permit the use of intermediaries or aids to communication.

The Justice (Northern Ireland) Act 2011 amends these provisions by the extension of special measures for the giving of evidence by vulnerable and intimidated witnesses and also the extension of the range of matters that can be dealt with by way of video-link. In addition, the Northern Ireland Law Commission recently recommended that a scheme of special measures be put in place on a statutory basis in relation to civil proceedings in Northern Ireland.

- Additionally, in England & Wales and Northern Ireland, Chapter 25 Part 3 Chapter 2 of the Coroners and Justice Act 2009 provides for the court to make a "witness anonymity order" allowing measures to be taken which the court thinks appropriate to ensure that the identity of the witness is not disclosed in or in connection with the

court proceedings. This could include one or more of the following:

- The witness's name and other identifying details being (i) withheld or (ii) removed from materials disclosed to any party to the proceedings.
- The witness using a pseudonym.
- The witness not being asked questions that might lead to him/her being identified.
- The witness being screened from the defendant.
- The witness's voice being modulated so that their natural voice cannot be heard by the defendant.

Breach of the order by the unauthorised disclosure of a witness's identity will be dealt with as contempt of court. The legislation sets out three conditions for making an order, i.e. that:

- the measures must be necessary in order to protect the safety of the witness or another person or in order to prevent real harm to the public interest;
- the defendant must receive a fair trial, and
- the order must be in the interests of justice.

The legislation sets out a non-exhaustive list of considerations to which the court must have regard when deciding whether these conditions are met. These cover:

- the defendant's general right to know the identity of a witness;
- the extent to which credibility is relevant;
- whether the witness's evidence might be the sole or decisive evidence implicating the defendant;
- whether the witness's evidence can be properly tested;
- whether the witness has a tendency or any motive to be dishonest;
- whether alternative means could be used to protect the witness's identity.

Sections 271 N to Z of the Criminal Procedure (Scotland) Act 1995 were amended by section 90 of the Criminal Justice and Licensing (Scotland) Act 2010 to make provision for a statutory regime for applications for witness anonymity orders. Applications may be made by the prosecutor or defence to a court in solemn or summary proceedings where it is necessary to protect the safety of the witness or another person, prevent serious damage to property or prevent real harm to the public interest. Steps which might be authorised include the withholding of identifying details, use of pseudonyms, restrictions on questions, use of screens and voice modulation.

In Scotland, Witness Anonymity Orders are covered by Section 90 of the Criminal Justice and Licensing (Scotland) Act, which inserts sections 271N-Z into the Criminal Procedure (Scotland) Act 1995. This provides a statutory regime, whereby applications may be made by the prosecutor or accused to a court in solemn or summary proceedings where it is necessary to protect the safety of the witness or another person, prevent serious damage to property or prevent real harm to the public interest. Steps which may be authorised include the withholding of identifying details, use of pseudonyms, restrictions on questions, use of screens and voice modulation.

Additional support and advice is available to witnesses through Victim, Information and Advice (VIA). VIA is an integral part of the Crown Office and Procurator Fiscal Service and offers a dedicated service to certain victims, witnesses and bereaved nearest relatives. VIA provide information on the progress of their case, the range of practical and emotional support available, and the criminal justice system in general. VIA's aim is to increase their understanding of, and improving their experience of the system. VIA staff work in partnership with the rest of COPFS and with other

statutory agencies and voluntary organisations to help victims, witnesses and nearest relatives get the information and support they need. VIA can help by:

- providing general information and advice about how the criminal justice system works and what can be expected in relation to the particular case type;
 - providing updates on the progress of the case (including court dates, bail information and sentencing decisions);
 - arranging for witnesses to be shown round the court before a trial;
 - discussing any additional requirements (for example, access to court or needing an interpreter);
 - obtaining the views of eligible witnesses about special measures that might help when giving evidence; and
 - offering details of organisations that can offer practical and/or emotional support, facilitating contact where appropriate.
- In England & Wales, a total of £9.2m has been invested in replacement programmes since 2005 providing modern video recording and broadcasting equipment in both Crown and Magistrates' Courts. Amongst other benefits, the new equipment can easily be upgraded to allow videoconferencing links to be made. These enable evidence to be given remotely, which means that victims and witnesses will not have to go to the courthouse where the trial is being held, but give evidence from another location. All Crown Court centres have video link equipment enabling the witness to give evidence from within the court building but without entering the courtroom. 60 out of 78 Court Centres have videoconferencing links, which allow witnesses to give evidence remotely. There is currently £2.8m worth of videoconferencing equipment in place across the Scottish court estate. The three High Courts of Justiciary, namely, Glasgow, Edinburgh & Aberdeen all have video conference links available. A total of 46 out of 49 Sheriff Courts have at least one court that is fully equipped to take the evidence from suitably equipped remote sites. There are no facilities at any District or Justice of the Peace Courts. Mobile equipment is also available to enhance service provision where required. All Crown venues in Northern Ireland have remote evidence link facilities and in total 16 out of 23 court venues have this service. All but two court venues are able to conduct remand hearings via video link between prisons and courts. Seven court venues in Northern Ireland are 'Hi-Tech Courts' with remote CCTV Links and Video Conferencing Technology that enable the court to view and hear witness testimony from a separate room within the court building and remote video conferencing from virtually anywhere in the world. Two courthouses have secure live video links to designated off-site witness suites to further safeguard vulnerable victims and witnesses.

The use of live television links for the giving of evidence and other special measures is widely used in courts in England, Wales, Scotland and Northern Ireland, for trials

involving young and other vulnerable witnesses. There have also been a number of cases in which the evidence-in-chief of witnesses is given by means of a recorded video. Witness anonymity orders are granted in around 50 cases per year in courts in England and Wales. 21 Witness Anonymity Orders have been granted in the courts in Northern Ireland since January 2009. The provisions in relation to witness anonymity orders in Scotland apply to all cases where the trial or hearing begins on or after 28 March 2011.

- Regarding the application of par. 3 of Article 32, the UK Government has formal agreements with the International Criminal Court and other international tribunals to provide witness protection. Police forces across the UK have regular arrangements with EU countries under Europol Relocation Guidelines. Other arrangements can be made on an ad-hoc basis via Ministerial agreement and are co-ordinated by the Central Witness Bureau. In 2009/10, a total of seven witness protection cases were being managed by UK law enforcement agencies involving relocations to countries outside of the UK and thirty cases, involving a total of 73 individuals, involving relocations into the UK from abroad.
- Finally, with regard to par. 5 of Article 32 of the Convention, decisions about providing protection for victims in the UK are taken in full consultation with the individual concerned. This includes consideration of their ability to adjust to any change in circumstances as a result of the protection arrangements (s. 82(4)(c) Serious Organised Crime and Police Act 2005). Detailed protection arrangements will be agreed through a formal memorandum of understanding between the law enforcement agency and the protected person concerned. In deciding whether to grant special measures to a victim to assist them in giving evidence in court, the court must take account of the views of the victim concerned (s. 19 (3)(a) Youth Justice and Criminal Evidence Act 1999; Article 7(3)(a) of the Criminal Evidence (NI) Order 1999). This is also true in Scotland under s. 271E(2) of the Criminal Procedure (Scotland) Act 1995, as amended by the terms of the Vulnerable Witnesses (Scotland) Act 2004.

In England and Wales victims can be heard during proceedings through a Victim Personal Statement. Victim Impact Statements are also available in Northern Ireland, and Victim Statements in Scotland. In England and Wales arrangements are in place to ensure that witnesses have access to support and advice when attending court and the opportunity to express their views and discuss their needs. Witness Care Units are responsible for updating witnesses about the progress and result of their case and providing them with any assistance they need to attend court. They can put them in touch with the Witness Service which has supporters available to meet witnesses in advance and provide pre-trial visits to see the courtroom. On the day they provide moral and physical support to witnesses in a secure and comfortable area and ensure that the separate witness entry point is used if required. The Witness Service can also explain the processes involved in a trial. Court Witness Liaison Officers have a specific role in ensuring the consistent and appropriate care for victims and witnesses whilst they are attending court.

Up until 2010 in England and Wales, the views of victims and witnesses were collated through a regular quarterly survey - the Witness and Victim Experience Survey (WAVES). However this has now been discontinued, as many of its measures remained stable over time, and it surveyed a subset of victims and witnesses whose cases had resulted in a criminal charge. Many groups of interest were excluded, such as victims and witnesses whose cases resulted in an out of court disposal, or remained undetected; vulnerable victims and witnesses, such as those whose cases involved sexual offences or domestic violence; and victims and witnesses aged under 18. The Ministry of Justice is therefore wishing to explore alternative options for surveying victims and witnesses who have had contact with the criminal justice system to provide nationally representative information on their experiences and perceptions for a wider group of victims and witnesses than covered by WAVES. Also, in the criminal justice system in Northern Ireland there are various opportunities for victims to express their views and opinions including victim impact statements, surveys, complaints procedures and other feedback processes. The Northern Ireland Victim and Witness Survey (NIVAWS) is carried out annually and respondents are initially required to relate their specific experiences with the various stages of the criminal justice process (e.g. while making a statement, waiting for the trial, giving evidence at court, claiming criminal injury compensation etc.). Having done this, respondents are then asked to reflect on their overall experience of the criminal justice system and to rate their overall level of satisfaction with:- (i) the information they were given about the criminal justice system process; (ii) how well they had been kept informed about the progress of their case; (iii) the way they were treated by staff in the criminal justice system; and (iv) the contact they had with the criminal justice system. The views of victims are also sought by independent monitoring bodies as, for example, the recent inspection into the care and treatment of victims in the NI criminal justice system which is shortly to be published by Criminal Justice Inspection Northern Ireland. The statistics available for England and Wales from the WAVES findings indicate that: - 43% of victims remember being given the opportunity to make a VPS (WAVES, cases closed in 2009/10) - of those who remember being given the opportunity, 55% made a statement - of those who made a statement, 68% thought it was taken into account during the CJS process (combining those who answered 'fully' (39%) and 'to some extent' (28%)) - of those who made a VPS, 34% were made aware of how to make a complaint if they were unhappy about the service they received from CJ agencies This data covers victims and prosecution witnesses aged 18 and over whose case resulted in a charge and covers the following crime types; violence against the person; robbery; burglary; criminal damage; theft and handling stolen goods. It does not include victims and witnesses in sensitive cases, such as sexual offences or domestic violence, crimes involving a fatality, and any crime where the defendant was a family member or a member of the witnesses' or victims' household (which were not included on ethical grounds). It also excludes police officers or other CJS officials assaulted in the course of duty, and all police or expert witnesses. In Northern Ireland the numbers of Victim Impact Statements lodged in court is not currently monitored. For the most recent NIVAWS exercise during January 2011 the

target sample comprised 1,057 victims and witnesses involved in cases which closed between January and June 2010. As explained above there is a wide variety of fora for the presentation of victims' views and, because of the range of organisations and formats involved, it is impossible to provide a total annual figure for the numbers involved.

227. In view of the above, the State under review appears to regulate the protection of witnesses, experts and victims in full compliance with Article 32, in a manner which could be considered a “good practice” for the advancement of the goals of the Convention. All provisions of the relevant article, mandatory and optional, appear to be fully implemented. The UK is in a position to provide effective protection to an extensive group of individuals, including the ones indicated in Art. 32 par. 1 of the Convention. Accordingly, the competent authorities may provide protective measures ranging from personal/home security measures and non-disclosure of information to permanent relocation (to another country if deemed appropriate) and full identity change. Witnesses (including the victims of the crime) and experts may give testimony by means of the communications technology, namely live television links, video recordings etc. Finally, protection arrangements are taken in full consultation with the victims, they are exposed in a written form (MOU) and the victims are updated and assisted by Witness Service.

Article 33. Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

228. The State under review has provided a link to the Public Interest Disclosure Act 1998 (PIDA), which is designed to protect most workers from being unfairly dismissed by their employer or suffering other detriment whenever they have reported their concerns to the employer or the regulatory authorities. Details of unfair dismissal or detriment claims that are submitted to the Employment Tribunals under PIDA are forwarded, with the agreement of the complainant, to the relevant regulatory authorities, so that they can decide whether to further investigate the underlying issues (such as fraud or non-compliance with health and safety law). The State under review has also provided a table showing the outcome of applications to Employment Tribunals under PIDA, by year. Annual statistics on claims accepted, disposals, unfair dismissal jurisdictions disposed of at a hearing, compensation awarded by tribunals, costs awarded, receipts and

disposals, as well as cases dealt with at preliminary hearings, are also available online³.

229. The relevant provisions of PIDA read as follows:

Public Interest Disclosure Act 1998

“After Part IV of the Employment Rights Act 1996 (in this Act referred to as “the 1996 Act”) there is inserted—

“PART IVA

PROTECTED DISCLOSURES

43A Meaning of “protected disclosure”.

In this Act a “protected disclosure” means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

43B Disclosures qualifying for protection.

(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following—

- (a) that a criminal offence has been committed, is being committed or is likely to be committed,*
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*
- (d) that the health or safety of any individual has been, is being or is likely to be endangered,*
- (e) that the environment has been, is being or is likely to be damaged, or*
- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.*

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

³

<http://webarchive.nationalarchives.gov.uk/20110207135458/http://www.employmenttribunals.gov.uk/Publications/annualReports.htm>

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part “the relevant failure”, in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

After section 47A of the 1996 Act there is inserted—

“47B Protected disclosures.

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

(2) Except where the worker is an employee who is dismissed in circumstances in which, by virtue of section 197, Part X does not apply to the dismissal, this section does not apply where—

(a) the worker is an employee, and

(b) the detriment in question amounts to dismissal (within the meaning of that Part).

(3) For the purposes of this section, and of sections 48 and 49 so far as relating to this section, “worker”, “worker’s contract”, “employment” and “employer” have the extended meaning given by section 43K.”

Unfair dismissal.

After section 103 of the 1996 Act there is inserted—

“103A Protected disclosure.

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.”

Article 18 Short title, interpretation, commencement and extent.

(1) This Act may be cited as the Public Interest Disclosure Act 1998.

(2) In this Act “the 1996 Act” means the Employment Rights Act 1996.

(5) This Act, except section 17, does not extend to Northern Ireland.”

(b) Observations on the implementation of the article

230. The State under evaluation refers to the Public Interest Disclosure Act 1998 which applies to workers who make certain disclosures of information in the public interest.

These disclosures are protected disclosures. The Act has no freestanding provisions, but works by amending the Employment Rights Act 1996 to add “whistleblowers” to others given special protection against dismissal or other detrimental treatment. According to these provisions the substance of whistleblowers protection is wide since “the worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure”. To that purpose regarding the meaning of the section “any detriment by any act or any deliberate failure to act”, the UK reported that individuals who believe they have been unfairly dismissed for whistleblowing can complain to an employment tribunal. Dismissal for this reason is regarded as automatically unfair. Complaints about other forms of detriment can also be made. “Detriment” is not defined in the legislation; it will be up to the tribunal to decide whether detriment has occurred. Detriment could include, for instance, refusal of training or promotion opportunities.

231. The UK’s whistleblower protection system represents a good practice, though more could perhaps be done to raise awareness about the possible protections and mechanisms for reporting.
232. Northern Ireland has enacted similar legislation, which is contained in the following Orders: - 1998 No. 1763 (N.I. 17) The Public Interest Disclosure (Northern Ireland) Order 1998; and - 1996 No. 1919 (N.I. 16) The Employment Rights (Northern Ireland) Order 1996.

Article 34. Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of the article

233. In accordance with Regulation 23(1) of the Public Contracts Regulations 2006 (SI 2006/5), which is applicable to England & Wales and Northern Ireland, contracting authorities are required to exclude an economic operator from a procurement process if that economic operator (including its directors or any other person who has powers of representation, decision or control) has been convicted of any of the following offences: -

(b) corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906, where the offence relates to active corruption;

(c) the offence of bribery, where the offence relates to active corruption;

(ca) bribery within the meaning of section 1 or 6 of the Bribery Act 2010; unless there are overriding requirements in the general interest. 'Active corruption' for these purposes means 'corruption as defined in Article 3 of the Council Act of 26 May 1997 or Article 3(1) of Council Joint Action 98/742/JHA' and in effect relates to giving, rather than receiving, a bribe.

234. Similar provisions are contained within Regulation 23(1) of the Public Contracts (Scotland) Regulations 2006 (SI 2006/1), which provides for mandatory exclusion in the event of a conviction for: -

(b) corruption within the meaning of section 1 of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;

(c) bribery or corruption within the meaning of sections 68 and 69 of the Criminal Justice (Scotland) Act 2003;

235. The Defence and Security Public Contracts Regulations 2011 (SI 2011/1848) which apply throughout the UK reflect the provisions stated above, but also require mandatory exclusion for a conviction under section 2 of the Bribery Act 2010 (offences related to being bribed); regulation 23(1) provides for mandatory exclusion in the event of a conviction for: -

(c) corruption within the meaning of section 1 of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;

(d) the offence of bribery;

(e) bribery within the meaning of section 1, 2 or 6 of the Bribery Act 2010;

(f) bribery or corruption within the meaning of section 68 and 69 of the Criminal Justice (Scotland) Act 2003.

(b) Observations on the implementation of the article

236. According to the aforementioned regulations a person (whether an individual or a corporate body) can be excluded from bidding for public sector contracts and/or have their existing public sector contracts terminated in the event of a conviction for specified bribery or corruption offences.

237. Furthermore, contracting authorities have discretion to exclude a person from bidding for a public sector contract in the event of that person having: i) been convicted of a criminal offence relating to the conduct of his business or profession; or ii) committed an act of grave misconduct in the course of his business or profession. It is possible that, for example, the first ground could result in an exclusion for a conviction under section 7 of the Bribery Act 2010 (failure of a commercial organisation to prevent

bribery) and the second ground could result in an exclusion where there are allegations of bribery, but no conviction.

238. In view of the above, the State under review should be deemed to be in compliance with the present Article.

Article 35. Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

239. The state under review has provided four examples of economic torts that could be applied in cases of damages inflicted to an individual as a result of an act of corruption, namely deceit, conspiracy, intimidation and intentional harm of economic interests by unlawful means:

- The tort of deceit covers circumstances in which a claimant suffers loss by relying on a misrepresentation made by the defendant.
- The tort of conspiracy assumes two forms: 1) unlawful means conspiracy, where two or more persons cause loss to a claimant by combining to do an unlawful act, or a lawful act by unlawful means, and (2) simple conspiracy, where two or more persons combine wilfully, and without justification, to injure another in his trade and cause damage to his trade results.
- The tort of intimidation involves the defendant using an unlawful threat in order to compel another to act, or refrain from acting, in a particular manner that that will cause harm to the claimant.
- The tort of intentionally harming another's trade or other economic interests by unlawful means, has developed as a general tort intended to apply in a wide range of circumstances to enable claimants to protect their economic interests.

(b) Observations on the implementation of the article

240. The ratio legis of Art.35 is to urge State parties to provide for individuals who have suffered financial damage as a result of acts of corruption, legal ground which will enable them to pursue compensation from actors involved in such actions (as these are described in Art. 15 to 22 of the Convention) even if the perpetrators have not directly interacted with the claimant(s) and may not even be aware of the damage inflicted to the particular claimants' interests because of their illegal acts. Causality and extent of whatever damage inflicted to the claimant because of an act of corruption ("... *damage*

as a result of ...”) will have to be substantiated under the same principles of the State’s domestic law that govern causality and extend of due compensation, in general. In regard to intent though, it is our view that the Convention means to secure that lack of personal interaction between the perpetrator(s) and the claimant(s), or the fact that the perpetrator was not aware of the specific damage that would be inflicted to every specific claimant’s interests, will not serve as a defence for the latter, nor as a legal obstacle for those who have suffered damage and will try to pursue compensation. The Convention does not specifically require State parties to enact provisions which would explicitly allow any party, without the need to establish direct or intended damage, to claim compensation. On the question of whether a remedy is available where a public authority is alleged to have been complicit in a corrupt process which can be shown to have resulted in damage to the claimant, the UK confirmed that this would be capable of falling within one of the economic torts previously identified (deceit, conspiracy, intimidation, and intentionally harming trade or economic interests - though which one would depend on the particular circumstances of the case), and that this would allow for damages to be claimed from the public authority if they were found to be complicit.

241. The aforementioned torts can be interpreted as to cover the facts of the scenario provided. It was explicitly clarified that the aforementioned example was covered, and that in the scenario where the actors of a corrupt transaction intended or were aware that damage was going to be inflicted to a certain group of individuals, intention could be imputed under the aforementioned torts.

Article 36. Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

242. The State under review has provided information on the investigation and prosecution of corruption offences.

1) England and Wales

243. In England and Wales the prosecuting authorities, regarding offences established according to the Convention, are the Crown Prosecution Service (CPS), headed by the Director of Public Prosecutions (DPP), and the Serious Fraud Office (SFO), headed by its Director. The CPS has competency to provide advice on and to prosecute cases investigated by any police force. Although the CPS works closely with the police and

other investigators, it is independent of them. The CPS advises on criminal investigations carried out by the police - including the City of London Police and the Ministry of Defence Police. Two specialist casework groups - Central Fraud Group and Serious Crime Group - deal with the prosecution of cases of serious crime, including bribery and corruption. The Central Fraud Group of the CPS works closely with these police investigative bodies in foreign bribery and related cases in which the SFO is the prosecuting authority but does not exercise its jurisdiction. Specialist Complex Casework Units in 13 CPS regional Areas deal with corruption cases that fall outside the remit of the Central Groups.

244. The SFO is an independent investigating and prosecuting authority. The Director of the SFO and the DPP exercise their statutory prosecutorial functions independently of Government and subject only to the superintendence of the Attorney General.
245. The Serious Fraud Office is the lead agency in England and Wales for investigating (jointly with the police in some cases) and prosecuting cases of overseas corruption. The Crown Prosecution Service also prosecutes bribery offences investigated by the police, committed either overseas or in England and Wales. As of 31 January 2012, SOCA had 11 active cases of foreign bribery/corruption received from the U.S. Department of Justice, overseas governments, SOCA, lawyers, the OECD and self-reporting; in addition, 18 cases of foreign bribery/corruption were under consideration.
246. The Director of Public Prosecutions and the Director of the SFO have published joint guidance for prosecutors on the Bribery Act 2010 to set out the Directors' approach to prosecutorial decision-making in respect of offences under the Act. Proceedings under the Bribery Act 2010 require the personal consent of the Director of Public Prosecutions or the Director of the SFO. This replaced a previous requirement under earlier legislation (under the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Act 1906) for the consent of the Attorney General.
247. A protocol has been agreed between the Attorney General and the Prosecuting Departments which confirms that the Director of the SFO and the Director of Public Prosecutions are responsible for making prosecuting decisions except in exceptional circumstances where the Attorney General will consider the possibility that he or she may direct that a prosecution is not started or not continued (or, in the case of the SFO, that an investigation is not to take place or not to continue) where the Attorney General is satisfied that it is necessary to do so for the purpose of safeguarding national security.
248. Both the Director of Public Prosecutions and the Director of the Serious Fraud Office are appointed on merit in an open competition that is overseen by the Civil Service Commission. Although the formal appointment is made by the Attorney General he does not sit on the selection panel which is chaired by a Civil Service Commissioner. The Directors can only be dismissed in accordance with standard civil service terms and processes.

249. CPS reviewing lawyers are professionally qualified solicitors or barristers with a current practising certificate issued by the Solicitors Regulation Authority or the Bar Council. They are recruited by open competition or by internal selection by procedures based upon the establishment of relevant skills and competencies. Training is provided by attendance at relevant courses.
250. The SFO investigates and prosecutes cases by means of multi-discipline case teams comprising lawyers, investigators, forensic accountants and specialists in IT. Staff are recruited from across government, the private sector and the police with a diverse range of skills and experience. The SFO provides its own in-house training and when appropriate supports relevant training delivered externally by other departments and organisations.

2) Scotland

251. The Crown Office and Procurator Fiscal Service (COPFS) provides the public prosecution service for Scotland, and is a Ministerial Department of the Scottish Government. The department is headed by Her Majesty's Lord Advocate, who under the Scottish legal system is responsible overall for prosecution. COPFS has a direct role in instructing and directing police investigations under the Police (Scotland) Act 1967. The Serious and Organised Crime Division of COPFS is made up of multi-disciplinary lawyers, forensic accountants/analysts, settlement negotiators and confiscation officers, and liaises closely with Law Enforcement Agencies with the primary responsibility for the co-ordination, investigation and prosecution of large and complex serious and organised crime and corruption cases (and recovery of proceeds of crime) throughout Scotland. The Division recruits qualified individuals and focuses on experience, education, and skills required to successfully fulfil requirements for this type of work. Specialised training and performance reviews, conducted at least annually, are designed to ensure that multi-disciplinary expertise within the Division is retained and enhanced. The Lord Advocate is the head of the system of prosecution, the senior of the two Scottish Law Officers (the other being the Solicitor General for Scotland). The State under review stated that the Law Officers have always acted independently of other Ministers and, of any other person. That duty is now expressly set out in section 48(5) of the Scotland Act 1998. No one can compel the Lord Advocate to instigate criminal proceedings, nor discontinue them.

3) Northern Ireland

252. The Public Prosecution Service (PPS) is the principal prosecuting authority in Northern Ireland. It is Department of the Director of Public Prosecutions (DPPNI) and the Police Service of Northern Ireland. In addition to taking decisions as to prosecution in all cases initiated or investigated by the police in Northern Ireland, it also considers cases initiated or investigated by other statutory authorities, for example, HM Revenue and Customs. The PPS is headed by the Director of Public Prosecutions who is appointed by the Attorney General for Northern Ireland. Prosecution decisions are taken by quali-

fied solicitors or barristers who are appointed as Public Prosecutors by the Director of Public Prosecutions. Cases involving corruption are dealt with in the PPS Central Casework Section. This is a specialised Section which deals with complex cases. Prosecutions are instituted or continued only where the public prosecutor is satisfied that the Test for Prosecution is met as set out in the Code for Prosecutors issued under Section 37 of the 2002 Act. Recruitment of all staff, both legal and administrative is achieved through a competitive process in line with requirement of Northern Ireland Civil Service Recruitment. Public Prosecutors must be fully qualified solicitors or barristers entitled to practice in Northern Ireland. All newly appointed staff go through a training and induction programme. Public Prosecutors require a high degree of specialised skills. Public Prosecutors when appointed must complete an intensive induction course before they are able to make individual prosecution decisions. The PPS arranges and facilitates specialised training both internally and with the use of external experts. The Justice (Northern Ireland) Act 2002 provides that as the Director of Public Prosecutions should have independence in the exercise of his functions, subject to the accountability measures and limits set out in this legislation.

253. The basic investigative functions in UK regarding offences established according to the Convention are fulfilled by the police. The State under review provided information about the City of London Police (CoLP), which host, accommodate and partially resource the specialist Overseas Anti-Corruption Unit (OACU) which has extraterritorial jurisdiction in respect of UK residents and companies associated with the UK, through the powers conferred by existing legislation and the Bribery Act 2010. Unit personnel are resourced from the Economic Crime Directorate, all independent serving police officers and experienced economic crime investigators. Whilst the Department for International Development (DFID) are the main funding body, the CoLP retain all operational decision making and investigative control. The City of London Police (CoLP) is an independent law enforcement body operating under The Police Act 1996. Control for all aspects of the force rests solely with the Chief Officer, with the activities of the Force overseen by an independent Police Authority. Performance is overseen by the independent Her Majesty's Inspectorate of Constabulary (HMIC) and Public Confidence issues by the Independent Police Complaints Commission (IPCC). OACU staff are selected by way of a competitive interview process in response to force-wide advertisements for applicants. Each process make use of an independent panel member. Most staff are selected because of their relevant experience and investigative skills whilst training is further supplemented through national police training courses, local force training and independent specialist training from external recognised bodies.
254. Furthermore, the Serious Organised Crime Agency (SOCA), established by the Serious Organised Crime and Police Act 2005, which functions are to prevent and detect serious organised crime, to contribute to its reduction in other ways and the mitigation of its consequences, and to gather, store, analyse and disseminate information on organised crime, has an Anti-Corruption Unit which supports UK partners (police and/or prosecutors) in tackling corruption that enables organised crime and works to increase

knowledge of the use of corruption in support of organised crime. The unit also tackles corruption directed against SOCA, or public sector corruption impacting on SOCA.

(b) Observations on the implementation of the article

255. In view of the above the UK has in place independent and effective mechanisms to combat corruption in accordance with Article 36 of the Convention.
256. Much of the focus of the specialized units is on foreign fraud and bribery rather than domestic corruption. Although this is commendable and in many ways unique among other countries, the UK might consider focusing additional resources on domestic measures, in particular the extension of the International Anti-Corruption Champion to the domestic sphere and tasking him to consider developing a national anti-corruption strategy.
257. Further, the reviewers were of the opinion that the creation of a National Crime Agency (NCA), which may or may not encompass the functions and mandate of the SFO, should not detract from the current momentum of enforcement of bribery and corruption cases in the wake of the Bribery Act, nor lead to further cuts in resources and staffing of the relevant enforcement agencies, in particular the SFO. It is noted that funding for the SFO is determined on a rolling three-year basis, and that the SFO has seen a 30 percent budget cut in the last four years.

Article 37. Cooperation with law enforcement authorities

- 1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*
- 2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*
- 3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*
- 4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*
- 5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in ac-*

cordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

258. The State under review has provided links to Sections 71-75 of the Serious Organised Crime and Police Act 2005 (SOCPA) – as amended by Section 113 of the Coroners and Justice Act 2009 –, applying in England & Wales and Northern Ireland. In addition, it has provided statistical data regarding the application of SOPCA and examples of cases with a financial background from year 2006 on, as well as information on the situation in Scotland.

259. Regarding protective measures in accordance with par. 4 of the present Article, the State under review has made reference to the provisions of Section 82 of the Serious Organised Crime and Police Act 2005, of Part II Chapter 1 of the Youth Justice and Criminal Evidence Act 1999, and of Chapter 25 Part 3 Chapter 2 of the Coroners and Justice Act 2009, reproduced above under Article 32.

