

Letters to the *New Law Journal*

The OECD Convention on Combating Bribery

Introductory Note by Francis Bennion

The following letter echoes the final part of an article by FB published in *Justice of the Peace* (See FB's website at www.francisbennion.com/2007/001.htm).

Dear Editor,

I would like to add to the article by Gareth Rees QC and Jason Mansell (9 March 2007). My point relates to the recent discontinuance of the investigation into bribery allegations about an arms order involving Saudi Arabia. It was discontinued on the ground that to continue it would be contrary to the public interest.

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions entered into effect in the United Kingdom on 15 February 1999. The Act implementing it (the Anti-terrorism, Crime and Security Act 2001) came into force on 14 February 2002. Article 5 of the Convention runs as follows (emphasis added):

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

Neither the 2001 Act nor the official explanatory notes on it mention Article 5, so it is clear it has no legislative effect. Its terms are contradictory. Among “the applicable rules and principles” of United Kingdom law is the rule that a prosecution should be instituted or allowed to continue only where the public interest so requires, and for this purpose the public interest comprehends both “considerations of national economic interest” and “the potential effect upon relations with another State”.

In the absence of legislation upholding Article 5, it seems that because it is contrary to our law it must be treated as ineffective in relation to this country. A treaty cannot of its own force abrogate a rule of our law, especially when that rule explicitly protects the public interest. Such abrogation requires Parliamentary approval, which in this case it did not receive.