260. Sections 71-75 of SOCPA read as follows:

“71. Assistance by offender: immunity from prosecution

(1) If a specified prosecutor thinks that for the purposes of the investigation or prosecution of any offence it is appropriate to offer any person immunity from prosecution he may give the person a written notice under this subsection (an “immunity notice”).

(2) If a person is given an immunity notice, no proceedings for an offence of a description specified in the notice may be brought against that person in England and Wales or Northern Ireland except in circumstances specified in the notice.

(3) An immunity notice ceases to have effect in relation to the person to whom it is given if the person fails to comply with any conditions specified in the notice.

(4) Each of the following is a specified prosecutor—

(a) the Director of Public Prosecutions;

(b) the Director of Revenue and Customs Prosecutions;

(c) the Director of the Serious Fraud Office;

(d) the Director of Public Prosecutions for Northern Ireland;

(e) a prosecutor designated for the purposes of this section by a prosecutor mentioned in paragraphs (a) to (d).

(5) The Director of Public Prosecutions or a person designated by him under subsection (4)(e) may not give an immunity notice in relation to proceedings in Northern Ireland.

(6) *The Director of Public Prosecutions for Northern Ireland or a person designated by him under subsection (4)(e) may not give an immunity notice in relation to proceedings in England and Wales.*

(7) *An immunity notice must not be given in relation to an offence under section 188 of the Enterprise Act 2002 (c. 40) (cartel offences).*

72. Assistance by offender: undertakings as to use of evidence

(1) *If a specified prosecutor thinks that for the purposes of the investigation or prosecution of any offence it is appropriate to offer any person an undertaking that information of any description will not be used against the person in any proceedings to which this section applies he may give the person a written notice under this subsection (a “restricted use undertaking”).*

(2) *This section applies to—*

(a) *criminal proceedings;*

(b) *proceedings under Part 5 of the Proceeds of Crime Act 2002 (c. 29).*

(3) *If a person is given a restricted use undertaking the information described in the undertaking must not be used against that person in any proceedings to which this section applies brought in England and Wales or Northern Ireland except in the circumstances specified in the undertaking.*

(4) *A restricted use undertaking ceases to have effect in relation to the person to whom it is given if the person fails to comply with any conditions specified in the undertaking.*

(5) *The Director of Public Prosecutions for Northern Ireland or a person designated by him under section 71(4)(e) may not give a restricted use undertaking in relation to proceedings in England and Wales.*

(6) *The Director of Public Prosecutions or a person designated by him under section 71(4)(e) may not give a restricted use undertaking in relation to proceedings in Northern Ireland.*

(7) *Specified prosecutor must be construed in accordance with section 71(4).*

73 Assistance by defendant: reduction in sentence

(1) *This section applies if a defendant—*

(a) *following a plea of guilty is either convicted of an offence in proceedings in the Crown Court or is committed to the Crown Court for sentence, and*

(b) *has, pursuant to a written agreement made with a specified prosecutor, assisted or offered to assist the investigator or prosecutor in relation to that or any other offence.*

(2) In determining what sentence to pass on the defendant the court may take into account the extent and nature of the assistance given or offered.

(3) If the court passes a sentence which is less than it would have passed but for the assistance given or offered, it must state in open court—

(a) that it has passed a lesser sentence than it would otherwise have passed, and

(b) what the greater sentence would have been.

(4) Subsection (3) does not apply if the court thinks that it would not be in the public interest to disclose that the sentence has been discounted; but in such a case the court must give written notice of the matters specified in paragraphs (a) and (b) of subsection (3) to both the prosecutor and the defendant.

(5) Nothing in any enactment which—

(a) requires that a minimum sentence is passed in respect of any offence or an offence of any description or by reference to the circumstances of any offender (whether or not the enactment also permits the court to pass a lesser sentence in particular circumstances), or

(b) in the case of a sentence which is fixed by law, requires the court to take into account certain matters for the purposes of making an order which determines or has the effect of determining the minimum period of imprisonment which the offender must serve (whether or not the enactment also permits the court to fix a lesser period in particular circumstances), affects the power of a court to act under subsection (2).

(6) If, in determining what sentence to pass on the defendant, the court takes into account the extent and nature of the assistance given or offered as mentioned in subsection (2), that does not prevent the court from also taking account of any other matter which it is entitled by virtue of any other enactment to take account of for the purposes of determining—

(a) the sentence, or

(b) in the case of a sentence which is fixed by law, any minimum period of imprisonment which an offender must serve.

(7) If subsection (3) above does not apply by virtue of subsection (4) above, sections 174(1)(a) and 270 of the Criminal Justice Act 2003 (c. 44) (requirement to explain reasons for sentence or other order) do not apply to the extent that the explanation will disclose that a sentence has been discounted in pursuance of this section.

(8) In this section—

(a) a reference to a sentence includes, in the case of a sentence which is fixed by law, a reference to the minimum period an offender is required to serve, and a reference to a lesser sentence must be construed accordingly;

(b) a reference to imprisonment includes a reference to any other custodial sentence within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) or Article 2 of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/ 3160).

(9) An agreement with a specified prosecutor may provide for assistance to be given to that prosecutor or to any other prosecutor.

74. Assistance by defendant: review of sentence

(1) This section applies if—

(a) the Crown Court has passed a sentence on a person in respect of an offence, and

(b) the person falls within subsection (2).

(2) A person falls within this subsection if—

(a) he receives a discounted sentence in consequence of his having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence but he knowingly fails to any extent to give assistance in accordance with the agreement;

(b) he receives a discounted sentence in consequence of his having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence and, having given the assistance in accordance with the agreement, in pursuance of another written agreement gives or offers to give further assistance;

(c) he receives a sentence which is not discounted but in pursuance of a written agreement he subsequently gives or offers to give assistance to the prosecutor or investigator of an offence.

(3) A specified prosecutor may at any time refer the case back to the court by which the sentence was passed if—

(a) the person is still serving his sentence, and

(b) the specified prosecutor thinks it is in the interests of justice to do so.

(4) A case so referred must, if possible, be heard by the judge who passed the sentence to which the referral relates.

(5) If the court is satisfied that a person who falls within subsection (2)(a) knowingly failed to give the assistance it may substitute for the sentence to which the referral relates such greater sentence (not exceeding that which it would have passed but for the agreement to give assistance) as it thinks appropriate.

(6) In a case of a person who falls within subsection (2)(b) or (c) the court may—

(a) take into account the extent and nature of the assistance given or offered;

(b) substitute for the sentence to which the referral relates such lesser sentence as it thinks appropriate.

(7) Any part of the sentence to which the referral relates which the person has already served must be taken into account in determining when a greater or lesser sentence imposed by subsection (5) or (6) has been served.

(8) A person in respect of whom a reference is made under this section and the specified prosecutor may with the leave of the Court of Appeal appeal to the Court of Appeal against the decision of the Crown Court.

(9) Section 33(3) of the Criminal Appeal Act 1968 (c. 19) (limitation on appeal from the criminal division of the Court of Appeal) does not prevent an appeal to the Supreme Court under this section.

(10) A discounted sentence is a sentence passed in pursuance of section 73 or subsection (6) above.

(11) References—

(a) to a written agreement are to an agreement made in writing with a specified prosecutor;

(b) to a specified prosecutor must be construed in accordance with section 71.

(12) In relation to any proceedings under this section, the Secretary of State may make an order containing provision corresponding to any provision in—

(a) the Criminal Appeal Act 1968 (subject to any specified modifications), or

(b) the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) (subject to any specified modifications).

(13) A person does not fall within subsection (2) if—

(a) he was convicted of an offence for which the sentence is fixed by law, and

(b) he did not plead guilty to the offence for which he was sentenced.

(14) Section 174(1)(a) or 270 of the Criminal Justice Act 2003 (c. 44) (as the case may be) applies to a sentence substituted under subsection (5) above unless the court thinks that it is not in the public interest to disclose that the person falls within subsection (2)(a) above.

(15) Subsections (3) to (9) of section 73 apply for the purposes of this section as they apply for the purposes of that section and any reference in those subsections to subsection (2) of that section must be construed as a reference to subsection (6) of this section.

75. Proceedings under section 74: exclusion of public

(1) This section applies to—

- (a) any proceedings relating to a reference made under section 74(3), and
 - (b) any other proceedings arising in consequence of such proceedings.
- (2) The court in which the proceedings will be or are being heard may make such order as it thinks appropriate—
- (a) to exclude from the proceedings any person who does not fall within subsection (4);
 - (b) to give such directions as it thinks appropriate prohibiting the publication of any matter relating to the proceedings (including the fact that the reference has been made).
- (3) An order under subsection (2) may be made only to the extent that the court thinks—
- (a) that it is necessary to do so to protect the safety of any person, and
 - (b) that it is in the interests of justice.
- (4) The following persons fall within this subsection—
- (a) a member or officer of the court;
 - (b) a party to the proceedings;
 - (c) counsel or a solicitor for a party to the proceedings;
 - (d) a person otherwise directly concerned with the proceedings.
- (5) This section does not affect any other power which the court has by virtue of any rule of law or other enactment—
- (a) to exclude any person from proceedings, or
 - (b) to restrict the publication of any matter relating to proceedings.”

261. Section 113 of the Coroners and Justice Act 2009⁴ amends sections 71 and 72 of the 2005 SOCPA to provide that those statutory provisions can only be used for the investigation or prosecution of serious criminal offences. While a person who assists the authorities under those powers can be offered the relevant incentives in respect of any offence, the assistance must be in relation to the investigation or prosecution of an offence that is capable of being tried in the Crown Court (that is, it is either an indictable only offence or an indictable offence triable either way).

262. That amendment has been made because it is considered desirable to make explicit the existing intention that the provisions are to be used only in obtaining assistance in re-

⁴ MoJ, Circular 2010/06, Distribution Date 19 March 2010, Implementation Date 6 April 2010.

spect of serious offences, particularly in view of the extension of the powers to two additional authorities as described below.

263. Section 113 adds to the list of “specified prosecutors” who can use the above statutory powers the Financial Services Authority and the Secretary of State for Business, Innovation and Skills. Because those authorities are not superintended or overseen by the Attorney General, their power to grant immunity from prosecution is made subject to the consent of the Attorney General. They may delegate the powers within their respective organisations only to one prosecutor and a nominated deputy to act in that person’s absence. Their addition to the list reflects the fact that both prosecute serious financial crime, such as insider dealing and major frauds, under a number of Acts.
264. Finally, there is a power for the Attorney General to issue guidance to all “specified prosecutors” about the exercise by them of the above statutory powers, to ensure consistency of approach and proper liaison in the event of overlapping interests, should the Attorney General consider such guidance necessary

(b) Observations on the implementation of the article

265. The UK appears to regulate the treatment of persons who cooperate with law enforcement authorities in accordance with article 37 of the Convention.
- Sections 71 to 75 of SOCPA, as amended by section 113 of the Coroners and Justice Act 2009, created a statutory framework for the provision of immunity from prosecution and sentence reductions for defendants who co-operate in the investigation and prosecution of others. “Specified prosecutors” are conferred powers to grant a person immunity from prosecution (section 71), to give an undertaking that any information which a person provides will not be used against that person in criminal proceedings (section 72), to enter into a written agreement with a defendant for the defendant to provide assistance in relation to an offence, which the court may take into account when sentencing (section 73), and to refer a case back to court where a defendant reneges on such an agreement, or provides new or additional assistance (section 74). There have been numerous cases where the “specified prosecutors” have exercised these powers, including international corruption cases, where the offenders pleaded guilty and among other things agreed to cooperate with the competent foreign judicial authorities. The SFO has entered into similar agreements under section 73 of SOCPA in 6 cases, 2 of which are ongoing.
 - The above legislation does not apply in Scotland. The State under review notes, that in Scotland, for any offence (including bribery and corruption offences), the court is able to take into account a range of factors in deciding an appropriate sentence. That would include any mitigating factors such as provision by the offender of substantial cooperation. For any offence (including bribery and corruption offences), the Crown Office and Procurator Fiscal Service decide whether it is in the public interest to prosecute an accused person.

- Regarding par. 4 of the Article under review, in the UK the protection and safety of persons who cooperate is the same as for witnesses under Article 32. In England & Wales, Section 82 of the SOCPA makes provision for the protection of witnesses and certain other persons involved in investigations or legal proceedings. This protection applies to a person who has been given an immunity notice under section 71 if the notice continues to have effect in relation to him and to a person who has been given a restricted use undertaking under section 72 if the undertaking continues to have effect in relation to him. It is stated that Part II Chapter 1 of the Youth Justice and Criminal Evidence Act 1999, and Chapter 25 Part 3 Chapter 2 of the Coroners and Justice Act 2009 also apply. It is assumed that the same goes for the Vulnerable Witnesses (Scotland) Act 2004 and for Part II of the Criminal Evidence (NI) Order 1999.

266. In view of the above, the UK should be deemed to be in compliance with Article 37. In Scotland, legislation exists that is nearly identical to England & Wales concerning privileges of persons who cooperate with the authorities in accordance with its fundamental principles (e.g. providing for the non-punishment of the perpetrators of active bribery of public officials who, on their own will and before any form of examination by the law enforcement authorities announce their act to the police or the public prosecutor). Since 2006, ten such cases have been recorded. The legislation in question is the Police, Public Order and Criminal Justice (Scotland) Act 2006, sections 91 – 97, which are similar to sections 71 - 75 of the Serious Organised Crime and Police Act 2005.

Article 38. Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

267. The State under review has provided some information on the way national authorities cooperate, including references to the Civil Service Code, the Public Interest Disclosure Act 1998, the Constitutional Reform and Governance Act 2010 and the Proceeds of Crime Act 2002.

(b) Observations on the implementation of the article

268. The UK states that compliance with this Article follows from: a) The core Civil Service values and behaviours as set out in the Civil Service Code, b) The Constitutional Reform and Governance Act 2010, which establishes the statutory framework for the Civil Service by providing a power for the Minister for the Civil Service (the Prime Minister) to manage the Civil Service, and making provision for a code of conduct for civil servants which specifically requires them to carry out their duties in accordance with the core Civil Service values, c) The Public Interest Disclosure Act 1998, which protects individuals who make certain disclosures of information in the public interest and d) the Proceeds of Crime Act 2002, which makes provisions that a court-issued production order can be served on a Government Department to overcome any restriction on the disclosure of information and allow them to provide identified material relevant to an investigation. Moreover, memoranda of understanding exist between the public departments and law enforcement authorities that govern their cooperation. The proposed National Crime Agency would centralize all investigative and policing functions.
269. In view of the above, UK should be deemed to be in compliance with the requirement put forth in subpar. b) of the present Article. The Civil Service Code imposes an obligation for civil servants to report concerns and prima facie evidence of criminal or unlawful activity to the police or other appropriate regulatory authorities, though it was noted that the wording uses the term “should” rather than the term “must” used in other parts of the Code. The Code applies only to employees in government departments and does not cover all public officials in the UK. Additional reporting obligations are set out in each department’s internal code of ethics and regulations. Where an internal investigation discovers evidence of criminal or unlawful activity, the matter would be reported to the police or other appropriate regulatory authority. It is likely the internal investigation, if on the same issues, would be suspended pending the outcome of the criminal investigation.

Article 39. Cooperation between national authorities and the private sector

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

270. The State under review has provided some information on the way national authorities and the private cooperate.

(b) Observations on the implementation of the article

271. Regarding the encouragement of cooperation between national law enforcement authorities and the private sector, UK has stated that SOCA works closely with industry, by engaging with private sector stakeholders, regulators and practitioners at every level in order to deny and frustrate criminal activities across the UK, and overseas through foreign law enforcement partners and the overseas liaison network. On the other hand the UKFIU has good relationships with the reporting sector and the Regulated sector and its supervisors. It has outreach paths to share information and encourage dialogue in respect of money laundering and terrorist financing reporting under Part 7 POCA 2002 and the Terrorism Act 2000. The UKFIU/SOCA forms part of the cross-governmental International Corruption Group which is intended to: Establish an effective deterrent against bribery, corruption and PEPs money laundering through enhanced knowledge derived from diverse intelligence sources; Optimise the regulated sector's reporting of suspicious activity on bribery, corruption and PEPs money laundering; Maximise the recovery of stolen assets in the UK and the disruption of those who facilitate bribery, corruption and PEPs money laundering; Sustain and develop a legal and regulatory environment that effectively combats bribery, corruption and PEPs money laundering at minimum cost to business.

272. Regarding the encouragement of the public in general to report offences, UK has stated that such encouragement is being given through the provisions of the Proceeds of Crime Act 2002, which establishes two distinct regimes for the handling of suspicions about criminal funds. The first requires institutions in the reporting sectors to disclose (as SARs) to the UKFIU any suspicions that arise concerning criminal property or money laundering. The second allows nominated persons within the reporting sectors, to avail themselves of a defence against money laundering charges by seeking the consent of SOCA to undertake an activity (a 'prohibited act') about which they have concerns. Obligation for a person to report offences is provided under the Terrorism Act 2000.

273. In Scotland, the lead for corruption and bribery investigations is dependent on whether the allegation involves bribery or corruption within law enforcement or involves the rest of public sector/private sector:

- Allegations around law enforcement are led by Counter Corruption Units (CCUs) within the Association of Chief Police Officers in Scotland (ACPOS) forces and the Scottish Crime and Drug Enforcement Agency (SCDEA). At the time of the review, there were around 30 officers and staff (0.01% of total police numbers) dedicated to such investigations across Scotland, all of which would become part of a single CCU for the Police Service of Scotland as from 1 April 2013.

- Allegations around rest of the public sector/private sector are led by Fraud Squads/Financial Crime/Money laundering units across the ACPOS Forces and SCDEA. Staff numbers within such units were unavailable, but it was explained that suspect bribery and corruption investigations were considered to be a small part of their remit.

In line with the foregoing comment on lead responsibility, intelligence and allegations relating to law enforcement are held by the ACPOS forces and SCDEA within CCU intelligence databases. Allegations will be investigated as per any other crime and, where there is a reasonable inference of criminality, the Area Procurator Fiscal will be provided with a report for consideration of prosecution. SARS are occasionally received which suggest bribery or corruption by police officers and staff, and all are treated as intelligence for investigation.

With regard to enquiries by fraud squads/financial crime units/money laundering units, they may receive such allegations from intelligence received from CCU units within ACPOS forces or the SCDEA, SARS and many other routes, including Crime stoppers, criminal intelligence sources, public allegations, the media, etc. Such investigations are invariably resource-intensive and are conducted where it is considered that there is a reasonable inference of criminality and, usually after consultation with COPFS, may amount to a Major Crime Investigation. Intelligence in relation to bribery and corruption across the public and private sectors is held in the Scottish Intelligence Database and accessible only to those with high level access permissions.

Fraud squads/financial crime units and the Scottish money laundering unit at the SCDEA are experienced and highly skilled in the pursuit of money trails. Conversely, CCUs within the ACPOS forces and SCDEA have a limited number of financial investigators and will usually seek the assistance of the foregoing specialist financial units.

Though beyond the scope of the review, Scotland makes significant efforts to educate law enforcement officers and staff on ways in which they can reduce their personal and organizational vulnerability to those who would seek to bribe and corrupt. The ACPOS Scottish Threat Assessment of law enforcement Corruption (STAC) identifies enforcement and intelligence priorities but also includes various prevention actions that we are carrying out. These include educational presentations, personal defensive briefing to particularly vulnerable staff due to lifestyle choices, and encouragement to all staff and supervisors to intervene early where a corruption threat may be suspected. Over the past year, around 200 such presentations have been delivered to over 2,000 staff (8% of all officers and staff) and an additional 300 officers and staff have received personal confidential advice to reduce their vulnerability. All Scottish forces and the SCDEA also have 'whistleblowing' lines where officers and staff can confidentially report any concerns around bribery or corruption.

274. The State under review has provided examples of cooperation and exchanging information between SOCA, a private entity, academics, the financial industry, the FSA,

ACPO forces, HMRC and UKBA. UK has also provided the number of SARs reviewed by the UKFIU in the year 2010, that indicated corrupt PEP activity, many of which have initiated or supported successful intervention activity against corrupt foreign officials.

275. In view of the above, UK should be deemed to be in compliance with the requirements put forth in the above Article. No further information was available from law enforcement officials on raising public awareness in the importance of reporting suspicious transactions.

Article 40. Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

276. The UK has provided some information on overcoming bank secrecy in the case of domestic criminal investigations.
277. According to the State under review, all corruption cases rely on financial investigations of the questioned UK accounts of suspects so each adopted case will involve at least one Police and Criminal Evidence Act 1984 (PACE) Production Order to allow the banks to reveal the suspicious transactions.

(b) Observations on the implementation of the article

278. The provision of information by financial institutions is generally accepted to be governed by case law, *Tournier v National Provincial and Union Bank of England (1924) 1KB461*. According to the State under review this old case law still holds as good practice as the guiding influence for banks and other financial businesses and is quoted as providing the principles of how and why confidentiality may be breached by both the British Bankers' Association and the Financial Services Ombudsman in advice to both members and customers. This case law has established what has become known as "Tournier Rules" and sets out four occasions when the institutions may breach their customer confidentiality contract. These are: 1. When required to do so by law; 2. To protect the public; 3. To protect the institution; 4. By permission or request of the customer. The first occasion, which is most relevant for the application of the present Article, occurs most often when the financial institution is called to comply with a Production Order made under relevant legislation. This could be under POCA 2002 in relation to Money Laundering, Confiscation or Civil Recovery investigations, The Drug Trafficking Act 1994 in relation to the investigation of drugs trafficking offences, or The Police and Criminal Evidence Act 1984 in relation to the provision of Special Pro-

cedure Material. Equally the legal requirement may come from the money laundering provisions of POCA 2002 under section 330 which sets out the requirement for disclosure of information to SOCA if the institution suspects the activity relates to money laundering. The resultant information may be seen by a financial investigator as SARs.

279. The UK seems accordingly to be in compliance with the present Article.

Article 41. Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

280. The State under review has provided the relevant legislation, namely Sections 98 to 113 of the Criminal Justice Act 2003 as amended by paragraph 1 of Schedule 17 to the Coroners and Justice Act 2009, Articles 6 to 17 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004, as amended by paragraph 2 of Schedule 17 to the Coroners and Justice Act 2009, Sections 101, 266, 270 and 275A of the Criminal Procedure (Scotland) Act 1995.

(b) Observations on the implementation of the article

281. In England & Wales and Northern Ireland the courts may admit evidence of a person's "bad character", which includes evidence of previous convictions under the law of any country, provided that the offence would also have been an offence in England & Wales and Northern Ireland respectively if it had been done there. In Scotland, previous convictions are generally not admissible as evidence in criminal proceedings, with very limited exceptions.

282. A case study by the UK Central Authority for the Exchange of Criminal Records (UKCA-ECR) highlighting the benefits of foreign conviction exchange was provided to the reviewers.

283. Given the optional character of the present Article, the State under review is in compliance with its requirements.

Article 42. Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) *The offence is committed in the territory of that State Party; or*

(b) *The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

2. *Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

(a) *The offence is committed against a national of that State Party; or*

(b) *The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

(c) *The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

(d) *The offence is committed against the State Party.*

3. *For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

4. *Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.*

5. *If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

6. *Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.*

(a) Summary of information relevant to reviewing the implementation of the article

284. The State under review has provided information on basic principles and various statutory provisions that pertain to the jurisdiction over the offences relating to the Convention.

Bribery Act 2010

“12 Offences under this Act: territorial application

(1) An offence is committed under section 1, 2 or 6 in England and Wales, Scotland or Northern Ireland if any act or omission which forms part of the offence takes place in that part of the United Kingdom.

(2) Subsection (3) applies if—

(a) no act or omission which forms part of an offence under section 1, 2 or 6 takes place in the United Kingdom,

(b) a person's acts or omissions done or made outside the United Kingdom would form part of such an offence if done or made in the United Kingdom, and

(c) that person has a close connection with the United Kingdom.

(3) In such a case—

(a) the acts or omissions form part of the offence referred to in subsection

(2) (a), and

(b) proceedings for the offence may be taken at any place in the United Kingdom.

(4) For the purposes of subsection (2)(c) a person has a close connection with the United Kingdom if, and only if, the person was one of the following at the time the acts or omissions concerned were done or made—

(a) a British citizen,

(b) a British overseas territories citizen,

(c) a British National (Overseas),

(d) a British Overseas citizen,

(e) a person who under the British Nationality Act 1981 was a British subject,

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

(g) an individual ordinarily resident in the United Kingdom,

(h) a body incorporated under the law of any part of the United Kingdom,

(i) a Scottish partnership.

(5) An offence is committed under section 7 irrespective of whether the acts or omissions which form part of the offence take place in the United Kingdom or elsewhere.

(6) Where no act or omission which forms part of an offence under section 7 takes place in the United Kingdom, proceedings for the offence may be taken at any place in the United Kingdom.

(7) *Subsection (8) applies if, by virtue of this section, proceedings for an offence are to be taken in Scotland against a person.*

(8) *Such proceedings may be taken—*

(a) *in any sheriff court district in which the person is apprehended or in custody, or*

(b) *in such sheriff court district as the Lord Advocate may determine.*

(9) *In subsection (8) “sheriff court district” is to be read in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995.”*

285. There is jurisdiction to prosecute all the offences in the **Fraud Act** if a “relevant event” occurred in England or Wales - Criminal Justice Act 1993, Part 1 (Archbold 2007, para. 2-37) and Home Office Circular 19/1999. A “relevant event” for the purposes of the Criminal Justice Act 1993 is defined in Section 2 (1) of that Act as “any act or omission or other event (including the result of any one or more acts or omissions) proof of which is required for conviction of the offence.”

286. In relation to an offence under Section 1 of the Fraud Act the definition of a relevant event has been extended by the insertion of subsection 1A after subsection 2 (1) of the Criminal Justice Act 1993. Subsection 1A states that in relation to an offence under Section 1 a “relevant event” includes: if the fraud involved an intention to make a gain and the gain occurred, that occurrence; and if the fraud involved an intention to cause a loss or to expose another to a risk of loss and the loss occurred, that loss. This means that if, for example, a false representation is made in Scotland to a bank call centre in India resulting in a loss from a bank account in London, there will be jurisdiction to prosecute a Section 1 offence in England and Wales although the actual loss is not an essential element of a Section 1 offence. This provision applies in addition to the provisions in Section 4 of the Criminal Justice Act 1993 which lays down the rules for determining the location of events (Archbold 2007, para. 2-40).

287. Similarly, offences under the **Theft Act 1968** (section 1 and 17(1)(a) and (b)) may be prosecuted if a “relevant event” occurred in England and Wales (Criminal Justice Act 1993 (Part 1)).

288. Sections 2,3 and 4 of the Fraud Act 2006 extend to Northern Ireland as well as England and Wales and provision re jurisdiction to prosecute is made by the Criminal Justice (NI) Order 1996 Part 111 where article 39(1) defines 'a relevant event'. This definition was also extended by a consequential amendment in the Fraud Act. Article 40 of the Order determines that a person may be guilty whether or not they were in NI at the time and Article 41 lies down rules for determining the location of events. The common law offences of conspiracy and misconduct in public office apply in NI. Similar provision for theft breach of trust is made in the Theft Act (NI) 1969 and again jurisdiction to prosecute is in the 1996 Order.

Magistrates’ Court Act 1980

“3A Offences committed on ships and abroad

Sections 280, 281 and 282 of the Merchant Shipping Act 1995 (offences on ships and abroad by British citizens and others) apply in relation to other offences under the law of England and Wales as they apply in relation to offences under that Act or instruments under that Act.”

Senior Courts Act 1981

“46A Offences committed on ships and abroad.

(1) Sections 280, 281 and 282 of the Merchant Shipping Act 1995 (offences on ships and abroad by British citizens and others) apply in relation to other offences under the law of England and Wales as they apply in relation to offences under that Act or instruments under that Act.”

Merchant Shipping Act 1995

“280 Jurisdiction over ships lying off coasts.

(1) Where the area within which a court in any part of the United Kingdom has jurisdiction is situated on the coast of any sea or abuts on or projects into any bay, channel, lake, river or other navigable water the court shall have jurisdiction as respects offences under this Act over any vessel being on, or lying or passing off, that coast or being in or near that bay, channel, lake, river or navigable water and over all persons on board that vessel or for the time being belonging to it.

(2) The jurisdiction under subsection (1) above shall be in addition to and not in derogation of any jurisdiction or power of a court under the Magistrates’ Courts Act 1980 or the Magistrates’ Courts (Northern Ireland) Order 1981.

281 Jurisdiction in case of offences on board ship.

Where any person is charged with having committed any offence under this Act then-

(a) if he is a British citizen and is charged with having committed it-

(i) on board any United Kingdom ship on the high seas,

(ii) in any foreign port or harbour, or

(iii) on board any foreign ship to which he does not belong; or

(b) if he is not a British citizen and is charged with having committed it on board any United Kingdom ship on the high seas;

and he is found within the jurisdiction of any court in any part of the United Kingdom which would have had jurisdiction in relation to the offence if it had been committed on board a United Kingdom ship within the limits of its ordinary jurisdiction to try the offence that court shall have jurisdiction to try the offence as if it had been so committed.

282 Offences committed by British seamen.

(1) Any act in relation to property or person done in or at any place (ashore or afloat) outside the United Kingdom by any master or seaman who at the time is employed in a United Kingdom ship, which, if done in any part of the United Kingdom, would be an offence under the law of any part of the United Kingdom, shall-

(a) be an offence under that law, and

(b) be treated for the purposes of jurisdiction and trial, as if it had been done within the jurisdiction of the Admiralty of England.

(2) Subsection (1) above also applies in relation to a person who had been so employed within the period of three months expiring with the time when the act was done.

(3) Subsections (1) and (2) above apply to omissions as they apply to acts.”

Civil Aviation Act 1982

“92 Application of criminal law to aircraft.

(1) Any act or omission taking place on board a British-controlled aircraft or (subject to subsection (1A) below) a foreign aircraft while in flight elsewhere than in or over the United Kingdom which, if taking place in, or in a part of, the United Kingdom, would constitute an offence under the law in force in, or in that part of, the United Kingdom shall constitute that offence; but this subsection shall not apply to any act or omission which is expressly or impliedly authorised by or under that law when taking place outside the United Kingdom.

(1A) Subsection (1) above shall only apply to an act or omission which takes place on board a foreign aircraft where-

(a) the next landing of the aircraft is in the United Kingdom, and

(b) in the case of an aircraft registered in a country other than the United Kingdom, the act or omission would, if taking place there, also constitute an offence under the law in force in that country.

(1B) Any act or omission punishable under the law in force in any country is an offence under that law for the purposes of subsection (1A) above, however it is described in that law.”

(b) Observations on the implementation of the article

289. The UK appears to regulate jurisdictional matters in accordance for the most part with Article 42 of the Convention.

- Article 42 par. 1 of the Convention requires that States parties establish jurisdiction when the offences are committed in their territory or on board aircraft and vessels registered under their laws. In addition, States parties are invited to consider the establishment of jurisdiction in cases where their nationals are victimized, where the

offence is committed by a national or stateless person residing in their territory, where the offence is linked to ML planned to be committed in their territory, or the offence is committed against the State (Article 42, par. 2). According to Article 42 par. 3 (and Article 44 par. 11), States are also required to establish jurisdiction in cases where they cannot extradite a person on grounds of nationality. In these cases, the general principle *aut dedere aut judicare* (extradite or prosecute) would apply. Finally, States parties may also wish to consider the option of establishing their jurisdiction over offences established in accordance with the Convention when extradition is refused for reasons other than nationality (Art. 42, par. 4).

- It is a general principle of the UK criminal law that there is jurisdiction over offences committed in the territory of the United Kingdom. This principle will apply where statute law is silent. Territorial jurisdiction may also be established by statute, as is the case in particular with regard to the offences relating to Articles 15, 16 and 21 of the Convention (Section 12(1) (5) of the Bribery Act 2010). Equally, regarding Article 17 of the Convention, the Criminal Justice Act 1993 Part 1 provides jurisdiction to prosecute offences in the Theft Act 1968 and in the Fraud Act 2006 if a “relevant event” occurred in England & Wales (section 2 of the 1993 Act). In Scotland, Sections 11 and 11A of the Criminal Procedure (Scotland) Act 1995 provide for how certain offences committed outside Scotland can be prosecuted in Scotland, including under section 11(4) offences relating to property that an offender has in his possession in Scotland but has stolen in other parts of the UK. Finally, the Criminal Justice (Northern Ireland) Order 1996 provides jurisdiction to prosecute offences in the Theft Act (NI) 1969 and in the Fraud Act 2006 if a “relevant event” occurs in Northern Ireland.
- As regards subparagraph 1 (b) of Article 42 (flag principle), jurisdiction in relation to offences committed on board UK ships has been established by Sections 3A of the Magistrates’ Court Act 1980 and 46A of the Senior Courts Act 1981 (in combination with Section 281(a)(i), (b) of the Merchant Shipping Act 1995). Jurisdiction in relation to offences committed on board UK aircraft has been established by Section 92 of the Civil Aviation Act 1982.
- As regards subparagraph 2 (a) of Article 42, the State under review does not recognize the passive personality principle and has not adopted any measures.
- As regards subparagraph 2 (b) of Article 42, the State under review has adopted legislation in part, in respect of bribery (Articles 15, 16 and 21). It has established namely, in Section 12 subs. (2)-(4) of the Bribery Act 2010, an extended active nationality principle, covering all persons who have “a close connection with the United Kingdom”, including not only British citizens, but also individuals ordinarily resident in the UK, bodies incorporated under the law of any part of the UK (including UK subsidiaries of foreign companies) and Scottish partnerships.

- As regards subparagraph 2 (c) of Article 42, the State under review hasn't adopted any measures.
 - As regards subparagraph 2 (d) of Article 42, the State under review hasn't adopted any measures. The United Kingdom does not recognize the state protection principle and does not exercise jurisdiction based on an offence being committed against the State party.
 - As regards paragraph 3 of Article 42, the State under review is in compliance with this provision, because the United Kingdom cannot refuse an extradition request solely on the basis that the person is a UK national or resident (Extradition Act 2003).
 - As regards paragraph 4 of Article 42, the State under review hasn't adopted any measures, stating however that the United Kingdom would always seek to provide co-operation on the basis of extradition. Under Section 194 of the Extradition Act 2003, the UK can consider an extradition request made in the absence of a formal treaty basis.
 - According to Article 42 par. 5, States are required to consult with other interested States in appropriate circumstances in order to avoid, as much as possible, the risk of improper overlapping of exercised jurisdictions. In the United Kingdom investigating and prosecuting authorities are able to consult as appropriate with the competent authorities in other States to co-ordinate their actions. Legislative measures are not deemed necessary for this purpose. The State under review states that consultation would be routine in multi-jurisdictional cases. Prosecutors have reference to the following, where appropriate: European Union 2000 Mutual Legal Assistance Convention, in force since 2005, and which also sets out the legal framework for Joint Investigation Teams in Article 13 of the Convention; Eurojust Guidelines; and US-UK AG (+Lord Advocate) Concurrent Jurisdiction Guidelines.
 - As regards paragraph 6 of Article 42 the State under review hasn't adopted any grounds of criminal jurisdiction other than those described above.
290. In view of the above the UK should be deemed to be in compliance, for the most part, with Article 42. The flag principle seems to apply only in relation to Convention offences which have been established under the law of England & Wales (see Sections 3A of the Magistrates' Court Act 1980 and 46A of the Senior Courts Act 1981).

Similar provision for offences committed on ships and abroad exists in Northern Ireland. Schedule 13 of the Merchant Shipping Act 1995 created the following consequential amendments in Northern Ireland legislation:

1981 No. 1675 (N.I. 26) The Magistrates' Courts (Northern Ireland) Order 1981

42 Offences committed on ships and abroad

17A. Sections 280, 281 and 282 of the Merchant Shipping Act 1995 (offences on ships and abroad by British citizens and others) apply in relation to other offences under the

law of Northern Ireland as they apply in relation to offences under that Act or instruments under that Act.

1978 c23. The Judicature (Northern Ireland) Act 1978

PART IV THE CROWN COURT

46 Exclusive jurisdiction in trial on indictment

(3A) Sections 280, 281 and 282 of the Merchant Shipping Act 1995 (offences on ships and abroad by British citizens and others) apply in relation to other offences under the law of Northern Ireland as they apply in relation to offences under that Act or instruments under that Act.

There are no legislative provisions in Scotland equivalent to section 3A of the Magistrates Courts Act 1980 or section 46A of the Senior Courts Act 1981, even though it is suggested by the State under review that the terms of Section 12 of the Bribery Act would cover most offences committed on flagged ships within territorial waters of other countries.

CHAPTER IV. INTERNATIONAL COOPERATION

291. A review of the UK's self-assessment checklist response would indicate that the UK is compliant with the standards and obligations imposed in Chapter IV. The UK's indication, if correct, that it has criminalized as "equivalent conduct offences" the offences covered by the Convention would seem to reduce concerns on problems raised by requirements for double criminality, one of the primary issues of concern in Chapter IV both with respect to extradition and mutual legal assistance. Of similar effect is the UK's indication that, consistent with the Convention's purposes, the UK does not demand double criminality for non-coercive assistance. Similarly, the UK's willingness and ability to extradite its own citizens reduces many of the problems in international cooperation with which Chapter IV is concerned, primarily in the extradition sphere but with some impact on mutual legal assistance and transfer of proceedings as well.
292. In broad terms, it is obvious from the self-assessment that the UK possesses a wide and robust array of legislative, treaty, and practical tools to meet the international cooperation requirements of the Convention and broad experience in the use of these tools.
293. In late 2011, a panel appointed by the UK Secretary of State issued a comprehensive Review of the United Kingdom's Extradition Arrangements (hereinafter: "the Extradition Review"). At the time of the review, the Home Secretary was still considering the Government's response to the review panel's recommendations. While, consequently, the country review report must consider the operation of the United Kingdom's extradition mechanisms in their present state, the reviewers did review the Extradition Review, including its recommendations (Extradition Review at pp. 317-336). The reviewers' assessment is that the UK's extradition apparatus presently satisfies the require-

ments of Article 44 of the Convention. Adoption of the recommendations of the Extradition Review, in whole or in part, would not alter that assessment. Similarly, a decision not to adopt those recommendations would not alter the assessment of compliance. The reviewers do emphasize that significant expertise went into the Extradition Review and that the Extradition Review as a whole, including its recommendations, should be given a full and careful consideration by the UK authorities which the reviewers understood was being done. As noted, however, a determination regarding the UK's compliance with the standards of the Convention is not dependent on any particular response by the UK authorities to the Extradition Review's specific recommendations.

Article 44 – Paragraph 1.

This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

294. The State under review has provided information on the primary legislation for extradition, the Extradition Act 2003, and referred specifically to Sections 193, 194, 137 and 138.

295. Part 1 of the Extradition Act 2003 covers extradition to Category 1 territories (EU Member States), where the European Arrest Warrant is in operation. Part 2 of the Extradition Act concerns non-EU Member States. The UK has designated its non-EU extradition partners as category 2 territories.

296. Under Section 193 of the Extradition Act 2003, the UK may extradite to States which are its partners to international conventions where a specific designation under that section has been made. Furthermore, Section 194 of the Extradition Act 2003 provides for the negotiation of a special arrangement for extradition of an individual with States with which no other extradition provisions exist. Part 2 of the Extradition Act 2003 would apply to requests made with these provisions.

297. Sections 137, 138, 193 and 194 of the Extradition Act 2003 read as follows:

137 Extradition offences: person not sentenced for offence

(1) This section applies in relation to conduct of a person if-

(a) he is accused in a category 2 territory of the commission of an offence

constituted by the conduct, or

(b) he is alleged to be unlawfully at large after conviction by a court in a category 2 territory of an offence constituted by the conduct and he has not been sentenced for the offence.

(2) The conduct constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied-

(a) the conduct occurs in the category 2 territory;

(b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom;

(c) the conduct is so punishable under the law of the category 2 territory (however it is described in that law).

(3) The conduct also constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied-

(a) the conduct occurs outside the category 2 territory;

(b) the conduct is punishable under the law of the category 2 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment (however it is described in that law);

(c) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment.

(4) The conduct also constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied-

(a) the conduct occurs outside the category 2 territory and no part of it occurs in the United Kingdom;

(b) the conduct would constitute an offence under the law of the relevant

part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom;

(c) the conduct is so punishable under the law of the category 2 territory (however it is described in that law).

(5) The conduct also constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied-

(a) the conduct occurs outside the category 2 territory and no part of it occurs in the United Kingdom;

(b) the conduct is punishable under the law of the category 2 territory with imprisonment for a term of 12 months or another form of detention or a greater punishment (however it is described in that law);

(c) the conduct constitutes or if committed in the United Kingdom would constitute an offence mentioned in subsection (6).

(6) The offences are-

(a) an offence under section 51 or 58 of the International Criminal Court Act 2001 (c. 17) (genocide, crimes against humanity and war crimes);

(b) an offence under section 52 or 59 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction);

(c) an ancillary offence, as defined in section 55 or 62 of that Act, in relation to an offence falling within paragraph (a) or (b);

(d) an offence under section 1 of the International Criminal Court (Scotland) Act 2001 (asp 13) (genocide, crimes against humanity and war crimes);

(e) an offence under section 2 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction);

(f) an ancillary offence, as defined in section 7 of that Act, in relation to an

offence falling within paragraph (d) or (e).

(7) If the conduct constitutes an offence under the military law of the category 2 territory but does not constitute an offence under the general criminal law of the relevant part of the United Kingdom it does not constitute an extradition offence; and subsections (1) to (6) have effect subject to this.

(8) The relevant part of the United Kingdom is the part of the United Kingdom in which-

(a) the extradition hearing took place, if the question of whether conduct constitutes an extradition offence is to be decided by the Secretary of State;

(b) proceedings in which it is necessary to decide that question are taking place, in any other case.

(9) Subsections (1) to (7) apply for the purposes of this Part.

138 Extradition offences: person sentenced for offence

(1) This section applies in relation to conduct of a person if-

(a) he is alleged to be unlawfully at large after conviction by a court in a category 2 territory of an offence constituted by the conduct, and

(b) he has been sentenced for the offence.

(2) The conduct constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied-

(a) the conduct occurs in the category 2 territory;

(b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom;

(c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 2 territory in respect of the conduct.

(3) The conduct also constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied-

(a) the conduct occurs outside the category 2 territory;

(b) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 2 territory in respect of the conduct;

(c) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment.

(4) The conduct also constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied-

(a) the conduct occurs outside the category 2 territory and no part of it occurs in the United Kingdom;

(b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom;

(c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 2 territory in respect of the conduct.

(5) The conduct also constitutes an extradition offence in relation to the category 2 territory if these conditions are satisfied-

(a) the conduct occurs outside the category 2 territory and no part of it occurs in the United Kingdom;

(b) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 2 territory in respect of the conduct;

(c) the conduct constitutes or if committed in the United Kingdom would constitute an offence mentioned in subsection (6).

(6) The offences are-

(a) an offence under section 51 or 58 of the International Criminal Court Act 2001 (c. 17) (genocide, crimes against humanity and war crimes);

(b) an offence under section 52 or 59 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction);

(c) an ancillary offence, as defined in section 55 or 62 of that Act, in relation to an offence falling within paragraph (a) or (b);

(d) an offence under section 1 of the International Criminal Court (Scotland) Act 2001 (asp 13) (genocide, crimes against humanity and war crimes);

(e) an offence under section 2 of that Act (conduct ancillary to genocide etc. committed outside the jurisdiction);

(f) an ancillary offence, as defined in section 7 of that Act, in relation to an offence falling within paragraph (d) or (e).

(7) If the conduct constitutes an offence under the military law of the category 2 territory but does not constitute an offence under the general criminal law of the relevant part of the United Kingdom it does not constitute an extradition offence; and subsections (1) to (6) have effect subject to this.

(8) The relevant part of the United Kingdom is the part of the United

Kingdom in which-

(a) the extradition hearing took place, if the question of whether conduct constitutes an extradition offence is to be decided by the Secretary of State;

(b) proceedings in which it is necessary to decide that question are taking place, in any other case.

(9) Subsections (1) to (7) apply for the purposes of this Part.

193 Parties to international Conventions(1)A territory may be designated by order made by the Secretary of State if—

(a) it is not a category 1 territory or a category 2 territory, and

(b) it is a party to an international Convention to which the United Kingdom is a party.

(2) This Act applies in relation to a territory designated by order under subsection (1) as if the territory were a category 2 territory.

(3) As applied to a territory by subsection (2), this Act has effect as if—

(a) sections 71(4), 73(5), 74(11)(b), 84(7), 86(7), 137 and 138 were omitted;

(b) the conduct that constituted an extradition offence for the purposes of Part 2 were the conduct specified in relation to the territory in the order under subsection (1) designating the territory.

(4) Conduct may be specified in relation to a territory in an order under subsection (1) designating the territory only if it is conduct to which the relevant Convention applies.

(5) The relevant Convention is the Convention referred to in subsection (1)(b) which is specified in relation to the territory in the order under subsection (1) designating it.

194 Special extradition arrangements(1)This section applies if the Secretary of State believes that—

(a) arrangements have been made between the United Kingdom and another territory for the extradition of a person to the territory, and

(b) the territory is not a category 1 territory or a category 2 territory.

(2) *The Secretary of State may certify that the conditions in paragraphs (a) and (b) of subsection (1) are satisfied in relation to the extradition of the person.*

(3) *If the Secretary of State issues a certificate under subsection (2) this Act applies in respect of the person's extradition to the territory as if the territory were a category 2 territory.*

(4) *As applied by subsection (3), this Act has effect—*

(a) *as if sections 71(4), 73(5), 74(11)(b), 84(7) and 86(7) were omitted;*

(b) *with any other modifications specified in the certificate.*

(5) *A certificate under subsection (2) in relation to a person is conclusive evidence that the conditions in paragraphs (a) and (b) of subsection (1) are satisfied in relation to the person's extradition.*

(b) Observations on the implementation of the article

298. The UK appears to have a comprehensive if somewhat complex legislative framework with respect to extradition. The answer provided under this paragraph is largely formulated by quotations from the legislation. Some explication of the legislation in the answer was provided by the UK. More specifically:

- The countries which are designated as Category 2 territories under the Extradition Act are listed in SI 2003 no. 3334. The UK explained that paragraph 193, Chapter 41, Part 5 of the Extradition Act 2003 makes provision for extradition between parties to international conventions and provides that:
 - 1) A Territory may be designated by order of the Secretary of State if:
 - a) it is not a category 1 territory or a category 2 territory, and
 - b) it is party to an international Convention to which the UK is a party.

It was explained that this sets out a provision under which the Convention on its own could be the legal basis for extradition if paragraph 193 is met.

- Regarding the distinction between Section 137(3) and Section 137(4) for extraterritorial extradition offences, the UK explained that Section 137(3) contemplates a scenario where a foreign state requests extradition for a crime committed within the territory of the UK. In such cases, if the crime is one of a limited number of crimes over which the UK has extraterritorial jurisdiction, extradition may be sought even though the crime occurred within the UK. These provisions were considered and explicated by the House of Lords in *Kings Prosecutor Belgium v Cando Armas* [2005] UKHL 67. Section 137(4) contemplates a simple extra-territorial jurisdiction, i.e. where no part of the crime occurred within the UK, and in such cases, while traditional dual criminality requirements, apply for Category 2 territories, there is no special re-

quirement that the offence be of the limited type where the UK can assert extraterritorial jurisdiction.

- Regarding Section 138(3) and (4), it was explained that the only difference between these provisions is that Section 138 deals with persons who have already been sentenced.
- This being said, it seems apparent, assuming the criminalization provisions of the Convention have been satisfactorily complied with, that the double criminality provisions of the Extradition Act would themselves comply with the Convention. To the extent criminalization issues exist they would thus, of course, affect the ability to effect extradition to partner states under the Convention.

Regarding examples of implementation, including cases which raised issues on double criminality, the UK reports that no extradition requests have been made to the UK for offences falling under the Convention. It was clarified that no requests have been made under the Convention itself as the treaty basis for the extradition (which is not entirely surprising at this point), although the UK has executed requests for extradition to the UK for corruption-related offences which would fall under the offences set forth in the criminalization chapter of the Convention but does not have that data at hand. It was explained that examples of double-criminality would require an analysis of European Arrest Warrants executed for corruption offences by SOCA and the Judicial Cooperation Unit for Category 2 territories handled by the Unit, which would then have to be individually analyzed to assess if any issues arose that would have caused problems had they been executed under the Convention. It was explained that, while this would involve a significant amount of manpower, the request could be considered outside of the timeframe required under the review.

Article 44 – Paragraph 2.

Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

299. The UK has stated that its law only permits extradition for offences where dual criminality has been established.

(b) Observations on the implementation of the article

300. There were no comments by the reviewers regarding this provision.

Article 44 – Paragraph 3.

If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

301. The UK has stated that if extradition is sought for a number of offences, some of which meet the sentence threshold criteria and some of which do not, the District Judge and, in Scotland, the Sheriff, should refuse extradition for the lesser offences because they cannot be defined as “extradition offences” in accordance with the Extradition Act 2003.

(b) Observations on the implementation of the article

302. The inability to extradite on “lesser offences” would not breach the rule of specialty if the conviction resulted from the same conduct as that for which extradition was granted. The same is true for Scotland.

Article 44 – Paragraph 4.

Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

303. The answer to paragraph 1 details extraditable offences under the Extradition Act 2003.

304. Section 81 of the Extradition Act 2003 provides for the District Judge and, in Scotland, the Sheriff, to refuse extradition if it appears that the extradition request has been received for the purpose of punishing the person on account of his political opinions. Section 81 reads as follows:

81 Extraneous considerations

A person’s extradition to a category 2 territory is barred by reason of extraneous considerations if (and only if) it appears that-

(a) the request for his extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality,

gender, sexual orientation or political opinions, or

(b) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions.

305. The Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States provides for extradition between the 27 EU Member States⁵.

306. The UK has bilateral Extradition treaties with the following countries:

Algeria, http://www.fco.gov.uk/resources/en/pdf/pdf10/fco_cm6928_algeriaextradition

Argentina, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1894/2>

Bolivia, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1899/10>

Brazil, http://www.fco.gov.uk/resources/en/pdf/pdf17/fco_ref_cm3759brazilextradition

Chile, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1898/12>

Colombia, Signed October 1888 - Hard copy available if needed.

Cuba, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1905/15>

Ecuador, Signed September 1880 - Hard copy available if needed.

El Salvador, Signed 23 June 1881 - Hard copy available if needed.

Guatemala, Signed July 1885 - Hard copy available if needed.

Guyana,

Hong Kong Special Administrative Region,

http://www.fco.gov.uk/resources/en/pdf/pdf17/fco_ref_ts30-98i_hksar_surren

Haiti, Signed December 1874 - Hard copy available if needed.

Iraq, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1933/13>

Liberia, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1894/6>

Libya,

<http://www.fco.gov.uk/resources/en/pdf/3706546/3892733/10149409/TrLibya3.2009Extrad>

Nicaragua, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1906/7>

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0584:EN:HTML>

Panama, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1907/25>

Paraguay, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1911/19>

Peru, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1907/13>

Thailand, Signed September 1883 - Hard copy available if needed.

The United Arab Emirates,

http://www.fco.gov.uk/resources/en/pdf/pdf19/fco_ref_cm7283_uaeextradition

The United States of America,

http://www.fco.gov.uk/resources/en/pdf/pdf18/fco_cm7146_usaextraditiontreaty.

307. The UK is also party to multi-lateral treaties:

The European Convention on Extradition,

<http://conventions.coe.int/Treaty/en/Treaties/Html/024.htm>

Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Iceland, Israel, Liechtenstein, Macedonia (FYR) Moldova, Monaco, Montenegro, Norway, Russian Federation, San Marino, Serbia, South Africa, Switzerland, Turkey, Ukraine,

The London Scheme for Extradition within the Commonwealth
http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7B56F55E5D-1882-4421-9CC1-71634DF17331%7D_London_Scheme.pdf

Antigua and Barbuda, Australia, The Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Canada, Cook Islands, Dominica, Fiji, Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, , Malawi, Malaysia, Maldives, Mauritius, Mexico, Nauru, New Zealand, Nigeria, Papua New Guinea, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Singapore, Solomon Islands, Sri Lanka, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Tuvalu, Uganda, Uruguay, Vanuatu, Western Samoa, Zambia and Zimbabwe.

(b) Observations on the implementation of the article

308. The UK points out that extradition requests that are motivated by intent to punish someone for his or her political opinions will not be complied with. This is a question separate from whether an offence itself is a political offence. The answer seems to imply that the UK does not have a per se “political offence” exception, or at least that corruption-related offences under the Convention would not be considered political offences.

309. Concerning implementation, the UK indicated that they have not received any extradition requests made to the UK for offences falling under the Convention. Reference is made to the last paragraph of the comments to Article 44 – paragraph 1.

Article 44 – Paragraphs 5, 6 and 7.

5. *If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

6. *A State Party that makes extradition conditional on the existence of a treaty shall:*

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

7. *States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.*

(a) Summary of information relevant to reviewing the implementation of the article

310. The UK has stated that it does not make extradition conditional on the existence of a treaty providing the offence in question is deemed an extraditable offence. Details of extraditable offences have been provided in the response to paragraph 1.

(b) Observations on the implementation of the articles

311. The UK indicated that it does not require a treaty for extradition. Section 193 of the Extradition Act 2003 (quoted under paragraph 1 of Article 44 above) sets out a provision under which UNCAC on its own could be the legal basis for extradition if Section 193 is met, although the UK authorities did not indicate whether that designation has been made with respect to UNCAC, or whether there are principles beyond Section 193 of the Extradition Act 2003 that are considered in making such designation. In Scotland, this has arisen in practice in three requests for extradition related to one crime. The crime in Scotland was murder and the accused were extradited under a special arrangement from Pakistan. This was facilitated and agreed between the Scottish Ministers, Lord Advocate and the Foreign and Commonwealth Office. The extradition was carried out under Section 4 of Chapter 1 of the Pakistan Extradition Act 1972 which allows for non-treaty States to arrange ad-hoc extraditions following the terms of that Act.

312. It was noted that the relevant notification to the United Nations under article 44 (6)(a) of the Convention has not been made. It was suggested that the UK send the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secre-

tary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

Article 44 – Paragraph 8.

Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

313. Sections 80-95 of the Extradition Act 2003 contain bars to extradition, and are cited in the UK response, as follows.

80 Rule against double jeopardy

A person's extradition to a category 2 territory is barred by reason of the rule against double jeopardy if (and only if) it appears that he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction if he were charged with the extradition offence in the part of the United Kingdom where the judge exercises his jurisdiction

81 Extraneous considerations

A person's extradition to a category 2 territory is barred by reason of extraneous considerations if (and only if) it appears that-

(a) the request for his extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation or political opinions, or

(b) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions.

82 Passage of time

A person's extradition to a category 2 territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have committed the extradition offence or since he is alleged to have become unlawfully at large (as the case may be).

83 Hostage-taking considerations

(1) A person's extradition to a category 2 territory is barred by reason of hostage-taking considerations if (and only if) the territory is a party to the

Hostage-taking Convention and it appears that-

(a) if extradited he might be prejudiced at his trial because communication between him and the appropriate authorities would not be possible, and

(b) the act or omission constituting the extradition offence also constitutes an offence under section 1 of the Taking of Hostages Act 1982 (c. 28) or an attempt to commit such an offence.

(2) The appropriate authorities are the authorities of the territory which are entitled to exercise rights of protection in relation to him.

(3) A certificate issued by the Secretary of State that a territory is a party to the Hostage-taking Convention is conclusive evidence of that fact for the purposes of subsection (1).

(4) The Hostage-taking Convention is the International Convention against the Taking of Hostages opened for signature at New York on 18 December 1979.

84 Case where person has not been convicted

(1) If the judge is required to proceed under this section he must decide whether there is evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him.

(2) In deciding the question in subsection (1) the judge may treat a statement made by a person in a document as admissible evidence of a fact if-

(a) the statement is made by the person to a police officer or another person charged with the duty of investigating offences or charging offenders, and

(b) direct oral evidence by the person of the fact would be admissible.

(3) In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the judge must in particular have regard-

(a) to the nature and source of the document;

(b) to whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the judge to be relevant, it is likely that the document is authentic;

(c) to the extent to which the statement appears to supply evidence which would not be readily available if the statement were not treated as being admissible evidence of the fact;

(d) to the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the judge in deciding the question in subsection (1);

(e) to any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible to controvert the statement if

the person making it does not attend to give oral evidence in the proceedings.

(4) A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the purposes of subsection (2).

(5) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.

(6) If the judge decides that question in the affirmative he must proceed under section 87.

(7) If the judge is required to proceed under this section and the category 2 territory to which extradition is requested is designated for the purposes of this section by order made by the Secretary of State-

(a) the judge must not decide under subsection (1), and

(b) he must proceed under section 87.

(8) Subsection (1) applies to Scotland with the substitution of "summary proceedings in respect of an offence alleged to have been committed by the person (except that for this purpose evidence from a single source shall be sufficient)" for "the summary trial of an information against him".

(9) Subsection (1) applies to Northern Ireland with the substitution of "the hearing and determination of a complaint" for "the summary trial of an information".

85 Case where person has been convicted

(1) If the judge is required to proceed under this section he must decide whether the person was convicted in his presence.

(2) If the judge decides the question in subsection (1) in the affirmative he must proceed under section 87.

(3) If the judge decides that question in the negative he must decide whether the person deliberately absented himself from his trial.

(4) If the judge decides the question in subsection (3) in the affirmative he must proceed under section 87.

(5) If the judge decides that question in the negative he must decide whether the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial.

(6) If the judge decides the question in subsection (5) in the affirmative he must proceed under section 86.

(7) If the judge decides that question in the negative he must order the person's discharge.

(8) The judge must not decide the question in subsection (5) in the affirmative unless, in any proceedings that it is alleged would constitute a retrial or a review amounting to a retrial, the person would have these rights-

(a) the right to defend himself in person or through legal assistance of his own choosing or, if he had not sufficient means to pay for legal assistance, to be given it free when the interests of justice so required;

(b) the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

86 Conviction in person's absence

(1) If the judge is required to proceed under this section he must decide whether there is evidence which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him.

(2) In deciding the question in subsection (1) the judge may treat a statement made by a person in a document as admissible evidence of a fact if-

(a) the statement is made by the person to a police officer or another person charged with the duty of investigating offences or charging offenders, and

(b) direct oral evidence by the person of the fact would be admissible.

(3) In deciding whether to treat a statement made by a person in a document as admissible evidence of a fact, the judge must in particular have regard-

(a) to the nature and source of the document;

(b) to whether or not, having regard to the nature and source of the document and to any other circumstances that appear to the judge to be relevant, it is likely that the document is authentic;

(c) to the extent to which the statement appears to supply evidence which would not be readily available if the statement were not treated as being admissible evidence of the fact;

(d) to the relevance of the evidence that the statement appears to supply to any issue likely to have to be determined by the judge in deciding the question in subsection (1);

(e) to any risk that the admission or exclusion of the statement will result in unfairness to the person whose extradition is sought, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings.

(4) A summary in a document of a statement made by a person must be treated as a statement made by the person in the document for the

purposes of subsection (2).

(5) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.

(6) If the judge decides that question in the affirmative he must proceed under section 87.

(7) If the judge is required to proceed under this section and the category 2 territory to which extradition is requested is designated for the purposes of this section by order made by the Secretary of State-

(a) the judge must not decide under subsection (1), and

(b) he must proceed under section 87.

(8) Subsection (1) applies to Scotland with the substitution of "summary proceedings in respect of an offence alleged to have been committed by the person (except that for this purpose evidence from a single source shall be sufficient)" for "the summary trial of an information against him".

(9) Subsection (1) applies to Northern Ireland with the substitution of "the hearing and determination of a complaint" for "the summary trial of an information".

87 Human rights

(1) If the judge is required to proceed under this section (by virtue of section 84, 85 or 86) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c. 42).

(2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.

(3) If the judge decides that question in the affirmative he must send the case to the Secretary of State for his decision whether the person is to be

extradited.

88 Person charged with offence in United Kingdom

(1) This section applies if at any time in the extradition hearing the judge is informed that the person is charged with an offence in the United Kingdom.

(2) The judge must adjourn the extradition hearing until one of these occurs-

(a) the charge is disposed of;

(b) the charge is withdrawn;

(c) proceedings in respect of the charge are discontinued;

(d) an order is made for the charge to lie on the file, or in relation to Scotland, the diet is deserted pro loco et tempore.

(3) If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the judge may adjourn the extradition hearing until the sentence has been served.

(4) If before he adjourns the extradition hearing under subsection (2) the judge has decided under section 79 whether the person's extradition is barred by reason of the rule against double jeopardy, the judge must decide that question again after the resumption of the hearing.

89 Person serving sentence in United Kingdom

(1) This section applies if at any time in the extradition hearing the judge is informed that the person is serving a sentence of imprisonment or another form of detention in the United Kingdom.

(2) The judge may adjourn the extradition hearing until the sentence has been served.

90 Competing extradition claim

(1) This section applies if at any time in the extradition hearing the judge is informed that the conditions in subsection (2) or (3) are met.

(2) The conditions are that-

(a) the Secretary of State has received another valid request for the person's extradition to a category 2 territory;

(b) the other request has not been disposed of;

(c) the Secretary of State has made an order under section 126(2) for further proceedings on the request under consideration to be deferred until the other request has been disposed of.

(3) The conditions are that-

(a) a certificate has been issued under section 2 in respect of a Part 1 warrant issued in respect of the person;

(b) the warrant has not been disposed of;

(c) the Secretary of State has made an order under section 179(2) for further proceedings on the request to be deferred until the warrant has been disposed of.

(4) The judge must remand the person in custody or on bail.

(5) If the judge remands the person in custody he may later grant bail.

91 Physical or mental condition

(1) This section applies if at any time in the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied.

(2) The condition is that the physical or mental condition of the person is such that it would be unjust or oppressive to extradite him.

(3) The judge must-

(a) order the person's discharge, or

(b) adjourn the extradition hearing until it appears to him that the condition

in subsection (2) is no longer satisfied.

92 Case sent to Secretary of State

(1) This section applies if the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited.

(2) The judge must inform the person in ordinary language that-

(a) he has a right to appeal to the High Court;

(b) if he exercises the right the appeal will not be heard until the Secretary of State has made his decision.

(3) But subsection (2) does not apply if the person has consented to his extradition under section 127.

(4) The judge must remand the person in custody or on bail-

(a) to wait for the Secretary of State's decision, and

(b) to wait for his extradition to the territory to which extradition is requested (if the Secretary of State orders him to be extradited).

(5) If the judge remands the person in custody he may later grant bail.

93 Secretary of State's consideration of case

(1) This section applies if the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited.

(2) The Secretary of State must decide whether he is prohibited from ordering the person's extradition under any of these sections-

(a) section 94 (death penalty);

(b) section 95 (speciality);

(c) section 96 (earlier extradition to United Kingdom from other territory).

(3) If the Secretary of State decides any of the questions in subsection (2) in the affirmative he must order the person's discharge.

(4) If the Secretary of State decides those questions in the negative he must order the person to be extradited to the territory to which his extradition is requested unless-

(a) he is informed that the request has been withdrawn,

(b) he makes an order under section 126(2) or 179(2) for further proceedings on the request to be deferred and the person is discharged under section 180, or

(c) he orders the person's discharge under section 208.

(5) In deciding the questions in subsection (2), the Secretary of State is not required to consider any representations received by him after the end of the permitted period.

(6) The permitted period is the period of 6 weeks starting with the appropriate day.

94 Death penalty

(1) The Secretary of State must not order a person's extradition to a category 2 territory if he could be, will be or has been sentenced to death for the offence concerned in the category 2 territory.

(2) Subsection (1) does not apply if the Secretary of State receives a written assurance which he considers adequate that a sentence of death-

(a) will not be imposed, or

(b) will not be carried out (if imposed).

95 Speciality

(1) The Secretary of State must not order a person's extradition to a

category 2 territory if there are no speciality arrangements with the category 2 territory.

(2) But subsection (1) does not apply if the person consented to his extradition under section 127 before his case was sent to the Secretary of State.

(3) There are speciality arrangements with a category 2 territory if (and only if) under the law of that territory or arrangements made between it and the United Kingdom a person who is extradited to the territory from the United Kingdom may be dealt with in the territory for an offence committed before his extradition only if-

(a) the offence is one falling within subsection (4), or

(b) he is first given an opportunity to leave the territory.

(4) The offences are-

(a) the offence in respect of which the person is extradited;

(b) an extradition offence disclosed by the same facts as that offence, other than one in respect of which a sentence of death could be imposed;

(c) an extradition offence in respect of which the Secretary of State consents to the person being dealt with;

(d) an offence in respect of which the person waives the right that he would have (but for this paragraph) not to be dealt with for the offence.

(5) Arrangements made with a category 2 territory which is a Commonwealth country or a British overseas territory may be made for a particular case or more generally.

(6) A certificate issued by or under the authority of the Secretary of State confirming the existence of arrangements with a category 2 territory which is a Commonwealth country or a British overseas territory and stating the terms of the arrangements is conclusive evidence of those matters.

(b) Observations on the implementation of the article

314. Because the essence of the paragraph is to subject extradition to the limitations in the domestic law, the paragraph is almost ipso facto complied with. It is assumed, however, that the purpose of the review is to determine that the limitations on extradition are traditional and/or reasonable limitations that do not operate to neutralize extradition as an effective tool of international cooperation in corruption cases.

315. The following explanations were provided.

Double jeopardy:

316. The statute basically states that extradition will be barred by double jeopardy in situations where double jeopardy would have barred the person's indictment in the UK in an analogous domestic situation. The UK further explained that the rule applies under Section 80 of the Act. There is no relevant case law in this area, as the issue does not come up often in terms of incoming requests. The UK is also bound by the European Convention on Extradition, which states at Article 9 (non bis in idem) that "extradition shall not be granted if final judgment has been passed by the competent authorities of the requested party upon the person claimed in respect of the offence or offences for which extradition is requested." In Scotland, the Double Jeopardy (Scotland) Act 2011 now regulates the law in this area domestically. It provides a statutory regime for what would have previously been dealt with by a plea in bar of trial at common law under the term "tholed assize" or "ne bis in idem". The Act provides that where a person is charged with a crime, he may claim the crime arises from the same, or largely the same acts or omissions which have already given rise to his earlier trial, and the resultant conviction or acquittal (autrefois acquit or convict). The statute provides that the judge or sheriff in such cases may uphold the plea in bar of trial (or ne bis in idem) if satisfied on the balance of probabilities that the claim is true. Evidence may be submitted in relation to this point.

317. A plea in bar of trial is a plea which must be taken before any plea of guilty or not guilty is recorded by the court. If the plea is successful, no further procedure on that charge may take place. However, if attempts were made to bring the same charge again, the plea would require to be taken again. It is anticipated that if a person whose extradition was sought raised a plea in bar of trial on the ground of double jeopardy in relation to extradition proceedings, the extraditee would be required to establish on the balance of probabilities that their guilt or innocence in relation to the crime had previously been established.

Passage of time:

318. The sections of the Extradition Act 2003 which relate to passage of time (both in the context of European Arrest Warrants and Category 2 countries) have been the subject of much litigation. The leading case in relation to passage of time is *Gomes & Good-*

year v. Trinidad and Tobago [2009] UKHL 21⁶, which sets out the principles that are applied to consideration of the issue of passage of time, and follows the case of *Kakis v. Cyprus* [1978] 1 WLR 779. *Kakis v Cyprus* set out two categories of persons in relation to the passage of time: (1) persons who had fled justice; and (2) persons who were not deemed to be fugitives. Under the caselaw, absent exceptional circumstances where the passage of time is engendered by a fugitive's own actions in fleeing from justice, the passage of time will not be a factor in preventing extradition.

319. In Scotland, the Court has held due to the overarching requirement to give effect to the United Kingdom's treaty obligations, that where the extraditee raises a bar to extradition based upon the passage of time, the court will consider the effect that passage of time has had on the person and where appropriate his family life, rather than the period of time itself. Even where there is no explanation for the period of time that has elapsed, this will not of itself be conclusive of culpability of the part of the issuing judicial authority such that it will lead to the bar in trial being established.

Hostage taking considerations:

320. Some of these provisions were not clear. We assume, however, that these provisions would not, in any case, be relevant to extradition regarding corruption offences under the Convention.

Evidentiary requirements:

321. The evidentiary requirements of Section 84 of the Extradition Act, are applicable in cases where the Convention would be the only treaty basis. Under treaties that the UK has with many countries, such as the Commonwealth or the Council of Europe, submission evidence is not required. In cases where the evidentiary requirements of Section 84 are applicable, it was explained that the sufficiency of the evidence is a decision rendered by the judge who will assess if the evidence provided is sufficient or if a discharge is required. Under Section 84, evidence should be sufficient "to make a case requiring an answer by the person in the proceedings if the proceedings were the summary trial of an information against him". (Essentially, this means sufficient evidence to survive a motion by the defence to dismiss the case as unproven after the prosecution has presented its evidence, even before the defense has presented its own case.) Section 84 provides for flexibility regarding the form of the evidence submitted. It need not be in affidavit form and a statement made to a police officer or investigating officer, or direct oral evidence is sufficient.

Ultimately, however, it is the judge who will assess the sufficiency of the evidence and, other than as provided for in Section 84, it is not possible to say what level of evidence would satisfy a judge. Evidence adduced should obviously be as robust as possible in order to persuade the judge. The recent case of *Tudor v UAE*, Div Ct, 2012 EWHC

⁶ <http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090429/gomes-1.htm>

1098 (13.3.2012) was provided concerning admissibility considerations under Section 84 and concerning the types of “statements” that can be submitted under Section 84. The case, involving a jewel theft, demonstrated the flexibility applied by the Court in admitting and assessing the evidence submitted by the foreign jurisdiction with an emphasis on fairness to the defendant and the interests of justice.

322. The following points were also clarified:

- As to the question of whether a wanted person is permitted to submit evidence in an extradition proceeding to refute the evidence submitted against him and how easy it is to “disprove” a statement, it was explained that if a statement is factually weak then it could be easily controverted. If a prima facie case exists, then that prima facie evidence will need to be put forward before the judge who will decide on the basis of that evidence if there is a case to answer. It is up to the requested person to refute the evidence in court if they so wish, be it orally or via a written statement or objective evidence. Courts rules regarding the submission of evidence are in place, particularly around the timing of when such evidence must be put forward. Rulings on the admissibility of evidence are made by the courts.
- Section 84(7) relates to the circumstance where extradition is sought by a country which has been designated by the Secretary of State as being a country which need not provide a full prima facie case which forms the basis of the prosecution case in that country, and may instead provide abbreviated information about the prosecution case. The abbreviated information is usually in the form of an affidavit of the prosecutor setting out the evidence available to establish the charge, the indictment and the warrant to arrest issued in that jurisdiction
- Regarding the significance of Section 84(8) for proceedings in Scotland, the UK explained that in Scotland, a summary trial is a trial before a sheriff sitting alone (as opposed to a sheriff/judge sitting with a jury). The maximum sentence in summary procedure is limited by statute to 12 months imprisonment or a £10,000 fine (or as otherwise provided for by the statute that creates the offence). In Scotland, no one can be convicted of a criminal charge on a single source of evidence. The significance of this section is that where, in summary procedure, evidence of one witness, no matter how credible or reliable, would not be sufficient to establish the guilt of an accused person, in this procedure, one source of evidence is sufficient to establish a factual basis for the crime in the requesting jurisdiction.
- Regarding the significance of Section 84(9) regarding proceedings in Northern Ireland, it was explained that the terms “the hearing and determination of a complaint” in lieu of “the summary trial of an information” are terminology used by courts in Northern Ireland as opposed to England and Wales, but that the terms mean the same thing.

Extradition based on in absentia convictions:

323. While the statutory provisions regarding the general recognition or non-recognition of in absentia convictions for extradition purposes are fairly clear, the UK explained that practically (in cases where Scotland is the requested jurisdiction), the requesting State is asked to provide information which would satisfy the court that the requested person was either aware of the hearing at which he was convicted and chose to absent himself, or would be entitled to a retrial on his return. The court must be satisfied on these issues beyond reasonable doubt. If information provided by the requesting State is insufficient to satisfy the court, the requested person will be discharged from the proceedings. The same applies to England and Wales, although it hasn't been done in Part 2 cases. Some issues had been encountered with in absentia convictions relating to Non-extradition on the basis of human rights concerns:

324. In light of the existence of the European Arrest Warrant, it is likely that extradition requests to the UK under the Convention would be essentially made by non-EU States. In clarifying the limitations under Section 87 regarding extraditions incompatible with "Convention rights", the UK reported that this is an obligation that must be considered and provided case law and published materials of the Human Rights Joint Committee on the human rights implications of UK extradition policy and the effectiveness of human rights articles in extradition cases⁷.

Pending Case in the UK:

325. Further explanation of the terms used in Section 88, e.g. "withdrawn", "discontinued", the "charge to lie on the file," was requested. The UK explained that "withdrawn" and "discontinued" are self-explanatory; the former means that the warrant may have been issued by mistake or against the wrong person. The latter "Nolle prosequi" as a declaration can be made by a prosecutor in a criminal case either before or during trial, resulting in the prosecutor declining to further pursue the case against the defendant (for whatever reason). Charges disposed means the case has been concluded by way of conviction or acquittal. Charges "lie to file" means that charges are in effect still live and can be re-raised. For example, a plea bargain may be acceptable in respect of multiple charges. If there are charges remaining the prosecutor may ask for them to lie to file. The request must come from a prosecutor and ordered by a judge. The UK further explained that "the diet is deserted pro loco et tempore" is a term used in Scotland to indicate that the prosecutor has brought proceedings on a particular charge on a complaint or indictment (the documents setting out the charge in summary and solemn proceedings) to an end, but reserving the right to raise proceedings (even in relation to a charge in identical terms) as a consequence of the same conduct at a later date.

326. In this context, if criminal charges have been brought against a person in Scotland and his or her extradition is sought, the terms of the EA section 76/76A require that the extradition proceedings are adjourned until the UK case is no longer "live". If, in Scotland, the decision had been made to desert the case pro loco et tempore, proceedings on

⁷ <http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/156/15605.htm>

that charge could be resurrected assuming that it remained in the public interest to prosecute the charge and there was no proscription of time.

Serving sentence in UK:

327. The UK explained that the word “may” in Section 89(2) has been interpreted in Scotland to mean that temporary extradition is possible where the extradition of a person in UK detention is requested. Whether sufficient guarantees can be provided by the requesting State that the person would remain in custody serving the sentence, and would thereafter be returned to serve the remainder of the sentence to allow the temporary extradition to take place, is a different matter. Further, it was explained that Section 89(2) “simply means what it says”, i.e. that the judge may adjourn an extradition hearing until a person has served a prison sentence. The Section has been amended by Section 71(5)(b) of the Policing and Crime Act 2009), and the Secretary of State has the same power under Section 98.

Temporary extradition (aka temporary or conditional surrender) is an alternative to adjourning the hearing. It is intended to apply where a person serving a prison sentence in the UK, for example, is the subject of an extradition request. In such cases, one option is for extradition to be adjourned to await the conclusion of the prison sentence, but another option is for the person to be temporarily surrendered to the requesting State in order that he can be tried there, on the understanding that he will be returned to the UK once proceedings there have concluded. The aim is to prevent lengthy delays in a trial taking place in the requesting State where a person is serving a lengthy UK sentence. It is provided for, for example in Article 19 of the European Convention on Extradition.

The relevant provision in Part 2 of the Extradition Act 2003 is Section 119, which enables the Secretary of State to make an order for extradition subject to an undertaking that, e.g., a person serving a prison sentence in the UK will if extradited be kept in custody and returned to the UK to serve the remainder of the sentence. The UK would need to be satisfied that the requesting State would abide by any undertaking.

Competing extradition claims:

328. Section 90 of the Extradition Act 2003 sets out what a competing claim is. How they are dealt with is spelled out in Sections 126 and 179. In practice, it is a procedural matter. There are three sections that give the Secretary of State (or Scottish Ministers) discretion relating to Part 1 and Part 2 cases, namely Section 126 (Competing extradition requests), Section 179 (Competing claims to extradition) and Section 208 (National Security). It was explained that Section 126 applies where there are competing part 2 requests and Section 179 where there is a Part 1 warrant (European Arrest Warrant) and Part 2 request. The Secretary of State (or Scottish Ministers) have discretion over which take priority. The criteria in Section 126(3) and 179(3) have to be taken into account, and the Secretary of State’s power of discretion in these matters is quite limited as they are not common. No request under the Convention would necessarily be given priority. Factors in the decision making are as spelled out above.

Physical or mental condition:

329. Regarding the application of this limitation to “mental condition” in Section 91, the UK explained that the requested person must establish on the balance of probabilities that, given their physical or mental health it would be unjust or oppressive to extradite them. The court in Scotland has observed, “In assessing the extent of the risk, it is necessary to have regard to the possibility that the appellant may be acquitted, or given a non-custodial sentence or a short sentence of imprisonment, or transferred to Scotland to serve any sentence here. It is also necessary to bear in mind that [the requested person] has no history of self harm or attempted suicide, and that [the requested person’s] mental health problems are not considered to be of the most serious character. In the circumstances, we do not consider that the evidence considered as a whole warrants the conclusion that the appellant’s extradition would be unjust or oppressive.” *Howes v. HMA No 1*, 2010 SLT 337.

Secretary of State’s consideration of the case:

330. Regarding the meaning of Section 93.4 (b-c), it was explained that consideration is limited to the factors spelled out in Section 93. If none of these (limited) factors apply, then the person must be extradited, unless either the request is withdrawn by the requesting State, there is a decision to be made on a competing claim (as described in Sections 126 or 179 above), or there are national security considerations under Section 208. Extradition can be halted if considered it is not in the interests of national security, though in practice this is not likely to happen. Discretion under any of these provisions has barely been used to date.

Specialty Provisions:

331. The Convention has no independent provision for specialty. Regarding a request under the Convention where no other relevant treaty exists, the UK authorities explained that they would require an undertaking from the requesting State that it would afford specialty.

General:

332. Both at the judicial and executive (i.e. Secretary of State) stages of the extradition process there are a number of grounds under which extradition may be refused. At the same time the UK apparently does not have non-territorial jurisdiction. The UK explained that the question of whether or not the UK would have jurisdiction to prosecute an offender where it refuses extradition on grounds that have nothing to do with the strength of the case (i.e., it appeared that an offence under the Convention was committed) would need to be answered by the relevant policing/prosecution authorities. If the offence was not an extraditable offence under UK legislation, the question of whether the offence was prosecutable in the UK would be determined by the Crown Prosecution Service.

States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

333. Section 71(3) of the Extradition Act 2003 states that the evidence supplied in support of the extradition request should be sufficient to justify the District Judge and, in Scotland, the Sheriff issuing a warrant for the person's arrest if the conduct for which extradition is sought had occurred in the Judge's jurisdiction.

334. Evidentiary requirements for the UK's partners under the European Convention on Extradition and certain long-established extradition partners, designated under Section 71(4), have been simplified. These countries are required to provide information to satisfy the District Judge and, in Scotland, the Sheriff, to issue an arrest warrant following an extradition request. These countries are: Albania, Andorra, Armenia, Australia, Azerbaijan, Bosnia and Herzegovina, Canada, Croatia, Georgia, Iceland, Israel, Liechtenstein, Macedonia FYR, Moldova, Montenegro, New Zealand, Norway, Russian Federation, Serbia, South Africa, Switzerland, Turkey, Ukraine and the United States of America. These countries have been designated in UK statutory instruments⁸.

335. Section 71 of the Extradition Act 2003 reads as follows.

71 Arrest warrant following extradition request

(1) This section applies if the Secretary of State sends documents to the appropriate judge under section 70.

(2) The judge may issue a warrant for the arrest of the person whose extradition is requested if the judge has reasonable grounds for believing that-

(a) the offence in respect of which extradition is requested is an extradition offence, and

(b) there is evidence falling within subsection (3).

(3) The evidence is-

(a) evidence that would justify the issue of a warrant for the arrest of a person accused of the offence within the judge's jurisdiction, if the person whose extradition is requested is accused of the commission of the offence;

⁸ <http://www.legislation.gov.uk/uksi/2003/3334/contents/made>;
<http://www.legislation.gov.uk/uksi/2004/1898/contents/made>;
<http://www.legislation.gov.uk/uksi/2005/365/contents/made>;
<http://www.legislation.gov.uk/uksi/2005/2036/contents/made>;
<http://www.legislation.gov.uk/uksi/2006/3451/contents/made>;
<http://www.legislation.gov.uk/uksi/2007/2238/contents/made>;
<http://www.legislation.gov.uk/uksi/2008/1589/contents/made>

(b) evidence that would justify the issue of a warrant for the arrest of a person unlawfully at large after conviction of the offence within the judge's jurisdiction, if the person whose extradition is requested is alleged to be unlawfully at large after conviction of the offence.

(4) But if the category 2 territory to which extradition is requested is designated for the purposes of this section by order made by the Secretary of State, subsections (2) and (3) have effect as if "evidence" read "information".

(5) A warrant issued under this section may-

(a) be executed by any person to whom it is directed or by any constable or customs officer;

(b) be executed even if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest.

(6) If a warrant issued under this section in respect of a person is directed to a service policeman, it may be executed in any place where the service policeman would have power to arrest the person under the appropriate service law if the person had committed an offence under that law.

(7) In any other case, a warrant issued under this section may be executed in any part of the United Kingdom.

(8) The appropriate service law is-

(a) the Army Act 1955 (3 & 4 Eliz. 2 c. 18), if the person in respect of whom the warrant is issued is subject to military law;

(b) the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), if that person is subject to air-force law;

(c) the Naval Discipline Act 1957 (c. 53), if that person is subject to that Act.

(b) Observations on the implementation of the article

336. The UK explained that the difference between "information" and "evidence" relates to the difference in requirements as to what is provided by designated and non designated countries. Countries which are designated to provide information of the facts on which

the request is based must also provide a copy of the warrant which is sought to be enforced through extradition. Ordinarily the information is provided in the format specified in the relevant treaty, which in turn is ordinarily in affidavit format.

337. With respect to the evidentiary requirements for arrest pending extradition (section 71 of the Extradition Act 2003), the UK explained that in Scotland, such warrants are obtained on the basis of evidence or information being provided to the sheriff by the procurator fiscal. There is no requirement that the evidence/information is sworn to before the warrant can be granted. In Scotland, in domestic procedures, an arrest warrant can be granted on the basis of one source of evidence in petition procedure. It is suggested that a similar level of information would be required to obtain a warrant for arrest in extradition procedure.

Article 44 – Paragraph 10.

Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

338. For countries that have been designated as category 2 territories, Sections 73 and 74 of the Extradition Act 2003 provide for provisional arrest warrants and arrests made under a provisional arrest warrant.
339. In line with Section 74(11) of the Extradition Act 2003, certain countries have longer time periods with which to ensure the necessary documents are received in time. This longer period takes account of the different time periods specified in particular bilateral extradition treaties. These time periods have been designated by the following statutory instruments⁹.
340. For territories where Section 194 of the Extradition Act 2003 applies (i.e., countries where no general extradition arrangements exist), the special ad hoc arrangements must be in place before the provisions on provisional arrest (Sections 73 and 74) can apply.
341. Sections 73 and 74 read as follows:

⁹ <http://www.legislation.gov.uk/uksi/2003/3334/contents/made>,
<http://www.legislation.gov.uk/uksi/2004/1898/contents/made>
<http://www.legislation.gov.uk/uksi/2005/365/contents/made>
<http://www.legislation.gov.uk/uksi/2005/2036/contents/made>
<http://www.legislation.gov.uk/uksi/2006/3451/contents/made>
<http://www.legislation.gov.uk/uksi/2007/2238/contents/made>
<http://www.legislation.gov.uk/uksi/2008/1589/contents/made>
<http://www.legislation.gov.uk/uksi/2010/861/contents/made>

73 Provisional warrant

(1) This section applies if a justice of the peace is satisfied on information in writing and on oath that a person within subsection (2)-

(a) is or is believed to be in the United Kingdom, or

(b) is or is believed to be on his way to the United Kingdom.

(2) A person is within this subsection if-

(a) he is accused in a category 2 territory of the commission of an offence, or

(b) he is alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory.

(3) The justice may issue a warrant for the arrest of the person (a provisional warrant) if he has reasonable grounds for believing that-

(a) the offence of which the person is accused or has been convicted is an extradition offence, and

(b) there is written evidence falling within subsection (4).

(4) The evidence is-

(a) evidence that would justify the issue of a warrant for the arrest of a person accused of the offence within the justice's jurisdiction, if the person in respect of whom the warrant is sought is accused of the commission of the offence;

(b) evidence that would justify the issue of a warrant for the arrest of a person unlawfully at large after conviction of the offence within the justice's jurisdiction, if the person in respect of whom the warrant is sought is alleged to be unlawfully at large after conviction of the offence.

(5) But if the category 2 territory is designated for the purposes of this

section by order made by the Secretary of State, subsections (3) and (4) have effect as if "evidence" read "information".

(6) A provisional warrant may-

(a) be executed by any person to whom it is directed or by any constable

or customs officer;

(b) be executed even if neither the warrant nor a copy of it is in the possession of the person executing it at the time of the arrest.

(7) If a warrant issued under this section in respect of a person is directed to a service policeman, it may be executed in any place where the service policeman would have power to arrest the person under the appropriate service law if the person had committed an offence under that law.

(8) In any other case, a warrant issued under this section may be executed in any part of the United Kingdom.

(9) The appropriate service law is-

(a) the Army Act 1955 (3 & 4 Eliz. 2 c. 18), if the person in respect of whom the warrant is issued is subject to military law;

(b) the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), if that person is subject to air-force law;

(c) the Naval Discipline Act 1957 (c. 53), if that person is subject to that Act.

(10) The preceding provisions of this section apply to Scotland with these modifications-

(a) in subsection (1) for “justice of the peace is satisfied on information in writing and on oath” substitute “sheriff is satisfied, on an application by a procurator fiscal,”;

(b) in subsection (3) for “justice” substitute “sheriff”;

(c) in subsection (4) for “justice's”, in paragraphs (a) and (b), substitute “sheriff's”.

(11) Subsection (1) applies to Northern Ireland with the substitution of “a complaint” for “information”.

74 Person arrested under provisional warrant

(1) This section applies if a person is arrested under a provisional warrant.

(2) A copy of the warrant must be given to the person as soon as practicable after his arrest.

(3) The person must be brought as soon as practicable before the appropriate judge.

(4) But subsection (3) does not apply if-

(a) the person is granted bail by a constable following his arrest, or

(b) in a case where the Secretary of State has received a valid request for the person's extradition, the Secretary of State decides under section 126 that the request is not to be proceeded with.

(5) If subsection (2) is not complied with and the person applies to the judge to be discharged, the judge may order his discharge.

(6) If subsection (3) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge.

(7) When the person first appears or is brought before the appropriate judge, the judge must-

(a) inform him that he is accused of the commission of an offence in a category 2 territory or that he is alleged to be unlawfully at large after conviction of an offence by a court in a category 2 territory;

(b) give him the required information about consent;

(c) remand him in custody or on bail.

(8) The required information about consent is-

(a) that the person may consent to his extradition to the category 2 territory in which he is accused of the commission of an offence or is alleged to have been convicted of an offence;

(b) an explanation of the effect of consent and the procedure that will apply if he gives consent;

(c) that consent must be given in writing and is irrevocable.

(9) If the judge remands the person in custody he may later grant bail.

(10) The judge must order the person's discharge if the documents referred

to in section 70(9) are not received by the judge within the required period.

(11) The required period is-

(a) 45 days starting with the day on which the person was arrested, or

(b) if the category 2 territory is designated by order made by the Secretary of State for the purposes of this section, any longer period permitted by the order.

(12) Subsection (4)(a) applies to Scotland with the omission of the words “by a constable”.

(b) Observations on the implementation of the article

342. With respect to Section 73 of the Extradition Act:

- Regarding the term “justice of the peace” in Section 73(1), the UK explained that magistrates, also known as justices of the peace or JPs, are volunteers who hear cases in courts. They deal with around 95 percent of criminal cases in England and Wales.
- The legal definition of the term “accused” (Section 73(2)(a)) is “A person who has been arrested or formally charged by an indictment, information, or presentment with a crime.” An arrest warrant would suffice under this definition.
- Clarification was sought of what “reasonable grounds” under Section 73(3) means. The UK reported that it is a low legal threshold, but in the context of Section 73(3) an offence either is or is not an extradition offence. The question depends on the evidence and whether that falls in the scope of Subsection 4. The decision is discretionary, and in practice the evidence either justifies the issue of a warrant or not, depending on the quality of the evidence.
- The UK explained that the significance of the distinction between evidence and “information” in Section 73(5) relates to the distinction between designated and non-designated countries; some countries need to provide more than a statement of their case to the UK.

343. With respect to Section 74:

- Regarding the standards as to whether bail will or will not be granted in an international extradition case, the UK explained that sheriffs in Scotland must give consideration to factors set out in domestic legislation when addressing the question of bail. These are set out below and similar factors apply elsewhere in the UK. If a person can be shown to have fled the requesting State in the knowledge that he is wanted for trial or to serve a sentence, it is suggested that the sheriff will consider this to be a factor in favour of refusing bail. Each case is considered on the merits of the information provided to the court in relation to risk to the public, risk of further flight and similar considerations. It is often the case that the risk of flight is the justification for

persons being remanded in custody, even where a domestic offender might be released on bail. The statutory grounds which are to be considered are produced below.

Most of the law and practice concerning bail applications is contained in the following legal texts:

- Bail Act 1976 (The Act);
- Bail (Amendment) Act 1993 (The BAA);
- Magistrates' Court Act 1980;
- Magistrates' Court Rules 1981;
- Supreme Court Act 1981;
- Rules of the Supreme Court;
- Criminal Procedure Rules 2005;
- Police and Criminal Evidence Act 1984; (PACE)
- The Consolidated Criminal Practice Direction amended and reissued 18 May 2004, I.13, III.25, IV.50 and V.53

The same type of considerations in respect of seriousness of the (alleged) offence, risk to the public, risk of further flight are made in extradition cases as described in the Scottish statute below.

23C Grounds relevant as to question of bail (Criminal Procedure (Scotland) Act 1995)

(1) In any proceedings in which a person is accused of an offence, the following are grounds on which it may be determined that there is good reason for refusing bail—

(a) any substantial risk that the person might if granted bail—

(i) abscond; or

(ii) fail to appear at a diet of the court as required;

(b) any substantial risk of the person committing further offences if granted bail;

(c) any substantial risk that the person might if granted bail—

(i) interfere with witnesses; or

(ii) otherwise obstruct the course of justice,

in relation to himself or any other person;

(d) any other substantial factor which appears to the court to justify keeping the person in custody.

(2) In assessing the grounds specified in subsection (1) above, the court must have regard to all material considerations including (in so far as relevant in the circumstances of the case) the following examples—

(a) the—

(i) nature (including level of seriousness) of the offences before the court;

(ii) probable disposal of the case if the person were convicted of the offences;

- (b) whether the person was subject to a bail order when the offences are alleged to have been committed;
- (c) whether the offences before the court are alleged to have been committed—
 - (i) while the person was subject to another court order;
 - (ii) while the person was on release on licence or parole;
 - (iii) during a period for which sentence of the person was deferred;
- (d) the character and antecedents of the person, in particular—
 - (i) the nature of any previous convictions of the person (including convictions [by courts outside the European Union] 2);
 - (ii) whether the person has previously contravened a bail order or other court order (by committing an offence or otherwise);
 - (iii) whether the person has previously breached the terms of any release on licence or parole (by committing an offence or otherwise);
 - (iv) whether the person is serving or recently has served a sentence of imprisonment in connection with a matter referred to in sub-paragraphs (i) to (iii) above;
 - (e) the associations and community ties of the person.

Article 44 – Paragraphs 11, 12 and 13.

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

344. The UK has stated that the law allows for the extradition of UK nationals so long as none of the bars to extradition contained in the Extradition Act apply.

(b) Observations on the implementation of the articles

345. The UK appears to be in compliance with these paragraphs as the UK is able to extradite its citizens.

- The UK clarified that it can extradite its nationals but also does not refuse extradition on the basis of nationality.
- The answer in the Self Evaluation provides that extradition of nationals can occur when “none of the bars to extradition contained in the Extradition Act apply”. Reference was made to the question raised earlier as to whether the UK will have jurisdiction to prosecute its nationals (or others) if extradition is refused for grounds not related to culpability of the offence charged. The UK clarified that consideration is being given as part of the extradition review to the issue of the lack of such a basis for prosecution, which may in some cases result in impunity for the commission of the corruption offences. Furthermore, the UK provided the case of *Vincent Brown aka Vincent Bajinja and Others v. Government of Rwanda and the Secretary of State for the Home Department*, 2009 EWHC 770 (Admin) (8 April 2009)¹⁰.

Article 44 – Paragraph 14.

Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

346. Section 87 of the Extradition Act 2003 provides that a person’s extradition must be compatible with his human rights as set out in European Convention on Human Rights, incorporated into United Kingdom domestic legislation by the Human Rights Act 1998. Section 87 reads as follows:

87 Human rights

(1) If the judge is required to proceed under this section (by virtue of section 84, 85 or 86) he must decide whether the person’s extradition would be compatible with the Convention rights within the meaning of the Human

¹⁰ http://www.unhcr.org/refworld/country,,GBR_HC_QB,,RWA,456d621e2,49f848212,0.html

Rights Act 1998 (c. 42).

(2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.

(3) If the judge decides that question in the affirmative he must send the case to the Secretary of State for his decision whether the person is to be extradited.

347. Sections 103 - 116 of the Extradition Act 2003 provide for appeals to be made in the following circumstances:

- In the UK a requested person may appeal within 14 days to the High Court if:
 1. the district judge sends the case to the Secretary of State and
 2. the Secretary of State orders his extradition.
- In England, Wales and Northern Ireland a decision of the High Court in an extradition case may be appealed against in the Supreme Court by either a requested person (or if a person is discharged by the High Court, by a requesting state) provided that leave to appeal has been granted. An appeal to the Supreme Court can only be made on a point of law of general public importance and where it is agreed by the High Court that the point is one which should be considered by the Supreme Court. Section 114 of the 2003 Act sets out the details and time limits for such an appeal.¹¹

348. Sections 182 - 185 provide for a person subject to an extradition request to be granted legal aid.¹²

349. In Scotland, for Secretary of State it reads Scottish Ministers (Extradition Act 2003 Section 141). There is no right of appeal to the Supreme Court from the Appeal Court (High Court of Justiciary) in Scotland under the Extradition Act 2003 (Extradition Act 2003 Section 114 (13) and Section 116). However, the Scotland Act 1998 Section 52 and Schedule 6 provides for devolution issues which prohibit the Lord Advocate acting in a manner incompatible with the fugitive's convention rights. If a devolution issue is lodged in an extradition hearing and raises a convention right, this provides a mechanism for review by the Supreme Court of the determination of the devolution issue.

(b) Observations on the implementation of the articles

350. It seems that the language of Section 87 refers primarily to not extraditing someone where his extradition would subject him to violation of his human rights (presumably in the Requesting State). Article 44 (14) of the Convention seems to relate more direct-

¹¹ These sections can be found at the following link: <http://www.legislation.gov.uk/ukpga/2003/41/contents>.

¹² These sections can be found at the following link: <http://www.legislation.gov.uk/ukpga/2003/41/contents>.

ly to the fairness of the extradition proceedings themselves as conducted in the Requested State. The UK's answer does relate to rights to legal aid and the right of appeal which are essential elements of procedural fairness. In addition, it was explained that in England and Wales and Northern Ireland, parties have leave to appeal domestically to a higher judicial instance, up to and including the Supreme Court and the European Court of Human Rights (ECHR) thereafter. Scotland's position is slightly different, as outlined below. The statutory provisions are outlined in the legislation, as referenced in the UK response. It was noted that most cases are challenged on human rights grounds as opposed to procedural rights. However, the case of *Mucelli v Albania* (cited above)¹³ is noted as a standout "procedural case", as it addressed the timeliness of appeals.

351. Regarding the significance of the devolution issues on extradition, the UK explained that in Scotland, the right of appeal to the Supreme Court is limited to circumstances in which a devolution issue is said to arise. This in practice limits appeals to the Supreme Court to cases where ECHR issues have arisen.
352. Reference is made to previous comments on not restricting implementation information, as well as examples, to requests submitted in relation to offences under the Convention.

Article 44 – Paragraph 15.

Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

353. Section 81 of the Extradition Act 2003 provides a bar in these cases and reads as follows:

81 Extraneous considerations

A person's extradition to a category 2 territory is barred by reason of extraneous considerations if (and only if) it appears that-

(a) the request for his extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation or political opinions, or

¹³ <http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090121/albani-1.htm>

(b)if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions.

(b) Observations on the implementation of the articles

354. The UK appears to be in compliance on this matter. Reference is made to the potential impunity issue where an offender is not extradited on the bases in this paragraph.

Article 44 – Paragraph 16.

States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

355. The self-evaluation states that an extradition request will be considered for an offence involving fiscal matters, providing it is deemed an extraditable offence.

(b) Observations on the implementation of the articles

356. The UK appears to be in compliance with this provision.

Article 44 – Paragraph 17.

Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

357. The UK indicated that it will liaise with the requesting State if additional information is required. Under Section 75 of the Extradition Act 2003, the District Judge and, in Scotland, the Sheriff, can adjourn the extradition hearing if extra information is required. The time limit for orders of extradition or discharge is set forth in Section 99 of the Act. Sections 75 and 99 of the Extradition Act 2003 read as follows:

75 Date of extradition hearing: arrest under section 71

(1)When a person arrested under a warrant issued under section 71 first appears or is brought before the appropriate judge, the judge must fix a date on which the extradition hearing is to begin.

(2)The date fixed under subsection (1) must not be later than the end of

the permitted period, which is 2 months starting with the date on which the person first appears or is brought before the judge.

(3) If before the date fixed under subsection (1) (or this subsection) a party to the proceedings applies to the judge for a later date to be fixed and the judge believes it to be in the interests of justice to do so, he may fix a later date; and this subsection may apply more than once.

(4) If the extradition hearing does not begin on or before the date fixed under this section and the person applies to the judge to be discharged, the judge must order his discharge.

99 Time limit for order for extradition or discharge

(1) This section applies if-

(a) the appropriate judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited;

(b) within the required period the Secretary of State does not make an order for the person's extradition or discharge.

(2) If the person applies to the High Court to be discharged, the court must order his discharge.

(3) The required period is the period of 2 months starting with the appropriate day.

(4) If before the required period ends the Secretary of State applies to the High Court for it to be extended the High Court may make an order accordingly; and this subsection may apply more than once.

(b) Observations on the implementation of the articles

358. The UK appears to be in compliance with this provision. Regarding the manner in which UK authorities will liaise with the Requesting State regarding extradition requests, the UK explained that in Scotland, the Lord Advocate must represent the requesting authority in the conduct of proceedings. In addition, the Lord Advocate must

provide advice to the requesting authority on any relevant matters relating to the extradition proceedings or proposed extradition proceedings. In practice, lawyers within the International Cooperation Unit acting on behalf of the Lord Advocate, appear in court on behalf of the issuing authority and give such relevant advice. On behalf of the Crown Agent (the administrative head of the Scottish prosecution service), who is designated as the central authority in Scotland for the receipt and execution (as well as issue) of extradition requests, there is direct liaison with issuing authorities. However, information and requests may be and are transmitted through the Serious Organised Crime Agency.

Article 44 – Paragraph 18.

States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

359. Although the UK does not make extradition conditional on the basis of an extradition treaty, the UK has concluded a number of bilateral and multilateral treaties.

The Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States provides for extradition between the 27 EU Member States.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0584:EN:HTML>

The UK has bilateral Extradition treaties with the following countries:

Algeria, http://www.fco.gov.uk/resources/en/pdf/pdf10/fco_cm6928_algeriaextradition

Argentina, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1894/2>

Bolivia, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1899/10>

Brazil, http://www.fco.gov.uk/resources/en/pdf/pdf17/fco_ref_cm3759brazilextradition

Chile, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1898/12>

Colombia, Signed October 1888 - Hard copy available if needed.

Cuba, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1905/15>

Ecuador, Signed September 1880 - Hard copy available if needed.

El Salvador, Signed 23 June 1881 - Hard copy available if needed.

Guatemala, Signed July 1885 - Hard copy available if needed.

Guyana,

Hong Kong Special Administrative Region,
http://www.fco.gov.uk/resources/en/pdf/pdf17/fco_ref_ts30-98i_hksar_surren

Haiti, Signed December 1874 - Hard copy available if needed.

Iraq, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1933/13>

Liberia, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1894/6>

Libya,

<http://www.fco.gov.uk/resources/en/pdf/3706546/3892733/10149409/TrLibya3.2009Extrad>

Nicaragua, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1906/7>

Panama, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1907/25>

Paraguay, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1911/19>

Peru, <http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1907/13>

Thailand, Signed September 1883 - Hard copy available if needed

United Arab Emirates,

http://www.fco.gov.uk/resources/en/pdf/pdf19/fco_ref_cm7283_uaeextradition

United States of America,

http://www.fco.gov.uk/resources/en/pdf/pdf18/fco_cm7146_usaextraditiontreaty

The UK is also party to multi-lateral treaties:

the European Convention on Extradition,

<http://conventions.coe.int/Treaty/en/Treaties/Html/024.htm>

Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Iceland, Israel, Liechtenstein, Macedonia (FYR) Moldova, Monaco, Montenegro, Norway, Russian Federation, San Marino, Serbia, South Africa, Switzerland, Turkey, Ukraine,

the London Scheme for Extradition within the Commonwealth
http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7B56F55E5D-1882-4421-9CC1-71634DF17331%7D_London_Scheme.pdf

Antigua and Barbuda, Australia, The Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Canada, Cook Islands, Dominica, Fiji, Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, , Malawi, Malaysia, Maldives, Mauritius, Mexico, Nauru, New Zealand, Nigeria, Papua New Guinea, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Singapore, Solomon Islands, Sri Lanka, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Tuvalu, Uganda, Uruguay, Vanuatu, Western Samoa, Zambia and Zimbabwe.

(b) Observations on the implementation of the articles

360. The UK appears to be in compliance with this provision.

Article 45.

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

361. The Repatriation of Prisoners Act 1984¹⁴ governs the transfer of prisoners into and out of the United Kingdom. According to the UK, the Act enables the Secretary of State to issue an order for the transfer of a prisoner where there is a relevant international arrangement in place providing for the transfer of prisoners.

362. The UK has prisoner transfer arrangements with over 100 countries and territories. The principal prisoner transfer arrangement is the Council of Europe Convention on the Transfer of Sentenced Persons¹⁵ which has been ratified by 64 countries. In addition, the UK is a party to the Commonwealth Scheme for the Transfer of Convicted Offenders¹⁶.

363. The UK is also a party to a number of bilateral prisoner transfer agreement. Each of these agreements provided for the transfer of a prisoner where the offence committed by the prisoner is an offence in both countries.

(b) Observations on the implementation of the articles

364. The UK appears to be in compliance with the discretionary provisions on prisoner transfer in Article 45.

Article 46 – Mutual Legal Assistance.

General observations related to Article 46:

365. It is apparent from reviewing the UK self-assessment checklist response, and the statutory instruments and other documents attached to it, that the UK possesses a broad capacity to provide the forms of mutual legal assistance (MLA) contemplated by the

¹⁴ <http://www.legislation.gov.uk/ukpga/1984/47/contents>

¹⁵ <http://conventions.coe.int/Treaty/en/Treaties/Html/112.htm>

¹⁶ http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%257BBF5E0493-DE14-43D6-A5E8-7641447B2CB1%257D_convicted_criminals.pdf

Convention. It is also apparent that on legislative bases, the UK is in compliance with the Convention. The UK explained that the legislative framework for mutual legal assistance is very broad and undefined, and many provisions have grown up through policy and practice rather than through any strict legislative requirements. This is why there are no legislative provisions for many of the types of assistance that can be provided under MLA. The provisions of the Crime (International Co-operation) Act 2003 also allow for the incorporation of other existing police powers, such as those under the Police and Criminal Evidence Act 1984. MLA is only provided in accordance with UK domestic law. The UK Guidance on Mutual Legal Assistance (MLA) for UK Police International Liaison Officers (ILOs) (version 2.0 dated March 2011) was provided to the reviewers.

366. The UK reviews and makes changes to its domestic legislation prior to ratification of a treaty to ensure that once the treaty comes into force it can be used effectively. Examples of this in the mutual legal assistance field are the Criminal Justice (International Cooperation) Act 1990 prior to the ratification of the 1959 Convention in 1991, and the Crime (International Co-Operation) Act 2003 (“CICA”)¹⁷ to implement the 2000 European Union Convention. Therefore, ratification of the Convention, and in particular Article 46, did not in themselves create any new mutual legal assistance provisions in UK law, as legislative changes were identified beforehand, but merely extended existing MLA provisions to signatories of the Convention.
367. It appears that the most significant provision of CICA regarding the general provision of assistance is Section 14 of the statute, read together with Sections 13, 15 and other related provisions (including sections relating specifically to evidence in Scotland) although Section 14 and the related provisions are not directly quoted in the self-evaluation. These provisions provide for authority and procedures to obtain and provide assistance on request to competent foreign authorities.
368. It may be noted that if by statute the UK can, and in practice it does, provide the assistance described in the Guidelines, it is clear that the UK is fully compliant with the MLA requirements of the Convention regarding Article 46.

Article 46 – Paragraph 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.

(a) Summary of information relevant to reviewing the implementation of the article

¹⁷ <http://www.legislation.gov.uk/ukpga/2003/32/contents>

369. The UK has stated that the CICA governs the provision of mutual legal assistance. This Act provides (at Section 14) for evidence to be obtained, providing that the request for assistance is made in connection with:

a) criminal proceedings or a criminal investigation, being carried on outside the United Kingdom

b) administrative proceedings, or an investigation into an act punishable in such proceedings, being carried on there,

c) clemency proceedings, or proceedings on an appeal before a court against a decision in administrative proceedings, being carried on, or intended to be carried on there.

Section 14 (2) continues that evidence can be obtained providing that an offence under the law of the country in question has been committed or there are reasonable grounds for suspecting that such an offence has been committed, and that proceedings in respect of the offence have been instituted in that country or that an investigation into the offence is being carried on there. An offence includes an act punishable in administrative proceedings.

370. The provisions of the International Criminal Court Act 2001 (“ICCA”)¹⁸ govern mutual legal assistance arrangements with the International Criminal Court. The UK also publishes a set of Mutual Legal Assistance Guidelines (“Guidelines”), which were provided to the reviewers. The Guidelines provide requesting States with the information that they need to make a request to the UK, and also confirm what assistance can be provided.

371. Guidelines are also provided to executing authorities, such as the police (and were separately attached).

372. CICA also provides for a UK authority to request assistance to obtain evidence abroad. Section 7 of the Act reads as follows:

Requests for assistance in obtaining evidence abroad

(1) If it appears to a judicial authority in the United Kingdom on an application made by a person mentioned in subsection (3)-

(a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and

(b) that proceedings in respect of the offence have been instituted or that the offence is being investigated,

¹⁸ <http://www.legislation.gov.uk/ukpga/2001/17/contents>

the judicial authority may request assistance under this section.

(2)The assistance that may be requested under this section is assistance in obtaining outside the United Kingdom any evidence specified in the request for use in the proceedings or investigation.

(3)The application may be made-

(a)in relation to England and Wales and Northern Ireland, by a prosecuting authority,

(b)in relation to Scotland, by the Lord Advocate or a procurator fiscal,

(c)where proceedings have been instituted, by the person charged in those proceedings.

(4)The judicial authorities are-

(a)in relation to England and Wales, any judge or justice of the peace,

(b)in relation to Scotland, any judge of the High Court or sheriff,

(c)in relation to Northern Ireland, any judge or resident magistrate.

(5)In relation to England and Wales or Northern Ireland, a designated prosecuting authority may itself request assistance under this section if-

(a)it appears to the authority that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and

(b)the authority has instituted proceedings in respect of the offence in question or it is being investigated.

- *“Designated” means designated by an order made by the Secretary of State.*

(6)In relation to Scotland, the Lord Advocate or a procurator fiscal may himself request assistance under this section if it appears to him-

(a)that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and

(b)that proceedings in respect of the offence have been instituted or that

the offence is being investigated.

(7) If a request for assistance under this section is made in reliance on Article 2 of the 2001 Protocol (requests for information on banking transactions) in connection with the investigation of an offence, the request must state the grounds on which the person making the request considers the evidence specified in it to be relevant for the purposes of the investigation.

373. The UK is also party to 35 bilateral mutual legal assistance treaties¹⁹, plus has ratified another 7 international conventions, and is party to a further 2 EU MLA treaties.

¹⁹ UK's Bilateral Mutual Legal Assistance Treaties:

Algeria <http://www.fco.gov.uk/resources/en/pdf/pdf10/fco_cm6929_algeriamutualassistan>
Antigua & Barbuda <http://www.fco.gov.uk/resources/en/pdf/pdf8/fco_cm6336_barbudacrimeproceeds>
Argentina <<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1994/31>>
Australia <http://www.fco.gov.uk/resources/en/pdf/pdf13/fco_ts77-00_aus_investig_crime>
The Bahamas <<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1991/13>>
Barbados <<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1993/31>>
Bahrain <<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1994/7>>
Brazil <http://www.fco.gov.uk/resources/en/pdf/pdf9/fco_cm6734_brazilmutuallegal>
Canada <<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1990/84>>
Exchange of Notes: <<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1993/74>>
Chile <<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1997/63>>
Colombia <http://www.fco.gov.uk/resources/en/pdf/pdf13/fco_ts40-00_colombia_mutual>
Ecuador <<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1993/18>>
Grenada - Hard copy available if needed
Guyana <<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1997/9>>
Hong Kong SAR <http://www.fco.gov.uk/resources/en/pdf/pdf6/fco_cm5502_chinalegalmatter>
India <<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1995/69>>
Ireland - Hard copy available if needed
Italy <<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1995/33>>
Libya <<http://www.fco.gov.uk/resources/en/pdf/3706546/3892733/10149409/TrLibya2.2009MLA>>
Malaysia <<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1995/42>>
Mexico <<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1991/57>>
The Netherlands (supplementing the Council of Europe 1990 Convention)
<<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1994/45>>
Nigeria <<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1994/18>>
Panama <<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1994/46>>
Paraguay <http://www.fco.gov.uk/resources/en/pdf/pdf16/fco_ref_cm5259_paraguaydrugs>
Romania <http://www.fco.gov.uk/resources/en/pdf/pdf20/fco_ts132-00_romaniarestraint>
Saudi Arabia <<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1992/65>>
Spain <<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1993/74>>
Sweden <<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1992/72>>
Thailand <http://www.fco.gov.uk/resources/en/pdf/pdf20/fco_ref_cm3783_thailandcriminal>
UAE <http://www.fco.gov.uk/resources/en/pdf/pdf19/fco_ref_cm7282_uamutualla>
Ukraine <http://www.fco.gov.uk/resources/en/pdf/pdf17/fco_ref_cm3731_ukrainecriminal>
USA (Bilateral Instrument implementing the EU-US MLA Agreement)
<http://www.fco.gov.uk/resources/en/pdf/3706546/3892733/10149409/TS_US1_2009EUMLAExtradCm7613>
Uruguay <<http://www.fco.gov.uk/resources/en/pdf/treaties/TS1/1994/4>>
Vietnam <[http://www.fco.gov.uk/resources/en/pdf/3706546/3892733/10149409/Tr.Viet.1.2009.MLA\(Crim\)Cm7587](http://www.fco.gov.uk/resources/en/pdf/3706546/3892733/10149409/Tr.Viet.1.2009.MLA(Crim)Cm7587)>

EU MLA Treaties

EU-Japan <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:039:0020:0035:EN:PDF>>

374. Regarding examples of implementation, the UK stated that it is committed to assisting investigative, prosecuting and judicial authorities in combating international crime, and is able to provide a wide range of MLA.
375. Bilateral treaties have been made with countries such as the USA, India, Canada, UAE and Thailand. The UK has ratified the following international conventions:
- the 1959 European Convention on Mutual Assistance in Criminal Matters, its Additional Protocol of 1978 and its Second Additional Protocol of 2002;
 - the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention);
 - the 1990 European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime;
 - the Convention implementing the Schengen Agreement;
 - the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union 2000 and its Protocol thereto;
 - the United Nations Convention against Transnational Organised Crime 2000;
 - the United Nations Convention against Corruption 2003.
376. The UK also uses the Commonwealth Scheme Relating to Mutual Assistance in Criminal Matters (also known as the Harare Scheme) and is party to the EU-Japan MLA Agreement, and the EU-Norway and Iceland MLA Agreement.
377. The UK is able to provide assistance to any country or territory in the world, whether or not that country is able to assist the UK. The UK can also provide most forms of MLA without the need for a treaty basis, a bilateral or other international agreement.
378. The UK is able to provide a very wide range of mutual legal assistance, under the broad statute referred to above. Informal assistance is also encouraged through law enforcement channels. Indeed, a request for MLA is encouraged only when a formal request for evidence is required by a requesting state's legislation, as it can be quicker and easier to obtain material on an intelligence basis. In many countries, intelligence can constitute admissible evidence, and it is therefore a matter for a requesting State, to determine, whether in relation to their legislation, a request for evidence or intelligence is more appropriate.
379. The UK has three designated central authorities for mutual legal assistance:

1. The UK Central Authority (UKCA), which has jurisdiction for England, Wales and Northern Ireland
 2. The Crown Office, which has jurisdiction for Scotland
 3. HM Revenue and Customs, which has jurisdiction for some limited customs matters (HMRC are not a relevant central authority for the purposes of the Convention).
380. The Crown Dependencies (the Channel Islands and the Isle of Man), are not part of the UK and have their own jurisdictional arrangements for providing mutual legal assistance.
381. As the UK does not require a treaty basis to provide MLA, the basis on which requests are made are not recorded within its statistics. Most requests from EU countries are made under the 1959 Convention, and all requests from countries where there is a relevant bilateral treaty are made under that treaty (for example, the USA, India, from where a number of corruption requests have been received). The UK does not require reciprocity but would expect assistance from countries which are parties to relevant bilateral or international agreements with the UK.
382. The UK provided some general statistics regarding requests for mutual legal assistance received. Specifically, it indicated that The UK Central Authority receives over 3,000 requests for mutual legal assistance each year. These range from the very basic requests for assistance, for example in internet frauds, through serious and complex cases of corruption, murder, and terrorism. From statistics available, the UK has received approximately 500 cases categorized as bribery or corruption cases. Of these, approximately 100 were active cases at the time of the review. The UK indicated that it was not possible to determine which treaty basis these cases were made upon.
383. The UK Central Authority is also responsible for the onward transmission of outgoing requests from the UK to overseas authorities, with the exception of EU States under the Schengen arrangements, under which requests for evidence can be sent directly to the overseas State. From current statistics available, the UK Central Authority has transmitted approximately 150 requests concerning bribery and corruption, of which under 20 were still open at the time of the review. Again, the UK indicated that it was not possible to identify which of these cases have been made under the provisions of the Convention.
384. A small number of requests have been made under the Convention, but these tend to be made by developing countries, such as Bangladesh, Malawi and Mauritius. The numbers from each of these states are small (for example, only one request from Malawi has been received). These cases are ongoing in the UKCA at present. During the country visit, the Serious Fraud Office confirmed that they have both received and made MLA requests using the Convention as a legal basis.
385. The Crown Office, as the Central Authority for execution of such requests in Scotland, has received no requests for assistance under this particular treaty.

(b) Observations on the implementation of the articles

386. Regarding the definition of the term “administrative proceedings”, the UK explained that the term as defined by Section 51(1) CICA is essentially lifted from Article 3(1) of the 2000 Convention. The UK authorities were not aware of any further definition.
387. The UK explained that there is no concept of non-conviction based criminal forfeiture in the UK. There is a regime of conviction based criminal asset confiscation, or civil recovery of assets which were obtained as a result of unlawful activity. In respect of civil recovery, the UK explained that this is a process that allows the State (Serious Organised Crime Agency and the main prosecution agencies) to effectively sue for the proceeds of crime in the High Court, where a criminal conviction is not possible or has failed. The proceedings are against property, rather than an individual, and so do not require a criminal conviction (Section 243 POCA). The process is based on existing civil procedures and therefore has similar protections and provisions as a private individual civil claim would have, e.g., a statute of limitations to bring proceedings, court receivers managing frozen property and seeking declarations from the court to exclude property from the proceedings. The State has to show on the balance of probabilities that specific, actual, identified property has been obtained through unlawful conduct. The property is transferred to a court appointed receiver (known as a trustee) for it to be sold. A court decides whether the property is criminally derived and will make a recovery order if it deems it appropriate. The UK reported that it has received no international requests for the enforcement of civil orders, but has a policy of returning the proceeds of corruption to victim States in both domestic and international cooperation cases. The UK has returned money which is the proceeds of corruption from a domestic cash forfeiture case. Reference was made to the explanatory memorandum to the UK’s proceeds of crime legislation²⁰.
388. Regarding the term “UK authorities overseas” who can provide assistance, the UK clarified its response and explained that under CICA, provisions are made for overseas authorities to request assistance from the UK (Section 13), and for the UK to make requests for assistance in obtaining evidence abroad (Sections 7 and 8).

Overseas authorities making requests for assistance to the UK are defined as:

- (a) a court exercising criminal jurisdiction, or a prosecuting authority, in a country outside the United Kingdom,
 - (b) any other authority in such a country which appears to the territorial authority to have the function of making such requests for assistance,
 - (c) any international authority mentioned in subsection (3).
- (3) The international authorities are—

²⁰ http://www.legislation.gov.uk/uksi/2005/3181/pdfs/uksiem_20053181_en.pdf

(a) the International Criminal Police Organisation,

(b) any other body or person competent to make a request of the kind to which this section applies under any provisions adopted under the Treaty on European Union.

Authorities to whom requests can be sent are defined as:

A court exercising jurisdiction in the place where the evidence is situated, or any authority recognised by the government of the country in question as the appropriate authority for receiving requests of that kind.

389. With respect to Article 46(1) Section 7 of CICA is the relevant provision of the Act. CICA also provides for assistance to be made by a UK authority to an authority overseas for assistance, and Section 7 is the relevant provision of the Act in that regard. As indicated in the earlier part of the self-assessment, “The Act provides (at Section 14) for evidence to be provided, providing that the request for assistance is made for criminal proceedings, administrative proceedings, or clemency proceedings” and it is indeed that part of the Act that governs requests to the UK for assistance.
390. Implementation – As noted above under paragraph 1, no further information was available within the timeframe required under the review of any issues that arose in previous cases that would have caused problems had the cases been executed under the Convention.

Article 46 – Paragraph 2.

Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

391. The UK refers to the response to paragraph 1 of Article 46.

(b) Observations on the implementation of the articles

392. Regarding the ability to provide assistance regarding both natural and legal persons, the UK indicated that this is not spelled out in any specific legislation but is covered within the ambit of general MLA legislation. It is standard in MLA to cover both legal and natural persons.

Article 46 – Paragraphs 3(a)-3(i).

Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

(a) Summary of information relevant to reviewing the implementation of the article

393. The UK refers to the response to paragraph 1 of Article 46.

394. The provisions of CICA allow for a wide range of assistance to be granted, dependent on certain criteria being met. The types of specific assistance can be seen at Section 3 of the Mutual Legal Assistance Guidelines. Some specific types of assistance are described in the self-assessment, including taking evidence or statements from persons (page 15 of the Mutual Legal Assistance Guidelines and Section 15 of the Act); evidence being given by video or telephone link (Sections 30 and 31 of the Act); service of documents (Section 1 of the Act); service of process (page 13 onwards of the Mutual Legal Assistance Guidelines); search warrants (with separate provisions applicable in Scotland); and temporary transfer of prisoners (Sections 4 and 5 Criminal Justice (International Co-operation) Act 1990²¹ and page 25 of the Mutual Legal Assistance Guidelines).

395. Regarding examples of implementation, the UK referred to its previous answer, stating that the UK has received requests for assistance under the Convention, but is unable to identify specific cases because data is not recorded in that way. However, the UKCA has received 8 cases from Bangladesh, seeking a mixture of assistance, including restraint, witness evidence and banking evidence, one case from Malawi, also seeking a

²¹ <http://www.legislation.gov.uk/ukpga/1990/5/contents>

number of different types of assistance, and one from Mauritius, seeking banking evidence. These are currently in the process of being executed.

396. Sections 1 and 15 of the CICA read as follows:

1 Service of overseas process

(1)The power conferred by subsection (3) is exercisable where the Secretary of State receives any process or other document to which this section applies from the government of, or other authority in, a country outside the United Kingdom, together with a request for the process or document to be served on a person in the United Kingdom.

(2)This section applies-

(a)to any process issued or made in that country for the purposes of criminal proceedings,

(b)to any document issued or made by an administrative authority in that country in administrative proceedings,

(c)to any process issued or made for the purposes of any proceedings on an appeal before a court in that country against a decision in administrative proceedings,

(d)to any document issued or made by an authority in that country for the purposes of clemency proceedings.

(3)The Secretary of State may cause the process or document to be served by post or, if the request is for personal service, direct the chief officer of police for the area in which that person appears to be to cause it to be personally served on him.

(4)In relation to any process or document to be served in Scotland, references in this section to the Secretary of State are to be read as references to the Lord Advocate.

15 Nominating a court etc. to receive evidence

(1) Where the evidence is in England and Wales or Northern Ireland, the Secretary of State may by a notice nominate a court to receive any evidence to which the request relates which appears to the court to be appropriate for the purpose of giving effect to the request.

(2) But if it appears to the Secretary of State that the request relates to an offence involving serious or complex fraud, he may refer the request (or any part of it) to the Director of the Serious Fraud Office for the Director to obtain any evidence to which the request or part relates which appears to him to be appropriate for the purpose of giving effect to the request or part.

(3) Where the evidence is in Scotland, the Lord Advocate may by a notice nominate a court to receive any evidence to which the request relates which appears to the court to be appropriate for the purpose of giving effect to the request.

(4) But if it appears to the Lord Advocate that the request relates to an offence involving serious or complex fraud, he may give a direction under section 27 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) (directions applying investigatory provisions).

(5) Schedule 1 is to have effect in relation to proceedings before a court nominated under this section.

(b) Observations on the implementation of the articles

397. Reference is made to the UK's response under paragraph 1, which explains that the operative section of CICA for incoming requests to the UK is Section 14. The response refers to specific parts of the MLA guidelines and Section 15.

398. It may be noted that if by statute the UK can, and in practice it does, provide the assistance described in the Guidelines, it is clear that the UK is fully compliant with the MLA requirements of the Convention regarding Article 46, and it is clear that the utilization of specialized anti-corruption and fraud units such as the SFO in providing legal assistance in such cases greatly contributes to this process.

399. The UK clarified that the SFO is one of a number of executing authorities that execute requests for assistance. The UK Central Authority (UKCA) may refer requests to any

one of over 40 police forces, HM Revenue and Customs, the SFO, Serious Organised Crime Agency and others. The SFO is not a central authority, but does provide a large amount of assistance in large scale corruption cases. The SFO provided the following information regarding the procedures of the SFO in MLA situations including case examples.

In terms of incoming requests, only one request was identified which specifically referred to the Convention. Two incoming requests had referred to the OECD Convention on the Bribery of foreign officials.

Nevertheless the SFO indicated that it can respond to requests for assistance regardless of whether a treaty is referred to or not, because of the UK's status as a dualist country and the fact that there is domestic legislation in place providing the UK with discretion to provide such assistance.

The SFO is not a territorial authority but can respond to and execute letters of request for assistance upon a referral of a request by the Secretary of State for the Home Department (SSHD).

The relevant legislation is as follows:

The Crime (International Co-operation) Act 2003 provides the overarching circumstances under which MLA may be provided in Section 13(2) and 13(3), 14(1) and 14(2).

Governmental responsibility for mutual assistance in criminal matters lies with the SSHD. Responsibility for the supervision of requests for mutual assistance in the UK lies with the UKCA at the Home Office. All formal legal assistance, such as search warrants, requires that the overseas authority first send a request for assistance to the UKCA. However, informal acts of non-legal assistance or information exchange can be secured by direct communication with the Serious Fraud Office.

Criminal Justice Act 1987

The Serious Fraud Office was established under the Criminal Justice Act 1987. Under Section 1, the Director may investigate any suspected offence which appears to him on reasonable grounds to involve serious or complex fraud. Whether a case is serious or complex is a question of fact, and the SFO uses its own criteria to assess the merits of each case. The Director may institute any criminal proceedings which appear to relate to such fraud.

Section 2 provides the Director with powers that can be exercised in relation to an investigation under Section 1, where there is a good reason to do so for the purpose of investigating the affairs of any person.

The power to provide mutual legal assistance is contained in Section 2. Under Section 2 (1A) the Secretary of State, acting under Section 15 (2) Criminal Justice (Internation-

al Co-operation) Act 2003, may request that the Director use his powers in response to a request from an overseas authority. Section 2 (1B) provides that:

“The Director shall not exercise his powers on request from the Secretary of State acting in response to a request received from an overseas authority within subsection (1A) above, unless it appears to the Director on reasonable grounds that the offence in which he has been requested to obtain evidence involves serious or complex fraud”

400. The procedure is that upon receipt of a request for assistance from the SSHD, a briefing note is prepared for the Director which summarizes the request and addresses the above statutory provisions. The Director has a discretion to accede to a request and will consider inter alia (a) the SSHD’s assessment that the conditions in Section 14 apply and (b) whether the requirements of Section 2(1)(B) of the Criminal Justice Act 1987 are fulfilled. As far as the exercise of this discretion is concerned, the Director will consider whether, if the conduct in question occurred in the UK it would be a case of the kind which the SFO would investigate under Section 1 of the Criminal Justice Act 1987. The UK’s treaty obligations under the Convention would also be considered. The UK explained that further information on the standards for obtaining warrants in MLA situations can be found at page 23 of the MLA guidelines. Page 26 of the guidelines for police officers, which explain how warrants work in practice, is also relevant. In Scotland, the standard for obtaining a warrant is that there are reasonable grounds for suspecting that evidence relevant to the crime being investigated will be found at the location to be sought. This information is provided to the sheriff in a written application, setting out the basis on which the warrant is sought. The double criminality requirement is assessed on a “broad conduct” basis; that is to say, if the conduct in question would constitute a criminal offence in Scotland (even if it has a different nomen juris in Scotland than the requesting State), an application for a warrant will be made.
401. Rules of Court have been established regarding court hearings related to MLA pursuant to Section 49 of CICA. In Scotland, the Act of Adjournal (Criminal Procedure Rules) 1996 was amended to include chapter 36, which set out the procedural requirements of such hearings.

Article 46 – Paragraphs 3(j)-3(k).

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

402. The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005²² allows for the recognition of an overseas judgement or request for restraint and confiscation of funds. Part 2 of the Order (dealing with England and Wales) regulates the restraint and forfeiture of criminal proceeds; specifically, Section 7 covers restraint and confiscation pursuant to an external request, Section 8 deals with restraint orders, and Section 21 deals with external orders. The provisions are set forth below.

Part 2 of the Order (Giving Effect In England And Wales To External Requests In Connection With Criminal Investigations Or Proceedings And To External Orders Arising From Such Proceedings)

Conditions for Crown Court to give effect to external request

7.—(1) The Crown Court may exercise the powers conferred by article 8 if either of the following conditions is satisfied.

(2) The first condition is that—

(a) relevant property in England and Wales is identified in the external request; .

(b) a criminal investigation has been started in the country from which the external request was made with regard to an offence, and .

(c) there is reasonable cause to believe that the alleged offender named in the request has benefited from his criminal conduct. .

(3) The second condition is that—

(a) relevant property in England and Wales is identified in the external request; .

(b) proceedings for an offence have been started in the country from which the external request was made and not concluded, and .

(c) there is reasonable cause to believe that the defendant named in the request has benefited from his criminal conduct. .

(4) In determining whether the conditions are satisfied and whether the request is an external request within the meaning of the Act, the Court must have regard to the definitions in subsections (1), (4) to (8) and (11) of section 447 of the Act.

(5) If the first condition is satisfied, references in this Chapter to the defendant are to the alleged offender.

Restraint orders

²² <http://www.legislation.gov.uk/ukSI/2005/3181/contents>

8.—(1) If either condition set out in article 7 is satisfied, the Crown Court may make an order (“a restraint order”) prohibiting any specified person from dealing with relevant property which is identified in the external request and specified in the order.

(2) A restraint order may be made subject to exceptions, and an exception may in particular—

(a) make provision for reasonable living expenses and reasonable legal expenses in connection with the proceedings seeking a restraint order or the registration of an external order; .

(b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation; .

(c) be made subject to conditions. .

(3) Paragraph (4) applies if—

(a) a court makes a restraint order, and .

(b) the applicant for the order applies to the court to proceed under paragraph (4) (whether as part of the application for the restraint order or at any time afterwards). .

(4) The court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.

(5) A restraint order does not affect property for the time being subject to a charge under any of these provisions—

(a) section 9 of the Drug Trafficking Offences Act 1986(1); .

(b) section 78 of the Criminal Justice Act 1988(2); .

(c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990(3); .

(d) section 27 of the Drug Trafficking Act 1994(4); .

(e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996(5). .

(6) Dealing with property includes removing it from England and Wales.

Conditions for Crown Court to give effect to external orders

21.—(1) The Crown Court must decide to give effect to an external order by registering it where all of the following conditions are satisfied.

(2) The first condition is that the external order was made consequent on the conviction of the person named in the order and no appeal is outstanding in respect of that conviction.

(3) The second condition is that the external order is in force and no appeal is outstanding in respect of it.

(4) The third condition is that giving effect to the external order would not be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998(14)) of any person affected by it.

(5) The fourth condition applies only in respect of an external order which authorises the confiscation of property other than money that is specified in the order.

(6) That condition is that the specified property must not be subject to a charge under any of the following provisions—

(a) section 9 of the Drug Trafficking Offences Act 1986(15); .

(b) section 78 of the Criminal Justice Act 1988(16); .

(c) Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990(17); .

(d) section 27 of the Drug Trafficking Act 1994(18); .

(e) Article 32 of the Proceeds of Crime (Northern Ireland) Order 1996(19). .

(7) In determining whether the order is an external order within the meaning of the Act, the Court must have regard to the definitions in subsections (2), (4), (5), (6), (8) and (10) of section 447 of the Act.

(8) In paragraph (3) “appeal” includes—

(a) any proceedings by way of discharging or setting aside the order; and .

(b) an application for a new trial or stay of execution.

403. For the specific requirements for a restraint request, reference is made to page 21 of the Mutual Legal Assistance Guidelines. Requests for restraint and confiscation require dual criminality and a full justification as to why it is necessary, as without this information, a court will be unable to give an order to freeze assets.

404. The UK authority dealing with the request will make the appropriate applications before a court for assets to be restrained and will inform the requesting authority as soon as this is done.

405. The order to freeze assets can be obtained by a court on behalf of a foreign jurisdiction at the investigative stage.

406. Regarding implementation, as noted the UK has received requests for assistance under the Convention (for example, from Bangladesh) but is unable to determine specific cases further.

(b) Observations on the implementation of the articles

407. The power to restrain and forfeit criminal proceeds pursuant to orders and requests of foreign authorities are regulated by the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (hereinafter “Order 2005”), in particular Parts 2 of the Order (dealing with England and Wales); part 3 (dealing with Scotland) and Part 4 (dealing with Northern Ireland). Part 5 of the Order deals with foreign orders for civil recovery. Order 2005 is a complex and lengthy instrument of more than 200 provisions. Many of its provisions contain references and utilize terminology provided in the Proceeds of Crime Act 2002 itself.
408. As explained above under paragraph 1, there is no concept of non-conviction based criminal forfeiture in the UK, but rather regimes of conviction based criminal asset confiscation or civil recovery of assets which were obtained as a result of unlawful activity.

Article 46 – Paragraph 4.

Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

409. The UK has stated that it does not need a legislative basis for this provision, and this can be dealt with practically. Specifically, spontaneous exchanges of information are permitted in relation to material that may be held by the UK which may lead to a mutual legal assistance request by a State party, or which may relate to an MLA request by a State party. This can be done without a formal request for assistance. Information may also be exchanged on an informal basis via police co-operation routes, and is channelled through SOCA International. Reference was made to page 28 of the Mutual Legal Assistance Guidelines.
410. The UK stated that it is unaware of any cases that relate to this provision of the Convention. However, information has recently been sent to Vietnam under the terms of the bilateral treaty between the UK and Vietnam, and the provisions are similarly worded.

(b) Observations on the implementation of the articles

411. The UK explained that no legislative basis is needed for the UK to pass on spontaneous information, which may relate to confidential and investigative data (including personal data) to foreign authorities because this could be done through the normal gateway

provisions provided for in the Data Protection Act 1998²³. The provisions of that Act (in Chapter IV) allow for exemptions to the regulations found elsewhere, and in particular, for the purposes of crime prevention and detection. The UK explained that there are no difficulties in this regard, as the UK could provide this assistance before the ratification of the Convention.

Article 46 – Paragraph 5.

The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

412. The UK has stated that this is a matter of practice and is in accordance with the UK's domestic legislation on data protection. The UK indicated that it will always comply with requests to maintain confidentiality with regards to such requests.

413. The UK is not aware of any cases involving this provision of the Convention.

(b) Observations on the implementation of the articles

414. The domestic legislation on data protection is the Data Protection Act 1998. A link to the Act can be found at <http://www.legislation.gov.uk/ukpga/1998/29/contents> and a link to the Information Commissioner's Office (which regulates the use of data under the Act) is at http://www.ico.gov.uk/for_organisations/data_protection.aspx.

Article 46 – Paragraph 8.

States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

²³ <http://www.legislation.gov.uk/ukpga/1998/29/part/IV>

415. The UK has stated that it does not decline to provide assistance on grounds of bank secrecy. The UK may nominate a court to receive evidence under the provisions of Section 15 of the Crime (International Cooperation) Act 2003²⁴. This provision allows for third party confidentiality to be overridden as witnesses giving banking evidence are served with a witness summons to give evidence. This provision is often used to overcome issues of third party confidentiality.
416. The investigation provisions of the Proceeds of Crime Act 2002²⁵ (specifically Sections 348(4), 368 and 374) were also referred to in this regard.
417. The UK indicated that because it does not decline to provide assistance on grounds of bank secrecy, no examples of cases can be given here.

(b) Observations on the implementation of the articles

347. The UK does not have any legislation which makes banking information secret. A person's banking and account information is confidential. To protect banks from litigation from their customers for disclosing such information to law enforcement, there are two principal legislative measures which enable the UK to provide the information for an overseas criminal investigation. The first measure is the Proceeds of Crime Act 2002 and the second is the Crime (International Cooperation) Act 2003. The Crime (International Cooperation) Act 2003 was preceded by legislation in 1990 which enabled banking information to be obtained either upon the service of a Notice by the Serious Fraud Office or by application to court by the Police. The 2003 Act made further provision for European Union countries enabling customs officers and police constables to apply for a range of additional court orders such as account monitoring orders. Although only available to "Participating Countries" i.e. EU countries, these orders improved the ability to make banking information available for an overseas criminal investigation. Although the UK authorities cite Section 15 of CICA and certain provisions of the POCA, regarding the issue of not declining MLA requests on the issue of bank secrecy, it appears that CICA has a lengthy legislative regime (in Chapter 4) relating specifically to the obtaining of bank information and documentation for MLA purposes. The UK explained that Chapter 4 of CICA explicitly implements the 2001 EU Protocol (note that Article 7 prevents Member States from using banking secrecy as a reason for declining a request). Chapter 4 only applies to "participating countries" as defined by Section 51 of CICA. However, prior to the 2001 Protocol (or its implementation in CICA) the UK did not decline to provide assistance on grounds of bank secrecy. Regardless of Chapter 4, Section 15 is preferred as a quicker and more streamlined route to obtain banking evidence in most cases. Indeed Chapter 4 is rarely used to obtain evidence for MLA cases, whereas Section 15 is used extensively.

²⁴ <http://www.legislation.gov.uk/ukpga/2003/32/contents>

²⁵ <http://www.legislation.gov.uk/ukpga/2002/29/contents>

General observation regarding the implementation of Article 46, paragraphs 9-29:

418. The UK notes in its self-evaluation to paragraphs 9-29 of Article 46 that, under the Legislative Guide, paragraphs 9-29 do not apply to the UK because the UK does not require a treaty to provide legal assistance. In light of the fact that the UK did provide extensive information concerning its MLA procedures relevant to these paragraphs of the Convention, the examiners were not required to evaluate whether the UK's statement on this point of interpretation was correct. The examiners consider that, at the very least, these paragraphs of Article 46 provide important guideposts for the self-assessment process and this review proceeded on that basis.

Article 46 – Paragraph 9(a).

(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;

(a) Summary of information relevant to reviewing the implementation of the article

419. The UK does not require dual criminality to provide mutual legal assistance in most cases. However, the UK would require dual criminality to be present for coercive measures, such as search warrants.

(b) Observations on the implementation of the articles

420. The UK has indicated that it “always seeks to provide the widest form of assistance possible”. In Scotland, such requests are dealt with by a small team of lawyers who specialize in Mutual Legal Assistance requests. Given the size of the team dealing with the requests, it is considered that there is no need for a formal mechanism to assure that in the case of requests under the Convention, the officials charged with consideration and execution of the request are conversant with the purposes of the Convention, as provided in paragraph 9(a) and with the obligation to give them due consideration.

421. It would seem that the import of this is to assure as flexible an application as possible of double criminality requirements, consistent with domestic law, so as to fulfill these purposes of the Convention. The UK provided that the principle of dual criminality is applied to all coercive measures requested in the UK, which would include search warrants and restraint and confiscation of assets. The principle of dual criminality is assessed by seeking equivalent criminal conduct in the UK, despite the fact that the criminal act may be named in other terms in the requesting State. In most cases, the identification of an equivalent act in the UK will be straightforward, and does not cause difficulties. However, there may be some instances when there is no equivalent criminal offence in the UK (one example may be breach of child maintenance obligations, which are civil matters in the UK). No coercive measures can thus be ordered, but other assistance may be provided. There are no practical examples of this in the corruption

sphere, as equivalent offences can be found. In Scotland, double criminality is assessed in a broad and flexible manner. A “broad conduct” test is applied, relating to the conduct alleged, rather than any particular named crime or definition of the crime in the requested state. If the conduct alleged appeared to fall into the category of a crime known to the law of Scotland, an application for coercive measures would be made, no matter that the classification of the crime was different between jurisdictions. In this case, the double criminality test is applied in the same manner as in extradition cases. More generally, all requests to the UK are fully assessed by lawyers prior to acceptance into the UK. Therefore the requests are reviewed by those who are fully aware of the purposes of the Convention.

Article 46 – Paragraph 9(b).

(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;

(a) Summary of information relevant to reviewing the implementation of the article

422. The UK reported that de minimis cases are unlikely to be prioritized and urge that requests made are proportionate, particularly for resource intensive measures. Priority is granted to more serious offences, which may include large scale offences of corruption under the Convention, because the police forces in the UK and other executing bodies such as the Serious Fraud Office are operationally independent; thus MLA requests are prioritized alongside domestic work, while in Scotland, the police may be directed by the Lord Advocate/Procurator Fiscal to carry out enquiries. There are no definitions in UK law of the term “de minimis”.
423. The UK indicated that while there are no definitions in UK law of the term “coercive”, it is generally recognized that requests seeking search warrants, restraint and confiscation of assets, and summoning of witnesses to court, are regarded as coercive measures. Therefore, the definition encompasses anything that is not done voluntarily.
424. The UK is able to provide a wide range of assistance in the absence of dual criminality, including witness evidence, banking and telecoms evidence, and exchanges of information through formal statements of documentation held by government bodies (for example, tax information, company registration documents).
425. The UK stated that it is not aware of any cases under the Convention where requests have been refused on the grounds of dual criminality. Offences such as those under the Convention have equivalent conduct offences in UK law.

(b) Observations on the implementation of the articles

426. The UK referred to its explanation in paragraph 9(a) above as to the operation of the double criminality principle in practice.

427. Regarding de minimis cases, it was observed that the UK response seems reasonable.

Article 46 – Paragraph 9(c).

(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;

(a) Summary of information relevant to reviewing the implementation of the article

428. The UK refers to answers to previous questions regarding the types of assistance available in the UK.

(b) Observations on the implementation of the articles

429. The comments noted for paragraphs 9(a) and (b) are reiterated.

Article 46 – Paragraph 10.

A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate;

(a) Summary of information relevant to reviewing the implementation of the article

430. The provisions of the Criminal Justice (International Co-operation) Act 1990²⁶ allow for the temporary transfer of prisoners who consent to assist with overseas investigations and prosecutions. Reference was also made to page 25 of the Mutual Legal Assistance Guidelines.

431. The UK is not aware of any requests made under this provision of the Convention.

²⁶ <http://www.legislation.gov.uk/ukpga/1990/5/contents>

(b) Observations on the implementation of the articles

432. Section 5 of the Criminal Justice (International Cooperation) Act 1990 seems to provide for this form of assistance. For the avoidance of doubt, Section 47 of CICA 2003 implements Article 9 of the 2000 EU Convention, which provides for prisoners from the UK to be transferred to another participating country to assist with an investigation being conducted from the UK. While the UK explained that it is difficult to imagine a situation where this might be needed, an example might be if a UK prisoner was being transferred overseas to identify a crime scene. This contrasts with Section 5 of the Criminal Justice (International Cooperation) Act 1990, which allows for the temporary transfer of prisoners overseas who consent to assist with an overseas investigation or prosecution.
433. The UK explained that it has received very few requests for the transfer of prisoners to assist in investigations or prosecutions and most of those have been in drugs cases under Section 5 of the 1990 Act rather than Section 47 of the 2003 Act. The UK reported that it has no records of any cases being recorded under the latter provision. It has no records of any transfers in corruption cases.

Article 46 – Paragraph 11.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

434. The UK complies with the terms of this provision through the provisions of the Criminal Justice (International Co-operation) Act 1990, which is also regarded as general good practice.

435. The UK is not aware of any cases made under this provision of the Convention.

(b) Observations on the implementation of the articles

436. As the UK legislation in this matter does not appear to relate to subparagraphs b-d of Article 46(11), although the UK describes such provisions as “good practice”, clarification was sought on how the UK is able to apply these provisions, e.g., to achieve or implement return of an already transferred prisoner; to return the prisoner even without extradition procedures; to assure that the prisoner receives credit for his custody while transferred. It was explained that this accomplished through various treaty provisions, such as Article 9(4) of the 2000 European Mutual Legal Assistance Convention.

Article 46 – Paragraph 12.

Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

437. The UK has stated that this is a matter of practice in the UK and there are no legislative provisions.

438. The UK is not aware of any cases under this provision of the Convention.

(b) Observations on the implementation of the articles

439. Reference is made to the observations and explanations under paragraphs 10 and 11 above.

Article 46 – Paragraph 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.

ty 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 information relevant to reviewing the implementation of the article

440. The UK Central Authority is the designated central authority for England, Wales and Northern Ireland, and the Crown Office is the designated authority for Scotland. The UK Central Authority acts under delegated powers from the Secretary of State for the Home Department (Home Secretary).

(b) Observations on the implementation of the articles

441. The UK indicated that they are unable to keep specific statistics on cases made under the Convention, as they do not require a treaty basis to provide MLA. The UK can identify corruption and bribery cases, but cannot break down statistics further than that. There is no intention to commence recording cases by treaty basis. The UK indicated that current strategies focus primarily on targeting organized crime, but that additional statistics on corruption are expected to be available in the future, though not differentiated according to treaty basis.

442. It was noted that the UK provided the required notification to the United Nations, which can be found on the website of the Office of Legal Affairs²⁷.

Article 46 – Paragraph 14.

Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

443. There are no specific legislative requirements that cover the language of requests made to the UK or requests made from the UK to other States parties. The only legislative

²⁷ http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-14&chapter=18&lang=en

requirement is that the request meets the standards as set out to allow it to accept a request under Section 14 of the Act.

444. It is however, a part of the Mutual Legal Assistance Guidelines (page 9) that requests are made on the headed notepaper of the issuing authority, signed and if, the request is not in English, a translation must be provided. The details of the requesting authority must also be given, to allow the UK Central authorities to properly judge the bona fides of the request. Requests should be sent by post to the UK Central authorities, although in urgent cases, an advance copy may be sent by e-mail or fax.

445. Section 14 of the Crime (International Co-operation) Act 2003 reads as follows:

14 Powers to arrange for evidence to be obtained

(1)The territorial authority may arrange for evidence to be obtained under section 15 if the request for assistance in obtaining the evidence is made in connection with-

(a)criminal proceedings or a criminal investigation, being carried on outside the United Kingdom,

(b)administrative proceedings, or an investigation into an act punishable in such proceedings, being carried on there,

(c)clemency proceedings, or proceedings on an appeal before a court against a decision in administrative proceedings, being carried on, or intended to be carried on, there.

(2)In a case within subsection (1)(a) or (b), the authority may arrange for the evidence to be so obtained only if the authority is satisfied-

(a)that an offence under the law of the country in question has been committed or that there are reasonable grounds for suspecting that such

an offence has been committed, and

(b)that proceedings in respect of the offence have been instituted in that country or that an investigation into the offence is being carried on there.

An offence includes an act punishable in administrative proceedings.

(3)The territorial authority is to regard as conclusive a certificate as to the matters mentioned in subsection (2)(a) and (b) issued by any authority in

the country in question which appears to him to be the appropriate authority to do so.

(4) If it appears to the territorial authority that the request for assistance relates to a fiscal offence in respect of which proceedings have not yet been instituted, the authority may not arrange for the evidence to be so obtained unless-

(a) the request is from a country which is a member of the Commonwealth or is made pursuant to a treaty to which the United Kingdom is a party, or

(b) the authority is satisfied that if the conduct constituting the offence were to occur in a part of the United Kingdom, it would constitute an offence in that part.

(b) Observations on the implementation of the articles

446. As stated in previous answers, the UK does not require a treaty basis to provide MLA and can do so on the basis of good relations and reciprocity.

447. It was noted that the UK provided the required notification to the United Nations, which can be found on the website of the Office of Legal Affairs²⁸.

Article 46 – Paragraphs 15 and 16.

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

²⁸ http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-14&chapter=18&lang=en

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

448. There are no legislative requirements that govern this in UK law, but page 9 of the mutual legal assistance guidelines provide for this information to be given. This information is also provided on requests made from the UK prosecutors to other States. The UK Central Authorities reserve the right to revert back to a requesting State where this information is not given, to obtain proper information before making a decision to accept a request for assistance.

449. The request must contain the information necessary to progress the request as specified in Section 14 of the Act, which states as follows:

14 Powers to arrange for evidence to be obtained

(1) The territorial authority may arrange for evidence to be obtained under section 15 if the request for assistance in obtaining the evidence is made in connection with-

(a) criminal proceedings or a criminal investigation, being carried on outside the United Kingdom,

(b) administrative proceedings, or an investigation into an act punishable in such proceedings, being carried on there,

(c) clemency proceedings, or proceedings on an appeal before a court against a decision in administrative proceedings, being carried on, or intended to be carried on, there.

(2) In a case within subsection (1)(a) or (b), the authority may arrange for the evidence to be so obtained only if the authority is satisfied-

(a) that an offence under the law of the country in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed, and

(b) that proceedings in respect of the offence have been instituted in that

country or that an investigation into the offence is being carried on there.

An offence includes an act punishable in administrative proceedings.

(3) The territorial authority is to regard as conclusive a certificate as to the matters mentioned in subsection (2)(a) and (b) issued by any authority in the country in question which appears to him to be the appropriate authority to do so.

(4) If it appears to the territorial authority that the request for assistance relates to a fiscal offence in respect of which proceedings have not yet been instituted, the authority may not arrange for the evidence to be so obtained unless-

(a) the request is from a country which is a member of the Commonwealth or is made pursuant to a treaty to which the United Kingdom is a party, or

(b) the authority is satisfied that if the conduct constituting the offence were to occur in a part of the United Kingdom, it would constitute an offence in that part.

(b) Observations on the implementation of the articles

450. As stated in previous answers, the UK does not require a treaty basis to provide MLA and can do so on the basis of good relations and reciprocity.

Article 46 – Paragraph 17.

A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

451. There are no specific legislative requirements that govern these requirements.

(b) Observations on the implementation of the articles

452. The UK indicated that it is a matter of practice that the UK will seek to execute the request in accordance with any specific requirements to ensure the evidence is admissible in the requesting State. The UK will reserve the right to execute particular types of re-

quest in another way, if it is not appropriate to do so; for example, a request for material under a search warrant that may more appropriately be obtained via a witness summons. The UK will always seek to consult with a requesting State in advance of obtaining evidence, so that the requesting State may agree to obtain evidence in such a way.

453. In Scotland, if no specific requirements are communicated as to the form of authentication of documents or other evidential requirements in relation to the recovery of material, police forces will recover evidence in accordance with domestic law and practice.
454. The Home Office explained that it has not had any difficulties in implementing mutual legal assistance requests in corruption cases. The major difference in mutual legal assistance requests normally relates to search requests, as common law countries have different requirements for search warrants than the UK, where the measure is seen as very coercive.

Article 46 – Paragraph 18.

Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

455. Section 30 of the Crime (International Co-operation) Act 2003²⁹ permits this. Reference was also made to page 20 of the Mutual Legal Assistance Guidelines. Section 30 of the Act reads as follows:

30 Hearing witnesses in the UK through television links

(1) This section applies where the Secretary of State receives a request, from an authority mentioned in subsection (2) (“the external authority”), for a person in the United Kingdom to give evidence through a live television link in criminal proceedings before a court in a country outside the United Kingdom. Criminal proceedings include any proceedings on an appeal before a court against a decision in administrative proceedings.

²⁹ <http://www.legislation.gov.uk/ukpga/2003/32/contents>

(2)The authority referred to in subsection (1) is the authority in that country which appears to the Secretary of State to have the function of making

requests of the kind to which this section applies.

(3)Unless he considers it inappropriate to do so, the Secretary of State must by notice in writing nominate a court in the United Kingdom where the witness may be heard in the proceedings in question through a live television link.

(4)Anything done by the witness in the presence of the nominated court which, if it were done in proceedings before the court, would constitute contempt of court is to be treated for that purpose as done in proceedings before the court.

(5)Any statement made on oath by a witness giving evidence in pursuance of this section is to be treated for the purposes of-

(a)section 1 of the Perjury Act 1911 (c. 6),

(b)Article 3 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/ 1714 (N.I. 19)),

(c)sections 44 to 46 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) or, in relation to Scotland, any matter pertaining to the common law crime of perjury,

as made in proceedings before the nominated court.

(6)Part 1 of Schedule 2 (evidence given by television link) is to have effect.

(7)Subject to subsections (4) and (5) and the provisions of that Schedule, evidence given pursuant to this section is not to be treated for any purpose as evidence given in proceedings in the United Kingdom.

(8)In relation to Scotland, references in this section and Part 1 of Schedule 2 to the Secretary of State are to be read as references to the Lord Advocate.

456. The UK Central Authorities are not aware of any cases made under this provision of the Convention.

(b) Observations on the implementation of the articles

457. The UK has received no requests for video conferences under the Convention. The UK has been involved in one case for video conference evidence in a corruption case which

was received under the European Convention on Mutual Legal Assistance. This case relates to evidence given by a witness in the corruption case against the former Prime Minister of Italy. The case was referred to as particularly sensitive because of the nature of the allegations and the individual concerned, and the large amount of publicity. In the UK, the UKCA will often brief the Junior Minister responsible for mutual legal assistance and extradition, or in certain cases the Home Secretary, and may ask a minister to make a decision as to whether to accept the case; this was the situation in this case. The evidence was heard successfully over a number of days. The UK has lots of difficulties in video conferencing cases in general, mostly due to technology differences with the requesting State.

458. The rules of court that are applicable regarding such hearings are the Criminal Procedure Rules on International Co-operation, which came into force on 3 October 2011 and are available at http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/criminal/part_32.htm. In Scotland, the Rules are contained in the above mentioned Act of Adjournal.

Article 46 – Paragraph 19.

The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

459. Section 9 of the CICA reads as follows:

9 Use of evidence obtained

(1) This section applies to evidence obtained pursuant to a request for assistance under section 7.

(2) The evidence may not without the consent of the appropriate overseas authority be used for any purpose other than that specified in the request.

(3) When the evidence is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it must be

returned to the appropriate overseas authority, unless that authority indicates that it need not be returned.

(4) In exercising the discretion conferred by section 25 of the Criminal Justice Act 1988 (c. 33) or Article 5 of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (S.I. 1988/1847 (N.I. 17)) (exclusion of evidence otherwise admissible) in relation to a statement contained in the evidence, the court must have regard-

(a) to whether it was possible to challenge the statement by questioning the person who made it, and

(b) if proceedings have been instituted, to whether the local law allowed the parties to the proceedings to be legally represented when the evidence was being obtained.

(5) In Scotland, the evidence may be received in evidence without being sworn to by witnesses, so far as that may be done without unfairness to either party.

(6) In this section, the appropriate overseas authority means the authority recognised by the government of the country in question as the appropriate authority for receiving requests of the kind in question. There are no legislative requirements governing this provision.

460. The UK indicated that evidence is only provided by the UK Central Authorities to a requesting State with the following caveat: “If you need to use the evidence for any other proceedings, which were not outlined in the original request, you must seek the authorisation of the UK Central Authority in advance of the material being used for those proceedings.”

(b) Observations on the implementation of the articles

461. The UK appears to be in compliance with this provision. It was explained that the wording of Section 9(4) of CICA largely replicates the previous wording that was in the Criminal Justice (International Co-operation) Act 1990. The UK indicated that there have been no difficulties with MLA specialty in corruption cases, and in most

cases where permission has been sought for the use of evidence for use or in another case, this permission has been granted.

Article 46 – Paragraph 20.

The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

462. There are no specific legislative requirements covering this provision. However, in line with established international practice the UK Central Authorities will always endeavour to maintain the confidentiality of requests, and will neither confirm nor deny the existence of a request, or its content outside the government agencies, the courts or enforcement agencies. Requests are not disclosed further than it is necessary to obtain the co-operation of the witness or other person concerned. In the event that confidentiality requirements make the execution of a request difficult or impossible, the Central Authorities will consult the requesting authorities and the requesting State will be given the opportunity to withdraw the request before disclosure to third parties is made.
463. If a public statement is made by an overseas authority in relation to a request where assistance is requested from the UK, the Central Authorities should be notified so that appropriate handling issues can be managed.
464. Reference was made to page 6 and 7 of the Mutual Legal Assistance Guidelines.

(b) Observations on the implementation of the articles

465. The UK indicates that there are no specific legislative requirements covering this provision and explained that, as referred to above, Chapter 4 of CICA only applies to participating countries. It was confirmed that there are no circumstances in UK law where disclosure of an MLA request where confidentiality has been requested could constitute obstruction of justice under domestic UK law.

Article 46 – Paragraph 21.

21. Mutual legal assistance may be refused:

- (a) If the request is not made in conformity with the provisions of this article;*
- (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

(a) Summary of information relevant to reviewing the implementation of the article

466. The UK's Central Authorities will consider each request individually, and may decide to refuse a request in line with the above requirements. Requests may be returned to a requesting State if there is insufficient information given within the request.

467. Section 13 of the CICA allows for the fact that the authority "may" obtain the evidence, so a discretion is retained partly by statute.

468. The UK Central Authorities are not aware of any cases made under the Convention where assistance has been refused on this basis. The UK has refused assistance in less than 6 cases over the last 5 years; in the majority of cases, this was due to reasons of national security.

(b) Observations on the implementation of the articles

469. The Central Authorities will decide on whether an MLA request is to be refused. Requests are only formally refused on the grounds of ordre public, national security, sovereignty or other essential interests. A distinction must be made between a formal refusal of a request for one of these reasons (which is signed off by a Home Office minister and is normally only recommended in consultation with other government departments) and a rejection because the request is not specific enough or does not provide the information required. None of the six refusals mentioned in the response were for offences covered by the Convention. In Scotland, a Sheriff, who is an independent judicial officer may decline to grant a search warrant application if he feels that the domestic requirements in relation to search warrants are not made out.

Article 46 – Paragraph 22.

States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

470. The UK has referred to Section 14 of CICA, which states as follows:

14 Powers to arrange for evidence to be obtained

(1) The territorial authority may arrange for evidence to be obtained under

section 15 if the request for assistance in obtaining the evidence is made in connection with-

(a) criminal proceedings or a criminal investigation, being carried on outside the United Kingdom,

(b) administrative proceedings, or an investigation into an act punishable in such proceedings, being carried on there,

(c) clemency proceedings, or proceedings on an appeal before a court against a decision in administrative proceedings, being carried on, or intended to be carried on, there.

(2) In a case within subsection (1)(a) or (b), the authority may arrange for the evidence to be so obtained only if the authority is satisfied-

(a) that an offence under the law of the country in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed, and

(b) that proceedings in respect of the offence have been instituted in that country or that an investigation into the offence is being carried on there.

An offence includes an act punishable in administrative proceedings.

(3) The territorial authority is to regard as conclusive a certificate as to the matters mentioned in subsection (2)(a) and (b) issued by any authority in the country in question which appears to him to be the appropriate authority to do so.

(4) If it appears to the territorial authority that the request for assistance relates to a fiscal offence in respect of which proceedings have not yet been instituted, the authority may not arrange for the evidence to be so obtained unless-

(a) the request is from a country which is a member of the Commonwealth or is made pursuant to a treaty to which the United Kingdom is a party, or

(b) the authority is satisfied that if the conduct constituting the offence were to occur in a part of the United Kingdom, it would constitute an offence in that part.

(b) Observations on the implementation of the articles

471. To clarify the meaning of the quoted provisions of Section 14 of CICA regarding a request from a Non-Commonwealth State with respect to an investigation involving fiscal matters, the UK indicated that double criminality would be required here even for non-coercive measures. However, the double criminality test is broadly construed, at least in Scotland. Regarding the definition of the “institution of proceedings” for purposes of CICA Section 14, the UK indicated that some procedural step would have to be taken to commence formal proceedings, such as service of an indictment or equivalent document. Reference was also made to Article 8 of the 2001 Protocol.

Article 46 – Paragraph 23.

Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

472. There are no specific legislative requirements, but this provision is part of the UK Central Authority’s general practice. Prior to refusing any requests, the UK authorities will generally seek further information from a requesting State, if it appears that the reason for refusal would be lack of specification in the request, rather than legal impossibility.

473. There are no examples of when a request has been refused under the provisions of the Convention.

(b) Observations on the implementation of the articles

474. Although some States have provisions requiring that reasons for refusal of MLA be provided by their authorities, it does not appear to us that such a provision is necessary for compliance with this paragraph. It would seem, in any case, that by ratification of the Convention, the UK assumed an international obligation to other States parties to comply in practice with this provision in the absence of some provision in an applicable treaty on this point.

Article 46 – Paragraph 24.

The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting

State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

475. It is a matter of practice for the UK Central Authorities that appropriate case handling measures are in place. There are no specific legislative requirements covering this requirement.

476. Cases are allocated a complexity and an urgency rating depending on the nature of assistance required and the type of case. Cases such as requests for search and seizure, restraint of funds, proposed arrests or cases where there is a very sensitive element, are prioritised. Each case is allocated to a designated caseworker, (in Scotland, a procurator fiscal depute at Crown Office) who will follow up cases, and will endeavour to provide updates in a timely manner. The more sensitive and complex the case, the more likely it is to be dealt with by senior staff within the Central Authorities. Once a case is referred to an executing authority, it is prioritized by that authority amongst the other work, which in the case of police forces may mean prioritization amongst domestic work.

477. The UK Central Authorities will respond to urgent cases customarily within 5 working days, and routine cases within 10 working days. However, the length of time that it takes to execute a request depends on the complexity of the evidence required, and other factors, such as court time, availability of witnesses and executing authority resources.

(b) Observations on the implementation of the articles

478. Regarding the possibility of establishing procedures in the internal guidelines of its authority or its Court Rules to assure that the purposes of this paragraph of Article 46 are fulfilled, the UK indicated that requests for MLA can be sent to any one of over 40 executing authorities, all of which have their own systems for prioritizing MLA over their domestic cases. Of the regional forces, only the Metropolitan Police and the City of London Police have specialist departments for dealing with overseas requests, though the SFO, HMRC and UKBA also have departments to deal with them. The UK indicated that to implement deadlines would therefore not be appropriate. However, the implementation of the European Investigation Order in criminal matters (“the EIO”), as described in paragraph 30 below, which will have an impact on MLA within Europe, will implement deadlines. Also, to implement rules would be unnecessarily prescriptive and would not allow for peaks and troughs in other work.

Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

479. There is no specific legislative requirement covering this provision, but Central Authority policy is to comply with this provision. The Central Authorities will always seek to consult with the requesting State and the executing authority to see if there is a mutually acceptable compromise in the absence of full execution.

480. There are no specific cases under the Convention. However, there have been other cases not under the Convention where the provision of mutual legal assistance has been postponed because of an ongoing domestic investigation.

(b) Observations on the implementation of the articles

481. The UK Central Authority (UKCA) will be responsible for deciding on postponement and communicating this to a requesting State. However, this is only done in conjunction with the executing authority (for example police) and will also consult with the Crown Prosecution Service or Serious Fraud Office, who will bring the prosecution. The UK indicated that postponement is a matter for consideration on a case by case basis, and thus no legislative authorisation is thought appropriate. As each case is considered on a case by case basis, no guidelines are thought necessary. Each case which is to be postponed will be dealt with appropriately by a lawyer in the Central authorities. In Scotland, the COPFS as the sole prosecuting authority in Scotland would take this decision.

482. There are no circumstances under UK domestic law where execution of an MLA request must necessarily be postponed when a UK proceeding is pending. The UK explained that it is extremely rare that MLA is postponed because of an ongoing investigation. Although no instances were given where the UK has delayed or put conditions in place, it may be the case that certain information may be provided only on an intelligence basis before the conclusion of a trial in the UK.

Article 46 – Paragraph 26.

Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

483. There is no specific legislative requirement covering this provision. The Central Authorities will comply with this provision as a matter of practice and procedure.

(b) Observations on the implementation of the articles

484. The UK explained that there are no examples available of any postponement in corruption cases, indeed the numbers of cases that have been postponed have been very limited in number and normally were only postponed due to an ongoing prosecution in the UK. There were no cases where postponement has been put into place subject to conditions.

Article 46 – Paragraph 27.

Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

485. There are no legislative provisions covering compliance with this provision. Compliance is matter of practice.

(b) Observations on the implementation of the articles

486. The UK authorities reported that safe conducts are presumed to operate automatically as a result of treaty provisions.

Article 46 – Paragraph 28.

The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfill the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

487. The provisions on costs are outlined on page 11 of the Mutual Legal Assistance Guidelines. The exceptions to this rule are:

- a) fees and reasonable expenses of expert witnesses
- b) costs of operating video conferencing, interpretation and transcription
- c) costs of transferring persons in custody
- d) costs of an extraordinary nature agreed with the requesting State.

488. There are no specific examples under the provisions of the Convention. However, agreements have been made with other central authorities on the costs of an extraordinary nature, such as the processing of large amounts of computer material under a search warrant, large amounts of courier costs for shipping evidence to a State, or lawyers fees in relation to court applications made in the UK on behalf of a requesting State.

(b) Observations on the implementation of the articles

489. Many or most MLA requests will require court orders. Fees are not normally charged for law enforcement purposes. Extraordinary costs are negotiated on a case by case basis. The example given in the response was for a particularly unusual court application (not under the Convention) where an indemnity was required for a restraint order to be made. Normal lawyers' fees are not covered by a claim for extraordinary costs. In Scotland, the lawyers appearing on behalf of the requesting State will generally be members of COPFS. These are salaried civil servants, who do not charge fees for their time in the sense mentioned above.

Article 46 – Paragraph 29(a).

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(a) Summary of information relevant to reviewing the implementation of the article

490. There are no specific legislative requirements covering this provision. Records are provided as a matter of practice and policy.

491. There are no specific examples available under the Convention. However, requests are routinely made to the UK for material held at Companies House (Company registry), Registry of Births Marriages and Deaths, Land Registry and other government registry where material is ordinarily available to the general public, albeit on payment of relevant fees. This material can be provided in any format that is admissible in the requesting State, so that relevant evidential requirements can be met.

(b) Observations on the implementation of the articles

492. Fees are not normally charged for law enforcement purposes. Documentation is obtained by the police who will approach the government agency in question. If a fee is charged, this is normally paid by the police or executing authority. One exemption is court transcripts of trial proceedings. This is because transcripts are provided by a third party private company contracted by the court. There is no provision for payment of costs by the police or by the UKCA for these transcripts and thus the requesting State would normally be required to pay.
493. There is no need for a legislative authorization to provide documents not normally available to the public. These can normally be provided under normal law enforcement gateways. There may be some exceptions, such as those documents protected by national security.

Article 46 – Paragraph 29(b).

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

494. There are no specific legislative requirements covering this provision.
495. There are no specific cases available under the Convention, but the UK is routinely asked to provide material such as that held by the Revenue and Customs Office, Passport Agency, Driver and Vehicle Licensing Agency, Department for Work and Pensions, and other government agencies where material is not routinely available to the public.

(b) Observations on the implementation of the articles

496. The UK reported that there is no need for a legislative authorization to provide documents not normally available to the public. These can normally be provided under normal law enforcement gateways. There may be some exceptions, such as those documents protected by national security. Further, as explained under paragraph 4 above, no legislative basis is needed for the UK to pass on spontaneous information, which may relate to confidential and investigative data (including personal data) to foreign authorities because this could be done through the normal gateway provisions provided for in the Data Protection Act 1998. The provisions of that Act (in Chapter IV) allow for exemptions to the regulations found elsewhere, and in particular, for the purposes of crime prevention and detection.

Article 46 – Paragraph 30.

States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

497. The UK is signatory to numerous conventions and bilateral treaties, as noted above in response to paragraph 1. Moreover, the UK indicated that the UK Central Authority is prepared to consider individual requests for negotiations of bilateral treaties on a country by country basis, if it considers it appropriate to do so.

(b) Observations on the implementation of the articles

498. The UK clearly complies with this provision. The Judicial Cooperation Unit negotiates bilateral treaties, and is currently in negotiation with China and Morocco. A treaty with Malaysia came into force in December 2011. Each request is considered on a case by case basis, and a substantive law enforcement reason is needed before a bilateral treaty can be negotiated. In addition, on 27 July 2010 the UK opted into the draft Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters (“the EIO”). This new instrument is expected to be the main route for MLA between EU Member States. The EIO will replace corresponding provisions in a number of other EU MLA instruments, including the 2000 Convention and its Protocol.

Article 47. Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

499. It is possible to transfer proceedings to other jurisdictions. An extract of the Crown Prosecution Services legal Guidance on “International Enquiries” for prosecutors was provided to the reviewers. The Guidance sets out the possibility of transferring proceedings and some of the issues which should be considered.

500. No information is kept centrally on the transfer of proceedings to other jurisdictions.

(b) Observations on the implementation of the articles

501. While the Convention does not require a bespoke mechanism for transfer of proceedings, the reviewers noted that it does not appear that the UK has a specific mechanism for transfer of proceedings. The UK both receives requests for transfer of proceedings and transfers proceedings to other countries.. The Mutual Legal Assistance Guidelines state that the UK is not party to the relevant Council of Europe Treaty on Transfer of Proceedings. The Crown Prosecution Services legal Guidance on “International Enquiries” also notes that the UK has registered a reservation to Article 21 of the Council of Europe Treaty on Mutual Legal Assistance, which provides for Transfer of Proceedings.
502. The UK reported that since January 2010 it has received over 750 cases to transfer proceedings into the UK, although it is not possible to determine how many of these were ultimately accepted. The vast majority of these cases relate to fraudulent behaviour. The guidelines or criteria for doing so are found in the guidance to prosecutors, which notes circumstances when a transfer issue may arise and was provided to the examiners. Transfer requests reach England and Wales via the UK Central Authority (UKCA) in the Home Office. These can then be passed to CPS who assess whether there would be jurisdiction. If there is, CPS prosecutors, in conjunction with the relevant investigator, will assess what should be done. When a request is passed to CPS prosecutors, they are reminded of the terms of the guidance so that prosecutors are sighted on what criteria should be used in order to assess where the locus of prosecution should be.
503. Scotland receives occasional requests for “transfer of proceedings”. Where jurisdiction can be established (i.e. it can be established that a crime has been committed in Scotland), this is achieved by transmission of evidence through normal MLA channels, and a report being made to the relevant procurator fiscal by the police or other reporting agency. In Scotland, no one can force the PF to take up criminal proceedings. Any transfer of proceedings would require to be assessed in the same way (for sufficiency of evidence, and to determine what action would be in the public interest) as a case reported domestically.
504. The Legislative Guide to the Convention notes that transfer of proceedings may be an important tool in international cooperation by allowing prosecution to take place in the most relevant jurisdiction. If extradition is refused for some reason, the requesting State can request that the UK investigates or prosecutes. That can happen where jurisdiction exists. It would not be possible for the courts to expand jurisdiction on an ad hoc basis.

Article 48 – Paragraphs 1 (a) and (b).

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(a) Summary of information relevant to reviewing the implementation of the article

505. The UK implements these measures in practice and has provided a number of examples to the implementation of both provisions.

Regarding subparagraph 1 (a):

- The UK's Serious Organised Crime Agency (SOCA) acts in a variety of roles to support law enforcement activity within the UK and abroad. SOCA has a mandate as the UK's national agency with a statutory remit for tackling serious organised crime affecting the UK, and, as a centre for international police cooperation (for example, hosting the UK Interpol National Central Bureau and the UK Europol National Unit), for activity supporting international law enforcement conventions. SOCA's information exchange procedures ensure adherence to the requirements of these conventions. SOCA's role is also under statute to be the national recipient for certain material, including counterfeit currency and suspicious activity reports.
- The Serious Fraud Office (SFO) has investigated and prosecuted a number of cases based on breaches of the UN Oil for Food programme in Iraq. Crown Office assisted in Scotland by investigating and prosecuting one case, Weir Group Ltd. The SFO investigation focused on offences in respect of the supply of goods that were purchased with the proceeds from the sale of oil, but was later extended to include the sale of oil itself under the Oil-for-Food Programme. At the start of the investigation the SFO's priority was to establish links with other Member States, so as to expedite the exchange of information and evidence concerning breach of Iraqi sanctions in a secure way. It is not uncommon for overseas enquiries to lead to a significant delay in progressing investigations, but in this case the SFO was able to expedite its investigation by establishing a close working relationship with the competent authority. This allowed the SFO to access relevant information on an informal basis at a much earlier

stage. The SFO was therefore able to assess the value of the information to its investigation before requesting it in a formal letter of request. The Member State was also able to refer to the SFO to investigate other suspect corporations and/or individuals. Concurrent jurisdictional issues were also resolved at a much earlier stage than would otherwise have been the case.

- The SFO was able to establish close links with the authorities in other Member States by: (i) calling for and attending a Eurojust meeting of competent authorities; this meeting was followed by separate meetings with those Member States which shared a common interest in an individual suspect(s) and/or who could assist the SFO with its investigation into suspect(s), and (ii) where there was no obvious forum/means to establish links and channels of communication the SFO relied on diplomacy to arrange meetings by video/telephone, or on a one-to-one basis.
 - The SFO's approach to this investigation also enabled it to keep abreast of how other Member States were enforcing the Iraqi sanctions, the evidential and procedural challenges they were facing, and the legal challenges that were mounted. Consequently, the SFO was able to speak with authority in court on how other jurisdictions were enforcing and disposing of their cases.
506. There is no single database for sharing information; data sharing is managed under arrangements for implementing measures, as indicated above.
507. For examples of recent cases where UK law enforcement authorities have exchanged information with those of other State parties for offences covered by the Convention, the UK referred to the UN Oil for Food programme in Iraq, in connection with which the SFO has investigated and prosecuted a number of cases based on breaches of the programme. In this series of cases payments were made to the Iraqi regime to secure contracts. In the case of oil purchases a surcharge payment was paid; in the case of humanitarian goods a kickback payment was paid.
508. Regarding the exchange of information in recent cases involving other criminal activities, the UK referred to several non-corruption related cases:
- In June 2006, an investigation into an organised crime group involved in the importation of heroin into the UK identified that the head of the organised crime group who was wanted in the UK, Damien O'Connor, was resident in Belgium throughout the investigation. Following his arrest in February 2007 in Belgium, he was surrendered to the UK on a European Arrest Warrant (EAW) and charged along with 12 other members of the group. He received a custodial sentence of 20 years in February 2009 and a 10-year travel restriction order. His subsequent appeals against conviction and sentence were dismissed. In November 2010, despite contesting the benefit figure, he was ordered to pay £1,021,300 with a five and a half year sentence in the event of default.

- Following SOCA support to a Hungarian-led investigation, a man involved in the trafficking of illegal immigrants, primarily to work in cannabis factories in the UK, was surrendered on 29 June 2010 to Hungary on a European Arrest Warrant (EAW). Do Huan Nguyen was described as being instrumental to an organised crime group which is believed to have trafficked more than 50 Vietnamese nationals via Moscow and Hungary to the UK on fraudulently obtained Hungarian passports. Once in the UK, they were required to re-pay their debt by working in premises used for the commercial-scale cultivation of cannabis. The other 17 members of the group were convicted in 2009 by a Hungarian court.
- In 2010-2011, one of the hostage takers responsible for the kidnap of a five-year old British boy in Pakistan in 2010 was sentenced to 60 years' imprisonment. SOCA co-ordinated the response to the kidnap investigation by providing tactical and strategic advice which resulted in the safe recovery of the child. A ransom payment sequence under the control of Greater Manchester Police (GMP) and SOCA was initiated in Manchester and taken by courier whilst under surveillance by British, French and Spanish officers. The hostage takers released the child when they received information that the £400,000 had safely been delivered in Spain. A number of arrests were then made in Pakistan, Spain and France and the ransom money was recovered.

Regarding subparagraph 1 (b):

509. SOCA provides a gateway to a wide range of international services, responding to requests from UK and overseas partners:

- SOCA's network of liaison officers and UK support teams work closely with partners around the world.
- SOCA act as the UK's national central bureau for international law enforcement networks, including Interpol, Europol and Schengen:
 - SOCA is the Europol National Unit in the UK.
 - SOCA is the UK National Central Bureau for Interpol services, which allows police in member countries to share critical crime-related information through a common platform.
- SOCA is the UK Central Authority for the European Arrest Warrant, a fast track arrest and extradition process operating between EU member states.

510. There are a number of international and EU mechanisms in place to facilitate the use of joint operations. Amongst others these include:

- Bilateral engagement through the SOCA Liaison Officer Network;
- Engagement through Europol (facilitating engagement through the UK Liaison Bureau (UKLB), through information sharing with Europol and Member States to iden-

tify opportunities for operational engagement and, through setting up coordination meetings, etc);

- Engagement through Interpol (information sharing (entity data on persons, objects and biometric data), circulating notices on persons and objects of interest (including wanted persons), and, through setting up coordination meetings);
 - Engagement through Eurojust, e.g. to facilitate the exchange of International Letters of Request;
 - Schengen: whilst the UK is partial signatory of the Schengen convention, the UK currently participates in some measures including Article 40 (cross-border surveillance) and Articles 39 and 46, which support the exchange and provision of information in relation to a person or object of interest;
 - The European Arrest Warrant, administered through SOCA International;
 - Engagement through the Comprehensive Operational Strategic Planning for Police (COSPOL) framework projects; the UK participates in all seven existing projects, which provide a platform for Member States to establish agreed objectives and plans to tackle specific areas of criminality. Europol is also key to the effective running of COSPOL projects, allocating specialists to each project and providing analytical support through its Analysis Workfiles (AWFs);
 - SOCA advocates the use of Joint Investigation Teams (JITs) as a mechanism for supporting international operational engagement.
511. SOCA also sits on the European Anti Corruption Network, an EU body to facilitate the development of standards and sharing of best practice for corruption practitioners. This is a contact point network with no policy remit but which works to promote standards around anti-corruption and police oversight. This can be a forum for sharing strategic intelligence on corruption practices and trends but there is no tasking or referral process as part of the group. The contacts from the group are usually the first port of call for any bi-lateral operational matters.
512. SOCA acts as the focal point in the UK for conducting overseas operations to tackle serious organised crime threats that originate in the UK, such as Operation CAPTURA, a campaign which identifies individuals on the run in Spain who are wanted by UK law enforcement agencies for serious crimes committed in the UK. The campaign highlights appeals for information on individuals facing prosecution in the UK who have European Arrest Warrants issued against them. In 2010, SOCA and Crimestoppers joined forces in a similar campaign called Operation RETURN, targeting criminals in Amsterdam.
513. SOCA (UKFIU) has, as part of the responsibilities of the International Corruption and Asset Recovery Team (ICART), designated the head of ICART as the UK representative on the StAR/Interpol Asset Recovery Focal Point Group (ARFPG). This forum,

comprising national practitioners, aims to promote cooperation in the tracing and securing of assets derived from criminality related to offences under the Convention. The UK ARFPG representative is responsible for ensuring that intelligence is shared with operational law enforcement partners within the UK International Corruption Group to maximise the opportunities for intervention activity or is passed to relevant international anti-corruption partners overseas.

514. The UK is a member of the Egmont Group, an international forum for financial intelligence units to stimulate cooperation, particularly in the areas of information exchange, training and the sharing of expertise in the fight against money laundering and the financing of terrorism. There are over 100 worldwide FIUs in the Egmont Group. Membership allows the UKFIU to seek financial intelligence from other members to support law enforcement operations and projects, including those led by SOCA.
515. An EU Council Framework Decision was taken in December 2007 that Member States should have designated national Asset Recovery Offices (AROs). These are responsible for assisting with the tracing and identification of proceeds of crime and other crime-related property which may become the subject of a freezing, seizure or confiscation order under the legislation of another Member State. The UK has two AROs: one for England, Wales and Northern Ireland and one for Scotland. The Home Office nominated SOCA as the ARO for England, Wales and Northern Ireland. The other ARO is part of the Scottish Money Laundering Unit of the Scottish Crime and Drug Enforcement Agency (SCDEA). The ARO activity within SOCA is undertaken by the UKFIU. This provides access to financial intelligence and research tools to enable effective co-ordination and asset tracing. The ARO has access to the Joint Asset Recovery Database (JARD), a multi-agency system that records information about asset recovery activity and performance across the UK criminal justice sector. JARD is maintained by the National Policing Improvement Agency (NPIA). The UKARO also makes use of the SLO network to maintain and enhance relationships with asset recovery partners abroad and has two officers based in strategic financial capitals in Europe. The ARO incorporates membership, on behalf of UK law enforcement, of the wider Camden Assets Recovery Inter-Agency Network (CARIN) asset recovery community.
516. The UK referred to an example of a recent case where UK law enforcement authorities have cooperated with other States parties in conducting inquiries with respect to offences covered by the Convention. In February 2011, a formerly high ranking Nigerian government official was ordered by the High Court to hand assets worth £1.25 million to SOCA. The order was granted by the High Court in London against Christopher Orumgbe Agidi from Lagos in Nigeria, trading as Orion Worldwide Consult Limited. Mr. Agidi was the former Director of the Federal Ministry of Education and the former Director of the National Civil Registration Directorate with the Nigerian civil service from 1995 until his retirement in 2002. In its civil recovery application, SOCA submitted that Mr. Agidi had derived the majority of his assets through corruption over a five year period and that he used his consultancy firm in London as a front to launder the cash. SOCA's investigation identified that Mr. Agidi had received bribes from two in-

ternational companies whilst he was in post. The Czech and French companies both had contracts with the Nigerian Government at the time. His Honour Mr. Justice Sweeney deemed Mr. Agidi's UK assets, which include a house in Golders Green and a bank account containing over £650,000, to be the proceeds of crime.

(b) Observations on the implementation of the articles

517. While the discussion focuses largely on SOCA additional information concerning the SFO and other UK law authorities demonstrates that the UK liaises and cooperates with foreign counterparts to achieve the goals of Article 48. The liaison role expresses itself not only in cases which have a nexus to the UK and for which there may be UK jurisdiction, but in capacity building efforts in developing countries in which the specialized UK law enforcement units, as listed in the following paragraphs, participate. An example of a significant case handled by the Metropolitan Police Proceeds of Corruption Unit, for example, was the conviction of James Ibori, former governor of Delta state in Nigeria, who was acquitted by a Delta state court in 2009 and then pleaded guilty in April 2012 on money laundering charges to stealing \$80 million and was sentenced to 13 years imprisonment. The efforts and practices of the law enforcement units directed at tackling overseas corruption, in particular the effective use of specialized agencies, such as the SFO and SOCA, and the operations of aid-funded police units which are directed at illicit flows and bribery related to developing countries, were considered by the reviewers as a good practice in the fight against corruption at the international level. These units also receive and handle a number of complex assistance requests, including offences covered by the Convention, on a regular basis. There were no examples given in which the Convention was used as a basis for direct law enforcement cooperation with other jurisdictions. Instead, as noted, UK law enforcement agencies cooperate in the context of other mechanisms, such as Egmont, FATF and CARIN.
518. Regarding the UK's operations and practices in this area, the UK reported that the Association of Chief Police Officers has an Anti Corruption Advisory Group (ACAG). In addition, corruption-related specialised units exist within the Metropolitan Police and the City of London police (CoLP). The City of London Police, based in London's financial centre, is the UK's National Lead Police Force for Fraud. In addition to an Economic Crime Department the CoLP has an Overseas Anti-Corruption Unit, which, alongside the Serious Fraud Office (SFO), handles all UK international foreign corruption cases. The Metropolitan Police has a Proceeds of Corruption Unit that investigates foreign Politically Exposed Persons (PEPs) committing theft of state assets. It also has a Fraud Squad that investigates domestic corruption in the public sector. The international unit of the Metropolitan Police executes extradition and MLA requests; it receives approximately 3,000 extradition requests and conducts around 2,000 arrests per year; approximately 70 percent of which originate from Europe.
519. The International Corruption Group is a co-ordination group for law enforcement agencies which coordinates casework on Politically Exposed Persons (PEPs), money

laundering and corruption generally. It usually meets on a monthly basis and is attended by representatives from the SFO, Metropolitan Police, City of London Police, Serious Organised Crime Agency, FSA, Ministry of Defence Police and sometimes by HM Revenue and Customs. The Politically Exposed Persons (PEPs) Strategic Group, which meets quarterly, provides a strategic lead and co-ordinates government departments and agencies to tackle money laundering by corrupt PEPs. Operating underneath the PEPs strategic group is the PEPs tactical group, bringing together the law enforcement agencies that deal with corrupt foreign PEPs (the Metropolitan Police, City of London police, SOCA, and the FSA) to discuss progress on specific cases.

520. With specific regard to Subparagraph 1(b) of article 48, SOCA act as the central agency on all issues relating to the identity and location of offenders who are operating in or sought from Member States and other countries. The detail provided in the submission would appear to deal with the UK position.
521. Northern Ireland authorities seem in particular to coordinate in many cases with their counterparts in the Republic of Ireland to deal with cases of cross-border corruption.

Article 48 – Paragraph 1 (c).

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(a) Summary of information relevant to reviewing the implementation of the article

522. This is done under the overall arrangements for implementing measures in subparagraphs (a) and (b).
523. The UK referred to an example of a recent criminal case where UK law enforcement authorities cooperated with other States parties to provide samples for analytical or investigative purposes. In summer 2008, SOCA intelligence prompted the seizure of over 600 kilos of cocaine when a light aircraft was detained at Sierra Leone's main international airport. Sierra Leone police made the seizure following close collaborative work between a Sierra Leone intelligence unit and SOCA. The crew of the light aircraft, together with members of a Colombian organised crime group who had based their drug trafficking operations in Sierra Leone, were detained attempting to flee over the border to Guinea. Fifteen people were charged in December 2008 and are now serving prison sentences. At the request of the local authorities, a team of SOCA officers was de-

ployed to Freetown to help the Sierra Leone Police with the collection of forensic evidence, its investigation and its presentation in court. In addition, SOCA's Forensic Science Group assisted with the examination of technical equipment, fingerprints and drug samples in the UK.

Article 48 – Paragraph 1 (d).

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(a) Summary of information relevant to reviewing the implementation of the article

524. This is done under the overall arrangements for implementing measures in subparagraphs (a) through (c).

525. By way of example of implementation, the UK reported that SOCA leads a project to uncover the acquisition and use of fraudulently-obtained genuine (FOG) British passports by members of organised crime groups. FOG passports are genuine passports issued by the relevant UK authority after receipt of a fraudulent application, and a British criminal could therefore possess a number of genuine passports, each in a different identity. Applications have sometimes been made after payments to corrupt officials, with criminals paying between £5,000 and £15,000 per document. To date the project has largely focused on British criminals living in the Netherlands who are trafficking drugs and firearms into the UK and Ireland. As a result, a Joint Investigation Team (JIT) agreement was signed with Dutch authorities in December 2009, which was extended for a further 12 months from December 2010. This JIT has identified a large number of FOG passport offences, in many cases prosecuting these through the issue and execution of European Arrest Warrants. A number of fugitives have also been arrested, including several who had managed to evade capture for over a decade. Analytical work undertaken during the project has led to the identification of criminal facilitators (for example, hire companies knowingly supplying services to criminals using false identities); the identification of members of key criminal groups previously known only by nickname; and the placement of criminal assets and plans for criminal activity in other parts of the world. Although the initial focus has been on Britain, Ireland and the Netherlands, the project has shown that similar results are achievable in other jurisdictions.

(b) Observations on the implementation of the articles

526. The implementation example provided in this answer was instructive of the UK's effective implementation in this area.

Article 48 – Paragraph 1 (e).

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(a) Summary of information relevant to reviewing the implementation of the article

527. This is done under the overall arrangements for implementing measures in subparagraphs (a) through (d).

528. SOCA has in excess of 130 SOCA Liaison Officers (SLOs) posted in around 40 countries. Their main role is to lead and support SOCA projects and operations overseas. This support includes intelligence, research and development, and brokering relationships with key partners. The SLO network is supported by large teams of personnel in the UK, who coordinate activity on SOCA operations.

529. By way of corruption-related examples of implementation, the UK reported that SOCA activity in Afghanistan has an ongoing focus on supporting and contributing to the wider government strategy in the region; mentoring of the Corruption Investigation Unit (CIU) and the Counter-Narcotics Police of Afghanistan (CNPA); assisting in the creation and development of the Afghan Major Crime Task Force (MCTF) which provides an enhanced ability to investigate kidnap, corruption and serious crime; and working closely with law enforcement and military entities to develop intelligence on counter narcotics.

530. Regarding non-corruption related examples, the SLOs in Barbados and St Lucia played a key role in developing and evaluating intelligence which led to action in April 2008 against property linked to the major regional drug trafficker Antonio Gellizeau. He was suspected of having been involved in importing bulk quantities of cocaine from Venezuela to the Grenadines and then selling it to the numerous air courier networks targeting the UK, European and US markets. The St Vincent & Grenadine and Bermudian authorities carried out a coordinated strike against the yachts 'Jo Tobin' and 'Orion' in

Bequia Island as well as several properties on St Vincent linked to Gellizeau. An estimated USD1.76 million in cash was found in a well constructed deep concealment on the yacht 'Jo Tobin'. The yacht's crew were subsequently charged with money laundering offences. This ground-breaking operation was the first of its kind in the region. It involved the use of multiple police, Coast Guard and military assets supporting the St Vincent Financial Intelligence Unit (FIU) investigators, as well as the use of the Regional Security System Maritime Patrol Aircraft. Both SOCA and the regional UK Security Advisory Team were integrally involved in mentoring the planning and execution of the operation, as well as the lengthy investigation by the St Vincent FIU. This resulted in Antonio Gellizeau being arrested on 19 December 2008 and charged with the illegal importation and concealment of the cash seized.

Article 48 – Paragraph 1 (f).

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

...

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

531. This is done under the overall arrangements for implementing measures in subparagraphs (a) through (e).
532. By way of example of implementation in a criminal matter, the UK reported that in 2008/09, a strand of SOCA activity aimed to reduce the estimated £340 million lost every year by victims in the UK to criminal frauds originating in West Africa. To this end a strong partnership was formed with the Nigerian Economic and Financial Crimes Commission (EFCC). The EFCC were thus an active member of the international working group and partners with the UK in a project to target the communication infrastructure criminals use to make and maintain contact with victims. A subsequent successful programme to intercept fraudulent mail in Lagos resulted in Nigerian criminals being displaced to other West African countries, where SOCA and local law enforcement pursued them. SOCA's main contribution was to provide intelligence and tools to help the authorities identify and prosecute offenders.

Article 48 – Paragraph 2.

With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

(a) Summary of information relevant to reviewing the implementation of the article

533. The UK does not have a comprehensive list of relevant agreements on direct cooperation with law enforcement agencies of other States parties.

534. Information on law enforcement cooperation provided or received making use of bilateral or multilateral agreements or arrangements, including international or regional organizations, was provided in response to subparagraphs 1 (a) and (b).

535. The UK partly considers the Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by the Convention, though it is also able to cooperate with overseas law enforcement without the Convention.

536. The UK is a member of Europol, which as from 1 January 2010 became an EU body mandated through EU Council Decision³⁰. Europol supports the law enforcement activities of the member states mainly against:

- Illicit drug trafficking;
- Illicit immigration networks;
- Terrorism;
- Forgery of money (counterfeiting of the euro) and other means of payment;
- Trafficking in human beings (including child pornography);
- Illicit vehicle trafficking;
- Money laundering.

(b) Observations on the implementation of the articles

537. SOCA has in excess of 130 SOCA Liaison Officers posted in around 40 countries. Their main role is to lead and support SOCA projects and operations overseas. This support includes intelligence, research and development, and brokering relationships

³⁰ https://www.europol.europa.eu/sites/default/files/council_decision.pdf

with key partners. The SLO network is supported by teams of personnel in the UK, who coordinate activity on SOCA operations.

Outside of the EU, examples (both referenced elsewhere in self-assessment return) include:

- Strategic Alliance Group (SAG): SOCA is working in collaboration with seven international law enforcement partners called the Strategic Alliance Group (SAG) to reduce the threat of global organised crime and its international impact. The partners are from five countries: the UK, USA, Canada, Australia and New Zealand.
- The head of ICART is the nominated representative for the UK on the World Bank (StAR)/ Interpol Asset Recovery Focal Point Group. This is a global network of anti corruption and asset recovery practitioners focused on cooperation between members to identify instances of criminality related to offences under the Convention and provide channels of assistance to identify and recover stolen assets. The secretariat function is provided by Interpol, based in Lyon.

538. The UK amended its answer to the question of whether it considers the Convention as a basis for mutual law enforcement cooperation from “Yes, in part” to “Yes”, explaining that the original answer was a misunderstanding of the question on the part of the UK and that the UK response should have said “Yes”, as the UK does regard the Convention as a basis for law enforcement cooperation, though the Convention is not the sole basis for such cooperation.

Article 48 – Paragraph 3.

States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

539. The UK approach is to prosecute the offence, in this case corruption - which is an offence, rather than the means by which it is committed i.e. including through use of modern technology. Therefore law enforcement cooperation in combating corruption, including that committed using technology will follow the measures and examples mentioned above.

(b) Observations on the implementation of the articles

540. The UK explained that it has laws relating to computers and telecommunications, which relate largely to offences committed against IT or communications infrastructure. As an example, the Computer Misuse Act 1990 (CMA) concerns unauthorized access to computer material and unauthorized access with the intention of committing further offences. In the second of those, the material accessed might be used to commit

fraud and other offences, but the UK authorities would prosecute the CMA offence and the fraud offence.

541. The UK meets the offences of the Council of Europe Convention on Cybercrime through the CMA, and also through the Fraud Act and other general legislation. The procedural aspects of the Convention are met through general police powers and through the Regulation of Investigatory Powers Act 2000.

Article 49. Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

542. Council Framework Decision of 13 June 2002 on Joint Investigation Teams (2002/465/JHA)³¹ is a Governmental agreement signed up to by EU Member States which JITs are based on. Joint investigation teams (JITs) are also included in Article 13 of 2000 European Union Convention and Article 20 of the Second Additional Protocol to the 1959 Convention.
543. The UK makes use of JITs which are geared towards assisting MS law enforcement authorities tasked with instigating complex investigations into organised crime groups, by virtue of which cross jurisdictional serious criminality can be tackled by different LE agencies working in single teams. Both Europol and Eurojust have an important part to play in JIT operations; indeed the latter hold responsibility for the provision of detailed legal advice of an international nature on any given aspect of a JIT-related activity. Both Eurojust and the European Commission have responsibility for the provision of funding to those Member States who actively participate in a JIT. JITs negate the need for an International Letters of Request (ILOR) between Member States.
544. In reporting on a non-corruption related example of a Joint Investigation Team (JIT), the UK stated that in May 2010, an “international day of action” involving 750 officers, coordinated through a JIT among the UK, Spain, Ireland and Belgium, targeted an organised crime network suspected of trafficking both large quantities of drugs and firearms to gangs across the UK and Europe, and of laundering hundreds of millions of pounds in criminal proceeds. Dawn raids across Europe resulted in 35 arrests. In the

³¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0465:EN:HTML>

UK, around 230 SOCA officers searched business and residential addresses and 10 people were arrested. The man believed to be the head of the network was arrested in Spain.

(b) Observations on the implementation of the articles

545. In addition to the examples provided above, numerous examples of SOCA joint working with international partners outside the EU have been provided in the self-assessment, for example working with partners in Sierra Leone (article 48, Question 18), Afghanistan and the Caribbean (article 48, Question 30).
546. The investigating authorities in the UK make use of the mechanism of joint investigation teams (JITs) in particular when their use will mitigate problems in receiving intelligence and investigative cooperation from other jurisdictions. Many civil law jurisdictions cannot provide evidence absent specific MLA requests unless a joint investigation team mechanism is used and the UK authorities have participated in joint investigation teams for this purpose, including in corruption cases.

Article 50 – Paragraph 1.

In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

(a) Summary of information relevant to reviewing the implementation of the article

547. Covert surveillance and covert human intelligence sources are regulated by Part II of the Regulation of Investigatory Powers Act 2000 (“RIPA”) in England, Wales and Northern Ireland³² - and by the Regulation of Investigatory Powers (Scotland) Act 2000 in Scotland³³.
548. Property interference is regulated by Part III of the Police Act 1997³⁴ (for law enforcement agencies) and section 5 of the Intelligence Services Act 1994³⁵ (for intelligence agencies) throughout the United Kingdom.
549. There is no bar on material obtained by the use of these techniques being used as evidence in court. Sensitive material may be protected from disclosure at the discretion of

³² <http://www.legislation.gov.uk/ukpga/2000/23/contents>

³³ <http://www.legislation.gov.uk/asp/2000/11/contents>

³⁴ <http://www.legislation.gov.uk/ukpga/1997/50/contents>

³⁵ <http://www.legislation.gov.uk/ukpga/1994/13/contents>

the trial judge considering the public interest under the Criminal Procedure and Investigations Act 1996³⁶.

550. In Scotland, covert techniques can and are used in corruption investigations subject to the usual considerations of necessity and proportionality, as per other criminal investigation. Obtaining access to covert resources is a challenge, as they are not readily available within CCUs, fraud squads or similar units. There have, however, been various examples when CCU counter-corruption operations have been supported by covert resources from the SCDEA, although such covert techniques are not deployed routinely.
551. By way of example of implementation, the UK reported that the Overseas Anti-Corruption Unit (OACU) in the City of London Police have gathered both intelligence and evidential material within the UK jurisdiction using static (observation posts) and mobile surveillance techniques on numerous occasions, some of which has been admitted in evidence in the UK and abroad. Both historic and proactive interception of communication data has also been used for intelligence and evidential purposes, relating to both telephonic and data transactions. Some of the scenarios are sub-judice and the covert surveillance processes are often intelligence gathering exercises rather than evidential gathering and are protected by Public Interest Immunity (PII) guidelines.
552. SOCA examples of non-corruption related cases include the following:
- In 2010/11, seven men were jailed for their roles in bringing over half a billion pounds worth of cocaine into the UK hidden in metal pipes. They were caught after an 80 kg haul, with a street value of £15 million, was discovered at Dover. SOCA officers switched the drugs for flour and allowed the pipes to be transported to a warehouse in Manchester. Officers obtained evidence to show that there had been more than 30 previous deliveries to the warehouse identical to the one that had been intercepted. If each contained a similar amount of cocaine then the total amount could have had a street value of almost £500 million.
 - In February 2010, three members of a drug trafficking gang were jailed for a total of 65 years for their roles in a plot to supply 299 kilos of high purity cocaine. Undercover SOCA officers infiltrated the gang in March 2009, posing as criminals who could arrange delivery of the cocaine, and after a number of meetings a “handover” took place near to an industrial estate in Leicestershire, on 22 April 2009. A van containing the bales of cocaine was then stopped by armed officers on a motorway. Two men were arrested on the same day in London. Both men were sentenced on 12 February 2010 to 28 years’ imprisonment for conspiracy to supply cocaine. A further gang member was arrested at Heathrow airport on 18 June 2009. He pleaded guilty to the same offence and was jailed for nine years. During the operation, the undercover

³⁶ <http://www.legislation.gov.uk/ukpga/1996/25/contents>

officers were given £320,800 as part payment for the delivery service they were offering. This was seized under Proceeds of Crime Act 2002.

- In August 2011, drug smugglers who attempted to import almost 80kg of heroin into the UK disguised as chilli powder were sentenced to a total of 40 years in prison. The heroin had been shipped in a single container to the UK from Asia in November 2010. Gulab Mohammed, 51, was found guilty of importation of a Class A drug. He was sentenced to 21 years in prison. His son, Khalid Mohammed, 29, pleaded guilty to importation of a Class A drug in April. He was sentenced to 19 years' imprisonment. The SOCA investigation showed that the Mohammeds had used a shipping agency to transport the heroin from Pakistan to the UK. On its arrival at Felixstowe on 03 November 2010, the container was scanned by UK Border Agency officers and found to contain 600 20kg sacks of red chilli powder. Twelve beige coloured packages were found in one of the sacks near the rear of the container, and when tested, the contents were found to be heroin. Six further sacks in the final row of the container also contained quantities of the drug. SOCA officers substituted the heroin with a safe substance and then sent the consignment, driven by an undercover SOCA officer, to the delivery address in Birmingham. On his arrival he was met by the Mohammeds who asked him to take the container on to an industrial unit in Shropshire. After arriving at the unit, the container was subsequently unloaded and the father and son arrested by SOCA officers. The judge granted Travel Restriction Orders against both men which will come into effect on their release from prison.

553. Figures on authorisation of each covert technique under regulation are published annually by independent Commissioners appointed to oversee public authority compliance with the relevant legislation. The latest figures for UK law enforcement and intelligence agencies are for the 2010/11 financial year:

- property interference 2,701
- covert human intelligence sources 4,176
- covert surveillance 14,178

The figure for covert human intelligence sources includes both the deployment of undercover officers from law enforcement or intelligence agencies and the management of members of the public providing information derived from a relationship with a covert purpose.

The figure for covert surveillance covers both 398 for “intrusive” surveillance (on private property) and 13,780 for “directed” surveillance (in public places).

A more detailed breakdown is not available.

554. Regarding recent cases in which special investigative techniques have been used and admitted in court, the UK reported that OACU actively assisted the deployment of a foreign national within the UK jurisdiction in a covert role whose actions have been

evidenced and used in a series of trials relating to multiple offenders from both the UK and a number of other foreign jurisdictions. A number of these trials are still ongoing but some earlier hearings have resulted in guilty pleas and defendant cooperation. In support of the same case OACU deployed UK officers to obtain surveillance material relating to this investigation in a foreign jurisdiction under a RIPA authority for potential use in the UK.

(b) Observations on the implementation of the articles

555. Paragraph 1 of Article 50 does not directly deal with international cooperation. It does deal with the ability of investigative authorities to utilize domestically the special investigative techniques such as controlled delivery, electronic surveillance, physical surveillance, and undercover operations and to utilize the results of those techniques as evidence in prosecutions in corruption cases. The answer and texts cited indicate that those techniques are available for investigative use.

556. It should be noted that a distinction is drawn under UK law between surveillance techniques and intercept techniques such as telephone wire taps. Intercept techniques can and are used for purposes of gathering intelligence; however, evidence of such intercepts are not admissible as evidence in criminal trials. The UK authorities including CPS did not feel that the inability to utilize such evidence has a major impact on the ability to deal with crime including corruption crimes.

557. It should be noted that the UK authorities are permitted to use intercept evidence that has been lawfully obtained by authorities of a foreign jurisdiction as long as such intercepts were not undertaken at the request of the UK authorities.

Article 50 – Paragraph 2.

For the purpose of investigating the offences covered by this Convention, States parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

(a) Summary of information relevant to reviewing the implementation of the article

558. The UK implements this provision in practice. There are a number of international and EU mechanisms in place to facilitate the use of joint operations. Amongst others these include:

- Bilateral engagement through the SOCA Liaison Officer Network;
- Engagement through Europol (facilitating engagement through the UK Liaison Bureau (UKLB), through information sharing with Europol and Member States to identify

tify opportunities for operational engagement and through setting up coordination meetings, etc);

- Engagement through Interpol (information sharing (entity data on persons, objects and biometric data), circulating notices on persons and objects of interest (including wanted persons), and through setting up coordination meetings);
 - Engagement through Eurojust, e.g. to facilitate the exchange of International Letters of Request;
 - Schengen: whilst the UK is partial signatory of the Schengen convention, the UK currently participates in some measures including Article 40 (cross-border surveillance) and Articles 39 and 46, which support the exchange and provision of information in relation to a person or object of interest;
 - The European Arrest Warrant, administered through SOCA International;
 - Engagement through the Comprehensive Operational Strategic Planning for Police (COSPOL) framework projects; the UK participates in all seven existing projects, which provide a platform for Member States to establish agreed objectives and plans to tackle specific areas of criminality. Europol is also key to the effective running of COSPOL projects, allocating specialists to each project and providing analytical support through its Analysis Workfiles (AWFs);
 - SOCA advocates the use of Joint Investigation Teams (JITs) as a mechanism for supporting international operational engagement.
559. SOCA is the designated competent authority and single point of contact in the UK for cross border surveillance. There are a number of methods for requesting surveillance from another country, namely: Article 40 of the Schengen Acquis; Europol; the SOCA Liaison Officer (SLO) network; and an International Letter of Request (ILOR).
560. The UK is a signatory to Article 40 of the Schengen Acquis which deals with cross border surveillance. Under Article 40, the UK co-operates with other European states to facilitate surveillance operations that cross national borders. The UK can make a request to any European country that is also a signatory to Article 40. The obligation to act is reciprocal. If material is required evidentially, it will still have to be requested via an International Letter of Request.
561. Reference is also made to the separate discussion of controlled deliveries under paragraph 4 below.
562. Regarding information on recent cases in which bilateral or multilateral agreements or arrangements have facilitated the use of special investigative techniques, the UK reported that OACU have engaged in joint cross-border international investigations where RIPA authorities have been obtained to gather material in the foreign jurisdiction with a view to potential use in the UK for intelligence or evidential purposes. The

unit has also accommodated the activities of foreign nationals operating covertly in the UK jurisdiction to gain evidential and intelligence material for their home nation and offered support, security and practical advice and assistance. Normally these international arrangements are covered by a specific memorandum of understanding and existing supportive legislation or treaties and always advised in advance to prosecutors to ensure evidential gathering is lawful and admissible in the relevant jurisdiction. OACU actively assisted the deployment of a foreign national within the UK jurisdiction in a covert role whose actions have been evidenced and used in a series of trials relating to multiple offenders from both the UK and a number of other foreign jurisdictions. A number of these trials are still ongoing but some earlier hearings have resulted in guilty pleas and defendant cooperation. In support of the same case OACU deployed UK officers to obtain surveillance material relating to this investigation in a foreign jurisdiction under a RIPA authority for potential use in the UK.

563. In a non-corruption related example, in October 2010, Timothy Dale was sentenced to 18 years for masterminding an attempted 37kg cocaine deal, in a prosecution based on evidence passed to the UK by the Dutch authorities. In September 2007, Dale attempted to buy 37kg of cocaine for EUR 1million from a British gang located in Amsterdam. The gang was already being targeted by the Dutch National Crime Squad. Phone calls between Dale and Richard Wright in the Netherlands were intercepted by the Dutch NCS. When Wright arranged for a courier to transport the drugs concealed in the door panels of a car, police stopped the car as it approached the Belgian border. A search revealed 37kg of cocaine hidden. All four members of the gang along with the courier were arrested by the Dutch and have since received sentences totalling 26 years. Under Dutch law, Dale could not be prosecuted for his role in the conspiracy. SOCA contacted the Dutch authorities and agreed a prosecution in the UK. The overwhelming evidence against Dale, who by his own admission had been dealing in drugs for more than 20 years, resulted in his guilty pleas at Southwark Crown Court on 27 October 2010 and his subsequent 18 year sentence.

(b) Observations on the implementation of the articles

564. It was clarified that the special investigative techniques referred to in Article 50 are also available as a form of mutual legal assistance, pursuant to mutual legal assistance treaties to which the United Kingdom is party.

Article 50 – Paragraph 3.

In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

(a) Summary of information relevant to reviewing the implementation of the article

565. The UK implements this provision in practice.

566. By way of example of implementation, the UK reported that OACU actively assisted the deployment of a foreign national within the UK jurisdiction in a covert role whose actions have been evidenced and used in a series of trials relating to multiple offenders from both the UK and a number of other foreign jurisdictions. A number of these trials have resulted in guilty pleas and defendant cooperation. In support of the same case OACU deployed UK officers to obtain surveillance material relating to this investigation in a foreign jurisdiction under a RIPA authority for potential use in the UK. The City of London Police explained that the referenced case involved a “true” covert international corruption investigation, which was in the post-prosecution stage at the time of the review. As part of the case, UK law enforcement officials hosted a U.S. Foreign Corrupt Practices Act (FCPA) team deploying a covert cooperating witness, who met with individuals from various countries engaged in the sale and promotion of military hardware. The U.S. devised a “sting” operation, which resulted in all the suspects (including UK nationals) being invited to a meeting in Las Vegas to receive checks for supplying these materials and a 10 percent special commission indirectly, to a foreign public official (actually an FBI frontman). The suspects were all arrested and charged with FCPA offences. The U.S. judge took exception to the operation despite several guilty pleas. After a series of hung juries, the U.S. Department of Justice decided to pull the prosecutions rather than waste additional resources.

Article 50 – Paragraph 4.

Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

567. The UK implements this provision in practice.

Controlled Deliveries:

568. Previous references to legislation and measures for international cooperation are set forth above.

569. The UK reported that international referrals are notified to SOCA via the SOCA Liaison Officer network, from foreign law enforcement, or from Europol/Interpol. The referral will indicate that a commodity has arrived, or is destined to arrive, in the UK from overseas. International referrals are not subject to a defined threshold. The referral is adopted if it is viable for SOCA and if it meets the requirements of both UK and host country legislation. Operational activity undertaken outside the UK must comply

with the legal requirements of the host country. Any controlled delivery activity that traverses UK borders will require formal engagement with and authorisation from the UK Border Agency.

570. SOCA has defined a “Controlled Delivery” as: “An operational technique where illegal commodity, consignments containing illegal commodity or consignments where the illegal commodities have been substituted with inert material, are monitored under controlled circumstances with the intention of gaining intelligence and/or evidence against the suspects involved in the criminal activity”.

571. “Illegal commodity” is defined as: any substance, object, material that, the production of, possession of, use or supply of, is defined within UK law as illegal; or any substance, object or material that may not in itself be illegal but the circumstance of its arrival in the UK or intended future use constitutes a criminal offence.

572. By way of examples of implementation, the UK provided the following examples:

- In 2010/11, a German law enforcement agency identified a parcel containing two handguns with ammunition destined for an address in the southeast of England. Close collaboration with the German authorities, UKBA and the police forces of Hertfordshire, Lancashire and the Police Service of Northern Ireland led to the controlled delivery of this parcel and the arrest by SOCA of the intended recipient. The consignor has since been located and arrested by the authorities in Germany.
- In June 2011, a drug gang who used a specially adapted hydraulic press to conceal 18.4kg of cocaine in an attempt to smuggle it into south west England were sentenced to 50 years’ imprisonment. The concealment was discovered by German Customs Officers at Frankfurt Airport in December 2010 during a routine examination of two pallets which contained the component parts of the press. These had arrived from Bolivia, via Buenos Aires, destined for the UK. The consignment was forwarded to the UK, where the cocaine was removed by officers from SOCA before it was allowed to run its intended course. On 04/01/2011 the consignment was collected from Heathrow Airport and delivered to Mark Lang at an address in Torquay. SOCA kept the address under surveillance for almost two weeks. On 16 January 2011, Lang was joined at the premises by Jose Ricardo Gomez (a Mexican national who had arrived in the UK 2 days earlier) and Peter Ferguson, and together they opened the press. Gomez was required in the UK to open the concealment because of his specialist knowledge. At this point, all three were arrested by SOCA officers, working with Devon & Cornwall Police. Gomez pleaded guilty prior to trial and was sentenced to 17 years’ imprisonment. Ferguson and Lang were sentenced to 18 and 15 years’ imprisonment respectively.

(b) Observations on the implementation of the articles

573. It appears that UK utilizes and makes controlled delivery available as form of international cooperation and assistance.